Chapter 7

Compliance, inspections and enforcement in Lithuania

This chapter considers the processes for ensuring compliance and enforcement of regulations. It looks at tools, approaches and principles that have been used and implemented to strengthen compliance and enforcement.

The baseline for reviewing inspection and enforcement reform

This chapter uses as reference point for assessing Lithuania's inspection and enforcement reform the eleven best-practice principles that the OECD has compiled, based on international experience (Box 7.1).

Box 7.1. The OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections

1. Evidence based enforcement. Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. Selectivity. Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulations' objectives.
3. Risk focus and proportionality. Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. Responsive regulation. Enforcement should be based on "responsive regulation" principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. Long term vision. Governments should adopt policies on regulatory enforcement and inspections: clear objectives should be set and institutional mechanisms set up with clear objectives and a long-term road-map.
6. Co-ordination and consolidation. Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. Transparent governance. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. Information integration. Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. Clear and fair process. Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. Compliance promotion. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. Professionalism. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264208117-en.

History and overview of inspection reform in Lithuania

Compliance and market access issues: EU accession and beyond

Effective inspections and enforcement regimes foster reliable compliance, and compliance (if regulations are adequately designed and "fit for purpose") in turn leads to improved outcomes in crucial areas such as safety of products on the market (both food and non-food), or environmental protection. As such, over the past couple of decades, the European Union has put an increasing focus on improving the effectiveness of enforcement regimes in existing and aspiring member states. This is particularly true in goods that are traded fully freely in the Single Market and with a significant risk level, such as food (for which the EU Food and Veterinary Office has a supervisory and advisory role over national authorities), but also increasingly non-food products (with increasingly developed guidance on market surveillance, to be now further strengthened as part of the new Product Safety and Market Surveillance Package). The EU has also been gradually developing its guidance on environmental inspections (the environment being by nature a cross-border issue), and a new framework on this topic is under development.

In line with this, the first phase of reforms affecting inspections and enforcement in Lithuania was part of the EU accession process. This resulted in particular in the set up of the State Food and Veterinary Service (SFVS), which has developed into one of the strongest and most forward-looking inspection agencies in Lithuania, as well as in the reform of the product safety system and the creation of the State Non-Food Products Inspectorate. Thus, reform and improvement work in the inspection and enforcement sphere has been going on for well over 10 years already.

This EU involvement allows assessing results in terms of social welfare for some of these functions, in particular for food safety. Successive reports by the EU FVO (2011-14) and the EFSA (2012-13) shows that Lithuanian "official controls" (inspections and enforcement, monitoring etc.) are in line with EU guidelines, and effective at securing good levels of food safety in the country, at the production and consumer levels. In other regulatory areas, however, evaluating results may be more difficult (reliable data is often difficult, or costly, to obtain), or improvements may be less satisfactory. Improving impact (and measurement) remains one of the priorities of reform.

Overview of the reform process: origins, development, current status

Following the onset of the global financial crisis and the elections of 2008 that brought a new coalition to office, the government embarked on a regulatory reform agenda. This aimed at facilitating business creation and growth (essential in a time of sharp economic contraction), reducing costs for the state or at a minimum maximising efficiency so as to "achieve more with less state resources" (crucial given budgetary austerity), and transforming relations between authorities on the one hand, and businesses and citizens on the other. The new approach to regulation intended to emphasise trust and compliance promotion rather than distrust and bureaucratic control.

Given the importance of inspections and enforcement issues in terms of administrative burden, investors' confidence, relations between private persons and the state (inspections being the primary "interface" between economic operators and the public administration), as well as budgetary costs (considering the large number of employees of inspection bodies), reforming inspections was, logically, one of the key priorities of this reform effort (along with licensing). The reform was led in particular by

the Ministries of Justice and Economy, with strong direct personal engagement of the ministers themselves in the first years.

Preparation of the reform and consideration of possible directions started in 2009. The legal foundation for the reform, as well as some of the most important directions, were set first by a Government Resolution in May 2010 (subsequently amended and strengthened in 2011 and 2012), and by the adoption of amendments to the Law on Public Administration at the end of 2010. A new Chapter IV was added to this Law (originally adopted in 1999), covering "Supervision of Activities of Economic Entities" (the term "supervision" was consciously preferred to "inspection" as being broader and putting less emphasis on inspection visits, and more on an integrated approach to compliance promotion).

The reform team got inspiration for many of the reform's aspects from the United Kingdom's *Hampton* principles (Box 7.2), and proceeded to implement them – in some ways more radically or consistently than in the United Kingdom (which the centralised system of inspections in Lithuania made easier). The government got some limited international assistance starting 2011 (mostly from World Bank Group experts – with lack of funding limiting the scope and depth of such input), but the reform in its original impulse and design was a home-grown initiative. The Lithuanian reform team looked at the problems of the country, at existing international experience, and these efforts resulted in the revised Law on Public Administration.

Box 7.2. **The Hampton Principles**

Sir Philip Hampton's 2005 review, "Reducing administrative burdens: effective inspection and enforcement" considered how to reduce unnecessary administration for businesses. The Hampton Review set out some key principles that should be consistently applied throughout the regulatory system:

- regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
- regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
- no inspection should take place without a reason;
- businesses should not have to give unnecessary information, nor give the same piece of information twice;
- the few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions;
- regulators should provide authoritative, accessible advice easily and cheaply;
- regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
- regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Source: "Assessing our Regulatory System – The Hampton Review", Department for Business Innovation and Skills (2005), http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system.

The Law on Public Administration: Chapter on supervision

The provisions of the chapter on supervision included in the law are comprehensive as well as, in many ways, highly innovative in the emphasis they put on providing guidance and assured advice to economic entities. In spite of some shortcomings (mostly on the questions of "non-routine" inspections, as well as the lack of definition of, and emphasis on, risk), these provisions remain among the best internationally for primary legislation covering inspections. The ways in which the law's new provisions change the focus from "inspecting" to "promoting compliance" are, in particular, worth studying and imitating for other countries, including OECD member states with a longer history of regulatory reform.

In terms of scope, the law defines "supervision" as consisting of:

- Provision of consultations (put first on purpose)
- Inspection visits
- Analysis of available information
- Enforcement measures.

Noteworthy is thus the way in which inspections and enforcement are not anymore seen as the exclusive ways to implement legislation, but as complementary tools alongside advice (which comes first), and analytical work.

The principles set forth by the law include:

- Burden minimisation and strict proportionality of inspection and enforcement measures – in line with international best practice (and recently adopted OECD principles).
- Neutrality and Transparency (which align very well with procedural justice considerations, see previous section).
- Planning of inspections (this is the principle where the law is weakest because it does not clarify the basis for such planning, which in good practice should be the risk level).
- Functional separation of inspection and sanctions (a practice which limits the scope for abuses of discretion, and helps spread new approaches to enforcement – it has been recommended e.g. by the World Bank Group in many transition economies, and recently introduced in France for labour inspections).
- Requirement for supervising institutions to provide methodological assistance to economic entities – this particularly important principle is one of the crucial innovations of the law.
- Risk assessment and risk focus as foundations for inspections. The actions of supervision institutions should concentrate on establishments presenting the highest risk, defined as the combination of the likelihood and potential magnitude of harm. The definition of "harm" takes into account any harm to values of any kind protected by applicable legal norms. This is quite a broad definition and it will require practical guidance to avoid inspection institutions taking too vague an interpretation of it. It is worth considering narrowing the definition (through secondary legislation) so it focuses primarily on health, safety, the environment, and some fundamental public goods (including state revenue).

The most advanced and innovative part of the law, compared to other examples of primary or secondary legislation applying to inspections and enforcement, is the article dealing with consultations (guidance). First, because providing advice is squarely defined as a priority for supervision (inspection and enforcement) agencies (in line, again, with best practice and OECD principles) – whereas this is a role that, in many countries, is still debated. Second, because the law foresees that advice officially provided is to some extent "binding" on inspection agencies: if an economic entity acts in compliance with such advice (be it directly provided by an authorised inspectorate staff, or officially published), it cannot be subject to sanctions if later on this advice it is found to have been incorrect (which of course does not mean that the economic entity will not have to fix whichever problems exist – only that it will not be sanctioned for what is a good faith mistake, where it followed official advice). The law does provide a few (reasonable) exceptions, but this rule remains quite ground breaking. This type of "assured advice" is something that has been discussed in a few countries (including the United Kingdom), but has mostly been resisted by state administrations for fear of the liability it puts on them. Lithuania has made it a reality. This norm has also been the foundation for the development of inspectorates' call centres (see further in this chapter), in order to ensure that advice and guidance provided are of consistent quality (given the binding nature of this advice).

