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Designing Rulemaking

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Claire: *To my darling Kaye*
Jonathan: *To Davide*
Claudio: *To my wife and daughters*
Gaia: *To Stefano, Antonella, Chiara, and Davide*
Claudius: *To my parents, Gisela and Max Wagemann*

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Oxford University Press has created a website to accompany *Designing Rulemaking*. Materials that cannot be made available in a book, namely an online appendix, are provided here. The reader is encouraged to consult this resource in conjunction with the chapters. The companion website can be found at www.oup.co.uk/companion/Designing_rulemaking. From the book's webpage you can follow the link to the companion website.

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List of Abbreviations

APA	Administrative Procedure Act
AVG	Austrian General Administrative Procedure Act
Awb	Algemene Wet Bestuursrecht
CEE	Central and Eastern Europe
Clean	perception of low corruption
CON	Consultation
CPI	Corruption Perception Index
CPR	CPR
csQCA	Crisp-set Qualitative Comparative Analysis
EoDB	Ease of Doing Business
EPI	Environmental Performance Index
EU	European Union
FOI	freedom of information
fsQCA	Fuzzy set Qualitative Comparative Analysis
IC	Information Commissioner
IGEES	Irish Government Economic and Evaluation Service
IGT	Institutional Grammar Tool
IOs	international organizations
IRAs	independent regulatory agencies
NL	Netherlands
NPM	New Public Management
OECD	Organisation for Economic Co-operation and Development
OM	ombudsman
PC	Principal Components
PCA	Principal Component Analysis
PRI	Proportional Reduction in Inconsistency
QCA	Qualitative Comparative Analysis
RIA	regulatory impact assessment
RPC	Regulatory Policy Committee
SDGs	Sustainable Development Goals
SGI	Sustainable Governance Indicators
SDR	Sustainable Development Report
UN	United Nations
UNDESA	United Nations Department of Economic and Social Affairs
UNECE	United Nations Economic Commission for Europe
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States of America
UK	United Kingdom
voc	varieties of capitalism
WCED	World Commission on Environment and Development

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Does the Regulatory Reform Agenda Matter?

1.1 Introduction

Do procedures designed to improve rulemaking lead to better governance? Over the last twenty years or so, international organizations (IOs) have focused their attention and considerable resources on regulatory reform. This has led to recommendations and reform plans focused on how rules are generated and who gets to have a say in this production process, the factory of rules so to speak. In a remark famously attributed to nineteenth-century German leader Otto von Bismarck, we are advised that 'to retain respect for law and sausages, one must not watch them in the making' (1869 in Shapiro 2021: 717). Of course, laws are not sausages! And crafting them away from public eyes is no longer tenable (if it ever were). Citizens and stakeholders want to see how they are made. Today, governments and regulators have adopted procedures that establish standards and assign roles to those who are allowed not only to know how the rules are made, but also to make their voice heard.

The question then arises, are rules actually getting better? And pertinently, what are the consequences of improved rules for governance? For example, are we getting better at providing a suitable business environment, limiting corruption, and saving the environment? In this book we set out to take seriously, though not a-critically, the largely untested assumption of IOs that regulatory procedural instruments lead unequivocally to good governance outcomes. We do so by considering the design of some procedural regulatory instruments that usually are not considered together. We argue that what matters is the ecological or overall effect of these rulemaking procedures, not their individual contributions, and we measure this effect with methods that are aligned to our argument.

At the outset, we introduce the reader to four conversations about regulation, governance, policy analysis and the real world of policymaking. We

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explain why we distinguish our understanding of regulatory policy instruments from the language of better regulation adopted by international organizations, illustrate the choice of instruments, show how they basically work, and motivate why they should be considered together, as an ecology of 'rules about rulemaking' or 'meta-regulation'. The chapter also justifies our choice of cases and clarifies that we are interested in the design of nationwide procedures, not in implementation or customization of the instruments considered (though accepting these are relevant).

An important motivation of the volume is to go beyond idiosyncratic descriptions and measurements of individual rulemaking instruments or procedures, and instead establish their overall combined contribution to outcomes. We then explain why we have chosen to concentrate on four *relational* policy instruments that characterize the process of rulemaking in the twenty-seven Member States of the European Union and the UK. Each of these four procedural instruments—we will argue, following Elinor Ostrom—configure distinct action situations affecting rulemaking. Specifically, consultation (or 'notice and comment' in US parlance), freedom of information, (regulatory) impact assessment (RIA),[1] and the ombudsman share the properties of constraining bureaucratic action, enfranchising diffused interests in policymaking, and delivering on transparency and ways to review and redress administrative action via dedicated institutions. The four regulatory policy instruments on which we collected original data operate at the meta-regulatory level. That means they are designed to regulate the processes in which rules are made, stakeholders are consulted, access to information is provided, and maladministration is surveyed by special institutions. Finally, we provide a concise overview of the chapters ahead.

Before getting started, one word on the originality of our fourfold policy mix. There are several studies focusing on single regulatory policy instruments such as regulatory impact assessment and policy appraisal tools (Dunlop and Radaelli 2016; Jordan and Turnpenny 2015; Wiener 2006), consultation (Bunea 2017; Yackee and Yackee 2006), freedom of information laws and associated rights and obligations (Bignami 2004; Worthy 2017), and the ombudsman (Buck, Kirkham, and Thompson 2010). We know quite a bit about each of these policy instruments' content and operation in different places. But we know much less on how they interact in configurations. And yet, combinations of instruments may produce either functional or dysfunctional 'political economies' (Salamon 2002). Bureaucracies may be captured

[1] The expression (regulatory) impact assessment means that across the EU and in the UK, impact assessment is a procedure covering both regulations and primary legislation. See also Chapter 2, where we present the object of our research in detail.

if access is biased toward one set of dominating interests (Scott 2015). Or they may be responsive to a wider range of affected interests.

This has crucial implications for governance outcomes like the regulatory conditions of the business environment. A bundle of procedures may also affect the perception of corruption—transparency in regulatory decisions and fair access to rulemaking processes should decrease citizens' perception that decisions are corrupted by the lobbying of a few powerful actors. Finally, an effective design of procedures can affect governance outcomes by gradually changing the quality of rules in key sectors, like the environment.

The literature on instrument choice, policy tools and mixes of policy instruments (Eliadis et al. 2005) has explored combinations of regulatory and non-regulatory instruments, but it has not looked *inside* this particular family of procedural devices—and certainly not with cross-country comparative methods. As such, this book fills an important gap by leveraging, several theoretical and empirical innovations.

1.2 Four conversations on regulatory reform

What is our motivation? Essentially, we wish to contribute to four conversations that are central to: regulation, governance (including public administration and administrative law), public policy, and the so-called 'better regulation' agenda endorsed by governments and IOs.

From the point of view of disciplinary affiliation, though our analysis is framed in the language and methods of political science and public policy, we are not limited to these fields. Indeed, our book is also inspired by administrative law scholarship and critically engages with the approaches and evidence emerging from the world of practice—most of all the practice of IOs which, over the last two decades, have promoted, framed, and spread a certain type of bureaucratic reform globally (see final section of this chapter).

1.2.1 Regulation: Moving the conversation beyond control and management toward learning

The first conversation is about regulation. The scholarship in political science, law, and economics is of course impressive and vast (Baldwin, Cave, and Lodge 2010; Djankov et al. 2006; Shleifer 2005; Viscusi et al. 2018), especially if we consider individual sectors such as the digital world,

the utilities, and climate (Floridi 2021). Two concepts are central in this field: control and management.

Regulation and control have a special relationship. Typically, we associate the act of deploying political authority to regulate with the notion of controlling the behaviour of certain actors, like businesses. Unsurprisingly then, we think of regulation as command and control. Rules set standards, permit or prohibit certain activities, and determine sanctions for violations. But there is another story to tell. In the social sciences, there is a narrative about governments and parliaments struggling with the problem of controlling bureaucracies. Thus, control is both about regulations that impose, prohibit, or permit (hence controlling behaviour) and the objective of controlling bureaucracies so that they formulate and manage rules according to public interest standards.

In turn, the second narrative is grounded in principal–agent modelling (for a review see Miller 2005). Although there are important variations around how to model this relationship exactly, the basic analytical framework presupposes that a principal delegates regulatory powers and prerogatives to an agent (Epstein and O'Halloran 1994). The agent, be it a bureaucrat in a government department, an independent regulator, or a non-elected institution like the European Commission, exercises some degrees of autonomy in the daily process of regulating business, citizens, or public bodies and organizations within government (the latter refers to the web of rules governing public hospitals, state prisons and so on, Hood et al. 1999; James 2000). Yet, regardless of the level of discretion accorded to the agent in the exercise of its delegated powers, we may end up with a problem of accountability in the chain. Bureaucratic drift from the intentions of politicians and cozy relations with regulated actors may dis-align the interests of the agent with respect to those of the principal, thus posing a problem of accountability (Huber and Shipan 2002). The bureaucracy is unelected. If it cannot be controlled by elected politicians in the exercise of daily operations, so the argument goes, it will easily avoid accountability.

One solution to this problem is to create rules about rulemaking that make the bureaucracy somewhat controllable by elected politicians (Moe and Wilson 1994). Often, we find this category of rules about rulemaking captured by the concept of meta-regulation (Radaelli 2010a; Scott 2003). Meta-regulation operates on the rulemaking process via procedural standards. It is not sector- or problem-specific, it is 'whole-of-government'. Conceptually, meta-regulation is how principal–agent thinking theorizes the presence of requirements to consult widely on regulatory proposals, to grant access to documentation held by public authorities, to provide evidence in support of

proposed regulations, and to obtain approval by regulatory oversight institutions created by governments. This strand of the literature is therefore strongly focused on control (but see Waterman and Meier 1998 for a more learning-sensitive account).

Another important strand embraces the broader concept of 'managing regulation'. This literature is preoccupied with:

> a process of increasing specialization and fragmentation of regulatory processes. There is also a risk of decoupling of regulatory discussions between countries, either because of the increasing extent of the regulatory agenda … or because of a reluctance to consider international and cross-domain experiences given the *felt* uniqueness of one's own domain or field of interest. (Lodge and Wegrich 2012: 6, emphasis in original)

The ambition to manage regulation covers both analytical and normative dimensions (Lodge and Wegrich 2012: 7). To avoid getting lost in the details and idiosyncrasies of the policy sectors, Lodge and Wegrich suggest the perspective of administrative analysis (drawing on Hood 1986), which considers the importance of the administrative architecture rather than the characteristics of individual policies. This cross-cutting, cross-domain outlook is therefore central to administrative analysis.

Our original contribution to this first conversation is to go beyond control and management. To be clear: we do not ignore them, but we extend the analytical gaze. Fundamental in our motivation is the belief that although we wish to control regulatory bureaucracies we also, and more importantly, want them to be able to learn.

Legal scholar Tony Prosser (2010) reminds us that regulation is fundamentally an enterprise concerning governance and legitimacy. Managing regulation is not always and not necessarily about maximizing economic efficiency, with social and distributive issues left somewhere else in the political system. It is also a social enterprise where regulatory bureaucracies have responsibility for achieving fair distributive goals or allocating public goods. It is a collaborative enterprise among governmental agencies and bodies, and between regulators and stakeholders. It is a legitimacy enterprise where 'discretion may be more important than rules and its exercise can be held accountable through procedural means' (Prosser 2010: 5). Finally, regulation is also concerned with deliberation, 'the major role of regulatory institutions being to provide procedural means for resolving problems, either through a forum for compromise of different views or a source of *learning* to seek a consensus' (Prosser 2010: 18, emphasis added).

Following Prosser, we do not separate regulation for economic efficiency from regulation for protecting rights, for social solidarity and for deliberation (Prosser 2010: 18 calls these the four models of regulation), but instead we seek to accommodate these in a coherent vision of the regulatory enterprise. After the COVID-19 pandemic and the reorientation of several governments and institutions towards sustainable digital, social, and environmental transitions, control and management have not withered away. But to face the global challenges of the twenty-first century, we need learning to be at the centre of the governance agenda.

A learning regulatory bureaucracy must be accountable to a variety of societal preferences, not just the preferences of the elected politician. Regulatory policy is an arena where bureaucracies need a certain degree of autonomy to experiment, nudge, orchestrate, and ultimately learn how to become stewards of social values (Ayto 2014; Van der Heijden and Hodge 2021). Regulation is a valuable asset in this context. Consequently, departments should be charged with stewardship responsibility, embracing a comprehensive, long-term duty of care for a resource that exists for the benefits of the whole society (Van der Heijden 2021).

Bureaucratic autonomy is balanced with regulatory procedures geared towards accountability to a plurality of interests, including the public interest, the interests of those directly affected by regulations, the right to science as defined by the United Nations (UN) (and recently expanded by a detailed commentary, see United Nations Committee on Economic Social and Cultural Rights 2020), and the legitimate presupposition that regulators must show transparently the reasons and the evidence behind their proposals for new regulations or the removal of old ones.

This delicate balance is often achieved by enfranchising pluralistic interests through institutional design and procedural policy instruments. This explains the fundamental nature of mandatory consultation, the use of regulatory impact assessment (RIA), the adoption of freedom of information (FOI) acts, and the diffusion of the ombudsman. To analyse dimensions beyond control, we take Hood's intuition (1986) of thinking rigorously about the essence of the administrative architecture—beyond the idiosyncrasies of this or that sector and procedure. Certainly, consultation, FOI, RIA, and the ombudsman are not the same procedure, but they share the same meta-regulatory purpose—to open up the policy process to the input of diverse audiences. They all imply the duty of care characteristic of the stewardship mission of contemporary bureaucracies (Ayto 2014; Van der Heijden 2021). This intuition, however, does not tell us how to proceed with rigorous measurement across countries or how to cope with the diversity

of meta-regulatory instrumentations with a single empirical template. We address this puzzle by proposing theory-driven measurement based on Elinor Ostrom's (2005) action situations and rule types (see Chapter 2).

1.2.2 The governance conversation: Linking policy analysis to global challenges

The second conversation is stimulated by an enduring challenge of scaling up the findings of regulatory research to the grand issues societies face on governance, representation, and democracy. Regulation research has generated profound insights on regulatory techniques, models, and sectors. But where are the wider conversations that deliver governance lessons *beyond* regulation? Arguably, not answering broader macro questions is part of the crisis of regulatory scholarship (Lodge 2016).

And to carry on: Why should those not interested in regulation as primary focus engage with what we are saying here? What does granular research on procedural regulatory instruments add to the 'big issues' such as economic growth, corruption, and environmental protection? These concerns about the mismatch between micro-level regulatory analysis and macro-level societal problems, as well as the desire to paint on a larger analytical canvas, are central in how we approached the topic of this book (for a broader discussion of the connections between policy analysis and big governance issues see Dunlop and Radaelli 2021).[2]

The mismatch entails the following threefold motivation. First, if regulation is a mode of governance, as it certainly is, we need to reorient research, from the description and appraisal of different rulemaking processes and regulatory models to the broader effects of regulation on governance outcomes.

For sure, we are not the first to examine the causal effects of regulation. Previous studies have empirically dealt with the impact of regulation on jobs, business activity, or the environment (notably, Coglianese 2002; Coglianese, Finkel, and Carrigan 2015; Djankov et al. 2006; Jaffe et al. 1995). A decade ago, Parker and Kirkpatrick (2012) produced a review of studies focusing on the effects of regulatory policy. Their findings point to some empirically traceable effects of the use of impact assessment on the quality of rules adopted by governments, which in turn affect final governance outcomes. Fundamentally, this review reveals that the chain of causation linking policy instruments to outcomes is long and complex, even for a single policy instrument like impact assessment. Parker and Kirkpatrick's

[2] We are grateful to one of our book proposal reviewers who pushed us to spotlight this discrepancy.

(2012) conclusion suggests that if countries are to build governmental systems that lead to sustainable economic and social development, enabling experimentation and mutual learning on the design of administrative procedures is crucial. This volume speaks directly to that challenge. Our objective is to map empirically the causal effects of a whole set of meta-regulatory procedures.

Quite obviously, a precondition for this kind of analysis is to choose a population of cases where meta-regulatory instruments are, first, present and, second, characterized by different designs. Our empirical analysis focuses on the current twenty-seven Member States of the European Union (EU) and the UK (an EU member when our data collection began, in 2016). In this EU context, a major research question revolves around Europeanization effects. Though European administrative systems come from very different traditions (Ongaro 2009; Peters 2008), over the years the EU has infused administrative conditionality (Franchino 2007). For example, certain regulations and directives require the adoption of external evaluation as a condition of financial benefits. Does such conditionality produce convergence? Have the EU Member States converged towards similarly designed administrative norms and instruments of meta-regulation (in the context of broader transformations of governance, see Kettl 2000)? Has the EU provided a template, possibly strengthening the wider OECD convergence effects (De Francesco 2012), via its push for administrative reforms (Ongaro 2022)? Or do we expect the map to look more clustered (Börzel and Risse 2000)? And, if the latter is the case, are these clusters connected to the varieties of capitalism (Hall and Soskice 2001), to legal origin (Glaeser and Schleifer 2002), to administrative cultures and traditions (Painter and Peters 2010; Peters 2001; Peters 2021), to families of administrative law (Cane et al. 2021), or to anything else?

With regard to families of administrative law, the comparative gear of the book is a conversation with legal scholars seeking to uncover similarities as well as differences across administrative legal systems. As Bignami (2011) highlights, comparison in administrative law still relies to a great extent on two main categories related to the historical functions exercised by the bureaucracy, namely the organization of public administration and judicial review. The meta-regulatory tools under investigation constitute a crucial part of the transformations in the administrative landscape.

On methods, we rely on a theoretically justified analytical instrument (rule types) to measure and compare different design features of administrative procedures, thus assisting scholars of administration looking for comparative yardsticks and measures beyond historical narration. Our work contributes

to the efforts of comparativists who have explored administrative law systems in the European context (d'Alberti 2019), and to research on systems of administrative laws taking different forms (Cane et al. 2021; Fromont 2006), also at the global level (Rose-Ackerman and Lindseth 2010). We consider these expectations in more depth in Chapter 2.

To wrap up this second conversation, we engage with the broad governance effects of meta-regulatory innovations and test the presence of the empirical maps suggested by the literatures on Europeanization, legal origin, varieties of capitalism, and families of administrative law.

1.2.3 Public policy: Linking instrument mixes to outcomes

Our third conversation is with public policy researchers. Why should policy researchers care about theories and empirical findings about regulation? Public policy is of course interdisciplinary. So, assuming a unified answer to these questions is not a given. Nonetheless, we suggest that the most typical lenses for a policy researcher to engage with the subject matter of this book are those of policy instruments and design. Policy instruments have occupied the minds of policy researchers for quite some time. Instruments embed theories of public policies—hence they have normative qualities (Lascoumes and Le Galès 2007; Schneider and Ingram 1990).

Thinking about our instruments, regulatory impact assessment embeds a theory of how to control bureaucracies, according to some (Moe and Wilson 1994), or a theory of evidence-based policy, according to others (Radaelli 2010b). Consultation is underpinned by dialogic logics where, in its ideal forms, social participation in reflexive discussions becomes a way to enhance policy legitimacy and effectiveness (Alemanno 2020; Bartle 2006; Bunea and Chrisp 2022). Freedom of information laws have their own behavioural assumptions baked in. While this instrument is historically rooted in freedom of the press and the defence of personal autonomy, FOI has developed as a legal form which pivots around the right to access information as fundamental part of political participation and expression of citizenship (Bovens 2002; Roberts 2001). Finally, as an instrument of redress of maladministration, the ombudsman draws on soft law mechanisms like mediation and moral suasion to achieve remedies that would be associated with higher transaction costs for all the involved parties in case of a formal judicial litigation. It is therefore underpinned by theories of accountability.

To understand how instruments produce effects and how to change policies via instruments, one has to be clear on the mechanisms they trigger and

whether the mechanism found in country A at time t can also be triggered by the same instrument in country B at time t+1. Previously, we encountered two mechanisms: one is control, the other is learning.

Further, policy instruments do not exist in isolation; they come in bundles (Capano and Howlett 2020). Every government relies on a menu of policy instruments (memorably likened by one scholar to a Swiss army knife of tools, Macdonald 2005). Consequently, we set out to examine the causal effects of a theoretically justified mix of four policy instruments (see Chapter 3 on measurement). By 'theoretically justified' we mean that conceptually we can see the dimensions and rationales for bringing them together and why we think they trigger some mechanisms that should impact on governance outcomes.

Uniquely, we address an ecology of instruments. In doing this, we contribute to older and newer strands of policy design research (Howlett 2000; Howlett and Mukherjee 2017; Siddiki 2020; Siddiki and Curley 2022). With regard to the latter (Siddiki 2020; Siddiki and Curley 2022), by measuring and testing the effects of design diversity on twenty-eight country cases, we move this scholarship more decisively toward explanation. Policy design is not epiphenomenal. Design can exert distinctive effects on governance outcomes that are independent with respect to the causal forces elicited by the practice of policy implementation. As we shall see, the answer to the question on the explanatory power of policy design is case and context specific. More precisely, the effects of design are mediated by several different causal mechanisms. By theorizing on and testing them empirically, we seek to demonstrate that design diversity cannot only be seen as a dependent variable, but also as an explanatory factor.

Beyond this conversation, we provide actionable lessons for the overall architecture of ecologies of instruments through the empirical investigation of choices made by governments in terms of instruments' design and their effects on the greatest challenges to governance. This leads to our final conversation.

1.2.4 Usable knowledge for Better Regulation 2.0

The fourth conversation lies in the world 'out there', in the world of policymakers, governments, regulators, and IOs like the World Bank, the Organisation for Economic Co-operation and Development (OECD), the United Nations (UN), and the EU. It is also the world of advocacy organizations and pressure groups that seek to influence the design of regulatory policy and instrument adoption.

Since the 1990s, IOs and a high number of governments have engaged with the so-called better regulation agenda (Radaelli 2023; see Dudley and Ellig 2022 for a history of better regulation in the US and Dunlop and Radaelli 2022 for the EU). This agenda consists of principles, rules, and instrumentations that apply to the whole of government and to the entire life cycle of laws and regulations. Better regulation revolves around stakeholder engagement, impact assessment of primary and secondary legislation, regulatory flexibility, *ex post* regulatory/legislative evaluation, and regulatory offsetting programmes (OECD 2021). The relationship between better regulation and other agendas such as the new public management, evidence-based policy, participatory governance, liberalization and deregulation is not always clear and easy to grasp. Allio and Radaelli (2021) talk about a double connotation of the early vision of better regulation—one with a strong emphasis on stimulating trade and market competition, the other with a governance orientation. Organizations like the OECD (2021) talk about 'better regulation 2.0', perhaps indicating that we need a clearer distinction among competing beliefs and the *raison d'être* of better regulation (on regulatory beliefs in the OECD Regulatory Policy Committee see Radaelli et al. 2022). The United Nations Department of Economic and Social Affairs (UNDESA) takes policy coherence and the sustainable development goals as the new compass of better regulation (UNDESA 2021). The context around better regulation has definitively changed since the seminal 1995 OECD ministerial agreement on the regulatory quality principles (OECD 1995). The fourth industrial revolution, the COVID-19 pandemic, and the environmental emergency, along with many more complex problems, all capture a radically different global governance context where agility and policy coherence are increasingly viewed as the qualities needed at the heart of policymaking (Desjardins 2021; OECD 2021; World Economic Forum 2021).

Arguably, there is also an 'original sin' in better regulation (Allio and Radaelli 2021). The whole menu of better regulation as conceived by IOs is to nail down rulemaking to exact procedures: guidance on consultation, how to carry out the economic analysis of proposed rules, and how to guarantee access to public documents are often covered in formal governmental documents that can go on for hundreds of pages. However, in countries with a diffuse culture of trust in government and a strong public sector ethos, such high levels of formal proceduralization may actually hinder the quality and legitimacy of regulatory policy. High formalization and the detailed design of dozens if not hundreds of procedural steps are needed where social capital is weak, decision-making processes are erratic and contested, vested interests dominate, and politics can easily hijack regulatory analysis and access to governmental acts and procedures (for an empirical test, see Dunlop et al.

2020). However, in these contexts the likelihood of implementing formal procedures seriously and rigorously is low. On the other hand, proceduralization adds rigidity to administrative processes that work well in a context of informality. This is the original sin described by Allio and Radaelli (2021). Either way, the prospects for agility and capacity for policy coherence are in doubt.

In the search for a renewed better regulation agenda, our input to applied, real-world policy reform is twofold. First, by examining twenty-eight countries, we assess the causal effects of an ecology of policy instruments in contexts where social capital, beliefs in government, and the formality–informality balance vary markedly. We therefore generate policy implications that endogenize this important dimension of degree of (in)formality.

This finely calibrated approach also applies to how procedural rules combine in an ecology. By examining literally hundreds of procedural steps embedded in the four administrative instruments, our approach tells policymakers which particular procedural steps have what effect on final governance outcomes. Throughout, we will not rely on generic terms such as 'strong consultation' but point to how specific design features of consultation are sufficient for an outcome, when considered together with other design features of the other instruments. Finally, we contribute to the world of policymaking by observing and demonstrating that better regulation 2.0 should also include other instruments (specifically, freedom of information and the ombudsman) when thinking about procedural meta-regulatory ecologies.

1.3 Outline of the chapters

Chapter 2 Design in *Governance and Design* for *Governance*

Chapter 2 introduces the reader to the four regulatory policy instruments in the European context.

The EU Member States and the UK have invested in creating special procedures and instruments to enfranchise specific interests during the rulemaking process. In some countries, the new instrumentation has been layered on previous administrative procedures, raising questions about the overall synergy between regulatory innovations like consultation and impact assessment and traditions like hearings and the Parliamentary Ombudsman. Freedom of information acts have proliferated in the last three decades—opening up the process of making rules in terms of access, but not unconditionally. To make things even more complicated, some instruments like impact assessment

have been adopted under the better regulation agenda championed by the OECD and the EU (De Francesco 2012). But others have followed their own waves of diffusion, independently from the ambition and aims of the better regulation strategies. This is the case of freedom of information and ombuds.

This state of play raises questions about coherence in the design of regulatory policy instrumentation. In particular, is the overall ecology coherent? What does it contribute to governance? To answer these questions, we approach causation in a way that emphasizes combinatory logics and administrative context. Chapter 2 outlines this direction of travel. First, we introduce the instruments, why they matter for rulemaking, why they can be modelled as action situations, and how they may influence governance—that is, how the causal relationship between design diversity and outcomes unfolds. We then review the main causal theories and claims about the effects of regulation on ease of doing business, corruption and environmental protection.

This presentation of the four policy instruments and their effect on outcomes also allows us to account for the fact that they operate within their political and administrative contexts. Since context has been examined already by strands in the literature, we formulate expectations derived by extant scholarship. Specifically, we review the main insights from the literature about how the context can shape reforms and have an impact on our four instruments. We do this be summarizing the main findings drawn from Europeanization, administrative law, administrative cultures, and legal origin.

Chapter 3 Measuring Regulation: A Theory-Informed Approach

Once the characters of the causal narrative have made their entrance on the scene, we look at how to empirically grasp their dimensions. In Chapter 3, we present an approach to measurement grounded in theory.

Measuring and comparing the design features across twenty-eight different countries is a complex endeavour. In Chapter 3, we depart from existing approaches championed by IOs which draw on expert input to designate the presence/absence of specific micro-procedural features. Instead, by drawing on the diverse legal and linguistic expertise of a network of lawyers, we leverage a data collection and measurement architecture based on Ostrom's (2005) rule typology. This architecture informs both raw data-gathering and data generation, thus providing coherence to the whole process that led to the

creation of a dataset containing hundreds of data points in the format of institutional statements. The data are deployed to model the action situations of the four regulatory procedural instruments in our population of twenty-eight cases.

We then operationalize these statements into variables and carry out one Principal Component Analysis (PCA) for each regulatory procedure to grasp instrument-specific dimensions of variation suitable for subsequent cross-country comparison. The four PCAs are our Occam's razor identifying the essential elements of design of the four policy instruments. PCA's synthetic quality is then leveraged to conceptualize and calibrate the conditions for our subsequent analyses (we will apply Qualitative Comparative Analysis, QCA) that feature in the empirical chapters. Each instrument is described by dozens of rules in the dataset—in total the four instruments contain almost two hundred rules that conceptually define four actions situations in each of the twenty-eight cases. This rich information is captured synthetically in the four Principal Component Analyses. With this synthetic approach, we have a reasonably limited number of conditions about regulatory procedures that we can then use in the causal analysis—that is, the analysis that causally connects regulatory design to governance outcomes.

Chapters 4, 5, and 6 How Regulatory Design Matters: Analysis of Three Governance Outcomes

In the next three empirical chapters, we focus on the effects of the ecologies of our four regulatory instruments (conveniently captured by synthetic measures based on PCA) on three prominent global governance challenges: enabling conducive regulatory environments for business (Chapter 4), reducing the perception of corruption (Chapter 5), and delivering on environmental performance (Chapter 6). The aim is to contribute new knowledge on how combinations of regulatory reforms influence these outcomes in different ways.

Understanding the impacts of regulation on business was one of the first impulses of the original better regulation agenda, as we explain in Chapter 4. One of the most important arguments for the reform of permits and licensing regimes, simplification, and deregulation is that 'bad' regulatory processes and 'too many rules' stifle innovation and growth by making business activities complex and costly. Our four regulatory policy instruments operate at a meta-level in the causal thinking around calls for regulatory targets and culls. By changing the processes in which rules are made, stakeholders

are consulted, access is provided, and maladministration monitored by special institutions, the rulemaking process should limit the flow of regulations that damage the business environment and provide remedies to bureaucratic interference with legitimate and economically profitable business activities.

Of course, this argument is heavily loaded from a normative perspective. Nonetheless, it has generated a whole literature around the 'doing business indicators' (Chapter 4). We do not take any normative position. Rather, we test how the action situations created by the four regulatory procedures holistically create positive conditions for business environments. For the outcome variable, we do not depart from the doing business indicators of the World Bank but discuss their limitations and how they are used in this analysis.

We find three distinct combinations of instruments positively impact the business environments of ten countries—Austria, Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Portugal, Slovenia, and the UK. Common to each explanation is the pro-business potential of RIA. RIA design involving few exceptions to its application, highly formalized analytical requirements and public availability of the impact assessment is a potent driver of policy and regulatory outcomes which facilitate ease of doing business. In some countries, for RIA to deliver, it needs to interact ecologically with other instruments (namely, consultation and FOI) similarly emphasizing formalized best practices, lack of exceptions, and institutionalization. In others, it operates without any of the other instruments crowding out its power.

Regulation and corruption are often connected in causal terms in general discourse and in the prescription of international organizations (Choudhury 2021; De Benedetto 2021). In Chapter 5 we test the effects of combinations of consultation, freedom of information, impact assessment, and the ombudsman on the perception of corruption. Importantly, we are not outlining an explanation of corruption. Neither do we want to rank regulatory tools in the long list of causes. We know corruption has many causes—regulation is at best only one of them. Instead, we establish the contribution of regulatory instruments to how citizens perceive corruption. Given what we said about the many causes of corruption, we do not show the pathways leading to corruption. Instead, we isolate the pathways that are associated with perception of low corruption, or integrity.

The positive impact of procedural controls on corruption is not self-evident. The point is the following: for policymakers and policy scholars alike, it is much more important to know that certain combinations of regulatory instruments are sufficient conditions for integrity than to know that

corruption depends on many causes, most of which (such as culture and social capital) cannot be modified in the short or medium term.

Leveraging the methodological power of QCA, we use the instruments as potential sufficient conditions for different degrees of perception of corruption. Perceived low levels of corruption are explained by two explanatory paths which, critically, are mainly, but not exclusively, composed by the low formalization. In other words, light design seems to work for eight of the countries we study—Austria, Belgium, Denmark, Luxembourg, Malta, Netherlands, Portugal, and Sweden. In three of these (Austria, Denmark, and Portugal), we again see the detailed design of RIA on the outcome variable. Formalized versions of RIA interact with less proceduralized designs in consultation and ombudsman to create sufficient conditions for citizens to perceive low levels of corruption. The other five country cases all speak to the combined impact of low proceduralization. We finally identify a third path with Estonia, Ireland, and Slovenia: here the presence of formal steps for all four procedures is associated with perception of integrity.

The literature on targeted disclosures boosts our knowledge providing important insights on the possible relationship between these meta-regulatory tools for transparency and environmental policy performance. These insights chime with the sustainability turn in the future imaginings of better regulation now promoted by international organizations (European Commission 2021; OECD 2019, 2021; Meuleman 2021; Renda 2017; Sunstein and Reisch 2014; UNDESA 2021). Overarching institutionalized procedures may not be designed with specific regulatory effects in mind, but they do condition how environmental policies work. Chapter 6 pinpoints three sufficiency pathways linking positive environmental policy performances in ten countries—Denmark, Estonia, France, Ireland, Latvia, Lithuania, Luxembourg, Poland, Slovenia, and the UK—with the four instruments. In six of the countries we see a clear role for the design of highly proceduralized RIA in combination with the same in terms of consultation and freedom of information. This result suggests we can be cautiously optimistic about the potential for rules which focus not only on upstream design (consultation and RIA) but also downstream accountability (FOI) in helping to contribute to positive environmental outcomes. Our other two pathways again involve highly formalized FOI or RIA where other instruments are absent.

These findings on environmental performance are original. While case-based research exists that suggests positive links between tools like FOI, RIA and consultation to environmental campaigning, this is the first study to systematically explore this using policy performance outcomes.

The ombudsman does not seem to have a large role to play in our empirical chapters. But recall: with our data, we are saying that the design of

many formal steps for the ombudsman procedure does not have an ecological impact—by ecological, we mean 'together with the other three conditions'. Indeed, Sweden has the oldest ombudsman and well-performing institution but, in our dataset, since we measure the number and types of procedural steps, Sweden is one of the countries with the lightest proceduralization. Light design does not necessarily mean weak instrumentation—for example, the 'lightly proceduralized' ombudsman can work well because of social capital and informal cooperation with government departments and agencies.

Chapter 7 Conclusions

In the concluding chapter we wrap up the results, test them against expectations from Europeanization, varieties of capitalism, and administrative law/legal origin, and suggest the way forward for theory and practice. On expectations, the macro-frameworks we just mentioned do not lead to precise expectations but allow us to identify clusters of countries, or baskets where countries should appear. Actually, none of these theories and conceptual frameworks can predict our findings, although varieties of capitalism comes close to generate an explanatory account of the results. For the rest, our findings are genuinely novel. They call for a granular approach to rulemaking, and identify the presence of equifinality in every governance outcome we are interested in. Being granular, these results should also dissolve some of the ambiguity around the instruments, showing that, at the design level at least, there are many types of each of the four. The lesson for redesign and reform is to intervene carefully, at the granular level. Another lesson is not to over-design when informality and light proceduralization thrive in (and are causally associated with) an environment where business operations are not over-regulated, and there is a perception of integrity and good environmental performance. We also broaden our gaze from the granularity of design and scale up the detected lessons by looking at those combinations that simultaneously deliver on more than one outcome.

1.4 The story of this book

This book is part of an intellectual endeavour which stretches back over a decade. Three of the authors (Dunlop, Kamkhaji, and Radaelli) were involved in the European Research Council (ERC)–advanced research grant on Analysis of Learning in Regulatory Governance (ALREG, 2009–2013). ALREG uncovered the causal mechanisms and conditions through which regulatory policy instruments trigger learning processes. Once we explained

how policymakers and institutions learn how to use regulatory policy tools like consultation and impact assessment, we addressed the question of the effects of learning (about tools) on the quality of governance. However, when we investigated these broader effects on governance outcomes, we found that the explanatory power of individual regulatory policy instruments is limited. The design of regulatory policy instruments may well affect governance, but this effect or contribution is achieved via a combination of instruments, the social mechanisms they trigger, and the characteristics of the context in which they operate. These findings motivated the second ERC-advanced project—Procedural Tools for Effective Governance[3] (PROTEGO, 2016–2022)—to advance this ecological account of multiple instruments and governance outcomes.

At this point, we were joined by Alessia Damonte as project member and by an International Advisory Team of Herwig Hoffmann, Jacques Ziller, and Claudius Wagemann. We are very grateful to them. In the case of Claudius, his participation in the project's advisory team extended to co-authorship, making him a wonderful fellow traveller. We wish to acknowledge the contribution of the lawyers who assisted with the collection of raw data and the participants to the many conferences where we presented drafts and discussed theory and methods. Special thanks to Dominic Byatt at OUP for having encouraged and supported us throughout the process.

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2

Design *in* Governance and Design *for* Governance

2.1 Introduction

How governments *design* procedural regulatory instruments is the central theme of this volume. In this chapter, we explain what exactly it is about design that we explore empirically. The four instruments of consultation, freedom of information (FOI), regulatory impact assessment (RIA), and the ombudsman share a family resemblance: they all are procedural instruments that operate within the rulemaking process. One central question is therefore how these processes are designed in our population, and what this variation tells us about governance. For example, is the resulting governance architecture more (or less) open to certain interests by design?

However, capturing design in governance is only one part of the endeavour. We also care about what the rulemaking process actually means for societies. Addressing how the four instruments interact to shape governance outcomes raises issues about how we conceptualize causality. What kind of causality do we want to explore when we say that differences in design result in differences in outcomes? We propose an ecological approach where the effects on outcomes are generated by different combinations, or ecologies, of instruments' designs.

To introduce our logic and approach to cause-and-effect relationships, we start by making a conceptually justified case for the choice of four rulemaking instruments. First however, a brief note about terminology is in order. While legal scholars would speak of these four as administrative procedures (quite rightly), we also use the language of political science where we find policy instruments and policy mixes (Capano and Howlett 2020). As a policy mix or ecology, the chosen procedural instruments define some important properties of a process called rulemaking—here broadly conceived to consider both primary and secondary legislation.

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We use Sections 2 and 3 to introduce the four policy instruments, why they matter for rulemaking, why they can be modelled as action situations (following the work of Elinor Ostrom), and how they may influence governance—that is, how the causal relationship between design diversity and outcomes unfolds. This presentation also allows us to account for the fact that the instruments operate within their political and administrative contexts. Finally, Section 4 formulates expectations about families of countries derived by extant literatures in the political and legal sciences addressing administrative context—namely, varieties of capitalism, Europeanization, administrative law judicial review, and administrative traditions.

2.2 Instruments, context, and causation

Every research design choice depends on the causal story one wants to tell. Our narrative is about the causal effects of rule configurations enshrined in the design of four procedural instruments or administrative procedures that define rulemaking. Rulemaking instruments do not have immanent properties. They are instead the results of how governments have historically designed them, prescribing or recommending (that is, in soft law guidance) a number of procedural steps to be followed, allowing or denying entry to certain actors and interests in the rulemaking process, imposing or easing obligations for bureaucratic actors vis-à-vis the citizens and so on. We are therefore talking about meta-design—i.e. 'rules about rules' or meta-regulation. As such, we are not looking at how an individual rule in, say, policy sector X is formulated. Rather, recalling what we said in Chapter 1, we explore the form of guidance and rules concerning the process through which:

- proposals for new rules (primary and/or secondary legislation) are appraised at an early stage by government departments and regulators via regulatory impact assessment (RIA),
- stakeholders shape the process of rule formulation via consultation,
- diffuse and/or affected interests access information held by government departments and agencies, and
- those who want a third party to intervene in rulemaking to redress perceived maladministration can do so via a dedicated procedure and a specific body.

Oddly enough, it is hard to find in the literature a single concept that gathers these four dimensions. Bignami (2012) directs us towards the concept of accountability. For her, there are three types of bureaucratic accountability: the involvement of organized interests in rulemaking creates accountability via participation to policy formulation; judicial review allows to test administrative action before the courts; and 'informal accountability'—Bignami concludes—is delivered by parliamentary ombuds and transparency via rights to access (freedom of information laws) (Bignami 2012: 145). When reviewing administrative action, courts can adopt criteria of 'policy rationality' (Bignami 2012: 159). The latter is different from the various notions of legality developed according to administrative traditions. Arguing that, taken together, policy instruments X, Y, W, and Z constitute policy P, as we are now doing, is our first analytical move, close to Bignami's concept of bureaucratic accountability in democracies. Concept formation is a fundamental preliminary step in research (Goertz 2020; Sartori 1970).

Our choice to pool these four instruments is original also in relation to how international organizations (IOs) talk about and classify regulatory reforms. The well-known 'better regulation' agenda (see Chapter 1) comes closest, but it only covers parts of the story by excluding the ombudsman and FOI (Dunlop and Radaelli 2022). It is also excessively normative—implying that the adoption of specific procedures is indeed already 'better' than the status quo. Instead, a government can end up with 'worse regulation' depending on the precise features of the design of the procedural instruments we are dealing with.

