Blame-Avoidance and the Institutional Politics of Food Safety Regulation in Germany

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1. Introduction:

To cope with the BSE-crisis German government initiated far reaching institutional reforms in consumer protection and, in particular, in food safety regulation. The newly established Federal Ministry of Consumer Protection (BMVEL) aims to link issues of consumer protection with matters of agriculture and food mass production on the national level (Janning 2004a; Steiner 2003). On the subnational level new public agencies (Bundesämter), the Federal Institute for Risk Assessment (BfR) and the Federal Office for Consumer Protection and Food Safety Regulation (BVL), should improve the coordination of regulatory matters and the control of high standards in agricultural food production. Therefore, the BfR and the BVL will closely interact with relevant actors and institutions on the federal level – in the German Bundesländer. Also, to secure high standards not only by enforcing bureaucratic rules and means public-private partnerships have been established. Public agencies rely on private certification organizations to control meat producers and farmers on the local level. In this manner, institutional reform has resulted in a multilevel control system with a strong top-down orientation. In accord with EU regulations the Federal Ministry of Consumer Protection formulates guidelines for production standards, but relies for implementing these rules and standards on other public agencies and private organizations which tasks and competences differ in each federal state (Bundesland).

More recent food scandals (in spring and summer of 2002) demonstrated the deficiencies of this multilevel control system – nitrophen - a herbicide
and cleaning device - and sexual hormones were found in animal food and meat products. Local control agencies were not allowed to react to these urgent problems, but had to contact their superiors (ministries of agriculture in the Bundesländer and the BMVEL) to initiate political actions. In contrast, the BMVEL claimed that the information process about the specific cases of fraud and about the threat to the public was too slow and impractical. Also, the private certification organizations were made responsible for neglecting relevant data in their local control activities. As a result, it can be pointed out that the institutional reforms after the BSE-crisis and the installment of a multilevel control systems with a clear top down-orientation did not pave the way to a better and more flexible control structure in agricultural food safety regulation. Instead, these reforms should be understood as a tool to protect government and the relevant federal ministry from being blamed for further irregularities in food production. In this manner, the newly established institutional structure presents new “blame targets” and should minimize the danger for national government to be held responsible for further food scandals.

2. The New Institutional Structure of Food Safety Regulation in Germany after the BSE-crisis

Germany was not well prepared to deal with the problems that arose from the BSE-crisis (Janning 2004a; Steiner 2003). On the ministerial level the institutional competences for consumer protection and for food regulation, in particular, were devided between two ministries, the Ministry of Health and the Ministry of Agriculture. The federal states (Bundesländer) possessed no special ministries for consumer protection or food regulation
at all. And there was no branch or agency with the task of coordinating policies and information networks among federal states and between the federal states and central government. In addition, the most important interest organization for consumer protection – the AgV - was not an outcome of grass roots mobilizations and of bottom up-interest representation. Instead the AgV was controlled and financed by the German state and it only seldomly developed policy stances independently from state agencies. In contrast, the ‘Bauernverband’, the main political interest organization to represent agricultural business and farmers was well-organized and acted as a strong lobbying force in agricultural policy-making.

Of course, German officials tried to downplay any risks of an outbreak of BSE in Germany and interpreted the numerous cases of BSE in Great Britain and Switzerland as “local problems”. But soon enough, – in November 2000 – the first incidents of BSE happened in Germany, and even then the relevant ministerial secretaries tried to downplay any risks related to beef and sausages. The deficiencies of the old institutional structure of food regulation resulted in a national political crisis which, eventually, led to fundamental changes in the well-established policy regime.

The new institutional structure was organized around the new Federal Ministry of Consumer Protection, Food Regulation and Agriculture (BMVEL, established in January 2001) which brought together most of the relevant competences for consumer protection policies from other ministries (the Ministry of Justice and the Ministry of Economics both
regulate important issues of E-commerce). Nevertheless, the organizational map for the internal structure of the new ministry clearly demonstrates that there is a rather strict division between tasks and competences for consumer protection and for agriculture (Behringer 2004; Janning 2004a). Eventually, this division could result in a dominant position of agriculture issues in the ministry, as the consumer protection branches have not been subdivided after relevant issue areas of consumer protection (relating to the ministerial structure of the whole government). Also, food safety regulation was treated as a topic of consumer protection, not of agricultural policy-making.

