

Legitimate Goal-Based Regulation in a Hybrid Multi-Actor Regulatory Regime
(GOBAREG)

D1.1 & 1.2 Conceptual notes & theoretical framework

This document (deliverable 1.1 & 1.2) presents the theoretical framework followed by the researchers involved in the GOBAREG project. It gathers the five conceptual notes (D1.1) drafted by PhD researchers, which constitute the theoretical framework of the project.

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Abstract (EN)

This document compiles five conceptual notes developed by our PhD researchers. It constitutes the theoretical framework underlying the GOBAREG research project. It develops the concepts and hypotheses that will be tested by our research team.

Abstract (NL)

Dit document bundelt vijf conceptuele notities die zijn ontwikkeld door onze PhDs. Het vormt het theoretische kader dat ten grondslag ligt aan het GOBAREG-onderzoeksproject. Het ontwikkelt de concepten en hypothesen die door ons onderzoeksteam zullen worden getoetst.

1. Introduction

The GOBAREG-project (Legitimate Goal-Based Regulation in a Hybrid Multi-Actor Regulatory Regime) studies the conditions and context under which goal-based regulation (GBR) can be legitimately adopted, designed and implemented to contribute to better compliance, innovation, and trust and to decrease regulatory burdens in hybrid multi-actor regulatory regimes. Because of its interdisciplinary nature, the theoretical framework of GOBAREG gathers insights from economics, political science, law, and public administration literatures.

This document presents the theoretical framework of the GOBAREG-project, which combines the separate conceptual notes drafted by the researchers working on specific actor groups and conditions or outcomes. The next section presents the gaps in the literature that will be filled by our research project. Section 3 then provides a definition of the concepts. Then, section 4 develops the mechanisms and hypotheses that are going to be investigated throughout the research project.

2. Gaps in the literature and contributions

By developing an integrated framework on the conditions and context under which GBR can be legitimately adopted, designed and implemented within hybrid multi-actor regulatory regimes, this project fills several gaps in the existing literature.

First, research typically assesses public policies and regulation through rather narrow lenses of efficiency and performance (Wallner, 2008). This project adds a rationale of legitimacy to the study of GBR. Legitimacy is commonly defined as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions” (Suchman, 1995). Applied to rule design, legitimacy can be approached through established principles of good law-making. A legitimate rule design, from a legal perspective, takes into account the requirements of legality, legal certainty and equality. These principles have been widely researched already, but only rarely from the specific viewpoint of rule design, and in the context of GBR. This project therefore advances current research by theorizing and empirically analyzing GBR from a legitimacy rationale.

Much of the literature on GBR is conceptual in nature, mostly focusing on a description of its characteristics and distinguishing it from the RBR approach. In practice, ‘pure’ versions of GBR or RBR are rarely observed. Instead, various hybrid regulatory regimes

combine elements of both approaches. For example, Black (2008) discusses a tiered approach to rule design, with detailed rules underpinning principles or, vice versa, principles supporting detailed rules. Hybridity also accounts for the potential multi-level effect of regulation, where regulations at different levels of governance (local, regional, national, supra-national) influence each other. Given that regulatees in such hybrid regimes will base their actions on the full set of norms to which they are subject and not on just one norm, it is crucial that the combination of different types of regulation is logical, mutually supportive and, ultimately, congruent with the regulatory objective (Black, 2010; Decker, 2018; Deighton-Smith, 2008; Ford, 2008). So far, however, little is known about how GBR and RBR are combined in regulatory regimes, and how the supposed evolution towards GBR can be traced in rules and norms. In contrast to the propensity of hybrid regulation in practice stands the lack of a scholarly understanding of such hybrid regulation. This project moves beyond state-of-the-art by clearly positioning GBR in a hybrid context, and by developing novel methods to identify different degrees of GBR.

Furthermore, the behavior of different actors is said to be affected by the type of regulation used (Black, Hopper, & Band, 2007). GBR, for example, gives regulatees discretion and responsibility to determine what actions will best serve the regulatory goal they are subject to. At the same time, regulatory bodies will likely develop and adopt new supervision methods in line with the GBR approach. For courts, it remains to be seen which factors determine how a judge interprets GBR in concrete terms. With some exceptions (Timmer, 2012), hardly any research looks into the behavioral implications of GBR. GOBAREG intends to open this black box. In this research in particular, the focus the behavior of the legal actors (rule-makers, courts, etc.) will also be investigated.

Second, the project contributes to the literature on stakeholder and interest group involvement in regulatory governance by integrating existing knowledge on involvement modes, timings and diversities (Binderkrantz & Krøyer, 2012; Braun et al., 2020; Golden, 1998). The existing literature often focuses on the study of these concepts by themselves. This research aims to hone in on the interconnectedness of these concepts by studying their interplay. With regard to the timing of involvement, scholars often focus on involvement at particular stages of the rulemaking process, rather than involvement throughout the process (except Cook & Rinfret, 2013). This project takes on an innovative approach to timing by differentiating between early and late involvement in rulemaking.

Additionally, the focus on goal-based and hybrid regulatory contexts is a novel contribution to the existing literature. While some scholars have highlighted the potential role of regulatory discretion in group behavior (e.g. Crow, Albright, & Koebele,

2017), the involvement of stakeholders or interest groups in regulatory regimes that allows for such a form of discretion has not yet been focused on and therefore remains underexplored. Furthermore, a rationale of legitimacy is seen as a red thread throughout the project – not only for the rule-design condition, but also for the part on interest group involvement. While legitimacy is an often-studied concept in both political science and public administration (e.g. Beyers & Arras, 2021; Binderkrantz et al., 2023; Braun & Busuioc, 2020; Rasmussen & Reher, 2023), the focus on goal-based and hybrid regulatory contexts is an innovative approach aimed at widening existing knowledge.

Third, the project contributes to the public administration literature through insights into the behavioral changes of regulatory agencies under goal-based regulation. The three main components of this studied behavior are regulatory capacity, regulatory enforcement style and regulatory cooperation. Our mixed-method approach to research on behavioral shifts in regulatory agencies, provides innovative insights in a literature that heavily relies on qualitative methods, such as interviews, focus groups, observation, and action research (Potter & Brough, 2004; Keast, Brown & Mandell, 2007; McAllister, 2009). The literature on enforcement style also shows a great deal of quantitative studies (May & Winter, 2000; de Boer, 2019) that this project will reinforce.

Another contribution is the study of the interactions between regulatory authorities and other actors in the policy cycle within one survey. This way, direct inferences and comparisons can be established across actor groups. Lastly, we contribute to scholarly literature on regulatory capacity, regulatory enforcement styles, and regulatory cooperation by advancing a novel conceptualization that reconciles various theoretical models of these concepts.

Finally, the research project also incorporates contextual factors and trust to account for the use of different regulatory approaches and their outcomes. Considering factors related to the rule design, the stakeholder involvement, the regulatory enforcement approach, the context and different levels of trust will shed light on how those factors, individually and collectively, influence the outcomes of regulations. By doing so, our research contributes to many different literatures and creates bridges between them, as detailed previously in this section.

3. Concept definition

In this section, the concepts used in the research project are defined. They include the conditions and outcomes of the research design, but also some antecedents and important concepts – such as the different types of regulation.

3.1. Overarching concepts: types of regulatory approaches

The concepts defined in the next sub-sections are related to the different types of regulation that can co-exist in a regulatory regime. Although our research design is focused on the conditions under which goal-based regulation can be properly implemented to lead to improved outcomes, pure forms of goal-based regulations rarely occur. It is therefore important to understand what other types of regulatory approach exist and how they relate to goal-based regulation.

3.1.1 Rule-based regulation

Rule-based regulation (RBR) refers to regulation that explicitly prescribes specific behaviour that the regulatees have to perform, without leaving much leeway in this. It is based on detailed rules that set out specific standards and requirements. Thus, the regulator determines the input, process or output of the means by which a social objective should or can be pursued, i.e. it defines the product or service (output), the way the product or service is produced (process) and/or the factors of production used in the process (inputs), but not the outcome (Marneffe et al. 2021). The dimensions characterizing rule-based regulation include (1) the prescription of specific rules (input, process, and/or output of the means by which a social objective should or can be pursued) and (2) not much discretion for the regulatee.

3.1.2. Goal-based regulation

Goal-Based Regulation (GBR) - or outcome-based regulation - refers to regulation that defines which goals should be attained by the addressees of the norm, without thereby explicating how these goals should be attained – i.e. which measures should be taken, or which procedures should be followed to attain the goal. GBR thereby granting discretionary power to the addressee of the norm. We can speak of goal-based regulation (GBR) if the following requirements are met (Timmer, 2012):

1. In the regulation, the emphasis is on a certain outcome that must be attained (the goal).
2. The addressee of the norm has the freedom to attain the goal of the norm in their own way; the addressee has discretion on the approach to achieve the goal, and not the regulator

3. There are no specific behaviours prescribed or prohibited

Goal-based regulation is characterized by (1) emphasis on regulatory goals, (2) discretion given to the addressee of the norm, and (3) no specific rules of conduct are prescribed or prohibited.

3.1.3. Principle-based regulation

Principle-based regulation differs slightly from GBR as it details broad principles that addressees have to follow to reach regulatory goals. In this case, they receive some flexibility, but a bit less than in the case of GBR.

3.1.4. Performance-based regulation

Performance-based regulation does not develop goals or outcomes to be reached, but rather performance standards.

3.1.5. Hybrid regulation

Hybrid regulation is regulation that shows characteristics of both RBR and GBR. Usually, both a goal is specified that the regulatee needs to attain, as well as some guidance on how the goal can or must be attained (in the form of prescribed or prohibited behaviour, procedural requirements, guiding principles, examples, etc.). It has characteristics of both RBR and GBR. We can speak of hybrid regulation if the following requirements are met:

1. In the regulation, the emphasis is on a certain outcome that must be attained (the goal).
2. The addressee of the norm has at least some degree of freedom to attain the goal of the norm in their own way; the addressee has discretion on the approach to achieve the goal
3. There is at least some guidance on how the goal can or must be attained (in the form of prescribed or prohibited behaviour, procedural requirements, guiding principles, examples, etc.); the regulator has closed off some of the available options to the regulatee.

Hybrid regulation displays the following characteristics: (1) emphasis on goal, (2) at least some discretion is given to the addressee of the norm, and (3) at least some guidance on how the goal can or must be attained is given.

3.1.6. Risk-based regulation

Risk-based regulation does not deal with the flexibility given to addressee. Instead, it is a regulatory approach that allocates regulatory resources by considering the level of risk emerging from different regulated activities or entities.

3.1.7. Adaptive regulation

The adaptive approach entails a certain degree of flexibility as it adjusts to new data, technologies, or changing circumstances.

3.1.8. Responsive regulation

Responsive regulation is an approach which reacts to compliance behaviors. For actors who are not complying, enforcement is being escalated, while for actors who are complying well, the burden is reduced.

In our project, we argue that those different types of regulatory approaches are characterized, at least partly, by the way regulations are designed (rule-design condition). At least three features of how regulation is designed are constitutive of a regulatory approach: rule discretion, rule clarity, and rule stringency. Those concepts are defined in the next sub-sections.

3.2. The rule-design condition

In this section, the dimensions of the rule-design condition are developed. They related to the operationalization of the rule-design through the level of discretion, clarity and stringency of a norm.

3.2.1. Rule discretion

The level of flexibility indicates the room for discretion that is left to the persons addressed by the rule. This also indicates the level of GBR: the aim of goal-based regulations is precisely to obtain a certain outcome, but to leave room for different types of behavior to achieve this aim. As such, discretion can be seen as an alternative to enacting detailed laws (Epstein and O'Halloran 1999). Rule-makers can then choose between either detailed laws or vague laws that grant discretion (Huber and Shipan 2002).

Discretion refers to the degree of freedom that is granted by a legal norm – through its rule design – with regard to which means the addressee may employ to achieve the regulatory goal of the norm. As such, we can distinguish 3 important characteristics of this definition of discretion:

- Discretion is seen as a property of the rule design of a legal norm.
- Discretion is always approached in relation to a certain regulatory goal
- Discretion is always granted to someone

In other words, what we are talking about is how much discretion a certain norm gives to the addressee of the norm on how to attain the regulatory goal. Discretion, thus conceptualized, is indeed precisely the core of goal-based regulation. In (traditional)

rules-based regulation, specific behaviour is prescribed to determine how the addressee should attain the regulatory goal, while in goal-based regulation, the regulatory goal is prescribed to the addressee directly, without specifying which means they should employ to attain it.

3.2.2. Rule clarity

The level of clarity indicates how much certainty there is about what behavior is expected in which circumstances. As Re (2019, 1507) suggests, we must first ask ourselves why we care about legal clarity. In our case, we care mainly about legal certainty, equality and legality. As such, the requirement of clarity entails that legal subjects can accurately predict what the legal consequences of their actions and inactions will be and that similar cases are treated similarly by the law (Coremans et al. 2016; Popelier 1997, 2004). We are thus concerned with what Re (2019) calls ‘clarity as predictability’: we want to make sure that all addressees of a norm come to similar conclusions of what the norm allows and what not, and that different courts treat similar cases similarly. In other words, we want that as many people as possible interpret the rules in the same way. Next, Re (2019, 1517) suggests that we should establish from whose perspective the norms should be predictable. In our case this is from the perspective of both the addressees and the ruling courts. As Black (2007, 14) puts it, we want to ensure “that regulators will always respond to similar situations in similar ways, and so the regulated firms know what the supervisory and enforcement response will be.”

Finally, as Post (1994) illuminates, concerns about clarity are also often inspired by concerns about whether regulatees can know which (social) norms and standards will be used to interpret vague propositions and whether they can be reasonably expected to comply to these norms. Hence, the question is whether it is specified *how* any potential room for interpretation is filled in: who has the authority to do that, is it clear for the addressees, and is it reasonable? However, this will not be included in our definition of clarity since it is not contained in the rule design. Nonetheless, it will be important to consider when evaluating whether certain regulation is problematic from a clarity perspective or not. Clarity is a property of the rule design of a legal norm and refers to how similarly different individuals (regulatees, judges,...) will interpret the norm. The more similar the respective interpretations of different individuals are, the higher the clarity of the norm. However, since clarity is here seen as a property of rule design, it cannot directly rely on people’s interpretations. Instead, we define it here as conversely proportional to the *room for interpretation* that a norm allows by its rule design.

As such, a norm with high clarity will leave little room for interpretation as to the conditions of the rule (when, where, and under what circumstances the rule applies), the expected behaviour under these conditions (what), the aim of the norm (why) and the consequences of (not) complying (or else). In all of these, the clarity will be

negatively influenced by vague, indeterminate, or missing propositions. The underlying dimensions of rule clarity are:

- Room for interpretation about the conditions under which the rule applies
- Room for interpretation of the legal consequences the norm implies:
 - o Goals (duty to act in such a way that these goals are achieved)
 - o Specifications as to how to achieve these aims

3.2.3. Rule stringency

The stringency of a rule indicates the impact of a sanction on a person who does not comply with the rule. It refers to the sanction (legal consequence) in the case of non-compliance (condition). The stringency of a rule is relevant for us since it determines how much clarity is required. Moreover, it might impact how many risks regulatees are willing to make.

Stringency is here seen as a property of the rule design of a legal norm and refers to how impactful the consequences of (non-)compliance are. Both positive (motivational) and negative sanctions are considered. Moreover, also the kind of sanction relevant: a penal sanction is more stringent than an administrative sanction, for example. Even though the subjective experience of the stringency of a sanction – how severe the sanctioned person perceives a sanction – is very relevant when assessing stringency (Kolber 2009), this is not included in here since we approach stringency from the perspective of the rule design. Finally, we employ a ‘deprivation of interest’ perspective on stringency: a sanction is more stringent if it has a greater impact on the addressee’s quality of life (Schiff 1997). The enforcement pyramid (Ayres and Braithwaite, 1992) can serve as guidance for evaluating this impact. The underlying dimensions of stringency are:

- Positive consequences of compliance
- Negative consequences of non-compliance
- The kind of sanction (civil, administrative, or penal)

3.2.4. Other concepts related to the rule-design condition

Some other concepts have been identified as also influencing the rule-design. They are listed and concisely defined in this section. The difference between concepts such as ‘rule discretion’ and ‘perceived discretion’ is very important because rule discretion is objectively measured through a coding mechanism developed by our research team, while perceived discretion is another concept measured through a survey addressed to actors involved in the domains we are studying. This differentiation also holds for clarity

and stringency. Additional concepts are also considered and developed in the sub-sections below.