According to IOs, better regulation is a whole-of-life vision of the regulatory cycle: from the stage of policy formulation to implementation and evaluation (OECD 2021). And indeed, this concept has the merit of bringing under a holistic perspective the two key instruments of policy formulation—impact assessment and consultation—together with many of the successive stages of the life-cycle of a rule, such as implementation, compliance, enforcement, inspections, and regulatory-legislative evaluation (OECD 2014). However, the better regulation concept still lacks breadth. We argue in fact that the possibility of activating procedures early on in the policy cycle which guarantee public access to information and the possibility of resorting to easily accessible, swift, and low-cost contestation of rules through the ombudsman have become distinctive features of rulemaking. This is to say, FOI and ombudsman procedures, by existing and being designed in specific ways, send signals to citizens and bureaucrats alike in the context of rulemaking. These signals may then impact the outcomes of rulemaking, the quality of governance, and

diffuse perceptions of bureaucratic accountability. Indeed, Bignami (2012: 165–167) considers together ombuds and FOI under the concept of informal accountability.

Addressing this lack of relevant instruments within the conceptual space of IOs is a key motivator for this book. Although they are not commonly taken as a single conceptual entity or policy, unless one goes for the blunt argument that 'they are all administrative procedures', the design of the instruments defines rulemaking in fundamental ways. As mentioned in Chapter 1, in the context of rulemaking, the four instruments have a common procedural nature. They are activated when a policy actor performs a given action, others respond, there are interactions, exchanges of information, choices, and appeals, until, ultimately, an end point is reached, and a rule is made or a decision is taken. Following Crawford and Ostrom (1995), we conceptualize the four instruments as 'action situations'. When a rule is made, the four procedures are relevant in that they prescribe different policy actors': roles, rights, choices, rights to lodge complaints, and consequences they may face while drawing on information they are allowed to access. Because the design of these four procedures frames rulemaking in unique, distinctive ways, we must consider them together. Though they share a family resemblance, these four instruments are not the same. Moreover, their content varies by country and by time too (Radaelli 2020; 2023 on how regulatory policy has mutated in the last twenty years).

Across the current EU Member States and the UK, the design of *regulatory impact assessment* (RIA) has been associated with different logics (Dunlop and Radaelli 2016). This includes evidence-informed policies, the control of bureaucracies, or the late wave of public management reforms—or a combination of these (Radaelli and Meuwese 2009 on public management; Radaelli 2010 on four logics associated with impact assessment; see also Chapter 1 on the limits of the control perspective). This means that in our population, there may be countries where impact assessment is designed to make those involved in rule formulation accountable to expertise, economics, benefit–cost analysis, and ultimately objective evidence. But in others, the prevailing motivation may well be control and bureaucratic accountability to the elected politicians (and indeed the evidence shows this kind of variability, see Radaelli 2010).

In yet another set of countries, the design logic may be to join-up the policy formulation process with other public management reforms. The aim is to streamline decision-making and to encourage policy coherence. The latter concept has gained good currency internationally. For example, the OECD promotes policy coherence for sustainable development by recommending

'regular assessments to identify and assess potential positive and negative impacts on sustainable development, building on any existing tools such as Regulatory, Environmental, Gender and Social Impact and Strategic Assessments' (OECD 2019, recommendation 4. See also recommendation 3 on engaging stakeholders for policy coherence).

In Europe, *consultation* is often embedded in impact assessment (Blanc and Ottimofiore 2016), but not always, as shown by the corporatist tradition in countries like Austria and Sweden (Dunlop et al. 2020). In Sweden, for example, hearings pre-date the arrival of better regulation and OECD-style stakeholder consultation. Chapter 7 of the European Commission's (2021) *Better Regulation Toolbox* provides detailed guidance for EU policy officers. But this is prescription, not description. Meaning, the 'Toolbox' has no ambition to describe how officers actually involve key stakeholders in consultation. Nor does it inform on how bureaucracies in Member States gauge the status of consultation requirements (for an example Dunlop et al. 2021: 379–383 on Malta). In short, there is significant variation in how consultation is carried out at the EU level (Albareda 2024; Binderkrantz et al. 2023; Bunea 2017) and across its Member States (Dunlop et al. 2021).

The OECD notes that consultation before the draft of a bill emerges is not that common in Europe. Rather, it is common to find cases of consultation when a bill has already been sent to parliament or in any case it is already in the form of draft articles and clauses. There is also cross-country variation about whether consultation is mandatory or not, for either primary or secondary legislation, or both (OECD 2021).

Freedom of information (FOI) has diffused in the same period in which better regulation first emerged. Over half of the world's FOI laws have been adopted in the past two decades. However, the advocacy networks that led to the adoption of freedom of information legislation—most frequently coalitions of political reformers in office, journalists, and civil society organizations (Banisar 2006; Mendel 2008; UNESCO 2016)—are not the same as those which dominated the push for better regulation instruments—often the business community and individual ministers concerned about the costs of regulation and the regulatory expansion fueled by the European Commission (Dunlop and Radaelli 2022). Europe serves as a microcosm of this global diffusion—with first adoptions in Western Europe taking place in the 1970s, followed by a second wave from the Central and Eastern Europe (CEE) EU accession countries in the 1990s. Despite all twenty-eight countries in our book showing some form of FOI legislation, there is significant variation across multiple dimensions. Most notably, these include the bodies covered; documents and/or information which is accessible; exemptions

allowed for information types; fees to be charged; timescales that must be followed; appeals process; oversight and investigation arrangements; and, sanctions for refusal to grant information.

The term *Ombudsman*[1] originates in Scandinavian languages denoting a person who works as a representative. This particular agent serves the diffuse interests of a polity by acting on behalf of those interests before administrative bodies in cases of potential maladministration and injustice. Early forms of this institution were documented as far back as the twelfth century, but it is conventionally assumed that it took its modern form in Sweden at the beginning of the nineteenth century. Since then, different waves of diffusion appeared (Gregory and Giddings 2000). In the first, the ombudsman spread across Scandinavia in the early twentieth century. In the post-war period, in the second and third waves, that the institution started its global diffusion, first across Western democracies and then across new democracies. According to the International Ombudsman Institute (IOI),[2] 140 countries in the world have established this institution.

When it comes to functions and mandate, the ombudsman is an officer of the legislature vested with broad supervisory and investigative powers and jurisdiction over the public administration, promoting accountability and the protection of individual rights (Diamandouros 2006). Key features of the office are independence; broad accessibility; considerable latitude in terms of investigative powers and a largely informal role when it comes to the range of remedies, which typically take the form of mediations/conciliations between the parties or recommendations issued to the investigated public authorities. The ombudsman usually lacks the means to enforce its recommendations and typically issues warnings in instances of non-compliance.

The big question at this point is how does our selection of these four policy instruments match a concept? Clearly, we cannot lump everything into the incomplete category of better regulation. We propose a single theoretical lens that looks deep into the structure and functions of these meta-rules, going beyond the headline labels. By putting them under the same theoretical lens, we 'see' the instruments' empirical manifestations as designs of four distinct but interrelated social spaces where significative interactions occur. The nature of this interrelation lies in what these procedural action situations do: they constrain governments and regulators and, by regulating the way different actors can weigh in the rulemaking process, they enfranchise different public interests in public policymaking.

[1] For a detailed and fascinating discussion of the etymology of this term and its gender neutrality see the briefing paper written for the Northern Ireland Assembly (Moore 2015).

[2] https://www.theioi.org/the-i-o-i

We also need the lens to be parsimonious: the instruments must be forensically examined through a limited number of conceptually meaningful categories. When we say 'examined' we mean that we must have a way of handling the operationalization of concepts, so that we move towards the step of measurement with the appropriate compass.

The Institutional Grammar Tool (IGT) (Crawford and Ostrom 1995; Ostrom 2005) delineates a suite of seven types of rules that configure any 'action situation' and therefore allows us to operationalize and measure the four procedural instruments without idiosyncrasies. We must clarify the status of the word 'rule' in different branches of scholarly work. While our empirical subject matter is rulemaking, the Institutional Grammar Tool (IGT) has its own vocabulary of seven types of rules that are not about regulatory policy or making regulations. Rather, they concern the *rules of interaction* in an action situation. In turn, an action situation is a process in time, like the procedures we consider here.

These action situations are social spaces where participants with diverse preferences interact, bargain and finalize exchanges, engage in collective problem solving, compete or conflict (Ostrom 2005: 14). The structure of such action situations is described, as Ostrom explains,

> by using a common set of variables. These are: (1) the set of participants, (2) the positions to be filled by participants, (3) the potential outcomes, (4) the set of allowable actions and the function that maps actions into realized outcomes, (5) the control that an individual has in regard to this function, (6) the information available to participants about actions and outcomes and their linkages, and (7) the costs and benefits—which serve as incentives and deterrents—assigned to actions and outcomes. (Ostrom 2005: 32)

We therefore argue that rulemaking procedures in different countries can be interpreted as empirical instances of Ostrom's rule types that constitute action situations. Rule types are an instrument for classification and operationalization, 'a useful system for those interested in linking rules and the action situations (games) created by rules, the biophysical world, and communities' (Ostrom 2005: 187). And also, '[R]ules are part of the underlying structure that constitute a single action situation or a series of them' (2005: 179).

Thus, the significance of rule types lies in their role as markers of important steps when actors interact, become interdependent, or are requested to perform in an institutional setting (Schlager and Cox 2017). These interactions, as mentioned, are examined as comprising the IGT seven rule types.

Table 2.1 Seven Rule Types of the Institutional Grammar

Rule type	These rules…
Position	Identify positions/roles to be filled by individual or collective actors
Boundary	Regulate eligibility of actors to occupy positions
Choice	Specify actions that actors must, must not, or may undertake
Aggregation	Discipline actions or decisions that require the aggregation of two or more actors
Information	Identify channels and modes of communication/exchange of information between actors
Pay-off	Assign benefits and costs—for example, rewards and sanctions—to specific actors relative to distinct courses of action
Scope	Identify required, desired, or prohibited outcomes of the action situation

Sources: Carter et al. 2015: 163; Ostrom 2005: 190

The seven types are: position, boundary, choice, aggregation, information, pay-off, and scope (Ostrom 2005, 2007: 29–30; see Table 2.1). Each of these rule types has a different manifestation in each of the four instruments. Table 2.2 provides some exemplars of how the seven rule types identified by Ostrom can be read across the four procedural instruments, and offers a preview of how to move towards measurement. Indeed, empirically speaking, our aim is to measure and then compare the balance of these seven types in each instrument across twenty-eight countries.

2.3 Design, causality, and outcomes

We are interested in whether and how the design of regulatory policy instruments affects governance. Specifically, we test the proposition that these causal effects or contributions are achieved via a combination of instruments. This is our central proposition. If the argument is that governance is impacted by a constellation of procedural instruments working in a given sociopolitical context, then we must model causation accordingly. Since rules are the product of a process where the four instruments interact, we can only examine their causal effects ecologically, by considering their *overall effect*. In saying this, we are mindful of decades of findings regarding theory of change in the field of policy evaluation, especially Carol Weiss's (1972) observation about the 'little effect' of individual innovations.

And yet, it is not just a matter of cumulating the effect of the design of FOI with, say, the effect of consultation. Such an additive logic falls down pretty

Table 2.2 Rule Types Exemplars

	Position	**Boundary**	**Choice**	**Aggregation**	**Information**	**Pay-off**	**Scope [Promotion of …]**
Consultation	Departments Independent regulators Stakeholders Regulatory oversight bodies	Definition of who can take part in consultation Time limits for the submission of comments and evidence	Department has to set a timetable for the consultation process Procedural steps to seek experts' views Consultation techniques	Central oversight of the quality of consultation	Publish annual plan for consultation Publish an invitation to parties to submit comments and evidence	Departments cannot proceed with regulation lacking inclusive consultation	Engagement Inclusiveness Non-discrimination Plain language
Regulatory Impact Assessment (RIA)	Departments Independent regulators Regulatory oversight body Experts	Exceptions Mandate of the regulatory oversight body Who qualifies as expert	Requirement to empirically demonstrate a market failure Analysis of administrative burdens Benefit–cost criteria	Conditions under which different actors have to agree on whether a RIA is ready for publication	Publication of RIA Publication of opinions of the regulatory oversight body	Departments must revise RIA if it does not meet quality standards	Transparency Quality of business environment Gender equality Environment and sustainability

Continued

Table 2.2 *Continued*

	Position	Boundary	Choice	Aggregation	Information	Pay-off	Scope [Promotion of …]
Freedom of Information (FOI)	Requestor Information Commissioner Dedicated appeal body	Criteria of requestor eligibility (e.g. include non-citizens) Public authorities that are excluded from FOI (e.g. Ministry of Defence)	Actions possible for all three positions with concerning what can be: requested, withheld/refused, appealed, investigated	Provisions in place for consultation with third parties that may be relevant to information requests	Information/ documentation formats Timescales for information release or appeal Fees for information release or appeal	Redress procedures for underperformance Sanctions for unsupported restriction of access or defacement/destruction of information/ documentation	Promotion of best practice
Ombudsman	Ombudsman Complainant Public body under investigation Other public bodies receiving referrals	Personal interest of the complainant Time boundaries Range of bodies under Ombud jurisdiction Incompatibility with judicial procedures	Investigations Remedies (mediation or recommendations)	Referrals to judiciary or legislative bodies	Obligations to share information with the Ombudsman	Remedies (i.e. reccommandations, warnings, sanctions, etc.)	Accountability Individual rights Good administration

Source: Authors' own

quickly when it meets reality. For example, one instrument can cancel out the other. Take what can happen when access to information procedures meet consultation processes. In some instances, the mechanism of enfranchising a given interest via FOI may well be nullified by a design of consultation that stacks the deck against the very same interest. In one country, we may find a combination of highly procedural ombudsman and FOI with minimal formal consultation rules, while in another consultation may complement an incomplete design of the other two procedures. This is called equifinality—there can be different combinations of instruments or their elements that lead to the same outcome.

This conjunctural causation requires a suitable methodological design, one that aligns our hypothesis about the ecological effect with the empirical techniques chosen. As we shall see (in Chapter 3), this leads us to Qualitative Comparative Analysis (QCA). Due to its nature as a 'configurative method' (Wagemann 2020) which privileges the consideration of conjunctures of several causes as the main explanatory principle, QCA is tailor-made to examine the analytical intuition that different 'recipes' of conditions can be associated with the same outcome (Ragin 1987, 2008; Schneider and Wagemann 2012).

We now reason on the predicted outcomes of design diversity. Consultation standards, freedom of information acts, detailed guides on impact assessment, and bodies like the ombudsman have been designed with an overarching goal in common: to impact governance. To make governance analytically manageable we zoom in on three central challenges of good governance that have dominated the past few decades concerning the quality of the business environment, corruption, and environmental performance. Before we look at these three outcomes, there is an even more fundamental aspect to address. The relationship between policy instruments and quality of governance must be unpacked to enter the bureaucracy, the actor orchestrating all four procedures. The performance of the bureaucracy shapes attitudes and other public institutions. It does so because the abstract notion of quality of governance pivots around how the public experiences bureaucracy. Crucially, this can be seen to be more important than experiences with political parties and national elections, once every four or five years.

We are not the first to argue in this way. Nearly three decades ago, in the *Public Administration Review* (PAR) Dwight Waldo symposium, Ken Meier (1997) provocatively argued for more bureaucracy and less democracy (his polemical force was directed against the enduring anti-bureaucratic mood which saw bureaucracy as the major governance problem in the United States). For Meier, the 'problem of bureaucracy' is not a problem *with*

governance (as it has long been framed in political campaigning). Rather, it is a problem *of governance*. In making this argument, the analytical focus switches from individual reform programmes designed to control the bureau to the question of how institutional designs serve democratic visions. In short, understanding how rules are designed and how those designs interact with each other to enhance policy capacity and social dialogue is the best way for the granular lens of policy analysis to answer the big questions of political science. For public policy and administration scholars, this means making analytical moves beyond descriptive research on instrument mixes to examine the effects produced by different configurations in a country or group of countries, at any given time.

Recent research on nine European democracies shows that even those who want technocrats in office simultaneously seek meaningful involvement of citizens in the political system and policy process (Bertsou and Caramani 2022). These publics are disappointed with how democracy works, not with democracy *per se*. If they experience a badly functioning system, they turn to technocrats who at least 'know how to operate the machine'.

The mass preferences for populists and technocrats—we then submit—are shaped by the *quality* of the encounters between various publics (including citizens of course) and the bureaucracy *when rules are made*. And the four procedures we target, perceived as participatory instruments, all play a defining role for the quality of these encounters. Depending on their design, they can provide confidence to citizens and other affected interests that their preferences and inputs are heard, or signal that public access to rulemaking is limited. The design that shapes these instruments can make the bureaucracies responsive to science, economics, and more generally evidence (via RIA) or let the evidence base of proposed rules remain obscure, or non-existent. They can fuel trust in due process and rule of law, or give the impression that maladministration, corruption, and capture will not be identified and eliminated.

This is consistent with the evidence on public opinion (Bertsou and Caramani 2022) that so-called technocratic preferences and support for non-elected prime ministers (see Garzia and Karremans 2021 on Italy) are symptoms of discontent with how democracy works. These preferences can go hand-in-hand with popular demand for greater expertise in public decision-making and a transparent use of evidence in policy formulation. Detailed studies corroborate this claim. Ganuza and Font's (2020) work on Spain, for example, demonstrates that the demand for technical competence and experts in government is not conceived as an alternative to representative democracy, but as a resource that bolsters democracy.

Using survey experiments Beiser-McGrath et al. (2021) find that, when individuals are dissatisfied with the current policies (meaning that they prefer

policies that are further away from the status quo), they are less likely to support the classic mode of decision-making based on votes on draft bills in parliament. Does this mean that these citizens prefer technocracy or populism? Whether a dissatisfied citizen prefers to delegate to independent experts (for example independent regulatory agencies [IRAs]) or to referenda (which Beiser-McGrath et al. use as a proxy for populist preferences) depends on their distance from the position of other actors. When the preferences of citizens align with those of experts, they tend to support independent experts. When the preferences of citizens align with those of the public majority, they tend to support the referendum.

Looking at the 2019 European Parliament (EP) elections, Heyne and Costa Lobo (2021) show that some citizens who prefer technocrats in government are dissatisfied with democracy, the EU and mainstream political parties. But others do not. They support mainstream parties, the EU, and democracy. This points to demand for expertise and technical competence in governmental affairs. This is precisely what variations of benefit–cost analysis and risk analysis in the RIA analytical process promise to deliver. Thus, the relationship between citizens and government, so crucial for the decision whether to support technocracy or populism, is mediated by how bureaucracies deploy procedural instruments.

Bureaucrats, too, have preferences for either efficiency or social values, for technocracy or representative politics. Where a technocratic mentality dominates, the design of the four procedures is geared towards what is considered efficient. In Dunlop et al. (2021), we found cases where consultation is only about getting information that helps those who formulate policy, not about giving a voice to stakeholders. Bureaucrats move away from the technocratic mentality if they work close to the politicians and have positive feelings about these interactions. Another variable that is negatively associated with the technocratic mentality is having studied political science or public administration (Raudla, Douglas, and Mohr 2021).

The next question is: how do we theorize the causal chain that goes from the design of procedures to rulemaking, and to quality of rulemaking to quality of governance? As mentioned, we need to break down the notion of governance into something substantively specific. We select three outcomes concerning the business environment, perception of corruption, and countries' environmental performances.

To argue that the four instruments may have an effect on the quality of the business environment has an intuitive logic: engaging stakeholders and appraising proposals with RIA should make decision makers consider the economic effects of their choices with some precision, both in terms of affected parties and benefit–cost calculations. An open ecology that delivers

on access to regulation and controls for maladministration seems congenial to a business environment where permits, licences, registration requirements, and the possibility to hire and fire are not unnecessarily constrained and the processes predictable.

The case for 'good meta-rules leading to less corruption' is more difficult. The common argument is that too much regulation leads to corruption and, linked to that, new regulatory measures intended to curb corruption may backfire. Dunlop and Radaelli (2019) criticize this blunt take and consider more sophisticated arguments focusing on what instrument design can deliver. If we start by saying 'the quality, not the quantity, of rules leads to more or less corruption', since the quality of rule depends, *ceteris paribus*, on design, we can ultimately empirically test the proposition that the design has an ecological effect on perception of corruption.

Finally, regarding environmental performance, for decades, environmentalists campaigned for FOI legislation and disclosure instruments in order to obtain valuable information held by public authorities (Florini 2008). As such, the history of FOI has been fundamentally impacted by the pursuit of more environmentally sustainable policy action. In a similar vein, in the last twenty years, RIA processes have increasingly been used to operationalize Sustainable Development Goals (SDG) in the policy process (Radaelli 2021). Yet, despite the environmental movement's promotion of and engagement with procedural instruments like FOI and RIA, we know very little about how these connect with countries' environmental policy performance.

2.4 Modelling contexts and drawing expectations

The design of procedures does not come out of thin air. It is the result of decisions taken in a given political and administrative context. Considering our population of cases, the process of European integration has been an important component of the context. Different strands of the literature generate insights into how context shapes reforms across countries. Each strand would distribute the twenty-eight cases in baskets dominated by certain features. Thus, we can draw on extant literature to generate expectations about how the twenty-eight cases would get together in clusters or families of countries.[3]

[3] Note, we do not use the term 'cluster' in its statistical sense.

2.4.1 Varieties of capitalism

The countries of our population are part of the EU, or, in the case of the UK, have been part of this organization for a sufficiently long period of time to expect Europeanization effects in the domain of the four administrative procedural reforms. However, as we shall see later on, scholars working on Europeanization effects have not argued for or expected convergence. One fundamental reason for the lack of convergence is the presence and resiliency of varieties of capitalism. The literature has found distinct varieties of capitalism that, so far, have been resistant to homogenizing Europeanization effects. We start from this literature and then move to Europeanization. Finally, we will derive expectations from our knowledge of administrative law and administrative systems.

Although the notion of varieties of capitalism is essentially ideal-typical (Hay 2020), it is common to identify different 'real types' in Europe, where we find a basket of liberal market economies and one of coordinated market economies (Hall and Soskice 2001; Hancké, Rhodes, and Thatcher 2007). We expect Ireland and the UK to be in the same cluster, along with the most liberal northern economies such as Estonia, plus micro-countries like Luxembourg and Malta that have been aggressive in tax and regulatory competition. Continental countries like France and Germany belong to the cluster of coordinated economies. Austria, Denmark, Finland, and Sweden are also coordinated, via a corporatist policymaking mechanism. We can imagine a cluster of Mediterranean countries with their own variety of mixed economies (Molina and Rhodes 2007). Indeed, the Euro crisis has exposed the features of the political economies of these countries especially Greece (Hall 2014, 2018). Finally, the literature has examined a post-communist 'dependent market economies' variety in Central and Eastern Europe (Nölke and Vliegenthart 2009), with Sobczyk (2023) adding Greece to this variety because of its reliance on external debt and dependent position in the Euro area.

We expect the presence of a variety of capitalism should make a difference when we examine the combined effects of the four regulatory procedures on the quality of the business environment. This is because the varieties of capitalism define the broad architecture of distinct political economies, or how the governance of the market has emerged and still shapes doing business today.

2.4.2 Europeanization

Turning to Europeanization (Radaelli 2018), as mentioned, this approach does not argue for convergence (Tosun 2022). There may be convergence on policy outcomes, but only limited and clustered convergence when it comes to policy instruments, policy processes, politics, polity, and institutional choices (Börzel and Risse 2003).

The establishment of the ombudsman and FOI is, in the language of Börzel and Risse (2003), an institutional or political choice. Administrative procedures for consultation and RIA are not policy outcomes for which the theory would predict convergence since they are closer to Börzel and Risse's category of policy processes. Domestic institutions are likely to filter how a country goes about engaging stakeholders on new legislation and about the appraisal of proposals at an early stage via RIA.

It follows that, from the point of view of Europeanization, what matters are clusters. How would countries cluster together, then? This depends on institutions. And since institutions differ across our population, we would expect 'differential Europe' (following Héritier et al. 2001) with clusters following the contours of institutional arrangements. Countries with the same domestic arrangements should face similar adaptational pressures to conform to the EU. Yet, pressure is only a necessary condition for domestic change. In fact:

> quite irrespective of the pressures for adaptation, each member state has a different set of institutions and actors facilitating or inhibiting change in response to these pressures. Multiple veto points, supporting formal institutions, norm entrepreneurs, and cooperative formal institutions mediate between the adaptational pressures and the outcome of domestic change. (Börzel and Risse 2003: 73)

The degree and type of federalism (cooperative or competitive) are additional intervening variables that explain how a country adapts to European pressure. The result is that convergence is expected to be very limited. For example, we cannot theorize *ex ante* that norm entrepreneurs will be distributed in a specific way across our population. We expect political systems with limited veto points and cooperative federalism to be able to change more than systems with many veto players and competitive inter-institutional relations.

But second, and more fundamentally, are we sure about the presence of EU pressure in the first place? Although the EU has been a pivotal actor in creating networks and templates for some meta-regulatory instruments such as RIA (Renda 2016), it has not been a major force in the global explosion of

FOI acts (Banisar 2004). And, whereas the EU has its own ombudsman, the institution originated in Sweden and has travelled across the world in at least three waves which have had little to do with Europeanization.

Further, the Organisation for Economic Co-operation and Development (OECD) has been more important than the EU in the historical process of generating templates for regulatory indicators, impact assessment, and stakeholders' engagement across the EU Member States (De Francesco 2012; OECD 2021). Some EU Member States have sought to upload, sometimes successfully, their preferred template to the EU level, thus influencing the EU approach to tools like, for example, the standard cost model for the measurement of administrative burdens (Radaelli 2020). The EU approach to consultation and impact assessment has been downloaded by countries that had no experience of these instruments—like in some former communist countries and also the Mediterranean Member States but not in corporatist countries. In turn, when facilitating the adoption of better regulation instruments, the EU has acted in synch with the OECD, including practical means of cooperation such as the SIGMA initiative.[4] The facilitation task of the EU and the OECD has taken the form of soft law and socialization through the OECD Regulatory Policy Committee, and, for the EU, pan-European networks like the Directors and Experts of Better Regulation (Radaelli 2020; Radaelli and De Francesco 2007). Obviously, this process has not been mechanistic and insensitive to what existed before: for instance, countries like Sweden have not changed their long-standing approach to hearings and switched to the EU-OECD-style of consultation. The OECD regulatory indicators (OECD 2021) show that although there has been the same on-paper adoption of consultation and impact assessment, there is still considerable cross-country variation across dimensions such as methodology, implementation, transparency, and oversight.

It is difficult to create precise expectations about Europeanization clusters given the variation in the policy reform processes that have led to the design of the four instruments. On better regulation (thus, excluding FOI and ombudsman), the OECD indicators (OECD 2021; Figures 2.1 and 2.2; see Radaelli 2020 on how they are built and measured) on stakeholders' engagement in the preparation of primary legislation suggest a cluster of high performers made up of the UK, Croatia, Slovakia, Netherlands, Poland, Bulgaria, Latvia, Estonia, Slovenia, and Italy (countries in decreasing order). Low performers are Hungary (the lowest score), Portugal, Ireland, Luxembourg, and Austria. If we consider consultation on secondary legislation

[4] http://www.sigmaweb.org/

the weakest scores are given to Cyprus, Ireland, Austria, Hungary, and Luxembourg—confirming the ranking order for primary legislation with the exception of Cyprus. The EU high performers are Slovakia, Croatia, Bulgaria, Latvia, Netherlands, and Italy.

Turning to impact assessment, according to OECD (2021) data, the best performer in the EU for primary legislation is Estonia, followed by Lithuania, Germany, Slovakia, Croatia, the Czech Republic, and Italy. The list of the top performers for impact assessment of subordinate legislation confirms the Czech Republic and Germany, followed by Slovakia and Estonia. Croatia is at the bottom of the list in this category, making it impossible to predict in which cluster Croatia would fall in our analysis. In all cases, the UK performs better than any EU Member State (OECD 2021: Figures 2.7 and 2.8); UK is second after Iceland and European Commission for consultation on primary legislation, behind Latvia, Slovakia, and European Commission for consultation on secondary legislation; second on RIA indicators after European Commission.[5]

On both consultation and impact assessment, the European Commission is the highest performer (better than the twenty-seven countries of the EU). This suggests that, despite what we said above regarding the limited influence of the EU in better regulation reforms, the possibility of some Europeanization effects induced by emulation of (or pressure from) the best pupil in the class (the European Commission) should not be ruled out. The general expectation for better regulation is that the UK, the Baltics, and some Eastern European countries that have embraced the EU better regulation agenda should sit together, with some surprises from Mediterranean countries (Italy does reasonably well, Spain is a good performer in impact assessment but just average on consultation, Portugal is a weak performer).

The multilevel stories for FOI and ombudsman are very different. These instruments have not been part of the so-called better regulation toolbox of the EU. For the FOI, the Europeanization lens shows very little indeed. The adoption of FOI is less an integration story of multilevel pressure, and more about a much bigger global explosion of access to information legislation underpinned by the idiosyncrasies of domestic politics for some countries and democratic transitions for others (Ackerman and Sandoval-Ballesteros 2006; Banisar 2004).

Taking the bird's-eye view, while FOI was pioneered by an EU country—Sweden, centuries ago—half of the Member States' adoption took place after 1999 (matching the broader international trend). When we drill down, we

[5] The OECD labels this as 'European Union'.

can think in terms of three categories of European adopters. In the vanguard are the Nordic countries—Sweden, Finland, and Denmark—and France, whose FOI measures precede 1980. Yet, the time span of these pioneers' adoption runs from 1766 (Sweden) to 1978 (France)—so it makes little sense to look for diffusion mechanisms, although it suggests the presence of countries that stand as models for adoption.

Thinking about content, the Swedish model—where rights are enshrined in the Constitution, access costs to information are low, and the possibilities for appeals are generous—has been consciously used as the template for Finland (1951) and then Norway and Denmark (1970) (Ackerman and Sandoval-Ballesteros 2006).

The second category of adoptees are those European countries whose FOI legislation is part of a wider transition to democracy—for example, Hungary, Spain, and Portugal in the early 1990s, and Bulgaria, Slovakia, Poland, and Romania in the early 2000s. While the pressure for FOI is similar for these countries, the character of FOI in them varies across key dimensions—coverage, exemptions (so-called 'harm', 'class', and 'public interest' tests), enforcement powers (binding or advisory), and ease of access (Ackerman and Sandoval-Ballesteros 2006: 99).

Finally, the third group of countries (possibly forming yet another cluster) are those established democracies of Western Europe where the content and timing has been largely determined by specific domestic forces whereby FOI uptake is the answer to a political problem or ideational project—for example, Italy (1990), UK (2000), and Germany (2005). The FOI laws in these countries have been described as less progressive than in the newly democratized states (Ackerman and Sandoval-Ballesteros 2006), but, given the vast number of clauses in FOI legislation, generalization is problematic.

As for the ombudsman, different waves appeared (Gregory and Giddings 2000). In the first wave, it spread across Scandinavia in the early twentieth century. In the post-war period the institution started its global diffusion, first across Western democracies and then across new democracies. The scattered and century-long pattern of adoption of the institution (also characterized by the blossoming and numerous sectorial ombuds) does not offer any clear signs of structured convergence driven by forces associated with European integration.

Reflecting this dis-homogeneous pattern of diffusion, in Central and Eastern European countries, the type and bite of ombuds' remedies tend to be broader and radically different from the Swedish blueprint (where remedies are almost fully informal and not proceduralized). Although barred from issuing sanctions on its own, the system of referrals of cases to judiciary

or disciplinarian bodies strengthens the cogency of ombudsman recommendations, making the office in those countries closer to courts. This judicialization of this office may also reflect an objective weakness of the judiciary branch in Central and Eastern European countries (Gregory and Giddings 2000). Nonetheless, we fail to discern a pattern of design convergence allegedly driven by the membership in the EU.

2.4.3 Administrative law and administrative systems

A final consideration militating against a hypothesis of homogeneous, EU-driven convergence is the absence of a pan-EU administrative procedure act. A law of administrative procedure of the EU does not seem to be on the cards, despite calls coming from the Parliament to codify the fundamental principles of good administration of the EU (EP 2013, 2016; for an early discussion see Meuwese, Schuurmans, and Voermans 2009). In January 2013, the European Parliament adopted a first resolution presenting detailed recommendations to the European Commission on the need to depart from the sector-specific approach currently taken in the EU administrative space (EP 2013).

Indeed, over the years, the EU has established several administrative procedures for the implementation of its rules in different policy areas. All these procedures remain fragmented and localized, making it difficult to delineate citizen's administrative rights under Union law. This was also the claim put forward by the latest European Parliament resolution of June 2016 that launched a public consultation on the costs and benefits of a codified cross-cutting administrative procedure applicable as a *de minimis* rule. The Commission, on the other hand, is reluctant when it comes to identifying the actual benefits of having an established EU Administrative law and therefore the project is still on hold. Despite the number of EU administrative procedures in areas such as competition, trade, or state aid, there is no sign of any single, binding European Administrative Procedure. For these reasons, the EU cannot possibly have been the engine of any diffusion of common administrative principles and practices. This leads us to conceive of baskets of countries in relation to variables affecting administrative law.

2.4.4 Administrative law, judicial review, and legal origin

Administrative law has evolved around different patterns across time. This evolution reflects the emergence of the administrative state. As such,

understanding the context in which rulemaking tools are set involves getting to grips with the changing institutional set-ups that define administrative systems.

The traditional distinction between common and civil law systems cannot fully capture the subtle differences characterizing specific tools of administrative accountability (Ziller 2021). Starting from administrative laws and procedures which serve as the navigational instruments (Barnes 2021) guiding the administration through different routes, we observe heterogeneity. Administrative procedures, in fact, started expanding because of the need to control the administrative power. Moreover, as public bodies took on new judicial responsibilities there was the need to establish clear procedural rules imitating or adapting the judicial process.

Codification has followed different paths, also via the adoption of Administrative Procedures Acts (APAs). Here, history suggests expectations about possible clusters. The history of codified administrative proceedings dates to the nineteenth century with the Spanish and Austro-Hungarian traditions of establishing written regulations of administrative matters. The Austro-Hungarian tradition gave rise to the Central European heritage of codified administrative procedures, notably following the historical Austrian General Administrative Procedure Act (AVG) and the German *Verwaltungsverfahrensgesetz* (VwVfG), which spread across Eastern Europe. The Spanish tradition expanded across the Ibero-American family of countries, all of which share a common skeleton of laws of administrative procedures (Siucinski 2020). The Nordic European countries are part of yet another 'family' that revolves around simplicity, clear language of administrative procedure acts, strong ombuds' provisions, and clear principles of transparency.

In these families, we observe that their prominent countries are *not* founding members of the EU. Some, like Italy and France, have even rejected the idea of codification of Administrative Procedures for quite a long time and have only recently—compared to the abovementioned 'families'—adopted laws focusing on principles of administrative procedure and the right to access to administrative documents. This heterogeneity can be the result of legal as well as political factors such as the decision to enact more or less comprehensive administrative procedures, or whether APAs would focus on rulemaking (like the US APA) or the model of decision-making through administrative procedures (see Barnes's classification [2021]).

On administrative principles and judicial review of administrative acts there are a number of dimensions with relevance for the framework of our analysis (see Table 2.3). The majority of countries have codified their principles of administrative procedures, with the exception of Belgium, Ireland,

Romania, and the UK—which do not have a piece of general administrative legislation. France and Italy, traditionally resistant to a codified administrative procedure (as already noted), have only very recently established a written code. Historically, these countries did not feel pressure to codify administrative procedures because general principles could already be found within the Constitution and in other procedural codes.

A written and unified law on administrative procedures, however, is not a necessary condition for public bodies to give reasons with regard to rulemaking. In fact, in all countries except Luxembourg and UK, there are general written obligations that regulate the duty to give reason by public bodies and these obligations are usually found in the Constitution, FOI, and also, but not exclusively, in administrative codes. Another feature concerns whether general principles establish individual rights for the citizen. While we find that in almost all cases, individual rights are established by general principles of administrative action such as the right to comment or access to official documents, this is not the case for Austria, Malta, and the UK, where general principles do not identify individual rights. We can also put France in the same basket, since the spirit of the French administrative procedure is to establish general principles but not individual ones.

An accountability dimension of the administrative systems (or context) is judicial control of administrative decisions (Bignami 2012). Here too there are differences. We distinguish at least three different institutional set-ups of administrative judicial review, suggesting the presence of possible baskets. To begin with, we have the traditional common and civil law distinction, associated with the English common law and the French *droit administratif*. The main difference is whether judges reviewing administrative decisions sit in ordinary courts or whether a body authorized to hear challenges is part of the executive branch, that is, the Council of State. A third system emerged in Germany under the Basic Law of 1949 (Bignami 2011) with a specialized branch dedicated to hearing administrative law cases without the presence of a Council of State.

Let us look at some more details on judicial review of administrative action. In Belgium, the review of administrative acts is divided between ordinary courts and administrative courts; however, the system still follows the French *dualité* with the separation of the court system into two distinct branches: ordinary and administrative courts and the institutional existence of the Council of State. The use of these different courts depends on the nature and subject of the procedure. For example, if rights are involved (subjective review), this falls under the responsibility of the ordinary courts. By

contrast, administrative courts engage with what is called an objective review. In Bulgaria, for example, the judicial review of administrative acts is carried out by the dedicated branch of the judiciary, which is composed of specialized administrative courts and the Supreme Administrative Court. This model is also applied in Cyprus, Croatia, the Czech Republic, Estonia, Finland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, and Sweden; all these countries have a dedicated administrative judicial branch at the first and second level. Finally, there are no specialized administrative courts in Denmark, Ireland, Malta, Slovakia, and the UK, all of which follow the *common law* system—ordinary courts are responsible for judicial review. There have been several institutional changes across countries in terms of who carries out judicial review of administrative decisions. Eastern European countries started to establish specialized administrative courts with their entry into the EU—hence we can talk of a Europeanization effect. However, even this institutional setting is not systematically the same across Eastern European countries. The difference-making variable with establishing specialized administrative courts is the independence of the judiciary and the wider relationship between politics and the magistrates.

2.4.5 Administrative traditions

We now consider administrative traditions, intended as well-established beliefs and ways of organizing public administration and its relationships with political institutions and society at large (Laegreid 2017). We are talking here about traditions as identified by the discipline of public administration. For this discipline an administrative tradition includes four dimensions: the vertical dimension of distribution of authority (for example high or low levels of devolution to local public administration, and the presence or absence of federalism); the horizontal organization (for tight coordination to fragmentation); the relationship between the state, as embodied in public administrations, and society; and the role and values assigned to public managers (Steinebach 2023: 1165).

Public administration scholars distinguish two main traditions in Continental Europe: legalistic and managerial (Painter and Peters 2010; Pierre 1995; Steinebach 2023). The legalistic tradition flows from the Rechtsstaat concept, with the idea of power always bound by rules, characterized by a sense of equality of citizens in front of the state. Ideal-typically, rules are applied by independent and neutral administrators. Administrative decisions

are always potentially subject to judicial review. Therefore, countries that fall into this model clearly require a specific set of specialized administrative courts—such is, for instance, the case of France and Germany. Eastern European countries have followed the Rechtsstaat model following the fall of the communist regimes.

On the other hand, the managerial tradition follows the 'public interest' model where the role of the state is less prominent within the society. Actions of ministers and public officials are not clearly defined by laws and norms—rather, these actors are accountable to parliament. In this tradition, laws, rules, and procedures are less dominant compared to the Rechtsstaat model. Moreover, the public interest model is characterized by civil servants that do not belong to a special caste representing 'the State' as in the Rechtsstaat. In the public interest model, in fact, we find reference to 'the government' rather than the state, a distinction in terms that indicates a less dominant role within society (Pollitt and Bouckaert 2011). This second cluster includes Anglo-Saxon countries and the Baltics, while Finland and Sweden share some similarities in terms of administrative culture but are in-between the two. In fact, as mentioned, the Rechtsstaat versus public interest dichotomy was generated with continental Europe in mind. Painters and Peters (2010) also distinguish between a number of administrative traditions that persist despite contemporary administrative reforms, where certain patterns resist the impact of pressure for change. Among the Western administrative traditions, they identify: Napoleonic, Germanic, Scandinavian, Anglo Saxon, and Soviet (Painter and Peters 2010).

