

TABLE OF CONTENTS

| | |
|---|----|
| EXECUTIVE SUMMARY | 2 |
| CHAPTER 1. INTRODUCTION - THE INSPECTIONS ISSUE | 4 |
| 1. What are inspections and enforcement procedures – Specificities of inspections, control, enforcement vs. “administrative procedures” and “regulations” | 4 |
| 2. Burden on businesses – how do inspections weigh on business activity | 9 |
| 3. Effectiveness and efficiency – what do inspections cost (to the state) and what do they deliver | 16 |
| CHAPTER 2. INSPECTIONS PRACTICES PRE-REFORM – MANY PRACTICES, NO MODEL, LITTLE COHERENCE..... | 21 |
| 4. Institutional issues: transparency, duplications, goals | 21 |
| 5. National vs. local inspections – coordination issues..... | 26 |
| 6. Professional background and qualification of inspectors | 30 |
| 7. Inspections targeting and risk-based planning..... | 31 |
| CHAPTER 3. REFORMING INSPECTIONS – DIFFERENT CONTEXTS, DIFFERENT GOALS, DIFFERENT MODELS | 34 |
| 8. Starting points – recognising the inspections problem, mobilising support | 34 |
| 9. Defining the goals and approach of reform | 48 |
| 10. Driving implementation successfully..... | 53 |
| CHAPTER 4. REFORMED INSPECTIONS – SOME EXAMPLES OF GOOD PRACTICE..... | 60 |
| 11. The use of “delegated” inspections or “second-level control” | 60 |
| 12. Institutional reform – reducing overlaps and duplication, improving efficiency | 64 |
| 13. Governance – giving inspectorates the ability to do their job without undue influence | 69 |
| 14. Risk-based targeting – optimising effectiveness and costs | 72 |
| 15. Promoting compliance – information and guidance rather than control and sanctions | 75 |
| 16. Sharing information – reducing burden, improving planning, optimising efficiency | 77 |
| 17. Beyond inspections – sanctions and liability, “acceptable risk level” | 81 |
| BIBLIOGRAPHY | 87 |

EXECUTIVE SUMMARY

1. In spite of the increasing focus on improving regulations for businesses (and citizens), enforcement and delivery of these regulations, and in particular inspections, have been the object of considerably less attention. Studies and reform programmes often “assume” delivery, effectiveness, compliance and tend to pay too little attention to how third parties, but also the state administration, are actually supposed to work with rules *in practice*. There is, however, a growing body of experience and evidence, both from OECD countries and beyond, on the crucial issue of how regulation *actually works*:

- who “delivers” it through inspection, enforcement, information activities (staff resources, structures);
- how interactions with citizens and businesses take place;
- how practices get transformed;
- costs, outcomes, effectiveness and efficiency.

2. While differences between and within countries are considerable, the picture presented by business inspections around the world is often unsatisfactory. In many jurisdictions, to at least some extent:

- many inspections creating significant costs for the state, and burden for businesses;
- insufficiently clear requirements, uncertainty, discretion etc. lead to additional barriers to growth;
- outcomes are disappointing in terms of securing public goods, and/or cost-effectiveness is low.

3. The reasons for this evidently vary, but a frequent pattern includes the following problems:

- many inspecting agencies, inspectors, and inspection visits – frequent overlaps, duplications, lack of coordination;
- insufficient risk-focus – many businesses get inspected, even though their risk level is low or moderate (combination of probability and magnitude of hazard for the public);
- lack of consistency, coordination and coherence between agencies – lack of uniform guidelines and approaches between inspectors;
- frequent focus on finding violations rather than improving compliance and outcomes.

4. Overall, high costs for state budgets usually go hand-in-hand with high costs for businesses – and outcomes that are not in proportion to these costs.

5. Many countries have thus undertaken to reform inspections, starting with Mexico in 1995, many Central and Eastern European and Former Soviet countries from the late 1990s, and with prominent examples such as the UK from 2005 and the Netherlands from 2006. Among the latest initiatives are reforms in Lithuania since 2010 and Italy since 2011. To varying degrees, and with emphasis corresponding to each jurisdictions’ specifics, these reforms try and make the legal framework for inspections clearer and stronger, to ensure that inspections and enforcement are more risk-based and risk-

focused, and aim more at promoting compliance and ensuring positive outcomes than at detecting and punishing violations.

6. Successfully improving the inspections and enforcement system requires to address a number of issues:

- Institutional overlaps and structures, clarifying which agency should deal with which type of risk, and reducing duplications and overheads;
- Roles and responsibilities of national and local structures, combining flexibility and responsiveness with coherence and consistency;
- Risk-focus in resource allocation, planning and implementation of inspection visits – relying on a comprehensive and up-to-date information system;
- Transparency of requirements and clear guidance, allowing businesses to know what is expected of them, and what they can expect from inspectors.

7. While the adequate way to address each of these will of course depend on the specifics of each country's administrative structure and political economy, this report attempts to present some of the most interesting and successful experiences, as in fact problems were found to be frequently similar, suggesting that some good practices may be valid beyond the countries where they were initially pioneered.

CHAPTER 1. INTRODUCTION - THE INSPECTIONS ISSUE

1. What are inspections and enforcement procedures – Specificities of inspections, control, enforcement vs. “administrative procedures” and “regulations”

1.1 “Inspections” – brief overview

Historical overview

8. The question of their enforcement is probably nearly as old as the introduction of rules and laws themselves. Ancient Egypt in the New Kingdom era (16th-11th centuries BC) already had a complex administrative system with technical staff at the lower levels that were in charge of making sure that central directives (e.g. relating to irrigation systems etc.) were properly followed. Controls of customs and taxes have also come into existence very early – ancient Athens and Rome both levied fees on imports, and had agents in charge of controlling incoming ships. These agents, however, were in most cases working for private “contractors” who advanced the income from duties and taxes to the state, and then collected the actual payments for themselves – tax farming being the norm during Ancient times, and very frequent until the 19th century CE.

9. Still, while these functions undoubtedly related to enforcement, control and inspections, the structures in place did not necessarily look very similar to what we would nowadays understand as “inspections”. These developed gradually, over a number of centuries. Inspections of business premises to verify (and promote) compliance with official requirements started at least in the Middle-Ages, when craftsmen guilds controlled the activities of their members and the quality of their production – and in the 16th and 17th century, as central state power grew, several countries saw state inspections appear, such as manufacturing inspections in France, which were among the most established and long-lasting. These distant origins are important to keep in mind, for they sometimes help explain the difficulty to change, including the fact that from the onset inspections focused on issues of quality and techniques – an aspect that has led to problematic situations in many countries. A much broader development of inspection functions came along with the onset of the industrial era, and its many new hazards, that society sought to limit or control – with, for instance, the UK Factory Acts of the 19th century and to the labour inspections to enforce them, which developed from around 1850.

Different types of inspections and enforcement

10. There are many different types and categories of enforcement activities, control, inspections etc. – and they are called by many different names in different languages. In this report, we will be looking at inspections in the sense of visits conducted by state regulatory agencies (or by quasi-state, or even non-governmental organizations, but acting upon a specific delegation of power from the state) – they are usually neither requested by, nor paid for (though there are exceptions) by the objects they visit. They are mandatory checks of compliance with applicable regulations. They are conducted on the premises of the inspected entities. The focus will be on inspections of private business, because of their impact on administrative burden, investment climate and growth.

11. A certain number of verification and control activities are more difficult to strictly classify as “inspections” – and they will only be covered to some extent in this report.

12. First, visits, checks, tests etc. related to the certification of given goods or processes by private certifying bodies (which is a visit that is in fact requested by the controlled entity) – even though these inspections may be mandated by legislation for certain types of products, the selection of inspecting or certifying body is free, and the requesting party always has the liberty to call another one, for instance. This type of inspections will be discussed, but relatively briefly, as they would entail very complex technical considerations, and are somewhat distinct from the “state inspections” proper.

13. Documentary checks conducted by regulators entirely upon their own premises and with their own means, without involving in any way the regulated entity are another particular case. In some countries, these may be called “inspections” but they do not really create additional administrative burden. They will not be discussed here as they are more of an internal technical process of the state, and not directly relevant to the issue considered, except inasmuch as they can *replace* actual physical visits (through a better use of available information).

14. Revenue inspections (tax and customs), as well as inspections (of goods and people) conducted at the border of a country or group of countries (e.g. the EU), regardless of whether their purpose is safety in the broadest sense, customs duties or any other, are, on the other hand, most definitely *inspections* in the meaning of this report. They will not, however, be discussed in length here. Indeed, they are the focus of a large body of specific research and literature, and it would be redundant to try and summarise it here. Though these inspections are not really very different in nature from those studied in this research, they are organised in a distinct way, and their very high economic impact means that they have been the object of far more attention. We will thus mention them here only when they have been included into broader assessments and reforms of inspections “in general”, but not enter into their specifics.

15. “Enforcement” is a broader term than inspections: it includes both all types of controls conducted by regulatory agencies and all of their potential follow up measures (sanctions, prosecution etc.) as well as activities of law-enforcement bodies that are not primarily “business regulators” (e.g. the police, prosecutors etc.). Enforcement *strategies* may even incorporate other tools such as reliance on third-parties to initiate prosecutions, class-actions and the like – and, to some extent, enforcement strategies could also be understood as including information, outreach and education activities. This broader understanding is in line with Ayres and Braithwaite’s “enforcement pyramid”.¹

16. Because both of the relative fluidity of the “enforcement” concept, and of the impossibility to consider effectively inspections without somehow looking also at the follow up actions initiated by regulators, this report will to some extent cover both. The main focus, however, will be inspections specifically, because there are the largest component of enforcement activities, the one most broadly felt as burdensome, and also where reform interventions are the most complex, because of the large administrations involved, the many practices, traditions, expectations etc.

17. Another way of naming the set of functions and activities this research is looking at is “regulatory delivery”, which has entered usage in the UK in recent years – and has now become official through its use to name the *Better Regulation Delivery Office*.² Because it is so far used only in the UK, however, and is not yet usual elsewhere, it will be used only in specific instances here.

State of research and literature on the issue

18. Business inspections have been relatively less, and only more recently, discussed and researched than other dimensions of the state regulation of business activities – and also the focus of relatively less numerous reforms. While some of the earliest research on enforcement that can really be said to cover inspections specifically dates back to the 1980s,³ the topic has taken time to become “mainstream”, and the

most frequently used “better regulation tools”, such as regulatory impact analysis or the standard cost model only consider the inspections aspect at the margin. There may be several reasons to this situation.

19. The first is that inspections are somewhat more complex to investigate and to quantify than other regulatory “burdens”. Inspections are something that “happen” to businesses rather than a procedure that they have to go through with certainty in certain cases, and this means that not all businesses will be inspected by the same agencies, at the same frequency, in the same way etc. Other procedures, such as registration, permits, licences etc. are somewhat easier to assess: all businesses of a given type are supposed to go through a given set of procedural steps, and expert analysis can often come up with a reasonable estimate of what it takes to do so (even though reality can diverge from these estimates). As an example, the World Bank Group’s *Doing Business* survey and report look at a range of regulatory procedures (registration, building permits, licenses, border clearance...), administrative compliance costs (for paying taxes for instance), other legal framework issues (e.g. minority shareholders’ rights) – but not at inspections, precisely because it would be difficult to define a “typical case”.

20. The second may be that inspections have first emerged as a major problem in emerging markets and transition economies. Possibly the first well-documented inspections reform effort was in Mexico in 1994⁴, the very same year when it became an OECD member. Most of the countries, which engaged in such reforms in the late 1990s and early 2000s were in Eastern Europe and the Former Soviet Union. The Netherlands’ programme for inspections reform was one of the first in more advanced economies, with some initial steps in 2001-2002 but mostly taking shape in 2005-2007. Possibly the most important milestone in making inspections reform conceptually grounded and more “high profile” in OECD countries came in 2005 with the UK’s “Hampton Review”⁵. Thus, while clearly inspections reform are not a “new field”, they also have not yet been around for so long – and research on their design and effectiveness has thus been relatively limited.

21. To a large extent, available research and academic literature cover inspections in three ways:

- As a part of the broader “enforcement” topic, where inspections are only an instrument that treated as relatively “transparent”, i.e. not being considered for itself – regulators’ enforcement strategies and approaches are discussed, but limited consideration is given to the specifics of inspections (targeting, resource allocation, technical processes etc.), even though general assessments of enforcement “styles” are present.⁶
- In “regulatory effectiveness” studies, most often done on occupational safety and health, environment, tax and food safety (reflecting the importance of these functions, and the ideological disputes around them) – in some studies, inspections are looked at specifically, as the effectiveness evaluation looks at how rules are enforced.⁷
- With greater detail, in specific studies of how regulators operate and how their staff works, most of which have focused on occupational health and safety and environment, and came from the UK (and to some extent the US and Australia) – they have tended to focus on how the inspection actually happens and what the interaction with the business is, but far less on targeting or resources management.⁸

22. Though all these studies are valuable and useful, they leave a number of issues and gaps on the topic.

23. First, technical issues relating to planning and targeting, specific instruments to use during inspections (e.g. check-lists), etc. have mostly not been covered by existing research – most of the knowledge on these topics is fragmented, and held by the staff of various national or local regulators,

except for some publications by national or international agencies.⁹ Second, organizational structure issues (roles of different agencies, national/local structures, etc.) have received very little attention as such – though some studies mention the specific issues involved in locally-driven enforcement, for instance, there is no systematic review of these issues.¹⁰

1.2 *Regulations vs. enforcement/inspections*

24. Regulations *as such*, how they are designed and developed, how to improve them and make them “smarter”, have been considerably more studied than delivery mechanisms such as inspections and other enforcement tools. There is however ample evidence that enforcement and inspections are in fact crucial to how the regulatory sphere affects businesses and the economy. First, inspections and enforcement actions are generally the primary way through which businesses, in particular SMEs, “experience” regulations and regulators. Second, inadequate approaches or lack of changes in enforcement and inspections can mean that changes in regulations fail to deliver their full benefits. Third, evolutions in inspections and regulatory delivery to make them more compliance-focused, more supportive and risk-based can all lead to real and significant improvements for economic actors, even within the framework of existing regulations (which may, for different reasons, be very difficult to change “on the books” – so the ability to change the way they are enforced in practice matters). Finally, enforcement and inspections are as much about methods and culture as institutions, and as much about organizational mechanisms as legislation.

25. In fact, for most regulated businesses, inspections and other forms of control are the primary form through which regulations and regulators are experienced (even when inspections are relatively rare, their possibility remains an important concern for entrepreneurs). Also, the way in which inspections are conducted (with or without flexibility and emphasis on the “spirit” or the “letter” of the rules, with or without clarity on what criteria are used, etc.) can make identical rules translate in very different regulatory realities.

26. The reason inspections are often seen by businesses as a particularly important (burdensome, but also in some cases helpful and needed) instrument of “regulatory delivery” is their *recurring* nature. Licences and permits are usually obtained once, or renewed only rarely, whereas inspectors come back (more or less often). They are of particular interest in terms of reform because they are difficult to tackle. Regulations can be changed “on the books” but inspectors may continue to check “in the same old way”. Licenses can be eliminated for some types of activities, establishments etc. – but inspections need to be *improved* (better targeted, with a more professional and compliance-promoting inspector behaviour etc.), which takes time and resources, and can face considerable resistance.

27. Regulatory Delivery, as it is called in the UK, differs from Regulatory Policy in that the latter is about rules and rule-making, about policy expressed through rules – whereas the former is about relationships on the ground, once the rules are put into practice. Regulatory Delivery is about “the regulatory experience” for business, rather than the abstract analysis of rules and their possible impact. It is about actual impact, and not just of the rules but of all the interactions between businesses and the various regulatory authorities. It is about day-to-day, ongoing relationships within the framework of rules. A simple example is the one of a regulated business that operates branches in many different localities, each of which has its own inspectors. The rules it has to comply with may be the same throughout and even be a textbook case of light-touch, minimal regulation. But the business is faced with many different interpretations of these rules by the inspectors for stores in each local authority area. The clarity and simplicity at the rule-making level disappears into confusion and costly systems design.

28. The way in which regulations are implemented and enforced can mean at least as much if not more to businesses as the actual rules themselves – and this is even more true for newly set up businesses, which find it most difficult to know exactly what the rules mean, and how they will be interpreted. This

also means that better implementation (in the form of clearer guidance and advice) can lead to much better outcomes for the public in terms of safety, health etc., because compliance and practices improve.

29. The importance of how rules are interpreted and enforced is increasingly being perceived – and it is particularly important when regulations are demanding, wide-ranging and difficult to change. One of the best examples may be the EU “Food Hygiene Package” adopted in 2004. Among its provisions was the requirement for all EU food business operators to introduce HACCP-based practices to guarantee the safety of the food at all stages. The difficulty was to understand what this meant, in particular for micro and small businesses, for which it made no sense (and would have been very costly) to introduce a full, certified HACCP scheme. The European Commission DG SanCo as a result issued end 2005 a “Guidance Document” on the implementation of procedures based on HACCP,¹¹ particularly for small businesses. The document is an excellent example of how to translate a rule that can appear extremely complex, abstract and demanding, into a set of simple prescriptions that are understandable and applicable. Unfortunately, such “guidance documents” are a relatively weak form of EU regulation, and have no direct force. The way the requirements of EU food safety legislation are applied are mostly determined by regulators in each of the member states (under some supervision from the EU Food and Veterinary Office), and not all of them have shown the same level of transparency, clarity and flexibility as this guidance – resulting, in some countries, in major problems for MSMEs in complying with the new requirements, whereas they might have been able to do so if provided with clearer and simpler explanations, and faced with more goal-focused enforcement. The UK then showed with its “Safer Food, Better Business” approach how such guidance could not only deliver better results for businesses, but also for the public.¹²

1.3 What types and varieties of inspections are there?

30. There is a very wide variety of inspections, and some of them can be very country-specific (or even specific to a state or province inside a country). Some jurisdictions have inspectorates in charge of controlling compliance with legislation on official language, or gambling. However, there is a general pattern that can allow to categorise inspections into a few main classes:

- Technical inspections focusing on compliance with, broadly speaking, “safety requirements” (understood in a very broad sense, i.e. including “safeguarding” heritage, for instance, or landscapes), and protection of consumers (including against fraud of all types): occupational safety and health, safety of equipments, buildings and premises, environmental protection, food safety and hygiene, environmental health and public hygiene, public health and drugs safety, market surveillance of non-food products, etc. These tend to be fragmented among many institutions but can be broadly grouped into 7 or 8 main “risk areas” as in the above list. There are some important differences within this category between most checks that tend to focus on “objects” that are premises, or entire businesses – and market surveillance (including part of the food safety checks) where the focus is on products.
- Tax and customs inspections – both focusing on compliance with regulations on mandatory taxes and duties, but with customs inspections focusing on products at the border (even though much of the risk analysis done there will take into account the history of compliance of the importers, so that the “business” as such is also an object of control), and tax inspections looking at an entire business entity’s operations.
- Inspections conducted following an application for a permit, license or subsidy – these are often called by regulatory authorities “inspections requested by businesses”, even though what the businesses really request is not the inspection, but the relevant approval or assistance. In some ways, these inspections are more a part of the procedure being applied for (approval, or financial assistance etc.) than really part of “enforcement” in general. However, most of the issues and

reform approaches are similar to inspections “in general” (predictability and transparency, proportionality to risk, etc.).

- Indirect control, whereby the state regulatory bodies do not generally inspect businesses (or products) directly, but rather rely on private/delegated inspections or certification. Generally this involves a mechanism to approve certain entities to perform these inspections or certifications, a system of liability for these certifiers, and a supervision of these entities by the state regulator – but the regulator may also, in some cases, inspect directly the businesses or products that have been privately inspected or certified, as a kind of “reality check” (this is what happens for many types of goods in modern market surveillance systems). Even though this kind of system is very specific, and generally studied separately as part of the work on “technical regulations”, many aspects and issues are common with regulatory enforcement and inspections in general (risk analysis, transparency, proportionality, credibility of sanctions and liability, etc.).

31. This report will primarily focus on the first type of inspections, as they are the most “typical” of the issue, but will cover as much as possible and relevant the other ones as well, particularly when they have been addressed in the same reform processes.

2. Burden on businesses – how do inspections weigh on business activity

2.1 Time and money costs – preparation, inspection and follow-up

32. The primary way in which inspections are a burden on business is through the time lost and other direct costs – these may not, in fact, be always the *most important* form of inspections burden, but they are the most easily quantifiable. They also in a way form a good proxy for other burdens (which are more difficult to quantify) as an inspections system that creates considerable burden in terms of time lost or other direct costs tends to be a system where duplications of control abound, targeting is weak, requirements are unclear – all of which are major elements that make the inspection system also dissuasive for investment and start-up decisions.

33. The type of costs that are usually understood as being directly related to inspections are the following:

- Preparation time, if any, when inspections are announced in advance – including time to retrieve or prepare specific documentation
- Inspection time: time spent with inspectors by staff or management of the business, during which they were not able to perform other work
- Follow up time, if any, for all activities directly resulting from the inspection – preparing papers, going to government offices, or any other administrative task.

34. In countries where they may occur, any “unofficial” payments or gifts to inspectors are quite obviously to be considered as an inspections burden – while it is also obvious that they are rarely reported upon, and not easy to estimate.

35. Fines, or any other penalties, if inflicted upon a business as a result of the inspection, are a contentious point. They would seem to be at first glance most clearly a cost resulting from the inspection – but of course they can be said to be the result of the non-compliance, rather than of the inspection, and thus argued not to be a “burden” but a fully justified sanction. A somewhat deeper investigation is thus needed to see if the aggregate levels of fines imposed suggests a problem with the enforcement and inspections

system (unclear or inconsistent requirements on the inspectors' side, systematic "punishment" regardless of the level or seriousness of violations found, etc.), or an issue with the regulations themselves (unrealistic requirements considering the economic situation) – or if fines are rightly being imposed on some "rogue" businesses who refuse to comply or improve, but not on others.

36. A certain number of other potential costs are also difficult to decide upon, i.e. there is some discussion as to whether they should be understood as "administrative burden", or more as regulatory burden – i.e. not linked to inspections, but to the underlying regulation, the compliance with which is being verified through the inspection. This is mostly the case with any improvement expenses (investments required by an inspector's conclusions after the visit) – these can (like fines) be seen either to reflect a proper application of well designed regulations, or (if excessively frequent) either a problem with enforcement and inspections approaches, or with the regulations themselves, or both. Expenses for testing, sampling etc. may be put in the same category, as well as outside expertise (may be considered to be needed because regulations are not designed well, or because the enforcement institution is unhelpful and opaque, or both).

37. The final element of costs which could in theory be directly inputted to inspections is the lost turnover or profit as a result of delayed or suspended operations, be it during the inspection itself (because operation is disrupted by the visit and the staff having to spend time with the inspector) or after it (if inspectors' orders lead to operations being suspended). These are of course two very different situations – whereby the first is really a burden (because it weighs on the business regardless of whether it is compliant or not), the second is a sanction, and so the same distinction needs to be made as for other sanctions, i.e. whether there appears to be a pattern of excessively frequent sanctioning (suggesting issues with regulations or enforcement or both), or whether this is just a normal consequence for business operators who violate essential rules. The additional difficulty with lost turnover or profit, however, is to assess whether it is really "lost" or not just delayed. In some cases, postponing activities by a few hours or a day may have only a limited importance. In others (say, for trade and services on the most active days of the week, or for many businesses close to a major selling season, etc.), this may really be a pure loss. It is also complex to decide whether to count turnover, profit or value added as the relevant "loss". Discussing this in depth would go beyond the scope of this report, but it is clearly an important issue, but one that measurement and methodological difficulties make difficult to solve – meaning that this economic loss most often does *not* get estimated.

38. As a result of these many cases when it is not entirely clear whether to ascribe the burden to inspections or not, and of the difficulty to measure most of these costs, there are in the end two main approaches to the issue:

- Trying to get the details of most costs at least, through in-depth interviews – however, the complexity of the process usually means it can only be done for some specific sectors of the economy;
- Limiting the measurement to the easiest and most widespread costs, i.e. direct time lost through inspections (and in some cases preparation/follow up time/costs, depending on how relevant they are in different jurisdictions) – these can usually be asked about through representative surveys (and in some cases, direct payments to inspectors, if relevant, can be included too).

2.2 *The many layers and “grey areas” of inspections costs*

39. If one wants to go into somewhat greater details in the cost measurement issues we outlined above, there are some “grey areas” in the burden broadly related to inspections, where it is not clear cut whether this really is “administrative burden”, and whether it is primarily “inspections-related” – in particular:

- Costs directly or indirectly related to testing or physical inspection conducted as part of the broader inspection system.
- Turnover, profit or value-added losses due to inspections (during inspection itself or as a result of inspector’s decision).
- Monetary (or other) sanctions imposed as a result of inspections findings.
- Costs of putting the business in compliance following the inspection’s findings and inspector’s improvement notice.

40. As a general rule, the first (testing costs) should probably be considered part of inspections’ costs, in particular because the organization of the process can make these costs higher or lower, even without changing the number of tests – and also because deciding or not to demand tests should be a decision based on risk-analysis, and as such the amount of tests required from businesses reflects the inspection and enforcement approach. Still, this can to some extent be considered a “grey area” because some of these tests may be imposed by the underlying regulations, not by the inspections themselves.

41. The second (losses in turnover or profit – or, from an economic perspective rather than a business one, losses in value added) should definitely be considered an inspections cost when it arises as a result of the inspection process itself disrupting the normal course of business, i.e. because the inspector’s visit takes up too much time, or “scares off” clients, or imposes to suspend operations of production etc. The difficulty is to measure adequately this loss. First, if one wants to be able to extrapolate data to the level of the entire economy, representative data is needed – but large sample representative surveys are not effective tools to ask sensitive information such as turnover or profit, and thus making reliable estimates of the surveyed businesses’ average turnover or profit is quite difficult (which means assessing the amount that may be lost due to inspections cannot be done with high reliability). Second, the question of whether the inspection results in a full loss of turnover, profit or value-added (i.e. if the production or sale has not been done at that time, it cannot be caught up later) depends on many specifics of each business – type of product and activity, time of the year etc. Overall, this may be quite a significant economic amount, and a deeper investigation is well worth pursuing if there is qualitative evidence that the problem is strongly felt by businesses in the jurisdiction being considered, but the difficulties in achieving a good quality measurement should not be underestimated.

42. In the case of activity loss as a result of a suspension of operations *following* the inspection (i.e. as a consequence identified violations), it would normally *not* be considered an “administrative burden”, since it results from the business not complying with key regulations – except in the case where the inspector *mistakenly* suspends the business (excessively harsh measure given a minor violation, or even mistake in considering the current process as hazardous, whereas in fact it is not). There are, however, many cases where one can make the case that there is a *structural* problem with such suspensions being too frequent, as a result of inadequate enforcement practices (if too frequent suspensions are the result of excessively strict or demanding or unrealistic regulations, then it is primarily a regulatory rather than enforcement burden). This can happen for instance when inspectors or enforcement agencies in their entirety do not give clear prior guidance on how to understand requirements, or when they suspend

operations immediately without prior warning, even when violations are relatively minor, or non life-threatening, or are found for the first time in this business. The difficulty here lies in assessing what can be the threshold above which the frequency of suspension of operations would be considered “abnormally high”. In the absence, so far, of comparative studies on the issue, there is no set of data that would allow to easily assess this. It would have to be done specifically if the feedback from businesses in a given jurisdiction points it out as a major issue. Of course, in some cases, a simple rule of “common sense” may apply, if for example every second inspection leads to a suspension, there is most probably a real problem in the enforcement approach.

43. Finally, the costs of sanctions and the costs of putting the establishment in compliance should not *usually* be considered as *inspections* burden. The cost of compliance is an administrative cost of the underlying regulations, and the cost of sanctions is a consequence of non-compliance that should normally be considered as “deserved” by the business which violated the law. However, there may be some exceptions to this rule, when (i) sanction is either excessive or even taken on the basis of a mistaken assessment (i.e. there was not really a violation, or less serious than claimed) or (ii) improvement notice issued by inspector sets requests that exceed in fact applicable requirements, or contradict assessments or notices provided during previous inspections or consultations by the inspecting agency (in which case the contradictions between inspectors result in excess costs, and this lack of consistency is really a structural problem in the enforcement regime). In such cases, the costs can be considered as pertaining primarily to the inspections process. Also, the same rule should apply here as to the issue of suspension of operations after an inspection: if sanctions are “too frequent” (and again the same issues apply as to how to define this “excessive frequency”) then this may indicate problems with the way enforcement and inspections are structured (wrong staff incentives, lack of clarity in requirements or lack of guidance, excessively rigid instructions on sanctioning, lack of risk-focus and differentiation etc.). These would then have to be investigated as such.

44. A way to handle the difficult issues of whether suspensions and sanctions are excessive can be for a reforming government to:

- Require each inspectorate to report on the total amount of suspensions of activities or sanctions of all kinds ordered during the year.
- Compare this data to other inspectorates (total average number of suspensions, and duration thereof, or sanctions, by supervised business – so as to compare in a relevant way between inspectorates, whose scope of supervision can vary considerably).

45. Furthermore, in order to assess the *economic magnitude* of suspensions of activities or sanctions, a representative business survey can include a question to each respondent on the total number of days lost as a result of such suspensions and/or of costs of sanctions. Because the attribution of such losses to *administrative* burden is problematic (the assumption being that most of the suspensions are legitimate), this data would not be used as a direct burden component. It would, however, be very important as a qualitative assessment tool: if the total costs for the country go consistently up, and/or if one/some inspectorate(s) have significantly higher suspension or sanctions rates than others, or see their rates go up, these would all be “flags” for a variety of potential problems: abusive inspections practices, excessive rigidity, lack of compliance promotion/information efforts, excessive regulations etc.

46. Other parts of the inspections burden are less problematic: time expended strictly on administrative tasks to prepare for the inspection (gathering documentation for instance), during the inspection (staff spending time with the inspector(s), answering questions etc.), and as a follow up on inspectors’ requests (gathering information, filling up forms, etc.). Any time spent on actually *putting the establishment in conformity* should not be counted. Direct costs (financial, not time) counted here should

be directly related to the “administration” of inspections: copying documents, testing, sending documents, any transportation costs if relevant (to go to the inspectorate’s etc.).

47. It may however still be difficult for respondents (businesses) to correctly estimate where the separation is between these costs, and those pertaining to the underlying regulation (e.g. time required to get familiar with the regulations, costs associated with complying, etc.).

2.3 *Effect on investment and growth decisions*

48. Arguably the most important effect of an inspections and enforcement system is *not* through the direct amount of administrative burden it creates, but through its impact on investment decisions – whether to start a business, to engage in an activity, to expand, build, procure new equipment, hire staff etc. All these decisions are affected by many factors of the investment climate, of course, including tax regimes and regulations – but it is clear that the way enforcement and inspections are done or perceived has a significant role. Indeed, one of the most important aspects of regulations for existing or would-be businesses when making investment decisions is *predictability*.