3.2.4.1. Perceived discretion

Perceived discretion is about the discretion that regulatees themselves experience having with regard to certain regulation. The perceived discretion of a norm points to how much freedom of choice the addressees of the norm experience having with regard to how they can achieve the regulatory goal. Perceived discretion is thus about whether the addressees have multiple options to comply to the norm or not. Moreover, it is about whether any of these options are live, i.e. that the regulatee reasonably sees themselves pursuing these options given their current circumstances, values, and capacities (Terlazzo 2016). The dimensions of perceived discretion can be characterized by identifying (1) who decides how to attain the regulatory goal?, and (2) how many 'live' options are available to the regulatee? (Terlazzo 2016)

3.2.4.2. Perceived clarity

Perceived clarity is about the clarity that regulatees themselves experience having with regard to certain regulation. The perceived clarity of a norm points to how much room for interpretation the addressees of a norm perceive the norm to have.

Perceived clarity thus entails whether someone finds it clear:

- What the norm means in general
- Under which conditions the norm applies
- What the goal of the norm is
- How this aim should be achieved
- What the consequences of (not) complying are

Finally, perceived clarity also includes the question of whether someone thinks extra guidelines are useful or necessary to be able to comply to the norm.

3.2.4.3. Perceived stringency

Perceived stringency is about the stringency that regulatees themselves perceive a certain norm has. The perceived stringency of a norm points to how stringent the addressees of the norm themselves experience the norm to be. Perceived stringency thus entails whether the addressees think:

- The positive consequences of complying to the norm are impactful
- The negative consequences of not complying to the norm are impactful

3.2.4.4. *Legal certainty, legality and equality*

Legal certainty refers to how clear and predictable the law is for the addressee. That is, can a legal subject accurately predict what the legal consequences will be of a decision to act or not to act? Legal certainty demands that legal subjects can accurately predict what the legal consequences of their actions and inactions will be (Popelier 1997, 2004). According to the requirements of the European Court of Human Rights, which are also followed by the Belgian courts, this entails that the law must be clear, predictable, and in accordance with the rule of law, the latter meaning that it cannot grant unfettered power to a governmental body (Spano 2021). The dimensions of legal certainty are (1) clarity, (2) predictability, and (3) accordance with the rule of law. Legality means that rules and sanctions must be in accordance with the law and ultimately rely on parliamentary approval. When talking about rule design, the principle of legality entails three different requirements.

1. all legal rules should be in accordance with rules of higher law (e.g. the constitution or supranational law).
2. The formal legislator has to regulate the ‘essential elements’ of certain reserved matters itself and thus cannot leave it up to others (e.g. the government) to regulate these. In the case of GOBAREG, 3 aspects are relevant: (1) penal provisions must be included in statutory law and cannot be left blank, (2) environment and care are not ‘reserved matters’, and (3) for social fundamental rights (art. 23 GW), the essential elements do not need to be included in the statutory law, but the objectives or other guidelines do. (formal legality principle)
3. the law must be clear and predictable. This is also called the ‘substantive’ legality principle. This in fact coincides with the idea of legal certainty discussed earlier (Popelier 2004; Coremans et al. 2016; Marneffe et al. 2021).

Finally, equality refers to the principle that persons in comparable circumstances must be treated equally, and persons in non-comparable circumstances differently. Equality means that similar cases are treated similarly by the law, and different cases are treated differently. Moreover, every difference in the treatment of similar cases and every similarity in the treatment of differing cases must be based on objective and factual criteria. Lastly, such differences or similarities in treatment must serve a legitimate goal, must be necessary to attain that goal, and must be proportional to the attainment of that goal (Popelier 1995, 2004). The dimensions of equality are: (1) equal cases treated equally by the law and in the application of the law, (2) take differences in capacity of the regulatees into account, and (3) distinctions must be reasonable.

3.3. The interest groups involvement condition

In this section, interest group involvement (IG) is defined, together with the sub-dimensions used to measure it in regulatory processes.

3.3.1. Interest groups involvement

Organised interests can employ different strategies to try to influence policy. Binderkrantz and Krøyer (2012) conceptually differentiate between four different strategies. In line with previous research they distinguish between insider and outsider strategies. Insider strategies focus directly on decision-makers and can be divided into two categories: an administrative approach that targets the bureaucracy, and a parliamentary approach that involves engaging members of parliament and political parties. In contrast, outsider strategies include a broad media strategy, which covers 'responsible' media actions like issuing press releases or reaching out to journalists. Additionally, a protest strategy is included to represent actions that may challenge maintaining close ties with bureaucrats. This strategy involves tactics such as strikes, direct action, public demonstrations, and petitions. Interest groups can employ these different strategies at different times in the legislative and regulatory process. Typically, four phases are distinguished namely agenda-setting, preparation, decision-making and implementation (Beyers, Eising, & Maloney, 2013). In this research project, we consider the different phases in a more practical way that resonates more with interest groups but that also relates to this legislative and regulatory cycle. For this we consider interest groups as being able to be involved in: 1) the preparation of policy visions or strategic papers, 2) the preparation of decrees, 3) the preparation of decisions from the Flemish Government or ministerial decisions, 4) the preparation of a decision of a leading official or government institution, and 5) the preparation of interpretative frameworks, supervisory frameworks, manuals or circulars. Conceptualising timing of involvement in this way allows us to assess when interest groups get involved and simultaneously gives us an insight in the depth of their involvement.

On a higher level of abstraction, when looking at the complete picture of interest groups involved in a specific regulation or on a specific issue, interest group involvement can be diverse or biased. Interest group diversity often refers to the proportion of dominating interests within an interest group population (e.g. Beyers & Arras, 2020; Fraussen, Albareda, & Braun, 2020). For this research project, we specifically look at the proportion of interest groups representing regulatees versus interest groups representing beneficiaries. Involvement is then considered diverse, when the different types of interests involved are balanced, and biased when either regulatees or beneficiaries are involved more.

3.3.2. Mode of IG involvement

Mode refers to the different ways in which interest groups can try to get involved in the decision-making process. Binderkrantz and Krøyer (2012) conceptually differentiate between four different strategies. In line with previous research they distinguish between insider and outsider strategies. Insider strategies focus directly on decision-makers and can be divided into two categories: an administrative approach that targets the bureaucracy, and a parliamentary approach that involves engaging members of parliament and political parties. In contrast, outsider strategies include a broad media strategy, which covers ‘responsible’ media actions like issuing press releases or reaching out to journalists. Additionally, a protest strategy is included to represent actions that may challenge maintaining close ties with bureaucrats. This strategy involves tactics such as strikes, direct action, public demonstrations, and petitions.

3.3.3. Timing of IG involvement

Timing refers to the different stages in the legislative and regulatory process interest groups can be involved in. Typically, four phases are distinguished, namely agenda-setting, preparation, decision-making and implementation (Beyers, Eising, & Maloney, 2013). In this research project we consider the different phases as parallel to the different forms of laws and regulations as this also often runs concurrently and chronologically. We consider: the preparing of policy visions or strategic papers, the preparing of decrees, the preparing of decisions of the Flemish Government or ministerial decisions, the preparing of a decision of a leading official or government institution, and the preparing of interpretative frameworks, supervisory frameworks, manuals or circulars.

3.3.4. Diversity of IG involvement

Diversity refers to the type of interest groups that are involved in the decision-making process (Beyers & Arras, 2020). Essentially, we want to know whether there is a diversity of interests represented or whether involvement is biased by exclusively involving regulatees and their interest groups while denying access to beneficiaries and their interest groups. More specifically, we will be looking at the different constituencies that are represented and the role they play in a specific policy issue. In literature a distinction is often made between the different constituencies that are advocated for. Often the following types of interest groups are identified: professional associations, business associations, firms, citizen groups, labour unions, institutions, public authorities and others (e.g. Fraussen, Albareda, & Braun, 2020). Within the context of this project however, we are more interested in the specific roles within a policy issue: regulatees and beneficiaries. Diversity can thus be seen as the relative proportion of the different

types of groups involved. This allows us to directly assess whether interest group involvement is balanced when it comes to the represented interests and their role or if the scale tips over to a specific side.

3.3.4. Perceived legitimacy

Perceived legitimacy is an important concept for the research design as it will be the dependent variable of some of our analyses. Increased legitimacy beliefs is a key assumption pushing policymakers to involve interest groups in the decision-making process (Arras, 2017). Additionally, the way in which interest groups participate in policy-making processes plays an important role in how legitimate citizens perceive these processes (Rasmussen & Reher, 2023). As Furlong and Kerwin (2005, p. 354) wrote: “Public participation serves, in effect, as a substitute for the electoral process that bestows constitutional legitimacy on legislation. Public participation in rule making also informs unelected officials. This enables agencies to write rules that benefit directly from the public’s considerable wisdom and experience with the topic at hand.” Perceived legitimacy is conceptualised as the extent to which individual citizens and stakeholders perceive decision-making procedures and policy outcomes as acceptable, and whether they will voluntarily comply with policy outcomes, even if these go against their interests or policy position (Arras, 2017; de Fine Licht, 2011).

Literature on legitimacy teaches us that it is often seen as having three dimensions: input, throughput and output legitimacy. (e.g. Hendriks, 2022; Schmidt, 2013). Input legitimacy focuses on the inclusion of diverse perspectives and ensuring everyone has an equal say, regardless of their role or position (Haesevoets et al., 2024). Throughput legitimacy refers to the procedural standards that evaluate the quality of governance. It emphasizes the accountability of policy-makers and the transparency, inclusiveness, and openness of governance processes (Schmidt & Wood, 2019; Schmidt, 2013). Finally, output legitimacy emphasizes values like efficiency, consequentiality, economy, cost-efficiency, and effectiveness. The main concern is the extent to which policy-making can produce high-quality, effective, and efficient outputs (such as public services) and outcomes (such as solutions to collective issues), and how well these outputs and outcomes are accepted by the public (Gundelach, Buser, & Kübler, 2017; Hendriks, 2022; Schmidt & Wood, 2019; Strebel, Kübler, & Marcinkowski, 2019; van Meerkerk, Edelenbos, & Klijn, 2015)

3.4. The regulatory oversight condition

This section presents the sub-dimensions of regulatory oversight used to characterize it: regulatory capacity, regulatory (enforcement) style, and extent of regulatory cooperation.

3.4.1. Regulatory capacity

Regulatory capacity is: ‘the inherent ability [of the regulatory authority] to effectively utilise its resources to carry out its policy objectives’ (Shybalkina, 2024 adapted from Ingraham & Donahue, 2000). It has four dimensions:

- 1) Basic resources capacity: the degree of available tools and money to perform the job at all (based on Potter & Brough, 2004).
- 2) Skills (& knowledge) capacity: the degree of knowledge, skills and confidence of the staff to perform properly (based on Potter & Brough, 2004).
- 3) Role / Mandate capacity: the degree to which the role of a regulatory authority allows for them to autonomously “make the decisions essential to effective performance” (Potter & Brough, 2004) regarding “the management of the agency or how to carry out their tasks (...) [without] structural, financial, legal and interventional restrictions on their actual use of these decision-making competences” by politicians (Verhoest, van Thiel, & De Vadder, 2021).
- 4) Management / Administrative capacity: ‘government’s intrinsic ability to marshal, develop, and control its human, physical and information capital to support the discharge of its policy directions. That is, management capacity concerns the extent to which a government has the right resources in the right place at the right time. (...)’ (Ingraham & Donahue, 2000).

3.4.2. Regulatory (enforcement) style

Regulatory style is defined as ‘the character of the day-to-day interactions of [regulatory authorities] when dealing with regulated entities’ (May & Winter, 2000), or as ‘the general approach assumed by [a regulatory authority] in the course of performing regulatory duties’. (Lo, Fryxell, & Van Rooij, 2009). It can be characterized by three types of approaches:

- 1) The deterrence approach: “a range of increasingly severe sanctions to punish and deter non-compliance” (Varhammar, 2019) ~ Command regulation with discretionary punishment (Ayres & Braithwaite, 1992).
- 2) The restorative approach: “a combination of positive motivators to encourage compliance” (Varhammar, 2019) ~ Enforced self-regulation (Ayres & Braithwaite, 1992).
- 3) The capacity-building approach: “education to assist capacity-building and knowledge on how to comply” (Varhammar, 2019) ~ self-regulation (Ayres & Braithwaite, 1992).

3.4.3. Regulatory cooperation

Regulatory cooperation cover ‘the instruments and mechanisms that aim to enhance the voluntary or forced alignment of tasks and efforts of [regulatory authorities]’ across functions in the regulatory cycle (adapted from Bouckaert, Peters, & Verhoest, 2010).

3.5. The outcomes

In this section, we define the concepts related to the outcomes of our research design, namely regulatory burdens, compliance and innovation.

3.5.1. *Regulatory burdens*

In the process of complying with regulation, administrative costs in terms of money, time, paperwork and complexity are imposed on regulatees (Banks, 2006; Straughter & Carley, 2021). Burdens are distinct from rules insofar as they comprise the costs experienced in the interaction with the state. Their impact depends not on objective analyses of costs and benefits, but on how individuals construe the world (Moynihan et al., 2015). Bickerdyke and Lattimore define **regulatory burden** broadly as follows: “the costs imposed on businesses by the regulatory framework”. For them, these costs include (a) compliance costs: the costs involved in meeting the substantive requirements of the regulatory framework; (b) administration and paperwork costs involved in complying with the regulatory framework; (c) the costs arising from the disincentives, distortions and duplication attributable to the regulatory framework; and (d) other burdens associated with compliance” (Bickerdyke & Lattimore, 1997, p. 1). Once again, two observations can be made. First, it becomes clear that regulatory burdens are inextricably linked to compliance; if there were no complying behaviour, there would be no burden of regulation since it would not be taken into account when conducting business. The resources that go towards compliance are not available for other productive, business-related activities (Cordes et al., 2022). Second, burdens are not synonymous with costs (Peck et al., 2012). Costs in this context can be of financial, economic or non-economic nature. ‘Burdens’ is therefore a more correct term, and it will replace ‘costs’ in my adaptation of Bickerdyke and Lattimore’s definition.

Again, there seems to be little consensus in terms of terminology. Cordes et al. (2022) provide an idea of the costs (burdens) of regulation for businesses similar to Bickerdyke and Lattimore (1997). They drop ‘other costs’ and provide more detail regarding the administrative costs. Regulatory burdens are often conflated with administrative burdens, which will in this research be presented as a subsection of regulatory burden (Zambrano-Gutiérrez & Avellaneda, 2022). Some scholars change this hierarchy: for Moynihan et al. (2015), administrative burdens comprise compliance costs, learning costs, and psychological costs. Carrigan and Harrington (2015) too specify that administrative burdens comprise a subset of costs concerning the implementation of

regulatory requirements. Others, like Straughter and Carley (2021), focus on the overlap of regulation when discussing the regulatory burden: the excessive, fragmented and duplicative nature regulation can take on.

The Dutch Government and the Advisory Board on Regulation (*Adviescollege Toetsing Regeldruk*, ATR), as part of RegWatchEurope, a network of independent European advisory bodies concerned with scrutinising the impacts of legislation, define the regulatory burden using two subcomponents: (1) regulatory costs, being quantifiable; and (2) perceived regulatory burden, the non-quantifiable regulatory pressure related to the workability of laws and regulations in practice. Regulatory costs can be (a) substantive compliance costs, the costs that have to be incurred (on top of 'business as usual' costs) to comply with laws and regulations, either one-off or reoccurring; or (b) administrative burdens that stem from the information requirements to government. The perceived regulatory burden can refer to (a) operability: the ability of businesses, citizens or professionals to understand and apply rules, the extent to which existing routines or procedures fit their own systems and practices, the course of contact with officials, processing times and mutual cooperation between (and within) agencies; (b) proportionality: the efforts required to meet obligations in relation to the extent to which those efforts achieve the intended policy goal; and (c) utility: the different benefits or added value that businesses, citizens or professionals expect to get from the laws and regulations, for themselves or for society. (Adviescollege Toetsing Regeldruk, 2023, s.d.). The perception of regulatory burden can be intensified by uncertainty arising from the pace of regulatory change, anxieties created by the threat of non-compliance, unfairness in some forms of regulation as well as the moral pressures on businesses to adopt certain practices under pressure from various third parties including customers and business partners (Marneffe, 2022; Nielsen & Parker, 2008, as cited in Peck et al., 2012).

