

Non-Compliance as an Issue on EU Food Safety Regulations

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I Introduction

Food safety, as an EU policy field, has been the subject of intense modifications during the last decade. In particular EU's unfortunate role during the BSE crisis by the beginning of the century has revealed the necessity for a realignment of EU responsibilities on the issue of food safety. Nonetheless the current EU approach in this policy field is still undermined by a variety of domestic approaches of its member states. By way of example, in October 2009 the European Commission has moved to the next stage in the infringement proceedings against five member states which despite a warning letter have failed to introduce EU food safety legislation into their legal systems (Agence Europe, 14.10.2009). This research aims to identify the reasons why some member states have difficulties to comply with certain EU directives in the field of food safety regulations whilst policy integration in other member states preceded comparatively easy¹.

Seeing that one of the main features of the European Union, besides integration on the political level and thereby the Europeanization of policies, is the EU Single Market with approximately 500 million consumer, the question of member states' compliance performance on food safety regulations features relevance on both levels: societal as well as theoretical.

The former particularly manifests itself in one of the Single Markets' main features, namely the free movement of goods within the Union. This feature brings consequences for stakeholders on both sites of the economic cycle, namely consumers and producers, and consequently can be valued highly relevant since food safety regulations directly influence consumer behaviour in one of the world's largest and most elaborated free trade areas. Hence diverging food safety standards in the EU member states bear the potential to jeopardize an essential feature of the Single Market, namely equivalent market access to all member states on the basis of a uniform regulative framework.

Beyond that the theoretical relevance of answering the research question at hand is doubtlessly given, taking into account the comprehensive state of compliance research on the one hand (explicitly reviewed in the following section) and the resultant need for sophisticated policy analysis to close the research gap in related policy fields on the other hand. Accordingly this research paper strives to contribute to further the research on member states' compliance by expanding the scope of compliance research on a policy field which has so far not been the subject of systematic compliance research, namely the field of European food safety legislation in terms of food hygiene standards. Hence, albeit compliance research has so far mainly been focused on environmental and social policy the discipline nevertheless provides a strong and multifaceted theoretical framework to provide answers to the following question:

Why do some member states not comply with EU food safety legislation whereas others do?

¹ For an overview of a number of infringement proceedings against various countries refer to Commission Press Release IP/98/602, 3 July 1998.

II Theoretical framework

In recent years a growing number of scholars have dealt with the issue of member states' compliance with EU legislation and gave birth to a variety of theoretical explanations for the observed policy outcomes. This chapter subsequently presents some of the more influential theories on member states' compliance performance in more detail.

2.1 The interplay of national administrative traditions and European policy implementation

Seeing that the formal and practical transformation of EU law rests mainly at the national level, one theoretical approach accounting for the diverse implementation records is based upon the 'institutional scope' of EU policy implementation. Knill (1998) assumes that a central problem for effective implementation of European legislation is the impact of national administrative traditions. In his research the author introduces the concept of adaption pressure and furthermore establishes a direct connection between this pressure and the implementation effectiveness of the member states. Consequently Knill hypothesises that implementation effectiveness depends on the institutional scope of the required adaption (Knill 1998: 3) and beyond that the author argues that effective implementation is more likely in member states with a high potential for administrative reform. In other words, national dynamics can allow for effective adaption to EU requirements which previously reflected core challenges to administrative traditions (Knill 1998: 4).

In his empirical findings the author first distinguishes between three levels of adaption pressure: *high*, whereby EU policy contradicts core elements of domestic administrative arrangements. *Moderate*, in which EU legislation does not challenge the core factors of national administrative traditions. *Low*, which allows member states to rely on existing administrative provisions in order to implement European legislation successfully (Knill 1998: 7).

Based on these three levels of pressure Knill identifies three corresponding implementation paths. First, *contradiction of the core* manifests in those policy areas where European policies imply contradictions of the administrative core, ineffective implementation results are likely. The observed adoptions fail to effectively meet EU requirements since they are incomplete, incorrect, or just symbolic. Following the author's reasoning the neo-institutional approach serves as an explanation for the poor implementation records in cases where EU policies contradict the administrative core. "Well-established institutions and traditions not easily adapt to exogenous pressure, [...] institutions remain stable even in a changing environment" (Knill 1998: 8). Second, *change within a core* can be observed where the adoptions required in order to meet European law can be achieved by changes within the institutional framework without challenging its core. Hence substantial but not fundamental change of the domestic institutional framework is necessary. This moderate adaption pressure

bears two potential outcomes, either the result will be successful implementation of EU law or alternatively, European reform requirements may be either underestimated or intentionally ignored by the policy actors. Third, *confirmation of the core* is present in those cases where European requirements imply no or only negligible adoptions of administrative arrangements. In these cases one can expect effective implementation of EU legislation, seeing EU policy mainly as a confirmation of national core arrangements (Knill 1998: 8ff).

As a conclusion to the empirical findings of his research, comparing the implementation records of EU environmental policy in three member states, the author confirms his hypotheses. Indeed, it seems that the distinctive characteristics of different national administrative traditions have an important impact on a country's general ability to comply with EU requirements since national administrative traditions and their level of institutionalisation influence national implementation of EU legislation (Knill 1998: 24). Hence, Knill argues that the low adaption capability of certain countries is the result of a "thick institutional core combined with low structural capacity for administrative reform" (Knill 1998: 25). Resulting in a constellation which increases the potential that European legislation contradicts core administrative arrangements and as a consequence the implementation record of EU law is rather poor in these countries. On the other hand, countries with a better capacity for national reforms can be expected to exert much higher adaption capabilities (ibid).

These theoretical explanations yield the following hypothesis when applied to this research: *A high contradiction between EU food safety legislation and the core elements of the corresponding national administrative arrangements leads to non-compliance in the field of EU food safety policy.*

2.2 The influence of member states' policy shaping and national implementation

While acknowledging the impact of national administrative settings, some theories expand the institutional scope towards a two dimensional approach. Considering the theme of compliance as a two-way process of Europeanization, Börzel (2002) developed an approach to link these dimensions by focusing on the ways in which member states governments both shape European policy outcomes and adapt to them. On this occasion the author concludes that on the one hand member states governments share a general incentive to upload their domestic policies to the European level, seeing that the better the fit between European and domestic policies, the lower the implementation costs at the national level (Börzel 2002: 194). Yet, on the other hand each national government pursues competing policy preferences, depending on the level of domestic regulation and more than that, member states also diverge in their capacity to participate in the European policy contest (Börzel 2002: 196). At this juncture Börzel presents a framework which distinguishes for three different strategies in which governments have responded to Europeanization and furthermore she argues that the member states' level of economic development, while largely influencing its degree of domestic regulation and its action capacity, affects which kind of strategy a member state eventually adopts (Börzel

2002: 197). These different member states' responses to Europeanization will be illustrated briefly in the following.

High-regulating countries ('pace-setters') share a common interest in harmonizing their (high) standards at the European level, given the fact that the successful 'upload' of their domestic preferences to the European level will most likely erase a number of problems in the subsequent 'downloading' of the European policy. Furthermore, the incorporation of "alien' elements into a dense, historically grown regulatory structure that is ingrained in a particular state tradition can impose considerable costs" (Börzel 2002: 198). In this occasion pace-setters are often supported by pan-European multinational firms, since it is in their operational interest to have only one set of EU rules to comply with. Beyond that, strong domestic policies as a precondition for successful 'uploading' is accompanied by member states' capacity to push these policies through the European negotiation process. This capacity includes the ability to offer expertise and information to the European Commission in the drafting of policy proposals and governments' skills in coalition-building and interest accommodation. Hence it needs considerable staff power, expertise and information in order to meet these requirements; factors which the member states do not share to the same degree throughout the various policy sectors. Finally, even though pace-setters' compliance with European law is above average, they still face costly policies by downloading policies from the European level, given the heterogeneity of domestic regulations and policy preferences and additionally the absence of a consistent regulatory framework (Börzel 2002: 201).

The exact opposite response to Europeanization is adopted by those countries that lack both, highly developed regulatory structures as well as the capacity to shape European policy making. These so called 'foot draggers' aim at stopping or at least containing the attempts of other member states to upload their domestic policies to the European level, seeing that building up regulatory structures is often even more expensive than fitting European policies into historically grown and comprehensive domestic arrangements (Börzel 2002: 204). Beyond that, less demanding regulations constitute a competitive advantage over high-regulating countries due to lower production costs (ibid). Since foot draggers lack both the incentive as well as the capacity to push or support strict European measures, they try to block or delay them. However, as foot-dragging is seldom able to prevent these costly policies altogether, it aims at obtaining some compensation in the form of side-payments or package deals in the form of concessions in other issue areas. Seeing the problems of foot-dragging member states on both dimensions, namely the lack of incentive to upload preferences to the European level and furthermore the low domestic capacity of efficiently download European policies, it is hardly surprising to note the following conclusion. First, latecomers are policy-takers rather than policy-makers and second, they have a worse compliance record than the formerly mentioned group of pace-setters.

The third way of member states' response towards the Europeanization of politics is the occupation of a rather indifferent and neutral position, neither setting the pace nor putting the brake on EU policies. This behaviour can be

attributed to less pronounced policy preferences and/or constrained action capacities of the respective member state (Börzel 2002: 207). Even though 'fence-sitters' do not push for stricter European laws they neither actively oppose them for several reasons: first, they do not anticipate any significant costs resulting from the uploading attempts of others, due to similar domestic policies in place. Second, they hope to achieve policy results which they have not been able to deliver at the domestic level, given their limited action capacities. Finally, fence-sitters may prefer to avoid costly European policies simply by not implementing them rather than raising opposition in the decision-making process (Börzel 2002: 207ff). Hence, instead of pressing for compensation or exemptions, fence-sitters tend to minimize costs at the implementation stage by circumventing inconvenient obligations and consequently the implementation record of fence-sitters is not among the highest in the EU; in the end closer to the foot-draggers than the pace-setters.

As pointed out by this abstract of Börzel's approach to categorize member states' compliance records, the process of Europeanization can be classified along two dimensions, namely the 'uploading' and 'downloading' of policies. Since member states differ both in their policy preferences as well as their action capacities they have pursued different strategies in responding to Europeanization. Accordingly they are grouped by the author in three categories, differing in their uploading incentives (European policy shaping) and their downloading capabilities (European policy implementation). The author concludes by referring to European policy-making as a leader-laggard dynamic at which the leaders push the Community process along, drawing the laggards up to their levels of regulation. This process repeatedly gives rise to substantial tensions between leaders (policy uploader) and laggards (policy downloader), an issue that can be observed in a variety of policy sectors (Börzel 2002: 209).

In the course of the given research question of this thesis Börzel's theory translates into the following hypothesis: *The less successful member states have been in 'uploading' their own preferences to the EU level as the template for the joint standard, the more they try to resist during the 'downloading' process and as a consequence ultimately do not comply with EU food safety law.*

2.3 The importance of institutional veto points

The theories discussed so far implied the importance of national institutional arrangements from the perspective of an institutional-fit and its capacity to actively shape European policies. On the one hand Knill introduced a coherent theoretical framework which explains this institutional-fit and furthermore the author presented corresponding findings on the impact of national administrative traditions on EU policy implementation. On the other hand Börzel argued that member states' ability to comply with EU law predominantly rests upon their capacity to actively influence European policy making towards outcomes that match with their respective domestic administrative settings. Yet, these theoretical approaches do not unveil the whole picture of the theoretical discourse which strives to explain member states' compliance; even though

national institutional settings are a central concept in the following approach as well.

Haverland (2000) argues that differential degrees in the goodness of fit do not explain the pace and quality of adaption to European requirements. Rather his findings suggest that ultimately the national institutional opportunity structure bears great importance for a proper implementation of EU Directives. In other words, "[institutional] veto points tend to shape the timing and quality of implementation regardless of differential gaps in the goodness of fit between European requirements and national traditions" (Haverland 2000: 100). By the term 'institutional veto points' the author refers to all stages in the decision-making process on which agreement is legally required for a policy change. Yet, even though EU law can ultimately not be rejected at domestic institutional veto points, central governments are often dependent on these actors for the practical implementation of EU legislation into the national framework (Haverland 2000: 85).

This proposition primarily rests upon Haverland's research on the speed and correctness of the implementation of a directive on packaging waste in three European countries. The findings of this particular research unveiled that the implementation of this particular directive in Germany and the UK happened in both cases contrary to the outcome, as predicted by the 'goodness of fit' approach. As the compared countries exhibit differing degrees in their respective institutional fit between European provisions and national rules, they offered the feasibility to prognosticate potentially different success rates on the implementation of the directive, according to the goodness of fit approach. Yet, contrary to the results anticipated by this approach, "the country with the greatest misfit, the United Kingdom, adapted more successfully than the country which only needed incremental adjustments [in order to comply with the Packaging Directive], Germany" (Haverland 2000: 83). Rather the case of observation unveiled that it was decisive whether the national institutional opportunity structure provided domestic opposition with an institutional veto point which enabled them to modify the outcome. Additionally, under the impression of these findings Haverland suggests that it is useful to extend the analysis beyond the domestic *administrative* sphere and include the institutional opportunity structures that grant *political* and *societal* actors access to the political process and consequently shape the national adaption process of EU requirements (Haverland 2000: 85).

