

Effects of disclosure on business compliance: a framework for the analysis of disclosure regimes

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Published in:

European Food and Feed Law Review, vol. 2, no.5, 2007, p.255-263.

1. Introduction

Of all the safety issues that are subject to public regulation and enforcement, the safety and quality of our food is one of the most evocative. Who would not want to know where to eat, what restaurants are best left aside, and what products do not meet food safety standards? If public authorities possessed information about unhygienic production conditions, unhealthy additives, or dangerous bacterial outbursts in certain products or places, it would seem unfair to keep this information from the public. Consumers have a “right to know” what officials know, to allow them to make informed choices.

Following this line of argument, enforcement agencies are increasingly deciding to share their inspection results with the public. Of course, press releases or public notices following incidents have been the practice long since. What is new is the systematic and detailed character of the information that is published, as with the disclosure of all names and offences of violating companies, or the periodical publication of inspection results of a whole sector. For instance, both in Denmark and in the UK, “scores on the doors” of restaurants show the extent to which the restaurant complies with hygiene standards. A positive smiley denotes compliance while a negative smiley indicates discrepancies¹. In both countries, a website serves as a back up for more detailed information about restaurants and information about wholesalers.

As this issue of EFFL shows, many other European countries are experimenting with similar forms of disclosure. In designing disclosure regimes, they face a lot of choices concerning, among others, the quantity and type of information they should publish, the publication format, the accessibility of the information and the timing of publication. A first goal of this article is to provide some order in these choices by identifying relevant dimensions on which disclosure regimes can vary.

A second goal is to provide more insight into the possible effects of different disclosure regimes. Consumer empowerment is a logical perspective, since this is the dominant reason for the disclosure of inspection results. However, it is usually not the only argument. Transparency also serves two other goals that are less articulated, but equally important. In

¹ Of course, the premises will be closed down if real food safety hazards occur.

the first place, transparency has an important effect on the businesses that are regulated. Besides informing customers, the purpose of the Danish smiley scheme, for example, is “to give enterprises an extra incentive to stay on their toes”². For fear of bad publicity or negative consumer reactions, companies will choose to comply with regulations. Perceived in this way, publicity can be considered as part of a regulatory enforcement policy.

Secondly, disclosure fits in a strategy of accountability of the enforcement agency itself³. Enforcement agencies are increasingly adopting transparency as a fundamental principle. Publishing names of companies that have been inspected, violations that have been detected and sanctions that have been imposed is the most direct way of informing the public about the activities of the enforcement agency. The increased visibility of enforcement may also contribute to the image of the enforcement agency as a powerful and effective regulator. It can be assumed that this image also contributes to regulatory compliance in the long run.

In sum, although disclosure primarily aims to inform consumers, it also influences regulatory compliance by companies. This article explores the effects of the various disclosure regimes on regulatory compliance by companies. Both directly, as well as via their relations with the regulating agency, disclosure can contribute to better regulatory compliance. However, practical experience indicates that disclosure also has potential downsides. Firstly, disclosure often meets adverse reactions from regulated companies. Danish practice shows an increase in hostility, even physical violence, towards inspectors ever since publication of results began. When disclosure produces defiance, it may not contribute to better compliance. Second, disclosure may provide the enforcement agency with a powerful image, but it may negatively affect its legitimacy at the same time. Authorities that engage in an active publication strategy are often accused of unfairness and trial by media. A (perceived) lack of procedural fairness is not only problematic from a due process perspective, it may also have a negative impact on compliance, whereby companies may not want to cooperate and may show more strategic behavior.

Clearly, although disclosure can have powerful effects on compliance, these effects may not always be positive. How can we design regimes that stimulate compliance instead of producing defiance, and contribute to the legitimacy of the regulator instead of undermining it? In this article, I will develop a framework for the analysis of potential effects of disclosure regimes in terms of compliance. This framework will identify five dimensions on which disclosure regimes can vary, as well as outline the implications of these variations for regulatory compliance.

² Presentation K. Nielsen, Workshop transparency and confidentiality, Food Law Enforcement Practitioners in Europe, jan.2007

³ Meijer, A., *Vreemde ogen dwingen, De betekenis van internet voor maatschappelijke controle in de publieke sector*, Den Haag 2004.

