

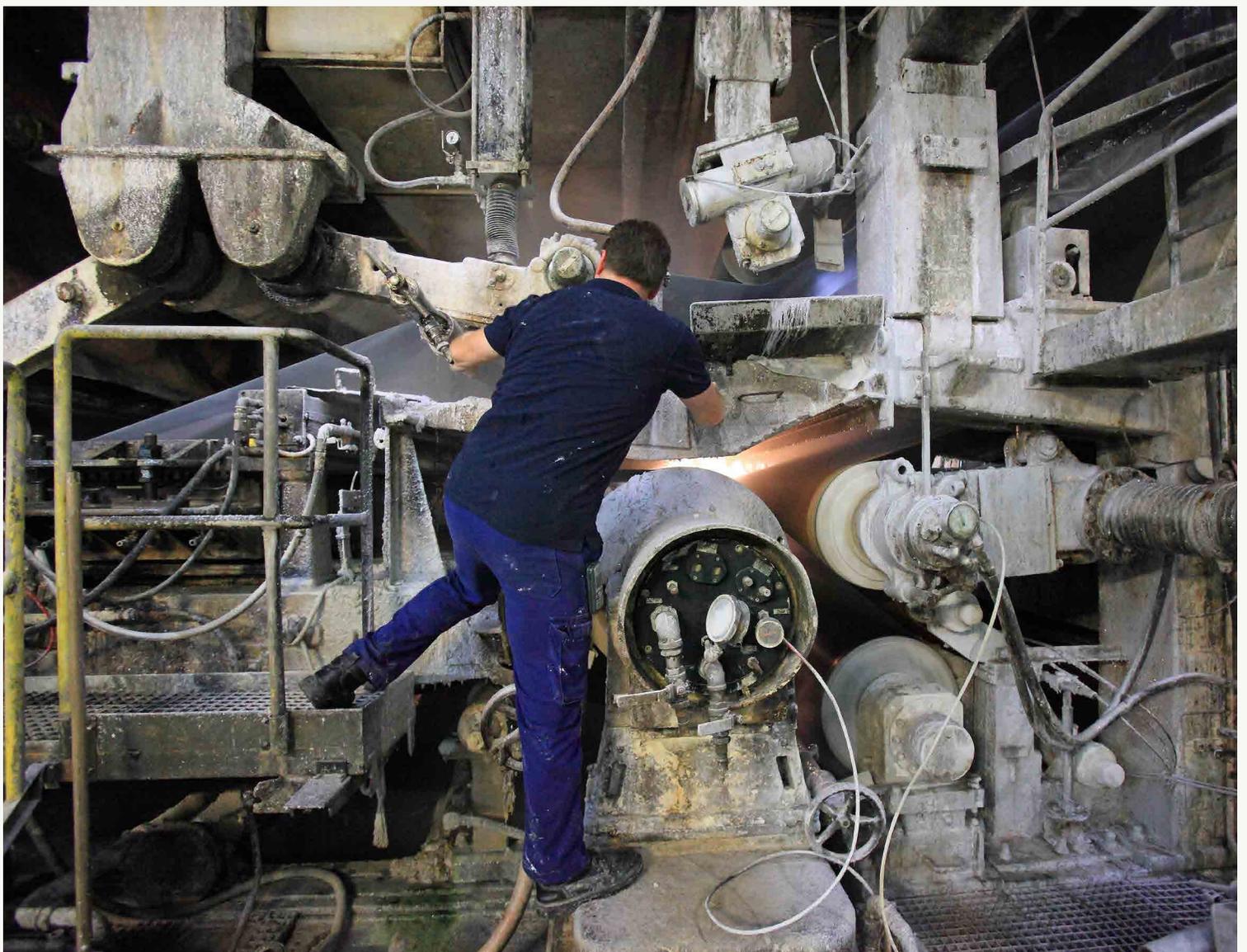
Labour inspection and health and safety in the EU

British expert David Walters presents a comprehensive review of the main systems of labour inspection that exist in the European Union. Faced with profound transformations in the world of work, the emergence of new risks, and generally unfavourable policy shifts, labour inspectorates have been forced to rethink their strategic approach to protecting workers' health and safety.