Regarding the Nordic administrative tradition, identified by Per Laegreid (2017), this is more exactly a complex set of mixed orders and competing demands on public officers. As such, we should more correctly talk of multiple administrative traditions (Laegreid 2017)—indeed we have just mentioned how Finland and Sweden sit between legalistic and managerial when looked at closely. With this caveat the Nordic tradition is described in the following way:

> the Nordic countries have well-developed administrative systems, which are characterized by merit-based bureaucratic professionalism in contrast to a patrimonial-Napoleonic culture. Rechtsstaat values are strong. They enjoy a consensus-oriented democratic tradition and distinctive cooperative features in their administrative practice. (Laegreid 2017: 82)

The long-standing system of stakeholder engagement pre-dates the notion of consultation OECD-style (Laegreid 2017: 83). The decision-making style

is consensual, not confrontational, with features of informal cooperation among departments and strong independence of central agencies.

In terms of implications, one might expect Rechtsstaat systems to be slower and resistant when it comes to reforms of public administration and OECD-style 'better regulation reforms' about involving stakeholders (Pollitt and Bouckaert 2011). Rechtsstaat countries have been less likely to embrace wholesale New Public Management (NPM) inspired reforms, as shown by the trajectory in France and Germany. Public officers in the legalistic culture are typically trained in law, hence less likely than 'managerial' civil servants to adopt the justification of new regulations in terms of benefit–cost analysis and economics typical of RIA and 'better regulation'.

Turning now to the legal origin, this explanation offers yet another way of thinking about the European legal space, this time grounded in economics. A good reason to consider this literature is that legal origin is one of the strongest predictors of some regulatory outcomes. Research by La Porta et al. (1997, 1998) established that regulatory rules on investor protection (at the start, this was mainly based around commercial bankruptcy laws) vary systematically by legal origin. These traditions are exogenously derived of course (the products of conquest, colonization and so on). The fault-line which counts is that between common law countries (the ideal type being the English legal system) and countries that operate in civil law. In La Porta, Lopez-de-Silanes, and Shleifer (2008) we find yet again a distinction between Common Law origin and Civil Law origin. The latter is divided into Roman, Germanic, and Scandinavian origins. Thus, European countries can be divided into four origins: English, Roman, Germanic, and Scandinavian. Going back to economic regulation, the mechanisms that matter lie in common law countries' lower formalization of judicial procedures and higher judicial autonomy, which increase contract enforcement and reduce conditions on private market activity.

And so, when it comes to administrative law and traditions, we find both overlapping and competing classifications—a result of the lenses adopted by researchers interested in very different topics, like administrative law, the trajectories of public management reforms, and intersection between legal origin and the quality of the business environment. Arguably, we should adopt a concept such as 'multiple administrative traditions'—to reflect the presence of empirically, historically well-documented overlaps (Laegreid 2017).

Legal origin, traditions, and models of the state (like the Rechtsstaat) blend with administrative cultures impacting how regulators and public managers perceive their relationship with the citizen. Recruitment is also connected to

these concepts, with training in law being preferred in countries such as Italy when it comes to recruiting the senior civil service ranks. The propensity to adopt public management reforms varies across our population. But we cannot draw neat expectations about the design of the four procedures. To begin with, the relationship between the NPM, on the one hand, and consultation and RIA, on the other, is not straightforward (Radaelli and Meuwese 2009). We cannot transfer our knowledge of how traditions have shaped public management reforms (as outlined in Pollitt and Bouckaert 2011) to consultation and RIA.

Second, our choice of instruments also includes the ombuds and FOI, anchored to historical traditions and waves of reforms. The policy networks, politicians and advocacy groups that have pushed for the introduction of FOI are different from the ones that historically have been engaged in the introduction of the ombudsman. This contingency of advocates of FOI and ombudsman makes it impossible to draw a straight line from how historically administrative law and administrative systems have been conceived in a given country or family of countries to the design of these instruments. But third, this does not make administrative variables trivial. We expect them to play a role in explaining some deviant or special cases—in other words, to qualify our findings case by case. To give an example: the prominence of proceduralization in the Rechtsstaat and in countries that have been keen on discipling administrative action with tightly designed APAs is expected to be reflected in the degree of formality and thickness of procedural steps in the four procedural instruments.

2.5 Conclusions

We have introduced four policy instruments that contain meta-rules about rulemaking. We explain how they operate, and where they come from, historically. We cannot point to any single pattern of diffusion, although consultation and impact assessment are tied up by the better regulation agenda, with impetus for adoption provided by the OECD (at least for the countries we examine here). Instead of considering the procedural instruments one-by-one, we approach them as action situations, inspired by Ostrom. This conceptual step gives us a single template for empirical analysis, as we shall see in the next chapter. How the design of the four instruments affects outcomes brought us to a set of complex causal stories. We have barely sketched them and discuss them in more details in the empirical chapters considering outcomes. We have also drawn expectations from research in different

fields. There is no single set of expectations when we look at the four instruments together, although some narrow-range expectations are portrayed in Table 2.3 We can formulate expectations about which country will be in which cluster, according to the conceptual lens we use, be it varieties of capitalism, Europeanization, features of administrative law, or administrative cultures and traditions. However, we cannot tell whether one cluster or another is more likely to generate outcomes like the quality of the business environment, control of corruption, and environmental performance. We can, however, hypothesize that coordinated market economies and liberal market economies will both create good conditions for business, whilst other varieties will not deliver on the most common indicators of the ease of doing business. As for formality versus informality in administrative processes and law, there is no easy way to draw expectations. In countries that favour informality, the presence of administrative procedures in consultation and impact assessment may hinder the smooth functioning of the rulemaking process.

Table 2.3 How Countries Cluster According to Analytical Frameworks

Analytical Framework	Countries Clusters
Varieties of capitalism	Liberal market economies: Estonia, Ireland, Luxembourg, UK Coordinated economies: Austria, Denmark, France, Finland, Germany, Sweden Dependent market economies: Eastern European countries, Greece Mixed economies: Mediterranean countries
Europeanization	Weak or no diffusion effect from the top down to the twenty-eight countries. Some top-down pressure and emulation from the European Commission as top performer for consultation and impact assessment. Ombudsman and FOI not affected by Europeanization processes. Clustered Europeanization—different clusters created by how domestic variables filter the Europeanization pressure to adapt. These variables include multiple veto points, supporting formal institutions, norm entrepreneurs, and cooperative formal institutions. Each of the four instruments created by different constellations of actors at different times, with only consultation and impact assessment inspired by the better regulation agenda. OECD more influential than European Commission in providing regulatory indicators that measure progress and stimulate emulation/diffusion.

Continued

Table 2.3 *Continued*

Analytical Framework	Countries Clusters
Administrative law and systems [1] Codification [2] Obligation for public bodies to give reasons [3] Principles of administrative action establish individual rights	Codified administrative procedure: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden
	No written administrative procedure: Belgium, Ireland, Romania, UK
	General obligation for public authorities to give reason: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
	No general obligation: Luxembourg, UK.
	(France: historically this obligation did not exist until the entry into force of the French Administrative Procedure Act)
	Individual rights are established in principles of administrative action: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden.
	General principles of administrative action do not establish individual rights: Austria, Romania, UK
Judicial control of administrative decisions	Dedicated branch of the judiciary: Austria, Bulgaria, Cyprus, Croatia, the Czech Republic, Estonia, Finland, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, and Sweden
	Lack of a dedicated branch: Denmark, Hungary, Ireland, Malta, Slovakia, UK
	Conseil d'etat model: Belgium, France, Italy, Greece
Administrative models and traditions (as suggested by the literature on public management reforms)	Rechtsstaat or Legalistic: Austria, Belgium, Czech Republic, France, Germany, Italy, Hungary, Poland, Romania, Slovakia, Slovenia
	Public Interest or Managerial: Estonia, Ireland, Latvia, Lithuania, UK
	Netherlands: originally Rechtsstaat but evolving towards public interest model
	Finland and Sweden in-between the two models
	Traditions:
	Scandinavian/Nordic: Denmark, Sweden, Finland Anglo Saxon: UK, Ireland
	Napoleonic: France, Italy, Portugal, Spain
	Germanic: Austria, Belgium, Germany, Netherlands,
	Soviet/Eastern European: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Slovenia

Legal Origin	Legal Systems
	Civil Law: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden
	Common Law: Ireland, UK
	Mixed: Cyprus, Malta
	Legal Origin
	English: UK, Ireland
	French: Belgium, Cyprus, France, Italy, Greece, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Spain
	Germanic: Austria, Bulgaria, Croatia, Czech Republic, Estonia, Germany, Hungary, Poland, Slovakia, Slovenia
	Scandinavian: Denmark, Finland, Sweden

Source: Authors' own
Note: When countries are not listed it means that they are not identified in the relevant literature.

Instead, when it comes to finding causal relationships between rulemaking procedures and outcomes, the literatures in political and legal studies have limited analytical leverage.

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3

Measuring Rulemaking: A Theory-Informed Approach

3.1 Introduction

Before our motivation and theoretical choices hit the road of empirical analysis, we must address the first practical challenge of our research programme: the search for a measurement approach that allows us to map the design of rulemaking instruments within our population. Furthermore, the measurement of design needs to be sufficiently granular to inspect those aspects of policy instruments that can be related to our research questions and the conversations introduced in Chapter 1. In short, we need a theoretically motivated approach that can be applied to all instruments and countries, allowing for meaningful comparisons.

Yet, we are not looking for just another set of regulatory indicators. As we have made clear, the data extend beyond the toolbox of 'better regulation', covering instruments not usually associated with regulatory indicators. However, our approach is not limited to expanding the size of toolbox. The key advancement we propose lies on theoretical and methodological grounds. Fundamentally, this step is inspired by theory, rather than by the idiosyncrasies of the instruments themselves. All instruments, hence, are approached as action situations. Furthermore, the design of each policy instrument in each country is thought to be structurally constituted by specific rules-in-form that shape the action situation. As a result, each instrument is approached with the same theory-driven yardstick (the rule types) in each country. This reduces idiosyncratic effects and enables high comparability across instruments.

We further approach the four instruments as nested action situations—in the sense that they are conjoined as the action situations can overlap; they can also trigger mechanisms that reinforce or cancel each other; and one action situation may be a functional equivalent of another. Together, the four nested action situations feed into the macro action situation we call rulemaking. In other words, the four action situations configured by the

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instruments are nested into the broader rulemaking action situation. In brief, rulemaking instruments do not work in isolation, they may complement or substitute each other and, in combination, lead to different governance outcomes.

Once our approach uncovers the granular design features of each instrument, we employ a popular (and largely exploratory) dimensional reduction technique (Principal Component Analysis, PCA) to detect key dimensions of variations. We then use these dimensions of variation (i.e. the principal components) and their scores to derive and calibrate conditions that are then suitable for Qualitative Comparative Analysis (QCA). The goal of our QCA as a configurative approach is to associate combinations of instruments' design features to the occurrence of the outcomes of interest in the countries under research.

In short, we are carrying out a double exercise in parsimony and synthesis: first we reduce the complexity of the rule types' variability to components. Then we transform components into conditions which are suitable for QCA. This happens through so-called fuzzy values, which indicate how far a given case can be attributed to the concepts which are constitutive for our conditions. Fuzzy values are defined through a process which is called 'calibration' in QCA terminology. After doing this, these conditions are related to the three outcomes of ease of doing business, corruption, and environmental performance, which are also based on fuzzy values.

Fundamentally, this account of measurement addresses four empirical questions.

1. How do the four action situations differ in terms of the seven rule types?
2. What are the rules that best explain the variability in our population?
3. How do countries align in relation to the components that best explain variation?
4. How can we assign synthetic values to each country by instrument?

To answer these, we consider the twenty-eight countries as a single population containing a number of rules. The total number is found empirically. Each rule is classified as belonging to one of the seven rule types. Empirically, each rule type may or may not be present in our population. Incidentally, the lack of a rule type is by itself informative of how the design of an action situation may be incomplete. Now, to the details.[1]

[1] This chapter is broadly based on Dunlop et al. (2021)

3.2 Existing indicators and their limits

Over the years, international organizations (IOs) such as the World Bank and the Organisation for Economic Co-operation and Development (OECD) have provided cross-country regulatory performance measures (Johns and Saltane 2016; OECD 2019, 2021). These indicators of rulemaking are mainly descriptive, not theory-informed. They take stock of instrument-specific aspects of consultation and impact assessment across countries (note that the role of freedom of information and ombudsman in rulemaking are not considered). The raw data stem from different sources. The World Bank mainly relies on country officers, country experts, and academics. The OECD iReg dataset[2] is generated by a process of interaction between the member states' delegates in the Regulatory Policy Committee (RPC) and the OECD RPC Secretariat (see Radaelli 2020 for a description). Both the OECD and the World Bank produce regulatory indicators for their own purposes of international benchmarking and advise governments engaged with reforms.

These are legitimate motivations and approaches, of course, but they do entail several limitations that we seek to overcome. Fundamentally, IOs (IOs) employ expert surveys to generate benchmarks and best practices but the way the latter are generated may prevent punctual cross-instruments comparisons. For example, a typical IO questionnaire used to measure public consultation features would look into the presence/absence of certain best practices and include a question along these lines: 'Do ministries or regulatory agencies in your jurisdiction request comments on proposed regulations from the general public?' Similarly, in the case of impact assessment, one of the questionnaire items may sound like: 'What are the criteria used to identify interested stakeholders?' Quite clearly, these items are both about eligibility criteria, but one can immediately see that, despite their common nature, the way the questions are formulated, and answers 'measured', prevents direct comparison between the eligibility criteria for the public to participate in the procedures. Thus, for instance, the comparison between consultation and impact assessment, two instruments belonging to the same better regulation family according to IOs, in terms of eligibility criteria is remarkably hard if we stick to IOs' measures.

In contrast, by using the conceptual category of boundary rules to scrutinize the legal bases disciplining the instruments we avoid this idiosyncratic approach based on instrument-specific survey items and identify all the provisions that discipline the characteristics of those actors that are eligible to

[2] https://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm

perform a role in the procedure. We will see a range of individuals or public bodies, or organizations.

Thus, rather than superimposing and measuring expert-inspired and instrument-specific dimensions, an approach based on the measurement of universal semantic categories (in this case, Ostrom's rules) allows us to reach an unprecedented level of comparability—and validity. The increased validity of this procedure is also due to the fact that, in contrast to IOs, we are careful to avoid mixing design and implementation features. Whereas an approach focused solely on design has its own limitations (see Chapter 2), it allows us to achieve higher construct validity as we, first, form the concept (instruments' design) and, second, tackle an empirical corpus (the legal bases disciplining the instruments) which perfectly matches the concept and does not include aspects of implementation which are typically included in IOs' measures. For us, the legal text is the faithful, and perhaps only, representation of design.

Furthermore, our approach does not involve expert opinions, either in the definition of relevant dimensions or in their scoring. In fact, while the answer to the questions above comes from different typologies of experts in the case of IOs, our identification of rules that belong to one or another Ostrom type is based exclusively on the legal texts that discipline the procedures. This, quite obviously, allows us to reach a degree of reliability that is simply impossible to achieve in the case of (mutable) experts' answers.

3.3 Data collection and validation

To gather data, we worked with a team of forty partners (mostly academic and professional administrative lawyers) who retrieved and translated institutional statements included in relevant legal bases of the four procedures. We also collected data on judicial review and administrative procedure acts, but in this book, we use them to describe the context (see Chapter 1) and to qualitatively describe individual cases evidenced by the formal analysis we present in Chapters 4, 5, and 6.

Our data points are statements extracted from the law, not answers to survey items. This, as already noted, increases the reliability and replicability of our approach to data collection. Our measures of instruments' design are based on the letter of the law, not on opinions that may reflect different positions (in government, as World Bank officer, and so on) and change over time (depending on the attitude of the government in office, for example). There is a difference between the number of lawyers and the

number of countries and instruments: many covered more than one instrument per country. This is because an expert on a country's FOI procedure often has expertise of that same place's ombudsman procedures. Similarly, impact assessment experts are also knowledgeable about consultation. And so, for some countries, we were able to select a single expert to cover all four instruments.

For each country we identified the legal bases of the rulemaking instruments in force as of 2018, plus the year of adoption, how many times it had changed, and whether there were additional legal bases for sectoral/local regulators. For the analysis that follows, we rely only on nationwide procedures, without considering subnational levels of government and policy sectors (as we noted in Chapter 2). These legal bases are grounded in hard law or on soft law guidance documents. We did not differentiate between these when identifying the rules in the population, although our data tells us whether a rule comes from soft or hard law.

The forty experts completed a protocol for each instrument reporting the exact text of the portion of the legal base corresponding to a rule type and inserting as many portions of legislation (articles, clauses, and sections of guidelines) which revealed a rule type.

In the process of data collection, we did *not* use the Institutional Grammar Tool (IGT) language directly to avoid super-imposing terms on the experts (most of them with qualifications in law rather than political science) that are open to diverse interpretations. Rather, we asked them in plain language to: (1) identify the actors involved in a procedure (for example, impact assessment) [position rules]; (2) define the characteristics of individuals or public bodies eligible to perform a role in the procedure [boundary rules]; (3) specify the actions and choices that actors can make according to the legal base [choice rules]; (4) identify actions that require the aggregation of two or more actors [aggregation rules]; (5) list the information sent or received in the procedure, including the channels of communication [information rules]; (6) report the statements containing sanctions and rewards [pay-off rules]; and (7) identify the range of possible outcomes or targets and the level of specificity of the desirable outcomes [scope rules]. The experts also provided a flowchart of each procedure which enabled the identification of the essential steps in each administrative procedure while also offering the bigger picture of the process. Finally, they recorded details of various dimensions relevant to the individual instrument or the context of administrative law in that country. This was done using open-ended questions. To support the completion of the tasks, we relied on clearly written instructions further explained in a webinar, a one-day in-person

workshop on the protocols, plus a number of on demand online one-to-one sessions.

The 112 (28 x 4) protocols were validated by four members of the research team[3] working in pairs with the additional guidance of the legal scholars from the project's advisory board.[4] Working in pairs to increase the reliability of the categorization, we validated all the protocols. In practice, we (re)allocated the extracted statements to the IGT categories. When necessary, we went back to the lawyers to ask precise, factual questions regarding the legal bases, or the accuracy of the translation from the original language into English.

The result was four data architectures. These architectures contain:

- 33 rules/variables for Consultation,
- 45 rules/variables for RIA,
- 64 rules/variables for FOI,
- 61 rules/variables for ombudsman procedures.

These are mainly 'Yes' or 'No' micro-procedural items which reflect the rules extracted from the legal bases. We followed Ostrom's approach outlined in her 2005 book (in particular Chapter 8, pp. 223–226). To take stock of the diversity in boundary rules observed across a population of Common Pool Resource (CPR) arrangements, Ostrom simply extracted all the boundary rules found across all the cases and computed a total of empirically observed boundary rules for that population. Our transition from statements to variables follows this logic. When we look at individual cases (countries), each of the rules represents a variable measured in terms of presence/absence.

In addition to the variables based on Ostrom's rule types, we collected a small number of background items detailing, for instance, year of adoption, the presence of a hard as opposed to soft legal base, or the regional/sectorial coverage of the instruments.

This approach, based on original legal texts and rule typologies, cannot be considered a form of coding in the style of coding framework set out in the institutional grammar 2.0 codebook (Frantz and Siddiki 2020).[5] Rather, ours

[3] This was Dunlop, Kamkhaji, Radaelli, and Taffoni.

[4] This was Herwig Hoffmann and Jacques Ziller.

[5] Our choice is due to the fact that rule types are more conducive to conceptualize action situations than the ADICO categories. In fact, '[r]ules are part of the underlying structure that constitute a single-action situation or a series of them' (Ostrom 2005: 179). In Ostrom's words, rule type categorization is 'a way of consistently grouping rules so that the analysis of rule systems can be made much more cumulative' and, we add, comparative (Ostrom 2005: 175). Moreover, the theoretical framework of reference is IAD, not IGT *per se*: 'If one wishes to use the syntax as a foundation, this leaves one with the AIM element of a rule to be used. And this is our plan. Although … the syntax fits regulatory rules better than generative rules, generative rules still do have an AIM, so a sorting mechanism that uses the AIM works for generative

is a form of *categorization* which relies on a semantic classification scheme with legal experts reporting the rule types in our protocol.

Table 3.1 and its corresponding heatmap in Figure 3.1 provide initial insights into the density of rule types across the four instruments. **Pay-off and aggregation rules** are rare in all countries. This points to limited reach of the design in terms of scrutiny, oversight, sanctions and rewards. There are few sanctions related to not performing according to guidance or rewards for good practice. For example, the only aggregation moment for FOI concerns specialist cases of consultations with third parties when dealing with information that may impact them adversely.

For the rest of the types, the picture is mixed. **Position rules** are a case in point. The designs of FOI and ombudsman display conventional positions that determine who can participate. Take FOI where four positions recur: (i) the requestor (usually the public in some form); (ii) a public authority; (iii) a specialized information appellate body—usually called the Information Commissioner (IC), and; (iv) a designated information handler that sometimes exists in the bureau or within each public authority. The ombudsman is similar with three clearly codified positions: the ombudsman, the complainant, and the investigated public body. The degree to which positions are designated is lighter in consultation and impact assessment.

In RIA, the position of who carries out the assessment ranges from the 'individual officer', the 'competent administration' (Estonia, Lithuania, Italy), the 'initiator of the act or external contractor' (Romania) to more generic references to decision-making in cabinet (Spain). Specific positions are sometimes assigned to Treasury (control on the costs of proposed legislation), the Ministry of Justice (control on the quality of legislation), the legal service (Cyprus), and independent regulators. In consultation, there is no identification of who exactly carries out the procedure in a number of countries, including Austria, the Czech Republic, and Denmark. By contrast, countries such as Bulgaria define the position of 'the drafting authority' with some precision—this authority can be a central government department or an independent regulator. In federal countries, position rules include subnational authorities.

rules too. And, it works for all three levels of the IAD framework' (Ostrom 2005: 188). Therefore, rule types can be seen as the key tool for generalizing IAD: 'As institutional analysts … we need to devise a method that draws on the general Institutional Analysis and Development (IAD) framework to help link rules to the action situations they constitute' (p. 186). Additionally, and most importantly, rule typologies are conceived as a classification of rules by their AIM, which is one of the ADICO component. The concepts hence are not only genealogically related but actually rule types (as an instrument of classification) generalizes one of the ADICO components (see Ostrom 2005: 185) after careful reflection on what of the ADICO components better lends itself to a semantic generalization (p. 188).

Table 3.1 Number of Rules by Instrument

	Position	Boundary	Choice	Aggregation	Information	Pay-off	Scope	Total
Consultation	7	4	8	0	6	0	8	33
	21.21%	12.12%	24.24%	0	18.18%	0	24.24%	100%
RIA	10	7	17	0	4	1	6	45
	22.22%	15.56%	37.78%	0	8.89%	2.22%	13.33%	100%
FOI	3	23	16	1	12	5	4	64
	4.69%	35.94%	25%	1.56%	18.75%	7.81%	6.25%	100%
Ombudsman	2	17	26	3	8	4	1	61
	3.28%	27.87%	40.98%	4.92%	13.11%	6.56%	1.64%	100%

Source: Authors

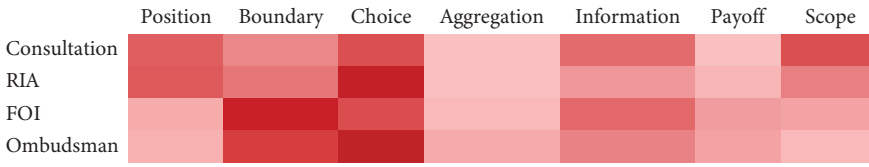

Figure 3.1 Heatmap of Number of Rules by Instrument

FOI and the ombudsman are heavy on **boundary rules**, whereas consultation and impact assessment set fewer barriers. Indeed, with these two instruments we enter a world of conditions, exceptions, and exemptions where definite eligibility criteria are attached to each of the positions. In the case of FOI, for example, these rules offer precision on who can request and what constitutes a public authority and an information commissioner. We also find the boundaries of the information and/or documents themselves. This is one of the central dimensions where FOI varies across the world—so-called 'class tests' and 'harm tests'. In essence, these cover the exemptions—which can be either mandatory or discretionary—to particular categories of information (class) or information the release of which it is judged may risk harm to certain functions of the state. In ombudsman procedures, boundaries to eligibility similarly apply to the complainant, in the form of demonstrating a personal interest/suffered violation and of filing the complaint within a specified time frame (typically one year), and to the public administration, in the form of exempted bodies.

Choice rules feature strongly in all four instruments. For consultation and impact assessment, these rules refer to the steps of the procedures. These are mostly procedural-analytical steps and tests in IA, such as measuring the baseline and examining more than one option. In consultation, choice rules deal with identification of parties, notification, consultation timetable, and other steps, including in some cases (for example, Bulgaria) seeking experts' opinions. In FOI, requestors' obligations and rights revolve around information reuse and appeals. For public authorities, disclosure actions, rules of engagement with the requestor, reporting requirements, and obligations in the appeals process all have prominence here. Where an Information Commissioner (IC) exists, choice rules concern the nature of their decision-making—binding or not—the extent of their powers, and, again, reporting activities. In the ombudsman, where we see the greatest number (41%), they mainly reflect two key aspects of the procedure. First, the investigative functions of the ombudsman which trigger the relational aspect of the

action situation. Second, the overarching dimension of remedies. Indeed, the accountability potential of the ombudsman is muted lacking clear rules which discipline the means through which cases of maladministration or violation of individual rights can be mended. This is also the reason the ombudsman is comparatively the instrument featuring most aggregation and pay-off rules (although few).

As we would expect from an information tool, in FOI, **information rules** are abundant. They cover a vast range of details regarding the timing, format, record management procedures and the clarity of the process. But all procedures contemplate information rules, given that they are contingent on increasing transparency, notifying, giving reasons, and displaying evidence utilized by the government and the regulators.

Finally, turning to **scope rules**, statements on the overall aims and outcomes to be achieved are scarce in instruments grounded in codified law—that is, FOI and ombudsman. Discussions about the scope of the instrument are found in the legislative and political debates that pre-date the instruments' design and enactment. The picture on scope rules is different for consultation and impact assessment. As instruments typically set in guidelines rather than law, motivations and aims are recorded to underline their importance. Consultation in particular is the instrument through which governments send signals and generate expectations about the involvement of a range of interests and preferences that are enfranchised by design. In contrast to other ways of influencing the legislator or rulemaker, consultation is where the legal base provides for access to draft rules of 'any citizen', 'interests not directly affected' and 'citizens of other countries that may be affected' (this wording occurs in the legal base). This is also the procedure with the lowest number of rules, which signals the presence of degrees of freedom in how to carry out consultation as well as reflecting the fact that consultation guidance is generally short and, in many cases, embedded in RIA.

3.4 Reducing complexity through Principal Component Analysis (PCA)

To reveal the key dimensions of each policy instrument, we used Principal Component Analysis (PCA) (see Table 3.2). This was instrumental in developing a quantification of higher-order concepts which then were used for our QCA analysis. As a technique, PCA is meant to reduce the dimensionality of data when manifest variables are correlated. As such, it enables the reduction of redundant information and the identification of principal components

Table 3.2 Principal Component Analysis: Consultation, RIA, FOI, and Ombudsman

Consultation				Regulatory Impact Assessment			
Principal components	**Share of explained variance (cumulative)**	**Loading variables and coefficients**	**Type of rule**	**Principal components**	**Share of explained variance (cumulative)**	**Loading variables and coefficients**	**Type of rule**
1) Commitment	28.2%	• Is there a generally applicable, nationwide, cross-cutting legal base for consultation? (.901)	• Background	**1) Breadth of exceptions**	27%	• Does the legal base set exceptions for: International treaties, Constitution, EU, and for federal countries regulations concerning multilevel governance (.878)	• Boundary
		• Does the Drafting Authority (DA) have to set a consultation timetable? (.875)	• Choice			• Regulations with a mere formal nature and self-regulation of the government (.816)	• Boundary
		• Does the DA have to publish a report on comments filed by the CEs (consultation report)? (.888)	• Information			• Urgency (.815)	• Boundary
						• State budget (.705)	

Continued

Table 3.2 *Continued*

Consultation				Regulatory Impact Assessment			
Principal components	**Share of explained variance (cumulative)**	**Loading variables and coefficients**	**Type of rule**	**Principal components**	**Share of explained variance (cumulative)**	**Loading variables and coefficients**	**Type of rule**
2) Scope	25.9% (54.1%)	• Does the legal base spell out inclusiveness of groups that may not be directly affected as aim of the consultation procedure? (.782)	• Scope	**2) Analysis**	15.5% (42.5%)	• Does the legal base contain requirements to analyse the status quo? (.912)	• Choice
		• Does the legal base spell out avoiding discrimination as aim of the consultation procedure? (.917)	• Scope			• Does the legal base contain a requirement to compare, identify or commensurate benefits and costs? (.793)	• Choice
		• Does the legal base spell out understanding via plain language as aim of the consultation procedure? (.862)	• Scope				
				3) Responsibility	13.2% (55.7%)	• Does the legal base mention line departments (as drafting authorities)? (.872)	• Position
						• Are draft IAs published? (.832)	• Information

1) Information Commissioner: Presence, powers and paperwork	22%	• Presence / absence of dedicated information commissioner (.804)	• Position
		• Are information commissioner decisions binding? (.796)	• Choice
		• Does the information commissioner have inspection powers? (.867)	• Choice
		• Can the information review classified documents? (.907)	• Choice
		• Must the information commissioner report to legislature? (.889)	• Choice
		• Is there a documented appeal process in the legislation? (.859)	• Information
		• Is there a clear timeline for appeal in the legislation? (.821)	• Information
		• Does the legislation require the sharing of best practice by a dedicated body? (.727)	• Scope
1) Remedies	27.7%	• Can the OM issue binding recommendations? (.797)	• Choice
		• Upon receiving an OM recommendation, is there a specific deadline for the concerned public body to comply? (.924)	• Choice
		• Is the concerned public body obliged to comply with the OM's recommendations by notifying her about actions taken? (.939)	• Information

Continued

Table 3.2 *Continued*

Consultation				Regulatory Impact Assessment			
Principal components	**Share of explained variance (cumulative)**	**Loading variables and coefficients**	**Type of rule**	**Principal components**	**Share of explained variance (cumulative)**	**Loading variables and coefficients**	**Type of rule**
2) Boundaries of discretionary harm tests	18% (40%)	• Does the legal base give government discretion to deny information that could cause harm to persons? (.890)	• Boundary	**2) Breadth of accountability**	18.7% (46.4%)	• Does the legal base put private entities performing public functions under the OM's jurisdiction? (.879)	• Boundary
		• Does the legal base give government discretion to deny information that could cause harm to international relations and defence? (.968)	• Boundary			• Is the periodic report to the body which appoints the OM public? (.875)	• Boundary
		• Does the legal base give government discretion to deny information that could cause harm to commercial competitiveness? (.890)	• Boundary				
		• Does the legal base give government discretion to deny information that could cause harm to national economic interests? (.871)	• Boundary				

		• Does the legal base give government discretion to deny information that could cause harm to the activities of law enforcement agencies? (.968)	• Boundary				
3) Boundaries of mandatory and discretionary class tests	12% (52%)	• Does the legal base contain a mandatory class test on information and documents pertaining to national security? (.775)	• Boundary	**3) (Ecological) boundaries**	14.3% (60.7%)	• Does the complainant have to hold a personal interest to be allowed to file a complaint? (.834)	• Boundary
		• Does the legal base include a mandatory class test on information and documents pertaining to national economic competitiveness? (.761)	• Boundary			• Does an ongoing judicial procedure prevent the OM from launching an investigation? (.849)	• Boundary
		• Does the legal base contain discretionary class tests on information and documents pertaining to national security? (−.874)	• Boundary				
		• Does the legal base contain discretionary class tests on information and documents pertaining to personal information? (−.843)	• Boundary				

Source: Authors' own

(Jolliffe 2002; Lever, Krzywinski, and Altman 2017). These components are computed as orthogonal linear transformations of the original manifest variables and are used to reveal a simpler internal structure of the data. The type of PCAs we have employed are based on the correlation matrixes and resort to a so-called varimax rotation of the components. As such, this technique maximizes the variance in the data as we want our principal components to represent those dimensions that most explain variation across our twenty-eight cases.

A detailed discussion of the technical and conceptual aspects of the four PCAs is featured in Section 4 of this chapter and in Section 1 of the online Appendix. Below, we outline the results of these analyses by reporting details on the principal components retained for each instrument.

We adopted a very simple criterion for the retention of components for further analysis. We resorted to the criterion of more than 50% of explained variance (Jolliffe 2002). This threshold is reached with the first two components for consultation and with the first three for the other instruments.

3.4.1 Principal Components in consultation

Variation in consultation designs is driven by two components that capture fundamental features of this instrument as well as the importance of certain types of rules. The first principal component (PC1) concerns commitment. We identify a first 'background rule' that is not captured by Ostrom's type but is essential in our case, because we deal with two different approaches to consultation. Some countries follow a formal approach, based on provisions contained in either hard law or soft law, or in some cases both. These provisions describe the steps and actions of the government during consultation, no matter what sector is considered. In the other set of countries either informality is the guiding principle for consultation or there is no consultation at all.

The second rule loading on the commitment component is a choice rule that commits the departments or agencies to the production of a timetable at the beginning of each consultation. Some countries do not have a rule type like this because the timetable is uniform for all consultations and fixed by law or government's decision (UK). Others do not have the timetable rule because departments and agencies organize consultation with some flexibility and informality (Sweden). The third commitment component concerns the provision of information relevant for the overall credibility of the exercise, that is, the drafting authority publishes a report at the end of consultation showing how the comments raised by the stakeholders are taken into consideration.

Together, these three rules signal the commitment of the government to consultation—hence the label of this component. In the language of Ostrom's IGT, commitment is a combination of uniform cross-sector standards that create expectations about the process, choice and information.

The second principal component (PC2) for consultation concerns the IGT category of scope. We find three scope rules. They open up consultation to interests that otherwise would not be considered—the interests of those who are not directly affected, who would be discriminated against, and who would not understand draft legislation because of technical language. The design of consultation is among other things a signal of openness and non-discrimination.

The distribution of twenty-eight countries on the two principal components is portrayed in the first square of Figure 3.2.

Most countries cluster in the lower quadrants, meaning that few invest in scope rules. Italy, Cyprus and the UK are in the upper part of the figure, but in different positions in relation to PC2 on scope. The case of Italy is one of investment in scope rules but not in commitment. We suggest this is indicative of a flowery language regarding the virtues of consultation without specific obligations (Italy is low on scope). Cyprus has high scores on both scope and commitment. The legal base for consultation is indeed one of the richest we have found in our population—it even contains an obligation to write 'thank you letters' to those who have taken part in the exercise! This over-presence of rules may be the result of trying to describe the most idealistic, perhaps unrealistic, consultation structure. The OECD 2021 indicators, which consider implementation of guidance as one dimension, put Cyprus in the category of low performers in stakeholder engagement (OECD 2022).

In the lower part of the figure, and to the east, we find countries that have historically championed informal consultation, quite different from 'better regulation' OECD-style (Dunlop et al. 2020), either because of informality (Denmark, see Radaelli 2010) or corporatism (Austria). Sweden has its own approach—based on delegation of consultation on secondary legislation to regulatory authorities and, for primary legislation, consultation via committees of inquiry and hearings. This approach does not contemplate the steps and formalities presupposed by the typical OECD and EU practice (Radaelli 2009, 2010).

The south-west quadrant displays twelve countries that have high scores of commitment and low values on scope. We read this first of all as evidence of convergence across systems that do not share historical traits in terms of diffusion of administrative law or membership of the EU—both a founding member of the EU (Germany) and the most recent entrant (Croatia) are in this group.

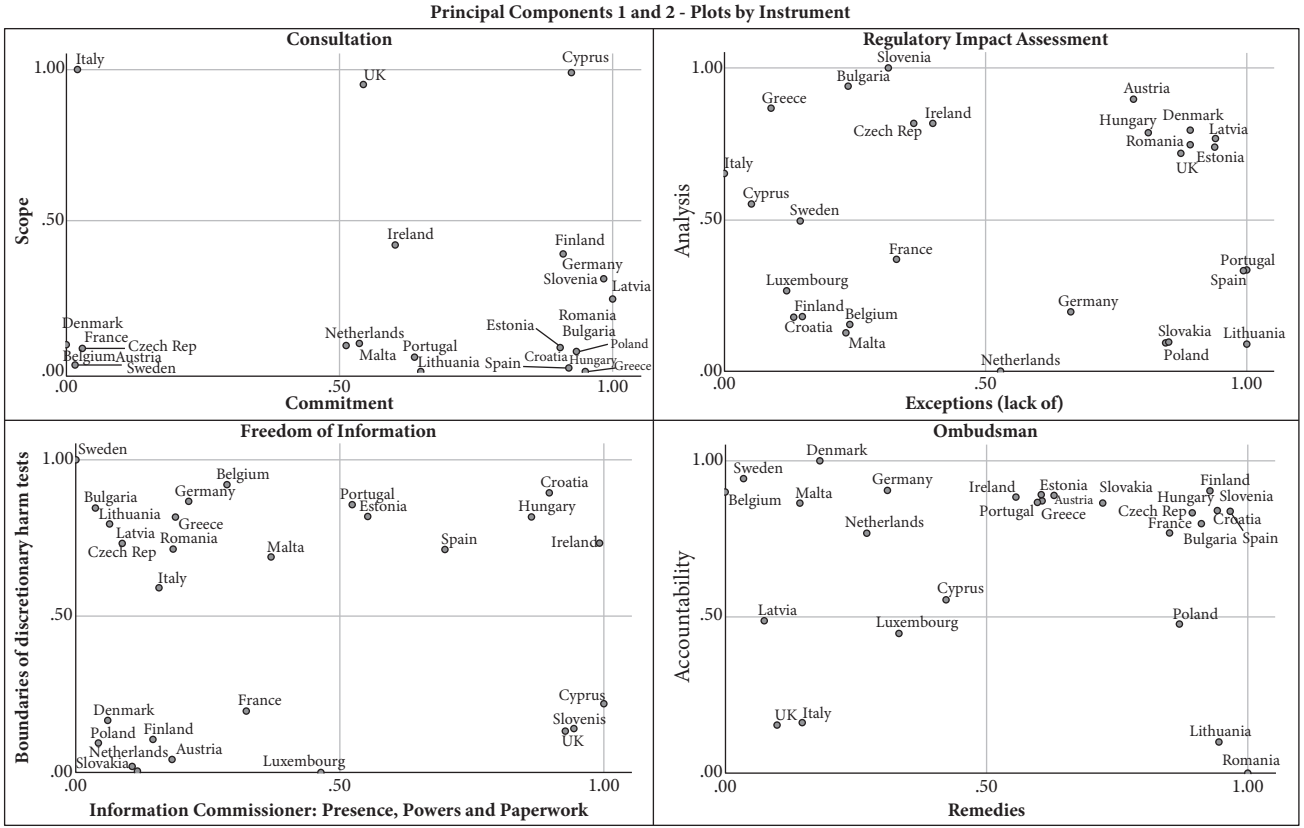

Figure 3.2 Principal Components 1 and 2: Plots by Instrument.

Notes: For plotting the cases along the first two components we utilized PC regression scores, a so-called 'refined method'. The scores were standardized to range from 0 to 1 to improve interpretability. See Section 5 of this chapter for a more detailed explanation.

Source: Author's own

Consultation does not follow any conventional narrative. The countries are not displayed in ways that resemble our knowledge of pressure group systems (social dialogue and corporatism versus pluralism) or old versus new member states of the EU. And second, the map points to a prevalence of commitment over declaratory functions of the legal base.

3.4.2 Principal Components of Regulatory Impact Assessment (RIA)

We now examine the components of RIA (Table 3.2 and second square of Figure 3.2). PC1 concerns the breadth of exceptions. It has a clearly discernible IGT value: it is about the boundaries. It is made up of four types of exceptions—cases in which the government does not have to carry out an impact assessment. Exceptions are the most important boundary rule. There are few boundaries of the 'who' of impact assessment—generally the position rule is the relevant government department, pure and simple. Instead, the boundaries concern the 'what', that is, the contours of the assessment.

RIA's second principal component (PC2) concerns two analytical requirements. This component assembles the initial test on the status quo—which in the legal base is sometimes described as identification of the current regulatory-legal base, or definition of the problem that needs to be addressed—and the benefit–cost criterion. In our population, the latter is not formal benefit–cost analysis, but rather a requirement to measure positive and negative impacts, or take into consideration some categories of qualitative benefits, or justify costs with the benefits accruing from the chosen option (or from a range of feasible options). The IGT lens shows the nature of choice rules in RIA.

