Defining 'Better'

Investigating a New Framework to Understand Quality of Regulation*

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Abstract

Better regulation is a political and scholarly theme, which has gained in both relevance and salience throughout the last two decades or so. Regulatory quality is the epicentre of these discussions. Despite this, quality is seldom conceptualized in its own right. Thus, beyond loose principles, we are rarely aware of what we mean by 'better' regulation, and academic discussions hereof usually centre themselves on other topics such as meta-regulation and processes. This leaves the notion of quality hard to asses especially from a comparative perspective. In this article, a core concept of quality is suggested. This concept is founded on an acknowledgement of the importance of the legal texts when it comes to achieving regulatory aims and objectives. The concept and methodology proposed has components from both law and political science and is sought to be of relevance to scholars and practitioners alike.

Keywords: better regulation, businesses, cross-disciplinary approaches, quality of regulation, European Union.

A Introduction

Since the dawn of political thought, the making of good laws has caught interest,[1] and this ancient discussion continues to this day. A modern ramification hereof is

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1 Plato, *Staten* [The State], Copenhagen, Museum Tusculanums Forlag 2003; Plato, *Lovene I-XII* [The Laws I-XII], Copenhagen, Gyldendal 2014.

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the debate on better regulation. This topic has been discussed for years[2] leading to the establishment of regulatory governance institutions.[3] This development is also pushed forward at the supranational level[4] and has led to the creation of a distinguished better regulation portfolio at vice-presidential level in the European Commission.[5] However, if the measures taken in the name of this agenda are to have any societal impact, one has to linger little by the concept of regulatory quality[6]: What do we mean when talking about *better* regulation? Unfortunately, this small but pivotal question has often been overlooked. In its own way, it is saying a lot when Baldwin only allows himself 3½ pages of discussion of quality in his 20-page contribution on better regulation to the *Oxford Handbook on Regulation*.[7] Responding to this, the present article proposes a humble but hands-on contribution to how to understand regulatory quality.

The claim made here is threefold. First, the literature on regulatory quality has often been segregated not allowing for crossover insights despite the cross-disciplinary nature of the topic when viewed from the perspective of the practitioner. Second, regulatory quality can be understood as raising the potential ability of a given legal act of whatever form to allow the desired outcome to materialize. This indicates a narrow, analytical focus on the legal output. Third, it is often much easier to define poor regulation than the opposite – quality as understood in the following is not something to 'measure' precisely but rather a subject for qualitative assessment; therefore, it is as a starting point defined negatively. The article draws on both theoretical and empirical studies on regulatory quality, and these have been coupled with a number of inspirational interviews with different regulatory actors described in the appendix. This was done in order to define a cross-disciplinary and for practitioners relevant framework for studying and discussing regulatory quality.

2 R. Baldwin, 'Better Regulation: The Search and the Struggle', *in* R. Baldwin, M. Cave & M. Lodge (Eds.), *The Oxford Handbook of Regulation*, Oxford University Press 2010, p. 259.

3 C.M. Radaelli, 'Towards Better Research on Better Regulation', *in Advanced Colloquium on Better Regulation*, Centre for Regulatory Governance, University of Exeter 2007, available at: <https://ore.exeter.ac.uk/repository/bitstream/handle/10036/23973/RadaelliTowardsBetterResearch.pdf>, accessed 17 September 2014. W. Robinson, 'Time for Coherent Rules on EU Regulation', *The Theory and Practice of Legislation*, Vol. 3, No. 3, 2015, pp. 257-278.

4 OECD, 'Better Regulation in Europe – The EU 15 Project', 2010a, available at: <www.oecd.org/gov/regulatory-policy/45115076.pdf>, accessed 31 March 2015; OECD, 'Better Regulation in Europe – The EU 15 Project', 2010b, available at: <www.oecd.org/gov/regulatory-policy/betterregulationineurope-theeu15project.htm>, accessed 31 March 2015.

5 European Commission, 'The New Structure of the Juncker Commission', 2014, available at: <http://ec.europa.eu/about/juncker-commission/structure/index_en.htm>, accessed 15 October 2014.

6 The analytical framework presented in this article is presented (although less elaborate) and applied to the Consumer Rights Directice, Directive 2001/83/EC, in M. Pedersen, '"Give Me My Money Back" or Why the Consumer Rights Directive Can Hardly Do What It Is Supposed to', *in* T. Vranešević (Ed.), *2015 M-Sphere Book of Papers*, Zagreb, Accent 2015, p. 147.

7 Baldwin 2010.

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I Why Is Regulatory Quality Relevant?

The question of how to make good laws has two dimensions: How to go beyond special interests, and how to make a law well-functioning? A field in which these questions is especially salient is where special interests are everywhere and where the functioning of the law is highly relevant to the functioning of the economy, *i.e.*, in the regulation of businesses. Thus, a modern edition of the discussion of 'good laws' is that of regulatory quality and better regulation. 'Better regulation' is a vague concept with several political and ideational parents but due to *inter alia* 'legal borrowing',[8] it has a certain core to it.[9] Following, for example, Radaelli, the agenda is dominated by "simplification programs, the reduction of administrative burdens, regulatory impact assessment (RIA), market-friendly alternatives to command and control regulation, consolidation, codification, and new approaches to implementation and enforcement of regulation".[10] Torriti also argues for the preponderance of impact assessments,[11] and Saltelli *et al*. discuss the use of statistics in policy evaluation.[12] Flowing as a stream below all of these tools to make regulation better is regulatory quality, the 'cognitive anchor' of better regulation.[13]

Explanations for this political interest in regulatory quality are *legio*. Deploying the idea of private interests as the main impetus for regulation,[14] it is not surprising that (some) politicians are interested in the well-functioning of a given regulation: The opposite being the case would leave the regulation at odds with the very interests it is supposed to earn. If private interests are able to 'capture' a certain regulation, a wish among these same interests for inefficient or ineffective regulation seems implausible.[15] The arguments put forward here seem only to be strengthened by Becker's classical qualifications of this understanding of regulation: "Policies that raise efficiency are likely to win out in the competition for

8 J. Wiener, 'Better Regulation in Europe', *Duke Law School Faculty Scholarship Series* 65, 2006, available at: <www.ecipe.org/media/publication_pdfs/Better_Regulation_in_Europe.pdf>, accessed 17 September 2014.

9 Baldwin 2010, pp. 262-263.

10 Radaelli 2007, p. 3.

11 J. Torriti, 'Impact Assessment in the EU: A Tool for Better Regulation, Less Regulation or Less Bad Regulation?', *Journal of Risk Research*, Vol. 10, No. 2, 2007, 239-276.

12 A. Saltelli *et al*., 'Indicators for European Union Policies. Business as Usual?', *Social Indicators Research*, Vol. 102, No. 2, 2011, pp. 197-207.

13 C.M. Radaelli & F. de Francesco, *Regulatory Quality in Europe: Concepts, Measures and Policy Processes*, Manchester, Manchester University Press 2007, p. 28.