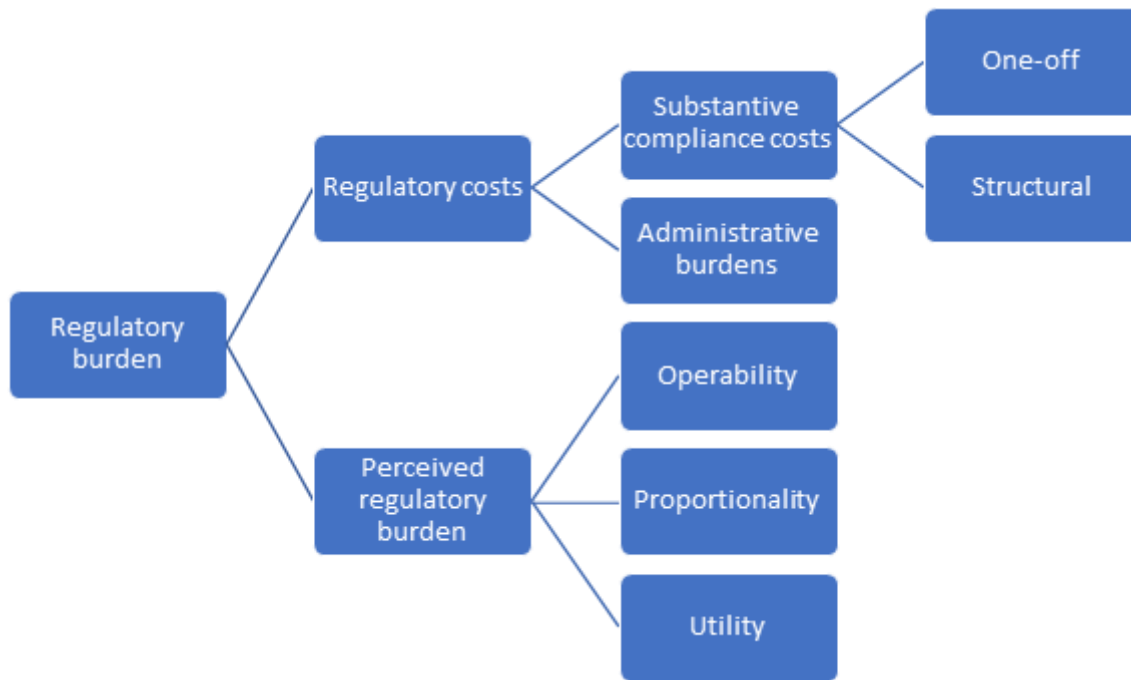


Figure 1: Regulatory burden (adapted from Adviescollege Toetsing Regeldruk, 2023)

A link between quantifiable and non-quantifiable costs still exists. For example, the administrative burden, as measured through the Standard Cost Model (SKM) is not necessarily the highest burden, but it can be linked to high ‘hassle costs’, a high perceived burden (Marneffe et al., 2021).

The general presumption is that lowering regulatory burdens will free time and resources of regulated businesses for other more productive activities; and can therefore be expected to improve national economic performance (Cordes et al., 2022; Parker & Kirkpatrick, 2012). A relatively large body of literature covers the compliance costs for small businesses, where a disproportionately large cost is usually found (Lewis et al., 2014). In this literature, regulatory burden is often talked about in terms of barriers to entry or exit of markets (Levie & Autio, 2011).

The ATR conceptualisation is compatible with the definition of regulatory burden provided by Bickerdyke and Lattimore (1997), and generally with the other conceptualisations mentioned. It is therefore preferred.

3.5.2. Compliance

There is not one concept of compliance with a definition that is broadly agreed upon (Parker & Nielsen, 2009). Different disciplines define the concept differently, but even within academic domains no consensus seems to be present. Two main aspects seem to persist however: a) the definition of a rule, and b) the behaviour of an actor. Other definitions always seem to include the aforementioned elements, see e.g. Lange (1999); Parker and Nielsen (2017); Six (2013); Treib (2014). Accordingly, the study of compliance focuses on the interaction between legal rules, and human and organizational conduct,

and it can be conceptualised as the way targeted actors respond to the law (Kuiper et al., 2023; Wu & van Rooij, 2021). This is how compliance is defined by van Rooij and Sokol (2021, p. 4): “the interaction between rule and behaviour.” For the purposes of this research, I adapt Timmer’s definition slightly to highlight the role of the regulatee: **compliance** is “the (f)actual conduct of *targeted actors* according to certain rules, including abstaining from behaviour prohibited by those rules” (Timmer, 2011, pp. 15-16). Including the targeted actors in the definition highlights the central role they play in this research. The breadth of this definition allows for the inclusion of compliance under goal-based regulation, which may be clarified as goal achievement. It should be clear that compliance is not a straightforward term, and its meaning can differ through social construction within the regulatory enterprise. Sometimes this occurs in dialogue with regulatory enforcement officials (Kagan et al., 2011).

Furthermore, compliance is not necessarily a unitary or binary response by the regulatee to an official rule promulgated and enforced by official agencies. It can therefore be thought of as “the result of a process of construction and negotiation of compliance between official regulator and regulatee” (Parker & Nielsen, 2009, p. 48). This process of negotiation is also present in some compliance definitions in the social sciences (Bowen et al., 2020; Edelman & Suchman, 1997; Nielsen & Nielsen, 2023). As negotiation and interaction imply repeated behaviour, compliance in this sense cannot be conceived of as a permanent state of being. Even though (non-)compliance in one area is often a predictor of (non-)compliance in another, being compliant at a given point in time does not translate to future or past behaviours, deliberate or not compliance is a continuous and labour-intensive process (Adriaansens, 2022; OECD, 2018). For example, Fairman and Yapp (2005) found that for many small businesses in the food industry, compliance is thought to be achieved when all instructions from the last inspector visit were followed. They theorize close interaction with the inspector and a lack of knowledge of legal requirements may foster reliance on the inspector.

On the opposite side of the compliance spectrum, noncompliance with any law or rule might be caused by two reasons: either the noncompliant behaviour is caused by errors, whether due to lack of knowledge or concern, or the noncompliant behaviour is undertaken deliberately or wilfully (Elffers et al., 2003, p. 410).

3.5.3. Innovation

Innovation is a highly important driver of economic growth, and its development requires the involvement of multiple different actors (May & Wood, 2003). However, as a concept, innovation is rarely defined in the literature (De Vries et al., 2016). Those who do provide a definition often fall back on Rogers’ 2003 definition: “an idea, practice, or object that is perceived as new by an individual or other unit of adoption” (Rogers, 2003, p. 12). The appeal of this definition lies in its simplicity, and the fact that it captures two fundamental aspects of innovation: (1) perceived newness, and (2) adoption

(Damanpour & Schneider, 2008). The first fundamental aspect states that the minimum requirement for an innovation is that the product or business process must have one or more characteristics that are significantly different from those contained in the products or business processes previously offered by or used by the unit. The definition of innovation cannot be too broad; the smallest of changes should not be considered an innovation (Şandor, 2018). The emphasis on ‘perceived’ newness rather than ‘actual’ newness is also of importance in the definition of innovation due to the difficulty in quantifying newness (Callens et al., 2021). Consequently, an innovation need not necessarily be something entirely new, being new within a sector or a unit of adoption is sufficient to speak of innovation. These new characteristics must additionally be relevant to the firm or to external users. Note that relevancy does not equal desirability, a positive value or improvement for society or the unit. Solving a problem is the stated goal of innovation, but innovation activities do not necessarily lead to an improved situation. On the one hand, the realised outcome of the innovation activity can worsen the situation, perhaps temporarily, and still be considered an innovation. On the other hand, an improved situation is not necessarily the result of innovation (De Vries et al., 2016; Langbroek et al., 2017; OECD & Eurostat, 2018). Still, most, if not all, mentions of innovations in the literature frame the concept as a positive or neutral development (Cunha & Donadelli, 2024). The second fundamental aspect requires adoption or implementation for something to be classified as an innovation. This can be achieved either by being put into active use or by being made available for use by other parties, firms, individuals or organisations, and often involves the extraction of economic value. This is how innovation is differentiated from an invention, prototype, or a new idea (National Research Council, 2014; OECD & Eurostat, 2018; Walker, 2014).

Combining both fundamental aspects and extending Rogers’ definition, OECD and Eurostat define innovation as “a new or improved product or process (or combination thereof) that differs significantly from the unit’s previous products or processes and that has been made available to potential users or brought into use by the unit” (OECD & Eurostat, 2018, p. 60). New again refers to perceived newness in this definition, the unit does not necessarily have to be the very first. Innovation can thus be a outcome (innovation) or a process (innovation activities) (Damanpour & Schneider, 2008; Edquist et al., 2001 as referenced in Walker, 2014; Frishammar et al., 2012; Walker, 2014). Innovation as an outcome can be differentiated into two separate categories. The first is product innovation: a new or improved good or service that differs significantly from the firm’s previous goods or services and that has been introduced on the market. The second is business process innovation: a new or improved business process for one or more business functions that differs significantly from the firm’s previous business processes and that has been brought into use by the firm. Six categories of business process innovation can be distinguished. The first, production innovation, concerns the

production of goods or services. The other five concern the supporting activities surrounding the production of these goods and services. They are distribution and logistics, marketing and sales, information and communication systems, administration and management, and product and business process development (OECD & Eurostat, 2018). Note that in some sectors, for example in service industries, the line between product and process and therefore product and process innovation is blurry (Van der Aa & Elfring, 2002).

Business process innovation is not to be confused with innovation as a process, which is the processes with which innovation is hoped to be achieved. Innovation as a process encompasses all activities undertaken by the unit to result in innovation. The OECD and Eurostat (2018) identify eight broad types of these activities that can be undertaken in pursuit of innovation:

1. Research and experimental development (R&D) activities;
2. Engineering, design and other creative work activities;
3. Marketing and brand equity activities;
4. IP-related activities;
5. Employee training activities;
6. Software development and database activities;
7. Activities related to the acquisition or lease of tangible assets;
8. Innovation management activities.

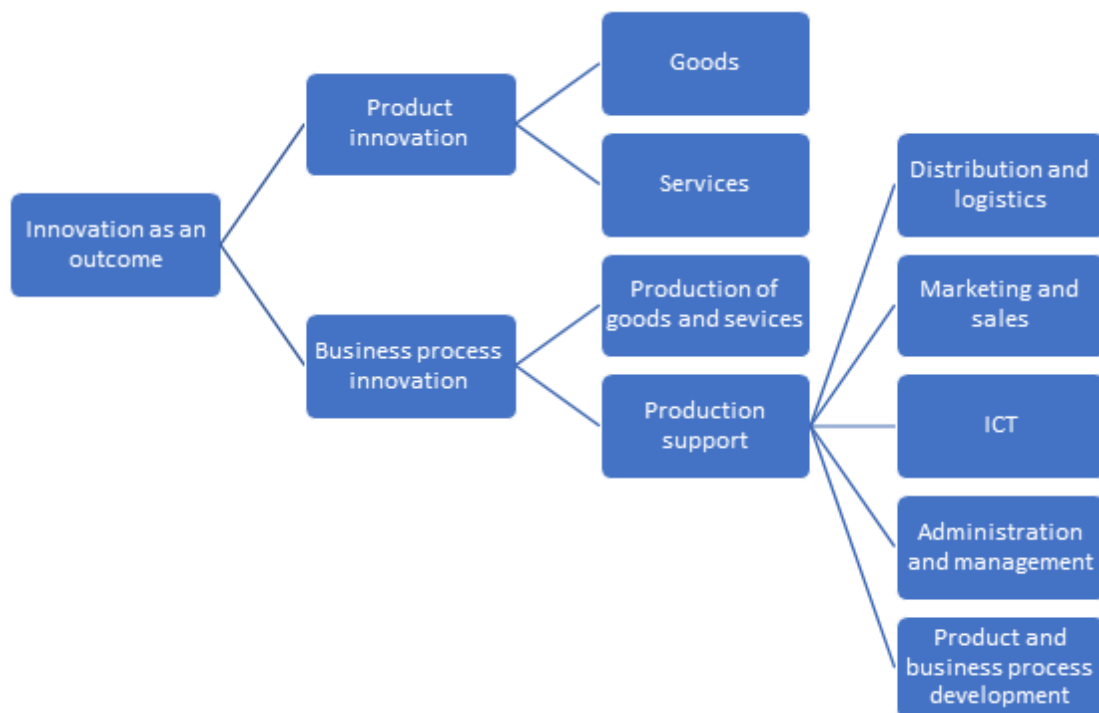


Figure 2: Innovation as an outcome (adapted from OECD & Eurostat, 2018)



Figure 3: Innovation as a process (adapted from OECD & Eurostat, 2018)

3.6. Trust-related concepts

Trust intervenes in different ways in our research design. It is conceptualized as an outcome of goal-based regulation being properly implemented, but it is also an enabling factor for the proper functioning of it. The different underlying dimensions of trust are defined in this section.

3.6.1. General conceptualization of trust

Trust is a multifaceted concept that can be defined in many dimensions. It is referred to as the foundation of all human contacts and institutional interactions (Tonkiss, Passey, Fenton, & Hems, 2000). As Ruscio (1996) states, it is “central to legitimate democratic government, to the formation of public policy, and to its implementation”. Because the studies on trust have grown vastly in the last few years, in several disciplines such as psychology, sociology, ethical studies, management- and organization sciences, trust “suffers” from conceptual richness (Oomsels, 2016; Levi-Faur, et al., Deliverable D1.1 Report on trust in government, politics, policy and regulatory governance, 2020). Trust can play multiple roles, serving as a cause, an outcome, or a mediating factor. It can initiate collaboration as the initial cause, develop over time as an outcome, or act as a mediating factor that enhances productivity or outcomes (O'Rourke, 2012). There is no *one* right way to approach the content of trust, however, there is most definitely a *more appropriate* way to build its meaning tying into the research questions that need to be answered and the broader context these materialize in. This project in particular attempts to explore “regime trust”. With this in mind, upcoming paragraphs navigate through existing trust literature, in order to distill a conceptual meaning of trust, that will operate as foundation for upcoming research.

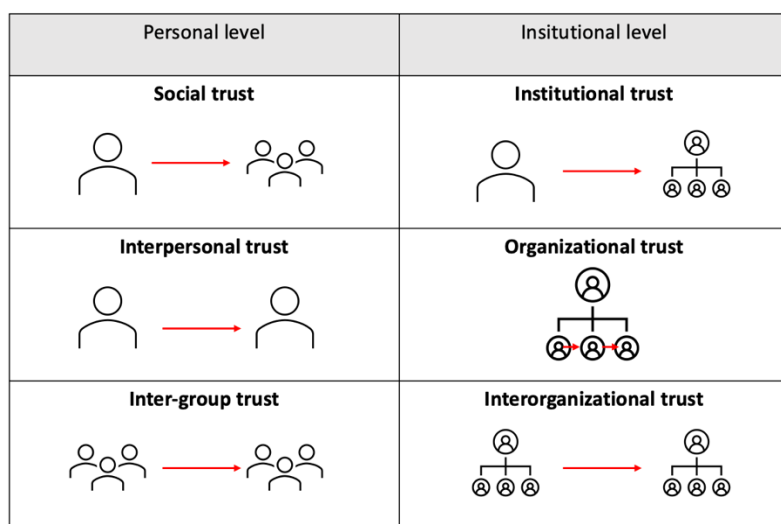


Figure 4. General conceptualization of trust

When researching trust and consulting work of prominent scholars in the field, you quickly find your way to one definition that is acknowledged by several authors was

developed by Mayer, Davis and Schoorman (1995): *“the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustor, irrespective of the ability to monitor or control that other party”* (Mayer, Davis, & Schoorman, 1995). The most well-known understanding of trust, however, is probably the adaptation made by Rousseau et al. (1998), which has been very influential and is much cited through social sciences. Trust is *“a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intention or behavior of another.”*.