49. The issue of predictable enforcement and implementation of regulations is crucial, and underlined, for instance, in the 2005 *APEC-OECD Integrated Checklist on Regulatory Reform*.¹³ For instance, point A6 calls predictability “an important element in business planning”, point B4 requires “implementation and appeals processes that are predictable”, and point C6 underlines that transparency improves the “predictability of enforcement decisions”. There is only so much, however, that can be done to improve predictability through an improved design of regulations – and most of the possible improvement in fact has to be done through better inspections and enforcement systems. Indeed, as has been evidenced by research on the “optimal type of regulation” for many years now, such an “optimal” is not really achievable: there is an unavoidable trade-off between precision of the rule (which would make it more predictable) and its effectiveness in terms of achieving compliance, safety etc.¹⁴

50. Given this, rules will always end up being either somewhat too precise and narrow (in which case smart enforcement is needed to make sure they still reach their actual goals and are implemented in a results-oriented way) or too general and ambiguous (in which case transparent enforcement can help businesses understand what they actually mean, and what to expect). There are many ways in which uncertainty or fear about enforcement can harm investment, business creation and growth – and conversely how predictable and transparent enforcement can help:

- Some regulations (such as EU food safety rules) may be seen by small businesses (or would-be small businesses) as so complex and technical that they do not know how to understand them. If no official guidance clarifying what to expect is available, they will often refrain from investing or starting an activity altogether.
- If enforcement of regulations is not proportionate to risk and targeted at promoted compliance, introduction of new rules (e.g. again EU food safety rules when they were introduced in new Member States) can result in massive amounts of businesses closing – whereas possibly some would have been able to stay open had the communication on expectations been clearer, and the enforcement focus been more on “key issues” rather than on getting 100% of all rules followed “as per the book”.
- Significant investment in new equipment or new activity, be it by existing or new businesses, will be significantly reduced if the operators are not sure of how the regulators will assess compliance, and if they cannot get appropriate guidance. In many countries, not only is an officially published guidance not available, but regulators will even refuse to give any prior

consultation or visit that would be binding on themselves – thus leaving the whole risk on operators.

51. The UK's BRDO published this year a paper called "Regulation and Growth" that emphasises these very same issues.¹⁵ This paper underlines how good regulatory delivery can improve *confidence and control*: "Businesses need to understand how regulatory regimes impact upon them to enable them to identify the most cost effective means of compliance for their business context. Good risk assessment should be transparent to the business and should be supported by assurance that enables investment decisions to be made on a sound understanding of future compliance requirements." This paper highlights some of the positive results that improvements in the way regulatory enforcement and inspection agencies work significantly improved the situation for businesses – for instance:

- "Safer Food, Better Business" as a way to ease compliance with EU requirements on Food Safety Management Systems (FSMS) – The Food Standards Agency "worked with a wide range of businesses to develop an optional, business friendly management system. This contained a pull out step-by-step checklist and diary pages to record checks. The pack was tailored to different sectors and published in various languages, to cater for the wide-ranging needs of business communities. An evaluation report revealed that all businesses questioned felt that using FSMS helped them stay compliant with food hygiene legislation and gave them confidence that they were managing food safely. 87% of SMEs also reported that FSMS helped them manage their businesses, with 45% commenting that it actually made their businesses more profitable."
- Health and Safety Executive's efforts to make regulations clear and simple for businesses – "Reputable employers want to do their best to meet their health and safety obligations and protect their workers and members of the public. However, the volume of health and safety regulation can lead to confusion and uncertainty about responsibilities under the law. These challenges can have a disproportionate effect on small businesses, which rarely have in-house health and safety advisers. To make it easier for employers, the Health and Safety Executive developed a single and accessible piece of guidance called "Health and Safety Made Simple".¹⁶ This approach is targeted at small and medium-sized employers in low risk businesses and explains their basic health and safety duties in plain English."

2.4 Adverse effect of inadequate information on compliance, safety and other public outcomes

52. What these last points taken from BRDO's paper also highlight, is that improving inspections and enforcement (or more broadly "regulatory delivery") not only can decrease administrative burden, and make it easier to take investment decisions, but can also lead to improved health and safety results for the public. Conversely, this suggests that inadequate inspections approaches may have an adverse effect on compliance and safety – and not because of an insufficient number of inspections, but because on the contrary efforts to support compliance are lacking.

53. As an example, the development of the UK's "Safer Food, Better Business" toolkit mentioned above arose to a large extent not only from complaints on the side of businesses about the difficulty to understand legislation, but because inspectors found that the previous approach was not working in terms of securing compliance and safety. One of the most salient issues was the situation of restaurants in London's Chinatown. Inspectors from the City of Westminster food safety teams regularly found them to be non-compliant, with serious hygiene issues, issued relevant warnings and sometimes sanctions – only to see the problems repeated upon subsequent visits. A deeper investigation of the situation revealed that this was essentially due to communication problems: chefs did not understand the regulations as they were formulated, frequent turnover with new chefs coming from China meant that the warnings issued in previous inspections were not taken into account, and the way inspectors were addressing remarks to chefs

was seen as a “loss of face” and provoked adverse reactions. The solution was to develop the “Safer Food, Better Business” toolkit with very clear guidance, have it translated into all key languages used by large number of chefs and cooks in the UK (including both Mandarin and Cantonese) – and to organize specific seminars for chefs and restaurant operators in Chinatown. As a result of these, the levels of compliance, hygiene and safety have dramatically increased, resulting in a situation which is now very good from the public safety perspective – while also being far better for businesses, and even for inspectors (who got out of a confrontational situation, and are now into a far more constructive relationship with these businesses).

54. The Danish Government’s 2009 *Debureaucratisation Plan for Business Regulation*¹⁷ also notes the issue of clarity of information and guidance as one of particular importance. For instance, Initiative 32 focuses on “clarification of workplace assessment requirements” – foreseeing that “New guidelines will be developed. The updated version will very clearly specify the WPA [WorkPlace Assessment] minimum requirements and provide examples of best practices, so that businesses can prepare their WPAs more quickly and easily, being confident that they are complying with working environment requirements.”

55. Experience suggests that in fact many businesses (or would-be entrepreneurs) *overestimate* in some cases the complexity or level of demand of applicable regulations. This is partly because of the difficulty to understand the “regulatory language”, partly because of the overall “image” of regulations in the public or the media – and also, to some extent, because “specialists” in regulatory spheres may have an interest in making them appear more complicated than they are. Such an issue has been noticed in the occupational health and safety sphere in the UK – and the Health and Safety Executive has found it to be so significant that one of the main pages in its web portal is called “Myth Busters”.¹⁸ It appears that many “myths” about health and safety neither corresponded to actual requirements in the regulations, nor to real practices by the HSE or local authorities (which share part of the health and safety inspections and enforcement responsibilities) – but were due to specialised consultants “inflating” regulations to get more work, or to media blowing up bits of information based on misunderstandings, etc.

56. The Italian situation offers a similar example. The National Firefighters’ Corps, together with the Civil Service Department, worked on simplifying the start up procedures for business premises based on risk categorization, as part of the “Less Paper, More Safety” initiative¹⁹ launched in 2011. Lower risk premises now can benefit from simplified procedures, start without a formal permit, and are only inspected in a small percentage of cases. However, the two institutions found through their own data and discussions with businesses that the new, simplified procedures were being rarely made use of – and that this was because businesses did not know about them, and specialised consultants kept using the more complex procedure, since this allowed them to charge more time to their clients. The solution was to develop a brochure explaining simply which business belonged to which category, and which procedures were applicable to each.²⁰ This has increased the take-up of the new, simplified procedure, and it is now being widely used by lower-risk businesses. As a result, the Firefighters’ Corps has more available resources to devote to high-risk objects and can ensure better safety – while lower-risk ones are better informed about what they need to do to ensure fire safety.

57. As we have seen above, the case of food safety requirements is also a particularly good example. They often end up being seen as impossible to comply with for smaller businesses, but this is to a large extent based on misconceptions – or on excessively rules-based enforcement. When real efforts are made to translate requirements into simple, clear steps, many MSMEs in fact find it quite possible to comply. The key here, however, is not just to have a clear guidebook – but for all businesses to know that this guidance is binding for inspectors (or at least will be followed in all but the rarest of cases). While this is the case for the UK’s “Safer Food, Better Business” (not *de jure* binding, but treated as accepted guidance by all inspectors), it is not, for instance, the case for a somewhat similar guide developed in France for the hotels, restaurants and catering sector. This guide²¹, while very comprehensive (it covers not only food safety but really most, if not all, regulations applicable to the sector – health and safety, all required

approvals, etc.), is *not* an official guidance (even though it is published by the Government). It also is relatively short on details of how to actually implement complex regulations, such as food safety rules – and in this is very different from “Safer Food, Better Business”. As a result, while being a useful tool, it has nowhere near the impact that the UK guidance has had. This relates to a profound reluctance by supervisory authorities in most countries to actually commit themselves to issue guidance documents which they (more or less) bind themselves to implement. In countries where such “assured guidances” have eventually been prepared and published, it has only been because there was a strong requirement or drive from the top of Government to change practices and make enforcement more transparent and predictable. The situation in France, where regulators have so far resisted committing themselves to an “official interpretation” of rules, is unfortunately far more typical.

58. A final example of how lack of guidance and effort to clarify interpretation of rules can be problematic can be seen with the example of prevention of forest fires in France. Applicable regulations aim at preventing fire from spreading to constructions (in particular houses) and thus provoking important property damages, or endangering lives. These regulations broadly foresee that within 50 meters of buildings the land should be cleared of bushes and trees left standing only with significant distance between them. These requirements conflict directly with demands as part of construction permits to safeguard the forested cover in protected landscape areas – and they also conflict in many cases with the topography of some sites, where clearing too much forested cover could result in rains washing away soils entirely. None of these cases, however, is foreseen either in regulations, or in any official guidance, leaving owners with additional expenses and uncertainty, and enforcement options entirely up to each inspector.

3. Effectiveness and efficiency – what do inspections cost (to the state) and what do they deliver

3.1 *Goals of inspections and inspectorates*

59. Measuring the effectiveness and efficiency of inspections and enforcement institutions and activities is neither simple nor straightforward – and first, because it is not always obvious what they are supposed to achieve in terms of public goods (i.e. going beyond the somewhat tautological “enforcing applicable laws”).

60. Though it may sound obvious for each inspectorate to clearly know what it stands for, defining their goals tends to be quite a difficult task for many institutions, as soon as the goal is defined in terms of an objective in terms of positive impact for the society, and not simply law enforcement. The reason for this is that most regulatory and inspecting agencies were set up in order to enforce specific legislation – not to reach a specific goal. The goals of the said legislation may or may not have originally been clear, but in most cases, after a period of time, some institutions are bound to have a less and less clear purpose – while some others may have on the contrary a very clear goal. For instance, in most countries, institutions that deal with food safety in its various stages usually have a clear goal – but it may have become confused with excessively broad considerations of ensuring food “quality” rather than safety, which then becomes rather impossible to achieve or evaluate. At the same time, other institutions may have a function that is essentially “regulation centered” – i.e. they exist to administer a regulatory process, the actual social purpose of which has long stopped being clear (if it ever was). In Lithuania, for example, the State Food and Veterinary Service has a clear purpose (minimising the occurrence and effects of animal and food-borne diseases), whereas the Territorial Planning Inspectorate does not have one (it enforces a variety of legislative acts, but without a clear, unifying purpose in terms of public good or potential hazards being prevented – its main function is to check that other institutions or actors comply with different regulatory procedures, regardless of whether this is already checked by others, or whether this is socially important).

61. Even if an inspectorate has a relatively clear “public good” mandate, e.g. related to specific aspects of the population’s health and safety, there remains a question: is the inspectorate’s primary mandate to secure compliance with regulations in this sphere (which are assumed to be appropriate to their goals), or to actually deliver better outcomes for health and safety? The answer partly depends on legal traditions in each country (with some jurisdictions more “traditional” and inclined to consider that the purpose is to achieve compliance – and some others more “goal-oriented” and putting outcomes above compliance), but can also vary from one institution to the other within the same country. In many cases, inspectorates themselves prefer to have objectives defined in terms of compliance (which they find easier to enforce and monitor) – but more “progressive” ones on the contrary judge this a poor metric and chose to target outcomes. A few examples are worth quoting:

- UK’s Health and Safety Executive: “Our mission is to prevent death, injury and ill health in Great Britain’s workplaces” (entirely focused on outcomes).
- France’s Inspectorate for Classified Installations (*Inspection des Installations Classées*, i.e. high risk establishments): “The Inspectorate implements missions of environmental police [which] [...] aim to prevent and reduce hazards and nuisances linked to these installations, so as to protect people, environment and public health” (first defined functionally by reference to regulations, but then primarily focused on outcomes).
- Netherlands’ Health Care Inspection (*Inspectie voor de Gezondheidszorg*): “promotes public health through effective enforcement of the quality of care, prevention and medical products” (focused on outcomes but with a reference to “quality” that can be difficult to define precisely).
- France’s Directorate General for Food (*Direction Générale de l’Alimentation – DGAL*): “is in charge of regulations relating to health and protection of wild and domestic animals. These regulations also cover veterinary drugs, animal feed, identification and movement of animals. To implement [these] [...] the DGAL relies on local directorates in charge of protection of the populations [...]. They also follow carefully the sanitary conditions for breeding, the sanitary qualification of herds and the way veterinary practitioners fulfill their public health mandate” (entirely focused on regulations and implementation mechanisms, not mentioning desired outcomes).

62. Of course, official statements such as these do not necessarily mean that the institution limits itself to them. “Goal-oriented” objectives do not preclude from checking regulations – and the French DGAL is in many ways clearly focused on outcomes. Still, this question of definition is very important, because depending on the purposed of an agency, the criteria of its evaluation will be very different. It leads to the question of what risk is being addressed when one seeks to promote risk-focused planning and implementation.

63. If the aim is compliance with regulations, all activities that will improve compliance rates, regardless of the precise rules and of their relevance to safety, will be relevant. Potential conflicts of interest will also arise when it comes to measurement and targets: should the inspectorate register every non-compliance and claim to be effective when it finds many? Or on the contrary should high rates of non-compliance be seen as a failure – in which case the inspectorate would *de facto* have an incentive to *hide* non-compliances and under-register them?

64. If the selected aim is to improve a public outcome, the inspectorate will be more likely to prioritise activities that yield the best results in terms of cost-benefit ratio. It will also be relatively neutral as to the actual number of non-compliances and may be expected to have less bias in registering them. On

the other hand, the questions that then arise are (a) how much of the outcomes can actually be ascribed to the inspectorate's actions and (b) how to measure the outcomes in a way that is reliable and neutral.

3.2 *Measurement issues*

65. The particular difficulty in terms of defining and setting goals (and measuring success in reaching them) lies herein that inspectorates and regulators only have (at most) an *indirect* effect on their area of competence. A food safety agency, for instance, does not itself produce or process food, and only food business operators (FBOs) can directly ensure safe provision of food. Food safety agencies and their inspectors can only create *incentives* for FBOs to improve their practices, and/or provide deterrence for bad practices. Furthermore, safety (e.g. food safety) or other goals (e.g. government revenue) may be impacted by many external events (epidemics, consumer habits and behaviours, economic cycles etc.), on which inspectorates have little or no influence.

66. This means that it is very difficult to *attribute* specific results in terms of safety (or other public goods) to the action of one or several regulators or inspectorates. At most, some indirect determination can be made by tracking changes over time, comparing levels with countries having sufficiently similar conditions, etc. It also means that changes in the effectiveness of inspectorates' actions can only be tracked (if at all) on a relatively long timeframe. Such indirect action as they have cannot in general be expected to have an impact in the very short run. This means that any attribution to an inspectorate's actions of a sudden change in levels of the indicators being tracked for "effectiveness" should be regarded with caution and further investigated for (i) potential problems in measurement and/or (ii) external factors. In general, positive changes as a result of inspectorates' actions (or, though they are not wished for, worsenings as a result of poor inspectorate practices) can only be seen over at least a few years.

67. The question of whether inspections are effective, and how to measure (and possibly improve) their effectiveness, has been the focus of particular attention in the Netherlands, both from the state structures and in the academic sphere. A specific component of the overall inspections reform program ("Renewing Supervision") is dedicated to "Inspections with Effects" – and it makes up an important part of the Netherlands' inspections portal www.inspectieloket.nl.²² Paul Robben, of the Netherlands' Health Care Inspectorate and Professor at Erasmus University in Rotterdam has, among others, highlighted the limitations of an inspectorate's ability to influence the outcomes it is supposed to aim at,²³ the difficulty to attribute the effects specifically to the inspectorate's actions, and the desirability of defining objectives in a more precise and narrow way so as to be able to really track the inspectorate's effect. He also underlined the need to always look at this in the broader perspective of the potential adverse effects (or side effects) an inspectorate's action may have.

68. While we cannot address this very complex issue in real depth in this report, it is at least essential to keep in mind that, in most countries, inspectorates often have neither clear goals and objectives, nor indicators and targets. While it is important to approach these with all the relevant methodological care, it remains a priority to move from a situation where inspectorates' activities are taken "as a given" to one where they have to justify of their positive contribution to an agreed goal.

69. There are a couple additional considerations to bear in mind regarding *measurement* of indicators relating to effectiveness:

- Generally, data should in every possible case be gathered either by other agencies/structures than the inspectorates themselves (e.g. the health care system can give data for food safety outcomes), and/or collected through procedures or instruments that leave as little room as possible for individual discretion and potential manipulation (e.g. epizootic monitoring per EU guidelines, or pollution monitoring through automated measurement stations etc.). This is often difficult if not

impossible – but is an important issue if measurement is not to be influenced by the agency being evaluated itself.

- Quality of data may be problematic in any case for a number of indicators, because measurement relies on detection/reporting, which may not occur in a sufficiently systematic way. This can be the case for instance with a number of food-borne diseases (require patients to report to their doctor/hospital, and the latter to conduct testing in every case), occupational accidents (some may end up hidden with “unofficial” settlements between employers and employees), etc. There are ways to try and improve reporting (changing incentives or penalties for labour-related incidents, awareness campaigns on food-borne diseases etc.) but these may take time to have an effect, and are unlikely to be 100% effective anyway.

70. None of this should, again, mean that effectiveness measurement is impossible – but it all contributes to make it a complex exercise, and one where all limitations must be clearly understood from the onset.

Notes

1. Ayres I. and Braithwaite J., *Responsive regulation: Transcending the deregulation debate*, New York, Oxford University Press, 1992.
2. See www.bis.gov.uk/brdo.
3. Hawkins K., *Environment and Enforcement*, Oxford, Clarendon Press, 1984 for instance
4. It is important to note that Canada initiated a drive to reform its regulators’ “compliance programs” far earlier – starting with a study conducted in late 1982-early 1983 and coordinated by the Ministry of Justice. Though “compliance programs” certainly include inspections among many other things, however, the latter were not the primary focus of the effort, and were not discussed or tackled extensively as such.
5. Hampton P., *Reducing administrative burden: effective inspections and enforcement – Report to HM Treasury*, London, HMSO, 2005.
6. The most notable example possibly being: I. Ayres and J. Braithwaite, *Responsive regulation: transcending the Deregulation debate*, Oxford University Press, 1992 – much of what Ayres and Braithwaite discuss and propose focuses on enforcement of regulation, and goes rather deep on the issues of regulators’ targeting, behaviour, approaches etc. – but inspections remain more or less “assumed” as an instrument, and not explicitly considered or discussed.
7. A very valuable collection of such studies can be found in the Netherlands’ inspections portal library of effectiveness studies at: www.inspectieloket.nl/vernieuwing_toezicht/toezichtmeteffect/bibliotheek/ – however this collection includes many studies that are not strictly speaking of “inspections” but rather of “control” in general (e.g. driving rules enforcement).
8. Many excellent examples, from the late 1970s onwards – a recent one is K. Hawkins, *Law as last resort*, Oxford Clarendon Press, 2002
9. For instance the UK’s BRDO www.bis.gov.uk/brdo/publications and the World Bank Group Investment Climate department, www.wbginvestmentclimate.org/publications/.

10. See for an excellent example P.J.May and S.Winter, “Regulatory Enforcement and Compliance: Examining Danish Agro-Environmental Policy”, *Journal of Policy Analysis and Management*, Vol. 18, No. 4, 625–651 (1999).
11. See: http://ec.europa.eu/food/food/biosafety/hygienelegislation/guidance_doc_haccp_en.pdf.
12. See: www.food.gov.uk/business-industry/caterers/sfbb.
13. See: OECD and APEC (2005), *APEC-OECD Integrated Checklist on Regulatory Reform*, OECD and APEC, Paris and Singapore, www.oecd.org/regreform/34989455.pdf
14. See Diver, C. (1983), ‘The optimal precision of administrative rules’, *Yale Law Journal* 93, Yale, pp. 65-109.
15. See: Local Better Regulation Office (2012), *Regulation and Growth*, LBRO, Birmingham, www.bis.gov.uk/assets/brdo/docs/publications-2012/12-688-regulation-and-growth.pdf
16. See: www.hse.gov.uk/simple-health-safety.
17. See: Danish Government (2009), *Debureaucratisation Plan for Business Regulation*, Copenhagen, [www.dcca.dk/graphics/publikationer/Administrative%20lertelser/Afbureaukratiseringsplan%20\(Eng\).pdf](http://www.dcca.dk/graphics/publikationer/Administrative%20lertelser/Afbureaukratiseringsplan%20(Eng).pdf)
18. See: www.hse.gov.uk/contact/myth-busting.htm and www.hse.gov.uk/myth/myth-busting/index.htm.
19. See: www.vigilfuoco.it/aspx/notizia.aspx?codnews=12910.
20. See: www.vigilfuoco.it/aspx/download_file.aspx?id=10525.
21. See: www.modernisation.gouv.fr/guideHCR/.
22. See: www.inspectieloket.nl/vernieuwing_toezicht/toezichtmeteffect/
23. See: Robben, P. (2010), *Toezicht in een glazen huis*, Erasmus Universiteit, Instituut Beleid & Management Gezondheidszorg, Rotterdam, www.bmg.eur.nl/fileadmin/ASSETS/bmg/Onderzoek/Oraties/Robben/iBMG_Oratie_Paul_Robben.pdf

CHAPTER 2. INSPECTIONS PRACTICES PRE-REFORM – MANY PRACTICES, NO MODEL, LITTLE COHERENCE

4. Institutional issues: transparency, duplications, goals

4.1 *Opacity and resulting problems*

71. As mentioned above, what was possibly the first recorded “inspections reform” took place in Mexico from 1994 (with the main changes in 1995), along with NAFTA and OECD accession. The problems created by inspections were increasingly noticed and discussed from the late 1980s, but the context really made reform possible with the combination of (a) demand for greater effectiveness of control functions on the side of NAFTA partners (USA and Canada), (b) successive administrations that were strongly in favour of administrative and regulatory reform, in order to take full opportunity of NAFTA’s growth potential (partly also spurred by the OECD accession process). One of the first problems that was apparent regarding inspections is one that experience has shown to exist in a number of countries, even though it would appear like there should be obvious solutions for it: “pirate” inspectors, i.e. people posing as inspectors but not really empowered to inspect (be they public officials without inspection rights, inspectors without a proper order, pensioned inspectors, or people without any link to the inspection body). Such a situation may appear highly surprising, but in fact the complete opacity of inspections procedures and powers, the general fear of inspectors because of excessive discretion and possible abuses, all made it possible for a number of “pirate” inspectors to operate, meaning that businesses suffered from visits from people who had in fact no power to conduct any.

72. Inspections studies and reforms elsewhere have shown similar (if not always exactly identical) problems:

- In countries of Eastern Europe and the Former Soviet Union, a very frequent situation is to see inspectors, with actual authority to inspect, but visiting far more businesses, and far more often, than what they have officially been sent to do – with as a result a huge difference between the “official” number of inspections, and what businesses really receive.
- In Kenya, it was found that (not unlike in Mexico before 1995) people without official inspecting rights went to inspect (and harass) businesses, with a clear rent-seeking purpose – mostly, these were either other officials (but not inspectors), or former inspectors having gone on pension.
- Survey data from Italy shows that, whereas inspectors are in fact required to produce an ID upon inception of the inspection visit, but over 1/3 do not do so – and less than 50% actually indicate what they are going to check, based on which legislation, and how long it is likely to take.

73. This last example shows that this is an important systemic issue that is at hand, and not just an aberration from some countries. The problem stems from the opacity of the inspections system, and the fear that most businesses have in front of inspectors. Thus, abuses are easily possible, as most businesses will simply not dare to ask proof of the inspector’s right to inspect – as they have no certainty of who has the right to inspect, what are the rights of businesses in the process, and what documentation they are entitled to request. Addressing such issues is thus an important priority.

4.2 *Many inspections for related topics (or even similar ones)*

74. As new legislation or regulations have over many decades been introduced without real consideration of what existing ones may have already covered part of the same issues, new areas of competence have been added to new or existing institutions, without necessarily verifying whether other institutions had at least partly similar ones. This is a pattern that holds true in pretty much every country, with rare exceptions in jurisdictions where “better regulation” frameworks demand the review of existing legislation whenever new one is introduced, and/or where the number and functions of executive agencies is limited by an exhaustive list. In fact, as this type of mechanism tends to be relatively recent, there are extremely few examples of countries, which do not have situations where several institutions are (or claim to be) responsible for the enforcement of one and the same regulatory field at the same time.

75. This tendency is made even stronger by the fact that, beyond the intentions of legislators and regulators, and the text of regulations, enforcement agencies have a general tendency to try and interpret their remit as expansively as possible – thereby increasing their power and importance, their ability to exert influence, and their claim to additional resources. Were more Governments to demand indicators-based performance measurement from their inspectorates, this tendency would probably decrease, as inspectorates with too broad a mandate would quickly come under pressure and scrutiny for their inevitable failure to manage to deliver results on the whole scope of their functions. Indeed, there already is a tendency in countries where Governments make enforcement agencies more accountable for the latter to try and shed, rather than, add, functions. However, since this trend is still relatively limited, the more frequent pattern is still one where many agencies will try and claim the same field – and to claim it as an *inspection* responsibility, and not just as a general sphere of competence, because inspections are seen as a means of control and power.

76. Examples of overlap and duplication of functions are manifold. This does not mean, in general, that two (or more) agencies have exactly the same mandates, but that their mandates to some extent overlap each other – be it that they inspect the same regulations, or that they inspect concurrent regulations but applying to the same general field or issue. Many examples can be listed, but it is worth taking a closer look at two examples from the Occupational Health and Safety sphere, an area where public pressure (with the aim of improving conditions for workers) has resulted in institutional proliferation in some countries – which, while it adds to burden, apparently makes little to actually improve safety:

- In Italy, three national entities have directly overlapping responsibilities in supervising the field of occupational health and safety – and the police forces tend to intervene too, making a fourth one: the Labour Inspection (under the Ministry of Labour and Social Policy), the National Institute for Social Security (*Istituto Nazionale Previdenza Sociale – INPS*), the National Institute for Insurance against Hazards on the Workplace (*Istituto Nazionale per l’Assicurazione contro gli Infortuni sul Lavoro – INAIL*) all have to some extent a direct competence in this sphere (even if the Labour Inspection’s is the broadest), thus there are 3 national inspectorates in charge of OHS (one ministerial departments and two “quangos”). The police and *carabinieri* add to these, however, as they are very active in inspecting businesses in Italy – and one of the main areas they look at is again OHS legislation. Of course, the level of competence and effectiveness of these different “inspectors” is very different, but the duplication is obvious, with clearly adverse effects for state expenditure and business costs. This makes OHS-related inspections the second most frequent type of controls in Italy, just behind fiscal ones – with more than 17 visits for 100 businesses every year (considering only businesses with 5-250 employees, thus SMEs without very small/micro-businesses) – without counting the checks conducted by the police and *carabinieri*.

- In France, not unlike in Italy, OHS is supervised by a number of institutions, because of the control role played by what are essentially insurance/social security institutions, but also because a succession of reforms has left the system with every more players and rather less clarity: the Labour Inspection (which has a general competence on all OHS issues) is indeed supplemented by the Occupational Health Services – the latter are not really a “state inspection” but rather (there are a multitude of set-ups and thus it is difficult to draw a “general picture”) non-government services which the enterprises have to employ, but which are partly supervised by the ministries in charge of labour and health, and definitely have a “control” function (and powers). To this should be added the regional Health and Occupational Insurance Funds (*Caisse Régionale d’Assurance Maladie* or *Caisse d’Assurance Retraite et de la Santé au Travail*). A number of state agencies and “quangos” are, furthermore, in charge of generally “improving” OHS conditions, supervising OHS-related risks, etc. – which further complexifies the picture. Although there is unfortunately no data on inspections coverage and frequency in France, there are many testimonies suggesting that enterprises find OHS supervision problematic, not only (or not so much) because of the level of OHS requirements and their demanding nature, but rather because these many “inspectors” check several times their activity within the same year, with no information sharing or coordination, and little coherence.

77. There are many other examples of partial or complete duplication or of serious overlaps which also create coordination problems – to list but a few:

- In France, the safety of food products is under the remit of the General Directorate for Food (*DGAL*) and of the General Directorate for Competition, Consumers and Fraud Prevention (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes – DGCCRF*). In principle, the DGAL supervises the production stage, and the DGCCRF at the retail/catering stage. Important changes have taken place at the local level as part of the recent General Review of Public Policy (*Révision Générale des Politiques Publiques*) so that “field” inspectors are part of joint units called “Directorate for Populations Protection”. These services have merged the local teams of DGAL and DGCCRF. However, in practice, they still report through different information systems and based on different work programmes, and coordination and harmonization are not complete.
- In Italy, businesses are inspected for fiscal issues both by the Tax Inspection and by the Tax Police (*Guardia di Finanza*). This is a pattern that is also common, for instance, in the former Soviet Union. While it may make sense for specific issues to have a specific police force in charge of tax issues, and to have certain enterprises (suspected of criminal activities) checked by this “tax police” rather than by usual tax inspectors, the situation in Italy (again, like in other countries where these two institutions coexist) suggests that they in fact end up both doing essentially a general inspection job: in 2011, the Italian *Guardia di Finanza* appeared to visit *more* SMEs than the Tax Inspection (around 10.5% of businesses with 5-250 employees, vs. around 9.5% for the Tax Inspection, based on survey data).
- Even in Slovenia, a country that went through an important reform of the inspections sphere, and adopted a Law on Inspections in 2007 that foresees an exhaustive list of inspections, the reform does not appear to have solved all the “grey areas”. In the field of supervision of radioactivity-related activities and material, for instance, there are two agencies with inspecting powers (Inspection for Radiation and Nuclear Safety Administration under the ministry in charge of the environment, and Administration for Radiation Protection Administration under the ministry in charge of health) – not counting agencies with a broad health or environment remit, which may also have their say. Even if duties appear clearly delineated in theory, it is likely that in practice many instances of multiple control do occur. The country also has an Agency for Post and

Electronic Communication with inspections rights, alongside an Inspectorate for Electronic Communications and Electronic Signature – while it may appear that one single agency may have been put in charge of all these issues. There is also a clear overlap between the Feed Control Inspection under the Inspectorate for Agriculture, Food, Forestry and the Environment, and the Veterinary Service (both having, among others, responsibility to enforce regulations regarding animal feed).