On inspections visits themselves, the law leaves some of the specifics to secondary legislation, in particular methods for planning and for inspection visits, which are to be developed by each inspectorate. While this is not unusual (and much has been done on this front, as evidenced in the next section), it remains a weakness that the law does not define very clearly the foundation on which both should be developed. There are important norms on inspections that are directly in the law, however: the requirement to announce "routine" inspections in advance (at least 10 days), as well as to have a methodology to define the frequency of planned inspections (even though, again, "risk" is missing). The list of admissible grounds for "non-routine" inspections is also limited, but in a way that is vague and fails to link it to risk considerations. This is one of the weakest aspects of the law. The recently adopted amendments (November 2014) have introduced risk assessment as a fundamental principle of inspections planning. This is a very welcome development. Logically, this should apply to all inspections and simultaneously provide greater clarity on how to target "non-routine" inspections, develop better checklists and planning methods etc. It remains to be seen how the amendments will be implemented. Secondary legislation clarifying and specifying how to understand and apply the provision of the law, which is worded very broadly (defining risk as the probability and magnitude of any type of harm to any kind of values protected by law), would be very useful.[1]

The law also introduces important changes regarding sanctions:

- During the first year of operations, sanctions that lead to operations of the economic entity being suspended should not be imposed (except in demonstrated emergencies)
- Sanctions (their volume, level etc.), or the number of identified violations, should in no way be used as performance indicators for inspectorates.
- On 1 January 2015 amendments to the Law on Public Administration entered into force, introducing and defining the term "minor legal violation". A minor violation is defined as one that causes only little harm to the protected goods and values. In the case of a minor violation an inspector issues only a verbal note if

the violation can be remedied immediately while he is present, or he issues a written note to remedy the violation within a reasonable period of time. A fine is not imposed. This is a welcome improvement, and in line with changes in practices that hitherto were only grounded in secondary legislation, and thus were relatively fragile and open to challenges.

Both points are perfectly in line with the efforts to make inspectorates more effective at promoting compliance, while also being more supportive of economic growth.

The law has a number of other positive and important norms. These include:

- Requirements for annual reporting on performance by inspectorates (which have to include details on their compliance-promotion work, on compliance levels, and on issues in legislation which they recommend to address, based on their "real life experience").
- The obligation for inspectorates to post information on their websites on their field of competence, norms to be respected by businesses etc.
- A "tell it only once" norm, giving the right to economic entities to refuse to submit information to an inspectorate if they have already submitted it to another state body (in which case they should indicate which one) – however, the norm is less strong than a comparable one in Italy which specifically makes it an offense for an official to ask for a certificate (official document) issued by the state, and thus puts the onus on public officials being banned from asking twice, rather than businesses having the right to opt out.

The rules are directly applicable to all inspectorates except for the rules on inspections (e.g. advance notification etc.) that are not directly applicable to those dealing with taxes, customs, supervision of financial services and supervision of competition (though they remain for them as "recommendations"). Overall, the legal framework is strong (and, in some cases, the law's provisions are being invoked directly in legal proceedings – thus it serves not only as a reform framework, but directly as giving new rights to economic entities). The rest of the reform process, the successes on the areas where the law was most innovative, as well as the limitations, demonstrates the effectiveness of this instrument – but also the need for an implementation mechanism.

Reform implementation: Mechanisms, key directions, monitoring

Adopting enabling legislation for reform is a fundamental step, but experience across the world indicates that this will have only very limited impact on inspection and enforcement practices if there are no active efforts to follow up on implementation. Indeed, such a reform requires profound changes that can only take place if the government shows constant attention and intervenes to overcome resistances within inspectorates.

Government Resolution No. 511 (2010) and the "implementation mechanism"

As indicated above, the original version of the Government Resolution on "Optimisation of Functions of Supervisory Authorities" was in fact adopted *before* the amendments to the Law on Public Administration – but it has lesser normative status compared to the law, and also more provisions pertaining to implementation. It was subsequently amended several times (2011 and 2012), but with only marginal changes. The Resolution not only sets forth the objectives of the reform, and of supervision, but

also establishes a mechanism for implementation, and prescribes the use of a number of tools and methods.

Objectives:

- Reduce burden;
- Optimise the use of limited resources to manage risks;
- Fight corruption;
- Move towards a compliance promotion approach.

Mechanism:

- "Expert Group" gathering the key ministries and most important inspectorates;
- Co-ordination and guidance entrusted to Ministers of Economy and Justice;
- Regular reporting to the government.

Tools and methods:

- Checklists for inspections strongly recommended;
- Focus on consultations – and measures (e.g. FAQs, call-centres) to ensure their uniformity and reliability;
- Risk-assessment as basis for supervision;
- Special status for start-ups during first year of operation (no suspension of operation, one month to correct mistakes/violations before imposing sanctions etc.);
- Common Commencement Dates for new regulations (see Chapter 6 on the management and rationalisation of existing regulation); and
- A number of other measures (on information, reporting etc.), which were generally taken up in the Law on Public Administration.

"Supervision groups":

- In order to improve co-ordination and limit overlaps and duplication, the resolution introduced nine "supervision groups", gathering inspectorates in a related field.
- The grouping made sense, and was useful to some extent, for example, to share practices; but hopes to achieve better co-ordination of planning and data sharing did not fully live up to expectations. This proved difficult to achieve, and instead the focus was put on work within the Expert Group.

Overall, the resolution set very sound principles and a number of very important reform tools – most of which were also taken up in the law, but not all. In particular, the Resolution is the source of all the implementation work on risk-based inspections planning, and checklists. It also created the Expert Group, which was reported by key reform actors to have been a very good setting for focused and effective reform work. Indeed, the most successful inspectorates in terms of reform, and those that offer the best examples, all were part of this group (but some quite "unsuccessful" ones were also part of it). It also gave the ministers of justice and economy a clear task to give some guidance and steering to the reform.

It failed, however, to build a strong implementation mechanism – which could have included a more formal decision making mechanism and "vetting" mechanism on inspection methodologies, a time-specific and resource-specific action plan, and resources allocated to reform support and co-ordination. It also did not give specific guidance on how to build good checklists, or how to define risk and develop risk criteria. The newly adopted amendments to the Law on Public Administration, which put risk at the centre of inspections and supervision work, are a good opportunity to adopt new, stronger secondary legislation to ensure better reform implementation.

These two shortcomings were to some extent alleviated by the creation of a specific division within the Ministry of Economy, and the adoption of comprehensive and clear guidelines for checklists and risk criteria development (both based on best international practice), as a joint decision of the Ministers of Economy and Justice (both of these changes taking place in 2012). However, this joint decision only has a weak status and thus compliance with it remains mostly voluntary for inspectorates – and the "supervision optimisation" (inspection reform) division only has limited resources to deal with a vast number of tasks. The fact that the institutional mechanism was relatively informal has been one of the reasons why, over time, implementation has slowed down.

Key directions of reform and relative reform slowdown

Over the first years of reform, Lithuania managed to achieve impressive results in a number of reform directions, while essentially "postponing" others – conscious choices were made to prioritise the actions that were deemed most likely to produce significant impact quickly: checklists development, development of guidance and consultation activities, changes in enforcement, risk-based approaches. Improvements in performance management were also introduced (and work is currently ongoing to develop this further). Unfortunately, reform implementation has then slowed down. While work has been done on some key issues that were missing from the first phase of reform (development of IT systems, consolidation), little results have been achieved so far, and there are a number of concerns. Some important areas (reviewing inspectorates' mandates and goals, improving governance) have also been neglected.

Summarising the main reform outcomes from the first phase (until 2012-13) looks as follows:

- Development and adoption of checklists for all major inspectorates, covering the most widespread types of economic activity, particularly SMEs (over 65 checklists in 2012 – now 148 in total).
- Introduction/improvement of risk-based planning systems in major inspectorates where they were hitherto absent (e.g. labour, non-food products…) – and further consolidation in those where they already were in use (SFVS, tax).
- Set up of uniform consultation practices and call-centres in several major inspectorates (SFVS, Consumer Rights Protection, Labour, Non-Food Products, Territorial Planning…) – and further development of e-services in the Tax Inspectorate (which led the way on consultations, and had a call-centre operational since 2006).
- "First Year Declaration" whereby inspectorates voluntarily sign on better treatment for new businesses (including no sanctions on first visit in most cases) – signed first by 9 main inspectorates, then by several dozen others (now 50 out of 60).

- Clarification of enforcement practices in respect to "minor violations" (agreement on definition of some minor violations for at least some inspectorates). Amendments to the Law on Public Administration that entered into force in January 2015 have now given a legal basis to "minor violations" (defined as those that can only cause limited harm) and clearly indicated that inspectors should only issue warnings in such cases.
- Adoption of performance criteria for inspectorates – however too many indicators with too frequent reporting schedules, and further improvements needed to make the system more meaningful.

