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The Rise of Transnational Private Meta-Regulators

Paul Verbruggen

Tetty Havinga

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The TBGI Project

Transnational initiatives to regulate business activities interact increasingly with each other and with official regulation, generating complex governance ensembles. Heterogeneous actors and institutions interact at multiple levels and in various ways, from mimicry and cooperation to competition and conflict. The TBGI Project investigates the forms, drivers, mechanisms, dynamics, outputs and impacts of transnational business governance interactions (TBGI) from diverse theoretical and methodological perspectives. It is funded by a Social Sciences and Humanities Research Council of Canada grant led by Professor Stepan Wood, Osgoode.

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Keywords:
Meta-regulation, transnational private regulation, legitimacy, food safety, advertising

Author(s):
Paul Verbruggen
Assistant Professor
Radboud University
Nijmegen, Netherlands
E: paul.verbruggen@jur.ru.nl

Tetty Havinga
Associate Professor
Radboud University
Nijmegen, Netherlands
E: t.havinga@jur.ru.nl

The Rise of Transnational Private Meta-Regulators

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Abstract

In recent years scholars from various disciplines have turned their attention to transnational regimes of regulation that are chiefly developed outside state-driven frameworks. The rise of such "transnational private regulation" has also led to the emergence of private meta-regulation. The term 'meta-regulation' commonly refers to processes through which a regulatory body oversees another and sets standards for its activities or performance of regulation. In the public domain, meta-regulation has been associated with the devolution of regulatory activities by a statutory body to private actors with the view to enhance voluntary rule compliance, awareness of responsibilities among the regulated and reduce public enforcement costs. However, in the transnational private domain the rationale for meta-regulation appears to be a different one. We contend that meta-regulation in this domain is less concerned with the goal of enhancing rule compliance and efficiency in enforcement, but instead is more prominently concerned with the bolstering of the integrity, legitimacy and accountability of private regulatory regimes and the coordination between such regimes. To furnish this argument the paper develops a comparative analysis of two sectoral private meta-regulators involved in transnational private regulation: the Global Food Safety Initiative in the food industry and the European Advertising Standards Alliance in the advertising industry. These two organisations have developed guidelines, benchmarks and performance indicators for other private bodies involved in transnational regulatory activities. The comparative analysis is focused around four principled and interlinked questions: (i) What has driven the emergence of meta-regulation in the private regulatory domain?; (ii) What are the forms and functions of private meta-regulation?; (iii) What is its relationship with public regulation and regulators?; and (iv) How and to what extent does private meta-regulation contribute to the legitimization of transnational private regulation?

Introduction

In recent years scholars from various disciplines have turned their attention to transnational regimes of regulation that are chiefly developed outside state-driven frameworks. This 'transnational private regulation' is complementing, competing and at times serving as an alternative to national and international public law frameworks for the regulation of (global) business across a wide range of industries and sectors.[1] The development has spurred scholars to revisit familiar concepts such as legitimacy and accountability,[2] and challenges public actors to rethink regulatory policies.[3]

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[*] Assistant Professor of Private Law and Associate Professor of Law & Sociology both at Radboud University,

[1] T. Bartley, 'Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions' (2007) American Journal of Sociology 113(2), 297-351; D. Vogel, 'The Private Regulation of Global Corporate Conduct', in W. Mattli and N. Woods (eds), *The Politics of Global Regulation* (Princeton University Press, Princeton 2009), pp. 151-188, at 153-154; and C. Scott, F. Cafaggi and L. Senden, 'Introduction: The Conceptual and Constitutional Challenge of Transnational Private Regulation' (2011) *Journal of Law and Society* 38(1), 1-19.

[2] Scott, Cafaggi and Senden (n 2), at 14-15.

[3] The OECD has recently released a study on 'International Regulatory Co-operation' (April 2013) in which it flags transnational private regulation as a relevant trend to be taken into account by government in developing policies on international cooperation between regulatory actors. The OECD report is available at: http://www.oecd.org/gov/regulatory-policy/transnationalprivateregulation.htm (accessed May 2014).

The emergence of transnational private regulation has also led to the rise of private meta-regulation. The term 'meta-regulation' commonly refers to processes through which a regulatory body oversees another and sets standards for its activities or performance. In the public domain, meta-regulation may involve the devolution of regulatory activities by a statutory body to private actors with the view to enhance voluntary rule compliance, awareness of responsibilities among the regulated and reduce public enforcement costs. However, in the private domain the rationale for meta-regulation appears to be a different one. We contend that meta-regulation in the private domain is less concerned with the goal of enhancing rule compliance and reducing administrative burdens – as is usually discussed in the literature in relation to government-led meta-regulation – but instead is prominently concerned with the bolstering of the capacity, credibility and legitimacy of private regulatory regimes, and the coordination and convergence between such regimes.

Similar functions of meta-regulation were recently highlighted by Loconto and Fouilleux (2013) and by Derkx and Glasbergen (2014). The first couple focused on the rise of the ISEAL Alliance as the global association for social and environmental standards.[4] They argue that ISEAL facilitates the shaping of an organizational field for sustainability by institutionalizing and legitimating specified actors, tools and practices. More specifically, they content that: *"*ISEAL actively builds institutions to shape, provide cohesiveness to, and discipline the sustainability field through the development of a series of meta-codes which fulfil two main purposes: harmonizing procedures among ISEAL members, and establishing the borders between insiders (credible standard schemes) and outsiders (non-credible standards schemes)."[5] Derkx and Glasbergen compare ISEAL with other transnational private meta-regulators in the field of fair labor (JO-IN), sustainable tourism (GSTC), and organic agriculture (ITF).[6] They note that all four organizations use two 'pathways' to enhance the effectiveness of sustainability standards: one concerns the procedural harmonization of the standards setting and certification processes to negotiate a 'consensus standards' and the other concerns the activities 'to enhance the capacity of individual standards initiatives to bring about, verify, and reward compliance with these standards'.[7] Accordingly, they also highlight the capacity-building and coordination functions of private meta-regulation at the transnational level.

We contribute to the current debate on the meta-regulation of transnational private standards by engaging in a comparative analysis of two sector-specific transnational private meta-regulators not addressed by the studies noted about, namely the Global Food Safety Initiative (GFSI) in the food industry and the European Advertising Standards Alliance (EASA)

[4] A. Loconto and E. Fouilleux, 'Politics of Private Regulation: ISEAL and the Shaping of Transnational Sustainability Governance' (2013) *Regulation & Governance*, DOI: 10.1111/rego.12028 (accessed May 2014). The ISEAL Alliance, an international non-profit organization that codifies best practices for the design of (transnational) private regulatory initiatives concerned with social and environmental issues. Its membership includes amongst others the Forest Stewardship Council, the Marine Stewardship Council, Fair Trade International, UTZ and the Rainforest Alliance. Since 2004, ISEAL has developed standards of best practice for adopting social and environmental regulatory standards. The latest version of these standards is embedded in the 'Standard-setting Code' (2010). More recently, ISEAL also developed an 'Impacts Code' (2010) and an 'Assurance Code' (2012), detailing best practice on performance evaluation and monitoring and enforcement of standards. See: ISEAL Alliance, 'Our Codes of Good Practice', http://www.isealalliance.org/our-work/defining-credibility/codes-of-good-practice (accessed May 2014).

[5] Ibid, 14.

[6] B. Derkx and P. Glasbergen, Elaborating 'Global Private Meta-governance: An Inventory in the Realm of Voluntary Sustainability Standards' (2014) *Global Evironmental Change* 27, 41-50.

[7] Ibid, p. 49.

in the advertising industry. Both organizations develop guidelines, benchmarks and performance indicators for other private bodies involved in the transnational regulation of business activities by processes of standard-setting, compliance monitoring and enforcement. The comparative analysis is focused around four principled and interlinked questions: (i) What has driven the emergence of meta-regulation in the private regulatory domain?; (ii) What are the functions of private meta-regulation?; (iii) What is its relationship with public regulation and regulators?; (iv) How and to what extent does private meta-regulation contribute to the legitimization of transnational private regulation? These questions contribute to answering the central question of this paper: How can we explain the emergence of meta-regulation in transnational private regulation?

The paper is structured as follows. We first define the concept of meta-regulation (1). Next, we examine the ways in which meta-regulation has emerged in transnational private regulatory regimes in the issue areas of food safety (2) and advertising (3). The findings of this analysis are discussed and compared afterwards (4). Concluding observations follow (5).

1. Debating Meta-regulation

What do we mean by "meta-regulation"? As Coglianese and Mendelson have noted, there is no agreement on the definition of meta-regulation.[8] While for some scholars the concept is linked to the 'state's oversight on self-regulatory arrangements',[9] for others the concept is wider and involves the use of control and steering mechanisms between different regulatory actors and levels of regulation. Parker appears to capture the common core of study of meta-regulation by holding that it principally concerns the activity of '(...) regulating the regulators, whether they be public agencies, private corporate self-regulators or third party gatekeepers'.[10] As such, a meta-regulatory approach requires a change in the function of the regulatory body. Rather than carrying out regulatory tasks itself, the body is primarily concerned with the oversight and control of regulatory activities undertaken by other actors, possibly also at other levels of regulation. The regulator (the meta-regulator) may respond if the other (the first tier regulator) does not meet the conditions the former set as part of the framework for meta-regulation. Accordingly, the role of the meta-regulator changes from – what Osborne and Gaebler have famously called – *rowing* to *steering*.[11]

There are many different forms of meta-regulation. Most discussed in the literature is the public control and oversight of private regulatory activities. In this context, government control over *individual* and *collective* initiatives of private regulation have been analyzed through the lens of meta-regulation. In the first form, the thrust of meta-regulation is concerned with the regulation of company-specific risk management systems. Then, meta-regulation overlaps with the concepts of "enforced self-regulation",[12] "management-based

[8] C. Coglianese and E. Mendelson, 'Meta-regulation and Self-regulation' in M. Cave, R. Baldwin and M. Lodge (eds), *The Oxford Handbook of Regulation* (Oxford University Press, Oxford 2010), 146-168, 147.

