

A REGULATORY MODEL TO CHOOSE THE APPROPRIATE REGULATORY TOOLS

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Abstract: This paper deals with regulatory quality that always depends also on human factors. While the latter are moulded in time and in their mutual enhancements, also the regulatory tools have the same characteristics. Because they change their meanings in time and place – while these changes are enhanced by other changes and contexts – this paper gives criteria for some regulatory tools that could have the same meanings in different jurisdictions. Due to the political, social, economic and cultural differences there cannot be present the same regulatory tools for the same problems or targets in different countries, but nevertheless there can be used the same approach or a model by which we could establish the most appropriate tool (that could be different in other jurisdictions) for solving similar situations. A proposed model favours a participatory “individual-collective” approach that can eliminate more bias than deliberative democracy or even by experts individually, because it is built on one of the basic cybernetic laws, *i.e.* of redundancy of command.

Keywords: regulatory quality, regulatory tools, regulatory model, regulatory cycle, countries’ differences

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INTRODUCTION

The adoption of a qualitative regulatory or its alternative system should be the strategic decision of every organization. Already one example of the importance of this strategic dimension is enough: Europe 2020 is a 10-year strategy proposed by the European Commission for advancement of the economy of the European Union (EU). To achieve the five targets for the EU in 2020¹ and efficiently administrate the EU economic governance within the framework of the Stability and Growth Pact (SGP), reporting and evaluation is done simultaneously within the European semester to bring the means and aims together, while keeping the instruments and procedures *separate*

¹ The strategy identifies five headline targets the European Union should take to boost growth and employment. These are: 1) to raise the employment rate of the population aged 20–64 from the current 69% to at least 75%; 2) to achieve the target of investing 3% of GDP in R&D in particular by improving the conditions for R&D investment by the private sector, and develop a new indicator to track innovation; 3) to reduce greenhouse gas emissions by at least 20% compared to 1990 levels or by 30% if the conditions are right, increase the share of renewable energy in final energy consumption to 20%, and achieve a 20% increase in energy efficiency; 4) to reduce the share of early school leavers to 10% from the current 15% and increase the share of the population aged 30–34 having completed tertiary from 31% to at least 40%; 5) to reduce the number of Europeans living below national poverty lines by 25%, lifting 20 million people out of poverty. <http://ec.europa.eu/europe2020/targets/eu-targets/>

and maintaining the integrity of the SGP.² Setting goals and recommendations for the EU member states must be consistent not only with the general principles of proportionality and subsidiarity, but each state should adapt its legal rules to bring the means and aims *together*, *i.e.* to have the instruments and procedures interconnected. Countries should apply for their contexts the most suitable regulatory tools due to the countries' differences (the presence of latter can be shown by the different worldwide governance indicators), but at the same time they need a process to do this.

The basic question for every good regulator is how to choose the most appropriate regulatory tool to achieve desired goals; although the scientific and technical breakthroughs have been remarkable, complexity is still on its rise³ and will rise also in the future, so this task will be even more difficult. Problems of managing the transition to a more knowledge-based and/or innovative economy can be achieved by the *reduction* of complexity without losing sight of wholeness in a real time-place dimension. This was done in the past mainly by deliberative democracy where people democratically used the argumentative discourses 'as the effects of power generated by what was said'.⁴ Despite of the importance of choosing the right fundamental goals, there should not be forgotten on achieving them on the right way, so there is a question if power really rests in discourses. There should not be forgotten the idea of importance of what was, and will be done when following the fundamental goals. Power for Foucault 'is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society'.⁵ If we look on regulatory tools that are *used* to achieve goals in Foucauldian way, there is only dispersion and division of power:⁶ who has the power to choose (some regulatory tool), does not *ex automata* have also the power to collect (regulatory effects). The above-mentioned basic question is therefore wrong; in regulation the law of the harvest between the regulatory tools and the desired goals – due to the complex interweaving of tools and goals, when the first became the second on the other way around – cannot be automatically applied (power could be closer to the instrumental means than to the fundamental goals).

Choosing the most suitable (regulatory or its alternative) tool can make a contribution to the achievement of goals, but only in a constant presence of the tightest connection between a tool and its goal(s). George Stigler already in 1981 criticized regulatory economics for neglecting what he regarded as the most pervasive and fundamental

² See Communication from the Commission Europe 2020: A strategy for smart, sustainable and inclusive growth. Brussels, 3. 3. 2010 COM(2010) 2020.

