

Agencification under the 'shadow of Brussels'

Reforming the plant health inspection system in the Netherlands

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Abstract

This article describes the establishment of a new governance arrangement in the Netherlands by which phytosanitary inspections for plant(product)s had to become autonomized from government control. What started as a deregulation initiative, however, led, to some extent, to an increased formalization of the existing control system. In order to gain international acceptance, Dutch government strengthened its compliance with EU legislation. To explain the Dutch compliance with these EU requirements, I adopt a so-called 'institutional processual' approach (Barzelay and Callego 2006). This approach conceptualizes EU compliance explicitly as a process or trajectory, which it seeks to explain by turning to recurrent social mechanisms that operate in this trajectory. The case study shows how these mechanisms formed a longer causal chain or 'family of mechanisms' that I term *waking sleeping dogs*.

Key words: *EU compliance; agencification; phytosanitary policy; sensemaking; social mechanisms; institutional processualism.*

Introduction

This article describes a regulatory reform of the plant health and quality inspection system in the Netherlands by which most plant health inspections were transferred from the Ministry of Agriculture, Nature and Food Quality to different *independent administrative bodies* (ZBOs). The relationship between this reform, called Plantkeur, and EU formal requirements is central in this article.

The relation between the EU and processes of agencification at the member state level has been mostly addressed from a 'top-down' perspective in which the EU is identified as a *driver* of agencification at the Member State level. Christensen and Lægreid (2005, 19) for example, argue that 'the creation of the single European market requires the liberalization of the utilities sectors, the abolition of national monopolies, and the establishment of independent regulatory agencies in the member states to promote competition'. While no piece of legislation *explicitly requires* the establishment of national independent agencies, several directives, notably on the single market for energy and telecommunications, have promoted their creation through the imposition of a separation of ownership and regulation (Gilardi 2005, 90).

In this article, I will focus on the relation between agencification and EU formal requirement from a different perspective and consider the *potential tensions* between nationally instigated agencification processes and EU formal requirements. Over recent years, different Dutch scholars have turned their attention to this tension. They discuss in particular, the relation between EU formal requirements and *hybrid organizations* – that combine public and private tasks - that are involved in the provision of 'service of general interests', such as social housing (Priemus 2006), public health (van de Gronden 2001) or landscape management (Goverde and Zwaan 2009). In these studies EU state aid policy is identified as an important barrier for involving hybrid organizations in the delivery of public services. This study also focuses on the relation between hybrid organizations and EU requirements, though I turn here to the impact of the phytosanitary directive (2000/29/EC).

In principle the EU Treaty states that 'a directive shall be binding, as to the *result* to be achieved (...) but shall leave to the national authorities the choice of form and methods' (art. x, *italics* mine). This is known as the principle of *institutional autonomy* (Jans, de Lange et al. 2007, 18-24). Since the 1980s though, this autonomy has been largely restricted by EU case-law. Based on the basic principles of 'full effect' and 'legal certainty', the European Court of Justice has elaborated various basis legal requirements, which have to be taken into account when implementing EU directives (Prechal 1995, 90). These requirements set limits for

example, on the use of covenants in the member states. Though, also in directives themselves, we can find requirements that relate to the implementation measures taken by the Member State, as was the case in the EU phytosanitary directive.

The case study presented below, shows how Dutch government had to strengthen its compliance with EU phytosanitary directive and in fact had to 're-regulate' its plant health system to gain acceptance for the proposed reform. What this strengthening meant, however, became only clear as the project unfolded. The research question that has guided this study is: *How do national actors make sense of, and respond to EU formal requirement?*

I explain this *process* by adopting an 'institutional processual' approach to compliance. Departing from what could be called a *pragmatist view* on structure and agency, this approach seeks to explain policy processes by referring to recurrent *mechanisms* that connect them (Barzelay and Jacobsen 2009). This approach is set out in section two, followed by a short section on the research methodology. Section four describes the case study and presents a number of *mechanisms* that help to *explain* this process. In the conclusion I will shortly reflect on the theoretical approach, summarize the compliance process and put this case study in wider perspective of the EU governance debate.

An institutional processual approach

This study starts from the assumption that formal rules gain *impact* by their practical application by actors and that the *study* of this *process* offers a way to 'unpack' the effect of formal rules in concrete situations (Schneider 1999, 2; O'Mahony 2007, 266). To study this process, I draw on a combination of new institutional and sensemaking literature in organization studies. This combination of approaches is largely consistent with what has recently been called a *constructivist institutional approach* by Hay (2007). The approach adopted here, in fact, reflects its 'mechanism-process version', called *institutional processualism* (Barzelay 2004; Barzelay and Gallego 2006). Notwithstanding the different labels, these approaches are all 'attentive to flows of interaction, to the (...) interplay between beliefs and action as experience unfolds, (...) and take strong interest in how situated interaction (...) can feed back upon context.' (Barzelay and Gallego 2006, 538).

In line with popular understanding in institutional theory, institutions - understood here as *regulative* (formal) rules, norms, authority relationships and routines - are regarded as the result of (more or less conscious) processes of action that subsequently provide stability to social and political life (e.g. Barley and Tolbert 1997; Clemens and Cook 1999; Scott 2001).