14 That is, drawing on the tradition from, for instance G. Stigler, 'The Theory of Economic Regulation', *The Bell Journal of Economics and Management Science*, Vol. 2, No. 1, 1971, pp. 3-21 and S. Peltzmann, 'Toward a More General Theory of Regulation', *Journal of Law and Economics*, Vol. 19, No. 2, 1976, pp. 211-240.

15 For a presentation of this concept, please *see* E.D. Bó, 'Regulatory Capture: A Review', *Oxford Review of Economic Policy*, Vol. 22, No. 2, 2005, pp. 203-225; J.-J. Laffont & J. Tirole, 'The Politics of Government Decision-Making: A Theory of Regulatory Capture', *The Quarterly Journal of Economics*, Vol. 106, No. 4, pp. 1089-1127, or S. Croley, 'Beyond Capture: Towards a New Theory of Regulation', *in* D. Levi-Faur (Ed.), *Handbook on the Politics of Regulation*, Cheltenham, Edward Elgar 2011, p. 50.

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influence because they produce gains rather than deadweight costs....”[16] Please note, however, that all of the above is different from claiming that private interests are always and alone focused on effective regulation; this is merely a theoretical argument adding to an explanation of present political salience of better regulation.

Departing from the opposite standpoint – regulation is installed to adhere to some public interest such as to correct market failure[17] – allows for a theoretical explanation of political interest too: Market failures can hardly be corrected if regulation is, for instance, obscure. Another reason for the political focus on better regulation and quality is the seemingly failure of obsolete modes of regulation of businesses such as state control disregarding the reasons for installing these forms of regulation.[18]

Beyond this mere ascertaining of theoretical reasons for political interest, there are a number of more substantial arguments for spending precious time on these matters: When caring about economic performance or legitimacy, one should care about regulatory quality. Both reasons are explored in detail below. At this point, however, it is needed to stress that the above does not warrant the naïve conclusion that regulatory regimes always will take the best form possible. A lot of other actors, interests and institutional arrangements can disrupt this from being the case,[19] *e.g.*, due to bureaucratic drift or slack.[20] The point made here is merely that a political focus on better regulation and quality is comprehensible through different theoretical lenses, and this all adds to the relevance of discussing the topic.

From Weber’s classic work on Protestantism and effective capitalism and forth,[21] scholars have studied the economic impact of good institutions. ‘Good institutions’ can mean a range of things, but here the focus is on regulation of businesses. Boța-Avram demonstrates how quality of regulation (as measured by the World Bank) correlates to the ease of doing business, which is assumed to lead to better economic performance,[22] and Jalilian *et al*. show a clear correlation

16 G. Becker, ‘A Theory of Competition Among Pressure Groups for Political Influence’, *Quarterly Journal of Economics*, Vol. 98, No. 3, 1983, p. 396; G. Majone, *Regulating Europe*, New York, Routledge 1996, pp. 31-33.

17 Majone 1996, pp. 28-29; B. Mitnick, *The Political Economy of Regulation. Creating, Designing and Removing Regulatory Forms*, New York, Columbia University Press 1980, pp. 91-108.

18 Majone 1996, pp. 10-11; D. Parker, ‘Regulation of Privatised Public Utilities in the UK: Performance and Governance’, *International Journal of Public Sector Management*, Vol. 12, No. 3, 1999, pp. 213-236; J. Stern & J. Cubbin, ‘Regulatory Effectiveness: The Impact of Regulation and Regulatory Governance Arrangements on Electricity Industry Outcomes’, *World Bank Policy Research Working Paper* 3536, 2005, p. 2.

19 Majone 1996, p. 35.

20 E.B. De Mesquita & M.C. Stephenson, ‘Regulatory Quality Under Imperfect Oversight’, *American Political Science Review*, Vol. 101, No. 3, 2007, p. 605.

21 M. Weber, *Die protestantische Ethik und der Geist des Kapitalismus* (Erweiterte Ausgabe), Altenmünster, Jazzybee Verlag 2012.

22 C. Boța-Avram, ‘Good Governance and Doing Business: Evidence from a Cross-Country Survey’, *Transylvanian Review of Administrative Sciences*, No. 41, 2014, pp. 27-45.

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between regulatory quality and growth.[23] Some even take it a step further: Departing from a positive correlation between regulatory quality and macro-economic performance, the contra-factual experiment of 'moving' a country up the quality rank and calculating the effects on growth has been conducted. We can conclude that regulation that is more effective has a larger impact on growth than a parallel increase in primary school enrolment.[24] Similar findings leads Haidar to conclude that "[a]lthough macro policies are unquestionably important; there is a growing consensus that the quality of business regulation and the institutions that enforce it are a major determinant of prosperity."[25] These conclusions have, of course, been nuanced. Rodrik has determined that good institutions are not necessary to achieve growth in the short run, but only relevant to achieve sustained growth,[26] and Loayza *et al*. concludes that good institutions do not contribute to economic development themselves; instead, they work through the mitigating of the economically adverse effects of regulation as such.[27] Other scholars claiming a more non-linear correlation between the two challenge the relationship between regulatory quality and growth more directly.[28] To this, one could add that the variety of definitions of 'good institutions' and 'quality', the distinction between the two, and the challenges of measuring these by themselves constitute serious methodological problems when comparing regulatory and economic performances. However, despite these drawbacks it seems established that some sort of positive relationship between regulatory regimes of high quality (however defined) and economic performance exists.

Legitimacy and regulatory quality are linked, too, as quality is inherently coupled with output legitimacy.[29] Drawing on Majone's discussion of legitimacy in majoritarian and non-majoritarian systems, respectively,[30] it becomes clear that quality is a relevant object of discussion disregarding your view on democracy. Despite other sources of 'substantive legitimacy' such as the ability to protect diffuse interests,[31] questions of output and outcome seem to take the lead in discus-

23 H. Jalilian, C. Kirkpatrick & D. Parker, 'The Impact of Regulation on Economic Growth in Developing Countries: A Cross-Country Analysis', *World Development*, Vol. 35, No. 1, 2007, pp. 87-103.

24 S. Djankov, C. McLiesh & R.M. Ramalho, 'Regulation and Growth', *Economics Letters*, Vol. 92, No. 3, 2006, p. 400.

25 J.I. Haidar, 'The Impact of Business Regulatory Reforms on Economic Growth', *Journal of the Japanese and International Economies*, Vol. 26, No. 3, 2012, p. 286.

26 D. Rodrik, 'Growth Strategies', *in* P. Aghion & S.N. Durlauf (Eds.), *Handbook of Economic Growth*, Vol. 1A, Amsterdam, Elsevier 2005, pp. 967, 1005; Stern & Cubbin 2005, p. 52.

27 N.V. Loayza, A.M. Oviedo & L. Servén, 'Regulation and Macroeconomic Performance', *World Bank Policy Research Working Paper* 3469, 2004.

28 K.P. Huynh & D.T. Jacho-Chávez, 'Growth and Governance: A Nonparametric Analysis', *Journal of Comparative Economics*, Vol. 37, No. 1, 2009, pp. 121-143.

29 F.W. Scharpf, *Governing in Europe. Effective and Democratic?*, Oxford, Oxford University Press 1999.

30 Majone 1996; G. Majone, 'Europe's "Democratic Deficit": The Question of Standards', *European Law Journal*, Vol. 4, No. 1, 1998, pp. 5-28.