Finally, the third component (PC3) labelled 'responsibility' is about 'who' carries out the assessment. In some cases, the legal base is silent assuming that RIA shall be done, without clarifying who exactly will take responsibility. The publication of draft impact assessments is another step that points towards responsibility. Some governments do not publish RIA either because they do not have this instrument (except that in special sectors like the environment or for a type of companies, such as Malta with the Small Business Act) or because the process of appraising the likely effects of proposals is not formal. In IGT terms, this issue of responsibility is a combination of position and information rules.

Turning to the distribution of countries portrayed in the second square of Figure 3.2, the design of RIA is analytical (PC2) and carried out across the board (PC1) in seven countries that differ by administrative traditions

and experience. Communications with our experts in Romania and Hungary point to the likelihood of 'communication out of character'. The legal base was inspired by the OECD–EU principles of regulatory reform, however, there are administrative capacity issues on the ground in these two countries (World Bank 2015; personal communications with project experts February 2020). In the north-west quadrant the countries are more distanced. Here, impact assessment is not carried out across the board, but when it is done it is comprehensive. Boundaries may then signal sector-level meticulous guidelines (for example, the gas and electricity sectors in Italy).

The south-west quadrant suggests a low density of IGT rules (at least as far as the first two RIA components are portrayed). The boundaries are low because the RIA procedure is barely sketched (Belgium, Malta, Luxembourg) and because there is a preference for informality (Finland).

3.4.3 Principal Components of Freedom of Information (FOI)

Variation in FOI legislation is accounted for by two features—the presence, powers and paperwork associated with a dedicated independent supervisory body (Information Commissioner [IC]) that may exist as an audience for appeals and the boundaries concerning what documents and/or information are exempt from disclosure.

The first principal component (PC1) is comprised of eight variables revealing the pivotal importance of the IC position. Central to an IC's operation are the choice rules attached to that role and specifically, whether: its decisions are binding, it has inspection powers, and it must report annually to the legislature. Added to this, information rules concerning the existence of a delineated appeal process and timeline account for diversity. Finally, we have a single scope rule usually associated with the IC as an engine for the sharing of best practice. In short, this is a microcosmic action situation concerning the operation (or not) of a dedicated FOI appeals process within the overall instrumentation.

The second and third principal components (PC2) and (PC3) underline the importance of the presence or absence clauses in the law that exempt information—harm and class tests. FOI legislation contains an array of these tests but this analysis cuts through the complexity. PC2 shows that one set of boundaries that matter is the absence of discretionary harm tests across five main categories (Blanke and Perlingeiro 2018: 33–38; Muscar and Cottier 2017; OECD 2011). These are harm to persons; international relations; commercial competitiveness; economic interests; and the activities

of law enforcement agencies. PC3 similarly focuses attention on the boundary rules that dominate FOI. This time we are dealing with the presence or absence of tests around entire classifications of information and whether these are mandatory (in relation to national security and economic competitiveness) and discretionary (in relation to national security, personal data, and commercial confidentiality).

The data suggests that the mix of other rules—choice, information, and scope—matters *but* only as they relate to the presence or absence of one position—the Information Commissioner (IC). Despite the fact that scope rules account for only 6% of the FOI content analysed and are rare in this policy instrument, they do matter in connection to the presence of an IC to operationalize them. And, while information rules are in abundance in FOI legislation (accounting for nearly a fifth of our data structure), they do not drive cross-national variation even though there is a good deal of diversity in these rules across the twenty-eight cases. Rather, their importance only relates to the issue of appeals.

Staying on the theme of surprises, when we consider the legal literature on FOI legislative design, there are some variables that are assumed to make a difference between countries but just do not figure here (despite considerable cross-national variation). These include: whether the legal text gives requestors access to both information and specific administrative documents (Dragos, Kovač, and Marseille 2019); the presence of a so-called public interest over-ride invoked as a final check before exceptions are applied (Banisar 2006); the presence of fees for information access (Banisar 2006); and the sanctions imposed for violations of FOI legislation (Blanke and Perlingeiro 2018: 58–60).

When we look at the two main FOI components, the twenty-eight cases fall into distinct zones (see the third square of Figure 3.2). Taking the bird's-eye view, as we move eastward we encounter countries with an IC whose powers are considerable and with an appeal process whose rules are clear (the ideal type being the UK[6]). As we move northward, we find fewer and eventually no discretionary harm tests (the archetype being Sweden). The north-west quadrant contains the largest concentration of countries—nine in total. Eight countries lack any dedicated IC and there is an (almost total) absence of discretionary harm tests in the five main areas (with the exception of Italy which invokes these tests for documentation in relation to personal affairs and commercial confidentiality). Though Germany does have the position

[6] We should be clear that despite using the UK label, the legislation coded for this study is the England, Wales, and Northern Ireland Freedom of Information Act 2000. Owing to its distinct legal system (combination of common and civil law), public authorities in Scotland are covered by separate legislation, though it is similar (Freedom of Information [Scotland] Act 2002).

of IC, it has none of the powers or explication of appeals process we see in countries in the eastern side of the figure.

The four countries in the north-east quadrant are united by the presence of dedicated IC—some with binding powers and other not (Hungary and Spain). For almost all, discretionary harm tests in the five main areas (Ireland excepted which retains the right to withhold documents it judges may harm national economic competitiveness).

The south-east quadrant has only three countries. Here, discretionary harm tests in the main areas exist (with the exception of Cyprus which has three of the five tests) combined with a dedicated IC with considerable and binding powers in all cases. The six countries in the south-west quadrant have discretionary harm tests in the five main areas but do not have a dedicated IC. With the exception of Austria and Belgium, appeals in these countries are made through the administrative courts and/or ombudsman procedures.

When we lift our gaze from the specifics, and compare the countries found in each quadrant, the analysis offers some unexpected affinities. For example, in the north-west quadrant, we find member states from different regions and different times of EU accession—Scandinavia (Sweden), Central and Eastern Europe (CEE) (Bulgaria, Czech Republic, Romania), the Baltics (Latvia, Lithuania), Southern Europe (Greece), and founding EU countries (Germany, Italy). Such diversity undermines any notions we might have about carbon-copying of legislation taking place during waves of EU enlargement. Moreover, the plot also questions notions of tools based on legal families—for example, the north-east and south-east zones each contain mixed of civil (Croatia, Hungary, Slovenia, and Spain) and common law countries (Cyprus, Ireland, and UK).

One reason for this varied picture, and apparently unlikely affinities between countries, is the politicized nature of the development of FOI legislation. This is a high salience administrative tool whose legislative development and design is subject to intense and forensic scrutiny by a diverse range of policy actors, as shown by Worthy (2017) with reference to Britain. The result is legislation which is not carbon-copied from neighbouring jurisdictions or drawn down from legal principles alone.

3.4.4 Principal Components of the ombudsman

The key sources of variation in ombudsman broadly confirm our expectations. The first principal component (PC1) on remedies explains more than a quarter of the overall variance. It is comprised of two choice rules and

one information rule. These capture the dialectic relationship that unfolds between the ombudsman and the public bodies to which recommendations are addressed. This is not a surprise: choice and information rules represent together 54% of all ombudsman rule types. The IGT implications are clear: the procedural aspect of ombudsman recommendations (also including the exchange of information between the parties after the decision of the ombudsman) is the most prominent in explaining variation in design.

The distribution of cases along PC1 (see the fourth square of Figure 3.2) confirms this intuition as it reveals the existence of the expected divide between political systems where the oversight potential of ombudsman procedures is expressed though informality and high mutual trust between the parties (mainly in old democracies) and systems where the ombudsman is vested with quasi-judiciary coercive prerogatives (mainly new democracies). This divide corroborates the argument about different waves of diffusion (Gregory and Giddings 2000) with late (and harder) adopters clustering in the right part of the plot.

PC2 brings together different forms of accountability. First, there is accountability of the ombudsman with regard to the body that appoints them as well as the public at large. The publicity of the ombudsman annual reports, in fact, typically brings to the fore all the cases of maladministration treated by the office before the Parliament and the public. This provides incentives for further usage by the public (Diamandouros 2006) and constitutes a form of 'name and shame' for the public bodies whose actions were reprimanded, even lacking manifest hard sanctions. The second form of accountability concerns the boundaries of the ombudsman jurisdiction, namely its authority over private bodies performing public functions. Clearly, countries that allow for both publicity of ombudsman reports and coverage of private entities (upper quadrants of the graph) score well in terms of accountability toward different positions.

Finally, the third set of principal components (PC3) includes eligibility criteria to access the ombudsman (boundary rules). Personal interest (as opposed to time boundaries) remains a cornerstone of ombuds' variability, as well as the incompatibility of ombudsman investigations with judicial procedures. The IGT implications of components two and three are less neat, but note that three of the four original variables loading into these components are boundary rules, bringing us back to our expectations about the centrality of choice and boundary rules for highly proceduralized and codified instruments.

The plot of ombudsman PCs points to low degrees of clustered convergence. Starting from the south-west quadrant, Italy and the UK stand out.

Although their designs are different, for PC1 (remedies) and PC2 (accountability) they are functionally equivalent. Italy only has regional institutions, without a central ombudsman. In the UK, access to the ombudsman is filtered by MPs, the set of available remedies is limited to non-binding recommendations and a vast number of regional/local and sectorial ombudsman institutions exist.

Moving up in the north-west quadrant, the countries remain quite distanced with no clear clustering. Yet, among them, we find four Scandinavian and Western/Northern European countries (Sweden, Denmark, Germany, and the Netherlands). These countries belong to the first wave of diffusion of the ombudsman institution and are (still) loyal to the original template: strong on accountability while drawing on informal and non-binding remedies.

The north-east quadrant, where accountability mechanisms are coupled with harder forms of recommendations, is the most populated with fourteen countries. The two groups of countries observed in this quadrant defy classifications like waves of diffusion and legal traditions. In fact, along with new democracies (mainly grouping in the right end side of the plot—as noted above) we find countries like France, Austria, and Finland. The lesson we draw is that the IGT's comparative logic, aptly expressed in our analysis through orthogonal/uncorrelated components, is truly configurational. As such, one aspect/dimension of policy design highlighted by IGT may converge with existing assumptions and taxonomies, while others may allow us to detect surprising similarities in design (as per the two groups of the north-west quadrant).

Finally, Poland, Lithuania, and Romania are in the south-east quadrant where the hardening of ombuds' remedies is coupled with weak accountability mechanisms. Interestingly, these are also the only countries where the ombudsman allows some form of direct sanctioning, indicating a potential (and dangerous) trade-off between direct enforcement mechanisms and accountability rules.

3.5 Transforming Principal Components to fuzzy set values

As we explained and motivated above, our overarching working hypothesis is that the design diversity we presented in the previous sections of this chapter matters for positive governance outcomes. More precisely, the different configurations and combinations of rulemaking instruments' design

features observed across the EU 27 plus the UK are associated with different levels of ease of doing business, perceived corruption and environmental performance.

In Chapter 2 we showed how we conceptualized and selected thereof the relevant rulemaking instruments, while in the present chapter we explained how we decided to measure their design diversity and presented static results. We termed our measuring effort an exercise in parsimony and synthesis. This exercise conceptually draws on Ostrom's action situation and methodologically on rule types. The latter allowed us to parse and categorize a large body of legal texts and institutional statements therein. To diminish (and make sense of) the empirical complexity we relied on a popular exploratory dimension reduction technique (Principal Component Analysis—PCA). PCA enabled us to capture those rules/statements (condensed in newly created variables, i.e. the Principal Components) which are key difference-making conditions within our population (technically speaking, those variables which represent the main sources of variability). In other words, we reduced the high number of instrument-specific manifest variables (see Table 3.2) to a limited number of components. We presented and explained this exercise in parsimony in the previous sections where we also used the first two components of each instrument—and their scores—to plot countries/cases on a bidimensional space. The following step, an exercise in synthesis, involves the transformation of Principal Components into conditions that then we calibrate into fuzzy set values which are useful for our main analytical method, Qualitative Comparative Analysis (QCA) in its fuzzy set version (fsQCA).

3.5.1 The conditions

In this section we introduce the conditions that constitute the core elements of our empirical investigation.

By leveraging rule types as a data collection device, we have created very granular pictures of the design features of the four instruments. Those pictures are ideal for in-depth qualitative analyses of individual countries and/or individual instruments, but they are not readily usable for countries' and/or instruments' comparisons. This is the because the granular data we have generated through rule types hardly lend themselves to be condensed in a single metric which, in the case of fsQCA, is represented by a score that indicates set membership of each country vis-à-vis each instrument. 'Set membership' in this sense refers to the circumstance that QCA operates through a

set-theoretic logic. This means that the components of the analysis (let us take 'consultation' as an example) are transformed into sets to which cases can more or less belong. In this language, a country case with highly proceduralized consultation procedures technically speaking belongs to 'the set of all countries with highly developed consultation procedures'. This is not just a particular way of speaking, but a specific methodological understanding of case description. Cases are related to sets, so that the analysis can proceed with sets as main analytical tool.

It is evident, however, that cases cannot only belong to a set or not, but that they can also belong to sets with different intensities. This differentiation is captured through fuzzy sets which allow to model different set memberships. Fuzzy values vary between 0 and 1. A case with a high fuzzy value of, say, 0.8 belongs to the set of countries with highly proceduralized consultation procedures, but it does not belong to it perfectly.

In very simple terms, the challenge we face is to assign each instrument in each country to such a (fuzzy) set. Doing this starting from forty or fifty variables would be both technically complex and conceptually risky. This is because not every rule possesses the same weight and importance in explaining intra-population variability. Incidentally, the PCAs were instrumental in clearly demonstrating this and in creating new variables (the Principal Components) which embed those manifest variable which play a major role in explaining overall variability.

These circumstances make the Principal Components the ideal devices to summarize, in a synthetic yet informative way, the information conveyed by the dozens of manifest variables we collected. Hence, the starting point of the operationalization of the instruments' design features into fuzzy set QCA conditions is deciding how many Principal Components to retain for each instrument. If we were using crisp sets which—different from fuzzy sets—are limited to the values 1 (full membership in the set, indicating a perfect presence of the concept for that case) and 0 (full non-membership, indicating a perfect absence), then the operationalization would be more straightforward. The challenge would be to decide, say, whether freedom of information in Croatia is a member in the set of all countries with high levels of freedom of information (value 1) or not (value 0). In that case, a simple consideration about the existence of freedom of information legislation in Croatia may suffice. Hence, absent FOI legislation, Croatia would be assigned a 0, whereas in presence of a (any …) FOI discipline it would be assigned a 1. As introduced above, fuzzy sets are more complex, as they allow for different degrees of set membership and therefore of presence/absence of the concept, allowing for a much more nuanced analysis, which is certainly more in line with our social

science thinking which is not only black and white but also refers to many greys in between (see also below for a more technical account).

But presence or absence of what, precisely? To answer this question, we need to go back to the instrument-specific Principal Components and show step by step how we selected them for the sake of fuzzy set calibration, and what they represent conceptually and in terms of manifest variables they embed.

Recall that PCA extracts as many components as manifest variables. As using all the PCs for subsequent analyses would not allow for any meaningful dimensional reduction, the specialized literature has developed a number of rules of thumb for principal components' retention. The most popular of such rules of thumb suggests retaining for further analyses all the component with an eigenvalue >1. Yet, rules of thumb are, by their very nature, not case-specific (in this case, dataset-specific) and hence are insensitive with respect to the nature/structure of the data. To illustrate, whereas a big sample size is required to extract meaningful components when manifest variables are mainly uncorrelated, this is not true when the variables are highly correlated (and this is the case of our four datasets). Similarly, the eigenvalue >1 rule is meaningful when a limited number of Principal Components have eigenvalues noticeably higher than 1, so that one or two Principal Components are enough to validly summarize population information. Yet, this is not our case. Hence, we decided to employ another more meaningful rule of thumb which suggests retaining those Principal Components which jointly explain more than the 50% of the dataset's variability.

There are several reasons for this choice, conceptual, practical and methodological. First, consider that the consultation dataset includes 36 manifest variables, the RIA one 48, the ombudsman (OM) one 44, and FOI one 72. Out of these high numbers of manifest variables, we have to distil four categorical conditions only, one per instrument.

In a previous study focusing on the link between consultation design and perceived corruption (Dunlop et al. 2020) and employing again fsQCA, we faced a similar challenge, that is, the need to devise a limited number of explanatory conditions (related to the design of consultation procedures) which are associated to levels of perceived corruption (our outcome variable). In that research, we were able to proceed qualitatively, that is selecting and weighting a subset of the thirty-six variables which constitute the design of consultation procedures. These selected rules ended up contributing to one of the four consultations conditions, broadly based on Ostrom's rule types: Thickness, Access, Information, and Choice. Now, in the context of an ecologic study which considers four procedures instead of one, the

conditions cannot represent aspects of a given instrument but have to convey information about the whole instrument: one instrument, one condition.

This, as already argued, poses a great challenge. Since one of the main qualities of the datasets we collected is granularity and therefore precision in the measurement of the smallest procedural aspects of the four policy-making instruments, we want to preserve as much as possible this quality while transitioning from micro-procedural items (e.g. does country X's RIA foresee the publication of drafts for comments?) to a single number used to assign set membership to that country. The approach we followed in Dunlop et al. (2020) unfortunately has to be ruled out due to the fact that we cannot use conditions to capture aspects/dimensions of an individual procedure, but we have to use them to capture the nature of the whole procedure. The options we are left with are two. One is to follow a qualitative approach where we browse the variables included in the four databases, select and weight a subset of them based on theoretical considerations, and then proceed to calibrate. This, as discussed, is quite time consuming and requires a number of arbitrary decisions which may undermine the quality of the data we collected.

The second option is definitely more practical and less prone to biased decisions and involves resorting to the PCs, their scores, and their shares of explained variance to develop weighted standardized country scores for each instrument. With these scores, then, we can easily calibrate conditions for the fsQCA.

Technically speaking, PCA being a variance-maximizing technique, when we rely on Principal Components we basically rely on the largest sources of variation of the databases. This is an inductive approach that allows to preserve some/much of the granularity of the Protego data. Technically, we decided to proceed as follows. The starting point is PC scores. In the context of PCA, they are calculated in various different ways and put simply the represent the score each case gets on the Principal Components (PCs). Remember that PCs are agglomerates of manifest variables, hence PC scores are computed starting from the original values each case gets on the variables included within that PC. For each of the four databases we retained only the components which allow to explain more than the 50% of the overall variance.

In practice, this means that we retained the first two Principal Components[7] of the Consultation PCA (54.1% of variance explained); the first three principal components of the RIA PCA (55.7% of variance explained); the first

[7] Recall that Principal Components are organized hierarchically according to the percentage of variance they explain.

three principal components of the FOI PCA (52% of variance explained); and the first three principal components of the ombudsman PCA (60.7% of variance explained). To develop a single index for each instrument and each case (i.e. an index score), we computed a weighted sum of the Principal Component Scores. The PC scores we used are the most used in the literature, that is, regression scores. Regression method simply weights the scores according to original variables' loadings on the PC.

The sum is weighted in that we employed the percentage of explained variance to balance the influence of each Principal Component in the final indexes. Technically, the weighted indexes were computed according to the following formula:

$$\text{Weighted index score}_i = \sum_{J=1}^{N} (\text{Principal Component Score}_{ij} * \text{variance explained}_j)$$

whereby the subscript, i, indicates the observation and the subscript, j, the principal component. The index is a hierarchically weighted aggregate of the principal components scores retained for each instrument (N=2 for consultation, N=3 for RIA, FOI and ombudsman). Because we are interested in variation, the components explaining major shares of variance in the dataset carry a greater weight. Then, we rescaled the new scores from 0–1 to make interpretation easier.

Equipped with these new weighted index scores, we standardized them to range from 0 to 1 and performed a calibration based on 6-tile rank transformation to obtain 6 fuzzy values as detailed in Table 3.3.

A few considerations on the rationale of fuzzy sets are in order. Fuzzy sets define a full membership in the set under research (fuzzy value of 1), full non-membership (fuzzy value of 0) and the point of indifference (fuzzy value of 0.5) where we do not know whether the case is rather a member of the set or not (Schneider and Wagemann 2012: 28). While this is also achieved with the dichotomous form of QCA—crisp-set QCA (csQCA)—the fuzzy set variant goes further and establishes gradings in between these qualitative anchors. Values between 0.5 and 1 indicate in how far the case belongs to the set in question, while values between 0.5 and 0 inform us about cases that do not belong to the set in question, albeit at different degrees. Spain, for example, has a full membership in the set of all countries with a strong ombudsman (fuzzy value of 1), fairly strong memberships in the sets of all countries with highly developed rules of impact assessment or freedom of information, respectively (both with fuzzy values of 0.8), while it is not a member of the set of countries with strong consultation procedures, but comes close to such a membership (fuzzy value of 0.4).

Table 3.3 Calibration of the Conditions

	CON	RIA	FOI	OM
Austria	0	0.8	0.4	0.6
Belgium	0	0.2	0	0.2
Bulgaria	0.6	0.6	0.2	0.8
Croatia	0.6	0.2	1	1
Cyprus	1	0.2	1	0.2
Czech Rep	0	0.4	0	0.8
Denmark	0	0.8	0.4	0.4
Estonia	0.6	1	0.6	0.6
Finland	1	0.2	0.6	1
France	0	0	0.8	0.8
Germany	1	0.4	0	0.4
Greece	0.4	0.4	0.2	0.6
Hungary	0.4	0.6	1	0.8
Ireland	0.8	0.8	0.8	0.6
Italy	0.8	0.2	0.2	0
Latvia	0.8	1	0.8	0
Lithuania	0.2	0.8	0.6	0.2
Luxembourg	0	0	0.6	0
Malta	0.4	0	0.4	0.4
Netherlands	0.2	0.4	0.2	0.4
Poland	0.6	0.6	0.6	0.4
Portugal	0.4	0.6	0.4	0.6
Romania	0.6	1	0.2	0.2
Slovakia	0.6	0.4	0.4	0.8
Slovenia	0.8	0.6	1	1
Spain	0.4	0.8	0.8	1
Sweden	0	0	0	0.2
UK	1	1	0.8	0

Source : Authors' own

In brief, fuzzy values

- of 1 indicate full set membership,
- between 0.5 and 1 rather membership than non-membership,
- of 0.5 complete indifference (and thus useless information),
- between 0 and 0.5 rather non-membership than membership,
- and of 0 full set non-membership.

The fuzzy values then become the data matrix of the QCA. Therefore, their definition and assignment to single cases (a process called 'calibration') is of utmost importance for every QCA and a decisive step. This step is nothing

else than the transformation of theoretically derived qualitative concepts into numbers between 0 and 1. Implicitly, this is done in any comparative research, while the formal way of a QCA forces the researcher to reason intensively about the single values. In a sense, this is a much more transparent and tractable way to speak about concepts than using superficial language markers such as 'consultation is strong in country XY'.

Interested readers will find an exhaustive explanation on the calibration of our outcomes and the four instruments which we use as explanatory factors in the online Appendix.

After having discussed the steps linked to our calibration, some terminology clarity is needed. High fuzzy values (such as 1, 0.8, or 0.6) mean high set membership values (the case is, at least partially, a member of that set). However, they also mean that the concept is rather present or, in the language of the Principal Component Analysis, that it scored well. By contrast, low fuzzy values (such as 0, 0.2 and 0.4) mean low set membership values (the case does not belong to that set, or only partially). Consequently, the concept is rather absent, and the case scores low in the PCA.

While this is very technical jargon, let us now verbalize what this substantially means. The following list provides a translation for what low fsQCA scores denote for each instrument (with the reverse translation for high scores).

- Consultation: the components we use to measure consultation design are Commitment and Scope. A low score/absence indicates that the design is silent/weak on government's commitment to good consultation practices and/or on general objectives of consultation (scope);
- RIA: the components are Breadth of exceptions, Analysis and Publicity. Absence/low score of a country's RIA means that there are many exceptions to its application and/or analytical requirements are weak/absent and/or RIA are typically not published;
- FOI: the components are Information Commissioner and two types of boundaries, respectively to harm and class tests. As a result, a low score/absence of FOI indicates the absence of the Commissioner (or its lack of powers) and/or the presence of many exceptions to FOI discipline;
- OM: the components are Remedies, Breadth of accountability, and Boundaries. A low score/absence hence indicates that the OM has no hard law remedies; and/or the OM has no power on private entities and no reporting obligations.

3.6 Analytical principles in a QCA

As mentioned, these conditions and the three governance outcomes (which are also defined through fuzzy sets) will be used for a QCA analysis. Through various set-theoretic techniques (for details, see Schneider and Wagemann 2012), paths will be identified that show which combinations of factors logically imply the outcome. To present it less technically: QCA will produce combinations of factors which render the outcome under research present (or absent); QCA works out all combinations of factors for which the outcome (such as the ease of doing business) is present. However, put like this, this sounds like just a condensation of empirical information. In other words, it sounds like a correlation in quantitatively inspired social science research which is an indication of causality, but not yet a full account on causality. This, indeed, is a fundamental problem of all social science research: over the centuries, the social sciences have produced very helpful tools to find different forms of correlation (captured as 'set relations' in QCA), but the establishment of causality poses challenges which go beyond algorithms. This is not different for QCA.

QCA results just indicate where to look for causal mechanisms. The argumentation on causal mechanisms inevitably refers to plausibility (Gerring 2010), but also to case knowledge. Once we know which combinations of explanatory factors are connected to which outcome, then we can identify the cases that are marked through such combinations of factors and use our case knowledge in order to explain *why* these combinations have led to the outcome. Often, such a procedure then results in the insight that, while different cases belong to the same combination of explanatory factors, different mechanisms or reasons are at work in the single cases. In a way, a QCA represents the results of a cross-case analysis similar to correlations in quantitative research (it is 'set relations' in QCA); what has to follow (in all research paradigms) is a case-based account. Twenty-seven EU countries plus the UK are real-existing realities which cannot be easily captured through formal recipes. Therefore, a good deal of case knowledge is necessary. The real explanation of the phenomenon can only occur through case analysis, with all its pros and cons. It necessarily has to remain vague and speculative, since it is the very essence of case analysis to consider case specificities.

In other words, the subsequent QCA analyses will first present the results on communalities and differences between the cases. This step will identify those combinations of conditions which imply the outcome. The verb 'imply' is deliberately used here, because we can only be sure about the formal

implication. In a subsequent step, we will extensively speak about the single combinations, connect them to country cases, and argue on the basis of our country case knowledge. In this sense, QCA is a truly case-oriented method.

One more clarification is on order: QCA is often used as a method which tries to identify causes of effects (Mahoney and Goertz 2006). We use it in this sense, but also partially invert the perspective: while we are certainly interested in finding the causes for our effects (i.e. the three outcomes), we acknowledge that our analysis might not capture *all* causes. So, we do not have the ambition to fully explain our outcomes. Rather, our interest is rather on the contribution of the four instruments to the explanation of our effects. In other words, additionally to looking for causes of effects, we are also interested in the effects of causes (= our instruments). We acknowledge a priori that we will omit variables, in order to stay within the well-known vocabulary (Radaelli and Wagemann 2019).

3.7 Conclusions

Our theory-informed approach to measurement provides a granular picture in three directions, which correspond to the research questions outlined earlier on: the distribution of rule types in the population as a whole, the IGT structure of each instrument, the variation across twenty-eight cases as accounted for by rule types, and data calibration for further analyses. The principal components are then used in the three following empirical chapters to create the conditions we need for fsQCA. This fsQCA will then identify those combinations of explanatory factors which imply the outcomes under research. Case-by-case analysis will shed light on the processes at work in the single country cases.

The findings on the underlying structure of the data allow us to see how far we are from comparative politics categories about civil and common law countries, varieties of capitalism, strength of pressure groups, Europeanization, and waves of accession to the EU (as per the discussion of expectations in Chapter 2). These empirical results challenge our conventional interpretation of cross-country variation in Europe. In our data, there is no alignment of countries around waves of Europeanization, families of administrative law, or liberal versus coordinated economies (see also Section 2 of Chapter 1 about the limited use of these categories). This reveals comparative political approaches may be suitable for macro-comparisons. Yet, when it comes to administrative law, regulation, and specific policy instruments, the explanation we found is more nuanced and, as we said, granular.

This last observation brings us to the limitations of the data. We do not examine sectors which can also be nationwide procedures. In several countries, independent regulators have their own guidance documents on impact assessment. In others, we find sectoral ombudsman offices, from insurance to banking and prisons, that we did not analyse. Finally, the *map* we present does not take into account of the evolution across the years. Though changes to FOI and ombudsman in the twenty-eight countries are rare and where they have happened have been incremental, change does happen, and certainly governments have overhauled their approach to consultation and impact assessment since the early days of the 1990s. Of course, when procedures change, the indicators mapping rule types change accordingly. Yet we can only capture the snapshot image of how these procedural instruments look in 2018.

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4
Regulatory Conditions for Business

4.1 Introduction

In this chapter we address the (surprisingly) understudied causal link behind the claim that underpins the rationale for regulatory reform: evidence-based, transparent, and inclusive rulemaking instruments deliver in terms of effective governance outcomes, in particular better regulatory conditions for doing business. We ask: what kind of ecology of designs of rulemaking instruments are associated with regulatory outcomes that improve doing business conditions? Although the evidence is scarce and inconclusive at best (Broughel and Hahn 2022; Coglianese 2012; OECD 2011; Parker and Kirkpatrick 2012), we expect, in line with the policy prescriptions of international organizations (IOs) such as the World Bank and the OECD, that a combination of instruments' design features that highlight the use of evidence, transparency, inclusiveness and stakeholder enfranchisement in rulemaking is causally connected to a better business environment.

The chapter is organized as follows. In Section 4.2 we introduce business regulation as a regulatory governance issue and discuss its prominence in the reform agendas of the last decades. In Section 4.3 we introduce Ease of Doing Business (EoDB) and causally connect it with rulemaking instruments' design, besides outlining the original contributions such an approach can provide to scholarship and practice. In Section 4.4 we present our operationalization of EoDB as outcome measure of a fuzzy set Qualitative Comparative Analysis (fsQCA). Section 4.5 presents the results of fsQCA, while Section 4.6 concludes.

4.2 The 'regulation of entry' as a regulatory reform problem

Ever since the 'The regulation of entry' was published in 2002 (Djankov et al. 2002), the design of regulatory policies have *entered* the economic mainstream. That famous paper presented a ranking of eighty-five countries based on a composite indicator measuring regulatory costs incurred by an

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imaginary representative start-up firm to begin operating in the capital city of a country. The key finding was:

> heavier business entry regulation associated with greater corruption and a larger unofficial economy, but not with better quality of private or public goods. We also find that the countries with less limited, less democratic, and more interventionist governments regulate entry more heavily, even controlling for the level of economic development. (Djankov et al. 2002: 35)

These findings started up a full-blown revolution as they constituted the basis for the World Bank's 'Doing Business' reports and scores. Indeed 'since 2006 when the Bank started tracking [Doing Business scores], countries have undertaken 3057 sets of reforms related to the Ease of Doing Business' (Doshi, Kelley, and Simmons 2019: 622).

Thanks to the explicit link with economic growth (Djankov, McLiesh, and Ramalho 2006; Jalilian, Kirkpatrick, and Parker 2007) and also the 'power of ranking' (Doshi, Kelley, and Simmons 2019), the toolbox of classic instruments governments use to influence the economy (monetary and fiscal policies) was widened to welcome a new guest. Macroeconomic stabilization, allocation, and redistribution—in a word, public finance—could rely on a supposedly new and Promethean agent: regulation. Promethean—because the implications of regulatory governance, we have learned in the last decades, easily extend beyond business regulation, and reach the territory of allocation and redistribution (Dworczak, Kominers, and Akbarpour 2021)—and to an extent even to the highly guarded land of macroeconomic stabilization (Braun and Hübner 2018; Caporaso et al. 2015).

The emergence of regulation to manage economic outcomes looks particularly well timed when we consider that the turn of the century was characterized by a series of international trends (deepening economic globalization and increasing interdependence, large-scale privatizations, and, for EU countries, monetary integration) that weakened the effectiveness of the classic fiscal and monetary levers for national governments. In that historical moment, the proactive and systemic management of regulation seemed to governments like a low-cost option to improve on economic performance, whether by deregulating, or by 'providing services without producing them' (Seidman and Gilmour 1986, 119).

In reality, the growth in the number and influence of regulation had already attracted scholarly interest well before Djankov et al.'s landmark study. The impact of regulation on the economy was an important theme of the US law and economics scholarship which in the 1980s described the

apparently never-ending growth of the US bureaucracy as the emergence of the regulatory state (Seidman and Gilmour 1986; Sunstein 1990). Thanks to the seminal work of Majone (1994, 1996) in Europe, by the mid-1990s, the regulatory state framework crossed the Atlantic Ocean and, besides gaining international traction and attention, had switched its status from mere descriptor of a trend to full-blown theoretical concept (Levi-Faur 2013). Yet, the profound debate around the alleged transition from a positive to a regulatory state (Majone 1997) was not the primary intellectual stimulus for governmental action. Rather, national and international regulatory reforms owe more to Djankov et al.'s (2002) empirical work. Their pragmatic comparative measurement of the regulatory state in action had palpable and immediate impacts on (global) reform trends.

In fact, the World Bank proved extremely quick in seizing on the novelty represented in 'The regulation of entry' as it was already working on some forms of international regulatory benchmarks (Doshi, Kelley, and Simmons 2019). In 2003, it created a team (led by Djankov) to drafting a *Doing Business* report measuring the costs of business regulation (and not only entry regulations) to firms across countries. The first report was published in 2004 covering 145 countries. The 2006 report was the first to explicitly include rankings. The 2020 report covers 190 countries. The report and rankings have been published annually since 2004 (until having been discontinued in 2021) and represented one of the flagship products of the World Bank. This is not only because EoDB scores and rankings have been used in thousands of scholarly and governmental publications but because, along with the methodology, the World Bank broadly also embraced the key policy advice stemming from 'The regulation of entry' and related scholarship.

The advice highlighted that reforms aimed at making business regulation lighter do not only foster business and investment-friendly environments but can also greatly contribute to economic growth:

> Our results have significant implications for policy. They suggest that countries should put priority on reforming their business regulations when designing growth policies. Measures of institutions currently used in the growth literature indicate the extent of problems but not how to fix them. By contrast the indicators in the Doing Business database are directly linked to specific reforms … Our findings imply that identifying and implementing such reforms can accelerate economic growth. (Djankov, McLiesh, and Ramalho 2006: 400)

As a result, besides funding the reports, the World Bank invested heavily, both monetarily and institutionally, also in crafting a reform agenda (as well

as transferrable reform packages) whereby policy specific EoDB reforms were openly promoted and advocated to member states as pro-growth tools. This leads to the staggering 3,000 plus EoDB reforms launched since 2006. This huge number of reforms were implemented, for the most part, by countries outside our population, that is, developing and emerging economies. Yet, they are indicative of an important direction of international reform agendas and of the new centrality of regulation in the political economy of the last two decades.

Within this massive universe of World Bank-inspired (and funded) reforms, along with reforms drawing on policy-specific advice, there are also more systemic reforms which concern not so much *policy* but *meta-policy*. This change of focus is certainly more familiar when we look at the 28 countries. In those countries, only marginally hit by the World Bank wave (see below for two exceptions—Poland and the UK), the key inputs for regulatory reform came from the overlapping influence of OECD's and EU Commission's advocacy aimed at reforming meta-regulatory instruments rather that at the transfer of policy.

In other words, more than by a Doing Business reform wave, the EU was hit by a smart/better regulation wave. Under that wave, the introduction and careful management of smart regulatory instruments was promoted with a view to advancing policy effectiveness and good governance, with improved business climate and overall economic performance as positive side effects. This was cognizant of the fact that mature EU countries are different from reform-hungry developing countries and also more ambitious in terms of good governance goals. Yet, as reasonable as it looks, the link between participatory, transparent, and evidence-based rulemaking instruments (as opposed to actual policies) and good regulatory conditions for business conditions has not been subject to any systematic empirical test. The present chapter addresses this gap.

4.3 From rulemaking instruments to ease of doing business

Though the causal mechanism we theorize as connecting specific combinations of design features of rulemaking instruments with ease of doing business is not new, it has never been fully tested empirically by measuring rulemaking conditions. Indeed, there is practically no literature in which any of the four instruments we are interested in feature alongside discussions of the doing business environment. Bibliographic searches of

their discussion in studies including any of the EU 27 countries or UK yielded three articles in total (with each referring to specific cases).[1]

We envisage the mechanism working as follows. Governments have the prerogative and power to use regulation to steer economic outcomes in a given direction. As Chapters 1 and 2 establish, the political objectives of governments cannot be translated one-to-one into regulation when the latter is (also) the output of participatory administrative procedures that govern the rulemaking process and constrain them. As these procedures enfranchise the public and make decision makers accountable to scientific and economic evidence (RIA), citizens' and stakeholders' input (consultation), and public scrutiny (FOI and OM), we expect that the regulations produced through these procedures, regardless of the political leaning of a government and its rent-seeking or benevolent ethos, will also be informed by the interests of those citizens and stakeholders who take active part to the rulemaking process or are given the opportunity to scrutinize it.

Although our measurement of administrative procedures is limited to how they are designed, we have already argued that design is not epiphenomenal, but it exerts distinct influences on implementation and behaviour (actual and potential).

And so, the general expectation we hold is that instruments' design features which foster decision makers' accountability to science and evidence, citizens' and stakeholders' input and public scrutiny lead to individual outputs (regulations and policies) that contribute to improve and facilitate business activity. Under a perspective where politicians and bureaucrats are rent-seeking actors, heavier regulation mainly benefit them, and participatory rulemaking instruments limit this bias. Under a public policy perspective, rulemaking instruments work as controls or fire alarms, simultaneously limiting bureaucratic and political drift.

Citizens and stakeholders enter rulemaking via, among other things, the four rulemaking instruments whose design we have dissected and measured. To be precise, citizens and stakeholders are given the *possibility* of participating in rulemaking by instruments' design, although they do not

[1] The following Web of Science™ searches were conducted (24 November 2022). 'freedom of information' AND 'ease of doing business' and 'freedom of information' AND 'business environment' were merged, duplicates removed, non-EU27+UK removed resulting in N=0. ombudsman AND 'ease of doing business' and ombudsman AND 'business environment' were merged, duplicates removed, non-EU27+UK removed resulting in N=0. 'regulatory impact assessment' AND 'ease of doing business' and 'regulatory impact assessment' AND 'business environment' were merged, duplicates removed, non-EU27+UK removed resulting in N=1 (a case of trade licensing in the Slovak Republic). Finally, consultation AND 'ease of doing business' and consultation AND 'business environment' were merged, duplicates removed, non-EU27+UK removed resulting in N=2 (one discussion of a case in Romanian and the other the Netherlands).

necessarily need to activate those inclusive rules-in-form (i.e. to actually participate into public consultation, or to file a FOI request, and so on) for them to have an effect. This is because rule makers will have to act *in the shadow* of these rules, regardless of their actual usage. In fact, instruments' design creates (indirect) accountability effects.

Consider how the landscape of public decision-making has been affected by the mere presence of the possibility for citizens to scrutinize in person the information that has led to a given decision through FOI. The same applies to the possibility of being consulted, or the requirement to document the potential impact of a policy against scientific evidence, or the possibility of putting administrative action under the lens of a third party (the ombudsman) without the need to activate costly and at time esoteric judicial procedures. In sum, when rule makers are exposed by meta-regulatory design to this kind of possible *tests*, the regulations they devise will be to an extent affected by the possible usage of them. In terms of regulatory conditions for business, the public's influence on rulemaking supposedly delivers leaner business regulation.

As we have noted, this is not a proven causal relationship but a reasonable hypothesis that needs scrupulous testing. The lack of a strong empirical basis for this hypothesis may look odd since it represents one of the key tenets of the regulatory reform templates and agendas of IOs. Hence, when empirically scrutinizing this relationship, we seek to provide usable knowledge to reform practitioners, as well as enlarging the boundaries of the toolbox governments can use to reach a given governance or societal outcome. This is for two main reasons. First, because FOI and OM are typically overlooked within the 'better regulation' agenda; second, because in our analyses we do not causally connect specific regulatory outputs and policies to good governance outcomes we investigate (whether it is ease of doing business, perception of corruption or environmental performance), but reason more broadly by testing the systemic and ecological effects of meta-regulatory instruments.

In that regard, by focusing specifically on the role of rulemaking instruments rather than on individual regulations and policies we believe we can: generate additional knowledge, provide improved policy advice, and be sensitive to the historical developments of regulatory reform in Europe.

In terms of additional knowledge, while the link between a decision to deregulate business licensing and improved business entry conditions is self-evident, we do not know whether, which (and which combination of), and how participatory rulemaking instruments may be conducive to generate that deregulatory decision by enfranchising stakeholders' interests. By dissecting and combining instruments' design and putting their empirical

combinations to a test against overarching governance and societal outcomes, we seek to unearth whether two decades of reform have actually led rulemaking to become structurally supportive of effective governance—and how.

