The metagovernance of co-regulation
A case study on safeguarding the quality of Dutch eggs

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1 Introduction

In times of budget cuts and ‘regulatory governance’- philosophies public regulators have a keen eye on private systems that are aimed at safeguarding the quality and safety of products. This may explain the popularity of co-regulation. The concept encompasses a variety of arrangements in which regulations are specified, administered and enforced by a combination of the state and the regulated organizations (Bartle and Vass, 2005; Martinez et al, 2007).

Relying on those private systems would probably save valuable inspection capacity and keep quality and safety on an acceptable level. In this paper these systems are framed as ‘governance- systems’, albeit on a micro-level, in which multiple public inspections, private certification bodies, audit committees and different industries interact to meet both individual and common ends. This framing provides an excellent opportunity to make the concept of meta-governance more tangible than in the current literature. Meta-governance, then, deals with the governance of these governance-systems.

Main question is how the concept of ‘metagovernance’ may help us analyzing change in a co-regulation regime. This question will be answered with the use of a single case study on a specific co-regulation arrangement for maintaining the quality of Dutch eggs. In the next session co-regulation will be framed as ‘governance’ and a typology of theoretical governance approaches will be provided. In section 3 two interpretations of ‘metagovernance’ will be given. The Dutch eggs- case will be described in the sections 4, 5 and 6. The study results in a reflection on this co-regulation regime and on the way the concept of meta-governance has supported our study (section 7).

2 Co-regulation as governance

Co-regulation typically requires coordination efforts between public regulators, industry and third parties. Broadly defined, they serve common values (such as safety, quality, sustainability), but with different purposes and methods. A massive amount of literature on self regulation describes tensions between public regulators (‘government’) on the one hand and private regulatees (‘industry’) on the other. Much of this literature looks at coordination from a public perspective. They aim at making self regulation suitable for government purposes. They find plenty of incompatibilities. Industry would most prominently serve their own interests rather than public values (Gunningham and Rees, 1997; Grabosky, 1995; Bartle and Vass, 2005; Hutter, 2006). An emphasis on efficiency would compromise the effectiveness of self-regulation (Rametsteiner and Simula, 2002). A lack of commitment would result in symbolic self regulation (King and Lenox, 2000; O’Rourke, 2003; Power, 2003; De Marzo c.s., 2005).
The distinction between ‘government’ and ‘industry’ can be refined by the introduction of third parties. Public regulators are not the only organizations defining norms for the ‘industries’. Lots of other organizations, such as banks, insurance companies, ngo’s do the same, but again differently (Grabosky, 1995; Kunreuther et al., 2002; Hutter, 2006). In some cases these third parties are explicitly invited to develop a co-regulation regime. A common form of this is ‘third party certification’ in which certification bodies do inspection work according to schemes co-written by government and industry, but also in accordance to norms of accreditation bodies. Co-regulation, this way, involves three categories of actors that coordinate their activities to safeguard common values, for which they are mutually dependent.

**Governance**

This perspective on co-regulation fits in the current writings on ‘governance’. It is hard for a regulation scholar to live with or without ‘governance’. That also implies a major weakness of the concept. ‘Governance’ gives 1.730.000 hits on scholar.google.nl (dd. 29-12-09). Many scholars use it in very different ways and it is now hard to understand each other by using this concept (Rhodes, 2007). The following is an attempt to sharpen our ‘governance’- perspective a bit.

‘Governance’ assumes that

‘societies are governed by a combination of governing efforts by all kinds of actors and entities, public as well as non-public’ (Kooiman en Jentoft, 2009)

‘Governance’ reflects the insight that (government) policy is made and is implemented in horizontal settings: complex sets of interactions between mutually dependent but relatively autonomous public, private and societal parties. Steering by a single actor is hard in this context. This is mainly due to the variety of actors, their mutual dependencies, and the dynamics of the context in which steering happens (Koppenjan c.s., 2009; De Bruijn and Ten Heuvelhof, 2008; O’Toole, 1997). Because of these complicating factors steering is best understood by a variety of steering efforts by various actors, which is referred to as ‘governance’ (Kooiman, 1993; Pierre, 2000). The increased acknowledgment of the complicating factors for steering is often presented as a shift from ‘government’ to ‘governance’. ‘Government’, then, refers to a (public) hierarchical actor that has exclusive steering abilities, while ‘governance’ stresses the patterns of steering efforts by various actors. This is attractive for studying co-regulation, for ‘governance’ tolerates various perspectives on cooperation between public and private parties. Co-regulation is not just about the use of private quality systems by government, but also the use of cooperation with government from a private perspective.

