

GOVERNANCE AS CONTESTED LOGICS OF CONTROL: EUROPEANIZED MEAT INSPECTION REGIMES IN DENMARK AND GERMANY

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Abstract

The term governance has been used in many contexts and meanings. This paper assesses three logics of control widely associated with governance, namely multi-level governance, the 'regulatory state' and performance management. It questions to what extent these logics are present, are reinforcing or are mutually self-destructive in their effects. It answers this question by looking at the field of meat inspection as a critical aspect of the Europeanised food safety regime and concentrates on the cases of Denmark and Germany. The paper assesses the three logics of control across three levels and concludes that their effect is interactive and that far from being mutually reinforcing, the various logics are mutually self-destructive and destabilising.

Introduction

We are said to live in the era of governance. However incontestable this claim appears to be, there are multiple logics of control that are associated with the idea of governance. For many, governance is associated with the rise of 'multi-level governance', namely the idea of a diversification and blurring of national and organisational authority and competencies and an increased emphasis on collaboration and deliberation among networks of actors (Goetz 2008, Jachtenfuchs 2001, Pierre 2000). For others, governance is linked to the idea of a rise of the regulatory state that has replaced the age of the interventionist or positive state (Majone 1994). The regulatory state has not just been associated with the growth in regulatory agencies (at least in Europe) as organisations centrally occupied with activities of control, but also with growing demands on efficiency (vis-à-vis other administrative values) and tactics to decentralise and fragment control downwards, namely to establish distinctive modes of self-observation and self-discipline (Power 2007: 41). A third literature links governance to an increased interest in ideas of performance management that is widely said to have altered accountability relations between policy making and delivery organisations, in particular in terms of shifting controls away from inputs and procedures towards outputs and outcomes (Radin 2006, Bouckaert and Halligan 2008, Hood 2007, Pollitt 2006).

While many authors have either studied the three tendencies of multi-level governance, regulatory state, and performance management separately or as mutually reinforcing phenomena, this paper seeks to explore the interaction and potential tensions across these three policy trends. We do so by looking at food inspections in the meat domain in the European Union. The area of food regulation provides a particularly fruitful area to explore these three types of logic of control (see also Caduff and Bernauer 2006). First, it is a prime example of multi-level governance in the sense of a substantial and growing influence of the EU level on national regulation and policy. Second, it is also a prime example of the latest doctrines of risk management, in the sense of risk management being pushed increasingly into organisations and the regulatory state becoming (across all levels) a system of 'regulated self-control' (or meta-regulation). Thus, ideas regarding risk-based regulation (as part of wide ideas regarding hazard-based regulation, Coglianese and Lazer 2003) can be seen as the logical extension of the regulatory state, as regulatory activities increasingly acknowledge the inherent limitations of oversight (due to lack of resources, intelligence and complexity) and focus primarily on activities associated with systemic risks. Third, an increasing emphasis on 'audit' and reporting resonates with contemporary ideas regarding performance management, although, as we shall see later, target setting and output or outcome measurement are somewhat problematic in the area of food safety.

More generally, this paper is interested in the evolution of the European regulatory state, in particular whether the regulatory state is moving towards a model in which 'Europe' relies on the control of decentralised self-control among member states, regions and, ultimately, private organisations, as has been suggested by observers from the 'multi-level governance' side of the literature (Grande and Eberlein 2005). To explore the workings of the three

logics of control noted above, especially as to whether they are complimentary or in tension with each other, this paper proceeds as follows. First, we consider the three different logics of control. Second, we introduce the regulatory regime that applies to food regulation in the European Union. Third, we consider the interaction between EU and national level in the case of Germany and Denmark and, in a further step, the ways in which the logics of control within national systems of meat inspections have developed in these two countries. The choice of Germany and Denmark provides for institutional variety in the overall administrative set-up on two dimensions; one, in terms of administrative culture, Germany is widely said to reflect a 'hierarchical' culture, Denmark is commonly associated with a more egalitarian policy 'style' (Jann 1983); two, Germany continued to rely on hardwiring administrative behaviour through law coupled with a relatively light-touch oversight style (see Lodge and Wegrich 2005, Hood et al 2004), Denmark, in contrast, introduced a comprehensive set of contractualised relationships between ministries and agencies that included output- and outcome-related targets for executive agencies (Binderkrantz and Groennegaard Christensen 2009). This paper is based on a series of semi-structured interviews with higher and top ranking officials from ministries and agencies at EU, national and regional levels of government (n=30), as well as extensive documentary and media analysis.

Governance as Competing Logics of Control

What unifies the accounts using the governance label is the idea that control is not solely executed through direct and hierarchical 'command and control' instruments employed by armies of public bureaucrats. Largely in response to complexification and internationalisation, control is instead said to be increasingly executed through indirect means (Majone 1994).¹ Food, with changing perceptions regarding risks and the internationalisation of the 'food production chain', offers a pertinent example of such dynamics; with ideas regarding hazard-based approaches emphasising the importance of looking at different 'key points' rather than relying on hygiene standards in any one location (such as, traditionally, slaughterhouses). Furthermore, if, as some suggest, the regulatory state with its emphasis on 'expert regulators' is a response to increasingly distrustful societies, then food offers a prime example of such a logic too, especially following BSE. Finally, and related, if the age of governance, especially with its multi-level character, is a response to 'failure' of national control regimes, then again the area of food could be seen as a very good example for the growth of multi-level governance (see Lodge 2008).

