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Korrespondenzadresse:
outi.lepisto@helsinki.fi

Department of Food and Environmental Hygiene, University of Helsinki, Finland

Application of EU legislation concerning food control fees in Finland

Anwendung von Gemeinschaftsvorschriften über die Gebühren für die amtliche Lebensmittelkontrolle in Finnland

Outi Lepistö, Mari Nevas, Marja-Liisa Hänninen

Summary

According to EU legislation every member state of the European Union is obliged to collect fees in food control. The purpose of this system is to target costs to the users of the actions and thus ensure resources for official control. In our study we analysed the construction, validity and implementation of the control fee tariffs in Finland, using a questionnaire targeting municipal environmental health and food control authorities. We also analysed the effects of new legislation in Finland affecting control fees and planned inspections as well as the effects of regional differences in fees on the principle of equality. The results show that there are regional differences in the application of control fees. This may lead to shortcomings in implementing the principle of equality and also cause distortions in competition among entrepreneurs.

Keywords: Regulation (EC) No. 882/2004 on official controls, official food control, fees for official controls, control fees Finland, control fees Germany

Zusammenfassung

Nach den Gemeinschaftsvorschriften sind die Mitgliedstaaten der Europäischen Union ermächtigt Gebühren oder Abgaben zur Deckung der Kosten für die amtliche Lebensmittelüberwachung zu erheben. In dieser Studie wurde der Aufbau, die Gültigkeit und die Durchführung des Gebührensystems für Lebensmittelkontrollen in Finnland mit Hilfe eines Fragebogens untersucht, der an die zuständigen Behörden gerichtet war. In die Untersuchungen über die Erhebung der Kontrollgebühren floss eine neue Gesetzgebung in Finnland ein, die zu einer Reduzierung der Anzahl der zuständigen lokalen Behörden geführt hatte. Die Wissenschaftler analysierten die Auswirkungen der neuen Gesetzgebung in Bezug auf die Kontrollgebühren und die umgesetzten Inspektionen sowie die Auswirkungen der regionalen Unterschiede bei den Gebühren im Hinblick auf das Prinzip der Gleichheit.

Die Ergebnisse der Studie zeigen, dass es regionale Unterschiede bei der Erhebung der Kontrollgebühren gibt. Dies kann zu Mängeln bei der Umsetzung der EU-Gesetzgebung und den Grundsatz der Gleichstellung sowie zu Verzerrungen im Wettbewerb unter den Unternehmern führen.

Schlüsselwörter: Verordnung (EG) Nr. 882/2004 über amtliche Kontrollen, amtliche Lebensmittelüberwachung, Gebühren amtliche Überwachung; Kontrollgebühren, Gebührentarife Finnland, Gebührentarife Deutschland

Introduction

Every member state of the European Union is obliged to collect fees in food control (European Parliament and Council Regulation 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, 2004, hereafter referred to as Regulation 882/2004). The purpose of the fees is to cover the costs occasioned by official inspections in the food control sector and to ensure adequate financial resources for carrying out the mandated system. Hence, the competent authorities in the field of food control must determine the fees that will cover the costs incurred. The legislation nevertheless defines the aims and not the means, and therefore member states are free to establish the system and the fees in their own way. The fees can be defined as flat-rate amounts based on the time and the costs incurred by official control actions or by following the minimum fees given to some of the actions specified in Regulation 882/2004.

The control fees should not be lower than the minimum nor should they be higher than the costs borne by the responsible authorities (Regulation 882/2004). In setting the fees member states shall take into consideration the type of business concerned and relevant risk factors. This means that if official controls are carried out with reduced frequency because of an efficient own-check system as well as the level of compliance found during official controls, then the member states may set the control fee below the minimum rates. When the responsible authority carries out several official controls at the same time in a single establishment, it shall consider these controls a single activity and charge a single fee. Furthermore, when the detection of non-compliance leads to official controls that exceed normal activities, the authority shall charge the operators responsible for the non-compliance for the additional expense.