Co-regulation regimes require activities from government, industry and third parties. Their mutual interactions and steering efforts can be seen as ‘governance’ on a micro-level, because it is not about steering national or even international societies, but about a single regime. ‘Governance’ in such a regime typically deals about decisions about for instance standard setting, scheme management and harmonization processes.

**Governance systems**

The set of actors that are involved in ‘governance’ are often referred to as ‘governance networks’ (Kooiman 2003; Kooiman and Jentoft 2009) or ‘regulatory networks’ (Parker and Nielsen, 2009). Networks stress variety and interdependence between actors and imply rules
of mutual adjustment and proportionality. These networks may cut across existing territorial, administrative and functional boundaries (Castells, 1996; Rhodes, 1997; Kickert, Klijn and Koppenjan, 1997). Applying this concept to co-regulation regimes is attractive, but one has to keep in mind that the boundaries mentioned above still exist. It would be a simplification to view the various actors involved in a co-regulation regime just as ‘networks’, forgetting hierarchical relations and markets that might also be apparent in co-regulation regimes. Both hierarchy and market imply different rules of interaction than networks (Powell, 1991). For this we rather prefer the term ‘governance system’, that may comprise of networks, hierarchies and markets.

3 Changing a co-regulation regime: metagovernance?

Still, this picture of governance systems is static. It cannot help us with explaining change in co-regulation regimes. Co-regulations imply interactions between public and private regulators. They will just happen on a regularly basis. For change we need to discuss how the way these interactions happen are influenced. In the governance literature the concept of ‘metagovernance’ is used for this. This concept is referred to as the “governance of governance” (Jessop, 2002, 2004). This immediately implies a conceptual problem. If ‘governance’ is hard to operationalize because it is used so often in so many different ways, what about the ‘governance’ of ‘governance’? Comparable to discussions on ‘governance’ we distinguish two schools of ‘metagovernance’.

**Metagovernance as design.** Some scholars describe metagovernance as a deliberate designing activity. Subject of design could be an interaction process between (public and private) actors about a specific problem. This is called ‘process architecture’ or ‘process design’ (De Bruijn c.s., 2002, Klijn and Edelenbos, 2007). ‘Goveriance’, then, comprises of the actors that are involved in this problem and their interactions. Metagovernance could also involve an ‘institutional design’. In that case rules, norms and habits that apply to a system of actors are (re)designed (Sörensen and Torfing, 2007: 175, Jessop, 2003; Klijn and Edelenbos, 2007). The ‘designing’ implies active and deliberate metagovernance, applied to a specific and definable ‘governance network’. Triantafillou (2007) even speaks of ‘network formation’.

This deliberate form of ‘metagovernance’ supporting actors in their interactions. Metagovernors this way are more involved in governance processes. They participate, more than designers, in interactions. That’s why Sörensen and Torfing (2007: 181) distinguish hands off (designing) and hands on (participating) types of metagovernance. Examples of this hands on type is formulating (public) policy, knowledge sharing and providing (organization) capacity (Whitehead, 2003; Sörensen en Torfing, 2007: 176).

**Metagovernance as management.** Not all scholars interpret metagovernance as a deliberate activity. Some don’t define a specific ‘meta-governor’ (for example Kooiman en Jentoft, 2009). O’Toole (2007) writes:

> Public authorities may not be the only ones working at the meta-level. In fact, it becomes an empirical question as to whether public authorities are at all involved at the meta-level; an alternative might be that other social actors sometimes set the basic rules of the game that ultimately (at another level of action) produces outputs and outcomes.