So far, so normal: these phenomena can be seen as closely related developments and responses to the same external stimuli. However, they also provide for contradictory policy responses. According to the multi-level governance logic, recent decades have witnessed an increasing fragmentation and diversification of regulatory authority, especially 'upwards' in terms of regulatory standards being set at the European level (Hooghe and Marks 2003). Accordingly, we observe the shifting of regulatory standard-setting to the

¹ Normatively, Majone's argument of a shift towards a regulatory state has been associated with a move from redistribution to efficiency. Organisationally, the regulatory state has been associated with privatisation of public services, the creation of quasi-independent regulatory agencies and the formalisation of relationships with the regulated policy domain.

European level, the responsibility for transposition at the national level and the enforcement and implementation of these transposed standards at the local or regional level. Related to this shifting levels of government is change in policy style, namely an emphasis on collaboration and the 'bringing in' of private interests in the development and implementation of regulatory regimes. Two decades (at least) of diagnosing the shift 'from government to governance' have gone hand-in-hand with protestations of increased deliberation, a decline in hierarchical control and difficulties of taking decisive action given the 'veto power' of actors engaged in the regulatory regime. Multi-level governance therefore is understood here as a logic of control that unites the differentiation in legal authority across levels of government with an increased emphasis on deliberation and negotiation. Some may of course argue that the multi-level governance dynamic is hardly new. For example, the concept of 'regulatory space' pointed to the historical origins of distributed regulatory authority across public and private actors (Hancher and Moran 1989). We do not disagree with this sentiment, but suggest that the past three decades have witnessed developments that have further accentuated the logic of multi-level governance (as defined here). Similarly, it might be argued that multi-level governance is purely about changing levels of institutional re-arrangement and therefore allows for all kinds of logic of control to operate. However, such a view discounts the wider realisation that fragmented governance arrangements, as seen through the multi-level governance lens, are said to require collaboration and mediation as mechanisms to achieve agreement.

According to the regulatory state logic, we expect risk to be a central organising principle (Black 2005, Hutter and Lloyd Bostock 2008). Risk, especially also in the form of risk-based regulation (the idea that regulatory enforcement should concentrate on those activities associated with systemic risk), has become a central organising principle that has driven developments the regulatory state beyond its initial late 1980s outfit (as defined by Majone).² According to this 'next generation' regulatory state, the sharing of regulatory authority has been pushed, via the principles of meta-regulation (and 'regulated self-regulation') into private organisations. At the same time, regulators are required to develop decision-making frameworks to prioritise regulatory activities and allocate resources around the assessment of regulated firms' particular risks. Overall, these developments also acknowledge the inherent limitations of oversight, both in terms of being able to control 'everything', with risk-based regulation establishing boundaries of responsibility, and in terms of blame-management. This follows the realisation that delegating authority to supposedly independent regulators has hardly reduced the likelihood that politicians end in the political cross-fire should things 'go wrong' in the regulation of particular activities.

The third logic associated with governance is performance management. The recent decade is said to have witnessed the rise of a 'performance movement' in the context with wider developments usually summarised as 'New Public Management' (or NPM). Accordingly, there is said to have been a shift towards outputs and outcomes and away from procedures and inputs (Vakhuri and Meklin 2006). Organisations are expected to respond to set goals and they will respond in the most effective and efficient ways if given

² We do not deny the existence of regulatory activities that are not about risk in a narrow sense, but argue that risk has become one, if not the central organising principle that is shaping the tactics and techniques of the regulatory state (also Chalmers 2005).

discretion. At the same time, as the extensive literature on targets in contemporary England (in particular) has shown (see Hood 2007, Kelman 2006), such attempts at encouraging performance are also deeply problematic, given varying purposes (Behn 2003) and extensive gaming and, possibly, change in professional motivations. Figure 1 points to the relationship between the three logics of control that have usually been associated with the notion of governance.

FIGURE 1 HERE

Each one of these logics has also been associated with particular limitations and side-effects – and hybridisation across these logics can create tensions and side-effects. Regarding the ‘regulatory state’, risk-based regulation is said to suffer from a lack of resilience against political blame management demands when the going gets tough. That is, when the headlines ask for a clarification or strengthening of responsibilities, the political level is not interested in analysing particular risk profiles, but in managing the political risk of survival by responding to the demands of the day. Regarding multi-level governance, the possibilities of achieving regulatory outcomes and being explicit about regulatory outcomes are limited due to the non-hierarchical and informal nature of negotiations that lacks the possibility to take decisive action. Finally, in terms of performance management, side-effects are usually related to demands of measureability and risk aversion. In other words, performance management invites gaming, but also affects the way in which regulatory strategies are being implemented (for example, measuring inspection frequency invites high numbers of superficial inspections rather than in-depth consideration of particularly difficult and complex situations). We summarise the three logics and their implications in Table 1.

Table 1: Contrasting Logics of Control

Control Logic	Indicator	Limitations & Side-Effects
Multi-level governance	Increasing fragmentation of different aspects of a regulatory regime across levels of government plus increasing collaborative policy style	Limits to hierarchical control and intervention due to veto points
Regulatory State	Use of risk-based regulation and risk as central organising principle to establish boundaries of responsibilities	Political blame management challenges resilience of risk-based approach
Performance Management	Shift towards control of output and outcomes and explicit performance contract between domain actors	Number fixation invites gaming and undermines professional values by reducing strategies to ‘measureable’ ones.

We have accentuated difference between these three dynamics of control rather than commonality in order to highlight contrasting currents in the recent governance literatures.