[9] B. Hutter, 'Risk, Regulation and Management', in P. Taylor-Gooby and J. Zinn (eds), *Risk in Social Science* (Oxford University Press, Oxford 2006), 202-277, at 215.

[10] C. Parker, *The Open Corporation: Effective Self-regulation and Democracy* (Cambridge University Press, Cambridge 2002), p. 15.

[11] D. Osborne and T. Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, Reading, MA: Addison-Wesley 1992 as cited in R. Baldwin, M. Cave and M. Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (2nd edn, Oxford University Press, Oxford 2011), 147.

[12] J. Braithwaite, 'Enforced Self-Regulation: A New Strategy for Corporate Crime Control' (1982) *Michigan Law Review* 80(7), 1466–1507; and R. Fairman and C. Yapp, 'Enforced Self-Regulation, Prescription, and Conceptions of Compliance within Small Businesses: The Impact of Enforcement' (2005) *Law and Policy* 27(4), 491-519.

regulation"[13] and "process-oriented regulation".[14] In all of these forms of meta-regulation attention is drawn to the importance of law and legal institutions to build commitment and capacity among firms to self-regulate and resolve non-compliance internally and without the help of public actors.[15] In the second form, collective, industry-wide regulatory activities are submitted to public control and oversight. This principally concerns the regulation of self-regulatory bodies through law or executive action. Bomhoff and Meuwese have argued that even the disciplines of Better Regulation and Private International Law may constitute examples of meta-regulation for regimes of transnational private regulation, because these disciplines include rules that regulate the activities and performance of these regimes.[16]

Meta-regulation, in our view, is not limited to the control and oversight by public actors of private regulatory activities. If regulation is broadly conceived as being concerned with the attempt to influence the behavior of others that is non-exclusionary to the state and that involves processes of standard-setting, monitoring and enforcement,[17] meta-regulation is not a strategy of which the use is restricted to public actors, but may be applied by private actors vis-à-vis both public and private regulators.[18] Importantly, also the activity that is subject to meta-regulation may not be limited to one specific phase of the regulatory process, and may address standard-setting, monitoring and enforcement activities or a combination thereof. A meta-regulator may thus set criteria only for the standard-setting activities of another regulator, while not addressing the latter's monitoring and enforcement activities. A regulator may also engage with another regulator for the specific purpose of monitoring and enforcement, while retaining full control over its own standard-setting.[19] This also implies that the rules being monitored and enforced through a meta-regulatory approach, need not necessarily be meta-regulatory in nature, although that can be the case.

We observe that in much of the literature on meta-regulation there is a focus on (A) the oversight and control activities of public actors over private regulatory activities; and (B) with the objective to enhance voluntary rule compliance, awareness of responsibilities among the regulated and reduce public enforcement costs. Parker, for example, discusses meta-regulation as the public regulation of corporate self-regulation and engages in an analysis of the effectiveness of such an approach in a broad range of areas, including

[13] C. Coglianese and D. Lazer, 'Management-based Regulation: Prescribing Private Management to Achieve Public Goals' (2003) *Law and Society Review* 37(4), 691-730.

[14] S. Gilad, 'It runs in the family: Meta-regulation and its siblings' *Regulation & Governance* 2010-4, p. 485-506.

[15] Baldwin, Cave and Lodge 2011 (n 8), 149.

[16] J. Bomhoff and A. Meuwese, 'The Meta-regulation of Transnational Private Regulation', *Journal of Law and Society* 38(1), 138-162.

[17] Black has coined such understanding of regulation as 'decentred' or 'polycentric'. See: J. Black, 'Decentring Regulation: Understanding the Role of Regulation and Self Regulation in a "Post-regulatory" World' (2001) *Current Legal Problems* 54, 103–146. See also: C. Scott, 'Regulation in the Age of Governance: The Rise of the Post-Regulatory State' in: J. Jordana and D. Levi-Faur (eds), *The Politics of Regulation. Institutions and Regulatory Reforms for the Age of Governance* (Edward Elgar Cheltenham 2004), pp. 145-174.

[18] See also Scott, who holds that the core of meta-regulation is the idea that '(…) all social and economic spheres in which governments or others might have an interest in controlling already have within them mechanism of steering – whether through hierarchy, competition, community, design or some combination thereof.' Then, it is a matter of tuning into that mechanism of steering for meta-regulation to manifest. See: C. Scott, 'Regulating Everything: From Mega- to Meta-regulation' (2012) *Administration* 60(1), 61-89, at 82.

[19] See for an analysis of how the public authority responsible for the monitoring and enforcement of food safety regulation in the Netherlands seeks to engage with private actors to devolve a share of this monitoring and enforcement tasks: P. Verbruggen and T. Havinga, 'Meta-toezicht in voedselveiligheid', (2014) *Tijdschrift voor Toezicht* 5(1), 6-32.

consumer protection, sexual harassment and environmental compliance.[20] Ayres and Braithwaite describe enforced self-regulation, which is considered the most salient form of meta-regulation by several authors,[21] as a model of regulation comprising two key elements: "(1) public enforcement of privately written rules, and (2) publicly mandated and publicly monitored private enforcement of those rules."[22] These authors describe this model to have several comparative advantages over traditional forms of regulation, including the increase of compliance rates and the reduction of administrative burdens and public enforcement costs.[23] Empirical evidence shows that meeting those objectives may prove difficult (if not impossible) if applied to a field in which the regulated firms largely consist of small and medium-sized enterprises.[24]

Current developments in the field of transnational private regulation do not match the configuration and objectives of the meta-regulation previously described in much of the literature. In the absence of competent public actors, meta-regulation in this field is pursued by private, business associations. We argue that their activities do not merely concern the monitoring and enforcement of transnational private standards, but also include standard-setting procedures and impact assessment.[25] Also, the objectives of this meta-regulation differ. As we contend, the goal is not solely related to increasing rule compliance and administrative burden relief, but to enhancing the capacity, credibility and legitimacy of private regulatory regimes, as well as the coordination and convergence between such regimes. We will furnish our argument by developing a comparative analysis of the Global Food Safety Initiative and the European Advertising Standards Alliance in the following sections.

2. Global Food Safety Initiative

Transnational private food safety standards

Transnational private food safety standards play a significant role in the regulation of global food supply chains. In the aftermath of the BSE crisis and other food safety incidents, the food processing industry and major food retailers developed initiatives for decreasing food safety risks and increasing consumer confidence in food. Since the 1990s, large retailers and their organizations are playing an active role in food safety regulation. They initiated private food safety standards and compelled suppliers of food products to comply with these standards.

Several factors contributed to the rise of private food safety standards. A first is that traditional governmental regulation seemed to fail to effectively ensure safe food supply.Moreover, the increased internationalization of food supply chains challenges the capacity of national governments to control food safety issues as their powers are limited to the national territory. At the same time issue salience of food safety increased. Due to their

[20] Parker 2002.
[21] Coglianese and Mendelson 2010, 150; Gilad 2010.
[22] I. Ayres and J. Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, New York 1992) 116.
[23] Ibid, 110-116.
[24] Fairman and Yapp 2005, 516.
[25] For ISEAL see: Loconto and Fouilleux 2013 and F. Cafaggi and A. Renda, 'Public and Private Regulation. Mapping the Labyrinth' (CEPS Working Document No 370/2012), http://www.ceps.eu/book/public-and-private-regulation-mapping-labyrinth, at 20-23.

legal responsibility and because of fear for potential reputation damage in case of unsafe food products, the food processing industry and retailers developed initiatives for decreasing food safety risks and increasing consumer confidence in safe food. A relatively small number of large grocery retailers gained significant economic and political power through a series of mergers and take-overs,[26] which enabled them to to expand their grip on the global and domestic food supply chain.

In the 1990s, several supermarket chains and large food manufacturers established their own food quality control systems to evaluate to what extent their suppliers complied with food safety standards..[27] Food retailers joined forces to harmonize these private control systems through the creation of national collective standards such as the British Retail Consortium Food Technical Standard (BRC) in the UK. In due course, these national private certification schemes extend across geographical borders and evolved into transnational or even global schemes. This happened in two ways. First, supermarkets source products globally and want to ensure these products meet high quality and safety standards. To that end, they require suppliers from all over the world to comply with the same retail-standards. Second, retailers abroad adopted foreign food safety standards..[28] For example, the BRC standard is now accepted by many supermarkets across the world.

Today, the leading private food safety standards are governed by either multinational retailers or representatives from different national retail associations. These are the standards of the BRC (British Retail Consortium Global Standard for Food Safety), IFS (International Featured Standards Food standard), SQF (Safe Quality Food standard) and GlobalG.A.P. (Global Partnership for Good Agricultural Practices standards).[29] This private food safety system is very attractive for food retailers and branded manufacturers because it 'reassures retailers and branded manufacturers of the capability and competence of the supplier, and reduces the need for retailers and manufacturers to carry out their own audits'.[30] The main costs of the system are borne by the certified firms and buyers still have a lot certified suppliers to choose from. Food retailers are therefore the main drivers for the emergence and dissemination of transnational food safety standards.[31]

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[26] T. Marsden, R. Lee, A. Flynn and S. Thankappan *The New Regulation and Governance of Food. Beyond the Food Crisis?* (New York/London: Routledge 2010), p.9.

[27] T. Havinga and A. Jettinghoff 'Self-regulation in business: Beyond associational self-regulation' in: F. van Loon and K. van Aeken (eds.), *60 maal recht en 1 maal wijn: Rechtssociologie, Sociale problemen en justitieel beleid*, Liber Amicorum prof. dr. Jean Van Houtte (Leuven: Acco, 1999) 609-620.