- In the Netherlands, where major consolidation efforts have not only brought down the number of national inspectorates, but also generally avoided any overlaps between themselves (where overlaps may remain, coordination and delegation of responsibilities are used – such as where the Mining Inspectorate acts under delegation of the Labour and Environment Inspectorates) – however, local authorities have not been likewise consolidated. A 2006 report, commissioned at the beginning of the reform process and prepared by SIRA Consulting and the University of Tilburg, counted over 70 institutions, in total, with some inspecting powers. While the numbers have slightly gone down, they have done so at most by a few units – so the general picture remains. Most of these institutions are of course small and make very few visits, but not all. Some of the most important “proliferation” of institutions appear to be in the areas of water and environment, transportation, agriculture and animals, food etc.
- The Swedish Government 2009 Communication on “Clear, Fair and Effective Enforcement” also notes (section 2.2) overlaps and duplications as a real problem. The 2011 Denmark interministerial paper on “Optimised and targeted enforcement of business regulations” does not specifically list problems, but one can see through its recommendations that the problem of overlaps exists there as well. Principle 15 of the paper requires that authorities should “incorporate coordination of control in all phases of agency enforcement efforts” – and it specifically foresees that delegation of competences should be possible, which suggests that there are, indeed, areas where several agencies have very close (or duplicating) functions.
- The UK’s 2005 *Hampton Review* of course highlighted the rather large number of inspecting structures in the country, which it saw overall rather as a source of burden and inefficiency, mentioning for instance that “regulatory inspection and enforcement is divided between 63 national regulators, 203 trading standards offices and 408 environmental health offices in 468 local authorities” – and that “The Environment Agency unifies almost all regulation of land, air and water, yet regulation on farms is the responsibility of over 20 different inspectorates. Some responsibilities are split between local and national regulators” (*Executive Summary*, points 18 and 19). Overlaps and resulting complexity in the area of food regulation were singled out in particular (at the time of the report – some of them have in the meantime been solved). The review pointed out however (correctly) that “some overlaps in authority are natural; for example, there are both health and safety and environmental issues relating to the storage of hazardous chemicals, and these need to be worked through”. Indeed, however well the enforcement system gets redesigned, whichever resulting structure there is will always see some interactions between departments or institutions working on related areas – but they should not be checking exactly one and the same issue.
- Among the most frequently encountered “difficult areas”, where control is divided or multiple because of historical reasons, but not because of a logical separation of spheres, is food safety. In many countries, supervision is divided between (at least) two main agencies, one focused on animal health and animal products, and the other looking at other food products and at the retail and catering level in particular. This division is seen in the USA at both the federal level (the Food and Drugs Administration supervises food production *except* meat and poultry, which is the responsibility of the US Department of Agriculture) and at the state level (e.g. California

Department of Public Health and the California Department of Food and Agriculture likewise divide supervision). Most countries of the Former Soviet Union have a similar situation, with rivalries between agencies not being rare – which results in higher burden and lower effectiveness.

- Inventories of all inspecting agencies in a country have not been done everywhere, but the numbers are usually very high. We mentioned over 70 in the Netherlands in 2006 and the *Hampton Review* had 63 for *national* regulators only in 2005. Lithuania inventorised over 80, as did Ukraine and Kenya. By contrast, post-reform the numbers can be far lower, with for instance only 25 in Slovenia (with the Inspectorate for Agriculture, Food, Forestry and the Environment having 7 sub-divisions).

4.3 *Inspecting institutions without a clear purpose in terms of “public good”*

78. Part of the reason for the “proliferation” of inspection agencies or, to put it more neutrally, of their ever-increasing numbers and variety, is that policy-makers tend to suggest creating a new inspection (or regulatory) agency every time a problem gets discussed publicly. This is not a universal trend, but a frequent one. Unfortunately, this often happens without proper consideration to (a) cost-benefit issues, (b) existence of other institutions that could assume the desired role, (c) definition of the actual purpose of the new agency in terms of risk and/or public good. This issue has briefly been mentioned above, but it is worth giving a couple of examples of enforcement agencies, the purpose of which ends up not being absolutely clear, and/or for which cost-benefit reviews may yield disappointing results (were they conducted):

- Slovenia has a dedicated Supervision Office of Gambling, and this is a common example (we use Slovenia here only because it actually publishes a list of inspectorates). Gambling is indeed a specific activity, that requires some regulation (even though the level and type of regulation it receives appears to be driven more by cultural traditions than by a real cost-benefit analysis in most countries) – but one may question the need to have a separate *inspectorate*. Indeed, one could argue that this supervision could be exercised by the same body that is in charge of general enforcement of consumer protection and service provisions regulations – in Slovenia’s case, the Market Surveillance Inspectorate. Thus, this inspectorate would be able to have a proper risk-based allocation of resources, based on each year’s findings and results. Instead, having an inspectorate specifically dedicated to gambling and games means that a certain amount of resources will always be dedicated to this field, regardless of the actual evolution of risks, compliance levels, etc. This is a problem that occurs whenever a country has a high number of very specialised inspectorates, rather than a few with broader mandates. Inspectorates with a “broader scope” can reallocate resources based on the evolution of risks, whereas separate institutions “freeze” resource allocation and structures based on how much of a priority some issues were in a given year.
- Many countries have inspectorates in charge (exclusively or among other tasks) of enforcing legislation on the use of that state (or national) language. For historical and other reasons, this may be an issue that is considered a priority by policy-makers and/or citizens in a variety of countries, and this is not the place to discuss it – however, the enforcement aspect is of interest. Latvia, for instance, has a State Language Centre, which has an important inspection activity (it verifies the use of the national state language in businesses, publications etc.). The Slovenian Inspectorate for Culture and Media likewise has responsibility to supervise the public use of the state language, among others. Again, it is unclear whether one could justify such separate inspectorates from an analytical perspective (of course, they have a “political signaling” function, primarily, and this is why they were created). Even if one were to keep all their functions in terms

of enforcement of language legislation, this could be implemented partly by market surveillance authorities (for labels), partly by labour inspectorates (for the use of languages in the workplace), even in some instances by police forces. There appears little justification to have a separate structure.

- Many inspection structures have been set up to enforce licensing requirements – conversely, they may be seen as legitimate in terms of purpose only inasmuch as the underlying license(s) are really justified from a good regulation perspective – and also only inasmuch as no other institution could fulfil the enforcement role. Former Soviet states are known for the proliferation of licenses, and for the fact that they tend to double the size of inspection/enforcement institutions’ lists (there may be as many “license issuers that also inspect” as proper “inspectorates”) – but this is hardly unique to these countries. In most of Europe, licenses are a regulatory tool that is somewhat less used – but still, countries like France or the UK require licenses (for instance) for sale of beverages (in particular alcoholic) or organization of “entertainment event”. This translates, for the UK, into local authorities having specific “licensing departments” with inspection and enforcement functions, and related staff and other resources. One may wonder whether existing regulations (on noise, sale of alcohol, zoning, environment, excises etc.) may not be enough – and the respective inspection services in charge of each of them also sufficient. Again, this is rather a case of tradition – licenses have long existed, cancelling them would be a highly controversial issue, and thus inspection services exist to enforce them. The situation is even more serious in the USA, where many states have particularly extensive licensing requirements for a great variety of professions, often without proper consideration for risk, but rather due to lobbying pressure from incumbents in these professions¹ – and of course, *ipso facto* the licensing boards for various professions become enforcement and inspection structures, adding to the overall administrative burden and costs, without again a clear indication that this serves a public purpose and/or is the most cost-effective way to do so.

5. National vs. local inspections – coordination issues

5.1 General description – duplication – model

79. Just as much of the enforcement system in general has evolved over time without a specific plan or guiding principle (resulting, for instance, in the overlaps and duplications, or the “inspectorates without a clear purpose” both discussed above), the allocation of enforcement responsibilities and resources to different levels (central, local) has also followed the vagaries of history in each country, rather than a specifically conceived plan. Mostly, enforcement functions have been given to different administrative or self-government levels based on the overall political and constitutional structure of the country – but with variations from the general country structure that can occur based on when specific inspectorates were created, how many resources were allocated, how technical the issue is etc. What this means in practice is that:

- Most of the allocations of enforcement functions to different levels have not been the result of analysis-based decision processes, and thus none of them has really been “designed” with an “optimal solution” in mind – thus, while one can to some extent compare the strengths and weaknesses of different existing systems, it would be vain to try and draw general conclusions on different models⁷. At most, one can try and define how well certain solutions fit to specific situations and issues.
- Sometimes a function may be foreseen by legislation to be enforced by a given level (e.g. national), but if funding or implementation mechanisms are too slow to come, other

administrative or government levels may “jump in” and claim enforcement responsibilities for this area.

- Considerable confusion may exist within a single country, with enforcement functions being exercised concurrently by different levels, with or without coordination or clear rules to decide who has competence on each object or issue.

80. Very generally, it is possible to define two general models, which allow to describe a majority of inspection and enforcement structures – keeping in mind that there are considerable differences within these “models” and that they have more of a descriptive than explanatory function:

- Enforcement is primarily the responsibility of local self-governments, which for this purpose have specific technical departments, but which retain generally the power to decide how much funding to allocate, where to focus resources, etc. This locally-driven enforcement may coexist with a number of national-level agencies – either with exclusive competence in some highly technical or sensitive areas, or with concurrent competence on some topics (with or without a clear split of responsibilities depending on the type of objects), or with a “guidance” role to help local enforcement bodies have more similar practices and approaches – or any combination thereof.
- National agencies are mainly responsible for enforcement and inspections, with in most cases a network of local branches that report directly to the central body – but this may coexist either with some enforcement functions also left to local self-government, or with important autonomy of the decentralised structures, etc.

5.2 *Examples – problems and attempts to solve them*

81. It is not always possible to really assign a given country to one of these models, and possibly the details of each case are more important than the general outline. To take a few examples:

- Netherlands: this is a case where there is no clear “model” but rather coexistence of several types of structures. National inspectorates cover all of the key areas of regulatory enforcement and inspections, with gradual consolidation (down from 15 a few years ago to a planned 10). At the same time, there are a number of inspections and enforcement departments under the local self-governing structures (municipalities or provinces), or entirely autonomous (e.g. Water Boards). There are some areas of exclusive competence of one level or the other (e.g. taxes of course, safety of non-food products, health care: national inspectorates – fire safety: municipalities), but many areas where there is some overlap between the two (e.g. food and agriculture, environment etc.). In addition, many inspectorates have regional branches to be closer to the regulated objects and to the citizens – and in many areas, municipalities are trying to join forces and pool services to be able to mobilise better expertise. Thus, there is generally a combination of both approaches, and as yet no clear legal or constitutional instrument to organise the different responsibilities. The preference so far is for a “collaborative” approach whereby cooperation between national and local structures, and among local structures themselves (to pool resources), is encouraged.
- UK: the structure generally corresponds to the first model, at least in England (and generally Wales). The situation of Scotland and of Northern Ireland is in many ways different, so we will describe the English situation. The majority of enforcement responsibilities lie with local councils and the technical structures reporting to them – in particular everything that relates to trading standards (metrology, consumer protection, non-food products safety), licensed activities, and most of food safety. Fire safety is also handled by local structures. Safety of meat production

and slaughter is enforced by a national agency (the Food Standards Agency, incorporating the Meat Hygiene inspection). Occupational health and safety is supervised by the (national) Health and Safety Executive for objects pre-defined as “high risk”, and by local councils for other objects – resulting in the fact that in some cases there may be more inspections of lower-risk objects (if local councils put a high priority on this) than of some higher-risk ones. Environmental protection is essentially supervised by the (national) Environment Agency. Taxes and customs are of course national (HM Revenue and Customs). Overall, the structure in England is relatively clear, as responsibility is either with local *or* with national institutions in most cases – and where there is some level of overlap, rules exist to assign responsibility (e.g. on food safety or OHS). That said, the OHS example shows the difficulty to organise coherent risk management within this dual structure. Food safety was also an area where having several hundred enforcement bodies risked affecting the consistency of enforcement – hence guidelines have been issued by the Food Standards Agency, which are followed by local inspectors. In order to address some of the difficulties arising from many decentralised enforcement structures, the UK Government created in 2007 the Local Better Regulation Office (LBRO), which became BRDO in 2012 with expanded responsibilities.

- In the USA, the majority of enforcement functions are, by default, at the state (or lower) level, as any issues that are not explicitly delegated to the Union in line with the constitution are retained by the states. There are, however, some important federal agencies (not unlike in the UK), with an enforcement mandate that applies (at least to some extent) throughout the United States: IRS (Internal Revenue Service – taxes), EPA (Environmental Protection Agency), OSHA (Occupational Safety and Health Administration), FDA (Food and Drugs Administration) and the USDA (veterinary and meat inspections). The states retain the ability to have concurrent regulation on all of these topics, and most do so – meaning that most of them also have state-level regulators on the same issues, and state- or lower-level (usually county) enforcement structures. In most cases, it is clear which issue is regulated by which level – either because both federal and state level regulate every business concurrently (taxes: there are both federal and state taxes, each enforced by its own administration) or because there is a coordination mechanism and split of responsibilities (food safety: production supervised by FDA and USDA, retail/catering supervised by local agencies). For environment and occupational safety and health there is likewise a mix of federal regulations (applicable to all regulated entities, which does not mean all businesses, and enforced by the federal agencies) and state ones, at least for most states. In the case of OSH, OSHA has a monitoring and approval role for states that elect to develop their own OSH plans. Overall, the articulation of responsibilities is mostly clear. One of the main weaknesses was in the food safety sphere, where the FDA often did not have the appropriate authority, access to information or coordination role, but this has been addressed as part of the 2011 Food Safety Modernization Act. From a cost perspective, however, be it for the public or businesses, the fact that in most cases there is only limited coordination and delegation of functions between the federal and state levels can mean that expenses are higher than they would need to be and that the administrative burden is not optimised. The evolution of food safety enforcement does suggest a way forward, but any change in such a coordinated direction means a reduction in state autonomy, which is a trade-off that is often unacceptable in the US context.
- Other federal states present a variety of patterns, some close to the US model, some not. Canada may look not entirely unlike the US model, with both federal and provincial enforcement agencies, but it has important differences: food safety is more strongly integrated federally under the Canadian Food Inspection Agency (internationally recognised as a very strong example), OHS on the contrary is essentially left to the provinces, and environment is partly federal, partly provincial. Most other issues are provincially regulated and enforced. In Australia, however, while some federal regulations apply to issues such as food safety (where regulations are even

jointly developed with New Zealand) or the environment, enforcement is essentially (bar some exceptions like control of food imports) done by provinces or territories. At the other end of the spectrum, in Russia, while enforcement bodies exist at the level of federated entities, they are strongly coordinated, controlled or supervised by the federal agencies, and can to a large extent be seen rather as local branches of national bodies (more so in the regions under direct federal administration, less so in the republics).

- Germany presents a good example of the complexity introduced by federal systems in the enforcement field (which may be balanced from a broader perspective by other advantages of federal systems, but cannot be ignored in our case). Being a federal state with more functions delegated to the federal level than the US, and also a smaller, more “integrated” country, and also being part of the EU, a large part of regulations are essentially or exclusively adopted at the federal (*Bund*) level: this is particularly the case for food safety, but also largely the case for OHS, environmental protection etc. On the other hand, however, most of the enforcement is done at the state (*Bundesland*) level, with guidelines and coordination done, when needed, by federal institutions.² There has been some discussion as to whether this structure could lead to some inefficiencies in enforcement and surveillance, because of the many actors involved and the many points where information has to be passed to others, which may or may not take action. The 2011 *e.coli* outbreak led to some questions of whether a more integrated food safety enforcement system could have been faster at identifying the source of contamination.
- France clearly belongs rather to the second model (national-level agencies), but with some specificities. Enforcement of regulations is mostly the purview of national structures, i.e. local self-governing bodies do not have any enforcement and inspection functions (apart from their role in the construction permit process, and a few other specific areas, e.g. supervising mother-and child-care centers) – but how the local enforcement structures are organised is not as “vertical” as one could first think. Indeed, while inspectors at the local level (generally at the level of the *département* but for some functions, where controls are less frequent, at the level of the *région*) report to national directorates in terms of objectives, practices, approaches and careers, operational management is far more decentralised. Team leaders for different inspection functions report operationally to the *préfet*, who is the head of all state services at the local level, ever since Napoléon created this function. Thus, while the primary logic is of nation-wide “corps” of specialised inspectors, much of the operational planning is made from a local perspective. This allows to some extent a greater coordination between different services at the local level, based on current priorities, and has been used to create “inter-ministerial” departments/teams for local delivery of services and enforcement under the recent reforms known as the *RGPP*. On the other hand, this also weakens the coherence of the delivery model and creates additional administrative complexity, weakens reporting lines etc.
- Other countries present a wide range of situations. Countries of Eastern Europe and the Former Soviet Union (such as Lithuania or Ukraine) are structured around national inspectorates with local branches, and a strict “vertical” reporting to the headquarters of each agency – thus, they are more nationally integrated than France, but also their inspectorates tend even more to create “silos” and work completely separately from each other. Italy has a mix of both, with some functions (e.g. public health and food safety) having mostly been devolved to the regional level in terms of enforcement and delivery, some others (e.g. fire safety and labour safety) still mostly the purview of national agencies with local branches at the municipal or provincial level. Most Latin American countries have a large dimension of local enforcement, both for locally-adopted regulations and for national ones. Finally, many former colonies have adopted variations of the prevailing structure in the metropolis – meaning that former French colonies generally have

national structures with local branches, whereas in former British colonies, such as Kenya, most of the enforcement is done by local councils.

82. The main conclusion of this overview is that generally the issue of “who does what at which level” in enforcement has rarely been asked – and, when asked, it was never from a neutral starting point but already with a heavy institutional heritage. A frequent trend to suggest that “decentralization is better” is not necessarily supported by observations of enforcement practices and structures. Some flexibility at the local level is helpful when it allows to be reactive and to share information, resources, knowledge more easily between different teams or directions. However, too much decentralization can lead to major discrepancies in approaches, inequality of enforcement and breakdowns of communication. Combining national and local can sometimes seem like a good option, but again can yield to communication issues – and can also increase the administrative burden. Some of these difficulties were evidenced in the Netherlands, where businesses in the HoReCa (hotels, restaurants, catering) sector complained about excessive frequency of visits and excessive burden due to the combination of local and national inspectors. In the UK, prior to the introduction of the “primary authority” scheme³ by LBRO/BRDO, businesses with branches in several parts of the country were faced with highly different enforcement approaches, interpretation of requirements etc. That said, national inspections are not a magic cure for that last issue either – if they do not adopt clear guidance and interpretation documents, enforcement is likely to be just as diverse and inconsistent between different parts of the country as if it was fully decentralised, a problem that is frequently seen in France.

6. Professional background and qualification of inspectors

6.1 Professionalism not always well guaranteed – or narrowly so

83. Recruitment rules, and internal qualification processes, vary widely from one country to the other, and also from one agency to the next. Some countries have very specific requirements for “inspectors” whereas others do not. In any case, in most cases, the focus is essentially on technical skills in the field being supervised rather than specifically on inspections. This is for instance the case in France, where most inspectors belong to technical “corps”, some of which are several centuries old, and where very demanding qualification requirements upon entry lead to a correspondingly high prestige. On the other hand, there is very little (if any) specific requirement or training focused on “how to inspect” or “how to enforce”, and seeking to introduce more consistency of approaches, or more focus on compliance promotion, for instance.

84. Some countries have sought to introduce stricter requirements for inspectors’ qualification as part of reforms, and this has been the case for instance in Slovenia. The 2007 Inspections Act mandates in its article 12 a professional qualification examination. However, a closer look at the law shows that most of the requirements on inspectors’ qualification are highly formal (examinations, rules for hiring and firing etc.) – but in the end what matters are the contents of the training, and the actual use of relevant indicators in the inspectorate’s management and in its staff’s evaluation. Even if “good practices” are taught and required in testing, if they are not really part of the way the inspectorate manages itself, staff will quickly stop using them.

85. In fact, developing a set of common core skills and approaches for all kinds of inspectors is quite an important issue, as it is essential to overall improve relations with supervised businesses and promote compliance while reducing burden – while it can also lay the foundation for more inter-disciplinary approaches, where inspectors in one given field are able to look also at other issues within the inspected premises and thus act as “eyes and ears” for their colleagues from other departments. In the UK, training for inspectors was usually focused, as elsewhere, on technical issues – but there was already in some areas the experience of more practice-focused, inter-disciplinary training, such as the qualifications for

“environmental health officers” (which are often employed to work as food safety inspectors or as OHS inspectors) organised by the Chartered Institute for Environmental Health. In recent years, BRDO has led the effort for the development of a “common approach to professional competency” for regulators’ staff, which could be the basis of a “core curriculum” for all inspectors – focusing not only on what to check, but how to do it.⁴

7. Inspections targeting and risk-based planning

7.1 *Logic of risk-based targeting*

86. Much of the overview above has shown that there are many instances of sub-optimal inspections structures and regimes. Available data and evidence also indicates that, in too many cases, targeting is rather poor, i.e. most businesses are inspected regardless of risk, or inspection selection is entirely random – or even, in some cases, more inspections are conducted on low-risk businesses than on high-risk ones.

87. The logic of risk-based targeting is that the majority of severe violations causing actual injury, death or severe damage occur in a small number of premises – and that they occur in many cases following a certain pattern (not in all cases, since there are also accidents happening in spite of all expectations, of course). Focusing more enforcement resources on objects with the highest risk potential (defined as a combination of likelihood of hazard, and its potential severity and magnitude) is thus expected to produce better outcomes for the same amount of enforcement resources.

88. Risk-based targeting means selecting only a small percentage of the total enterprise population to be able to effectively focus activities on them. Unfortunately, survey data, where available (and as presented in other sections), suggests that this approach is still quite rare in practice (even when there are claims to be implementing it). The fact that over 50% of businesses are inspected each year in Lithuania, or that in the Netherlands there is on average more than 2 inspections a year per business in the HoReCa sector, or that survey data from Italy suggests that among businesses with 10-250 employees, those inspected in a given year (around 37%) may receive an average of 10 visits during the year – this all strongly suggests that risk-based targeting is far less universal than the lip-service it receives.

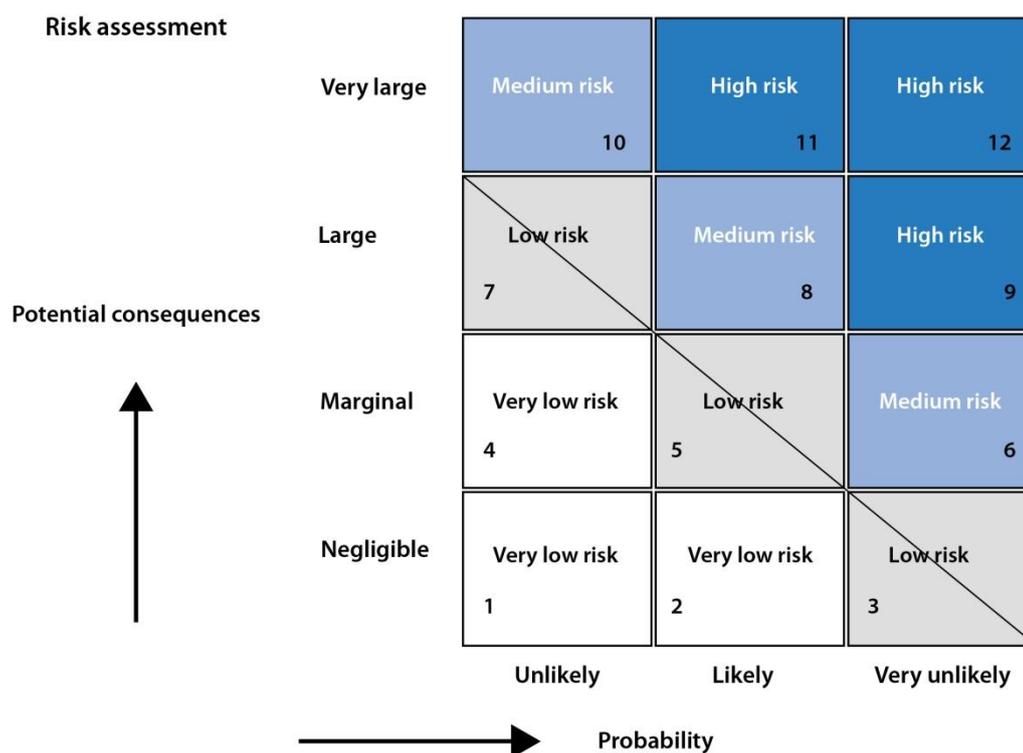
7.2 *Some (relatively rare) good practices of use of risk-based planning*

89. There are, however, some existing interesting examples, and it is worth mentioning a few of them:

- UK HSE: the HSE focuses its inspections nearly exclusively on the highest risk targets, with an emphasis on businesses with a clear record of hazardous non-compliance. It also focuses specifically on sectors, where the greatest numbers of incidents leading to deaths and injuries are found – and it focuses in this way not just to control, but to prevent, expanding for instance important efforts on prevention in the construction sector, including actions in foreign languages to make sure it reaches the actual workers and foremen. Though it does not specifically communicate on this, because of the conflictual nature of the topic, the HSE has gradually reduced the inspections numbers in the last decade, from over 50,000 a year to around 30,000 5 years ago, to a lower figure now (as part also of budgetary restrictions in the UK). At the same time, better targeting and prevention work mean that death and injuries rates have actually decreased.⁵
- England and Wales Environment Agency: as reported in the *Hampton Review*, a 2002 National Audit Office report criticised the agency for far excessive frequency of inspections, including to low-risk sites. This had led to already profound changes by the time of *Hampton* (by 2005

inspections of waste management sites had already decreased by 1/3) – and risk-based focus has continued since then. By 2009, inspections of low-risk waste sites had decreased by 70%. As a result, more resources are available for in-depth audits of high risk sites, prosecutions of serious environmental crimes etc. In the same period, pollution-related indicators improved, meaning outcomes were better.⁶

- Some tax inspectorates are probably among the most risk-focused institutions, having concluded that they had to optimise the effectiveness of each inspection, as staff time expended on tax controls can quickly result in costs that are rather higher than what can be recovered. As examples, the Netherlands’ and France’s tax services both inspect no more than 3-5% of all businesses per year, on average.
- All national inspectorates in the Netherlands had to develop a risk analysis framework, and have greatly reduced their overall inspections “pressure” over the years (the remaining high amount of checks in some sectors is now mostly, though not entirely, due to local inspections). A good example of risk planning matrix is provided by the Mining Inspectorate (which mostly supervises offshore platforms, due to obvious changes in economic structure in the country):



- In spite of overall EU legislation on food safety (in particular the so-called 2004 “Hygiene Package”) calling for risk-based enforcement, practice in many member states is often quite heavy. There is indeed a differentiation based on risk, but this can be in some cases a differentiation between “many controls” and “even more controls”. In contrast, the UK’s Food Standards Agency has published the following guidelines (for use by local councils’ inspectors):⁷

- *Food hygiene interventions* (checks of hygiene, HACCP compliance, contaminations etc.)

A5.4 Food hygiene intervention frequencies

| Category | Score | Minimum intervention frequency |
|----------|--------------|--|
| A | 92 or higher | At least every six months |
| B | 72 to 91 | At least every 12 months |
| C | 42 to 71 | At least every 18 months |
| D | 31 to 41 | at least every 24 months |
| E | 0 to 30 | A programme of alternative enforcement strategies or interventions every three years |

Establishments rated as low-risk (30 or less) need not be included in the planned inspection programme, but must be subject to an alternative enforcement strategy at least once in every 3 years.

- *Food standards interventions* (ingredients, labeling, traceability) [carry relatively less risk than food hygiene so overall frequency is lower]

A5.7 Food standards inspection frequencies

| Category | Score | Minimum intervention frequency |
|----------|------------|---|
| A | 101 to 180 | At least every 12 months |
| B | 46 to 100 | At least every 24 months |
| C | 0 to 45 | Alternative enforcement strategy or intervention every five years |

Establishments rated as low-risk (45 or less) need not be included in the planned inspection programme but must be subject to an alternative enforcement strategy at least once in every 5 years.

Notes

1. For in depth analysis of licensing in the USA and its economic effects see Morris Kleiner's works, e.g.: Kleiner M. (2000), "Occupational Licensing", *Journal of Economic Perspectives*, Volume 14 Issue 4, American Economic Association, Nashville, pp. 189-202, <http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.14.4.189>
2. See overview for food safety: www.bvl.bund.de/DE/01_Lebensmittel/01_Aufgaben/01_WerMachtWas/lm_WerMachtWas_node.html.
3. See: www.bis.gov.uk/brdo/primary-authority.
4. See: www.bis.gov.uk/brdo/resources/competency.
5. OHS is a contentious issue, because it is linked to employers/employees relationships, which are often conflictual. Trade unions are often hostile to any reduction in OHS inspections because they see this as tilting the field towards employers and putting workers at risk. There is not always, however, evidence that this is true. Researchers close to the TUC in the UK, and very hostile to the changes in HSE approaches, actually tried to demonstrate adverse effects of the reduction in inspections volume and of the changes in methods (see the "Regulatory Surrender" book: www.ier.org.uk/node/491) – but in fact their research, while it showed a decrease in inspections and prosecutions, failed to demonstrate any adverse effects on workers' health and safety.
6. Of course, here as in the HSE's case above, outcomes are to a large extent dependent on many other factors than regulators' activities. Improvements in technology and changes in economic structure both contributed to improvements in OHS and environmental indicators. Still, massive decreases in inspections numbers for low-risk objects did not lead to any negative consequence.
7. Food Law – Code of Practice – 2012 version – pp. 132 and 137. See: www.food.gov.uk/multimedia/pdfs/codeofpracticeeng.pdf.

CHAPTER 3. REFORMING INSPECTIONS – DIFFERENT CONTEXTS, DIFFERENT GOALS, DIFFERENT MODELS

8. Starting points – recognising the inspections problem, mobilising support

8.1 *Diagnostics: the key to get reform started*

Need to identify the inspections and enforcement issue

90. In many instances, the enforcement and inspections issue is simply not recognised as such, for a variety of reasons. First, in many countries, there can be some difficulty with the terminology – when one speaks about “inspections” in France, for instance, most will think about the internal inspections of state agencies, not to structures controlling businesses or private persons. “Control” will likewise often be understood to refer to tax audits, not to other forms of regulatory control. There simply is not, in many cases, a common understanding that the different agencies of the state (or quasi-state bodies) which perform regulatory enforcement and inspections share common features, and conduct activities that are inherently similar.

91. Another barrier to the perception of the specific inspections issue is the confusion of all state agencies performing controls under the word “regulators”, which tends to blur the point that many of the problems may arise not from the regulations themselves, but from the way they are enforced, delivered, controlled.

92. Finally, for many businesses, there tends to be a view that state regulations are burdensome *per se* and, lacking other experiences, they cannot really imagine that they could be differently administered – as a result, the pressure to change can be mostly missing.

93. In this perspective, it is really crucial to have first an appropriate *understanding* that inspections and enforcement are a topic in and of themselves, and worth considering as such – and to conduct a diagnostic on this basis.

Different kinds of diagnostic studies

94. “Diagnosing” inspections and enforcement can be done in different ways, according to the starting situation, context and goals. Ideally, combining qualitative and quantitative assessments would be better to ensure that the picture is accurate, and that changes can be appropriately tracked and measured. Again ideally, sources of information should be combined, consulting with businesses, regulators and other stakeholders (e.g. workers/trade unions, NGOs etc.). In practice, however, time and resources are rarely available to conduct all these different types of assessments, and the context generally leads to prioritise some of them.

95. In some cases, where there is both relatively reliable data available from different inspection agencies, strong engagement on the side of the government to promote reform, and relative consensus on the issue (i.e. improvements in inspection approaches are seen as something that can be a “win win” move for all involved), it may be possible to skip quantitative assessments and focus on qualitative analysis and

recommendations. This was for instance the case in the UK when the Hampton Review was conducted in 2005. On the other hand, this review was reasonably comprehensive in terms of the types and variety of stakeholders consulted with. Quantitative exercises were then conducted by the different regulatory agencies, following the Review and the Cabinet's endorsement of it – but they were not part of the initial diagnostic work.

96. In most situations, however, quantitative measurements are essential to ensure proper support for the reform, and given an adequate level of knowledge on the starting point and problems. They are also indispensable if one wants to really measure changes (and hopefully improvements) further along the reform process.

97. As indicated above, there are different tools that can be used to conduct a quantitative assessment of inspections – relying on official data available from inspectorates, performing a “Standard Cost Model” – SCM – detailed measurement, or implementing a business survey (possibly then used as the basis for a simplified “Standard Cost Model”-type calculation). Different countries have gone different routes in this regard.