Concluding, on the one hand Haverland acknowledges adaption pressure as an important source of domestic opposition to European requirements. Yet, what makes the difference between Knill's and Haverland's approach is that the latter emphasizes the importance of the national institutional opportunity structure, since it emphasizes that even though domestic opposition is activated by adaption pressure it is the availability of veto points which determines whether this opposition is successful or not. Consequently in the context of the research at hand Haverland's theory leads to the following hypothesis: *A low number of domestic institutional veto points results in high member states' compliance with EU food safety law.*

2.4 Linking institutional vetoes and goodness-of-fit

With Haverland's findings as the starting point Bailey (2002) revisits the implementation of the Packaging Waste Directive in the United Kingdom and Germany and eventually draws a slightly different picture; however the author does not dissent with Haverland's findings on the whole.

On the one hand Bailey generally confirms the impact of institutional domestic veto points on member states' compliance with EU Directives, albeit he disagrees with Haverland's conclusion that the compatibility of national and European procedures and practices ('goodness-of-fit') does only possess limited explanatory power by interpreting member states' compliance (Bailey 2002: 807).

In his review of the implementation process Bailey adds to Haverland's definitions of transposition of European legislation into national law (*legal* implementation) and the establishment of policy mechanisms for achieving compliance (*administrative* implementation) a third dimension of implementation, namely the *practical* implementation, comprising the application and monitoring of policy measures (Bailey 1999a in: Bailey 2002: 792).

By reviewing the implementation of the Packaging Waste Directive on this practical level Bailey makes the following observations. Incipently Bailey confirms Haverland's findings regarding the legal and administrative implementation of the directive in Germany and the UK, as the British government introduced national legislation and implementing mechanisms relatively smoothly while the German compliance record has been prolonged by the influence of domestic veto points. Yet, even though Bailey recognizes domestic institutional veto points as instrumental in articulating the dispute between the legislative bodies in Germany (Government versus Federal Chamber), he estimates the key trigger to be a mismatch between European and national regulatory preferences and "consequently, poor policy fit" (Bailey 2002: 798).

In the following Bailey reviews the practical implementation in both countries and hereby values his assumption of the relevance of the goodness-of-fit approach to be correct: Despite the smooth 'first round' of implementation (legal and administrative) and the sophistication of the existing policy arrangements, Britain has experienced severe difficulties in achieving the directives' environmental objectives (Bailey 2002: 799) which are said to be caused by poor fit between EU and national regulatory styles (Bailey 2002: 802). This leads the author to the conclusion that "the ability to introduce measures without domestic opposition [does] not mean that the measures could necessarily achieve effective practical implementation" (ibid). Concluding, and contrary to Haverland's (2000) assertion, Bailey argues that in his case study institutional veto points indeed delayed amendments to the ordinance, yet opposition was only mobilized because the directive was in some parts discordant with entrenched national policies, therefore "goodness-of-fit remains integral to legal and administrative adaption to Europeanization" (Bailey 2002: 805).

Applying Bailey's theory to this theories' research topic leads to the following hypothesis: *Member states whose political system features both a number of institutional veto points and a contradiction between EU legislation and the core elements of national administrative arrangements are the laggards in complying with EU Directives on food safety legislation.*

2.5 The influence of granted implementation leeway

Besides the common theories on member states' compliance records that have been introduced in the preceding sections of this chapter, this research also strives to test for an additional explanation for non-compliance with EU legislation, namely the correlation between implementation leeway granted by the EU to the member states on the one hand and the actual compliance performance of the member states on the other hand. Although this connection has not yet been tested for in the context of compliance research and thereby certainly provides room for new insights, this approach is basically following the linkage of the institutional vetoes and goodness-of-fit theories.

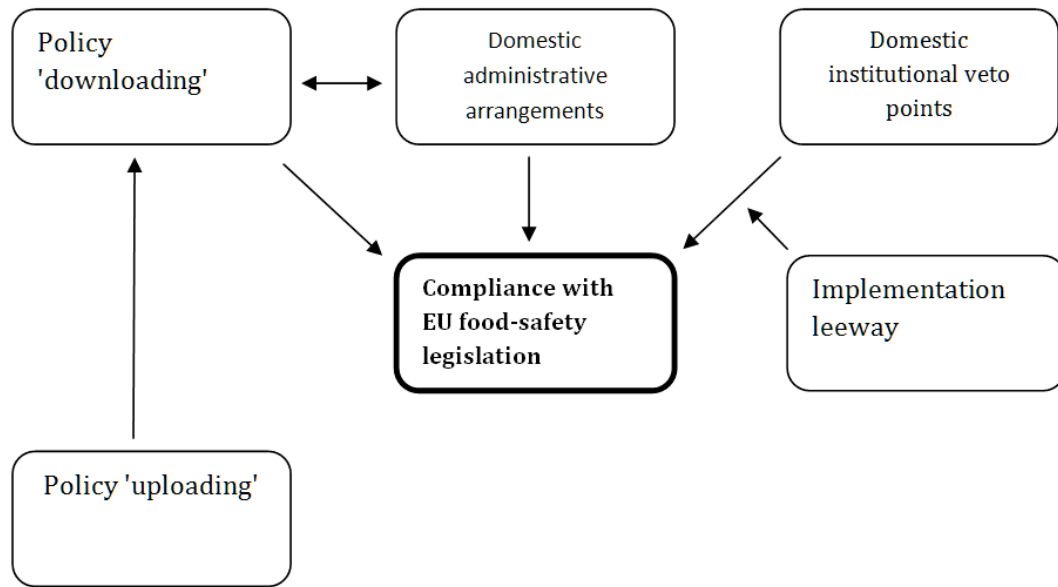
In particular this approach implies that a certain degree of implementation leeway worsens member states' compliance record in case the following adverse policy conditions are given: A contradiction between national administrative arrangements and the implications of the European approach, as well as domestic veto players' opportunity to use institutional veto points to impede the implementation of the new legislation. In this connection this approach is following the logic that under these conditions governments use their granted implementation leeway to make concessions to the veto institutions in order to avoid a possible veto and thereby a delay in the implementation of the EU law. In other words, governments sacrifice some implications of the new legislation and therewith facilitate a timely implementation by 'diluting' the legislation as has been set up by the European Union.

This theory finds its expression in the following hypothesis: *Greater leeway given to the member states in implementing European policy in particular worsens the compliance records on EU food safety legislations in those member states that inhibit a number of institutional veto points.*

2.6 Causal model of the independent variables affecting member states' compliance

The above mentioned hypotheses include a number of variables which are likely to affect the observed factor of member states' compliance and therefore constitute as a substantial element of this research. Therefore the following model provides an illustration of the causation in the relationship between these variables as analyzed in the course of this thesis (see next page).

Illustration 1: Causal model of variables' interaction



III Research Design

Acknowledging that the choice for a particular research design is a crucial factor for the overall quality of the research since only an applicable design enables to draw sound conclusions that are supported by evidence (Buttolph Johnson; Reynolds 2005), the following will introduce three possible designs that are expected to be feasible for this particular research. On this occasion the subsequent paragraphs will provide a brief theoretical elaboration on the basic characteristics of each design, afterwards a selection of the most appropriate one will be made before the final section will elaborate on how this particular design is applied to the research at hand.

3.1 Contrasting the available research designs

Amongst the multitude of available research designs three specific designs were identified due to their estimated feasibility on both the theoretical as well as the practical level. Hence, the following research designs are available:

The *single case study* is based on an in-depth investigation of a single individual, group, or event to explore causation in order to find underlying principles. Moreover it proves to be an "important design to use for the development and evaluation of public policies as well as for developing explanations for [...] political phenomena" (Buttolph Johnson; Reynolds 2005: 84). More specific, following Yin (2009), the strength of case studies lies in answering explanatory questions such as 'how' and 'why' questions. In addition, Yin characterizes the case study to be feasible under conditions, where the researcher does not have

control over behavioural events and where the research focuses on contemporary events (Yin 2009: 18). As these three conditions are obviously given in the research question at hand, the single case study therefore qualifies as an applicable design for this research.

For the reason that the findings, obtained by a single case study may be regarded as less robust, a *comparative case study* could serve as a research design which is often considered more compelling (Yin 2009: 53). As the questions' conditions ("why" question, lack of control over behavioural events, focus on contemporary events) remain the same, the question proves to be feasible for this research design, as well.

Finally, when using a *non-experimental times series design* to answer the research question, both the dependent and the independent variables are measured before and after the emergence of a particular phenomenon; in this case the introduction of common European food safety legislation. Put into practice this design will measure the consistency of domestic food safety legislation in the EU member states under observation, furthermore the measurement includes the assessment of independent variables such as the impact of domestic veto points on national and/or European food safety legislation

3.2 Selection of a feasible research design

All three research designs that have been introduced in the previous section seem capable to offer findings that help answering the research question. Furthermore they prove feasible, as each design's characteristic contributes individual strength in a certain field. Still, a choice has to be made which design will be applied in the course of this research. This selection for one particular design is based on the extent of data/findings each design offers and the possibility to put the theoretical design into practice. Based on these criteria the decision is made to use the comparative case study for answering the research question. The rationales for this choice are the following:

First of all, this paragraph strives for a more general emphasis regarding the non-experimental design as the approach of first choice. Even though experimental designs have proven to offer stronger methods for making causal inferences when compared to non-experimental designs, such designs are difficult or even impossible to carry out when it comes to research of non-individual units of analysis such as events, groups, and states/countries. In order to obtain findings on these 'more realistic problems' (Buttolph Johnson; Reynolds 2008) a non-experimental design is a more feasible strategy for collecting information and data that can ultimately be used to test hypotheses and give room to make causal inferences. Acknowledging that the lack of control over the application of the independent variables is both a distinct feature and one of the main weaknesses of the non-experimental design, this research strives to overcome this drawback on its internal validity through the careful selection of cases that may lead to the approximation of a quasi-experimental situation. On this occasion, as mentioned earlier, this research aims to choose cases with

different values of an independent variable but with the same values for important control variables.

However, the final choice for a feasible research design to be implemented can be found in the formulation of the research question. Given that the research question at hand is of explanatory nature, the comparative case study proves to be the most feasible design since it allows for replication and is therefore more likely to have explanatory power than a single case study or a time series design. The main strength of the comparative case study, which justifies its use in this research, is the fact that it enables the researchers to test a single theory more than once. Recapitulating that the initial research question asks for the reasons why some EU member states do not comply with European food safety legislation and that the theory on compliance research offers a number of possible explanations, the comparative case study design provides an appropriate approach to test these theoretical explanations more than once in a different context than previous studies on member states' compliance.

3.3 The comparative case study

In the research at hand, the comparative case study will be applied within a design that comprises two countries of observation. Furthermore the research will enhance the internal validity of its findings by using a Most Similar Systems Design. Consequently the combination of these two factors, namely the selection of multiple units of analysis that vary as much as possible on one of the independent variable and are as similar as possible regarding other relevant explanatory variables, will further the internal validity of the research. Put into practice the research design will look the following:

For the purpose of keeping the research on a practical level the number of analysed units does not exceed two countries. Furthermore, the selection of countries is based on the presence or absence of factors that a political theory has indicated to be important (Buttolph Johnson; Reynolds 2005). By recalling the theoretical introduction of this thesis it is obvious that the theory on the influence of domestic institutional veto points proves to imply the factor whose determination requires the less efforts, namely the number of institutional veto points. In this connection the choice has been made for Britain and Germany as the countries of observation. Seeing that the institutional structure of the United Kingdom de facto offers no effective veto point at which the domestic opposition could substantially delay the implementation process (Haverland 2000) whereas the German government must always be aware of the possible resistance by the German Federal Chamber, it is evident that the selected countries demonstrate considerable variance on this variable.

Whereas internal validity can be achieved through the above mentioned selection of cases, there is unfortunately no obvious technique to improve external validity. Consequently the external validity of the comparative case study remains rather weak, as generalization can only be made to cases that share similar conditions.

Finally this paragraph briefly provides a definition of member states' compliance as grasped in this thesis. Generally speaking the term *compliance* refers to the implementation of EU legislation into national law. The question is then raised as to whether member states comply with EU legislation or not. At this connection the thesis refers to good compliance as the implementation of the *basic principles* of the respective EU directive; these principles will be elaborated on and defined more precisely in a subsequent chapter. Additionally the factor of time is used as another indicator in order to assess member states' compliance, following the question whether member states have been able to implement the respective EU legislation prior to the official deadline as set by the Union. However, the time factor on its own remains rather vague in providing an evidence for good compliance, acknowledging that a hastily formation of an amending law does not necessarily contribute to the de facto harmonization on national legislations and thereby does not foster this initial intention of the European legislation. Consequently, the compliance records of Britain and Germany in the field of food safety are measured by looking at the time factor of member states' compliance and additionally by a qualitative analysis of their respective post-directive legislative frameworks, whose basic principles shall be contrasted with the EU directive on the hygiene of foodstuffs.

3.4 Structure of case comparison

After having opted for the comparative case study to be applied for this research the following provides a preview on how this case study will be implemented in the course of this thesis.