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Targeting health and safety inspections solely at "high-risk" companies is a trend which can be observed in many European countries.
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Since the advent of industrialisation in Europe, regulatory inspection has played an important role in helping to achieve safe and healthy work. Originating in the specific provisions of a UK Factory Act in 1833, requirements specifying the nature and functions of labour inspection gradually developed in parallel with the spread of industrialisation throughout Europe during the 19th and early 20th centuries. In 1947 the International Labour Organization (ILO) adopted its Labour Inspection Convention (No. 81), which outlined broad principles concerning the structure and functions of national inspection systems and which most countries in the European Union have since ratified. Despite the acceptance of such common principles, the structure and functions of different national inspectorates, as well as their position in the legal system, vary considerably between different EU countries. Inspectorates are usually regarded as either generalist or specialist, with the former having a broad mandate that addresses elements of employment and industrial relations issues – including working conditions, health, safety and welfare – and the latter usually restricted to occupational health, safety and work environment¹.

The variety of labour inspection models

Generalist inspectorates are typical of Latin European countries like France, Spain and Portugal and are also found in part in other countries, such as the Netherlands and the Baltic States, where their responsibilities embrace working conditions, employment relations, aspects of wage and social security administration, legal and illegal work, health and safety, and welfare. They tend to be managed centrally and be accountable to central government, although they often have regional structures. They are also sometimes separated into divisions that have different functions with, for example, one dealing with occupational health and safety (hereinafter OHS), another with social security and a third with employment and wage matters.

Specialist inspectorates that have developed according to an Anglo-Scandinavian pattern are mainly responsible for securing compliance with requirements solely concerning health, safety and welfare at work (and sometimes with certain requirements on general working conditions). They tend to be responsible to tripartite boards and, through them, to central government. They are typical of the UK and Scandinavian countries but also characterise elements of other systems, such as those found in the Netherlands or, more specifically, the insurance-based *Berufsgenossenschaften* in Germany (although these latter inspectorates are not state bodies but agents of bipartite insurance organisations; see article p. 30).

In some countries that have federal political and legal administrations, such as Germany, generalist inspectorates function in a federal pattern, their powers delegated to state levels. In other countries, the development of increased political autonomy at regional level has led to a degree of movement from centralist to more such federal patterns; in Spain, for example, responsibility for labour inspection has been taken over by the regional government in Catalonia.

In many countries, in addition to a main labour inspectorate there may also be smaller specialist and associated inspectorates with responsibility for securing compliance in relation to particular economic sectors or technologies. Typically there are separate such inspectorates for seafaring, fire safety, railways and mines. In some countries, however, some or all of these are incorporated within the overall labour inspectorate.

Therefore, while the structure and functions of national inspection systems broadly fit this typology, it is not rigid and in many countries the pattern is somewhat mixed. For example, the overriding system might be broadly "generalist" but, at the same time, it may contain elements that are more specialist or administered in different ways, such as within a federal system. In Italy, for example, until quite recently a centrally organised generalist labour inspectorate played a relatively minor role in the surveillance of health and safety at work in comparison to the regionally administered public health agencies, the ASL (*Aziende Sanitarie Locali*). In the UK, the practice of delegating

1. von Richthofen W. (2002) *Labour inspection: a guide to the profession*, Geneva, International Labour Office.

enforcement powers in so-called "low risk premises" to local authority public health inspectors (environmental health officers) means that most small firms (and indeed most workplaces) are inspected not by the central specialist inspectors of the Health and Safety Executive (HSE) but by inspectors of local authorities, who also have many other public health functions on matters such as food hygiene and sanitation. In Germany, the overlapping inspection responsibilities of the sector-based *Berufsgenossenschaften* and the geographically based labour inspectorates of the federal states (Länder) make for a very complex dual system.

Different functional combinations

Bearing these caveats in mind, it is possible to employ five functional areas – as suggested by the ILO – to describe the range of responsibilities for labour protection delivered by inspectorates in the EU:

1. occupational safety, health and welfare (and sometimes hours of work);
2. general conditions of work and sometimes wages;
3. industrial relations;
4. employment-related matters such as illegal employment, vocational training and employment promotion;
5. social security issues.

Labour inspection systems can also be seen as single, dual or multi-functional in so far as they deliver one or more of each of these functions. Single function systems are typically found in such countries as the UK, the Republic of Ireland, Denmark and Sweden. Different forms of dual systems are found in Germany, the Netherlands, Bulgaria and the Baltic States where, as well as health, safety and welfare, a range of matters under general working conditions are also covered. Finland and Norway are somewhere in between, with a main focus on OHS but also covering some additional broader tasks in which they address, for example, undocumented/undeclared work. More multifunctional systems are typical of Latin countries such as France and Spain where – in addition

to OHS – industrial relations, social security and employment-related matters are all covered to varying degrees.