On the federal level, only one federal state – Bavaria - established a Ministry of Consumer Protection. In Bavaria agricultural production is still an important economic factor, nevertheless, tasks and competences of food regulation and consumer protection should have been reorganized in all federal states. Yet, the new head of department of the BMVEL, Mrs. Renate Künast (Green party), remarked that federal states would overstretch their competences if they would take up regulatory tasks in issue areas of consumer protection. Instead, a new Federal Office for Consumer Protection and Food Safety Regulation (BVL) should coordinate all activities among the federal states. Especially in matters and problems of food regulation the BVL (established in November 2002) should act as central actor. The BVL will control and restrict the regulation of foodstuffs and animal food. It may also to a certain extent act as a regulator, as it is allowed to ban certain foods and goods if any irregularities can be detected. As a result, the BVL has to establish and
equip research units in order to test the quality and ingredients of foodstuffs and animal food. The federal states can rely on this infrastructure and delegate tests and test reports to the BVL. In sum, the BVL should collect and evaluate all relevant information concerning food regulation issues.

The BVL is not the only national agency that was established to support the BMVEL to cope with the BSE-crisis and other food scandals. The Federal Institute for Risk Assessment (BfR) has to evaluate the relevant scientific knowledge and can initiate further research projects to gather more in-depths knowledge for certain issues at hand. Compared to the BVL the BfR fulfills a purely consultative role, it shall not intervene in problems of risk management or matters of policy implementation.

3. Delegating Power and Avoiding Responsibility?

The new bureaucratic structure of food regulation in Germany introduced a delegation of power and responsibility on three levels:

- On the national level the centralization of policy-making authority in one department (BMVEL);
- On the subnational and federal level the installment of public agencies with limited regulatory authority (BVL, BfR);
- On the federal and local level the promotion of public-private partnerships and other decentralized control mechanisms.

Political forms of risk management rely to a certain degree on purely symbolic means (Edelman 1971). After the Tschernobyl accident in 1986
the neo-conservative government under Chancellor Kohl was quick to establish a Ministry for the Environment. This purely administrative innovation was used as a symbolic device to demonstrate political leadership in times of international crisis. Also, it was used as a signal for the ecological movement that was more and more shaping public opinion and with the rise of the Green party was about to become an important factor in parliamentary politics. So, it seems appropriate to assume that the BMVEL was established to play a similar role in face of the BSE crisis. Food regulation in itself was not a mayor issue for this new ministry, as those branches (special departments 311 to 318) were integrated in the “consumer section” and not in the “agriculture section” of the ministry. Mrs. Künast as head of department promoted an ecological project – the “Agrarwende”, farming and food production after ecological principles – as general policy guideline (Künast 2002; Schmidt/Jasper 2001). Issues of food safety regulation were reformulated to fit the guideline with a strong focus on the problems of agricultural food production.

The limited importance of food regulation as a specific issue area for policy-making can, off course, be explained from a different perspective. Over the past few years food regulation together with the issue area of consumer protection in E-commerce were central elements of the policy strategies of the European Commission. The European Commission promoted high standards in consumer protection, especially in the aforementioned issues areas, and produced a number of relevant directives and guidelines that left only a limited amount of leeway for the national governments of member states. In this manner, the main programs to
cope with the BSE crisis were developed and initiated by the European Commission, although it took the European Commission some time to develop a more aggressive position towards BSE, as Great Britain successfully lobbied in favor of a less restrictive strategy (Dressel 2002). As a result, food regulation can not be considered a policy area which allows national governments in the EU to develop autonomous policy stances. Therefore, it appears to be a rational strategy for national governments to downplay the importance of food regulation and to “hide” specific competences for this issue area in a complex bureaucratic structure. Success in food regulation guarantees only limited benefits for national governments. In addition, the formal competency for implementation and control lies with federal states (Bundesländer) which can on their own terms define the procedures for food regulation control. So, the BMVEL’s competences are restricted both in the policy-making process (by EU directives and guidelines) and in the field of implementation (by competences of the Bundesländer).

