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Beyond Compliance.  
Business Ethics and Food  
Safety Culture

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# BEYOND COMPLIANCE. BUSINESS ETHICS AND FOOD SAFETY CULTURE

Tetty Havinga\*

## Abstract

This paper discusses some developments in industry governance of food safety. People in the food industry have come to realize that is not enough to just follow the rules. November 2018, the Global Food Safety Initiative, a transnational organization of the food industry, published a position paper 'a culture of food safety'. A food safety culture is supposed to contribute to business compliance with food safety regulations.

However, we could argue that what really matters is not compliance with the rules, but how people within an organization deal with the rules and with the underlying objective of the rules (safe food). Many rules do not have a stable, determinant meaning independent of the context of their use. This applies more particularly to general obligations and principle based rules. Investigating how business organizations take public interest into account in how they to do their job is often preferable to investigating compliance and noncompliance. The paper concludes with some critical comments on the concept of compliance and on the food safety culture approach.

## Key words

Compliance; food safety ; safety culture; selfregulation; private regulation

“Law and legal systems can never be the ultimate means of controlling behaviour. It is the ethical values of the group in which the rules are applied, and of the individuals in that group, which ultimately matter.”

Christopher Hodges (2015) *Law and Corporate Behaviour. Integrating Theories of Regulation, Enforcement, Compliance and Ethics*, p. 697.

“Food industry laws and formalised standards have done much to make the global food supply safer [...] However, The Global Food Safety Initiative believes that to be successful and sustainable, food safety must go beyond formal regulations to live within the culture of a company.”

GFSI (2018) *A Culture of Food Safety. A position paper from the Global Food Safety Initiative (GFSI)*, p. 32.

## Industry Governance of Food Safety

From the 1990s, criticism of the regulatory capacity of governments and food safety incidents led both the food industry and the governments to explore new forms of food safety governance. Many of these new forms are characterized by a mix of public and private organizations involved in rule-making, monitoring compliance, and enforcement. This hybridization of food governance (Verbruggen & Havinga 2017) fits within the plural and decentralized networked nature of regulation that is a key feature of regulatory capitalism (Parker & Nielsen 2009). Private standards and certification schemes have become increasingly important in food

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safety governance (as well as in other domains) over the last 25 years (e.g. Bain, Ransom & Higgins 2013; Busch & Bingen 2006; Henson & Humphrey 2009; Van der Meulen 2011a).<sup>1</sup> Large supermarket companies initiated the development of private food safety standards such as BRC Global Standard for Food Safety, IFS Food and GlobalGAP without state involvement and without the threat of statutory regulation. On the contrary, the perception that governmental food regulation was inadequate and consumer confidence in food had to be reinstalled after several food safety incidents was an important driver (Havinga 2018: 23). Nowadays, the use of private certification schemes is common practice in the food industry in many countries. There are several drivers for retailers and food manufacturers to be engaged in food safety certification schemes: a safeguard against liability claims, an instrument to assure high quality of food products, standardization of product requirements over suppliers, to avoid incidents and unfavourable media attention, confidence-building (build and maintain an image of reliable and responsible company) and outsourcing expensive quality controls. These retailers and many large food manufacturing firms require from their suppliers and subsidiaries compliance with such a scheme as part of their commercial contracts or procurement policies. This makes the adoption and implementation of such a private scheme in fact mandatory for many farmers, food processors and food manufacturers around the world, even though compliance with these non-governmental schemes is not legally mandatory. Besides, participation in a certification scheme offers a structure to organize and manage ensuring a high level of safety and quality and may prevent a worst case scenario such as food poisoning or product recall.

Current legislation in the European Union explicitly postulates that food businesses are primary responsible for ensuring food safety. Henson (2008) calls public regulations shifting responsibility for food safety to the private sector a push factor for the promulgation of private food safety standards as this establishes a 'legal position' for private standards. This can be seen as an example of responsabilization of business, the other key feature of regulatory capitalism distinguished by Parker and Nielsen (2009).