In sections two and three, I will further explore the relationship between disclosure and compliance on the basis of theoretical insights and empirical research. Section 2 describes the importance of a good reputation as a motive for compliance. The sensitivity of a company to reputational damage is a key explanation for regulatory compliance. Section 3 discusses the effects and possible counter-productive effects of disclosure, and addresses the question when effective disclosure shifts to counter-productive disclosure. The classic concept of stigmatization is used to explain this shift. Drawing upon Braithwaite's theory on reintegrative shaming, it will be argued that a certain measure of stigmatization is necessary to produce any effect on company behavior, but too much will shift the balance to defiance. Besides, an excessively stigmatizing approach does not fit in a fair and legitimate enforcement policy. On the basis of these theoretical viewpoints, section 4 develops the framework for the analysis of disclosure regimes. It identifies various dimensions of disclosure regimes and explores the stigmatizing aspects of each of them. Section 5 concludes with characteristics of disclosure strategies that will be most productive in securing compliance. To illustrate, the framework is used to compare Danish and Dutch disclosure regimes in terms of their expected effects on regulatory compliance.

2. Reputation as a motivation for regulatory compliance

The importance of reputation

Of all the motives a company can have for complying with legal norms, the wish to uphold a good reputation with its stakeholders is a key one. A good reputation pays out in terms of confidence of business partners and investors, consumer trust, and goodwill and support of the community and the political and bureaucratic environment. All these assets are necessary for the continuity and growth of a company. However, a reputation is a fragile asset. Whereas financial capital can be regained, reputational capital cannot, once it has been damaged, be rebuilt quite so easily. As a CEO recently remarked: a reputation does not allow for compromises⁴. Undoubtedly, companies try to avoid bad publicity at all cost.

Reputational concerns as a motive for compliance

Understandably, a status as a legal offender does not contribute to a good reputation. A good compliance record is interpreted as a signal of the trustworthiness of the company and the quality of its products. A status as legal offender, on the other hand, invokes the impression that the company is a bad apple and should not be trusted. This impression does not only involve the aspects that are regulated, but extends itself to the performance of the company as a whole⁵. As publicity about noncompliance can seriously damage the reputation of a company, fear of reputational damage serves as a powerful deterrent for rule violations.

⁴ Klaus Kleinfeld, CEO of Siemens, in the recent corruption affair. Het financieele dagblad, 13 december 2006.

⁵ Posner, E.A., *Law and Social Norms*, Harvard University Press, 2000.

A classic study on the relationship between compliance and reputation is Fisse and Braithwaite's study on the impact of publicity on corporate offenders⁶. They investigated 17 large companies that were involved in publicity crises as a result of rule violations. All companies made significant changes in their compliance programs. These changes were not mainly induced by the financial effects of this publicity, or their loss of market position. It was their loss of reputation and esteem: the public humiliation of the company executives that pushed them to take measures.

The deterrent effect of negative publicity is even considered a much more powerful deterrent than "classical" interventions such as legal fines, since it invokes much stronger feelings of guilt and shame than a financial sanction does. Braithwaite claims that it is not the severity of the sanction in financial terms, but the amount of public shame that it invokes, which is the most important motivator of compliance. In other words: "the nub of deterrence is not the severity of the sanction but its social embeddedness"⁷. This point was recently illustrated by former Ahold CEO Cees van der Hoeven in the trial about financial misrepresentation. Van der Hoeven stated that it was not the legal sanction that awaited him that most hurt him but the damage that the process had done to his reputation, as a person and entrepreneur that was much worse. "This damage is lasting, and for the public, I have already been convicted and written off"⁸.

Limitations of reputational effects

Since this classic study, many other authors have added empirical evidence on the close link between reputation and legal compliance⁹. These studies suggest several mechanisms through which reputational concerns stimulate compliance. First, Gunningham c.s. find that pressure from environmental groups and local communities stimulates companies to go beyond compliance. Second, Hutter and Jones's recent study among restaurant managers mentions customer demand that stimulates them to comply with food regulation¹⁰. The managers think customers rate food safety and hygiene as very important aspects in their choice of restaurant. Whether this assumption is correct, can be left unanswered. A third mechanism is purely financial: Karpoff has shown that financial misrepresentation results in

⁶ Fisse, B., en J. Braithwaite, *The impact of publicity on corporate offenders*, Albany, State University of New York Press, 1983.

