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Food Safety Meta-Controls in the Netherlands

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FOOD SAFETY META-CONTROLS IN THE NETHERLANDS*

Paul Verbruggen & Tetty Havinga**

Abstract
Both public and private actors are involved in the monitoring and enforcement of compliance with public food safety norms. Public authorities in countries such as the Netherlands, the United Kingdom and Canada have recently started to develop forms of coordination and collaboration with private food safety control systems. Such policies bring with them the risk of regulatory capture, loss of transparency and fuzzy accountability relationships. Here we analyse how the Netherlands Food and Consumer Product Safety Authority (de Nederlandse Voedsel- en Warenautoriteit – NVWA) assesses and monitors the functioning of private food safety control systems (meta-control) so it can use these private systems in its own enforcement activities. We do so by discussing two national private systems that have been formally accepted by the NVWA: Bureau de Wit and RiskPlaza. The paper examines the safeguards that the public enforcement agency deploys while coordinating its own activities with private food safety controls, the advantages and risks involved in this strategy, and the extent to which this policy can be improved. The study is based on the analysis of policy documents, public and private regulation and open-ended interviews with representatives of the public and private sector in the Netherlands.

Key words
Meta-control; food governance; self-regulation; private food controls; food inspectorate; food safety; Netherlands

1. Introduction

Food safety regulation is a responsibility that is shared between public and private actors. Government and industry have developed sophisticated monitoring and enforcement systems to control and manage food safety risks. An important development is the emergence of arrangements and regimes in which public and private actors organize their respective regulatory activities to attain the common goal of ensuring safe food. The coordination and management of regulatory capacity appears attractive in times of global food chains, the internationalisation of public food safety controls, and national budget deficits (Havinga and Van Waarden 2013). However, it is not clear how much such 'hybridisation' of food safety controls contributes to higher levels of food safety. Moreover, certain risks seem manifest, including regulatory capture, loss

* This paper is based on previous empirical research published in Dutch (Verbruggen and Havinga 2014a).

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of transparency and fuzzy accountability relationships (Garcia Martinez, Verbruggen and Fearne 2013).

The question is how these risks can be controlled and managed. A public enforcer is not likely to rely on private food safety controls without ensuring that public legal norms are complied with and the level of compliance is the same as in case of public enforcement, if not better. In the Netherlands, the Netherlands Food and Consumer Product Safety Authority (Nederlandse Voedsel en Warenautoriteit – NVWA) has recently developed a policy of assessing private systems of food safety controls so as to use these private systems in its own enforcement activities. This paper enquires how the NVWA has designed this policy of 'meta-control' (controlling the controllers) and asks which safeguards the public enforcement agency deploys while coordinating its own activities with private food safety controls, and the extent to which this policy can be improved.

These are pressing questions, given the fact that the NVWA is currently being challenged to more efficiently allocate enforcement resources, after successive rounds of budget cuts have seriously limited those resources. Elsewhere, too, public enforcement agencies in the food sector are developing collaborative regulatory arrangements with private actors to deploy their resources in more efficient and innovative ways. Since the mid-2000s, the Food Standards Agency in the United Kingdom has promoted better coordination between the monitoring and enforcement activities of the local food authorities and the activities undertaken by the private sector, mainly focusing on so-called 'farm assurance schemes' (Kirk-Wilson 2002). The Canadian Food Inspection Agency (2012) recently announced that it was to develop guidelines for the recognition of 'third-party service delivery providers'. The U.S. Food & Drug Administration (2013) has also indicated that, in the context of the Food Safety Modernization Act, it wants to deploy private certification from recognised 'third-party auditors' to verify the food safety compliance of imported goods.

The questions framed above are central to the explorative research set out in this paper, in which we conducted a comparative analysis of two private food safety control systems – known as *Bureau de Wit* and *RiskPlaza* – which the NVWA has accepted as 'systems of self-control' for food produce. The methodological choices that underlie this analysis are explained in Section 4. In what follows, we first define what we mean by 'meta-control' (2) and discuss the factors that have driven the emergence of such a policy in the Netherlands (3). The analysis of Bureau de Wit (5) and RiskPlaza (6) focuses on the design of these systems of private control and how the NVWA coordinates its own enforcement activities with them. The results of this analysis are compared and discussed to highlight the approach the NVWA has taken to the respective private systems, and discuss the risks involved in those approaches (8).

2. Hybridisation and meta-control of food governance

Meta-control – and the broader term meta-regulation – should be considered a 'hybrid' regulatory approach. Hybridity involves the combination of (at least) two different entities in a regulatory regime, thus constituting a composite, mixed form of regulation (Havinga and Verbruggen 2014). Since meta-control involves two (or more) different actors, implies the management of monitoring and enforcement activities of one actor by the other(s), and may occur between different categories of actors (public-public, private-private, public-private, and private-public), it is a clear manifestation of hybridity (cf. Oude Vrielink et al. 2011).

What do we mean by 'meta-control'? In essence, meta-control concerns the assessment and control of (other) control systems. In an arrangement of meta-controls, the actor that performs monitoring and enforcement activities (the first tier) is itself subject to systems of control. The actor that performs this meta-control function (the second or third tier) does not itself monitor or enforce regulation vis-à-vis the regulated. Instead, its role is limited to managing, verifying and designing the first-tier control mechanisms and, more broadly, the framework for meta-control. Meta-control thus implies a two- (or three-) stage process of monitoring and enforcement, in which the role of the meta-controller changes from what Osborne and Gaebler (1992) have famously called *rowing* to *steering*.