Nevertheless, national government and its branches are held responsible for any mishaps and failures in the implementation process (delays in the adaptation of EU guidelines, new food scandals that demonstrate the ineffectiveness of regulations etc.). So, governments need bureaucratic tools to support the implementation of new food regulations. Here, the BVL and BfR come into play. Conceived as “unpolitical” public agencies with a subordinate status in the policy-making process they are not allowed to form own policy proposals. They are central parts of an implementation structure which is purely defined in functional terms (Behringer 2004).
Especially the BVL has been conceived as a prominent coordination device to guarantee an easy and well-structured flow of information about food issues between all relevant actors - the federal states, central government and the EU. If these public agencies do not fulfill their tasks of coordination and control (BVL) and data analysis and scientific advice (BfR), political authority hardly can be criticized.

But not only state departments and agencies are involved in the implementation process triggered by EU regulations. The federal states have their own control systems; these are local or regional agencies (Länderämter) which are subordinated to the general directives of the BMVEL and gather informations relevant for the BVL and BfR. These local or regional agencies on the federal level safeguard the implementation of food regulations on the federal level. To do this, they rely on a complex network of professional control organizations and their subcontractors. Most of these organizations work as private businesses and depend to a certain extent both on demands of their superiors (the local agencies) and their clients (farmers, supermarkets or meat producers that pay for a certificate). For instance, to safeguard the implementation of the EU-directive 2092/91 which regulates the standard for applying the “ecological-certificate” to products and to the whole production process a type of controlling organization was developed by interest groups which promoted radical positions in environmental politics (Öko-Verbände) (Lau 2004). From a business standpoint these controlling organizations benefit from an increase in the number of farmers, butchers and shopkeepers which obtain the eco-certificate (more contracts). Nevertheless, a less
restrictive control strategy may also increase the danger of unlawfully behavior of certified production and service units and may jeopardize the whole system of certification.

4. The New Institutional Structure and the New Food Scandals

In spring 2002, as the final elements – the BVL and BfR - of the new bureaucratic structure in german food safety regulation were about to be installed a new food scandal drew the attention of the media and public agencies. In May 2002 the BMVEL announced publicly that the herbicide Nitrophen was found in animal food and chicken meat in four federal states (Niedersachsen, Brandenburg, Mecklenburg-Vorpommern, Sachsen-Anhalt), although, at first, spokespersons of the BMVEL only mentioned “diffuse gossip” about incidents involving Nitrophen in press conferences (Heeschen 2002).