These different functional combinations and their relative balance in different Member States also have a significant influence on the way in which labour inspectorates have been able to respond to change and to address emergent trends and risks. For example, in many EU countries there is currently significant concern regarding undocumented/undeclared work. There is clearly a set of risks to the health, safety and wellbeing of workers involved, arising largely from the undocumented/illegal nature of the work, the limited provision made by employers for health and safety management in such circumstances and the tendency for such work to include tasks and working conditions that would not be acceptable in properly documented employment.

However, the way in which these issues are addressed by labour inspectorates in different countries varies according to which aspect of such work falls within the remit of the national requirements for regulatory inspection. Thus, in countries such as Spain, Greece, Portugal, the Baltic States and the Netherlands, in which multifunctional inspectorates operate, efforts to identify the extent of undocumented work and take actions to reduce it are a significant feature of current labour inspection strategies. Meanwhile, in Member States such as the UK, where such employment-related matters are beyond the jurisdiction of the inspectorate, interest in undocumented work is largely restricted to the extent to which it affects arrangements for the occupational health and safety of the workers involved. In other countries, such as Sweden and Denmark, inspectorates do not supervise the legality of employment themselves, but they may alert other state authorities about these matters when they come across them.

Some observers have suggested that the broader differences between generalist and specialist inspectorates may result in some inspectorates being better equipped than others to respond to consequences of structural economic and labour market changes, such as increases in undocumented

2. Teague P. (2009) Reforming the Anglo-Saxon Model of Labour Inspection: The Case of the Republic of Ireland, *European Journal of Industrial Relations*, 15, 207-225.

work, migrant workers and the informal/illegal economy. For example, Professor Paul Teague of Queen's University Belfast² has argued that since responses of labour inspectorates to change are circumscribed by the nature of their remit for inspection, this makes specialist inspectorates such as those in Ireland and the UK – which are based on a narrow organisational pattern – less suited to address the consequences of such change than those inspectorates concerned more broadly with social and employment affairs. However, empirical research evidence in support of this argument is lacking.

The character and qualifications of inspectors

In most countries of the EU, labour inspection is a profession in its own right, in which individuals, usually with some graduate-level qualifications in legal, engineering or technical subjects, are recruited (often after quite intense competition) to a national corps of inspectors. They subsequently receive further training in the particular skills of inspection. Inspectorates have a career structure that encourages inspectors to remain with them for significant periods of their working life; although as the inspectorate is usually part of the national infrastructure for public administration, career opportunities may be pursued by inspectors in other branches of public service.

The nature of the qualifications required and the orientation of subsequent training to a large extent reflect whether inspectorates are generalist social labour

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inspectorates or specialist OHS ones, as well as the more general character of the public administration infrastructure. Generally, qualifications reflect traditional concerns while additional training of varying extent and quality is provided to address "new" ones; in Sweden, for example, attempts have been made to recruit inspectors with the skills and experience suited to dealing with psycho-social risks.

In recent years there has been an increased turnover of inspectors, brought about by budgetary constraints in many older EU Member States and relatively low salaries in some new Member States. This has resulted in a movement of inspectors towards professional health and safety jobs in commercial organisations.

Regulatory inspectorates for OSH in EU Member States have a similar set of powers, broadly in line with those laid down in Articles 12 -13 of the ILO Convention 81. They may, for example, enter and inspect premises, seek information from employers and workers and remove items for further analysis. They either have direct authority to require changes to workplaces, plant and work methods to remedy defects they believe represent a threat to the health or safety of workers, or the right to apply to the appropriate authority to require such actions. They are also generally the authority to which notifications of accidents and diseases must be made in accordance with national regulatory requirements. There are minor variations in their powers in different EU countries but none that are especially significant.

The situation regarding the sanctions available to inspectorates for addressing instances of non-compliance is more complicated, reflecting as it does the relationship between inspectorates and the different national styles of regulation and legal administration in which they are variously embedded in EU Member States. Thus, while most inspectorates have administrative powers to impose requirements for health and safety improvements or to stop work operations they deem to be unacceptably risky through serving notices on duty-holders, their exact means of doing so varies. Some have a limited capacity to themselves impose sanctions

such as administrative fines, while others have no such powers. There has been an increasing trend in the number of financial penalties upon conviction, but considerable variation remains between countries in the practice of imposing penalties and most convictions still result in comparatively small penalties. It is also notable that most violations that result in prosecution and conviction involve the mismanagement of "conventional" risks, rather than "new" or "emergent" ones. Thus, for example, despite its current widespread recognition as a major cause of work-related ill health, psycho-social risk remains a relatively minor cause of prosecution cases for labour protection offences. Technical and legal difficulties in bringing such cases are often cited as an explanation for why this is so.