Although these are great starting points to understand the concept of trust, this project will utilize the approach provided by Oomsels (2016). Oomsels builds on the work by Dietz and Den Hartog (2006), who start off by looking at the trust process in its most simplistic form: party A (the trustor) trusts party B (the trustee). From this perspective, these three authors mapped the conceptualization of trust in several disciplines in order to find a well-rounded, workable definition for the notion. There are several common elements that returned in a vast number of conceptualizations. Dietz and Den Hartog break it down into three constituent parts: trust as a belief, as a decision and as an action (Dietz & Den Hartog, 2006) .

a) A belief

The initial form of trust involves subjective beliefs in the other party and the relationship, leading one to anticipate positive outcomes from the other party's actions. This belief is often represented as an assessment of the other party's trustworthiness, although trustworthiness and trust are distinct concepts (Mayer, Davis, & Schoorman, 1995) . Trustworthiness refers to a quality possessed by the trustee, while trusting is an action undertaken by the trustor. Despite considering someone trustworthy, it doesn't guarantee trust, as other factors may influence trust decisions. However, trustworthiness is typically a strong predictor of trust decisions, as it is based on perceived probabilities and carries a significant emotional weight that distinguishes it from mere hope or blind faith (Nooteboom, Berger, & Noorderhaven, 1997; Bhattacharya, Devinney, & Pillutla, 1998; McEvily, Perrone, & Zaheer, Trust as an organizing principle, 2003) . (Dietz & Den Hartog, 2006)

b) A decision

The second constituent part of trust involves the active decision to trust the other party, where the belief in the other's trustworthiness is translated into trust itself. For genuine trust to exist, both the expectation of trustworthy behavior and the intention to act upon it are necessary (Huff & Kelley, 2003) . Trust is seen as a process model, where the decision to trust is influenced by an underlying subjective trust base (Clark & Payne, 1997; Costa, Work team trust and effectiveness, 2003) . This decision is often described as the "willingness to render oneself vulnerable", where one trusts that potentially

harmful actions by the other party are unlikely (Mayer, Davis, & Schoorman, 1995) . (Dietz & Den Hartog, 2006)

c) An action

However, making the decision to trust implies only an intention to act (Costa, Roe, & Taillieu, 2001; Mayer, Davis, & Schoorman, 1995; Sitkin & Pablo, 1992) . To demonstrate unequivocal trust in B, A must follow through on this decision by engaging in trust-informed risk-taking behaviors. These behaviors can be broadly categorized as "reliance"-related, such as surrendering control over valuable resources or sharing potentially sensitive information (Gillespie, 2006; Lee, Gillespie, Mann, & Wearing, 2010) . It's important to differentiate these behaviors from actions indicating A's trustworthiness or B's response to being trusted, such as meeting obligations or resisting opportunism. Importantly, while trusting another is a likely consequence of the decision to trust, it's not guaranteed. External factors, such as the impact on third parties' perceptions of A, may influence the decision-making process (Dietz & Den Hartog, 2006). This is further actualized by Oomsels (2016): trust stems from both cognition and affection, is required in risky or contingent situations, is characterized by a willingness to be vulnerable, based on positive expectation about a counterpart and leads to risk-taking behaviour (Oomsels, 2016) .

- 1) A psychological state, which can be cognitive or affective (McAllister, 1995) and individual or collective.

This can be linked to the trustors' general propensity to trust. Individuals' decision to trust is influenced by their personal characteristics, including their predisposition to trust others (Mayer, Davis, & Schoorman, 1995). This propensity to trust is shaped by biological factors, socialization, education, cultural environment and previous trust-related experiences (Sztompka, 1999; Uslaner E. , The moral foundations of trust, 2002; Tyler & Kramer, 1996; Berg, Dickhaut, & McCabe, 1995). An individual's inclination to trust impacts their decision-making process, and two people with different trust tendencies may make different choices in the same situation (Mayer, Davis, & Schoorman, 1995). Individuals with a higher propensity to trust are more likely to initiate and engage in new relationships, providing them with more opportunities to assess trustworthiness (Levi-Faur, et al., 2020) .

Next to propensity to trust, there are also calculative elements that are considered: reliability, predictability and dependability. They are assessed based on past experience and reputation (O'Rourke, 2012) .

- 2) The acceptance of vulnerability, which concerns the dependency of the trustor on the trusted party (Currall & Judge, 1995). Trust in a government organization involves vulnerability due to the presence of risk and interdependency (Luhmann, 1979; Das & Teng, 2001). Citizens often have no choice but to accept rules and regulations

imposed by the government, making them vulnerable to potential abuse of power and policy failures. This involuntary vulnerability arises from the unequal power dynamics and the necessity of government involvement in solving collective problems. Möllering (2006) emphasizes that trust is rooted in reasons, routines/roles, or reflexivity, but none of these can guarantee certainty about the trustee's future behavior. Therefore, trust involves suspending social vulnerability and uncertainty as if they have successfully been resolved. Every time someone trusts, a leap of faith is taken (Möllering, 2006).

- 3) Positive expectations, which consists of perceptions of another person or collective (Mayer, Davis, & Schoorman, 1995). Positive expectations in trust relationships are based on perceptions of the trustworthiness of the object of trust, including their intentions and behavior. Assessing the trustworthiness of a counterpart involves evaluating their favorable qualities. Despite the element of risk (cf. *infra*), there is a belief that something will good will come of the decision to trust (Oomsels, 2016) .

Trust encompasses goodwill and benevolence. Benevolence, the critical and enchanting component of trust, represents the degree to which one takes into account the needs of the other party, surpassing their own interests. Goodwill is the driving force that inspires a trustor to prioritize their partner's welfare over their own self-interest. It's the catalyst that elevates a mere transaction into a meaningful relationship. As Hosmer (1995) stated, trust is: "...the expectation by one person, group, or firm of ethically justifiable behavior – that is, morally correct decisions and actions based upon ethical principles of analysis – on the part of the other person, group, or firm in a joint endeavor or economic exchange”.

Hosmer refers to ten principles of analysis:

1. Self-interests (Inspired by *Protagoras and others*): The principle suggests that if individuals prioritize their long-term self-interests and refrain from infringing upon others' rights, society will thrive with freedom and productivity, despite short-term appearances of selfishness.

Are the actions in your long-term and the long-term interests of your organization?

2. Personal virtues (Inspired by *Plato and Aristotle*): The principle underscores that beyond refraining from forcefully infringing upon others' rights, individuals must also adhere to standards of fairness and courtesy in pursuing their self-interests, emphasizing honesty, openness, and temperance to foster trust and pride in one's actions and life.

Are your actions honest, open and truthful?

3. Religious injunctions (Inspired by *St. Augustine*): The principle asserts that in addition to honesty, truthfulness, and temperance, cultivating compassion

and kindness towards others is essential for creating a truly "good" society, as exemplified by the Golden Rule found across various religious traditions, fostering reciprocity and a communal spirit towards collectively shared goals.

Are your actions kind? Do they build a sense of community and of working towards a common goal?

4. Government requirements (Inspired by *Hobbes and Locke*): The principle argues that while compassion and kindness are desirable, not everyone will exhibit these qualities, as competition and exploitation persist in society. Thus, to mitigate such tendencies and uphold social order, individuals must collectively adhere to and respect the basic rules enforced by a central authority, typically the government in democratic nations, as these laws represent the fundamental moral standards of the community.

Are your actions legal?

5. Utilitarian benefits (Inspired by *Bentham and Mill*): The principle posits that while common obedience to basic rules hinges on the absence of self-interest among those associated with the central authority, such self-interest does exist. Therefore, there's a need for evaluating both government laws and individual actions based on their contribution to the overall societal benefit, encapsulated by the principle of achieving greater good than harm for the community.

Do your actions result in greater good than harm to society?

6. Universal rules (Inspired by *Kant*): The concept of net social benefit lacks practical guidance regarding the measurement and distribution of benefits and harms, necessitating a rule that neutralizes the self-interest of decision-makers and applies universally, captured by the principle of only taking actions that one would accept others to take in similar circumstances.

Would you be willing to see others, faced with the same or a closely similar situation, take the same actions you are taking?

7. Individual rights (Inspired by *Rousseau and Jefferson*): Given the inherent self-interest of individuals, achieving complete elimination of self-interest in decision-making is impractical, thus necessitating a set of universally upheld rights, including protections against arbitrary government actions, ensuring freedoms such as speech, assembly, and religion, as well as safeguards against property seizure, privacy infringement, and unjust deprivation of liberty, encapsulated by the principle of refraining from actions that violate agreed-upon rights of others.

Do your actions respect the rights of others?

8. Economic efficiency (Inspired by *Adam Smith*): Basic rights are rendered ineffective without access to necessities like food, clothing, and shelter, thus advocating for maximizing the production of essential goods and services by aligning marginal revenues with marginal costs, achieving Pareto Optimality where no individual can be improved without negatively impacting another, summarized by the principle of maximizing profits within legal and market limitations while acknowledging external costs for optimal efficiency.

Do your actions maximize profits – within legal and market constraints?

9. Distributive justice (Inspired by *Rawls*): The flaw in the economic efficiency argument lies in the unjust distribution of essential goods and services by the market, particularly marginalizing the poor, uneducated, and unemployed, necessitating a rule to ensure their inclusion, with the principle emphasizing that actions should not harm the least advantaged among us.

Do your actions harm the least among us in some way?

10. Contributing liberty (Inspired by *Nozick*): Possibly, prioritizing liberty, defined as the freedom to pursue self-interests within legal and market confines, over justice, which entails equitable access to resources, suggests that under conditions of the Social Contract where individual outcomes are uncertain, the sole agreement would be to refrain from impeding others' self-development, as personal growth ultimately benefits society, encapsulated by the principle of avoiding actions that hinder others' rights for self-development and fulfillment.

Do your actions interfere with the rights of others for self-development and self-fulfillment?

- 4) Trust as a relational concept – intentions or behavior of another actor. Trust is a relational concept where one actor places trust in another regarding specific future behavior (Hardin, 2002; Nooteboom, Trust: forms, foundations, functions, failures and figures, 2002). This trust relationship is often reciprocal, but the focus and nature of trust can vary within a relationship, meaning A trusts B for different reasons and with a different objective than A may trust B. Trust can involve individuals, organizations, or systems, and the type of actor involved influences how trust emerges and evolves (Levi-Faur, et al., 2020) . Trust evolves in response to new information, with trustors continually evaluating factors such as capacity, integrity, reliability, and benevolence during interactions. As trust strengthens over time, it can transition into a deeper and more enduring form. Trust moves among interpersonal and intergroup levels. Trust in one individual can be broadened to trust in the group they are part of – at each stage assessing different factors. Vice versa, when a larger

group, such as an organization is trusted, this can be extended to the individuals behind the group. Moreover, the opposite may also be true, where a larger group is trusted, but not the constituting individuals; or the individual may be trusted, but not the larger group (O'Rourke, 2012) . Not only does it differ depending on the actor questioned or envisioned, but also depending on the instruments and institutions put in place to govern (Lahusen, 2020).

Related to trust being a relational concept, is that trust is a voluntary act, not subject to coercion. While cooperation might be compelled, trust cannot be imposed. The trustee is tasked with fostering an environment where individuals, groups, or entities willingly opt to place their trust (Rivera-Santos & Rufin, 2010) .

5) Risk taking behaviour. The element of risk is part of many conceptualizations regarding trust. Several authors argue that the manifestation of trust (within the trustor) cannot be present when there is full certainty about the future actions of the trustee. In order for a potential trust issue to arise, there are a few factors that need to be present (Oomsels, 2016; Barrera, Buskens, & Raub, 2012) :

1. There needs to be an interaction between trustor and trustee, where trustor gives trustee access to resources and trustee can abuse or honour the trust.
2. There is an obvious preference from the trustor for the trustee to honour the trust and abuse comes with regrets from the trustor.
3. There is no binding agreement that guarantees the trustor that the trustee will honour the trust.
4. The trustee's choice and the trustor's decision are made at different times.

There is, in other words, always a possibility that the other party will act opportunistically, counters the trustor's expectations, with the probability of disappointment unknown (Hosmer, 1995). The risk-taking behavior is the ultimate manifestation of trust: "the risk-taking act is trust's defining stage, and the way that it is both sought and enacted" (Skinner, Dietz, & Weibel, 2013).

Based on these observations, the following definition was provided: "The intentional and behavioural willingness to suspend vulnerability on the basis of positive expectations about a counterpart under conditions of risk, dependency and uncertainty" (Oomsels, 2016).

3.6.2. Trust in regime actors

Trust in regime actors refers to the intentional and behavioral willingness of beneficiaries and regulatees to suspend vulnerability based on positive expectations about these actors, despite the presence of risk, dependency, and uncertainty within the regulatory regime.

- **Intentional Willingness:** This aspect of trust in regime actors suggests that beneficiaries and regulatees actively choose to believe in the reliability, competence, and integrity of the actors involved in rule-making, supervision, and enforcement.
- **Behavioral Willingness:** Trust is not merely a passive belief but translates into actions and behaviors. Beneficiaries and regulatees demonstrate trust in regime actors through their compliance with regulations, cooperation with regulatory processes, and willingness to engage constructively with regulatory authorities.
- **Suspension of Vulnerability:** Trust involves a degree of vulnerability because beneficiaries and regulatees rely on regime actors to act in their best interests. Trusting actors means temporarily relinquishing some control and vulnerability, believing that they will act responsibly.
- **Positive Expectations:** Trust is based on positive expectations regarding the intentions, capabilities, and actions of regime actors. This may include expectations of fairness, impartiality, competence, transparency, and accountability.
- **Conditions of Risk, Dependency, and Uncertainty:** Trust in regime actors is particularly relevant in contexts where beneficiaries and regulatees face risks, dependencies, and uncertainties concerning regulatory outcomes, compliance requirements, and enforcement actions.

With regards to regulatory regimes, the notion of ‘institutional trust’ needs to be introduced (note: the term ‘political trust’ is often used interchangeably in common literature). Firstly, a distinction needs to be made between social and institutional trust. Even though these notions differ from each other conceptually, they reinforce each other. Social trust can be defined as “trust in people in general for a nonspecific purpose or situation” (Uslaner E. , 2002) . Research (Schyns & Koop, 2010; Zmerli & Newton, 2008), which indicates a correlation between social and political trust: Effective governance fosters social trust (Van der Meer, 2003), and reciprocally, social trust facilitates good governance, termed the ‘rainmaker effect’ (Newton & Zmerli, 2011). Furthermore, both types of trust are vulnerable to similar influences, such as political polarization (Uslaner E. , 2015) and contentious public discourse (Rapp, 2016), which can undermine both institutional and interpersonal trust. Research suggests that political trust is not simply an extension of social trust, as various factors influence it (Uslaner E. , 2017; Wike & Holzwardt, 2008). The relationship between social and political trust is complex, marked by both interdependence and distinctiveness. Theoretical discussions grapple with defining the structure and rationale of trust in political institutions, often focusing on rational-utilitarian or rational-normative perspectives (Hardin, 1999; Hardin, 2002). Trust in political institutions can reflect cost-benefit

calculations or adherence to societal norms and beliefs, yet an integrated analytical framework considering both instrumental and normative aspects is lacking. (Lahusen, 2020).

For upcoming research, the focus for this constituent entity will be, however, on institutional trust. The concept of institutional trust pertains to the degree of certainty individuals have in institutions and actors in the regulatory system. The basis of institutional trust can arise from a person's association with a particular group, government policies, or general political alignment. The majority of citizens work in professional capacities in particular organisations, and they may assess public institutions' levels of trust and distrust from that point of view. This is overlooked in the majority of research that concentrates on citizens as a whole (Six & Verhoest, 2017; Levi-Faur, et al., 2020).

Institutional trust is a type of specific trust that is directed towards particular institutions and actors, often with a particular purpose or within a particular situation (Hardin, Trust and Trustworthiness, 2002). Trust in the government reflects evaluations of specific leaders and institutions in terms of their ability to meet citizens' needs and demands, deliver quality public services, and effectively manage social, economic, and political uncertainties (Kumagai & Iorio, 2020). When a boundary spanner, representing an organization in external interactions, engages in effective face work, it fosters trust in them. This trust is not only interpersonal but also extends to the organization, as the representative's behavior is seen as reflective of the organization (Kroeger, 2012). Conversely, organizational traits can also bolster trust in the individual representative, especially when the representative is not familiar to external parties (Six & Verhoest, 2017).