The use of the herbicide Nitrophen in food production and farming is banned in Germany and the EU since 1988 because it may cause cancerous diseases. Before, it was widely used to guarantee the quality of wheat crops. The new cases of Nitrophen usage were detected in the production of so-called ‘eco-wheat’ (Bioweizen) which was seen as a basic component of healthy and ecologically appropriate animal food. Therefore, an important aspect of the new food regulation programs after BSE and of the general policy guideline of the left-green government is affected by the new food scandal.
In what way did the administrative structure of food safety regulation contribute to this new food scandal? Long before May 2002 – in December of 2001 – a producer of babyfood detected Nitrophen in some products that contained turkey meat. The producer of babyfood contacted the responsible meat producer (GRÜNE WIESEN) who was especially devoted to ecological principles of animal farming. The meat producer tried at first without help from outside to find the sources which were responsible to bring Nitrophen in the food production process. But by the end of January 2002 meat was sent to the relevant public agency, the national agency for meat research (BAFF). The BAFF undertook several tests with different meat samples using their own research facilities, but also involving private research facilities. Although the BAFF verified the earlier test results and came to the conclusion that most likely not the meat producer, but a producer of animal food (a wheat farmer) was responsible for contaminating the food chain with Nitrophen, the BAFF decided to downplay the general health risks. As a result, the BAFF saw no reason to send information to the BMVEL on this issue. The relevant wheat farmer in Brandenburg was also informed about the test results but claimed no further responsibility, and, therefore, did not examine the store rooms or analyzed other potential factors. Nevertheless, the BAFF saw to it that the Länder agency in Brandenburg in charge of controlling the implementation of the EU-Eco-Directive received relevant data and other material about the Nitrophen incident. The Länder agency which operates as a unit of the Länder Ministry of Agriculture of Brandenburg saw no reason to get involved and to intensify the investigations.
In April Nitrophen was found in sausages made from turkey meat which was also produced by the GRÜNE WIESEN firm. GRÜNE WIESEN informed the sausage producer and the local food regulation agency (Landkreis Ammerland, Niedersachsen) about the earlier Nitrofen case and about the wheat farmer in Brandenburg as possible source. The local food regulation agency came to the conclusion that no urgent danger to the public health could be detected and abstained from further activities. Nevertheless, sausages made from turkey meat were called back by several sausage firms and prosecution attorneys in Niedersachsen started with their investigations. In May 2002 another Länder agency for food regulation in Lüneburg received information about these investigations, but decided to take no further actions.

Also in May, GRÜNE WIESEN decided to take turkey meat from the market, although no sanction was yet declared against the firm. The producer of animal food GS AGRI with a similar ecological orientation followed this decision with a call back of all animal food with wheat ingredients. The local certification agency NATURLAND which was responsible for certifying and controlling GRÜNE WIESEN, GS AGRI and other related firms withdrew its certificate. Finally, on the 23rd of May – five months after the first incidents - NATURLAND informed the BMVEL about the Nitrophen scandal and submitted all relevant data to the ministry. Finally, the Nitrophen scandal became a political issue of national concern and received broad media coverage. The investigations of the prosecution attorneys identified several old and unrenovated storerooms in Malchin (Mecklenburg-Vorpommern) as the main starting point for the Nitrophen
scandal. In these storerooms which have been cleaned – in the times of the GDR - with cleaning devices containing Nitrophen large quantities of wheat and other animal food had been stored (Heynkes 2002). Here, the foodstuff was polluted by residues on the storeroom floor.

As was later stated by a report of the BMVEL especially the Länder agencies for food regulation in Brandenburg and Niedersachsen can be criticized for their passive role in the Nitrophen scandal (BMVEL 2002). Although these agencies received the relevant data and test results, they deliberately decided against an active role in the investigation. Also, they did not inform their superiors (BMVEL, EU) about the Nitrophen cases. These agencies claimed that they depended on further test results for making decisions. They also claimed that they did not want to stir up any “irrational reactions” from consumers, as both in Brandenburg and Niedersachsen farming, animal food and meat production are relevant factors of the Länder economies.

For the BMVEL the obvious failure of the Länder agencies demonstrated the necessity of strengthening the coordination between federal states and, therefore, the Nitrophen scandal was treated as an additional argument for the installment of the BVL as a central, multi-level coordination device (BMVEL 2002). Also, the BMVEL defended its general policy guideline of Eco-Modernization (Öko-Wende), as conventional farmers and meat producers used the Nitrophen scandal to attack the “alternative” ways to produce and distribute food for having too many loopholes and deficits.
Yet, meat and food producers and private certification agencies were the first to be alert to the Nitrophen problem and were able to come up with reliable test results quickly. Therefore, one could argue that the model of ‘decentralized self-control’ in the eco-agrarian sector worked pretty well. The ‘intermediaries’ in the bureaucratic structure of food regulation proved to be the weak link in this regulatory regime. Länder agencies and ministries did not function as proactive units neither in processes of information gathering nor in urgent matters of intervention and control.