The following chapter presents the cross-national variations in policies and regulatory styles on food safety prior to the European attempt to harmonize this policy field and elaborates on the question of what were the driving factors for harmonisation. Beyond that, this chapter firstly attempts to foster the readers' understanding of the national adaption to European food safety legislation in the countries of observation. Secondly, it will be illustrated if and to which degree the EU Directive fits to the respective national arrangement and thereby this section unveils the degree of adaption pressure induced by the Directive. This concept of 'match' or 'mismatch' between the embedded national regulatory structures on the one hand and the implications of EU Directive 93/43/EEC on the other hand will rest upon the framework Knill and Lenschow (1998) used in a similar comparative study, in which the authors analyzed the two dimensions of regulatory style and regulatory structure in order to define the basic characteristics of the administrative patterns in the policy field under observation. The findings on the respective administrative patterns will be contrasted in a table and thereby provide the analytical framework for the closing part of chapter five, namely determination of adaption pressure induced by the EU Directive. After having defined the respective regulatory food safety approach in Britain and Germany the final section of chapter five will examine Directive 93/43/EEC with regard to the resulting administrative implications for the member states. Finally these implications will be compared to the national administrative structures in the countries of observation and thereby indicate

the degree of 'match' or 'mismatch' between the Directive and the national arrangements. In terms of data collection chapter five will rely on qualitative data and thereby make use of a variety of scientific literature and country specific articles which, although originally not intended to determine adaption pressure between national and European arrangements, contain valuable sources with regards to the national administrative settings in the field of food safety.

Subsequently, and in the light of the pictured differences in the degree of fit between national arrangements and the drafted EU Directive, the second part of the case study covers the uploading capabilities of the observed countries in the directive. This section particularly addresses in which manner the member states were able to shape the final policy outcomes, thus if they have been successful in their attempts to 'upload' domestic policy arrangements to the EU level. For this purpose the section compares both countries' pre-directive and post-directive situations, regarding the respective legislative content, in order to deduce from these findings whether one of the countries has been successful in uploading its domestic preferences to the EU level. This approach assumes that in case EU legislation and domestic policies show considerable similarities, the respective country has been successful in shaping EU policy outcomes; whereas a variation between EU and national legislation serves as an indicator for ineffective uploading. The decision to use this causal model, in order to assess the uploading process, has been made due to a lack of capabilities to analyze the rather complex process of the decision making process on EU level in an appropriate way, namely in detail.

Third, the case study will cover the actual national to the adaption of the food safety Directives. The national adaption process on the one hand mirrors the conditions and outcomes of the previous parts and, on the other hand, combines these facts with national institutional arrangements that were until now not actively involved in the policy process, such as domestic veto players. By individual reviewing the adaption process for each member states of observation, this part provides answers to the question if certain member states were successful in complying with EU law with special emphasis on the role of domestic institutional veto points. Deriving from these findings the research closes with elaborating on the initial research question and beyond that by reviewing the appropriateness of common theoretical explanations for compliance in this specific case of EU legislation; for this purpose the closing of this thesis will furthermore provide a section which tests the initially posted hypotheses.

IV Food safety legislation - the national framework in Britain and Germany

The problematic nature of member states' compliance with EU law, which has already been elaborated on in the theoretical introduction of this thesis, does

also reflect in the Unions' approach of harmonizing national food safety legislation. These difficulties are basically grounded in the divergence between the member states in two factors: *interests* and *ideas* (van Waarden 2006). In a nutshell, since the interests of food producers diverge and more than that different countries have different food industries, they develop different interests with respect to food standards (van Waarden 2006: 35). Yet, the governance of food not only reflects different interests but also different ideas, in this case deeply held beliefs that touch on the identity of society. These shared beliefs do not only make up the substance of food regulation but more than that determine their organizational structure and therefore they engage not only what should be regulated but also how and by whom (ibid).

Consequently, and as part of the observation of the domestic food safety arrangements in the countries of observation, the following will conduct a qualitative review of the administrative culture and its guiding ideas and values which ultimately manifested itself in the respective food safety arrangements in both countries. This observation will be build upon van Waarden's concept of evaluating food safety as a form of risk management which aims at countering distrust and reducing uncertainty. As these transaction costs tend to be high on the individual level, seeing that the individual cannot profit from economies of scale, societies have developed institutions that serve to reduce these transaction costs (van Waarden 2006: 43ff.). However, by acknowledging that risk is not an absolute criterion but much more a social and cultural construct leading to differing risk perceptions, it is evident to distinguish between several allocation and coordination principles, each striving to reduce these transaction costs.

In the course of assessing and contrasting the respective national arrangements the following paragraphs will provide a general review of the underlying administrative regulative principles which amongst other guide the structure in the domestic food safety legislation. Afterwards, and in order to provide an evident framework which allows to assess the objective 'match' or 'mismatch' with the EU Directive under study, these administrative patterns of food safety in the UK and Germany will be tabulated and thereby point to possible similarities and differences which the two countries exhibit in their regulatory frameworks.

4.1 Regulation and enforcement of food safety in Britain

Initially food law in the UK was designed not primarily to safeguard consumer issues but to protect honest traders from less reputable competitors. Hence in the first place it were economic motivations that lead to the introduction of food safety controls in Britain. Yet, they came into force under public health legislation rather than explicit food law. Therefore one can describe the first legislation in the UK, dealing with food safety issues, as economically justified and framed under the umbrella of public health legislation. It was not before the year 1860 when the first specific national food legislation, the Act for Preventing Adulteration in Food and Drink, came into force. Again, with its main focus on the prevention of adulterated food, the underlying framework primarily origins in overcoming market failure.

A number of legal adjustments were carried out during the first half of the twentieth century, but besides providing more extensive regulatory powers the basic framework of the British food safety legislation remained limited in its focus for most part on the composition and labelling of food. However, pressure for change had been building up during the late 1970s and 1980s (Jukes 1993: 133). Due to a rise in the number of cases of food poisoning, in particular during 1988 with a sharp increase in cases of *Salmonella enteritidis*, the government had to be seen to be taking action to ensure food safety and set up a White Paper entitled 'Food Safety - Protecting the Consumer', of which most provisions ultimately were applied under the Food Safety Act 1990. This act incorporates many new provisions and contains significantly increased powers to enable ministers to issue regulations.

It extends controls back down the food supply chain and can be used to regulate aspects of food production where the latter has an effect on food. It tightened the controls on unfit and contaminated food. It introduced powers to require registration and licensing of premises. It increased the powers of enforcement officers and provided for Codes of Practice on enforcement (Jukes 1999: 134).

As noted above the Act notably increased the powers of enforcement officers, yet the British system still relied on the self-commitment of the food industry. Consequently manufacturers or retailers who have established procedures designed to protect the consumer, have little to fear should anything go wrong; always under the premise that they can demonstrate in a court that they have taken all reasonable precautions. These precautions may include established quality systems as the Hazard Analyses and Critical Control Points (HACCP - elaborated on more detailed in a subsequent section of this thesis).

Moreover the administrative configuration of food safety in the UK weakens a central enforcement approach since food safety control legislation in the UK has always been a matter for local rather than central government. Whereas it is the central government, empowered by parliament, who adopts food safety legislation, it is within the responsibility of the local administration to enforce the provisions of the law. Seeing that the local government in itself is organized into local authorities, one count more than 600 different local authorities, having responsibility under the Food Safety Act 1990 (Jukes 1993: 136). Even though there remain some parts of the country which are characterized by unitary local authorities, for instance many London boroughs, still the bigger part of the UK comprises two tiers of local government. In these parts the responsibility for the many duties allocated to local government is split between the two levels.

Keeping in mind that food legislation in the UK traditionally comprises of fraud and food labelling and only recently introduced food hygiene and safety as a major theme, it is consequential that in these two areas two different professions have become involved. Work associated with weight control and the provision of information to the consumers has been undertaken by Trading Standards Officers (TSOs) whilst work associated with food hygiene has become the responsibility of Environmental Health Officers (EHOs). Whereas the larger (unitary) councils take the responsibility for all aspects of local food safety

government, often allocated to the EHO, in those parts where a two-tier system operates (the bigger part of the country) the TSOs and the EHOs are employed at different levels: the TSO at the regional and the EHO at the district level. This division does not contribute to a uniform enforcement structure throughout the country and besides that provides an explanation for a certain rivalry between the two professions. Albeit the fragmented enforcement responsibilities, still the Food Safety Act provides a common legal set of enforcement powers which are given in Sections 9-12 of the Act:

- Section 9 provides powers of inspection of any food intended for human consumption which might be for sale or being prepared for sale. The inspection officer is provided with powers of seizure in case that his inspection detects that the food would not meet food safety requirements.
- Section 10 provides for the new instrument of issuing of an improvement notice where an officer believes that a business is failing to comply with processing or hygiene regulations. Whereas under previous legislation the business would have been instantly prosecuted, the issued notice provides an incentive for the business concerned to implement the corresponding regulations.
- Section 11 enables a court to prohibit the use of buildings or equipment if there has been a successful prosecution for hygiene offences and there continues to be a risk to health.
- Section 12 provides powers for enforcement officers to prevent a business operating if, in their view, there is an 'imminent risk of injury to health'. The immediate closing down of a business is legitimized through an Emergency Prohibition Notice which must be afterwards converted by court into an Emergency Prohibition Order.

Still, and as clarified above, the major potential problem with enforcement in the UK is the great number of employing authorities and the lack of central control over the inspecting officers. This problematic becomes particularly evident by looking at the case of national food companies distributing food on a country level, since "if different officers are following different policies, it may become very difficult to satisfy all the different enforcement officers who have dealings with the company" (Jukes 1993: 139).

4.2 Regulation and enforcement of food safety in Germany

In Germany the focus of food safety legislation has traditionally been less distinctive towards bacteriological and micro bacteriological control but has an apparent orientation towards composition and chemical control (van Waarden 2006, Elvbakken et al 2008). The best example of this tradition is the Reinheitsgebot (beer purity law) enacted in 1516. Beyond that, Germany represents a system of consumer protection with high state activity characterized by complex legal provisions and governmental initiatives to stabilize the organization of consumers' interests (Janning 2004). Yet, the

balance of power in this corporately organized structure of food safety policies is far from being equitable. On the one hand are the interests of the industry from the areas of foodstuff production, distribution of goods, agricultural economy etc. which are being represented by extensively funded, lobbying experienced associations which have precise domains of interests. On the other hand, however, the interests of the consumers are being represented by associations which are dependent on state funding and, due to the lack of extensive funds, mostly represent broader groups of consumer interests, therefore lacking precise domains of interests. Despite this corporatistically organized interest mediation in general and the described imbalance of this system in particular, decision making power in this field of legislation rests solely upon the responsibility of the central government. Put differently, "the [German] state is installed as supervisor of safety standards and consumers' interests and dominates the formulation of policies in the best interest of the consumer" (Janning 2008).

Before the institutional restructuring of food safety legislation, in the light of the BSE crisis in the year 2000, competences for the formulation of consumer protection legislation in the area of food safety were held at the responsibility of the Federal Ministry of Health for more than 130 years (Teuteberg 1991). Similar to the UK but for different reasons (namely Germany's federal structure), responsibility for food safety is split between the central federal government and two lower administrative levels, namely the German Länder and their local municipalities. Whereas the federal government principally holds the authority to act as legislator and policymaker, the administration and management, implementation and the further elaboration of regulations is carried out by the Länder. Ultimately practical control, enforcement and inspection take place in the local municipalities. However, it should be pointed out that the detailed organization of food safety regulation varies within the Länder, as in the municipalities (Elvbakken et al. 2008).

4.3 Contrasting British and German administrative arrangements in food safety policy

As with the most legislative arrangements the national food safety regulation concerns vital questions of risk regulation and additionally its design and implementation is strongly guided by the respective actors within the policy field, their behaviour and interaction with each other (Janning 2004). Beyond that, respective national arrangements differ in their specific interpretation of the dual character which characterizes food safety regulation; namely on the one hand the tension between its primary aim of protecting public health, and on the other hand the regulation of a market in which diverging and competing interests operate (Elvbakken et al. 2008). It is this dual legal motivation in addition with differing national configurations of the involved actors and institutions which shapes diverging national approaches within a virtually consistent field of policy and thereby creates a potential 'match' or 'mismatch' between national arrangements and common European regulations. For this reason, as outlined in the introduction of this chapter, the following tabular

comparison of British and German administrative arrangements strives to provide a starting point in order to assess the objective 'match' or 'mismatch' of European legislation and national administrative traditions. In doing so this thesis utilizes a model which has been introduced by Knill and Lenschow in their study on the impact of British and German administration on the implementation of EU environmental policy (1998). In this model the authors distinguish two analytical categories characterizing administrative arrangements, namely regulatory *style* and regulatory *structure*. The former is defined as "patterns of interaction between administrative and societal actors" (Knill; Lenschow 1998: 597), whereby the authors distinguish between two ideal types namely an *interventionist* and a *mediating* regulatory style. Beyond that, the authors distinguish between two dimensions, namely the mode of state intervention and administrative interest intermediation. Resting upon these two dimensions the identified ideal types show the following characteristics according to Knill and Lenschow:

The interventionist regulatory style is characterized by command-and-control type regulatory rules "defining substantive objectives that leave administrative actors only limited discretion and flexibility" (Knill; Lenschow 1998: 597). Additionally the patterns of interest intermediation are more legalistic, formal, adversarial and closed. On the other hand the mediating regulatory style puts an emphasis on self regulation and procedural rather than substantive requirements. Furthermore it implies "great discretion and flexibility for the administration in applying the law" (ibid) whereas the patterns of interest intermediation are shaped by pragmatic bargaining, informality, consensus and transparency.

Whilst the characteristics so far correspond to regulatory *style*, the authors conceptualize the regulatory *structure* by focusing on the vertical (centralization/decentralization) and horizontal (concentration/fragmentation) distribution of administrative competencies (ibid).