An important suggestion from this quote is that there are more ‘metagovernors’. This in turn suggests that there is no conscious ‘metagovernance’. The outcome of metagovernance cannot be linked to the purposes of a single actor, but may be a result of several interventions from a
number of actors that sometimes operate on some ‘metalevel’. Metagovernance, this way, is not a deliberate, but an emergent activity.

There is another issue about the deliberate school. Until now the thoughts on metagovernance suggest a relatively well-determinable ‘governance-system’. This makes it possible to change systems deliberately. An important criticism on this literature is that it is strongly deterministic. It is very optimistic about the ability to steer social interaction (Kelly, 2006), so it isn’t so much about the ‘governance’ of ‘governance’, but about the ‘government’ of ‘governance’. A variety of – mainly post-modernist – thinkers try to avoid this supposed pitfall. They assume ‘self referentiality’, the unavoidability that actors define the world – and its institutions - and their own place in it themselves (see for instance Foucault 1991; Jessop, 2003; Dean 2010). This way any actor may frame the governance system its own way. There is no authoritative central definition of a governance system. Definitions are dispersed over the system, as are definitions of interventions in the system.

The two perspectives on metagovernance are summarized in table 1. It takes the different thoughts on metagovernance to extremes. We coin them “Government of governance”, which stands for intentionally and holistically regulating interactions, and “Governance of governance”, which are interactions patterns determining interactions patterns. The first suggests some design of governance systems, the latter management efforts within governance systems.

<table>
<thead>
<tr>
<th>Metagovernor</th>
<th>Design: ‘government of governance’</th>
<th>Management: ‘governance of governance’</th>
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<tbody>
<tr>
<td>Metagovernance interventions</td>
<td>One actor</td>
<td>More actors</td>
</tr>
<tr>
<td>Framing governance system</td>
<td>Centric</td>
<td>Dispersed</td>
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*Table 1: two perspectives on metagovernance*

It has to be said that this won’t do justice to the nuance most authors show in their outings. The function of the table is to clarify perspectives, not to categorize work of specific authors.

The following sections report a study of a specific co-regulation regime. It serves answering the main question how meta-governance may help us analyzing change in a co-regulation regime. The previous theoretical sections shows that a ‘governance’ study on co-regulation regimes should focus on actors and their interaction processes. The following is an attempt to capture a process of metagovernance, by committing 22 semi-structured interviews with managers and inspectors from government, industry, and certification- and accreditation bodies, and by committing desk study.

The specific case is an example of an attempt by government to commit a deliberate institutional design, using a centric frame of the governance system. As such, it was the intention to ‘govern governance’. For this empirical study we were interested in the effects of the process on the design-as-committed and the design-as-realized. Who was the governor after all? Whose interventions did matter and what definition was dominant?

The empirical part of this paper starts with a brief description of the three domains, followed by a description of ‘governance’ as intended by the design itself. After this, we are going to
push the ‘run’- button and describe the process as it is running untill now. This process comprises of the introduction of the design and effects on the design-as-realized.

4 Safeguarding the quality of eggs by co-regulation: A Dutch story

The policy trend of involving all kinds of self regulation regimes in regulatory arrangements hasn’t passed the Netherlands. Following an authoritative policy vision in 2005⁠¹ all Dutch ministries and inspectorates have formulated strategic plans to be more selective in their regulatory efforts, conduct risk analyses and have a look whether private self regulatory programs can be an input for these risk analyses. Main goals are the reduction of the regulatory burden for industries, efficiency of regulation and targeting regulatory efforts to the ‘bad apples’.

All ministries have adopted their own strategies in their own style. The Dutch Ministry of Agriculture has adopted “Toezicht op Controle”², a policy framework that describes institutional requirements for cooperation with industries and their self regulatory bodies³.

