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Non-compliance in organic farming: A cross-country comparison of Italy and Germany

Danilo Gambelli [a,*], Francesco Solfanelli [a], Raffaele Zanoli [a], Alexander Zorn [b], Christian Lippert [b], Stephan Dabbert [b]

[a] Università Politecnica delle Marche, Dipartimento di Scienze Agrarie, Alimentari e Ambientali – D3A, Via Brecce Bianche, 60131 Ancona, Italy
[b] Universität Hohenheim, Institute of Farm Management (410a), D-70593 Stuttgart, Germany

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ABSTRACT

This paper describes the Italian and German organic certification systems, including the institutions involved and the definitions of non-compliance and sanctions. Although they are both implementations of the same EU regulatory framework, these systems differ in many respects. Case study data from control bodies on non-compliance and sanctions are presented and analysed using binary choice models. This analysis shows that the occurrence of slight non-compliance and greater farm acreage are significant risk factors that explain severe non-compliance in both countries. However, to implement an efficient risk-based inspection system in the future, the data collection process must be improved and extended to examine personal attributes of farmers and operators.

Introduction

In recent years, the role of governments and public authorities in food safety regulation and compliance has grown substantially (Henson and Caswell, 1999). Food safety regulation may be understood as a process that defines common standards, their implementation and their enforcement, in addition to being a process with the power to sanction for non-compliance (Garcia Martinez et al., 2007).

Food safety concepts can be adapted and applied to organic farming (Henson and Caswell, 1999; Garcia Martinez et al., 2007). In the organic sector, we distinguish between European Union (EU) regulations (EC, 2007) and national/regional public regulations and guidelines that may be stricter than EU-level regulations. Organic certification should ensure that only compliant operators are eligible to use the EU organic logo, which has been compulsory on all pre-packaged organic food produced in the EU since 2010. There are other national and regional public labels that may be used in addition to the EU compulsory logo, the most respected of which is the German *BIO-Siegel*. Non-compliant behaviour does not necessarily lead to safety problems, but product liability is nevertheless relevant in the organic framework because of both criminal and civil legal provisions that are intended to prevent fraudulent claims. To ensure that products comply with the rules that allow them to be labelled as organic, a public inspection and certification system has been instituted in some member states (e.g., Denmark). By contrast, other states (including Germany and Italy) utilise private third-party inspections that operate under delegation from competent public authorities. Private organic certification systems also involve self-regulation, mainly through private standards set by private actors in the organic sector, such as growers' associations; private product labelling includes the voluntary use of labels associated with private organisations, such as the logos of organic farmers' associations (e.g., Demeter, Bio Suisse, Soil Association) and other private organisations (Janssen and Hamm, 2011).

Food safety regulation is increasingly associated with risk-based approaches aiming to ensure effective enforcement of food standards (Hutter and Amodu, 2008). Council Regulation No. 882/2004 (EC, 2004) defines the general rules for official controls to verify compliance with food and feed safety, with the aim of "guaranteeing fair practices in feed and food trade and protecting consumers' interests, including feed and food labelling and other forms of consumer information" (EC, 2004, Art. 1). It also states, "official controls are carried out regularly on a risk basis and with appropriate frequency" (EC, 2004 Art. 3(1)); thus, such regulation requires national authorities to implement risk-based controls. Van Asselt et al. (2012) provide a review of the methods for implementing risk-based controls in a framework of food safety regulation; for a discussion about risk-based auditing in the food sector, see also Albersmeier et al. (2009). Risk-based controls

* Corresponding author. Tel.: +39 0712204629; fax: +39 0712204474.
E-mail addresses: d.gambelli@univpm.it (D. Gambelli), f.solfanelli@agrecon.univpm.it (F. Solfanelli), Zanoli@agrecon.univpm.it (R. Zanoli), alexander.zorn@uni-hohenheim.de (A. Zorn), christian.lippert@uni-hohenheim.de (C. Lippert), stephan.dabbert@uni-hohenheim.de (S. Dabbert).

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consist of two elements: risk categorisation and risk-based surveillance. The former concerns the measurement or ranking of risk and the latter defines the frequencies of inspections (Van Asselt et al., 2012). Hence, risk-based approaches should be based on the determination of probability and impact factors (see also Hutter, 2004). For a discussion about the advantages of a risk-based inspection system in organic certification, see Dabbert (2012) and Padel (2010). However, the scientific literature regarding the analysis of the probabilities of hazard with respect to risk-based control systems is scarce, particularly in the organic sector. Furthermore, attempts to provide an analysis of risk are often based on expert opinion (Van Asselt et al., 2012; Webster et al., 2010) or on spreadsheet tools that offer a simple and quick approach to relative risk (Ross and Sumner, 2002; Food Safety Centre, 2010). For the application of risk evaluation to non-compliance in the organic sector in particular, the approach has been generally based on simple methods that combine qualitative assessments when classifying operators into risk classes (Piva, 2010; SINCERT, 2009). Recent studies from Gambelli et al. (2012) and Zorn et al. (2013) provide an analysis of the risk of non-compliance respectively in Italy and Germany. Gambelli et al. (2014) consider a comparison of the main risk factors for non-compliance across five European countries.