A comparison of British and German arrangements in food safety policies along the two dimensions of regulatory style and structure in the first instance confirms Knill's and Lenschow's typification of British and German administrative patterns in environmental policy to be valid in the field of food safety policy as well. Similar to their classification, the findings on food safety arrangements lead to the typification of Britain being closest to the 'mediating ideal' and Germany corresponding with the 'interventionist ideal'. As mentioned above the British food safety enforcement structure consists of 600 different local authorities which, despite the centralized legislative, enjoy certain leeway in enforcing food safety legislation, as each officer can work within the priorities established at local level. The new instrument, introduced under the Food Safety Act 1990, of issuing of an improvement notice where an officer believes that a business is failing to comply with processing or hygiene regulations to some extent symbolizes this provided flexibility. Instead of immediately closing down the affected business it is within the officer's autonomy to evaluate the situation and create an incentive for the business to implement the required improvements. At this point it is worth noting that British food safety legislation provides certain room for an industry led self-regulating approach as well, which

applies to all sorts of retailers, regardless of their market size. As Harrison et al. (1997) found out in their study, the big corporate retailers, the so called 'super league' retailers, can fulfil their formal legal obligations with government more easily because of the nature of their management and hazard control systems at the local level, ensuring uniformity and consistency in food quality. The diversity and variability of in-house practice amongst the non-corporate food retailers means that such relationships are impossible, requiring a more flexible approach by the local enforcement officers.

German practice, by contrast, favours command-and-control food safety legislation. Irrespective of the countries' federal structure and its traditional corporatist character, the German food safety approach relies on uniform substantive standards within a corporatistically organized system of interest mediation. This interest mediation between governmental authorities and a number of specified lobbies, such as umbrella organizations representing industry and consumer interests, tends to be formal and legalistic. Hence, the federal government is placed as the central mediator and at the same time as the absolute supervisor of safety standards within this policy regime, allowing the reconciliation of interests between the various actors but at the same time upholding the legislative powers at the central level of the federal government. Here, similar to Knill's and Lenschow's observations on environmental policies, access to third parties is quite restricted, allowing for participation only in legally specified cases, as for instance in the (rare) cases of acute crisis with a certain need for specific expertise or publicly induced pressure for participation of actors originally situated outside the ordinary system. Summed up, in terms of regulatory style, German food safety legislation is characterized by a clear hierarchical structure which despite its corporatistic framework is solely oriented towards the federal government, in this case represented by the responsible national ministry as the pace setting institution. Furthermore this centralized legislative approach, unlike the British example, provides the responsible institutions at the federal state level with none or only little flexibility in terms of enforcing national food safety legislation.

The similarities in the style and structure of administrative patterns between food safety legislation and environmental policies in Britain and Germany, as established by Knill and Lenschow, can also be observed by looking at the regulatory structure in both countries. Although the legislative power in the UK rests traditionally at the central government, the institutional actors are highly fragmented and decentralized. Once implementation competences have been delegated to the regional or even to the district level there is no hierarchical control or inspection of local authorities' day-to-day performance by the central government; otherwise the flexible enforcement approach, as described in the paragraph above, would hardly be possible.

In Germany, despite the centrally organized legislative powers, the implementation of food safety legislation is the task of the federal state level (the Länder), thus one can in fact speak of a decentralized regulatory structure. However, since food safety is framed as a matter of public health, the responsible federal state ministries are not given great leeway in implementing the given

legislation, thus leading to a hierarchical co-ordination structure in this field of policy. These comparative findings are summarized in the following table:

Table 1: British and German administrative patterns in food safety legislation

	Britain	Germany
Regulatory style	'Mediating ideal'	'Interventionist ideal'
State intervention	- flexible - self-regulating	- no/low flexibility - hierarchical
Administrative interest intermediation	- formal - pragmatic - open	- formal - legalistic - closed
Regulatory structure	- sectoral fragmentation - non-hierarchical co-ordination	- sectoral fragmentation - hierarchical co-ordination

The findings on the administrative character of British and German food safety arrangements, as they were introduced in the preceding sections and summarized in table 1, indicate a high variance between the two countries' regulations. On the one hand is the British approach, whose patterns indicate a regulatory system which comes closest to the 'mediating ideal' based on a rather weak hierarchical co-ordination, whereas on the other hand the German approach of regulating food safety can be characterized as an 'interventionist ideal' with a clear hierarchical co-ordination structure. Put differently and as said elsewhere British food safety arrangements are characterized by "a liberal market regulation approach [...]; a regime that relies on self-regulation in the main sectors and allows only few state interventions" (Janning 2008: 73). In Germany, on the contrary, the formal legalistic regulatory approach is described as the central state "installed as supervisor of safety standards and consumers' interests, dominating the formulation of policies" and thereby fulfilling in general the "characteristics of a state centred protective policy" (ibid).

4.4.1 Regulation and enforcement of Council Directive 93/43/EEC

Having analyzed and elaborated on the nature of the respective national administrative arrangements, this section will address the regulation and enforcement of the directive 93/43/EEC and by going back to the findings of the previous paragraphs, this section gives evidence about the adaption pressure which the implementation of the directive exerts on the member states of observation and their administrative structures in this field of policy. Hence, before assessing the regulatory style and enforcement procedures of the directive, it should be emphasized at this point that this section does not follow the intention of analyzing the regulatory content and composition of the directive, this will be done subsequently in another chapter of this thesis; at this point it should only be noted that the horizontal directive on the hygiene of foodstuffs (DIR/93/43/EEC) is a framework directive which lays down the general rules of hygiene for foodstuffs and the procedures for verification of compliance with these rules. Moreover it establishes a general requirement for

hygiene at all stages of the food chain which is binding for all member states of the European Union.

In the light of two far-reaching events, namely the Schengen Agreement of 1985 which eliminated border controls between the national markets of the European Union and furthermore the Single European Act which set the deadline of 31 December 1992 to complete the single market, there arose growing demand from number of European actors and institutions, such as the European Parliament and member states as well as industry and commerce, to have horizontal Community legislation in the field of food hygiene. Consequently the Commission made an effort to harmonize the general principles of food control and food hygiene which ultimately lead to the adoption of directive 93/43/EEC by the Council of Ministers on 14 June 1993.

As evoked by the famous 'Cassis de Dijon' judgement of 1979 in which the Court of Justice in Luxembourg had reasoned amongst other things, that the results of official controls across the Community had to be accepted as being of equal value, European actors and institutions realised the necessity that the de facto free movement of goods also required a common set of rules that will apply throughout the community. On the other hand it was realized that this task seemed virtually impossible as agreement was rarely achieved as to what rules should be kept and what could be got rid of (Mossel 1995). Therefore, and being aware that eating habits and traditions vary throughout the (back then) 15 EC member states, the Commission in its communication of November 1985, 'Completion of the Internal Market: Community legislation on foodstuffs'² resolved to limit itself to protecting public health, providing consumers with information, ensuring fair trade (in the sense of correcting market failure), and providing for the adequate and necessary official controls. In the subsequent years European legislation was following the 1985 approach of harmonizing basic food law principles but leaving the way in which the law is actually enforced as a matter for the member states. In other words, as the recital of the Council Directive of 14 June 1989 on the official control of foodstuffs (89/397/EEC) outlines:

"Member states should be allowed a certain degree of freedom as to the practical means of carrying out inspections so as not to interfere with systems of proven worth which are best suited to the particular situation in each member state." (DIR 89/397/EEC)

In these premises the regulation and enforcement of Council Directive 93/43/EEC is no exception to this approach of offering member states certain leeway in enforcing EU legislation. However, in order to highlight some profound implications of the directive, in terms of regulatory competencies the directive facilitates an approach of self-regulation which is likely to be without precedent in the regulatory tradition of certain member states. Beyond that, by taking directive 89/397/EEC as a basis, DIR 93/43/EEC establishes certain measures in

² Commission Communication on Completion of the Internal Market: Community Legislation on Foodstuffs (1985) Com (85) 603.

the field of official food control that are likely to enter new ground in a number of the existing structures in member states' food safety arrangements.

Concerning the regulation and enforcement of DIR 93/43/EEC this section will limit its analysis on the regulatory style and structure as the regulatory content will be discussed subsequently in the corresponding chapter of this thesis. Ignoring the content of the legal rules at this point, it should be emphasised that the implied requirements which concern the hygiene of food are not universally binding, but allow for derogations. This means, for instance, that a food business operator can be exempted from a provision, if he can convince the food inspector that in his particular case compliance with that rule would not make sense (Mossel 1995: 292).

As already mentioned above the hygiene directive under investigation refers to the regulatory framework of directive 89/397/EEC when it comes to the enforcement of its regulation, as specified in the directive, "observance of the general rules of hygiene for foodstuffs should be controlled in accordance with Directive 89/397/EEC by the competent authorities of the Member States" (DIR 93/43/EEC: 1). These control procedures imply a relatively common and at the same time strictly binding framework of food safety enforcement which inter alia includes control of foodstuffs by state officials, that may take place at any stage in the process, from production to sale to the consumer, carried out both routinely and on suspicion. However, besides this more conventional interventionist approach directive 93/43/EEC pays special attention to an industry-led regulatory style of self-regulation in the field of food hygiene. Even though the so-called concept of Hazard Analysis and Critical Control Points (HACCP) has already been introduced in DIR 89/397/EEC, it is directive 93/43/EEC which made the HACCP principle its prime regulatory concept.

Dealing with the issue of ensuring food hygiene throughout the entire food chain ('from the farm to the fork') the directive delegates high degrees of responsibility and a number of tasks to the autonomy of the food industry. On this occasion the directive states under article 3.2 that

"food business operators shall identify any step in their activities which is critical to ensuring food safety and ensure that adequate safety procedures are identified, implemented, maintained and reviewed on the basis of the following principles, used to develop the system of HACCP:

- analysing the potential food hazards in a food business operation,
- identifying the points in those operations where food hazards may occur,
- deciding which of the points identified are critical to food safety - the 'critical points',
- identifying and implementing effective control and monitoring procedures at those critical points, and
- reviewing the analysis of food hazards, the critical control points and the control and monitoring procedures periodically and whenever the food business operations change" (DIR 93/43/EEC).

Noticeable, by increasing the importance of the HACCP principle in its legislation, directive 93/43/EEC stipulates the self-regulatory aspect of an industry-lead approach of ensuring a coherent standard in the area of food hygiene throughout the European Union. In this sense guides to good hygiene practice are an essential part of the concept of the directive, reinforcing the self-regulatory approach by obligating the member states to encourage the food industry to develop such guides. These guides to good hygiene practice are developed by the professional sectors together with other parties concerned, such as the government, the enforcement authorities or consumer organizations. Remarkable as a new approach of promoting horizontal food safety legislation, which pays particular attention to the differences in national regulatory arrangements in the field of food safety and administrative traditions in more general, once these guides are validated at a national level they are sent to the Commission which will make them available to other member states. Although these guides are of voluntary nature and thereby not enforceable under public law, meaning that failure to comply therewith does not automatically imply that unhygienic practices have been carried out, it is in the self-interest of the European food industry to build upon on a common set of hygiene standards (Moss 1995: 292). Consequently the directive fosters the completion of the single market in the sense that it promotes (to some extent voluntary) uniform customs in a very sensitive policy area by relying on the self-interest of the industry and thereby actively involving relevant stake holders which represent a broad range of political, consumer, and industry interests.

At the same time, however, the directive does not renounce the necessity of enforcing and monitoring the hygiene standards in food processing businesses by official institutions. On this occasion directive 93/43/EEC adopts and confirms the enforcement procedure of directive 89/397/EEC. Under article 4 it states that:

- "1. Inspections shall be carried out:
 - (a) regularly;
 - (b) where non-compliance is suspected.
2. Inspections shall be carried out using means proportionate to the end to be observed.
3. Inspection shall cover all stages of production, manufacture, import into the Community, processing, storage, transport, distribution and trade.
4. As a general rule, inspections shall be carried out without prior warning.
5. As a general rule, inspections shall, in each case, select the stage or stages which it considers the most appropriate for its examination from those listed in paragraph 3" (DIR 89/397/EEC).

These inspections shall be carried out, as article 6.2 implies, "by the competent [national] authority, with its own instruments of measurements taken with the instruments installed by the undertaking" (DIR 89/397/EEC). However, the directive also provides a perspective that, on the long run, these responsibilities may devolve to supranational jurisdiction on a European level. In this context, and in order to ensure that the application of this Directive is uniform

throughout the Member States, "the Commission shall, within one year of its adoption, make a report to the European Parliament and to the Council on:

- (a) the current standard of training provision for food inspectors in the Member States;
- (b) the possibility of establishing Community provisions on what should constitute the basic and further training of inspectors;
- (c) the possibility of establishing Community quality standards for all laboratories involved in inspection and sampling under this Directive;
- (d) the possibility of establishing a Community inspection service, including opportunities for all institutions and persons involved in the inspections to exchange information" (DIR 89/397/EEC: article 13).

Summarizing, the EU directive on the hygiene of foodstuffs presents an exceptional approach of harmonizing the diverse national arrangements on food safety, food hygiene in particular, while on the other hand maintaining competences of enforcement and inspection at the respective institutions at the national level of the EU member states. This somewhat unusual setting is made possible due to the nature of the recently established regulatory style of industry-lead self-regulation. Consequently the directive does not stipulate detailed sets of hygiene standards but rather provides a common and internationally approved procedure of ensuring such standards. Thereby it encourages the industry to follow these standards as they facilitate to finalise the common European market and as a consequence naturally serve the self-interests of the food industry. Practically food safety legislation remains within the competences of the member states and likewise the domestic food inspection arrangements remain for the most part unaffected. In terms of interest mediation the directive introduced the concept of guides to good hygiene practice and it obliges member states to encourage the food industry to develop such guides. Ultimately these guides are developed by the professional sectors together with other parties concerned, such as the government, the enforcement authorities or consumer organizations. Clearly this type of mediating interest intermediation, involving the entire spectrum of actors involved in the food business, is a necessary precondition for the effective implementation of a regulatory system which strives to be self-regulating in the long run.