98. Using official data from inspecting and enforcement agencies and institutions is generally highly problematic if one wants to get a reliable picture of the “inspection burden” on businesses. Indeed, many inspectorates do not have consolidated data indicating how many businesses were visited, how many times – and most of them have no data on the duration of each visit. In a number of countries, inspection functions are decentralised at least in part, and consolidating data across many local authorities is close to impossible. Information systems are sometimes far from up to date, and unable to generate easily recent, comprehensive data. Combining data from different inspectorates in order to have an estimate of the “average” inspection burden per business is also in most cases impossible, as all of them have different systems, databases, etc. In a reform context, it may also be the case that inspectorates have an incentive to under-report the number of establishments they controlled in a given year – and in some countries the activities of individual inspectors may simply be very imperfectly recorded, meaning that official data greatly under-estimates the actual number of visits. For all these reasons, relying on such data is in most cases not a viable option. Where it has been tried (as in the Netherlands for the “Inspection Holiday Snapshot”, see below), it has been a difficult undertaking – and clearly can only work in countries where inspection systems are already quite advanced.

99. Conducting detailed SCM measurements for inspections is equally challenging, though for different reasons. Indeed, administrative burden measurement approaches based on the SCM approach rely on the assumption that some “typical businesses” can be defined, from which the burden from larger populations can be extrapolated – but it is far from obvious that the inspections burden can be likewise assumed to be relatively constant across classes of businesses, making representativeness of data more of an issue. Such assumption of “typical businesses” is essential to the “traditional” SCM approach because the considerable level of detail in the questions and measurement precludes the implementation of these tools over large samples of firms. Furthermore, inspections reform happens primarily through changes in targeting (leading to a reduction in inspections frequency overall, or for some categories of objects) and in implementation (for instance with more focused and streamlined inspection practices making the time spent shorter, or the requirements clearer, etc.) – and only rarely through actual “cuts” (agencies abolished). This is in contrast to reforms of regulations (where entire requirements can be cancelled), or of reporting obligations and permits and approvals (where once again actual “cuts” are actually rather frequent). This means that it is more difficult to produce a reliable estimate of the burden reduction on the basis of initial SCM measurements and projections, since the effect of a “cut” could be more or less accurately anticipated, much less so the impact of a change in targeting and/or implementation. The Netherlands (with the 2007 baseline measurement, in particular) provides the main example of use of the

SCM approach in the inspections sphere – with both strengths (level of detail) and limitations (representativeness, and also definition of “administrative burden”).

100. In the end, the generally preferred approach to quantitative assessment of inspections is to conduct business surveys – one as baseline, and subsequent ones to track the evolution of the situation. Experience using such surveys in a wide variety of countries suggests that the data is generally reliable enough to give an overall picture, but of course the limitation is that large-scale surveys cannot get into the same level of detail as SCM exercises. Achieving really representative samples is also difficult as soon as one tries to get not just aggregate figures, but possibly data by type of inspection – this requires larger samples (1-2,000 respondents for instance), which increases the costs and management complexity of the survey process. Finally, while surveys allow to capture (if the questionnaire is properly designed) most critical aspects in terms of *quantity* (coverage, frequency, duration), the level of precision (which relies on respondents’ memory and estimates) is not always very high, meaning that economy-wide estimates of the inspections burden in terms of time and cost remain relatively imprecise – and such instruments are usually rather unreliable when it comes to try and capture the *qualitative* aspects of inspections. A number of countries have used such tools, and their experience is detailed below.

Experiences in inspections diagnostics and measurement

101. All governments and local authorities that have implemented or planned some reforms of their inspections and enforcement system have to some extent conducted a type of assessment – listing and reviewing them all would thus be excessively long, without necessarily shedding much light on the issue. For this reason, we will be focusing on a limited number of cases, which are particularly representative and/or are particularly good examples of a type of diagnostic.

102. The main group of countries having conducted in-depth diagnostics of their inspections systems, generally including quantitative diagnostics relying on business surveys, is in Eastern Europe and the Former Soviet Union. Incentives for such activity were strong, as inspections were particularly burdensome and often ineffective, with large institutions, staff and practices all inherited from command economy times. Even though the countries in this group are not OECD members, their experience is the widest and most comprehensive in regard to inspections diagnostics, and thus deserves to be considered here.

103. The second group is on the contrary made up of countries widely seen as “good practice”, where efforts have been made to bring the inspections system to a higher level of efficiency and effectiveness, and to use it to support economic growth.

104. Finally, Italy is the case of a core EU and OECD member having recently embarked on a review and reform of its inspections system, based on a diagnostic that relies to a large extent on quantitative measurements through business surveys.

105. A considerable part of the inspections diagnostics (and reforms) conducted in Eastern Europe and in Former Soviet countries have been done, at least in part, with support or participation of the World Bank Group. This has led to the gradual build up of a body of experience in this field, and a certain level of “standardization” in approaches, which helps make subsequent diagnostics faster and relatively easier.

106. A crucial point worth highlighting upfront is that diagnostics, and in particular surveys, have a usefulness that goes beyond the correct identification of the current situation and main problems, and the possibility to monitor and evaluate changes. They also have a political value, particularly when there is no widespread recognition of or agreement on the need to reform inspections and enforcement. They can help to overcome opposition from vested interests and established structures, mostly from inspectorates. Often,

and nowhere more so than in countries where the problem is particularly acute, the latter will simply deny that there is an excessive burden from inspections. Since they usually hold whichever data may exist, it is very difficult to prove otherwise. In such a situation, representative surveys (and, to a lesser extent, other, statistically non-representative tools) are the main instrument that can allow moving forward, by demonstrating the scope of the problem.

One of the first inspections diagnostics – Latvia, 1998-2003

107. Latvia was one of the first countries to conduct a reform targeting specifically inspections *as such* (even though it was part of a broader set of reforms on the regulatory front). The initial diagnostic was conducted by FIAS (then the Foreign Investment Advisory Service of the World Bank Group) in 1998, in cooperation with the Latvian Development Agency (LDA – focused on investment promotion), and upon the request of the Government of Latvia. The study covered all types of administrative barriers to businesses, and did not rely on quantitative instruments, but rather on series of interviews and focus-group discussions with all relevant stakeholders, in particular businesses, but also state officials, experts etc. The results were endorsed by the Government, discussed through workshops with the private sector, and then transformed into action plans through working committees involving both civil servants and businesses. Inspections emerged as a particularly acute problem for businesses, and an important priority for the Government.

108. Even though no quantitative diagnostic was initially conducted, the assessment carried significant weight, because of the involvement of private sector representatives, which was a major change in the country at that time. The context also helped to make its conclusions accepted and implemented. First, the country was seeing its perspective to join the EU recede because of slow progress in reforms. Second, the Cabinet and in particular the Minister of Economy of the time were strongly committed to change. Third, a policy-based credit operation was ongoing with the World Bank, and inspections reform became part of the benchmarks to be met for disbursement – on the Government’s request, in order to have a strong instrument to overcome internal opposition in the administrative structures.

109. An actual baseline survey (again, covering not only inspections but also other administrative barriers, from tax administration to licensing and permits) was conducted by the LDA in 2001, as well as a follow up survey in 2003 to evaluate progress. These surveys allowed estimate the scope of the problem, measure progress, and identify “best reformers” and “laggards” – and remaining problems.

110. Reduction in the duration of inspections (measured in 2003 compared to 2001) was estimated by World Bank Group staff [source Coolidge] to amount to a reduction of approximately USD 2 Mln per year in administrative burden for businesses – a significant number for a small country like Latvia, and after only initial steps in reform implementation. The duration of inspections for most agencies decreased by 50-60%. The second survey showed, however, that the Municipal Police remained a source of considerable burden and harassment, as their work had not seen any reform. This then gave impetus to further reform in this direction (and it should be noted that many police forces around the world do *de facto* inspections work, even though this is not always perceived and taken into account).

Gradual development of “standardised” quantitative assessments by the World Bank Group in the Former Soviet Union and beyond – from 2000 onwards

111. Building on the approach used by FIAS to assess administrative burden, the International Finance Corporation (IFC) of the World Bank Group developed a partly standardised method for business environment surveys, based on (a) using as representative a sample as possible, in particular to adequately reflect the situation for SMEs and (b) focusing on quantitative questions (were you inspected, how many times etc.) rather than qualitative ones (focusing on the “quality” of inspections), as it was found that the

results of quantitative questions were far more reliable and less likely to be biased by short-term circumstances.

112. This methodology has been applied in a number of countries (in chronological order Ukraine, Uzbekistan, Tajikistan, Georgia, Belarus, Kyrgyzstan, Mongolia, Kenya and now being planned in Armenia and Liberia¹) over more than ten years, with variations in precise questionnaires, sample structures, frequency of surveys etc., all due to local specificities, Government requests, funding issues etc. First developed in the post-Soviet context, it was found to be relevant in other regions as well. In spite of these variations, a certain number of key common characteristics can be summarised.

- Representative sample: it is essential for the survey to give a comprehensive and reliable picture of the inspections issue across the whole economy, and to be credible to use as a reform-advocacy tool. Therefore the sample should be large enough, representative as much as possible of all types and sizes of businesses, all regions etc. Because inspections burden tend to be felt particularly heavily by MSMEs, it is best if the survey can include them, even the smallest ones.
- Quantitative questions: asking respondents “qualitative” questions can easily lead to answers that do not, in fact, reflect reality. For instance, asking “are inspections a problem” will yield answers that are heavily influenced by whether respondents (i) have any knowledge of other inspections regimes that may be “lighter”, (ii) have (or not) other problems to deal with in their business activities that are more pressing, (iii) consider the challenges and burdens caused by inspections to be “part of the way things are”, (iv) the way their last inspection took place, etc. By contrast, purely quantitative questions (how often, how long, by whom) may of course be affected by memory issues (people do not necessarily remember duration of inspections very precisely), but these get mostly evened out by the large number of respondents – and they are not subject to interpretation by respondents.
- Inspections focus and burden: the aim of the questions is to assess (a) the level of focus (or lack thereof) of inspections, both overall and by different agencies, by seeing what percentage of the total business population, and of different sizes, sectors etc. is inspected each year – (b) what the total administrative is for all businesses in the country over a year (by multiplying the percentage inspected, the number of visits, and the average cost in time and direct expenses of each visit) – (c) which agencies appear to create the most burden and have the widest coverage (i.e. the least focus).

The 2005 *Hampton Review* in the UK – and the issue of inspections measurement

113. The “Hampton Review”² was commissioned by the UK’s Treasurer (at that time, Gordon Brown) to Philip Hampton, then Chairman of Sainsbury. It was decided to conduct a comprehensive review of inspection and enforcement, primarily from an administrative burden reduction perspective, but also with a view to ensuring effectiveness. The review relied on findings from repeated business surveys over the years, in particular those conducted by the Department for Trade and Industry (now Department for Business, Innovation and Skills) – but no specific inspections-focused survey was conducted, nor was the data available sufficient to establish an exact baseline on the administrative burden level. Rather, the review relied on thorough consultations with all stakeholders and experts – businesses, associations, regulators, academics etc. It also incorporated prior research and reports, and data obtained from regulators directly.

114. The results of the *Hampton Review* were notable not only because of the very detailed nature of the diagnostic, covering all aspects of inspections and enforcement (structures, staffing, methods, targeting, relations with regulated entities, performance evaluation, outcomes etc.), but also because of the conclusions

it drew, and of its development of a coherent, unified vision for a renewed enforcement system. Many of the principles that the *Review* proposed as foundations for effective and business-friendly inspections had been developed earlier, but this was possibly the first time they were all gathered in one document, particularly one with this level of visibility and influence.

115. Indeed, the *Review*'s importance was that it was more than a diagnostic – it outlined a full plan of action and, because it was an official Government document that had been requested by the Cabinet's number two, it was a directly "actionable" one. The *Review* thus had direct consequences – in the way regulators organised their work and in legislation.

116. Exact measurement was not the *Review*'s objective but, as a follow up, the Cabinet requested national regulators to develop administrative burden reduction plans related to enforcement and inspections – which meant that measurements first had to be conducted. While these were important to drive further improvements³, and resulted in considerable savings for businesses (in particular on the side of HM Revenue and Customs, which were directly under the Treasurer's authority, and at the forefront of burden reduction measurement⁴), they were not the most lasting impact of the *Review*. Rather, it was its impact on the overall perception of the inspections and enforcement issue in the UK which was probably fundamental: the topic became known, an important element of discussions on better regulation and improving the business climate.

117. Among the direct consequences of the *Review* was (a) a specific follow-up review focused on the question of sanctions and their effectiveness (2006 "*Macrory Report*" – *Regulatory Justice: Making Sanctions Effective*⁵), (b) the development and adoption of the statutory Regulators' Compliance Code, requiring regulators to implement approaches based on risk-management, transparency, compliance promotion etc. (2007) and (c) the development and adoption of the Regulatory Enforcement and Sanctions Act (2008). Institutionally, the Local Better Regulation Office was created in 2007 and started working on very practical schemes to improve the inspections regime, such as "primary authority". In short, even though the *Review* was first a diagnostic, and resulted on much measurement, it was probably most influential as a reform programme, and will again be covered as such below.

Inspections burden measurement in the Netherlands – 2007 baseline and subsequent updates

118. Since 2002, ACTAL (the Netherlands' Advisory Board on Regulatory Burden) started pointing out the administrative burden created by business inspections. In 2006, the Netherlands started embarking on a reform program that was first called "Clear (Unambiguous) Supervision" and later on ended up being called "Renewing Control" (*Vernieuwing Toezicht*), that aimed at making inspections significantly less burdensome for businesses (with a target of 25% reduction in administrative burden) but also more efficient and effective. The attention given to effectiveness was, among other events, strengthened by the memories of the 2000 Enschede disaster, when a fireworks depot exploded, killing 23. The overall motto of the reform program is: "More Effect, Less Burden".

119. The measurement exercise was in part initiated due to an ACTAL report called *The entrepreneur at the centre stage*, that showed how inspections (a.k.a. control or supervision) were one of the main (possibly *the* main) form(s) of interaction between businesses and state regulators, and the point at which much or most burden was felt. The key idea was that, while measures of administrative burden focused on the cost of *complying* with regulations, *supervision* (inspections) created costs due specifically to control (in the Dutch case, these were primarily identified as "information obligations", though later experience showed that these costs and burden were in fact more diverse). Two pilot measurement projects were conducted in 2006 to measure both *compliance* and *information* costs of different regulations, and thus test the methodology to measure the "supervision burden".

120. A more comprehensive measurement exercise was conducted in 2007, which covered most of the sectors considered critical to the Netherlands' economy, and which were thought (as a result of public discussions and consultations) to suffer from a significant inspections burden. The measurement was contracted to a specialised consulting firm, that implemented an approach that had been designed by ACTAL and the *Regulatory Reform Group* (part at that point of the Ministry of Finance) – with some amendments being done to the methodology as measurements went forward, to accommodate some of the improved understanding it yielded regarding the inspections issue. The 18 “domains” (or sectors of economic activity) covered included:

- Food and consumer services (hotels, restaurants and catering – agriculture – meat supply chain – food trade – leisure and entertainment).
- Manufacturing industry (chemicals – waste – construction, wood and metal – nuclear industry – pipelines).
- Transport (Schiphol airport – road transport – inland navigation – sea ports).
- Public services (child services supervision – child care – health care – penitentiary institutions).

121. The measurement exercise yielded some important results, which gave the foundation for the reform work – but at the same time some lessons can be learned from the methodology used, its strengths and limitations.

122. First, the yearly burden was estimated at EUR 180 Mln for the 18 “domains” covered, out of which approximately 55% created by national level (central government) inspectorates, and 45% by local inspectorates, at the time of the initial measurement. Out of the “central government” burden, more than half was assessed to be linked to EU guidelines and regulations, and to tax and customs. This breakdown had some bearing on what could, and could not, be targeted as changes, and achieved. The decision was that a 25% reduction would be sought on the whole “central government” burden, regardless of the origin of regulations, as it was deemed possible to improve inspections methods and practices anyway. As for the burden created by other (local) layers of government, on the contrary, no target was set, as the central government had (and has) no direct control over them.

123. Second, while the decision to use a measurement methodology close, in its design, to the “Standard Cost Model” already used for compliance burden, allowed to yield results that were detailed and precise, the complexity of the instrument meant it was used only for the aforementioned “domains” – and thus, that no economy-wide picture was available. It is impossible from this data to infer estimates of the inspections burden for the *entire* Dutch economy.

124. Third, the additional level of detail offered by the sector-specific measurement and in-depth interviews foreseen by the methodology may not have yielded much more than what a “lighter” approach could have given. The initial measurements included a complex “quality rating” on inspectorates’ practice that, in fact, relied substantially on the subjective judgement of the interviewers (even though it was supposed to result in a numeric rating). The reform program made very little use, if at all, of these ratings further on – suggesting that whichever detailed information on practices was required could have been obtained through focus group discussions and in-depth interviews of a more “usual” type, without this specific rating system. Similarly, it is not obvious that the additional “granularity” in details of the inspection burden by sector is sufficiently useful to outweigh the downsides of the method – lower representativeness (because sample sizes are quite small for each sector) and impossibility to estimate the economy-wide burden.

125. Overall, the methodology chosen might have been suitable given the objectives of the reform program, but nonetheless appears to have some shortcomings. Giving detailed insight into the burden experienced by a number of really critical sectors in the Dutch economy was undoubtedly useful, and allowed to set (and to a large extent reach) quantitative burden reduction objectives, which was very important for reform implementation. On the other hand, the approach was expensive (the baseline measurement costs were high, because of the complexity of interviews and reports), the data was not statistically representative, and it did not give an economy-wide picture. This made the overall case for reform weaker, it made it also more difficult to show progress due to the reform, and it possibly did not really help building momentum for reform of local government inspections, which has remained lagging.

126. A final issue was that reform work focusing on specific domains, and in particular discussions with businesses, showed that some aspects of the burden were not adequately captured in the methodology – and thus, that positive changes may not be tracked and claimed. As the methodology initially focused only on *information obligations*, direct expenses due for instance to the need to bring a container to a specific location in the port for testing, or lost turnover or wages as a result of having to wait for a visit or some test results, were not counted. As a result, the methodology was gradually amended to accommodate all or at least most types of costs due specifically to supervision or inspections. This experience both supports an approach where the inspection burden is relatively broadly defined (e.g. all the time that was expended preparing for an inspection, while it took place, and as a direct follow up) – and also shows that no approach is perfect: the complexity of inspections issues means that there will always be some very specific issues that can only be identified through in-depth discussions with businesses, and have to be measured separately, if need be.

127. Additional insight into the need for, and the difficulties of, inspections measurement is given by more recent developments in the Netherlands. In 2011, the Government launched an initiative called “Inspection Holiday”, which (in a nutshell) aimed at strongly reducing the burden of inspections for (a) low-risk and (b) higher-risk but consistently compliant businesses (the equivalent of what is called in the UK “earned recognition”). The target initially adopted (no more than 2 inspections per year per business) was in fact quite modest, and it was clear that in many cases, *on average*, Dutch companies were likely to have less than 2 inspections per year – however, again, the lack of economy-wide data made it difficult to be sure. In winter 2011-2012, the Government requested a “snapshot” of the inspections burden for businesses, using the same “domains” that were covered in the initial measurement.

128. The “snapshot” first showed the difficulty of obtaining data from inspection agencies and structures: it took several months of efforts to consolidate a total number of inspections for each “domain”, and even this was an estimate. It was impossible to have a certain number of how many *businesses* were visited, how many times on average. The number of inspections was simply compared to the number of business entities in each “domain”, and a simple average was made of visits/businesses.

129. While it did show that the average number of inspections per business on the side of *national authorities* was on average much lower than 2 per year (though in the case of food it was around 1 per year), it was not possible to distinguish further between categories of risk in these sectors. More importantly maybe, the “snapshot” showed that the number of inspections conducted by local authorities was now (possibly as a result of several years of reform in national inspectorates) *much higher* than those done by the central government. In food, catering and hospitality the average number of local inspections was 2-3 per year per business. In construction, leisure/entertainment or transport, it was close to 1 per year.

130. In other words, in spite of all its strengths, the Dutch experience tends to *a contrario* also make the case for simple representative surveys of businesses to assess and track the economy-wide inspection burden, and provide a low-cost, regular picture of the problem and its evolution.

Inspections surveys in Italy – foundation for reform

131. Italy is one of the most recent countries to have launched a Governmental reform initiative specifically targeted at inspections and enforcement, with a first decree adopted in May 2011 and then a significantly more specific one in February 2012. Even though some initiatives had been taken by different ministries as far back as 2008 and in some cases 2004, and also some regional reforms had taken place, this was the first time that inspections were really addressed comprehensively, and through a nationwide program. As a foundation of this reform, the Civil Service Department under the Presidency of the Council of Ministers, in charge of coordinating the process, decided to undertake a diagnostic survey.

132. In order to minimise costs and ensure quality of implementation, the survey work was entrusted to the national statistics institute, ISTAT. The survey covered the inspections “experience” for the year 2011, and the sample was over 1,500 respondents in the SME population (5-250 employees). Because the smallest businesses are very numerous (85% of the 4.5 Mln businesses in Italy), often more difficult to find and contact, the response rate tends to be lower and the precision of answers tends to also be more problematic (given their usually more limited legal knowledge, and higher informality), the survey team decided not to interview businesses with less than 5 employees, but to extrapolate the data from the businesses with 5-10 employees to them. The assumption, which surveys conducted in other countries suggest is likely to be correct, was that there would be only limited differences between the “micro” and “very small” businesses when it comes to inspections experiences. The survey was conducted by phone and covered specifically all the main inspection agencies, including the different police and law enforcement bodies (which do in fact inspect quite a lot, particularly in Italy), and lumped the smaller agencies into “all others”.

133. The results of the survey ended up being quite striking – and thus showing the very strong need for reform. Over 36% of SMEs were inspected at least once in 2011, a number that remained essentially constant regardless of size. While the smallest businesses were inspected a bit less frequently (nearly two inspections a year for those who were visited – or 0.7 a year on average for the whole population of businesses with 5-10 employees), the frequency increased a lot for medium-sized businesses, resulting in an average number of visits of more than 5 for SMEs that were inspected at least once (close to 2 a year on average for the whole SME population). While the percentage inspected is still lower than many countries in the Former Soviet Union or some in Eastern Europe (see below Lithuania for comparison), it is higher than in countries as diverse as Georgia or Uzbekistan. Unfortunately, available data does not allow to make countrywide estimates for the UK or the Netherlands – which again goes to show the relevance of such surveys – but available data suggests that percentages inspected overall may be approximately as high, at least in the UK (see previous section). The number of visits per inspected business is very high – equivalent to what is found in Belarus, Kyrgyzstan or Ukraine, and markedly higher than in Lithuania. Again, this should not be taken as a reason to single out the Italian inspections system (even though it is clearly burdensome, and the Government is well aware of it) – but to point out that practices and inspections burden in OECD countries may be often worse than is thought, and that the absence of national-level data aggregating all inspections simply makes it in most cases “invisible”.

134. ISTAT and the Civil Service Department estimated the total administrative burden created by inspections, thanks to questions included in the survey and covering all the staff and other resources (e.g. external advisors, consultants etc.) used to prepare for inspections, during inspections and to follow up on inspectors’ requests. The total for SMEs (5-250 employees) reached nearly EUR 75 Mln, for micro-enterprises (5-10 employees) it was estimated to be in excess of EUR 285 Mln. This means a total of EUR 360 Mln per year, without considering large companies, and with a methodology (telephone survey) that lends itself much less than the Dutch SCM approach to really getting into the depth and details of administrative procedure – and as a result tends to clearly under-estimate the total burden.

135. The survey results also suggest that there is a disproportionate inspection burden on the most “visible” and “street level” activities – restaurants, shops etc. – which may not necessarily correspond to what a risk-based targeting approach would yield. All these findings are forming a very important and useful basis for the reform, and can be used to help with “convening” the many institutions involved, and overcome scepticism. Indeed, one of the challenges in Italy for this reform (not unlike the situation in the Netherlands and the UK) is that (because of federalization reforms in the past 10 years) many inspections are managed at the regional level. Thus, reform will require not only to make national inspections agencies change – but also to ensure that all, or at least most, regions are fully on board. To continue supporting the reform process, and provide additional insights, a follow up survey is being conducted.

Inspections surveys in Lithuania – evaluating first steps, driving progress further

136. In Lithuania, the inspections reform process started in 2010. An initial set of changes and improvements to inspection structures and practices had taken place as part of the EU accession process, but this had nonetheless still left the country with a relatively heavy system, combining more “modern” features (in food safety and non-food products market surveillance, both affected by EU accession – also in tax administration, which was a priority) – and many agencies still operating to some extent in a “post-Soviet” mode. While there had long been issues with the way inspections were organised and implemented, and complaints from the business side were well known, the impetus for reform was given by “outside” events (at least “external” from the state administration perspective), i.e. the financial and economic crisis which started in 2008.

137. The crisis was particularly acute in the Baltic states and, even though Lithuania was relatively less hard hit than Latvia, it spurred the Government into action. The focus became to find all possible ways to decrease non-essential state expenditures, while at the same time improving conditions for businesses to try and promote growth (or at least recovery) by all means. Inspections were a prime target in this context, along with many other regulatory procedures.

138. In December 2008, the Government adopted a reform programme, which was then further developed into a conception for inspections reform in 2009, to a large extent based on the “Hampton Principles” from the UK, and on earlier analytical reports prepared in Lithuania. This then laid to the preparation and adoption of a new Law on Public Administration in 2010, which put the “Hampton Principles” into law and required inspecting agencies to implement a number of major changes. The “road map” for inspectorates reform was further precised by successive Government decrees. All of these required, among other points, inspectorates to:

- base their planning and targeting on risk-analysis;
- introduce new tools for inspections, such as check-lists, to make them more transparent;
- make very significant efforts to provide clear, reliable information to businesses to help them comply.

139. The reform also required improved coordination between inspectorates, use of advance notification as much as possible etc. – and also foresaw gradual consolidation from an initial number of over 80 inspectorates.

140. In order to be able to track progress in reform implementation, and also to sustain the momentum for change, it became critical to have appropriate data. While different analytical reports prepared by various experts, projects and structures had shown, as far back as 2003, the need and potential for inspections reform, a proper quantitative assessment was lacking. To address this, a first survey was

conducted end 2011, followed by a second one in mid 2012. The first survey covered over 500 companies, and the second one 1,000 – in both cases a random sample from the business registry.

141. While the first survey covered an entire year (2011), the second one asked questions only about a half-year (first half of 2012) – which slightly weakens the reliability of data because one has to extrapolate to a full year.

142. Overall, the first survey showed that the problem was even more acute than hitherto thought, with over 60% of businesses inspected at least once a year. This demonstrated that, in spite of significant progress in terms of methods by many of the inspectorates, the overall approach was still very much to inspect “as much as possible”, i.e. very “post-Soviet”. The average number of inspections per business per year in 2011 was around 1.7. Half-year data in 2012 suggests it may be as low as 0.9 for the entire year, which would mean a nearly 50% decrease in one year and would be an impressive achievement (final outcomes may differ as sometimes inspectorates are particularly active close to year’s end). In any case, the second survey also showed a high degree of compliance with reform requirements by at least the majority of enforcement agencies. As a few examples:

- 60% of businesses received advance notice of inspections;
- Inspectors used a check-list in 33-55% of cases (depending on agency);
- In 92% of cases, violations found which but not part of the check-list did not lead to any sanctions;
- 64% noticed an improvement in the behaviour of inspectors.

143. Overall, data has been helping the reform both by showing how serious the problem was, and by demonstrating improvements.

8.2 Drivers of reform: private sector, political forces

144. While diagnostics are an essential element to identify problems, demonstrate the need for reform and highlight key areas requiring change, they are never enough to make reform happen “by itself”. Inspections and enforcement reform, like any other regulatory reform but maybe even more so because of their practical implications and of the large number of personnel involved in the inspecting institutions, are difficult to achieve – because they are bound to have lots of opponents, or at the very least to require challenging habits and well-established ways of working. Thus, identifying the key drivers of successful reforms is important.

145. The first and generally most important factor (particularly for the sustainability of changes) is the ability of the business community to “push” for reforms in the enforcement sphere. It is, however, not always present. It can be because the business community is too weak and at too much a disadvantage *vis-à-vis* state institutions and inspectors in particular. Businesses are individually generally afraid to challenge inspecting institutions, even in “best practice” OECD countries, for fear of endangering their long-term relationship with the agency – if, in addition, the overall clout of the business community in the country is weak, it will make promoting reform particularly difficult. This was the situation in much of Eastern Europe in the 1990s, and still is the case in many transition or developing economies: businesses are for the most part too small to be influential.

146. It can also be that the business community as a whole is not acting together – because at least some large businesses have political connections that enable them to operate easily in the existing

environment, and in fact benefit from the lack of transparency, they may even have an interest to *not* see reform happen. This is a situation that has long delayed reforms in Ukraine, for instance.

147. Finally, some countries with a well-developed and organised business community can still see it be unable to successfully make the case for enforcement reform – mostly if the issue is strongly opposed by one political side or other stakeholders (e.g. civil servants, workers etc.), without having a really strong constituency on the other side. This is for instance the case in France where business associations have not put any real focus on the issue, no political parties are really explicitly campaigning on “improving regulations”, and there is on the other hand the risk to antagonise well organised groups if one touches some critical inspection functions.

148. On the other hand, there are a number of convincing examples where the business community coalesced together effectively to promote reform. It was of course the case in the Netherlands and in the UK (where business involvement in the *Hampton Review* and its follow-up was strong) – but in these two countries the general objective of decreasing administrative burden and supporting business development was supported by a large majority of political forces anyway.

149. Latvia was clearly a case where the very important and active participation of the business community in discussing the findings and recommendations of the FIAS team were critical to push reform forward – and their continued participation in working groups with public officials, discussing and arguing the details of the diagnostic and proposed reform was likewise essential.⁶

150. In Colombia, likewise, the implication of the business community was essential – but in an even more direct and structured way. The entire reform (first in the City of Bogota and then in other major municipalities) was designed and conducted in partnership with the Chamber of Commerce. This was a structural element of the reform since introducing an automated planning and information system for inspections was the core change, and this needed to be fully interconnected with the registration system for businesses – which is administered by the Chamber of Commerce. This meant that business representatives were present and active at all stages.

151. The reform process in Italy, which started in 2011, has also relied very strongly on the involvement of the different segments of the business community – *Confindustria*, *Confcommercio*, *Confartigianato*, and representatives of the agricultural sector. In a context of long-term economic difficulties in Italy, the complaints of businesses against excessive administrative burden have gradually gained more attention, in spite of the high political polarization. In order to build consensus for a reform that can be highly controversial, the Civil Service Department has spent a large part of the first year of reform organising discussions with businesses, and joint meetings with businesses and inspectorates – gradually managing to generate a wide level of agreement on the need for reform and its key principles.

152. A second critical component for success is the real commitment of important political forces or influential leaders. This works best either if there is broad consensus among all or most political forces, or if the forces or personalities supporting reform really have a strong ability to achieve changes (which may require more than just winning an election).

153. Latvia again provides a good example, where the personality of the Prime Minister and then of the Minister of Economy played a key role (along of course with the political platform of the Government of the time) in getting the reform started.⁷ In the UK, likewise, even if regulatory reform and administrative burden reduction generally enjoyed broad political support, and in particular from both Labour and Conservatives, it was also notable that the *Hampton Review* was commissioned by the Treasury, at a time when the Chancellor was particularly influential. In Italy, even though the first reform decree was adopted by the Berlusconi cabinet in 2011, real action on the issue became possible only under the new Monti

government – with the President of the Council being a strong supporter of administrative reform, and the crisis context lending his team the ability to push forward changes with broad political support from all main parties. In Lithuania again, some key political figures were strongly active to champion the adoption of the 2010 Law on Public Administration and the ongoing inspections reform process – mostly the Minister of Justice and successive Ministers of Economy. In that case also, personal convictions and ideas were to some extent more important than official cabinet or party platforms.