³ Complexity can be displayed on a simple case: if there is a statute that would contain only four measures to achieve a certain goal, the number of their positions $n(n - 1)$ is 12, the number of connections between them $n(n - 1)/2$ is 6; their variety at start (2^n) would permit 16 options, while the output variety) would be already 2^{64} options... And we want this to tame with four measures?

⁴ FOUCAULT, Michel: *The History of Sexuality, Vol. 1: An Introduction*. Reissue edition. Vintage Books, 1978, 11.

⁵ Ibid 23.

⁶ If we look on power on Foucauldian way we became almost instantly aware on contradiction between the above-mentioned Council Recommendation on the National Reform Programme of Slovenia and the Article 197 of the Treaty on European Union (OJ 2010/C 83) that is based (only) on administrative cooperation.

regulatory structure in society *i.e.* the legal system: ‘[i]f the economic theory of contracts, torts, and property, for example, are not part of the theory of regulation, I don’t know where in economics this work belongs’.⁷ In regulatory theory the regulatory tools have to be evaluated more systematically; although efforts are present,⁸ there are still more authors – who write about administrative law – and not even mention⁹ any kind of choosing the appropriate regulatory tools or their alternatives to achieve the desired goals (somehow surprisingly it is the same also in works that deal specially with regulatory questions,¹⁰ while this kind of effort can be found in the work about organizational systems¹¹).

Based on these observations a direction will be given by which – the national and/or EU – goals or targets could be more effectively and efficiently enhanced in the present complex environment; this will be done by presenting a model that will enable a more rational (and democratic) choice between the most appropriate options in the light of the national political economic, social and cultural characteristics and/or differences among countries. Although choosing the most appropriate regulatory tool is only a first step towards overall regulatory efficiency (there has to be also a system that should monitor results and their effects in real time and space, make the necessary corrections and draw attention also to other consequences) already this step should be carefully planned and deserves its special treatment. The next chapters will explain the basic characteristics of regulation, differences between the regulatory tools, their meanings and/or criteria, to be able then for regulators to select a country-specific regulatory tool based on the proposed model.

REGULATION IS CYCLICAL, WIDE AND ENCOMPASSING LIFE PHENOMENON

It must be emphasized – due to the above-mentioned differences – that it is not the task of this paper to address – from the regulatory point of view – a philosophical question about the difference between liberalism and state interventionism;

⁷ STIGLER, George A.: ‘Comment on Joskow and Noll’. In FROMM, Gary (ed.): *Studies in Public Regulation*. MIT Press, 1981, 73.

⁸ BALDWIN, Robert – CAVE, Martin – LODGE, Martin: *Understanding Regulation: Theory, Strategy, and Practice*. 2nd edition. Oxford University Press, 2013; BREYER, Stephen: *Regulation and Its Reform*. Harvard University Press, 1982; BREYER, Stephen G. et al.: *Administrative Law and Regulatory Policy: Problems, Text, and Cases*. 6th edition. Aspen Publishers, 2006; CASS, Ronald A. et al.: *Administrative Law: Cases and Materials, Sixth Edition*. 6th edition. Aspen Publishers, 2011.

⁹ CHAPUS, René: *Droit Administratif Général*. Montchrestien, 1996; CRAIG, P. P.: *Administrative Law*. 5th edition. Sweet & Maxwell, 2003; WADE, William – FORSYTH, Christopher: *Administrative Law*. 9th edition. Oxford University Press, 2004; HARLOW, Carol – RAWLINGS, Richard: *Law and Administration*. 3rd edition. Cambridge University Press, 2009; POPPER, Andrew et al.: *Popper, McKee, Varona, and Harter’s Administrative Law: A Contemporary Approach, 2d*. 2nd edition. West Academic Publishing, 2010.

¹⁰ MORAN, Michael: *The British Regulatory State: High Modernism and Hyper-Innovation*. Oxford University Press, USA, 2003; SENN, Myriam: *Non-State Regulatory Regimes: Understanding Institutional Transformation*. Springer, 2014.