As the trust triangle demonstrates (cf. *infra*), trust is fundamentally a relational concept involving one or more actors, which can include individuals, organizations, or systems (Luhmann 1979; Levi and Stoker 2000; Zmerli 2012). Consequently, the nature of these relationships can vary. Generally, trust relationships develop in two distinct ways.

First, trust can form between actors who engage in personal interactions. In this scenario, trust is built through a series of direct transactions, which may foster social bonds and accumulate into social capital, particularly when interactions are regular and enduring over time (Sobel 2002; Keele 2007). In regulatory regimes, this corresponds to face-to-face interactions among insiders, such as communication between civil servants working on the same regulatory issues across different public sector organizations, collaboration between inspectors and industry representatives, or frequent contact between independent regulators and consumer associations.

Second, trust can be impersonal. Citizens' trust in political institutions typically develops this way, as they trust specific institutions from a distance, with little direct experience or personal interaction (Freitag and Bühlmann 2009). The relationships

between citizens and public actors within regulatory regimes (such as agencies, ministries, or executive bodies) are even more impersonal, as these actors tend to be more technocratic and less democratically accountable than elected officials (Vibert 2007). Consequently, trust formation and maintenance occur through indirect information (Verhoest, Maggetti, Levi-Faur, Jordana, & Redert, 2024). There is evidence that a lack of institutional trust in the government can damage the social contract and cause citizens and businesses to become disengaged from the state (Arizti, Brumby, Manning, Senderowitsch, & Thomas, 2010).

Institutional trust depends not only on government performance and expectations but also on people's engagement experience in the decision-making process. There are two types of institutional trust: outcome-based and process-based. Outcome-based trust, determined by perceived results, is formed regardless of citizen engagement or interactions with the government. Process-based trust, on the other hand, is determined by citizens' satisfaction with the level, depth, and quality of engagement in the decision-making process. People may not always be content with the outcome of an engagement but may still feel satisfied with the level, depth, or quality of the consultation process, allowing the government to gain legitimacy and the trust of citizens (Kumagai & Iorio, 2020).

In this project, the approach is followed that trust is not just a general attitude of (a) subject(s) towards an abstract object (Uslaner E. , 2012), but is highly context-dependent, both for counterpart and situation (Oomsels, 2016).

3.6.3. Trust in regime regulation

Regulation is most often defined as a sustained and focused control mechanism over valuable activities by means of direct and indirect (delegated) rules (Verhoest, Maggetti, Levi-Faur, Jordana, & Redert, 2024). Traditionally, regulation was exclusively conducted by the state in a hierarchical manner. The state held the central authority in regulatory processes, assuming exclusive control capabilities (Black, 2002). As governmental influence waned, recognition grew for the involvement of additional actors in regulatory frameworks, albeit often limited to information gathering or standard-setting, with the state retaining primacy in judgment and enforcement (Grabosky, 2013). However, non-state actors are increasingly acknowledged for their role in both judgment and enforcement, leveraging their ability to impose sanctions, though challenges persist regarding information collection mandates and the reluctance of regulated entities to provide sensitive data (Den Hond, De Bakker, & De Haan, 2010). Scholars equally moved on to explore the involvement of non-state actors like public interest groups and market players (e.g. Black, 2008; Braithwaite, 2008, Hood et al., 2001). These actors contribute to various regulatory activities including standard-setting, information-gathering, assessment of compliance, and implementing sanctions when needed (Six & Verhoest, Trust in regulatory regimes: scoping the field, 2017).

Broader perspectives on regulation thus make it a tool not only used by governments, but also by businesses, civil organizations and various other entities it takes diverse forms with varying costs and benefits to society and specific groups. The process of regulation involves rulemaking, monitoring and enforcement, shaping power distribution in society (Verhoest, Maggetti, Levi-Faur, Jordana, & Redert, 2024).

Regulation is not developed in isolation; numerous actors, including public and private entities as well as political and societal stakeholders, participate in its design, creation, enforcement, and compliance. Regulatory frameworks are typically multi-layered, involving various regulators, government levels, and related sectors, necessitating coordination and collaboration (Aubin and Verhoest 2014; Matthieu et al. 2017). Trust between citizens and regulatees may be limited because citizens often lack the expertise or access to necessary information to accurately judge the trustworthiness of organizations, making proper risk assessment challenging. Consequently, regulators are established to provide assurance, acting as third-party providers of trust in the relationship between beneficiaries and regulatees (Verhoest, Maggetti, Levi-Faur, Jordana, & Redert, 2024).

These relationships create a fundamental trust triangle for regulation involving the citizen, the regulated organization, and the regulator.

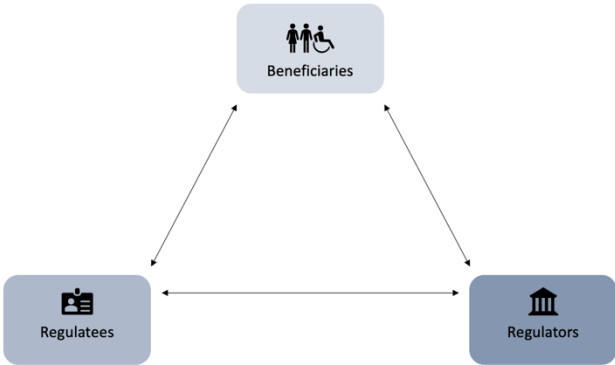


Figure 5. The regulatory trust triangle. Source: adapted from Verhoest, Maggetti, Levi-Faur, Jordana & Redert (2024).

However, this basic triangle must be broadened to fully capture the complexities of regulatory regimes. Trust relationships extend beyond these three actors to encompass the entire regime. This includes politicians and policymakers, ministries and executive bodies, other regulatory agencies (both within the same sector and in adjacent sectors), regulatory intermediaries such as certification bodies, and interest groups representing the regulatees and users across various governance levels—international/supranational, national, and subnational (Verhoest, Maggetti, Levi-Faur, Jordana, & Redert, 2024).

In the literature on trust and regulation, there are broadly three perspectives employed to explain the relationship between these concepts (Verhoest, Maggetti, Levi-Faur, Jordana, & Redert, 2024):

- 1) Trust and regulation are competing concepts, the one undermining the effectiveness and legitimacy of the other.
- 2) Trust and regulation are substitutes, the one replacing the other under different circumstances.
- 3) Trust and regulation are mutually supportive, working together to achieve similar goals (trust as the goal of regulation, as it aims to increase trust among regulatory actors through institutional design and trust can facilitate regulation by promoting compliance and self-determination).

Trust in regime rules involves the intentional and behavioral willingness of beneficiaries and regulatees to suspend vulnerability based on positive expectations about the regulatory framework and its provisions, despite the presence of risk, dependency, and uncertainty within the regulatory regime.

- **Intentional Willingness:** This aspect implies that beneficiaries and regulatees deliberately choose to abide by and comply with the regulatory rules, believing that they serve their interests and contribute to the overall effectiveness and fairness of the regulatory regime.
- **Behavioral Willingness:** Trust in regime rules manifests through adherence to regulations, voluntary compliance, and active participation in regulatory processes such as consultations, feedback mechanisms, and compliance reporting.
- **Suspension of Vulnerability:** Trusting in regime rules involves accepting some vulnerability by relying on the regulatory framework to provide predictable, consistent, and fair outcomes, even in complex or uncertain situations.
- **Positive Expectations:** Trust in regime rules is rooted in positive expectations regarding the clarity, consistency, enforceability, and fairness of the regulatory provisions. Beneficiaries and regulatees believe that following the rules will lead to desirable outcomes and protect their interests.
- **Conditions of Risk, Dependency, and Uncertainty:** Trust in regime rules is particularly crucial in environments where beneficiaries and regulatees face risks, dependencies, and uncertainties regarding compliance obligations, legal interpretations, and regulatory enforcement actions.

3.7. Contextual factors

In the literature, it is acknowledged that behavior, attitudes and cultures of regulatory actors are affecting the regulatory regime (Black & Baldwin, 2010). Therefore, context factors on behavior, attitudes and cultures of the different actor groups have been added to the theoretical framework of the GOBAREG project. Each of them are detailed in this section.

3.7.1. Rule obedience

Rule obedience is a personality characteristic that is expected to influence the regulatory practices of actors (De Boer, 2019). In the literature it has been particularly studied from the perspective of regulatory inspectors, where it is expected that rule-obedient individuals are more comfortable with strictness and formality (van Kleef, Schott & Steen, 2015)

3.7.2. Risk-taking behavior

Because some individuals take risks more eagerly than others (Hamstra et al., 2011), they might be more open to goal-based regulation. This can be described as individuals being more reactive to promotion or prevention. Promotion describes individuals' attention towards aspirations and ambitions, enhances sensitivity to positive outcomes, and creates a preference to use eager approach strategies for goal attainment (Hamstra et al., 2011). Risk-taking therefore refers to choosing the option with the higher outcome variability (cf. Goal-based regulation), that is the wider range of possible outcomes (Figner & Weber, 2011) or as a tendency to think about risks or problems (Baldwin & Black, 2016). Prevention guides individuals' attention toward responsibilities and obligations, enhances sensitivity to negative outcomes, and creates a preference to use vigilant avoidance strategies for goal attainment (Hamstra et al., 2011).

Risk-taking behavior is also influenced by the characteristics of the situation and of the decision-maker (age & gender – also controlled for in our surveys) (Figner & Weber, 2011). The literature emphasized that risk-taking behavior also influences regulators when they identify and prioritize issues for attention (Baldwin & Black, 2016).

3.7.3. Propensity to trust

Propensity to trust is a personal characteristic that can be defined as a general willingness to trust others, regardless of social and relationship-specific information (Mayer et al., 1995 in [Frazier, Johnson & Fainshmidt, 2013](#)).

3.7.4. Perception of government regulation of the economy

The question on the role of government in the economy was inspired by question 7.2 in the 2009 PIQUE survey (Flecker et al., 2009). The sentence, “Please bear in mind that strict regulation may affect businesses’ competitiveness” was added because of comments received from experts during the piloting. Experts argued that the word “protect” could lead respondents to answer “very strictly”, as they may not think about

businesses' competitiveness. Additionally, the sentence, "Think about the economy in general", was added to prime respondents not to think primarily about their own sector when answering the question. Think about the economy in general. How strictly should government regulate business to protect the people? Please bear in mind that strict regulation may affect businesses' competitiveness. Scale: 0-10, Not strictly at all, Very strictly

3.7.5. Innovativeness

Innovativeness can be defined as an attitude towards innovation which refers to whether actors are open to new experiences and novel stimuli, are willing to use information about new concepts, ideas, products or services, and readily recognize the potential application of new ideas (Pennings & Smidts, 2000).

3.7.6. Perception of organizational capacity

An individual's perception of (organizational) capacity influences their behavior more than actual capacity (e.g., Winter, 2002). Therefore, the perception of organizational capacity is important for actors to support the shift from rule-based to goal-based regulation. It is a concept that covers multiple dimensions, which is why it has been divided into six sub-dimensions to reflect it in the GOBAREG project.

(a) Financial capacity

The perception of all actors about the extent to which sufficient money is available within their organization to carry out its tasks (based on Potter & Brough, 2004).

(b) Staff

The perception of all actors about the extent to which there are sufficient high-quality and suitable employees within the organization to cope with the workload (based on Potter & Brough, 2004).

(c) Information

The perception of all actors about the extent to which there is sufficient access to the necessary information to properly perform the tasks within the organization (based on Potter & Brough, 2004).

(d) Understanding of regulation

The perception of all actors about the ability of the employees in the organization to understand the theoretical context (here the regulations) in order to perform their job (based on Potter & Brough, 2004).

(e) Knowledge specific to the sector

The perception of all actors about the extent to which employees in the organization have “specific knowledge about the field of work, about regulatory standards and about their implementation. This knowledge is twofold: on the one hand, knowledge about the behavior of the regulated, on the other hand, knowledge of the local context so that the regulations must be aligned with it.” (Van Haelter et al., 2019).

(f) Ability to deploy knowledge, financial and human resources in a timely and effective manner = systems management or management/administrative capacity

The perception of all actors about the extent to which the flows of resources, namely personnel, money and information, are timely and effective within the organization (based on Potter & Brough, 2004).

4. Provisional hypotheses

The GOBAREG-project looks into the conditions under which goal-based regulation can be properly implemented. The causal mechanisms underpinning the implementation of goal-based regulation include some enabling contextual factors, as well as features related to the rule-design, the involvement of stakeholders – more specifically interest groups, the type of regulatory oversight, and the trust dynamics. The outcomes of goal-based regulation, facilitated by certain behavioral changes of actors in the regulatory regime, are compliance, regulatory burdens, innovation and trust. This project unpacks the causal mechanisms through papers written by the researchers in charge of each condition and outcome. The hypotheses are therefore presented following the researchers’ approaches and by paper. Of course, some interactions between the conditions and the inclusion of contextual factors and trust dynamics are also investigated – as separate hypotheses or as moderating/mediating variables.

4.1. Rule-design-related hypotheses

H1: GBR with a high score on the discretion index, a high score on the clarity index and a medium to low score on the stringency index, is an optimal combination for innovation.

In this case, the goal is precise, but much discretion is left as to how obtain this goal, and medium/low stringency means that the addressed persons are motivated to collaborate but they can take risks because using innovative methods that in the end prove inadequate, will not lead to severe sanctions. At the same time, this combination is also a risk case because the government does not control for undesirable side effects.

H2: Rules with a medium score on the discretion index, a high score on the clarity index and a high score on the stringency index, provide an optimal combination for achieving specific policy goals.

A clear goal is more measurable and high stringency forces the addressed persons to collaborate. With a medium score on the discretion index the government keeps some control, but at the same time there is enough room for alternative means if the usual method proves ineffective or sub-optimal, for example due to new developments.

H3: When confronted with goal-based regulation, rule-makers, regulatory intermediaries, supervisory bodies, and courts will try to create more legal certainty and thus provide more detailed (binding and non-binding) guidelines.

Research by Wim Timmer (2011, 2012) suggests that, when GBR is introduced in a certain regulatory regime, regulatory intermediaries and supervisory bodies tend to try to increase the legal certainty of the regulatory regime by issuing additional rules or guidelines. We hypothesise that we will indeed observe that various actors will show such behaviour in GBR regimes.

H4: In line with H3, we expect to observe a decrease in discretion and an increase in clarity of GBR over time.

When various actors try to increase legal certainty of GBR in the ways described above, we expect that this results in them closing of certain possibilities, resulting in a decrease in discretion. Moreover, this will probably mean that specific interpretations of originally vague, indetermined, or absent aspects of the regulation will be specified, resulting in an increase in clarity.

H5: If discretion is to be safeguarded against devolution over time, GBR should from the start be accompanied with non-binding examples and guidelines, and its intentions to grant discretion should be made explicit.

As explained above, the reason why many actors tend to ‘fill in’ GBR again with more detailed regulation, is to increase legal certainty. Hence, the best way to avoid this might be to ensure the clarity of the norm in question in the first place. This might be done by complementing GBR with additional non-binding examples and guidelines. These can then serve as a ‘safe option’ for those regulatees who don’t have the capacity or will to innovate or who are risk-averse, while more innovative regulatees may go beyond these guidelines and develop their own best practices.