31 Majone 1998, p. 21.

sions of non-majoritarian legitimacy.[32] Similar points are made by Nedergaard,[33] who focuses on the efficient functioning of the European bureaucracy. The EU is an often-mentioned example of such a non-majoritarian system: To the extent the EU constitutes a so-called regulatory state,[34] its legitimacy is often coupled to the experience of the ability to solve societal problems.[35] If regulation is of a low quality this rather simple test of legitimacy can rarely be passed. Putting discussions of the nature of the EU aside and moving on to majoritarian models, the argument is essentially the same: If the desired outputs and outcomes are systematically absent, it is not hard to imagine criticisms in terms of legitimacy. It seems close to impossible to argue that regulation with low problem-solving capacity reflects any majoritarian will. The importance of quality and output (legitimacy) will certainly differ between policies and polities. It could be argued, for example, that in the field of security policies, output and outcome weigh more than in other policy areas.[36] Whether or not quality manifests itself as an aspect of actual legitimacy debates is an empirical question not to be examined here. The argument here is merely that quality can be seen as a relevant aspect of democratic legitimacy across systems of standards and even important in its own weight.

II Nuancing Existing Understandings of Regulatory Quality

Perhaps due to the above, the better regulation-agenda has spawned many intriguing studies. Much of this work draws knowingly or unknowingly on a distinction between 'regulatory governance' or 'governance structure' on one side and 'regulatory content' or 'regulatory incentives' on the other.[37] This dichotomy, however, overlooks the effects of regulation. To include these, this paper utilizes an approach inspired by David Easton to construct an overview of existing perceptions of regulatory quality.[38] This allows us conceptually to distinguish three perspectives from which quality can be understood: Process, output and outcome. Process is here designated to what Easton calls 'the political system',[39] whereas outputs include "the binding decisions, their implementing actions and (...) cer-

32 Majone 1996, pp. 294-296.

33 P. Nedergaard, *European Union Administration: Legitimacy and Efficiency*, Leiden, Martinus Nijhoff Publishers 2006.

34 G. Majone, 'The Rise of the Regulatory State in Europe', *West European Politics*, Vol. 17, No. 3, 1994, pp. 77-101; Majone 1996, pp. 54-56.

35 H. Bang, M.D. Jensen & P. Nedergaard, '"We the People" versus "We the Heads of States": The Debate on the Democratic Deficit of the European Union', 2015 *Policy Studies*, pp. 196-216. DOI: 10.1080/01442872.2014.1000846.

36 M. Pedersen, 'The intimate relationship between security, effectiveness, and legitimacy: a new look at the Schengen compensatory measures', *European Security*, Vol. 24, No. 4, 2015b, pp. 541-559.

37 B. Levy & P.T. Spiller, *Regulations, Institutions, and Commitment: Comparative Studies of Telecommunications*, Cambridge, Cambridge University Press 1996, p. 4; J. Stern & S. Holder, 'Regulatory Governance: Criteria for Assessing the Performance of Regulatory Systems: An Application to Infrastructure Industries in the Developing Countries of Asia', *Utilities Policy*, Vol. 8, No. 1, 1999, p. 40.

38 D. Easton, *A Systems Analysis of Political Life*, New York, Wiley and Son 1965.

39 *Ibid*., p. 32.

tain associated kinds of behaviours".[40] For methodological reasons, a more narrow definition of output is needed. Therefore, that term shall be reserved to describe the legal output alone. Easton defines implementation acts as output, but it makes more sense to define it as an outcome or perhaps even in a fourth category between output and outcome. This is the case as implementation – especially in multilevel settings – is contingent on a range of factors beyond the legal text.[41] This narrow definition of output also allows for a consistent differentiation between the steps. Lastly, outcomes are more generally associated with consequences of outputs. Despite being differentiated, it is clear that the three (or four) steps are highly interwoven: Process is important to define output, which frames implementation and thus influences outcome. This also reflects the view among many practitioners: In the end, outcome is what it is all about, but this outcome is mediated and dependent on the legal output shaped by the specific process. This three- or four-step approach also echoes different academic traditions: Presented crudely, process is often studied by political scientists, the output put under scrutiny by legal scholars and outcome analyzed by economists. That the different steps from which regulatory quality can be understood are in some sense linked to specific academic traditions also shapes the understandings of regulatory quality coupled to these steps. Table 1 sums up.

Beginning with the first step, process, this can be analyzed in many ways. However, when it comes to regulation, a common focus in political science is that of regulatory governance – not the specific rules.[42] Such a perspective gave rise to Radaelli & Meuwese's critique of Hansen & Pedersen's classification of better regulation as a specific regulatory reform and coining of the term *meta-regulation*.[43] From such a perspective, Radaelli & de Francesco's seminal book deal extensively with better regulation and quality, leading to two main themes.[44] First, they thoroughly discuss specific better regulation policies in Europe; this has drawn Radaelli's attention in other publications too.[45] Second and more importantly, they convincingly demonstrate how the definition of regulatory quality is dependent on contextual factors; following these authors, we often encounter "the false impression that quality is a one-size-fits-all entity".[46] This can be seen as the main reason to define quality as a characteristic of process, and the argu-

40 *Ibid*., p. 351.

41 J.L. Pressman & A.B. Wildavsky, *Implementation: How Great Expectations in Washington Are Dashed in Oakland: Or, Why It's Amazing That Federal Programs Work at All*, Berkeley, University of California Press 1973.

42 D. Levi-Faur, 'Regulation and Regulatory Governance', *in* D. Levi-Faur (Ed.), *Handbook on the Politics of Regulation*, Cheltenham, Edward Elgar 2011, p. 3.

43 H.F. Hansen & L.H. Pedersen, 'The Dynamics of Regulatory Reform', *in* T. Christensen & P. Lægreid (Eds.), *Autonomy and Regulation: Coping with Agencies in the Modern State*, Cheltenham, Edward Elgar 2006, p. 328; C.M. Radaelli & A.C.M. Meuwese, 'Better Regulation in Europe: Between Public Management and Regulatory Reform', *Public Administration*, Vol. 87, No. 3, 2009, pp. 639-654.

44 Radaelli & de Francesco 2007.

45 C.M. Radaelli, 'Whither Better Regulation for the Lisbon Agenda?', *Journal of European Public Policy*, Vol. 14, No. 2, 2007, pp. 190-207.