Where much of the institutional literature, though, tends to focus on the *reconstruction* of institutions, this approach seeks to understand and explain as well *how* and *why* institutions become contested or changed, though it recognizes that this takes place in a structured context (Hay 2006, 8). This perspective nonetheless, provides for 'significant amount of 'play' in the rules actors are expected to follow...' (Streeck and Thelen 2005).

Like rational choice institutionalism (RCI), this approach assumes that actors *may* consciously orient themselves towards their institutional context in choosing a potential course of action on the basis of their 'preferences'. In difference with RCI, it does not assume that actors are blessed with extensive information or necessarily act as self-interested utility maximizers (Hay and Wincott 1998). The kinds of situations that actors face will often involve both instrumental and normative concerns and likely a number of others (Scharpf 1997, 65; Gross 2009, 367). Neither does it assume that actors' preferences are either fixed or (completely) determined by the (material or social) circumstance in which actors find themselves. Actors preferences, in this perspective, are largely conceived as changing and being discovered as action proceeds (Scott 2008, 78). While actors in this view are conceptualised as reflexive and strategic, in the sense that they *may* act purposively to realise their (incomplete) intentions and (changing) preferences, it stresses not all action is the product of overt calculation. This approach stresses how, to different degrees, *routine strategies* or *a repertoire of actions* can be invoked (Hay 2002).

The approach, in addition, draws attention to the possibility of reflection of actors about their strategies and strategic repertoire and the possibility to revise or modify them. Strategic action does not only yield choosing, but also 'strategic learning' on the part of the actors when they enhance their awareness of the constraints and opportunities of this context and the intended and unintended consequences of their action. Through this 'strategic learning' actors revise their perceptions of what is feasible and possible (Hay and Wincott 1998, 956).

Actors, action and meaning

The approach attributes a crucial role to *meaning* and *ideas* which mediate between actors and the (institutional) context in which they find themselves. It complicates the idea that *strategic actors* have a 'fairly direct and unmediated access' to their environment or that their beliefs are arrived at through *pure* experience (Hay 2002, 209; Weick 1995). To *interpret* their (institutional) context actors will rely more conventional interpretations and meanings that (have) arise out of the social interaction with others (Hall and Taylor 1996, 948). In the literature these meanings and interpretations are variously termed *ideas*, *beliefs*, *knowledge*

schema's, assumptions, frames, worldviews, paradigms, traditions, stories, constitutive rules, etc.

Attention for these meanings and interpretations is not new to institutional literature. In fact, it has been one of the distinguishing features of the '*social-cognitive*' institutionalism in organization studies (Scott 2001). In the institutional literature however, frames of meaning are often treated as operating in the background; they are considered as *taken-for-granted structures* that require no further effort at maintenance. Constructivist institutionalism treats frames of meaning as more dynamic constructs and focuses on how actors work *with* them (active interpretation) (Hall and Taylor 1996). In organizational literature this 'working with' is referred to as *sensemaking* or *sensegiving* (Gioia and Chittipeddi 1991; Thomas, Clark et al. 1993; Weick 1995; Weick, Sutcliffe et al. 2005; Barzelay and Thompson 2008). It is attentive to the processes by which actors select from these *frames of meanings* to interpret their environment, may perpetuate and enlarge them as well to the processes by which these frames of meanings become contested, challenged, replaced or constructed (Weick 1995, 72).

A mechanism-process approach

The 'mechanisms-process version' of this approach, *institutional processualism*, sets out an explicit *epistemology* to understand policy processes and the relation between institutions and actors. While it suggest that policy 'trajectories' (like compliance) require us to take into account 'the subjective reasons [of] why humans acted in ways that they did' (Barzelay 2007, 527), this approach does not rule out the possibility we can develop a more 'explanatory understanding' of this trajectory.

Like other new institutionalisms, it does so in the form of *social mechanisms*, which it defines as *general delimited events or processes that generate relationships among specified elements in identical or closely similar ways* (McAdam, Tarrow et al. 2001; Tilly 2001; Mayntz 2004). Mechanisms thus, focus attention on *how* effects are produced. Where the different new institutionalisms tend to privilege or single out only certain mechanisms on the basis of their fit with their underlying *logic of action* (Gallego and Barzelay 2004, 14; Mayntz 2004; Gross 2009), institutional processualism suggest to *combine* these mechanisms to explain policy processes. In order to do so, it becomes necessary to specify the logic of action as a condition under which this mechanism operates (Gallego and Barzelay 2004) and to (re)describe the delimited events and processes that constitute the mechanism, in terms of the meaning they have for the actors. An example of a mechanism is that of *coercion*, that explains actors' *conformity* with an institutional pressure or expectation (relationship) by turning to *how* this is

generated by actors' *expectation* that conformity will elevate him or her from particular *perceived* material or political sanctions or threats.

In this article, I will explain a number of other institutional responses than that of conformity. To do so, I will draw on the work of Christine Oliver (1991), who provides an overview of strategies that actors draw on to respond to institutional pressures and expectations. These range from more passive responses such as conformity, to more active ones such as challenging or persuasion. Her work is interesting as she stresses that these responses cannot be completely understood as pure voluntarist strategic responses, but should be understood as affected by these institutional pressures and expectations.