154. Finally, in many cases, the most important driver of reform may be the context – i.e. events and processes that are external to the main protagonists of reform. There is a large number of reform cases that have taken place thanks to two types of processes (sometimes combined): international integration and economic (or more general) crisis.

155. Mexico in 1994-1995 was possibly the first case of “inspections reform”, and clearly one where international integration (into NAFTA) played an important role, with the US and Canada pushing for more effective enforcement after several scares or scandals (e.g. contamination of tomatoes grown in Mexico) – while the integration also offered opportunities for Mexican businesses that could only be fully taken avail of if reform unleashed their growth potential.

156. All of Central and Eastern Europe constitutes a major example of the importance of international integration, since the EU accession process (or the prospect of joining it) was the main driver of all changes that took place in the 1990s and beyond in this region. Even in countries that did not have a specific reform of inspections and enforcement, major changes took place in the way these were organised in all the spheres covered by EU legislation – in particular food safety, non-food products safety, environment and customs (which all adds up to a considerable amount of regulations and inspections). Risk analysis was introduced, burden overall reduced, practices and institutions were changed – and are still changing – because of the strong drive to join the EU, and the clarity of its requirements. In some countries, like Latvia from 1998-1999 onwards, this actually resulted into a more “full blown” inspections reform process – but in any case, in all countries, it led to major changes.

157. Another form of “external” pressure (with due quotation marks because it is requested, and agreed upon, by the country’s government) is constituted by conditionalities in external assistance. This was first used in the inspections context in Latvia, where the government specifically asked the World Bank policy credit team to include conditions related to regulatory and inspections reform so as to give itself “internal leverage” against opponents of reform. Such an approach was later successfully replicated in countries as diverse as Tajikistan and Ukraine. In none of these cases was the conditionality the main or first driver of reform – rather, it was used to reach a tipping point, and specifically designed as such with the main policy-makers in charge of the reform, in order to overcome opposition inside state structures. The importance for the government of getting this external support then meant that the necessary reforms were adopted, whereas they had long been delayed by internal bickering.

158. Economic crisis is, if anything, an even more potent engine for such reforms. The radicality of measures proposed in Lithuania (including very strict legal provisions, strong reductions in inspections levels and resource expenditure, etc.) were only possible because of the severity of the post-2008 economic downturn, meaning both that the Government needed to reduce costs as much as possible (given the debt crisis striking the country) and that businesses had to be supported by all means. The fact that inspections reform became possible in Italy starting in 2011 is due to a relatively similar context.

159. In some countries, as in Bosnia and Herzegovina, both international integration and crisis can combine. In that case, the prospect of becoming an EU-candidate country (not yet achieved but for which reform was a helpful step) combined with the overall “crisis condition” of the country post-civil war to

enable very radical reforms (comprehensive legislation, entirely new “single inspectorate” with new rules, processes, tools etc.).

8.3 *The role of public opinion*

160. Public opinion often ends up having a very important role in either enabling or preventing enforcement reforms, though this is frequently under-estimated at the onset, and not correctly taken into account by many reform promoters. The difficulty is that inspections and enforcement are not in most countries a frequently discussed topic or one where citizens or media are generally knowledgeable, and thus that reactions to reform proposals or actual measures will thus tend to be based on reactions to the aspects of the changes that coincide with already-held opinions. Thus, if there is broad-based consensus that administrative pressure is too high and changes are needed to make state regulations less intrusive, reform efforts will be supported – while, if there is widespread distrust of businesses, and strong trust in regulation as a safeguard for the public, it will be far more difficult to gain approval for changes in enforcement practices. In the latter situation, it will be very difficult to convince the public that, in fact, reform will *not* lead to weaker enforcement but, on the contrary, to a situation where inspections are both more effective *and* less burdensome – particularly if inspection authorities actively take position against the reform, which is then seen as a “ploy” by ill-intentioned businesses. Overall, for these reasons, inspections reform appear to be relatively “easier” in North-Western Europe (UK, Netherlands, Denmark, Sweden for instance), where regulatory reform in general is the object of political consensus (at least to an extent) – than in France and Southern Europe, where “business” and “citizens” are more often seen as having opposed interest (something which of course is also linked to the way businesses and their associations actually perform).

161. In many cases, however, public opinion might at the onset be either neutral or mildly supportive of reforms – but can turn rapidly against them if some “high profile⁸” accident occurs that can (rightly or not) be linked to recent changes in inspections or enforcement patterns. Such “link” may even be suggested by opponents of reform – and “risk aversion” can then lead to the reform being halted or reversed. The mechanisms behind such situations are the same that tend to bring about such reactions are the same that often lead to excessive regulations and the proliferation of inspection structures and activities in the first place, and that are now often referred to as “risk regulation reflex”. As this is a topic on which a fair amount of valid research and writing is available, we will not cover it in more depth here.⁹

162. There is some interesting experience suggesting that public opposition or scepticism towards enforcement reform can be at least partly alleviated, and “risk regulation reflex”-type reactions avoided, through well-designed communication campaigns. In Ukraine, the IFC of the World Bank Group faced strong opposition from many powerful inspectorates when it started supporting a proposed reform of inspections in 2006. Some inspecting agencies, such as the State Standards Committee, used the media to propagate “scare stories” about food or products safety, and how proposed changes would put the lives of Ukrainians in jeopardy. The IFC organised methodically a series of activities and events geared at explaining what the problems with inspections were, why reform was needed, what successful international examples looked like, and what would be the consequences.¹⁰ Partly as a result, media support for the reform increased, and inspectorates were less and less able to have success in their “black PR” activities (to use the usual Russian moniker for these). Ensuring media support is indeed very important, given that in fact there is some evidence that the *public* as such is possibly less “risk adverse” and systematically “risk regulation reflex”-oriented than is often believed.¹¹

9. Defining the goals and approach of reform

9.1 *Main objective: increasing effectiveness, efficiency, or reducing burden?*

163. One of the main reasons to undertake reforms to improve enforcement and inspections is that, in theory at least, they should be able to deliver *simultaneously* greater effectiveness, improved efficiency and reduced administrative burden. That said, in practice, in each reform case there is actually a priority among these objectives, depending on the starting situation – and a stronger emphasis on one of the other of these will yield somewhat different results.

164. In more “established” regulatory systems, increasing effectiveness and/or efficiency may be seen as a priority – possibly in a context of budget restrictions, or following some important incidents suggesting a failure of the underlying enforcement system.

165. Some examples of this are the ongoing changes in food safety enforcement in the US, or the continued consolidation and reform of national inspectorates in the Netherlands. The US Food Safety Modernization Act, that was finally adopted in 2011, squarely aimed at making enforcement more effective – as a number of instances of contaminations at the production, processing or catering levels, and the difficulties seen in identifying or addressing them, had for several years shown the limits of the existing system. Increasing effectiveness was also the main objective for the reforms that took place in Eastern Europe as part of the EU accession process, even if they sometimes had positive effects on the burden level.

166. In the Netherlands, meanwhile, reducing Government costs has become an important priority since 2008 and the ongoing economic and financial crisis – which means that efficiency improvements are now possibly as important as burden reduction in driving the reform forward, with a decrease of up to 25% in staffing and budgets foreseen for the national inspectorates as part of the changes. In the last couple of years, reducing costs has also become the main priority for enforcement reform in the UK – the HSE, for instance, has had to become even more risk-focused as its budget available for preventive checks decreased, allowing it to conduct less inspections than before. In Lithuania, likewise, even though administrative burden is possibly the primary concern, reducing state expenditures is nearly as important – and this drives a decrease in staffing and resources for inspectorates overall.

167. On the other hand, burden reduction was clearly the priority in the reforms conducted in the Former Soviet Union, Bosnia and Herzegovina or Mexico, or for the first phase of reforms in the UK and the Netherlands. It is also now the priority in Italy, or in Lithuania. All these reforms had or have other objectives too, but burden reduction is essential.

168. Focusing on one or the other of these goals has, of course, implications in terms of which reform measures get prioritised. This translates into reforms with significantly different impacts. Those focused on improving effectiveness are often implemented without real regard to the administrative burden issue (even though this lack of attention is not a logical necessity, it is the most frequent situation) – meaning that in many cases improvements in enforcement effectiveness led to a burden at least as high, if not higher than before, e.g. in the case of food safety in new EU member states. In some countries however, like Canada, compliance strategies (which have been a requirement for federal regulators since the 1980s) are developed with the double aim to maximise effectiveness and minimise burden, and try to achieve both.¹²

169. Reforms focusing on improving efficiency and reducing budget costs, meanwhile, often have real results in terms of consolidation of agencies, stricter focus on risks and optimization of resources. Those that focus more on burden reduction, on the other hand, usually entail requirements to improve transparency, rules of engagement for inspectors, requirements to improve planning and information – but

often do not make use of “efficiency focused” tools such as institutional consolidation and overall reductions in staff numbers, which would in fact have considerable effects.

170. The main lesson learned from this would be to try and always keep the three objectives in mind, whichever of them is the strongest short term priority, because only their combination can result in a reform design that is really comprehensive and maximises outcomes.

9.2 *Indicators and benchmarks*

171. Managing the reform successfully requires clear indicators, without which one cannot know which way things are really moving, and clear targets and benchmarks, to create the incentive and positive pressure for change. The key areas in which indicators are needed are the following:

- Burden – based on measuring the percentage of businesses inspected each year, the frequency and length of inspections and (if possible) the total time spent (preparation, inspection and follow up) and any direct administrative costs (useful both in aggregate and separately for each agency)
- Targeting – comparing the overall number of inspections with the proportion of these done in high, medium or low risk objects (usually done separately for each inspection agency)
- Use of new inspections “tools” – percentage of inspections (separately for each agency, and aggregate) conducted using new instruments mandated by the reform, e.g. check-lists, identification for inspectors, advance notice etc. (whichever are required by legislation or instructions)
- Information and compliance promotion – percentage of businesses having been reached by information efforts/activities, reporting satisfaction with inspectorate’s activity to inform them, finding requirements clear and transparent etc. (mostly separately by agency – but can be useful in aggregate too)
- Resource allocation – what share of resources (staff and financial) goes to different tasks: information/outreach, analysis and planning, inspection and enforcement in each agency.

172. In most countries, the focus has generally been (when measurement and targets were used at all) on burden reduction. Methodologies used to calculate the burden and measure the data vary, but are to some extent comparable (all rely to a large extent on time/staff costs). Sources of measurement are mostly some sort of survey of businesses – either in depth but with a small sample, or somewhat more summary but with a larger sample. Some of the main examples of use of administrative burden calculations in inspections are the Netherlands, the UK, Italy, Denmark – and, outside the OECD, Lithuania, and a number of countries with World Bank Group interventions (Belarus, Kenya, Kyrgyzstan, Mongolia, Tajikistan, Ukraine etc.). Though in theory it should be possible to use data from inspectorates themselves to estimate the burden and its evolution, in practical terms this is usually impossible. Inspectorates tend to be reluctant to share this data but, even when they do, its structure is often inadequate to this purpose (difficult in most countries to calculate really how many different businesses were inspected, as distinct from how many visits took place), and its contents not detailed enough (e.g. on duration of visits). In the cases where advanced information systems and good organizational practices make it increasingly usable (UK, Netherlands, for instance), burden measurement is/will increasingly be done or updated with inspectorates’ data – but in general conducting a representative business survey is more reliable, faster and (once all costs of data gathering are taken into account) possibly cheaper. In addition, because measurement has a “verification” and “evaluation” function, having independent data can also be considered safer than relying on data from the institution that is being evaluated.

173. While data on the use of new “tools” and on information and compliance promotion is also preferably to be obtained through surveys (most inspectorates would not have relevant data on this and/or would have an interest in inflating the numbers), it has been less consistently measured throughout various countries. The most interesting recent examples, commented above, are Lithuania and Italy – although the World Bank Group surveys also frequently included similar questions. Experience from the latter suggests that answers on the use of new “tools” may be reliable (at least as long as the question is very clear), but questions on the “quality” and “satisfaction” from advice less so (as satisfaction and estimates of quality are highly subjective, they can be influenced by many external factors, expectations, comparisons etc. – more than by actual evolutions in inspectorates’ work). Business surveys in the UK (such as those conducted by NAO and LBRO/BRDO) tend to focus mostly on satisfaction and perceived problems, rather than on quantitative indicators such as number of visits, use of specific tools etc. – which is in line with perceived political priorities, but may not always yield the most reliable results.

174. Measurement of targeting is theoretically possible through representative surveys, but the need to differentiate results according to sectors, sizes, etc. would require a very large sample, which is usually impossible. In practice, these indicators can mostly be tracked through inspectorates’ data, which then needs to be of adequate quality. This has, for instance, been an important indicator in the review of health and safety enforcement in the UK.¹³

175. Resource utilization can only be tracked through internal data, and this requires the tracking system to exist first, i.e. a staff and resource management system which can differentiate allocations by the functions which are being performed. In its absence, it is of course possible to “reconstruct” or estimate the data, but this is both painstaking and relatively imprecise. So far, only rare examples of such exercises have been conducted. In 2012, several leading regulators in the UK have conducted such an exercise to estimate which proportion of their resources was used for which purpose, but the results have not so far been made public. Lithuania is planning to require similar reporting from its inspectorates (and make it public) but the practical way forward has not yet been developed, as existing staff allocation/accounting systems are not adequate. Given how much the actual actions of an enforcement agency are governed by how it allocates its resources, and how much the default option (usually: most resources on control) can make it difficult to change, such measurement is in fact very important – and it is to be hoped that more efforts will be done in this direction in the future.

9.3 *The importance of process and rules*

176. Inspections and enforcement are primarily *processes* – they happen throughout the year and the country, many times, performed by many inspectors in various locations and objects. Excessive variations between these many occurrences are one of the main problems: varying interpretations of requirements by inspectors, varying behaviours, etc. Introducing more consistency and predictability is one of the strongest reasons to have process rules. In addition, precisely because inspections are conducted in many places by many officials, the visibility of each inspection and inspector is low. As a result, while edicting principles to be followed by inspectorates is a good step, it is very difficult to ensure their implementation in each and every case if the process is not strictly regulated – by a set of binding rules.

177. For these reasons, a number of countries have decided to adopt legislation that sets strict rules on how inspectors are allowed to proceed to inspections, their powers, duties, rights etc. We will just present a few of these as examples.

178. Mexico’s 1995 Federal Law on Administrative Procedures¹⁴ was maybe the first one to thus regulate inspection processes. It requires in particular inspectors to: (a) produce a valid ID upon inception of the inspection, (b) produce a specific, valid order of mission for this specific inspection, (c) prepare and

hand-over a detailed report with a prescribed format at the end of the inspection. These are mandatory requirements that may seem obvious but, in fact, are often not met even in OECD countries.

179. Laws developed later on tended to address inspections procedures in increasing details, particularly as they got drafted specifically for this purpose. Thus, the Inspections Laws or Decrees developed (many of them with World Bank Group assistance) in Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Russia, Tajikistan, Ukraine and Uzbekistan (with another one being considered in Azerbaijan and similar provisions being considered by the Cities of Nairobi and Mombasa in Kenya) include (to varying degrees and with many differences in precise provisions)¹⁵ some or all of these provisions:

- Requirement for an ID and official order to inspect this precise business (with, in some cases, advance notification).
- Rules on allowed time at which an inspection can be undertaken and its maximum duration.
- Provisions on non-duplication of inspections between different levels of the same agency.
- Mandatory report at the end of the inspection, with precise format and procedure to impose and appeal sanctions.
- Rules on sampling and testing (including in some laws a provision putting their costs on the state, except in case of proven violation).
- Requirements for inspecting agencies to publicise their requirements, prepare and use check-lists, base their inspections frequency on risks (with maximal frequency for inspections of low- and medium-risk objects).

180. The 2007 Inspection Act from Slovenia¹⁶ is rather more restrictive. It has provisions on ID requirements and rules for starting, conducting, concluding and appealing an inspection, but otherwise very little requiring inspectorates to improve their practices. Some laws are in on the other hand even more ambitious in that they prescribe not only rules for inspections, but also for the broader operation of regulatory bodies – including information provision. This is the case with Lithuania’s 2010 Law on Public Administration¹⁷, title IV of which relates to inspections/supervision of economic entities. This Law is particularly interesting because it not only has requirements on the process of inspection itself (these are in fact slightly less detailed than in some examples above, but nonetheless present), but also on how the enforcement agency should be organised:

- Planning of activities – mandatory preparation of a plan, principles on which it should be based (risk focus) etc;
- Rules limiting excessive frequency of inspections, limiting possibility to impose sanctions on new businesses etc;
- Requirements to post key information on the website of the agency and generally strong publicity principle;
- Mandatory provision of information upon request with a rule on “binding advice” – i.e. businesses cannot be sanctioned in the future if they have applied the agency’s advice (even if later inspections find that this advice was initially wrong – the business may have to modify its operations, but will not be held liable);

- Advance notification of inspections in most cases;
- Public reporting on inspectorate's performance.

181. The United Kingdom provides examples of how legislation with broadly similar aims can look like in a completely different legal, institutional and constitutional context, where rules of such levels of precision are not normally defined by Acts of Parliament. There, two main documents were approved by Parliament: the 2007 Regulators Compliance Code¹⁸ (though not an Act, it was approved by Parliament and is thus Statutory) and the 2008 Regulatory Enforcement and Sanctions Act.¹⁹ Both are more focused on principles and general provisions, or institutional issues, rather than specific process rules, compared to the documents above. Nonetheless, they set forth a series of important prescriptions:

- The Regulators Compliance Code mandates that inspections frequency should be based on risk analysis, requires regulators to provide guidance and advice on how to interpret and implement rules, and make use of proportionate measures of enforcement.
- The Act provides gives LBRO (now BRDO) its official mandate and foresees the “primary authority” relationship by which a business with activities in several locations can have a “primary” regulator in one location, that will set guidance on enforcement for all others to follow – it also expands the variety of sanctions available (which hitherto were often limited to either a warning or a full-blown prosecution).

182. Finally, Italy has started somewhat along the same road with Article 14 of the Decree-Law 5/2012 on administrative simplification²⁰ (“*Semplifica Italia*”). This article does not (yet) provide precise rules on the process, but requires inspections to be risk-based and proportional, for the administrative burden to be reduced and gives the Government authority to conduct burden measurement actions and to initiate coordination activities. It also calls for elimination of inspections that are not directly linked to health and safety but more “bureaucratic” in nature.

183. Most OECD countries have hitherto relied on rather “softer” measures to regulate enforcement and inspections – Government programmes or instructions, for instance. There is, however, interesting evidence on the side of using stronger legal instruments to drive progress forward.

9.4 *Emphasis: planning, coordination, institutional changes, compliance promotion...*

184. Just as objectives can be diverse, reform emphasis can be put on different points, depending on priorities in terms of results, and on what are the most acute problems:

- Planning/targeting – with the priority being to get inspectorates to develop risk-based models and classifications of objects for planning of visits;
- Coordination/consolidation – aiming first at eliminating duplications between agencies;
- Institutional changes – putting the accent on changing either the overall structure (number of agencies, their mandates) or their internal structures (departments, roles, resources);
- Culture, approaches and tools – with the goal of changing the way inspectors work, through the instruments they use (guidance documents, check-lists...) and through their re-training;
- Processes – either internal ones (how the inspectorate organises its work), or external ones (how the inspections take place), or both.

185. Depending on point(s) of emphasis, different policy instruments will be used – and the resources needed will also differ considerably. Some directions may require considerable resources – like achieving institutional mergers, or introducing real risk-based planning (which at some stage requires adequate IT capacity and data).

10. Driving implementation successfully

10.1 Reference documents, government decisions, framework legislation

186. The first instrument to ensure that implementation of changes actually happens is to have a legal document that sets forth the principles, goals, targets and requirements according to which enforcement agencies are to transform or conduct their work. We have mentioned or discussed above a number of these, and will only briefly recall them here. The important point is to mention that this is a quasi-universal feature of such reforms – at the very minimum, a Government statement or programme is needed. In many cases, a “stronger” mandate is achieved by having Parliament adopt a more or less detailed, but binding document. Among the primary examples:

- UK Regulators’ Code of Conduct (2007);
- Netherlands Inspections Reform Programme initially presented by the Cabinet in 2006 and endorsed by Parliament, with successive reports and updates since then;
- Italy’s Decree Law on Simplification (2012) foreseeing principles of reform and delegation of powers to Government for implementation;
- Latvia in 2000 adopted a Cabinet of Ministers’ Instruction prescribing to inspectorates what was expected of them in terms of internal changes;²¹
- Lithuania adopted the revised Law on Public Administration in 2010 – complemented by a Government Resolution (first adopted in 2010, then amended in 2011) prescribing specific steps for inspectorates to implement and establishing a coordination mechanism to follow up and support implementation;²²
- Denmark published an interministerial guidance document in 2011 setting forth the key principles for the reform;
- Sweden published a Government Communication in 2009 summarising both the diagnostic’s findings and principles and directions for reform.

10.2 Coordination mechanisms

187. A widespread type of structure to support inspections reform is the “coordination mechanism” – with a broad variety of incarnations. The logic is that inspections will inevitably remain implemented by specialised institutions, and that thus they need to be brought on board, involved in the reform as actively as possible. The aim is generally to ensure that the reform process is coordinated – but it can also be to coordinate, as much as possible, actual inspections, to limit overlaps and duplications.

188. Among the many variations and examples, here are a few that show effectively strengths and weaknesses of different approaches:

- The Netherlands' Inspection Council (*Inspectieraad*)²³ brings together the (currently) 12 national inspectorates, under the chairmanship of one of the Chief Inspectors. It is structured by a cooperation agreement that (currently) runs to 2014. Much of the work is conducted by the Inspection Council Bureau (*Bureau Inspectieraad*), which has around 20 staff at present. The Inspection Council organises information and experience sharing, supports introduction of new practices, approaches and tools among its members, looks at international best practice etc. The Bureau leads the implementation of specific reform projects, for instance on improvements of information systems. The strength of the system is that inspectorates feel fully in charge of the reform, and thus mostly support its initiatives. The weakness is that there is no real decision making process other than consensus, and that most implementation remains to be done by each individual inspectorate – thus, when it comes to cross-cutting initiatives (like on information systems), moving forward is difficult and the most effective (but to some extent disruptive) solutions do not always get chosen or implemented, even if analytical work shows they would make sense.
- In Latvia, the inspections reform work was to a large extent given momentum through a similar structure – the council, gathering the heads of inspectorates, was essential to give them a sense of participating actively in the process, and brought many of them to active support to the reform process – in this sense, the mechanism fully fulfilled its function.²⁴
- In Armenia, an Inspections Coordination Council was set up in 2009 to actually *lead* the reform process. It is chaired by the Prime Minister and gather Ministers or heads of relevant agencies, on a more-or-less quarterly basis (but with actual periodicity to some extent *ad hoc*). The Council has competence to approve conclusions that are very close to the status of Government decisions (although not quite as binding legally speaking), and are generally followed by all participants. It reviews previous reform steps and decides upon new requirements, deadlines etc. The Inspections Reform Unit in the Ministry of Economy acts as its secretariat. The Council can also review and address complaints. Mostly, so far, the Council has reviewed and either endorsed or sent back for further work (a) legislation relevant for inspections (it endorsed the revised Law on Inspections, since then inspected, and mandated revisions in sectoral laws), (b) risk-based planning criteria and check-lists for several inspectorates. It is the most crucial mechanism to overcome resistance from different Ministries and agencies.
- In Lithuania, the initial setup was to have coordination by broad area of control, to try and bring inspectorates in the same area not only to move in the same reform direction, but also to coordinate actual inspections, so as to avoid duplication. Nine “clusters” were created (e.g. products (food and non-food) safety, environment, taxation etc.), each with a lead inspectorate. Unfortunately, most “clusters” showed little activity, as most inspectorates preferred “passive resistance” to active participation. Instead, a new “expert group” has been set up, with senior representatives of the nine major inspectorates and of the “reform coordination” ministries (Economy and Justice). This expert group reviews work on changes required by the Law and Government decisions (e.g. preparation of check-lists), discusses problematic issues, shares good practices etc. In all respects, it appears to be a well functioning body, that both manages to involve the inspectorates (but focusing on the main ones, that conduct the bulk of inspections in the country) and to keep momentum.
- In the UK and in France, different mechanisms have been experimented to try and improve coordination of inspections at the local level. In the UK, this took the form of the Retail

Enforcement Pilot²⁵, whereby (a) a joint IT system was set up to share information between different inspections departments (fire safety, occupational safety, trading standards, food standards, licensing), (b) a joint check-list was developed for each of their inspector to try and “spot” key issues in other fields than their own and (c) overall a scheme was developed to connect all participating departments. Unfortunately, the project was badly designed in terms of IT, ownership, deadlines and sustainability, and was ultimately discontinued. The underlying idea, however, appeared interesting and some initiatives are trying to achieve similar goals with a more gradual approach.²⁶ In France, interministerial directorates have been created at the local level, with inspectors jointly reporting to several general directorates at the national level. While it appears to have improved coordination between related fields at the local level, it has not resulted (yet, at least) into a stronger coordination at the national level – nor in any move towards harmonisation of approaches, tools, etc.

189. The many differences between cases make it difficult to draw too many general conclusions, but there appears to be two that are reasonably clear:

- Coordination of reform is effective if it combines involvement of the reformed institutions with some level of “drive” provided by a coordinating institution that is strong politically and *not* an inspecting agency itself.
- Coordination bodies work best for reform processes, less so to coordinate actual inspections planning – this is more effectively done through IT systems (see below).

10.3 Reform support units or structures

190. Maybe the most crucial element in order to have a successful reform process is to have a team that is specifically tasked with supporting and leading this reform, preferably adequately staffed and resourced, and reporting directly to a policy-maker with sufficient authority to clear obstacles when needed, and to give the team the “umbrella” they need in their interaction with enforcement agencies.

191. While having such a team or unit is no guarantee of automatic success, *not* having one means that success is very unlikely – particularly when one moves from decisions to implementation. Many good reform designs have led to ambitious legal documents being adopted, but implementation has lagged for want of a structure actually in charge of making it happen. Sometimes this structure can be uniquely dedicated to inspections, sometimes it can be part of a broader mandate but with inspections clearly articulated as one of the priorities.

192. A few of the most notable examples are the following:

- UK former Local Better Regulation Office now Better Regulation Delivery Office – LBRO was first created in 2007 as a government-owned company, then transformed in 2008 by the Regulatory Enforcement and Sanctions Act into a non-departmental public body reporting to the Department of Business, Innovation and Skills (in short: as a “quango” in UK parlance), and was transformed on 1 April 2012 into BRDO, which is a full-fledged Department of BIS. This institutional transformation is interesting because it parallels the growing level of attention given both to the issue of “regulatory delivery” *and* to the way improvements in this sphere can be supported by a unit of the national executive branch. Whereas initially the implementation of the *Hampton Review* was left to existing structures such as the Better Regulation Executive, there is now a clear understanding that the inspections, enforcement and delivery issue is specific – and better handled by a specific structure. Whereas LBRO mainly focused on administering the “primary authority” scheme and launching pilot initiatives to promote good practices like “trading places” (inspectors spending some time working on the business side to understand their

issues and concerns), or the development of the “competency framework”, and had to rely mostly on cooperation from local authorities, BRDO has a broader remit and a more strategic position within Government. This gives it the ability to work on promoting better regulatory delivery approaches throughout all regulatory agencies, to move from pilot to mainstream schemes, and to help shape Government policy in this sphere. BRDO is a particularly prominent institution in the field of inspections and enforcement reform because it is the only body specifically dedicated to this issue in a large economy and major OECD country, and has correspondingly significant resources and deep expertise. It also has engaged, in partnership with the World Bank Group, into a range of activities to promote best regulatory delivery practices internationally.

- In the Netherlands, no corresponding body exists, as the main staff resources supporting the inspections reform process are in the Bureau of the Inspection Council. While the experts in the Bureau are very qualified and active, its position and role is different, and is closer in a way to what LBRO was, playing a coordinating role and leading pilot initiatives – but with the added difficulty that the Bureau reports to the Council, itself made up of 12 inspectorates, each with their head and vision. In the Government structures themselves, there is a team working on inspections as part of the Department for Administrative Burden Reduction and ICT Policy under the DG Enterprise and Innovation in the Ministry of Economy, Agriculture and Innovation. The Department used to be only in charge of Burden Reduction and to be part of the Ministry of Finance, but overall its missions have not changed. The inspections work has a distinct profile as part of it, with a few dedicated staffers, but it is only one of many functions, and the department does not have the lead on inspections reform – the Inspection Council has. The role of the inspections team in the Ministry is more to assess progress and limitations, to recommend possible ways forward to the Ministry and the Government – but not to lead things directly. This dual system does have some advantages because this way there is always a certain diversity of view and plurality of ideas, and in a way evaluation of progress is thus possibly improved – but overall this results in a dispersion of resources, and maybe less effectiveness than if the inspections reform functions were concentrated in one unit, with clear ministerial reporting lines.
- In Italy, inspections reform at the national level is led by the Administrative Simplification Office in the Civil Service Department, itself headed by a Minister without portfolio reporting directly to the President of the Council. The obvious advantage is that the office is part of the head of government’s office, and thus has an optimal political position. The difficulty is that the office has limited staff and is in charge of all administrative simplification efforts, which is a very challenging task. In practice, given the partly decentralised nature of inspections, some of the work is also supported by structures in various regional governments in charge of administrative simplification. Overall, the administrative position of the office is optimal, but if inspections reforms go on to develop in Italy, a dedicated team will increasingly be needed full time to follow up on its many aspects.
- In Lithuania, a specific team has been in charge of the reform from the beginning, but it only recently gained official status, now as a specific unit in the new Department for Regulatory and Inspections Reform in the Ministry of Economy. Initially, the team was more of an *ad hoc* group of staffers from both of the Ministries active in the reform, Justice and Economy. Because the team was headed by senior officials (Vice-Minister, Minister’s Advisor), it had sufficient clout to be effective in its interactions with inspecting agencies, it being clear that the two reform ministers would intervene whenever needed. The reform has been very regularly discussed in Cabinet meetings. Giving this reform team an institutional set up is a key way to give it stability and continuity, in view of forthcoming elections and a subsequent change of Government. The team has been extremely active in supporting the development of check-lists and risk management practices and checking their quality, monitoring the progress of reform

implementation more broadly, sharing international best practices through regular seminars with all inspecting agencies, organising the senior “expert group” in charge of coordinating the reform among the main inspectorates, etc. Overall, it really demonstrates the essential value of having such a specific structure in place.

- In Armenia, a specific Reform Unit was set up in 2009 in the Ministry of Economy. It reports to a Deputy Minister (currently the First Deputy Minister). Though the team is small, it has been very active in working to analyse problems, propose policy actions, and most importantly follow up on legal provisions and Government decisions to try and implement reforms in practice. It has worked very actively on supporting development of checklists and introduction of risk-based planning practices in pilot inspectorates, and also in developing plans for institutional reform to reduce overlaps, burden and costs. Its access to political decision making is guaranteed through the Deputy Minister’s ability to access the Prime Minister if and as needed, and through the Unit’s role as a secretariat for the Inspections Council, itself shared by the PM. Nonetheless, this setup is partly persons-related (linked to the personalities of current holders of these offices) and it would benefit from gaining more institutional stability.