[28] T. Havinga, T. 'Private regulation of food safety by Supermarkets' (2006) *Law & Policy* 28: 515-533.

[29] D. Fuchs, A. Kalfagianni and T. Havinga 'Actors in Private Food Governance: The legitimacy of retail standards and multistakeholder initiatives with civil society participation', (2011) *Agriculture and Human Values,* 28: 353–367.

[30] http://www.brcglobalstandards.com/Standards.aspx (last accessed May 2014)

[31] However, it should be pointed out that in addition to the retail-driven standards many other private food standards have emerged initiated by food industry, industrial associations, trading corporations, civil society organisations and alliances between these organisations. Their objectives range from securing safe food to improving animal welfare, protecting the environment, improving working conditions and ascertain labour rights and fair trade. See for current private food standards B. Van der Meulen (ed.) *Private Food Law. Governing food chains through contract law, self-regulation, private standards, audits and certification schemes*. (Wageningen: Wageningen Academic Publishers 2011), M. Van Amstel-van Saane, *Twilight on self-regulation. A socio-legal evaluation of conservation and sustainable use of agrobiodiversity by industry self-regulation*. (Copernicus Institute of Sustainable Development and Innovation: Utrecht 2007). For an historical case: T.D. Lytton *Kosher. Private regulation in the age of industrial food*. (Harvard University Press: Cambridge 2013).

The development of the GFSI

The European retailers not only cooperated in developing food safety standards, they also engaged in another process to harmonize transnational retailer food safety standards. In 2000, they established the Global Food Safety Initiative (GFSI) in order to adopt globally accepted food safety standards. The mission of GFSI is 'continuous improvement in food safety management systems to ensure confidence in the delivery of safe food to consumers.'[32] In short, the GFSI wants a plain set of rules, harmony between countries and save money for suppliers.[33] GFSI aims to encourage food safety stakeholders to share knowledge and strategy for food safety and to develop best food safety practice by organizing meetings, conferences, focus days and training for food safety managers. The Global Markets Programme is introduced to offer capacity building and help small and less-developed manufacturers and primary producers to achieve certification against a GFSI recognized scheme by gradually bringing the companies quality management system on a higher level.[34]

GFSI is a case of private meta-regulation; it is not a food safety standard but rather a standard for food safety standards. In the early years the option of developing one global food safety scheme was the subject of fierce debate among the GFSI members and it was decided that the preferred option was not the development of a uniform global standard, but the benchmarking of existing or new schemes against a common denominator called the GFSI Guidance Document.[35] The initiative thus sets baseline requirements for food safety standards and intends to improve efficiency and reduce costs of auditing and certification throughout the food chain. GFSI's aim is to have all food products sold meet this standard. By now, ten food safety standards have been benchmarked against the GFSI Guidance Document (sixth edition) and thus recognized by GFSI. China HACCP has applied for GFSI recognition. As all major transnational food safety standards are recognized by GFSI and most major corporate retailers and food manufacturers ask certification against a GFSI recognized standard, GFSI is in fact the world leading institutional in food safety governance. Many food producers do not even have a real choice of not getting certified against a GFSI recognized standard because this would bar a significant part of the market.

Table 1 Characteristics of food safety standards recognised by the Global Food Safety Initiative[36]

Food safety standard	*Current Standard Owner*	*Initiated by*	*Start date*	*Year of first recognition by GFSI*	*Product range*
BRC Global Standard for Food Safety and BRC Global	British Retail Consortium (Association of British retailers)	British retailers (BRC)	1998	2000	Any food processing or packing operation where open food is handled, processed or packed Food packaging

[32] GFSI 2011 http://www.mygfsi.com/gfsifiles/GFSI_White_Paper_-_Enhancing_Food_Safety_Through_Third_Party_Certification.pdf

[33] Global Food Safety Initiative, Year Book 2004 (www.ciesnet.com)

[34] Basic level 30%, intermediate level 70%. http://www.mygfsi.com/structure-and-governance/gfsi-technical-committee/gfsi-global-markets-working-group/programme-overview.html (18-9-2013)

[35] http://www.mygfsi.com/communication/frequently-asked-questions.html (18-9-2013)

[36] http://www.mygfsi.com/about-gfsi/gfsi-recognised-schemes.html (last consulted 23-5-2014).

Standard for Packaging[37]					
IFS Food standard[38]	IFS Management GmbH (non profit company owned by retail federations from Germany and France)[39]	German retailers (HDE)	2003	2003	Post-farm gate stages of food processing
SQF	Food Marketing Institute (Association of US food retailers and wholesalers)	West-Australian government	1994/ 2003	2004 or 2005	Primary production Food manufacturing and distribution
GlobalGap	Foodplus GmbH[40]	European retailers	1999	Between 2005 and 2009	Fruits and vegetables Meat Aquaculture fish
Global Red Meat Standard	Danish Agriculture & Food Council (non-profit association of farming and food industry)	Danish Agriculture & Food Council	2006	2009	Red Meat supply chain
Food Safety System Certification 22000	Foundation for Food Safety Certification (nonprofit organisation)	Dutch Certification Organisations (developed Dutch HACCP)	2009	2009[41]	Processing or manufacturing animal products, perishable vegetal products, products with a long shelf life, (other) food ingredients like additives, vitamins, bio-cultures and food packaging material
CanadaGap	CanAgPlus (not-for-profit corporation)	Canadian horticultural Council	2008	2010	Fresh fruits and vegetables

[37] http://www.brcglobalstandards.com/GlobalStandards/Standards/Food.aspx . Next to this standard covering food BRC also has 3 standards covering consumer products, packaging manufacture and storage & distribution.

[38] Next to the food standard the IFS Logistic standard is developed for transport, storage and distribution, and cash&carry- wholesale. New projects are in development, such as IFS for Household and Personal Care. All IFS standards are developed at the request of retailers.

[39] The IFS Standard is managed by IFS Management GmbH, a company owned by the German retail federation (Handelsverband Deutschland (HDE) and its French counterpart (Fédération des Entreprises du Commerce et de la Distribution FCD). Retailers from Italy, Switserland and Austria participated in the development of recent editions of IFS.

[40] Financial and legal ownership and responsibility for FoodPLUS GmbH is held by the EHI Retail Institute via its 100% subsidiary EHI-Verwaltungsgesellschaft mbH. EHI Retail Institute is a non profit scientific institute of the retail industry with 550 members including international retail companies and their associations, manufacturers of consumer goods and capital goods, and various service providers. (http://www.ehi.org/en/about-us/company.html)

[41] Dutch HACCP, a food safety standard owned by the same foundation that can be considered the predecessor of FSSC, was already recognised in 2003. The Dutch HACCP scheme has not been resubmitted to GFSI for benchmarking due to the new far reaching requirements in the GFSI Guidance Document Sixth Edition. The Foundation will focus on the management of the FSSC 22000 scheme which they also own and which has been resubmitted for benchmarking. (http://www.mygfsi.com/about-gfsi/gfsi-recognised-schemes.html 11-9-2013)

Global Aquaculture Alliance Seafood Processing standard	International, non-profit trade association		1997	2010	Aquaculture seafood
Primus GFS	Azzule Systems (datamanagement company)			2010 or before	Fresh agricultural produce
IFS PACSecure	IFS Management GmbH (non profit company owned by retail federations from Germany and France)[42]	IFS Management GmbH & The Packaging Association of Canada	2007	2013	Food packaging

In 2006, a survey of the world's leading supermarkets found that 75-99% of food supplies sold by them are certified against a GFSI benchmarked standard.[43] In 2007, seven major food retailers agreed to reduce duplication in the supply chain through the common acceptance of any of the GFSI benchmarked schemes: Carrefour, Tesco, Metro, Migros, Ahold, Wal-Mart and Delhaize.[44] Later other retailers and food firms followed.[45] Most major international food retailers support certification against one of the major food safety schemes. Retailers have a key position in these food standards, as BRC, IFS, SQF and GlobalGap are owned by retailer organizations. Other stakeholders such as food manufacturers, wholesalers and certification bodies participate in technical committees and working groups of the food schemes, but do not hold a casting vote on the adoption of the standards in these schemes.[46] Since 2009, GFSI also recognized some schemes that are not initiated and managed by retailers, such as the Global Red Meat Standard, CanadaGap, FSSC 22000, Global Aquaculture Alliance Seafood Processing standard and Primus GFS.

As noted above, GFSI was initiated by a group of international retailers in order to agree on globally accepted food safety standards. In terms of its governance design, it is a non-profit foundation under Belgian law managed by the Consumer Goods Forum, a membership organization of over 400 retailers, manufacturers, service providers and other stakeholders across 70 countries. Initially, the GFSI Taskforce was open to all retailers worldwide, and in January 2003 the Taskforce consisted of 52 members, all retailers, mainly from Europe. Overtime, however, the institutional structure of GFSI changed. The GFSI Board

[42] See n 39 above.

[43] Fulponi, L. (2006) 'Private voluntary standards in the food system: The perspective of major food retailers in OECD countries', *Food Policy,* 31: 1-13.

[44] Sansawat, S. and V. Muliyil (2011) *Comparing global food safety initiative (GFSI) recognized standards. A discussion about the similarities and differences between the requirements of the GFSI benchmarked food safety standards*. SGS (http://www.sgs.com/~/media/Global/Documents/White%20Papers/sgs-global-food-safety-initiative-whitepaper-en-11.ashx), p4.