The policy framework is a quite elaborative document. By prescription it attempts to bring order in the relations and interactions between public and private inspectorates and the industry. It stresses the end responsibility of government for the quality of regulation and oversight and the extra efforts this implies for industries, like necessary coordination with public and private inspectorates and auditors (p.13). Moreover, government formulates requirements for the organization and functioning of the body that primarily carry out the audits (p.8). Government may renounce sanctioning, but that would mainly depend on the seriousness of the norm violation (p.13).

Once TOC was settled, the ministry tried to stimulate sectors to cooperate on the basis of TOC. This appeared to be a hard job, for many sectors found the arrangement too rigid. The first sector that applied for TOC was the poultry-sector. The main reason for this was that there was some potential benefit for this sector. The inspection frequencies from the government side were very high that time and the industry had to pay for these controls. A possibility to have these inspections organized themselves would potentially save considerable time and money for the industry. The already existent privately owned quality system IKB ei⁴ would be suitable for TOC.

5. Around a simple egg: three domains

The application of TOC to this sector is a story of interaction between several actors that have their own roles and are committed to different rules. We present the key players in three domains: government, industry and certification-and accreditation bodies, all comprising of markets, hierarchies and networks.

The industry: a chain of markets in the market

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¹ Dutch Ministry of Internal Affairs, “Minder last, meer effect; Tweede kaderstellende visie op toezicht”, 2005
² This is hard to translate into English, it comes close to “overseeing auditing”
³ Dutch Ministry of Agriculture, “Beleidskader Toezicht op Controle”, 2005
⁴ Translates into “Integral Chain Management Eggs”
The quality of a simple egg involves a complicated value chain of companies. The bottom of the chain is involved in selection and reproduction of chicken and the top of the chain with production and trade. The chain consists of small, non-integrated links.

TOC has been applied to one of these links: poultry farmers that buy the chicken and sell their eggs to trading companies. These poultry farms usually are relatively small companies. The bigger have multiple sites.

The sector is represented by two organizations: the NOP (Dutch poultry farmers Organization) and NVP (Dutch poultry farmers labor union). The entire chain is represented in the Productschap voor Pluimveehouders en Eieren (Commodity Board for Poultry Farmers and Eggs; PPE). This is a hybrid form of the public and the private. It is mainly a body that represents industries in discussions with government, but at the same time has some public regulatory authorities for more technical issues, such as registration of chicken and management of salmonella bacteria.

The chain is also represented in the board of the CPE, which is a sector-specific auditor. CPE also is a bit of a hybrid, for they also conduct inspections mandated by public inspectorates. For these tasks they have public authorities. Until a couple of years ago CPE had its own commercial certification body: INDAS.

The poultry-sector has IKB ei as its own quality system. IKB ei has been managed by PPE. It has its own third party certification system to safeguard the quality of eggs and animal welfare. Every member company in every link of the chain earns a certificate, if they meet the requirements of the certification scheme, managed by PPE. Around 800 out of 1200 companies participate.

Each link in the chain is a little market. The links are occupied by a diversity of competing companies. At the same time the entire chain produces just a limited amount of products: eggs. This reinforces the mutual dependencies between the links. If a market of a single link is not functioning well and that would lead to quality issues, the entire chain would have quality problems.

Retailers look consumers most directly in their eyes and is the first to complain to if there are quality issues. This image problem provides strong incentives for retailers to formulate requirements and enforce them. That’s why a quality system such as IKB-ei is strongly market driven.

The international competition is a second major driver to adopt a quality system. Dutch retail only accepts eggs from IKB ei or the German quality system KAT (Kontrollierte Alternative Tierhaltungsformen). Foreign retailers of course have their own policies. This international market is very important, for a considerable amount of Dutch eggs are exported. An internationally authoritative quality system is vital for future sales.

*Government: an open system of specialized and fragmented inspectorates*

Most of the public regulations on the sector is about hygiene in the production process and the products, animal welfare and the correctness of the information on the eggs (provided by a stamp). Several inspectorates are involved in enforcing these regulations.
The Algemene InspectieDienst (General Inspection Service; AID) selectively inspects on animal welfare. The most important issue is the amount of space per chicken. Norms for these inspections are provided by the Dutch *Legkippenbesluit 2003*. The inspections are paid by government. The AID has the authority to enforce on criminal law in case of serious violations.