While Oliver's work is not casted explicitly in terms of social mechanisms, her work shows *how* these institutional pressures and expectations generate a particular response by linking them with the meaning that actors attribute to these pressures in the light of their 'own' interests or competing pressures and expectations. When we cast work of Oliver more explicitly in term of mechanisms, it becomes clear that these response are often generated by different mechanism that either *reinforce* or *undercut* each other. In their *compounded form*, these mechanisms generate a specific response (cf. Gambetta 1998, 105). For matters of space, and as I will only touch upon a number of response in the case-study below, I will turn to the work of Oliver during the narration of the case study itself.

Methodology

The single case presented here, has been analyzed in the tradition of bottom-up approaches to implementation (Elmore 1979; Hjern and Porter 1981; Hjern and Hull 1982). Instead of taking an EU requirement as the point of departure of this study, I turn to the moment EU requirement become 'relevant' for, or are 'encountered by' actors that are involved in implementing this reform, with the aim of understanding how these EU formal rules are responded to (cf. Schmidt and Radaelli 2004; Radaelli and Pasquier 2007; Mendez, Wishlade et al. 2008).

The process has been analyzed by using a method of process-tracing, which aims to provide a processual account of a specific phenomenon. Basically thus, this requires scholars to reconstruct *what* happened *when*, *where* and *how* (George and Bennett 2005). Chronology is therefore the implicit format followed by most process-tracing studies. The reconstruction below, covers the episode between 2002 and November 2007, shortly after the different independent bodies (ZBOs) became formally responsible for the phytosanitary inspections.¹

¹ This did not mean that the discussion on their role had completely stopped. At the time of conducting this research, the debate on the ZBOs became linked too a related discussion on the role of other

The reconstruction has been done by triangulating different types of data that were gathered through document analysis and by doing semi-structured interviews with ten domestic actors involved in this process over the period 2007-2009. The interviewed persons were selected on the basis of documents and by using snowballing technique, and included officials of the Ministry, the PPS and the Dutch Representation in Brussels, a company lawyer of the NAK and Members of (European) Parliament. On request, archival material was provided by NAK and the Ministry of Agriculture. Full access to archival material of the Ministry however, could not be provided because of secrecy rules that withheld documents from public analysis.² Statements of actors found in policy documents and interview protocols about the 'reasons' for holding or adopting particular preferences, interpretations or actions were regarded crucial for identifying particular mechanisms. In order to draw a conclusion in support of the operation of a particular *mechanisms*, the relevant actors basically must have made mention of the key considerations implied by it (Breeman 2006, 25).

Project Plantkeur

Background

The trade of *plants* and *plant products* within the EU and the import from third countries is regulated in EU members states (MS) by two types of policies. The policies aim to protect the safety of food derived from plants and to secure the health and quality status of crops.³ The EU's so-called *phytosanitary policy* takes protective measures against the introduction of *organisms* into the MS from other MS or third countries which are harmful to plants or plant products. The policy is laid down in a number of directives and regulations of which the EU *Phytosanitary Directive* is the most important legal instrument. The directive lays down different measures designed to protect plants and plant products against harmful organisms (2000/29/EC, art.1). In order to stop these organisms from spreading within the EU, the directive provides for plant-health *checks* and for *certificates (plant passports)* for plants and plant-products circulating between MS and entering from other countries.

In the Netherlands, phytosanitary control had traditionally been carried out by a *contract agency* (agentschap) called the Plant Protection Service, operating close to the Ministry of Agriculture. Given the great economic importance of the international acceptance of the Dutch inspection service, this was perceived as most 'appropriate' by the Ministry (Ministry

parties. This debate was still on-going and politically sensitive. Conducting research in this context, was considered been too much of an intervention in the policy process.

² Request for documents were assessed in the light of the so-called *Wet Openbaarheid van Bestuur*. Openness to different documents was considered to jeopardize the relationship with the European Commission (art. 10(2)).

³ (European Commission website http://ec.europa.eu/food/plant/index_en.htm).

of Agriculture Nature and Food Quality 2005). The Plant Protection Service (PPS) is the *Single and Central Authority* for plant health in the Netherlands and, together with the Ministry, responsible for plant health policy (European Commission 2007, 45). Formally the PPS is not involved in policy making, but only allotted with the execution of plant health policy, which consists of *sampling, analysis and certification*. In practice, however, the PPS is often involved in policy making processes as well.

Besides phytosanitary requirements, the EU has also laid down minimum *quality requirements* for plants that are traded *within* the EU. These requirements are laid down in a number of directives that set specific requirements for specific plants, such as beet (2002/54/EC) or oil and fibre plants (2004/117/EC). These directives restrict the marketing of plants and plant products to those that have been officially examined and certified. To secure that these quality and sanitary requirements are met, these directives require a number of inspection activities that need to be carried out under the responsibility of the MS.

The inspections for plant *quality* are placed at a further distance from national government. Based on national legislation (Zaaizaad- en plantgoedwet; Landbouwkwaliteitsbesluit) four specialized inspection bodies - NAK, Naktuinbouw, KCB and BKD⁴ - have been recognized to implement specific tasks. These so-called independent administrative bodies (ZBOs) operate at a distance from the government 'without an immediate hierarchical relationship' (Thiel 2004, 168). The ZBOs are private actors, but perform contracted services in the general interest.