193. The very clear conclusion of all these experiences is that optimal outcomes will tend to be achieved only if there is a dedicated structure inside Government in charge of this reform, it is adequately resourced and it has adequate access to senior policymakers. Reforms can work without this, but they will not be as effective.

Notes

1. See: International Finance Corporation (2009), *Business Environment in Azerbaijan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/abeep.nsf/Content/Reports
 International Finance Corporation (2010), *Business Inspections in Mongolia*, World Bank Group, Ulaanbaatar, [www.ifc.org/ifcext/eastasia.nsf/AttachmentsByTitle/Mongolia+Business+inspections+survey+report/\\$FILE/Business+inspections+survey+report.pdf](http://www.ifc.org/ifcext/eastasia.nsf/AttachmentsByTitle/Mongolia+Business+inspections+survey+report/$FILE/Business+inspections+survey+report.pdf)
 International Finance Corporation (2009), *Business Environment in Kyrgyzstan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/kbeep.nsf/Content/Research
 International Finance Corporation (several years), *Business Environment in Belarus*, World Bank Group, Washington, DC, www.ifc.org/ifcext/belarus.nsf/Content/BusinessEnv
 International Finance Corporation (several years), *Business Environment in Georgia*, World Bank Group, Washington, DC, www.ifc.org/ifcext/georgiasme.nsf/Content/Surveys
 International Finance Corporation (several years), *Business Environment in Tajikistan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/tajikistansme.nsf/Content/Survey
 International Finance Corporation (several years), *Business Environment in Ukraine*, World Bank Group, Washington, DC, www.ifc.org/ifcext/uspp.nsf/Content/PMSurveys
 International Finance Corporation (several years), *Business Environment in Uzbekistan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/media.nsf/Content/Research_UzbekSurvey
2. See: Hampton, P. (2005), *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, London, www.berr.gov.uk/files/file22988.pdf
3. The whole process is very well documented here: www.bis.gov.uk/policies/bre/enforcement-of-regulation/Hampton-Reviews.

4. See for instance (among other reports): HM Revenue and Customs (2010), *Delivering a new relationship with business - Reducing burdens and helping businesses get it right*, UK HMRC, London, www.hmrc.gov.uk/budget2010/new-rel-paper-1340.pdf
5. See: Macrory, R. (2006), *Regulatory Justice: Making Sanctions Effective*, Better Regulation Executive, Department for Business, Innovation and Skills of the United Kingdom, London, www.bis.gov.uk/files/file44593.pdf
6. See Liepina, S., Coolidge, J. and Grava, L. (2008), *Improving the business environment in Latvia: the impact of FIAS assistance*, FIAS Occasional Paper #18, World Bank, Washington, DC p. 61 – preview available online at: http://books.google.fr/books/about/Improving_the_Business_Environment_in_La.html?id=hPziHkMI7hYC&redir_esc=y
7. See page 15 in: Coolidge, J., Grava, L., Putnina, S. (2004), *Case Study: Inspectorate Reform in Latvia 1999-2003*, FIAS, World Bank Group, www.wbginvestmentclimate.org/uploads/7eCase+study+-+Latvia+inspections.pdf
8. It may or may not be an accident that is really “significant” statistically – but is one that has high public visibility and emotional appeal.
9. See in particular: Van Tol, J. (2010), *Building a different approach to risk - The Dutch Risk and Responsibility Programme*, Presentation to the OECD Conference ‘Regulatory Policy at the Crossroads’, OECD, Paris, www.oecd.org/regreform/policyconference/46313810.pdf – Van Tol, J. (2011), *Summary Analysis of the Risk-Regulation Reflex Entrenched Beliefs and Six Possible Avenues for Solutions*, OECD, Paris, www.oecd.org/regreform/regulatorypolicy/48654345.pdf – and various authors in the European Journal of Risk Regulation 3/2012, *Special Issue on the Risk Regulation Reflex*, Lexxion, Berlin www.lexxion.de/en/zeitschriften/fachzeitschriften-englisch/ejrr.html
10. Part of the documentation of this effort (public events and conferences) can be found here: www1.ifc.org/wps/wcm/connect/RegProjects_Ext_Content/IFC_External_Corporate_Site/USPP_Home/Events/.
11. A fine illustration of this is given in this video where Amsterdam commuters, following a metro accident, repeatedly fail to panic and ask for more inspections and rules, but rather accept risk as manageable: www.youtube.com/watch?v=heiWTT7WDWY. This also testifies to the good work done by proponents of enforcement reform in the Netherlands.
12. See illustration of the compliance strategy for tax: www.oag-bvg.gc.ca/internet/English/parl_oag_200403_05_e_14897.html.
13. See: Better Regulation Executive (2008), *Improving Outcomes from Health and Safety – A Report to the Government by the Better Regulation Executive*, UK Department for Business, Enterprise and Regulatory Reform, London, www.bis.gov.uk/files/file47324.pdf
14. See: Mexico Federal Law on Administrative Procedure, www.wipo.int/wipolex/en/details.jsp?id=7926.
15. Some of them have significant loopholes that make many provisions difficult to enforce – and some of them, while quite good in terms of drafting (Tajikistan, Ukraine), have been poorly implemented for lack of Government follow-up. Armenia and Mongolia may be the best current examples in terms of combined wording-implementation.
16. See: www.ip-rs.si/index.php?id=326.
17. See: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=403417.
18. See: www.berr.gov.uk/files/file45019.pdf.
19. See: www.legislation.gov.uk/ukpga/2008/13/contents.

20. See:
www.governo.it/GovernoInforma/Dossier/semplifica_italia/decretolegge9febbraio2012_5.pdf.
21. See: Coolidge, J., Grava, L. and Putnina, S. (2004), *Case Study: Inspectorate Reform in Latvia 1999-2003*, FIAS, World Bank Group, www.wbginvestmentclimate.org/uploads/7eCase+study+-+Latvia+inspections.pdf, pages 20 onward.
22. See:
www.ukmin.lt/uploads/documents/Prieziuros%20instituciju%20pertvarka/Guidelines%20for%20optimization.doc.
23. See: www.inspectieloket.nl/organisatie/inspectieraad/.
24. See: Coolidge, J., Grava, L. and Putnina, S. (2004), pages 24 onward
25. See: Page, A., Hewitt, M. and Lundy, S. (2010), *Review and Assessment of the Lessons Learnt from the Retail Enforcement Pilot (REP)*, Prepared for the Local Better Regulation Office by the Centre for Decision Analysis and Risk Management, LBRO, Birmingham, www.bis.gov.uk/assets/brdo/docs/publications-2010/10-1407-rep-lessons-learned.pdf
26. See the very interesting example of the Greater Manchester Business Compliance services – not exactly a pooling of inspections resources but teams working as partial alternatives to the usual inspection services – www.businesscomplianceservice.co.uk/about.htm.

CHAPTER 4. REFORMED INSPECTIONS – SOME EXAMPLES OF GOOD PRACTICE

11. The use of “delegated” inspections or “second-level control”

11.1 *Reasons for “indirect” inspections – and general typology*

194. The “usual” inspections approach is one where state structures (or quasi-state ones¹) check things directly: the inspector verifies compliance of the operator or product, through a visit, documentary checks, tests etc. There are, however, cases where state agents do not conduct such tasks directly, but rather rely on “indirect” inspections.²

195. The main context in which such “indirect” inspections are chosen is usually when conducting checks directly would be excessively costly and/or technically difficult (and/or would vastly exceed available staff resources, which is another way of saying it is too costly):

- verifying conformity of equipments, premises etc. would require very advanced qualifications and/or equipment;
- the number of products, equipments or premises to check is too high;
- direct checks would be in theory possible but would cause excessive delays, because they are required before entry into operation or release on the market;
- costs and delays could be possible to cover but still expenses would be so high that there is a disagreement on having the state budget pay for it (i.e. the whole public) rather than charging directly the interested parties.³

196. The introduction of third-party inspections can be done either because of the introduction of new regulations (e.g. setting higher requirements, or integration into an international free trade or single market zone with unified requirements), or because economic growth and the multiplication of objects, premises and products have made the previous system unsustainable – or because the existing system is seen as ineffective, corrupt or both.

197. In addition, for the control of very large and complex objects there is a general consensus that, in some cases, it is more effective (though not necessarily cheaper) to do “system inspections” rather than try and check each particular point of the regulations – i.e. inspectors do check the object, but not looking through every particular, but rather auditing the internal control systems and processes of the object⁴ (though experience suggests it is worth always conducting some “reality checks” directly too).

198. All types of “indirect” inspections require, to function, a very strong system to certify the competence of third-parties entrusted with control, and to enforce their liability when they violate their obligations. This makes such system in fact very difficult to put in place, and they should never be seen as an “easier way” to solve inspections problems. They are also unlikely to make things *cheaper* for businesses, which will be directly charged for the services. Finally, they are probably inappropriate for a range of regulatory issues. Experience of their use in customs assessments (for instance in West Africa)

appears very unconvincing, and they are not normally used in tax assessments, with good reason. Generally speaking, they are a complex tool, that is most useful for highly technical areas, in environments with a robust legislative and judiciary framework.

11.2 Examples of third-party inspections and systems inspections

199. The most extensive example of third-party inspections is certainly the conformity assessment for New Approach directives⁵ in the EU, which applies essentially to a series of medium- to high-risk goods (non-food products including electrical equipment, medical devices etc.) and to some stationary equipment and machinery (lifting equipment for instance). This system has been created in order to handle three challenges at once:

- Ensuring free movement of goods across an increasing number of countries, with unified requirements and mutually accepted conformity assessment procedures.
- Allowing for a growing economy with increasing trade volumes, while effectively protecting consumer, worker and citizen safety.
- Making costs manageable and accommodating a variety of initial contexts.

200. This system has been the object of many descriptions and explanations, in particular because (a) the EU trading partners need to understand it in order to have access to the European Single Market and (b) the many new Member States and Accession Countries have/had to adapt their regulatory, inspections and conformity assessment systems so as to conform to the EU model.⁶ Thus, it is superfluous for us to enter into a detailed description – let us just summarise in short:

- European directives set applicable safety requirements for the regulated types of goods/equipment – they also list “harmonised standards” that *can* be used to comply with the safety requirements, but firms are free to use these standards or not (the vast majority do, but some innovative firms may decide to use some novel process instead).
- Manufacturers/importers of goods, or operators (of equipment), will get their goods/equipment either self-certified (they may or may not do actual tests to self-certify, in any case they are fully liable for it) or certified by third-parties (in which case the third-party is liable) – depending on the type of good/equipment and the requirements of the directive.
- These “certifiers” are the “third party inspectors” (and are sometimes called this way, particularly when they look at equipment rather than products). They may include laboratories for testing, etc. They need to be (a) accredited (the accreditation body thus attesting of their technical capacity) for each particular type of conformity assessment separately, (b) “notified”, i.e. approved by the relevant state regulator (ministry, agency etc.) in the country [again for each particular type of conformity assessment separately] and then indicated to the EU bodies (“notified”) as a certifier, whose conformity assessment is to be held as valid for this type of good/equipment. The certifier is liable for its assessments, and has to hold insurance for this liability.

201. By and large, the system has been generally found to be effective to safeguard safety and consumer interests (in case of recalls, the manufacturer/importer is liable for the costs) – but it is, like any other system too, subject to some limitations. To work well, the system requires the liabilities of manufacturers/importers and certifiers to be strictly enforced – which sometimes is slow to happen. It also requires the state authorities to actually do their job, i.e. to provide “surveillance” over the system, making audits, “reality checks” etc. While market surveillance by and large works rather well in most of the EU

member states for “usual” non-food products, some serious shortcomings have been found in the supervision of medical devices – leading to series of scandals, like the PIP breast implants, manufactured in France but sold all over the EU and the world, which proved to be highly hazardous. The issue is also that the system is very poorly understood by the public, the media and many policy-makers. In the PIP case, for instance, all the public discussion in France centered on the manufacturer and on the excessively slow action on the side of the state regulator (then called AFSSAPS, now ANSM) – but absolutely no discussion of the certifier, which in fact bore a major responsibility in the scandal (and was a highly regarded firm from Germany).

202. It should also be noted that this system is used for non-food products but not for food – in particular because non-food products can have a high degree of uniformity once a production process is in place, which is impossible in food. Food inspections often now rely on “system checks” for larger facilities (audits of the HACCP system), but they still are conducted directly by state regulators (or by third-parties directly delegated by state regulators, and acting in their stead, such as in the Netherlands’ example above). Unfortunately, this very extensive and important example has been the object of too little attention on the side of specialists in regulatory studies and enforcement, and there is little to be found in terms of analysis of its strengths and weaknesses – including the effectiveness issue, but also the question of costs for businesses and consumers.

203. Mexico’s experience in reforming environmental supervision from 1993 followed a somewhat analogous model. This experience has been well documented⁷ (hence we again will just present it shortly), though recent assessments are limited in their scope. The situation pre-reform was the Mexico combined high requirements on paper with very limited enforcement in practice (only 2,000 or so inspections in 20 years, and mostly focused on “paperwork”) – and major incidents in 1993 amply demonstrated this. The changes involved introducing third-party certification for a certain number of environmental norms (*Terceros Acreditados*), targeting inspections using a risk-based model, and relying more on a decentralised approach (with state-level regulations and enforcement, from 1996 onwards).

204. The reform was generally found, in comparison with the *statu quo ante*, to have improved the situation: overall increased levels of compliance, particularly in high-risk industries and sites – while the administrative burden aspect was felt to be acceptable. That said, the fact that voluntary certification is used as a criterion for inspections planning (certification leading to reduced inspections pressure) seems to lead to some perverse effects, whereby in fact voluntary certification may be more “lenient” than state inspections, and thus certified plants be in fact more polluting than some others.⁸ This is a type of problem that is to be expected when voluntary certification is used in too much of a “linear” way to lower risk ratings, and this could in fact be solved with a modification of the risk management system – it does not necessarily show a systemic failure, nor that the reform was inadequate.

205. Overall, the main reason to rely on third-party certification was that the resources available were simply insufficient for the task, and that incentives had to be created to bring more firms to comply. On both counts, the experiment seems to have been relatively successful – but many of the findings also highlight that third-party certification is no “silver bullet” and carries significant risks. It can only work if managed very strictly in terms of supervision of the certifiers.

206. While these two examples combine third-party inspections/certification with supervision by state authorities (second-degree control), France’s system for enforcement of construction safety regulations (structural safety, not OHS for construction workers) relies nearly entirely on private relationships, with practically no state intervention (except for the judiciary in case of court cases). This system will be covered by a forthcoming review of construction supervision reforms by the World Bank Group, but can be summarised here very briefly:

- The requirements for construction permits are proportionate to the building's risk level – buildings/premises with high public occupancy, and highly hazardous establishments, both require specific authorizations in addition to the construction permits. But in all cases the actual structural details of the buildings are not required for permit issuance. They are the responsibility of the private parties.
- All actors of the construction process (architects, contractors, technical controllers, but also contracting authority except in the case of building for own residential use) have to contract insurance for the object and their liability. All involved in the building (except the contracting authority of course) have a 10-year liability for their part in the object.
- High risk structures (structural risk) or high occupancy objects (human risk) both are subject to mandatory technical control. Technical controllers are private entities, but have to be approved by state authorities for this function. They carry liability and are subject to mandatory insurance.
- Most conflicts between parties to the construction process are solved by direct negotiations between insurers rather than going to court. Court decisions, however, play an important role through jurisprudence – in particular, they have strongly enlarged the scope of the 10-year liability (a provision which itself is over 200 years old).
- State inspections are practically absent – a few hundred “monitoring visits” are conducted each year to check compliance with specific aspects of the applicable regulations (fire safety, accessibility etc.) but they serve more a statistical purpose than real enforcement.
- Norms applicable to buildings (structural safety, accessibility, ventilation etc.) are developed by technical committees gathering private actors, but given force of law by the state. They are enforceable through court decisions – but there are no inspections and enforcement activities from the side of the state.

207. Unfortunately, no thorough evaluation is available at this stage, but this system appears to function at a cost that is relatively minimal for the state, with appropriate flexibility but also with a good level of protection for owners/contracting authorities, and for the public. In fact, existing reviews of systems based on frequent controls by state/public authorities suggests⁹ that they are not always effective, because the construction process progresses every day, and no inspector can be there always and everywhere – in this perspective, again, the combination of liability and insurance (and perhaps specialised technical control) may in fact be more effective.

208. Finally, “system inspections” are increasingly used in the UK and the Netherlands (among others) for environmental, OHS and fire safety inspections – in short, for all inspections focusing on all large, complex objects with hazardous processes. Given the high number of steps, elements, employees, products etc. involved on site at any given time, it is felt that simply checking actual compliance with precise requirements at a given time is unlikely to give a real picture, and to reflect the real risk situation. Instead, focusing on auditing the internal processes and risk-management/prevention systems can really help the facility improve, and guarantee that things are *as much as possible* “done in a safe way”. As mentioned above, there is a relative consensus that systems inspections generally work better for this type of facilities – which neither means that they are “lower cost” (in fact they require an intense use of highly-qualified resources), nor that they work everywhere (they may be inappropriate for more “decentralised” operations, such as hospitals, see above), nor that they are “fail-proof” (a poorly done audit will fail to see gaps in safety processes, or steps that exist only on paper). Important documentation is available on this topic in many countries.¹⁰

12. Institutional reform – reducing overlaps and duplication, improving efficiency

12.1 *Less agencies, clearer mandates*

209. Among the many problems with existing/pre-reform inspections systems, the excessive number of agencies is an important one. It results in frequent overlaps and duplications, and in many resource misallocations (highly specialised structures “freezing” the resource allocation to specific issues regardless of further changes). It increases the administrative burden (as each of these institutions seeks to inspect to “justify its existence”, regardless of actual needs). It also increases the state expenditures (more headquarters, more management costs) – even though consolidation processes, in the short run, will also cost money. Thus, it is a prime objective for reforms – and there are some examples of successful (and less successful) consolidation:

- Netherlands: a process of gradual consolidation of state inspectorates reduced their number from 26 in 2000 to 12 in 2012, with a total of 10 forecast by end of year (or latest by 2015). The staffing levels have also decreased in aggregate, from around 7,500 to around 5,800 – while some areas of focus (and where one single inspectorate was in charge, so no consolidation was possible) actually saw small increases (Child Welfare, Health Care, Mining). Mergers were done by thematic areas to create entities with a broader perspective and consolidated means. The planned structure after the final mergers will have the following 10 inspectorates: Environment and Transport, Communications, Mining, Labour and Social Affairs, Food and Non-Food Products, Security and Justice, Child Welfare, Education, Heritage and Public Health. To these should of course be added Taxes and Customs (around 30,000 staff looking at taxes, social contributions and customs duties). It is notable that a large number of inspectorates look at public service functions (though in the Netherlands these are often provided by private-sector entities under a contractual or regulatory relationship with the state). The largest remaining inspectorates (except for the revenue agency) are Food and Non-Food Products (around 2 000 staff), Environment and Transport (ca. 1 200), Labour and Social Affairs (above 1 000), Education and Public Health (each a bit below 500). All others are small entities with less than 100 staff. Also, important inspections areas (e.g. construction/fire safety) are *not* covered in the Netherlands by national regulators, but by local ones, and thus do not appear in this consolidated list, not because they have been eliminated or merged, but because they belong to another level entirely.
- Slovenia: as a result of the clarification brought about by the Inspections Act and parallel consolidation, the country has 25 inspectorates (although one of them, focusing on food, agriculture and forestry, has 7 sub-divisions). The main improvement is that a single portal lists all these agencies as well as (in relative detail) their functions.
- The UK’s *Hampton Review* included a proposed outline of a more rational regulatory structure – it was not implemented, but is worth mentioning. In its point 4.45 (page 64) it recommended grouping regulators around 7 “themes”: Consumer protection and trading standards, Health and safety, Food standards, Environmental protection, Rural and countryside issues, Agricultural inspection, Animal health. To these should be added Revenue and customs (mentioned in a separate section as their merger was already under way) and Fire safety (not covered in the review as it was the object of a separate reform process). This would have left a total of 9 thematic areas. This is an interesting experiment to define what could be an enforcement structure from a “blank slate” and we will come back to this shortly as a conclusion of this section.

- Many countries, quite a few of them as part of the EU accession process¹¹, have (gradually or radically) consolidated all their agencies dealing with food safety (in a broader or narrower sense) into one single food safety agency. Canada's Food Inspection Agency¹² is one of the best examples, set-up in 1997 and with close to 5,000 inspection staff to date (and over 7,000 staff overall). Different examples feature very different levels of consolidation: all food-related inspections or only some, including veterinary inspections or not, incorporating risk-assessment and scientific guidance or not, etc. Some countries, like the UK, have a "food safety agency" that does *only* risk-assessment and guidance (with some inspections, but only a small part of the total), and thus are not really "single agencies" in practice. Estonia has accomplished a very comprehensive merger of food-related inspections services, and its Food and Veterinary Board can be used as a very good example of this type of agency¹³ – but some services, e.g. the veterinary laboratory, are outside of the agency itself. Lithuania merged all food-related institutions maybe even more comprehensively, with the State Food and Veterinary Service including also risk-assessment unit and laboratory structure.¹⁴ When structured properly, and implementing a sound risk-based approach and compliance promotion, such agencies can be a real benefit to all – more integrated and effective control, and less burden overall.
- Some countries have gone further than consolidating some agencies, and attempted to create a "Single Inspectorate" gathering all (or in reality *nearly* all) inspection functions. All existing examples of such inspectorates have *excluded* tax and customs (though there is no absolute logical reason to do so, but rather traditions and entrenched power of these institutions), and often (but not everywhere) inspections that look primarily at state functions and structures. The first country to take such a step was Croatia, which was established in 1997 and strengthened by a specific Law in 1999, and merged 12 inspections from 4 ministries. The State Inspectorate does *not* cover food safety (again, this was more of a lobbying issue than a logical necessity) but: non-food products, fraud and consumer protection (including tourism/restaurants), OHS and labour issues, technical safety (incl. electricity, mining, hazardous equipment etc.).¹⁵
- Bosnia and Herzegovina followed the Croatian model in 2004, but went further, establishing a State Inspectorate that covers *all* non-fiscal inspections, except those that exclusively target state services or structures. The political and constitutional complexity of Bosnia and Herzegovina means that there are two "entity-level" structures (one for the Republika Srpska and one for the Federation), and also inspecting structures at the level of the "cantons". The experience of Bosnia is very interesting because of the comprehensive nature of the change. Here, food safety was not excluded (even though there is a Food Safety Agency at the level of the Confederation, issuing regulations and looking at border controls, but not at food safety inspections in country) – and the merger was the opportunity for profound reforms in how inspections are planned and implemented. A Law on Inspections was adopted in each entity, foreseeing the creation of the inspectorate and specifying its powers, procedures etc. Inspectors had to be re-hired, which allowed to accomplish a partial renewal of staff. With external support (World Bank and USAID), internal procedures were profoundly transformed, with the introduction of risk-based planning, check-lists for all inspections, and a unified information system handling planning, inspections results and reports, and analysis, and which is among the "best practice" in this field.¹⁶ The main remaining point for improvement is the internal structure, where around a dozen departments exist, with functions that could be consolidated. That said, the unified information and planning system means that in practice duplications and overlap generally do not happen, even when several departments have related spheres. The inspectorates are working on improving their internal structure.

- Mongolia also created a unified Agency for Specialized Inspections (meaning: technical, not fiscal ones) in 2003, and is working with World Bank assistance on improving its planning capacity, methods for inspections, and internal structures. Until 2008, it was rather an example of how merging several agencies can result in essentially “no change” if no efforts are done to tackle the internal structure, processes, job descriptions etc. – but since 2009 the Government has undertaken a real effort for change, and this agency could become an interesting model as well.
- Mozambique is the latest country to have created a single inspection agency, which was done in 2011 – however, the agency is still in its starting phase.

210. Some more mergers, consolidation and experiments have been started or are in the works. France has experimented with its RGPP with mergers at the local level, but not at the national level. A full evaluation of the results is still pending, but the experience so far is mixed – and suffered from not conceiving clearly the difference between “service delivery” and “inspections and enforcement” departments. Italy is working on resolving the duplication of controls in the labour safety sphere. The province of Nova Scotia in Canada is considering a consolidation of all agencies working in the technical safety sphere.

211. Overall, consolidation is not a magical cure – it needs to be done correctly, along with real changes in practice, to deliver its expected benefits. It is not easy to do right. But it is at some stage probably indispensable to improve the coherence and efficiency of the system.

212. A small point worth mentioning is that food safety is one area where there is relative consensus that consolidating is a good option, and that the agency should cover “all food safety and food safety alone” – but even here, there are major exceptions. The Netherlands merged food safety with non-food products safety – and the *Hampton Review* planned to keep veterinarians separate.

213. If one looks only at business-focused inspections, the number of actual “risk spheres” which are being supervised is in fact relatively small. A tentative classification of “themes”, to use Hampton’s word, would be: (1) Food Safety, (2) Non-Food Products Safety and Consumer Protection/Metrology, (3) Environmental Protection, (4) Public Health, (5) Occupational, Technical and Construction Safety. A list worth considering when looking at actual systems in different countries.

12.2 A better articulation between local and national structures

214. The challenge here is to reconcile two objectives: being “close to the people and the problems” (local) and being consistent/coherent across the country, as well as following risks across supply and marketing chains (national). The “optimal” solution to this depends of course on institutional and constitutional models in different countries – which range from general decentralization of enforcement, to exclusive competence of national bodies (with or without local branches), through all kinds of combinations of the two. There are some interesting examples of possible solutions, mostly from the UK (a country which has over 400 local authorities doing enforcement):

- UK “Primary Authority”¹⁷ – a scheme which was originally conceived to solve the problems of variations in enforcement approaches for a single business across the country, but has shown to be able to deliver more: “assured guidance” in the form of a review of a business’s internal procedures, better utilization of the most competent regulators, etc. The system was created by Act of Parliament and enables a business operating across several council boundaries to form a primary authority partnership with a single local authority in relation to regulatory compliance. These partnerships can cover environmental health and trading standards legislation, or specific functions such as food safety or petroleum licensing (one or several functions, at the business’s

choice). BRDO approves (or not) such requests. Once legally nominated by BRDO, partnerships are automatically recognised by all local regulators, and all can access a central register of the partnerships. By working closely with the business, its primary authority can apply regulations to their specific circumstances providing detailed and reliable advice. This advice must then be respected by all local regulators enabling the business to operate with assurance and confidence. In effect, this means the primary authority reviews a business's internal procedures and processes, if necessary suggests amendments, and then "validates" them. Managers and employees then can have confidence that if they follow properly these internal procedures, they will also be respecting regulations. This also makes compliance far more certain, because internal rules have in fact more "power" over employees than external regulations. In many cases, the primary authority also produces a national inspection plan to avoid repeated checks, and enable better sharing of information. If a problem arises, the primary authority can coordinate enforcement action to ensure that the business is treated consistently and that responses are proportionate to the issue. BRDO oversees Primary Authority and operates a dispute resolution procedure. A business can choose what level of support it needs from its primary authority. The question of resourcing the partnership is up to the councils and businesses concerned. Where necessary, a primary authority can recover its costs – and in many cases, they do. This means that the extra costs involved in the in-depth "audit" of the company's processes, in issuing guidance and advice etc., are in the end mostly financed by the businesses themselves. There is no obligation for a business to choose as primary authority the one where its headquarters are located, or any other – it is free to select one which it feels has the best capacity to handle its regulatory needs, and it is BRDO's role to verify that this is indeed the case. The possibility to give associations of businesses access to the scheme is under consideration, which would give SMEs more ability to use it, regardless of whether they actually operate in several locations – putting more emphasis on the "guidance" aspect of the system.

- The role of the Food Standards Agency in the UK can also be seen as part of the solution to the "consistency" problem. The FSA has issued very detailed guidance¹⁸ on how to interpret and enforce food law, how to inspect businesses and score their compliance level, how to rate risks in each business etc. It also administers the "Scores on the Door" scheme, through which inspections results are displayed for each consumer to see (a system that was first pioneered in 1998 in Los Angeles and then in Denmark). In some ways, the US FDA has a similar role, though its guidance¹⁹ is more "optional" for state and county authorities, whereas the UK FSA's has a statutory character.
- OHS supervision in the UK is an interesting example of how to structure the responsibilities between "national" and "local" inspectors. Inspection and enforcement of health and safety regulation is divided between the HSE and local authorities depending on the main activity undertaken at a workplace. HSE is responsible for workplaces which historically have had a higher risk of workplace injury, including construction, agriculture, and manufacturing as well as specialist inspection of major hazard industries, like nuclear and off-shore sites. Local authority inspectors enforce in workplaces at historically lower risk of workplace injury, including offices and retail premises. Because of the division and the nature of their activities, some multi-site employers deal with both HSE and one or more local authorities. The division of responsibility between HSE and local authorities is longstanding, and does not always correspond to modern issues (the *Hampton Review* pointed out that some large automated warehouses, which are a new type of object, have a high risk level, but are supervised by local authorities – whereas some HSE-supervised premises may in fact now have a lower risk). This situation shows the difficulty in finding an optimal solution to the problem: the separation ensures clarity, but makes adaptation difficult, and can result in a situation whereby some lower risk premises are inspected *more often*

than high risk ones, if local authorities have sufficient resources whereas HSE has limited ones (overall, there are more OHS inspectors in local authorities than in HSE).

215. The Netherlands, another country which combines strong national inspectorates with very important local enforcement functions, is also working on this issue. The main areas of work so far have been:

- Supporting municipalities in creating joint regional pools of resources, so that even smaller municipalities can have access to the appropriate level of expertise, a problem that was acutely demonstrated when a large industrial fire took place in a part of the Rotterdam harbour area that belonged not to Rotterdam municipality, but to a small municipality nearby, which had very little inspection and enforcement capacity.
- Trying to promote greater coordination between local enforcement structures and national inspectorates, so as to minimise the duplication of visits.

216. In Italy, the inspections reform programme is now working on developing guidelines for inspections planning and implementation that would also be endorsed by the regional authorities, and would then serve for all regions to work on developing risk-based planning, information activities, check-lists etc. Some activities would be done jointly by national and all regional authorities (e.g. check-lists, development of risk-planning criteria) while some others (actual coordination of inspections) would take place separately in each region.

217. As noted above, from a purely technical (i.e. not political) perspective, having national inspectorates with local/regional offices (to ensure proximity to local concerns) is easier to organise well (without duplication and variations) than actual decentralised enforcement in the sense of enforcement structures belonging to local self-governing bodies.

12.3 Systematic information sharing

218. Short of consolidation and of unified inspection information systems (see below), systematic information sharing is the “next best option” to ensure that effectiveness is maximised and burden minimised. We already mentioned above the unfortunately partly failed experiment of the Retail Enforcement Pilot in the UK, which was harmed by poor project design. The new experiment in Greater Manchester of a joint “Business Compliance Service²⁰” is more a supplement to inspections (with assessors going upon request to businesses, advising on compliance, informing local authorities of the results) than a real information sharing scheme – even if it can lead to interesting developments. At this stage, the only real example of “information sharing” as such is in the Netherlands, with the “Company File” (*Ondernemingsdossier*)²¹. The “Company File” is a means of co-operation and information sharing between a business and various authorities. It enables a company to make available, on a once only basis, information from its own operational and management systems for government agencies such as regulators, agencies that provide licenses and permits, and inspectorates. The company decides which authorities have access to their File. It is crucial that a company and the authorities involved, agree in advance on the terms under which exchange of reliable information can take place. These terms are specified in a covenant for a branch of industry. In May 2011 national authorities and three branch organisations have signed letters of intent to create a model for Company Dossiers for their branch. These branches are: Recreation and Leisure (RECRON), Rubber and Plastics Industry (NRK) and the hospitality/catering branch (KHN). Inspectorates involved are the Food and Consumer Product Safety Authority and the inspectorate of *Social Affairs and Employment*. The latter is fully connected to the system, while the *Food and Consumer Product Safety Authority* is in the process of getting connected.