Meta-control is distinct from strategies that have been described as 'enforced self-regulation' and 'management-based regulation'. These forms of regulation are characterised by the public approval of private, internal management systems at the firm-level, which enable individual firms to self-assess and ensure regulatory compliance (Fairman and Yapp 2005, Coglianese and Lazer 2003). Meta-control, by contrast, concerns the approval of monitoring and enforcement activities carried out by private, external actors (such as third-party auditors and certification bodies) who use their own food safety management systems to assess and ensure regulatory compliance by the firm. Nonetheless, meta-control can involve enforced self-regulation or management-based regulation. This is the case if the first tier controller (e.g. a third-party auditor or licensed certification body) verifies whether a firm's internal risk management system complies with a set of regulatory norms by using a verification scheme, while subject to control and inspection by another body (e.g. a standard-setting body, accreditation institution or public enforcement agency). In our view, meta-control then concerns the relationship between the first and second tier of control, and not – in contrast to enforced self-regulation or management-based regulation – risk management systems at firm-level.

Accordingly, meta-control involves those activities that seek to regulate and steer the mechanisms, procedures and instruments for monitoring and enforcing

regulatory compliance, but are managed by others. In that sense, meta-control closely aligns with the concept of 'meta-regulation'. While Coglianese and Mendelson (2010, p. 147) have correctly observed that there is no agreement on the definition of meta-regulation, Parker (2002, p. 15) aptly captures the common core of studies of meta-regulation by holding that the concept principally concerns the activity of '(...) regulating the regulators, whether they be public agencies, private corporate self-regulators or third party gatekeepers'. Instead of independently setting regulatory standards and monitoring and enforcing them, the meta-regulator – just like the meta-controller – operates at a distance by using other actors' mechanisms. However, if these mechanisms are no longer deemed adequate, the meta-regulator intervenes and sets new standards with which the first-tier regulator must comply.

Both public and private actors may act as meta-regulators by exerting influence on or setting conditions for regulatory activities, whether such activities be standard-setting, monitoring or enforcement (Scott 2012, Verbruggen and Havinga 2014b). In this sense, meta-control is a form of meta-regulation that focuses on the activities of monitoring and enforcement in a regulatory regime. Although here we focus merely on meta-controls exercised by the public enforcement agency NVWA on two national private food safety control systems, the concepts of meta-regulation and meta-control – in our view – not only involve the regulation of private systems by public actors, but also, conversely the regulation of public regimes by private actors (Scott 2002), as well as the regulation of public and private actors among themselves (Verbruggen and Havinga 2014b).

3. Drivers for meta-control

Which factors have driven the development of NVWA oversight on private food safety control systems in the Netherlands? One relevant factor is that the capacity of public agencies to regulate food safety is increasingly coming under pressure. There are several aspects to this situation, of which two of the most relevant are briefly discussed here, namely the globalisation of food supply chains, and the recurrent institutional reforms and budget cuts. Today, supply chains in the food sector are often international in scope, which means that the various stages of food production may not occur within the jurisdiction of a single public enforcement agency, which is territorially defined. This makes it difficult for such agencies to warrant the safety and quality of the entire production process. In the Netherlands this is potentially a serious problem, as the country plays a major role in the global trade of food products. The Netherlands is the largest vegetable exporting country in the world (12% of the total global trade), but the country also takes a considerable share of the trade in other product categories (UN Comtrade 2011). To retain that position, it is in

the interest of the Netherlands to ensure the safety of the food it trades. However, the quantities of food traded make it nearly impossible for the public enforcer – the NVWA – to fulfil that task. We therefore observe that the NVWA is aligning its activities with other bodies, both public and private, at national and international levels.

It is against that background that we should view the development of the NVWA, which has been confronted with a number of institutional reforms and budget restrictions that have seriously limited its capacity to perform periodic inspections to assess compliance levels (Havinga and Van Waarden 2013, p. 81ff).[1] Efficiency has been the buzzword for the last decade, although it is not clear whether, or how much the suggested strategies have led to the anticipated efficiencies. Within this context, the NVWA has focused on 'system controls' (*systeemtoezicht*), which implies a shift from monitoring substantive food safety norms to oversight of production processes and HACCP-based systems[2] adopted by individual companies (Helderman and Honingh 2009, De Bree 2010). Coordination with private food safety systems also fits the rationale of this approach, since these systems may – it is contended – compensate for the gaps that the NVWA has been forced to leave unfulfilled. Put differently, public oversight can be reduced in favour of these private systems, provided they are adequate. This, in turn, reduces the regulatory burdens imposed by public agencies.

A second factor that has played a decisive role in the development of the NVWA policy of meta-control is the changes that have occurred in the legal framework applying to food safety controls. In response to the BSE crisis in 1996, this framework was significantly reformed both at the national and European level (Vos 2000). Whereas food safety was previously seen as the responsibility primarily of the public sector, now both the public and private sector share that responsibility. Regulation 178/2002/EC, which currently provides the general public legal framework for food safety controls in the European Union (EU), requires food and feed producers to meet the applicable regulatory standards in all stages of the production, processing and distribution of food and feed. The EU Member States must maintain an effective legal sys-

1 After several food safety (the salmonella Thomson and EHEC outbreaks) and non-food safety related incidents (horsemeat), an increase in the number of food safety inspectors was announced in December 2013. See: Brief van de staatssecretaris van Economische Zaken en de minister van Volksgezondheid, Welzijn en Sport aan de Tweede Kamer d.d. 19 december 2013, Plan van aanpak NVWA).

2 HACCP stands for Hazard Analysis and Critical Control Point. Food businesses are legally obliged to develop and maintain a food safety management system based on the principles of HACCP.

tem to see that food safety is ensured.[3] By making the private sector also responsible for food safety, it became possible for public authorities such as the NVWA to review and reallocate tasks and resources.