Private food safety standards lay down more specific and detailed instructions as to how to comply with legal requirements (Henson & Humphrey 2011: 160). Private standards not only add detailed specifications to public regulation, many standards also set stricter requirements. They can do so by adding requirements on issues not covered by governmental regulation, by setting lower thresholds or by extending existing requirements.<sup>2</sup> Current food safety laws in the European Union, Canada and the United States include a mandatory food safety management plan based on Hazard Analysis and Critical Control Points (HACCP)-principles. In this regard, public law is drawing upon the experience of private food standard organizations and auditors with HACCP (Marsden 2010: 255; Oldfield 2015).

The Global Food Safety Initiative (GFSI) plays a central role in the adoption and coordination of private food safety standards (Fagotto 2017, Havinga & Verbruggen 2017). GFSI was established in 2000 to harmonize retailer food safety standards. Its mission is to 'provide continuous improvement in food safety management systems to ensure confidence in the delivery of safe food to consumers worldwide'.<sup>3</sup> As a benchmarking organization, GFSI is a

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1 The food sector has a long history of quality controls by manufacturers, trade associations, and corporatist organizations, particularly in the production and trading of perishable food (Busch & Bingen 2006, Horrocks 1994, Van Waarden 1985).

2 See for example Wright et al. 2013, who assessed many private food assurance schemes operating in the UK and give an overview of correspondence of scheme requirements with legislative requirements regarding food hygiene and safety.

3 <https://www.mygfsi.com/about-us/about-gfsi/what-is-gfsi.html> (22 May 2019).

meta-regulator of business-to-business food safety certification schemes; it does not manage a food safety standard but rather a standard for food safety schemes (Verbruggen & Havinga 2016). Major food retailers, manufacturers and their representative organizations seek to have their standards and accompanying certification schemes ‘benchmarked’ by GFSI as a sign of authority and robustness. GFSI’s influence on both the material and procedural aspects of food safety governance has grown steadily. Currently, 18 food safety certification programs owned by 11 organizations have been recognized by GFSI. These schemes relate to different stages of food and feed production, including farming, processing, production, packaging, storage and distribution.<sup>4</sup>

GFSI is not only a benchmarking organization, it also runs programs and organizes conferences and meetings with stakeholders all over the world to promote ‘a harmonised approach with a shared vision of safe food for consumers everywhere’. One of the priorities of GFSI since its inception has been to enhance confidence among relevant stakeholders in third-party certification. GFSI’s legitimacy is first and foremost based on its widespread acceptance in the market. GFSI has created a global forum for the exchange of knowledge and best practices, promoting third-party certification and the GFSI initiative. By engaging with public regulatory affairs and state actors, it further seeks to bolster its legitimacy.

It can be argued that the commercial interests that dominate the private system will result in a race to the bottom, assurance schemes and certification services competing for a large share of the market could be inclined to be more lenient than their competitors. However, as far as the transnational GFSI benchmarked food safety certification programs are concerned, rather the opposite seems to be the case. Over the years, the programs have become more elaborated by adding requirements on new issues (such as fraud and auditor competences) and tightening up existing requirements. Food safety culture is a new topic that is being discussed within GFSI, it has not been included in the benchmarking requirements up to now.

### Food Safety Culture<sup>5</sup>

Food safety culture is increasingly recognized as being a significant risk factor. Several incidents and foodborne illness outbreaks have been linked to failing food safety culture (Griffith et al. 2010: 427; Jespersen 2017: 1; Powell et al. 2011: 818-820). After working on improving the credibility and acceptance of third party certification systems, the collaboration with international and national governments, the establishment and the promotion of the Global Markets Program to assist companies in acquiring certification, and the inclusion of food fraud in the benchmarking program, GFSI started to work on the strengthening of food safety culture in food business organizations. GFSI ‘believes that to be successful and sustainable, food safety must go beyond formal regulations to live within the culture of a company’ (GFSI 2018: 3). ‘[A]n increasingly complex and fragmented food delivery system demands more than a reliance on written rules, regulatory oversight and safe food practices’ (GFSI 2018: 3). June 2015, the Board of the GFSI decided to establish a technical working group focused on food safety culture. The group was asked to produce a position paper, benchmarking content and a voluntary measurement system. In the position paper, published November 2018, food safety culture is defined as ‘the shared values, beliefs and norms that affect mind-set

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4 GFSI, <https://www.mygfsi.com/certification/recognised-certification-programmes.html>, accessed 22 May 2019.