A phytosanitary patchwork

Over time, the policy field had developed into a patchwork (De Vries, Jorna et al. 2002; Ministry of Agriculture Nature and Food Quality 2005) in which the tasks and responsibilities of the different inspection agencies had become rather indistinct. As most plant products require *both* quality and phytosanitary controls, inspection duties had, in practice, been taken over by the different agencies (Ministry of Agriculture Nature and Food Quality, Plant Protection Service et al. 2004, 5). In the fruit sector, for example, both the *PPS* and the *KCB* (one of the ZBOs) were involved in quality and phytosanitary controls (Ministry of Agriculture Nature and Food Quality 2005; interviews with company lawyer NAK and official PPS). In the seed potato sector, the *NAK* had been involved in testing a number of diseases for seed potatoes, like 'ring rot' and 'brown rot' and the testing of potato root or cyst

⁴ These acronyms stand for the Nederlandse Algemene Keuringsdienst voor zaaizaad en pootgoed van landbouwgewassen (Dutch General Inspection Service for agricultural seeds and seed potatoes), Nederlandse Algemene Kwaliteitsdienst Tuinbouw (Netherlands Inspection Service for Horticulture) Kwaliteits-Controle-Bureau (Quality-Control-Agency), Bloembollen Keurings Dienst (Flowerbulb Inspection Service)

nematodes. On behalf of the PPS, NAK had been involved in the analysis of these diseases and in taking samples. Moreover, the Ministry of ANF had accredited five private laboratories for sampling and testing potato root or cyst nematodes (European Commission 2005; interview with company lawyer NAK). A report, commissioned by the Minister of Agriculture in 2002 after different crises in the adjacent *veterinarian sector*, concluded that the responsibilities and authorities in the plant sector needed clarification (De Vries, Jorna et al. 2002).

The results of the report were further discussed in a pilot project *Slimfruit* in which the Ministry, the PPS, KCB and representative of the private parties investigated how the different inspection agencies could better cooperate in the fruit sector (Ministry of Agriculture Nature and Food Quality, Plant Protection Service et al. 2004). The private sector was driven mainly by efficiency reasons. They felt that their products were inspected too often and that the costs / bills for these inspection were too high. During negotiations on the tariffs of the PPS in the summer of 2003, it was decided to explore how to develop smarter inspection methods that would be effective and feasible (ibid., 5, 11). The result of the study in the *fruit sector* had to provide the input for a wider debate on a reform of the plant sector (ibid., 20; interview with an official of PPS). *Slimfruit* was presented in September 2004 and in October the same year, the Ministry decided to broaden the project for the complete phytosanitary sector in a project called *Plantkeur*.

The project clearly fitted within the renewed interest in deregulation under the two centre-right governments, of which the latter published an action program for 'Another Administration' (Andere Overheid) in 2004 (cf. Steijn and Leisink 2007, 37). The program targeted to critically assess the tasks, responsibilities and authorities of government. The Ministry of Agriculture translated the program in the concept of 'monitoring control' (toezicht op controle). The self-organizing and regulating capacity of the private sector was put central, while maintaining the ministerial responsibility (Ministry of Agriculture Nature and Food Quality 2004). Knill and Lehmkuhl (2002, 50) have described this 'constellation of governance' as *regulated self-regulation*. The project took off in April 2005.

Together with the private sector, the different ZBOs, the PPS and the Ministry, an inventory was made of constraints in the sector and the preconditions for dealing with them. The ambition of transferring all phytosanitary tasks from the PPS to the different existing ZBOs was spelled out in the *Concept Report Project Plantkeur* that was presented September 2005. This implied a formalization of existing practices but it also meant that new tasks, that were still under the direct control of the PPS, would be transferred to the different ZBOs. A further agencification of the plant inspection system was thus envisioned.

EU Requirements

Implementing project Plantkeur, however, was not that a very straightforward exercise and became hampered by one of the preconditions for the reform: meeting EU formal requirements. What these requirements and their compliance meant became clear only progressively. Conforming to these requirements, resulted eventually in an increased formalization of the plant inspection system. In order to explain this process in terms of recurrent mechanisms, I first drafted a *narrative* to identify particular processes and intermediate outcomes or responses (McAdam et al. 2001, 29; Gallego & Barzelay 2004, 10; Askim 2005; Barzelay and Gallego 2006). These responses are presented in the figure below. In the section that follows I will discuss the mechanisms that generated these responses.