According to a study by European commission on fees and charges collected by the member states (European Commission, Directorate General for Health and Consumers 2009, part I) the collected incomes in the majority of member states are incorporated into the General State Budget, either entirely (11/27) or partly (7/27). Only nine member states claim to be directing the fee income specifically to those authorities performing the controls. As many as fourteen member states indicated that they do not cover the official control costs through the fees, while six member states claim that they do, at least in some cases.

Furthermore, according to the study (European Commission, Directorate General for Health and Consumers, 2009, part II), the stakeholders in the sector are generally concerned that the control fee system can cause distortions in competition between member states or between entrepreneurs in one state. At present the most well-documented examples of regional differences can be found in Germany, where a number of court cases have been filed due to different applications at the local level to define the system and to determine the activities for which fees are charged. In Germany, responsibility for official controls lies with the federal states, Bundesländer (German Federal Food and Feed Code, 2005). The Federal Office of Consumer Protection and Food Safety (BVL) prepares co-ordinated monitoring programmes which are then implemented by the states. Regulation 882/2004 is not centrally implemented at the federal level, but each state has its own laws for regulating the control fees. The control fee system

therefore varies among the federal states and furthermore, because the fee levels are set at regional, local or even at the individual establishment level, widely differing fees are charged for the same control activities throughout Germany (European Commission, Directorate General for Health and Consumers, 2009, part II).

In Finland too the Regulation 882/2004 is not centrally implemented. The municipalities can define their own control fees based on their actual costs (the Finnish Local Governmental Act 1995; the Food Act, 2006; the Health Protection Act, 1994). The municipalities can also charge less than the actual costs involved. The charges include inspections based on the control plan formulated at the municipal level. The control plan includes food control as well as environmental health control such as defined by the Health Protection Act (763/1994), the Act on the Safety of Consumer Goods and Consumer Services (75/2004) and the Chemicals Act (744/1989). In June 2009 a new national legislation on regional environmental health and food control units came into force (the Finnish Ministry of Social Affairs and Health, 2009). According to the new law, municipalities in Finland must arrange environmental health and food control so that there are at least ten people working in a given unit. This means that the municipalities must construct larger, regional units in order to comply with this regulation. At the beginning of 2009 there were 135 municipal environmental health and food control units in Finland, yet by 2013, there should be only 50 to 85 such units (Finnish Ministry of Social Affairs and Health, 2009). In each unit the control fees will be determined independently.

In Sweden the National Food Administration (Svenska Livsmedelsverket) is responsible for enforcing the legislation and regulations concerning food safety at the national level. The County Administrations have responsibility for co-ordinating food control at the regional level, while the municipal Environment and Health Protection Committees have responsibility for food control at the local level (Svenska Livsmedelsverket, 2009). The control fees include all food establishments and water treatment works (the Ministry of Social Affairs and Health, 2003). The control fees are mainly annual (Förordning om avgifter för offentlig kontroll av livsmedel, 2006), and as in Finland, they are defined within municipalities. Since the beginning of 2007, the control fees have had to be based on risk assessment according to the model and directions of the central bureau (Riskklassifiering av livsmedelsanläggningar och beräkning av kontrolavgifter, 2007).

The present study had three aims: 1) to determine how the EU legislation and its principles of control fees and charges are implemented in one member state Finland; 2) to determine whether the income from inspections is returned to the control authorities and 3) to determine whether the present implementation of the fee system causes regional differences in control fees in Finland. According to the legal principles given in the Constitution of Finland (1999), the Administrative Procedure Act (2003) and the legal principles of administration in Finnish legislation, everyone is equal under the law and must be treated equally. The principle of equality is also strongly emphasised in the Charter of Fundamental Rights of the European Union (the Commission of the European Communities, 2000) as well as case law established at different court levels of the European Union (Eur-Lex, 2009). Equality can be considered part of the principle of good governance (Lepistö, 2008;

Lepistö et al. 2009). It is assumed that the principle of equality ensures regional and economic equality.

