FIT FOR THE FUTURE?

Reflections from Leiden on the Functioning of the EU

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12 EU Cooperation and Coordination of Enforcement within the Fields of Occupational Safety and Food Safety

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12.1 Introduction

In 2010 the European Union adopted the EU2020 strategy: a strategy for smart, sustainable, and inclusive growth. Besides the ambition for the EU economy and EU society, this strategy also includes how the EU will deliver the required results. Better governance is a cornerstone of this strategy. It embraces a thematic approach to the EU dimension of required action, country reporting, integrated guidelines, and policy recommendations to the Member States. Even though this method is not completely new, the consistency of its implementation regarding the economic development of the Member States is. The financial and economic crisis explains the focus of EU strategy 2020: economic reform and financial discipline.

This paper discusses how the EU strategy is carried over to the fields of occupational safety and health, and of food safety. It analyses how cooperation between national enforcement agencies in these two fields has developed, including how the main policy principles are implemented and enforced. We have selected these two areas for the following reasons: (1) both areas have a long history of EU regulation and cooperation between Member States; (2) while EU strategy 2020 focuses on macro economics and financial issues, these areas are not only relevant for the day-to-day lives of the people, but also for creating the internal EU market.

The fields of occupational safety and health, and of food safety have a great interest in effective enforcement of Community regulations, regardless of whether they are implemented through national law or not. Enforcement is by its nature very operational: how does an individual inspector act when he or she encounters a violation? What safeguards are in place to ensure that an inspector in a slaughterhouse in Italy will take the same actions as an inspector in Sweden or Poland? How are the priorities determined for the inspections? Are Member States trying to let their national industry profit 'from less or less strict enforcement' than in other countries? Given the operational characteristics of the inspectors' work, enforcement is strongly influenced by cultural issues. What is the dominant attitude towards compliance? What legal instruments does an inspector have

for enforcing compliance, and if the legal instruments are being applied, are they accepted in society?

The national enforcement systems have evolved differently over time. They are differently positioned in governmental organizations, with different enforcement abilities and differences in the political attention to the issues. In the next two sections, we describe these issues for occupational safety and health, and for food safety. We argue that creating a level playing field requires more effective EU supervision. This affects the principle of subsidiarity. Supra-national supervision is already being implemented in the field of food safety; it focuses on the working methods of national inspections. In the field of occupational safety and health, there is not much EU supervision, and cooperation between inspectorates is mainly voluntarily.

12.2   THE FIELD OF OCCUPATIONAL SAFETY AND HEALTH

In the past, occupational safety and health was a national competence for improving labour circumstances and at the same time it was an instrument to support economic competition. The first EU directives on occupational safety and health were adopted on the basis of the general market harmonization provisions. This was due to a lack of explicit legislative competence in the treaty for occupational safety and health. The Single European Act 1987 and the new Social Chapter introduced a new legal provision to the treaty, authorizing the Commission to take an active role on working conditions and social dialogue. Opening up the borders requires international coordination to prevent unfair competition by saving costs through neglecting health and safety conditions in workplaces. Therefore, beginning in 1982, the Senior Labour Inspectors Committee (SLIC) started as an informal committee to assist the European Commission in monitoring the enforcement of EU legislation at the national level.[1] Community law often has to be implemented in national law and inspected by national inspectorates. Differences in enforcement could still lead to an unlevel economic playing field with companies having an unfair competitive advantage by saving money through bad labour conditions. Especially in times of economic crisis, the enforcement systems should be working similarly in various countries.

Besides the EU regulations, there are the ILO (International Labour Organization, a United Nations Agency) treaties signed by many countries including EU members. EU regulations and national regulation are bound by these treaties. The relations with the ILO are beyond the scope of this paper.

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[1]   *See also* the European Commission website on the history of the SLIC (SLIC), available at: <http://ec.europa.eu/social/main.jsp?catId=148&intPageId=685> (last accessed on 31 January 2016).