In other words, we have focused on the corners across the concentric circles in Figure 1 rather than on the areas of overlap, namely (a), (b), (c) and (d). Interaction effects in these overlapping areas have not featured very widely in the literature, although the wider literature on control has pointed to both reinforcement and de-stabilisation through hybridisation (Thompson et al 1990, Perri 6 2004). On another level, Moran (2003) has noted how the shot-gun marriage between regulatory state and performance logics (field 'c') in combination with the continued reliance on informality has sown the seeds for policy disasters, at least in the UK. Separately, Adrienne Héritier (1999) has shown how the European Commission uses informal negotiation strategies to combine elements of the regulatory state and multi-level governance logics of control (field 'a'); whereas others, such as Genschel and Jachtenfuchs (2009) refer to the indirect effects of multi-level governance in constraining national tax policy, thus, non-coercive multi-level governance has indirect 'regulatory' consequences (field 'a'). Finally, Bouckaert and Halligan (2008, ch. 9) and Moynihan (2008) claim that performance information can be used in multi-actor settings to facilitate deliberation and collaboration (field 'b').

The three logics discussed here are present in the areas of food safety and various treatments in the literatures on public policy, regulation or European politics have noted potential tensions and side-effects within each one of the logics they emphasise. This paper is therefore particularly interested in three key research questions: a) which, if any, of the three logics of control dominates the area of meat safety in the EU (and more particularly in the EU's relationship with its member states Germany and Denmark); b) do particular hybrids exist between the logics of control and if so, c) are these logics mutually reinforced through hybridisation or are hybrids bound for self-destruction due to inherent incompatibilities?

In the following we first look at the EU-level, then at the interaction between the EU and the national level, and then at the national level. We concentrate in particular on the cases of Germany and Denmark. Both countries have also been affected by food scandals. Scandals are a good context in which to study understandings of control, they are the equivalent of the leakage in domestic plumbing: we only understand its workings when things go wrong. The patterns in national patterns allow us to draw conclusions on the influence of the EU-level. In the conclusion we consider to what extent we are observing a parallel functioning of these three dynamics of control, whether we are observing a dominance of any particular control dynamic, or whether we observe a 'strange brew' combination in which interaction effects either provide for particularly potent or weak control capacity.

The EU-level dynamic

This section concentrates on the EU-level, especially the way in which the Food and Veterinary Office understood its work. It reveals not only a substantial move of standard-setting capacity to the EU-level over the past two decades or so that fits the multi-level governance dynamic, but also a substantial element of a regulatory state dynamic, in particular with the endorsement of a hazard-based and risk-based approach towards regulatory food. This dynamic was not just evident in the food safety and supposed 'risk management' aspects of the EU-level, but also in its so-called risk assessment aspects (Chalmers 2005).

The food regulatory regime at the EU level provides a very good example for the fragmented and 'specialised' nature of multi-level governance that combined with a logic of the regulatory state. First, the 'space' was populated by the European Food Safety Agency (EFSA) which dealt with advisory risk assessment (Alemanno 2008, Chalmers 2005, and contributions in Ansell and Vogel 2006), DG Sanco at large, and the Food and Veterinary Office (FVO) as an integral directorate of DG Sanco. The FVO dealt with inspections and control, despite ultimate enforcement activities being in the hands of DG Sanco. We solely focus on aspects involving the FVO. The FVO's activities gained prominence throughout the 1990s. First of all, it gained attention because of attempts at strengthening its resources through agencification. Second, because of BSE, subsequent resource increases and also resistance to agencification, the decision was taken not to 'agencify' the FVO's activities, although by then (1998) it had been agreed to 'decentralise' its activities away from Brussels and to Grange/Co Meath (in Ireland). But the FVO and its functions were hardly new to the EU as a result of 'mad cow disease' (BSE) or of the single market programme: since 1979 its initial function (then under the authority of the Agriculture and Enterprise DGs) had been to conduct third-country (non EU member states) inspections for food imports. Its 'domestic' functions became increasingly prominent throughout the 1980s with ever-more inspection demands put forward in specific regulatory measures despite constrained resources.³

While therefore the narrative of the multi-level governance dynamic fits the EU food safety domain on the basis of an extending remit alone, there was also considerable evidence for the regulatory state logic, in particular regarding an expansion of a 'risk-based' approach towards food safety. The ideas of consolidating regulatory activities in one regulatory device, namely 882/2004, as well as the explicit nature of this directive in terms of encouraging risk-based regulation (see Article 4(5) of the Directive), could be seen as one key example of the 'rise' of a 'risk-based regulation' approach at the EU level that was also transported to the national level. As a result, the FVO's inspection style moved away from going 'directly' into the slaughterhouses in order to establish individual malpractice (which had been common practice until the end of the 1990s). Instead, emphasis shifted towards an approach that focused on the 'delivery' of food safety systems at the national level and inspections 'on location'. These visits were therefore largely about testing the food safety system at large. In other words, the FVO relied on reporting by national systems as well as on 'spot checks' during so-called missions.⁴ Food production and processing companies continued to be visited during missions, but mainly in order to cross-validate the reported control activities of food safety agencies and control companies' self-regulatory systems. Similarly, the consolidation of risk-regulation also displayed a certain market-logic: the further the marketisation of food had become a European-wide phenomenon, the more

³ Staff number increased from 74 in 97 to 163 in 2009. Among these 81 were inspectors who participated regularly in inspection missions. While the number of inspectors may appear comparatively small vis-a-vis those operating at member state level, according to governance logics of control the exercise of effective control does not rely on numbers, but on alternative tools, such as authority (law).

⁴ The number of missions in EU member states and third countries has shown an increase over time, from 196 for 1998/99 to 255 in 2006 (FVO Annual Reports).

likely it was that an EU-level regulatory body would become active in an expansive role and that this role would focus on the 'control of national control' rather than trying to investigate practices in individual slaughterhouses.