Regarding improved policy advice, research on policy transfer and internationally inspired public policy reforms demonstrates how one-size-fit-all solutions are often poised to fail, both in advanced and emerging economies (Kirkpatrick 2016; Ladegaard, Lundkvist, and Kamkhaji 2018; Radaelli 2005). Policies and regulations are not 'plug-and-play' devices that can be transferred across countries and polities without contextual and historical considerations and considerable degrees of adaptation. By focusing on the design of four rulemaking procedures, we are targeting a relatively small subset of procedural administrative rules as opposed to entire policy or regulatory frameworks that govern, for instance, investors' protection or contracts' enforcement (two of the components of the Ease of Doing Business index). If certain empirical configurations of instruments' design are associated with effective governance outcomes and an effective governance outcome such as EoDB measures policy, this means that those design features contribute to the effective development of policy—without the need to transfer internationally accepted, one-size-fit-all policy (the elusive 'best practice'). This is exactly what we mean when we speak of 'procedural tools for effective governance': leveraging instruments' ecologies—rather than imported, emulated policies—can lead to successful governance outcomes.

The lesson for business climate practitioners and IOs is that it may be worth investing more in the rules of the game and in their ecology (combination of rulemaking instruments) rather than working on transferring actual policies. Moreover, the outcome may be the same and incur lower economic and political costs.

Finally, thinking about the European context specifically, we acknowledge that many EU countries and the UK have been at the forefront of the regulatory debate, having often been *makers* rather than *takers* of regulatory reform. In developing and emerging economies regulatory reform has meant the full-blown introduction from scratch of new rulemaking instruments and routines. By contrast, in many EU countries, most of the 'old' EU-15 members, considerable amounts of (un)codified rulemaking procedures were already in place. And only a portion of them has been reformed according to the mandate of regulatory reform and better regulation international agendas. Think for instance of Scandinavian countries, where public hearings are still the uncodified mechanism of consultation, or Austria, where FOI remains largely absent even after several waves of global FOI reforms.

This means that there is variability in the input conditions, that regulatory states differ profoundly, and that a comparison across design features of the rulemaking instruments is both more feasible and more informative than a comparison across individual regulations and policies.

In sum, extensive reform practice has demonstrated how for economic performance there is no silver bullet, a single or even a set of policies that more or less automatically deliver and improve on countries' ease of doing business. For this to happen, it is always an ecology of factors that matters. By leveraging the causal power of participatory rulemaking instruments, we target a potential systemic cause of the societal effects we seek.

4.4 Measuring ease of doing business

The nature of the rulemaking conditions we associate to EoDB outcomes has been explained in Chapter 3 (along with their operationalization). Here we introduce the outcome measure we employ: the 2020 World Bank Ease of Doing Business scores. While accepting the various problems with IO outcome measures already discussed in this volume, the EoDB scores are effective instruments to measure the underlying concept. As the first section of this chapter has shown, we may well say that ease of doing business as a good governance concept is a direct outcome of Djankov and colleagues' empirical and inductive approach to policy and regulation. We indeed observe a close coincidence between concept formation and the measurement. Starting from entry regulation, the perimeters of business regulations covered by EoDB scores has expanded dramatically to cover the ten Doing Business topics. In turn, these topics are measured using forty-one indicators (see Table 4.1 below).

From a practical point of view, the scores are constructed through a mix of expert and enterprise surveys triangulated with governmental input and regular site visits by World Bank officials. The survey asks about about a standard business case (keeping fix the legal form of the business, size, geographical location, and economic sector) to ensure comparability across time and space. The methodology has been heavily refined over the years. The 2020 values we employ are benchmark scores where two steps are followed. First,

> individual component indicators are normalized to a common unit where each of the 41 component indicators y (except for the total tax and contribution rate) is rescaled using the linear transformation (worst—y)/(worst—best). In this formulation the highest score represents the best regulatory performance on the indicator

Table 4.1 Ease of Doing Business Indicators

Topic	Indicators
Starting a business	Procedures, time, cost, and minimum capital to open a new business
Dealing with construction permits	Procedures, time, and cost to build a warehouse
Getting electricity	Procedures, time, and cost required for a business to obtain a permanent electricity connection for a newly constructed warehouse
Registering property	Procedures, time, and cost to register commercial real estate
Getting credit	Strength of legal rights index, depth of credit information index
Protecting investors	Indices on the extent of disclosure, the extent of director liability, and ease of shareholder suits
Paying taxes	Number of taxes paid, hours per year spent preparing tax returns, and total tax payable as a share of gross profit
Trading across borders	Number of documents, cost, and time necessary to export and import
Enforcing contracts	Procedures, time, and cost to enforce a debt contract
Resolving insolvency	The time, cost, and recovery rate (%) under a bankruptcy proceeding

Source: World Bank (2020) *Doing Business 2020*. Washington, DC: World Bank. License: Creative Commons Attribution CC BY 3.0 IGO

> across all economies since 2005 or the third year in which data for the indicator were collected … In the second step … the scores obtained for individual indicators for each economy are aggregated through simple averaging into one score, first for each topic and then across all 10 topics. (World Bank 2020: 78–81)

Before proceeding with the presentation of the 2020 scores and their fs calibration, it is worth addressing the so-called elephant in the room: the Georgieva scandal. In recent years, the EoDB was the subject of a public scandal and, as a result, was discontinued in 2021. In fact, it has been demonstrated that scores and ranks for China, and possibly other authoritarian countries, had been manufactured to improve their performance. The literature specialized on international benchmarking (Doshi, Kelley, and Simmons 2019) had already hypothesized and showed a politicization of international metrics: the Georgieva scandal proved them right. Paul Romer, the economist responsible for the 2017 Doing Business report, provides a useful summary of the story on his blog (Romer 2021).

That being acknowledged, we are confident that the subsample of countries we study (EU 27 and the UK) is sound (i.e. not touched by the scandal) and hence we quite faithfully rely on the 2020 EoDB scores—together with thousands of colleagues who have used and still use them and amidst calls for bringing them back (Chin and Seetharaman 2022).

When performing a QCA, as mentioned above (Chapter 3), a first step is to convert the original raw data in fuzzy values (Ragin 2008: 71ff.; Schneider and Wagemann 2012: 32ff.). As outlined, the basic idea of QCA is to work with sets that represent the underlying concepts. Our outcome set is defined as the 'set of all countries with high values of ease of doing business'. A country that belongs fully to the set (i.e. it has very high values of EoDB) will get a value of 1, while a country that does not belong at all to the set (i.e. it has very low values of EoDB) will get a value of 0. EoDB—as most social science concepts—is not manifest in the real world in just its extreme and pure form; there might be degrees of EoDB manifestation. Nevertheless, the dichotomous idea of high and low values remains. This means that there is not only a difference in degrees (as in a conventional ordinal scale), but the difference in kind still prevails (Schneider and Wagemann 2012: 14, 27). As explained in Chapter 3, fuzzy sets are a good possibility to represent this kind of concept.

Table 4.2 presents the results of the calibration process and thus the fuzzy values for the outcome Ease of Doing Business (based on the 2020 EoDB indicators). To calibrate these scores, we employed a 6-tile rank transformation[2] and performed limited qualitative evaluations of cases near the thresholds to ensure an empirically consistent and fairly homogeneous distribution of cases across categories.

Table 4.2 Set Membership, Ease of Doing Business

Values—EoDB	Countries
0	Bulgaria, Greece, Luxembourg, Malta
0.2	Croatia, Cyprus, Hungary, Italy, Romania
0.4	Belgium, Czech Republic, Netherlands, Poland, Slovakia
0.6	Austria, France, Portugal, Slovenia, Spain
0.8	Estonia, Finland, Germany, Ireland, Latvia,
1	Denmark, Lithuania, Sweden, UK

Source: Authors' own

[2] In more detail, we collected EoDB values for our twenty-eight cases, computed z-scores, and ranked the cases. Ranks were based on percentile groups. Technically, the 6-tiles transformation we chose assigned a rank of 1 to cases scoring below the 16th percentile, 2 to cases scoring between the 17th and 33th percentile, 3 to cases scoring between the 34th and 50th percentile, and so on, to create the six groups.

4.5 Analysis

Every QCA entails two different analytical steps. We have already outlined (Chapter 3) that QCA produces combinations of conditions which imply the outcome. QCA models those configurations which describe in a parsimonious way the cases which show the outcome (or not, if we are interested in understanding the absence of the outcome). In yet another terminology, we can call these configurations 'sufficient conditions'. If these configurations can be observed in a case, then also the outcome of interest can be observed. The configurations are thus sufficient for the outcome.

However, this is just one side of the story. When we speak about sufficiency, then we also have to speak about necessity. The logic is inverse: whenever a given outcome can be observed, then a condition which is defined as a necessary condition also has to be present. Reasoning in necessity and sufficiency terms provides a full account of all communalities and differences between cases: we can thus clarify what is necessary for the outcome to be present and what is sufficient for it. The combination of these two perspectives gives us a complete idea of set relations which we can then use as causal explanations for the outcome.

QCA always starts with the analysis of necessary conditions. The analysis of sufficiency comes second. In this way, we ensure that, during the analysis of sufficiency, assumptions are not made which contradict the statement of necessity (Schneider and Wagemann 2012: 278).

While the analysis of sufficiency always produces results[3], necessity is more difficult to achieve. Indeed, our analysis for EoDB reveals that no single condition is necessary. This becomes evident from the following table. For the sake of presentation, we use acronyms, CON standing for consultation, RIA for regulatory impact assessment, FOI for freedom of information, and OM for the ombudsman.

In Table 4.3, the inclusion value for necessity (inclN, also called 'consistency' in the QCA literature) indicates how far the data confirm the finding that the condition is necessary. The inclusion/consistency value varies between 0 and 1. 1 indicates that the condition is perfectly necessary, that is, that for all cases which show the outcome the necessary condition is also present. This is precisely the definition of a necessary condition. However, if we share the ontological assumption that the world is *not*

[3] The basic idea behind this is that, as soon as there is only one single case with a positive outcome, the combination of explanatory factors describing that case already constitutes a sufficient condition (albeit banal).

Table 4.3 Necessary Conditions for Ease of Doing Business

	inclN	RoN	covN
CON	0.600	0.755	0.636
RIA	0.771	0.814	0.771
FOI	0.657	0.745	0.657
OM	0.629	0.729	0.629

Source: Authors' own

deterministic, then we also allow for some deviance from such a statement, without completely abandoning the finding of necessity. In other words, even if not all cases support the claim of necessity (i.e. if, in a very reduced number of cases, the outcome may exist without the necessary condition being present), a necessity argument is still possible. Certainly, from a purist view, seemingly necessary conditions whose consistency value is not 1, are not necessary, strictly speaking. However, it is an illusion to seek such perfection. Therefore, some deviance is allowed. In technical terms, even consistency values other than 1 are interpreted as indications for necessity. The specialized QCA literature recommends considering only those conditions to be necessary which reach a consistency level of at least 0.9 (Schneider and Wagemann 2012: 278). While this can only be a 'rule of thumb' and leaves some room for a different decision, the situation for our set of conditions is clear: all conditions are far from passing the consistency threshold, and no condition can be interpreted as a necessary condition. As mentioned, necessity is difficult to achieve in general, and we will see this phenomenon again in the two subsequent chapters of this volume.[4]

This absence of necessary conditions can also be confirmed when we look at conditions in their absence rather than their presence. This is an important step because the fact that a condition is not necessary does not rule out the possibility that it might be necessary for the outcome to occur that the condition is absent. For example, when thinking about successful business regulations, the absence rather than the presence of criminal structures might be necessary.

[4] The other parameters (RoN and covN) only have to be considered if the consistency value allows us to declare the condition as necessary. They assess whether the necessary condition is trivial. For example, the statement that 'being born is a necessary condition for being a policy analyst' is certainly correct, but banal. 'Being born' is a necessary condition for more phenomena than only for being a policy analyst! 'RoN' ('Relevance of Necessity'), developed by Schneider and Wagemann (2012: 236), has become the standard parameter for this (Duşa 2019: 117) and has largely replaced the (older) coverage value (Ragin 2006) which is nevertheless indicated, for reasons of completeness.

Table 4.4 shows the results for the analysis of the conditions in their absence (the absences of the conditions are expressed with a tilde ~)[5].

Table 4.4 Necessary Conditions for Ease of Doing Business, Negative Conditions

	inclN	RoN	covN
CON	0.643	0.695	0.608
RIA	0.543	0.686	0.543
FOI	0.586	0.707	0.586
OM	0.629	0.729	0.629

Source: Authors' own

Since the analysis of necessity does not reveal any necessary conditions, we move to the analysis of sufficiency. This starts from a so-called 'truth table' (Schneider and Wagemann 2012: 91ff.). A truth table lists all possible combinations of conditions. As mentioned, QCA is a configurative method which looks at combinations of conditions rather than at isolated causal factors. Therefore, this list of all possible combinations of conditions is essential. The truth table reflects the configurative nature of QCA. For example, in our truth table (Table 4.5), row 7 (on top of the table) indicates those cases where consultation and the ombudsman are absent (they receive a 0) and regulatory impact assessment and freedom of information are present (they receive a 1). Lithuania is a case that can be best described by this truth table row. However, in our data matrix, Lithuania does not receive plain 1's and 0's. For CON and OM, there is a 0.2 in the data matrix, for RIA a 0.8, and for FOI a 0.6. Indeed, a case's attribution to a truth table row means that that truth table row describes the case better than other truth table rows, but not that all components are perfectly represented. Therefore, the respective truth table row is the best row for the indicated case(s), but, while the rows present ideal types, the cases conform to these ideal types at different degrees. Nevertheless, there is no other row to which the case would belong more.

[5] QCA experts will know that there is also the possibility of 'functional equivalents'. These are unions of conditions which can substitute each other in terms of necessity. A typical argument is that 'condition A or condition B is necessary for the outcome', with the operator 'or' denoting the logical union. In other words, while the single conditions are not necessary, it is necessary that at least one of them is present when the outcome is also present. Of course, such a statement only makes sense if there are also theoretical grounds why the two conditions should be alternatives to each other and if, as a consequence of this, they are 'functionally equivalent' (Schneider and Wagemann 2012: 74f.). While, in our case, two such unions reach or even go beyond the 0.9 threshold for inclusion (namely the unions ~CON + RIA, RIA + ~FOI), there is neither a theoretical argument why these could be functionally equivalent nor are the RoN values high enough (for both unions they are 0.513) in order to justify their being declared necessary.

Table 4.5 Truth Table for Ease of Doing Business

	CON	RIA	FOI	OM	OUT	n	incl	PRI	Cases
7	0	1	1	0	1	1	0.909	0.750	Lithuania
16	1	1	1	1	1	3	0.889	0.667	Estonia, Ireland, Slovenia
15	1	1	1	0	1	3	0.885	0.769	Latvia, Poland, UK
6	0	1	0	1	1	2	0.852	0.600	Austria, Portugal
8	0	1	1	1	0	2	0.846	0.556	Hungary, Spain
5	0	1	0	0	1	1	0.846	0.600	Denmark
13	1	1	0	0	0	1	0.762	0.444	Romania
14	1	1	0	1	0	1	0.762	0.375	Bulgaria
12	1	0	1	1	0	2	0.720	0.300	Croatia, Finland
4	0	0	1	1	0	1	0.720	0.300	France
2	0	0	0	1	0	2	0.692	0.273	Czech Republic, Greece
10	1	0	0	1	0	1	0.667	0.300	Slovakia
3	0	0	1	0	0	1	0.650	0.222	Luxembourg
1	0	0	0	0	0	4	0.645	0.353	Belgium, Malta, NL, Sweden
11	1	0	1	0	0	1	0.611	0.125	Cyprus
9	1	0	0	0	0	2	0.600	0.273	Germany, Italy

Source: Authors' own

From a similar perspective, the fact that row 1 lists Belgium, Malta, the Netherlands, and Sweden as cases implies that these four countries are best described by the absence of all four conditions, rather than by the presence (all four conditions show a 0-value in the truth table). Note that the truth table lists all cases, including those in which the outcome EoDB has not received a high score, since they can still be described through a combination of conditions.

In this truth table, the column n indicates the number of cases to which the truth table row ideally refers. The inclusion column can be interpreted in the same way as during the analysis of necessity. It tells us how far a truth table row can be considered to be a sufficient condition for the outcome, given the data at hand. The values of this column again range between 0 and 1. This is the column in which the basic information on sufficiency is stored. Since sufficiency is the main interest of this step of the analysis, the order of truth table rows follows the rank of the consistency value. Row 7 is on top of the table because it shows the highest consistency value. The PRI value indicates whether the truth table row can also be considered sufficient for the absence

of the outcome—a rare phenomenon which should obviously be avoided. One and the same truth table row should not be declared sufficient for both the outcome and its complement.

Finally, there is the outcome column (OUT). This identifies which truth table rows have been declared sufficient (OUT = 1) and which ones not (OUT = 0). This declaration is the individual researcher's task, obviously on the basis of the available empirical information. One strategy for this could be to set a minimum threshold that the inclusion value has to reach in order to define a condition to be sufficient. While such a strategy is frequently applied (probably because of the easy procedure), we have opted for a more case-sensitive strategy. We have instead checked every truth table row individually in order to see whether deviances from perfect sufficiency (which occur in all truth table rows, since not a single one of them reaches an inclusion value of 1) are due to 'important' cases or not. 'Important' in this sense are those cases for which the given truth table row represents the ideal configuration of conditions. This can be easily explained comparing the decisions for the truth table rows 5 and 8. They have the identical inclusion value of 0.846. This relatively high value means that most (but not all) cases support the argument that the combinations ~CON∗RIA∗~FOI∗~OM (row 5) and ~CON∗RIA∗FOI∗OM (row 8) are sufficient conditions for the outcome. In other words, this would mean to claim that, wherever the combinations ~CON∗RIA∗~FOI∗~OM or ~CON∗RIA∗FOI∗OM can be observed, the outcome can also be observed. However, some cases deviate. In case of row 8, for example, Hungary deviates (among some other cases). However, Hungary is an important case for row 8, since it can be quite well described by this row as a ~CON∗RIA∗FOI∗OM case. However, Hungary only has a membership value of 0.2 in the outcome. This means that, although the seemingly sufficient condition ~CON∗RIA∗FOI∗OM can be observed for the Hungarian case, it does not show the outcome.[6] Cases such as Hungary are called 'true logical contradictions' in QCA. Therefore, we have not declared row 8 as a sufficient condition.

The situation is different for row 5. There is just one case which is described by this configuration, namely Denmark. However, Denmark having a membership value of 1.0 in the outcome does not pose any serious problem, since it shows the outcome and is an *onlier*. The deviance from perfect sufficiency is therefore not due to Denmark. Rather it originates from

[6] Technically speaking, Hungary violates the formal requirement which defines sufficiency in fuzzy sets, namely to have a membership value of the outcome which is greater or equal than that of the condition (Schneider and Wagemann 2012: 67), and it even does so quite clearly: its membership in the condition is 0.6 (the minimum of all four components) and 0.2 in the outcome.

cases which can be described by row 5 rather badly and are not attributed to that truth table row. Therefore, despite having the same inclusion value as row 8, row 5 is declared to represent a sufficient condition, while row 8 is not.

The truth table rows which have been declared as sufficient are subsequently 'condensed' through an algorithm that extracts communalities and differences. This process is called 'minimization', since it minimizes the information which is contained in a truth table.

Our analysis is different from many other QCA applications, since all truth table rows refer to empirically existing cases. There is not a single configuration that does not count as an ideal type for any empirical case. Diversity is fully realized in our truth table. This simplifies our analysis considerably, since we would otherwise have to make assumptions about so-called 'logical remainders' (i.e. 'empty' truth table rows without cases) and would have to decide between various options of solutions (see Schneider and Wagemann 2012: 151ff. for details). In brief, for our analysis, we do not have to make any assumptions about remainder rows and can directly proceed.

In a first step, the algorithm identifies two configurations of sufficient conditions. These configurations refer to Austria, Denmark, Estonia, Ireland, Latvia, Poland, Portugal, Slovenia, and the UK. We are furthermore offered two more configurations that constitute a third configuration, but mutually replace each other. Both refer to Lithuania which has not been covered by the other two configurations so that one of these two configurations needs to be added as a third configuration; otherwise, we would not cover the Lithuanian case. Additionally, to Lithuania, both alternatives cover other cases which have already been explained by the first two configurations—one of the two alternatives covers Denmark again, the other one covers Latvia, Poland, and the UK again. Note that double (or triple or multiple) coverage is not a problem when deriving equifinal situations. Both 'third options' equally qualify as sufficient conditions, covering Lithuania additionally to the cases already covered. For reasons of parsimony and in absence of any theoretical reason for doing otherwise, we opt for the model which covers Denmark twice.

Therefore, the result of our analysis of sufficiency are shown in Table 4.6.

This means that there are three configurations that imply high values in the outcome EoDB. The case names indicate which country cases are explained by which causal combination. It can easily be noted that not all twenty-eight cases under research are listed. There are two types of cases which are not included in the list. A first type shows the outcome but cannot be attributed to any of the three causal recipes which we indicate. These cases are not explained through the conditions we have chosen. For our analysis, this clearly concerns Finland, Germany, and Sweden, to a lesser extent France and

Table 4.6 Sufficient Conditions for Ease of Doing Business

	Configurations	Cases
1	~CON*RIA*~FOI	Austria, Denmark, Portugal
2	CON*RIA*FOI	Estonia, Ireland, Latvia, Poland, Slovenia, UK
3	~CON*RIA*~OM	Denmark, Lithuania

Source: Authors' own

Spain (which, given their rather low outcome values, are a bit at the margins of the cases showing the outcome).

The second type is constituted by all the other cases which are missing from the result above. They do not show the outcome, or barely show it, as France and Spain. Since our goal was to find sufficient conditions for the outcome, cases which do not or only barely show the outcome are not important for our analysis. Remember in this context that QCA is an analysis that is interested in sufficient and necessary conditions for something to occur, so-called positive cases.

The analytical logic of QCA requires the definition of a target outcome set, in its positive formulation—in our case EoDB. Being a set-theoretic method, QCA takes the side of those approaches about concepts (remember that sets are basically abstract representations of concepts) that require a separate concept formation for negations of concepts (the contrary of EoDB is simply its absence, but not any other conceptual construct) (on this point, see Goertz 2020). As a consequence, this also means that if we intend to explain when something does not happen, we would need a new analysis, usually also requiring completely different explanatory factors.[7]

There is yet another peculiar case, which—different from the ones just discussed—is part of the list of countries. This is Poland. As evident above, Poland can be described by the second configuration, i.e. it has high fuzzy values on consultation, regulatory impact assessment, and freedom of information. However, it does not show the outcome. It is a deviant case in that our finding says that there should be the outcome, but it is not there. We will attend to that case at the end of the section.

[7] Another political science example might illustrate this. When we analyse 'democracy' as an outcome concept, we are faced with the question what the negation of this concept is. The literature proposes a range of possibilities, including 'authoritarianism', 'dictatorship', and so on. Unless we want to reduce our analysis to the vague notion of a 'non-democracy', the complementary set would require not only its own concept formation, clarifying what we are talking about, but also completely new conditions which explain its occurrence.

Again, parameters of fit can help us to assess this solution. The consistency value is 0.873. This indicates how far we have found a valid solution for sufficiency. This value is quite high. And, indeed, the only problematic case with regard to sufficiency is Poland. The coverage value is 0.686. This value tells us how much of the outcome is explained in our analysis. It goes without saying that the unexplained cases Finland, Germany, and Sweden mainly account for this value.

The situation is represented by the XY-plot in Figure 4.1. The lines connect the country labels with the dots. Note that a single dot sometimes refers to more than one country case.

This figure has to be read differently from a scatterplot in regression analysis. Cases above the diagonal confirm the sufficiency statement. However, the further cases move to the left of the plot, the less the solution can account for them, even if they are above the diagonal. Moving to the left, they take lower values on their membership in the final result of the analysis of sufficiency,

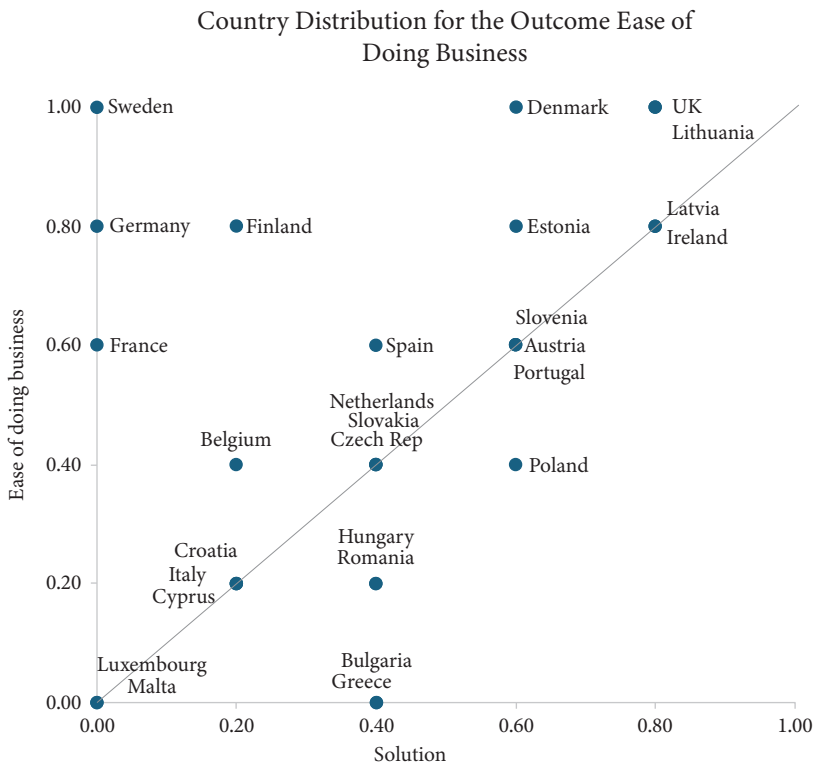

Figure 4.1 Country Distribution for the Outcome 'Ease of Doing Business'

Authors' own.

meaning that neither of the three configurations describes them. In other words: they are not explained through our conditions. This is no problem for the lower left part of the plot, because there is nothing to be explained anyway: these cases have low outcome values. This is more problematic for the upper left of the plot. We find Finland, Germany, and Sweden here, that is, those cases that show the outcome (which would have to be explained) but are not part of any of the three explanations.

The lower right—which, apart from one case—is empty describes the true logical contradictions, i.e. those cases which should show the outcome, but do not: the real outliers. Poland is the only case in this category. However, as the plot indicates, it fails for just a little bit and is not really centrally located in the lower right quadrant. In brief, the plot illustrates the comparatively high consistency level (with a lower right corner which is close to being empty) and the more mediocre coverage level (with an upper left corner where we can find a couple of cases).

When we now turn to the three solutions of the sufficiency analysis from above, we can observe four particular patterns: first, there is a strong explanatory role for the combination of the absence of CON and the presence of RIA, which, however, cannot stand alone, but has to be combined with a third condition (solutions 1 and 3). This refers to Austria, Denmark, Lithuania, and Portugal.

Second, alternatively to this scenario, there can also be the simultaneous presence of the three conditions CON, RIA, and FOI. This accounts for Estonia, Ireland, Latvia, Slovenia, and the UK and creates the deviant case of Poland. Third, note that the (absence of the) ombudsman is only mentioned in one of the three recipes, meaning that it really plays a subordinate role. Fourth, also note that the presence of RIA is part of all three recipes. However, Schneider and Wagemann (2012: 281) warn us against interpretations based on single conditions—it is the configuration which counts.

Let us turn to the substantial message which we infer from this solution. As mentioned, there are three explanatory configurations, often also referred to as paths or 'recipes'. First we take the two solutions which taken together cover four countries: Austria, Denmark, Lithuania, and Portugal: an absence of consultation combined with the presence of rules on impact assessment and the absence of freedom of information (#1 ~CON∗RIA∗~FOI) and as variant of this, an absence of consultation combined with the presence of rules on impact assessment, but this time also combined with an absence of the ombudsman (#3 ~CON∗RIA∗~OM).

Aside from the technical results indicating the presence/absence of the conditions, we know from the operationalization of the conditions that these

two configurations indicate that a combination of delivers in terms of positive EoDB conditions:

- a Consultation design involving low formalized government commitment to good consultation practices and general objectives of consultation;
- a RIA design involving few exceptions to its application and highly formalized and publicly available analytical requirements;
- and *EITHER* a FOI design involving the absence or lack of substantive powers of the Information Commissioner and significant exceptions to public access to information *OR* an OM design weak on remedies, latitude on private entities, and publicity;

delivers in terms of positive EoDB conditions.

This path to good EoDB may look odd at first sight, but it actually allows us to test and disconfirm, at least for the set of countries showing it, one of our key hypotheses. For Austria, Denmark, Lithuania, and Portugal, the ecology of policy instruments does not seem to matter. The presence of strongly proceduralized RIA guidelines, including the publicity of RIA documents and formal requirements for analytical tests, subsumes the role of an ecology to lead to positive doing business conditions.

This should not surprise us though, since RIA has typically been hailed as a strong pro-business tool (Kirkpatrick and Parker 2003; World Bank 2010). Moreover, strong RIA designs embed their own form of consultation which, for countries like Denmark (where consultation takes place though unformalized public hearings) and Austria (where OECD-style consultation is absent and largely governed through corporatist channels), cancels out the effects of consultation as a standalone instrument.

The case of Portugal is interesting since it points toward the effects of the ecology of instruments. Portugal's weakness on Consultation and FOI designs is not as marked as Austria's and Denmark's (fuzzy set calibrations assign a 0.4 on these two instruments to Portugal as opposed to 0 on both for Austria and Denmark). Similarly, the design of RIA is scored as 0.6 as opposed to the almost full membership of Denmark and Austria—0.8. This underlines the point that it is not the absence of procedures which is explanatory, but is rather the particular configuration of its design, which may be stronger or weaker (more or less formalized) on the dimensions highlighted by the principal components which operationalize design.

We now turn to the remaining explanatory path:

- a simultaneous presence of highly proceduralized rules on Consultation, RIA, and FOI.

This recipe, also drawing on the operationalization of the conditions discussed in the previous chapter, points decidedly toward the ecological effects of instruments' design we hypothesized. In fact, a combination of instruments' design features which involve strong procedural formalization of RIA and Consultation requirements, along with institutionalization of FOI (notably, the presence of an Information Commissioner) and the absence of excessive exceptions to the application of the instruments leads to positive ease of doing business conditions. The countries that show this recipe are Estonia, Ireland, Latvia, Slovenia, and the UK.[8]

As for Estonia, Latvia, and Slovenia, we are dealing with countries where regulatory reforms followed the transition from planned to market economy and came hand-in-hand with their accession process to the EU. It is not surprising then that these countries cluster together as they have introduced rulemaking instruments, and RIA in particular, later than other EU 27 countries and largely following a template informed by the OECD 2012 principles (OECD 2017; OECD 2021). Despite late applications, in these countries, the combination of instruments' design features which foster accountability to different diffuse interests has indeed led to leaner business regulations. The explanations for Ireland and the UK differ. These countries, most of all the UK, pioneered regulatory reform informed by evidence-based and transparency principles in the 1990s. Yet, despite different historical trajectories, the configurations of instruments' design features coincide for these two sets of countries, as well as the outcome. These countries vindicate the role of formal design of rulemaking instruments as driver of effective governance outcomes, ease of doing business in particular.

Juxtaposing the two sets of explanation nested in the same configuration of rules demonstrates equifinality in action as well as stressing that case-specific considerations are crucial to assess the nature of a causal recipe. The takeaways we draw, have to do first with the essential role of RIA in fostering business-friendly regulation. This is not a new lesson in reform practice, but this is the first empirical demonstration for a set of developed economies. In

[8] Poland also shows this exact recipe, but the outcome is rather absent. Poland hence, as already noted, represents a true logical contradiction as, given the configuration of the conditions, should show a positive outcome and does not. We discuss this case after having completed the account of the sufficiency recipes.

terms of input for practitioners, this finding shows the importance of RIA design features such as the publicity of the impact assessment process, the lack of relevant exceptions to the application of RIA and, most of all, the need to embed in the official guidelines strict formal requirements about analytical steps.

When it comes to the second explanation, it shows how for pluralistic (rather than corporatist) countries, and for transition economies RIA is not enough, but formalized consultation and institutionalized access to information need to complement the causal effects of RIA on regulatory outputs.

Taking the recipes together, we can observe that rulemaking instruments, RIA in particular, were deliberately and politically leveraged to legitimize the switch toward leaner and more business-friendly regulation and the fight against red tape and administrative burdens. In other words, better regulation objectives and instruments such as the reduction of administrative burdens and one-in, one-out (OIOO) rules benefited from the presence of highly proceduralized rulemaking instruments geared toward evidence and public participation.

We are left with the account of our only logical contradiction, that is, Poland. Why does Poland show the recipe but fall short of a positive ease of doing business outcome? Although logical contradictions may hamper the conclusions of QCA, in this case Poland actually reinforces our argument. The ecology of rulemaking instruments' design features highlighted by the sufficient solution was not left working as expected in Poland. This is because Poland is one of the few EU countries (together with Croatia and the Czech Republic, two countries not showing the positive outcome, and the UK, a country showing the positive outcome but that was, as already explained, a supplier of better regulation rather than a recipient) which established a reform committee directly using the EoDB as performance target (Doshi, Kelley, and Simmons 2019). Although Poland ostensibly joined the regulatory reform wave with countries like Estonia, Latvia, and Slovenia and established formalized rulemaking instruments as a result, the reform committee focused too much on transferring policies and best practice while emptying the pro-business role of rulemaking instruments and regulatory reform.

4.6 Conclusions

In this first empirical chapter, we test one of the key conceptual drivers of many World Bank and OECD-inspired regulatory reforms: designs of rulemaking instruments emphasizing the use of evidence, participation, and

transparency are causally connected to ease of doing business, a cornerstone of good governance.

Our results are mixed. This is due in part to the innovative way we conceptualized and measured rulemaking instruments. That being acknowledged, our main finding is that a design of RIA involving few exceptions to its application, highly formalized analytical requirements, and public availability of the formulation document is a potent driver of policy and regulatory outcomes which facilitate ease of doing business. In a first group of countries (Austria, Denmark, Lithuania, and Portugal), for RIA to work in that direction it needs not to overlap with other strongly formalized instruments which empirically diminish the influence and impact of RIA. RIA on its own, hence, is not a necessary nor a sufficient condition for the positive outcome to occur, but it works only inasmuch it is not crowded out by other instruments.

Instead, for a second group of counties (Estonia, Ireland, Latvia, Slovenia, and the UK), for RIA design to deliver on ease of doing business, it needs to interplay ecologically with other instruments' designs (namely, consultation and FOI) similarly emphasizing formalized best practices, lack of exceptions, and institutionalization. In this path to ease of doing business, we can appreciate both the importance of formal design, as well as the effects of the ecologies of rulemaking instruments.

In the concluding chapter, we evaluate how these findings relate to the expectations stemming from other theoretical approaches. For now, we show that in the case of EoDB the recipes that imply positive outcomes broadly align with the expectations of varieties of capitalism (VoC). The first type of recipes (those including highly formalized RIA and less formalized consultation and FOI or OM), in fact, is observed in a group of coordinated market economies, while the second type (the one which vindicates the importance of formal design) appears in a group of marked-oriented countries. It is too early to draw conclusions about this alignment before analysing the recipes that lead to perception of low corruption and high environmental performance (and the countries showing them), but we can anticipate that the compatibility between VoC explanations and our own one based on rulemaking instruments' design is not surprising given the centrality of regulatory governance and business regulation within the agendas of European governments of the last decades. What is really interesting is, yet again, equifinality. Both coordinated and market-oriented economies are suited to *host* pro-business regulatory frameworks. By leveraging the role of rulemaking instruments, we showed the different pathways to reach analogous outcomes.

Back to our recipes, in both types, we see the significant pro-business potential for RIA.

This is not new, and it is somewhat confirmed also by the case of Poland, a country where the ecological recipe embedding highly formalized instruments is observed, but the outcome is negative. In Poland, although RIA is designed (along with consultation and FOI procedures) in a way poised to hypothetically deliver on the outcome, we observe the main driver of regulatory reform has not been the interplay of instruments within the rulemaking process, but rather an overt advocacy for some predetermined, *imported* regulatory solutions. This emptied the role of rulemaking instruments, RIA in particular, as a mediator of different interests and legitimate source of bottom-up policy and regulatory change endogenous to a given polity, in favour of plugging and playing exogenous policies and regulations. According to a practitioner's perspective (that is, Joanna Romańczuk's, general manager for Poland and Ukraine of TMF, a consultancy firm providing administrative and regulatory compliance services for businesses), 'Poland's worst result in history in terms of ease of doing business results from frequent changes in the law [and] little transparency regarding the rules of its application … Legislation in Poland often changes quickly, leaving businesses little time to react and implement changes in accordance with new laws' (Koschalka 2021).

To conclude, we provided some strong evidence that RIA and other rulemaking instruments can make a difference in terms of ease of doing business, that is, on business regulation. Yet, this mechanism only works inasmuch business regulation is the output of national rulemaking processes and dynamics rather than of exogenous policy transfer. This represents a potent message for reform practice, a message that highlights how business environment outcomes are the result of polity-specific rulemaking factors (involving the instruments' designs we have empirically captured) that can hardly be achieved through policy and regulatory 'import' of solutions lacking the legitimacy and ownership which arises out of a participated rulemaking process. This is highly topical given the pressing need to relaunch growth in the EU post-COVID, where member states may simply not have the capacity or the willingness (or both) to adopt all the design features of administrative instruments recommended by IOs.

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5
Perception of Corruption

5.1 Introduction

After 'ease of business', we turn to another important causal link in the literature on regulatory reforms: the connection between the rulemaking instrumentation and corruption. A common argument in the social sciences and in political discourse is that too much regulation, or wrong regulations, create opportunities for corruption. Does regulation cause corruption, then? And what happens to corruption when the rulemaking process is made more open, accessible, transparent and evidence-based with the four instruments we examine in this book? Like in the previous chapter, we ask questions about the ecology and causal pathways that associate a configuration of the four rulemaking instruments with the outcome. This time the outcome is the perception of corruption.

To begin, we must define corruption and model expectations about the causal linkages that associate it with our rulemaking procedures. Given the breadth and scope of the concept of corruption, we start from a regulatory perspective in Section 5.2 to pin down the interactions between rules and corruption. We will see that the causal pathway is two-way: conceptually, one can model causality in terms of the effects of rules on corruption, but there are also corruption impacts on the quality and number of rules. Section 5.3 enters the four rulemaking instruments. We motivate and explain the outcome measure for corruption (Section 5.4) and then turn to the fuzzy-set configurational analysis (Section 5.5). Section 5.6 briefly concludes.

At the outset, what do we mean by corruption? There are different conceptual frameworks to identify corruption (see Graycar 2020 for a review) even if we remain in the field of corruption in the public sector—that is, defining corruption as the abuse of government resource or power for private gain, in short, an illegal exchange (Varese 2018). Corruption can firstly be framed as economic issue—looking at the role of incentives and economic resources in corrupt transactions. Second, corruption can be framed in terms of criminal activity, with the law as compass to identify and correct it. This is the territory of administrative or criminal sanctions, but also legal nudges

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(Alemanno and Sibony 2015). Third, we can approach corruption as moral issue where culturally informed self-interested behaviours undermine the public good (as most famously laid out in Edward Banfield's classic (1958) *The Moral Basis of a Backward Society)*. From an institutional or administrative perspective, a fourth approach considers corruption an 'extra-legal institution' in which certain stakeholders gain influence on the decisions of an agency. A public organization may not be able to carry out its functions through the legal, organizational, and administrative resources and procedures. In order to 'get something done' the agency and the stakeholders may engage in a corrupt exchange.

These approaches and frameworks are compatible with the broad understandings of corruption held by international organizations (IOs). For the World Bank, for example, corruption is the abuse of public power for private benefit. This is somewhat vague. Indeed, this concept needs to be unpacked into petty and grand corruption, political and administrative corruption, systemic corruption, and other categories (De Benedetto 2021: 34). For our purposes, it is sufficient to bear in mind the complexity and multidimensionality of corruption and stick to a definition like 'the use of public office for private gains where an official … entrusted with carrying out a task by the public … engages in some sort of malfeasance for private enrichment' (Bardhan 1997: 1321).