Other pieces of European legislation that concern the exercise of inspections and controls further promote this reorientation. Regulation 882/2004/EC requires that the NVWA and other public authorities in the EU shall conduct food safety inspections, without prior notice, on a risk basis and with appropriate frequency, taking into account the identified risks, past compliance records, the reliability of the authority's own checks and any other information that might signal non-compliance.[4] The regulation's preamble specifies the latter point, noting that the frequency of the controls should be proportionate to the risk, 'taking into account the results of the checks carried out by feed and food business operators under HACCP based control programmes or quality assurance programmes, where such programmes are designed to meet requirements of feed and food law, animal health and animal welfare rules'.[5] This enables the NVWA to ascribe a role to private food safety control systems in their institutional framework to ensure food safety. The result is that food safety controls in the Netherlands are hybridised to a considerable degree.

A third important factor is the motivation of the private sector to collaborate with the NVWA. Owners of private food safety control systems have a manifest, commercial interest in having their system accepted by the public agency. After all, such public approval will serve as a sign of expertise and diligence in the private system, which is likely to attract more (paying) customers. This is a significant incentive for owners to collaborate with the NVWA and subject themselves to its (meta-) control.[6] This 'buy in' offers the NVWA a possibility to collaborate with the private sector since meta-control presupposes a certain level of cooperation and is, in that sense, no one-way street. However, the presence of the commercial motivation for collaboration implies the risk that the private interests (attracting new customers, making a profit) will

3 Article 17(1) and (2) of Regulation 178/2002/EC of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2000] OJ L 31/1.

4 Article 3(1) Regulation 882/2004/EC of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules [2004] OJ L 191/1.

5 Recital 13 Regulation 882/2004/EC.

6 Not only the owners, but also food business operators have noted that they would like to see the NVWA take (greater) consideration of private systems and certifications in determining its enforcement action. Almost half the firms certified by ISACert (a major certification body in the Netherlands) suggested in a survey conducted by ISACert among its customers that the NVWA does not take sufficient consideration of their audit results to base its inspections on (ISACert 2013).

undermine the public ones (astute enforcement, food safety). To maintain the proper balance between these interests, the NVWA is challenged to set down adequate safeguards and conditions under which the collaboration can take place.

4. Methodology

To explore the way the NVWA assesses and monitors private food safety control systems and deploys its meta-control strategy, we have investigated two such systems, namely Bureau de Wit (BDW) and RiskPlaza. These are two of the in total eleven so-called 'self-control systems' which the NVWA accepted in the food production, catering, and retail industries. The agency committed itself to taking these systems (and their audit results) into account when determining its inspection frequency, the depth and length of its inspections, and the interventions at participating firms. The private systems that have been accepted so far are voluntary and principally national in scope. Certification for transnational standards, such as those recognized within the Global Food Safety Initiative (GFSI), have not (yet) been accepted by the NVWA, although the agency was investigating that option at the time of writing.

The cases were not selected according to any theoretically driven principles. Very little was known about the operation of most accepted self-control systems when we initiated our research. The cases we selected were sought to ensure a high level of variation.

The system operated by BDW is one of seven accepted systems that monitor compliance with applicable guides to good hygienic practices by artisan, non-industrial food business operators. These guides are developed on a sectoral basis by the respective representative industry bodies and submitted to the NVWA for formal approval, after which they form the basis for NVWA inspections in the sector concerned. BDW was accepted by the NVWA in December 2011. BDW's customers include firms in the catering, hotel, restaurant, café, retail, and health care sector.

RiskPlaza is one of the four other systems accepted by the NVWA. The choice to include RiskPlaza in our analysis is, in part, related to the fact that many consider this system an example of how the NVWA should collaborate with private sector initiatives (Havinga and Van Waarden 2013, p. 61). RiskPlaza was created at the joint initiative of the bakery sector and the Dutch trade association called the 'Agricultural Product Board' (Productschap Akkerbouw). This association is a semi-public institution under Dutch administrative law and functions as a forum for employers and employees in the agri-food business. The RiskPlaza scheme aims to control food safety hazards in raw materials and ingredients for food production. It consists of two modules: a database that identifies potential safety hazards and an HACCP-based 'RiskPlaza

Audit+' system in which accredited certification bodies perform the audits. RiskPlaza was accepted by the NVWA in September 2012.

The selected private food safety control systems differ as regards a number of elements that, we anticipate, are likely to influence how the NVWA designs and implements its meta-control approach. First, BDW is a medium-sized, for-profit company with some 50 years of experience in verification and certification services. By contrast, RiskPlaza was launched in 2008 as a multi-stakeholder initiative and is administered by the not-for-profit Product Board. This difference appears relevant to the risk of (regulatory) capture, against which NVWA should take preventative measures. Second, firms participating in the BDW system are no longer subject to official inspections by the NVWA. RiskPlaza Audit+ firms will still be subject to NVWA inspections, but they will only look at the parts not covered by the RiskPlaza audit. This difference might lead the NVWA to set different requirements for the acceptance of the systems. Third, BDW only verifies compliance with pre-existing industry guides to good hygienic practice. In the case of RiskPlaza, the database that is part of the system concretises the norms upon which the audit is based, which are adopted in collaboration with the NVWA, experts and certification bodies performing the audits. The arrangement with RiskPlaza thus not only concerns the verification of compliance with regulatory norms, but also the concretisation of those norms. It appears to us that this aspect will also impact on the NVWA's meta-control strategy.