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12.2.1   Governance Structure

The EU Directorate-General for Employment, Social Affairs and Inclusion supports the EU Commission in its regulating tasks. This directorate-general meets every 6 months with its counterparts of the Member States: directorates-general responsible for policy development for employment, social affairs, and inclusion. The Commission's regulatory task finds its origin in Article 153 of the Treaty on the Functioning of the European Union (ex Article 137 of the Treaty Establishing the European Community). A wide variety of Community measures for safety and health at work have been adopted based on this article, starting with the Framework Directive. This Framework Directive has a wide scope of application and incudes other directives focusing on specific aspects of safety and health at work. The directives for occupational safety and health set out minimum requirements and fundamental principles, such as the principle of prevention and risk assessment, as well as the responsibilities of employers and employees. These directives (like all EU directives) are binding and oblige Member States to transpose them into national law.

The EU facilitates Member States with the implementation of the directives. Guidelines are used for that. Guidelines are non-binding documents that, for example, describe best practices, modus operandi, etc. The guidance on risk assessment at work describes how the strategies for the identification of hazards and control of the risks should be based on the participation and consultation of all those who work at the workplace.[2] This especially includes workers and their representatives. Despite the fact that the guideline was published in 1996, its general provisions are still up to date and in line with current good practice.[3]

Occupational safety and health is dominated by technical issues. What type of machines have what kinds of risks? What level of exposure to certain chemicals is acceptable? What is a good method of protection and will it reduce exposure? These kinds of issues can only be addressed in overall directives and require accepted standards to set concrete norms for the operational level. In EU terms, a standard is a 'harmonized standard' if adopted by one of the European standardization organizations – European Committee for Standardization (CEN), European Committee for Electro technical Standardization (CENELEC), and European Telecommunications Standards Institute (ETSI). A standard is only set following a request of the EU Commission.

In this way there is a split between the EU regulating bodies and the EU standardization bodies. This especially applies for tools and equipment under the Commodities Act: tools and equipment sold on the European market should be safe by design. Therefore, these commodities should be regulated. The European directives define the 'essential require-

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2 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ 1989 L 183/1.
3 *See* the European Agency for Safety and Health at Work's website, available at: <https://osha.europa.eu/en> (last accessed on 31 January 2016).

ments' to ensure healthy and safe consumer products, to protect the environment, and protect the workers using the products for professional use. The European standardization organizations have the task of drawing up the corresponding standards for meeting the essential requirements of products as defined in the regulations. This way of working is not only relevant TO occupational safety and health, but is especially important from the perspective of free movement of goods. Member States must accept the products that meet these standards. The DG for Enterprise and Industry supports the EU Commission in developing these regulations and linking them to the standardization organizations.

Having directives and standards is one thing, having good compliance is another matter. The national enforcement system should guarantee maximum compliance. To ensure this, national inspection must have a common way of working: from the perspective of occupational safety and health, but also from the perspective of a level playing field for the internal market. The SLIC consists of national directors or directorate-generals of the national labour inspectorates. The committee has a limited role in the development of regulations.[4] It can put issues on the agenda by advising the EU directorates-general to take action, but has no formal role in the regulatory process. The development of new regulations is dominated by the policy directorates-general and by social partners. Social partners (employees as well as employers) are always consulted in the regulatory process. The EU standardization agencies and the European Agency for Safety and Health at Work are also consulted. The SLIC has an important role in developing guidelines, sharing best practices, and developing inspectorates by sharing knowledge. It also has peer-review approach, so every member is periodically visited by its colleagues and receives advice for improvement. Where the policy directorates-general and the standardization organizations have a role in regulations and standards, the SLIC has a strong role in guidelines and best practices.