4.4.2 'Match'/'mismatch' between EU legislation and national administrative arrangements in Britain and Germany

When transcribing the findings on the regulation and enforcement of Council Directive 93/43/EEC to the same framework as has been used when this thesis contrasted British and German food safety arrangements, we obtain the following result (see table 2 on the next page):

Table 2: 'Match'/'mismatch' between DIR 93/43/EEC and British and German administrative patterns in food safety legislation

Regulatory style	DIR 93/43/EEC		
	'Mediating ideal'	Britain 'Mediating ideal'	Germany 'Interventionist ideal'
State intervention	- flexible - self-regulating	- flexible - self-regulating	- no/low flexibility - hierarchical
Administrative interest intermediation	- informal - pragmatic - open	- formal - pragmatic - open	- formal - legalistic - closed
Regulatory structure	- depends on national arrangements	- sectoral fragmentation - non-hierarchical co-ordination	- sectoral fragmentation - hierarchical co-ordination

As presented in detail in the previous section the EU directive on food hygiene principally follows an approach of self-regulation and interest-mediation between the involved stakeholders. Table 2 illustrates that by following the evaluation criteria of the previously used regulatory patterns, the directive is more in line with the regulatory food safety arrangements utilised in the UK.

Directive 93/43/EEC offers a flexible approach of state intervention as the regulatory authority only prescribes the general principle of HACCP to be followed by food business. Compliance with these principles is delegated to an industry-led approach of self-regulation, following guides of good hygiene practice. As the directive obliges member states to encourage the food industry to develop such guides in a regulatory environment which brings together a number of actors and institutions concerned, the administrative setting clearly can be described as of informal, pragmatic, and open character.

Although the regulatory structure of food safety in the EU member states remains relatively unaffected by this directive and therefore still depends on national arrangements, the overall administrative character of directive 93/43/EEC shares a lot of features with the mediating ideal, found in the administrative food safety arrangements in Britain. It is therefore to be seen whether the implementation of the directive poses major difficulties to the administrative settings in Germany which, in the policy area of food safety, follow an interventionalist tradition.

V Policy uploading during the formation of the Council Directive 93/43/EEC

In order to provide reasons which explain the difference in member states' compliance with EU legislation in the field of food safety, the previous chapter has examined the different national administrative settings. Yet, the heterogeneity of domestic regulatory structures is not the only variable which is likely to affect compliance. Rather, as outlined in the theoretical chapter above, several scholars have provided various theoretical approaches of which one of them will provide the analytical framework of this chapter, namely the ways in which member states governments both shape European policy outcomes and adapt to them.

Following Börzel (2002) member states governments on the one hand share a general incentive to upload their domestic policies to the European level, seeing that the better the fit between European and domestic policies, the lower the implementation costs at the national level (Börzel 2002: 194). On this occasion in the first two sections this chapter will provide an examination of the regulatory content and composition of domestic food safety arrangements in Britain and Germany before the formation of DIR 93/43/EEC. The regulatory content and composition of the directive itself will be the focus of analysis in section three, before finally the last section of this chapter will provide a

comparison of the respective regulatory contents and, deriving from these findings, draw conclusions about whether the two member states of observation have been successful in uploading significant pieces of their regulatory content of food safety measures to the European level.

5.1.1 Regulatory content and composition of food safety legislation in Germany before the formation of DIR 93/43/EEC

Food safety arrangements in Germany in the time before the formation of directive 93/43/EEC underlied the principles of the Foodstuff and Utensils Law (Lebensmittel- und Bedarfsgegenständegesetz) (LMBG) which came into force on 1. January 1975. For more than thirty years (until it was substituted in September 2005) the LMBG represented the bases juridiques for processing and the placing on the market of foodstuffs and utensils which are likely to come into contact with foodstuffs. With its primary objectives of consumer protection and advertng the danger emanating from hazardous foodstuffs and utensils the LMBG to a large extent regulated German food safety legislation.

The LMBG is structured in nine sections with altogether fifty-five paragraphs. These cover a very broad spectrum of food related issues and, noteworthy, two sections even regulate the use of tobacco products and cosmetics. This elaboration will, however, limit its focus on those sections which are deemed of relevance for the issue of food hygiene since hygiene issues are the primary regulatory topic of directive 93/43/EEC. Furthermore, what is obvious right at the very outset of this analysis is that the Federal Republic of Germany does not seem to have horizontal food hygiene principles which are uniformly valid throughout its federal territory. Even though the legislative powers principally remain within the competences of the federal minister, the respective paragraph of the LMBG does not include clear cut legal provisions but confines itself to emphasize the general power of authority of the federal government in this field of policy.

"The Federal Minister [for Youth, Family and Health] is herewith authorized, in agreement with the Federal Ministers for Food, Agriculture and Forests and for Economics, by the use of statutory instruments and where necessary in accordance with the Bundesrat, in order to counteract the hazard of a sickening or elsewhere harmful effect, as caused by microorganisms, contaminations, smells, temperatures, weather influences, or processing or preparation processes, [...] to lay down standards which assure the flawless quality of foodstuffs from their production through their sale to the consumer. Where necessary the Federal Minister may delegate the power of authority to the federal state government, in order to take into account for exceptional local conditions" (LMBG § 10 (1)).

"The federal state governments are authorised to enact statutory instruments as long as the Federal Minister does not make use of his legislative power." (LMBG § 10 (2))

Remarkably § 10 (2) and the second sentence of § 10 (1) of the LMBG expound that even though the Federal Minister for Youth, Family and Health still holds the

legislative authority in the field of food safety, the legislative procedure and thereby the formation of the regulatory content is delegated to the federal state level. As a consequence, even though the respective food safety legislations may be indeed of horizontal scope with regard to food matters, their validity on the Federal Level may be termed vertical with regard to the geographical extent of their validity. Consequently, in order to reflect upon the regulatory content of German food safety legislation, the following will exemplarily examine the ordinance on food hygiene of Lower Saxony as one of the federal states with the biggest food processing industry in Germany. On this occasion the content of the hygiene regulation of Lower Saxony de facto acts as a representative for the corresponding legislative arrangements in the remaining fifteen federal states (Bundesländer). The ordinance is structured according to four main themes, namely foodstuffs, utilities, workspace, and personal. The following are legislative statements respectively assigned to each of the four themes:

- Highly perishable food has to be stored in a cool environment. Foodstuffs may be stored together with other foodstuffs only if it is ensured by means of packaging that the both cannot be affected unfavourably by the other.
- The sales counter and the work desk are obliged to be provided with a plain, gapless, easily washed off board or with an equivalent surface.
- The rooms in which foodstuffs are produced prepared and processed are obliged to be provided with walls which must be smooth and must be lined with a washable light-coloured covering or paint up to a height of 2 metres.
- Personal working with foodstuffs is obliged to keep themselves clean and must be dressed clean. Businesses dealing with foodstuffs are obliged to provide washing facilities comprising of soap, hand brush as well as one-way towels. (Verordnung über Lebensmittelhygiene 1976)

By reviewing these abstracted statements of food safety law in Lower Saxony it is evident that the content of the ordinance attaches great importance to laying down regulations very detailed and thereby provides little room for discretionary power by the enforcing food safety inspector. Moreover this stringent and specific set of rules is rather results oriented than providing process oriented guides of good practice and therefore further confirms this perceived factor of inflexibility on the part of both the hygiene inspections and the food business operators.

5.1.2 Regulatory content and composition of food safety legislation in Britain before the formation of DIR 93/43/EEC

At the time before directive 93/43/EEC has been implemented food safety in the UK, and therewith the regulations on food hygiene, were legally based on the Food Safety Act 1990 (FSA). Under paragraph 16.2(a) the responsible Ministers of Agriculture, Fisheries and Food and of Health are encouraged by the use of regulations to make provisions

"for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to contact materials which are intended to come into contact with food intended for human consumption" (FSA 16.2(a)).

These provisions are presented in more detail in schedule 1 paragraph 5.1(a)-(c) of the FSA. At this point the legislation provides further provisions for imposing food hygiene requirements as to

"the construction, maintenance, cleanliness and use of food premises, including any parts of such premises in which equipment and utensils are cleaned, or in which refuse is disposed of or stored" (FSA schedule 1: 5.1(a);

"the provision, maintenance and cleanliness of sanitary and washing facilities in connection with such premises" (FSA schedule 1: 5.1(b)); and

"the disposal of refuse from such premises" (FSA schedule 1: 5.1(c)).

When examining these paragraphs of British food law it is striking that detailed or even product specific rules of law are missing. Rather than providing fixed regulations, each of them applying to specific foodstuffs or their production process, the FSA is limited to laying down relatively unspecific provisions which are professed to the assurance of food hygiene in general. Consequently the question remains of how the competent authorities ensure the de facto transposition of these requirements in the respective companies of the food processing industry.

The answer in this matter lies within a systematic collaboration between these companies on the one hand and the responsible state authorities on the other hand. More specific, the approach of ensuring food hygiene as laid down in the FSA can be ascribed to the British Standards (BS) 5750 Quality systems, providing food safety legislation with a national standard for quality management systems. Although not being explicitly tailored to the issue of food hygiene, the standard generally implies that quality management must begin at the earliest planning stage and continue through design, manufacture and purchasing into service (Pierce 1991). Therefore the basic characteristics of British food regulations, and so to speak setting the British approach apart from German food safety (hygiene) regulations, is that it does not set out special, product based requirements with which firms need to comply but rather assesses the quality system as a whole by ensuring a practical standard for quality systems. By doing so the FSA follows an industry-lead approach of self-regulation whereas government authorities limit their activities to the provision and enforcement of basic requirements within the self-regulating framework of hygiene assurance.

In order to ensure the appropriate functioning of self-regulating hygiene assurance firms need to register to BS 5750 at the British Standards Institution. This registration implies that a firm's management system has been independently assessed and checked by a team of experts, experienced both in quality assurance and the technical conditions that apply in the particular area of foodstuff processing. Essentially and of great importance for the functioning of this approach of self-regulation is the clear definition of management

responsibility; consequently every registered firm is obliged to put in charge one manager with the necessary ability and authority as he constitutes the competent authority contact for government institutions by coordinating and monitoring the company's specific quality system. Beyond that he is made responsible to ensure that the requirements of BS 5750 are met, which in particular means the provision of a quality manual which documents all procedures governing the production of its particular product or service.

This documentation of precautionary hygiene arrangements as well as clearly defined personal responsibilities amongst food industry staff are the central approaches in the food safety concept as laid down in the Food Safety Act 1990 and have been fixed in the individual assessment of the company's specific quality systems by the British Standards Institution. These basic principles are laid down in paragraph 20 and 21.1 of the FSA, which, with regard to these elementary requirements, lays down the following regulation:

"Where the commission by any person of an offence under any of the preceding provisions of this Part is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person." (FSA 20)

Furthermore,

"in any proceedings for an offence [...] it shall [...] be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control" (FSA 21.1).

In summarizing it can be stated that the British approach of ensuring food safety in terms of hygiene, is less bothered by detailed and product specific regulations which horizontally prescribe requirements for each of the four main themes in the food business (foodstuffs, utilities, workspace, and personal), but strives to facilitate the proper functioning of an industry-lead approach of self-regulation. Therefore food processing firms are obliged to register at the competent authority, the British Standards Institution, where the functioning of their particular management system is assessed and checked by a team of experts, experienced in the respective field of food safety (Pierce 1991).

These observations on the content and composition of British food hygiene legislation, on the basis of the Food Safety Act 1990 in general and the implications of the British Standards (BS) 5750 in particular, to some extent correspond with Juke's (1993) characterization of modern food law systems whereas legislation is defined as a

"clear statement by the government of parliament of the country that there exists a boundary between what is acceptable and what is unacceptable. A national standard is defined and anyone operating a food business within the country has to operate at or above that minimum. It is then open to manufacturers and retailers to establish marketing policies which ensure that the minimum is met or exceeded" (Jukes 1993: 131).

Yet, what clearly sets the British example apart from this general evaluation of legislative food safety approaches is the existence of officially approved safety management systems which apply to food processing firms on an individual level, instead of a general standard as found in most other national food safety arrangements of modern-style.

5.2 Regulatory content and composition of DIR 93/43/EEC

As already mentioned briefly in a former chapter of this thesis, with regard to the completion of the internal market the Commission limited its legislative activities to essential requirements only. Namely, in its communication of November 1985 the Commission resolved to limit itself to protecting public health, providing consumers with information, ensuring fair trade (in the sense of correcting market failure), and providing for the adequate and necessary official controls to safeguard these intentions.

In the domain of food safety this approach has been implemented in practice by the introduction of Council Directive 93/43/EEC. The implications of this directive are not only reflecting the Union's commitment to integration from the viewpoint of the political class, but moreover pays tribute to the position of the European umbrella association of the food and drink industry which declared that "food hygiene is a main concern for the community food and drink industries" (CIAA 1991 in: Jouve 1994: 181) and that "the control of procedures to assure safety cannot be concentrated on any particular part of the food chain and appropriate control must be exercised throughout the [production] chain" (ibid). Consequently, in the light of ultimately similar ambitions shared by the Commission and the industry, the directive strove to introduce a common set of food safety regulations which apply throughout the Union and at all points of the food processing chain; thus making DIR 93/43/EEC the first horizontal directive on food hygiene, whereas its predecessors DIR 91/493, 92/5, and 92/46 were of vertical character aligned to product specific hygiene regulations.