Since 2013, efforts to further develop these reform elements across all inspectorates have been limited, even though some numbers (e.g. number of checklists) have improved significantly. "Best performers" among inspectorates (notably tax, labour, the SFVS) have continued to work on improving their practices, processes, staff qualifications etc. – but little progress has been made in other institutions. While there have been some recent efforts to look again at the performance management system and push inspectorates to adopt indicators that more closely reflect their goals in terms of public welfare, this is still ongoing, and has not been part of a broader effort to review the goals and mandates of inspectorates. The main direction of reform work has been consolidation – and preparatory work has been done on the development of an information management system for inspections. These two streams of work can be summarised as follows:

- ***Information management systems***: as early as 2012, it was recognised that many inspectorates lacked a good information system that would allow them to properly plan inspections, record their results, and generally turn risk-based approaches into practices. Rather than build separate systems for each of them, introducing a unified or partly-unified system for several or even most inspectorates was found to be the most effective and efficient approach. However, the expertise procured in 2013 seems to have produced rather inconclusive findings and recommendations, and decisions and action on this issue are still pending. This means that real improvements in targeting and planning are still elusive in most inspectorates, and that also optimal risk assessment is impossible even for inspectorates which do have their own information system, since there is no data sharing with others.
- ***Consolidation***: in the first phase of reforms, some limited consolidation took place (a few mergers), resulting in a list of 60 inspecting institutions, which still was very large. Many of these inspectorates were small, but a considerable number of overlaps, duplications, unclear mandates etc. remained, as well as fragmentation that is not conducive to effectiveness and efficiency, and leads to confusion for businesses. The government decided to focus on consolidation, defined an action plan and a process. Working groups gathering state and non-state stakeholders in 11 areas reviewed the existing situation, proposals, possible options and submitted conclusions in September 2014. Ministries are now working on turning conclusions into proposals for legislation to change the institutional setup and significantly decrease the number of inspectorates. However, as far as can be observed, only limited attention is being paid to reviewing the mandates of inspectorates – many of them are problematic, and merging problematic entities will not solve the issues. Proposed mergers also do not always correspond to international best practice. These difficulties will be discussed below in the "shortcomings" and "recommendation" sections – but

clearly the consolidation process is still far from having delivered significant results.

Overall, the reform achievements are quite significant if one looks at these outcomes, even considering the slowdown in the past couple of years. If there is progress on IT and consolidation issues, this slowdown itself could easily be reversed. What is important, however, is to look at what impact these reforms have achieved.

The Lithuanian government has shown real attention to tracking reform implementation through regular surveys, four in total, covering 2011 (full year), and 2012, 2013, 2014 (first half year). During the earlier phase of reform, in addition, a shorter-term, "scorecard"-type tool was used to track compliance of inspectorates with reform requirements. This unfortunately seems to have been abandoned, but the survey results are what matters to assess the impact of reform – which we discuss in the next section.

Reform impact: Summary of main improvements and limits

Assessing reform impact is not always easy, considering the many aspects that are affected by inspections – administrative burden, investors' confidence, public interest outcomes (safety, health etc.). Reliable or recent measures are not always available for all of these. Impact may also vary significantly between different regulatory spheres and inspectorates, or even for different impact measures in a given inspectorate (burden may go down, but effectiveness not go up, or vice versa etc.). In order to reach a balanced assessment of reform impact we use here three complementary approaches: business survey data (directly reflecting administrative burden, and some essential features of reform implementation and inspectors-businesses relations)and consolidated insights from direct interviews and desk review (giving a comprehensive view of all aspects of the inspections and enforcement system) – and finally "focused" highlights presenting the situation in specific agencies (both strengths and weaknesses).

Survey data

A total of 4 representative business surveys have been conducted so far covering business inspection issues[2] – one end 2011 (covering 2011 data), and three in summer 2012, 2013 and 2014 covering the first half of each respective year. The first survey had a sample size of around 500, successive ones a sample of 1 000 – thus, data is adequately representative. Overall quality of survey work is good, and data can be used with a good degree of confidence. However, experience with these and many similar surveys (e.g. those conducted on the same topic by the World Bank Group over more than 10 years) leads to treating more "qualitative" answers with caution. When respondents are asked to comment on whether inspectors are helpful, professional etc., or whether the situation has improved, their statements are likely to be influenced by a number of factors (see World Bank Group, 2009). For this reason, we will focus on the data from more "objective" questions, on whether an inspection took place, and whether certain tools or practices (e.g. checklists, advance notification etc.) were used.

A few additional points of caution and clarification are required. First, the sample size in 2011 was smaller, and the published survey data is not fully complete, with the number of inspections per enterprise inspected in particular missing. An estimate had to be calculated from the published data, but there is room for error. Second, in the latest survey publication (2014), there is again a way to present inspection duration that leaves

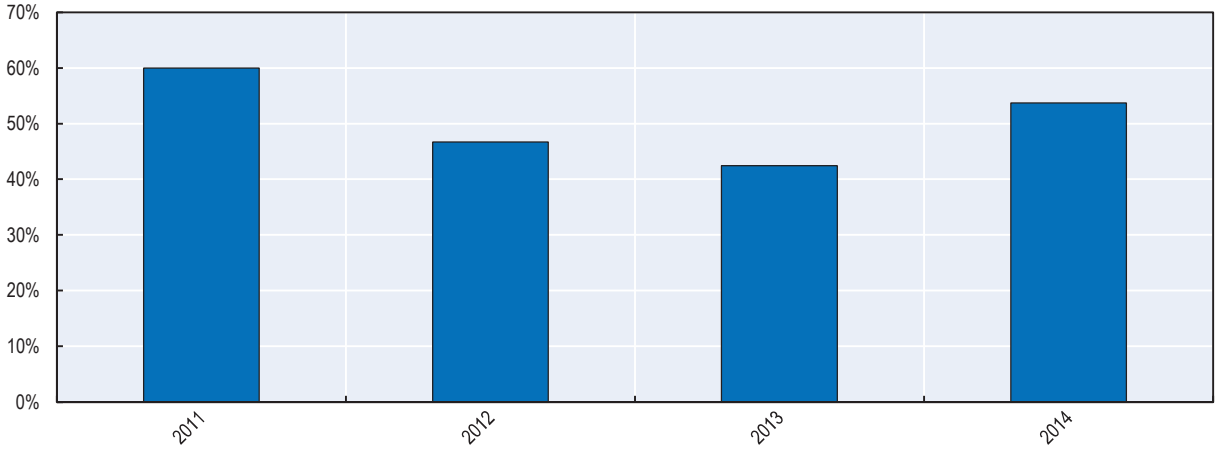
room for error, since the average duration was not given in the report, and has to be again calculated from incomplete data.

Finally, since 2012, surveys cover only half a year. While this allows having data during the year and thus evaluate reform progress and steer further actions, it is in fact not best practice for a number of reasons. First, inspection frequency, duration etc. may vary during the year, in particular for some agencies (SFVS, Tax etc.). Some may inspect more in summer (food, for instance), others towards the end of year (tax, in many countries). Capturing only a half-year leaves room for error. In addition, in order to compare annualised results, an extrapolation has to be done. Assuming that inspectorates have a constant volume of resources, the number of inspections should remain relatively stable from one half-year to the next. This means that the product of percentage of enterprises inspected, and of number of visits per inspected business, is constant. Thus, to extrapolate from half-year to full year, we have multiplied both by $\sqrt{2}$.[3]

The percentage of businesses inspected declined at the beginning of the reform process, but is rising again

After a strong decrease from 2011 to 2012, the percentage of businesses covered by inspections increased strongly in 2014 (Figure 7.1). Looking down at breakdown by agency, this appears to be mostly driven by an increase in Tax, SFVS and Labour inspections (Figure 7.2). It should be noted that the State Tax Inspectorate reports that its control actions during this time would have in fact gone down. However, since the data reported by the STI appears to be for a narrower type of inspection visits, this is not absolutely comparable. Experience elsewhere suggests that representative survey data is a reliable source to assess burden on businesses, and this clearly appears to have gone up. It may be driven by a variety of visits that may not always be registered as formal "inspections" or "tax audits", but is none less real.