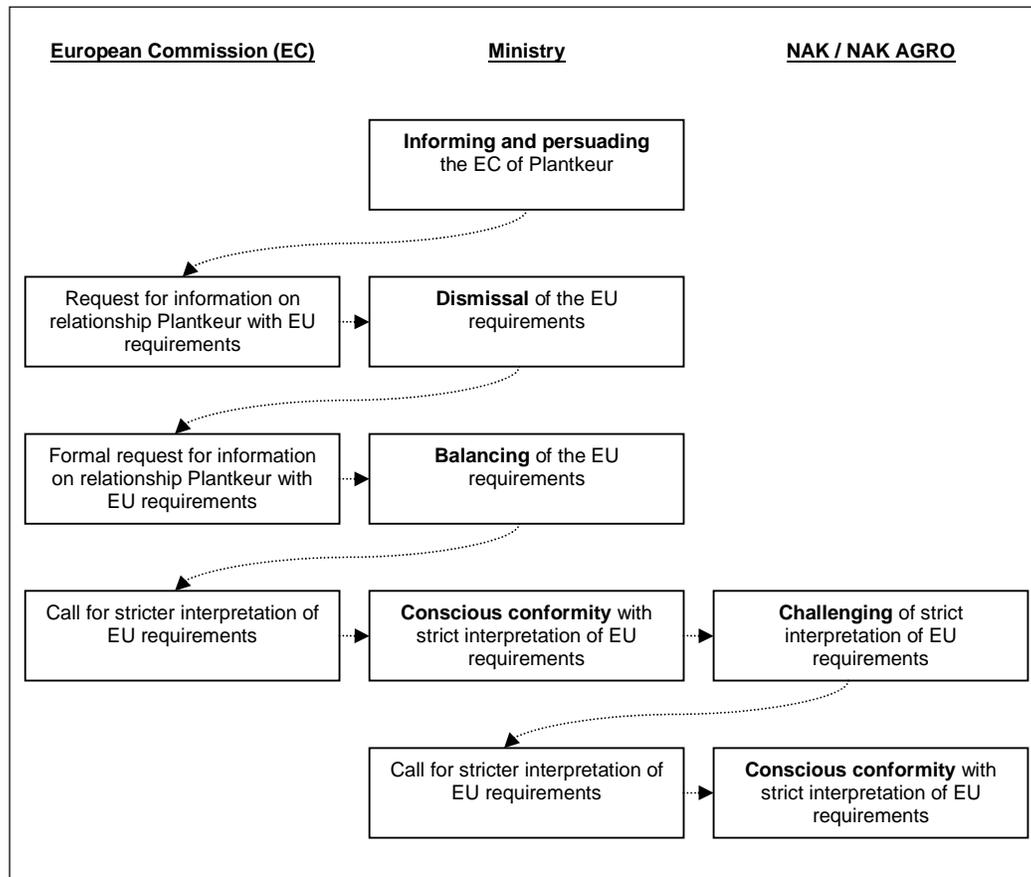


Figure 1: Sequence of responses (the arrows present the order of events)

Informing and persuading

One of the conditions that was made explicit in the different reports on the reform was to maintain a high phytosanitary status of the Netherlands. It was regarded to be in the great interest of the Netherlands to keep up other actors' confidence in the Dutch phytosanitary system (Slimfruit 2004, 18). Early on, it was recognized that this had to be achieved by complying with EU and international requirements, even though this could set limits to putting the inspections at a remote distance from government. Explicit attention in the Plantkeur report was given to the international communication of the operation (Ministry of Agriculture Nature and Food Quality 2005, 19-20). It was advised that the outcome of the rapport need to be discussed soon with the European Commission.

In organizational literature on 'newcomers' we find various references to the process by which actors seek the attention and approval of an 'authorizing actor'. Organizational literature has pointed out that the task of *winning acceptance* is often accredited much importance by those that are 'entering a new line of activity'. Often, these actors feel the 'need' to win acceptance for their activity in order to gain (moral or financial) support (Aldrich and Fiol 1994; Suchman 1995, 586-8; cf. Oliver 1991, 158). In the institutional literature this process has often been used to explain actors conformity with institutional demands or expectation and referred to as the mechanism of *legitimation* (Scott 1991).

Organizational literature stresses that there are not only gains but costs as well. Conforming with particular requirements can imply that the new activity has to be modified or that actors must provide information and access to representatives of the authorizing actor (Scott 1987). The ability to maintain discretion or autonomy over one's 'own' goals (which are affected by number of mechanisms) is thereby challenged (Oliver 1991, 150). The literature on newcomers shows that when actors feel themselves 'confronted' with these opposing mechanisms, this will often *generate* a more proactive response to their institutional environment than that of simple conformity (Suchman 1995, 589). As actors are motivated to gain acceptance, this will lead actors to try to shape or change the authorizing agent's interpretations of these rules or the fit of their activity with them by informing and persuading them (Oliver 1991, 158).

In this case study we clearly see the operation of this compounded mechanism. Although, it was generally concluded that that the ZBOs could carry out these phytosanitary inspections (concept Plantkeur, 15; cf. Slimfruit 2004), national actors were aware that other EU member states could be skeptical with regards to 'semi-private inspection systems'. The existing complex organization of the Dutch inspection system in which both public and private

organizations are involved was already difficult to explain to other countries that have a much more top-down culture (cf. De Vries et al. 2002).

'The whole structure with ZBOs....That is uncommon in other countries. It is very difficult to explain that you have *non* governmental administrative bodies, who act as governmental bodies. Because that is how it sounds, when you explain the system to someone from abroad...' (interview with PPS official)

Different interviewees agree that the implementing the reform 'in silence' was no feasible option. Given the size of the operation, together with the special position of the Netherlands, national actors considered it no option to proceed without contacting the European Commission or third countries.