5.2 A regulatory perspective on corruption

Corruption occurs in four classic regulatory situations, sometimes intertwined (Rose-Ackerman and Palifka 2016: 53): (i) regulation imposes compliance and administrative costs that an actor does not want or cannot pay.[1] In this case, a bribe is paid to a public officer to lower the cost of regulation; (ii) a citizen or firm carries out an activity that is considered illegal by regulation and punished with sanctions. This can be the main activity of the agent or a secondary activity, e.g. the illegal disposal of toxic waste is not the main activity of the firm producing waste. In this type of situation, corruption enables illegal activity to carry on unsanctioned; (iii) the bureaucracy has discretion in allocating a benefit that is valuable to individuals using criteria other than willingness to pay—for example when public managers determine if someone is eligible for a benefit like subsidized price of fuel; allocations of benefits to non-eligible recipients in exchange for some gain amount to

[1] This section draws on Dunlop and Radaelli (2019).

corruption, and (iv) officials deliver regulation in a relational context where they can shirk because either they are only minimally monitored or they have low pay scales (often both). In these cases, corruption is a system of incentive bonuses for the officials to do—or abstain from doing—their job.

Beyond this day-to-day low-level corruption, there is an opportunity for grand-scale regulation-driven corruption in procurement, privatization, and the award of important concessions—think of the licence to broadcast nationwide or the construction of a subway in a capital city (Rose-Ackerman and Palifka 2016: Chapter 3).

Lambsdorff (2002, 2006) adds that costly regulations interact with corruption in circular ways. Rather than treating regulation as our starting point, we should look at the role of corruption in the emergence of rules. Think about the following case: regulatory burdens may be motivated by corrupt officials who deliberately create labyrinthine rules which are so complex that bribery is the only way to short-circuit the system. After initial success, the corrupt official may then add in administrative delays as part of increased rent seeking: 'bureaucratic personnel may deliberately slow down service after the initial payoff and create more red tape in order to establish additional inducements for others to make payments or to raise the ante' (Rose-Ackerman 1978: 90, citing Gardiner and Olson 1974, p. 196; for a similar argument also see Tullock 1989). The literature is replete with famous case studies that unpack not only the opportunities for corruption provided regulation but the corrupt intentions *behind* regulations (Coolidge and Rose-Ackerman 1997; De Soto 1989; McChesney 1997; Shleifer and Vishny 2002).

In this framework, we find an understanding of corruption as a matter arising out of (low) regulatory quality—and this is the one relevant to our discussion. Corruption is not simply an 'abuse of public power for private benefits' but one facilitated by 'bad rules' or the wrong functioning of a regulatory framework—the latter refers to systems of rules that govern the 'public power' in question (De Benedetto 2021: 36). Critical to this understanding is the view that corruption is itself a by-product of government activity (Holcombe and Boudreaux 2015). But then, what is it in the regulatory process that creates this by-product? To shed light with examples: a regulation may be so badly written that it is misunderstood or unknown to officials (Kurniawan, Prasojo, and Gunadi 2017 on Indonesia; Scott and Triantis 2005). In their analysis of 26 African countries, Lambsdorff and Cornelius (2000) find corruption is positively correlated with the degree to which the regulations are vague. Duvanova (2017) provides an instructive example from Kazakhstan where she compares the building codes of two provinces. The code in Kostanai is over 11,000 words in length and

provides unambiguous technical specifications that must be met. In contrast, Kyzylorda's code is half the length and details no precise standards or enforcement instruments. Here, it is the potential for discretion which creates the opportunity for corruption. And this discretion is fundamentally shaped by the presence or absence of regulatory standards, benchmarks, monitoring mechanisms, and targets. This lack of formal rules in key areas shapes officials' ability to offer their own interpretations. Such discretion is especially high when countries and their economies are in transition Liou (2017) offers a similar argument in relation to China during years of economic reform when monitoring of local officials was lax. For similar, see Innes (2016)Innes (2016) on EU accession countries in the 1990s.

Alternatively, regulatory structures may simply be out of date (see Lambsdorff 2002: 116) or unfit for purpose. Ramio (2017) suggests public institutions in Spain can be made less permeable to corruption with the design of a regulatory framework for public service provision tailored to the 'network management of public services' (2017: 1) that sees services procured from and provided by a multiplicity of public, private and third sector actors (for a similar argument on public appointments in Spain see Cerrillo-i-Martinez 2017). For Djankov et al. (2002) some types of red tape are more detrimental than others (see also Chapter 4).

Finally, regulatory quality can be low because of delivery challenges and attitudes of inspectors (Bardach and Kagan 1982; Blanc 2018). In short, the quality of rules and regulatory frameworks matters. This is also fundamental for us, because the four procedures we deploy to model the causal effects on the outcome corruption refer to regulatory policy instruments introduced to enhance the overall quality of regulation.

Yet, before getting into the problem of quality, we acknowledge that the literature has often drawn attention to the issue of quantity: beyond a certain threshold, too many rules stifle economic and social activity, and provide either opportunities or the necessity of corruption. No one can tell exactly what that threshold is and when we pass the point where rules are 'too many' and trigger corruption. Indeed, being based on bundles of obligations and controls, even anti-corruption policies themselves can contribute to going above this threshold. Regulations can create corruptibility generating a higher risk of corruption when they produce excessive administrative obligations. For example, in public procurement, the OECD observes, the main rationale is to provide a level playing field, and therefore public procurement regulation has many provisions to curb or avoid corruption. However, 'corruption risks are exacerbated by the complexity of the process

[of public procurement], the close interaction between public officials and businesses, and the multitude of stakeholders' (OECD 2016: 6).

Moving beyond public procurement specifically, the whole system of controls and anti-corruption initiatives has limits. In fact, we need bureaucracy to carry out corruption controls. This may be another push factor leading to more bureaucracy. From the point of view of economic operators, controls can simply raise the cost of doing business. Moreover, they also have a cost for the public purse. No public body can implement any number of controls. In consequence, public officers and inspectors ought to exercise some degrees of administrative tolerance (De Benedetto 2021: 137). Instead of trying to catch corruption sector-by-sector, type-by-type, activity-by-activity, policies to protect integrity should consider the whole rulemaking process, intended as how rules are formulated, produced, managed, and delivered. This is the terrain of regulatory anti-corruption—or the 'regulatory perspective' on corruption (De Benedetto 2021). And, with this, we are back to the point that the quality of rules (more than the quantity) is central to the understanding of corruption.

We need to refine the argument about quality of rules taking into account the role of social norms, informality, and trust. Let us reflect on the previous definition of corruption (abuse of public power for private benefits facilitated by bad quality or bad functioning of rules), which, as we just said, points to the quality of regulation rather than the quantity. To start with, the causal street is two-way. Not only does opaque, outdated, badly enforced regulation cause corruption. The opposite is also true. The presence of corruption 'distorts regulation, its objectives and the system of incentives which have been put in place in order to achieve regulatory purposes' (De Benedetto 2021: 169).

Enter now procedural controls to limit corruption. Naturally, remedies do not work in vacuum. In each country they operate in a given social and institutional context, a system of attitudes, beliefs, ways of doing things, and finally educational and social capital. Control and informal norms are not alternatives to each other. Their combinations, however, change according to the country or continent we consider. The challenge is to find the right combination of controls and trust (De Benedetto 2021: 31, 75 on social norms). If people do not trust, they demand more regulation and more sanctions or coercive instruments to pull free riders into line (Aghion et al. 2010; Harring 2016; Pinotti 2012). The paradox is that in low-trust countries individuals demand more regulation even if they know that their government is corrupt! The cure exacerbates the disease.

Where do these arguments take us in the complex relationship between quality of rules, formal instruments and informality? Using the case of the design of consultation in the EU 27 and the UK with the same data presented in this book, we found formal controls and informality grounded in trust are not alternative to each other (Dunlop et al. 2020). We take this as point of departure to explore procedures in more detail, with the more sophisticated design of QCA conditions representing four regulatory instruments.[2] Certainly, there are criticisms of this approach. Mungiu-Pippidi is among the most trenchant critics of those seeking technical, bureau-focused answers to the problem of corruption (most recently 2020; see also Spink 1999). Reforms that target 'actionable factors' of bureaucratic design may miss the primacy of sociopolitical conditions fuelling corruption.

Definitively, procedural instruments are not the major source of corruption—the historical evolution of social norms that stymie cooperation and lead to mutual distrust is more important (Rothstein 2005; Rothstein and Teorell 2015; Rothstein and Varraich 2017). But, while accepting the limitations of 'bureaucracy rules' in the face of contexts which create collective action problems (even where it makes sense to cooperate), nonetheless rulemaking procedures shape our social and political world. Our interest is in uncovering the extent to which, and when, they have a bite. To rehearse again the fundamental intention in this book, our research design is not to explain the outcome (corruption in our case) by ranking the explanatory variables from the most important to the least important. Instead, we want to know if a combination of the four instruments is sufficient for a country to fall into the basket of high or low corruption.

5.3 The factory of regulations

An original way to recast the debate, although it may not provide the final answer on the claims about causality, is to raise the question: where does a certain rule that shapes the interaction between public agencies and stakeholders and citizens in a given moment in time come from? It certainly comes from a policy process in which regulations are appraised, designed, enter into force and are delivered. The process can be evidence-rich, participatory and fair, or more political and biased to protect rents (McChesney 1987). Hence, how this process takes place in each country mediates the quality of the

[2] For the operationalization of the instruments into QCA conditions see Chapter 3, Section 3.5.

regulations we find downstream in day-to-day regulatory interactions. For us, the main lens to observe this process is via the four regulatory instruments.

De Benedetto (2021) calls this approach one of looking at the origin of regulations 'upstream'. Instead of looking at regulations and their causal linkages with corruption downstream—sector-by-sector, rule-by-rule, episode-by-episode, we go into the 'factory of regulations' and seek to improve on the machine. In her words: 'if corruption is a special kind of regulatory side-effect and/or ineffectiveness, rules must be considered across their whole life cycle, from their proposal to their delivery' (De Benedetto 2021: 168). In this perspective, the specific type of corrupt exchange is not important—e.g. whether it is passive or active corruption, caused by a company offering a bribe or a public manager demanding a side-payment for a permit.

The four instruments at the centre of our book, and more generally the better regulation agenda pursued by international organizations (Chapter 2; Radaelli 2023), underpin several meta-regulatory principles to improve on the factory of rules: limited boundaries to public access to regulations and regulatory processes (fostering participation), simplification, periodic evaluation of existing rules in key sectors, elimination of administrative burdens that may trigger corruption, checklists on regulatory proposals that follow the guidelines of anti-corruption impact assessment, proper assessment of costs and benefits arising from existing and proposed regulations, open and transparent consultation in regulatory evaluation and *ex ante* appraisal of legislation, codification, and improved access to regulations. Yet, we know little about how these instruments perform for corruption. In fact, bibliographic searches of their discussion in studies including any of the EU 27+UK yielded a total of three all of which concerned only freedom of information provisions (FOI) and corruption.[3]

Though limited to a single instrument and most from beyond our population, this literature does provide some instructive insights regarding how meta-rules designed to make the state more visible can interact with the perception of corruption. First, we know that FOI works as an anti-corruption tool. By becoming internalized in public employees' value systems or offering

[3] The following Web of Science™ searches were conducted (8 December 2022). 'freedom of information' AND corruption and 'freedom of information' AND 'perception of corruption' were merged, duplicates removed, non-EU27+UK removed resulting in N=3. Ombudsman AND corruption and ombudsman AND 'perception of corruption' were merged, duplicates removed, non-EU27+UK removed resulting in N=0. 'impact assessment' AND corruption and 'impact assessment' AND 'perception of corruption' were merged, duplicates removed, non-EU27+UK removed resulting in N=0. Finally, consultation AND corruption and consultation AND 'perception of corruption' were filtered through three relevant WoS categories—Public Administration, Political Science and Law, then merged, duplicates removed, non-EU27+UK removed resulting in N=0 (with our own article on the subject removed).

a way for citizens to access services (Astudillo-Rodas 2023; Peisakhin and Pinto 2010), FOI provides efficient ways for the increased detection and reporting of corrupt practices (Vadlamannati and Cooray 2016). Importantly however, where analysis detects an impact of FOI, this is usually either in combination with more influential political and economic factors—free and fair elections, fiscal transparency levels, level of economic development, press freedom and so on. (Chen and Ganapati 2021; Žuffová 2020). Moreover, in countries with developed accountability regimes (many of which are in our set of twenty-eight cases), few citizens use the information gained to hold administrations to account (Lindstedt and Naurin 2010).

Second, the implementation of FOI matters for corruption. For example, the impact of interpretation and adherence at the local level (where people most frequently encounter day-to-day corrupt practices) can be critical in how FOI impacts how corruption is perceived (Batista, Rocha, and dos Santos 2020; Escaleras, Lin, and Register 2010). This is not merely the result of a lack of motivation or evidence of bad faith actors. The administrative burdens imposed by transparency mechanisms like FOI are considerable, and we know that the workload and political consequences of adopting FOI are often underestimated (Schnell 2018). Symbolic adoption and shallow implementation may be the result of a lack of administrative capacity (Camaj 2016; Di Mascio, Natalini, and Cacciatore 2019).

So, we know that FOI can result in either the increased detection and reporting of corruption or dashed expectations and elevated suspicion. These arguments are the ones mobilized in the empirical literature exposing the association between FOI laws and increased perception of corruption (Cordis and Warren 2014; Costa 2013; Vadlamannati and Cooray 2017). These have not been found to decline over time (Costa 2013), indeed the only fall recorded in this phenomenon is during the process of FOI legislation being adopted (Vadlamannati and Cooray 2017). Thus, the success story of bureaucratic efficiency and political signalling that are part of FOI adoption also work to increase the perception of corruption on the ground as citizens and firms see more corruption being uncovered and expectations of action are dashed.

As stated, there is next to nothing in the academic literature concerning our three other instruments. We go into our analysis with an appreciation of the possible contradictions implied by some instruments for corruption (as we see in the FOI studies). We start from a genuinely open position regarding whether design of meta-regulatory instruments reduces the scope and breadth of corruption. The next step is to explore this with our population. For this task, we need an outcome measure which is then used in the QCA.

5.4 Measuring corruption

Selecting a cross-country outcome measure of corruption to associate with the four conditions is a challenge. There are plenty of indicators, some subjective (that is, based on the diffuse perception in public opinion) and others objective (that is, based on hard data like the number of convictions for corruption). One advantage of this wide choice is that a lively commentary literature exists reviewing the merits of corruption measures and specifically their methodologies (Escresa and Picci 2020; Heller 2009; Heinrich and Hodess 2011; Heywood and Rose 2014; Olken 2009).

One of the most popular indicators is subjective: Transparency International's (TI) Corruption Perception Index (CPI) ranks 180 countries. Established in 1994, CPI uses a mix of cross-national data sources, notably: expert ratings and business surveys to create a composite indicator of perceived corruption country-by-country. One of the first aggregate measures, CPI quantifies corruption in the most general of ways. As a result, it has received significant criticisms, chief among them are concerns about: conceptual stretching, weighting and aggregation choices, endogeneity of sources, and the reliance on perception alone (Andersson and Heywood 2009; Heywood and Rose 2014; Oman and Arndt 2006). Though the CPI played a major role in putting corruption on both political and research agendas (Lambsdorff 2006; for opposing accounts of TI's contribution to anti-corruption movements see Galtung and Pope 1999 and de Sousa and Lamour 2009), the lack of clarity about what is being measured leads us to set it to one side.

Turning to objective measures, Golden and Picci's approach (2005) uses the gap in physical infrastructure. The reasoning is that a certain level of infrastructure should exist in a country, given the level of capital outlay. If we do not observe it, it must be because of corruption. Escresa and Picci (2017) constructed a measure based on the geographical distribution of public managers involved in cross-border corruption cases—the Public Administration Corruption Index (PACI). Elsewhere, the same authors (Escresa and Picci 2020) have measured cross-national corruption, defined as the bribery by a firm based in a country of a public manager of a foreign country—such as bribery of an officer in Nigeria by a US firm. This is interesting, but not relevant for our analysis since we are looking at the association between configurations of rulemaking instruments in each of the twenty-eight countries and corruption in the same country.

Another approach to objective measures is to look at single bidding in competitive markets as proxy of favouritism in public procurement (Fazekas 2017). Building on this argument, Fazekas and Kocsis (2020)

provide a measure of 'corruption risk' based on 1.4 million public procurement contracts to identify the single bidders in high-cost public procurement. This objective measure is used together with subjective measures, precisely the European Quality of Government Index (EQI) by Bahur and Charron (2018). Though the study by Bahur and Charron is not on corruption, it has the merit of drawing our attention to regional measures, thus breaking with the assumption that corruption is best measured at the national level. Surely regional differences vary in countries with strong centre-periphery disparities (like Finland) or diverse geographical pathways to national unity (like Italy). Again, we dispense with this measure: our data on rulemaking are national, hence we need to consider nationwide outcome measures.

A radical approach is to switch from corruption to integrity measures. The Index of Public Integrity[4] covers the dimensions of judicial independence, administrative burdens, trade openness, budget transparency, e-citizenship, and freedom of the press. A possible research design informed by this measure would then consider the association between our measures of regulation and integrity, rather than regulation and corruption. However, in this index, regulation is on both sides of the equation so to speak, since administrative burdens are a component of the regulatory costs. The measure is also too heterogeneous (it includes freedom of the press and independence of the judiciary) to be used with validity in our analysis.

In short, there is no convergence on how to get to grips with measurement. To establish the exact meaning of corruption in a given social setting and achieve strong construct validity, one has to go in the field and look at how communities socially construct corruption. For example, Mancini et al. have documented the variety of representations of corruption in the British, French, and Italian press (Mancini et al. 2017). Bratu and Kažoka (2018) have exposed metaphors of corruption in seven European countries tracing the news media for ten years. One can even go deeper than the media and draw on political ethnography and practice-tracing to find when and how a community defines a certain behaviour as corrupt or acceptable (Blundo and De Sartan 2006; Bratu 2017). Corruption studies clearly need the understanding of meaning generated by practice-tracing (Pouliot 2014). Yet, methodologically, such an approach has obvious limits when one is interested in cross-national research in the context of twenty-eight national cases.

Accepting that measuring corruption across twenty-eight cases is fraught with difficulty, 'second generation' (Johnston 2014: 69–76) measures go

[4] https://integrity-index.org/

beyond using individual indictors in isolation. We are then back to the CPI (Lambsdorff 2007) which, as mentioned, is excessively heterogeneous. The World Bank's World Governance Indicators (WGI) (Kaufmann, Kraay, and Zoido-Lobatón 1999) seems more suitable for our task.

We do not pretend to settle a debate on how to measure corruption, but rather we aim only to identify an indicator that is not too imperfect and biased given the data we have for the four conditions and our analytical aims. Let us focus only on Control of Corruption, which is one of six components of the WGI. This indicator offers the most extensive range of sources of any index—in 2018 it aggregated forty-three surveys from thirty-two source organizations.[5] So, why is WGI better than CPI for our purposes?

Our reasons for selecting WGI over CPI are four-fold. First, WGI includes citizen survey data (unlike CPI, which is limited to experts and business) and the perception of state capture by elites and private interests.[6] Second, not only does the WGI include more indicators than CPI, but it also reflects the precision of each individual data source by weighting the averages.[7] Third, unlike the CPI, WGI reports margins of error (Kaufmann, Kraay, and Mastruzzi 2009, 2010). Fourth, as we are not analysing the whole population but, looking at high performers in the control of corruption (EU 27 +UK), we relied on WGI as it shows a higher coefficient of variation with respect to the CPI measures.[8] A final remark: for the EU 27 +UK countries, CPI and WGI scores correlate almost perfectly,[9] hence even those who do not agree with our choice would come to the same empirical conclusions.

To assign cases to different fuzzy values, we started from the 2020 WGI Control of Corruption scores. We opted for a fuzzy set calibration based on a 6-tile rank transformation[10] since this allowed for more variation between the cases and ensured a fairly homogenous distribution of cases across categories (see Table 5.1). A clarification is on order: we have calibrated our outcome in a way that high values point to a favourable outcome. This choice is in line what we do in all empirical chapters, that is, to show the effects on dimensions of good governance. Therefore, high values of the corruption outcome indicate control of corruption, i.e. how well a country deals with corruption, and this means that corruption is perceived as low. So, the actual outcome is not corruption, but the perception of integrity in the public sector; we use

[5] https://info.worldbank.org/governance/wgi/#doc.
[6] https://datacatalog.worldbank.org/control-corruption-estimate-0.
[7] The 2018 edition of the CPI draws on thirteen surveys (https://www.transparency.org/cpi2018) as compared with the WGI's 43 (https://info.worldbank.org/governance/wgi/#doc).
[8] 0.147 as opposed to 0.04.
[9] Pearson correlation 0.989, $p<0.01$.
[10] See footnote 2, chapter 4.

Table 5.1 Set Membership, Perception of Corruption

Values—Perception of corruption	Countries
0	Bulgaria, Greece, Hungary, Romania
0.2	Croatia, Italy, Latvia, Romania, Spain
0.4	Cyprus, Czech Rep., Lithuania, Malta, Poland
0.6	Belgium, Estonia, France, Portugal, Slovenia
0.8	Austria, Germany, Ireland, the Netherlands, UK
1	Denmark, Finland, Luxembourg, Sweden

Source: Authors' own

the shorthand Clean for this. Citizens of countries that are members of the Clean set consider their country to be relatively free from corruption, such as Denmark, Sweden, and Austria.

5.5 Analysis

When analysing the outcome corruption, we use again the four conditions consultation (CON), freedom of information (FOI), regulatory impact assessment (RIA), and the ombudsman (OM) created in Chapter 3. As just introduced, our outcome is Clean, referring to a country's perception of low corruption.

Starting from the analysis of necessity, as Table 5.2 shows, no condition (or its complement) is necessary for the outcome.[11]

With regard to the analysis of sufficiency, the following truth table (5.3) results:[12]

[11] For technical explanations of this and other parts of the analysis, please refer to Chapter 4. With regard to 'functional equivalents', ~CON + RIA results as a potentially necessary condition. However, the low RoN value of 0.506 makes it obsolete to consider this union a necessary condition.

[12] As explained in Chapter 4, the column n indicates the number of cases to which the truth table row ideally refers. For example, Estonia, Ireland, and Slovenia (row 16) show all four instruments rather than not showing them (all values of the configuration are 1). The inclusion column tells us in how far a truth table row can be considered to be a sufficient condition for the outcome, given the data at hand. The values of this column range between 0 and 1. The Proportional Reduction in Inconsistency (PRI) value indicates whether the truth table row can also be considered sufficient for the absence of the outcome, something that should be avoided. The outcome column (OUT) identifies which truth table rows have been declared sufficient (OUT = 1) and which ones not (OUT = 0). This declaration is the individual researcher's task, obviously on the basis of the available empirical information. Instead of basing this decision on the inclusion value only, we have opted for a more case-sensitive strategy. We have checked every truth table row individually in order to see whether deviances from perfect sufficiency are due to 'important' cases or not. 'Important' in this sense are those cases for which the given truth table row represents the ideal configuration of conditions.

Table 5.2 Necessary Conditions for Clean

	inclN	RoN	covN
CON	0.543	0.725	0.576
RIA	0.614	0.722	0.614
FOI	0.614	0.722	0.614
OM	0.600	0.714	0.600
~COM	0.700	0.725	0.662
~RIA	0.657	0.745	0.657
~FOI	0.657	0.745	0.657
~OM	0.657	0.745	0.657

Source: Authors' own

As in Chapter 4, the outcome value is derived through a careful check of every truth table row. The only doubtful row in this respect is row 1, for which Malta qualified as a 'true logical contradiction' (Schneider and Wagemann 2012: 334), being part of a highly consistent configuration which could qualify as a sufficient condition, but showing an outcome value of only 0.4; at least for Malta, the configuration at hand cannot be confirmed to be sufficient. Belgium only marginally deviates from the sufficiency requirement (showing the condition more than the outcome, but both values being > 0.5) and is no 'true logical contradiction'. Since the other two countries for which row 1 represents an ideal case scenario (the Netherlands and Sweden) are perfect onliers, row 1 was declared to be sufficient. However, since there is an obvious contradiction between the Netherlands and Sweden on the one hand (which show the outcome) and Malta (and in part Belgium, which do not show the outcome), the analysis will not produce a fully consistent result. Malta is a deviant case.

Note that row 16 (with the ideal cases Estonia, Ireland, and Slovenia) was considered to be a sufficient condition. Although showing not a high consistency value, there is no true logical contradiction. This means that all three countries that are characterized by the presence of all four instruments also show the outcome. The not-too-high consistency value of 0.741 is therefore only due to cases for which this row is no good description, or by cases which deviate only marginally.

The result of the analysis of sufficiency is: outlined in Table 5.4.

Three sufficient configurations for Clean result. The first is about low formalization of CON, RIA, and OM. The second combines again low or absent formalization of CON, this time with the formalization of RIA and

Table 5.3 Truth Table for Perception of Corruption

	CON	RIA	FOI	OM	OUT	n	incl	PRI	Cases
3	0	0	1	0	1	1	0.850	0.571	Luxembourg
1	0	0	0	0	1	4	0.839	0.667	Belgium, Malta, NL, Sweden
5	0	1	0	0	1	1	0.808	0.500	Denmark
6	0	1	0	1	1	2	0.778	0.500	Austria, Portugal
7	0	1	1	0	0	1	0.773	0.375	Lithuania
16	1	1	1	1	1	3	0.741	0.417	Estonia, Ireland, Slovenia
2	0	0	0	1	0	2	0.731	0.300	Czech Republic, Greece
11	1	0	1	0	0	1	0.722	0.000	Cyprus
12	1	0	1	1	0	2	0.720	0.300	Croatia, Finland
4	0	0	1	1	0	1	0.720	0.222	France
10	1	0	0	1	0	1	0.714	0.333	Slovakia
13	1	1	0	0	0	1	0.714	0.143	Romania
9	1	0	0	0	0	2	0.700	0.250	Germany, Italy
15	1	1	1	0	0	3	0.692	0.333	Latvia, Poland, UK
14	1	1	0	1	0	1	0.667	0.222	Bulgaria
8	0	1	1	1	0	2	0.654	0.250	Hungary, Spain

Source: Authors' own

low formalization of FOI. A final and third Clean pathway sees all conditions in their presence. This refers to row 16, which we mentioned before.
While the overall consistency level of this analysis is good (0.803), coverage is 0.700. This means that we explain some cases really well (high consistency), and that a few cases are not explained.

The three solutions allow us to make a number of observations. First, they are quite different from one another which means the conditions under examination do not produce many communalities between the solutions. Accordingly, we have evidence of equifinality: there are three distinct pathways that associate rulemaking procedures with how the phenomenon of corruption is perceived.

Table 5.4 Sufficient Conditions for Clean

	Configurations	Cases
1	~CON*~RIA*~OM	Belgium, Luxembourg, Malta, Netherlands, Sweden
2	~CON*RIA*~FOI	Austria, Denmark, Portugal
3	CON*RIA*FOI*OM	Estonia, Ireland, Slovenia

Source: Authors' own

The second point is the most important, and we shall spend some more time discussing it. The first two paths tell us that the *ecological* effect of the four rulemaking procedures can be weak in several cases. This result does not mean that each of them is irrelevant: we are not examining the average causal effect of an independent variable one by one (be it CON or FOI) on our measure of corruption perception. Instead, we are observing the overall, combinatory effects of the four procedures—therefore the term 'configuration'. As such, the four policy instruments can also feature in terms of their absence, with the exception of impact assessment that is present in the second explanation.

And yet, again, with regard to the first two paths, we are not arguing that consultation (in both), the ombudsman (in the first one), and freedom of information acts (in the second one) are absent. Recall that our conditions capture the presence of Ostromian rule types, or, in plain language, the presence of formalization, procedural steps, requirements written in the legal base of the four policy instruments.

We illustrate the point using the example of consultation, but the argument equally applies to the other conditions. The notation ~CON points to lack of written rules that establish what departments and agencies should do in the consultation process, who should be consulted, what should be published. More precisely, ~CON implies the absence of those procedural requirements captured by the first and second component that, in our Principal Component Analysis (see Chapter 3), make up the CON condition.

And therefore, ~CON, empirically, can portray one of these two situations: it can refer to a country with highly meaningful and engaging consultation processes—except that these processes are not formalized, because they are instead based on informality and social norms. Alternatively, it might be the empirical representation of a country where consultation does not exist, or it is weak. Our data and set-theoretical techniques cannot discriminate between the two cases. But qualitative analysis carried out country by country can. We turn to the qualitative observations next.

Elsewhere, we have explained how consultation is objectively weak in, for example, Malta, which features in the first solution (Dunlop et al. 2021) and, in line with the literature, illustrated the informal characteristics of consultation in Sweden (solution 1) and Denmark (solution 2) (Dunlop et al. 2020). In some countries (like Austria and Sweden) with corporatist traditions and hearings that pre-date OECD-type stakeholders engagement, the substance of consultation and impact assessment is not embedded in rigid procedures. The function of rulemaking instruments is not to neatly separate a formal evidence-based stage and a more informal political, consensus-seeking stage. The two may happen at the same time, especially in corporatist countries with relatively small elites, with 'the informal steps being more important than the formal ones' (Radaelli 2009: 40).

Third, the countries in the Clean explanations have different stories to tell. For the first explanation, we find Sweden, with the notable absence of thick proceduralization of the ombudsman, together with small countries where better regulation OECD-style has not taken off, like Luxembourg. As is always the case with our analyses, the explanation is ecological, hence no-one is arguing that the ombudsman does not have any effect on corruption in Sweden. Rather, the data simply say that Sweden is characterized by the absence of those procedural rules for the ombudsman that make up the Principal Components we used to calculate the OM condition. The ombudsman can be strong in real-world public policy, supported by social norms, but not heavily proceduralized in design.

The fourth point is that the rulemaking instruments should be projected on the wider canvas of the design of national administrative procedures. By this we mean the country-by-country approach to administrative law, typically enshrined in the administrative procedure act (APA). Let us look at the context and history of administrative law in more detail, country by country, to show how this important dimension matters. If general principles of administrative action are not codified, it would be odd to expect that administrative procedures governing rulemaking are highly formalized in several steps.

In Belgium, general principles of administrative action are not codified. They are mostly a doctrinal creation. It is mainly the Council of State that develops these principles as specific legal grounds to challenge the legality of administrative action. This chimes with Belgium showing no proceduralization in the design of consultation, light proceduralization for impact assessment and (compared to other countries) light formalization

in terms of information, pay-off and scope rules for ombudsman. The total absence of rules for consultation is because there is no general legislation prescribing public bodies to follow a consultation procedure.

Sweden tells a similar story. This is a country where the presence of the APA is not significant, given its very late codification. Sweden in fact adopted the Administrative Procedure Act only in 2018. This case is, similarly to Belgium, one of light architecture to govern administrative action. This however is not the case of Luxembourg (the legal source for general administrative principles dates back to 1978).

The Netherlands has a story of light codification—which correlates with low formalization in our four conditions. This country has also a peculiar understanding of rules and regulations—yet again a product of history. The Dutch APA is not a meta-regulatory effort to fix administrative processes once and for all. On the contrary, it was intentionally designed to leave room for manoeuvre to courts. The Dutch APA, called *Algemene Wet Bestuursrecht* (Awb, adopted in 1994) contains some principles and procedures that are generally applicable to all actions by administrative bodies. Underlining the special position of 'rules' in Dutch administrative law, 'generally binding rules' are exempted from the scope of certain provisions, such as those on publication and the duty to give reasons.

Furthermore, the applicability of the provisions is limited to the 'extent that the nature of the decisions concerned does not stand in the way': the principle of careful preparation, the prohibition of *détournement de pouvoir*, the balancing of interests and the proportionality principle (3:2–3:4 *Awb*). The reason for this is that, when the *Awb* was drafted in the early 1990s, it was thought best to leave the development of norms for lawmaking (traditionally a vague area) to the courts, instead of resorting to codification.

The vast majority of delegated legislation (regulations) is adopted by either the government (*Algemene maatregelen van bestuur; amvb's*) or ministers (*ministeriele regelingen*). Rulemaking powers for agencies are almost never rulemaking powers in the legal sense of the word, but always connected to the power to take individual decisions. Whenever an administrative body (whether this is an agency or a minister) has the power to take such an individual decision (fines, licenses and so on) it can make 'policy rules' (*beleidsregels*) to clarify the way in which it will use the discretionary power that comes with the power to take individual decisions. These rules are technically made for internal purposes but once they have been published a judge may apply them.

Turning to the countries that feature in the second sufficiency pathway, Denmark, Austria, and Portugal are in the same recipe, but for different reasons. Denmark today has a fairly developed and procedural impact assessment according to our data, and indeed we find it in the recipe with proceduralized impact assessment. But, in terms of engaging stakeholders, the characteristics of informal 'small world' networks of those who count in government and companies have not disappeared (on the small world characteristics of Scandinavia see Sinani et al. 2007). 'Small world' interactions and soft controls such as consensus, social capital, and trust developed during decades are the effective means of curbing corruption in Denmark (Johnston 2013). In her article on 'Becoming Denmark' Mungiu-Pippidi (2013) argues that the explanation of how Denmark controls corruption lies in how society and institutions developed in the past, not in what kind of policy instrumentation is adopted today. Here, Mungiu-Pippidi echoes the collective action explanation provided by Persson, Rothstein, and Teorell (2013) for Sweden, where systemic corruption is kept at bay via social mechanisms (Rothstein and Teorell 2015).

When observing the Austrian case, Biegelbauer and Mayer (2007: 1) highlight the interplay between some mechanisms of procedural impact assessment and informality in consultation. Interestingly, the title of their contribution is 'To RIA or not to RIA'. Their analysis points to a long-standing feature of the governance *modus operandi* in Austria when they note that:

> the intense interactions between key actors in the Austrian regulatory process are historically contingent. One example for such a set of interactions building on previous interactions is the consultation mechanism preceding the legislative process of Austrian parliamentarianism: most draft laws are produced by federal ministries as part of a pre-consultation process (*Vorbegutachtungsverfahren*) in interaction with political and economic stakeholders before they are fed into the consultation mechanism (*Begutachtungsverfahren*). Both periods in the production of a law are barely regulated, both consist in differing degrees of formal and informal elements. (Biegelbauer and Mayer 2007: 1)

This mix of formal with informal is captured in the second QCA sufficiency path for Clean. The recipe 2 countries all have a history of light codification of rulemaking, even when an APA is present. Denmark has a Public Administration Act which dates back to 1985, but most of the general principles exist only as non-codified rules. Austria is one of the few countries in the EU (and the only one in the two strings) where individual rights are not

established by general principles, thus are not in the APA. Rather, it is the Austrian Constitution that contains most of the provisions where individual rights are set. This is also a case of light proceduralization of administrative action, because the protection of rights is in the Constitution. Lastly, Portugal codified general principles of administrative action only in 2015, hence it is not worth considering how heavy this APA is in terms of administrative action architecture.

The conditions that appear in the strings—this is our fifth point—are synthetic measures. They aggregate and simplify a high number of Ostrom's rules, divided by rule type and organized in Principal Components. The point is relevant because when we move down the level of abstraction and draw on more granular measurement approaches, the results may vary. Turning one more time to consultation, in the article we mentioned above (Dunlop et al. 2020) we observed this instrument in granular ways (meaning: without applying to our raw data a technique to reduce complexity like Principal Component Analysis) and in combination with a condition of social capital to capture the dimension of informality. We found that soft controls via social capital make up for the absence of proceduralization on access and choice rules in Austria, Belgium, Denmark, Germany, Ireland, Luxembourg, and the Netherlands. The second pathway revealed in that article is also based on soft or minimum proceduralization (namely, of information and choice rules, plus a condition called 'thickness' of the consultation procedure) and includes Sweden. Only in the UK do we find informal rules and strong proceduralization (always of consultation) working together. Portugal is the only case where poor social capital indicators combine with high proceduralization of consultation to produce a configurational association with perception of low corruption (Dunlop et al. 2020: 1731).

Significantly, Belgium, Luxembourg, and the Netherlands also feature in our first sufficiency recipe, whilst Austria and Denmark are in recipe 2 which also has low proceduralization of consultation. Portugal is again a surprise, like in the 2020 article. It is not a country whose size makes it practically irrelevant whether design follows OECD-type better regulation proceduralization. Neither is this a country with hearings, corporatism and a 'small worlds' tradition. Yet RIA has been developed with rather precise procedural steps. One variable we cannot control for is the level of tolerance of corruption (Moriconi and Carvalho 2016 provide data on this phenomenon in Portugal), which in turn affects the value of the perceptions-based indicator of corruption like the one we use. Torcal (2014) makes the point that in Portugal the increasing perception of political corruption aggravates the

overall beliefs in the political responsiveness of representative institutions, drawing connections between our subject matter (corruption) and trust.

The third part of the explanation shows a different causal logic. Here all the four conditions are present, to signal an ecological positive effect on the outcome. The finding is that classic better regulation instruments can work well with other instruments that open up the public administration (FOI) and allow for some forms of scrutiny and pressure. The positive ecological effect is present in three countries: Estonia, Ireland, and Slovenia. Estonia has a regulatory framework embedded in the preparation of new legislation since 2014. The Ministry of Justice is in charge of the overall quality of legislation and oversight of impact assessment. This is a country that makes extensive use of online tools for public consultation and more extensively to track down all legislative developments. Estonia also engages stakeholders when proposals for new legislation emerge at the European Commission, thus making this country a heavy user of regulatory procedures.[13] According to the most recent OECD data, Estonia is the top performer in the EU 27 for the use of RIA in the development of primary laws (OECD 2022: Chapter 3, Figure 3.1).

Ireland has detailed proceduralization of the rulemaking process, anchored to the idea of providing citizens and stakeholders with a legislative footprint to access the process of making laws and regulations at different stages. Consultation guidance was strengthened in 2016 by the Department of Public Expenditure and Reform.[14] The Irish Government Economic and Evaluation Service (IGEES) has invested in different rounds of training and awareness-raising events around better regulation, involving several departments. Slovenia has been keen on adopting proceduralization with action plans for better regulation.

Finally, we explore the XY plot, see Figure 5.1 (for technical details, please refer to Chapter 3). Remember that on the Y-axis we have Clean, to represent perception of low corruption. Only Malta, as we said above, is a 'true logical contradiction', but, as shown by its location in the plot, not a very relevant one, since it is close to the area above the diagonal. However, a few cases cluster in the upper left corner of the plot. These cases show the outcome, but the four instruments do not account for their high outcome value, in any combination. This mainly refers to the cases of Finland, Germany, and the UK.

[13] https://www.oecd-ilibrary.org/sites/3b46f4aa-en/index.html?itemId=/content/component/3b46f4aa-en.

[14] https://enterprise.gov.ie/en/what-we-do/the-business-environment/better-regulation/.

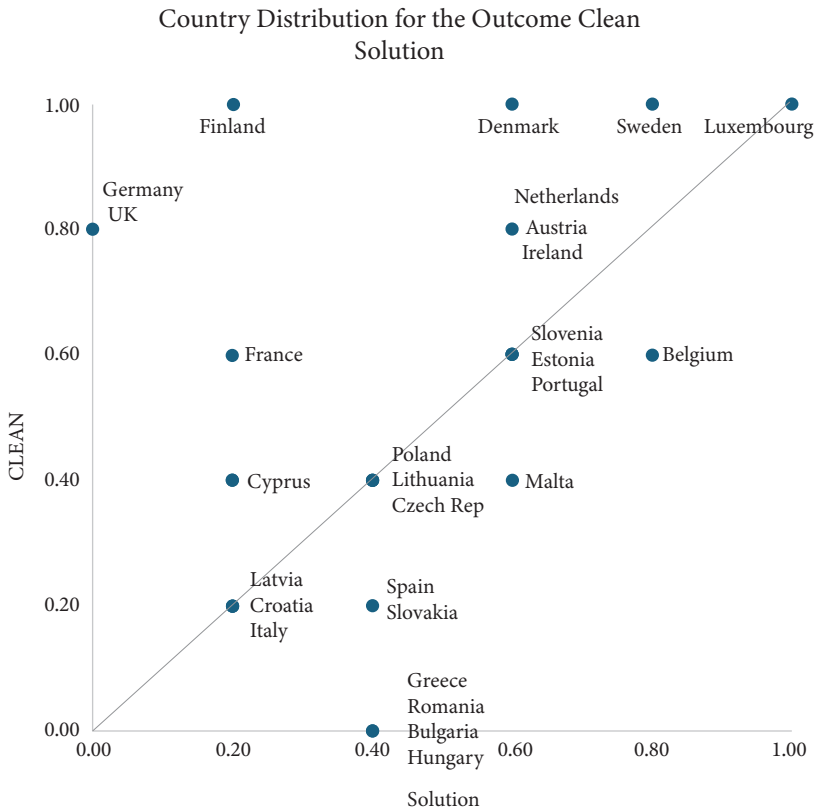

Figure 5.1 Country Distribution for Outcome Clean

Source: Authors' own

5.6 Conclusions

This chapter has presented a story of informality and social norms (our first two solutions) versus formalization (the third solution). But it is also a story where in some cases some formality and soft social interactions coexist, as we observed in the case of Austria.