At the same time, it could be argued that risk-based regulation, in the form of 882/2004 (as well as other Directives such as 178/2002), arrived as a result of long years of practice; ideas that had been around since at least the mid-1980s were finally officially formalised as part of an overarching regulatory approach. Given limited resources, the required inspection volume proved increasingly impossible to achieve. Risk-based regulation offered a way to legitimise a focusing of attention. Furthermore, the risk-based approach that characterised the FVO's activities was also related to the rise of the HACCP-approach (the so-called 'hazard analysis and critical control point' approach) that had become increasingly popular in food regulation. Since the 1980s HACCP had become a central part of the world trade-governing Codex Alimentarius, which has been developed, since 1963, by the Food and Agriculture Organisation of the United Nations and the World Health Organisation (Braithwaite and Drahos 2000: 400-2).

Some observers warned against over-stating the claim of the growth of 'risk' as guiding principle. The actual practice of food safety, as well as its policy substance, especially in the area of meat, was rather more traditional. That is, the meat domain was characterised by a reliance on a highly prescriptive approach towards what was to be inspected and how (as was evident in Annex I of 882/2004). Therefore, while on one level the evolution of food safety regulation at the EU level was in line with developments predicted by the 'regulatory state' control dynamic, underneath this broad claim the emergence of official 'risk-based' standards reflected a practice that had incrementally moved towards accepting the limitations of supranational control and the inherent superiority of 'subsidiarity' in the light of resource constraints. Arguably in meat in particular the importance of national inspection styles as well as a high level of prescription continued to predominate the logic of 'risk-based regulation'.

An underlying conception of risk-based regulation was nevertheless prominent in the FVO's selection of mission-targets, with its annual programme being decided on a basis of legal requirements, previous missions, trade relations and 'changing circumstances'. Member states were advised about annual programmes. Against the claim that the biannual review of the existing work programme was driven by incidents and scandals, it was argued that missions were based on clear criteria (noted in 882/2004) and that changing contexts could be integrated into the work plan (in order to fulfil the inspection programme's stated objective to 'remain flexible to enable it to respond to emergencies, other urgent issues and unforeseen circumstances'). 80 per cent of the work plan was followed-up and it was argued that the nature of contemporary inspections did not allow for an incident-driven inspection pattern given that in-depth reviews were said to require extensive preparation and analysis of reports. Variations and 'responsiveness' were mostly introduced as a result of demands by DG Sanco on its FVO-division. Furthermore, it was the more central (i.e. politically exposed) units of DG Sanco that became involved in the immediate 'heat' of national food scandals by, for example, calling for specific reports from national governments.

Missions, as part of behaviour modification activities, were to investigate compliance and not to provide for advice. Reports and their recommendations were therefore seen as 'required' instructions (of varying complexity) rather than as part of a professional conversation on how to 'improve' food safety. Enforcement activities (directed at both member states and third countries and executed by SG Sanco) could range from infraction/infringement proceedings to the imposition of immediate trade restrictions, if a good was declared to pose a 'serious immediate risk'. Both of these powers were mostly seen as useful 'threat powers' rather than actually utilised, although in the latter case, this applied, for example, to the British beef exports in the wake of the revelation that BSE was indeed potentially transmittable to humans.

The regulatory state logic of control dominated the way reports were written and issued. Reports by the FVO, publicly available since the late 1990s in the aftermath of BSE, were criticised for being too critical and direct by member states. To control against inconsistencies across reports and missions, mission teams (usually composed of two FVO staff and one national expert chosen on the basis of special expertise relating to the thematic focus of the specific mission) were selected on the basis of previous experience, technical expertise as well as language competence. Therefore, unlike other areas of 'control over government' in domestic contexts, missions were neither conducted by randomly selected FVO staff, nor by single 'area specialists' (an idea that had been initiated but then dismissed in the late 1990s). A further control on the FVO, apart from internal controls and review mechanisms that accompanied any report, was the way in which these reports were seen to be part of a wider multi-level 'peer-review process' among food safety specialists – it was regarded as professionally very important to produce findings that would not be regarded as 'a joke' by other bodies, for example the US-FDA (interview). This awareness of producing findings within an area of high expertise did, however, not extend to encouraging 'conversations' during the actual visits themselves (i.e. between FVO inspectors and national administrators) (interviews). This lack of conversations flies in the face of a multi-level governance control pattern, as defined in this paper. Indeed, mechanisms that traditionally had provided for conversations about inspection issues had migrated away from the domain of the FVO, partly due to locational reasons, partly due to the overload of the system that reduced the scope for such professional conversations. Similarly, the reports, despite the creation of a database and annual reports, were not used to encourage a performance-type control logic to emerge.

In sum, the EU-level regime provided evidence of a move towards risk-based regulation and thus a type of governance that pointed to a pushing down of control towards the national, local and the 'organisational' level. At the same time, the move towards 'performance management' in the sense of clear output and outcome targets at this level was somewhat limited. The FVO set its targets and was required to report on their achievement, which were then published in annual reports (public documents since 1998) as well as by DG Sanco. However, there were very few other explicit targets that applied to the FVO.

The multi-level governance dynamic was certainly present in the sense of legal competency. However, it was noteworthy that the EU level regime was seen to be turning towards bilateral regulatory controls rather than encouraging regulatory 'networks' as has

become fashionable in other areas of regulation, such as utilities. There were also certain limitations to the spread of the 'risk' regulatory dynamic. For one, traditional approaches towards food safety, in particular in the area of meat, remained tied to more established inspection styles, i.e. they concentrated on 'traditional' hygiene aspects as well as followed a prescriptive control style that left little scope for a 'risk-based' discretionary approach. Furthermore, regardless of the 'risk regulation' arguments, the spread of this regulatory strategy was as much about acknowledgement of limited resources at the EU level as it was about changing ideas and understandings regarding control in the age of the regulatory state.