'Within the EU [The Netherlands] take a special position as a small member state with an enormous amount of trade....So, you are put under a glass bell....Being transparent about your plans is the only way ahead...' (interview with PPS official)

Along the same line, another official remarked more in general:

'The days are over that states can cover up these things....They [the European Commission] will just find out. They also read newspapers....have access to the internet. Why would one keep it silent?.... Even more so, given that the FVO [Food and Veterinary Office] visits the member states almost on a yearly basis [to control the member states compliance with EU directives]' (interview with a Member of the Dutch Permanent Representation to the EU).

In November 2005, the first meeting with the European Commission was organized, after which there had been both formal and informal contact between officials of different levels of the Ministry and of the EC on various occasions

'It is just how it goes. As a member state you must comply with certain formal requirements and when you have certain ideas, you discuss it with the Commission (...)...And the Commission appreciated that we came and provide them information on our plans and wanted to think along with us....that's how we gradually proceeded....It is just a sort of communication....You need to inform Commission official and take them with you in your argumentation. (...) we know that Commission officials do not want be confronted with a *fait accompli*....' (interview with a Member of the Dutch Permanent Representation to the EU).

The latter statement of an official working for the Dutch Permanent Representation to the European Union, clearly shows how the operation of this compounded mechanism resulted in an effort to inform and convince the Commission. By making clear the different responsibilities and authorities, by stressing the role of the government in keeping control and by communicating the changes, acceptance was promoted (Plantkeur).

Dismissal

Convincing the Commission of the operation however, became troubled due to a Food and Veterinary Office mission that was conducted in October 2005. On a yearly basis the FVO, an agency of the European Commission, visits member states and audits the member states on its compliance with EU directives. The mission in 2005 audited the plant health system in the potato sector. During the mission, the FVO had visited the NAK and raised question about NAK and its relationship with its *commercial counterpart* NAK AGRO. It had become clear to the FVO that not NAK, but its commercial counterpart NAK AGRO had been involved, on behalf of the PPS, in the sampling and testing of a number of plant diseases. The FVO concluded that:

‘the fact that NAK shares its staff, equipment and has financial connection with its commercial subsidiary, NAK AGRO, is not fully in line with Article 2(1)(g) of Commission Directive 2000/29/EC which stipulates that the ‘responsible official bodies in a MS may delegate tasks to be accomplished under their authority and supervision to any legal person, whether governed by public or private law, which under its approved constitution is charged exclusively with specific public functions, provided that such person, or its members, has no personal interest in the outcome of the measures it takes.’ In this case NAK employees may have a personal interest in the outcome of the measures taken when charged with public function to the advantage of NAK AGRO.’ (European Commission 2005, 33).

The NAK was surprised by the questions of the FVO, but believed that things would blow over. The existing situation had been there since the mid-1990s and had never led to any discussions. Different interviewees expressed that the Netherlands acted in accordance with the Phytosanitary directive: ‘in practice the Dutch system worked, there was never any comment on that’ (interview with PPS official; interview with company lawyer NAK).

‘The Ministry, the PPS had no problems with that...Neither did the Commission. We had never received any questions about it (...).... We were convinced that we acted righteous...’ (interview with PPS official).

The initial response of the Dutch Ministry to a *draft report* of the FVO mission was that there was no violation of the Directive (College van Beroep voor het bedrijfsleven 27 June 2008). In the discussion with the Commission the FVO report gained specific attention and made the Commission to ask critical questions on Plantkeur and its relation with the EU phytosanitary directive. In these discussions, the Commission critical on the potential conflict of interests and the independence of NAK/NAK AGRO staff.

Also in these discussions, the Netherland maintained that there was no violation of the directive and did not expected this would lead to problems for implementing Plantkeur. Without much consideration of the issue, a covenant on Plantkeur was signed 15 May 2005 in which main decisions were taken on the transfer of tasks from the PPS to the different ZBOs and the implementation of the project. The latter implied a.o. that agreements would be signed between the ZBOs and the Ministry on how to carry out the phytosanitary task, juridical changes would be prepared, and that the communication with the Commission on the project would continue. Plantkeur was planned to be implemented 1 January 2007.

Oliver (1991, 156) has described this response as one of 'dismissing' or 'ignoring'. She points out is a typical response when actors perceive the potential for external enforcement of institutional rules to be low and when their 'own' preferences diverge or conflict with institutional values or requirements. Moreover, she points out that the temptation to ignore these demands is often 'exacerbated by deficient comprehension of the rationale behind the institutional pressures'. The *recurrence* of these events, in EU compliance is illustrated by the implementation of the Nitrate directive in the Netherlands. Based on secondary analysis, it can be concluded that also here national actors were little aware of the formal reasoning of the European Commission which required the Netherlands to strictly adhere to particular *means* that were prescribe in the directive. The Netherlands yet, turned directly to the goals of the directive and developed its own system to achieve this. In their view, their system was a much more innovative alternative to the system of application standards in the NiD and could not imagine that the Commission would be against it (Frouws, Bavel et al. 2004). Instead of taken the objections of the EC seriously and trying to address these, the Netherlands operated from its own position (Woldendorp 2003, 348).