[45] Currently 24 retailers, 10 food processing firms and 4 catering companies accept GFSI-recognised schemes (retailers: Aeon, Ahold , Asda, Auchan, Carrefour, Coles, COOP, Daymon, DelHaize, Food Lion, H.E.B., ICA, Kroger, Loblaw, Metro, Migros, Pick n Pay, Publix, Raley's, ShopRite, Tesco, US Foodservice, Vanguard, Walmart, Wegmans; food processing: Campbell's, Cargill, CocaCola, ConAgraFoods, Danone, Hormel, McCain, Melita, Mondelēz, Tyson; catering: BurgerKing, Sodexo, McDonalds, and Whitsons) http://www.mygfsi.com/gfsi-benchmarking-general.html (11-9-2013)

[46] Fuchs cs 2011.

now comprises representatives of major retailers and food service operators (50%) and branded manufacturers (50%). Accordingly, retailers share decision-making powers with food manufacturers according to a 50/50 ratio of votes. The Technical Working Groups, which provide technical input for the development of the GFSI Guidance Document, consist of experts from retailers, manufacturers, food service operators, standard owners, certification bodies, accreditation bodies, and industry associations. An Advisory Council with members of academics, ngo's and government and annual meetings of the GFSI Stakeholder Group complement the governance structure.[47] The relationship between GFSI and the scheme owners that apply for GFSI recognition is governed by a contract, of which the content is not publicly available.

In course of time the participation in GFSI thus broadened in several respects. Food service providers and food manufacturers supplemented the membership, which previously consisted only of large corporate retailers. Also participation of (non-)industry stakeholders is promoted in consultation rounds, focus days and stakeholder meetings. Secondly, not only retailer-led food standards are recognized, but also standards from food manufacturers and farmers' organizations. A third dimension of wider participation is the outreach to countries outside Europe and in non-OECD countries. Broadening the scope of participants contributes to the legitimacy and credibility of the GFSI as it supports its claim to be the global platform for all relevant stakeholders. To pursue that mission, the GFSI also recently engaged in building close relationships with international governmental organizations such as Codex Alimentarius and WTO, as well as national governmental food agencies such as FDA (USA) and the NVWA (Netherlands). Its aim is to further align industry and government efforts in food safety by engaging 'governments to recognize and accept GFSI benchmarked schemes'. GFSI is collaborating also with the Chinese government on food safety[48]. Thus after having gained a recognized position as promoting a globally accepted standard for food safety standards, GFSI seeks recognition from public authorities as well. When GFSI succeeds in this new mission this will further strengthen its legitimacy and dominance in the market.

Meta-regulation

The GFSI is a benchmarking organization. Food safety schemes that apply for recognition are compared to the GFSI Guidance Document. The first version of the Guidance Document was published in 2001, the current version (Version 6) was published in January 2011.[49] The document specifies the requirements that a food safety scheme must implement, the key elements for the production of safe food that must be included in the standard, and specifies the benchmarking process. The GFSI requirements 'are firmly based on the food safety principles laid down by the Codex Alimentarius Commission (Codex), the National Advisory Committee on Microbiological Criteria for Foods (NACMCF), relevant ISO standards,

[47] The GFSI website does not provide the members of this council. The Advisory Council is made up of representatives from the International Accreditation Forum, University of Georgia, United Nations Industrial Development Organization, Cornell University, Centers for Disease Control and Prevention and ISO among others. *www.mygfsi.com/gfsifiles/Detailed_GFSI_General_Presentation_Dec2011.ppt* (accessed May 2014).

[48] GFSI has signed a Memorandum of Understanding with CNCA (China National Accreditation Service for Conformity Assessment) on collaboration on food safety on November 7, 2011 and a second Memorandum of Understanding with the China Certification & Accreditation Institute (CCAI) on 27th March 2012. This will allow GFSI to proceed with the benchmarking of the Chinese Food Safety HACCP scheme.

[49] http://www.mygfsi.com/gfsifiles/GFSI_Guidance_Document_Sixth_Edition_Version_6.2.pdf . See for an extensive description of the Guidance document E.Fagotto 'Private Standards in Gobal Food Safety Governance' (2013) Draft paper Hill project.

and International Codes of Practice where appropriate'.[50] By referring to such authoritative sources GFSI seeks to further strengthen its legitimacy as the global institution setting the leading benchmark for all food safety management systems. The GFSI Guidance Document provides requirements regarding the content and procedures of food safety management systems the scheme needs to cover, the organization and governance structure of food safety schemes, and the organization and routines for auditing and certification against the scheme.

One set of requirements deals with the food safety management systems. Some requirements apply to all certified organizations, others are scope-specific applicable to a particular sector of the food supply chain (scope) such as farming of fish, processing of animal perishable products, production of food packaging or, catering.[51] The document includes food safety management requirements, Good Practices and HACCP requirements. This ranges from general requirements that all element of the food safety management system are documented, implemented, maintained and continually improved; that procedures and instructions must be in place for all processes and operations having an effect on food safety, and that a HACCP-based system should be in place to more specific requirements such as the requirement that animal medicine should be stored in accordance with the information on the label and, that waste water is disposed of legally.

Other requirements deal with the organization and governance structure of the food safety scheme. The scheme cannot be developed, managed or owned by a Certification Body.[52] Representatives of direct stakeholders should be involved with the scheme development.[53] All normative documents of the standard shall be provided in English and be publicly available.[54] The scheme needs annually internal review and a reissue every four year.[55] The scheme also needs a clearly defined governance policy and organizational structure and it should ensure there is no conflict of interest which could call into question its impartiality and integrity.[56]

Several requirements deal with the process of auditing and certification. The schemes need an agreement with an accreditation body that is member of the International Accreditation Forum in order to accredit certification bodies recognized by the scheme (in line with an appropriate ISO accreditation standard).[57] The performance of certification bodies and auditors should be monitored (including risk based office audits and announced but unscheduled audits of certified organizations, auditor competence assessment, complaint procedures and sanctions).[58] Certification bodies should have an effective implemented quality system and an agreement with certified organizations to ensure

[50] http://www.mygfsi.com/gfsifiles/What_is_the_GFSI_Guidance_Document_Sixth_Edition.pdf (last accessed May 2014).

[51] GFSI Guidance Document, 6th ed issue 3 June 2012, Part III

[52] GFSI Guidance Document, 6th ed issue 3 June 2012, Requirements for Food Safety Schemes 2.3.1. Nevertheless FSSC22000 (and Dutch HACCP) are recognized by the GFSI although the owner is a foundation founded by a group of Dutch Certification Organizations. The actual responsibility and authority for the content of the scheme and the delivered certification audits lies with the FSSC 22000 Board of Stakeholders, voting members are representatives from food industry associations.(http://www.fssc22000.com/en/page.php, http://www.fssc22000.com/downloads/Board%20of%20Stakeholders%20130806.pdf 17-9-2013)

[53] Requirements for Food Safety Schemes 2.3.2, 2.3.3, 2.3.6 and 2.3.8

[54] Requirements for Food Safety Schemes 2.3.4 en 2.3.5

[55] Requirements for Food Safety Schemes 2.3.7

[56] Requirements for Food Safety Schemes 2.4.1, 2.4.2, 2.4.3, 2.4.10

[57] Requirements for Food Safety Schemes 1.2, 3.2 and 3.3

[58] Requirements for Food Safety Schemes 2.5.6, 2.5.8, 2.5.9, 3.3.8, 3.3.9, 3.5.2

notification of any food safety non-conformity or product recall.[59] Both the certification body and the scheme owner should have a complaints and appeals process in place to address situations where the food business feels the certification body or its auditor was not objective or misbehaved. The Guidance document also contains specific requirements as to the competence of certification body personnel.[60] The scheme owner must have an audit frequency program and should specify clear criteria for frequency and duration of audits; the minimum audit frequency is once a year and an on-site audit is expected to be typically 2 days for manufacturing and 1 day for primary production; all elements of the standard should be assessed.[61] Audit reports need impartial technical review prior to granting or withdrawing certification after non conformities are verified corrected.[62]

A food safety scheme must apply for recognition by GFSI by submitting the completed GFSI Benchmarking Application Form (including examples of objective evidence to support the key requirements) and after paying a fee.[63] The benchmarking process consists of six procedural steps: preliminary screening, preliminary desk review, benchmark committee review, GFSI Board review, annual assessment and continued recognition. The GFSI Benchmark Committee assesses the scheme's standard, auditor competence requirements, certification audit program and management system against the requirements spelled out in the GFSI Guidance Document. For each application a separate Benchmark Committee is formed. Its members are chosen from a list of 'suitably qualified persons that are independent, impartial and technically competent from organisations such as retailers and manufacturers and other appropriate experts', though cannot be 'committed users of the scheme being considered for recognition'.[64]

GFSI commits to annually audit the system of the recognized schemes through a self-assessment carried out by those schemes. This includes an internal audit of the recognized schemes.[65] For each new edition of the Guidance document recognized schemes need to reapply for recognition. In any event, a re-benchmarking process is required every four years.[66] Re-benchmarking may be a demanding and lengthy exercise. Not all GFSI-recognized schemes reapply to be benchmarked against a new version of the GFSI Guidance Document. In 2005, EFSIS withdrew its standard because the new version of the Guidance Document (Version 4) only accepted third-party certification schemes and EFSIS did not comply with this requirement.[67] Another scheme that declined to reapply for recognition is Dutch HACCP. The scheme owner decided not to resubmit Dutch HACCP for benchmarking and "to go back