Whilst the directive does not contain realignment in terms of observing the general rules of hygiene for foodstuffs since, and as mentioned in a previous chapter, the rules should be controlled in accordance with Directive 89/397/EEC. Instead the directive aims at aligning these rules by laying down the "general rules of hygiene for foodstuffs and the procedures for verification of compliance with these rules" (DIR 93/43/EEC: article 1). Right from the beginning the directive indicates its character as a framework directive by clarifying its jurisdiction as "all stages after primary production [of foodstuffs]" (DIR 93/43/EEC: article 2).

The general requirement for hygiene is established under article 3, the key part of the directive: First, it provides a rather broad commitment to the necessity of a hygienic food production cycle as it points out that "preparation, processing, manufacturing, packaging, storing, transportation, distribution, handling and offering for sale or supply of foodstuffs shall be carried out in a hygienic way" (DIR 93/43/EEC: article 3.1). Following it lays down more specific hygiene obligations under the subsequent paragraph:

"Food business operators shall identify any step in their activities which is critical to ensuring food safety and ensure that adequate safety procedures are identified, implemented, maintained and reviewed on the basis of the following principles, used to develop the system of HACCP (Hazard analysis and critical control points):

- analysing the potential food hazards in a food business operation,
- identifying the points in those operations where food hazards may occur,
- deciding which of the points identified are critical to food safety - the 'critical points',
- identifying and implementing effective control and monitoring procedures at those critical points, and
- reviewing the analysis of food hazards, the critical control points and the control and monitoring procedures periodically and whenever the food business operations change." (DIR 93/43/EEC: article 3.2)

While article 3.2 explicitly mentions the system of HACCP, Jouve (1994) points out that the directive only makes reference to the systems' principles, meaning that the HACCP system as such is not a formal requirement of the directive. What is enforceable instead is a

"systems approach which has to be developed under each food business operator's responsibility, integrating hazard analysis, risk assessment aimed at providing evidence that relevant safety hazards have been properly identified and assessed and that appropriate procedures for safety have been identified, implemented, monitored and reviewed" (Jouves 1994: 183).

This approach, as laid down under article 3, provides a certain degree of flexibility for the food business operators since the requirements of the directive allow to use different tools in order to comply with, as long as they follow the same principles as HACCP.

5.3 Contrasting the implications of DIR 93/43/EEC with the patterns of domestic pre-directive regulations

So far this chapter has reflected upon the content of pre-directive food safety legislation in Britain and Germany and introduced the regulatory content of DIR 93/43/EEC. This final section of chapter 6 aims at summarizing the existing findings by contrasting the implications of DIR 93/43/EEC with the patterns of domestic pre-directive regulations in the two countries. By means of this comparison an evaluation should be made to which degree Britain and Germany have been able to upload their domestic policy content to the European level. By comparing domestic food legislation with the directive, the following framework will make use of five patterns which ought to subsume the general conditions of the regulatory content.

The *scope* of the three food safety approaches does not show any greater divergence, as each approach can be characterized as a framework legislation which strives to establish horizontally valid food safety standards that are not

limited to a single product group or a certain part of the processing chain (cf. FSA 16.2(a); LMBG § 10 (1); DIR 93/43/EEC: article 2). Yet there indeed exist specific hygiene regulations in Britain and Germany for certain (sensitive) product groups, as the monitoring of shellfish in Britain or the special treatment of ground meat in Germany. But since the new EU directive on food hygiene does not interfere with country specific regulations which go beyond the common European standard on food safety, these special domestic regulations are not relevant in assessing the scope of the regulatory content of the compared legislations.

Whereas the scope of the compared approaches is virtually homologous, they differ in terms of how *specific* the content of the legislations regulates food hygiene. Here, in particular, the British and the European approach group in one pattern which clearly distinguishes from the specification of Germany's regulatory content. On the one hand British and European legislative content is based on laying down relatively unspecific provisions which are professed to the assurance of food hygiene in general and strive to be primary process-oriented (cf. FSA schedule 1 paragraph 5.1(a)-(c); DIR 93/43/EEC: article 3.1). On the other hand the specification of German legislation, as by way of example Lower Saxony's regulation on food hygiene, is of very detailed character, laying down stringent and specific rules for a variety of procedural steps in the food processing chain (cf. Verordnung über Lebensmittelhygiene 1976).

Building on the degree of specification, the room for legislative *interpretation* by both food business operators and official inspectors naturally differs as well. Whereas the process-oriented approach as pursued by Britain and the European Union provides certain room for the individual (business operators as well as state officials) to interpret the objective of food hygiene according to the actualities of the situation, the detailed and fixed content of German food safety legislation does not provide this scope for flexible interpretations or individually assessed inspections by state authorities which are tailored to the particular conditions of the business and the actually processed type of foodstuffs.

The fourth pattern of comparison between the different legislative contents is the business operators' *proof of compliance* with the hygienic requirements as laid down in the respective legislation. In this context German food legislation lacks a clear demand for businesses operators of particularly indicating their compliance with existing hygiene regulations. By recalling the explicitly laid down requirements of the food safety legislation it is only too clear that the proof of compliance is first and foremost supplied by a detailed field inspection through the competent authority, as contrasting the local conditions with the formulated legal requirements yields the easiest way of testing compliance with German hygiene regulations. A different approach is followed by the hygiene requirements as part of the British and European food safety legislation. Here it is not the field inspector as a representative for the state authorities who is in charge of checking for (non)compliance but it lies within the responsibility of the food business operator to establish evidence for compliance (cf. FSA 21.1; DIR 93/43/EEC: article 3.2). Both concepts are all the more comprehensible as they apparently reflect the respective general character of the specifications of German food safety legislation on the one hand, and British and European legislation on the other hand.

Finally, the last pattern strives to assess the overlying *principles* which dominate the regulatory content of the three legislative approaches. In German food hygiene standards are to be ensured by strictly prescribed requirements in the various stages of production and besides that regarding the technical realisation of the food processing chain. The fulfilment of these requirements is controlled at irregular intervals in a classical top-down manner with the state authority as the inspector and the food business operator as the entity to be inspected. On the contrary, the overlying principles of food safety legislation in Britain are more concerned to facilitate the proper functioning of an industry-lead approach of self-regulation. Instead of being limited to field inspections the British authorities emphasize the collaboration principle between the industries own management capabilities and the supervising role of the state authorities (cf. BS 5750). Likewise the overlying principles of DIR 93/43/EEC, with their special reference to identification and monitoring of critical control points, verification procedures and record keeping. These provisions should all be conducted by the industry; hence the directive implicitly references to HACCP as its guiding principle and consequently fosters the collaboration between industry and public authorities.

Summarizing it is comparatively obvious that generally speaking two clusters emerge when comparing the content of the three legislative approaches. On the one hand the German legislation whose content implies strict regulations, results-oriented and closely supervised by the appropriate authorities with little room for interpretation. On the other hand remains the cluster of British and European legislative content, being relatively unspecific, process-oriented flexible and assured by collaboration between the industry and public authorities in a (relatively) flexible manner. (See next page for a presentation of these findings in a condensed comparison)

Concluding, with regard to the question of each country's ability to upload its domestic arrangements these findings suggest that Britain performed rather successful in this matter, seeing that the pre-directive legislative content of British food safety regulation shares various patterns with the approach which has been formulated on the European level. On the other hand the legislative content of Germany's pre-directive regulations has hardly any pattern in common with the implications of the directive, which leads to the conclusion that Germany has not been successful in uploading its policy arrangements during the policy formulation process.

Table 3: Contrasting the implications of DIR 93/43/EEC with the patterns of domestic pre-directive regulations

	<u>Germany (pre-directive)</u>	<u>Great Britain (pre-directive)</u>	<u>DIR 93/43/EEC</u>
Legislative:			
Scope	- horizontal (with exceptions)	- horizontal (with exceptions)	- horizontal
Specification	- very detailed character - stringent and specific rules - results-oriented	- assurance of food hygiene in general - relatively unspecific - process-oriented	- assurance of food hygiene in general - relatively unspecific - primary process-oriented
Room for Interpretation	- closed - inflexible	- open - relatively flexible	- open - flexible
Proof of Compliance	- top-down - field-inspections	- collaboration - field inspections - guides to good practice	- collaboration - within national responsibilities - guides to good practice
Principle	- interventionist	- industry management (BS 5750)	- HACCP

VI The influence of institutional veto points

The influence of national institutional veto points is the third theoretical explanation this thesis strives to test for in the policy field of food safety legislation. In the previous chapter this thesis elaborated on the goodness of fit between EU legislation and national administrative arrangements (chapter 5) and member states' ability to shape European legislation by policy uploading (chapter 6). Yet, as indicated in the theoretical introduction, this thesis in total makes use of three theories in order to provide explanations for member states' non-compliance with regard to the European food safety approach.

Acknowledging the importance of the approaches mentioned above, Haverland (2000) points to the fact that according to the findings of his case study "the relative degree of adaption pressure is not of decisive importance for explaining variations in implementing records. [...] [Rather] it was decisive whether the national institutional opportunity structure provided domestic opposition with an institutional veto point which enabled them to modify the outcome" (Haverland 2000: 85). Therefore the following will investigate the implementation process of DIR 93/43/EEC in the two countries of observation and consequently provides an insight whether the veto points have mattered in these cases. On this occasion, and in terms of defining the objects of research, institutional veto points refer both to those points "*administrative* actors have at their disposal to block political and societal reform initiatives" (Knill 1998 in: Haverland 2000: 85, original emphasis), as well as the "institutional opportunity structures that grant *political* and *societal* actors access to the political process" (Haverland 2000: *ibid*, original emphasis). Moreover "institutional veto points refer to all stages in the decision-making process on which agreement is legally required for a policy change" (*ibid*).

6.1 Configuration of veto players and their behaviour during the implementation process of DIR 93/43/EEC in Britain

The United Kingdom is a unitary state. Therefore any administrative division exercises only those powers that the central government chooses to delegate. Consequently, in the case of food safety paragraph 4(1) of the Food Safety Act 1990 explicitly clarifies the competent authorities which hold function under the act, namely in relation to England and Wales, the Minister of Agriculture, Fisheries and Food or the Secretary of State and in relation to Scotland, the Secretary of State (FSA 1990, paragraph 4 (1)). Yet, since the devolved parliament in Scotland and Wales are not sovereign bodies, most legislative acts including food safety law, origins from the Parliament of the United Kingdom. Seeing that this allocation of competences does only refer to the *delegation* of authority on country level within the United Kingdom of Great Britain, namely the delegation of authority in England, Scotland, and Wales, this paragraph strives to provide a brief outline of legislative powers in Britain, in order to assess the decision-making-structures of Britain's legislative system and thereby the potential institutional veto points.

Britain is governed by a parliamentary system, meaning that parliament is the supreme legislative body in the United Kingdom, appointing the government which ultimately is answerable to it. In Britain, as in most Westminster systems, the parliament is of bicameral character, thereby consisting of the lower house (the House of Commons) and the upper house (the House of Lords). Hereof the de facto legislative body is the House of Commons, while the upper house practices restraint in exercising its constitutional powers and serves as a consultative body (Weir; Beetham 1999). The parliament alone possesses legislative supremacy and thereby ultimate power over all other political bodies in the UK and its territories; however, ultimately this configuration leads to the characterization of the House of Commons as the only institutional veto point within the British legislative system, as the power of the Lords to reject a bill passed by the House of Commons is severely restricted by the Parliament Acts 1911³ and 1949⁴. The Parliament Act 1911 restricted the powers of the House of Lords, both in relation to money bills and bills *other* than money bills. Under the provisions of the act the Lords lost the power to delay certified money bills for more than one month and to exercise an absolute veto over other public bills. This first Parliament Act (1911) was amended by Parliament Act 1949, which further limited the power of the Lords by reducing the time periods that the House of Lords could delay bills from two years to one year, as specified in the execution of the procedure (Kelly 2007).

Summarizing, with the aid of the two acts it is possible that legislation can theoretically be passed without the approval of the House of Lords. However, this barely happens in reality, as the rare use of the two acts indicates: Only three acts (1914, 1914, 1949) under the terms of the original 1911 Parliament Act and four acts (1991, 1999, 2000, 2004) since the 1949 Act have passed into law without the agreement of the Lords (ibid). This rather infrequent use of the two acts seems to indicate that there exists a distinctive procedure of interest intermediation between the upper and the lower house (Weir; Beetham 1999) or otherwise, that the legislative system provides certain room to overcome the potential veto of the House of Lords. In the case of the British implementation of DIR 93/43/EEC the second factor seems to prove true.