12.2.2   Current Developments

The field of occupational safety and health is dominated by social partners, at a national as well as EU level. Basic standpoints are that workers and their representatives want a safe and healthy workplace. Employers want a level playing field and acceptable costs for the safety and health of the workers. Apart from the loss of an individual's wellbeing, labour accidents cost a lot of money. These costs not only affect the company involved, but also society as a whole if an individual becomes sick or is not capable of earning a living for

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4   *See* European Commission: SLIC, 'Resolution on the role of SLIC in the Community Strategy on health and safety at work 2007-2012', available at: <http://ec.europa.eu/social/BlobServlet?docId=3168&langId=en> (last accessed on 31 January 2016; and European Commission: SLIC, 'SLIC Action plan for 2013-15 and beyond, in support of EU OSH, Strategy 2013-2020', document on file with author.

himself. Also a good and safe workplace makes it possible for people to continue working for longer, which is required given the demographic development of the EU population.

Three basic characteristics dominate occupational safety and health. First, technological developments bring new risks to the fore. This especially occurs in the chemicals sector when clinical studies connect the exposure to chemicals with illness. Before there is hard evidence of the connection, how should this uncertainty be dealt with? What can be allowed and what should be forbidden? Which action should be taken during the period of uncertainty? Secondly, technological developments deliver solutions to existing risks in the workplace. Often these risks were accepted because of economic considerations and the abundance of technical solutions. With the application of new technology these risks can be removed completely. Thirdly, new technological developments create new risks, for instance, nanotechnology or repetitive strain injury (RSI). How should these new risks be dealt with? These three characteristics always boil down to questions like: what are acceptable risks? Which measures should be taken? And how should workers be protected if the risks cannot be removed completely? Regulations, standards and guidelines try to answer these questions.

While technology creates the dynamics, the field of occupational safety and health has a long history of policy development and, because of this, it is not so dynamic anymore. Strong social partners with experience in dealing with these issues don't want all kinds of micro regulation. Therefore, for a number of years a discussion has been going on about transforming the regulations from means-oriented regulation to goal-oriented regulation. Means-oriented regulation describes at a micro level how to act in a certain situation, for instance, machines with moving parts should always be screened off from workers. Goal-oriented regulations focus on the final outcomes one strives for (for instance, workers should be protected against fall hazard) and emphasize that social partners take their own responsibility for reaching the required goal by defining technological solutions. In this respect, there is a difference between countries in the EU with a long policy history in occupational safety and health, and those with a short history. Countries with a short occupational safety and health history have less experience in social dialogue and prefer means-oriented regulations because they eliminate discussion in companies and give the inspectors a strong position. At the same time countries, with long occupational safety and health experience prefer goal-oriented regulations which offer more opportunities for fine-tuning in specific situations and generate more support for agreed measures. Goal-oriented regulations also offer more flexibility for adopting new technology and responding to new risks.

The discussion about goal-oriented regulation converges with the discussion about better regulation and less regulation. The occupational safety and health field has a bad name because of the large volumes of regulation, at the national level as well as the EU level. As far back as 2004, the Dutch government proposed reducing the amount of regu-

lation in the occupational safety and health field. This led to a new occupational safety and health law in 2007 in the Netherlands that was intended to reduce regulations and that was based on a goal-oriented approach. If social partners conclude that goal-oriented regulation needs to be more specific, they can negotiate with one another for a specific sector. If they reach an agreement, the Labour Inspectorate will examine these results to determine whether they meet the goals formulated in the regulation. If its opinion is positive, the government accepts the agreement as a standard and all companies in the described sector can use it, knowing that the inspectorate will accept it as a good standard. There are already 172 sector agreements in the so-called 'arbocatalogus', or occupation health and safety catalogue.[5]

This approach will only work if employees and employers can reach an agreement. If they don't reach an agreement, the goal-oriented approach requires an employer to prove that the measures taken are sufficient to meet the goals. If there is an agreement, the employer can implement the agreed measures without having to prove that they suffice. So the employer has an incentive to come to an agreement as do the employees, because without an agreement there are few standards to refer to in case of hazards. The basic idea behind this approach is that specific sectors can customize the occupational safety and health regulation to their own needs. This, however, requires a high level of internalization of the occupational safety and health interest by social partners and a highly developed field of occupational safety and health services in the market place.