The Voedsel en Waren Autoriteit (Food and Trade Authority; VWA) provides certificates for exporting eggs and pays inspection visits to every company that wants to export their products, at any time. VWA also mandates inspection authorities for hygiene norms to the CPE.

CPE actually inspects on several issues, such as regulations on hygiene, European Trade Norms\(^5\) (mandated by the Dutch Ministry of Health Care, Welfare and Sports). These norms for example are about the stamping of eggs. The stamp encodes the housing system of chicken (e.g. the way the chicken are treated), the country and the stable the eggs come from and the production date of the egg. Inspections of CPE are paid by the inspectees, in accordance to Dutch guidelines for inspections by semi-public bodies as CPE is.\(^6\)

In the poultry sector a variety of public inspectorates operates. Their legal foundations for their inspections differ and, as such, they are horizontally specialized. The norms of inspectorates can have different origins. On the poultry sector a variety of European Guidelines are applicable. They can deal about the primary process (such as hygiene norms) as well as about inspections (such as inspections on trade norms). European Guidelines are legally superior to national laws and regulations. The total picture is a highly fragmented set of inspectorates that are specialized and have different legal foundation for what they are doing.

An important similarity between the inspectorates’ policies is the wish to reduce the burden of inspections for the industry. This is a politically inspired wish, which has it’s origins in the Dutch Cabinet vision in 2005\(^7\). Inspectorates show themselves sensitive to the political reality and they have to unite political impulses with the legal foundation of their activities.

> “the foundation for inspections by AID is a rather narrow one. It is just the *Legkippenbesluit*. We actually haven’t inspected biological companies, but did inspect non-biological. (…) Animal welfare is recently an important issue in politics and society” (interview government)

This quote shows that political attention is not just on apparent values such as efficiency or effectiveness of inspections, but also on a specific issue, such as animal welfare. That’s why inspectorates regularly receive incentives to change their priorities.

*Certification- and accreditation bodies: international norms, national monopolist, national market*

Since 2007 the IKB ei has a ‘third party certification system’ under accreditation of the RvA (The Dutch Accreditation Body, which is a private actor). This means that the quality system,

\(^5\) European Guideline EU 589/2008

\(^6\) report “Maat houden”, MDW- werkgroep doorberekening handhavingskosten”, June 1996

\(^7\) Dutch Ministry of Internal Affairs,”Minder last, meer effect; Zes principes van goed toezicht, Tweede kaderstellende visie op toezicht”, 2005
its schemes and the certification body all will be accredited by RvA. For this RvA uses international norms, depending on the types of certification one is applying for. Instigated by TOC, IKB ei strives for accreditation for product certification (NEN EN45011 Guide 65).

The norms RvA use for product certification deal with methodological issues, such as the way a certification body can measure quality issues and how these methods are written down in schemes. RvA also sets norms on the interaction between actors. They usually deal with the organization of the quality system. Three examples: first norms should be administered by a Board of Experts, wherein the sector is represented. Second, inspection and judgment against the norms should be institutionally separated. Third, inspection and judgment should be done by independent certification bodies, which operate in a market setting.

Two certification bodies are involved in IKB ei: CBD/ISACert and INDAS. The latter is closely tied to CPE. Certification bodies announce their audit visits beforehand and get paid by the auditees, which in fact are their customers.

With the sector’s aim for an accredited ‘third party certification system’ the world of accreditation and certification is gaining dominance.

Certification bodies are competing with each other in a market setting, in which their clients are auditees. The market is not that big. Just two certification bodies are in. The certification bodies organize audits and are in their turn auditees for the RvA. RvA is (per January 2010) by law the only organization that can provide this service. This way, RvA is a monopolist. Accreditation bodies from different countries refer to the same international norms. Still, differences between the procedures of accreditation bodies exist. On an international level harmonization between accreditation bodies takes place in several bodies, such as the European cooperation for Accreditation (EA).