Our aim was to monitor the construction, validity and implementation of the control fee tariffs in Finland, using a questionnaire targeting municipal environmental health and food control authorities. We also analysed the effects of new legislation in Finland affecting control fees and planned inspections as well as the effects of regional differences in fees on the principle of equality.

Materials and Methods

In April 2009 an electronic enquiry was sent to those Finnish municipal environmental health and food control units that had an e-mail address in the national register of Finnish Food Safety Agency in December 2008 (Evira, 2009). The enquiry, constructed with software of Webropol (Webropol RTA, Coventry, UK), had questions about the size of the units, the validity and construction of the tariffs, the amounts of the fees and the use of the incomes. The enquiry was addressed to the head of each unit. The respondents received e-mail message and one reminder about the enquiry.

The answers were recorded and analysed using MS Excel Software (Microsoft Corporation; Redmond, WA, USA). A statistical analysis was conducted using SPSS 15.0 software for Windows (SPSS Inc.; Illinois, USA). A Spearman correlation test was performed to analyse differences among the respondents at the 95 % level (p -value < 0,01). The answers were analysed both quantitatively and qualitatively. The qualitative analysis was performed for descriptive and explanatory answers to find the opinions and attitudes of control officers towards the control fee system.

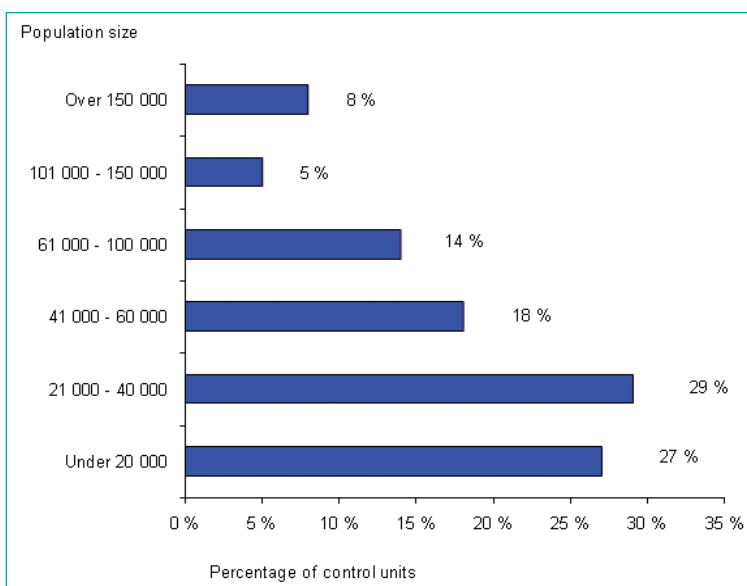


FIGURE 1: Size distribution of municipal environmental health and food control units according to the number of inhabitants living in the area in Finland 2009 ($n=63$).

Results

Of the 135 municipal control units, 64 responded to the enquiry (response rate of 47 %). Among these 64 municipalities, the control had been arranged by joining other communities (in regional units) in over half of the respondents (36/64; 57 %). Most of the control units had between 21 000–40 000 inhabitants in their area. The populations are shown in Figure 1. The units in which the number of working personnel was fewer than ten made up over half of the respondents (34/64; 53 %).

Most of the control unit chiefs (55/63; 87 %) did not work in management tasks alone, but also had other tasks, such as control actions. There was a statistically significant