However, the Nitrophen scandal also clearly demonstrated the ambivalent status of the BMVEL as a member of the policy regime for food safety regulation. Although the BMVEL successfully tried to dominate the public discourse on issues of consumer protection and food regulation, its role appears to be limited to a reactive part, as it is not able to supervise directly the implementation process and depends on the support of agencies and authorities of the federal states (Bundesländer). Therefore, the BMVEL has only limited capacities for anticipating or even preventing food scandals.

Will the full establishment of the BVL make much difference? Operating for only two years and still in the transitional phase of building up administrative and research units, official statements describe the main tasks of the BVL to be the supervision and support of the Länder agencies and ministries in the implementation process (BVL 2004). To be effective, the BVL will establish special committees for national-federal-coordination. The Länder agencies are obliged to send reports and data about their
work and about the activities of private certification agencies to the BVL. Nevertheless, the BVL depends on the cooperation of the Länder agencies to receive all data and has only limited authority to speed up the information process or to gather own data through direct interaction with the local agencies and the relevant food producers. To act as a true regulatory agency would imply direct interventions in the implementation process and would jeopardize fundamental rights and competences of the German Länder. In the current state, the BVL will mainly function as a coordination device for the BMVEL and will, eventually, help to intensify the cooperation with the Länder agencies and departments involved in food safety regulation. Hereby, the BVL will strengthen the ‘intermediary sector’ of the food regulation regime. Also, in case of new food scandals the BMVEL can rely on the BVL to delegate tasks of crisis management and will be able to transfer bureaucratic responsibility in the face of troublesome issues of food regulation.

5. Blame Avoidance and Food Safety Regulation in Germany

Taking blame in food safety issues has different results for different actors: For food producers taking blame means diminishing sales and a general, mostly short-term distrust against certain products and brands. Failures of bureaucrats will weaken their authority (and the agency’s status) in the implementation process – for a while, they will not be taken seriously as partners for cooperation and coordination. Politicians who fail demonstrate a lack of political leadership; their faults may undermine the general policy guidelines of the party or government they represent and will harm the chances of (re-)election (Weaver 1986).
During the Nitrophen scandal only the ecologically oriented food producers were fully taking responsibility. Their fast reactions and intensive cooperation with the local certification agencies documented a strong intention to solve the problem. Nevertheless, the Nitrophen scandal strongly affected the sales rates and the image of ‘bio-products’ in Germany (Bruhn 2003). For a short period of time ‘bio-products’ were not considered more healthy than conventional products by consumers, and especially for sausages and chicken/turkey meat the sales rates were drastically declining.

The obvious mismanagement of bureaucrats in Länder agencies and ministries was treated as a confirmation of all those criticisms that describe the federalist model in Germany as too slow and inflexible and not easy to coordinate with activities and agencies of national government. The BMVEL considered its argument as being verified, that the Bundesländer cannot coordinate matters of food safety regulation on their own. They will only benefit form a new administrative unit – the BVL - completely devoted to mulitlevel-coordination and control. After the Nitrofen scandal, it is also more likely that food producers and certification agencies will accept a ‘new player’ in the food safety policy regime. Analyzing the internal structure of this policy regime one could argue that a competition between Länder agencies and the BVL for competences and regime/network centrality is most likely to occur.

Although the BVMEL basically treated the Nitrophen scandal as further proof of its strategy to support a fast completion of the new bureaucractic
structure, the scandal was a huge challenge to aspirations towards new political leadership of the department. After the BSE crisis the new ministry of consumer protection and in particular the new head of department, Mrs. Künast, were successfully demonstrating an awareness for issues of food safety and of consumer protection in general. For a short period of time consumer protection and the project of an ecological modernization of food production and farming (Öko-Wende) appeared to stand out as one of the ‘innovative’ policy projects of the left-green-government under chancellor Schröder. The Nitrophen scandal challenged this view; the BMVEL seemed somewhat detached and isolated from the problems at hand and could only slowly react to this new crisis. Although the BMVEL processed important new regulations and standardizations by August 2002, for instance a ‘positive list’ for all acceptable ingredients and supplements of animal food was drawn up and the duty for all producers to inform the relevant agency about food irregularities was established, it appeared to be not as powerful and well-respected as before.