EU-national interaction

This section turns to the interaction between national and the EU level. In particular, we are interested in the way the EU-national interaction is conducted with regards to information-gathering and behaviour-modification. In other words, how did member states report and alter their behaviour, in particular in the light of FVO reports?

Turning to the system of information gathering first, it was already noted above that the key objective of the FVO's control was to check the national system of safety rather than to provide for a second level of inspections. In that sense, information gathering relied on the provision of information on 80-odd indicators as well as on 'on the spot' controls during missions. The latter were to indicate the extent of a national system's robustness rather than reveal the particular safety performance of the specific slaughterhouse visited. The reporting requirements were sent about eight weeks prior to any particular mission, thereby allowing FVO staff to assess the national reply in advance (this included, for example, documentation of control activities) and to address other 'open questions'.

There was little debate as to whether particular indicators provided for a reliable picture of the overall 'health' of a system. Interviewees, on the one hand, argued that there was little scope for misinterpretation and creative forms of discretionary behaviour due to the level of specification set in legislation. In some cases, it was the mere passing of specific provisions that was recorded. On the other hand, even in those aspects that were open for 'creative' interpretation, a 'gaming' attitude was said to be neither in the self-interest of the national state, nor was it likely to remain undetected by the FVO (although 'super-clean slaughterhouses' and such like were interpreted as 'part of the game'). And even where national officials hoped that an early call to particular establishments would lead to a 'cleaning up' response, these expectations were often dashed: 'we told them, but the reports showed that they didn't clean up' (interview). Indeed, it was argued that the information gathering was less interested in achieving 'numerical' targets, but rather in advancing the quality of the system. However, German interviewees in particular complained about the FVO's interest in paper tracing 'audits' that failed (in their view) to take sufficient account of the overall quality of a national food safety regime.

The presence of such a risk-based inspection regime should be expected to provide for a number of behaviour-modification strategies, ranging from the use of a central database, the 'league-tabling' of member states, to the taking of direct punitive actions against individual violations. In terms of databases, there were, as part of the provisions of 882/2004, developments to establish a multi-annual control database that recorded

member states' reported data. At the same time, there was no appetite for 'open' comparative benchmarking both at EU and member state level, as it was argued that 'number obtainment' was neither a good sign of quality nor helpful in terms of providing for robust or valid information. Nevertheless, informal comparative exercises were conducted by officials at all levels, but these remained outside the public domain. Notably, no private party had attempted to conduct such a comparison on the basis of the mission reports, although such exercises were deemed to be possible. Indeed, transparent comparative information was seen as potentially dangerous for the advance of food safety. Interviewees (at all levels) argued that portrayals of poor performance would lead member states to close-off co-operation in food safety, thereby leading to an overall deterioration of food safety in an internal market.

National officials regarded the risk to their reputation of 'coming out badly' in reports as the most effective and immediate behaviour-modification tool. This contrasted with wider multi-level governance related ideas that emphasises the importance of 'conversations'. Missions were understood, as noted, as solely concerned in checking compliance rather than in 'advising' on how to achieve compliance. Such understandings were purposefully maintained, for example personal interaction between FVO and national staff were restricted during missions, for example, by travelling in separate cars to site visits. Furthermore, communication between FVO and national staff did not extend beyond that of individual inspections. In other words, the area of meat inspections was not characterised by a cross-cutting professional community, although interviewees regretted the absence of such a forum (therefore contrasting to domains, such as competition law, where such communities were said to exist and supposed to be encouraged).

In sum, the relationship between European and national systems of control was to a large extent based on ideas of risk-based regulation and the idea of 'subsidiarity'. Risks were to be examined according to their particular profile in addition to legal requirements; and the main authority to maintain safety was located at the level of the member state, rather than at the EU-level. In terms of regulatory instruments, many of the logics of the regulatory state and the multi-level governance state were also present, whether it was in the sense of reporting duties or the utilisation of supranational legal authority to force compliance. At the same time, as noted in the previous section on the EU-level, the type of control had not changed towards one predicted by the 'multi-governance' view (as defined here). The inspections of the FVO were conducted on the principle of discovering whether food safety provisions were dealt with appropriately. There was therefore little space for advisory or 'persuasion'-driven enforcement. Instead, the reliance was placed on more traditional understandings of legal authority. Indeed, some officials noted a reduction, due to lack of resources (especially time), of consultative fora to consider aspects of food safety and inspection. There was little evidence of explicit performance management, whether this was in terms of a reliance on numbers, or in terms of relying on explicit comparison on the lines of league-tables. Instead, it was argued that such explicit comparison was more dangerous than merely pointless: compliance to 'transposition' targets was seen as failing to provide indications regarding the overall quality of food safety regulation. Explicit comparison was also seen as misleading, given differences in national approaches and threatening openness and co-operation across national food safety regimes.

National-local interaction

One of the key interests in the vast literature on Europeanisation has been the way in which EU provisions impact on actor constellations within national systems of government (Knill and Lehmkuhl 2002). Much has been said about the absence of a 'coercive' effect of institutional provisions in terms of forcing particular institutional solutions in precise detail upon member states, most studies have suggested that Europeanisation, especially in the 'traditional' EU member states, has to be largely understood as a process that tips domestic coalitions, alters the frame of domestic policy deliberations and provides for additional venues to outmanoeuvre domestic opposition to change.