A working document from the EC Directorate General for Agriculture and Rural Development has been developed in cooperation with member states (Commission of the European Communities, 2011), which includes, among other features, guidelines regarding the risk criteria to be taken into account in the risk assessment of organic operators. This document indicates that risk evaluation should be based on a list of risk factors: the results of previous controls; the quantity of products concerned; the risk of products being exchanged; the type of operator (producer, processor, importer, distributor); the structure of the operator (stages of production, type of staff, number of premises); whether the operator is new; whether there is mixed production and processing; the type and value of products; whether there has been a rapid increase in production; complaints received; suspicion of fraud; and other criteria. However, there is no guideline provided about the methodologies and approaches that should process this information.

The aim of this paper is to provide an analysis of the probability of non-compliance based on quantitative rather than qualitative methods, which will thus provide an empirical contribution to the categorisation of risk controls for organic farming. More specifically, we use discrete choice models to evaluate the likelihood of severe non-compliance depending on a set of risk factors. The analysis is based on data from the archives of the inspections of two main control bodies in Germany and Italy, which provide a basis for comparing the two systems. The implementation of organic regulations at the national level – including the role played by the different institutional actors in the system – may have a direct effect on the enforcement of food rules (Hutter and Amodu, 2008) that also apply to the organic food sector (Zorn et al., 2012). Thus, we provide a comparison of the regulatory framework of the certification systems in Germany and Italy. The Italian and German organic certification systems may be considered relevant cases. In 2010, Italy accounted for the greatest number of organic operators (41,807) in Europe, whereas Germany had the largest number of organic sales (6020 mil €) (Willer and Kilcher, 2012). The comparison of the two national systems considers two aspects. We first discuss how institutional factors influence the certification system and might affect the management of non-compliance, including its definition and sanctioning. We then analyse the determinants of non-compliance by focusing on the relevance of a set of risk factors. The analysis refers specifically to the probability of severe non-compliance in the two countries.

The structure of the paper is as follows. In the next section, we provide a brief overview of how the organic inspection and certification system functions in the EU, with specific reference to Germany and Italy, while introducing certain open issues regarding the determinants of regulatory compliance in the organic sector. In Section 'Conceptual and analytical framework', we discuss our approach to analysing the determinants of severe non-compliance. In Section 'Data', we describe the data used in the empirical analysis. In Section 'Results', we present the results of the analysis, which are then discussed in Section 'Discussion'. The paper ends with our conclusions.

Legal background

The production and marketing of organic food products in the EU are regulated by Council Regulation EC 834/2007 (EC, 2007). This EU legal framework defines the basic principles and rules of production, in addition to the control (inspection) and certification system for their enforcement. The organic legal framework (EC, 2007) is implemented by the European Commission through Council Regulation No 889/2008 (EC, 2008a), which defines the details of the organic production standards and controls (EC, 2007, Art. 38) that keep the legal requirements up to date with market, societal and technological developments. The Food and Veterinary Office of Europe is responsible for monitoring the compliance of member states with the EU organic regulations.

Each member state designates a competent authority to oversee and manage the correct implementation of European organic regulations. An overview of the specific implementation of the inspection and certification systems in Germany and in Italy is provided in Fig. 1.

The German federal states (Länder) are responsible for implementation of organic regulations. The German organic farming law ("Öko-Landbaugesetz", ÖLG) appoints the responsibilities of implementing the Community law, the duties of control bodies and fines. On a national level, the Federal Agency for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung, BLE) approves control bodies and inspectors according to the regulations for the approval of control bodies ("Verordnung über die Zulassung von Kontrollstellen nach dem Öko-Landbaugesetz"). The BLE is also responsible for reporting organic control data to the Federal Ministry of Food, Agriculture and Consumer Protection, which forwards these data to the European Commission.

Fifteen competent authorities of the federal states in Germany are entitled to delegate to or engage with private control bodies to implement the control system for organic foods, i.e., to perform official controls (inspections) in the field. The states are responsible for the supervision of private control bodies' organic control activities. Supervision is performed by accompanied controls (in which a representative of the competent authority attends a control, which is also called a witness audit), follow-up controls and self-administered controls. The competent authorities also perform audits of the control bodies and check control records to ensure objective and effective controls. They cooperate in the working group "Länderarbeitsgemeinschaft Ökologischer Landbau (LÖK)" (Bundesrepublik Deutschland, 2011) to ensure a harmonised implementation of the European legal framework.

According to EC (2007), Art. 27(5), each member state that delegates control tasks to private control bodies must ensure that the latter are accredited under European Standard EN 45011 (ISO guide 65). Accreditation is an impartial way of assessing the competency of control bodies and is regulated at the European level by Council Regulation No. 765/2008 (EC, 2008b). According to EC (2008b), Art. 4 (1, 7), each member state appoints a single national accreditation body; however, member states can also establish an agreed-upon collaboration with an accreditation body in another EU member state in some circumstances.