This shift in the public perception of the BMVEL continued as other new irregularities in the issue area of food safety regulation reached the political agenda. Only a few weeks after the Nitrophen scandal, a new scandal made the news: Close to a number of 7000 pigs whose meat contained MPA, a sexual hormone, were transported from the Netherlands to Germany to be slaughtered here and used in industrial meat production. Further investigations showed that not only living animals, but also large amounts of animal foodstuff containing MPA were brought to Germany and used for almost two years by farmers. Then, in the fall of 2002 the
cancerous effects of Acrylamid which was detected, for instance, in french fries and potato chips received broad media coverage. First reports about this substance which is regularly produced by deep frying food were published in April 2002 in Sweden and distributed among Ministries of Health and of Consumer Protection in the EU. The BMVEL consulted with experts and the BfR on this matter and decided to inform the public about the potential danger of certain food, but abstained from pushing for a regulation on the EU- or national level. All together, these events did not contribute to reestablish public trust in the new bureaucratic structure of food safety regulation although the BMVEL could not directly be blamed for any specific failure.

To explain the wrecked image of the BMVEL one could plausibly argue that the general blame affinity of the new bureaucratic structure in food safety regulation in Germany results from the increased openness of this specific risk regulation regime after the BSE crisis (Hood/Rothstein 2001). The new transparency of procedures and political regulations in food safety regulation was a consequence of the general delegitimation of political leadership in this issue area and of the effort to reestablish consumer trust. Nevertheless, this new transparency opens up new blame targets – one should not forget that the project of eco-modernization is fiercely opposed by the traditional agriculture lobby - and will eventually lead to efforts of blame-prevention if the increased openness produces new problems for the restructured policy regime. In this manner, the establishment of the BVL and the BfR could be treated as a strategy – a typical agency strategy (Hood 2004: 8) - of the BMVEL to translate issues
of political responsibility into questions of expert knowledge and scientific debate and, thereby, delegate a certain amount of responsibility without losing power, since the new federal agencies have no formal authority to intervene in political decision-making processes. The BMVEL would, then, benefit – receive credit - from all positive outcomes of the new bureaucratic structure, but could delegate blame in case of new scandals (Hood 2002: 27).

However, the new food scandals in the aftermath of the BSE crisis put the leadership role of the BMVEL into question and pointed to the weaknesses of the multilevel-coordination system of the policy regime for food safety regulation. From this perspective, the establishment of the BVL and the BfR could be perceived as a too simple defence strategy and any mishaps in the efforts of coordination by the BVL could directly be linked to a lack of political leadership of the BMVEL and of the political actors heading the department.

Apart from these implications for the discussion about the ‘blame game’ and its political and institutional dimensions, the recent food scandals demonstrate that the policy regime for food safety regulation in Germany lacks central elements of a multi-level control system that would correspond to the precautionary principle. After the BSE crisis the precautionary principle was adopted by the European Commission as general policy guideline for all issue areas of consumer protection and especially for food safety regulation (Vogel 2003; Vos 2000). The new food scandals and, in particular, the Nitrophen scandal can be interpreted
as an indication that the existing policy subsystem for food safety regulation has not yet changed from a reactive policy regime responsible for crisis management to an anticipating policy regime that focuses on open issue networks and on the prevention of food safety irregularities (Janning 2004b). Yet, our knowledge about blame avoidance mechanisms and about the ‘framing’ of problems and blame targets could prevent us from expecting too much of a regime idealtype derived from the precautionary principle. Policy principles may guide policy actors’ beliefs and help them to identify appropriate goals, allies and arenas for policy-making, but the internal regime structure is to the same extent determined by power struggles, self-interests of bureaucrats and politicians and by external and internal fiscal, social and political constraints (Janning 2005).

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