5 This section is primarily based on GFSI 2018.

and behaviour toward food safety in, across and throughout an organization'. The paper discusses five aspects of food safety culture: vision and mission, people, consistency, adaptability, and hazards and risk awareness. It is emphasized that all these elements are essential for a mature food safety culture. Food safety should be core to the business and embedded throughout the organization. The paper provides guidelines, methods of measurement and advice to help professionals promote and maintain a positive culture of food safety within their organization. It advocates:

- a clear food safety policy statement,
- clearly defined individual responsibilities and non-negotiable rules,
- regular and tailored communication,
- educating employees and reinforcing good behavior,
- alignment of food safety priorities with people, technology, resources and processes, and
- training to ensure that everyone understands the hazards and risks specific to their role.

The Working group recognizes that it may take years or even generations for a culture to mature. In the coming years, the requirement for food safety culture awareness and improvement is likely to be incorporated into the GFSI benchmarking requirements.<sup>6</sup>

BRC Global Standards, one of the leading GFSI recognized industry food safety programs, adopted a voluntary food safety assessment in 2016.<sup>7</sup> The 2018 edition of the standard requires a manufacturing site to have a clear plan for the development and continuing improvement of a food safety and quality culture.<sup>8</sup> However, it is clearly stated that auditors will not audit the culture of the site. The auditors will focus on checking how sites have implemented the requirement. This includes if and how the organization has defined activities that will have an impact on product safety, indicated how the activities will be undertaken and measured, and how they will be reviewed for effectiveness. With this new requirement, BRC recognizes its responsibilities to increase awareness of food safety culture as part of the continuous development of food safety and quality.

## Beyond Compliance?

Both the proliferation and content of certification programs and the recent attention within the food industry for a good food safety culture go beyond compliance with food safety legislation. Many certification programs do include requirements that are not included in the legislation.<sup>9</sup> Food businesses participating in these programs do adhere to these non-statutory requirements. Although a strong food safety culture is supposed to contribute to business compliance with food safety regulations, establishing and maintaining an effective food safety culture is not a legal requirement.

This paper is really work in progress and I have not yet come to clear conclusions. In this section I discuss some thoughts about the concept of compliance and about the food safety culture approach.

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6 <https://www.cultureexcellence.com/food-safety-culture> (21-5-2019).

7 <https://www.brcgs.com/brcgs/food-safety/additional-modules/food-safety-culture-module/>  
<https://www.cultureexcellence.com/food-safety-culture> <https://www.brcgs.com/media/1007/food-safety-culture-module-brochure.pdf>; <http://www.cardiffmet.ac.uk/health/zero2five/news/Documents/David%20Brackston%20UKAFP%202018.pdf> (21-5-2019).

8 BRC Global standard, 8<sup>th</sup> ed., art. 1.1.2.

9 It is particularly these extra-statutory requirements that have raised a lot of concern about these certification programs in international forums.

Is it compliance with (legal) requirements that is most important? Is compliance the adequate concept to work with? There are several arguments here:

1. Having a strong food safety culture in businesses that produce or deliver food may be more important than compliance with the rules to realize the public aim of a safe food supply.
2. Many rules do not have a stable, determinant meaning independent of the context of their use. Different regulators, regulatees and stakeholders will each have their own ideas about what compliance means (Parker & Nielsen 2009: 64). This applies more particularly to general obligations and principle based rules. Examples in the field of food safety include the EU General Food Law stipulating that food business operators carry primary responsibility for the safety of the food they produce or sell. Each business is responsible for taking the measures necessary to ensure compliance with food law requirements within the context of its own specific activities by applying verification procedures and quality assurance systems. One of the major obligations on food business operators in EU law is that they have to 'put in place, implement and maintain a permanent procedure based on the HACCP principles'.<sup>10</sup>
3. Compliance seems to be a dichotomous concept (at least in a narrow conceptualization): either you are compliant or non-compliant. My narrow conceptualization could have to do with the Dutch translation (naleving). Of course, a regulation or law usually contains several obligations, this creates differentiation between compliance with all obligations or with some of them. Parker and Nielsen (2009) use a broader conceptualization that also includes interpretative research that problematizes the very notion of compliance (Parker & Nielsen 2011: 3, 6-8).
4. Investigating how business organizations take public interest into account in how they to do their job is often preferable to investigating compliance and noncompliance. However, even with a narrow conceptualization of compliance, simply compliance with particular rules can be of vital importance. Examples include driving on the wrong side of the road, specific safety regulations in the chemical industry, maintenance of aircraft and nuclear power plants.
5. The concept of compliance puts too strong an emphasis on the question whether people are doing what the rules prescribe. However, what could be an alternative concept? I have not found one yet.