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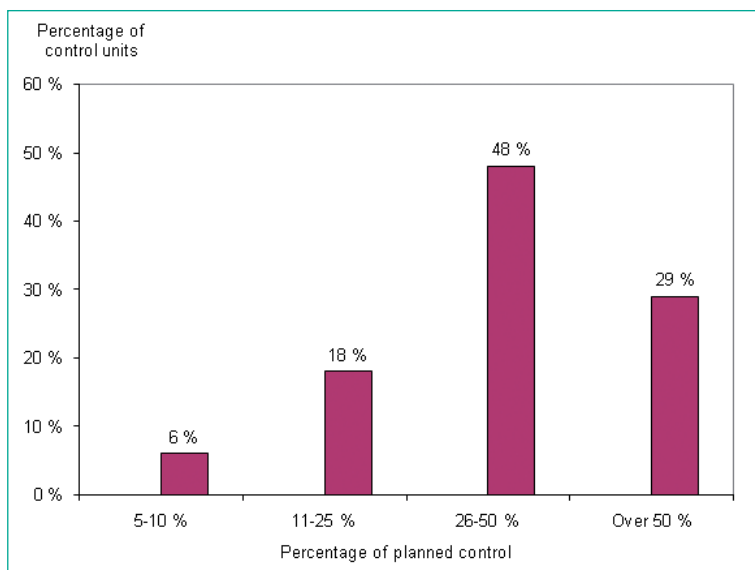


FIGURE 2: The percentage of planned control of entire control actions in municipal environmental health and food control units in Finland 2009 (n=63).

negative correlation between a chief performing tasks other than management and the population size of the unit ($r=0,694$, $p=0,001$) as well as between the chief performing tasks other than management and the number of personnel working in the control unit ($r=0,684$, $p=0,001$).

The proportion of planned control varied between 5 per cent and more than 50 per cent. The portions of planned control in units are shown in Figure 2. There was a statistically significant negative correlation between the portion of planned control and the population size of the unit ($r=0,395$, $p=0,001$) and between the portion of planned control and the number of personnel working in the control unit ($r=0,415$, $p=0,001$). The inspection frequencies were based on risk-assessment in food control 34/62 (55 %) and on other environmental health issues in 44 per cent of the units. The risk assessment was based on officers' individual or general estimation of control targets in 8 per cent of the control units. There was a statistically significant positive

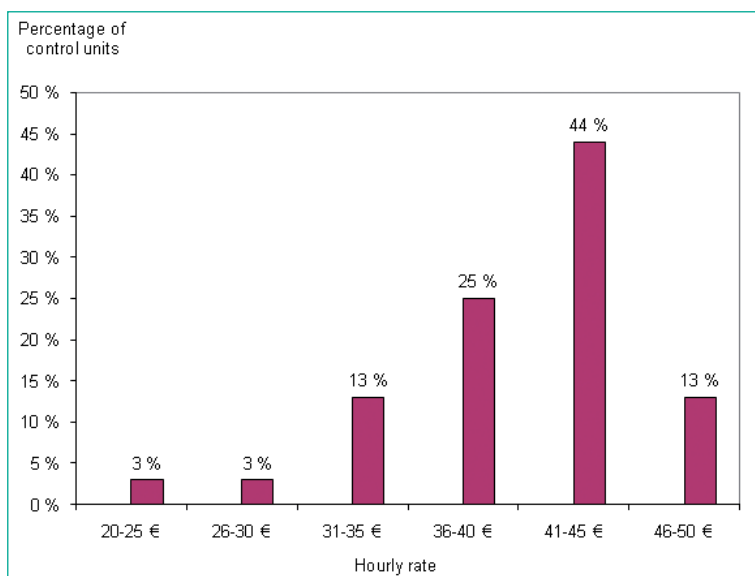


FIGURE 3: Hourly rate of control fees collected by municipal environmental health and food control units in Finland 2009 (n=64).

correlation between risk assessment in food control and the number of personnel working in the control unit ($r=0,416$, $p=0,001$) as well as between risk assessment in food control and the population size of the unit ($r=0,395$, $p=0,001$).

A tariff validated by a municipal organ was levied in majority of control units (57/64; 89 %). A total of 45 per cent of the tariffs were authorised 2009, and 38 per cent in 2008. Most of the tariffs were a mix of hourly rates and flat rates (43/63; 68 %). The applied hourly rates varied between 20 and 50 Euro. The hourly rates in control units are shown in Figure 3.