[59] Requirements for food Safety Schemes 3.3.12 and 3.3.13
[60] Requirements for food Safety Schemes 3.4 and Annex 3.
[61] Requirements for food Safety Schemes 3.5, 3.6.3
[62] Requirements for food Safety Schemes 3.7.3 and 3.7.2
[63] http://www.mygfsi.com/gfsifiles/For_Website_-_Benchmarking_Application_Completion_Guidelines.pdf ; Information on the fee and the contract between scheme owner and GFSI is not publicly available, http://www.mygfsi.com/gfsi-benchmarking-general/overview--background/application-new-scheme-/application-submission.html (18-9-2013)
[64] http://www.mygfsi.com/gfsi-benchmarking-general/benchmark-committee.html, http://www.mygfsi.com/gfsi-benchmarking-general/benchmark-committee/register-of-committee-members.html and http://www.mygfsi.com/gfsifiles/Part_I_Annex_II_GFSI_Guidance_Document_Sixth_Edition_Version_6.1.pdf . (17-9-2013)
[65] Requirements for food Safety Schemes, 2.6.5
[66] Requirements for food Safety Schemes, 2.6.5 and GFSI, enhancing food safety through third party certification, March 2011, p. 10
[67] L. Joppen 'GFSI increases its reach' (2005) *Food Engineering & ingredients* April, 46-47

to basic with a focus on small and medium-size organizations (…) based on the Codex Alimentarius principles once again. With this the HACCP scheme can serve as a starting point for organisations to become later certified against a GFSI recognised scheme like FSSC 22000."[68]

Overtime, the meta-regulatory standards of GFSI have expanded globally and evolved in substance, paying attention to a broader set of topics including auditor competence and stakeholder consultations, adding new scopes (agriculture, aquaculture, feed, storage, catering) and focusing on capacity building for small food firms. GFSI has thus developed into a global private meta-regulator establishing requirements for private food safety standards for the certification of food safety management systems for all sectors of the food supply chain. Multiple stakeholders are involved in the formulation of the Guidance Document. The final decision on the Guidance Document and on recognition of food schemes is taken by large food retailers and manufacturers that staff the Board. GFSI relies on global accepted norms from Codex and ISO, and promotes accredited third party certification. GFSI succeeded in its mission to establish global food safety requirements that are widely accepted. However, in reality, multiple food safety audits continue to exist as some retailers and manufacturers add additional requirements to certification against a GFSI recognized standard.

The legitimacy of GFSI is essentially based on inclusion of accepted global public and private norms (Codex and ISO), multi-stakeholder participation and widespread acceptance in the market. GFSI has contributed to the growth and development of private food safety schemes with third party certification and has created a forum for discussion, sharing best practices and exchange of knowledge for the improvement of food safety management. The GFSI benchmarking requirements to secure serious, impartial and credible certification procedures also strengthen the legitimacy and reliability of private standards. GFSI is flexible in that it responded to criticism by establishing more opportunities for other stakeholders (not retailers) to be involved, by including more specific requirements (e.g. frequency and duration audits), by stricter benchmarking and more openness and transparency. This now translates into the situation that scheme owners refer to GFSI to bolster their own legitimacy and credibility of the scheme. GFSI has thus turned into a sign of global excellence that scheme owners are keen to use to attract new clientele.

3. European Advertising Standards Alliance[69]

Advertising self-regulation

The European advertising industry has since long developed systems of advertising self-regulation to control the behavior of its members and contribute to public policy objectives such as fair competition, consumer protection and human rights protection. These systems generally operate on the basis of two elements: a code of conduct that lays down the basic

[68] http://www.foodsafetymanagement.info/net-book.php?op=cms&pageid=53&pageid_up=0&nnl=english (17-9-2013). New Zealand GAP has been benchmarked against the Global Food Safety Initiative (GFSI) Guidance Document, 4th Ed and still mentions this on its website (http://www.newzealandgap.co.nz/NZGAP/Overview/International-Benchmarking.htm 18-9-2013).

[69] The following analysis builds on the case study report written within the framework of the HiiL project on transnational private regulation. See: P. Verbruggen, 'Transnational Private Regulation. Case Study Report on Private Regulation in the Advertising Industry' (Report HiiL project on 'Constitutional Foundations of Transnational Private Regulation: Emergence and Governance Design', Florence 2011), available at: www.hiil.org/privateregulation, accessed May 2014.

rules with which advertising practices and marketing communications must comply, and a mechanism for the adoption, review and enforcement of that code.[70] Trade associations representing the segments of the advertising industry (i.e. advertisers, advertising agencies and the media) set these codes, but often establish separate self-regulatory organizations (SROs) to oversee the application of such codes at the national level. According to data provided by the industry, the SROs in Europe jointly process between 50,000 and 60,000 complaints on advertising annually.[71]

The codes of conduct applied by the SROs at national level may have their origins in codes of international trade organizations or business consortia that intend to create a level playing field for transnational advertising. The principal institutional actor in this respect is the International Chamber of Commerce (ICC), an association for businesses based in Paris. The ICC has promulgated codes of advertising practice since the mid-1930s. Also the most recent version of the ICC code continues to serve as a general reference point for local SROs to adopt, review and enforce of codes of conduct, in particular in continental Europe.[72] The SROs in France, Belgium, Sweden, Finland and Turkey, for example, still apply the ICC code in full. However, in other countries, such as Germany, Italy and the United Kingdom, the ICC code has been less influential and national advertising laws and politics have shaped the development of the local codes for the most part. Then again, advertising self-regulation did not gain firm ground in all countries in Europe. In Eastern and Central Europe, in particular, few to none robust systems of self-regulation had developed since the early 1990s.[73] Different legal frameworks and national legacies that affect the people's perception of the role of the state and public trust in private entities and their regulation, have played a major role in holding back the development of self-regulation in these countries.[74]

Development of EASA

It is against this background that the European advertising industry established the European Advertising Standards Alliance (EASA) in 1992. The patchwork of national codes and systems regulating advertising and marketing communications in Europe, with each having their own particularities and levels of sophistication, resulted in higher costs for companies wanting to engage in advertising activities in other countries. The European Commission even held that the fragmented structure of private regulation in Europe challenged the creation of the

[70] J.J. Boddewyn, *Global Perspectives on Advertising Self-Regulation. Principles and Practices in Thirty-eight Countries*, (Quorum Books, Westport, Connecticut; London 1992), 9 and EASA, *Advertising Self-Regulation in Europe and Beyond: A Reference Guide to Self-Regulatory Systems and Codes of Advertising Practice* (6th edn, Poot Printers, Brussels 2010), 19.

[71] EASA, 'European Trends in Advertising Complaints', copy advice and pre-clearance' (Brussels, 2012) http://www.easa-alliance.org/binarydata.aspx?type=doc&sessionId=krcjynvjd4ecpa555jxbfaic/2011_Stats_report-final.pdf (accessed May 2014).

[72] ICC, 'Consolidated ICC Code of Advertising and Marketing Communication Practice' (2011), http://codescentre.com/images/downloads/660%20consolidated%20icc%20code_2011_final%20with%20covers.pdf, accessed May 2014.

[73] In the study on 'Global Perspectives on Advertising Self-Regulation' commissioned by the ICC, Boddewyn did not discuss any system from the Eastern and Central European countries. See: Boddewyn 1992 (n XXX).

[74] See for a study in the field of media self-regulation: UNESCO, 'Professional Journalism and Self-regulation: New Media, Old Dilemmas in South East Europe and Turkey' (Paris, 2011), http://unesdoc.unesco.org/images/0019/001908/190810e.pdf, accessed May 2014.

European Internal Market and threatened to take legislative action if the industry would not set in place structures that could regulate advertising at the European level.[75]

In response, the European advertising industry established EASA, an international not-for-profit association ('association internationale sans but lucrative') under Belgian law based in Brussels. EASA formalized a hitherto *ad hoc* grouping of SROs from a number of West-European countries that had for some years discussed the coordination of their efforts to regulate transnational industry conduct.[76] This network was given the specific task to oversee the coordination of advertising self-regulation throughout the European Single Market.[77] Following its mandate, EASA first set up a system for the handling of cross-borders complaints about advertising. EASA would not resolve these cross-border complaints itself, but was to enable the quick transfer of complaints lodged before an SRO in one country to the SRO in the country where the editorial decision to publicise the advertising was made. The latter regime would then bare responsibility for resolving the complaint on the basis of its own code of conduct and system. Accordingly, EASA assumed a role of coordinating transnational compliance and enforcement activities between its SRO members, without actually engaging in regulatory activities itself and defining the standard of what is fair and decent advertising. This latter task was left to the industry.

Until 2002, EASA's main task was concerned with the operation of the cross-border complaint handling system. This changed in view of two major developments in the early 2000s, namely the adoption of important new European legislation on advertising[78] and the imminent accession of 10 new Member States to the European Union in 2004. Given that existing trade associations had previously done a bad job at adequately lobbying for the interests of the European advertising industry in the legislative process,[79] the industry was determined to create an institution through which it could speak with one single voice. In 2002, EASA was restructured to become that institution. No longer was it a network between national SROs, but its membership was extended to include also trade associations representing the industry at the European level. Currently, 26 national SROs from 23 European countries and 15 European industry associations are members of EASA.[80] EASA's Board of Directors is comprised of representatives of its member organizations.

With its membership including both the national SRO's and the representative bodies of the European advertising industry, EASA's mandate also changed. In addition to handling of cross-border advertising complaints, the organization was also to encourage 'high ethical

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[75] A. Cunningham, 'Advertising Self-regulation in a Broader Context: An Examination of the European Union's Regulatory Environment' (2000) *Journal of Promotion Management* 5(2), 61-83, at 64.

[76] EASA, *Advertising Self-Regulation in Europe: An Analysis of Self-Regulatory Systems and Codes of Advertising Practice* (5th edn, Poot Printers, Brussels 2007), 31.

[77] EASA, *EASA Guide* (2nd edn, EASA, Brussels 1996), 5.

[78] In the early 2000s the revision of two principal Directives regulating advertising was discussed, namely the Misleading and Comparative Advertising Directive (Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ L 290, 23.10.1997, p. 18)) and the Television Without Frontiers Directive (Council Directive 89/522/EG of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23)).