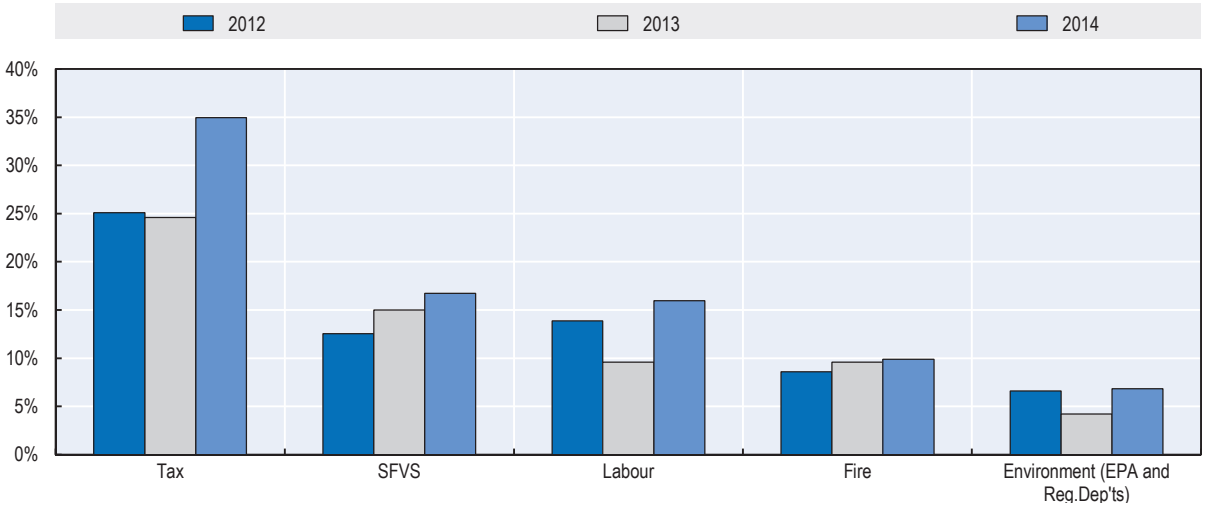
Figure 7.1. **Percentage of all businesses inspected in a given year**



Source: 2011-14 business surveys commissioned by the Ministry of Economy, www.ukmin.lt/web/lt/verslo_aplinka/verslo-prieziura/ataskaitos.

Figure 7.2. **Percentage of businesses inspected in a given year, by agency**

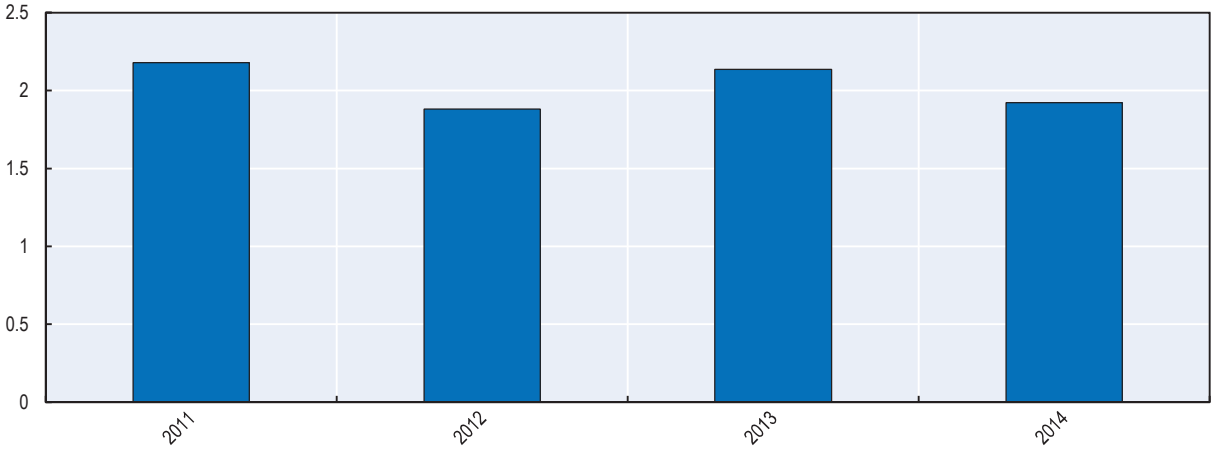
(only most important ones listed)



Source: 2011-14 business surveys commissioned by the Ministry of Economy, www.ukmin.lt/web/lt/verslo_aplinka/verslo-prieziura/ataskaitos.

The number of inspection visits per inspected business went down at first, but this has not been confirmed over time (Figure 7.3).

Figure 7.3. **Average number of inspection visits per inspected business, per year**



Note: For 2011, OECD estimates based on survey data.

Source: 2011-14 business surveys commissioned by the Ministry of Economy, www.ukmin.lt/web/lt/verslo_aplinka/verslo-prieziura/ataskaitos.

Duration has probably decreased a bit, but not very significantly

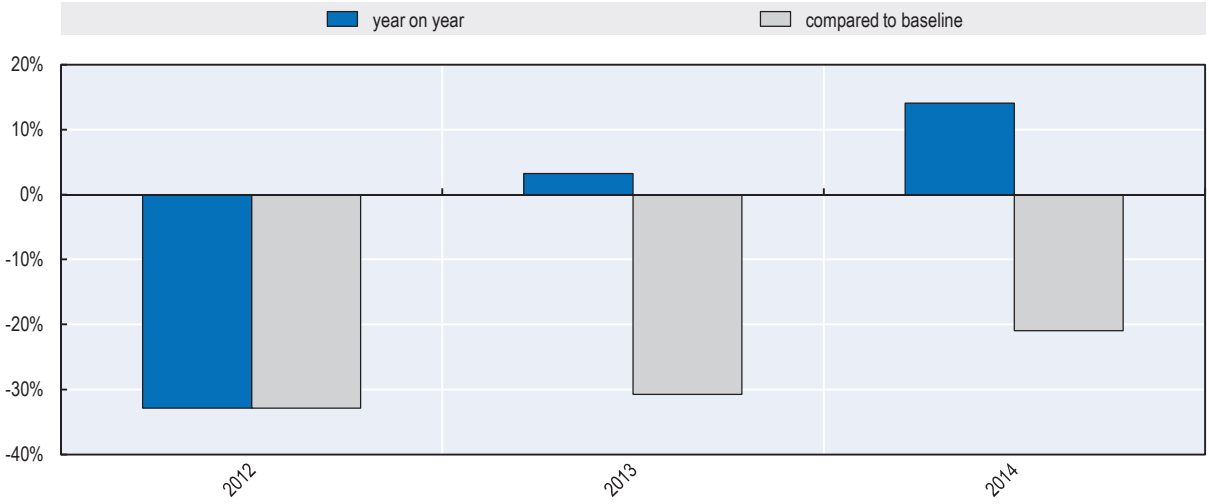
Data on duration is presented in survey reports in ways that make it difficult to calculate a reliable average. Figures for specific inspectorates suggest real improvements for some: tax inspections average went down from 4.6 hours to 2.9 hours between 2011 and 2014, labour: from 3.2 to 2.6 hours. But inspections by Regional Departments of Environment went up from 2.9 to 3.3 hours over the same period. The average duration for 2011 is estimated at somewhat above 3 hours, whereas in 2014, it may be slightly below 3 hours. Overall, the decrease (if confirmed) is not very substantial.

Evolution of administrative burden

Taking here the administrative burden in its narrow sense, i.e. only from inspections' duration,[4] it is visible that there was a significant decrease in 2012, but that this has been partly reversed in the meantime. The below figures are estimated assuming that the duration of inspections is constant. As indicated above, there may in fact have been a small decrease, so the overall decrease in burden may be somewhat stronger than suggested below, but the trend is as presented below (Figure 7.4).

Figure 7.4. **Changes in burden from time lost during inspections**

Compared to previous year and to 2011



Source: 2011-14 business surveys commissioned by the Ministry of Economy, www.ukmin.lt/web/lt/verslo_aplinka/verslo-prieziura/ataskaitos.

Compliance with reformed procedures is overall good, and improving

Advance notification is complied with in 63% of cases in the latest survey, a number that has been roughly stable since 2012. The percentages vary, however, between inspectorates: 73% for Fire Safety inspections, 58% for Tax, 49% for Labour and only 33% for SFVS. It is known that the EU Food and Veterinary Office (FVO) strongly advises against advance notification in inspections, even though there is some evidence that, when used appropriately, it does not in any way harm the inspections' effectiveness – and this adverse guidance explains the low percentage for the SFVS. The relatively low figure for Labour is likely due to a lot of inspections based on complaints and/or trying to "catch" illegal employment.

Use of check lists has improved over time, in line both with the elaboration of more checklists (covering more agencies, and more economic activities), and with greater familiarity with the tool. In 2012, only 46% of respondents indicated that checklists had been used, in 2014 the figure is 58%. Some inspectorates have higher compliance: 63% for SFVS, 66% for Labour, 77% for the Environmental Protection Agency (EPA). Fire has only 51%, whereas this is a field where checklists are particularly applicable. There is clearly scope for improvement on this front. The State Labour Inspectorate (SLI) reports that its percentage may be even higher (close to 90% based on its own data) – the lower percentage reported by businesses may reflect discrepancies between practice "on the

field" and inspectors' reports, or it may come (as suggested by the SLI) from the inclusion of visits to control illegal work, which do not necessarily rely on a checklist.