6. TOC in action: The change of a co-regulation regime

Now the three domains are described and the scene for ‘governance’ has been set, it is time to push the ‘run’ button. This section we describe the dynamics of the adoption and execution of TOC.

The poultry sector has applied for an arrangement after the design has been made. The main consequences of application of TOC on IKB ei is threefold:

1. CPE and AID stop inspecting on most of the regulations they enforce. The regulatory definitions are included in the IKB ei scheme. Certification bodies will include these definitions in their audits. Public inspectorates remain responsible for the process. CPE and AID keep inspecting companies that are not a member of IKB ei.

2. There are extra conditions for certification bodies, some of them anticipating on EN45011-accreditation. There is, for example, a norm on the time an audit visit should take. This is to prevent rushing audits.

3. CPE and AID commit verification audits at the poultry farmers. This way they check whether the certificates are provided deservedly.

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8 EU Guideline 765/2008, implemented in Dutch Law “Wet aanwijzing nationale accreditatie-instantie” (31931), October 2009
Further detailing TOC in an arrangement has been a challenge. It took place in a period between the issue of TOC in 2005 and the introduction of TOC in the sector on January 1, 2008. In this period of time the TOC-arrangement, and the relations between the different actors with it, has been discussed and codified. The ministry of Agriculture has managed this process. All actors mentioned have been involved. They faced some issues that hide typical conflicts between the domains as mentioned above. We selected some key-issues below.

**Issue 1. Erection of a private foundation “IKB-ei”: Government versus industry**

One of the TOC-requirements of TOC is that the arrangement is based on private quality systems. This requirement has its origin in European law. The problem was, that the main manager of IKB ei, PPE, was not exactly private. It had public authorities. The discussion on this issue had a huge potential impact on PPE. They have built up experience and knowledge on the management of this quality system. They historically are an intermediary between government and sector. For this reason they saw themselves as the perfect gatekeeper for TOC.

“...It should be someone who understands where it is about and can make decisions on behalf of the entire sector. And who has some authority to connect parties if tensions are rising a bit (...). It has been a hard discussion for quite some time. Government was very strict: they say “PPE is not a private actor, so it is not applicable to PPE” (interview industry)

The discussion has resulted in the erection of a private foundation (IKB ei-Foundation), that would take over the management of the quality system from PPE. In a strict legal sense, the foundation and PPE are separated. It’s not much more than that. They reside in the same building and many people work for both organizations.

**Issue 2. Addition of unannounced inspections: Government versus industry**

Audits of certification bodies are announced. This is usual for client-supplier-relationships. The principle of announced audits, however, conflicts with practices of AID and CPE. Their philosophy is that one should prevent poultry farmers anticipating too much on their inspections. CPE has insisted on unannounced inspections, backed by European regulations. On instigation of the Ministry of Agriculture the foundation therefore requires certification bodies to audit an extra 50% of their client base. The costs of these extra audits are included in the contributions for IKB ei, which are raising because of this. This leaves the poultry farmers in doubt whether TOC actually is in their advantage.

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In first instance the foundation doesn’t seem to be very keen on initiating these unannounced audits. In 2008 the certification bodies received the requests for unannounced audits in November, in 2009 in July. In 2010, awaiting an evaluation of TOC and IKB ei by the ministry the amount of unannounced audits have been reduced unilaterally by the sector.

**Issue 3. Addition of a fine as a sanctioning instrument: Government versus certification**

Just before the introduction of TOC self-regulation issues arose in the media. The media paid much attention to abuses in the meatworks sector, which was a pioneer in self regulation in

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9 European Guideline EU 589/2008
the sector of agriculture. As a reaction, the Minister was planning to quicken the addition of fines as an enforcing instrument in some laws on animal welfare.\textsuperscript{10} It showed that there wasn’t much political support for trusting private quality systems for risk based selection of inspections. A fine as an extra sanctioning instrument would muscle inspections. The ministry showed sensitive to this new political sound and included the fine in the TOC-arrangement. Main question was who should enforce this fine? Including a fine in TOC would suggest that the Foundation would do this based on information provided by certification bodies.