46 Radaelli & de Francesco 2007, p. 31.

Table 1 Regulatory steps and understandings of quality

Regulatory step	Description	Quality is …
Process	Political, legal and administrative process leading to the articulation of regulation including regulatory governance or meta-regulation	… contingent on political and administrative context; therefore one should focus on processes installed to enhance quality instead
Output	Legal act or specific rules or rulings	… a characteristic of the specific legal act enhancing this legal act's probability of or potential to meet its objectives
(Implementation)	(Administrative procedure translating output into outcome)	–
Outcome	Legal and economic effect on regulatees and society	… the same as positive socio-economic effects

ment is echoed elsewhere: It is found not only in Radaelli's own work on quality and impact assessments,[47] but also in Stern and others' inclusion of 'informal accountability' when examining regulation of utilities,[48] in Parker's address of institutions mitigating regulatory regimes,[49] in the conclusions in Parker & Kirkpatrick's review of studies of economic effects of different meta-regulatory tools,[50] and in Wiener's almost poetic point that Europe 'needs to innovate, not imitate' America.[51] Thus, this stressing of context is the very substrate of many studies of processes rather than output or outcome: If quality is contingent, there is no sense in defining quality strictly and instead we should investigate different understandings of quality. It is not only in the academic world that this perspective on quality exists. As Radaelli & de Francesco show, the OECD (and the World Bank) is an example of an entity that "get[s] very close to identifying quality with the presence of well-functioning better regulation policies".[52] In this approach, the goal (quality of regulation) and the tool (meta-regulation) are the same. Paradoxically, however, instead of tackling the critique inherent in this context point, the pragmatic approaches are often strikingly similar and thereby not sensitive to specific contexts (*c.f.* the introduction). This bears in it the risk of reducing policy innovation through 'crowding out' both at the regulatory and at the meta-regulatory levels.[53]

47 C.M. Radaelli, 'Getting to Grips with Quality in the Diffusion of Regulatory Impact Assessment in Europe', *Public Money and Management*, Vol. 24, No. 5, 2004, pp. 271-276; C.M. Radaelli, 'Diffusion without Convergence: How Political Context Shapes the Adoption of Regulatory Impact Assessment', *Journal of European Public Policy*, Vol. 12, No. 5, 2005, pp. 924-943.

48 J. Stern, 'What Makes an Independent Regulator Independent?', *Business Strategy Review*, Vol. 8, No. 2, 1997, pp. 67-74; Stern & Holder 1999.

49 Parker 1999.

50 D. Parker & C. Kirkpatrick, 'Measuring Regulatory Performance. The Economic Impact of Regulatory Policy: A Literature Review of Quantitative Evidence', *OECD Expert Paper* 3, 2012, pp. 41-42.

51 Wiener 2006, p. 12.

52 Radaelli & de Francesco 2007, p. 34.

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Despite its obvious relevance, exaggerated stressing of context does, however, lead to its own set of theoretical challenges. First, it can lead to a more discursive understanding focusing on perceptions alone. An important insight from the theories of regulatory genesis, however, is that regulation is often installed to serve specific interests be they private or public, and if public interest is understood as, for instance, a compromise or act of balancing between competing private interests,[54] this can hardly even be seen as a true public interest.[55] Thus, reducing quality to perceptions alone risks confusing perceptions of quality with normative and interests-based views of legal objectives.[56] This problem is sometimes handled through the inclusion of different actors.[57] Second, it can lead to a 'mechanical' view on quality decoupling the concept of quality from the concept of regulation and fixing it to process alone. It also decouples quality from any discussion of effect as it neglects the output leading to that effect. In the pragmatic world, such an understanding of quality runs the risk of obtaining a bureaucratic logic of 'ticking the box'; Torriti, for instance, criticizes EU impact assessments on this ground.[58] A challenge stemming from both understandings is that overly stressing of the contextual nature of definitions of quality necessarily underplays or challenges comparative perspectives on regulatory quality even if comparison is confined to different agencies or branches of the same government. The above is not, of course, a complete refusal of the importance of context. Instead, it is trying to stress that an utterly contingent notion of regulatory quality would risk rendering the concept without analytical meaning and deprive it from comparative use. Instead, we need a theoretical framework to handle different contexts when talking about quality.[59]

At the other end of the Eastonian model outlined, one finds the works on output and outcome. This includes definitions of quality as legislative effectiveness[60] and efficiency and works on economic growth. Unsurprisingly, the latter is research often undertaken by economists. Effectivity and efficiency, however, are both highly dependent on a range of contextual factors – including but not con-

53 Radaelli 2007; Radaelli & de Francesco 2007, p. 38.

54 Mitnick 1980, pp. 92-93.

55 M.J. Pedersen & S. Pasquali, 'Regelforenkling og administrative lettelser – med panden mod muren?' [Rule Simplification and Reduction of Administrative Burdens – the Forehead Against a Brick Wall?], *Tidsskriftet Politik*, Vol. 12, No. 3, 2009, p. 67.

56 M. Klun & R. Slabe-Erker, 'Business Views of the Quality of Tax, Environment and Employment Regulation and Institutions: The Slovenian Case', *International Review of Administrative Sciences*, Vol. 75, No. 3, 2009, pp. 529-548.

57 D. Kaufmann & A. Kraay, 'Growth without Governance', *World Bank Policy Research Working Paper* 2928, 2002, p. 6; D. Kaufmann, A. Kraay & M. Mastruzzi, 'The Worldwide Governance Indicators. Methodology and Analytical Issues', *World Bank Policy Research Working Paper* 5430, 2010, p. 4.

58 Torriti 2007, p. 254. It is noticeable that several of the issues brought forward by Torriti have been tackled or at least sought tackled via the establishment of the impact assessment review procedure in the European Commission.

59 F. Saurwein, 'Regulatory Choice for Alternative Modes of Regulation: How Context Matters', *Law & Policy*, Vol. 33, No. 3, 2011, pp. 334-366.

60 M. Mousmouti, 'Effectiveness as an Aspect of Quality of EU Legislation: Is It Feasible?', *The Theory and Practice of Legislation*, Vol. 2, No. 3, 2014, pp. 309-327.

fined to the quality of the given regulation. In addition, the institutional quality of the implementing organizations, communication efforts and so forth play a role when translating output into outcome, and as mentioned earlier, this often econometric literature also uses different notions of quality. In addition, and perhaps more important, is the economic approach so broad – often applying macroeconomic designs – that it is of minor relevance to regulatory practitioners despite its value for our general knowledge.

To sum up, relating quality to process alone leads to problems of comparability and defining quality as outcome risks making quality too broad a concept to be of practical and analytical relevance.[61] Instead, it is proposed here that quality be seen as a characteristic of output. As defined earlier, this has to be understood very narrow: The specific legal act. A too narrow legal perspective, however, does not include relevant insights from the other traditions – nor does it reflect the view among many practitioners. Adding to the legal perspective, one therefore has to include a way to handle the point on context. Quality, then, can be seen as a feature of the regulatory output closely and positively coupled to the potential for effect. If a given regulation does not have the necessary quality, it cannot – *ceteris paribus* – be expected to meet its legal objectives in a degree as high as if it had these qualities. "In order to respect it, the law must be acknowledged, and to be acknowledged it must be clear and constant", as Bălan puts it.[62] This, of course, is not the same as stating that low (or high) regulatory quality cannot be countered by, for instance, institutions; the word *potential* in the definition of quality is important. Citing Kaeding, desired regulatory results cannot be achieved unless laws are "applied correctly and effectively"[63]; quality, in the understanding presented here, enhances the ability for such a correct application, but says nothing about the actual and effective application. It is a question of potential – not causality. This can be seen as a parallel to Giuliani's distinction between transposition (legal output) and compliance (real-world outcome),[64] and it is a way of including context in the analysis.