While the “Company File” is still very much at an experimental stage, it holds interesting promises if it is shown to function as hoped for.

12.4 Joint planning, delegated inspections

219. There is often much talk of joint planning between different inspection agencies, but practice shows that it can nearly never happen in practice without a joint IT system – and we thus cover this issue in the section dedicated to information solutions. As for “delegated inspections”, whereby an agency would look at issues on behalf of others, they are also very rare – and the legal systems in most countries make them all but impossible.

220. A significant attempt at joint planning was done in the context of the “clusters” of inspectorates in Lithuania, already discussed above. The system did not really give the expected results, as most inspectorates had too little IT capacity to properly conduct planning – and the largest agencies did have capacity, but then saw no need or way to coordinate with the smaller, or less capable ones. The Government in Lithuania is now developing plans to implement an interconnection of inspectorates’ information system and possibly a joint system for all the inspectorates (the majority) that currently have none or a very “basic” one.

221. The experiment with “delegated inspections” in the Netherlands is somewhat more positive, even though it is still employed only in a small number of situations. The principle is that for each “domain” (broad business/activity sectors), one can define a “lead inspectorate” that visits objects in this domain the most frequently, because it is responsible for the main risk in their activities (an idea that was also at the basis of the UK’s Retail Enforcement Pilot). Thus, HoReCa businesses would have the Food and Products Safety Agency as lead inspectorate, Oil and Gas production the Mining Inspectorate, etc. The inspectors from the “lead inspectorate” would then act as “eyes and ears” for others by receiving some additional training on the issues covered by other inspectorates, so that they can “spot” the most critical problems at least, and inform accordingly. There is unfortunately no data on how often this is being used, although the Inspection Council reported this as being used in practice. The most frequent (and clearly attested as such by the lead inspectorate) case is with offshore platforms and the Mining Inspectorate. Because visiting platforms requires a helicopter, and the number of people in the helicopter is restricted, and so is the number of people that are allowed to be on the platform at a given time (for safety reasons), the Mining Inspectorate has agreements with both Labour and Environment to effectively act on their behalf and conduct “monitoring”. If a Mining inspector does spot problems in these spheres, which are not of his competence, s/he will then inform the relevant inspectorate(s), which will send an inspection mission if appropriate. This way, costs are minimised for all without a loss of effectiveness. While the general idea of delegated inspections and of inspectors having a broader knowledge and thus a capacity to “watch out” for other issues is sound, practice suggests it is in fact one of the most difficult to implement, due to legal difficulties and to the inherently very strong professional identity of inspectors and enforcement agencies.

13. Governance – giving inspectorates the ability to do their job without undue influence

13.1 Purpose: avoiding interference with planning – achieve real “risk-based” planning

222. A frequently agreed upon element of “good practice” in regulatory enforcement is to keep enforcement agencies at arm’s length from political actors. That said, some are arguing against it, (correctly) emphasising that *enforcement as prioritised by political programmes* can also claim to have a legitimacy, i.e. the political one (clearly a stronger claim in democratic regimes). In this perspective, the executive branch is legitimate to prioritise hazards that it sees as more important, or to allocate more resources to actions deemed as more essential. This is articulated in some countries to justify having inspecting agencies directly subordinated to ministers, and receiving direct instructions from them that

“interfere” with their usual planning. The justification is that ministers (owing their positions to elections) are more responsive to citizens’ concerns, and that this responsiveness is essential.

223. Granted, such “responsiveness to citizens’ concerns” is usually not absent, even where elections are not free – since even in authoritarian regimes, keeping the majority “not overly dissatisfied” is important for stability. However, in countries where ministers or presidents frequently interfere with planning by inspection agencies, it tends to be on topics that appear to correspond to real public concerns, but often for other reasons than safety (e.g. to increase government revenue, or target businesses associated with rival politicians, etc.).

224. The problem is that “citizens’ concerns” are the “risk regulation reflex” in its purest form – and that, were actual citizens asked to make an *informed* choice (i.e. do you want to conduct these enforcement actions *knowing* that it means there are other things the state will be unable to do), they would not necessarily succumb to this RRR.²² Instead of responding to a real issue, these are sequences whereby politicians “spin” some incident reported by the media, focus on it and proclaim a “strong” regulatory response as a solution. There is neither analysis of the real risk level, nor of the response’s adequacy. In this perspective, politically-driven inspections have been seen to “respond” to increases in fuel prices (gas stations inspected), as much in developing as in some OECD countries. None of these, of course, made any difference to the real issue. Generally, the evidence thus strongly supports the case to make regulatory delivery agencies more independent from direct political supervision.

13.2 Different ways: self-governed, reporting to Parliament, etc.

225. In practice, the vast majority of inspection agencies across the world, including in OECD countries, remains more or less directly subordinate to ministers (or even to officials below minister’s level). There are a few examples of improved governance arrangements, that we summarise here:

- UK – The HSE has a board of directors, appointed by the Secretary of State but required by statute to represent different interest groups (labour, employers etc.). The Environment Agency has a similar structure, even though its board is more “technical” and less “political” overall. Both agencies have a Chairperson and a Chief Executive, with the Chair being responsible to ensure the integrity and the strategic vision of the entity. While of course ministers essentially select both Chair and Chief Executive (and appoint board members), the structure, as well as the agencies’ visibility and clear identity all help to give them a real measure of autonomy. This does not mean that they do not respond to political directives – indeed, they do, and major changes have been seen along with changes of Cabinet. But this means that the influence of political actors is made at a high level – on strategic directions, essential institutional changes, reform initiatives, overall budget allocations. The day-to-day operation of the agencies is relatively well “shielded” from interference.
- Netherlands – the Chief Inspectors report to the Minister (who appoints them), but also to Parliament (yearly), and inspectorates again have high visibility and clear and distinct institutional identity. While key appointments are made by politicians, and they also impulse main reforms and changes, the operational workings of inspectorates are, again, relatively shielded. Reporting to Parliament means that there is public scrutiny, which helps avoid undue political influence.
- In Republika Srpska (Bosnia and Herzegovina) the Head of the State Inspectorate and all the management team are appointed by, and report to, the Cabinet as a whole. This gives higher status to the agency and avoids at least direct interference from any single minister (while it does not, of course, really distance the agency from political influence in general).

226. The UK model, with boards of directors and dual Chair/CEO positions, is interesting – and could even be reinforced were the appointments to the board made not only by the minister in charge, but by other office holders (possibly including the political opposition), or stakeholders’ associations. That said, the main protections from interference are given by civil service legislation and the jurisprudence on its application, as well as by the visibility of the agency. While many OECD countries have rather solid civil service legislation, protecting inspectors and technical officials from political meddling, inspection agencies have very low visibility in some countries, for instance in France, where very few people actually know the names of the different directorates within ministries that have enforcement functions. Giving a distinct identity and visibility to inspectorates is a first step, requiring public reporting a second (and by public reporting one means a high level public presentation, not just a report), that can help to make it more difficult to interfere with daily operations (as this would become very visible and possibly backfire).

227. Internal governance is important as well – and here again the “board” model is very interesting. If a new head has too much latitude to change senior officials within the agency, and to change the approaches and strategy, this creates significant risks. While it may make reform easier, it also works against the professionalism of the agency, and can lead to serious backtracking. In most OECD member states this is relatively unlikely to happen, again thanks to civil service legislation, but in many emerging countries this is a real problem. All in all, more work to improve and strengthen governance regimes for inspecting agencies would be very welcome.

13.3 Challenge: inspectorates and “the court of public opinion”

228. One of the manifestations of the growing “demand for safety” or “risk aversion” is that inspectorates’ activities can become strongly criticised in case an incident happens, not always with the appropriate approach, knowledge and data – and in some cases leading to the wrong consequences.

229. One recent example has been the controversy surrounding the IGZ (Public Health Inspectorate) in the Netherlands early 2012. The IGZ is held responsible for not reacting properly on complaints about healthcare and not intervening when necessary or far too late. The National Ombudsman of the Netherlands examined 5 complaints and concluded that he had never seen a worse reaction of a governmental agency before in dealing with complaints of people. Over many years a few had been giving very poor, and the IGZ investigated complaints but did not specifically act about it – or, when it did act, it was not in radical enough a way that these MDs would be barred from practising medicine. The IGZ was particularly strongly criticised because its replies implied that it was not really focused on the individual accidents, but only on possible systemic risks – and in that sense interested only in individual complaints inasmuch as they could affect its risk analysis.

230. Now, in fact, the IGZ approach and replies made sense in a way, and the problem partly stems from the fact that it has rather too many functions – while it is a health care inspectorate, it is also the agency in the Netherlands which has the right to ban people from medicinal practice (something which, in many other OECD countries, is done by self-regulating organizations – not necessarily better, it should be said). This somewhat makes the IGZ’s position more difficult. But from a pure “inspections best practice” perspective, their approach made sense: their role should not be to take individual action on each complaint and to substitute themselves to the police forces and court system, but to try and prevent systemic risks. The difficulty is in getting the public to understand the limitations of what an inspectorate can do – but it is important for the inspectorate to try and communicate this better.

231. In the same period, the PIP scandal in France (mentioned above) led to the agency in charge of drugs and medical devices being restructured and renamed. However, in a clear show of how little understanding of the issue there is in general, none of the real issues were addressed – the role of the third-party certifier/inspector (and its obvious liability), the absence of local inspection structures subordinate to

or linked with the regulatory agency (something which absolutely did not change with its new name), or of any coordination between this agency and local health structures – all of which played a real role in the scandal not being addressed on time.

14. Risk-based targeting – optimising effectiveness and costs

14.1 What is risk-based targeting – about which “risk” are we talking

232. The foundation of risk-based targeting is the recognition that it is *in fact* impossible to *properly* control everything. Of course, this can be seen as logically obvious – but even if one restricts “everything” to “visiting every business and checking whether they comply”, it stays just as impossible. Either resources available would be out of reach for any regime or country, or the time and attention available if each object is actually visited is just too small to actually be able to spot all the key issues. The excessive amount of information will in fact *obscure* the real issues and make it more difficult to spot critical hazards wherever they occur. Finally, spotting everything, everywhere at all times is anyway not possible – and thus “risk management” is the only actual possibility. All inspectorates have to be selective – the only question is whether to be selective “by default” (trying to check everything and in fact failing, thus noticing things at random) or “on purpose” – analysing where are the highest probabilities of serious harm, and concentrating on these. There is very strong consensus that random inspections or “blanket inspections” (trying to check each and everyone) are poor options – the latter one being in addition excessively costly for the state and businesses. Risk-focused inspections are the way to go, the only question being: how?

233. The issue of targeting and focus in inspections becomes more complex if one attempts to define precisely *on what* should this targeting be based. Deciding on which criteria should be used to measure risk first requires to agree on a *definition* of risk. Experience with reform shows this is a difficult and essential question – getting agreement on the fact that risk-based targeting “in general” would be better than no targeting is relatively easy, but disagreements arise when trying to define what risk-based targeting means.

234. There are three ways (at least) to conceive risk in terms of business establishments or objects of inspections:

- Probability of non-compliance with applicable regulations
- Relevance of the type of establishment to a specific “risk type” that is seen as an important priority by the government or administration
- Combination of likelihood and potential magnitude of hazards that can be caused by the specific type of establishment, be they measured through statistical work or through more “qualitative” experience and practical insights.

235. These three visions of “risk” all have their own legitimacy, but do not yield similar results. They are also often supported by different groups, with different backgrounds and interests.

236. Focusing on the *risk of non-compliance with regulations* is the most obviously legitimate approach from a *legal* perspective, and supported by many regulators and legal scholars.²³ Laws are to be complied with, the executive branch (and its regulatory agencies) are there to implement these laws, and thus inspections should aim at identifying, punishing and deterring non-compliances of all kinds. This logic is prevalent in many countries and, as a result, when developing criteria to classify establishments in different risk categories, some inspectorates start by defining “high risk” as “more likely to infringe rules”. This is generally done without consideration to the importance or relevance of these rules, or to the magnitude of the potential negative impact of infringements. Since non-compliance is seen as a risk *per se*,

it does not matter what type of rule is infringed, or to what degree. This results often in considering smaller businesses as higher risk (non-compliances, though often minor, are most frequent there, because of lower resources and expertise), and in a focus on high-volume activities such as trade, catering etc. – where, again, non-compliance tends to be frequent but usually minor. In theory, one could develop a more sophisticated risk-based planning approach from a “legal compliance” perspective, using the type of sanctions that can be incurred as a proxy for the seriousness of the offences. However, this would be complex to implement *seriously* (classifying all infractions recorded, analysing where the most severe are found, etc.). More importantly, one cannot assume that the legislator had a full technical understanding of the field being regulated, and insight into what activities would potentially create

237. Relying on *risks as prioritised by political programmes* can also claim to have a legitimacy, i.e. the political one (clearly a stronger claim in democratic regimes). In this perspective, the executive branch is legitimate to prioritise hazards that it sees as more important. We have already discussed above the fact that this usually does not lead to optimal outcomes and that “risk” in this context is more manipulated than addressed.

238. In contrast to the first two approaches, defining risk as *the combination of the probability and the possible magnitude of adverse outcomes* is more of a “technical” (or “technocratic”) view. Risk is defined as what can create harm (to life, health, the environment, etc.) – and the risk level is proportional to how likely such harm is to occur, how severe it may be and how many people it would affect (or what would be its scope in environmental or financial terms etc.). In this perspective, inspections should be targeted at the establishments where the combined likelihood and potential harm is greatest, which means not just greater frequency of inspections, but also “deeper” inspections, with more time spent on site, more qualified staff involved etc. There are significant elements of evidence that this approach indeed delivers the benefits it claims, i.e. better or constant outcomes with less costs overall.

239. Finally, it is essential to remember that “risk focus” does not happen only during planning: it is an approach that needs to underpin the whole inspection process, and in particular how inspectors behave, and what they check, during the actual inspection visits. It is on this basis that inspection tools, such as check-lists, can and should be developed.

14.2 How to measure and assess risk – how to plan based on it

240. The question of how to actually implement such a risk-based approach (with risk defined as “risk to life, health etc.) raises technical challenges:

- What parameters should the risk classification be based upon, how to measure them, and how to then “rate” establishments according to these?
- How to turn these criteria and rating systems into a functioning planning tool, in particular how to get the relevant data on establishments and manage it?

241. There is a trend to base risk analysis, criteria development, ratings etc. on sophisticated “data mining” techniques, using statistical tools to determine “objectively” (though the selection of the parameters being analyzed is never purely objective) the most relevant parameters and thresholds. This approach is most often proposed for tax inspections planning²⁴ – and is most applicable in their case, as tax and accounting data are suited to processing through such tools.

242. In practice, deploying such approaches is very difficult, because the relevant data on establishments and inspections results is either unavailable in consolidated and computerised form, or incomplete and inconsistent, even in OECD (data might exist but not consolidated, or may be in numerous

incompatible systems, etc.). Thus, in practice, such statistical analysis as the “pure” foundation of risk-based planning is very rarely a feasible option.

243. A more workable option is to have the essential parameters of risk for a given “sphere” of regulation and control (e.g. “food safety” or “building safety”) determined by a group of expert practitioners based on (a) the existing state of science, (b) practice and experience across the world and (c) experience in-country (even if summarised more in a “qualitative” than strictly “quantitative” way). If done properly, the main parameters will often be agreed upon relatively easily, be rather consistent across countries, and effectively correspond to actual risks “on the ground”. For instance, in the food safety sphere, key parameters to classify establishments according to risk tend to be: (i) type of products processed, (ii) types of processes used, (iii) volumes, (iv) specifics of population served, (v) prior history and track record.

244. In the absence of “data mining”, rating and ranking based on these parameters is subject to improvement and refinement through a “trial and error” process. Experts developing the rating instrument will affect scores to different parameters (corresponding to different types of processes, different sizes of establishment etc.), then define overall score thresholds for classification as (e.g.) “high”, “medium” or “low” risk – based on practical experience and outside examples. The thresholds’ levels have to ensure that establishments with only minor risk factors end up as “low”, those with several critical risk factors end up as “high” etc. It is then crucial to *test* and *adjust* these scores and thresholds: the risk criteria are tested against real-life cases of establishments. If obvious aberrations occur, the scores and/or thresholds are modified. Once the system is in use, adjustments may occur if too many, or too few, businesses end up in “high risk” and “medium risk” categories. These categories are to be used to selectively allocate limited inspection resources, so the risk classification should look like a pyramid, with more in “low”, less in “medium” and even less in “high”.²⁵

245. *Implementing* these criteria for actual planning is difficult, because it requires consolidated data on establishments and software to use it, which we discuss below. Examples of how such criteria and planning tools look have been provided above, with the Netherlands’ Mining Inspectorate matrix and UK FSA risk-based planning guidelines.

14.3 Outcomes of risk-based inspections planning

246. Risk-based inspections planning allows to significantly decrease inspections level for low-risk objects, without (at least this is the expectation) worsening the safety situation (and possibly improving it). Available data tends to clearly back this expectation, as a few examples can suggest:

- Environment Agency (England and Wales) inspections of low-risk waste sites went down dramatically from 2002 onwards (75% decrease) – the agency was able to reallocate resource to in-depth audits of high-risk facilities (went up from 70 to 1 500 a year) and to prosecutions of environmental crime. Indicators improved over the period.
- UK HSE inspections went down by more than half over the last decade, with a growing focus on the highest risk objects, and on the “systematically non-compliant” businesses. Work-related deaths and injuries rates decreased.
- National inspectorates in the Netherlands constantly reduced their inspections numbers in the past decade, in line with decreasing staffing levels and consolidation – without adverse effects being observed.

- Strengthening of risk-focus led Lithuanian inspectorates to decrease their inspections levels from 2011 to 2012 by nearly half.

247. While it is impossible to suggest “guidelines” on which percentage of objects under supervision should be inspected in a risk-based system, it is interesting to note that some of the “best practice” agencies (those listed above, or many tax agencies) inspect no more than a few percents (at most) of all businesses. They have carefully selected their target, and focus their attention where it can yield the highest results.

15. Promoting compliance – information and guidance rather than control and sanctions

15.1 Hands-on advice and predictable enforcement for SMEs

248. Providing clear guidance on “how to do things right” is probably the most effective way that regulatory delivery agencies can improve public outcomes. All too often, SMEs in particular do not really know what to do, or why, or how to do it. Relatedly, SMEs usually do not know what to expect from inspectors – what they will require, what they will pay attention to, how they will react. This breeds distrust and hostility, and makes establishing trust really difficult. Specific guidance is a helpful cure for both issues. A couple of good examples exist of how to address this issue:

- UK’s “Safer Food, Better Business”²⁶ – this guide is possibly the best existing example of how to help SMEs comply with complex regulations, improve safety and provide confidence that those who act “as well as possible” under this guidance will have no problems during inspections. The guide focuses on catering, restaurants, and other small businesses that prepare and serve food. It takes them through a series of steps that, in fact, correspond to a small-scale implementation of HACCP (Hazard Analysis and Critical Control Points) principles, but without this vocabulary, and without the business needing to develop its own specific plan (it is even divided in sections which correspond to the different fundamental risk dimensions in such a business type). Thus, a business that simply follows the guide step-by-step is compliant with the EU legislation (it even has a diary model and one can order refills online). The guide includes pictures, explanations of why each step is needed, examples of “right and wrong” – and is translated in 16 languages, to cover those most often used in the hospitality business in the UK. The “SFBB” guide is not officially a check-list for inspectors, but in fact it is an official FSA document and corresponds to all that is really essential in the requirements. Thus, environmental health officers that come to check food safety in these businesses will check the situation in line with this guide – and, if everything is well implemented, will not ask anything more. Below is a snapshot from a section of the guide.

Safe method:

Personal hygiene

It is vital for staff to follow good personal hygiene practices to help prevent bacteria from spreading to food.



| Safety point | Why? | How do you do this? |
|---|---|--|
| Staff should always wash their hands before preparing food. (See the 'Clear and clean as you go' method in the Cleaning section.) | Handwashing is one of the best ways to prevent harmful bacteria from spreading. | Are all staff trained to wash their hands before preparing food? Yes <input type="checkbox"/> No <input type="checkbox"/> |
| All staff should wear clean clothes when working with food. Ideally, they should change into clean work clothes before starting work and not wear these clothes outside food preparation areas. | Clothes can bring dirt and bacteria into food preparation areas. Wearing clean clothes helps to prevent this. | Do your staff wear clean work clothes? Yes <input type="checkbox"/> No <input type="checkbox"/> Do your staff change clothes before starting work? Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Ideally, work clothes should be long-sleeved and light-coloured (to show the dirt) with no external pockets. | This prevents skin from touching food and helps to stop hairs, fibres and the contents of pockets (which can carry bacteria) getting into food. | Yes <input type="checkbox"/> No <input type="checkbox"/> Describe your staff's work clothes here: <div style="border: 1px solid black; height: 40px; width: 100%;"></div> |



- The UK HSE likewise tried to take all the painstaking aspects out of health and safety compliance, by making requirements as clear and simple as possible for businesses, and providing them with sample documentation for the “paperwork” side (e.g. the H&S policy which every business has to have). This is available as a portal at www.hse.gov.uk/simple-health-safety/index.htm (with additional documentation, templates) or as a summary leaflet.²⁷ The portal covers everything – internal policy, risk assessment (with templates, examples and an online tool at www.hse.gov.uk/risk/assessment.htm) etc. The level of detail and of assistance is impressive, and it is really a prime example of how good and detailed guidance can alleviate even burdensome regulatory requirements.
- In Lithuania, the Law on Public Administration and successive Government Resolutions mandate inspectorates to use check-lists. There has been sometimes a bit of controversy around the “check-list” idea, as proponents of best enforcement practices in the UK and the Netherlands were criticising precisely the “tick box” approach and advocating for flexibility, attention to each specific situation, and increased professionalism and responsibility for each inspector. Now, of course, a tool like “Safer Food, Better Business” is also a check-list – even though it is not *officially* to be used as such by inspectors, it clearly is in practice. But it is worth addressing the point further: in the vast majority of countries and agencies, including within the OECD, the real primary problems are inconsistent demands and interpretations from one inspector to the next, and many inspectors lacking the appropriate ability to analyse risks in each business and focus on

the priority issues. As a result, many inspections focus on the wrong things. In this context, having check-lists is far better than not having any – and it is easier to instil some additional flexibility for the most proficient inspectors in the most complex cases, rather than having a situation where every inspector does his or her own will. As discussed above, the efforts of the Lithuanian government have resulted in a situation where now check-lists exist for dozens of types of businesses and for most inspection agencies, are used in the majority of cases, and where inspectors check essentially what is in the check-lists. This participates greatly to the clear opinion of the majority of businesses surveyed that the situation with inspections improved, requirements are clearer, and inspectors are making efforts to improve the situation. Even when check-lists are not perfect (e.g. still include many non-essential, “paperwork” requirements), they are a clear improvement on the prior situation, where businesses were usually in the dark on what had to be checked.

249. How to develop proper check lists is also an important issue. As the “SFBB” example suggests, and as experience in many countries has shown, the regulations are the wrong place to start – rather, the expert group tasked with developing a check-list (knowing that there needs to be a specific one for each agency/type of control and each type of business) should start from risk-analysis and experience: what are the issues in the field being checked and in the type of business considered that can cause real hazard and harm, that can go wrong? Starting from the risks allows to keep the check-list shorter and focused. It can then, once prepared, tested and finalised, be connected to the legal requirements (regulations) – but not the other way round. Indeed, starting from the regulations is guaranteed to result in bloated documents, with huge lists of questions, lots of paperwork and documentary checks, and endless discussions as to which requirements are really essential, and which not.

15.2 Assured guidance and consistent enforcement for larger businesses

250. The “system inspections”, which we have discussed above, as well as the UK’s “Primary Authority” approach, are very interesting examples of what in effect is specific guidance for larger businesses, giving them confidence that what they are doing is the right thing. Going through their internal processes, rules and systems with them, discussing their effectiveness and their conformity with regulations, means not only that businesses are more secure (they have a clear answer on whether what they are doing is correct, and not just whether this particular inspector found something or not), but also compliance likelihood is increased at all stages, because employees are more likely to obey first internal rules (which they have to know, and can be sanctioned or fired for not implementing), and state regulations only second.

16. Sharing information – reducing burden, improving planning, optimising efficiency

16.1 Systematic information sharing, automated planning, inspections records – IT approaches

251. Experience with attempts at “coordination” or “joint planning” show that it is essentially not possible without a consolidated IT system. In parallel, risk-based planning cannot be done without each agency having data on all objects under supervision, which is costly and difficult to update – while, at the same time, because many of the risk dimensions are correlated, and because a non-compliant business tends to be thus in several areas, inspectorate would be able to improve their risk analysis if they also had data from other inspectorates. In addition, many inspectorates (even in OECD countries) have been found not to have proper information systems in the sense of systems allowing them to plan their activities based on risk, and to record the inspections results – setting up a system for each of these separately, and “populating” each separately with data on all objects, is far more costly than setting up a joint system. All these points speak strongly for setting up as much as possible joint information systems shared by most or all inspectorates.

252. Ideally, such a system should incorporate at least the following:

The information system should be built on a database that includes the following data:

- List of all business entities and of all establishments (not only all companies/businesses, but also all separate premises) in the country.
- For each establishment, have data on a set of relevant parameters corresponding to different risk factors, some “general” risk parameters generally relevant to all or most types of inspections (e.g. size, volumes handled, type of technology or process, etc.), and other more specific ones grouped by risk dimensions (e.g. food safety, workplace safety etc.)
- List all inspections and their results, with both:
 - Overall results resulting in a “rating” (from perfect compliance to major critical violations) [note: this rating based on actual compliance record is one of the major risk criteria for all control functions].
 - Link to a detailed inspections report, including the filled-in check-list and recommendations.
 - Possibly, the details of all permitting documents obtained by all establishments.
- Automatically generate risk ratings for each business and establishment. The risk rating will be both specific to each dimension (e.g fire safety, labor safety) and general, corresponding to the risk profile for all dimensions aggregated. The risk rating for each business and establishment will be updated automatically based on the results of inspections;
- Automatically generate inspections selection and schedule, based on *i*) the risk rating, *ii*) on the number of inspection-man-hours available and *iii*) on pre-determined average inspecting times. Automatic selection would make sure that the selection of businesses to be inspected is fully transparent;
- Filter and analyze data so as to provide a coherent picture of the activity of an agency, of all controls in a give sphere, of the compliance level on specific regulatory dimensions, of the history and profile of a given establishment, or of the work of a given inspector etc.

253. More advanced systems can also incorporate functions to plan activities inside the inspectorate and manage processes, have on-line check-lists, etc. However, overall, such systems (be they more or less advanced) are still rare. The World Bank Group will soon release a comprehensive note on this topic, consolidating existing experience and lessons learned. For this reason, we will consider only briefly some of the interesting examples:

- Netherlands “Inspection View” – this application is so to say a “minimal” option, in the sense that it does not replace or consolidate existing information systems in the national inspectorates, but only pools their data so that each inspector can get a consolidated view of any given business, with information from all other inspectorates, including past inspections and their results. For now, only data from four inspectorates (Social Affairs and Employment, Environment and Traffic, the Communications Agency and the Food and Consumer Product Safety Authority) is available (to all inspectors from the 12 existing inspectorates). The experience, though useful (and a clear improvement compared to the absence of data sharing, which is still the norm in most countries) shows how difficult it is to try and build such a system on the basis of existing

ones. It has taken several years to reach this point, and still only data from some inspectorates is included. The technical challenges, and the institutional ones, have been considerable. Ultimately, the “interconnection” approach is difficult, and it only yields limited benefits compared to building an integrated system. However, its clear upside is that it does not require a political decision or a consensus to replace existing systems by a new one, and that there is no “transition period” when a new system might not be fully functional.

- Nova Scotia (Canada) “AMANDA” system – in 2008, the main regulatory enforcement departments of the Province of Nova Scotia (licensed activities, environment, OHS, food) decided to develop and adopt an integrated inspections information system (including also licensing data). The objectives were both to increase efficiency and decrease costs (one unified solution being cheaper to maintain than several) and to decrease administrative burden on businesses (through better coordination and information sharing). The system allows for complete data sharing between all participating departments, inspections reports generation and management, mobile access, automated scheduling of inspections and work schedules of inspectors. It is a very effective system that functions well and was relatively cheap to implement given that it was based on an “off the shelf” solution with some customization. The main limitation at this stage has to do with the practice of the regulatory departments themselves, that currently do not base inspections planning on risk, but rather on random assignment and complaints.
- Colombia IVC inspections control system (City of Bogota, then extended to 4 other major cities) – starting 2005, the IFC of the World Bank Group started assisting the City of Bogota to reform its municipal inspections. Inspections were reported by businesses to be a problem in several ways, and in particular initial inspections (conducted during the first months/year of operation). Indeed, though upon registration all businesses in Colombia are technically authorised to operate, de facto an initial inspection by several key services of the municipality (health, fire, environment, police) was required for all, and a negative inspection could result in shutting down the establishment, meaning a serious loss of investment. Inspections were often slow to come, lengthy and confusing when implemented, resulting in contradictory requirements and additional paperwork – overall, they imposed substantial transaction costs. Effectiveness was low, as there was no real targeting and lack of transparency and information meant that compliance was not promoted. The project decided to address the issue in a comprehensive way: through coordination of inspections, risk-based targeting and automation. The information system was conceived as an integral and central part of this reform.
- A coordination group gathered all 4 inspecting agencies and made them harmonise approaches, risk categories were developed by this group, and became the basis for inspections targeting. Only high risk objects would be systematically inspected, low risk would be inspected only randomly. A comprehensive “check list” for inspections was developed, allowing to increase consistency between inspectors, and paperwork formalities for businesses were also reduced.
- The information system was developed with a link the data obtained from newly registered businesses (through the Chamber of Commerce, which was also a participant in the project) to the inspections planning, allowing to schedule inspections based on risk criteria, information on which was collected during registration. A link was also made to the land use planning system, so that businesses can know whether a given type of activity is allowed in a specific location. The system started operating in Bogota in 2008. The system handles risk-based scheduling of inspections, can assign inspections automatically (although city departments do not always use this functionality), incorporates check-lists and generates and files inspection reports. It also supports mobile access.

- The reform in general (including the strong cooperation between Chamber of Commerce and City government) has been a strong success. The City of Bogota now has a department dedicated to inspection coordination, and the process has vastly improved. The information system is a central part in this scheme. Because it is linked to the registration system, data is constantly added for new businesses, which is a strong feature. The system was built at very limited cost, showing that this type of solution is far from being as difficult as is often thought.
- Bosnia and Herzegovina/Republika Srpska Inspection Management System – between 2007 and 2009, the State Inspectorate procured and rolled out an integrated system with considerable functionalities. Evidently, having a unified information system was the logical complement to the unification of inspection functions into one agency. The system incorporates a number of functions: risk-based planning, management of inspections reports, work and process scheduling, database of check-lists and automated generation of reports on their basis (inspectors have a laptop and fill in the check-list directly in the system, on site), etc. Overall, the system is a particularly good example of a fully integrated system, with complete functionalities. One missing link, however is to registration and licensing. As the system does not (for the moment at least) receive data from other institutions as businesses get set up or obtain specific approvals, the database of establishments has to be entirely populated and updated by the inspectorate, which is a real inefficiency (but is due more to the overall institutional set up *beyond* the inspectorate as to the system itself). Once again, the cost of developing the software was rather moderate, compared to costs involved in trying to interconnect existing systems in other experiences.
- Italy – Emilia Romagna region – RUC (Unified Inspections Registry) – set up in 2012, the registry applies so far to businesses in the agriculture and food production/processing sectors (one of the region’s key strengths). This unified information system can be used by all controlling agencies and all public agencies dealing with this sector, and operating in the region. The registry records for each business the list of inspections conducted (with data on what type, which agency and agent, the follow up measures) – as well as data on the enterprise itself (production, environmental and sanitary compliance, etc. While still only applicable to one sector in one region, and in a pilot stage, this is a very positive development.