From 2012 to 2014, the percentage of respondents indicating that inspectors also checked points *not* included in checklists has increased strongly: from 40% to 49% in 2013 and 53% in 2014. The most frequent cases are in Tax, SFVS and Labour inspections (in declining order). This suggests that there may not be major cause for concern (but for remedial action): first, because checklists are relatively less important in Tax inspections (where they are more of a reminder of items to check, what matters being the overall compliance level – whereas in technical safety inspections, checklists are a clear guide to compliance "step-by-step"). Second, because it is in fact normal that checklists require regular improvements and revision, particularly when they are a new tool. If inspectors are finding the need to inspect a lot "outside", it means a review process is required. In any case, this points to the importance of sustained implementation efforts – to ensure that progress is not rolled back, but on the contrary further deepened. The fact that in more than 90% of cases (in every year) no sanctions were imposed for violations "outside the checklist" confirms this case for relative optimism. The "worst offender" (largest share of sanctions for items not included in checklists) is the Environmental Protection Agency – an institution where clearly further reform is needed (see below).

Finally, even though this should not be taken as an indicator either way, it is worth noting that the proportion of inspections where warnings or sanctions are imposed is remarkably stable between 2011 and 2014, with 75-80% of inspections not resulting in sanctions, and fines imposed in less than 10% of inspected enterprises.

Reform awareness: limited, but some improvements

Over time, the percentage of respondents aware of the inspections reform process as such has remained stable, and low, at around 25%. However, awareness of specific tools and features seems to be improving, with awareness of checklists the most notable, increasing from around 30% to 80% in 2014. This suggests that additional information and outreach efforts could be done, and may be beneficial to ensure that reform momentum is sustained, by building stronger support for what has been achieved, and for next steps.

Summary conclusion on data

The trends over successive years as suggested by survey results tend to confirm the picture described above of a reform process that went strong at first, but has since slowed down considerably, and with some reversals in specific areas. The strong increases in some inspectorates' coverage in recent years would have to be further investigated: what motivated them? Did they yield beneficial results in terms of impact? If not, then these increases should be reconsidered.

It is difficult to compare such data internationally because of the lack of comparable surveys in OECD countries. The percentage of enterprises inspected and the number of yearly visits compared favourably to many post-Soviet countries (where surveys have been conducted by the World Bank Group), but this is not the group with which Lithuania is trying to benchmark itself.

The United Kingdom does not have directly comparable data but estimates based on a combination of different surveys and reports suggest that the percentage of enterprises covered is definitely most probably around 35 to 40% – which suggests that there is room

for improvement in Lithuania. In Italy, surveys conducted in 2012 by ISTAT showed that around 37% of all SMEs were inspected every year – the frequency of visits, however, was higher than in Lithuania (around 5 per inspected business). Thus, in terms of overall burden, Lithuania may already be in a somewhat better position.

This data is consistent with the overall perspective of a reform process that has been very strong at first, with some "world class" reforms in particular with respect to compliance promotion, and thus has already allowed Lithuania to "leapfrog" practices in many "old" EU and OECD members. There remains, however, considerable space for progress to reach "best practice", and the fact that reforms have slowed down has not allowed to bridge this gap, but rather has let it widen again.

Effectiveness

Assessing effectiveness of the inspections and enforcement system is complex. Data is often missing, or is not independently produced, i.e. inspectorates produce themselves the data against which they should be evaluated. This is particularly problematic when the data is primarily compliance rates: since compliance is checked by inspectorates, they may have incentives to major or minor it, depending on the policy of the government. Only independent monitoring, evaluation, measurement allows to have full confidence in results assessments.

In spite of this, there are a number of cases where data has sufficient reliability, either because it comes indeed from external sources (e.g. the EU), or because it relates to issues which are highly visible and where statistics are far more likely to reflect reality more-or-less fully (fires, deaths). The evidence coming from these suggests that effectiveness of regulatory delivery efforts in Lithuania is variable:

- Food safety: evaluations by the EU FVO and monitoring by the European Food Safety Agency (EFSA) both confirm that SFVS inspections and overall activities are effective and in line with good practices, and that the level of food safety in Lithuania is generally good (in line with EU norms and objectives). This does not mean there is no room for improvement, but clearly this is a field where efforts over the past ten years and more have borne fruit.
- Labour safety: whereas incidence of labour-related injuries and sick-leave are low, the incidence of *fatal* accidents is among the highest in the EU, and way above the EU average (Eurostat data). This is important because labour-related *fatalities* are mostly impossible to hide, and this means that the injuries and sickness data is certainly underreported. Compliance with occupational safety rules, and in particular the essential ones, is clearly still problematic, in spite of the Labour inspectorate's efforts – although it is well known that occupational fatalities incidence is linked also to other factors such as industrial structure.
- Fire safety: statistics compiled by the CTIF (International Association of Fire and Rescue Services) again show Lithuania with an incidence of fire-related deaths that is vastly higher than EU and OECD averages, and is in fact quite similar to neighbouring post-Soviet countries such as Russia or Ukraine. This is clearly a cause for concern, even though the numbers appear to be improving over the past 5 to 10 years.

Considering the *details* and *causes* of these gaps in effectiveness is, however, more important than just looking at the raw aggregate numbers.

In fire safety, there are in fact *no* fatalities and virtually no injuries in fires in manufacturing and business premises. Eighty five per cent of fire-related deaths occur in "residential buildings and hotels" – which are unfortunately not separated in official statistics, but anecdotal evidence suggests that in the past years there were no reported hotel fires, so the overwhelming majority of these deaths take place in residential buildings. The three leading causes of these fires (and deaths) are careless smoking, "other careless behaviour", and faulty electrical wiring or other electrical equipment. This all points to deeply engrained behaviours that are indeed (as the incidence of deaths) quite similar to those found in other post-Soviet countries, and to equipment and infrastructure that have aged, and were designed with far lower electrical usage levels. In short, what should be an absolute priority is education, aiming at changing private behaviours, and also programmes to support upgrading of electrical installations. The Fire and Rescue Service expends significant resources in inspecting businesses (with over 18% inspected per year) and, considering that there are no fatalities at all in business premises, this clearly looks like misallocated resources.

The statistics on occupational fatalities, in turn, may look quite disappointing considering that the labour inspectorate is one that has made considerable progress over the past years, both in targeting, methods, compliance promotion efforts etc. This comes, however, after many years when this was an institution that had made limited progress – hence a first issue is that impact of new methods has simply not yet had time to be visible (indeed statistics show some decrease after 2008, but still insufficient). This situation leads to at least four comments:

- The government should focus more on investigating areas where safety levels are low and "out of line" with EU and OECD averages, allocate resources for such investigations, and then direct relevant agencies to act on this basis;
- Resource allocation within the Labour inspectorate is based on a dual mandate: enforcing employment legislation, and occupational safety and health – thus, up to around half of the inspectorate is focused on employment law issues, and this leaves only limited resources to focus on Occupational Safety and Health (OSH);
- Risk focus of labour inspections could still be improved – in particular by *i)* further developing planning criteria (which, for now, take insufficiently into account the size of the business, and its prior compliance history) – *ii)* using systematic data sharing with other inspectorates, to better identify potentially problematic businesses (which again shows the importance of an integrated information system);
- Finally, as anecdotal evidence again suggests that much of this high incidence of fatalities is linked to reckless behaviour, the level of resources and efforts allocated to education probably needs to be increased.

These few examples show that, if the inspection and enforcement system in Lithuania is to significantly improve its effectiveness in terms of public welfare, more effort needs to be made in these directions; first, better data and more analysis; second; more government attention to this problem; third, better risk focus: and fourth, more "radical" rethinking of priorities, reallocation of resources, and even more attention to education and outreach.

Highlights on specific agencies

To conclude this assessment of the current level of development of the system and of the reform's impact, it is worth looking in more details at a few agency-level examples, focusing on some of the best practices, and some of the really problematic ones.

Good practices

- *Tax Inspectorate*

The State Tax Inspectorate (STI) has clearly defined its mission as supporting voluntary compliance with the maximum efficiency. It evaluates its performance in terms of compliance levels. It has a well-established practice of information and advice, with a centralised process. Its call-centre started operating in 2006 and served as model for others. It has also been one of the first inspectorates to plan inspections on the basis of risk (with an automated risk analysis and case selection system since 2007). A Tax Information Department was established in 2011. This enables better quality management.