⁷ Braithwaite, J., *Crime, shame and reintegration*, Cambridge University Press, 1989.

⁸ Statement Cees van der Hoeven, via www.nrc.nl/weblog/ahold/2006/05/08

⁹ Huisman, W., *Tussen winst en moraal: achtergronden van regelnaleving en regelovertrading door ondernemingen*, Den Haag, Boom Juridische Uitgevers, 2001; May, P., "Compliance Motivations: Affirmative & Negative Bases", in: *Law & Society Review* no.1, 2004, vol. 38 p.41-68; Gunningham, N., R. Kagan en D. Thornton, 'Social License and Environmental Protection: Why Businesses Go Beyond Compliance', in: *Law & Social Inquiry*, 2004, p.307-341.

¹⁰ Hutter, B., en C. Jones, "From Government to governance: external influences on business risk management", in: *Regulation & Governance*, vol. 1 no.1, March 2007, p.27-45.

market sanctions that largely exceed the sum of the original misrepresentation and the legal fine. The difference between these real costs and the market value is the reputational loss¹¹. However, although these studies demonstrate that the threat of negative publicity can be an effective deterrent, the authors also show limitations of reputational effects. The interests of stakeholders do not always parallel the law, and they do not always value rule compliance. Therefore, reputational damage does not always form a credible threat. To start with, Gunningham, Thornton and Kagan's study on the influence of social pressure groups shows that these groups strategically select their targets. Companies or violations that are expected to attract a lot of media attention are preferred to less visible issues. As a company owner remarks: "Nobody knows us, so there is not much of a reputation to preserve".. Karpoff finds that financial shareholders generally react more strongly to financial fraud, because they suffer from it, than because they react to environmental violations that do not harm them directly¹². In the same line of reasoning, Huisman (2001) states, that, a company that mainly supplies abroad, or a restaurant that mainly caters to tourists, is not likely to be affected by local bad publicity.

3. Disclosure of inspection results as a deterrent

Deterrent effects of disclosure

From section 2, we can conclude that disclosure of information on violations only seriously deters if the company fears that there is a significant audience that will react to the information. A certain amount of "bad publicity" is necessary for the threat of reputational damage to be taken seriously. When the market or media do not automatically generate negative publicity, an active publicity strategy of enforcement agencies will be necessary. In circumstances where stakeholders and media do not automatically disapprove of violations, governments wishing to effectively use disclosure should provoke this disapproval by negatively coloring the information it publishes. In other words, if the market does not automatically sanction rule violations once they become public, governments should stimulate market reactions by an actively stigmatizing approach.

Stigmatizing disclosure of compliance information is potentially effective, because it reflects the moral aspects of deterrence. As stated before, deterrence mainly works through fear of shame, not through fear of formal punishment. When companies are aware that violations will be published, they are forced to reflect on the public reaction that violations will meet. Thus, publication of violations can induce a company to change its attitude towards rule violations because it realizes that this type of behavior is not socially accepted. Also,

¹¹ Karpoff, J.M., D. Scott Lee en G.S. Martin, *The Cost to Firms of Cooking the Books*, Working Paper, 4 januari 2007, via <http://ssrn.com/abstract=652121>

¹² Karpoff, J., J. Lott en E. Wehrly, "Reputational Penalties for Environmental Violations, Empirical Evidence", in: *Journal of Law and Economics*, no.68, oktober 2005, p.653-675.

disclosure stimulates peer to peer comparison. It is this function that the Danish refer to when they speak about “staying on their tiptoes”: no executive likes to appear at the bottom of some list.