This line of thought has several advantages. First, the narrow understanding of the object of analysis makes it easier and more parsimonious to define quality as a property of exactly that object – and more empirically accessible. The framework thus owes a lot to legal methodology. Second, such an approach allows insights from law to wander into political science and vice versa. On the one

61 This, for instance, becomes clear when going through the four aspects of regulatory quality presented by Voermans, *see* W. Voermans, 'Concern about the Quality of EU Legislation: What Kind of Problem, by What Kind of Standards?', *Erasmus Law Review*, Vol. 2, No. 1, 2009, pp. 59-95. He, however, also does not discuss the concept *per se*.

62 E. Bălan, 'The Quality of Regulation', *Acta Universitatis Danubius Juridica*, Vol. 7, No. 3, 2011, p. 69.

63 M. Kaeding, 'In Search of Better Quality of EU Regulations for Prompt Transposition: The Brussels Perspective', *European Law Journal*, Vol. 14, No. 5, 2008, p. 585. *See* also Voermans 2009, pp. 73-74.

64 M. Giuliani, 'Europeizzazione Come Istituzionalizzazione: Questioni Definitorie E Di Metodo', 4 *URGE Working Paper*, 2004, available at: <www.academia.edu/17365026/Europeizzazione_come_istituzionalizzazione_questioni_definitorie_e_di_metodo>, accessed 3 December 2014, in Kaeding 2009, p. 585.

European Journal of Law Reform 2016 (18) 2
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hand, a legal approach is rarely seen in political science, despite legal quality often being an implicit and perhaps even unacknowledged variable in studies of (better) regulation.[65] On the other hand, systematic thoughts governing method are from time to time missing or only superficially described in legal analyses. The framework developed below tries to systematize this legal part of the analysis and to couple this with insights from political science. The idea has been to describe a logic accessible also for non-legal scholars and practitioners. Third, this approach has the potential to go beyond normative assessments of a regulation's objectives and thus to surpass discussions of interests.[66] Fourth, it allows us to clarify when, where, and how context and institutions are relevant to outcome. Fifth, this understanding of quality builds upon how quality is understood by many regulatory practitioners. This last point was underpinned by the empirical work that inspired this theoretical exercise, and it is also found among some legal scholars and reflected in the principles of quality in many countries, which have been well described elsewhere.[67] Many of these principles – for instance, needs for rules to be enforceable, user friendly, accessible, understandable, consistent and targeted – are related to the legal quality of the given rules. In other words, there is some sort of empirical resonance to the definition of regulatory quality described here. Given all this, quality can be operationalized as a concept pointing to an often-important precondition for effective and efficient regulation. It is not a sufficient precondition, however. That this is not the case follows from the context argument described previously; it is plausible to imagine situations in which a regulation of low regulatory quality – in the narrow understanding of this concept envisaged here – still leads to the desired outcomes due to aspects of, say, implementation countering that low quality.

Inspired by the theoretical discussion conducted above and drawing on both the general principles of quality mentioned and on the empirical work that has informed this article, three categories of regulatory quality are constructed. The categories reflect different aspects of the potential of a legal text to allow for a specific outcome. The categories are of a legal-logical nature (coherence), inspired by legal theory and method (the interpretative field) and inspired by a political science approach (the regulatory field).

III Proposing Indicators of Quality

Before initializing the elaboration of the categories of regulatory quality, five very important caveats regarding their use are imperative. First, this framework says nothing about process or input *a priori*. Rather, it can be seen as a way to evaluate process or input both during that process and afterwards. Second, any such

65 R. Baldwin, 'Better Regulation in Troubled Times', *Health Economics, Policy and Law*, Vol. 1, No. 3, 2006, pp. 203-207; C. Hey, K. Jacob & A. Volkery, 'Better Regulation by New Governance Hybrids? Governance Models and the Reform of European Chemicals Policy', *Journal of Cleaner Production*, Vol. 15, No. 18, 2007, pp. 1859-1874; Wiener 2006.

66 O. Fliedner, *Gute Gesetzgebung. Welche Möglichkeiten Gibt Es, Bessere Gesetze Zu Machen?*, Friedrich-Ebert-Stiftung 2001, pp. 7-8, available at: <http://library.fes.de/pdf-files/stabsabteilung/01147.pdf>, accessed 19 December 2014.

67 *Ibid*.; Radaelli & de Francesco 2007, pp. 32-36.

doi: 10.5553/EJLR/138723702016018002003

understanding of regulatory quality as the envisaged implies a law-as-rules approach,[68] a legal-dogmatic perspective[69] and influence by normativist legal science and legal positivism.[70] This, of course, rules out broader perspectives. However, such an approach has the advantage of making the analytical framework relevant to both common and civil law systems: It is irrelevant whether the object of analysis is a decree, a court ruling, a law or something fourth. At centre stage are the rules as such. Besides, it reflects the approach taken by many practitioners. Third, the categories or indicators of quality below are theoretical ideal types. They are closely interrelated and the lines between them are in all but theory blurred. Fourth, high or low regulatory quality neither supports nor rules out other types of quality such as, for instance, political quality. For example, flexibility might be a political desire despite its dragging in a direction away from regulatory quality as understood here. In other words, a trade-off between regulatory quality and other measures of success might exist. This underpins that regulatory quality might be important, but it is not all encompassing. Fifth, the framework below has been developed to analyze European legal acts, as quality seems all the more relevant in a multilevel setting where the same set of rules applies to a range of different contexts. In addition, the framework has been constructed to assess business regulation; this may bias the categories of quality.

Thus nuanced, the article continues describing the three categories of regulatory quality in an ascending order of abstraction. The first category, coherence, is the most straightforward to comprehend, whereas the third, the regulatory field, is more complex. This also leads to the three categories being presented in an ascending order of need for interpretation when applied: Due to its complexity, investigating the regulatory field will – *ceteris paribus* – imply more ambiguity than coherence.

The first category follows from a legal-logical view on a given regulatory text's potential for allowing the desired outcomes to materialize. This simple aspect of quality comes in two versions: Internal and external coherence. Internal coherence is related to the rules within a given legal document: How do they interact, and are they in conflict with one another? This is seldom the case, but one example might be the rules in Articles 13 and 14 of the European Consumer Rights Directive, Directive 2011/83. Here a conflict might exist between the consumer's liability to diminished value of returned goods and the trader's obligation to reimburse within 14 days as the trader risks not being able to define the consumer's liability before having to reimburse that same consumer. This could be an 'odd man out', but it demonstrates that coherence is crucial; one cannot expect a self-

68 Well described in M. van Hoecke & M. Warrington, 'Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law', *International and Comparative Law Quarterly*, Vol. 47, No. 3, 1998, pp. 495-536.

69 M. Wegener, *Juridisk metode* [Legal Method], 3rd edn, Copenhagen, Jurist- og Økonomforbundets Forlag 2000, pp. 51-60.