Travelling costs were also charged very differently. In almost half of the units (29/63; 46 %), travel time was included in the inspection time, while in 35 per cent (22/63) of the units the travelling costs were included in the hourly rate and travel time was not included in the inspection time. The travel costs were not charged in any way in 13 per cent (8/63) of the units. The control visits,

which included several inspections based on different legislations at the same visit, were considered and charged as one single control action in 53 per cent (34/64) of the units. In 14 per cent (9/64) of the units the inspections were charged separately, and in 17 per cent (11/64), the main inspection was charged normally and the other parts of the control visit were charged with a 50 per cents reduction.

In over one third of the control units (24/63; 38 %) the control fees covered the true costs of the control actions. The incomes were directed to the control units in most of the responding units (43/63; 68 %). The control actions that were directed to entrepreneurs who did not follow the legislation (non-compliance) were normally charged in most of the control units (44/62; 74 %). In 10 per cent of the units (6/62) the control actions of non-compliance were not charged at all, and the fees were lower than normal in three per cent of the control units.

The officers in the environmental health and food control sector viewed the control fee system positively or rather positively in 16/63 (56 %) of the control units. The system was viewed negatively or rather negatively in 13 per cent (8/63) of the units. Most of the respondents thought that the control fee system had had a positive effect on the quality (40/63; 64 %) and uniformity (42/63; 67 %) of the inspections. The greatest concern was caused by the regional differences and the office work generated by the control fee system.

Discussion

Almost half of the communities who responded (41 %) had arranged the environmental health and food control themselves. As seen in Figure 1, most of the control units were rather small. The new legislation requires that the number of personnel working in the sector be a minimum of ten in every control

unit. Thus organised regional co-operation should be arranged in the next few years in more than half the control units.

The heads of the control units were not working exclusively in management. Our results showed that the proportion of other tasks diminished as the size of the control units grew. The adequate management of the control unit is extremely important and improves the uniformity and quality of control.

The proportion of the planned control varied considerably among the units. As seen in Figure 2, the proportion of planned control was most often between 26 per cent and 50 per cent of the entire control. What is alarming is that, according to our results, the proportion of the planned, chargeable control seemed to decrease when the size of the unit grew. One particular purpose of the new legislation in Finland is to increase the planned control by creating bigger units. One explanation for our result could be the age of the control units. If the co-operation had just begun at the time of enquiry the action of the unit would not have been the most efficient and the proportion of the planned control thus minor. Nevertheless, efficiency of action can also suffer in bigger units if there are overlapping operations. Also the geographical situation has an effect on the control: if the distances between the control targets grow, then travel time adds to the time required for carrying out the control. On the other hand, in bigger units the portion of risk-based control in the food sector was higher than in smaller units. Thus, the efficiency of action increased in form of more adequate and risk-oriented control. According to our results, the risk assessments in some units were based on officers' individual or general estimation of control targets, which impairs the quality and equality of the risk-based control and can cause distortion in the results of risk assessments between the control units. Similar results were reported by Tähkää et al. (2009) in their study of the control plans in Finnish environmental health and food control units. In 2005 over 52 per cent of the respondents indicated that risk assessments were difficult to carry out and created a sizeable problem in a control plan and only 16 per cent of control units had a risk-based frequency of inspections of every control object. Furthermore, in 41 per cent of the municipalities the risk assessment and the frequency of inspections were decided solely by the local inspector. This means that the risk assessments can vary a good deal in different municipalities.

The most common form of tariffs was a combination of hourly rates and flat rates. This may be considered a reasonable solution in new regional control units. The harmonisation of working cultures and practices takes time. A pure hourly rate system would cause differences in the fees within one and the same control unit. There was, however, a significant variation in hourly control fees between the control units as seen in Figure 3. The variation in the hourly rates were at most 30 Euro per hour. Also the variation in charging travel costs increased the differences between the control units. So did the fact that the sectors included in the tariffs also varied between the control units. This means that the same actions can be chargeable in some units, but free of charge in others. This puts entrepreneurs in economically unequal situations depending on their companies' geographical situation. A risk for different treatment of operators based on their geographical location was also noticed by Tähkää et al (2009) in 2005.