Counter-productive effects of disclosure

However, stigmatizing approaches can have several counter-productive effects for compliance. A well-known risk of a stigmatizing approach is that it can produce defiance. For example, the moral message can be interpreted so negatively by either the public or the company itself that it leads to a demoralizing stigma. Often, violations are not the result of a rational calculation of costs and benefits, but of incapacity and a low degree of professionalism. Disclosure will not solve these problems, and the violating companies will not always be able to improve their performance. When bad performers cannot get rid of their stigma, their motivation to improve compliance will vanish, and their bad reputation can become a self-fulfilling prophecy. So, instead of improving compliance, disclosure could even reinforce violators in their behavior.

Moreover, a stigmatizing approach can be perceived as unfair and illegitimate, and as a violation of the principle of due process. The public character of inspection results seems to place the fairness of the inspection procedure under a magnifying glass. There is an extra pressure on the transparency of inspection procedures; a fair selection of inspected companies; the consistency of the evaluation of company performance, and the correctness of information. A stigmatic approach can generate hostile reactions of the business community when they experience that these principles are not being met. The fairness of the procedure is not dependent on the inspection agency alone. More than with traditional enforcement instruments, the results of disclosure are dependent on the reactions of the media and the public. Inspection agencies do not completely control the outcome of their publication policy. Media can use the information for entertainment goals, sensationalizing risks and causing disproportional effects for those companies that attract the attention of the public¹³. Although inspection agencies cannot be blamed for this, their legitimacy will suffer. In this way, disclosure can hamper a cooperative attitude and voluntary compliance, and invoke strategic or counter-productive behavior of companies.

In the field of food safety, the potential demoralizing and counter-productive effect of disclosure is beautifully illustrated by the reaction of the Chinese restaurateurs in Rotterdam to the closure of a well-known Chinese restaurant and the publicity that followed. In an emotional meeting with politicians, three hundred restaurant-owners and personnel showed up to express their dissatisfaction. The Chinese entrepreneurs accused the Food Safety Authority of unfair and one-sided treatment in comparison to the treatment accorded to European restaurants. Angry patrons protested saying: “The government is picking on us”;

¹³ Meijer, A., *Vreemde ogen dwingen, De betekenis van internet voor maatschappelijke controle in de publieke sector*, Den Haag, 2004.

“Hygiene rules are much too severe and not tailored to the Chinese way of cooking”; “My customers never have diarrhea”. Regardless of the truth in these allegations, it is clear that the shaming associated with the public announcement of closure of this restaurant did not result in better compliance, but produced defiance and hostile reactions of a whole business community.

The balance between deterrence and defiance

As we have seen, a certain amount of bad publicity is necessary to attract the attention of an audience and to send a moral message. However, stigmatization can easily backfire. The balance between deterrence and defiance is fragile. How can regulators make sure that disclosure will reinforce compliance instead of violations? How can they fulfill the task of moral education while respecting due process requirements?

The classic approach to this is “reintegrative shaming”, a concept introduced by the Australian criminologist John Braithwaite. Reintegrative shaming requires separation of the act from the offender. It means condemning the violation, but maintaining a respectful approach towards the offender or offending company. After the expressions of disapproval (shaming), the company should be reintegrated into the community. This approach is the opposite of stigmatizing shaming which produces outcasts.

There is no clear boundary between these forms: reintegrative shaming versus stigmatizing shaming can be regarded as a spectrum ranging from little to large stigmatizing effects. Although excessive stigmatization should be avoided, it should be realized that reintegrative shaming is not neutral. At both sides of the spectrum, shame needs to be invoked, by the implicit or explicit disapproval of behavior.

In this context, it should be realized that public disclosure of offences is almost never neutral. Even if the enforcement agency limits disclosure to a neutral list of companies or products that exceed the norm, this information will be experienced as stigmatizing by the companies that are mentioned. Negative coloring is provided by the fact that the information is disclosed by a public authority with the legitimacy to determine what is right and wrong, and the power to punish.

So, the question is not whether to disclose, but how and what to disclose. A certain degree of stigma is necessary to reach a deterrent and educative effect, but on the other hand, an approach that is too stigmatic can become counter-productive. What publication strategy best fulfills the tasks of deterrence and moral education? In the remainder of this article, I discuss several aspects of disclosure models, illustrated with examples from current practice in food safety. After several variations have been outlined, I explore the stigmatizing aspects of each of them. This leads to a conclusion about what models will be most productive in securing compliance.