4.2. Interest group involvement-related hypotheses

4.2.1. *Navigating the Shift: Interest Group Dynamics in Hybrid Regulatory Regimes*

Interest groups get involved in agency rulemaking primarily to provide critical information that agencies need to effectively regulate. Regulatory policies aim to address market failures, and agencies require detailed knowledge about the sectors they oversee to identify these failures, draft appropriate measures, and assess their impacts. Interest groups offer valuable technical, economic, and legal expertise in

exchange for access and influence in the rulemaking process. This collaboration enhances the problem-solving capacity of agencies, leading to more effective regulatory outcomes (Beyers & Braun, 2014; Bouwen, 2002; Braun, 2012; De Bruycker, 2016). Additionally, while legislative bodies may seek both policy-related and political information, executive agencies primarily focus on technical expertise, making them more reliant on interest groups from the regulated sectors. We argue that goal-based regulation has a higher need for information exchange compared to rule-based regulation, as a result of the need for a joint formulation of goals that are to be achieved. Close collaboration between policymakers and those that are regulated is therefore essential. In order for policymakers to develop regulatory frameworks that are efficient and have a high likelihood of goal attainment, they desperately need knowledge on what the capabilities and day-to-day concerns in the sector are. However, we expect that this reasoning will only apply to interest groups representing regulated interests. This means that interest groups of beneficiaries, who are less likely to find access, will have to resort to more antagonistic strategies. Therefore, we expect that:

H1: The type of regulation will significantly affect the mode of interest group involvement

- H1a: For interest groups of regulatees, goal-based regulation will be associated with a higher use of administrative and parliamentary strategies
- H1b: For interest groups of beneficiaries, goal-based regulation will be associated with a higher use of media and protest strategies

Building further on this reasoning of an increased need of information exchange and joint formulation of goals to be achieved, we argue that this also affects the timing groups choose to get involved. To ensure a smooth implementation process, policymakers require regulated sectors to be on board as this can cultivate a sense of ownership enhancing compliance and mitigate opposition during the final stages of the policy cycle (Garcia Martinez, Verbruggen, & Fearné, 2013) Additionally, agencies can leverage the organization capacities of groups to aid in the implementation, monitoring, and enforcement of policies (Verbruggen, 2013). We therefore argue that interest groups will tend to be involved from the earliest stages to make sure that from the very beginning, goals align with their expectations, capacity and needs. Furthermore, groups that support their members in complying with regulations, will be more inclined to be involved continuously to foster a shared sense of responsibility over the regulation. Therefore, we expect that:

H2: The type of regulation will significantly affect the timing of interest group involvement

- H2a: Goal-based regulation will be associated with continuous involvement of interest groups, but only for interest groups of regulatees

- 1) H2b: The relationship will be stronger for groups that offer support to their members in how to comply with regulations

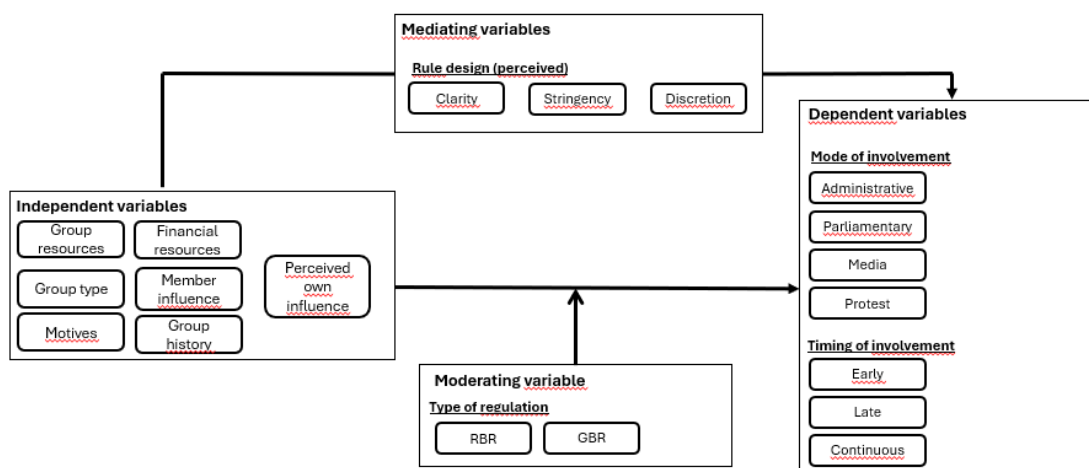


Figure 5. Provisional conceptual model for interest group involvement

4.2.2. Different types of interest groups involvement in regulatory regimes and their influence on legitimacy perceptions

One of the main reasons for including stakeholders in agency decisions and other forms of non-majoritarian governance is the belief that it will boost the legitimacy of these decisions and strengthen the agency's overall authority (Arras, 2017). Involving stakeholders serves as an indirect method of citizen representation, making up for the agencies' lack of direct public accountability (Furlong & Kerwin, 2004). The literature teaches us that the involvement of interest groups contributes to legitimacy via four main mechanisms. It enhances transparency and accountability of decision-making procedures (McCubbins & Schwartz, 1984; Schillemans, 2008; Steffek & Ferretti, 2009), improves decision quality by incorporating expert information (Coglianese, Zeckhauser, & Parson, 2004; Steffek & Ferretti, 2009), increases ownership and compliance, which facilitates smoother implementation (Borrás, Koutalakis, & Wendler, 2007; Braun, 2013; Garcia Martinez, Verbruggen, & Fearne, 2013), and enables agencies to build their reputation as autonomous and credible authorities through strategic stakeholder interactions (Busuioac & Lodge, 2016; Carpenter, 2002). However, interest groups, who claim to represent certain parts of society, lack the democratic legitimacy bestowed through elections (Rasmussen & Reher, 2023). Furthermore, it is often argued that the interest group system is biased and dominated by representatives of powerful business or smaller sections of society, rather than representing the public good or the majority of citizens (Flöthe & Rasmussen, 2019; Rasmussen & Reher, 2023).

Different modes of involvement provide varying levels of access and influence. For example, administrative and parliamentary strategies may offer more formal channels of

input, leading to higher perceived input legitimacy as groups feel their contributions are officially recognized. In contrast, protest and media strategies might be seen as less formal but can still influence public opinion and pressure regulators. Therefore, we expect that:

H1: Administrative and parliamentary strategies lead to higher perceived input legitimacy

H2: Continuous involvement of interest groups leads to higher perceived throughput legitimacy

As argued earlier, goal-based regulation has a higher need for information exchange and joint formulation of goals that are to be achieved. Close collaboration between policymakers and those that are regulated is therefore essential. We expect however that only interest groups of regulatees will benefit from this higher need of information exchange, causing them to have higher legitimacy perceptions. For interest groups representing beneficiaries, it might have the opposite effect and lead to a decrease in perceived legitimacy as a result of distrust caused by the close relationship between regulator and regulated. Therefore, we expect that:

H3: Goal-based regulation strengthens the positive effect of parliamentary and administrative modes on perceived output legitimacy, but only for interest groups of regulatees.

A key factor of the perceived legitimacy of interest group involvement, is the diversity of involved interests. A diverse set of interest groups provides a wide range of perspectives and expertise, leading to more balanced and comprehensive regulations, enhancing input legitimacy. This is confirmed by Rasmussen and Reher (2023), who find that biased participation results in reduced legitimacy perceptions. Therefore, we expect that:

H4: Higher diversity of involved interest groups leads to higher perceived input legitimacy.

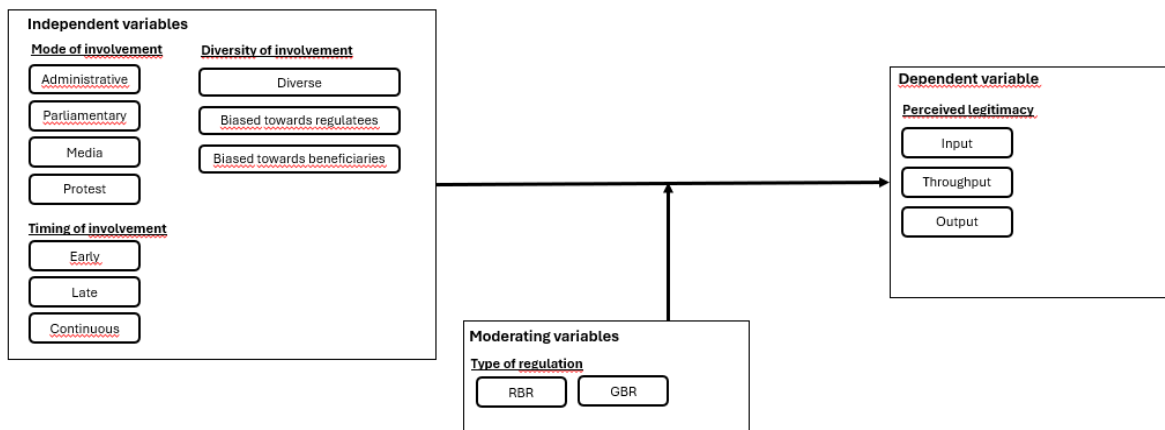


Figure 6. Provisional conceptual model for diversity of stakeholder involvement

4.2.3. Combined preferences of interest groups for legitimate regulation

Procedural fairness theory, which emphasizes the importance of fair processes in decision-making (Ruder & Woods, 2019), is a key aspect in any form of regulatory legitimacy (Baldwin, Cave, & Lodge, 2011). We argue that all three conditions (rule-design, interest group involvement and regulatory supervision) touch upon aspects of potential perceived fairness of the decision-making process and in turn will contribute to the perceived legitimacy of regulation.

Rule clarity ensures that rules are understandable and transparent. We can say that high rule clarity leads to better comprehension of regulatory requirements. This enhances the perceived fairness of the process because regulatees and their interest groups will feel informed. High rule clarity also reduces rule ambiguity and the potential for arbitrary enforcement, which in turn also aligns with the principles of procedural fairness (Ruder & Woods, 2019). Stringent rules, when applied consistently, can enhance fairness by ensuring that all regulatees are subject to the same standards. However, overly stringent rules can be perceived as unfair if they are seen as excessively burdensome or inflexible. Discretion in rule design allows for flexibility in how rules are applied. From the perspective of procedural fairness theory, discretion can be seen as a double-edged sword. On one hand, it allows regulators to adapt rules to specific contexts, which can be seen as fairer than a one-size-fits-all approach. On the other hand, too much discretion can lead to perceptions of bias or inconsistency (Effron, 2013).

When interest groups are involved through formal consultation procedures organized by the government, the process is typically more transparent and structured. This formal mode ensures that all groups have an equal opportunity to participate, which enhances procedural fairness by providing a clear and open platform for input. Involvement through informal contacts between policymakers and interest groups can be perceived

as less fair because it may lack transparency and inclusiveness. Informal modes can lead to perceptions of bias and unequal access, undermining the fairness of the process. When interest groups are involved both in setting the rules and in implementing them, it ensures continuous engagement and allows for feedback throughout the process. This continuous involvement can enhance procedural fairness by ensuring that interest groups can influence both the design and application of regulations. Involving interest groups early in the process, when rules are being determined, ensures that their input is considered from the outset. Early involvement is crucial for procedural fairness as it allows interest groups to shape the foundational aspects of regulation, rather than merely reacting to decisions already made. When the government involves a variety of interest groups to provide support for regulation, it ensures that multiple perspectives are considered. This diversity enhances procedural fairness by preventing dominance by any single group and ensuring that the regulatory process reflects a broad range of interests. If the government involves interest groups primarily from regulatees to provide expertise for regulation, it can be seen as biased. While expertise is valuable, procedural fairness requires that the process also includes groups representing broader societal interests to ensure balanced and fair outcomes.

In line with Ruder and Woods (2019), who find that transparency and public participation in the rulemaking process can enhance perceived fairness and legitimacy, we expect that dimensions of the conditions contributing to increased procedural fairness in the eyes of interest groups, will lead to higher perceived legitimacy. This means that we expect differences in the legitimacy perceptions of interest groups representing regulatees and interest groups representing beneficiaries.

Building on this procedural fairness theory, we expect that:

H1: Interest groups representing regulatees will consider regulation that has:

A high level of rule discretion

A high low level of rule stringency

A low level of stakeholder diversity

A low level of stakeholder mode

A high level of stakeholder timing

A low level of regulatory capacity

A high level of regulatory style

... to be more legitimate / more supportable.

For interest groups representing beneficiaries we expect that :

H2: Interest groups of beneficiaries will consider regulation that has:

A low level of rule discretion
A high level of rule stringency
A high level of stakeholder diversity
A high level of stakeholder mode
A high level of stakeholder timing
A high level of regulatory capacity
A low level of regulatory style
... to be more legitimate / more supportable

4.3. Regulatory oversight-related hypotheses

4.3.1. *How do enforcement styles change under goal-based regulation?*

H1: In a regulatory approach which contains more goal-based regulation (compared to rule-based regulation), regulatory authorities will use less of a deterrence approach and more of a restorative approach and capacity-building approach.

Rule-based regulation is often described as a framework of demarcated prescriptive rules which give clarity to the regulated entity as to what is expected from them in terms of means and behaviour to comply (Decker, 2018). It also results in clearer accountability of regulatory authorities, as a violation can be determined with more certainty. We hypothesise that under this rule-based regulation, a regulatory authority will be more likely to adopt a deterrence approach.

Varhammar (2019) states that the deterrence logic is based on “principles of certainty, proportionality and swiftness”. Its success in fostering compliance thus lies in the perception of regulated entities that a violation will in all certainty lead to a proportionate penalty which is enforced in a swift, proactive manner. Such perception can be created through precisely drafted rules which foster a shared understanding between the regulatory authority and the regulated entity on what is expected compliant behaviour and what entails a violation (Decker, 2018).

In contrast, more persuasive approaches, such as the restorative and capacity-building approaches, foster “a culture of shared commitment to regulatory goals rather than enforcing compliance with potentially ill-defined, legislative standards”, says Varhammar (2019). This shared commitment lies at the centre of both the restorative and capacity-building approach as they respectively take into account the context and learning curve of the regulated entities. Indeed, Varhammar (2019) states that these approaches are best used when the solutions to a problem are not as clear and when

some innovation is needed. Hence, we hypothesise that when regulatory authorities function under a more goal-based regulation, they will employ these restorative and capacity-building approaches.

Goal-based regulation is described as a framework which lacks clear rules of action yet allows the regulatory entity to develop their own means and methods to comply with a set-out goal (Decker, 2018). The need for innovation and complex problem-solving are thus an inherent part of a goal-based regulation as it encourages regulatory entities to experiment with alternative methods for compliance (Black, 2008; Decker, 2018). Consequently, the regulatory authority can adjust their enforcement style to the context (restorative approach) and learning curve (capacity-building approach) of the regulated entity. Besides, under a goal-based regulation the accountability greatly shifts towards the regulated entities which entails a higher allocation of risk to the regulated entities (Decker, 2018). Hence, regulatory authorities might want to control for this risk and potential accountability gap by actively involving the regulated entities in their enforcement style.

H2: In a regulatory approach which contains more goal-based regulation (compared to rule-based regulation), regulatory authorities will use less of a deterrence approach and more of a restorative approach and capacity-building approach, only if regulatory authorities will perceive more discretion, less clarity and less stringency.

We build further on this hypothesis by including the perception of regulatory authorities concerning the design of the regulation or ‘rule design’, in terms of discretion, clarity, and stringency. *We hypothesise that in a regulatory approach which contains more goal-based regulation (compared to rule-based regulation), regulatory authorities will use less of a deterrence approach and more of a restorative approach and capacity-building approach, only if regulatory authorities will perceive more discretion, less clarity, and less stringency in the regulation.*

First, discretion can be defined as “the extent to which non-prescribed options are left open to achieve the aim envisaged by the rule-maker” (Verhoest et al., 2023). This discretion applies first and foremost to the decision space of regulated entities. Under goal-based regulation, regulated entities are given the freedom and flexibility to decide the means which they will employ to reach the set-out goal of the regulation (Decker, 2018). Hence, under a goal-based regulation, a regulatory authority will likely perceive the discretion of the regulated entity to be higher than under a rule-based regulation. However, in some cases of goal-based regulation, regulatory authorities might still perceive the discretion of regulated entities to be low. For example, when there is a tendency for re-regulation in the sector. Re-regulation occurs when regulatory actors, such as politicians, regulated entities or beneficiaries, push to compensate for the discretion created under goal-based regulation by introducing a guiding framework of non-binding rules or recommendations (Baldwin, Cave, & Lodge, 2012). In doing so, regulatory entities and regulatory authorities may perceive these recommendations to

be the yardstick for determining compliance, hence creating the same effect as rule-based regulation (Decker, 2018).

We hypothesize that the perception of a regulatory authority is the crucial factor in determining their subsequent choice in enforcement style. Of course, regulatory authorities will only take into account the context and learning curve of regulated entities when they perceive that working more case-specific instead of employing a uniform approach for all is the most effective way to reach compliance (Baldwin, Cave, & Lodge, 2012). Hence, we assume that only when a regulatory authority perceives the discretion of regulated entities to be high, will they actively employ a restorative approach or capacity-building approach to compensate for the higher allocation of risk and accountability towards the regulated entity (Decker, 2018). On the contrary, when a regulatory authority perceives the discretion of regulated entities to be low, they will more likely use a deterrence approach as they attribute the risk and accountability to themselves.