Challenges to the traditional approach

Nowadays, it is widely accepted that, in practice, labour inspection is limited in its reach. That is, given the imbalance between the resources available for inspection and the number of workplaces, employers and workers subject to inspection, there is little practical possibility that face-to-face contact between them and labour inspectors will occur in more than a minority of cases. This is one good reason why most inspectorates have organisational plans and strategies to focus attention where they believe it will have the biggest impact³. However, the extent to which inspectorates have the resources to match the tasks they are obliged to perform is a critical issue and there has been growing concern about the increasing mismatch between the two. Such concern is not only reflected in critical research but also in reports from international inspection bodies such as the Senior Labour Inspectors' Committee (SLIC) which, in its 2008 audit of the Work Environment Authority in Sweden, "found some indications that the recent cuts have resulted in a reduction in continuing professional development, in communication between specialists, and in training of established inspectors. ... There were also

3. Denmark presents an interesting possible modification of this approach, with its strategy of screening all workplaces where there are employees in order to categorise workplaces according to risk and the arrangements in place to address it.

some indications that the necessary training of established inspectors is declining due to the cuts in financial resources".

There is a well-established trend of continuing reduction of public expenditure on regulatory inspection, in keeping with the general neoliberal economic policy orientation of many Member States, which aims to reduce "regulatory burdens on business" while claiming to seek a better competitive advantage for EU businesses in both national and global contexts. In keeping with this general trend are other elements of current regulatory/political strategy, such as an increased emphasis on voluntary/private regulation and a greater advisory and informative role for inspection, which a growing body of critical research has found wanting; this indicates that such approaches generally fail to secure effective coverage or meaningful enforcement and have serious shortcomings in terms of governance.

While the critical literature provides compelling evidence that the deregulatory and resource reductive trends of neoliberalism offer little support for the preventive and protective role of labour inspection, it also acknowledges that the situation is complex. Firstly, an advisory role for inspectors and increased emphasis on private regulation are frequently, but not always, found together. Secondly, while there is a general trend towards reduced resourcing of inspection, which goes hand in hand with a "lighter touch" for inspection practices in many EU Member States, not all labour inspectorates have experienced such reduction; indeed, some have increased their resources during this period. For example, funding of the Irish Health and Safety Authority (HSA) almost doubled between 2002 and 2007. Similarly, the number of Polish labour inspectors grew substantially between 2002 and 2009. There are further indications that resourcing has favoured some elements of labour inspection activities but not others. For example, greater resources are being devoted to employment-related matters – reflecting concerns about undocumented work etc. – while, at the same time, there is still concern about reduced resourcing for health and safety inspection in countries such as Spain and the Netherlands.

Moreover, while labour inspection strategies that emphasise the provision of advice and information are evident in some countries, it may be over-simplistic to interpret them as part of a strategy of reduced formal regulation. They are, in part at least, a direct response to the challenges presented to regulatory reach by the restructuring of work and employment. Overall, work may have become less obviously physically hazardous as a consequence of these changes but, at the same time, its pace has increased. It is more intensive, insecure and prone to uncertainties regarding its restructuring, reorganization and the greater demands made for its "flexibility". The nature of employment and the employment relationship has also changed for many, with much evidence of increases in precarious, outsourced and undeclared work. Situations requiring surveillance or intervention in this kind of work present challenges to traditional labour inspection practices, whether "generalist" or "specialist". Reaching them and intervening in them therefore stretches the limited resources available to inspectorates, which in any case may have become even more limited as a result of the "removal of administrative burdens on businesses" by neoliberal governments. At the same time,

they are complex situations in which the nature and extent of legal responsibilities and suitable preventive strategies are themselves often unclear. Of course, risks created by the reorganisation and restructuring of work and employment have also changed the risk profile of work, leading to a greater presence of psycho-social concerns that are not easy to either manage or regulate by conventional means and therefore pose further challenges for traditional inspection practices. As a result, current regulatory inspection policies and practices on health and safety have struggled to address the emergent challenges of the so-called "new economy", having to make the best use of dwindling resources in a political environment that is often hostile to state regulation of business.