70 *See* A. Vaquero, 'Five Models of Legal Science', *Revus*, No. 19, 2013, pp. 53-81 (translated by Ester González Bertrán) and H. Kelsen, *Die philosophischen Grundlage der Naturrechtslehre und des Rechtspositivismus* [The Philosophical Foundation of Natural law and of Legal Positivism], Pan-Verlag Rolf Heise 1928 respectively.

European Journal of Law Reform 2016 (18) 2
doi: 10.5553/EJLR/138723702016018002003

contradictory legal arrangement to be effective and efficient or applied without chafe.

External coherence is related to the rules in other sources of regulation: Is there, for instance, a (potential) conflict between the articles in law A and law B? External coherence is also relevant when it comes to case law: Is a given regulatory measure coherent with given case law? And the other way around: Is given case law coherent with already given rules?[71] In the legal literature, external coherence is a widespread fulcrum of attention despite the fact that it is rarely exhaustively defined; coherence is often discussed without that word ever being used.[72] The understanding of coherence in this literature, however, is often broader than hailed in this article.[73] Where this author suggests a narrow focus on the specific rules (when talking about coherence), coherence is often given a looser meaning pertaining to systemic and institutional traits. Such a broad understanding, however, risks making the analyses less systematic, more normative and less open to scholars from other disciplines or practitioners. Therefore, a more parsimonious path has been chosen here.

Both the assessment of internal and external coherence implies a legal analysis of the document in question. From a scholarly perspective, the 'classical' legal analysis could be validated through the drawing on second-hand literature and use of interviews; due to time constraints this, of course, is harder to do for practitioners unless in an evaluative situation. Coherence might also be assessed through the study of the number and nature of conflicts arising from the use of a given legal act. Validating an analysis by 'sponging off' other scholars and through interviews becomes especially relevant when it comes to assessing the external coherence, which is a concept potentially without limitations. When to stop comparing? This, of course, is a weakness of this apparatus.

The next category, the interpretative field, is inspired by legal theory and practice. Crudely stated, this category focuses on whether any given regulatory text is understandable. Theoretically, the interpretative field can fall in two orders, first and second, but in practice they can be quite hard to separate. The broader an interpretative field, the bigger risk of the legal act not being able to meet its goals as different understandings of the rules can be supported. A broad

71 K. Hailbronner, 'Union Citizenship and Access to Social Benefits', *Common Market Law Review*, Vol. 42, 2005, pp. 1245-1267 gives a good example of the latter not being the case.

72 *See*, for instance, A.D. Chiriță, 'The Impact of Directive 2011/83/EU on Consumer Rights', 2012 *Ius Commune Law Series*, available at: <http://ssrn.com/abstract=1998993>; E. Hall, G. Howells & J. Watson, 'The Consumer Rights Directive – An Assessment of Its Contribution to the Development of European Consumer Contract Law', *European Review of Contract Law*, Vol. 8, No. 2, 2012, pp. 139-166; A.R. Lodder, 'Information Requirements Overload? Assessing Disclosure Duties Under the E-Commerce Directive, Services Directive and Consumer Directive', *in* A. Savin & J. Trzaskowski (Eds.), *Research Handbook on EU Internet Law*, Cheltenham, Edward Elgar 2014, at p. 358, available at: <http://papers.ssrn.com/abstract=2413200>, accessed 22 January 2015. These different authors all discuss the before-mentioned Consumer Rights Directive.

73 Compare, for instance, the understanding in this article with that presented in S. Weatherill, 'The Consumer Rights Directive: How and Why a Quest for "coherence" Has (largely) Failed', *Common Market Law Review*, Vol. 49, No. 4, 2012, pp. 1279-1317.

interpretative field, vague language, is therefore an instance of low regulatory quality.[74]

First-order interpretative field is the simplest take on that: Is the text readable and clear? Here one must ask questions of, for instance, readability and structure. This is a point put forward in guides on how to write legal texts.[75] Examining this seems straightforward, but is hard to formalize. In addition, first-order interpretative field does have some more depth to it. From a political science point of departure, this depth can be illustrated by referring to literature on how to make survey questions. In such literature, one finds appreciations of the importance of respondents' understanding of a given text and how this understanding can be dependent on contextual factors beyond the influence of the drafter of the text.[76] The whole constructivist and discursive tradition in political science, too, can put some theoretical flesh on this pragmatic bone. Summing up, it might be a simpler task finding bad language than good, and the threshold for what constitutes 'bad language' might be very fluid. Nevertheless, the first-order interpretative field is an ineluctable aspect of regulatory quality as clarity is necessary in order to reach any wider regulatory aims.[77]

Second-order interpretative field is similar but more related to legal ambiguities. Such legal-linguistic ambiguities can, for example, follow from references to hardly judiciable legal principles. These can be found both nationally and in the EU *acquis*. An example of the former is the first article of the Danish law on marketing, which dictates adherence to 'good marketing behaviour'.[78] That concept, however, is not defined in the law but continuously developed through a self-regulatory regime. Judged strictly by the interpretative field, this rule has poor regulatory quality despite its being politically desirable. At EU level, the EU legal body

74 *See* also G.A. Pennisi, 'Plain Language: Improving Legal Communication', 2014, and the contributions to the *European Journal of Law Reform*, Vol. 16, No. 3 on legal communication following that editorial.

75 A.L. Bormann, J.-C. Bülow & C. Østrup, *Loven. Om udarbejdelse af lovforslag* [The Law. On the Writing of Bills], Copenhagen, Jurist- og Økonomforbundets Forlag 2002, pp. 13-23; Justitsministeriet, *Vejledning om lovkvalitet* [Guide to Legal Quality], Copenhagen, Justitsministeriet 2005, p. 12; G. Müller & F. Uhlmann, *Elemente einer Rechtssetzungslehre* [Elements of a Legislative Doctrine], Schulthess 2013; J.M. Painter, *Legal Writer: 40 Rules for the Art of Legal Writing*, 4th edn, Jarndyce & Jarndyce 2009. *See* also Robinson 2015, pp. 263-264.

76 H. Olsen, 'Tal taler ikke uden ord. Et metodeeksperiment om danske respondenters sprogsensitivitet i politologiske og sociologiske surveyundersøgelser' [Numbers Do Not Speak Without Words. A Methods Experiment on Danish Respondents' Linguistic Sensitivity in Political Science and Sociological Surveys], *Politica*, Vol. 29, No. 3, 1997, pp. 295-310.