When we examine the perception of corruption, three solutions for the outcome result. The first is about low formalization of three of our four conditions: consultation, impact assessment and the ombudsman. The second combines again low or absent formalization of consultation, this time with the formalization of impact assessment procedures and low formalization of freedom of information. The third (which however does not reach a high consistency value and is thus doubtful to be interpreted) sees all conditions in their presence, in three countries. The ecological effect of formal

procedures is weak for the first two solutions, but strong for Estonia, Ireland, and Slovenia.

The three groups do not respond to intuitions or expectations drawn from macro-theories like Europeanization, varieties of capitalism, administrative reforms, and legal origin. However, we found that looking in more details to the history and nature of administrative law explains the position of the countries in the first two recipes. As we said, the history of how 'Sweden became Sweden', the nature of interaction with the stakeholders, the 'small worlds' characteristics of some cases in our two recipes gives a fuller account and an explanation of their position. Estonia, Ireland, and Slovenia, making up the third string, have in common a commitment to fix the steps of rulemaking in meticulously designed procedures.

In explaining the findings, we observed cases with a low degree of proceduralization because these cases draw on informality to control corruption. In other cases, however, the absence of formal procedure means that there has not been an investment in rulemaking instrumentation, like in Luxembourg, where the small size of the country explains the lack of commitment for regulating the rulemaking process with consultation, freedom of information, and the ombudsman. One lesson for policymakers is that the perception of corruption may not respond to an investment in design alone: as we said, history and informality have a role of play in the causal explanation of corruption. High proceduralization may actually create that type of regulatory rigidity that favours corruption. This argument often aired in the literature, as we have seen. But in our results the argument holds in novel forms, for example it shows in countries that do well on perception of corruption because of low degrees of meta-regulation, and with more nuances, as we observed in our case-by-case qualitative analysis of countries like Austria, Denmark, and the Netherlands for example.

When does an investment in formal procedures pay off, then? A thick design works for impact assessment in the second solution, whilst all the four instruments show up in the third one. In particular, that third path suggests widening up the concept of better regulation to freedom of information and the ombudsman. This is a lesson for international organizations that have invested in promoting consultation and impact assessment but have not connected the discourse and agendas on better regulation to the other rulemaking instruments that are sufficient (in the QCA sense) for the outcome of perception of low corruption to occur.

Taking all partial solutions together, we come up with a nuanced explanation, pointing to equifinality. There are countries that benefit from proceduralization and others where light procedures are sufficient for

perceptions of low corruption. This suggests caution when adopting better regulation instruments or going for detailed procedures in the design of FOI and the ombudsman. There is no one-size-fits-all.

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6
Environmental Performance

6.1 Introduction

The final empirical chapter places environmental performance in the spotlight. We know countries' environmental records are shaped by complex combinations of political, economic, and cultural factors. The mediating roles played by administrative variables are also increasingly highlighted as consequential for sustainable policy outcomes as authors seek to bring the state into environmental governance analysis (Duit 2016; Duit, Feindt, and Meadowcroft 2016). In this regard, there is a growing body of evidence regarding how administrative capacity, traditions, and policy integration shape environmental policy design and implementation (for example, Lenschow 2002; Lenschow, Burns, and Zito 2020; Melidis and Russel 2022; Russel 2022; Steinebach 2023). The connection between rulemaking and the environment is yet to be systematically examined.

While the impact of meta-rules on a country's standing in environmental protection is not self-evident, there are good reasons to link policymaking processes which are more transparent, evidence-based, and accessible to positive environmental outcomes. This intuition reflects the logic at work in the pre-eminent definition of environmental protection as a regulatory problem where policy design (both nationally and internationally) privileging narrow economic priorities and interests is seen as major cause of environmental externalities. In Section 6.2 we outline the increasing appreciation that for policies to deliver on the environment high quality regulatory design is required which brings in a wide range of expertise. Section 6.3 delineates the links between our four instruments and environmental protection. The advent of transparency-based environmental governance is our springboard since it lays bare the problem of protection as one of asymmetrical power over information and access to decision-making. We push on this, further by suggesting three possible causal pathways that link our instruments to outcomes: audience expectations, social learning, and interest configurations.

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Environmental performance can be modelled in a variety of ways. Section 6.4 is dedicated to our outcome measure—the Sustainable Governance Indicators (SGI). The SGI is an index of policy performance and has the key advantage of covering individual countries domestic results as well as their international contributions to environmental protection. Our assessment of the impacts of our four instruments on environmental performance reveals that none of these conditions are necessary for highly rated environmental outcomes. However, convincing sufficiency patterns do exist involving different combinations of consultation, impact assessment, and freedom of information. The findings reported in Section 6.5 demonstrate that the importance of these instruments is especially pronounced in countries which lack some of the key political variables—notably concerning interest configurations—known to shape positive environmental protection. Indeed, even moderate access to information and inclusion of expertise appear to enhance environmental policy performance in some countries. Section 6.6 briefly concludes.

6.2 Environmental protection as a regulatory problem

Environmental problems are products of market and government failures (Hepburn 2010). Environmental degradation is fundamentally an economic problem, a textbook case of an externality where economic production and consumption operate in ways which focus attention on the direct costs of goods allowing firms and consumers to neglect their indirect impacts on the environment (Jacobs 1991). Leaving environmental protection to market forces risks leaving this uncorrected. Governments intervene. Yet, command and control policies have been dogged by faulty design and implementation gaps. Moreover, there is a vast debate on the capacity of governments to provide public goods with interventions that actually internalize environmental externalities without producing excessive distortions to economic activities and competition. The likelihood of government failures has to be compared with how much property rights, voluntary exchange, and common law liability can do in a specific situation to protect the environment (Anderson and Lyal 1991). In the 1990s, these deficiencies acted as the stimulus for environmental protection becoming widely treated as a regulatory challenge (Binder 2002; Busch, Jörgens, and Trews 2006; Fung, Graham, and Weil 2007; Graham 2002; Porter and Van der Linde 1995; Stephan 2002).

Yet regulatory policies do not offer some mechanical switch to automatically improve outputs and outcomes (Bressers and Huitema 1999). Indeed, the persistence of environmental problems speaks to regulatory failure over prolonged periods of time. Regulation can under-deliver. Where governments lack the political will to enforce mitigation policies which check the behaviour of polluting firms and citizen consumers, environmental rules can be little more than cosmetic. Politically motivated administrations may deliberately design policies to appease powerful polluters whose backing they need for political advancement (Felder and Schleiniger 2002; Kamieniecki, Shafie, and Silvers 1999; Shepsle and Weingast 1984; Ward and Cao 2012). Ineffective environmental policies may be underpinned by protectionism. Most obviously, this happens where high standards are avoided since, it is presumed, they will jeopardize some competitive advantage a nation has in a particular industry or sector (Börzel 2002; De Santis 2012; Jenkins 2014; Scruggs 1999; Stigler 1971). In international trade, it is also possible that high environmental standards favour the domestic incumbent firms in international trade, since they have already developed strategies to comply with high standards (Vogel 1997).

Thinking beyond the political, high-quality regulatory design requires expertise: governments may simply lack the detailed technical know-how required to design regulations that effectively address specific environmental challenges or detect shirking in policy implementation (Stevens 2019). Regulations adopted in the US and EU in the early 2000s promoting first generation biofuels are an instructive example. Ambitious targets for plant-based fuels were adopted without realizing the deleterious implications of these fuels both for emissions levels themselves (Searchinger et al. 2008) and for environmental sustainability in the developing world where land use began to change radically as a result of the new biofuels industry (Palmer 2014). With regulatory targets set and a new industry created around this technology, policy reversals were slow and partial.

The fundamentally international nature of environmental policies adds a further layer of complexity for effective policy design. It is always possible that rules designed to achieve positive results at home may actually transfer the same risk (or worse) to other countries. This may be inadvertent—as per the aforementioned biofuels case (Dunlop 2009). But exporting environmental hazard is also deliberately designed into some policy instruments. Most obviously in the phenomena of emissions trading which has arguably stymied radical climate action in the developed world and entrenched fundamental

collective actions problem of environmental protection (Jordan and Moore 2020; Voß and Simons 2014).

Yet, environment policies can and do deliver. After all, the world is replete with indices tracking global policy outputs and outcomes at the domestic and international levels which attest to progress. The question then is not if they deliver but under what conditions (Fiorino 2011). Of course, what is actually meant by environmental performance is, quite rightly, contested (Duit 2014; Fiorino 2011; Meadowcroft 2014). And, regardless of the conceptualization chosen, there is no simple formula for successful environmental performance (Eisenstadt, Fiorino, and Stevens 2019). Thinking about EU member states (and UK), studies suggest countries' status as environmental 'leaders or laggards' are shaped by complex combinations of factors. Most frequently identified are: green advocacy coalitions (Jänicke 2005; Jahn 1998); religious culture (Lenschow, Liefferink, and Veenman 2005); the structure of public/private ownership in certain sectors (Lenschow, Liefferink, and Veenman 2005); governmental capacity and institutional fit/misfit (Melidis and Russel 2020); levels of economic development (Börzel 2002; Lenschow, Liefferink, and Veenman 2005) and economic activity (Melidis and Russel 2020); national regulatory styles/degree of neo-corporatism (Biesbroek et al. 2018; Crepaz 1995; Vink et al. 2015; Vogel 2003; Wälti 2004); and administrative traditions (Steinebach 2023).

This literature is a mix of conceptual plausibility probes and small-scale analyses of specific policy outputs. The few quantitative studies offering a more general picture reiterate the importance of this range of cultural, political, and institutional factors (see for example Jacob and Volkery's 2006 examination of twenty-seven independent variables in their assessment of OECD countries' performances). Large N studies also highlight the importance of EU membership for domestic environmental performance (Liefferink et al. 2009). Finally, studies on environmental outcomes add to the mix a basket of geographic and economic explanatory variables—from population density and size of country to income levels of GDP in manufacturing (Farzin and Bond 2006; Jahn 1998; Scruggs 1999; Torras and Boyce 1998).

Digging deeper into the mechanisms through which some of these variables impact environmental policy performance, we can see the potential importance of administrative instruments. Specifically, setting structural, economic and cultural factors to one side, a role for transparency instruments can be uncovered in two of the strongest political and institutional variables identified in the literature: green advocacy coalitions and national regulatory styles (specifically, neo-corporatism). We turn to these next.

6.3 Meta-regulation and environmental protection: The advent of transparency-based environmental governance

The presence of strong environmental movements and increased levels of social participation are positively associated with the elevated environmental performance of countries (Jahn 1998; Laegreid and Povitkina 2018). The success of such advocacy is not only a matter of the structure of these networks. It is about broadening the spectrum of actors involved in policy design (Jänicke and Jörgens 2006) and modifying the structure of the resulting networks. The mechanisms are simple: green groups and citizens' demand better environmental policies, monitor implementation (which is often poor, Stevens 2019), and inform bottom-up policy innovation (Jänicke 2005). The spread of administrative procedures such as freedom of information, consultation, and RIA has been central to these contributions. What emerges is a picture of environmental progress as dependent on greater opportunities for participation and information.

This conceptualization of environmental degradation as, in part, a problem of power and information asymmetry has been one of the factors behind the global push for 'transparency-based' environmental governance which gained momentum this century. Since the birth of the modern-day environmental movement in the 1960s, activists and local communities affected by adverse environmental hazards have understood that access to information is a central campaigning resource (Konar and Cohen 1997; Mol 2014). The United Nation's (UN) 1992 'Rio Process' supporting the implementation of Agenda 21[1] emphasized the importance of monitoring and cooperative governance (Jänicke and Jörgens 2006; Knoepfel 1995). Coupled with that, the 1990s saw the global diffusion of freedom of information legislation which became widely regarded as a key route to more environmentally sustainable policy outcomes.

In the past two decades, calls have broadened for the inclusion of more participatory tools that open-up policy design and implementation to diverse stakeholders and civil society (Weil et al. 2006; Stephan 2002). The attendant literature on environmental governance has seen a 'transparency turn' examining the policies which combat opacity and require governments and powerful private economic interests to report key environmental metrics (Langley 2001; Mitchell 1998; Gupta and Mason 2014).

[1] Agenda 21 is a four-pronged, non-binding action plan on sustainable development. It was a product of the famous 'Earth Summit' held in Rio de Janeiro in 1992.

Empirical analyses focus primarily on the societal scope conditions for the successful institutionalization and performance of targeted environmental disclosure systems. Specifically what matters most are: societal willingness to engage in new behaviours and the extent to which those being regulated will benefit from that behavioural change (for example in the US, Fung, Graham, and Weil 2007 and Weil et al. 2006). Such case studies aside, we know very little about what these tools actually deliver for the environment both individually or cumulatively (Bannister and Connolly 2011; Fung, Graham, and Weil 2007; Lord 2006; Roberts 2006). In short, there is a gap in the literature when it comes to assessing the impacts of transparency and rulemaking instruments on environmental performance.

One promising way to move beyond the specificity of case studies is to consider the broader institutional context within which environmental policies sit. Majone's (1976) study of effluent charges in France in the 1960s reminds us that, while the technical features of an environmental instrument are non-trivial, the wider administrative context and stock of rules therein can matter more for its performance. Policy instruments are not implemented in isolation, after all no policymaker writes on a clean slate. How specific policy measures themselves contribute to outcomes is not self-evident (Majone 1976: 599; for similar arguments see Bressers and Huitema 1999; Larrue 1995; Liberatore 1995; Simonelli and Iacob 2021). A nation's administrative context casts a heavy shadow.

In particular a neo-corporatist policy style, where policy is made through coordination with key economic and social stakeholders, is one of the strongest explanatory variables of environmental performance. The success of environmental movements in many western liberal democracies in the 1970s and 1980s has resulted in environmental interests being taken into consideration more readily and consistently in the policy process (Crepaz 1995; Enloe 1975; Jänicke 2005; Jahn 1998 Vogel 1986, 2003). This style is especially effective in multi-level decision-making settings (Wälti 2004).

When we think about the importance for environmental performance of what is written on the administrative slate of a country and how it gets written (the national policy style), an obvious starting point is the Aarhus Convention.[2] Signed in 1998, Aarhus requires that all signatories (forty-seven countries in 2022) commit to wide-ranging levels of information access on environmental impacts, participation in decisions, and environmental justice (UNECE 1998). Aarhus stands as a major institutional moment in

[2] Its full title is: The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters negotiated under the auspices of the United Nations Economic Commission for Europe (UNECE).

environmental policymaking and a milestone in the acceptance of transparency tools for environmental protection. Meeting Aarhus's broad aspirations relies heavily on existing national administrative institutions and their (mis)fit with the ambitious standards set by Aarhus. On the ground, the way individual states meet their Aarhus obligations and policy and civil society actors exercise their rights is largely dependent on the norms established in freedom of information legislation, consultation procedures, impact assessment guidelines, ombudsman arrangements and judicial review powers, and their interplay (Lee and Abbot 2003; Mason 2008, 2010, 2014; for examples see national implementation reports on the Aarhus Clearing House[3]).

Thus, the reality of Aarhus suggests a more systematic exploration of how different transparency tools jointly impact environment protection and, this in turn, requires that we go broader than environment-specific tools (Florini and Jairaj 2014). Environmental regulations and disclosure mechanisms are clearly nested in broader administrative contexts. Bringing the state into the study of environmental performance requires we ask how the design of transparency systems at the national level mediates environmental policy commitment and performance at both domestic and international levels.

Steinberg (2015) is one of the few authors to break this ground. In his study of how social rules shape environmental outcomes in the US, Steinberg makes the point that rules which govern rulemaking structure the environmental policy design space. He points to notice-and-comment and freedom of information legislation as two exemplars of 'super-rules' which have enabled transparency and challenge and, in doing so, helped to drive up the quality of legislation benefitting the environment (2015: Chapter 10). What we lack are systematic studies of the impacts of rules which structure who participates, who gets to complain, whose knowledge matters and what information is available. Indeed, there are no studies which place administrative instruments front and centre in an empirical analysis of environmental performance. The literature where any of the four instruments we are interested in feature prominently in the analysis is slight. Bibliographic searches of their discussion in studies including any of the EU27 countries or UK yielded sixteen or fewer articles per instrument (in the case of the ombudsman considerably lower) and a total of only thirty-nine with any relevance.[4]

[3] https://aarhusclearinghouse.unece.org/national-reports/reports.

[4] The following Web of Science™ searches were conducted (21 November 2022). 'freedom of information' AND environment and 'freedom of information' AND environmental were merged, duplicates removed, non-EU27+UK removed resulting in N=9. Ombudsman AND environment and ombudsman AND environmental were merged, duplicates removed, non-EU27+UK removed resulting in N=3. 'regulatory impact assessment' AND environment and 'regulatory impact assessment' AND environmental were merged, duplicates removed, non-EU27+UK removed resulting in N=11. Finally, consultation AND

These articles offer very little by way of systematic empirical evidence on the impact of these instruments in the environmental arena.

The literature on targeted disclosures boosts our knowledge, providing important insights on the possible relationship between these meta-regulatory tools for transparency and environmental policy performance. These insights chime with the sustainability turn in the future imaginings of better regulation now promoted by IOs (European Commission 2021; OECD 2019, 2021; Meuleman 2021; Renda 2017; Sunstein 2014; UNDESA 2021). Overarching institutionalized procedures may not be designed with specific regulatory effects in mind, but they do condition how environmental policies work. Three pathways to impact are important: audience expectations, social learning, and changes in interests' configurations.

Transparency measures at the macro level of rulemaking can shape expectations and receptivity to transparency in environmental policymaking. National norms regarding the standards of evidence-based policymaking in RIA or levels of inclusivity in consultation shape the broader context of policy design for individual sectors. Florini (1998) notes the development of 'regulation by revelation' in environmental policymaking owes much to the rapid global diffusion of FOI. FOI's adoption since the 1990s has been an important generator of support among NGOs and civil society for deeper disclosure arrangements in environment policy (Florini and Jairaj 2014: 68). This contagion effect also alters expectations within the bureau regarding the art of the possible. We know ministries that are politically weak can struggle to engage in the integrated planning that aids policy innovation in environmental issues (Jänicke 1997). Administrative tools that apply across the bureaucracy may help level the playing field in this regard. For example, Florini and Jairaj (2014: 71) offer the intriguing example of how access to information legislation in China provided the legal basis for pro-environment action by motivated bureaucrats.

Closely linked to this contagion of expectations comes social learning. Civil society and stakeholder expectations are not only artefacts of the levels of openness they have become accustomed to in policymaking. Understandings about how access to information works (for example, its exemptions), actual participation in consultation exercises, and the experience of appealing decisions, all support the capacity to demand environmental policies which deliver on sustainability. Again, Florini and Jairaj (2014) offer an instructive case in how wider access tools create 'informed voices'

environment and consultation AND environmental were filtered through three relevant WoS categories—Public Administration, Political Science and Law—then merged, duplicates removed, non-EU27+UK removed resulting in N=16.

(Florini 2007; Sinclair and Diduck 1995). This time in India, they demonstrate the importance of FOI legislation in socializing NGOs and civil society groups' to routinely mobilize and push for particular types of disclosure in environmental policy (see also Florini 2010).

We know similar policy learning processes can be triggered by impact assessment and stakeholder consultation. In its basic form, in some contexts and issues, RIA may simply offer the best way to preserve scarce natural resources (see Adelle et al. 2015 on developing countries). Yet, upstream evidential procedures like RIA can offer the first line of innovation in policymaking which embeds sustainability values through capacity building (though see Cashore 2022 for a nuanced discussion of the pitfalls of unprioritized innovation for sustainability development). For example, forms of impact assessment which require evidence from local communities (see Bice and Fischer 2020 on Australia, Spaling, Montes, and Sinclair 2011 on Kenya and Tanzania) or stipulate that sustainable well-being be included in appraisals (for example Green, Gray, and Ashton 2020 on health impact assessment in Wales) appear to instigate more expansive analytical thinking in the bureau, include more diverse ranges of stakeholders, and ultimately secure more environmentally aware policy action on the ground.

Of course, learning is not always a 'good thing'. The quality of information and equality of access to it can never be assumed (Mol 2014 and Florini 2010 again on India; see also Hamilton 2005: 174 on Friends of the Earth's criticism of the US Environmental Protection Agency [EPA] in this regard). The same normative neutrality applies to the knowledge and participation forms generated by RIA and consultation: strong formal procedures may not necessarily equate with positive contributions to policy.

National regulatory tools also impact interest configurations around environmental issues. Such changes in pressure politics are laid bare in an early study of the impact of freedom of information legislations in different parts of the UK. Gouldson (2004) demonstrates how enhanced access to information reconfigured environmental policy networks. Specifically, the availability of data on environmental performance in England contributed to the disruption of the once stable and closed relationship between industry and regulator as empowered environmental NGOs and citizens pressed for more stringent action.

The use of administrative rules to restructure power relations is inevitable in issues with profound distributional consequences. The environment is a prime example of such an area where rules 'both define the existing environment for choice and provide an arena for conflict' (Goldberg 1974 in Majone 1976: 591). Citizens can use administrative hearings, tribunals

and consultations to protest against the spectre of future pollution in their community (see Grima 1985 on hearings for the environment and Newig et al. 2023 for broader a meta-analysis). And those same consultation procedures are also used by powerful industry stakeholders looking to publicize the potential economic benefit for that community. This takes us back to normative neutrality; the result of these clashes may not always encourage environmentally progressive policy results. Transparency is not always emancipatory (Mol 2014).

Notwithstanding these realities of bargaining, great expectations can be enhanced by norm contagion and social learning. Power reconfigurations can be driven by disclosure and participation that underpins the contemporary better regulation agenda of IOs. Increasingly, institutional quality is seen not merely as a matter of opening the bureau to more diverse voices for the sake of democracy or evidence-based policy. Now, enhanced transparency mechanisms and innovative appraisal promise to make responsive 'agile regulatory governance' possible. Such agility increases the potential for sustainable policymaking and better environmental outcomes (European Commission 2021; OECD 2019, 2021).

So goes the theory. What we lack are systematic empirical explorations of such mechanisms. Analysis offering a fine-grained view of what administrative systems deliver for environmental policy performance is essential if are to move from the aspiration of policy coherence for sustainable development toward its reality.

Before outlining our outcome measure, we should acknowledge the literature adopting a critical approach to transparency in global environmental governance (Gupta 2008; Mason 2008; see Gupta and Mason 2014 for a review). Critical scholars convey important messages about the power configurations underpinning the design and impact of transparency tools in this area. For example, they point out rational approaches to the inclusion of scientific evidence in policy appraisal marginalize other forms of evidence or sideline critiques in ways that reproduce existing power structures. Disclosure tools have their own political economy widening accountability or improving ecological outcomes in unequal ways; due process can be skewed, and information may empower some more than others, most of all when the latter is technically complex. Moreover, information access regulations are often devoid of environmentalist values in their design (Mason 2008).

The critical political economy literature also brings into sharp focus the folly of assuming (or indeed trying to establish) causality. Changes in disclosure practices are often driven less by instruments such as FOI and more by broader changes in the polity. It is not as simple as assuming any direct

causal link running from targeted disclosure tools to environmental outcomes (Gupta 2010). Some authors go further and contest the status of transparency measures as drivers of significant regulatory effects full stop. Structural analysis, for example, treats tools as little more than a fig leaf which operates to give the impression of progressive action while frustrating more radical change in ecological outcomes (Lord 2006).

Though we are not working within this critical tradition, the point about practicing caution on causality is well taken. Moreover, the skepticism which accompanies transparency tools makes it even more important to empirically understand what they can deliver for environmental governance. The relationship between transparency measures and environmental performance is by no means self-evident. Our approach goes some way to exploring the distinct and combinatory effects of disclosure devices on environmental outcomes.

6.4 Measuring environmental performance

Since the 1990s, indicators have sprung up for almost every conceivable aspect of governance (Anheier, Haber, and Kayser 2018; Oman and Arndt 2006). With governmental focus on climate change coinciding with this rise of better regulation metrics, attempts to measure progress on environmental sustainability are manifold. Indeed, it is hard to find any 'good governance' indicators that do not have at least some environmental component to them.

There are two main categories. First, policymakers and scholars interested in the environment can drill down on the environmental components found within large composite indices designed to capture an array of governance measures. Or, where appropriate, they can go for highly specialist indicators that address issue-specific areas—for example, emissions for specified compounds (Jahn 1998) or forestry depletion (Haber and Kononykhina 2018). Whether all-encompassing or highly specified, the architectures of these indices are broadly similar: metric data across a range of attributes and issues are gathered from academics, think tanks, NGOs, stakeholders, and governments which are transformed into a score enabling country rankings.

Alternatively, measurements of environmental protection often come in the case study form (for examples see Gupta and Mason 2014 and Gupta, Boas, and Oosterveer 2020). Though we cannot transform such thick analyses into outcome data, these cases bring us a huge amount of country and instrument-related intelligence invaluable in the interpretation of cross-national comparisons like ours.

When selecting outcome data, we need to balance inclusivity with precision. This is especially important when it comes to policy areas that touch sustainability whose definition is incredibly broad (WCED 1987). We use the Sustainable Governance Indicators (SGI). Funded by the think tank the Bertelsmann Foundation, the SGI was first published in 2009 and has reported every year since. Focused on OECD and EU countries only, the SGI is structured into three pillars—policies, democracy, and governance. The core aim of all the indicators is to adopt a long-term view of societal development that captures countries' capacities to achieve truly sustainable policy outcomes (Brusis and Siegmund 2011). Table 6.1 summarizes each.

Following the classic understanding of sustainability established by the Brundtland Report (WCED 1987), the SGI contains three policy dimensions—economic, social, and environmental. These policy performance data focus on sustainability challenges and are composites of

Table 6.1 Sustainable Governance Indicators (SGI) Data

Pillar	Sustainable Policies	Robust Democracy	Good Governance
Indicators	**Economic Policies** - economy - labor markets - taxes - budgets - research - innovation and infrastructure - global financial system **Social Policies** - education - social inclusion - health - families - pensions - integration - safe living - global inequalities **Environmental Policies** - environment - global environmental protection	**Quality of Democracy** - electoral processes - access to information - civil rights and political liberties - rule of law	**Executive Capacity** - strategic capacity - interministerial coordination - evidence-based instruments - societal consultation - policy communication - implementation - adaptability - organizational reform **Executive Accountability** - citizens' participatory competence - legislative actors' resources - media - parties and interest associations - independent supervisory bodies

Source: Bertelsmann Stiftung 2022 Sustainable Governance Indicators https://www.sgi-network.org/2022/Data

qualitative expert inputs and statistical 'objective' measures (see Schraad-Tischler and Seelkopf 2016 for a step-by-step outline of SGI data generation). The next pillar is democratic quality. Electoral processes, access to information, civil liberties, and the rule of law are broken down to smaller measures and given codes by country experts. Finally, sustainable governance is a function of executive capacity and accountability. These bureau-focused attributes make up the third pillar. The latest SGI contains seventy-one qualitative indicators and eighty-six quantitative indicators.

The SGI is designed with the policymaking process in mind—the three pillars combine to create a single score (and ranking) for sustainable governance informed by 'interaction between a government and other stakeholders' (Schraad-Tischler and Seelkopf 2016: 10). As such, the data collected are well suited to policy research. Moreover, the SGI is flexible enough that scholars can zoom in on one of the three pillars or indeed individual attributes within them (see for example Bazzan, Álamos-Concha, and Rihoux 2022; Jahn and Suda 2022; Tosun and Howlett 2022; Wagschal 2022).

The standout feature of the SGI, and where it differs from most other indices, is its conceptualization of policy performance in discrete sectors which are empirically distinct (Croissant and Pelke 2022). This allows us to select only the environmental policy scores as our outcome measure. 'Do environmental policies address sustainability issues?' is covered using two components: environmental policy performance at home and contribution on the international stage to global protection. Both these attributes are assessed using a mix of expert-coded and hard statistical indicators (Bertelsmann Stiftung 2022[5]). The SGI captures both domestic and outward focused features that define environmental protection. The mix of measures (see Table 6.2) includes policy outputs—for example, extent of policy integration across sectors—and also quantitative metrics of policy outcomes—for example, energy productivity or waste generation.

Though this policy granularity makes the SGI the obvious choice for our analysis, it is worthwhile spending a moment with the possible alternatives. There are two indices which, on the face of it, are credible possibilities. The Sustainable Development Report (SDR, formerly the Sustainable Development Goals [SDG]) generates indicators across the seventeen UN goals launched in 2016 as part of the UN's 2030 Agenda for sustainable development (UN 2015). Each is broken into a vast number of individual measures—some 169 in total. This sheer scale of the data is a barrier to

[5] https://https://www.sgi-network.org/2022/Sustainable_Policies/Environmental_Policies https://www.sgi-network.org/2020/Data

Table 6.2 SGI Environmental Policies Data Composition

Environmental Policy	Measure	Questions	%	Data Generation
	Environmental policy	How effectively does environmental policy in your country protect and preserve the sustainability of natural resources and environmental quality?	50	Expert report in response to three guiding questions converted for 1 to 10 score
	Energy productivity	What is the economy's energy productivity?	5.56	Quantitative indicators converted for 1 to 10 score
	Gross greenhouse gas emissions	How much greenhouse gases are emitted per capita?	5.56	
	Particulate matter	What share of population is exposed to more than 15 micrograms/m3 PM?	5.56	
	Biocapacity	How good is the capacity of ecosystems to regenerate what people demand from its resources?	5.56	
	Waste generation	How much municipal waste is produced per capita?	5.56	
	Material recycling	What percentage of municipal waste is recovered by material recycling?	5.56	
	Biodiversity	How successfully is biodiversity protected?	5.56	
	Renewable energy	Renewable energy accounts for what percentage of the total energy consumption?	5.56	
	Material footprint	How big is the material footprint per capital?	5.56	
Global Environmental Policy			**%**	
	Global environmental policy	To what extent does the government actively contribute to the design and advancement of global environmental protection regimes?	50	Expert report in response to three guiding questions converted for 1 to 10 score
	Multilateral environmental agreements	What is the participation rate in global and regional multilateral environmental agreements?	25	Quantitative indicators converted for 1 to 10 score
	Net greenhouse gas emissions	How much greenhouse gases including land use, land-use change, and forestry (LULUCF) are emitted per capita?	25	

Source: Bertelsmann Stiftung (2022) *Sustainable Governance Indicators* https://www.sgi-network.org/2022/Sustainable_Policies/Environmental_Policies

precision analysis in itself and is one of the reasons behind the development of the more focused SGI (Breu et al. 2021). As such, there is some overlap with the statistical data used in the SGI (especially those around SDG goals 12, 13, 14, and 15 which cover aspects of environmental outputs[6]) (Sachs et al. 2020). Yet, the SDR lacks qualitative reports which take a wider view of a country's environmental outcomes and capacity. And so, selecting these individual measures leaves analysts with a mixed bundle of highly specific policy output measures detached from the wider context and theory. Moreover, such cherry-picking is methodologically problematic. The SDR measures are designed to be used together to create an encompassing picture of sustainability across all dimensions.

A second index of interest was the Environmental Performance Index (EPI).[7] Produced by Yale University's Center for Environmental Law and Policy (YCELP), EPI ranking is based on forty quantitative indicators of eleven policy issues. The index aims to capture countries progress in meeting internationally agreed targets across three policy objectives—ecosystem vitality, climate change, and environmental health (Wolf et al. 2022). The EPI's environmental policy focus is less expensive than the SDR and as such provides a focused measure useful to policy analysts (Fiorino 2011). However, it too lacks the qualitative expert assessment of a countries policy performance. Both lack a focus on states' international commitment to environmental protection. On these areas, the SGI adds value to policy research.[8]

No index is perfect, of course. Methodologically, the SGI draws the criticisms common to most governance indices. In their dissection of the SGI, Croissant and Pelke (2022) identify four main methodological drawbacks of the SGI: the organization of third-party statistical data; the lack of uncertainty scores; the absence of theory in data aggregation where various indicators are brought together; and the problems of expert deliberations as data sources. The final point on expert surveys is due some discussion.

Though SGI's use of two experts plus a regional panel (that acts as a clearing house for the scores) does dilute the problem of replicability of perceptions (see Croissant and Pelke 2022: 150 Figure 2), potential biases

[6] https://dashboards.sdgindex.org/ SDG12 Responsible Consumption and Production; SDG13 Climate Action; SDG14 Life below Water; SDG15 Life on Land.

[7] https://epi.yale.edu/ The EPI succeeded the Environmental Sustainability Index (ESI) which ran 2001–2005 and covered 146 countries (Esty et al. 2005; Rotberg and Bhushan 2015; see Jacob and Volkery 2006 for an early use of the ESI in political science).

[8] It is worth noting that for EU 27 +UK, the SDR, EPI, and SGI scores differ quite considerably. In general, EPI is closer to SDGs, while SDI differ quite a lot from the UN measurement. Interestingly, the three raw metrics are highly and significantly correlated.

can never be fully discounted. Thankfully, these are well documented elsewhere in this volume and the wider literature. We need not rehearse them in this chapter. What does deserve attention are the advantages of these expert inputs.

Most obviously, the qualitative reports—which in many cases extend into thousands of words—are all publicly available and, as such, provide enviable levels of transparency to the SGI data. So, for example, if an expert assigns a country a 6 out of 10 score on a variable, we can look at the reasoning and identify the experts coordinating the country report. Moreover, they provide researchers with a key resource to interpret their analytical findings (Croissant and Pelke 2022: 148, 152). Finally, through the inclusion of expert judgements, the SGI is able to offer an index which comprises both policy outputs and outcomes—giving a picture of a state's commitment to policy action and also the stringency of those actions.

Temporally and spatially, the SGI has limits. On the former, the index started in 2009 and underwent substantial methodological changes in 2014 meaning for scholars interested in comparing across time, the SGI has not yet reached maturity. The SGI is also restricted geographically, its handles only OECD and EU countries. That said, neither of these parameters are problematic for our analysis which is limited to the EU (pre-Brexit) and temporally static. As with the other outcome indices used in this volume, we use results from 2020 covering the EU 27 + UK.

SGI environmental policy performance scores were transformed into fuzzy set scores, following the same 6-tile rank transformation—coupled with limited qualitative evaluations—used for the other two outcomes. The distribution of cases is detailed in Table 6.3, where 1 denotes the leaders in environmental policy performance.

Table 6.3 Set Membership, Environmental Policy Performance

Values—Environmental Policy Performance	Countries
0	Cyprus, Greece, Malta, Poland
0.2	Austria, Belgium, Czech Republic, Hungary, Slovakia
0.4	Bulgaria, Croatia, Italy, Portugal, Romania
0.6	Germany, Ireland, Netherlands, Slovenia, Spain
0.8	Estonia, Latvia, Lithuania, Luxembourg
1	Denmark, Finland, France, Sweden, UK

Source: Authors' own

6.5 Analysis

When analysing the outcome 'environmental performance' (ENV), we use again the four conditions consultation (CON), freedom of information (FOI), regulatory impact assessment (RIA), and the ombudsman procedures (OM). As before, our QCA starts with the analysis of necessary conditions, see Table 6.4. We find no condition (or its complement) is necessary for the outcome.[9]

Table 6.4 Necessary Conditions for Environmental Policy Performance

	inclN	RoN	covN
CON	0.592	0.755	0.636
RIA	0.676	0.761	0.686
FOI	0.648	0.745	0.657
OM	0.577	0.707	0.586
~CON	0.676	0.717	0.649
~RIA	0.606	0.722	0.614
~FOI	0.549	0.693	0.557
~OM	0.662	0.753	0.671

Source: Authors' own

Proceeding now to the analysis of sufficiency, Table 6.5 reports the truth table results.[10] As before, the outcome value has been assigned on the basis of a careful check of every truth table row. In this process, row 15 was declared sufficient, although Poland can be characterized as a 'true logical contradiction' (Schneider and Wagemann 2012: 334), which is part of the configuration of row 15, but has a zero value on the outcome. In other words: Poland should show the outcome, but it does not. This choice was made in

[9] For technical explanations of this and other parts of the analysis, please refer to Chapter 4. With regard to 'functional equivalents', three options result: ~CON + RIA; ~RIA + ~FOI; and FOI + ~OM. As before, the RoN values are too low (the highest one is 0.532), and, thus, this is not considered any further.

[10] As explained in Chapter 4, the column n indicates the number of cases to which the truth table row ideally refers. For example, Estonia, Ireland, and Slovenia (row 16) show all four instruments rather than not showing them (their value in the truth table is 1). The inclusion column tells us in how far a truth table row can be considered to be a sufficient condition for the outcome, given the data at hand. The values of this column range between 0 and 1. The Proportional Reduction in Inconsistency (PRI) value indicates whether the truth table row can also be considered sufficient for the absence of the outcome, something that should be avoided. The outcome column (OUT) identifies which truth table rows have been declared sufficient (OUT = 1) and which ones not (OUT = 0). This declaration is the individual researcher's task, obviously on the basis of the available empirical information. Instead of basing this decision on the inclusion value only, we have opted for a more case-sensitive strategy. We have checked every truth table row individually in order to see whether deviances from perfect sufficiency are due to 'important' cases or not. 'Important' in this sense are those cases for which the given truth table row represents the ideal configuration of conditions.

Table 6.5 Truth Table for Environmental Policy Performance

CON	RIA	FOI	OM	OUT	n	incl	PRI	Cases
0	1	1	0	1	1	0.818	0.556	Lithuania
1	1	1	0	1	3	0.808	0.615	Latvia, Poland, UK
0	1	0	0	1	1	0.808	0.500	Denmark
1	1	1	1	1	3	0.778	0.455	Estonia, Ireland, Slovenia
1	1	0	0	0	1	0.762	0.286	Romania
0	0	1	0	1	1	0.750	0.444	Luxembourg
0	1	1	1	0	2	0.731	0.364	Hungary, Spain
0	0	1	1	1	1	0.720	0.417	France
1	1	0	1	0	1	0.714	0.250	Bulgaria
0	0	0	0	0	4	0.677	0.444	Belgium, Malta, NL, Sweden
0	1	0	1	0	2	0.667	0.250	Austria, Portugal
1	0	1	1	0	2	0.640	0.250	Croatia, Finland
1	0	0	1	0	1	0.619	0.200	Slovakia
0	0	0	1	0	2	0.615	0.231	Czech Rep, Greece
1	0	0	0	0	2	0.600	0.111	Germany, Italy
1	0	1	0	0	1	0.500	0.000	Cyprus

Source: Authors' own

order to render Latvia and the UK, which are perfect onliers in this row, part of the explanation.

Bearing this in mind, the result of the analysis of sufficiency is captured in Table 6.6.

Three solutions can be identified for reaching high values in the outcome 'environmental performance'. They are quite different from one another.

Table 6.6 Sufficient Conditions for Environmental Policy Performance

	Configurations	Cases
1	CON*RIA*FOI	Estonia, Ireland, Latvia, Poland, Slovenia, UK
2	~CON*RIA*~OM	Denmark, Lithuania
3	~CON*~RIA*FOI	France, Luxembourg

Source: Authors' own

A first one claims the simultaneous occurrence of the three conditions: consultations strong in commitment and/or scope, rules on impact assessment which are highly proceduralized, and highly formalized freedom of information laws. The second one requires consultation and ombudsman procedures to be low, while rules of impact assessment have to be highly proceduralized and/or low on exceptions. Finally, the third combination points to the simultaneous absence of consultation and rules of impact assessment, combined with the presence of freedom of information. The lack of communalities hampers any encompassing or bold interpretations. The three scenarios are very different from one another and therefore represent clearly identifiable explanatory models.

The parameters of fit (consistency = 0.803, coverage = 0.690) indicate a couple of smaller problems in the result which are also illustrated in the XY plot, see Figure 6.1. Still, there is a convincing sufficiency pattern, as most cases are above the diagonal.