Alternatives to workplace inspections

Some regulatory agencies have adopted alternative strategies to workplace inspections, which have generally declined in many countries along with the number of inspectors and level of enforcement. In the UK, for example, an interest in using "multiple tools" to achieve improvement in the "atypical work

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scenarios of the new economy" has been prominent in policy documents of recent decades, which advocate communication, the use of intermediaries, the identification of business benefits and so on. Similar developments are evident in other EU countries, especially in Finland, Sweden, Denmark and the Netherlands. However, evaluation of all these initiatives has been inconclusive concerning their success.

In some cases legislation has been amended. For example, the duty of care has been extended to supply chain responsibilities in construction, and inspectors now have a regulatory framework to guide their surveillance and efforts to achieve compliance that is more appropriate to the organisation of the industry and its work activities.

Attempts to achieve greater engagement with peak bodies in the economy such as trade and employers' organisations, insurance associations and sometimes trade unions, are features of the outreach policies of national inspection authorities. They thus seek to exploit the roles of organizations and individuals in intermediary positions between the regulatory agencies and those thought to be beyond the reach of conventional inspection: hard-to-reach small firms, temporary workers and migrants. The aim is to "cascade" good practices to situations that are difficult to access through conventional inspection. Belief in the success of these initiatives is strongly held by some regulatory authorities in such countries as the UK, Sweden and Germany, despite criticism that they are in fact a result of substantial cuts in the inspectorates' resources and political pressure for more "business friendly" inspection strategies.

In parallel, new public sector management initiatives that place greater emphasis on "evidence-based" strategies and require the evaluation of performance against targets have prompted a strategic interest among regulatory authorities in measurable outcomes. To some extent this is also indicative of the overall trend towards "risk-based regulation", or strategies which "involve the targeting of enforcement resources on the basis of assessments of the risks that a regulated person or firm poses to the regulator's objectives"⁴. For inspection, it has meant an

increased focus on surveillance in relation to measurable performance targets; addressing, for example, the more prevalent forms of occupational injury or ill health, as well as high-risk sectors or particular activities within them. As a result, in many cases regulatory authority strategies set quantitative targets for inspection of particular work activities. This sometimes leads inspectors to feel less able to act on the full range of risks they may encounter during an inspection⁵. Such targeted approaches are evident in the UK, Sweden, the Netherlands, Denmark and in 15 other EU countries.

Of course, the implications of most of these changes for worker representatives are that state inspection services may be even less "hands on" than previously, consequently reducing the degree of enforcement interventions at the workplace level. On a more positive note, since worker representatives are themselves known to be effective "intermediaries", the policy rhetoric of labour inspection should encourage inspectors to engage more willingly and effectively with worker representatives than has been the case in the past. However, there has not yet been any strong evidence of this in practice.

Inspectorate compliance promotion strategies that place increased emphasis on private regulation may be in part an acknowledgement of the reduced relevance of conventional regulatory inspection in restructured business contexts. However, they are also a pragmatic attempt to exploit business relationships and orientations in order to improve compliance with health and safety regulations in these situations. There are some suggestions that suitable regulatory mixes may be found which exploit both public and private regulation to the benefit of health and safety; as, for example, with supply chain regulation.

It seems that under the combined influence of the restructuring and reorganisation of work in recent decades – together with the further effects of the hegemonic neoliberal political and economic strategies that have helped drive these changes – labour inspectorates have been obliged to rethink their strategic approach to helping protect workers from harm.

4. See for example, Black J. and Baldwin R. (2010) Really responsive risk-based regulation, *Law & Policy*, 32 (2), 181.

5. Risk Solutions (2003) *Evaluation of FOD's topic-based inspection*, HSE Contract, Research Report 368, Sudbury, HSE Books.

As we have seen, their responses have mostly constituted efforts to increase reach and influence, while at the same time trying to make the best of reduced resourcing in a political environment in which state inspection is required to better support business needs. What this means for most workers and their trade union representatives is that the likelihood of being in a workplace that is subject to inspection is much reduced, as is the likelihood of being able to easily contact labour inspectorate for advice or support. However, it is possible that these new approaches to their role in regulating OHS may have produced some useful outcomes, especially in addressing new and emergent risks and reaching work scenarios that are acknowledged to be difficult to monitor with more conventional inspection. It is hard to be entirely certain about this however, since there is very little independent evaluation of these activities and their true effectiveness remains to be seen. In the end, it seems fairly clear that while such approaches may offer innovative additional strategies for regulatory enforcement, there is no evidence to suggest they are an effective alternative to the role of regulatory enforcement in protecting the health and safety of workers in the EU. ●