

# Editorial

The EJRR greets the New Year with a wealth of timely new analysis and comments to the most controversial risk regulation issues of our times. This first issue of 2016 hosts two mini-symposia devoted to the infamous *Volkswagen scandal* – which revealed that the carmaker used for some its vehicles defeat devices and software to cheat on tests for smog-causing nitrous oxides (NOx) – and the *Paris Agreement on Climate Change*, concluded at COP-21 in December of last year. In addition, it features a Special Issue, which delves into the EU law and policy of one of the most contentious, yet potentially necessary, strategies to counter the effects of natural and anthropogenic climate change: *geoengineering*.

Under the guest-editorship of *Marie-Eve Harbour* (Université Laval) the homonymous mini-symposium that involves the Volkswagen group offers a first tentative analysis of the debacle. By providing a kaleidoscopic answer – considering that its contributions provide different legal perspectives – be it business law, consumer law, criminal law, environmental law and torts –, the authors offer a useful mapping for future research. Despite their different backgrounds, all contributors highlight the need to enhance controls by regulators on the market economy.

The “world's greatest diplomatic success” or an “epic failure”? This is the provocative line opening the Paris Agreement mini-symposium edited by *Lucas Bergkamp* (Hunton & Williams). This collection of essays illustrates and exemplifies the breadth of the issues associated with the Paris Agreement on Climate Change. They address inter alia the Agreement's relation to science, how the agreement's aspirational objectives may affect future behaviour by states, and how it treats agriculture and food security. More generally, the Paris Agreement also epitomizes the contradictions of Beck's world risk society, characterized by perceived threats confirmed by politicized science and governed by sub-politics beyond democratic control.

On a different, yet related line of thought, the Special Issue on Geoengineering looks from an EU perspective at what was once viewed as a “freak show in otherwise serious discussions of climate science and policy”<sup>1</sup>. Geoengineering – also referred to as climate engineering – is broadly defined by the Royal Society as “the deliberate large-scale manipulation of the planetary environment to counteract anthropogenic climate change”. With the declared aim to address the gap between the EU's role in regulating climate engineering and its actual risks, *Jesse L. Reynolds* (Tilburg Law School) our guest editor, took the initiative to host at his own institution an international workshop gathering environmental policy, legal and regulatory experts. This resulted into a well-timed and insightful reflection providing the need to enhance the dialogue regarding the intersections among climate change, geoengineering and European law.

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1 David G. Victor, “On the Regulation of Geoengineering”, 24(2) *Oxford Review of Economic Policy* (2008), 322, 323.

In addition to these dedicated collections, our issue contains several original research articles that deal with some of the most controversial risk regulatory challenges facing the European and global risk world: an exhaustive analysis of the state of the art of GMO cultivation in Europe, a fresh look at how the European Courts have applied the precautionary principle, a sophisticated treatment of what qualifies as a “nudge” and how exactly it relates to “libertarian paternalism”, and finally, an epidemiological perspective of causal inference in law.

Professor *Gerd Winter*, from the University of Bremen, explores in a comprehensive EU and WTO-law analysis what grounds may justify GM-cultivation restrictions beyond those identified in a concrete environmental risk assessment. By distinguishing between grounds of general environmental policy and trans-environmental grounds (like socio-economic or ethical grounds), he convincingly demonstrates how trade restrictions for reasons of health and environmental protection are increasingly justified by a broadened variety of risk perceptions and cultures.

*Anne-May Janssen* and *Nele Rosenstock* examine how the European Courts have recently been handling uncertain risks. Confirming the pattern – originally identified by Marjolein Van Asselt and Ellen Vos in the seminal Precautionary Paradox – that the EU judiciary has been inconsistent in dealing with the relationship between uncertainty and the precautionary principle, they also demonstrate that the existing EU risk regulation framework does not sufficiently address the complexities of uncertain risks, by taking into due account the role of the Courts and that of the EU Commission.

“Nudge” and “libertarian paternalism” have become concepts of increasing interest and debate amongst public policy makers and academics alike. Yet, their respective definitions and relation to one another have raised semantic and inevitably conceptual confusion. This has in turn led to a series of disagreements and ambiguities. To improve the clarity and value of the definition of nudges, *Pelle Guldberg Hansen*, from Roskilde University, ventures to tackle the resulting theoretical confusion. In his essay, he reconciles them with their theoretical foundations in behavioural economics, and offers an astute explanation of how they relate to incentives and information.

Last but not least, *Bob Siegerink*, *Wouter den Hollander*, *Maurice Zeegers* and *Rutger Middelburg* discuss the problem of causal inference in law, by providing an epidemiological viewpoint. More specifically, by scrutinizing the concept of the so-called “proportional liability”, which embraces the epidemiological notion of multi-causality, they demonstrate how the former can be made more proportional to a defendant's relative contribution in the known causal mechanism underlying a particular damage.

Thanks to our correspondents EJRR readers are kept updated on some of the latest developments in different risk regulation sectors by covering various issues, such as the EU's new framework for food for specific groups, like sportspeople or infants, or how the concept of “performativity” constitutes a useful mechanism to analyse the relation between risk communication and risk regulation.

A couple of risk regulation annotations on important EU risk-relevant judgments and book reviews complete the issue.

With every good wish for a lively and fulfilling 2016!

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