16.2 Barriers and challenges for information sharing and unified information systems

254. There exist, of course, a certain number of barriers to information sharing and unified information systems, which explain their relative rarity – including the expectation that building such systems would be very costly and complex, even though this is not necessarily true. Among the main obstacles are:

- **Technology:** interconnecting existing systems can be very difficult because of heterogeneous data, underlying systems, etc. – which is why it is easier to build new, unified systems.
- **Confidentiality:** depending on the jurisdictions, legislation (on privacy in particular) may make it difficult to interconnect data, or require complex safeguards (though the practice in the Netherlands suggests this is entirely solvable, as long as the data remains confidential/within the state institutions) – publicity about such a system being built may also create “scares” in the public in some contexts.
- **Complexity:** interconnection of existing systems is complex – building a new system is far less so, but it requires to compile the data (populate the database of establishments), which can be either complex (if using different existing bases) or work-intensive (if creating a new base “from scratch”).

- Decision making: this is probably the main challenge – overcoming habits, resistance from institutions keen to preserve their own complete independence, all this with a large number of institutions and players involved.
- Preconditions: technical capacity is required in all involved institutions, as well as legal and institutional provisions allowing for the information sharing.
- Costs: even if unified systems cost far less than many fear, there is in any case a cost – and if hardware upgrades are required, or training taken into account, costs can increase rapidly in large jurisdictions (even if the system will save money in the longer run).
- Data: different institutions are likely to have different index structures for objects under supervision, even possibly different definitions of what an “object” is, all of which can make the process more complex (though this can all be solved technically with multiple indices and cross-references).

255. Given the importance of such systems in really improving inspections and enforcement, however, it is to be hoped that more Governments will look into the issue – particularly as existing legacy systems in different inspectorates will at some point need to be replaced anyway.

17. Beyond inspections – sanctions and liability, “acceptable risk level”

17.1 Making regulatory enforcement more effective – the role of adequate sanctions and liability

256. Considering the importance and the complexity of this issue, we will follow the example set by the *Hampton Review* itself, and briefly mention it, but not enter into an in-depth discussion of it – leaving it for specific research and reviews. The question is important for several reasons:

- Excessively heavy sanctions for relatively minor violations can create problems in several ways – very high direct costs for affected businesses, important opportunities for abuses of powers by inspectors, confrontational relation between state authorities and private sector, etc.
- Insufficient liability provisions may mean that businesses feel “off the hook” in case of problems, and/or that potential victims of serious violations/crimes are not adequately compensated if problems happen
- Inadequate sanctions, not commensurate to the potential size of undue profits and/or of damages, may be insufficient to deter violations. The same applies if potential sanctions are severe, but the probability of them being inflicted is low because of the complexity of the procedure (criminal prosecution and trial in all cases, for instance).

257. The first issue is relatively frequently found in emerging economies (with the potential of a business being shut down even for “paperwork mistakes”) – but can also exist in OECD members. It is often a function of inappropriate enforcement, whereby inspectors apply the letter of the law in all its rigour without consideration to the actual risk, and to the business’s intent (treating any mistake or sloppiness as intentional violation). This can be handled in many cases by improving enforcement practices and inspectors’ training as well as internal guidelines – but, in very strongly rules-based jurisdictions, it may require amendments to legislation.

258. The second issue is also frequently found in emerging and transition economies, as it stems from an evolving legal system, where modern provisions on producer and operator liability have not been fully put in place, or are still being inadequately enforced by the legal system. The question is however often far from entirely clear in OECD countries as well. Many countries do not have a “class action” system, making it very difficult to actually enforce liability claims in cases of “diffuse” harm. Certain situations see “legal collisions” between different norms, or require jurisprudence to become clear, such as the recently decided environmental damages case for the “Erika” wreck which polluted French coasts in 1999 (it took 13 years to have the final decision). Thus, this is far from being a question that is universally clear and settled – in spite of its being very important to address the consequences of serious violations in terms of individual and collective damage.

259. The last issue has been the object of much attention in the *Hampton Review*, leading to a follow up report by Richard Macrory.²⁸ In *Hampton*, the guiding principle was summarised as follows (2.92, page 43): “the few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions”. The *Review*’s Executive Summary worded the problem thus: “at present, regulatory penalties do not take the economic value of a breach into consideration and it is quite often in a business’s interest to pay the fine rather than comply”. The *Macrory Report*, after an in-depth look at the existing system, stakeholders’ opinions and research, suggested changes along the following directions: (a) edicting a list of Penalties Principles and a framework for regulatory sanctioning, (b) strengthening the role of the criminal prosecution as a regulatory sanction (by giving stronger guidelines to prosecutors, for instance, (c) developing the role of Monetary Administrative Penalties (through legislation to give regulatory bodies the power to issue such sanctions), (d) alternative options such as statutory notices, restorative justice etc. The main outcome was the adoption of the 2008 *Regulatory Enforcement and Sanctions Act* that, along with other provisions related to inspections and enforcement, gave regulators new authority to issue monetary sanctions without court proceedings.

260. Experience in countries of the Former Soviet Union, for instance, suggests that Hampton and Macrory indeed had a point. In countries such as Ukraine, sanctions for violations of fire safety rules, for example, are in some cases very low, as the monetary amount has been set many years ago, and inflation and growth have made it irrelevant in a contemporary context. In such cases, it is clear (and confirmed by many businesses) that the pettiness of the possible sanctions does play a role in making compliance less likely. Similarly, if the only available sanctions are to be obtained through criminal prosecution and sentencing (as was mostly the case before the 2008 Act in the UK), inevitably many violations will go detected but unpunished, because regulators will deem they are not worth the (significant) expenses of criminal prosecution.

261. The question of exactly why and how sanctions are relevant to compliance, however, is not touched by Hampton or Macrory – and research suggests the mechanisms of compliance may be more complex than these reviews suggest. The work of Henk Elffers and Dick Hessing suggest in fact (and this is backed up by the experience of many practitioners in the regulatory enforcement field) that:

- Statutory sanctions are ineffective for – in their own words – the *conformist compliers*, i.e. those who comply with rules only because they fear punishment. There is only an effect if – and this is generally not feasible, and perhaps not desirable either – the punishment threatened is certain, quick and severe.
- Statutory sanctions have an indirect effect on the *identifiers*, those who comply with rules because they want to belong to a social group for which compliance is the norm; imposing sanctions on the others, those who break the rules, is necessary and useful for the identifiers, because this serves to maintain the social norm for them, the norm that keeps them on the straight and narrow.

- Statutory sanctions are superfluous for the *internalisers*, those who comply with rules because they have made these rules part of their own world view.²⁹

262. In this perspective, sanctions are not, in fact, effective to deter the “real criminals”, those that in UK parlance are often called “rogue traders”. These are, simply, not to be deterred. The experience of the PIP scandal, mentioned several times above, suggests as much – the CEO of PIP was aware of the major violations being undertaken, knew of course that he would incur major criminal penalties *and* massive civil liability, and nonetheless went ahead brazenly. Accidents such as the *Deepwater Horizon* explosion also show that even in countries with potentially crippling civil damage awards, such as the USA, reckless behaviour can very well happen. In short, there is a percentage of actors for whom no rules, sanctions, enforcement measures etc. will be effective. There is also, on the opposite end of the spectrum, a share of people who will comply and try and work properly even when there is no real credible threat of any sanction.

263. The focus of the sanctioning system is much more the mass of those “in between” – they might cut corners if they think cutting corners “is OK”, but not if they see it as being strongly socially reprehensible, and punished. Sanctions are signals for this majority.

264. The importance of “signaling” is also underlined by both Hampton and Macrory, who both insist on the importance of “reputational” sanctions – the “stigma of criminal prosecution” (Hampton) and specific actions by regulators to “name and shame” non-compliant businesses. Indeed, the most effective sanction scheme in many cases may indeed be the one that deters consumers from using this particular business – such as the display of inspection results through schemes such as “Scores on the Door”.³⁰

265. Overall, it is thus fair to say that, while the issues of liability, economic damage and its compensation, sanctions and stigma are all very important, and all participate in the web of incentives for compliance or non-compliance, there is no mechanical effect “severe sanctions lead to higher compliance” – neither in criminal justice, as has been very well demonstrated in many studies, nor in enforcement of business regulations.

17.2 The issue of the “acceptable risk level”, risk aversion and its costs

266. As a short conclusion, and an opening unto broader considerations, it is worth coming back to the fundamental question behind enforcement efforts: are the rules being enforced actually “worth it”? No matter how proportionate and flexible the enforcement, indeed, if regulations are inherently demanding expenses that vastly outweigh their costs, inspections will never really be “efficient”. And no matter what good principles an agency bases its work upon, if political decision-makers require for them boundless enforcement efforts each time an incident happens, the situation will never really improve.

267. It is worth quoting from the recent inaugural lecture by Prof. Ira Helsloot in Radboud University (Netherlands): “it cannot be repeated often enough: our safety has never been so high, looking at [...] our average (healthy) life. [...] Considering the “average” ignores the substantial differences between higher and lower income groups. [...] The (healthy) life expectancy depends very strongly on the level of education, which in turn is strongly correlated with the level of income. [...] If today’s society wants more safety, it has to increase the disposable income of the lower income groups. Research shows that more administrative burden (e.g. due to safety considerations) leads to less prosperity, particularly for lower income groups. Thus to be able to achieve a higher average level of safety in Western societies, it is essential that the (safety) administrative burden stops rising and, where possible, decreases.”³¹

268. Indeed, safety regulations have a cost, and beyond a certain point it most certainly exceeds the positive impact that they may be having. There is a difficult balancing act between immediate demands for “safety”, including in reaction to “scares” and incidents, and the actual effect on safety brought about by economic prosperity. Recent news in France once again highlighted it, with a couple of “illegal” kindergarten being shut down in the city of Marseille, and their operators prosecuted, in spite of parents and children being obviously happy about the conditions there, and in any case far happier than they would have been in the absence of any day care option. High requirements on health and safety, staffing, professional qualifications etc. make opening an “official” kindergaten very difficult in France, places are scarce, state funding for day care subsidies insufficient to cover the extent of the demand (given the costs of “official” care), and many parents and children are left with no viable option – prosecuting those who try and offer a solution, where no harm was done to anyone (a case where these illegal places would have been horrendous would clearly have been different), will probably only make the situation worse for all. Enforcement and inspections issues played a role in the case, as the relevant regulatory body in fact new about these places, they had been visited before (with positive findings) – but staff in the agency started to be worried about potential liability for “closing their eyes” over such illegal activity, and decided to shut the structure down and initiate prosecution.

269. Trying to solve all problems by more regulations cannot work. Acting to improve inspections and enforcement can be a good place to start tackling risk-aversion.

Notes

1. To all intent and purpose, a “quango” with inspection powers is the same as a “full fledged” state body. Similarly, when an NGO/professional organization (a) receives delegated inspection powers and (b) along with this, is subject to liability, reporting requirements etc. that make it *de facto* report to the state, then it becomes akin to a “quasi state” body. The Netherlands has two such “authorities” for dairy (COKZ: www.cokz.nl/) and for eggs (NCAE: www.ncae.nl/). The delegation can be revoked at any time (indeed for eggs the delegated body has just recently become NCAE instead of CEP) and these delegated bodies act in all respects like state inspectors. In this sense, they are more a “special case” of direct inspections than really “third party inspections” in the sense of this section.
2. “Direct” inspections are “usual” in the modern world. That said, as we indicated in our introduction, “delegated” inspections (to tax and customs farmers) are a very ancient model.
3. Note that in some countries and contexts cost-recovery charges are imposed on inspected businesses/premises by visiting state bodies, for this reason. This is for instance the case for fire safety inspections in Sweden, and for some of the high-risk premises inspections in the UK by HSE and the Environment Agency (see: www.hse.gov.uk/comah/index.htm). In many countries, however, having state agencies charge for inspections would be either legally problematic, or seen as a harbinger of harassment and corruption.
4. General consensus on the use of system inspections in industrial objects, but not necessarily everywhere – Prof. Paul Robben for instance not only warns against the fact that system inspections are generally *not* cheaper, but also against relying too much on them outside of the industrial and aviation sectors – in particular he argues that, in health care, establishments may have too little control over what happens inside them to make system inspections really effective – see: Robben, P. (2010), *Toezicht in een glazen huis*, Erasmus Universiteit, Instituut Beleid & Management Gezondheidszorg, Rotterdam, www.bmg.eur.nl/fileadmin/ASSETS/bmg/Onderzoek/Oraties/Robben/iBMG_Oratie_Paul_Robben.pdf.
5. A similar system is also used for some non-harmonized goods, but this does not change the overall picture.
6. See for instance: official reference page <http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/new-legislative-framework/> –

- summary presentation: www.oecd.org/tad/non-tariffmeasures/43864487.pdf – Presentation to Croatia (Accession Country about to become new Member State): www.dzm.hr/_download/repository/HStolz_Conformity_Assessment.pdf – overview for Latvia (new Member State): www.ptac.gov.lv/upload/vadlinijas_uznemejiem_en/lg/lg_2_-_the_impact_of_the_eu_new_approach_on_the_safety_of_products_and_services.pdf – explanation for US exporters: www.ita.doc.gov/td/standards/final%20site/ccg/ccg%20pdfs/eu.pdf – explanation for Australian exporters: www.innovation.gov.au/Industry/TradePolicies/MRA/Documents/EUStandardsConformityAssessmentSystem.pdf.
7. See: World Bank Group (2006), *Good Practices for Business Inspections - Guidelines for Reformers*, Washington, DC, [www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/BEEGood+Practices+for+Business+Inspection/\\$FILE/Bus+Inspect+Book.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/BEEGood+Practices+for+Business+Inspection/$FILE/Bus+Inspect+Book.pdf), pp. 88 onwards.
 8. See: Foster, A. (2010), *Direct and Indirect Effects of Voluntary Certification: Evidence from the Mexican Clean Industry Program*, IPC Working Paper Series Number 105, International Policy Center, Gerald R. Ford School of Public Policy, University of Michigan, <http://hdl.handle.net/2027.42/78011>.
 9. See on the Netherlands' system (official review): Ministry of Housing, Spatial Planning and the Environment of the Kingdom of the Netherlands (2009), *Castle or House of Cards? Strengthening the Structural Safety Chain*, Den Haag, <http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2009/05/01/castle-or-house-of-cards-strengthening-the-structural-safety-chain.html>. A more recent review in the Netherlands looked at alternative options, including the French approach (France case study starts from page 41): Helsloot, I. and Schmidt, A. (2012), *Risicoaansprakelijkheid als vervanging van overheidsstoezicht in de bouw?*, Ministry of Internal Affairs of the Kingdom of the Netherlands, Den Haag, www.rijksoverheid.nl/onderwerpen/bouwregelgeving/documenten-en-publicaties/rapporten/2012/09/20/risicoaansprakelijkheid-als-vervanging-van-overheidsstoezicht-in-de-bouw.html.
 10. See for instance from the UK HSE: www.hse.gov.uk/comah/remodelling/inspection.htm and www.hse.gov.uk/comah/sram/index.htm. On the Netherlands' move towards system inspections, for instance the following brochure: www.dhv.nl/dhvn/files/a3/a35c211a-c522-4baa-9b46-a9268e088087.pdf and in the “Inspectieloket” portal: www.inspectieloket.nl/vernieuwing_toezicht/programma_systeemtoezicht/ and see inspections policy from State Mining Inspectorate: www.sodm.nl/sites/default/files/redactie/toezicht%20delfstofwinning.pdf.
 11. Interestingly, whereas most “old EU Member States” do *not* have such a single agency – but the EU food safety approach mandates coherence and continuity of control along the whole food chain, and a single agency was (often rightly, but not always so) seen as the best/easiest way to achieve this. Not *all* new Member States took this route, however – far from it.
 12. www.inspection.gc.ca/.
 13. www.vet.agri.ee/?op=body&id=315 and for the Veterinary Laboratory: www.vetlab.ee/.
 14. <http://vmvt.lt/en/>.
 15. List of competences: www.inspektorat.hr/dirh12/o-drzavnomspektoratu/podrucjanadzora/.
 16. The system used by the Republika Srpska inspectorate (<http://inspektorat.vladars.net/>) is particularly worthy of consideration as an excellent example. The one used in the Federation

is also valid, but institutional complexities there made it more difficult to simplify procedures and to adopt the most efficient system.

17. See: www.bis.gov.uk/brdo/primary-authority.
18. www.food.gov.uk/enforcement/#.UHQsv_lra-A.
19. www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm
20. www.businesscomplianceservice.co.uk/services.htm.
21. www.ondernemingsdossier.nl/.
22. Helsloot, I. (2012), *Veiligheid als (bij)product – Over beleidsontwikkeling in interactie tussen*, Radboud Universiteit, Nijmegen, http://crisislab.nl/wordpress/wp-content/uploads/Oratie_Ira_Helsloot_21-09-2012.pdf
23. See for instance summary in Morgan, B. and Yeung, K. (2007), *An Introduction to Law and Regulation – Text and Materials*, Cambridge University Press, Cambridge at p. 200-202 – arguments for an enforcement approach that makes upholding compliance with the law, and enforcement thereof, a fundamental value, and thus makes other approaches to “risk” subordinate to it.
24. See for instance Charles Vellutini, “Key Principles of Risk-Based Audits” (ch.1), “Risk-Based Audits: Assessing the Risks” (ch.2) and “Database and IT Framework for Risk Analysis” (ch.5) in Awasthi, R., Khwaja, M. S. and Loeprick, J. (ed.) (2011), *Risk-based Tax Audits. Approaches and Country Experiences*, World Bank Group, Washington, DC, <http://hdl.handle.net/10986/2314>, pp. 13-36 and 57-64 – and also Ugur Dogan, “Data Warehouse and Data-Mining Tools for Risk Management: The Case of Turkey” (ch. 7), *ibid.*, pp. 71-76.
25. A key “reality check” is to compare the risk categories thus created to relevant statistics on hazards affecting the country, when possible), otherwise absurdity can ensue. E.g. in Kyrgyzstan hairdressers were classified uniformly as “high risk” due to old Soviet-time rules (and rent-seeking considerations), even though no health statistics backed this up.
26. See: www.food.gov.uk/business-industry/caterers/sfbb.
27. See: www.hse.gov.uk/pubns/indg449.pdf.
28. Macrory, R. (2006), *Regulatory Justice: Making Sanctions Effective*, Better Regulation Executive, Department for Business, Innovation and Skills of the United Kingdom, London, www.bis.gov.uk/files/file44593.pdf
29. Based on Elffers, H. (2005), *De rationele regelovertreder*, (inaugural lecture for Antwerp University, 26 October 2004) Boom Juridische Uitgevers, Den Haag – this summary courtesy of unpublished work by Prof. W. Voermans, Leiden University.
30. See study on the original scheme in Los Angeles (started 1998) – Simon, P., Leslie, P., Run, G., Zhe Jin, G. Reporter, R., Aguirre, A. and Fielding, J.E. (2005), *Impact of Restaurant Hygiene Grade Cards on Foodborne-Disease Hospitalizations in Los Angeles County*, *Journal of Environmental Health*, March 2005, Vol. 67, number 7, pp. 32-36, Denver, <http://www.ncbi.nlm.nih.gov/pubmed/15794461>
31. Helsloot, I. (2012), *Veiligheid als (bij)product – Over beleidsontwikkeling in interactie tussen*, Radboud Universiteit, Nijmegen, http://crisislab.nl/wordpress/wp-content/uploads/Oratie_Ira_Helsloot_21-09-2012.pdf – author’s translation.

BIBLIOGRAPHY

- Awasthi, R., Khwaja, M. S. and Loeprick, J. (ed.) (2011), *Risk-based Tax Audits. Approaches and Country Experiences*, World Bank Group, Washington, DC, <http://hdl.handle.net/10986/2314>
- Ayres, I. and Braithwaite, J. (1992), *Responsive regulation: transcending the Deregulation debate*, Oxford University Press, Oxford
- Better Regulation Executive (2008), *Improving Outcomes from Health and Safety – A Report to the Government by the Better Regulation Executive*, UK Department for Business, Enterprise and Regulatory Reform, London, www.bis.gov.uk/files/file47324.pdf
- Blanc, F. (2011), *Reforming Inspections, Measuring Success - Challenges in Former Soviet Republics and their Neighbours*, Paper presented to the ECPR General Conference, Reykjavik, <http://www.ecprnet.eu/MyECPR/proposals/reykjavik/uploads/papers/2136.pdf>
- Blanc, F. (2012), *Moving Away From Total Control in Former Communist Countries – the RRR in Inspections, and Lessons Learned from Reforming them*, European Journal of Risk Regulation 3/2012, pp. 327-341, Lexxion, Berlin
- Burgess, A. and Macrae, D. (2012), ‘*An Experimental Offensive against the Mishandling of Risk in Society*’: *Reflecting on the Pioneering Work of the Risk and Regulation Advisory Council in the UK*, European Journal of Risk Regulation 3/2012, pp. 343-351, Lexxion, Berlin
- Coolidge, J., Grava, L. and Putnina, S. (2004), *Case Study: Inspectorate Reform in Latvia 1999-2003*, FIAS, World Bank Group, www.wbginvestmentclimate.org/uploads/7eCase+study+-+Latvia+inspections.pdf
- Danish Government (2009), *Debureaucratisation Plan for Business Regulation*, Copenhagen, [www.dcca.dk/graphics/publikationer/Administrative%20lettelser/Afbureaukratiseringsplan%20\(Eng\).pdf](http://www.dcca.dk/graphics/publikationer/Administrative%20lettelser/Afbureaukratiseringsplan%20(Eng).pdf)
- Diver, C. (1983), ‘The optimal precision of administrative rules’, *Yale Law Journal* 93, Yale, pp. 65-109
- Elffers, H. (2005), *De rationele regelovertreder*, (inaugural lecture for Antwerp University, 26 October 2004) Boom Juridische Uitgevers, Den Haag
- Elffers, H., Verboon, P. and Huisman, W. (ed.) (2006), *Managing and Maintaining Compliance*, Boom Legal Publishers, Den Haag
- Food Standards Agency (2012), *Food Law Code of Practice (England)*, FSA, London, www.food.gov.uk/multimedia/pdfs/codeofpracticeeng.pdf

- Foster, A. (2010), *Direct and Indirect Effects of Voluntary Certification: Evidence from the Mexican Clean Industry Program*, IPC Working Paper Series Number 105, International Policy Center, Gerald R. Ford School of Public Policy, University of Michigan, <http://hdl.handle.net/2027.42/78011>
- Hampton, P. (2005), *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, London, www.berr.gov.uk/files/file22988.pdf
- Hawkins, K. (2002), *Law as Last Resort – Prosecution Decision-Making in a Regulatory Agency*, Oxford University Press, Oxford
- Hawkins, K. (ed.) (1992), *The Uses of Discretion*, Clarendon Press, Oxford
- Helsloot, I. (2012), *Veiligheid als (bij)product – Over beleidsontwikkeling in interactie tussen*, Radboud Universiteit, Nijmegen, http://crisislab.nl/wordpress/wp-content/uploads/Oratie_Ira_Helsloot_21-09-2012.pdf
- Helsloot, I. and Schmidt, A. (2012), *Risicoaansprakelijkheid als vervanging van overheidstoezicht in de bouw?*, Ministry of Internal Affairs of the Kingdom of the Netherlands, Den Haag, www.rijksoverheid.nl/onderwerpen/bouwregelgeving/documenten-en-publicaties/rapporten/2012/09/20/risicoaansprakelijkheid-als-vervanging-van-overheidstoezicht-in-de-bouw.html
- Helsloot, I. and Schmidt, A. (2012), *The Intractable Citizen and the Single-Minded Risk Expert – Mechanisms Causing the Risk Regulation Reflex Pointed Out in the Dutch Risk and Responsibility Programme*, European Journal of Risk Regulation 3/2012, pp. 305-312, Lexxion, Berlin
- HM Revenue and Customs (2010), *Delivering a new relationship with business - Reducing burdens and helping businesses get it right*, UK HMRC, London, www.hmrc.gov.uk/budget2010/new-rel-paper-1340.pdf
- International Finance Corporation (2009), *Business Environment in Azerbaijan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/abeep.nsf/Content/Reports
- International Finance Corporation (2009), *Business Environment in Kyrgyzstan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/kbeep.nsf/Content/Research
- International Finance Corporation (2010), *Business Inspections in Mongolia*, World Bank Group, Ulaanbaatar, [www.ifc.org/ifcext/eastasia.nsf/AttachmentsByTitle/Mongolia+Business+inspections+survey+report/\\$FILE/Business+inspections+survey+report.pdf](http://www.ifc.org/ifcext/eastasia.nsf/AttachmentsByTitle/Mongolia+Business+inspections+survey+report/$FILE/Business+inspections+survey+report.pdf)
- International Finance Corporation (several years), *Business Environment in Belarus*, World Bank Group, Washington, DC, www.ifc.org/ifcext/belarus.nsf/Content/BusinessEnv
- International Finance Corporation (several years), *Business Environment in Georgia*, World Bank Group, Washington, DC, www.ifc.org/ifcext/georgiasme.nsf/Content/Surveys
- International Finance Corporation (several years), *Business Environment in Tajikistan*, World Bank Group, Washington, DC, www.ifc.org/ifcext/tajikistansme.nsf/Content/Survey
- International Finance Corporation (several years), *Business Environment in Ukraine*, World Bank Group, Washington, DC, www.ifc.org/ifcext/uspp.nsf/Content/PMSurveys

- International Finance Corporation (several years), Business Environment in Uzbekistan, World Bank Group, Washington, DC, www.ifc.org/ifcext/media.nsf/Content/Research_UzbekSurvey
- Kirchler, E. and Hoelzl, E. (2006), “Modelling Taxpayers’ Behaviour as a Function of Interaction between Tax Authorities and Taxpayers”, in Elffers, H., Verboon, P. and Huisman, W. (ed.), *Managing and Maintaining Compliance*, Boom Legal Publishers, Den Haag, pp. 1-23
- Kleiner, M. (2000), “Occupational Licensing”, *Journal of Economic Perspectives*, Volume 14 Issue 4, American Economic Association, Nashville, pp. 189-202, <http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.14.4.189>
- Kleiner, M. (2006), *Licensing Occupations. Ensuring Quality or Restricting Competition?*, W.E. Upjohn Institute for Employment Research, Kalamazoo
- Liepina, S., Coolidge, J. and Grava, L. (2008), *Improving the business environment in Latvia: the impact of FIAS assistance*, FIAS Occasional Paper #18, World Bank, Washington, DC
- Local Better Regulation Office (2012), *Regulation and Growth*, LBRO, Birmingham, www.bis.gov.uk/assets/brdo/docs/publications-2012/12-688-regulation-and-growth.pdf
- Löfstedt, R. (2011), *Reclaiming health and safety for all*, UK Department of Work and Pensions, London, www.dwp.gov.uk/docs/lofstedt-report.pdf
- Macrory, R. (2006), *Regulatory Justice: Making Sanctions Effective*, Better Regulation Executive, Department for Business, Innovation and Skills of the United Kingdom, London, www.bis.gov.uk/files/file44593.pdf
- May, P.J. and Winter, S. (1999), “Regulatory Enforcement and Compliance: Examining Danish Agro-Environmental Policy”, *Journal of Policy Analysis and Management*, Vol. 18, No. 4, pp. 625–651, APPAM, Washington, DC
- Mertens, F. (2011), *Inspecteren. Toezicht door Inspecties*, SDU Uitgevers, Den Haag
- Morgan, B. and Yeung, K. (2007), *An Introduction to Law and Regulation – Text and Materials*, Cambridge University Press, Cambridge
- OECD and APEC (2005), *APEC-OECD Integrated Checklist on Regulatory Reform*, OECD and APEC, Paris and Singapore, www.oecd.org/regreform/34989455.pdf
- Ogus, A. (1994), *Regulation: legal form and economic theory*, Clarendon Press, Oxford
- Page, A., Hewitt, M. and Lundy, S. (2010), *Review and Assessment of the Lessons Learnt from the Retail Enforcement Pilot (REP)*, Prepared for the Local Better Regulation Office by the Centre for Decision Analysis and Risk Management, LBRO, Birmingham, www.bis.gov.uk/assets/brdo/docs/publications-2010/10-1407-rep-lessons-learned.pdf
- Robben, P. (2010), *Toezicht in een glazen huis*, Erasmus Universiteit, Instituut Beleid & Management Gezondheidszorg, Rotterdam, www.bmg.eur.nl/fileadmin/ASSETS/bmg/Onderzoek/Oraties/Robben/iBMG_Oratie_Paul_Robben.pdf

- Simon, P., Leslie, P., Run, G., Zhe Jin, G. Reporter, R., Aguirre, A. and Fielding, J.E. (2005), *Impact of Restaurant Hygiene Grade Cards on Foodborne-Disease Hospitalizations in Los Angeles County*, Journal of Environmental Health, March 2005, Vol. 67, number 7, pp. 32-36, Denver, www.ncbi.nlm.nih.gov/pubmed/15794461
- Sparrow, M. (2008), *The character of harms: operational challenges in control*, Cambridge University Press, Cambridge
- Spekkink., D. (2009), *Castle or House of Cards? Strengthening the Structural Safety Chain*,), Ministry of Housing, Spatial Planning and the Environment of the Kingdom of the Netherlands, Den Haag, www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2009/05/01/castle-or-house-of-cards-strengthening-the-structural-safety-chain.html
- Van Tol, J. (2010), *Building a different approach to risk - The Dutch Risk and Responsibility Programme*, Presentation to the OECD Conference ‘Regulatory Policy at the Crossroads’, OECD, Paris, www.oecd.org/regreform/policyconference/46313810.pdf
- Van Tol, J. (2011), *Summary Analysis of the Risk-Regulation Reflex Entrenched Beliefs and Six Possible Avenues for Solutions*, OECD, Paris, www.oecd.org/regreform/regulatorypolicy/48654345.pdf
- Van Tol, J., Helsloot, I. and Mertens, F. (ed.) (2011), *Veiligheid boven alles? Essays over oorzaken en gevolgen van de risicoregelreflex*, Boom Lemma, Den Haag
- Wittberg, L. (2006), “Can Communication Activities Improve Compliance?”, in Elffers, H., Verboon, P. and Huisman, W. (ed.), *Managing and Maintaining Compliance*, Boom Legal Publishers, Den Haag, pp. 25-44
- World Bank Group (2006), *Good Practices for Business Inspections - Guidelines for Reformers*, Washington, DC, [www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/BEEGood+Practices+for+Business+Inspection/\\$FILE/Bus+Inspect+Book.pdf](http://www.ifc.org/ifcext/sme.nsf/AttachmentsByTitle/BEEGood+Practices+for+Business+Inspection/$FILE/Bus+Inspect+Book.pdf)
- World Bank Group Investment Climate Advisory Services (2011), *How to Reform Business Inspections: Design, Implementation, Challenges*, World Bank Group, Washington, DC, www.wbinvestmentclimate.org/uploads/How%20to%20Reform%20Business%20Inspections%20WEB.pdf