The implications of Council Directive 93/43/EEC have been implemented in Britain through the introduction of the Statutory Instrument 1995 No. 1763, namely the Food Safety (General Food Hygiene) Regulations which came into force on 15th September 1995. Likewise a number of other member states of the Union, Britain has restricted the implementation of the directive to the first five principles⁵ of HACCP (Forsythe; Hayes 1998); in doing so the new legislation for the most part built upon the basic legislative principles of the Food Safety Act 1990 which had already introduced the HACCP approach to British food safety legislation before the European directive has been set up. Moreover and at the same time especially noteworthy, the preamble of the regulation clarifies that the Minister and the Secretaries of State, respectively concerned with

³ available at: www.statutelaw.gov.uk/content.aspx?activeTextDocId=1069329

⁴ available at: www.statutelaw.gov.uk/content.aspx?activeTextDocId=1097466

⁵ cf. FSAI 2006

Agriculture, Fisheries and Food and health in England, Wales, and Scotland, hold their obtained competences of the new regulation solely "in exercise of the powers conferred upon them by sections 6(4), 16(1), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990" (Statutory Instrument 1995). Among these, section 48(1) can be valued of capital importance for the smooth implementation of the directive, as it empowers the competent authorities, as listed above, to modify existing food safety legislation if deemed necessary and thereby to bypass the conventional legislative procedure which implies the hurdle of a possible veto position by the House of Lords in this manner.

In the wording of the law, the exercised power which the new legislation refers to is as follows:

Any power of the Ministers or the Minister to make regulations or an order under this Act includes power—

(a) to apply, with modifications and adaptations, any other enactment (including one contained in this Act) which deals with matters similar to those being dealt with by the regulations or order;

(b) to make different provision in relation to different cases or classes of case (including different provision for different areas or different classes of business); and

(c) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, as the Ministers or the Minister considers necessary or expedient.

(Food Safety Act 1990: section 48(1))

Thereby, with this legislative provision, DIR 93/34/EEC has been implemented as a virtual elongation of the food safety provisions which were already in place in Britain and furthermore included the basic principle on which the EU directive has been built upon, namely HACCP. Consequently this implementation did not cause major difficulties in Britain, whereas it remains open to question whether the legislative procedure on the conventional way would have exerted greater tensions, acknowledging that the HACCP approach and accordingly the British food safety system in total enjoyed high recognition by the political sphere as well as by the industry (cf. chapter 5). Summing up, the transposition of the basic principles of DIR 93/43/EEC into British legislation has been successful both under the aspect of time (the directive ought to be implemented by December 1995) and, more important for this study, also with regard to the legislative content which unreservedly implied the basic principles of the directive, namely the commitment to HACCP. Therefore these findings suggest that the UK features a smooth compliance record in terms of DIR 93/43/EEC.

6.2 Configuration of veto players and their behaviour during the implementation process of DIR 93/43/EEC in Germany

The German political structure is of federal character, thus the legislative competences are shared between the federal government, legitimised by

parliament (the Bundestag), and the federal states, constituted in the Federal Council (the Bundesrat). Yet, legislative competences are not shared in a uniform manner; by way of example, on the one hand foreign affairs, the postal system, and industrial property rights fall within the exclusive competence of the federal government as laid down in the Basic Law (Grundgesetz 2009: article 71). On the other hand the federal states hold legislative competences in the field of education, police affairs, and media constitution (Grundgesetz 2009: article 70). Particularly important for this study on food safety, however, is that in some policy areas the legislative competences are not clearly separated but remain in concurrent legislation. This means that in principle the federal states indeed hold legislative competences, yet in practice they are only allowed to make use of this power in case the federal government does not accomplish its primary right of enacting legislation (Grundgesetz 2009: article 72 & 74). In terms of food safety regulations the concurrent legislative powers is laid down in Germany's Basic Law under article 74, section 1, paragraph 17 and 20 (Grundgesetz 2009). here the legislation lays down that the federal government is the prime-legislator in the "the promotion of agricultural production and forestry (except for the law on land consolidation), ensuring the adequacy of food supply, the importation and exportation of agricultural and forestry products, deep-sea and coastal fishing [...]" (paragraph 17), as well as in the general "law on food products including animals used in their production, the law on alcohol and tobacco, essential commodities and feedstuffs as well as protective measures in connection with the marketing of agricultural and forest seeds and seedlings" (paragraph 20).

Consequently the relevant legislative act in German food law, the Law on Foodstuff and Utensils (Lebensmittel- und Bedarfsgegenständegesetz), states that "the Federal Minister is herewith authorized [...] to lay down standards which assure the flawless quality of foodstuffs from their production through their sale to the consumer" (LMBG § 10 (1)). However, the legislation also points to the fact that "the federal state governments are authorised to enact statutory instruments as long as the Federal Minister does not make use of his legislative power" (LMBG § 10 (2))" (cf. chapter 6.1.2). Therefore and as previously elaborated on, whereas the federal government principally holds the authority to act as legislator and policymaker, the administration and management, implementation and the further elaboration of regulations is carried out by the federal states (cf. chapter 5.2).

This legal situation changed in the light of the implementation of DIR 94/43/EEC. In Germany the implications of the directive have been implemented by the introduction of the Foodstuffs Hygiene Ordinance (Lebensmittelhygiene-Verordnung) (LMHV) which came into force on 8. February 1998. This ordinance disestablished the formerly granted leeway of the federal states by replacing the state specific interpretations of hygiene requirements and at the same time established uniform hygiene standards to be applied throughout Germany (ProHoGa 1998); a process which has been realized on behalf of the German government, since the EU directive does not explicitly interfere with the particular division of competences on the national level. Beyond that, the standards as laid down in the LMHV are to be applied whenever the hygienic requirements of other regulations (concerning the processing of foodstuffs) or

the system of self-monitoring do not meet the minimum requirements of the ordinance.

Although in this case the executive does not require the approval of parliament for enacting the law, the legal system in Germany provides for the need of consent between the executive and the Federal Council for certain types of legislative acts. Namely the Basic Law prescribes

"that unless a federal law otherwise provides, the consent of the Bundesrat shall be required for statutory instruments issued pursuant to federal laws that require the consent of the Bundesrat or *that are executed by the Länder on federal commission or in their own right*" (Grundgesetz 2010: article 80, paragraph 2, my emphasis).

The conditions, as emphasized in the paragraph above, are obviously given in the legislative procedure of this research: Despite the federal government technically remains as the pace setting institution in the field of food safety policy, it delegates much of its authority to the federal states. Thus ultimately practical control, enforcement, inspection and thereby the interpretation of food safety legislation take place in the local municipalities. However, the ratification of executives' legislation by the Federal Chamber did not face formidable obstacles, therefore making the legal implementation of DIR 93/43/EEC relatively smooth at the national level.

Concluding, also the implementation of DIR 93/43/EEC into Germany's legislative framework showed a delay of 26 months the overall compliance record in this case may hardly be characterized as failure. First of all, Germany's food safety system featured some structural differences in comparison with Britain and more important in comparison with the implications of the EU approach. Moreover, by taking into account the strong position of the Federal Chamber as a potential veto institution, Germany's compliance performance is in this case rather satisfactory. Even though the transposition process in Britain has been completed more than two years earlier, Germany nevertheless established HACCP as the (entirely new) basic principle of its domestic food legislation; therefore the compliance record of Germany may be characterized as a success with only minor limitations.

VII Conclusion

The intention of this thesis was to gain further knowledge in the field of compliance research; more specific this thesis followed the intention to provide explanations on the question why some EU member states do not comply with EU food safety legislation whereas others do. The motive for this research question is due in particular to two factors whose interconnection bears fundamental repercussions on EU citizens' everyday life: the completion of the European Single Market on the one hand, as well as the effort of establishing a common European framework of food safety standards on the other hand. Moreover, at this point it should be noted that the latter factor poses an

indispensable necessity for the proper realization of the first factor on the long run, as national frameworks on food safety standards are likely to lose their validity in an economic area without trade barriers. Consequently this fact leaves room for two possible options, namely either the harmonization of national food safety arrangements or ultimately the resurrection of trade restriction in order to safeguard the prevailing national standards. As the latter would de facto result in the breakdown of any attempts of sustaining or even extending the European Single Market, it is nothing but the option of creating common European food safety standards, in order to adhere to the vision of getting the Union to grow together more closely.

Needless to say that the issue of diverging national standards versus the European Single Market is not restricted to the field of the processing and consumption of food, but more than that runs through the entire domain of economic relations, thereby equally affecting the interests of consumers and the industry. Hence the issue of food safety compliance as the guiding principle of this thesis has amongst others been chosen as a representative for the broader issue of harmonising national arrangements in the course of fostering the European Single Market. However, the choice for this particular has been made as every European citizen comes into contact with foodstuffs several times a day, thus there is hardly any traded product available which exerts greater influence on people's everyday life.

As a start, the following of this concluding chapter will come back on the initially established hypotheses and deriving from the obtained findings of this research, reflect upon whether these could be confirmed. In the closing up of this thesis the initial research question will be provided with an answer with the aid of the findings obtained in the course of this research; furthermore this last section strives to evaluate the significance for each of the different compliance theories with regard to the policy field of food safety.

7.1 Testing of hypothesis

As already signified above the topic of this thesis can be attributed to the field of compliance research; consequently the theoretical framework which has been used relies on different theoretical explanatory approaches that came up as a result of the research efforts, undertaken by various scholars in this field. Consequently, due to the number of methodical research that has been carried out, various theoretical explanations have emerged, each trying to grasp the theme of differing compliance records amongst the member states of the European Union. In this context and besides finding an answer to the actual research question, the second objective of this thesis was to utilise the different potential explanatory theories and thereby to assess which of these approaches proves to be feasible in providing an explanation for member states' compliance in a field of policy which lies beyond the original scope of each theory. Therefore a number of hypothesis have been set up, whose independent variables each reflect one of the theoretical approaches used in the analyzing chapters above. In the following these hypothesis are tested for their correctness.

First hypothesis: *A High contradiction between EU food safety legislation and the core elements of the corresponding national administrative arrangements leads to non-compliance in this specific field of policy.*

As had been set out in chapter five, the domestic food safety arrangements may vary significantly between Britain and Germany, being the two countries of observation. However, irrespective of the differences among the analysed food safety systems it remains crucial to investigate whether high contradiction between national administrative arrangements and the respective EU directive leads to non-compliance in the field of food safety. Thus the two countries of observation provide a good start for testing this hypothesis, seeing that the national food safety arrangements of one country is rather congruent with the implications of the directive whereas the other country originally followed a somewhat different approach.

In a nutshell, on the one hand is the British approach, whose patterns indicate a regulatory system which comes closest to the 'mediating ideal' based on a rather weak hierarchical co-ordination, whereas on the other hand the German approach of regulating food safety can be characterized as an 'interventionist ideal' with a clear hierarchical co-ordination structure (cf. chapter 5.3). This characterization makes some scholars speak of a "liberal market regulation approach" (Janning 2008: 73) in Britain, whilst Germany following a "state centred protective policy" (ibid).

On the other hand, the EU directive on the hygiene of foodstuffs offers a flexible approach of state intervention, as the regulatory authority only prescribes the general principle of HACCP to be followed by food businesses. Compliance with these principles is delegated to an industry-led approach of self-regulation, following guides of good hygiene practice. Therefore the overall administrative character of directive 93/43/EEC shares a lot of features with the mediating ideal, which can be found in the administrative food safety arrangements in Britain (cf. chapter 5.4.2).

However, even though the directive introduces an approach of ensuring food hygiene standards which in its basic principles varies tremendously in comparison with German food safety legislation, the directive contains a distinctive feature which enhances the chance of relatively smooth compliance throughout the Union. Namely, while introducing the necessity of a common system in terms of ensuring food hygiene, the regulatory structure of food safety in the EU member states itself remains relatively unaffected by this directive and therefore still depends on national arrangements. By fostering industry's accountability for food safety the directive may indeed contradict with the traditional approach of certain domestic food safety arrangements, but since the majority of the new approaches' implications are delegated to the food businesses, these amendments do not require a change within the core of the public administration. As a consequence, by reviewing the intense modification of domestic legislations' basic principles in Germany and nevertheless the relatively smooth implication of these principles, this hypothesis has to be rejected in the final analysis.

Second hypothesis: *The less successful member states have been in 'uploading' their own preferences to the EU level as the template for the joint standard, the more they try to resist during the 'downloading' process and as a consequence ultimately do not comply with EU food safety law.*

Whereas chapter five has demonstrated the diverging administrative configurations of the food safety systems in Britain and Germany, it has furthermore been elaborated on the content and composition of the respective regulations in the two countries. Chapter six has pointed out that the differences between the British and German food safety systems are not limited solely to the administrative arrangements but in addition to this diverge in their regulatory content and composition as well. Consequently, by proceeding from the assumption that both countries followed the attempt of shaping the respective EU directive in accordance with the regulatory content of their domestic legislation, it is deemed possible to deduce each countries' success of 'policy uploading' by contrasting the content of its pre-directive legislation with the actual implications of the drawn up EU directive. By following this logic chapter six points to major similarities in the legislative content of the British Food Safety Act 1990 and DIR 93/43/EEC; on the other hand the content of Germany's food safety legislation, the LMBG, is hardly reflected in the implications of the directive. As a consequence these findings suggest that Britain has been comparatively successful in 'uploading' specific features of their regulatory content, whereas Germany performed rather unsuccessful in this manner.

Yet, the impact of the countries' unequal 'uploading' result does scarcely reflect upon the transposition of the new food safety implications into national law (the 'downloading' process), as had been demonstrated by Germany's relatively smooth implementation of the directive with the introduction of the Foodstuffs Hygiene Ordinance (Lebensmittelhygiene-Verordnung) in the year 1998. The reason may be seen in the widely perceived acceptance of the HACCP principles (cf. chapter seven) as the basic approach of the new EU directive, which left Germany with no alternative but to implement these principles in avoidance of possible losses to its export-oriented food industry. Besides that, the question to which degree Germany has been actively trying to present its domestic legislation as a template for the new EU approach gives room for more research and is beyond the scope of this thesis.