Broadly speaking, EU employees are satisfied with their working conditions: 82% of EU 27 workers are satisfied with their working conditions.[6] But levels of satisfaction vary widely: in Romania and Greece satisfaction is less than 60%, while in the United Kingdom and Denmark it is more than 90%. This research also shows large differences in the number of workers who claim to be exposed to health or safety hazards at work: in Lithuania 47% (the highest in the EU), and in Denmark and the Netherlands 16% (lowest in the EU). These differences between the countries are also reported in the Eurofound Yearbook 2014, and show a strong correlation between wellbeing in the workplace and organizational performance.[7] This makes the case for a win-win situation between employers and employees: good occupational safety and health conditions generate good profit for companies and vice versa.

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5   See <www.arboportaal.nl>.

6   See Nationaal Kompas Volksgezondheid based on fifth European Working Conditions Survey 2010 (EWCS), available at: <www.nationaalkompas.nl/gezondheidsdeterminanten/omgeving/arbeid/arbeidsomstandigheden-verschillen-internationaal/> (last accessed on 31 January 2016); and Eurofound, 'Fifth European Working Conditions Survey – 2010', Publications Office of the European Union, Luxembourg, 2012. Available at: <www.eurofound.europa.eu/surveys/2010/fifth-european-working-conditions-survey-2010>.

7   Eurofound, 'Eurofound yearbook 2014: Living and Working in Europe', Publications Office of the European Union, Luxembourg, 2015, p. 36. Available at: <www.eurofound.europa.eu/publications/annual-report/2015/eurofound-yearbook-2014-living-and-working-in-europe>.

The relationship between organizational performance and wellbeing is the basis for the transformation of means-oriented regulation to goal-oriented regulation. Countries with a high level of good organizational performance (like the five highest: the United Kingdom, Austria, Estonia, Sweden, and Denmark), in particular, will find more support for the transformation to goal-oriented regulation compared to countries with a lower level of good organizational performance (like the five lowest: Cyprus, Italy, Greece, Spain, and Portugal).[8] The transformation to goal-oriented regulation is a kind of next level OSH approach that requires an overall level of maturity in the occupational safety and health field. This is a fundamental issue in the EU: while some countries require guidelines with clear means regulations, other countries require possibilities for customization to their own level of development.

At the same time, to reduce differences between inspection and their effectiveness in enforcement, more regulation regarding the working methods of the inspectorates is needed. For instance, the minimal frequency of inspections in the Seveso III Directive[9] applies to 10,000 industrial establishments in the European Union where dangerous substances are used or stored in large volumes, which is mainly in the chemical, petrochemical, logistics, and metal refining sectors. Also the directive includes requirements concerning information exchange between the Member States and reporting obligations to the Commission concerning specific incidents. Another example is the initiative of the Commission to boost protection of posted workers using an enforcement directive. These requirements regarding enforcement are relatively new in EU regulations, and are in response to the need for enforcing regulation and harmonizing inspection methods.

12.2.3   Sub-Conclusion

The occupational safety and health field has a long history of EU regulation and is dominated by a permanent trade-off between employers and employees, and is strongly influenced by technological development and the overall occupational safety and health state in a country. It is difficult to customize EU directives and standards to suit national policies, while the guidelines are much more open to customization. So one could argue that the SLIC's EU guideline developments are a means of customizing because the countries are free to follow them.

Differences in the way labour inspectorates operate affect the level playing field for companies, and a level playing field is required for an effective EU internal market. The

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8   *Id.*
9   Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC Text with EEA relevance, OJ 2012 L197/1.

involvement of two EU directorates-general (DG Employment, Social Affairs and Inclusion, and DG Enterprise and Industry) illustrates this tension. The SLIC focuses on harmonization of inspection methods while at the same time a discussion about goal-oriented regulation is ongoing. In other words, while the policy discussion focuses on expanding the options for customization, downstream in the policy chain work is underway to reduce possibilities for customization through harmonizing the inspection methods.