[79] A. Mattelart and M. Palmer, 'Shaping the European Advertising Scene - Commercial Speech in Search of Legitimacy' (1993) 1(1), *Réseaux. Communication - Technologie - Société*, 9-26, 13.

[80] Both the SROs and European industry members are represented in EASA's Board. See for the organisational structure of EASA: http://www.easa-alliance.org/About-EASA/Decision-making-structure/page.aspx/112, accessed May 2014.

standards in commercial communications by means of effective self-regulation, while being mindful of national differences of culture, legal and commercial practice.'[81] Accordingly, its mission became to 'promote responsible advertising throughout the Single Market, through best self-regulatory practice, in the interests of both consumers and business.'[82]

Meta-regulation

EASA has principally sought to fulfil its renewed mission by sharing best practice guidance and supporting the creation and development of national private regimes, in particular in Central and Eastern European countries. In 2002, it first adopted the 'Common Principles and Operating Standards of Best Practice',[83] which were reaffirmed in the 2004 by the so-called 'EASA Best Practice Self-Regulation Model'. This model:

"(…) describes the various component parts of the model self-regulatory systems which EASA wishes to see in place in all existing EU member states and in Accession countries. It is designed to help EASA and its members to evaluate, initiate and develop effective and efficient systems across Europe. It will also help identify areas where investment is needed to develop existing national arrangements in order to improve the provision and operation of self-regulation (…)"[84]

The Best Practice Self-Regulation Model lays down several operational benchmarks for SROs. They concern: (i) industry support; (ii) funding; (iii) governance and administration; (iv) code adoption and review; (v) advice and information on code compliance; (vi) efficient complaint handling; (vii) independent and impartial complaint resolution; (viii) effective sanctioning; (ix) compliance monitoring; and (x) publicity and awareness of self-regulatory activities among industry and the consumers. EASA members made a public commitment to abide by these elements by signing the 'EASA Advertising Self-Regulation Charter' in June 2004.[85] To operationalize the meta-standards set out by the Best Practice Self-Regulation Model and the Charter, EASA developed separate documents called 'Best Practice Recommendations'. These Best Practice Recommendations are developed in the 'Self-Regulatory Committee', in which a number of representatives of EASA's SRO members discuss the technical details for guidelines for SROs. The proposals of the Committee require approval by EASA's Board. The Best Practice Self-Regulation Model, the Advertising Self-Regulation Charter and the Best Practice Recommendations were developed through the Self-Regulatory Committee. The best practice standards set out in these documents provide a common roadmap to the organization and functioning of advertising self-regulation in Europe.

EASA has sought to expand its meta-regulatory for advertising self-regulation outside Europe. In 2008 it established the EASA 'International Council on Ad Self-Regulation', which has as its current members the regimes from Australia, Brazil, Canada, Chile, Colombia,

[81] EASA, 'What is EASA?', http://www.easa-alliance.org/page.aspx/110, accessed May 2014.

[82] EASA, *Advertising Self-Regulation in Europe and Beyond: A Reference Guide* (n XXX), 45.

[83] Available at: http://www.easa-alliance.org/binarydata.aspx?type=doc/EN_commonprinciples.pdf/download, accessed May 2014.

[84] EASA, 'EASA Best Practice Self-Regulatory Model' (Brussels, 2004), http://www.easa-alliance.org/binarydata.aspx?type=doc&sessionId=ayufse45uivrinab2lt1bh45/EN_BestPracticeModel.pdf, accessed May 2014.

[85] European Advertising Standards Alliance, 'Advertising Self-Regulation Charter' (EASA, (Brussels, 2004) http://www.easa-alliance.org/01/MyDocuments/SR_CHARTER_ENG.pdf/download, accessed 31 December 2010.

India, Mexico, New Zealand, Peru and South Africa.[86] Also these countries now participate in EASA's cross-border complaint handling system. In addition, EASA has drafted the so-called 'International Guide to Developing a Self-regulatory Organisation' for the members of the International Council on Ad Self-Regulation and indeed also for other non-European countries that want to establish a system of advertising self-regulation. This guide essentially outlines the same operational standards as the 2004 Best Practice Self-Regulation Model does.[87]

In Europe, EASA's meta-standards has been quite influential in driving institutional change and organisational learning among the SROs, slowly harmonising national traditions and institutions, and enhancing the overall performance of local SROs. The SROs that were established since 2002 have based their governance design and operational procedures on the principles laid down by the model, whereas the SROs that already existed have also sought to bring their practices in line with the model's standards. EASA's annual meetings serve to report on progress of the implementation of the Best Practice Self-Regulation Model, Advertising Self-Regulation Charter and Best Practice Recommendations, and discuss the obstacles SROs encounter in that process. Through guided discussions and examples from fellow SRO members, SROs learn how to improve their operations and performance. EASA uses scoreboards to monitor progress among its SRO members.[88] As SROs have publicly committed to adjust their systems to EASA's meta-standards and simply do not want to be the worst student in class, these scoreboards offer a strong additional incentive to live up to these standards.

It should be stressed, however, that the implementation of EASA's meta-standards also benefited strongly from the backing EASA has received from the European Commission, more specifically the Directorate General for Health and Consumers (formerly SANCO). To push the entire European advertising industry toward a single model of self-regulation, EASA turned to the Commission for support. The Commission, which had some concerns of its own as regards advertising self-regulation,[89] recognized the opportunity this meant to develop self-regulation for advertising across the whole of the EU (including the new accession states in Central and Eastern Europe) and saw to it that EASA's Best Practice Model and Charter commitments were discussed in a wider forum.

In 2005, the Commission thus held a 'Roundtable on Advertising Self-Regulation' that included staff of the Commission, interested NGOs and representatives from the industry. The concluding report of the Roundtable identified a number of factors that should be used to strengthen the impact of self-regulatory activity and increase the overall effectiveness of SROs.[90] These factors largely overlapped with the elements highlighted by the Best Practice

[86] EASA, 'International Council on Advertising Self-Regulation', http://www.easa-alliance.org/page.aspx/245, accessed May 2014.

[87] EASA, 'International Guide to Developing a Self-regulatory Organisation: Practical Advice on Setting up and Consolidating an Advertising Self-regulatory System' (Brussels, 2009), http://www.easa-alliance.org/01/MyDocuments/EASA_International_ Guide.pdf/download, accessed May 2014.

[88] EASA, 'Best Practice Implementation by European Advertising Watchdogs. EASA Charter Validation Progress Report 2005-2011' (Brussels, 2011), http://www.easa-alliance.org/binarydata.aspx?type=doc/Best_practice_implementation_in_European_advertising_watchdogs270911.pdf/download, accessed May 2014, at 24-27.

[89] The concerns emerged in the light of the preparatory work to the Unfair Commercial Practices Directive (no. 2005/29/EC). See: European Commission, 'Green Paper on European Union Consumer Protection', COM(2002) final 531 of 2.10.2001, 5-7 and 14.

[90] DG SANCO, 'Self-Regulation and the Advertising Sector: A Report of Some Discussion among Interested Parties' (2006) http://www.easa-alliance.org/binarydata.aspx?type=doc/DGSANCO_advertisingRT_report.pdf, accessed May 2014, at 12-13.

Self-Regulation Model and Advertising Self-Regulation Charter. Accordingly, the Roundtable report to a large extent validated EASA's approach and confirms it as 'the' European standard for advertising self-regulation. This confirmation was a much-desired result by EASA, as it had encountered some resistance within its membership to develop advertising self-regulation along the lines of one particular model. The backing of its efforts by the Commission gave EASA the implicit mandate – and indeed a fair degree of legitimacy – to drive the further integration of the different national approaches to self-regulation in the domain of advertising.[91]

The Commission's support to EASA was reconfirmed in relation to the adoption of a new self-regulatory initiative of the European advertising industry called the 'Framework on Online Behavioural Advertising'.[92] This Framework was developed by the Internet Advertising Bureau (IAB) Europe, a trade association for firms engaged in online advertising in Europe. In December 2010 and March 2011, the Commission (DG INFSO) hosted two Roundtables on 'Interest Based Advertising' to discuss between its staff members, the (online) ad industry, and consumer and privacy advocates the framework developed by IAB Europe.[93] During the first Roundtable it became clear that the Commission would only accept a self-regulatory framework for online behavioural advertising if it would conform to EASA's standards, in particular those on reporting, monitoring and enforcement. To that end, EASA developed the Best Practice Recommendation on 'Online Behavioural Advertising' to address the establishment of robust compliance and enforcement mechanisms that would complement the Framework of IAB Europe.[94] Without the complementary Best Practice Recommendation from EASA, the Commission would not have accepted the Framework of IAB Europe. EASA thus plays a key role in building acceptance among interested stakeholders for self-regulatory initiatives in the European advertising industry. As such, compliance with EASA's meta-standards fosters the legitimacy of the advertising self-regulation.

4. Discussion

[91] This wish by EASA to push on is recognized in the Roundtable report, which holds: *"(…) there is a clear commitment on the part of some, if not all, [self-regulation]-practising sectors of industry to deliver increasingly high quality self-regulation, and to deliver it more evenly across the enlarged EU. This is certainly the case for EASA, which has made a public commitment to improve coverage and performance and has reached out to EU Authorities and others for help. The message heard from EASA is that they cannot deliver their vision alone. If business is to commit the willpower and resources needed to improve self-regulation across the EU 25, there seems to be a need for clear public leadership to the effect that business should be doing this."* DG SANCO, 'Round Table Report' *op. cit.*, 8.