As with all EU Regulations, the requirement to directly implement the provisions of the EU's 'hygiene package'⁵ required certain formal changes to be made at the national level. The way these provisions 'hit' member states varied considerably, with some member states, such as Denmark (and the UK) having established specific national food safety agencies. These agencies were seen as one response to European-wide issues in food safety, in particular a response to BSE, taking away authority both from national ministries and from local enforcement agencies (less so in the case of the UK, in particular in the case of meat). In the case of Denmark, the creation of a food safety agency followed developments in the 1990s, especially the need for a political response to public criticism in the light of food scandals. It also related to internal dissatisfaction with the state of regional and local food enforcement activities (that were responsible for all food production areas apart from those exporting to the US). Similarly, in Germany agencies responsible for risk assessment and risk management were created at the federal level, but the main (constitutional) provision of allocating responsibility for food safety to the sub-national Land level remained.⁶

Distinct changes occurred in the dynamics of control over time both in terms of information gathering and behaviour modification. In terms of information gathering, there was, in both countries, a greater emphasis on attempts to record and 'control' the way in which inspections were conducted. Thus, the ideas of 'auditing' and 'risk management' entered the discourse of local food inspections in the context of a greater emphasis on recording and proceduralisation. Such emphasis on recording was due to the increased interest by the FVO in conducting 'control of national control'.

Such a policy caused substantial problems for Germany, given its federal system.⁷ Attempts to harmonise and 'require' reporting by the sub-national governments were resisted on the basis of constitutional norms. It was the presence of the EU, in particular the demands of the FVO, that allowed the federal government to 'invade' the domain of food inspection at the Länder level. And it also allowed 'tightening up' of enforcement styles of Länder

⁵ http://europa.eu/legislation_summaries/food_safety/veterinary_checks_and_food_hygiene/index_en.htm. (last accessed 25 November 2009).

⁶ Bundesinstitut für Risikobewertung and Bundesamt für Verbraucherschutz und Lebensmittelsicherheit.

⁷ Across national systems, the risk management policy trend faced considerable resistance among food inspectors who regarded themselves as a largely autonomous profession (mostly veterinarians).

authorities vis-à-vis food safety agencies (usually part of local government). Moreover, the introduction of 'quality management' systems for local food inspection agencies, combined with an audit regime, was a novel element in Land-local control relations. In Denmark too, earlier resistance, prominent until way into the 1990s, to ideas of 'enforced self-regulation' and risk-based regulation increasingly gave way following the 1998 Food Act. This Act merged different food regimes and increasing involvement of central government over local enforcement. Central oversight relied on 'paper trails' to check on local/regional enforcement activities. Both national officials as well as FVO reports noted considerable shortcomings in local enforcement, with some pointing to the close linkages.

Thus, the control dynamic of the regulatory state, with its greater emphasis on risk, was certainly present in the national-local interaction. There was somewhat less emphasis on the multi-level governance control logic; and even less emphasis on the 'performance management' logic of control. Apart from the reporting duties 'upwards' to the FVO, there was hardly any emphasis on ideas of targets regarding outputs and outcomes in Germany. In contrast, in Denmark the performance logic was at least 'half-present', in the sense that output targets had been prescribed. These targets later became key aspects during food scandals. However, this particular logic of control 'invaded' the food domain not as part of the EU provisions, but emerged as a result of unrelated cross-government administrative reform initiatives that prescribed results contracts between ministries and their subordinate bodies.

There was less change in behaviour modification. As noted, observers agreed that ideas of risk-based regulation and 'auditing' in the context of quality management initiatives caused substantial problems for traditional regimes of food inspection, both in terms of their scientific approach (Andersen et al. 2006), and in terms of their understanding of 'what to control'. Whereas in the past, the interest had centred on a clean 'production' process and the inspection of animals in terms of preventing the spread of disease, the underlying ideas of the contemporary food inspection style were on wider quality issues, i.e. from 'farm to fork', and it was widely argued that domestic (and local) food inspections had so far failed to fully adjust to the internationalisation of the food production industry. Other initiatives, such as the use of greater 'transparency' of inspection results through the use of 'smiley displays' in restaurants and bars were not just seen as a tool to change the behaviour of firms, but they were regarded as tools that would impose particular behavioural demands on inspectors, namely having to more publicly and consistently justify judgements.

It was thus notable that the performance-type logic of control played a far more prominent role in national meat and food inspection policies than elsewhere. The (risk based) regulatory logic of control also impacted on local inspections in the sense of requiring greater procedural 'paper trails'; whereas the idea of multi-level governance in terms of deliberation was arguably less present.

Extending the focus on how two national systems of food safety responded to crises (i.e. events associated with considerable public attention in the media and labelled by evocative terms), a diagnosis of differential impact is also prominent. In the case of Germany, the so-called Gammelfleisch scandal in the late summer of 2006 was linked to the discovery of considerable amounts of putrid meat that had been relabelled and had

entered the food chain (in particular in the form of kebab meat). The Gammelfleisch scandal occurred in the context of a long series of problems in meat safety, especially regarding the use of so-called K3 meat (meat declared unfit for human consumption as part of regulatory responses to BSE) in so-called 'fresh meat products'. Whereas the federal minister for agriculture and consumer affairs, Seehofer, was seen to utilise these crises to call for a greater involvement and oversight function of the federal government, the Länder resisted (predictably) such moves and suggested that with somewhat better technical controls and resources, problems such as Gammelfleisch could at least be minimised. The eventual response was an intergovernmental agreement that more or less emphasised initiatives that had been under discussion prior to the Gammelfleisch scandal, namely a stronger emphasis on risk-based regulation, better reporting and monitoring, but, most importantly, neither a significant increase in federal engagement in food safety nor a greater emphasis on targets.