77 Bormann, Bülow & Østrup 2005, pp. 13-16.

78 Lov nr. 1216 af 25. September 2013 om markedsføring, § 1 [Law nr. 1216 of 25 September 2013 on marketing, Art. 1].

European Journal of Law Reform 2016 (18) 2
doi: 10.5553/EJLR/138723702016018002003

on the freedom of movement for workers and social rights[79] and the case law surrounding this legal complex[80] are from time to time criticized for problems regarding the second-order interpretative field. It has, for instance, been established that achieving legal status as a migrant worker is dependent on your occupation in a host country being 'effective' and 'genuine'[81]; but since the introduction of these criteria in 1982, we had to wait more than 20 years for an applicable definition.[82] Non-discrimination is another problematic concept. A broad second-order interpretative field installs ambiguity not only through non-definitions but also through the continual challenging of concepts, *i.e.*, where a certain concept is defined only to be redefined. A good example of this is the EU legal concept of a 'migrant worker', which today has a different and much wider meaning than originally, and which is subject to change constantly.[83] Finding examples on the EU level is not hard, and at least two reasons can be given for this. First, the EU is a legal order build upon such broad principles. How to understand these principles if they have not been fully developed legally? Reference to ill-defined or contested principles bear the risk of leading to transposition problems as stressed by Kaeding[84]; a too broad second-order interpretative field inhibits effective and efficient regulation as it hampers uniform implementation. Second, it is obvious that legal ambiguity is a way to achieve political compromise in a complex entity as the EU. This, however, dilutes the ability of a clear translation of political will into legal text. Such translation is a general problem – legislative intention has been descri-

79 This legal body is vast, but among the most central pieces of legislation one finds Reg. 492/2011 on freedom of movement for workers within the Union, OJ L141/1 (2011) (replacing Reg. 1612/68 on the freedom of movement for workers, Council of the European Communities, OJ L257/2 (1968)); Reg. 883/04 on the coordination of social security systems, Council of the European Union & European Parliament, OJ L166/1 (2004); and Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Council of the European Union & European Parliament, OJ L158/77 (2004).

80 As with the legislation on this topic, the number of cases is enormous; some of the most important, however, are cases 1/72, *Rita Frilli v. Belgian State* [1972] ECR-I-457; 53/81 *D.M. Levin v. Staatssecretaris van Justitie* [1982] ECR I-1035; 139/85 *R.H. Kempf v. Staatssecretaris van Justitie* [1986] ECR I-1741; 85/96 *María Martínez Sala v. Freistaat Bayern* [1998] ECR I-2691; 184/99 *Rudy Grzelczyk v. Centre Public d'Aide Sociale d'Ottignes-Louvain-la-Neuve* [2001] ECR I-6193; 413/01 *Franca Ninni-Orasche v. Bundesminister für Wissenschaft, Verkehr und Kunst* [2003] ECR I-13187 and 542/09 *European Commission v. Kingdom of the Netherlands* [2012].

81 Case 53/81, *D.M. Levin v. Staatssecretaris van Justitie* [1982] ECR I-1035.

82 Case 413/01, *Franca Ninni-Orasche v. Bundesminister für Wissenschaft, Verkehr und Kunst* [2003] ECR I-13187.

83 S. Pasquali & M.J. Pedersen, *De europæiske velfærdsstater: forenet i mangfoldighed?: en analyse af ikke-erhvervsaktive personers sociale rettigheder i EU og europæiseringen af sociale ydelser i Danmark* [The European Welfare States: United in Diversity? An Analysis of the Social Rights of Economical Inactive Citizens in the EU and the Europeanisation of Social Benefits in Denmark], Department of Political Science, University of Copenhagen 2011.

84 M. Kaeding, *Better Regulation in the European Union: Lost in Translation or Full Steam Ahead?: The Transposition of EU Transport Directives across Member States*, Leiden, Leiden University Press 2007, available at: <https://openaccess.leidenuniv.nl/handle/1887/12391>, accessed 17 September 2014; Kaeding 2008.

bed as 'a queerly amorphous piece of slag'[85] – but the problem becomes ever more present with the complexity of the political system. One should therefore expect more interpretative problems in international arenas such as the EU than in a national setting.

The assessment of the interpretative field does not separate itself much from the study of coherence. The first step is entering a 'classical' legal discussion. As argued above, however, the methodological stringency of the legal literature is often opaque. What has been offered so far is therefore a heuristic toolbox to make the legal part of analysis more accessible also for non-legal scholars, thus allowing them to engage discussions of regulatory quality. The second legal category, the interpretative field, is of course somewhat more complex than the former, coherence. Therefore, validation through 'triangulation' of methods – especially using interviews – becomes more relevant. This use of interviews to grasp the two legal categories of regulatory quality, coherence and the interpretative field, is worth dwelling by for a second. This is a method rarely found in legal analyses, and the very use of interviews to this end thus points to the cross-disciplinary nature of the framework proposed here. The use of interviews in political science is widespread, and many understandings of the interview and the data it generates co-exist. A logical consequence of the narrow nature of the object of analysis – the rules as such – is that the understanding of data generated by the interviews has to be similarly narrow. This implies two things. The first implication is a refusal of more constructivist accounts of the interview situation in which that situation itself becomes the object of scholarly interest. This bounds the interviews in a more realist methodology. The second implication is the use of semi-structured interviews. Open-ended interviews would risk shifting the focus away from the legal act under scrutiny and on to, say, process, and completely structured interviews such as surveys would not allow for relevant excurses. This last point on (relevant) excurses is truly important when it comes to the investigation of the regulatory field, which shall be described in the following. See also the appendix.

The third category, the regulatory fields, is different from the first two. This category has been inspired by the discussion of context. It has to do with potential discrepancies between what the regulation is meant to cover or do and what it actually covers or does: Discrepancies between the envisaged regulatory field and the empirical regulatory field. To draw a parallel to the first category, the regulatory field can be understood as non-legal coherence, *i.e.*, non-coherence between rules and reality, to put it bluntly. Figuratively speaking, the two versions of the regulatory field can be understood as two two-dimensional figures on top of one another. For a regulation to have a high quality, there has to be a high degree of congruence between the reality envisaged in the regulation and the empirical reality; the two figures have to be alike. If one or the other is bigger, discrepancies occur pointing to either too complex (positive discrepancy) or to simple (negative discrepancy) rules.

85 Max Radin cited in R. Munday, 'In the Wake of "Good Governance": Impact Assessments and the Politicisation of Statutory Interpretation', *The Modern Law Review*, Vol. 71, No. 3, 2008, p. 386.

European Journal of Law Reform 2016 (18) 2
doi: 10.5553/EJLR/138723702016018002003

A positive discrepancy means that the envisaged regulatory field is 'bigger' than the empirical regulatory field. This implies that the reality the regulation reflects includes aspects that are irrelevant to the reality the regulation is supposed to apply to; the figure on top is bigger than the one in the bottom. This could lead to overly complex or overly cautious regulation. That, however, is hard to determine. The dubbing of what aspects are relevant or irrelevant to include in the construction of the regulatory field can seldom be distinguished from political or even discursive predispositions. Positive discrepancy is thus hard to asses despite its obvious relevance.

Negative discrepancy is where the envisaged regulatory field does not cover all the aspects of the empirical reality to which it applies. Such a situation leads to rules, which cannot be applied meaningful to certain situations – but still legally covers these situations; too simple or blunt regulation, so to say. Examples might be due: In 2011, it was determined to classify investment products in Denmark as either red, yellow or green to give non-professional investors an idea of the complexity of investment products.[86] State bonds, for instance, were classified as a green product. However, at that time, the debt crisis in Southern Europe was erupting at full power; buying, for example, Greek state bonds would entail a considerable risk and hardly be non-complex. Yet, these bonds were classified as green, leaving the consumer with an impression of a simple product, the handling of which did not need any advice or caution. This classification of products did not include all necessary aspects of the empirical reality it governed, and thus it could not live up to its intentions of proper consumer protection and transparency when handling financial risks. Another example is – yet again – the Consumer Rights Directive and its rules on the consumer's right to withdraw. These seem to have been designed whilst imagining traders with a centralized storage from where they sell their goods; but it still applies to traders who have both a number of physical shops and a branch of e-commerce. The question is then how to handle if a consumer hands in a good bought on the Internet in a physical shop – is the young clerk, who happens to service that consumer, to asses any consumer liability on the spot?