In describing the cases we identify the organisations that are concerned with the system, what their respective responsibilities and obligations are, the legal format into which those obligations have been cast, and the methodology for compliance verification (nature, purpose and frequency of visits). Subsequently, we describe the meta-control approach of the NVWA: what requirements does the NVWA set for acceptance of the private system and how does the NVWA monitor the system's functioning after acceptance? Our focus here is on the ways in which the public agency seeks to manage and control the risks that are concerned with this collaboration. The case descriptions are based on publicly available documents (e.g. NVWA policy documents, legislation, private regulation and audit protocols) and four open-ended interviews with representatives of BDW, RiskPlaza, and the NVWA.[7]

7 We conducted four interviews, namely with the 'system expert' of RiskPlaza, the technical director of BDW (who is responsible for the development of the verification system), an auditor working for one of the RiskPlaza recognized certification bodies that perform RiskPlaza Audit+ visits, and a NVWA staff member responsible for developing of the policy of accepted self-control systems in the catering, retail and health care sector. In addition, we used data obtained from two interviews conducted by one of the authors with a staff member of the Product Board involved in the development of RiskPlaza and →

5. Bureau de Wit

System

BDW is a for-profit company offering verification and consultation services concerning food safety, water safety, air safety and rodent extermination. The company was established some 50 years ago as a laboratory, which today is accredited according to ISO standards. BDW has its own labelling scheme (keurmerk). Its services include inspections, training, sample taking and analysis, consultancy, and the development of internal quality assurance systems. Customers operate in the catering, hotel, restaurant, café, retail and health care sector. Many of the BDW customers are part of branded chains or franchises, in which case, the head office requires its subsidiaries or franchise takers to apply for the BDW label to ensure a certain level of quality and to prevent potential brand damage by safety incidents.

The BDW food safety control system involves a minimum of two annual inspections, during which compliance with the applicable guide to good hygienic practice and public regulation is verified. The inspection results are carefully documented and (if needed) an action plan is drafted to improve compliance. BDW provides support and follow-up concerning the implementation of such a plan. Firms that have been rated 80% compliance in a minimum of two consecutive inspections are awarded the BDW label (including the notification of that award on the BDW website) and will benefit from a lower inspection frequency by the NVWA. A contract between BDW and its customers provides the legal basis for BDW inspections. The contract also entitles BDW to pass on to the NVWA the audit results of customers in the context of a system audit conducted by the public agency on the BDW system. BDW only informs the NVWA about firms that meet the 80% threshold and qualify, to benefit from a laxer official inspection regime. These firms are no longer visited by the NVWA; the agency considers the BDW audit sufficient.[8]

The normative framework applying to the BDW inspections is the same as the one applied to official NVWA inspections, namely public legal norms as operationalised by the applicable guide to good hygienic practice. There are, however, some important differences between the inspections carried out by BDW and the agency. BDW inspectors must check all requirements set out by the guide to good hygienic practice during an inspection, whereas NVWA inspectors are permitted to focus on particular aspects (e.g. cleaning, sell-by

a staff member of the NVWA responsible for the development of the policy of accepted self-control systems for food and feed production.

8 BDW, Inspectieprotocol Zelfcontrolesysteem BDW, 1 March 2012, Version 7 (available at website BDW).

dates, cooling facilities, etc) as part of the prioritised goals in the agency's enforcement policy. Moreover, the level of required regulatory compliance is higher in case of the BDW: while the NVWA will not take enforcement measures if 60% of the requirements in the guide to good hygienic practice are met, BDW should maintain a compliance standard of 80%. The BDW inspection frequency is also higher than that of the NVWA. BDW claims that it visits its customers four times a year, of which at least two visits are unannounced. The NVWA requires a minimum of one unannounced annual visit for accepted self-control systems that monitor compliance with guides to good hygienic practices.

Meta-control

What instruments and procedures does the NVWA use to assess and monitor BDW performance? Before accepting the BDW system (and other self-control systems that monitor compliance with guides to good hygienic practices), the NVWA carries out an extensive initial assessment. This *ex ante* check starts off with talks and discussions with BDW to map and test the methodology of the private system. Aspects that feature prominently in these meetings are the norms that are assessed upon inspection, the research methodology used (e.g. auditing, sample taking, witness audits), the way questions are asked, the training of inspectors, and the ways in which the system is reviewed and updated.

If the NVWA is convinced of the robustness of the private system, a so-called 'address test' is organised: the system owner gives the NVWA a minimum of 40 addresses of customers that have been successfully audited. The NVWA then verifies whether it sees these firms as low-risk, based on the results of previous NVWA inspections. Subsequently, the NVWA will conduct a system audit at the system owner's premises. Two NVWA staff members who have not previously been involved in the approval process assess the system and inspection reports. The next step is that the system owner solicits firms to participate in the system. If some 100 firms participate, the NVWA performs a 'reality check' to verify whether the system ensures a high level of compliance in practice. Should irregularities emerge, the NVWA can organise verification audits, in which case a private assessor will conduct an inspection, after which an NVWA inspector will directly visit the same premise to form his/her own impression of the situation. Once all these steps are completed, the NVWA accepts the private system and announces it on its website.

Several system owners were interested in having their system assessed and accepted by the NVWA. However, the NVWA did not offer a clear set of criteria that system owners should meet to attain acceptance, nor was the procedure for acceptance formalized. By its own admission, the NVWA did not want to use a straightjacket to apply to all systems. This approach, though, led to uncertainty among system owners who wanted to apply for NVWA accept-

ance, and a certain level of resentment among those owners who saw their competitors gain acceptance. Our interviews suggest that the NVWA uses the following set of criteria before accepting BDW and other private systems, and verifying compliance with guides to good hygienic practices as 'self-control systems':

1. Participating firms should be artisan, non-industrial (craftsman) food business operators.
2. System owners ensure food safety by verifying compliance with recognised guides to good hygienic practices.
3. Inspections should cover all elements of the guide.
4. Compliance levels of 80%.
5. If non-compliance is observed, incidents must be re-inspected in a follow-up visit.
6. A minimum of one inspection per annum.
7. Inspections must be unannounced.
8. Participating firms should formally approve the exchange of audit results between the system owner and the NVWA.