4. A framework for the analysis of disclosure regimes

In this section, I will develop a framework for the analysis of the stigmatic character of disclosure regimes. To do this, five key characteristics will be identified on which disclosure models can differ. On each characteristic, variation takes the form of a spectrum. Following the identification of these characteristics, I will discuss the stigmatic character of types of disclosure at each end of the spectrum. To illustrate, I will draw from current practice in Denmark, the UK, the Netherlands and Norway¹⁴. These practices are described elaborately in the country reports in this special issue, so I will refrain from further introduction here. Where no examples are available, I draw from other fields, such as environmental regulation or health and workplace safety regulation.

Detail of information

A first distinction that can be made is the degree of detail in the information that is published. Enforcement agencies can publish aggregated results, such as the number of violations in a certain field or the number of fines that have been imposed. The Norwegian Food Safety Authority generally publishes aggregated reports with results of inspection campaigns or results of a specified period. It also publishes specific, but anonymous information on violators. At the most detailed level, the inspection results of individual companies can be disclosed, mentioning their names and addresses, and the nature of their violations. The Danish and UK “scores on the doors” are an example of this.

The stigmatic character of the information that is disclosed, varies in accordance with its degree of detail. Aggregate information on industry level is less stigmatizing than specifically mentioning a company by its name. The more detailed the disclosed information is, the more it will potentially affect a company’s reputation. Therefore, more specific information will have a stronger deterrent and stigmatizing effect.

Occasion for disclosure

A second distinction can be made on the basis of the occasion for disclosure. A disclosure policy is said to be incident-based, when the decision to inform the public is dependent on the risks, severity or impact of the situation that has been detected. This kind of disclosure will usually follow directly after an unsafe situation has been identified. The recall procedure is an example of a public announcement in case a product forms a serious risk to safety or health. However, incidental disclosure is also possible after measures have been taken, to inform the public. The Norwegian situation is an example of an incident-based policy: the law forces the agency to actively publish information when there is a reasonable suspicion of danger to people’s or animals’ health associated with consumption of food or feed stuff.

The opposite of an incident-based policy is a generic or systematic disclosure policy where all inspection results of a certain population are being published regardless of a specific occasion. Still, a choice has to be made regarding the frequency of publication. The Danish

¹⁴ Data were gathered during the 2-day Workshop Transparency and Confidentiality, Food Law Enforcement Practitioners in Europe, The Hague, January 2007

smiley website is updated every night with the latest inspection results. In the Dutch database, information is also added whenever available, but since the population is large and inspection capacity quite limited, it does not offer a systematic coverage of the population¹⁵. For this reason, the London database, which is expected to be launched in April 2007, will include all food premises inspected from 2006. It is backdated in order to have a reasonable body of results.

Regardless of the systematic or incidental character of a publication scheme, all disclosure of negative information on companies will stigmatize them to some extent – that is why it is done in the first place. However, the more generic and systematic the disclosure regime, the larger the body of results, and the more the performance of a single company will be placed in the context of the collective. When information is disclosed as a reaction to a food safety or hygiene incident, the company is singled out, and the individual message will attract a lot of attention. Systematic and periodic disclosure is also less stigmatic because publication occurs regardless of the detection of violations: the reason for publication is often formulated in terms of compliance of a sector or accountability of the auditor. The same line of reasoning can be applied to the size of the body of results and frequency of publication. When a small basis of results exists, a single noncompliant company will appear more exceptional, because no information is available about the group as a whole.

A systematic disclosure regime may be less stigmatic, but this does not mean that it is less deterring. On the contrary, the certainty of disclosure that is provided with a systematic regime probably may serve as a more powerful deterrent than incidental disclosure, which, again, is quite unpredictable.

Scope of information

The information can either focus specifically on rule violations, or cover the complete array of the inspection including positive aspects. When only the names of violating companies are published, we speak of a black list. On the other end of the spectrum, a whole inspection report can be published. The Danish smiley scheme offers an example, with a summary of an inspection report with results on five aspects of food safety; such as hygiene, labeling and information and training of staff. The Dutch website offers a middle course, because it mentions all inspected companies, but only mentions one aspect of their performance: the residues of pesticide in fruit and vegetables for wholesalers, and the use of trans fatty acids in liquid frying fat of snack bar holders.

