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Caught between proportionality and precaution: the principle of innovation and the principle of non-regression

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In 2020, during von der Leyen's first term, the European Commission presented the Farm to Fork Strategy. The strategy was largely scrapped in favour of a new Vision for Agriculture and Food, announced in February 2025 during von der Leyen's second term. The major legislative proposal that followed in December 2025 is largely known as the Food and Feed Safety Omnibus package. EU agri-food lawyers met both strategies with scepticism, showing how the legal community is (largely) divided between technological optimists and technological sceptics .

However, the reactions were not purely policy-oriented. They also showed significant legal creativity and reimagination within existing legal rules. One could suspect that this creativity and reimagination supported a particular normative vision of order in the agri-food sector. This would perhaps not be problematic per se, if someone outrightly does not reject certain academic activism. However, it showed how these reimaginations are caught between existing principles and may fall flat in offering a principled, rather than fact-contingent, line of argument.

In this blog post, I discuss two such scholarly and legal novelties, the innovation principle and the non-regression principle and their oscillation between the proportionality principle and the precautionary principle. Inspired by the view that the mutual recognition principle is best understood as a European mode of governance, I argue that the principles purported by some EU scholars should follow the same consideration: to understand these principles as a mode of epistemic governance, which will in turn help to determine their viability in the EU agri-food

sector.

Innovation principle

At its most basic, the innovation principle is understood as a lawmaking technique that prompts the legislature to adopt pro-innovation rules and actions. These include experimental and innovation clauses, testbeds, top-runner approaches and innovation deals. Some scholars point to the need for such a principle in impact assessment; others, in benchmarking industrial standards. Some say the principle obliges lawmakers to future-proof laws; others say it requires adaptive legal design throughout the policy process.

Critics argue that the principle is merely an expression, or even an amplifier, of corporate power in EU lawmaking. They claim that its deployment undermines the precautionary principle, that it is employed as a counter-principle to precaution and that it leads to deregulation. Initially, the Commission rebutted these views, maintaining that the principle complements the precautionary principle. Furthermore, it included the principle in its Better Regulation toolbox and viewed it as a policy-cycle principle that should accelerate the development and adoption of policy-relevant technologies.

One could argue that the Commission has applied an innovation principle, as it were, in its two proposals to enhance the agri-food sector: the Food and Feed Safety Omnibus package and the Biotech Act I package. Arguably, following that principle, it has also proposed new innovation-boosting rules in other sectors, such as the revision of the pharmaceutical legislation, currently awaiting the Parliament's second reading.

Despite the evidence of this practice, some argue that the innovation principle "does not presently enjoy any credible legal foundation". It is true that after the Commission adopted the two proposals in 2025, scholarly interest in further refining the innovation principle faded. Given the lack of legislative and doctrinal underpinning, some scholars questioned whether the innovation principle is necessary after all, that is, whether it effectively recalibrates the relationship between proportionality and the precautionary principle. They argued that the principle's tenets point to its superfluity. They highlight the principle's overlap with the sustainable development framework and argue that, when combined with the stringent application of the precautionary principle, the latter provides a sound understanding of trade-

offs “in the context of complex socio-economic systems.”

If nothing else, the debate around the innovation principle makes clear that governance can be reimagined as an innovation-enabling environment in which regulators and regulatees engage in reciprocal epistemic exchange and, for the most needed innovations, accelerate their marketisation through procedural design. If innovators use design thinking to design products, regulators can use design thinking to develop procedural solutions to regulatory bottlenecks. However, such governance is not principled enough to ease tensions between different objectives of Article 3 TFEU. In that sense, the innovation principle serves as an emulsifier rather than a calibrator, but it can also be understood as a governance vehicle that articulates an implicit objective of innovation within the objectives of Article 3 TFEU.

Non-regression principle

At its most basic, the non-regression principle is best understood as a policy-prohibition principle requiring the maintenance of any level of protection already achieved. It can also take shape through certain legislative techniques, such as non-deterioration clauses or progressive realisation clauses. As with the innovation principle, scholars have found conceptual overlap with the principle of sustainable development, and, just like the innovation principle, the non-regression principle extends beyond food and agriculture and is notably discussed in the context of climate mitigation. Again, as with the innovation principle, its doctrinal underpinning and significance are contested. However, unlike the innovation principle, the Court of Justice of the European Union derived the non-regression principle from Article 2 TEU, the EU constitutional value clause, in a case concerning judicial appointments.

In one of the most recent scholarly contributions on the non-regression principle, particularly in the context of the Food and Feed Safety Omnibus package, Hasler and González built a careful argument to normatively anchor the non-regression principle “against the sweeping deregulatory push of the Omnibus package”. Hasler and González ground the non-regression principle in the precautionary principle, which they identify as having a legislative design dimension, resonating with the innovation principle’s legal design potential. This normative linkage to the precautionary principle draws further important parallels to the innovation principle. Like the innovation principle, scholars also expressed reservations about the risk of

political instrumentalisation of the precautionary principle, which could carry over to the non-regression principle, particularly given its international investment and trade law underpinnings in the context of protecting domestic industries and national competitiveness amid global regulatory competition. Moreover, like the innovation principle, the non-regression principle has a teleological dimension that leans more heavily on health and environmental protection objectives. This plays out in how the non-regression principle is operationalised, namely through the proportionality test, which Hasler and González dub the "precaution-inflected proportionality test", reminiscent of Knuth's and Vos's "precautionary internal market law".