Countries supporting *goal-oriented regulation* (with a high level of organizational performance and good occupational safety and health standards) are eager to prevent unfair competition that is based on occupational safety and health. So they also support harmonized inspection methods while at the same time they are asking for customization options.

12.3   The Field of Food Safety

Food production is an international undertaking. Livestock, ingredients and food are transported all over the world. There is a long history of crises such as outbreaks of animal disease, contamination, and fraud. The threat of a new crisis is always eminent. At the same time, food quality must always be assured. So the sector's international characteristics and dependencies fuel a continuing need for EU coordination. The EU coordination of the food market began in 1962 with the plan for a common agricultural policy. The EU food market is based on being able to rely on one another's national enforcement systems. It's a highly technological sector comprising a range of EU working groups and a crisis structure to safeguard maximum reliability.

12.3.1   Governance Structure

The EU's integrated approach to food safety aims to ensure a high level of food safety, animal health, animal welfare, and plant health within the European Union through coherent farm-to-table measures and adequate monitoring, while ensuring the effective functioning of the internal market.

Food safety has become one of the most important – if not the most important – field of regulation in all European countries. All around the world and in particular within the EU, food and live animals are traded and transported between countries. Many incidents such as live animal diseases (Bovine Spongiform Encephalopathy or Mad Cow Disease, 1996), hog cholera, contamination of food (Dioxin and EHEC (2011)) and fraud (the horsemeat affair (2013) show that food safety can no longer be dealt with nationally. The need for international cooperation on the regulation of food safety is therefore widely accepted.

Based on Article 39 and 43 of the Treaty of Rome, the plan for a common agricultural policy within the EU was adopted in 1962. During the years that followed, legislative instruments were established to create an open market for agricultural products within the Community. It was, however, soon evident that free movement of live animals and meat between the Member States was often hampered and sometimes totally blocked by restrictions issued by the national veterinary authorities to prevent the spread of serious diseases carried by infected animals and contaminated meat. The Commission had already anticipated these difficulties in 1960 and had set up a working group 'veterinary legislation', in which DG VI staff met with the chief veterinary officers (CVOs) from the six Member States to discuss the veterinary obstacles to free trade. The chief veterinary officers, who still meet on a regular basis, felt that a coordinated veterinary policy was needed in Europe and that the EEC would constitute a good structure for veterinary cooperation. They agreed that harmonisation of the national veterinary legislation was necessary to solve problems related to intra-Community trade. Plans for coordination within the veterinary sector were discussed. It was agreed that Community criteria for veterinary control procedures and methods for protection of health in humans and animals, should be based on adequate technical and scientific standards. The Commission, therefore, held meetings with veterinary scientists from the Member States to get their advice and established working groups, in which veterinary experts assisted them to draft proposals for veterinary Directives.[10]

The Directorate-General for Health and Food Safety (DG SANTE) is responsible for food safety within the European Commission. The Directorate-General for the Internal Market, Industry, Entrepreneurship and SMEs is responsible for consumer product safety.

Coordinated European supervision has been well underway since 2002 with the introduction of Regulation 178/2002 on food law.[11] Based on regulation 178-2002, Regulation (EC) no. 882/2004 was then introduced.[12] It regulates the control and enforcement measures for food legislation of the EU Member States. Three elements are crucial: (1) the tasks of the EU in the organization of the controls; (2) provisions that national supervisory authorities (such as the Netherlands Food and Consumer Product Safety Authority (NVWA))[13] must take into account; and (3) enforcement tools.

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10   This section is based on text from H. Batho *et al.*, *The EU Veterinarian: Animal Health, Welfare and Veterinary Public Health Developments in Europe Since 1957*, Office for Official Publication of the European Communities, Luxembourg, 2008. Available at: <http://ec.europa.eu/food/resources/the_eu_veterinarian_080410.pdf> (last accessed on 31 January 2016).

11   Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ 2002 L31/1.

12   Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, OJ 2004 L 165/1.