[92] Online Behavioural Advertising is a technique for direct marketing. It uses data about web browsing behavior of individual Internet users collected over a certain period of time. This data can consist of, for example, the page views, page clicks, ad views, ad clicks and search terms entered. The data is used to form an interest profile of the web user. Mathematical algorithms calculate, in real-time, which advertisements should be served to meet the profile of the individual web user. The advertising shown to the web user thus increasingly suits individual interests and, as the industry claims, enhances the chance of it being successful.

[93] See for a brief report of the meeting: World Federation of Advertisers, 'WFA participates in EU Commission roundtable on Interest Based Advertising', http://www.wfanet.org/en/global-news/wfa-participates-in-eu-commission-roundtable-on-interest-based-advertising?p=45, accessed May 2014.

[94] EASA, 'EASA Best Practice Recommendation for a European Industry-wide Self-Regulatory Standard and Compliance Mechanism for Consumer Controls in Online Behavioural Advertising' (Brussels 2011), http://www.easa-alliance.org/binarydata.aspx?type=doc/EASA_BPR_OBA_12_APRIL_2011_CLEAN.pdf/download, accessed May 2014.

The description of the cases of GFSI and EASA highlight various aspects of meta-regulation of transnational private regulation. In discussing and comparing the two meta-regulators and their activities, we draw attention to: (i) the governance design of the organizations; (ii) the form and scope of meta-regulation they produce; (iii) the function of that meta-regulation; (iv) compliance with meta-regulation; and (v) the role public actors have in meta-regulation.

Governance design of meta-regulators

Both GFSI and EASA are international non-profit organizations under Belgian law, set up specifically to promote the international cooperation and convergence of existing standards. However, the governance structures of EASA and GFSI show some significant differences. The most important is that EASA is an association setting meta-regulatory standards for its own members, which are in part organized at the national level. GFSI, by contrast, is a foundation setting guidelines for food safety standards that are not directly represented in its Board, which consists of multinational corporations in the food retail, food service and food processing sector. Accordingly, the meta-regulatory activities undertaken by EASA take the form of what has traditionally been described in the literature as 'self-regulation'; the regulatory standards are adopted by those addressed by the standards. In other words, the regulator coincides with the regulatees and this essentially comes down to 'the disciplining of one's own conduct by oneself'.[95] The meta-regulatory standards of GFSI move beyond the traditional concept of self-regulation because the regulators are not (representatives of) the regulatees.

Nevertheless, it should be stressed that close ties exist between GFSI and the addressees of the meta-standards adopted by GFSI as the membership of GFSI in part overlaps with that of the addressees. The large retailers and manufacturers that have a seat in the GFSI Board may themselves be members of trade associations that have benchmarked their standards against the GFSI Guidance Documents. Retailers like Metro, Royal Ahold and Coles, for example, are represented in both the board of GFSI and the board of GFSI recognized food safety schemes such as IFS, GlobalG.A.P., SQF and BRC. Retailers and manufacturers participating in GFSI committees are also member of the trade associations of food retailers or food manufacturers that own the food safety schemes that are regulated by GFSI.

Both cases of GFSI and EASA show that new stakeholders have been included in the governance structure of the meta-regulatory bodies. These changes have enhanced the legitimacy of the meta-regulators and increased their capacity to coordinate between conflicting interests in the industry. GFSI was a purely retailer initiative at its start, later also large food manufacturers and food services were represented in the Board. The Technical Committees that provide input to the Guidance Documents include representatives of other stakeholders such as scheme owners (the direct addressees of the regulations), certification and accreditation bodies (indirect addressees) and industry associations (representing firms that undergo certification or ask their suppliers to be certified). The Advisory Council and the Stakeholders Group broadens the participation of stakeholders in discussing guidelines and developments with 'outsiders' such as public organizations and NGOs. However, the formal decisions on guidelines and recognitions are taken by the Board, i.c. the large corporations that buy certified food products. Other interested parties i.c. suppliers (food processing industry, primary producers), certification industry and consumers, are excluded.

[95] J. Black, 'Constitutionalising Self-Regulation' (1996) *Modern Law Review* 59(1), 24-55, at 26.

Also EASA developed from a network of national SROs to an association including both SROs and industry associations as its constituent members. It does not formally involve non-industry representatives (such as consumer organizations or other stakeholders) in the development, monitoring and enforcement of its meta-regulatory standards. Consistent with the traditional conception of self-regulation, it only includes those parties most directly addressed by the meta-standards, namely the SRO's and industry associations. Recently, also EASA held a public consultation on its Best Practice Recommendation on Online Behavioral Advertising. While it thus involved outsiders in the development of its meta-standards, their role remains limited to advice and they do not have a formal on the adoption of these standards. Compared to GFSI, it thus appears that EASA is more 'closed' organization, but in fact it involves all industry parties directly affected by private regulation in its governance design, whereas GFSI does not. Accordingly, industry representation is more carefully balanced in the governance structure of EASA than it is in GFSI.

Scope and instruments of meta-regulation

How do GFSI and EASA regulate and what is the scope of the meta-regulatory standards these bodies adopt? We find strong similarities in the way in which GFSI and EASA pursue their meta-regulatory activities. Both organizations do not define the substantive standards on the basis of which compliance by the regulated firms is assessed. Here, they refer to authoritative standards developed by other international institutions (e.g. ISO or the Codex Alimentarius Commission in the case of GFSI or the ICC or the European legislature in the case of EASA). Instead, the organizations focus on procedural aspects of regulation. In both cases documented best practice guidance (GFSI's "Guidance Document" and EASA's "Best Practice Recommendations") constitute the main instruments of meta-regulation. In these documents, we find three levels of meta-regulation. The first level concerns guidance on the governance design of private regulatory regimes. For example, the GFSI Guidance Document stipulates that schemes must have a clearly defined governance policy and organizational structure and they should ensure there is no conflict of interest which could call into question the impartiality and integrity of certification bodies. Furthermore, schemes developed, managed or owned by a certification body will not be accepted. Also EASA adopts guidelines that concern the governance of SROs. It has, for example, adopted Best Practice Recommendations on complaint handling that requires the establishment of a complaints board ("jury") that could independently and impartially assess complaints brought before it. Also a possibility for an appeals procedure in the form of an independent review is required. To accommodate these elements in their systems several SRO members have had to revise their governance structure.[96] Also EASA's guidelines on the funding of SROs and their standards of service have challenged SROs to reconsider some of their governance design.

A second level of meta-regulation that is included in the guidelines adopted by GFSI and EASA relates to the standard-setting activities of regulatory regimes. For example, GFSI requires from applicant scheme owners that direct stakeholders are included in standard-setting processes. In addition, the GFSI Guidance Document also stipulates substantive norms, such as those developed by the Codex, which the standards of the benchmarked schemes have to meet, depending on the scope for which the scheme is benchmarked. EASA also employs standards that prescribe the way in which SROs should adopt codes of practice and the normative documents upon which these standards should be based. The Best

[96] Verbruggen 2011, p. 83-84.

Practice Recommendation of EASA on code drafting and public consultation clearly define how SRO should draft and revise their normative documents. More generally, EASA promotes the use of the Consolidated ICC Code of Advertising and Marketing Communication Practice as the common substantive baseline for codes of advertising practice in Europe and around the world.

A third layer of meta-regulation concerns monitoring and enforcement activities employed by private food safety certification schemes and SROs. A major part of the GFSI Guidance Document is concerned with the way in which the schemes have designed their certification processes. Following the norms produced by ISO, GFSI requires amongst others that the certification procedures meet specific criteria for the frequency and duration of audits, and are performed by accredited third party certification bodies. This emphasis on the design of certification procedures can be explained by the importance that GFSI attributes to raising the level of integrity and credibility of private certification schemes. Since these schemes operated on the basis of paid audits performed by commercial bodies, their integrity and independence is always at risk. A careful governance design such as the separation of advice and auditing services in certification bodies contributes to their credibility. In the case of EASA meta-standards are adopted for both monitoring and enforcement activities by SROs. Unlike the case of GFSI, however, EASA draws specific attention to the complaint handling and enforcement of codes of conduct. This can be explained by the nature of the enforcement activities of SROs. These are complaint-based and very little proactive monitoring is done. Accordingly, EASA has adopted one guidance document on compliance monitoring, though at least six explicitly on enforcement.[97]

In addition to these three levels of meta-regulation, EASA involves a separate form of meta-regulation. Since 1992, EASA has facilitated the resolution of complaints on transnational advertising practices via a cross-border complaint handling mechanism. Here, the primary role of EASA is to coordinate between its SRO members and transfer complaints lodged before an SRO in one country to the SRO in the country where the editorial decision to publicise the advertising was made. Accordingly, EASA fulfils an important coordinating function in resolving transnational disputes about advertising. This role can be considered meta-regulatory as EASA determines which of its SRO member should resolve a cross-border dispute. Accordingly, it guides and facilitates transnational enforcement activities, without itself resolving the underlying disputes. GFSI, by its very nature, does not operate a cross-border coordination mechanism. It encourages food retailers and manufacturers to accept all certificates of GFSI-recognized schemes. This acceptance is entirely voluntary. The GFSI does, however, coordinate different and conflicting interests of its membership and seeks to harmonise existing private food safety standards.

The forms and scope of the meta-regulation of GFSI and EASA should also be seen as similar because they both leave ample space for regulatory regimes to "go beyond" their meta-standards. Furthermore, both bodies do not specifically prescribe how these regimes should implement the standards. In this sense, the guidance of GFSI and EASA can be qualified as a sort of minimum harmonization that is akin to that of the European Union in harmonizing the laws of Member States through the adoption of European Directives. By following this approach GFSI and EASA enable the construction of an international level-playing field for private food safety certification schemes and SROs respectively.

[97] These are the Best Practice Recommendations on complaint handling, confidentiality and identity of the complainant, claims substantiation, jury independence, publication of decisions, and online behavioral advertising.