Second, clarity is defined as “the extent to which the rule gives certainty as to what a person must do to obtain or avoid specific legal consequences” (Verhoest et al., 2023). Whilst the third variable, stringency, refers to how “strict, severe, or limiting” (“Stringency,” n.d.) the regulation and its prescribed sanctions are (Chen, Li, & Wu, 2022).

Goal-based regulation is “more imprecise, and potentially less certain” whilst rule-based regulation is “more precise and therefore potentially more certain” says Decker (2018). Hence, it is likely that regulatory authorities will perceive goal-based regulation to be less clear than rule-based regulation. Besides, Chen, Li and Wu (2022) state that “when policies are more stringent, their restrictive effects are stronger, which would facilitate more uniform actions”. Rule-based regulation is in general more restrictive and uniform than goal-based regulation. Hence, it is likely that regulatory authorities will perceive rule-based regulation to be more stringent than goal-based regulation. However, regulatory authorities might still perceive a high clarity and a high stringency under goal-based regulation when there is a shared understanding of the underlying goals among all the regulatory actors (Decker, 2018). For example, when goal-based regulation is defined in a quantifiable goal, such as the maximum level of allowed emission in environmental policy.

We hypothesize that only when regulatory authorities perceive goal-based regulation to be more clear and more stringent, they will be more likely to use a deterrence approach to strictly follow the clear rules. On the contrary, when regulatory authorities perceive the regulation to be less clear and less stringent, a deterrence approach will be less suitable as it might lead to hostility and a damaged credibility in the regulatory regime by regulated entities (Black, 2008). Hence, we hypothesize that in the case of low clarity and low stringency, regulatory authorities will more likely use a restorative approach and a capacity-building approach to compensate for this lack in legal certainty.

For our last set of hypotheses we introduce four moderating variables into this relation, namely regulatory authorities’ perceived stakeholder legitimacy, perceived regulatory

capacity, perceived regulatory cooperation and trust in regulatees. First, we define perceived stakeholder legitimacy as the extent to which “regulations are perceived as justified or credible (input legitimacy)” by the regulatory authorities (Mena & Palazzo, 2012). This perception stems from the idea that “political choices should be derived, directly or indirectly, from the authentic preferences of citizens and that, for that reason, governments must be held accountable to the governed” (Mena & Palazzo, 2012; Scharpf, 1997). We hypothesize that when regulatory authorities perceive a high stakeholder legitimacy, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities perceive a low stakeholder legitimacy.

H3a: When regulatory authorities perceive a high stakeholder legitimacy, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities perceive a low stakeholder legitimacy.

The underlying assumption for this hypothesis is that when regulatory authorities perceive that regulation has been established with only a low stakeholder legitimacy, they might be wary of regulatees and beneficiaries which do not (fully) support the new regulation. Hence, regulatory authorities might adapt their enforcement style to a stronger deterrence approach. Firstly, because without a stricter and more coercive style regulatees might not be incentivized to implement the new regulation (Ayres & Braithwaite, 1992). Secondly, because a stricter enforcement style might lead to higher levels of citizen trust and subsequently a higher perceived legitimacy of regulatees in the regulatory authorities (Grimmlikhuijsen et al., 2024). Hence, regulatory authorities perceive that a stronger deterrence approach and a weaker restorative approach and capacity-building approach can compensate for the low degree of stakeholder legitimacy. Conversely, when regulatory authorities perceive that regulation has been established with a high stakeholder legitimacy, they might approach regulatees with a higher level of trust in their willingness to comply, leading to a more restorative approach and capacity-building approach (Ayres & Braithwaite, 1992).

Second, we discuss the impact of the perceived regulatory capacity of regulatory authorities. Regulatory capacity is defined as “The inherent ability [of the regulatory authority] to effectively use its resources to carry out its policy objectives” (Shybalkina, 2024). We hypothesize that when regulatory authorities perceive a high regulatory capacity, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities perceive a low regulatory capacity.

H3b: When regulatory authorities perceive a high regulatory capacity, the negative relation between a goal-based regulatory approach and using a deterrence

approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities perceive a low regulatory capacity.

A low regulatory capacity means a low responsiveness to the challenges which regulatory authorities face when implementing regulation (Baldwin, Cave, & Lodge, 2012). Hence, Lipsky (1980) tells us that, when the regulatory capacity of regulatory authorities is low, they will employ all sorts of coping mechanisms to minimise implementation costs. Winter (2002) adds to this research by stating that the perception of regulatory capacity by regulatory authorities, the so-called ‘subjective capacity’, is more important than the actual or ‘objective capacity’ in reducing the usage of these coping mechanisms. Therefore, regulatory authorities who perceive their regulatory capacity as low, especially in terms of capacity in adequate staff and enforcement tools (Winter, 2002), might be less inclined to adapt their enforcement style to the changing regulation. Even more so as a restorative approach and capacity-building approach require more (individual) capacity of the regulatory authorities than a deterrence approach (Carrigan & Harrington, 2015; Gunningham, 2017).

Third, we discuss perceived regulatory cooperation between different regulatory authorities across organizations. Regulatory cooperation is defined as “the instruments and mechanisms that aim to enhance the voluntary or forced alignment of tasks and efforts of [regulatory authorities]” across functions in the regulatory cycle (Bouckaert, Peters, & Verhoest, 2010). We hypothesize that when regulatory authorities perceive a high regulatory cooperation, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities perceive a low regulatory cooperation.

H3c: When regulatory authorities perceive a high regulatory cooperation, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities perceive a low regulatory cooperation.

When regulatory authorities collaborate more with their colleagues, they develop a collective understanding of the regulation and a collective belief on how to implement the regulation (Sager, Thomann, & Hupe, 2019; Sandfort, 2000). In turn, this collegial collectivity gives regulatory authorities more confidence to actively implement the regulation in one and the same manner. This is especially important when it comes to goal-based regulation, as the inherent flexibility of its enforcement requires some degree of shared understanding or clarity (Decker, 2018). Hence, we argue that when the perceived regulatory cooperation among regulatory authorities is high, they will more strongly implement the changes in regulation (from rule-based to goal-based) by using the same restorative and capacity building approaches. Yet, when regulatory authorities

perceive that regulatory cooperation is low, they will stick to the usual deterrence approach of rule-based regulation.

- The fourth moderator which we will discuss, is the trust of regulatory authorities in regulatees. We define trust according to the definition of Rousseau et al. (1998): “Trust is a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behavior of another.” In this case of trust, the vulnerability of regulatory authorities lies in the ‘positive expectation of the intention’ of the regulatee to comply with the regulation. We hypothesis that when regulatory authorities have high trust in regulatees, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities have low trust in regulatees.

H3d: When regulatory authorities have high trust in regulatees, the negative relation between a goal-based regulatory approach and using a deterrence approach and the positive relation between a goal-based regulatory approach and using a restorative approach and capacity-building approach, will be stronger, compared to when regulatory authorities have low trust in regulatees.

Six (2013) tells us that the trust of a regulatory authority in the regulatee should not be looked at in terms of the subsequent severity of the sanctions. Instead, the focus should lie on the impact of the degree to which a regulatory authority chooses to control the regulatee through their enforcement style. Additionally, this degree of control will have either a positive or negative impact on the value internalization and the self-determination of each regulatee. This is a reinforcing cycle, meaning that regulatory authorities adjust their levels of trust in regulatees and their subsequent degree of control in their enforcement style based on the compliance behavior of regulatees (Six, 2013). The idea behind goal-based regulation is to give regulatees the discretion and accountability to develop this value internalization and self-determination (Baldwin, Cave, & Lodge, 2012; Decker, 2018). Hence, when a regulatory authority has a high degree of trust in regulatees under goal-based regulation, they will be more inclined to deploy a style which is less controlling and more enforcing of the value internalization and self-determination of regulatees. In our hypothesis, this translates itself in a stronger restorative and capacity-building approach and a lesser deterrence approach. Conversely, when regulatory authorities have only a low degree of trust in regulatees - meaning that they perceive resistance among regulatees to comply - they will be more inclined to use a more controlling style, namely a deterrence approach (Ayres & Braithwaite, 1992).

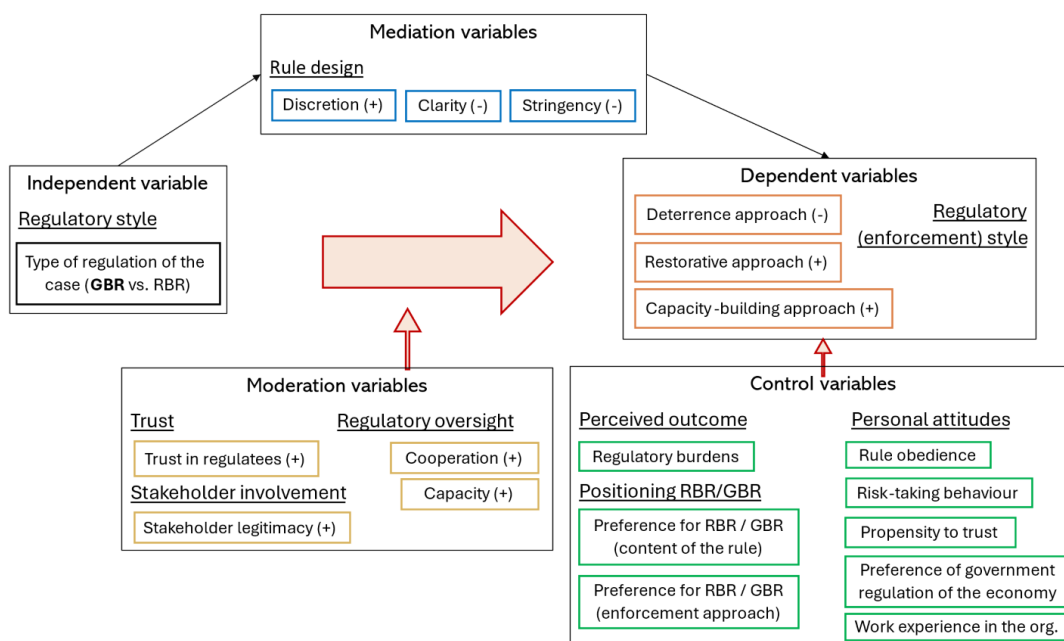


Figure 7. Provisional conceptual model for regulatory style

4.3.2. The drives for a preference in goal-based regulation

In this paper, we raise the following question: Which factors determine the preference of regulatory authorities for a goal-based regulatory regime (over a rule-based regulatory regime)? To answer this question, we distinguish three possibly explanatory categories: (1) the personal features of individual regulatory authorities, (2) the perceived sectoral features of the regulatory authority, and (3) the perceived organizational features of the regulatory authority.

First, the personal features of individual regulatory authorities can be defined as their personal attitudes based on the internal values of a person (which they grew up with); do they inherently want GBR?

H1a Regulatory authorities with a high degree of risk-taking behavior, will prefer goal-based regulation (over rule-based regulation).

H1b Regulatory authorities with a high propensity to trust others, will prefer goal-based regulation (over rule-based regulation).

H1c Regulatory authorities with a low degree of rule obedience, will prefer goal-based regulation (over rule-based regulation).

H1d Regulatory authorities with a preference for a low degree of government regulation of the economy, will prefer goal-based regulation (over rule-based regulation).

Second, the perceived sectoral features reflect an evaluation which the regulatory authority makes about the sector in which they function. On the one hand, does the

current regulatory framework in the sector work? On the other hand, can my sector handle goal-based regulation.

H2a_ Regulatory authorities who have a low degree of trust in their current sectoral regulation, and who currently function under a rule-based regulation, will prefer goal-based regulation (over rule-based regulation).

H2b_ Regulatory authorities who perceive a high degree of measurability and enforceability of the regulatory goals in their sector, will prefer goal-based regulation (over rule-based regulation).

H2c_ Regulatory authorities who perceive a low degree of risk (of irreversible damage) in their sector, will prefer goal-based regulation (over rule-based regulation).

Third, the perceived organizational features refer to the degree to which a regulatory authority thinks that their organization can handle a change to goal-based regulation.

H3a_ When regulatory authorities perceive a high degree of innovativeness in their organization, the relation between their personal features and sectoral features on the one hand, and their preference for goal-based regulation (over rule-based regulation) on the other hand, will be stronger, compared to when regulatory authorities perceive a low degree of innovativeness.

H3b_ When regulatory authorities perceive a high degree of capacity in their organization, the relation between their personal features and sectoral features on the one hand, and their preference for goal-based regulation (over rule-based regulation) on the other hand, will be stronger, compared to when regulatory authorities perceive a low degree of innovativeness.

H3c_ When regulatory authorities perceive a high degree of cooperation in their organization, the relation between their personal features and sectoral features on the one hand, and their preference for goal-based regulation (over rule-based regulation) on the other hand, will be stronger, compared to when regulatory authorities perceive a low degree of innovativeness.

Lastly, these features will likely have a different impact on the preference of regulatory authorities for goal-based regulation.

H4_ Regulatory authorities are influenced more by their individual features in their preference for goal-based regulation (over rule-based regulation) than by their sectoral features.

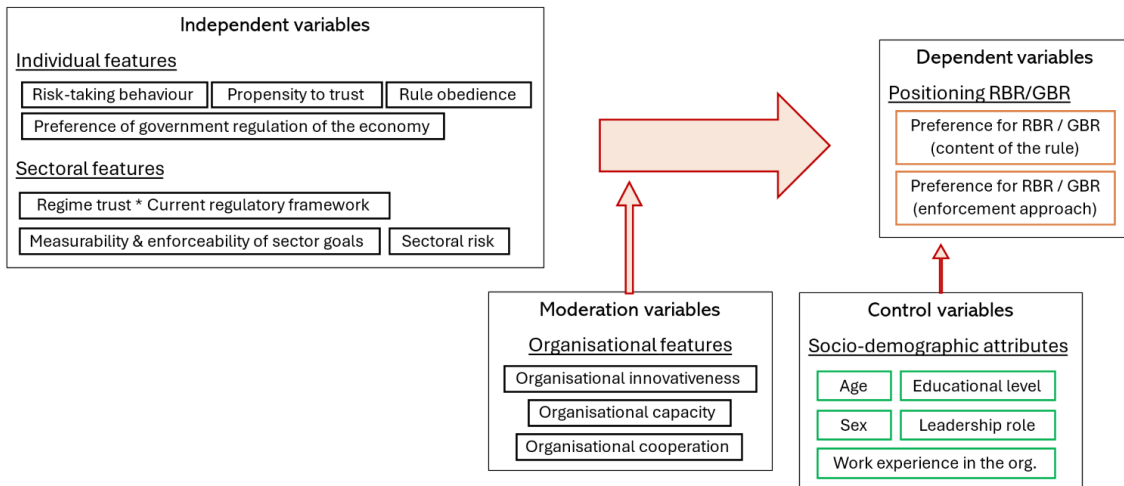


Figure 8. Provisional conceptual model for the choice between rule-based and goal-based regulation

4.3.3. How can regulatory authorities achieve effective regulatory oversight?

Which conditions do regulatory authorities find the most important for an effective regulatory oversight? To which degree do the regulatory discretion and the regulatory style of regulatory authorities depend of the rule design?

H1_Regulatory authorities who choose a scenario of goal-based regulation over the scenario of rule-based regulation, will prefer a high degree of discretionary capacity and an accommodating regulatory style.

H2_Regulatory authorities with a high degree of trust in the regime, will place more importance in the regulatory style than in the discretionary capacity when choosing a scenario.

H3_There will be a correlation between choosing a low discretionary capacity and a coercive regulatory style which will be positively moderated by a high degree of rule stringency.

4.4. Trust-related hypotheses

4.4.1. To what extent does the introduction of GBR relate to higher levels of perceived trust in the regulatory regime (including regime actors and regime regulation), controlling or moderating for antecedents, actor group differences and socio demographic variables?

Subquestion 1.1: What is the level of trust by regulatees (and beneficiaries) in the welfare sector today (a hybrid regime, including GBR)?

Subquestion 1.2: What is the relation between the four trust-typologies?