Accreditation is not required, nor does the NVWA set specific requirements for the training and experience of inspectors (although this is part of the system audit conducted by the NVWA upon acceptance of the system). Moreover, although the institutional separation of consultancy and inspection is not required, if it is absent then this does raise concerns at the NVWA.

In common with the other six accepted self-control systems, BDW reports monthly to the NVWA on the firms participating in the system. The NVWA assumes that these firms are compliant with applicable regulations and does not inspect them.

Finally, it is not clear how the NVWA will continue to assess and monitor the performance of private systems like that of BDW after acceptance. The NVWA anticipates that this *ex post* control will include annual meetings complemented by an office audit one year and random spot checks at participating firms in the alternate year. The NVWA organises a semi-annual plenary meeting to which all accepted self-control systems are invited to discuss new developments in the area and the general functioning of the systems and their collaboration with the NVWA in practice (e.g. in case of an outbreak of a food-borne decease).

6. RiskPlaza

System

RiskPlaza is a private HACCP-based audit scheme to control food safety hazards in raw materials and ingredients for food production. The scheme was launched in 2008 by the semi-public trade association Agricultural Product Board (Productschap Akkerbouw – Product Board). It initially applied only to the bakery sector, which had initiated the development of the scheme in 2005, but its application was soon extended to other sectors (vegetables, fruits, nuts, poultry, meat, oils and fats, convenience food). The RiskPlaza consists of two elements: a database that identifies potential food safety hazards and a 'RiskPlaza Audit+' system. The database concretises EU and national food safety regulations and is adopted and revised by the Product Board in collaboration with experts from various branches of industry and the certification bodies that are recognised as performing audits for the RiskPlaza Audit+ system. Participating firms in the food chain can consult the database to ensure that the products they source are safe. A covenant between the Product Board and NVWA defines the responsibilities of the Board vis-à-vis the NVWA and *vice versa*.[9] It determines, amongst others, that the NVWA will use the information in the database for inspections, such that 'a common truth' exists about the potential hazards in raw materials and food ingredients.[10]

The RiskPlaza Audit+ system supports suppliers in the food processing industry to comply with Article 5 Regulation 2004/852/EC, which requires that all food business operators have in place, implement and maintain permanent procedure(s) based on the HACCP principles to verify whether the raw materials and ingredients they source are safe. The Product Board does not consider the audit system a certification scheme, despite the fact that certification bodies recognised by RiskPlaza perform the audits. No actual certificate is awarded after a successful audit: a firm merely receives the status of 'RiskPlaza Audit+' (Product Board 2013, p. 23). Suppliers of raw materials and food ingredients can apply for a RiskPlaza Audit+ provided they already have a certificate from an HACCP-based food safety scheme, such as the BRC Global Standard, Dutch HACCP or FSSC 22000, or from an NVWA-approved guide to good hygienic practice. Whereas such HACCP certification concerns the assessment of food production processes, the RiskPlaza Audit+ is an additional test – hence

9 Convenant horizontaal toezicht tussen het Productschap Akkerbouw (systeemeigenaar RiskPlaza) en de Nederlandse Voedsel- en Warenautoriteit, Staatscourant 2012, 13450.

10 *Ibid.*, at 'Doelen en uitgangspunten', no. 7.

the 'plus' – specifically focused on controlling hazards in raw materials and food ingredients (Product Board 2013, p. 20).

The compliance assessment during the RiskPlaza Audit+ is basically an administrative audit of formalized risk management procedures, registration requirements and the documentation of product analyses. Sample taking and analysis are not included. These audits take place on the basis of announced visits, although unannounced visits are possible (Product Board 2013, p. 24). If a producer sources its raw materials or ingredients from a supplier that has been awarded the status of RiskPlaza Audit+, the NVWA considers him/her to meet the obligations under Article 5 Regulation 2004/852/EC on sales verification. Separate verification of the product sourced from that supplier is no longer necessary for the producer. The NVWA inspections regarding sales verification will then cease in relation to this issue.[11] Furthermore, the NVWA inspections at the RiskPlaza Audit+ supplier will cease.[12] The NVWA remains competent, however, to perform inspections as regards other aspects of food safety regulation.

Some 50 firms have been audited following the RiskPlaza Audit+ scheme.[13] The vast majority of these firms are located in the Netherlands, but a small number are based in Belgium and Germany. Four accredited third party certification bodies carry out the RiskPlaza audits,[14] which are usually conducted together with or after a regular HACCP food safety audit, such as those for standards like the BRC Global Standard and FSSC 22000. An audit is performed annually and is thus broadly similar to the auditing frequency of regular HACCP-based private standards. The 'system expert' of RiskPlaza assesses the requirements that are set for the audits (Product Board 2013, p. 33). This expert is external consultant who evaluates the performance of the certification bodies as regards aspects of an audit's comprehensiveness, consistency and quality, and reports to the Board annually. For that purpose, the expert collects all audit reports filed by the certification bodies and also participates in audits conducted by these bodies (witness audits) (Product Board p. 39-40).

As of January 2014, product boards (productschappen) have been dissolved as part of a wider administrative reform in the Netherlands. To ensure the continuity of RiskPlaza its administration and operations have been transferred to the legal entities called RiskPlaza Foundation (RiskPlaza Stichting)

11 *Ibid.*, at 'Verplichtingen NVWA', no. 4.
12 *Ibid.*, at 'Verplichtingen NVWA', no. 5.
13 Product Board, 'RiskPlaza-audit+ bedrijven' <https://www.riskplaza.nl/riskplaza/Rapportage/Bedrijven/BedrijvenOverzicht.aspx?1> accessed May 2014.
14 Product Board, 'Certificerende instellingen', <https://www.riskplaza.nl/riskplaza/Rapportage/Certificerendeinstellingen/CertificerendeinstellingenOverzicht.aspx?1> accessed May 2014.

and RiskPlaza BV. It is expected that RiskPlaza will be sold to a commercial party in 2014. At the time of writing, it is not clear what consequences the dissolution of the Product Board and the potential sale of RiskPlaza will have for the functioning of RiskPlaza and its collaboration with the NVWA.