This response and the events that generated it can be observed in the case of Plantkeur. Also here domestic actors had a strong belief in the rationality of their own system. As with the Nitrate case, the Netherlands acted from, what one official called, a 'national rightness'. Not so much the compliance with the law was put central, but rather the effectiveness of the Dutch system (interview with official PPS). While national actors realized that they sought the

boundaries of EU legislation, they believed that they could continue with the implementation of Plantkeur without making adjustments (interview with national official B).

As a PPS official put it 'We were all convinced that was organized rightly...this was never criticized.' Even when the comments of the FVO gained special attention in the discussion with the Commission, the Netherlands felt that this would not really affect the implementation of Plantkeur:

'Though it easy to be wise after the event....we believed that if we would inform them and be transparent, it would be accepted [by the Commission]....however, to be right and to prove right are two different matters.' (interview with PPS official).

Balancing

This became clear when Directorate-General SANCO (Health and Consumers), quite unexpected, sent a formal letter to the PPS on 4 August 2006, in which additional information was asked in on the status of NAK and its daughter NAK AGRO. Restating the FVO comment, the letter mentioned that it did not become clear that NAK and NAK AGRO are separated and that NAK AGRO appears to be accredited with public task (College van Beroep voor het bedrijfsleven 27 June 2008). The Dutch response of ignoring feedback on the surveillance of the Commission that wanted 'more flesh on the bones' (interview with national official A).

Due to the official letter, that was understood as that the Commission was taking the issue seriously, the Netherlands began to realize that they should approach the matter from the safe side of the Commission and had to adjust their 'strategy'.

'With hindsight....actually we should have chosen to be more careful.... Brussels is not ready for this construction and we should stay on the safe side....we should be very precise on the legal basis of and how we can guarantee independence...'. (interview with national official B).

Besides being concerned with the certification of the proposed reform, national official were also concerned with the financial costs in case of non compliance with EU requirements. With a nearing implementation date, national actors realized that it would be almost impossible to recover the entire operation without huge costs in the case of a breach with international legislation (interview with company lawyer NAK; interview with PPS official).

In a letter of 9 November 2006 the Netherlands responded to the Commission:

'The correspondence with the FVO gives rise to examining whether changes are necessary with regards to the roles of NAK and NAK AGRO. Apparently, The Netherlands has been unclear on

conformity with the directive. The Ministry of ANF has therefore decided to make an adjustment. These adjustment are part of the project Plantkeur. Before implementing Plantkeur, NAK will amend its constitution to indicate that it is exclusively responsible for undertaking legal tasks and related specific public tasks.' (quoted in College van Beroep voor het bedrijfsleven 27 June 2008).

The formal letter of the Ministry triggered a sensemaking process within the Ministry. National officials tried to figure out to what extent the EU directive required an adjustments of the ZBOs. Officials of the Ministry turned in particular to the independence of staff of the ZBOs. With regards to the NAK, the Ministry decided to stick to its interpretation that the NAK was charged exclusively with a specific public functions and maintained that a separation of staff was unnecessary. To secure the independence of the staff, the Ministry suggested that some adjustments were made in the statute of the NAK and to bring the NAK inspection activities under (private) ISO certification (archival document A).

The stance of the Ministry was supported by their experience with so-called plant passport, the official label which gives evidence that the provisions of this Directive related to plant health standards and special requirements are satisfied (2000/29/EC, 2(g)) (interview with national official A; archival document). Since 1995, the NAK had been involved in providing these certificates and this had not resulted into difficulties. The FVO had controlled this a few years before and this did not led to any comment on the role of NAK and its relation with NAK AGRO.

This response can be best understood as one of balancing, which Oliver (1991) describes as the accommodation of institutional pressures. Conformity with institutional pressure in this case is only partial and a likely when actors have interests they wish to protect but experience a need to take into institutional pressures into account. Knowing that they cannot persuade the regulator of a different interpretation of the rules or find this to time consuming, actors may try to find a compromise and gain some discretion in applying these rules.

In the further discussion with the Commission it became clear that the compromise could not be accepted (archival document B) and that a separation in the staff that worked for NAK / NAK AGRO had to be made. Moreover, the Commission demanded a stricter separation in the equipment and finances of the NAK, a point that was stressed in the FVO report. In order to 'gain acceptance' by the EC, NAK had to be split into a public parent and commercial subsidiary and had to introduce a separate and transparent accounting for public tasks and commercial activities: a 'Chinese wall' needed to be put in place.

Challenging

At the national level, the strict interpretation of the directive caused tensions between the Ministry and the NAK. At the end of 2006 it had become clear to the NAK that the entanglement of public and private tasks could become a problem for transferring the phytosanitary tasks to the NAK and that an adjustment possibly had to be made (interview company lawyer NAK). At the beginning of 2007 the Ministry contacted the NAK to sort this out turning in particular to the independence of NAK staff. Over time, it became clear to the NAK that additional adjustments had to be made, as a result of the discussion of the Ministry with the European Commission.

There was little understanding for these requirements, resulting in heavy discussions with the Ministry (interview with national official B; interview with company lawyer NAK).

'We did immediately lay down (...) I wouldn't exactly call it enraged...but, we did not agree. (...) And maybe, there has been some emotion, because letters were going to Brussels about us...without involving us in the discussion.' (interview with company lawyer NAK).