¹¹ ESPEJO, Raul – REYES, Alfonso: *Organizational Systems: Managing Complexity with the Viable System Model*. 2011 edition. Springer, 2011.

the paper's predisposition is that freedom and liberalism should be the starting point to choose the most appropriate regulatory tool. Although 'free institutions offer a surer, if perhaps at times a slower route to the ends they seek than the coercive power of the state',¹² it is also true that 'governmental measures ... as [long as] they are compatible with the rule of law, cannot be rejected out of hand as government intervention but must be examined in each instance from the viewpoint of expediency... In other words, it is the *character* rather than the volume of government activity that is important'.¹³ We must also emphasize that the EU 2020 or any other targets, are only static goals (while our societies are dynamic and flexible) with their own "characters". In the year 2020 every target will also – due to different periods and/or cycles and (mutual) reinforcements – mean something else and more than it meant at the time of its determination. We will now therefore proceed to the question of different periods and/or cycles, and after that on the reinforcements and/or amplifiers of regulatory tools, to be able to speak about a proposed method. Regarding the first we should mention that the liberals and protagonists of governmental interventions are both right in their ideas – if we look on them within the different time periods:

It is probably true that, at any given moment, a unified organization designed by the best experts that authority can select will be the most efficient that can be created. But it is not likely to remain so for long if it is made the only starting point for all future developments and if those initially put in charge also become the sole judges of what changes are necessary. It is an error to believe that the best or cheapest way of doing anything can, in the long run, be secured by advance design rather than by *the constant re-evaluation of available resources*. The principle that all sheltered monopolies become *inefficient in the course of time* applies here as much as elsewhere.¹⁴

The importance of the real time is never emphasized enough; to OECD 'the goal of regulatory reform is to improve national economies and enhance their ability to adapt to change'.¹⁵ As life and nature goes through its changes, other things can go through their cycles; one of them is the Kondratiev cycle¹⁶ that refers to wavelike fluctuations in the modern world economy and can be used also for the prediction of regulatory changes, because it is based on the constant re-evaluation of changes. If we combine the Kondratiev cycle with the regulatory cycle, we can predict what regulatory stage will follow after the previous one will end. This life-like regulatory cycle can tell us to which tool or process we should give an emphasis in the different time periods (see Figure 1).

OECD *Regulatory Governance Principles* advise to: deregulate where markets work better than governments; regulate well, where markets cannot work without governments; establish systems to ensure laws are coherent and well managed; and ensure

¹² FRIEDMAN, Milton: *Capitalism and Freedom: Fortieth Anniversary Edition*. 40th Anv edition. University of Chicago Press, 2002, 202.

¹³ HAYEK, F. A.: *The Constitution of Liberty: The Definitive Edition*. Ronald Hamowy ed, The Collected Works of F. A. Hayek edition. University Of Chicago Press, 2011, 331.

¹⁴ Ibid 407.

¹⁵ 'OECD Guiding Principles for Regulatory Quality and Performance' 1.

¹⁶ ALEXANDER, Michael: *The Kondratiev Cycle: A Generational Interpretation*. iUniverse, 2002.