That makes the non-regression principle not a value- but an objective-anchored governance vehicle. To illustrate the non-regression principle, the authors measure how the proposed pesticide rules under the Food and Feed Safety Omnibus package fare under the precaution-inflected proportionality test. Regression appears in the politicisation of "preventive regulatory epistemology" and its redesign to allow innovation to proceed without mandatory re-evaluation procedures, at the expense of incorporating new scientific evidence. However, the authors' challenge to the projected benefits of the new pesticide rules, including cost savings that may be channelled into further innovation, effectively undercuts this thought-test. They question the magnitude of the Commission's projected benefits, as well as the assumption that pesticide companies will actually invest in more sustainable, low-risk pesticide alternatives. It is on the basis of this opposition to the projected benefits that the precaution-inflected proportionality test renders the non-regression principle applicable.

That makes the principle hinge on fact-intensive disputes, where rebuttal can come easily, such as that the disputed assumptions rely on standard economic modelling, including real options. Such a construct for when to invoke the non-regression principle makes it vulnerable to basic fact-finding and uncertainty about benefits, including market and firm behaviour, as well as investment decisions. This is because applying proportionality in view of applying non-regression seems to call into question, and disbelieve a priori, epistemologies that seemingly originate outside the health and environmental protection area, such as those regarding innovation strategies based on competitive advantage, value creation, and staying successful in globally changing markets.

Nonetheless, investing more scholarly currency into crystallising the non-regression principle as a mode of epistemic governance could clarify how to reimagine the balancing exercise grounded in various epistemological understandings of benefits supported by robust evidentiary foundations, and how to establish those foundations.

Mode of (epistemic) governance

In his article, Riordan encountered a similar problem with another purported legal principle, that of mutual recognition. He found that it resulted from other principles and rules, such as proportionality, objective necessity, and non-discrimination, which together created a mutual recognition mechanism. The principles of innovation and non-regression emerge from various interactions between Article 2 TEU and Article 3 TFEU, depending on political power. Indeed, these interactions give rise to new forms of epistemic governance, guided by proportionality and, in cases of scientific uncertainty and irreversible risk, by the precautionary principle, within the broad discretion the EU legislature enjoys. Epistemic governance is the configuration of actors, power, and social practice of politics through which conceptions of what counts as objectives under Article 3 TFEU and what counts as values under Article 2 TEU are rallied and supported by facts and evidence. Seeing the innovation and non-regression principles as two modes of epistemic governance helps to appreciate how knowledge use creates, reinforces or disrupts the regulatory architecture in the agri-food sector. Some authors taking a similar approach recognise four primary models of innovation governance: the Precautionary Principle, Responsible Innovation, Permissionless Innovation, and the Innovation Principle. One of the closest understandings to that would be seeing innovation/non-regression epistemic governance as meaning that, whenever policy is developed, the impact on innovation/protection goals is fully understood through their respective epistemologies. Combined, these approaches call for very nuanced policy outcomes, in contrast to other countries' "accelerationist" policies, which assume the biggest safety risk is a lack of development.

Using the proportionality principle as a procedural vehicle for the innovation and non-regression principles means accepting that proportionality is a touch tone-deaf to quantifiable objectives and levels of protection. Nevertheless, it reminds us of the value of the proportionality principle and the vitality of its inner workings when "all relevant factors and

circumstances" are taken into account. Proportionality offers a coherent tool with internal balancing mechanics. Conceiving of the innovation and non-regression principles as modes of epistemic governance suggests that the proportionality principle does not need to recalibrate balances, but rather to place all considerations on the scale in an epistemically sound way, accounting for both objectives and values and recognising that innovation and non-regression are both objective-oriented epistemic governance vehicles. Such "going all in" includes innovation (and innovation decisions) and environmental and health systems aspects and resolving their trade-offs in a specific legal design, including that which enables "fighting risk with risk".

Conclusion: The case of NGT Regulation

To conclude, a good example illustrating why the innovation and non-regression principles should be understood as modes of epistemic governance is the adoption of the New Genomic Techniques Regulation (NGT Regulation) in June 2026, although other examples exist that point to the same, such as the proposed rules on non-renewal of authorisations of feed additives or genetically modified microorganisms. The new GMO rules treat certain NGT plants as conventional plants, and others as GMO plants, while lowering risk assessment requirements and even accelerating authorisation procedures for plants with traits that contribute to sustainability. In that context, I could not identify a single scholarly or other article arguing that the change in rules represents a regression in environmental protection standards, although separate concerns about compatibility with the precautionary principle have been raised. Yet, the innovation principle was invoked in articles authored by current Commission officials, suggesting that who participates in producing knowledge, whose expertise is recognised, and how knowledge informs decisions, change when the innovation principle enters the discourse. This reflects a strategic use of evidence marshalled in support of these proclaimed principles. While the effects of innovation as a mode of epistemic governance came to the fore in the latest rounds of EU omnibus lawmaking, non-regression must be properly designed in law or be given more spotlight in judicial review to test these propositions.

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