Meta-control

How does the NVWA assess and monitor the RiskPlaza scheme? Several instruments and procedures apply. First, the NVWA has been closely involved in setting the scheme up. When the first discussions between the Product Board and the bakery sector took place in 2005, the NVWA was asked to be involved. Now, the NVWA has a formal role in the governance of the regime as the agency participates in the so-called 'expert hearings' (deskundigenoverleg).[15] In these hearings the content of the hazard database is adopted, determining the specific ingredient groups and factsheets of related hazards. The hearings also discuss recent developments and changes in food safety regulation (Product Board 2013, p. 37). Participation in the expert hearings, which take place at most four times a year, enables the NVWA to survey the substantive standards upon which RiskPlaza audits are based. Accordingly, it can see to it that the level of protection warranted by RiskPlaza is adequate, and that changes in legislation are correctly and swiftly implemented.

Second, the NVWA also participates in the so-called 'harmonisation hearings' (harmonisatie-overleg) that takes place annually between the auditors of the recognised certification bodies and the RiskPlaza system expert (Product Board 2013, p. 40). During these hearings the system expert presents the analysis of the audit reports submitted by certification bodies and the witness audits. Cases are also discussed, although not so much at the level of individual certification bodies, but rather as examples to illustrate good (or bad) practices. Whereas participation in the expert hearings enables the NVWA to remain informed about the substantive standards upon which RiskPlaza audits are based, participation in the harmonisation hearings offers the NVWA up-to-date information about the way audits are performed. In conclusion, it must thus be considered that the NVWA is closely involved in the governance and implementation of the RiskPlaza scheme.

The exchange of information between the Product Board and the NVWA also enables the latter to monitor and assess performance. The covenant requires the Product Board to notify the NVWA in case of significant changes in the system, to grant the agency access to the database and to offer insights into the audit system's functioning.[16] From a public interest perspective it is

15 Convenant RiskPlaza 2012, at 'Verplichtingen NVWA', no. 1.
16 *Ibid.*, at 'Verplichtingen Productschap Akkerbouw', no. 2, 5 and 7.

worth observing that there is no obligation on the side of the Product Board to advise and alert the NVWA in cases of major non-compliance and serious risks to public health and safety.[17] The audit reports are not automatically shared with the NVWA and the agency did not require the Product Board to oblige the recognised certification bodies to share them either. Nonetheless, there are several ways in which the NVWA can access information about regulatory compliance by firms possessing the RiskPlaza Audit+ status. First of all, the NVWA can monitor the RiskPlaza website for changes in the status of firms. Second, it may request the audit report from the firm upon inspection. Third, the NVWA receives general information on the performance of audited firms and certification bodies when participating in the harmonisation hearings. Finally, the NVWA may organise a system audit to evaluate the entire scheme.[18] As the covenant notes, audit reports and random spot checks at participating firms may be part of this audit. The NVWA performed its first system audit on the RiskPlaza scheme late in 2013, that is, after we had conducted our interviews. The audit report has not been made public and thus little is known about the methodology applied and the results, except that RiskPlaza is a 'properly operating system with sufficient safeguards'.[19]

7. Comparison and discussion

Hybridisation

The analysis shows that the systems of food safety control operated by BDW and RiskPlaza are now closely tied to the NVWA. This hybridisation is manifested across different dimensions and regulatory activities (see Havinga and Verbruggen 2014). The following two tables highlight the characteristics of the hybridisation occurring in the case of the accepted self-control systems of BDW and RiskPlaza.

17 The covenant concerns only the situation that the NVWA provides information to the Product Board about food safety incidents at participating firms. See Convenant RiskPlaza 2012, at 'Verplichtingen Productschap Akkerbouw', no. 8.

18 *Ibid.*, at 'Verplichtingen NVWA', no. 2-3.

19 Personal communcation NVWA.

Table 1: Hybridisation in the case of BDW

Regulatory activities / **Dimension of hybridisation**	a. Agenda-setting & rule-making	b. Adoption & implementation	c. Monitoring & enforce-ment	d. Evaluation & review
1. Actors involved	Food industry (guides to good hygienic practices), NVWA.	Individual firms.	BDW inspec-tors.	BDW, NVWA, six other ac-cepted sys-tems.
2 Motivations and drivers	Firm reputa-tion, efficiency in supply chain, Government cuts, EU Regu-lation 882/2004/EC.	Better rule compliance, competitive advantages.	Verification, learning, risk assessment.	System veri-fication, learning and review.
3. Mechanisms and instru-ments	Informal meet-ings, bargain-ing, NVWA acceptance.	Inspection protocol, audit contracts, fran-chise contracts.	BDW inspec-tions.	NVWA 'sys-tem audits'.
4. Character of interaction	Deliberative discussions.	Cooptation.	Coordination.	Coordination.
5. Results and effects	NVWA ac-ceptance of the scheme.	No NVWA visits for BDW customers who have been successfully audited.	High costs for partici-pating firms, closer fo-cused NVWA in-spections.	unknown.
6. Change over time	NVWA ex-tends policy of acceptance to other private assurance schemes	n/a	n/a	n/a