13   *Nederlandse Voedsel- en Warenautoriteit.*

Furthermore, Regulation (EC) 882/2004 determines that each Member State must produce multi annual national control plans (MANCP). These plans describe a country's official plans regarding inspections regarding food safety, animal welfare, feed, plant health, and organic production.

The Regulation also led to the creation of the Food and Veterinary Office (FVO). The Food and Veterinary Office monitors Member State compliance with EU regulation. Each country must designate an organization that oversees food safety. Each country is required to have a national enforcement authority, the competent authority that meets a number of requirements established in the regulation, formulated as basic principles for good enforcement.

The Food and Veterinary Office, based in Grange (near Dublin), Ireland, has 180 employees. It carries out audits, inspections and related non-audit activities to ensure that national authorities implement and enforce EU legislation properly. In this way, the EU aims for equal implementation of European regulation by minimizing uneven practices on the part of inspectorates from all Member States.[14] This is done during on-the-spot audits, or by desk-based exercises or collation of data from the Member States. The Food and Veterinary Office writes reports about the performance of Member States and non-EU countries. Food and Veterinary Office reports can make recommendations to assist the competent authorities in taking corrective measures. The actions taken are monitored administratively or by on-the-spot audits. If non-compliances by Member States are sufficiently serious, stronger actions may be taken by the European Commission in agreement with Member States, including legal action, restrictions or even bans on the movement of goods or animals.

The Food and Veterinary Office visits the Member States 7 to 8 times a year on average. One of their main objectives is to harmonize Member State enforcement. The last time they visited the Netherlands, the Food and Veterinary Office inspectors bought food articles from supermarkets and asked the Netherlands Food and Consumer Product Safety Authority to trace all components.

The Food and Veterinary Office presents an official country profile report for each country every three years. In response to the recommendations in the country profile, countries have to take appropriate actions that are then monitored by the Food and Veterinary Office. These reports and the actions taken form a solid basis for benchmarking between Member States. The audit reports and country profiles are discussed with stakeholders so that compliance and national enforcement are improved. They are also used for better regulation. The Food and Veterinary Office promotes the best practices that

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14 E. Versluis, 'Explaining Variations in Implementation of EU Directives European Integration', *European Integration online Papers (EIoP)*, Vol. 8, 2004. Available at: <http://eiop.or.at/eiop/pdf/2004-019.pdf> (last accessed on 31 January 2016); and E. Versluis, 'Even Rules, Uneven Practices: Opening the "Black Box" of EU Law in Action', *West European Politics*, Vol. 30, 2007.

they encounter, and presents new trends and important developments in country workshops. These workshops sometimes result in guidelines for Member States. They train employers from national authorities and explain guidelines, stimulate discussion and strengthen contact between Member States. This is called 'Better Training, Safer Food'.

The European Food Safety Authority is the EU agency that provides independent scientific advice, and communicates on existing and emerging risks associated with the food chain. The European Food Safety Authority was established in February 2002 and is based in Parma, Italy. In the European food safety system, risk assessment is done independently from risk management. As the risk assessor, the European Food Safety Authority produces scientific opinions and advice to provide a sound foundation for European policies and legislation and to support the European Commission, European Parliament and EU Member States in taking effective and timely risk management decisions.

In 1989, the EC Symposium on Food Control in Rome identified the need to create a forum which would allow representatives of European food control authorities to meet, exchange information, address inconsistencies and explore practical enforcement difficulties. The Dutch Inspectorate for Health Protection responded to this challenge by inviting enforcement directors from other Member States to a meeting in The Hague in 1990. During this meeting the delegates agreed to establish an informal European Forum for Food Law Enforcement Practitioners (see www.flep.org). From its original foundation in 1990, it met regularly until November 2010. Following agreement with the European Heads of European Food Safety Authorities (HEFSA), the European Forum of Food Law Enforcement Practitioners was re-established and reconvened in Rome in January 2014.