¹⁵ For example, the database for the use of liquid frying fat does not contain results on snack bars in the cities of Amsterdam and the Hague. For the city of Rotterdam, three results are available, dating July 2006. All three concern the same company, Verhage Fast Food (search results of march 1st 2007).

Concerning the scope of information, secondly, disclosure can be limited to the point of view of the authority, or it can offer room for comments by the company. Both the Danish and Dutch systems provide for a company reaction. The Danish via a single rule on the scheme where the company can checkbox whether it agrees, disagrees, takes corrective action, or other. The Dutch website offers space for a written reaction of a company.

A publication policy that focuses on violations is more stigmatizing than publication of an inspection report that covers all aspects of company performance, both good and bad aspects. Singling out violations without providing a background of overall performance, will lead to the suspicion that more things are wrong with the company. This is especially true when the issue that is subject to disclosure is not the most important aspect of company performance, as is the case with the use of liquid fat in snack bars. In snack bars, aspects of food hygiene, freshness and temperature offer more important health risks, but they are not mentioned. Also, lack of context will become stigmatizing when the inspection takes a snapshot or sample that may not be representative of overall performance. This becomes evident out of the reaction of a Dutch wholesaler in prunes that contained an excessive amount of pesticide residue. Its official reaction states: "We are very surprised with the results of the analysis. The VWA has evaluated our monitoring system on residues as very good. Our own analysis of a different sample of the same party of prunes corresponded to the regulation".

Tone and style of information

A fourth dimension is the tone and style of the information that the enforcement agency discloses. The message can vary from a short factual reference to the legal norm that has been violated to a negatively colored narrative of the nature of the violation, its impact, and the sanction that has been imposed. In other words, the message can be presented as neutral and factual or aggressive. The Dutch website on pesticide residues is an example of a quite neutral, factual approach: It states, for example, that a sample of celeriac of supermarket Jan Linders in Nederweert does not comply with respect to residues: it contains 0,05 mg/kg of dimethoat, whereas 0,02 mg is the norm. It is also mentioned that this amount does not cause a health risk. An example of a quite aggressive approach can be found in the "Spotlight on Business Environmental Performance", published annually by the British Environment Agency, which uses messages such as (2006, p.27): "Registered waste carriers have no excuse for flouting environmental regulations. Yet Joywheel Ltd still dumped more than 100 truckloads of excavation waste on farmland in Amersham, Buckinghamshire. We worked with Buckinghamshire County Council to catch these criminals, resulting in a fine of 10.000".

Obviously, factual and objective information is less stigmatic than "colored" information in the form of a grade or a smiley. When some sort of symbolic representation is offered, the risk is

that the complexity of company performance is reduced to a single measure. The more the regulator adds its own interpretation, the more stigmatic a message can turn out if this interpretation is negative.

Accessibility of information

The format and accessibility of the information is the last dimension that is distinguished. Again, the information can be formal in character, focusing on legal rules and/or sanctions, or it can be designed with the customer in mind. Depending on the needs of the audience, it can be accessible in a public register, on the internet or on the spot. Restaurant clientele is best served by information that can be understood easily and quickly, as in the smiley schemes that are displayed in Danish restaurants. In the London pilot, restaurant holders can choose whether they display the scores “literally” on their doors. When accessible on the internet, the information can take the form of a blacklist of violators, or some browsing method can be applied in order to enable gathering information on companies in a certain area or field. The Dutch website is designed to enable the public to search results for its local supermarket or snack bar.

The more accessible the information is, the more it will be experienced as stigmatizing. A restaurant that is forced to display an inspection report with a sad smiley face at the premises, will suffer more from the disclosure than a Dutch snack bar whose customers first have to search for information on the internet. Moreover, the Dutch customers will only find a formal message that is difficult to interpret. We can all understand the risks of keeping food above temperature, but it is more difficult to judge the negative impact of eating fruit that contains 0,03 mg too much of a certain pesticide.