Compliance with meta-regulation

How is compliance with meta-regulatory standards of GFSI and EASA assessed and enforced? In short, the GFSI has a formalized assessment procedure laid down in the Guidance Document. Assessment with meta-standards by EASA is more fluid: the timing, scope and result of assessment are less clear and are addressed to the SROs in an informal way. The final decision in GFSI is binary (either recognition or not), while EASA's assessment does not end in a final decision, but rather in performance scores (green or red) on the different elements included in the meta-standards.

In the case of GFSI, the assessment of compliance with the Guidance Document essentially coincides with the benchmarking exercise. Compliance with the standards of the Guidance Document leads to recognition of the scheme by the GFSI. After recognition, the GFSI does not actively enforce compliance with these standards. The benchmarking process is carried out again after the Guidance Document has been revised. Such a re-benchmarking process is required every four years.[98] If the scheme owner then no longer complies with the Guidance Document it simply loses its status of GFSI-recognized scheme. In the period between the recognition of the private food safety scheme and the adoption of a new version of the Guidance Document, the GFSI shall annually audit recognized schemes based on self-assessment that comprises an internal audit.[99]

In the case of EASA compliance with the meta-regulatory standards is not assessed through a formal benchmarking process. Instead, the assessment of the level of compliance of the SROs with the standards set out in the Best Practice Self-Regulation Model, the Advertising Self-Regulation Charter and the Best Practice Recommendations is based on self-reporting and monitoring by the Board of Directors. Compliance with the Best Practice Self-Regulation Model and Best Practice Recommendation is not enforced formally, since both are intended as guidelines for best practice for the individual SRO members. Both remain non-binding and their implementation is subject to the context of national public laws and regulations, as well as negotiations with national industry representatives.[100] The Advertising Self-regulation Charter, on the other hand, can be considered binding for EASA members as they are required to sign the Charter as an obligation under EASA's rules of association. Enforcement of the Charter has been pursued informally, mainly through peer pressure from fellow SRO members at EASA's annual meetings and consultations with the Board of Directors or EASA's Secretariat.

Functions of meta-regulation

The meta-regulatory standards adopted by GFSI and EASA fulfill in part the same functions. In general it can be held that both meta-regulators seek to contribute to enhance the regulatory capacity of private food safety certification schemes and SROs. It might even be held that GFSI and EASA have been quite successful in achieving that goal. In the case of GFSI, the consecutive versions of the Guidance Documents have each raised the bar for private certification schemes requiring ever-stricter conditions for audit independence, quality and scope. As for EASA, its guidance documents have been influential in triggering

[98] Requirements for food Safety Schemes, 2.6.5 and GFSI, enhancing food safety through third party certification, March 2011, p. 10

[99] Requirements for food Safety Schemes, 2.6.5

[100] See: EASA, 'Digital Marketing Communications Best Practice' (Brussels 2008), http://www.easa-alliance.org/binarydata.aspx?type=doc/Full_DMC_report_PRINT_woFEDMAannex_new.pdf/download, 6.

institutional changes in code development and independent complaint-handling that have strengthened advertising self-regulation in Europe. These achievements, ultimately, also contribute to enhancing the credibility and legitimacy of the transnational private regulatory regimes in the field of food safety and advertising. In fact, compliance with the GFSI and EASA procedural meta-standards is now considered the industry standard that scheme owners and SROs should adhere to. When they do, they are generally keen to stress that a sign of excellence, increasing their credibility and legitimacy in the regulatory arena.

Another major function of meta-regulation as pursued by GFSI and EASA is that is plays a significant role in coordinating and harmonizing different private standards and regimes. Both the GFSI benchmarking process and EASA best practice guidance steer private standards and regimes toward convergence on a single (but minimum) standard for private regulation. GFSI and EASA both constitute a forum for discussion on how to achieve that convergence, for example, by disseminating best practices and new developments. The background of the convergence differs, however. In the case of GFSI, private certification schemes that apply for GFSI-recognition compete for suppliers that obtain certification and for retailers and manufacturers to accept certification against their standard. This competition and the diverging standards were costly and inefficient for both buyers and suppliers because of the high costs of multiple auditing and certification. Efficiency concerns were therefore a principle driver for the establishment of GFSI. In the case of EASA, competition between SROs is absent because the regulatory activities and influence is defined by the national territory of the SROs. While different national models of advertising self-regulation raise costs for advertisers that engage in transnational advertising activities, the convergence set in place by EASA is less cost-driven than by GFSI. The major drivers for EASA's activities were instead the pressures of the European Commission to better coordinate self-regulation at the European level and the advent of new EU legislation on advertising.

This background in part explains why the meta-regulation of GFSI has also developed a function that is different from the meta-regulation of EASA. GFSI's benchmarking exercise plays a prominent role in achieving market access. Recognition by the GFSI enhances the credibility and therefore also the marketability of the scheme among suppliers and buyers. The suppliers possessing a certificate of a GFSI-recognized scheme can also benefit from that recognition as this implies that a host of international retailers and manufacturers will accept their products. In many markets it is fast impossible to trade without certification against a GFSI recognized food safety scheme. For retailers, a higher uptake of GFSI-recognized scheme by suppliers may in turn lead to easier resourcing of products worldwide without carrying out audits or the need to work with preferred suppliers. In the case of EASA, by contrast, market access is not a function of meta-regulation. Instead, EASA's activities focus on coordination of different nationally-based self-regulatory systems. EASA's cross-border complaint handling system is the principal manifestation of this function.

Role of public actors

Finally, attention must be drawn to the role that public institutions play in the development of meta-regulation. Whereas this role is strong in the case of EASA, meta-regulation of GFSI has developed autonomously without much collaboration with public actors. GFSI bases its meta-standards in part on norms adopted by the Codex, an expert body established by the Food and Agricultural Organization (FAO) and World Health Organization (WHO) of the United Nations. The participation of representatives of public organizations in the GFSI is

limited to a few members in the Advisory council and a FAO representative in the Global Regulatory Affairs Working Group. The latter group has to develop a work plan to 'actively engage governments in recognizing and accepting GFSI benchmarked schemes as an effective and efficient tool for global food safety management' and 'actively engage and build relationships with CODEX Alimentarius and WTO (…) to further align industry and government efforts in food safety.'[101] It is only now GFSI has matured, that it currently seeks formal recognition by national and international governments and aims at integrating its meta-standards with Codex and WTO (SPS) requirements. GFSI is a pivotal actor at the global level of food safety discussion that public actors can no longer disregard. The rise of GFSI has significantly strengthened the capacity of the industry to lobby in this field and it would not surprise us if GFSI would be successful in doing so.

In the case of EASA, by contrast, the role of public actors, in particular the European Commission, is key to understanding the impact and function of EASA's meta-regulatory standards. As noted above, the concluding report of the 2005 Roundtable on Advertising Self-Regulation constituted a firm confirmation by the Commission of EASA's approach to enhance the operation of advertising self-regulation in Europe. It effectively puts EASA in the driver's seat to push further the integration of the different national approaches to self-regulation in the European advertising industry. This can also be witnessed more recently in relation to the regulation of Online Behavioral Advertising. At the Roundtables organized by the Commission to discuss the industry's proposal for self-regulation the Commission made sure that the approach taken by the industry would follow the principles set by EASA. While the Commission thus left ample space for the online advertising industry to regulate the matter of Online Behavioral Advertising itself, it seeks to control this process by making sure EASA's approach is followed. The informal delegation of regulation of online advertising this implies, offers an important recognition of EASA's regulatory activities and genuinely offers a degree of legitimacy to it.

5. Conclusion

This paper discussed the emergence of private meta-regulation in transnational private regulation. Several factors drive the rise of meta-regulators in this field. By analyzing the meta-regulatory activities of GFSI in the field of food safety and EASA in the field of advertising we argued that meta-regulation in the private domain is principally concerned with the bolstering of the capacity, credibility and legitimacy of transnational private regulatory regimes and the convergence between such regimes. While both GFSI and EASA do adopt meta-standards to enhance rule compliance and enforcement activities of private regulatory regimes, their principal goal is to establish common standards that boost the operation and performance of these regimes. In this sense, private meta-regulation offers a level-playing field for private regulation and aids the harmonization of private regulatory activities in specific issue areas. Private meta-regulation may thus be said to facilitate the building of a transnational community of private regulatory regimes that fosters common goals, offers a forum for discussion and reduces rivalry between different regimes.[102] This also offers opportunities for public actors such as states and intergovernmental organizations to engage with and tap into the capacity of private meta-regulators as these

[101] http://www.mygfsi.com/structure-and-governance/gfsi-technical-committee/global-regulatory-affairs.html (last accessed May 2014).

[102] Compare Loconto and Fouilleux 2013, who observe the same dynamics in relation to ISEAL.

institutions constitute a nexus of industry interests and other stakeholders involved in private regulation often at multiple layers of governance.

We also note that drawbacks of the development of transnational meta-regulators such as GFSI and EASA exist. Both GFSI and EASA have reinforced the concentrated powers of large corporate retailers and manufacturers at the end of the food supply-chain and of advertising industry respectively. A powerful transnational private meta-regulator may also easily relegate national governmental agencies to second-class regulators in the food safety domain. Only a concerted strategy of different international and national governmental players seems able to counterbalance the power of the private meta-regulator. What also appears key is that approaches that do not meet the meta-standards are driven out of the market or are otherwise forced to leave the scene. While the GFSI and EASA have successfully increased convergence and standardization, they have concomitantly excluding other practices. Efsis and HACCP dropped out of GFSI and the British model of advertising self-regulation stood model for the EASA, thus rejecting the German and French models. Finally, of course, all parties that are not capable or willing to adapt to the set standard are excluded from a large part of the market. This is particularly clear in the case of GFSI, which has been criticized for in effect excluding small farmers, artisan food producers and developing countries.