The European Forum of Food Law Enforcement Practitioners is an informal grouping of European food law enforcement practitioners representing the management of food control interests in Europe. Formed after the introduction of the original EU Directive on official controls, its main purpose is to stimulate exchange of information, learning and co-operation between European colleagues in order to establish confidence in national enforcing systems and actions taken when incidents occur. Its main bodies are the European Forum of Food Law Enforcement Practitioners Forum and the Steering Committee.

In addition to these provisions is a relatively new phenomenon that has gained status in only a few years time: the Heads of European Food Safety Agencies (HoA). This is an informal platform consisting of the heads of the competent authorities of the EU that aims to ensure safety throughout the food chain through regular control, inspection, sampling, and analysis. In particular, they ensure implementation and enforcement of European legislation as well as international and national rules by business operators in the participating countries. In addition, they promote collaboration between competent authorities of participating countries in order to verify compliance with food law legislation and to exchange views and experiences to improve harmonisation of the enforcement within the EU. They also focus on improving the inspectorates' effectiveness and efficiency.

12.3.2 Current Developments

Food safety is a huge issue at the moment, and it is expected that that will be the case for many years to come. Fraud, diseases and contamination are regulated and controlled heavily. The system for competent authorities seems to function quite well. But what does this mean for the companies that are subjected to all these regulations and regulators? What are the costs and benefits of all the regulations for companies as well as the governmental organizations? What is the socio-economic impact, in particular for small companies? Is the amount of compliance assistance and guidance sufficient? An evaluation of the burden for the food industry seems limited. The Food Standards Agency in the UK has provided a good practice with the food safety management package, 'Safer Food, Better Business'.[15] It was developed to help retail businesses across the UK to comply with food hygiene regulations. The Netherlands Food and Consumer Product Safety Authority is also aiming at reducing the burden for businesses with several projects.

The food chain is complex and entwined. One consumer product, for instance, the meat in a hamburger, consists of many substances from various meat sources. The industry is obliged to document all the substances throughout the food chain. The Netherlands Food and Consumer Product Safety Authority experiences much non-compliance in this documentation process, which makes it difficult to trace foodstuffs when there are food incidents. This is quite surprising, given the fact that the whole sector is dominated by all kinds of certification processes that should guarantee that companies have the requisite capacity to comply. This is a huge issue in the food safety field: what is the quality of the information on the food product labels?[16] The Food and Veterinary Office is pressing inspectorates to pay attention to this aspect of quality insuring assurance in the food sector.

There are some important issues yet to be addressed in the whole of Europe. It is obvious that an approach based on risk assessment is needed. More and more data is available these days. This constitutes a significant opportunity for the near future. European regulation has now reached the level where serious steps aimed at the final outcome – food safety combined with good market opportunities for businesses, especially small ones – have to be taken as soon as possible.

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15 *See* Food Standards Agency, 'Safer Food, Better Business', available at: <www.food.gov.uk/business-industry/sfbb> (last accessed on 31 January 2016).

16 *See also*, Speech of Inspector-General Harry Paul, Netherlands Food and Consumer Product Safety Authority (NVWA), speech at the annual meeting of the Dutch Food Retail Association (*Centraal Bureau voor de Levensmiddelenhandel*) on June 18th 2015 (in Dutch), available at: <www.nvwa.nl/txm-pub/files/?p_file_id=2208877> (last accessed on 31 January 2016).

12.3.3   Sub-Conclusions

The field of food safety is dominated by strong EU regulation and is strictly monitored by the EU. It has a long tradition in the EU context. The governance structure has already advanced beyond the structure announced in the EU 2020 strategy. National inspection authorities are strictly monitored and even inspected by the EU. There are few possibilities for customization, but the European Forum of Food Law Enforcement Practitioners and the heads of European food safety agencies are trying to develop a network of best practices, exchange information, and assist one another in implementing EU regulation. The cost of compliance is not a big issue: the regulation and food safety goals are given priority above the cost of regulation. Outbreaks of animal diseases in recent years have been visible to everybody and have prompted the development of stronger regulations and control. The costs of compliance are secondary in this debate. The field of occupational safety and health is not confronted by the same issues.