The response of the NAK reflects the response of challenging. This response refers to the reaction by which actors resist particular institutional demands and do so in a more public manner. Like this response of dismissing, the response is expected when actors preferences diverge or conflict with institutional values or requirements and when actors have a lack of understanding of the rationale behind these institutional pressures. The response of challenging becomes more likely though, when the potential for enforcement of the rules is perceived to be high and when actors feel that they can demonstrate the rationality or righteousness of their own alternative convictions (Oliver 1990, 156-7).

Conscious conformity

Over time though, the NAK realized that they had to conform with the requirements of the Ministry in order to carry out the phytosanitary control task. The 'shock at that moment ebbed away' (interview with company lawyer NAK) and the NAK felt that it had no other option then to conform with these requirements of the Commission. Complying with these rules was perceived to be in the interest of the NAK. In June 2007 the NAK agreed to change its statutes whereby it would become possible to carry out phytosanitary inspections from 1 September 2007. From then on, the NAK alone would carry out public tasks and committed to avoid any form (or appearance) of entanglement of interest with its commercial subsidiary (archival document c). In the end both the Ministry and the NAK thus consciously conformed with these demands in order to gain acceptance, or perhaps better, avoid further questioning by the Commission.

Conclusion and discussion

This study makes a strong case for adopting a processual and interpretive outlook to understand the impact of formal rules: formal rules do not implement themselves but need to be interpreted and enacted and this may unfold over time. By adopting a mechanisms-process approach, on the other hand, I hope to have shown that while we cannot present a single explanation of an overall compliance trajectory, particular processes be casted in more general explanatory terms.

In the above I have done so, by drawing on the work of Oliver to explain how the responses of *domestic actors* were generated. Obviously, we may turn to the responses of the Commission and explain these as well in more explicit mechanism terms. An interesting source to do so could be the (social cognitive) literature on escalation processes, which explains *how* moderate goals or tactics become displaced by more extreme goals or tactics (Tilly and Tarrow 2007, 216). Among others, this literature suggests that actors are likely to turn to more harsh tactics like when they do not feel taken seriously or when other actors responses do not match their own concerns (e.g. Rubin, Pruitt et al. 1994). In this article I refrained from doing so explicitly, as data is missing from the side of the European Commission.

We may also make an additional *explanatory step*, by describing how different mechanisms may not only *compound* and generate a reponse, but may also *concatenate* into larger process or causal chain (Gambetta 1998). When such longer chains are recurrent, it seems worth singling these out and describe these processes as a 'family of mechanisms' (McAdam, Tarrow et al. 2001). I believe that such a recurrent process can be readily observed in this case, at least by judging a proverbial wisdom, and will paraphrase this proverb to label this 'family of mechanisms' with the phrase *waking sleeping dogs*.

The presented case study clearly shows how the turn to 'Brussels' by the Dutch ministry 'woke up' the Commission and made turn to Plantkeur. The expectation of the Netherlands that the Commission could be 'kept quiet' by informing it of the plant health reform was unfounded and was frustrated by the outcome of the Food and Veterinary Offices mission. Efforts to keep the Commission quiet were inadequate and only triggered further attention: the Commission started growling and did stopped doing so until the Netherlands conformed with a strict interpretation of the directive.

What started as an operation to deregulate the plant health system, thereby turned somewhat in a stricter division of responsibilities between public and private activities. This result was addressed by the private sector that criticized the strict separation of activities. They

questioned whether the efficiency advantage would be met by sending a pressing letter to the Ministry and contacting the media. In the letter, it was remarked that the separation would 'degenerate into a too bureaucratic, sluggish and expensive entity' (Agrarisch Dagblad 28 March 2007).

Given these consequences, we may wonder whether it would not have been wiser to 'let the sleeping dog lie'. Different interviewees, yet, remarked that there was no other way then to proceed in the followed direction, even though the outcome was uncertain. 'Waking the sleeping dog' was preferred to 'letting it lie', risking that it would wake up without noticing and bite from behind.

This case demonstrated that instead of being a driver, EU policy requirements may as well function as a barrier to agencification processes, in particular when this involves hybrid organizations. The case study thereby shows how EU integration has shifted the more normative theoretical debates on *hybrid organizations* to the empirical. The concerns put forward by the European Commission as setting restrictions hybrid organizations were certainly not new or extraordinary to the Netherlands. The concerns of the Commission resonate with those expressed in different national reports during the 1990s (e.g. Commission Cohen 1997; SER 1998) that suggest that organizations that are dedicated with a public task should not mix these with commercial activities.

While this tempered the establishment of hybrid organizations in the Netherlands during the 1990s, this had so far not led to concrete rules that prohibit the establishment of hybrid organization. The discussion in the Netherlands nowadays appears to have moved beyond this. Instead of discussing whether or not hybrid organizations should be allowed, the discussion in the Netherlands has shifted to how these tensions need to be addressed within these organizations (Karré and in 't Veld 2007).

An interesting question is to what extent the European Commission can allow for such strategies at the member state level – a question that seems of relevance in the light of the Commission's call in its White Paper on Governance (2004) for bring greater flexibility into how Community legislation can be implemented. Given the importance the Commission attaches to basic legal principles such as 'full effect' and 'legal certainty', it seems unlikely that such strategies, in as far as they are brought under the attention of the Commission, will be accepted right away.

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