Of course the sector was not that enthusiastic about the fine. They especially feared disadvantage of IKB-ei members compared to non-members.

The fine is already problematic. We can fine immediately, while governmental sanctions are very slow, If they get materialized anyway. Sometimes the fine doesn’t make it to the bank account of the farmer. (interview industry)

The certification- and accreditation bodies also were fierce opponents against the fine, for different reasons.

It is one of the accreditation requirements that we can do our job only with the aim to tell what it is. Not more. The addition of enforcement tasks would be like “I have told what it is, and now I fine you” That’s absolutely not allowed in the accreditation world.” (interview certification body)

RvA has labeled the fine, after consultation of EA, as “highly unusual” in 2009 and “unacceptable” in 2010. They suggested not accrediting IKB ei if this fine would be included. Clarity of roles is the main argument.

“(If the fine would be implemented, hv) the certification bodies would become some kind of collecting agent. They are not organized for such a task. This implies just too many requirements that are non typical to certification bodies.” (interview accreditation body)

These non-typical requirements could lead to a quality drop of audits, because if the consequences of the audit reports could be an immediate fine, they could be tempted to mitigate their audit reports and serve the client by doing so.

Now an odd situation has emerged. RvA might not accredit IKB ei for EN45011. This would threaten the international position of IKB ei. At the same time TOC (instigated by government) requires accreditation. TOC and the political wish to include fine seem incompatible. The sector feels supported by the RvA in their resistance to the fine and deleted corresponding provisions from the IKB ei-scheme unilaterally.

\textit{Issue 4. Verification audits: Government versus certification}

TOC requires verification audits by CPE and AID. They do these audits at the farmer’s sites, but with the purpose of auditing the certification bodies’ job. If the farmer has a certificate, but still violates the norm, this will be reported as a non-conformity of the certification body. In the first year the percentage of verification audits would be 15\% of the total amount of farmers.

\textsuperscript{10} Letter from the Minister of Agriculture, TK 2008-2009, 26991, 10 oktober 2008; The laws are “Gezondheids- en welzijnswet voor dieren en wetsvoorstel Dieren-” (TK 2007-2008, 31 389)
In July 2008 CPE has found non-conformities. They claimed this proved the necessity of these verification audits. PPE, together with certification bodies resisted this claim. They suggest that CPE would have an interest in finding non-conformities. They would seek to find.

The verification audits are seen as a direct threat to TOC. The sector finds the percentage of 15% too high. If it even would raise, the advantage of TOC would dampen. TOC was attractive for them for it would reduce the amount of audits.

Certification bodies get confronted with multiple principles. They see RvA as their auditor and show little tolerance for more organizations that want to have a say in the way they do their jobs.

The RvA audits INDAS. We are 17020- accredited and now want to get accredited for EN45011, so RvA tells us whether the system is well or not, whether we are independent enough, whether our employees are qualified enough or whether there are enough auditors. We don’t want the AID to do this job over again. (…) We want to meet 45011- requirements and keep the AID out or not meet 45011- requirements and get us audited by AID for a day. Otherwise we would face tensions between the findings of RvA and AID. (interview certification body)

CPE states that they have full responsibility for auditing certification bodies as long as they are not EN45011- accredited.

7. Conclusion: Metagovernance and eggs

The main question is how the concept of ‘metagovernance’ may help us analyzing change in a co-regulation regime. Two metagovernance- perspectives have been presented. We’ll answer the main question by framing the changes affected by TOC with both perspectives.

TOC as a design: government of governance

The case of TOC for IKB ei is a rendez-vous between public inspections and private quality systems. It is prepared carefully and codified in an arrangement. This way TOC is a good example of an institutional design. After the design has been finished, the poultry sector applied for its adoption. During the detailing of the arrangement and the execution of it the three domains (government, industry and certification- and accreditation bodies) have met each other intensively and continuously. The way these ‘meetings’ took place was highly determined by the ‘deliberate’ character of TOC.