According to a study by Rahkio (2009), the fees in small Finnish slaughter houses can be as much as seven times higher than the minimum fees in Regulation 882/2004. In ad-

dition, Kaario et al. (2008) reported that Finnish small food industry establishments experienced the control fees as problematic and unreasonable and elevated the prices of products too much. This result echoes the opinion of the German meat industry, which maintains that the outcome of differences in control fees between the federal states causes a loss of competitiveness for establishments located in regions that pay what are considered to be unreasonably high fees (European Commission, Directorate General for Health and Consumers, 2009, part II).

The differences in control fees can also influence the work of the officers in control. In areas where the hourly rates are higher, there may be pressure to make the inspection visits quicker than is recommended. According to one Finnish report (the Ministry of Forest and Agriculture, 2006), the differences in charges levied were also caused by exceptions or reductions made to the fees. Among entrepreneurs, these differences were regarded as unequal and unfair treatment. According to a study by European Commission (2008), differences in fees are acknowledged as one of the factors affecting the competitiveness and therefore putting the food industry of a member state at a competitive advantage or disadvantage. Our study showed similar results.

The costs of the control were not covered by fees in 62 per cent of the units, and the income was not directed back to the control units in 32 per cent of the units. This means that at the moment in Finland the control fee system does not entirely fulfil its key objective, which is to provide sufficient resources for the effective and efficient operation of official inspections.

Although actions arising from non-compliance and its consequences control should be chargeable, in 10 per cent of the responding control units such charges were not levied. The chargeability of non-compliance can increase the effectiveness of compulsory actions, and the actions thus can serve as economic incentives (Lepistö, 2008).

The control fees are mainly viewed positively by officers in the environmental health and food control sector, and most of the respondents thought that the inspections had increased in quality and uniformity. Nevertheless, over 10 per cent of the respondents viewed the fees negatively. In particular, there seemed to be a fear of burdening officers with collecting fees if the resources do not simultaneously increase. The officers were also worried about the differences in the fees. There was one request to move to yearly charges and to a common, risk-based control fee, for example, as is done in Sweden.

The legal principles of administration are strongly emphasised in both Finnish and European legislation (the Constitution of Finland, 1999; Administrative Procedure Act, 2003; European Parliament, 2001; the European Parliament and the Council and the Commission of European Communities, 2000; the Commission of European Communities, 2001). Although these principles are not directly written into the legislation, public authorities in every field are obliged to follow them in their actions as well as their written and specific regulations. According to the Finnish Administrative Procedure Act (2003), Sector 6, an authority must treat everyone equally (the principle of equality) and use its power for legally accepted means only (the principle of legality). Furthermore, according to the principle of equality, all the applications, demands and advantages should be the same in similar situations unless there is an objective reason for different treatment (Mäenpää, 2003). Treating one

separate case differently is prohibited (European Parliament, 2001). The application of the principle of equality should include regional as well as economic aspects in order to ensure reasonable national equality in levying the control fees. When the legislation requires the authorities to define fees based on actual costs, which differ between the municipalities as do the risk assessments, besides endangering these principles the situation also puts the responsible authorities in a contradictory situation.

This study shows that there are significant differences between control fees in environmental health and food control units in Finland, which can therefore put entrepreneurs in economically unequal situations. The situation endangers the implementation of the principle of equality and can cause distortions in competition, especially among smaller establishments. Also the varied basis for risk assessments increases inequality in different regions in Finland. Equality could be increased by creating a nationwide risk assessment system on which the control fees defined by the local control units would then be based.

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Address for correspondence:

PhD Outi Lepistö
Department of Food and Environmental Hygiene
University of Helsinki
00014 Helsinki University
Finland
outi.lepisto@helsinki.fi