Approximately 150 people work in this department. The department handles up to one million calls per year, and around 17 000 detailed inquiries. The staff relies on a database of 7 000 documents, Q&A etc., which is also accessible directly to the public. The STI also organises seminars, webinars etc. to conduct proactive outreach towards taxpayers. The Tax Information Department provides unified and coherent consultations, is organised to optimise the use of its resources and its efficiency, and to work as a "one stop shop" – taxpayers can get all advice either through the unique phone number (1882), or online via "My STI". The inspectorate also reported that providing advice, consultation and information was a key priority for its staff overall (not only in the Tax Information Department).

It was not possible to fully evaluate the risk analysis methodology, as the STI did not want to share details (many other tax services likewise prefer to keep their risk criteria confidential). It would however be useful to further examine these criteria, and in particular whether they include looking at variations, discrepancies vs. sector averages, etc. Most importantly, the practice of information sharing, already in place with Customs, should become more systematic with other inspectorates, in order to more effectively fight evasion (once again pointing to the need of a system to share information).

Overall, the STI still appears to have a high rate of inspections, as evidenced by business surveys – and one which has increased again in recent years. As suggested above, this increase should be evaluated – whether it was really justified, and whether it has brought gains in effectiveness. Depending on the answer to these questions, further course for the next years should be defined. While the STI clearly is one of the best inspection and enforcement institutions in Lithuania, and one that clearly also belongs to "international good practice", this should not be ground for complacency.

- *Food and Veterinary Service*

The State Food and Veterinary Service (SFVS), like the STI, has been one of the "trailblazers" in Lithuania in terms of risk management and of modern enforcement methods. This is of course partly due to the significant efforts expended by the EU to ensure that food safety services in new Member States are up to standard – but it is worth noting that the SFVS is clearly "above average" also within new Member States, both in

terms of its level of integration, and its practices. On the integration side, the SFVS is really responsible for the whole food chain, and integrates not only inspection but also risk management and laboratory functions.

The SFVS clearly defines its mandate in terms of protecting the food chain and minimising contamination. Indicators include the level of food borne diseases and food poisoning outbreaks, as well as animal diseases incidence. It has been focusing increasingly over the past years on education, including not only towards businesses but citizens/consumers, to decrease food poisonings originating at home (it also co-operates with business associations). Information and consultation for food business operators are a key aspect of its work.

A "restaurant sticker scheme" is now starting, so far voluntary, along the lines of existing models in the United Kingdom and Denmark. It will allow to "leverage the power of the market" to drive higher compliance, since consumers will be able to know the food hygiene rating of the restaurant they plan to visit. Experience and evaluations have shown that such schemes are generally effective at increasing compliance without adding administrative burden on businesses.

Staff training is an area where further development would be useful. While specialised training on technical issues exists, most "on the job" training is relatively informal (mentoring by more experience inspector), and more formal programmes are mostly EU-driven. Developing a professional vision, competency model and formal training curriculum, as well as continuous evaluation and improvement, would be important for the further development of the service.

- *Labour Inspectorate*

The State Labour Inspectorate (SLI) has considerably transformed its approach over the past few years, since the start of the reform process. In this sense, it is a good example of what the reform process can achieve, since the STI and SFVS had started their development process earlier already. It now puts a square priority on reduction of accidents at work as a key goal, even though results (as indicated above) are still not really satisfactory.

Consulting and advice now makes up the majority of activities – through different channels: call-centre, online, on-site advice etc. In the call-centre over 40 inspectors are involved on a rotation basis (on average 7 inspectors each day). Each inspector provides approximately over 50 consultations per day. The SLI's vision is to engage with employers and support their compliance – attempting to show the advantages of good practices from other companies or countries. Its 142 inspectors spend a large share of their time on advice, and a team of approximately 15 consultants (2/3 on legal issues, 1/3 on OSH) works in the call centre. They get approximately 15 questions per day per consultant, with the majority on legal issues.

A limitation on efficiency is that there are always two inspectors per visit – one for OSH, and another focusing on employment law. While this means the businesses have only one visit, and each staff can have adequate skills, it is a drain on limited resources, and it should be investigated whether in many simple cases one inspector could not cover both areas. The SLI reports that this is already possible for very simple cases, but is rarely used because of corruption risks, and because working in teams allows for mentoring from more experience inspectors. These are reasons that may be valid, but are not fully

convincing at first glance. A closer look at the practice would still be warranted to ensure that resources are used as efficiently as possible.

Planning of inspection visits is now done on the basis of risk, and relies on a new information system that was introduced in the past couple of years. Risk criteria include sector considerations, turnover of staff in the businesses, and records of earlier accidents. They do not differentiate by size of business and may insufficiently incorporate prior records – further development of the risk methodology may be useful. The SLI already shares information with the Tax Inspectorate to fight "informal" work (and the two conduct joint inspections) – sharing data with other inspectorates may help to increase effectiveness further.

Post-reform, the SLI has a "responsive" approach to violations, deciding on actions based on the overall picture in the business, the level of severity and risk of violations, the history of the company, the intent or lack thereof of violations etc. Each business can ask labour inspectors for advice and receive recommendations (although the responsibility for decisions rest with the business). However it was reported that inspectors were a bit reluctant to provide very firm and specific recommendations on improvement, not necessarily for lack of technical knowledge (though this may be an issue), but for fear of liability. Given the still high level of OSH problems, this is an area for improvement: inspectors should have full confidence and ability to be able to guide businesses in a clear and specific way. Generally, an even greater focus on OSH-related information, education and guidance is needed – including towards workers and the general public.

Finally, training is once again primarily informal and based on mentoring from experienced inspectors, but a form of "practical test" before confirmation. This is another area where further development would be beneficial.

Problematic practices

- *Territorial Planning*

The State Territorial Planning and Construction Inspectorate (STPCI) is a prime example of the considerable potential for further simplification and streamlining of the system, and in particular of the possible efficiency gains. While the inspectorate reports having changed its work principles, and put the emphasis on consultation, what is still unclear after several years of reform is what *purpose* this institution has. Of course, the institution has an official mandate ("carrying out state supervision of territorial planning and construction"), and activities (ensuring that territorial planning, construction works are carried out in conformity with the law) – but it is far from clear what is the *goal* of these in terms of public welfare, and what risk to the public these activities aim at mitigating.

In fact, the inspectorate appears as an inheritance from an era when the state was expected to drive and control every activity. When asked to define its mandate in terms of risks to the public that it would be addressing, it is practically impossible. The inspectorate checks that building and planning are done "in accordance with the law", but the goals of these controls are not well defined. Indeed, the inspectorate does not verify, for instance, whether construction complies with safety norms (which would address the construction safety risk), or with environmental norms, but rather that the buildings correspond to what has been planned originally. This is a kind of circular check that adds little value, and could very well be performed by the developer/owner. It is also far from being the only institution involved in the whole planning and construction permit, and

building supervision (see Chapter 9 on territorial planning and construction permits). Its added value (on top of a system that is already too complex) is far from clear. While the inspectorate used, among other tasks, to check whether local authorities had issued construction permits and planning documents "in conformity to the law", it now reports to have set its main focus for this year and the next on verifying whether renovation of high occupancy residential buildings has been done in conformity with the approved building project. In neither case is it really clear what public interest the inspectorate is pursuing, why a specific state agency is required for this purpose, what risks it is addressing, and in which ways this is a rational use of public resources.

As far as could be assessed by the mission, and as was explained by STPCI representatives during meetings, it is only verifying formal compliance, i.e. whether a building was indeed built according to the plans that were agreed upon, for instance. This point was repeatedly confirmed by STPCI representatives, and is also consistent with earlier fact-finding work done by the authors of this review in Lithuania in previous years. Thus, the STPCI does not appear to have a strong role in ensuring safety of the buildings, protection of the environment, and other essential purposes of the planning and construction regulatory system. It chairs the commission that approves start of exploitation of new (or renovated) buildings, but this is part of a construction permit system that is in any case in great need of reform.

Supervision of other institutions involved in planning and construction approval does not, based on evidence from international practice, require a full-time inspectorate, and can be part of other internal audit functions of the state – and also can, and should, rely more on litigation. Compliance for its own sake should not be the goal, but mitigation of risks and harm – if there is no harm done to anyone, it is unclear what this double checking will provide. As to checking whether contractors have done renovation works according to contract, there is very little (if any) justification for having a state body do this. There are many private providers of such service, and there is no serious public interest involved. The fundamental principle of state regulation and regulatory enforcement should be that intervention is warranted only when there is evidence of market failure. In the absence of such market failure, maintaining an entire institution is questionable. With 265 staff, with roughly 2/3 to ¾ focusing on construction and the remainder on planning, the inspectorate is no small institution. At a time when there are so many demands on limited state resources, the inspectorate appears to be an institution that may have outlived its usefulness, regardless of the quality and qualifications of its staff (who could certainly be reallocated to higher priorities). The STPCI has indicated that it is increasingly moving towards more of a "consulting" than an "enforcement" role. While commendable, this still raises the question of what goals (in terms of public welfare, interest) these consultations aim to achieve. Chapter 9 provides further details on some aspects of the role of the STPCI and the questions it raises. The recommendation is to very seriously reconsider, as part of both inspections reform and construction permits reform, what the purpose of the STPCI is, what is effectively needed, and whether this institutional set-up is still relevant.