Hodges (2005, 697) is perfectly right in his conclusion that *"Law and legal systems can never be the ultimate means of controlling behaviour. It is the ethical values of the group in which the rules are applied, and of the individuals in that group, which ultimately matter."*

However, related to a culture of food safety we should add some critical observations.

- The discussion about food safety culture is just a discourse. It is unclear if this discourse has been materialized in actual behavior of people working in the food industry. We only have some anecdotal evidence here. There is a real risk of window dressing, companies just paying lip service to food safety culture.
- The concern about food safety culture is voiced in a particular niche of society. We could describe this niche as the elite of professionals working in the field of food safety or

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<sup>10</sup> Article 5 of Regulation (EC) No 853/2004 of the European Parliament and of the Council on the hygiene of foodstuffs [2004] OJ L139/1. HACCP stands for Hazard Analysis and Critical Control Point.

quality assurance. There is no doubt that there are thousands of food safety professionals who work with heart and soul to improve food safety. Many of them are working for large multinational food corporations or in the service and auditing industry.

- It is not to be expected that this food safety culture approach could be effective in all organizations producing, trading and selling food. For now it seems to be primarily the multinational corporate food manufacturers and retailers that invest in this. For many smaller companies and producers in developing countries it is probably hard to apply such a vague and broad approach. Just as it is difficult for many SMEs to establish and maintain a food safety management system. SMEs often rely on information and instructions by governmental enforcement officers (Hutter 2011), Guides for good hygiene (Havinga 2014) and consulting and auditing firms. On the other hand, it seems easier to manage the work attitude and culture of staff in a small organization compared to a multinational. For example, consider a restaurant with an inspired owner dedicated to food safety who personally oversees all work processes.
- Industry 'self-regulation' will only work effectively in particular conditions. An important prerequisite is that business organizations share a common interest that is aligned with the public interest. In the food industry, the safety of food is key to doing business in the long run. A food safety incident may cause serious trouble, not only damaging the brand reputation but also loss of sales, considerable costs and sometimes even bankruptcy. However, even in the food industry some producers may not value food safety. In other industries or in the food industry related to other issues (such as sugar or marketing unhealthy products) a shared private-public interest may be missing. For example, issues such as animal welfare, fair trade, working conditions and human rights may be important because of public pressure and reputation damage, but companies have a less direct interest in this than in food safety. The structural restraints on more responsible business behavior as outlined by Vogel (2005) in 'The market for virtue' are also relevant here.
- Another important condition is the capacity of business. To set up and maintain a tailored food safety program you need expertise, manpower and money. Economically marginal companies will opt for short-term survival.
- A culture of food safety indicates an intrinsic motivation to pay attention to food safety. Particularly for persons and organizations without such an intrinsic motivation and who are only focused on achieving adequate scores during checks and inspections, improvement of the culture that affects behavior is necessary. However, it seems least likely that a strong food safety culture will develop in such circumstances. This is a paradox.
- What will happen when private food safety certification schemes and GFSI include requirements to work towards an improved food safety culture? Will this effectively cause a culture of food safety in food organizations? There seems to be a high risk of lip service, bureaucratic registration systems, ticking boxes and goal displacement. It seems inconsistent to expect that writing guidelines and developing checklists and measurements will create a food safety culture. The GFSI Working group also recognizes the contradiction between culture operating 'on a more instinctual, spontaneous level' and 'checklists designed to nurture a culture of food safety' (GFSI 2018: 32).

However, it is clear to me that strong controls including fierce and strict enforcement in many circumstances is not the best way to go. We should talk and listen to people, convince them, share best practices and instruments and promote continuous learning and improvement.



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