Table 2: Hybridisation in the case of RiskPlaza

Regulatory activities / **Dimension of hybridisation**	a. Agenda-setting & rule-making	b. Adoption & implementation	c. Monitoring & enforcement	d. Evaluation & review
1. Actors involved	Food industry (Product Board), independent experts, including NVWA.	Product Board, individual firms, NVWA, certification bodies.	Certification bodies, NVWA.	'system expert', NVWA, accreditation body.
2 Motivations and drivers	Industry reputation, efficiency in supply chain, Government cuts, EU Regulation. 882/2004/EC.	Improved rule compliance, competitive advantages.	Verification, learning, risk assessment.	System verification, learning and review.
3. Mechanisms and instruments	Informal meetings, bargaining, NVWA acceptance.	Audit protocol, inter-firm contracts, public covenant.	Audits, inspections, NVWA sample-taking, reality checks.	Witness audits, NVWA 'system audits'.
4. Character of interaction	Deliberative discussions in expert meetings.	Cooptation.	Coordination via harmonisation meetings.	Coordination, 'Running Code'.
5. Results and effects	NVWA acceptance of the scheme, Small industry uptake.	'Common truth' in database, limitation of NVWA inspections.	High costs for participating firms, closer focused NVWA inspections.	Improvement auditing protocol.
6. Change over time	NVWA extends policy of acceptance to other private assurance schemes.	RiskPlaza is sold to commercial third party, leading to changes in governance.	Introduction of possibility of conducting unannounced audits.	n/a

Two issues require further comment. First, the hybridisation of public and private food governance occurs across different regulatory activities. This diversification of hybridisation is most notable in the case of RiskPlaza. Here, the NVWA not only participates in the agenda-setting and rule-making stage, but also in the other stages of the regulatory process. Hybridisation is prevalent here and as a result, this system can be seen as truly co-regulatory in nature (Garcia Martinez, Verbruggen, Fearne 2013). In the case of BDW, BDW inspectors monitor and enforce guides to good hygienic practices, which have been adopted by industry representatives and approved by the NVWA. Here, hybridity emerges first and foremost from the requirements that the NVWA

sets for acceptance and the consequences such acceptance has for the monitoring and enforcement activities of the NVWA itself.

Second, the public-private hybridisation displayed in this paper occurs at the national level with very little references to transnational private governance arrangements, which play a highly significant role in the food industry. As noted, certification for transnational standards, such as those recognized within the Global Food Safety Initiative (GFSI), have not been accepted by the NVWA. Limiting its meta-control strategy to national schemes appears a wise thing to do. It enables the NVWA to carefully construct its strategy and start with a controllable number of systems and participating firms that enjoy a benefit in terms of inspection frequency. It also seems to us that the NVWA, as the national food safety agency, is likely to have more influence on small, nationally oriented systems than on sizeable systems benchmarked by GFSI. Nevertheless, the agency is investigating the option of extending its meta-control strategy to transnational certification schemes such as the Global Standard of the British Retail Consortium and the Food Standard of International Featured Standards (representing French, German and Italian retailers). This raises the question of how the NVWA will accept these schemes (do the same criteria apply as for BDW?) and how will it continue to monitor scheme performance after acceptance. Arguably, requiring these schemes to meet NVWA standards and surveying performance after acceptance will be much more difficult in practice, given that these schemes are owned and administered by foreign parties.

Meta-control

There are several similarities between the ways in which the NVWA organises its meta-controls as regards the two accepted self-control systems. In both cases, BDW and RiskPlaza, a clear set of conditions for acceptance was absent from the start; these conditions have been set along the way as experience with the policy grew. In the case of private control systems such as BDW a number of clear-cut criteria that apply to similar private control systems are now used. RiskPlaza, however, remains a unique system, in which the NVWA has been closely involved from its inception.

A remarkable difference is that the NVWA has not required RiskPlaza to employ unannounced audits, whereas this is an undisputed condition for the acceptance of private control systems such as BDW. In both cases, however, the NVWA conducted an audit on the systems before accepting them. They also performed random checks at participating firms to assess the reliability of the systems, that is, to verify whether the private inspection results did not differ significantly from the findings of the NVWA when visiting the premises. It is too soon to draw any conclusions about the effectiveness of the NVWA meta-controls after the systems of BDW and RiskPlaza were accepted. The intention

is to monitor system performance by organising intermittent meetings, system audits and random verification checks. As noted, the NVWA performed its first system audit on the RiskPlaza scheme late in 2013. The methodology applied and the results remain undisclosed, however.

There are also some significant differences. To take one example, the NVWA has the possibility to request at any moment an audit report of a firm audited by BDW. The NVWA has that option since it obliges BDW to require from its customers the possibility to forward audit results to the NVWA. In the case of RiskPlaza, audit reports can only be shared with the NVWA in the context of a system audit. The certification bodies recognised by RiskPlaza do not demand from their customers the ability to share any audit results with the NVWA, nor does RiskPlaza require these certification bodies to do so upon recognition. Instead, the service contracts between the certification bodies and their customers typically include confidentiality clauses that bar them from sharing any information on audit result with third parties. The NVWA will be able to access the audit results when inspecting the firm; it will then ask for the relevant audit reports. RiskPlaza is obliged to maintain a public record (website) of the RiskPlaza Audit+ firms. That obligation is absent in the case of BDW. The difference is smaller than it seems, however. BDW maintains on its website a list of customers with a BDW certificate, provided the customer agrees to that notification.