This case underlines a considerable weakness of the ongoing consolidation system: that it does not challenge the necessity of existing institutions, and does not seriously consider the relevance and adequacy of their mandates. It looks more as functional and sectoral proximity, and seeks to consolidate what looks roughly similar or related. Rather, consolidation should start from thinking through what functions are *actually needed*, and from there go to how they should be structured and organised.

- *Environment*

The situation with environmental inspections in Lithuania is quite confused, and there is general agreement among most experts that this is one of the priority areas for reform. It was difficult to obtain all the necessary information to have a precise view of the system, hence these remarks will be limited to a few, key salient features.

First, the institutional set up is highly problematic, with parallel supervision (including inspection) functions hitherto exercised by the Environmental Protection Agency (EPA) and Regional Departments of Environment (reporting to the Ministry). A new Environmental Protection Service has now been created in addition, and the respective roles and interactions of the three are still to be clarified. Survey results show a certain number of problems with their inspections – that they are the longest on average, have the largest share of sanctions imposed outside of checklists, etc.

Criteria for planning and targeting work also seem problematic. Regional departments appear to follow closely ministerial instructions, which is in contradiction with OECD *Principles* which state that political decisions should intervene at the strategy level, but not in operational decisions.

It appears difficult to believe that the environmental sphere can be in such a poor shape, in contrast with areas like occupational safety and food safety. It seems clearly that consolidating *all* supervisory functions related to the environment (those of the three institutions listed above, and any other as well) in one body should be a priority – along with the development of a sound mission statement, clear risk methodology, and professional methods.

- *Non-Food Products Inspectorate*

The State Non-Food Products Inspectorate (SNFPI) is an agency that is under the Ministry of Economy, which is leading the inspections reform – as such, it is a disappointment that there remain serious issues with this institution, and that the planned consolidation risks making these problems far worse.

Even though the SNFPI is not one of the largest institutions (at least 10 times smaller than the SFVS in terms of staff and number of inspections), it is an important one to ensure the safety of consumer goods. It is the main market surveillance institution in Lithuania. Over recent years, it has improved its methodology, developing checklists (but with a "laundry list" approach, including all kinds of requirements without real consideration for risk), implementing the "First Year Declaration" etc.

It also has a risk-based approach, but its criteria for risk are rather insufficient, since they consider mostly the amounts of "dangerous products", Rapid Alert System for dangerous non-food products (RAPEX) alerts, previous controls, complaints – but not really any analysis of actual health and safety effects in previous years. The inspectorate indicates that it is practically impossible at present to obtain data on causes of death and injury from the health care system, which makes better risk-based targeting extremely difficult. Clearly, this is an area where systematic information sharing, standardised reporting forms, etc. would help – and this has to come from the centre of government. Information sharing with institutions such as the Fire Safety service would also be crucial.

Beyond this, however, the main problem is that the inspectorate still shows *i)* a very confused approach to its own mission and *ii)* a far too large share of complaints-based work as opposed to pro-active targeting – and these two problems are at least partially linked. The inspectorate still considers as its mission to broadly ensure the "quality" of products, and to respond to consumer complaints about quality – and it considers that every product on the market should conform to a "standard". This looks like a clear leftover of early post-Soviet approaches, and is similar to what one could see e.g. in Ukraine, and requires changes in guidelines and practice.

The Law on Product Safety is one of the key pieces of legislation that were adopted or amended as part of the approximation process with the EU *"acquis communautaire"*. As such, many of its provisions are directly translated from the EU's General Product Safety Directive (GPSD) (2001/95/EC). The problems arise from the facts that several important sections of the GPSD were omitted, and other highly inadequate points added. The GPSD states that products on the market have to be safe, and a product shall be deemed safe when it conforms to either European standards, other voluntary national standards, EC recommendations, "product safety codes of good practice", "state of the art" or "reasonable consumer expectations concerning safety". In other words, the GPSD leaves considerable flexibility to put on the market new products that do not correspond to any particular existing standard, particularly for types of goods that are low risk and thus not covered by specific EU Directives or Regulations. Many inspectors, however, remain convinced that they need to find standards for everything, and that in the absence of standards they cannot evaluate safety. First, this is fully mistaken, since standards are only one of the instruments that can be used (compliance with standards gives what the EU calls a "presumption of conformity"), but never the only one. Second, this also means that the SNFPI tries and control far too many products, including many with a very low level of risk. Good practice market surveillance institutions in the EU, on the contrary, start from hazards and risk levels, define methods and tools to check product compliance, and plan their work on this basis, rather than starting from standards.

On complaints, the problems are far deeper, and can be traced back to the approach to consumer protection that was widespread in post-Soviet countries in the 1990s, and is still (unfortunately) in place in many of them to date. Since the Law on Consumer Protection (originally adopted in 1994) was less central to EU approximation and accession, it was not thoroughly revised as part of this process (though some amendments were adopted in 2007). In its Article 21 it foresees the following (emphasis ours):

- If the seller, service supplier fails to satisfy a consumer's request regarding the acquired unsafe and **(or) inadequate quality** goods or services, he shall have the right to appeal to the (…) Inspectorate (…) with respect to return of the goods, elimination of the deficiencies, reduction of the price, replacement and (or) provision of information. These institutions must examine the consumer's application not later than within 20 working days (…)
- After having examined the consumer's application, the (…) Inspectorate (…) shall **write out an inspection report** specifying whether or not the consumer's request is valid and **if it is valid, shall propose to the seller, service supplier to satisfy the consumer's request** within a set time limit. (...)
- If the seller, service supplier fails to meet the proposal of the Service, Inspectorate or the State Public Health Service to satisfy the consumer's request, these institutions shall submit a copy of the inspection report to the State Consumer

> Rights Protection Authority which shall solve an issue regarding the defence of consumer rights.

These clauses are extremely problematic, in more ways than one. First, they put the inspectorate (and the state) in charge of solving "quality" issues (and conflicts), whereas there is no legal definition of quality, nor normative basis to assess it (as opposed from safety, for which the Law on Product Safety applies). Second, for every one of these complaints the inspectorate *has to conduct an inspection.* The English translation varies between "examination" and "inspection" – there is a similar back and forth in the original Lithuanian version, but it is clearer in its point 2 that this is an "inspection". In the end, the inspectorate does not have direct enforcement powers – it can make a recommendation, but if it is not followed, it can only refer the matter to the Consumer Rights authority (or the matter can go to the courts).

Data provided by the SNFPI shows that in 2014 over a period of just 9 months the SNFPI had to respond to over 2 000 complaints; 1 900 of these complaints were for "bad quality", a category which is not defined in law nor has clear assessment criteria. Following inspections, the inspectorate rated 2/3 of the complaints as "grounded" – and in most of these cases the seller agreed to a refund (half of these cases) or another arrangement. Only 6 to 7% of these cases were unresolved and forwarded to the Consumer Rights Authority. The other third of the complaints were considered "ungrounded". These cases concerned either extremely minor issues or, for example, products that the inspectorate actually deemed "conform". Over 25% of the complaints concerned shoes (a product category for which there is no harmonised EU standard or applicable regulation, given its low risk), nearly 8% textiles (mostly similarly unregulated, except specific cases like textiles for children), many complaints also concerned services (again, mostly unregulated ones). Some complaints cover deregulated goods (for instance, goods covered by some of the EU "New Approach" directives) such as electrical goods (main category with 37% of complaints), but again for these nearly all complaints concerned "quality" (and nearly none safety), and nearly half of the complaints were found to be "not grounded".

This practice, driven by completely outdated legislation, which contradicts basic principles of the market economy and of the EU Single Market, distracts the inspectorate from its real, core work (ensuring safety of non-food products), and from adopting best practices. With less than 100 staff (74 inspectors), the inspections following complaints make up more than 50% of the total, making any risk-based planning somewhat marginal. It means the inspectorate wastes around half of its already scarce resources on conflicts of a purely private nature, where there is no safety issue involved and no reason for the state to act. The lack of good statistics on product safety and injuries or deaths caused by unsafe products in Lithuania means that the negative impact of this misallocation of resources is difficult to estimate, but the serious situation with fire safety (see above) suggests that it may, in fact, be significant. The staff and management of the SNFPI to some extent understand the problem, but do not see a solution to it and see it as their duty to comply with the Law (which, indeed, gives them no choice).