Summing up, ultimately this second hypothesis has to be rejected.

Third hypothesis: *Member states whose political system features both a number of institutional veto points and a contradiction between EU legislation and the core elements of national administrative arrangements are the laggards in complying with EU Directives on food safety legislation.*

The previous paragraphs have shown that in terms of a contradiction between EU legislation and the national administrative arrangements the British example proved to be by and large in line with the European food safety approach whereas the case of German food legislation exhibited to some extent significant divergence in comparison with the directives' implications. Consequently, in order to test this hypothesis, this paragraph will therefore limit its elaboration on the case of Germany.

Manifested in the Federal Chamber (the Bundesrat) Germany's political system comprises a second institutional veto point which holds the authority to block draft legislation in certain cases; this also applies to legislation in the field of food hygiene (cf. chapter seven). Thus, both factors as implied by the hypothesis, namely a certain degree of misfit and an institutional veto point, are obviously present in Germany and furthermore in this specific case. Yet, contrary to the hypothesis' assumption Germany implemented the basic principles of the directive without greater difficulties into its national legislative framework. This outcome can be explained by considering two notable implications of the directive, which likely affected the voting procedure of the Federal Chamber, namely the directive's character and the changes it implied.

With regard to the first factor mentioned, one has to acknowledge that the implications of the directive indeed contradicted with Germany's formal and legalistic food safety approach which emphasised the responsibility of public authority in this manner. But as the basic principles of the directive fostered an industry-lead approach of self-regulation without however withdrawing public authorities' ultimate discretionary power, the directive did not really contradict with the *core* elements of national administrative arrangements but only adjusted the accountability regarding daily routine functions on food safety issues, thereby resulting in rather *moderate* adaption pressure.

Relating to the second factor, the changes implied by the directive were generally perceived as beneficial for the majority of the involved actors and institutions. In this context, the Federal Chamber assessed the introduction of the new approach to be less cost-intensive compared to the food safety arrangements previously in place, for both the food business operators as well as, most notably, the public supervisory authorities and hereby in particular those at the state and community level (cf. chapter seven).

Concluding, the exact conditions as implied by the hypothesis are neither given in Britain nor in Germany, as the directive in both countries does not contradict with the *core* elements of national administrative arrangements. Therefore it is not possible to test this hypothesis in an appropriate manner.

Fourth hypothesis: A low number of domestic institutional veto points results in high member state's compliance with EU food safety law.

The choice for Britain and Germany as the countries of observation is largely based on their difference in the number of institutional veto points, which poses on independent variable of this thesis. Therefore it is obvious that the selected countries demonstrate considerable variance on this variable, with one de facto institutional veto point in Britain but two institutional veto points in Germany. Yet, despite these differences both countries featured relatively smooth compliance with DIR 93/43/EEC, even though the EU legislation and Germany's pre-directive food safety arrangements were initially of contradictory character (see *addendum I* for possible explanation of the unproblematic implementation in Germany).

As a result of these observations although this fourth hypothesis can be proved valid, it has to be pointed out that the German case, as a system which comprises

a high number of institutional veto points, features a considerably good compliance record in this special case on EU food safety legislation; yet one has to acknowledge that in contrast to the British transposition process the respective German legislation came into force more than two years after the officially granted deadline.

Fifth hypothesis: Greater leeway given to the member states in implementing European policy in particular worsens the compliance records on EU food safety legislations in those member states that inhibit a number of institutional veto points.

The last of the five posted hypotheses assumes that greater leeway provided by the Commission to the member states in implementing EU legislation is ultimately used to make concessions to veto institutions and thereby worsens the compliance record of these countries. Yet, the findings of this research suggest that quite the opposite seems to be the case.

Whereas the directives' basic principle, namely self-regulation, has by then not been present in German food safety legislation, the directive provided enough leeway in implementing its objectives so that the member states (Germany in this case) were able to maintain the basic structure of their administrative arrangements, while at the same time adjusting their legislation to meet the standards of the objective. As the directive is less concerned about the administrative structure of each member state's food safety system but rather fosters a general burden shifting towards the food processing industry, Germany has been able to restructure the responsibilities within its administrative system according to its own preferences and thus has not been forced to establish a new institutional framework or even to delegate competences to the supranational level. On this occasion Germany organized its administrative structure in accordance with a more centralised approach while delegating much of the daily routine inspection procedures to the food industry. Both steps could ultimately be justified by potential financial savings and reduction of bureaucracy. In the light of these findings this fifth hypothesis has to be rejected.

7.2 Answering the research question

The initial research question which provided this thesis with an underlying problem definition reads as follows: Why do some member states not comply with EU food safety legislation whereas others do? In order to find an answer to this question and thereby obtain an explanation for the differing compliance records of the EU member states, the most common theoretical compliance approaches provided the theoretical framework of this research and furthermore have been translated into five different hypotheses which this thesis strived to test for. As the previous section has clarified only one of these hypotheses could ultimately be confirmed whereas the other either had to be rejected or their implied conditions did not match to the actualities of the observed case. Consequently the answer to the initial research question can only

be provided by taking into account the influence of domestic institutional veto points; a factor which the fourth hypothesis has proved to be valid in this case.

Notably Germany has been able to transpose the obligations of DIR 93/43/EEC into its national food safety legislation despite the previously analyzed contradictions between the frameworks' regulatory content and the legislative content of Germany's food safety arrangements. However, besides Germany's success in implementing the basic principles of the directive, the country ultimately failed to finalize this implementation within the time period which was granted by the EU. This translates into an exceedance of the time limit of more than two years, seeing that the new German food safety regulation came into force by February 1998 whereas the official implementation deadline has been set as December 1995. Britain on the contrary did not exceed the official time limit but implemented the directive right in time. In this context and in order to give an explanation for these time differences, the number of domestic institutional veto points certainly provides a crucial factor, as the two observed countries unveil substantial differences in their respective legislative process. Whereas the British government did not face the potential obstacle of a second institutional veto point, the legislative procedure in Germany unveiled a different picture as it provides an additional institutional veto point besides the federal government, namely the Federal Chamber.

Even though the Federal Chamber did not oppose the transposition of the directive in general, it drew up a number of requests which strove to amend the exact wording of the new law (cf. Bundesratsdrucksache 1997) and thereby substantially prolonged the formation of the new legislation. As indicated earlier these amendments did not touch the basic orientation or even the principles of the directive; nonetheless the behaviour of the Federal Chamber required a more extensive legislative procedure in Germany, when compared to the approach in Britain's legislative system which is characterized by only one institutional veto point. Consequently, in the course of these findings, the answer to the research question of this thesis must read as follows: The different compliance records of European Union member states in the field of food safety result of the diverse number of domestic institutional veto points.

7.3.1 Alternative interpretation of obtained findings and outlook on perspective research

The first section of this final part will provide an alternative interpretation of the findings that have been obtained in the course of this research and thereby elaborate on the scope for further research. Furthermore the second section of this part will reflect on this thesis' contribution to the current discourse on (partly) diverging compliance theories.

As has been demonstrated in chapter five, the domestic food safety arrangements in Britain and Germany featured fundamental differences in their respective regulatory structure ('who regulates') before the formation of DIR 93/43/EEC. Furthermore the regulatory content and composition ('what is

regulated') of food safety legislation in both countries were characterized by basic differences, as has been unveiled in chapter six. Beyond that, as the analysis has proven, the basic characteristics of the directive are largely congruent with the British food safety approach on both dimensions (regulatory structure and content), whereas they differ to the German legislation. In summary the above mentioned facts give reasons to expect that the proper implementation of DIR 93/43/EEC in Britain and Germany proceeded rather asymmetrically; yet this has only been the case with regard to the implementation at due date but less with regard to the proper implementation of the respective legislative content.

Whereas the relatively smooth implementation process in Britain does not depict as an exceptional case, acknowledging the advantageous legislative arrangements that were already in existence and the de facto nonexistent institutional veto points, the German implementation record can be described different than initially anticipated. Despite both the partially contradiction between the domestic arrangements and the implications of the EU approach as well as the existence of an institutional veto point which hold the power to impede the directives' implementation, Germany did not suffer a severe setback when translating the directive's implications into national law. In order to provide an explanation for this implementation performance, the two factors that can be assessed most influential for this fact are the implementation leeway granted to the member states on the one hand and the domestically perceived necessity for policy change on the other hand.

For one thing the former factor enhanced Germany's implementation capability by providing room to establish a domestic food hygiene framework which meets the commonly introduced standard while maintaining the basic character of the domestic administrative arrangements. Thereby the directive indeed harmonized food policy outcomes but did not interfere with the politics of national administrative traditions.

For another, various actors involved in the policy arena of food safety perceived the necessity to harmonize the European standards for food hygiene, seeing that HACCP as the basic principle of the new European approach towards food safety entails a high level of awareness in both areas, the political/scientific arena as well as the food processing industry, which ultimately is affected the most by the implications of DIR 93/43/EEC. On this occasion there were numerous papers, conferences and symposia which have propagated the HACCP concepts, principles and logical sequence of activities. Herewith one should mention one of the most regarded scientific surveys back then, namely the report of the Advisory Committee on the Microbiological Safety of Food (1990) which stated that "the adoption of the principles of HACCP at all stages of food production will greatly enhance food safety" and consequently recommended that "all food processes should be designed on HACCP principles" (Richmond 1990).

Beyond that, the food industry signalled that from their standpoint the HACCP concept has been assessed of providing favourable outcomes, as well. In their written opinion on food hygiene (1992) the Confederation of the Food and Drink Industries of the EC laid down that "food hygiene is a main concern for the

community food and drink industries" (CIAA 1991, in: Jouve 1994: 181) and that "the control of procedures to assure safety cannot be concentrated on any particular part of the food chain and appropriate control must be exercised throughout the chain" (ibid); thus an ambiguous statement in favour of the Europe-wide introduction of HACCP as the common standard on food hygiene.

Concluding, the awareness of the advantages of the HACCP, spreading on a broad level of the (international) political and societal sphere, can be named as a cause which clearly facilitated the substitution of the previous food safety system and as a result any potential conflict originating from the domestic reallocation of administrative competences has been overshadowed by the perceived necessity to effectively complete the implementation process of the directive. Beyond that, as the influence of societal actors on the formation of EU food safety policies still lacks comparative data, this theme provides room for prospective research in this field of politics.

7.3.2. Appropriateness of compliance theories in the case of EU food safety

Besides the initial research question another motive of this thesis was to test for the appropriateness of the currently most established compliance theories by extending their scope to the field of EU food safety policies; consequently the formulated hypothesis of this study have taken account of this intention. Notably in the course of the findings of this research a number of hypotheses had to be rejected or could not be tested in an appropriate manner. However this fact does not imply that each corresponding theory proves to be ultimately inapplicable in this field of policy. Rather the findings of the case study suggest that in the field of food hygiene standards a policy tool has been used by the Union which allowed overcoming the implications of various compliance theories. Implicitly, the EU approach to harmonize food safety standards suggested that the new regulations will be beneficial for the entire spectrum of involved actors and institutions. Naturally this promise holds true for most promoted policy approaches; yet, in this case the directive has successfully been depicted to create a policy situation in which there appear to be only winners, no losers.

On the part of the Union, the ultimate benefit was the consolidation of the Single Market due to the harmonization of previously diverse food hygiene standards. Moreover, in the first instance the 'absolute advantage' as the result of a European single market is especially beneficial for each particular member state as well. Beyond that the directive was even more attractive to the member states since while the directive harmonized food standards, the jurisdiction in this field remained within the responsibility of the member states, which were allowed to maintain the basic principles of their administrative arrangements or autonomously reorganise their food safety enforcement system respectively. So far the beneficial characteristics of the directive in the first place refer to the policy pace setters, namely the EU itself and the member states. However, the directive also provided an advantage for those policy actors which ultimately could make use of institutional veto points and thereby impede the legislative process. In fact, the responsible public institutions (as an *administrative* actor)

did not oppose the implementation of the directive since ultimate responsibility for food safety enforcement remains within their competences. The federal states (as a *political* actor) did not impede the directive as the implementation did not translate into additional expenditure, indeed the implications of the new approach implied deregulation and thereby lower costs for the federal level. Finally, the industry (as a *societal* actor) even expressed its demand for a new regulatory approach, seeing that a common regulatory framework lowered the transaction costs for ensuring food safety standards and additionally, whereas a self-regulatory approach enhanced industries' responsibility in this field, it also allowed for a more flexible approach that individually corresponds with local conditions. For the reason of these facts the implementation of the directive did not cause severe problems in both countries of observation, even though it has to be acknowledged that the German case unveiled an implementation problem with regard to the intended deadline which has been set by the Union. However, this does not mean that the theories at hand proved to be not correct in this case; rather the Union's food safety approach has been designed to bypass possible setbacks and therefore trying to reduce the influence of commonly known hindrances to member states' compliance, such as domestic institutional veto points, by providing a certain leeway in implementing the directive; hence avoiding to force a problematic change within the national administrative core.

Concluding, while the 'leeway-approach' provides an alternative explanation for the implementation records in the observed case, these interpretations still lack substantial data and thereby give room for prospective research. On the other side, and as has been shown by the original answer to the research question, the compliance theory on the influence of domestic institutional veto points proved to be the most applicable approach to explain the compliance records of this case: As the directives' framework has indeed weakened the relevance of the respective administrative arrangements, it is yet not within the competence of the directive to overcome the actual share of legislative power within the member states; thereby the domestic institutional veto points preserve their influence on member states' compliance with EU law.

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