When publication is violation-centered, a black list will be perceived as more stigmatizing than a database. Moreover, a black list where companies appear in alphabetic order, a restaurant called “apple tree” is always on top of the list and receives a lot more attention than its colleague named after pears, peaches or prunes.

Summary of the framework

In this section, I have developed a framework for the analysis of the stigmatic nature of disclosure regimes. Five aspects have been identified on which disclosure models can vary. On each aspect, a spectrum of outcomes can be identified. The different varieties of disclosure produce stigmatizing effects. The framework is summarized below.

	Less stigmatic	More stigmatic
Degree of detail	aggregate inspection results	Individual inspection results
Occasion of disclosure	Systematic and periodical	Incident-based
scope	Complete array of inspection	Violation-centered
Tone and style	Neutral and factual	Colored and aggressive

accessibility	Limited and formal, without interpretation	On the spot and symbolic, offering interpretation
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5. Conclusion

A disclosure scheme can deter companies from violating the law through the amount of bad publicity that it generates and the normative message it contains. A certain degree of stigmatizing is necessary to deter and to reinforce social norms, but on the other hand, an approach that is too stigmatic can become counter-productive. To help draw this balance, a framework has been developed for the analysis of the different variations of disclosure that we have identified, in terms of their stigmatic character.

The framework distinguishes five aspects on which disclosure regimes may vary: their degree of detail, their scope; the occasion for publication, their accessibility for customers and their neutrality. The next step is to evaluate these aspects on their effects in securing compliance. Disclosure that is formal, factual, extensive and systematic, is less stigmatizing than information that takes the form of a story or symbol, information that is summarized, incident-based or violation-centered.

This framework can help in designing a disclosure regime that promotes compliance, but it does not sketch an “ideal” disclosure regime. Regimes that approach the more stigmatizing extreme of the spectrum on each aspect will be more deterrent, but also more likely to produce counter-productive effects such as defiance or perceived lack of legitimacy. However, regimes that remain on the non-stigmatizing side on each dimension will not always be deterrent enough.

The challenge is to design a regime that balances the five different aspects. A more stigmatic choice on one dimension may be balanced with a more neutral approach on another dimension. In weighing the different dimensions, the sensitivity of the target group for reputational damage needs to be included. For a highly reputation-sensitive target group, a less stigmatizing regime may be enough. However, this does not mean that target groups that are relatively insensitive for reputational damage are best approached with a maximum of stigma: here, disclosure is probably of limited use and will give rise to counter-productive effects.

To illustrate the working of this framework of analysis, I will apply it to the Dutch and Danish disclosure regimes. What can we conclude comparing the Dutch and Danish disclosure regimes on their potential for improving compliance?

Both the Dutch pilots on pesticide residues in vegetables and fruit and trans fatty acids in frying fats, as well as the Danish smiley schemes on restaurant hygiene, offer a systematic and detailed overview of the inspection results of companies with names, addresses and inspection results of companies. However, they vary in scope, neutrality, and accessibility.

The Dutch regime focuses on compliance on a single issue, whereas the Danish regime has a broader scope of company performance including process characteristics as the quality of the own-check system and staff training. The Dutch system takes a more neutral, factual approach, whereas the Danish inspection regime adds some color to the information by providing a smiley or sad face. The accessibility of the Danish system is better, since the information is displayed on the spot in a customer-friendly format; whereas the Dutch customer will have problems finding the database on the internet and evaluating the information that is provided, due to its formal character.

Due to its greater visibility and accessibility and the coloring that is provided with the smileys, the Danish regime is more effective both in deterring and in stigmatizing. The visibility is high enough to trigger compliance. A negative smiley that is visible for all customers, will produce shame. However, the balance does not shift to counter-productive stigmatization, because the smiley is embedded in a report that covers both good and bad aspects of company performance and processes, and the inspection history is shown. Compared to the Danish regime, the Dutch regime is less deterrent and more stigmatic. The low visibility will not trigger compliance, whereas the snapshot, violation-centered approach will produce defiance with the companies that will find themselves unfairly judged on a single issue. The greater neutrality of the message, in my point of view, does not compensate for this stigmatic approach. On the basis of this analysis, I would judge the Danish system best fit to produce compliance while limiting the chance that the potential counter-productive effects of stigmatization occur.