Lithuania urgently needs a market surveillance institution that is up to international standards and best EU practice – with proper training of inspectors (another lagging area), real risk analysis and focus, prioritisation and sound methods. Legislation that prevents this development should be amended without delay, and consolidation plans that add to the confusion reconsidered.

- *State Health Care Accreditation Agency and State Medicines Control Agency*

Inspections of health care institutions and providers are essentially complaints-based. There are also some planned inspections and the institution reports using checklists, but the level of development of risk criteria is really insufficient. As reported by the State Medicines Control Agency (SHCAA), risk scores are determined entirely by the results of previous inspections, and whether violations were found (as well as the seriousness of these violations). Not having been inspected for a long time also increases the risk score. There appear to be no real criteria for rating objects in function of their *inherent* risk (type of facility, care processes practised there, type of public etc.), and of their *scope* (number of patients), whereas these are very well established criteria internationally. This also suggests that it may be worth looking at the quality of checklists, to see if they are more in line with international best practice than risk criteria. This is of concern, particularly in an area (health care supervision) where risk-based approaches are very well developed and classification on the basis of risk is easy (based on types of care provided, size, publics served and prior history), and where the use of checklists is also as developed as it is fundamental. As reported by SHCCA, draft primary and subordinate legislation has been prepared to regulate the evaluation of health care services (including requirements for medical devices and health care specialists). The draft legislation is expected to provide a more precise regulation of the quality of health care services and more objectively measurable risk criteria for inspections.

The State Medicines Control Agency appears to have risk criteria for its planning, which are essentially based on EU-wide guidance, but little analytical capacity and fine-tuning of its planning based on the Lithuanian situation in terms of health, medicines-related problems or accidents etc. It defines its mission in terms of fulfilling its inspection plan, and not in terms of achieving outcomes. There also appears to be no communication or outreach to the public, whereas this is known to be absolutely crucial to improving medicines safety.

Reform and system performance checklist

In order to allow for an overview of the state of progress with the reform, and of the overall quality of the inspections and enforcement regime, Table 7.1 presents a brief assessment of performance of Lithuania's inspections and enforcement regime against a set of criteria that draw on the OECD *Principles*. The checklist provides a basis for further analysis and an overview of the main priorities for further reform. The assessment reflects the findings presented in this chapter.

Table 7.1. **Inspections and enforcement reform and system performance checklist**

Evidence-based enforcement	
Clear, outcomes-focused mandates	*While much of this is present for the "best" agencies, it is nearly fully missing for many others*
Effectiveness indicators linked to public goods	
Regular effectiveness evaluation	
Allocation of resources based on risks and outcomes	
Science based risk assessments	

Table 7.1. **Inspections and enforcement reform and system performance checklist** (*cont.*)

Selectivity	*Too many agencies controlling too many issues where inspections are not appropriate*
REI agencies mandated on when really needed and cost-efficient	
Mechanisms in place to enforce regulation through civil action	
Resources allocated to support non-gov't regulatory enforcement	
Effectiveness and credibility of "co-regulation" schemes guaranteed	
Official recognition of the need for selectivity in REI	
Risk-focus and proportionality	*In some agencies, very advanced – but many inspectorates are lagging far behind*
Common approach or general practice of risk assessment	
Data on risks effectively collected, complaints managed as part of it	
Information systems to plan on risk basis, "unplanned" inspections limited	
Risk analysis and proportionality at all stages of inspection process	
Regular update of risk analysis, and transparent communication	
Responsive regulation	*Very good general guidelines and overall good implementation*
Enforcement differentiated based on regulatee's behaviour	
Gradation of available sanctions allowing credible deterrence	
Businesses with first violations, new bus., supported rather than punished	
Appropriate discretion given to REI agencies, with accountability	
Regular evaluation and adjustments of responsive regulation approach	
Information integration	*Some inspectorates have good systems but many do not – and no integration for now*
Communication of issues, risk data etc. easy and effective	
Interconnection with other databases (complete, up to date data)	
Unified index reference across REI agencies for all objects	
Joint database or regular data interchange for all REI agencies	
Information systems include all relevant risk data for planning	
Long-term vision	*The vision exists but it has some gaps and the mechanism is weak*
Official vision of REI, objectives, principles	
Institutional mechanism in place to drive progress	
Clear targets for REI agencies and regular assessment	
"Risk Regulation Reflex" avoided	
Co-ordination and consolidation	*Efforts are underway but for now fragmentation and multiplicity of agencies is still the rule, with co-operation only "ad hoc" and mostly informal*
Duplication of functions avoided	
One regulatory sphere = one REI agency (or mechanism to ensure coherence)	
Allocation of resources made considering all relevant agencies	
Act as "eyes and ears" for each other	
Sharing of records or main findings of prior inspections	
Limitation of re-inspection of same object in short time	
Joint planning or other practice to ensure co-ordination	

Table 7.1. **Inspections and enforcement reform and system performance checklist** (*cont.*)

Transparent governance	*Governance has not been a focus of reform. A few "good" cases raise the overall rating*
Collegial governance, stakeholders represented	
REI agencies have stable structure – and no conflict of interest/missions	
Management based on professionalism, open recruitment process	
Performance indicators for staff aligned with REI agency's objectives	
Clear guidance to staff on how to interpret rules, consistency, transparency	
Clear and fair process	*Good general rules but there is room for further improvements*
Overall process rules ensure balance of rights and powers in REI process	
Clear and comprehensive list of REI agencies and their functions	
Adequate possibilities to appeal, trusted by regulatees	
Requests for REI action effectively handled and in proportion to risk	
Powers of inspectors sufficient, checks and balances as well	
Compliance promotion	*Strongest point of reform so far – can be further strengthened and extended to all agencies*
Clear guidance documents to assist compliance	
Regular analysis of barriers to compliance	
Active outreach campaigns to businesses	
"Assured advice" practice	
Goal of REI agencies=maximise compliance, not # of sanctions	
Professionalism	*System for training and professional qualifications is too informal and lacks consistency*
Recruitment and on-the-job training ensure appropriate qualification	
Core skills defined for all inspectors, training to build these skills	
Competency of staff members assessed and developed regularly	
Overall capacity of REI agencies regularly assessed in same perspective	
Professionalism allows appropriate discretion, based on risk	

Notes

1. When the review was drafted, the full text of the amendments was not yet available. The content of the amendments has thus been reported here as presented by the Government, and was not directly verified. The amendments are now available in Lithuanian at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=487546&p_tr2=2. The full version of the law can be accessed at https://www.e-tar.lt/portal/lt/legalact/tar.0bdffd850a66/qqvlfpltmn.

2. All the survey reports are available (in Lithuanian) here: www.ukmin.lt/web/lt/verslo_aplinka/verslo-prieziura/ataskaitos. Unfortunately they are not available in the English version of the Ministry of Economy website – and are only released in Lithuanian. Publishing summaries in English would be useful. The 2011 survey was conducted by RAIT, 2012-13 surveys by *Socialinės informacijos centras* and the 2014 one by *Rinkos tyrimų centras*, all upon request of the Ministry of Economy.

3. Extrapolating survey data from half a year to a full year requires to understand the logic of the process studied, and the workload involved. In this case, both "percentage inspected" and "number of visits" are variables that are linked and, together, make up the 'total inspection visits per year in the country'. Since this last number is constrained by inspectorates' total staffing and workload, which is roughly constant across the year, it is impossible for *both* 'percentage' and 'number' to be multiplied by two to annualize the data, otherwise the resulting variable 'total visits' would be multiplied by 4 (implying a doubling of workload). We assume that the ratio of 'additional businesses visited' (percentage inspected) and of 'additional visits in same businesses' (number of businesses) is roughly constant. Thus, the equation writes itself as follows:

   P = percentage inspected, N = number of inspection visits, H = half year, Y = year.

   PY x NY = 2 x PH x YH – which is equivalent to: PY x NY = ($\sqrt{2}$ x PH) x ($\sqrt{2}$ x YH).

   Hence: PY = $\sqrt{2}$ x PH and NY = $\sqrt{2}$ x NH.

4. The administrative burden is defined here as: Percentage inspected x Number of inspection visits x Duration of inspection (average). The baseline is the value for 2011. What matters to assess the reform is more the variation than absolute numbers.

Bibliography

Blanc, F. (2012), "Inspection Reforms: Why, How, With What Results?", OECD, Paris.

EU (2013), "More Product Safety and better Market Surveillance in the Single Market for Products", COM(2013)74final, http://eur-lex.europa.eu/legal-content/en/txt/pdf/?uri=celex:52013dc0074&from=en.

OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264208117-en.

OECD (2012), "Recommendation of the Council on Regulatory Policy and Governance", www.oecd.org/gov/regulatory-policy/2012recommendation.htm.

World Bank (2009), *Doing Business 2010: Reforming through Difficult Times*, World Bank Group, Washington, D.C.