The way inspectorates and auditors coordinate their activities is laid down in the arrangement and conducted as such. Formally, this is it. The ‘meta process’ has been the development of TOC and the application of it to IKB ei. It tries to regulate the way the governance of the quality system takes place.

The participants of this development, coordinated by the Ministry of Agriculture, operated on a ‘metalevel’. They developed the institutional design according to the way they perceived governance. After finishing the design the designers can leave governance as it is. Their job is done.

Continuation of the governance processes as designed depends on formal evaluations. At the moment TOC is evaluated by involved actors, eventually resulting in a go/ no go decision. This could be the end of it.
TOC as management: governance of governance

The case shows a clear example of an institutional design. However, the confrontations between government and the two other domains show that many interactions and many results of these interactions were unforeseen. The ministry took the ‘metalevel’ consciously and explicitly, but often had to tolerate other actors climbing and descending the metachair. Their interventions heavily determined the actual execution of the arrangement. Examples are the continuous interactions about the fines, the requirements for EN45011 and the verification audits. These examples suggest that TOC hasn’t been finished yet as it was intended. There is no accreditation yet and there is still discussion on the amount of unannounced audits and verification audits. It is questionable whether this intended finish will happen.

It is hard to pinpoint what the key topics on a ‘metalevel’ are and when they are decided upon. This is possible for a scholar or evaluator, in hindsight. That’s because it is about issues and interventions that highly affected cooperation between inspectorates and auditors from then on. For TOC, most prominently the ‘high games’ appear to be the meta-issues, such as the discussion around the fines. The outcomes of these discussions result in change of interactions. Also individual strategies, such as CPE not respecting the separation of roles while doing verification visits, may be relevant on a ‘meta’- level, for the same reason. It, for example, could provide incentives to other actors to stop supporting TOC.

So every actor can do ‘meta-interventions’ on any moment, whatever this is on purpose or not. The purposes for meta-governance interventions are not that evident. We have to look for the way they value regulation and inspections. These may vary per domain, determined by their institutional structure. So there is no central perspective for optimalization of metagovernance, because it is not clear what goals would guide such optimalizations. From this perspective actors enter and leave the metalevel. Interaction is of all times, whatever is prescribed by designers. This implies that there is no formal beginning or end of metagovernance, as implied by the perspective of institutional design.

Discussion: a shift from ‘government of governance’ to ‘governance of governance’?

The answer to the main question is “yes, it helped”. Still, the conclusions are a bit schizophrenic: two perspectives on metagovernance have resulted in two explanations of change in a co-regulation regime. What can we learn about ‘metagovernance’, when we apply it to such a micro-level, in this case a co-regulation regime?

It seems the explanatory value of the second model of metagovernance (governance of governance) is higher than the first model. The perception of the Ministry of Agriculture may be described by the left column of the table. They, however, seem to face the reality of the right column. This seems hard to avoid. From a single domain, let alone from a single actor, it seems a very hard job to oversee it all. Indeed, it seems impossible for a designer to untie from its own perspective. For example: have there been a possibility for the government, as the author of the institutional design, to neglect the political support for fines and get the quality system accredited? Was it possible to please the sector by leaving requirements from European and Dutch regulation uncodified in the arrangement? The likely answers are “no” (not without severe political and legal damage).

The irony here is that the very same reasons why there would be a shift from ‘government’ to ‘governance’ seems to be applicable on the meta-level. Government of governance requires a
position that just does not hold in a multi-actor environment. A conscious design will be the occasion of confrontation between actors from different domains. The designer doesn’t have the hierarchical position to maintain the design-as-intended, because of their dependencies on other actors. If we assume relations between government and industry to be more horizontal, we inevitably see a shift from ‘government to governance’ as well as a shift from ‘government of governance’ to ‘governance of governance’. It would be interesting to scale up the issue. Is this hypothesis only applicable to metagovernance on this micro-scale, or would we find the same patterns on a higher, maybe even international, scale?

References

Bartle, I and P. Vass (2005) Self-Regulation and the Regulatory State; A Survey of Policy and Practice, Centre for the Study of Regulated Industries (CRI); Research Report 17, University of Bath