Pros and cons

Generally speaking, a key benefit for public authorities such as NVWA of collaborating with private control systems such as BDW and RiskPlaza appears to lie in the efficiencies that can be achieved in monitoring and enforcement. In times of budgetary constraints, engaging with pre-existing private assurance schemes can indeed be a cost-effective alternative to reduce inspection costs, while maintaining inspection coverage. Furthermore, the private schemes that have been recognized may contribute to better compliance of firms as they tend to visit firms more often, and they may combine inspection and advice in their services (Wright et al. 2013). Firms that participate in publicly recognized schemes benefit from fewer official inspections and may therefore experience less red tape and lower administrative burdens. This benefit may constitute an important driver for compliance with the scheme's requirements. Owners of the recognised schemes, for their part, are likely to attract more customers, as a successful audit process will offer such customers a favourable inspection regime.

There are nonetheless considerable risks involved in the meta-control strategy as currently employed by the NVWA. For one, a recognized scheme such as RiskPlaza does not provide an absolute warranty of rule compliance. Cer-

tificate holders have been found to violate food safety laws (Beuger 2012, 21). Private auditors are paid for by the auditees which constitutes a structural conflict of interest between the financial interests of the auditor and protecting the public from food safety risks (Lytton and McAllister 2014). Also the fact that the functions of third party audits do not overlap with those of official inspections and that certain methodologies (sample testing) are not used limits the purpose for which the private schemes can be used by public authorities. Public authorities are thus challenged to create an operational framework by which relevant changes in the status of certified firms are instantly communicated to it. In this sense it is disturbing to see that the information sharing arrangements designed by the NVWA and the accepted private control systems do not require auditors to advise and alert public authorities in case of major incidents of non-compliance and serious risks to public health and safety. The arrangement currently used relies on the authority to actively check certification data, which generates the risk that non-compliant firms can slip through the meta-control system.

Another concern is that the inspection frequency of the public authorities may be too low to incentivize firms to participate in the recognized private schemes. Firms that participate in these schemes make considerable investments to comply with the scheme's requirements and they pay for the auditing services. The premise that these firms will benefit from a more favourable inspection regime than the firms that do not participate can only be true if the public authority has the capacity to inspect the non-participating firms. It appears that, at least in the Netherlands, the NVWA does not have that capacity (Havinga and Van Waarden 2013, 80, Verbruggen and Havinga 2014a, 28). This leads to a *free rider* problem: non-participating firms enjoy lower costs and may be subject to the same inspection rate as applicant firms. This potentially undermines the effectiveness of the entire collaboration.

There are also concerns as regards the process of accepting private schemes. In both cases of BDW and RiskPlaza, recognition revolved around general criteria of independence, transparency, inclusiveness and legal compliance. However, formalised procedures that guide the process of acceptation have not been established. As a consequence, the procedure for applying for recognition, the criteria that must be met, and the period for which recognition is granted remain unclear. Furthermore, there is no formal procedure to monitor the performance of recognized schemes, nor to assess whether they are eligible for an extension of (the term of) recognition. While it can be argued that an increased level of formalisation and proceduralisation of scheme recognition may hamper the development of co-regulatory arrangements, the absence of official guidance on how and when to gain recognition challenges principles

like transparency, consistency and fairness in decision-making, which clearly apply to government bodies such as the NVWA.

8. Conclusion

The analysis of the meta-control strategy of the NVWA teaches us that the agency has carefully tried to design its strategy and establish the conditions for collaboration with the private food safety control systems of BDW and RiskPlaza. Its approach is characterised by pragmatism and it has managed to lay down some fundamental safeguards for meta-controls to be successful. The difference between the meta-control exercised in the case of BDW and RiskPlaza is primarily related to the consequences of NVWA's acceptance of these systems for the NVWA's monitoring and enforcement activities. In case of the BDW a more comprehensive (and stricter) set of conditions apply than in the case of RiskPlaza, since a positive BDW inspection leads to the termination of NVWA inspections. In the case of RiskPlaza a successful audit only leads to a partial replacement of NVWA inspections. Another significant point is that the NVWA was closely involved in establishing the RiskPlaza system and continues to have a formal position in the adoption of the norms on which controls are based. As regards the other circumstance that we supposed to exert an influence on the design of the meta-control strategy, namely the commercial nature of the system owners, we found no evidence. This may be explained by the fact that RiskPlaza, while being administered by a not-for-profit organisation, uses commercial third-party certification bodies to perform audits.

The analysis also reveals a number of weak spots in the NVWA's meta-control strategy. A significant shortcoming in the current design of the strategy is that the agency does not have the capacity to submit non-participating firms to a closer inspection regime than firms that participate in accepted self-control systems. Accordingly, non-participant firms enjoy lower costs than participating firms. The free rider problem that thus emerges makes the accepted self-control systems rather unattractive. Furthermore, the information exchange between the NVWA and accepted systems relies on the agency actively to check compliance data. The systems, their auditors and inspectors are not required to advise and alert the agency in case of major non-compliance and serious risks to public health and safety. This generates the risk that instances of non-compliance will go unnoticed and slip through the meta-control system. Moreover, it is recommended that the NVWA should formalise their procedure of accepting private food safety control systems to enhance uniformity and transparency around formal acceptance.

At this moment, the real functioning of the NVWA's meta-control strategy is still to be determined. The oversight the strategy implies has so far been primarily limited to *ex ante* checks and audits upon acceptance of the private sys-

tems. It is not clear how the NVWA will continue to assess performance after acceptance and which terms and conditions will apply for re-acceptance (or the revocation of acceptance for that matter). As noted, the agency is currently considering the option of extending its meta-control strategy to transnational certification schemes benchmarked by the GFSI. The possible acceptance of such schemes in the near future will raise the same questions that have been addressed here: what criteria apply for acceptance and how will scheme performance after acceptance be monitored? In considering the GFSI benchmarked schemes the NVWA can build on its experience with national private food control systems, eventually to develop a clear and consistent methodology of meta-controls. After our research the NVWA announced criteria for the acceptance of private schemes.[20] The NVWA is now in the process of assessing schemes that applied for acceptance.

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