12.4   Reflections and Conclusion

Occupational safety and health, and food safety are fields that are similar in some respects, but there are also some significant differences.

Both fields are dominated by a trade-off between economic aspects on one hand and safety and health issues on the other hand. Economic aspects are the fundamentals of the EU: free movement of goods, services and labour. Therefore, the EU policy directorate-general responsible for enterprise and industry has a strong say in developing regulations for both fields. Dedicated directorates-general represent the safety aspects of these two fields. Both fields have national inspection authorities responsible for ensuring compliance. The EU generates regulations for both fields, regulations that are implemented in national legislation and monitored by national inspections. Both fields have a long history of institutional development at the EU level. Both fields have dedicated standardization organizations and national inspectorates take initiatives to exchange information and share best practices.

An important difference relates to the monitoring instruments at the EU level. While food safety has a dedicated monitoring organization (the Food and Veterinary Office) that monitors national inspection authorities, occupational safety and health tries to develop standards based on cooperation between the inspectorates; observing these standards is strictly voluntary. Secondly, the fields show differ significantly in terms of the 'better regulation' discussion and the cost of compliance. This discussion is much more prominent in occupational safety and health than it is in food safety, which is moving toward a policy change that will include goal-oriented regulation.

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The monitoring of food safety is strongly dominated by the international effects of outbreaks of animal diseases and food scandals like the horsemeat scandal. These incidents can affect several countries or even the whole European society and therefore contribute to the need for strong coordination within the EU, whereas occupational safety and health incidents are by nature always local and have a limited impact. Everyone experiences the consequences of occupational safety and health regulation because we all need to obey the same regulations. There are differences between countries whose occupational safety and health organizations perform well and those countries where these organizations do not perform well. No such difference is evident in food safety and this explains why implementing a goal-oriented approach in food safety will not result in a better outcome.

Both fields discussed in this paper will be affected by the new governance structure introduced to implement the EU 2020 strategy.[17] National reform programmes reviewed by the Commission form the cornerstone of this governance structure. If necessary, the EU Council adopts the Commission's instructions. Countries report periodically to the Commission. Even though this structure was described in 2010 (the release of the EU 2020 strategy) it has only just been implemented in the Stability and Growth Pact. Due to the global and eurozone economic crises, economic and financial coordination within the EU has intensified. The EU monitors the transformation of national economies, gives recommendations concerning the reform actions to be taken, monitors the financial condition of Member States', and even has the option of taking financial actions if Member States don't meet the agreed standards. In this way, the economic crises and measures taken gave impetus to EU coordination that was reaffirmed at the June 2014 meeting of the EU Council. The governance ambition formulated in the EU 2020 strategy has been implemented in the financial and economic fields. This is not surprising given the huge impact of the crisis and resulted in EU interventions that Member States would not have accepted previously because of the subsidiarity principle.

We expect that the intensified EU coordination will also be applied to food safety and occupational safety and health due to its importance for a level economic playing field. For food safety, the consequences will be limited given the fact that food safety already has a high level of coordination and monitoring that is broadly accepted in the EU. For occupational safety and health, it will be more difficult because two contrary developments are in progress: reducing the coordination by means of goal-oriented regulation versus the need for stronger and coordinated enforcement of current regulations.

Occupational safety and health reflects a strong link between the development of Member States and whether or not they prefer for goal-oriented regulation. It would be interesting for the EU to discuss a regulation scheme that takes the level of development

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17 European Commission, 'Europe 2020, A strategy for smart, sustainable and inclusive growth', COM(2010) 2020 final, 3 March 2010.

of a certain field into account. For instance, countries with a high level of development in occupational safety and health could choose for goal-oriented regulations, while countries that are less developed would have to adhere to means-related regulation. Of course the level of development should be measured objectively and should be decided upon by the EU. Such an approach could also be applied to other sectors if the impact of failure is limited and does not affect other Member States, unlike food safety that does impact on other Member States. It would be interesting for the Dutch EU presidency to consider launching this debate.