The scandal therefore provided 'tailwind' for the ongoing but slowly progressing adoption of core elements of risk-based regulation, such as classification of firms and the protocolisation of control activities. Arguably, this tailwind also facilitated reforms of the 'inspection of inspectors', in particular supporting earlier initiatives to introduce auditing schemes and quality control of inspections. At the time of writing, auditing remained free from any type of target setting and performance measurement. Instead it stressed good practice of food safety inspection regimes and peer review mechanisms. Attempts to systematise local enforcement agencies' reporting as a starting point to routinise performance reporting and comparison across local governments were still in their infancy. In that sense, the German response to the Gammelfleisch scandal could be characterised as a combination of risk-based regulation and, to a much lesser extent, multi-level governance.

In the Danish case, too, the main food scandal involved putrid meat (gammel koed) that had been imported from Germany and had been distributed to a variety of hotels and restaurants in 2006. An earlier incident involving contaminated raspberries occurred during the period May-September 2005 with the 'Norovirus' killing five and causing serious illness among 1000 people. The trigger of the 2006 meat scandal was a radio programme that revealed that one particular firm 'Thuin Koed Engros' had sold more than three tons of putrid meat to diverse hotels and restaurants. The two consecutive incidents triggered widespread criticism of both the food safety agency, Foedevarestyrelsen, as well as the responsible minister (Lars Barfoed). The incidents also provided examples of two logics of control, namely performance management and 'regulatory state', being under public attack. The agency was criticised for its responses to prevent further distribution of the contaminated raspberries in 2005 and the failure to carry out the inspection programme specified in the performance contract with the ministry (in the gammel koed episode). This followed earlier criticisms that the agency not only had failed to send clear instructions to the raspberry importer but had also failed to appropriately engage with the EU-wide rapid alert system. At that point, the minister avoided public criticism, but during the gammel koed episode, the minister was attacked for limited attention and supervision of the agencies' activities, in particular in the face of an apparent breach of the performance agreement (Resultatkontrakt) between the ministry and the agency as well as audit reports highlighting these problems. The subsequent public and political debate was

focused on accountability for control failures rather than on regulatory or organisational responses to this failure. The minister was accused of inaction and cutting the agency's resources. Two investigations, one by a parliamentary committee, the other by the audit office, suggested that the agency had failed to fulfil its inspection requirements (couched in broad terms in the Resultatkontrakt), but also voiced criticisms regarding the minister's oversight activities. As a result, the minister resigned in mid-December 2006.

Risk-based regulation had been a guiding principle for the creation of the Danish food control administration as central government agency under the supervision of the ministry in the late 1990s. Control activities were supposed to be informed by systematic risk assessment activities in centralised laboratories (Andersen et al. 2006). The relation between ministry and agency, however, was also shaped by the cross-governmental model of performance contracts between those levels. The combination of funding cuts and delivery failures against targets triggered a blame game that left no room at all for informed debates concerning the further development of the risk regulation regimes. The performance regime framed the debate in terms of boundaries of accountability (and blame) and therefore interacted with the rationale for risk-based regulation (namely to establish boundaries of responsibility). The performance regime provided the grounds for considerable perversity in undermining the possibility of 'risk based enforcement'. That is, the prescription of a quantitative number of inspections triggered a target-hitting 'touch wall' inspection style rather than one that focused on areas with potential risks and required extensive and time-intensive inspections.

More generally, the control logic of performance management directly interacted and interfered with the risk-based logic of the regulatory state; that is, sanctions and inspection targets were cranked up without much regard of whether these were likely to improve food safety. In fact, they were seen as reducing food safety. Similarly, the idea of adding a 'flying squad' to the tools of regulatory inspection activities reflected multi-level governance dynamics, as this provided for additional territorial resources that could be employed to add 'vitamins' to often overstretched local enforcement officers, but it was not seen as a device to enhance deliberation and consultation. The utilisation of an 'audit unit' that was to check the work of the Danish food safety agency and was itself overseen by industry and consumer representatives, could be seen as an attempt to institutionally arrange for more consultation, but also as an attempt to impose regulatory oversight over the agency itself. Despite the word 'audit', the work of the unit hardly followed a 'performance management' logic, although results were made public.

Interaction effects: reinforcing or destructive?

It was noted at the outset that governance has been widely associated with three separate logics of control. These three logics of control, namely 'regulatory state', oriented around the concept of risk, 'performance management', centring around understandings of targets and output- and outcome-oriented controls, as well as 'multi-level governance', defined here as a 'fragmentation' up- and downwards and sideways as well as a collaborative decision-making style, are shaping the way in which contemporary policy is being conducted.

Table 2 provides an overview of the different interactions present in the food safety domain. In the context of interaction effects (of a reinforcing and contradictory kind), Table 2 raises two key questions: are the ‘empty boxes’ (marked with the X) a result of (political and/or logical) impossibility or are they the result of the presence of other logics of control? Second, what is the relationship between the different logics of control that are present in the food safety domain?

Table 2: Overview of observed patterns

	Multi-level Governance	Regulatory State	Performance Management
EU-level	Expansion of responsibility	Risk assessment Elements of risk based control in terms of controlling national implementation	X
EU-National	Interaction with EU-FVO inspection regime as part of EU hygiene packet provisions	Increasing protocolisation of meat inspections	X
National local: Denmark	Rise of national level of food safety, vertical ‘thickening’ through ‘flying squad’	Tailwind for implementation of risk-based inspection and auditing regimes	Food safety scandal framed as a failure to comply with performance obligations stipulated in contract between ministry and agency
National-local: Germany	Thickening of relations between federal and Land levels, increased federal monitoring	Tailwind for implementation of risk based inspection frameworks and auditing systems	X

The relationship and tension between the three dynamics of control in the food safety policy domain occurred at three levels. At the EU level, risk-based regulatory state dynamics were more strongly represented than on the two other levels. The development of the inspection programme of the FVO can be seen as the application of risk-based regulation thinking to the area of food safety, in particular the shift towards the idea of checking on national systems of control. Despite the possibility to apply performance management ideas, the EU level was defined by an explicit rejection of such measures.