As this category is the most complex, so is its assessment. Evaluating the regulatory fields demands expert knowledge of the specific business climate to which the given rules apply, and knowledge hereof is often confined to few people, making it hard for scholars to access. Access to knowledge of the empirical regulatory field might only be granted indirectly through interviews or from analyzing consultation letters if a consultation institution exists. The idea is to include context and the day-to-day experiences of practitioners' using, following, or interpreting the given rules. Analysis of the regulatory field is thus a very important supplement to the legal analysis in which one applies the two first categories of regulatory quality. That the assessment of the regulatory fields is built upon indirect knowledge obviously makes the conclusions inherently less valid, and the

86 Bekendtgørelse nr. 345 af 15 April 2011 om risikomærkning af investeringsprodukter [Decree nr. 345 of 15 April 2011 on the Risk Marking of Investment Products] (Økonomi- og Erhvervsministeriet 2011).

researcher has to be very aware to make the distinction between political evaluations of a given regulation's aim and assessments of the same regulation's regulatory fields. This is a hard but – in the eyes of this researcher – not insurmountable task.

B Conclusions

Time and time over, scholars have debated the nature of good laws but often this discussion has had little relevance to day-to-day policy making. The above is my humble attempt to deliver such relevance. The indicators above all support the same understanding of quality: Quality is seen as an important – but not necessarily ubiquitous – factor of mediating and translating political will into regulatory reality. This concept of regulatory quality is narrow, focused and confined to describe certain characteristics of a legal document. In order for regulatory quality to become an empirically relevant concept, it has to reflect the understanding among practitioners of the characteristics needed to enable this legal document to achieve its regulatory goals. It therefore has to include both legal and non-legal aspects. The understanding of quality outlined above – all the interpretative insecurities aside when applied – reflects these criteria.

"We live in the golden age of regulation,"[87] and with the increased focus on better regulation, quality as a fulcrum of discussion is not going to vanish. All of this underpins the importance of conceptual clarity when engaging in these discussions. Unfortunately, discussions and studies of regulatory quality are far too often dependent on which part of the Eastonian policy cycle, from process to outcome, the researcher finds interesting. This reflects the academic training of the given researcher: On the one hand, economist tend to equate quality with socio-economic efficiency; this view is to some point reiterated by policy makers in their view of what 'better regulation' is and ought to be. Lawyers, on the other hand, often have too narrow an understanding focusing on the text and the legal landscape alone – not including the broader context in which any given regulation is to function. This context, however, is overly stressed by political scientists, who thereby evade or even refuse the relevance of discussions of regulatory quality as such. These cleavages hamper the debate, and to bridge the different theorems, this article has proposed a framework for talking about regulatory quality focusing on the ability of a given legal text to allow desired objectives to be met. For this to be the case, one has to consider the legal text, the legal landscape and the empirical reality beyond law. Regulatory quality understood as defined above is related to increasing the potential of this translation being successful. In that respect, quality is a characteristic of the legal document as such, whereas, for instance, impact assessments, consultations and other meta-regulatory tools are mechanisms to increase the quality of this legal document.

Where does this all lead us? First, it points to a new way of assessing the effects of meta-regulation: Do the measures taken under the umbrella 'better reg-

87 Levi-Faur 2011, p. 16.

European Journal of Law Reform 2016 (18) 2
doi: 10.5553/EJLR/138723702016018002003

ulation' actually lead to better regulation, *i.e.*, to regulation with a higher potential of achieving its goals? Defining 'better' in an operable and empirically relevant way thus allows us to evaluate the processes more meticulously. Moreover, defining 'better' has relevance during both the administrative and the legislative phases, and when evaluating the final output. Second, it points to a way to investigate the effects of, for example, institutions, communication and implementation in a broader sense. If we can establish that a regulation has a high regulatory quality, but the desired outcomes do not materialize, where then lays the problem? And the other way around, if we are in a setting that normally acts effectively and efficiently, is a non-outcome then due to low regulatory quality? These empirical questions should be of interest to professors, policy makers and publics alike.

C Appendix: Interview

I Why?

This article aimed to develop a framework to investigate regulatory quality. This was not thought of as a purely scholarly exercise but was to have empirical resonance in order to allow for fertile discussions on the subject matter. In order to gain such empirical resonance, interviews were conducted, allowing for an in-depth discussion of both the concept of regulatory quality and examples hereof. The interviews did not dictate the articulation of the categories of quality; instead, the limited number of interviews conducted served two goals:

1 General inspiration to the categories of regulatory quality.
2 Continuously testing and challenging the thoughts on the framework so far.

II How?

All interviews were semi-structured, in which roughly the same interview guide was applied. This guide was divided into four parts, thereby structuring the interviews:

1 Questions on how to understand the general concept of regulatory quality and how the interviewee would evaluate the quality of European business regulation in general.
2 Questions on regulatory quality in practice including questions on meta-regulatory mechanisms and examples of good and less-than-good regulation, respectively.
3 Questions on the consequences of not having an adequate level of regulatory quality.
4 Open discussion on the topic.

The semi-structured nature of interviews implied a fairly strict focus. However, the specific questions under these themes did to a certain degree follow the flow of the discussion. This allowed for the interviews at the later stages in the research to meet the second objective stated above.

Table 2 Interviews conducted

Name	Position	Organization
Sven Petersen	Head of business law	Danish Chamber of Commerce
Lene Bech McCormick	Attorney, QLTT	Danish Chamber of Commerce
Ole Sohn	MP, former minister for businesses and growth	Social Democratic Party
Ane Berg Mansfield-Giese (telephone interview)	Head of division for legal quality	Ministry of Justice
Nina Lidman Borgsmidt	Head of section, legal quality	Ministry for Businesses and Growth
Jacob Schall Holberg	Attorney	Bech-Bruun Law Firm
Lars Bunch	Head of division	Agency for Businesses, Ministry of Businesses and Growth
Bjarke Thorbjørn Petersen	Team leader, team effective regulation	Agency for Businesses, Ministry of Businesses and Growth
Jakob Steenstrup*	Consultant	Danish consumer organization 'Forbrugerrådet Tænk'

The interviewees were chosen because of their professional affiliation, *i.e.*, because of their expected knowledge on relevant matters. Due to material and logistic constraints, the interviews were conducted in Denmark. Of course, this specific national context might have influenced the comments; this is a yet another reason for the interviews only having served as an inspirational source. The interviews is listed in Table 2, and the interview marked by * was conducted using the original *and* a supplementary interview guide as this interview is relevant to other research as well. All interviews were conducted from September 2014 until May 2015.

European Journal of Law Reform 2016 (18) 2
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