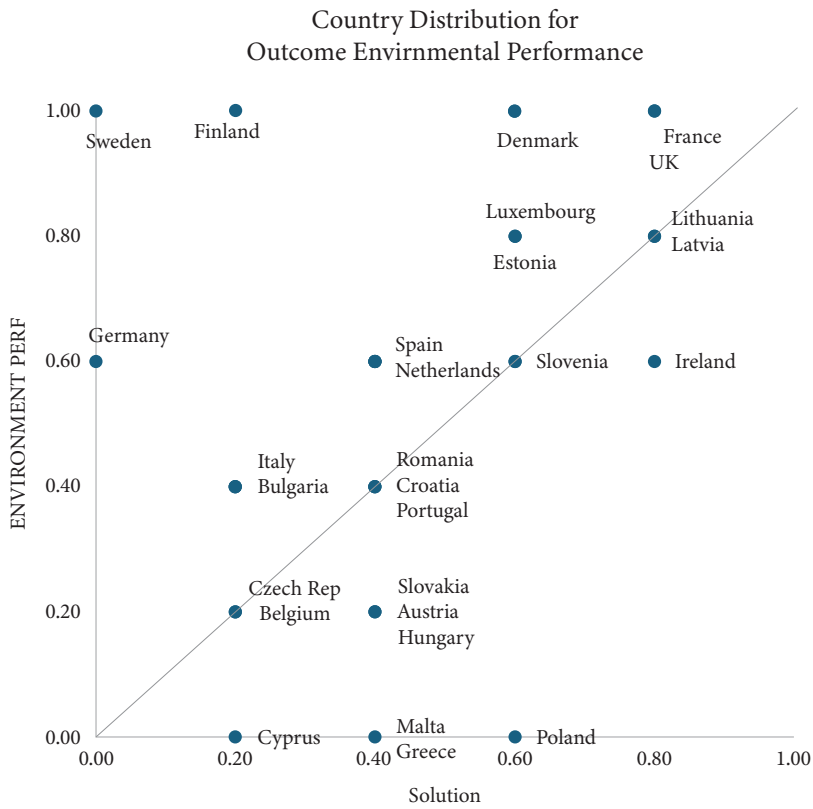

Figure 6.1 Country Distribution for Outcome Environmental Performance

Source: Authors' own

Turning to the individual sufficient configurations, the first path concerns the presence of the three conditions: consultation, rules on impact assessment, and freedom of information as sufficient for strong environmental performance in five countries: Estonia, Ireland, Latvia, Slovenia, and the UK. These countries all lack some of the key variables that according to the literature are supposed to shape positive environmental policy performance. None are truly federal, all score low on scales of corporatism and have solid though unremarkable levels of green politics in their political systems (Crowley 2004; Siaroff 1999; Wälti 2004). Our data show that strong administrative tools on three fronts combine to be the difference making conditions in these states facilitating environmental advocacy and policies with bite.

Of course, there can be more than one reason countries end up in the same configurational recipe. As such, an in-depth discussion about a country like the UK will not be exactly the same as the one on, say, Estonia. Taking a deep dive into the UK first, here is a country which had a slow start on environmental protection as compared with other western European countries and US (Vogel 2003). Notably, it did not adopt reforming environmental measures in 1970s as others did. Moreover, the UK has an adversarial political system. One of the strongest findings of studies in the political science literature concerns the difficulty of linking economic interests to progressive environmental action in non-corporatist systems. Pluralism in adversarial systems often results in an environmental race to the bottom as multiple stakeholders' interests are balanced by hierarchical governments.

But this may be offset by administrative tools. In the 1990s, the UK was a pioneer in Europe of better regulation and evidence-based policymaking embodied in tools like RIA and consultation (both of which are highly proceduralized and low on exceptions). During this period of administrative modernization, freedom of information legislation (FOI) was also introduced. The extensive degree of scrutiny of the British civil service and policy process that this enabled led the prime minister at the time, Rt Hon Tony Blair, to describe it as one of his biggest regrets (Blair 2010; see Schnell 2018 for a wider discussion of the political miscalculations that have marked the adoption of FOI). While the FOI legislation does contain notable exceptions, it is one of the more extensive of the countries in our study. Together these tools have been used to open up the British state—known for its opacity and uncodified constitution (Hennessy 1995). That environmental performance benefits as a result makes sense.

The backdrop to the adoption of strong administrative tools in Estonia is different, of course. A country in democratic transition, Estonia's nascent environmental NGOs remain disengaged from wider political processes

(Agarin and Grīviņš 2016) and corporatist arrangements weak. Rather, Estonia's commitment to the environment is informed both by the totemic importance of Estonian forests (which cover half of the country) and the need to create a strong business context for sectors in which it excels—notably shale oil (Dennison, Loss, and Söderström 2021: 43–44). Again, administrative tools are central to this endeavour. Following the OECD's better regulation agenda closely, Estonia focuses on the reduction of administrative burdens and conducts one of the largest numbers of impact assessments of all EU countries (Kasemets 2012; Lianos, Fazekas, and Karliuk 2014). The strength of Estonia's RIA publication and reduced exceptions drive its performance along with moderate consultation and FOI procedures.

The second path refers to Denmark and Lithuania and postulates a role for regulatory impact assessment in strong environmental policy performance where consultation and ombudsman arrangements are marked by weaknesses and reduced obligations. In these cases, the degree of FOI's proceduralization does not shape performance. Rather, it is RIA which appears to do the heavy lifting.

The case of Lithuania makes sense. With environmental actors lacking strong impact and weak support for the green agenda in labour unions, environmental performance in this state has been driven by EU membership and the business community which takes a favourable view toward economic opportunities afforded by pro-environment policies (Dennison, Loss, and Söderström 2021: 62–63). RIA features in both these dynamics and, as with its Baltic neighbours, is focused primarily on the reduction of administrative burdens for businesses (OECD 2022).

Denmark is perhaps more of a puzzle. Here we have an environmental leader which outperforms most other countries in our population. Denmark ranks as having strong corporatists arrangement (Siaroff 1999), and in the 1980s and 1990s, much of its environmental progress was enabled by consensus decision-making and locally focused structures on issues like renewable energy (Green-Pedersen and Thomsen 2005; Toke and Nielsen 2015). Indeed, environmental regulatory design in Denmark is well known for strong reciprocal and trusting relationships between government regulators and industry (Lönnroth 2010). The ambiguity of Denmark deepens further when we consider its advanced economy and mature green politics. In fact, we can legitimately ask: why the combination of three administrative instruments show-up in the way they do at all? Why might these instruments count in Denmark?

One answer might lie in recent history. In the early 2000s, a right-wing coalition government looked at the Danish green agenda through a

more critical lens and in particular emphasized the need to focus on cost-effectiveness in policy interventions (Toke and Nielsen 2015). It is useful to consider the importance of RIA against this backdrop. Denmark is a country that has put considerable investment into *ex ante* policy appraisal (Coletti 2013: Chapter 4); we are perhaps looking at a textbook case of how impact assessment arrangements deliver better quality regulation in some areas by changing the terms by which policy is legitimized (Hoppe 2005).

The third configuration involves two western European countries—France and Luxembourg—where FOI arrangements act as a counterweight to absence of consultation and RIA. These cases point to the importance of ecological thinking when it comes to instruments. Neither countries' FOI laws could be described as more than average—for example, they lack public interest override commitments. But, absent other strong administrative tools (in both cases consultation and impact assessment score 0 in our QCA calibration), even moderate access to information arrangements appear to make a positive contribution to policy. Domestic environmental progress in France has been progressed and setback in equal measure as the result of judicial rulings. This back and forth reflects the structure of political forces in France around the environment. The green lobby is politically weak when compared to anti-environmental protestors; take for example the Yellow Vests, a famously powerful agricultural lobby and economic interests concerned about industrial competitiveness suffering with too fast a move away from carbon (Bertelsmann Stiftung 2022; Dennison, Loss, and Söderström 2021: 47–48). Given this power imbalance, and the proliferation of nuclear power plants across the country, access to information has been a key weapon and one widely used in the last twenty years to unearth examples of environmental damage, especially at the local level (Yseult and Slautsky 2018).

When we consider them in the round, our three sufficiency paths echo much of what is present and absent in the wider literature on environmental performance. First, highly proceduralized FOI counts for good environmental governance in some places and under some conditions. This makes sense since, as we outlined, the history of environmental regulatory governance and the centrality of transparency tools is inextricably bound to the global spread of access to information rules. As such, both well-established democracies in Western Europe and renewed democracies of Baltic and Central and Eastern Europe (CEE) states show up in paths with strong FOI components. The presence of RIA and consultation seem important in cases where green policy progress is linked to economic competitiveness—again echoing the sentiment of the literature linking innovation with pro-environmental regulations.

What about the ombudsman, the dog that has not barked? This shows up only once in one of the paths as important where weak arrangements on obligations and remedies are combined with weak consultation and strong RIA. The fact that the ombudsman does not appear in other solutions does not mean it is not there and active. Rather, it suggests the ombudsman does not count for good environmental performance. In many ways, this ambivalent status is matched in the literature. For, despite being a powerful tool for giving citizens a voice, the ombudsman appears very little in the literature linked to environmental policy. For example, in their analysis of over 2000 complaints lodged against local governments to the national ombudsman in Portugal, Tavares, Pires, and Teles (2021) found problems with municipal action around the environment and natural resources represented nearly one-third of complaints (31%). Importantly, more than half of these and the largest single block of grievance within this category were environmental noise problems (16%). Environmental protection issues, in the traditional narrow sense, accounted for 15% of the overall population. Though this is still a considerable number and suggests widespread use of this procedure, it is important to ask: by whom? The ombudsman is at heart a protest tool for citizens to raise objections about aspects of public service performance (Overman 2017; Schläpfer 2017; van de Walle 2018). Yet, this tool is widely used as a dispute resolution mechanism, typically lacking strong enforcement mechanisms and remedies. It may simply be that environmental groups and organized stakeholders do not use the ombudsman in the same way as FOI or upstream tools like RIA due to its lack of powers. Certainly, the (tiny) literature provides no suggestion that this is a tool of environmental pressure politics beyond individual citizens.

Moving beyond the instruments we must also note that, save for Denmark, all the countries with sufficiency paths toward strong environmental policy performances are weak in terms of corporatist arrangements (Siaroff 1999). Without ongoing and inclusive consultation about the costs and benefits of policies and their broader impacts which are the hallmark of corporatist dialogues, the collective action dilemmas characteristic of environmental policy issues may well be mitigated by administrative tools which open the bureau to a variety of interests.

Important as these findings are on administrative instruments (especially for FOI and RIA), the fact remains that two-thirds of EU countries' environmental performance (bad and good) cannot be accounted for in these terms. Since these countries show neither the outcome nor the explanatory conditions, we leave discussion of these cases to others.

Now, we turn to the 'real' deviances, in QCA terms. First of all, Ireland is slightly deviant. Recall, Ireland is part of the first configurational path where the high levels of proceduralization of the three conditions: consultation, rules on impact assessment, and freedom of information as sufficient for strong environmental performance in five countries. Ireland's environmental performance is mediated by two strong forces: the boom-and-bust cycle of its economy (OECD 2021; Torney and O'Gorman 2019) and the pre-eminence of the farming lobby (Laffan and O'Mahony 2008). Brought together these undermined the bite of policy tools' impacts on environmental progress (Flynn 2003). Though its service industry expanded incredibly in the 'Celtic tiger' years (Sweeney 1999), Ireland remains a predominantly rural economy. The structure of environmental interest politics reflects this: farming interests have deep relationships with policymakers, while the environmental groups emerging on the political scene do not enjoy the same access. As a result, the potential for FOI is yet to be realized and impact assessment may well focus more on the negative consequences of environmental policy for national competitiveness and the rural economy. Consultation, too, is affected by the institutionalized relationship between farmers and the Irish state with some arguing environmental policy has been marked by a lack of transparency (Scannell 2011) though, comparatively speaking, consultation increasingly involves more groups than was previously the case (Laffan, Manning, and Kelly 1988; O'Mahony 2007).

But Poland represents a far more striking deviance, since it is a 'true logical contradiction'. This means that, because of its configuration of conditions, we would expect Poland to show the outcome, but it does not. In fact, despite the solid state of consultation, RIA and FOI, its outcome value is a clear 0. How can we account for the fact that identical configurations of conditions lead to a very different environmental outcome? The literature on environmental performance offers several ways to understand this. Most obviously, we can say there may well be implementation gaps which impact how consultation, RIA, and FOI actually perform for the environment on the ground. In their analysis of the widespread gaps in Polish local government's implementation of national environmental policy, Banas (2011) reports although extensive non-adoption was well known, the national government did not use its enforcement powers consistently enough to change behaviour. Thus, administrative tools may well be conceived and designed to generate information about degradation and inform sound policies, but limitations in analytical capacity may reduce the complexity of the analyses performed.

Moreover, the political will is required guarantee appropriate usage or at least monitor basic compliance.

Moreover, in Poland developed administrative tools—notably accounting devices—are used as blame avoidance tools which give the impression that environmental targets are being met (for example on renewables see Wiejski 2022). Thus, administrative instruments may well be used in ways that deracinate their original intentions. Such creative approaches are rooted in the political salience of slowing environmental progress at local and national levels. In countries like Poland, which imports waste from other EU member states (Austria, Italy, Germany, and the UK) (Bronska 2021) and where industry relies on coal, using highly proceduralized administrative tools to disguise non-compliance with environmental commitments makes sense.

Important as it is, 'And the rest is implementation' (Pressman and Wildavsky 1973) should not be our only conclusion for deviant cases. We must think in terms of the wider political landscape which mediates instrument use. In post-communist states like Poland the phenomena of 'democratic fatigue' is well documented (Ekiert and Ziblatt 2013) and intensified by political undermining of democratic institutions in recent years (Dawson and Hanley 2016; Kelemen and Orenstein 2016). We cannot assume each of our countries has a ready supply of pro-environment citizens and NGOs with the capacity to consistently mobilize administrative tools to expose environmental harms (Börzel and Buzogány 2010; Kronenberg et al. 2016). In Poland, environmental activism has historically struggled to make progress and is drowned out by the powerful industry trade unions seeking to preserve heavy industry, mining communities, and old practices (Charkiewicz 2008; Ostolski 2020).

Highly formalized administrative tools exist on the shelf but are no match for the power of the unions. In the decade following transition from communist rule, Ekiert and Kubik (1999) asked the intriguing question of why Poland was more prone to labour strikes than say Hungary. Their answer was rooted what they viewed as sham corporatism—where access to negotiations was advertised but did not truly exist behind the scenes. The protest culture in Poland which was central to the collapse of communism thirty years ago remains. When coupled with the memory of government duplicity in the 1990s, unions' ability to block economic, social, and environmental reforms is formidable (Karoleweski 2016). Indeed, it was only after prolonged negotiations that in 2021 an agreement was secured by the government for the phasing out of coal power (by 2049), and the policy details remain open (Matthes, Marklowski, and Bönker 2022).

Finally, we have those cases which our model fails to explain. Graphically, they occupy the upper left part of the plot. Administrative instruments do not count for good environmental policy performances in Finland, Germany, Netherlands, Spain, and Sweden. Though these not captured by our model, their position with regard to the outcome is not especially mysterious.

Four of these countries (all but Spain) have strong corporatist traditions where consensual decision-making styles advantage progressive environmental performance (Lönnroth 2010; Scruggs 2003; Wälti 2004). Mature stakeholder relationships and long-term political commitment to environmental protection could well ensure reduced significance for administrative procedures.

The very top performers, Sweden and Finland, have the oldest access to information laws in the world (1766 and 1956 respectively). As such, it may simply be that the values and policy benefits of FOI have become culturally embedded as part of the wider set of mature democratic institutions, even in absence of highly formalized procedures. Add into the mix Germany's federal structure and strong green movements (Frankland and Schoonmaker 1992), and these three countries' environmental performance decoupling from our administrative instruments model makes sense.

Turning to the Netherlands, a history of policy innovation paves the way for a decent policy showing. Added to this, most recent progress on the environment has been triggered by legal action taken by environmental NGOs with courts now setting precedents in their rulings on individual companies (Dennison, Loss, and Söderström 2021: 67–68; Hoppe et al. 2022).

Spain's success is politically driven from the top down rather than crafted through rulemaking instruments. Specifically, in 2018, the Sánchez government started to pursue ambitious environmental policies across the board. The country lacks the significant green coalitions or corporatist traditions commonly associated with strong environmental performance. Instead, Spain's contender status in this area is strongly linked to its multilateralism and calculation of benefits that will flow from the EU toward those making green transitions (Dennison, Loss, and Söderström 2021: 79–81; Kölling, Rodriguez Teruel, and Colino 2022).

6.6 Conclusions

The three solutions for high environmental performance reinforce the importance of formalized administrative procedures, in certain circumstances. The first shows a simultaneous occurrence of the three conditions:

consultations strong in commitment and/or scope, rules on impact assessment which are highly proceduralized, and highly formalized freedom of information laws. The second requires consultation and ombudsman procedures to be low, while rules of impact assessment have to be highly proceduralized and/or low on exceptions. Finally, the third combination points to the simultaneous absence of consultation and rules of impact assessment, combined with the presence of formalized freedom of information.

Taken together, the findings reinforce the environmental scholars' focus on FOI and RIA. Extensive rights of access to information are historically entwined with progressive environmental action; shaping the expectations of interest groups and citizens about the demands that can be placed on the bureau to justify policy action with potentially deleterious environmental consequences. The power of FOI is widely understood, and it is trusted as an effective tool for campaigners and feared by governments. RIA and, to a lesser extent, consultation also bring something important to environmental policy performance. Focused on the upstream of the policy process, these two *ex ante* procedures carry the promise of opening up pathways to innovation and public voice early on (Stirling 2008). These elements help make social learning count for policy design and speak to the wider economic impulses behind better regulation. The ombudsman appears to be a less relevant lever. For some it may simply come too far downstream in rulemaking for it to be a clear option for profound policy change. Yet, the ombudsman is a potentially powerful channel for protest and, over time, could make an important contribution to ecological citizenship (Dobson 2007) in the manner of FOI. This is one lesson for environmental campaigners.

The takeaways for policymakers are also clear: in certain settings, environmental performance responds well to investment in the design of FOI and RIA. For scholars, the picture is reassuringly nuanced. Those seeking enveloping macro explanations will be partially satisfied. Though Europeanization, varieties of capitalism, and legal origins and reforms offer little analytical leverage, political systems do have a role to play. With the exception of Denmark, all the countries found in our solutions are non-corporatist. The importance of corporatism for good environmental performance is well known. It makes sense that highly formalized administrative instruments of FOI and RIA can help overcome the absence of settled social contracts and enable interest access to policy design. Of course, as we have seen, exactly how these instruments count differs in each country and is shaped by factors such as economic agendas, environmental histories, and appetite for innovation (for example, Denmark).

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7
Conclusions

7.1 Introduction

We started with the question: 'In what ways does the design of rulemaking procedures, and their interplay, shape governance outcomes?' After all, those who have designed procedures that open up the policy process, support decision makers with evidence and consult on new proposals, give citizens access to information, and create bodies to limit maladministration do so because they want to improve on governance. In the end, we should know whether these rulemaking procedures have an empirical effect on governance outcomes, and if so, whether this effect is positive or negative. We have looked at specific outcomes: the quality of the business environment, the perception of corruption, and environmental performance. In this final chapter, we first go back to the expectations introduced in Chapter 2 and contrast them to our empirical findings. Then, we draw on this comparison to address the different academic and practical conversations we are engaged with—the four conversations of Chapter 1. We finally address the limitations of our study and make suggestions for future research agendas in this field.

7.2 The initial set of expectations

The literature provides expectations about Europeanization, the varieties of capitalism, and a mixed bag of expectations derived from administrative law, legal origin and traditions. Each of these strands of political science, economics, and administrative law sit at a macro level of analysis. They are used for theorizing about historical-institutional trajectories across a large number of countries, for long periods of time, in some cases even centuries.

In Chapter 2 we reasoned about the expectations drawn from these frameworks about the 28 cases. Europeanization suggests that there will not be convergence on design, because, across the 28 cases, the four procedural instruments were introduced at different times, by different constellations

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of actors, and with limited 'push-down' pressure from the European Union (EU). Instead of convergence, this literature highlights formal and informal institutions, incentives (winners and losers from Europeanization) and learning pathways connected to socialization effects, all factors that mediate the EU impulse. Thus, there are important mediating factors—and unless one knows about them country by country, we cannot identify the expected Europeanization effect on design diversity in our twenty-eight cases.

The Europeanization literature points to the mediating role of domestic institutions. Institutions can edit, filter, reframe and even discursively 'create' the pressure to adapt to the EU impulse. We need then to focus on institutions. In a sense, to theorize on varieties of capitalism is one possible way to make such institutions endogenous and clarify how they matter, although this approach is more interested in the political economy of capitalist countries than in public policies. This approach points to four baskets or clusters of countries: liberal market economies, coordinated economies, dependent market economies (in Eastern Europe) and the Mediterranean countries of the EU.

When we move to the literature on legal origin, we find that it discriminates between civil law and common law. An important expectation is that we should find common law countries like Ireland and the UK oriented towards a comparatively lower number of procedural steps when designing the four instruments.

Finally, strands of scholarship on administrative law and public management reforms divide countries in terms of whether they have codified administrative procedures, the presence of general obligations to give reasons and establish individual rights, judicial procedures, and (for public management reforms) the Rechtsstaat versus Public Interest model (and perhaps a Nordic model or administrative tradition). These are not mutually exclusive categories—indeed we could talk of multiple administrative traditions (Laegreid 2017)—meaning that we cannot derive precise expectations about the clusters in this literature. However, we can draw on these literatures to explain qualitatively individual cases. We also expect the presence of a basket of countries in the Nordic and Public Interest traditions where informal cooperation (in the Nordic version) and executive power (in the UK) prevail on thick layers of procedural, legally binding steps.

Lacking precise theory-driven expectations it would be unfair to conclude that, on the basis of our empirical findings, the various literatures do not have explanatory power. We could say that theory X 'does not fit the empirics' only if we could draw precise expectations on the design of the four procedural instruments in the first place. But this is not the case. These are macro theories

that point to some very important historical-institutional features. They are extremely useful to add qualitative explanations. That said, it is true that the overall QCA findings on the quality of the business environment, perception of corruption and environmental performance do not resonate with any of the macro stories about Europeanization, varieties of capitalism, legal origin, and administrative culture, traditions, and context. This is because our measurement of design is considerably more granular than the macro-theories and thus allows for more case-oriented differentiation.

When analysis is granular, the 'grand theorizations' about families of countries lose their analytical power. Macro-theorizations about institutions and governance (based on elections, parties, the relationships between cabinet and parliament, economic and legal paradigms) are perhaps good at explaining politics, but not policy—and certainly not the effects of policy instruments (on the same point, see Radaelli, Dente, and Dossi 2012).

But then, we have some corroboration of theorizing in terms of families of countries. The 'East versus West' picture resonates with Europeanization families (with the important exceptions we will consider below), as the recipes we found broadly respect this logic. Longevity as an EU member state is a rough (but real) sorting principle in assigning a country to one solution or another. Austria, Denmark, and Portugal are a newly discovered family of countries—for doing business and corruption. Though they are definitively neither liberal market economies nor a cluster identified by previous research on Europeanization, it would be difficult to lump them together in the category of coordinated market economies, since Portugal is a Southern European variety of capitalism (see Radaelli, Dente, and Dossi 2012 on the pitfall of dropping countries into varieties of capitalism boxes). As a result, the composition of this new cluster of good performers defies previous potential categorizations.

Nonetheless, varieties of capitalism still has traction in the explanation of doing business. The presence of liberal market economies like the UK, Estonia, Ireland, Latvia, and Slovenia in the same solution for doing business points to the logic of varieties of capitalism. Roughly speaking, the first two recipes of the doing business solutions group together coordinated and liberal market economies, with RIA emerging as the most important instrument. This, as we said in Chapter 4, makes sense given the pivotal role of RIA in regulatory reforms explicitly geared to improve on the quality of the bureaucratic-administrative environment faced by business.

Turning to the empirical findings on sufficient conditions for perception of low corruption, we found that the formality/informality divide goes a long way to explaining the position of individual countries in the

recipes—although, like in all cases, it does not 'predict' completely and accurately any recipe. Further, general principles of administrative action and the presence of codification make some sense of apparently odd groupings of countries. The Benelux countries sit together in the same recipe. Austria and Denmark share corporatist traits and appear in the same string and also share light codification of rulemaking. These two countries come up in the same explanatory path as Portugal, which is (again), a latecomer country that is 'light' in the codification of administrative principles. Looking at the overall results, the presence of formalization of all four instruments in Estonia, Ireland and Slovenia defied our expectation that liberal, 'digital' Estonia and common law Ireland would be light in proceduralization. A proceduralized RIA is yet again important for the outcome Clean (the perception that the level of corruption is low) to appear, as it shows in two of the three sufficient solutions in our corruption analysis.

As for environmental performance, Estonia, Ireland, Latvia, Slovenia, and the UK all score low on corporatism and relatively low on federalism. Save for Denmark, all the countries that appear in the sufficiency recipes are not corporatist systems. Without corporatist dialogues, the collective action dilemmas characteristic of environmental policy issues may well be mitigated by administrative tools which open the bureau to a variety of interests. Variables related to the evolution of environmental policy and green politics provide additional details and qualifications missed by macro theories. Finally, the presence of RIA and consultation is important in cases where green policy progress is linked to economic competitiveness—echoing the sentiment of the literature linking innovation with pro-environmental regulations.

7.3 Thinking ecologically!

Conceptually, our central aim has been to show how a theory-driven approach can lead us to consider a variety of procedures in different countries with a single template. Ostrom's institutional grammar tool, and in particular her typology of rules, allow us to navigate between hundreds of design features of rulemaking in the twenty-eight cases. This choice is anchored to a type of data generation that does not suffer from the bias of surveys of experts or policymakers. In fact, our data are generated by the text contained in the legal base of the four procedures. This approach from theory to measurement has a strong internal logic. Essentially, we rolled out a template that

can be adopted by other researchers interested in the procedural features of governance, beyond 'better regulation' and the administrative procedures we discussed.

The major empirical finding is that we must look at design as an ecology, a constellation or configuration of the regulatory policy instrumentation. This underpins the methodological rationale of working with a configurative method such as QCA. As well as being empirically grounded, the argument that consultation, freedom of information, the ombudsman, and RIA have or do not have effects *together* is also intuitive. Citizens and business stakeholders hold an overall belief on whether the government and regulators are open and accountable, or corrupt. They cannot even distinguish between how much of that belief is grounded in the presence of one or the other characteristic of any of the four instruments. After all, the majority of citizens do not even know there is something called impact assessment. Citizens and stakeholders are given the opportunity of weighing into rulemaking by design, but they do not necessarily need to activate A or B for them to have an effect on perception—and, also, on the behaviour of regulators. On the latter, this is because rulemakers will have to act in the shadow of these rules. They are bound by the overall administrative procedure, regardless of who triggers the usage and when.

Another reason for taking the holistic view is that each procedure triggers its own mechanisms—of access, participation, accountability, and learning. These mechanisms may contradict each other. For example, there can be consultation only for the happy few (most obviously, the lobbyists) while the rules of impact assessment are designed with the assumption of looking for evidence everywhere, including stakeholders that are usually missed by government departments and regulators (for empirical examples see Dunlop and Radaelli 2024). Or the opposite may be the case, where mechanisms reinforce each other. Or one mechanism triggered by, say, the design of freedom of information, can effectively replace and 'make up for' a narrow consultation design. We see all of these possibilities in the empirical chapters.

When considered together, the empirical manifestations of design in the EU and UK corroborate our intuition to go beyond the classic better regulation instrumentation. In our solutions, broadly speaking, we did not find an effect on the outcomes caused by consultation and impact assessment alone. A good example is the first pathway to environmental performance, explaining six cases, where high levels of proceduralization in consultation and impact assessment operate together with the same in FOI.

In general, when there are governance effects, they are generated by a mix of design features contained both in the better regulation instruments and

the other two procedures, that is, FOI and the ombudsman. However, there is the important exception of RIA in the causal pathways to the quality of the business environment and in two pathways to environmental performance.

Another result of thinking ecologically is that the overall impact of thick proceduralization of the four rulemaking procedures on governance outcomes can be negative when we are dealing with countries based on informal procedures of cooperation across departments and with the stakeholders. The fact that they are informal does not, of course, mean they are not resilient. As we argued in the chapter on corruption, the evolution of informality takes decades. It has its roots in the political and administrative history that, so to speak, made 'the Sweden' and 'the Denmark' we observe today.

And the story goes on. When addressing cases that deviate from our causal pathways, we found that, even if we go beyond better regulation tools to include the two other procedures, a single case that does not seem to fit with the others in a certain solution is actually explained by general principles of administrative law. Key in these explanations is how the administrative procedure acts, or similar high-level legislative principles, frame the role of regulation (recall what we said in the corruption chapter about 'regulations' in the Netherlands), the obligations of civil servants, and the rights of transparency, access, and judicial review of the citizens. This is yet another proof of the lesson that rulemaking reforms are not 'plug-and-play' devices that can be a-critically imported from the models of international organizations (IOs) (Radaelli 2005). Ultimately what matters is the balance—or, if you wish, the super-ecology—of procedures, informality, administrative history, and the framing effects of administrative law (for the balance of social capital and formal procedures see Dunlop et al. 2020).

7.4 Recall our four conversations?

7.4.1 The regulatory conversation

We can now read the results in light of the four conversations about regulation, governance, public policy and the non-academic beneficiaries of this volume outlined in Chapter 1.

On regulation, in Chapter 1 we noted the current emphasis on principal–agent models and the insistence with controlling the bureaucracy. But bureaucracies can learn from procedures that make them accountable to different interests and preferences that society values. Taken together,

the four rulemaking procedures are designed with the aim of making bureaucracies more open to stakeholders, fair in granting participation to the process, and sensitive to the right to know (on the right to know see Radaelli 2022). While they cannot be plugged into a system without considering their interaction with the broader context of administrative law and informality in any case, they shift the design emphasis from control to accountability and learning. Control is certainly present (consider the many obligations we found for regulators and departments to follow certain steps in choice rules and in information rules, see Table 3.1); but accompanied by multiple dimensions of accountability and learning.

There is another lesson for the world of regulation. Often in regulatory debates we find those who know about a given field, such as climate or artificial intelligence, and believe this specialist knowledge serves as the basis for knowing how it should be regulated. The message emanating from the design of rulemaking procedures is different. It is a kind of 'I do not know what the solution is, but I know the procedural steps that gradually, and with the contribution of other actors (who are not bureaucrats and elected politicians), will take us to a decent solution'. In this sense the meta-regulatory design discussed here is both humble and intelligent. Humble because it does not pretend to know *ex ante* what should be done. Intelligent because it makes up for the bounded rationality of bureaucrats and politicians with the pluralism of ideas and evidence possessed by stakeholders and citizens (Dunlop and Radaelli 2015).

7.4.2 Governance

Turning to the governance conversation, our original contribution is to go beyond the questions of adoption of procedural instruments, how well they work, which countries rank high in terms of following the templates of international organizations, and so forth. Instead, we searched for their holistic-ecological effects on governance. The findings for individual outcomes have already been discussed in the empirical chapters. Now we look at the big picture.

The first element of that picture is about equifinality. For each outcome, we found three sufficient pathways that allow a group of countries to fall into the baskets of good performers in terms of ease of doing business, perception of low corruption, and environmental performance. There is more than one way of doing good governance, then.

The second element is about the clusters we identified empirically: what kind of EU (plus the UK) do they portray? Recall that we are not trying to explain the causes of good governance, but to establish if among the consequences of the four procedural instruments there are governance outcomes. Our research design is not about the causes of three governance outcomes, but, rather, about the effects of design diversity. Hence, we have not investigated the causes of higher corruption or worse business environment or poor environmental performance.

With this caveat, the three empirical chapters show a map of Europe where the Eastern European countries rarely appear in the solutions—hinting at a differentiation between East and West. In the pathways for perception of low levels of corruption there are no Central and Eastern European countries. In the doing business solutions, the interesting feature of Estonia, Latvia, Poland, and Slovenia is that they associated with detailed design features of consultation, freedom of information, and impact assessment. Estonia, Latvia, Poland, and Slovenia are also represented in the solution for environmental performance with the three procedures rich in design features—meaning a high number of procedural requirements. Thus, when Eastern Europe is present in the solution, it is present because of high formalization. This stands in contrast with some Western countries, like Austria and Denmark for ease of doing business, and Sweden for corruption, where it is low formalization that is associated with good governance outcomes.

Strikingly, our data are unable to capture the position of the most important coordinated market economy, Germany. Naturally, Germany is a case of success on the outcome indicators. The fact that this country never appears in the solutions suggests that the quality of the business environment, how the level of corruption is perceived, and environmental policy performance outcomes are not effects of how the four procedures are designed. Their design has no impact on these governance outcomes.

7.4.3 Public policy

Our third conversation is with public policy researchers and specifically how this study speaks to the expanding literature on policy instruments and design. This literature is composed of two strands (Howlett and Rayner 2018). There are studies that concentrate on the process of policy design

(for example, instrument selection) and those focused on the output of that design (for example, policy content). This study advances this literature by linking these two phenomena to outcomes further downstream. To make these connections, we take a wider view of policymaking than is customary in the literature. By looking at meta-rules that govern policy design processes, as opposed to instruments in specific policy issues or sectors, our approach generates insights on big governance issues that affect all countries. Central to this comparative approach is the use of Ostrom's rule typology to categorize the content of the four procedural instruments and expose differences in instrument choices and mixes.

Unlike most instrument studies, ours is not limited to the policy formulation stages. Though RIA and consultation are essential upstream instruments, freedom of information mechanisms and ombudsman procedures can only be used when there is a policy output to scrutinize or appeal. Moreover, in our analysis, the power of these four tools is not only procedural. It is also cognitive (Linder and Peters 1984). These procedures are in operation even when they are not actually being used. Our interest in them as 'rules-in-form' means the shadow they cast—for example, the possibility that an appeal can be made or that interests must be widely consulted—may be sufficient to influence how a policy is designed and its outcomes.

We also contribute to the human side of policy instruments. Specifically, the focus on four rules designed to open up the bureau speaks to an interest in the impacts of design on target populations (Schneider and Ingram 1997) and the burgeoning literature focused on these populations' inclusion in the policy process (Curley, Feiock, and Xu 2020; Newig and Fritsch 2009). Thinking about our instruments, accountability underpins them all.

Finally, comes our contribution to the study of instrument mixes (Capano and Howlett 2020). Though there are isolated studies addressing the tensions and interactivities that occur when more than one instrument is used in policy delivery (Howlett and Mukherjee 2017; Rooge and Reichardt 2016), pinpointing the impacts of different design features with large scale outcomes is much harder (Siddiki and Curley 2022). By digging deep into the content of each instrument and its legal base, we have essentially reconstructed hundreds of design steps, and distilled these down to the most important ones for each instrument. Our focus on meta-rules means we can be sure that these rules are the products of intentional decisions and in our comparison, we are able to capture the choices that have made the difference for outcomes in terms of levels of proceduralization.

One final point on the operationalization of these instruments and their mixes: Siddiki and Curley (2022) discuss the problems of measuring policy mixes and specifically the weaknesses of studies using additive reasoning where each component is treated as identical in value. Though in this study each of our instruments' level of formalization are expressed as a binary 1/0, the extensive data effort means the inputs are fine-grained and not equally weighted (see Chapter 3 discussion of the Principal Component Analysis [PCA]).

Beyond scholarly contributions, through the empirical investigation of results of the choices made by governments in terms of instruments' design, the study provides actionable lessons for the overall architecture of ecologies of instruments, which leads us to our final conversation.

7.4.4 Regulatory reform

What can international organizations, policymakers, and non-governmental organizations involved in better regulation and regulatory reform more broadly learn from us? One lesson is regulatory humility: there are many countries in many solutions characterized by low formalization.

One implication is that adding meta-regulatory steps to the rulemaking process is not necessarily a good idea. As we said, it is a bad idea where governance outcomes are achieved via a rulemaking process based on informality. But, here is another implication. Humility means that expectations about meta-regulatory interventions must be managed. This instrumentation has its role to play, as we have shown with the empirical analyses. However, it must be 'sold' to constituencies like organized interests, foreign direct investors, or civil society with an acknowledgement of its ecological and qualified functions. To introduce a new guide on impact assessment by itself will not be the start of a new trajectory towards good governance. Reforms should come in bundles, not via individual instruments. These bundles should be calibrated on the existing administrative traditions and fine-tuned to the existing degree of informality. Humility should be a resource to manage expectations as well as a way to show regard to the legitimate role of elected politicians. In other words, regulatory reforms do not exist to substitute parliamentary democracy and the right/onus of governments to make policy. They are there to assist bureaucracies in learning and to support evidence-rich, participative processes.

Further, humility does not mean irrelevance. Quite the contrary: whilst culture, social capital, and informality come from history and cannot be changed, the four procedural instruments are malleable by policymakers. Since their design features have consequences for governance, there is no reason to ignore them or assume they do not matter. Actually, they are sufficient conditions for successful governance outcomes, provided that one does not look only at the presence or absence of a rulemaking instrument, but considers the details of design, their configuration, and ecological effects—as we have done with our dataset of hundreds of rules.

The other implication concerns the usage of our data. The empirical analyses show that the difference-making conditions are not about the presence or absence of the procedures, but the presence or absence of a well-identified set of specific procedural requirements in each of the four instruments. We synthesized the information provided by hundreds of rules in a few 'components' with the aid of PCA. This compact information is what policymakers willing to get more from their better regulation agenda, or from FOI and the ombudsman, should look at carefully. Each component is made up of several elements that represent those variables that policymakers can and should tweak, because these are the difference-making factors in the end.

An interesting feature of our solutions is that in some cases they occur with more than one positive outcome. In Austria, Denmark, and Portugal one solution (that is, ~CON∗RIA∗~FOI) leads to both the quality of the business environment and perception of low corruption. This means the reform designers can achieve two outcomes with the same combinations of rulemaking instruments. Similarly, the combination CON∗RIA∗FOI covers both ease of doing business and environment performance for Estonia, Ireland, Latvia, Poland, Slovenia, and the UK. The solution ~CON∗RIA∗~OM is the same for ease of doing business and environmental performance in Denmark and Lithuania.

Thus, we found multi-finality: policymakers can reach two different objectives with the same design of regulatory instruments. Multi-finality is therefore an important property that adds to, and is different from, equifinality—the latter points to the presence of more than one pathway to achieve the outcome. Our population of twenty-eight cases contains both multi-finality and equifinality.

However, the analysis exposes design trade-offs—in other words, there is no multi-finality in the other solutions. Policymakers must design the four rulemaking instruments in one way if they want a certain governance outcome, but the design must change if they are seeking to achieve other

outcomes. The implication is that design is not a single entity 'good for all seasons'. The lesson about regulatory reforms is therefore one of choosing priorities.

Turning one more time to rule types, in all the procedures we documented the absence or very weak presence of aggregation rules and pay-off rules. There are few sanctions when things are not done according to procedure. Oversight exists in impact assessment, but it is neither systematic nor always independent. Policymakers should design more incentives to conform to what the procedures say on paper. According to our data, the design of the procedures is often weak and incomplete.

The need to go beyond the current state of play with better regulation is acknowledged by the OECD, which has mapped the beliefs of its Regulatory Policy Committee in the context of a 'Better Regulation 2.0' exercise (Radaelli et al. 2022). Our choice of instruments shows where to expand on the current understanding of better regulation. The precision of the details included in our dataset can also bring transparency into a world where too many different things are called 'consultation' and 'impact assessment' and design features end up being conflated in the world of practice.

7.5 What next?

Our results come with limitations. We have examined design, that is, rules-in-form, not rules in action.[1] We have covered four important instruments, but others could have been added to the ecology of procedures that open up rulemaking, such as judicial review, lobbying regulation, anti-corruption authorities, and procurement laws. We could have examined regulatory procedures sector by sector, since at least for economic regulators it is often the case that they have their own guidance on consultation and impact assessment. We could have added other outcomes to our analyses—an important one being trust in governance and/or public administration. This effect may be mediated: formalization of rulemaking has an effect on the business environment, corruption, environmental performance, and these outcomes may increase trust in public institutions. Or alternatively, trust may be at the beginning of the story: given a certain level of trust in governance, rulemaking is more or less proceduralized, since high trust does not require an abundance of formal procedures.

[1] That being said, we did not greybox the causal paths between conditions and outcomes, but built outcome-specific causal mechanisms that show how different configurations of design may explain variation in governance outcomes.

These limitations notwithstanding, we have demonstrated how to derive indicators from theory, how to map rulemaking procedures together, and how to theorize and measure the impact of these procedures on governance outcomes. Future research could emulate our approach with different decision-making procedures in domains other than regulation (one can think of parliamentary procedures), or different baskets of countries. As noted, if we take a worldwide outlook, the twenty-eight cases are close in terms of governance indicators and global rankings. To extend the population means to have more variability on the three outcome indicators. Finally, our approach to regulation can be extended in time: a longitudinal analysis can provide more robust information on the effects of regulatory reform on governance than a single data collection.

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