Turning to the interaction between EU-national levels, risk-based regulation was mainly reflected in general EU law that prescribed changes at the national level. The protocolization of inspections was the most tangible impact of the EU regime. This was in line with interpretations of the regulatory state which drives institutional relations into increasingly formalised relationships that rely on formal reporting. Multi-level governance in terms of an emphasis on deliberation was hardly relevant to EU-national relations. Instead the FVO missions were perceived as another layer of hierarchical interference. Performance management dynamics were almost completely absent – the prominence of

performance management ideas in Denmark were largely due to wider national administrative reform ideas.

At the national-local level evaluation criteria from the performance management system dominated the reaction to a food safety scandal in one case, Denmark. In the German case, risk-based regulation had been an ongoing theme in food safety regulation and became more prominent among the professional responses to the Gammelfleisch scandal. Given the complexities of the German federal administrative system, the risk-based regulation dynamic challenged the established institutional fabric and provoked demands for increased protocolisation.

Returning to the ‘overlapping’ areas of Figure 1, there was considerable evidence of tension rather than mutual reinforcement between the different logics of control, where they were present. The regulatory state strategy of ‘formalised’ controls, even on a risk-based basis, did not clash with a logic of increased fragmentation of regulatory authority horizontally and vertically, but it did clash with an emphasis on deliberation and consultation (field ‘a’). Increased demands on inspection volumes and ‘risk-based’ control strategy, even where tightly prescribed as in the area of meat, conflicted with and dominated a logic of control that emphasised the importance of ‘professional community’ building through deliberation. Similarly, the idea of linking regulatory and performance based logics of control (field ‘c’) proved highly problematic. The case of Danish food scandals showed that food scandals pushed performance targets and their achievement into the area of ‘high politics’, targets were regularly reshuffled and were widely regarded as impinging on the logic of risk-based regulation (or rather dictating regulatory inspection in terms of political risk and not ‘objective’ risk). The absence of an attempt to link multi-level governance with performance management (i.e. field ‘b’) is not due to the theoretical impossibility of this combination. Instead, this combination was perceived to be ‘barred’ by actors across all levels (and therefore it does not feature in Table 2) as it was argued that ‘visible’ reporting on inspection discoveries and the quality of food safety would have undesirable effects, in particular in reducing national systems’ willingness to open themselves up to inspection. We found no cases of ‘d’ in Figure 1 (the mixing of all three control dynamics), but would suggest that such a combination would accentuate the tensions that we observe among two-way combinations.

Comparing the different logics of control suggests that far from being mutually reinforcing, they are likely to undermine each other. There is considerable scope to argue that the impact of the EU/FVO regime has been the move towards an increased hierarchisation of control, especially due to increased demands for protocolisation of inspections and recording of system performance.

Conclusion

This paper started out with a basic dissatisfaction with the undifferentiated treatment of the term governance. Three logics of control, all widely associated with governance, were defined and their significance in one particular domain, meat inspections were assessed. This domain is a particularly appropriate area for the investigation of control dynamics. It might be argued that measuring outputs and outcomes is problematic in an area such as food safety. However, the underlying logic of performance management, the idea of

trusting in numbers and in allowing for discretionary space to fulfil targets are present in the contemporary regulation of food safety - as was evident in the case of Denmark.

Similarly, the focus on two countries might be regarded as limited. Exploring further contexts, such as southern Europe, is likely to provide for a diverse pattern, however, this paper explores the dynamics of three logics of control that have been widely associated with governance. Thus, we would expect the three logics of control to play a role without suggesting that the same mixed patterns would emerge, especially at the national level. This analysis, however, suggests that the usually implicit assumption that governance consists of mutually reinforcing logics of control needs to be reconsidered.

Risk-based regulation as has been evolving at the EU level also as part of the activities of the FVO challenges traditional assumptions about multi-level governance and represents a hierarchisation of relationships. At the same time, the style of risk-based regulation as it developed in the European food safety domain did not fit with ideas about target setting and output control as emphasised by performance management related ideas. As noted, this particular combination provides evidence of the political dynamics that emerge when a system of performance management – even if it is a ‘light-touch’ (sanction-free) version such as the Danish (Hustedt 2007) – is seen as a reference point for evaluation of risk regulatory regimes. The Danish case provides evidence for considerable instability of national regulatory approaches given political preference changes in the light of food scandals and different ministerial priorities vis-à-vis the food industry. Similarly, performance management in terms of explicit targets and comparison were regarded as potentially harmful if applied to cross-national regulation, such as applied to the EU, or if applied to cross-federal performance, such as in the case of Germany. At the EU level, the logic of performance management was in tension with the logic of multi-level governance, i.e. making performance measurement explicitly comparative and public was said to increase the political risk of reduced willingness among some countries to co-operate in further reforms of food safety regulation.

In conclusion, this paper set out with the argument that while the rise of governance has been widely regarded as universal and uncontroversial, this supposed rise has drawn on diverse logics of control present in the wider literature. The paper finds considerable interaction effects between these three logics that are far from mutually reinforcing, in fact the different logics operate to some extent in opposition to each other. Food safety, especially the area of meat inspection may be declared as a ‘special domain’. However, such *sui generis* claim needs to be justified in the light of extensive comparative studies in other domains and states. Thus, contemporary debates regarding ‘governance’ and ‘performance’ should seek to develop a better understanding not only of the intended and unintended effects that are associated with any one of the logics of control under discussion in this paper. In fact, these discussions need to explore further the potential tensions and distinct features these different logics include.

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Figure 1: Governance and three logics of control