- Trust in the regulatory regime
- Trust in the regime actors
- Trust in the regime regulation

H1: High capacity regulatees have higher trust in hybrid regimes including GBR than low capacity regulatees.

High capacity regulatees can easily innovate and optimize their compliance strategies. Such regulatees prefer qualitative, flexible regulation which is less punitive and offers room to take entrepreneurial initiatives and to grow. Regulatees with low capacity to deal with uncertainties and to react to unforeseen events care less about room for manoeuvre and are likely to prefer stricter systems with clear sanctions and detailed rules as to how they are supposed to deliver their services

H2: Regulatees have higher trust in hybrid regimes including GBR than beneficiaries.

For beneficiaries, the effect of RBR on their regime trust is mainly based on a general concern about receiving the envisaged service with good quality, while avoiding foreseeable as well as unforeseeable and unintended risks of maltreatment and opportunistic behavior by regulatees. The more regulatory regimes are principle-based, the more they also leave room for discretion and flexibility for regulatees and the more uncertainty there is for beneficiaries with respect to the services they are offered. Beneficiaries in general do not prefer formalistic compliance, but rather prefer goal achievement combined with a general attitude of regulatees to avoid risks (incl. unintended ones) that might harm beneficiaries. This means that they favor a hybrid approach, with broad goals, but strict rules and practice to sanction target-averse and opportunistic behavior.

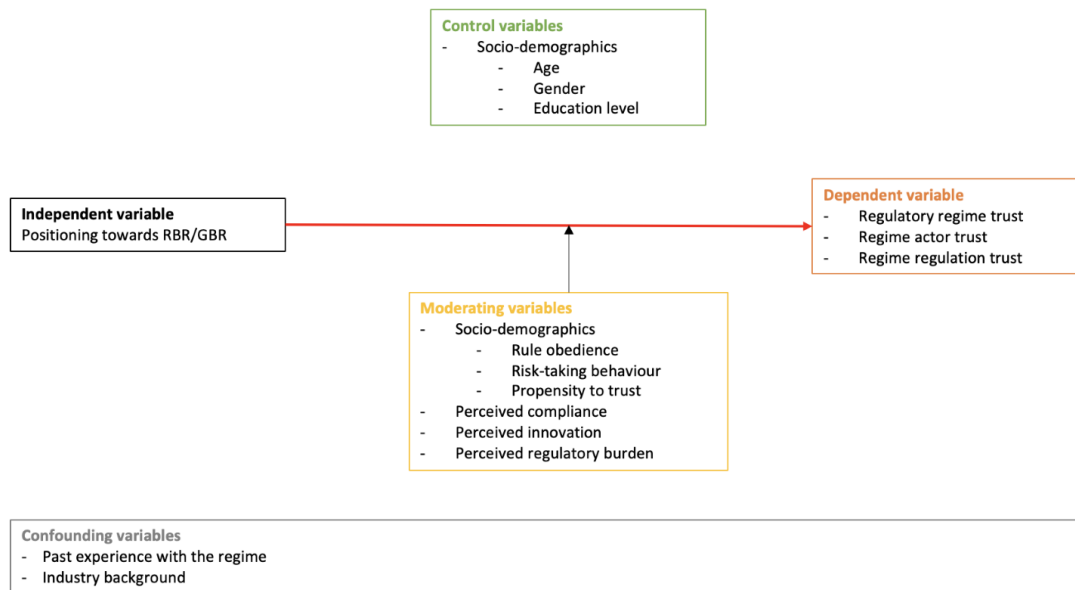


Figure 10. Provisional conceptual model for trust levels in goal-based regulation

4.4.2. What is the relative importance of discretion/stringency/clarity of rule design; mode/timing/diversity of stakeholder involvement and capacity, style and collaboration in regulatory enforcement for regulatees and beneficiaries to trust the regulatory regime, controlling for sector, organizational and individual variables, in a hybrid regulatory regime?

Subquestion 3.1: What is the relative influence of each condition on beneficiaries' and regulatees' trust?

3.1.1: What is the influence of rule design on beneficiaries' and regulatees' trust?

3.1.2: What is the influence of stakeholder participation on beneficiaries' and regulatees' Trust?

Trust?

3.1.3: What is the influence of regulatory enforcement on beneficiaries' and regulatees' trust?

Subquestion 3.2: What is the relative influence of each condition on beneficiaries' and regulatees' core action?

→ Variables to be explained		Beneficiaries' regime trust	Regulatees' regime trust	
			Low capacity	High capacity
↓ Explanatory variables				
Rule formulation	Quantitative goal formulation	-	+	-
	Goal + <u>behaviour rules</u>	+	+	-
	Detailed policy guidance	+	+	-
	Detailed sector protocols	-	+ or -	+ or -
Interest participation	Open consultations	+	+	-
	Interest diversity	+	+	-
	All stages in regulatory cycle	-	+	-
Regulatory capacity and enforcement	Strict enforcement style	+	+	-
	<u>Regulatory capacity</u>	+	+	+
	Regulatory cooperation	+	+ or -	-

Figure 11. Provisional overview of trust hypotheses

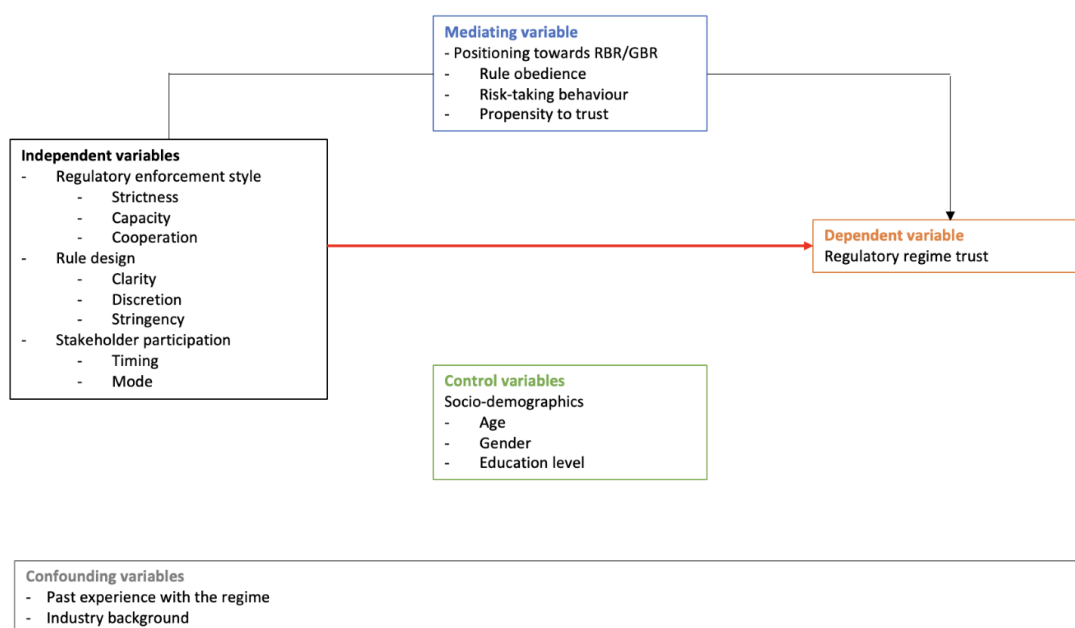


Figure 12. Provisional conceptual model for regulatory regime trust

4.4.3. What underlying mechanisms explain the effect of the three conditions (rule formulation, interest participation and regulatory enforcement) on beneficiaries' and regulatees' trust in hybrid regulatory regimes?

H1: Adequate rule design and stakeholder participation strengthen institutional trust, which in turn positively influences compliance (for regulatees) and reliance on the regime (for beneficiaries).

Well-designed rules (*CSE results on clarity, stringency, discretion*), as well as preferred stakeholder participation (*CSE results on timing and mode*) foster institutional-based trust by providing structural assurance. If regulatees and beneficiaries perceive rules as legitimate and effective, and the stakeholder participation process robust they are more likely to trust the regulatory regime.

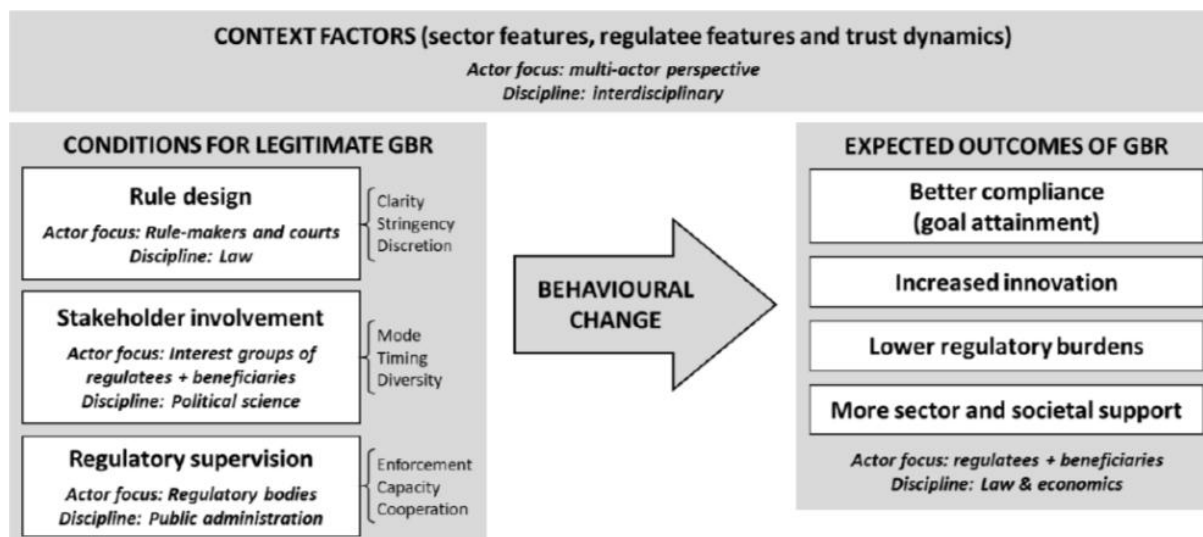
H2: An effective enforcement style and stakeholder participation reinforces action-based trust, which positively influences perceptions of regime actors performances.

(*CSE results on strictness, capacity and cooperation*) develops action-based trust by demonstrating reliability and accountability in regulatory actions. *Greater participation* (*CSE results on timing and mode*) improves action-based trust, which translates into a stronger perception of legitimacy and a willingness to cooperate with or support the regime.

H3: An effective enforcement style enhances regulatees' interpersonal trust by fostering mutual understanding and shared ownership of decisions.

Regulatees—such as businesses or organizations subject to enforcement—experience regulatory actions firsthand through inspections, audits, or penalties. Interpersonal trust fosters regulatees' belief that enforcement is not arbitrary or punitive but designed to ensure fair competition and compliance. This reduces resistance to enforcement actions, promotes voluntary compliance, and enhances overall regime trust.

5. Overview



This theoretical framework underpins the analysis of the conditions and contextual factors that enable Goal-Based Regulation (GBR) to be legitimately designed, adopted, and implemented within hybrid multi-actor regulatory regimes, thereby realizing its expected outcomes. The framework first identifies the conditions for legitimate GBR. It examines, in turn: (1) how elements of rule design—specifically discretion, clarity, and stringency—influence perceived legitimacy, behavior, and preferences of regulatory actors; (2) how the mode, timing, and diversity of stakeholder involvement affect legitimacy and actor behavior; and (3) how regulatory oversight—through enforcement, capacity, and cooperation—shapes these dynamics. Taken together, these conditions provide insight into how perceptions, legitimacy assessments, and behavioral responses of regulatory actors determine the eventual outcomes of introducing GBR in a regulatory domain. These outcomes include improved compliance, reduced regulatory burdens, enhanced innovation, and strengthened sectoral and societal support. In addition, context factors and trust dynamics are explicitly incorporated into the theoretical framework that guides the project.

Through this approach, GOBAREG addresses several significant knowledge gaps. First, the assessment of public policy and regulation in existing scholarship is often confined to narrow considerations of efficiency and performance. This project instead advances a legitimacy-based rationale for analyzing GBR. Legitimacy is commonly defined as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions.”(Suchman, 1995). Applied to regulation, legitimacy can be derived from: (a) legality and democratic principles of stakeholder involvement in rule drafting and revision (input legitimacy); (b) procedural fairness in the implementation and enforcement of regulation (throughput legitimacy); and (c) the effectiveness of

regulatory outcomes and the support they garner (output legitimacy). Although advocates of GBR frequently present it as a means to safeguard or enhance regulatory legitimacy, systematic theorization and empirical analysis from this perspective remain underdeveloped. GOBAREG therefore contributes by positioning legitimacy at the core of GBR research.

Second, much of the existing GBR literature is conceptual and primarily concerned with describing its characteristics or contrasting GBR with rule-based regulation (RBR). In practice, however, “pure” instances of either approach are rare. Instead, hybrid regulatory regimes typically combine elements of both. For example, Black highlights tiered rule-design arrangements in which principles and detailed rules mutually support one another. Scholars have argued that any functional regulatory regime requires both RBR and GBR elements. Hybridity is further strengthened by multi-level regulatory interactions, where local, regional, national, and supra-national rules shape each other. As regulatees respond to the full set of rules to which they are subject, ensuring that different regulatory approaches are coherent, mutually reinforcing, and aligned with the overarching regulatory purpose is critical. Despite the prevalence of such hybrids, limited empirical research examines how GBR and RBR are combined, how shifts towards GBR can be detected in rules and norms, and what consequences these combinations generate. Hybrid regimes can capitalize on the strengths of both approaches but may also introduce additional complexity and burdens. GOBAREG advances the state of the art by explicitly situating GBR within these hybrid regulatory contexts.

Third, classic actor-centered regulatory research and conceptual GBR studies typically focus on the dyadic interaction between regulators and regulatees. Yet actual regulatory regimes involve a far richer constellation of actors interacting across multiple governance levels. These include legislators, policymakers, regulatory bodies (responsible for norm-setting, supervision, and enforcement), courts, regulatory intermediaries (such as certification bodies), regulatees and their interest groups, as well as beneficiaries, citizens, and their organized representations. This dense web of relationships implies that the operation of GBR depends not on the actions of a single actor but on interactions among many. GOBAREG therefore introduces a multi-actor perspective as a foundational principle for studying GBR.

Fourth, the behavior of regulatory actors is influenced by the type of regulation they encounter. GBR, for instance, grants regulatees greater discretion and responsibility in determining how best to achieve regulatory objectives, while regulators may adapt their supervisory practices to match the logic of GBR. For courts, the factors guiding judicial interpretation of GBR remain uncertain. With few exceptions, behavioral consequences of GBR have received limited empirical attention. GOBAREG seeks to unpack these behavioral mechanisms.

Fifth, the shift towards GBR is commonly justified by the outcomes it is expected to deliver. In complex contemporary societies, GBR promises a responsive regulatory approach that promotes compliance, encourages innovation, reduces administrative

burdens, and enhances support for regulatory regimes. Realizing these outcomes, however, entails navigating inherent trade-offs—such as balancing compliance with reduced burdens—and recognizing that different actors prioritize outcomes differently. Regulatees may emphasize reduced burdens, whereas beneficiaries may prioritize compliance. By considering the full range of expected GBR outcomes, GOBAREG will investigate these trade-offs and the ways actors balance them.

Sixth, achieving the expected outcomes of GBR also presents considerable challenges. GOBAREG contributes to addressing these by examining the combined effects of contextual factors and the conditions required for legitimate GBR. Prior research has highlighted the central role of trust between actors in regulatory regimes. Given the vulnerability and interdependence inherent in regulatory relationships—and the shift under GBR from control to responsibility and mutuality—trust is particularly critical. Without sufficient trust, GBR risks re-regulation and increased detail, undermining its very purpose. Accordingly, trust dynamics are treated as a key contextual factor. Furthermore, the project identifies three interconnected conditions for legitimate GBR drawn from regulatory governance scholarship: (1) rule design; (2) stakeholder involvement; and (3) regulatory supervision. Although each appears in conceptual discussions of GBR, few have been empirically validated, and their interdependencies remain largely unexplored. GOBAREG will generate new in-depth knowledge on these conditions and contexts within hybrid GBR regimes, their evolution, their influence on actor behavior, and their combined effects on expected GBR outcomes.

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