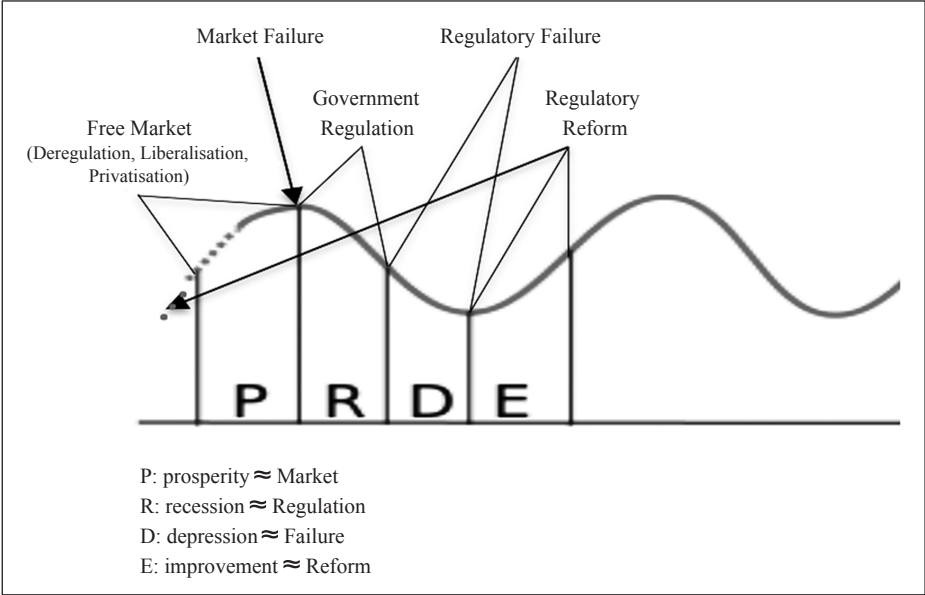


Figure 1. Regulatory cycle

regulations are made in ways to ensure democratic principles.¹⁷ This can be even better to accomplish if we have in mind the regulatory cycles. Within the regulatory cycle we should give a special attention to the OECD's element that advises us to establish systems to ensure laws are coherent and well managed, *i.e.* we should have *data in real-time* period. This is basically the core statement of regulatory quality and performance because it refers to capture the dynamic environment by the systematic assessment of diverse impacts *of* and *on* regulations. *Time* is thus very important element in the matters of regulation, so people should stop 'fighting about the donkey's shadow', *i.e.* which approach (liberal or interventionist) is more correct: they both are, but in different *time*.

Regulatory quality cannot be established already at this point; there should be also a relevant content of regulatory tools to which time can be applied as the (sort of) amplifier. Regulatory substance is becoming wider, all encompassing and bigger in the number of regulations. Despite of different ideas and differences between countries a prediction is given that there will be even more regulations in the future already due to the human's biological possibility of self-organisation:

Thirty years of research have convinced me that ... natural selection is important, but it has not labored alone to craft the fine architectures of the biosphere, from cell to organism to ecosystem. Another source—self-organization—is the root source of order. The order

¹⁷ OECD, 'OECD Reviews of Regulatory Reform, Regulatory Polices in OECD Countries, From Interventionism to Regulatory Governance' 2.

of the biological world, I have come to believe, is not merely tinkered, but arises naturally and spontaneously because of these principles of self-organization—laws of complexity that we are just beginning to uncover and understand.¹⁸

As molecules join to make cells, organisms, ecosystems, and societies, similar amplifying things that assemble, load, integrate, interweave, etc., are prevalent also in the ‘life-like’ law. Regardless of the ideas of deregulation, simplification, liberalisation, debirocratisation, the law is becoming wider, stronger and more encompassing than ever before, due to the proportional growth of society, technology and many other things. Vogel’s¹⁹ conclusion about the freer markets that have even more rules than before, was confirmed many times to this day. Moran in the similar style claims that ‘the image of a turn from command is ... hard to reconcile with the growth of a vastly expanded apparatus of surveillance and control within the public sector ... and with the transformation of self-regulation ... where the direction of change has been towards more hierarchy, more formality, and more state control’.²⁰ Decentralisation is theoretically *a contrario* process of passing the public affairs from the state to the local level, but in practice specific circumstances may lead right to the opposite, *i.e.* to centralisation. This is true as for the Slovene municipalities, as it is for the EU member states. Parisi talks about the paradox of progressive centralisation: ‘[c]ontrary to the aim for which it was introduced ... the subsidiarity test does not play a significant role in slowing down the process of centralisation. Rather, it is likely that the subsidiarity test leads to excessive centralisation, because over time it becomes an increasingly weaker instrument for keeping policy responsibilities at the local level’.²¹ Along the intended, there are always the non-intended (good/bad) consequences. The latter could be almost synonymous with not-imaginable in the beginning, while in the end they usually fit into a proverb (after a battle, everyone is a general). The law is the human phenomenon and humans have life cycles. Law *is* life, while the latter is also so much else. The second cannot be fully framed with the first. If we already know this (remember on the proverb) – how come that we use pretty much the same regulatory tools as were basically known already in the Ancient Rome? There are so many differences between countries that cannot be explained nor even mentioned in one paper; although generalisations are made in comparative-type monographs neither this cannot be a sufficient basis for making inferences to predict the future practice. In the next part of this paper it will be shown that even for the specific regulatory (administrative) tools people can understand something completely different.

¹⁸ KAUFFMAN, Stuart: *At Home in the Universe: The Search for the Laws of Self-Organization and Complexity*. Reprint edition. Oxford University Press, 1996, 2.

¹⁹ *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*. Cornell University Press, 1998.

²⁰ Moran (n 10) 6.

²¹ *The Economics of Lawmaking*. Oxford University Press, USA, 2008, 65.

DIFFERENT NAMES FOR THE SAME THING

If targets are changing and reinforcing in time, we should at first give an emphasis on tools by which we are trying to achieve them; while tools could have the essential role in this quest, we can see that within this like-life law there are many tools that are by their content identical to each other despite of their different names. If we proceed to look for regulatory quality in regulatory tools, we are confronted with their different meanings: are we talking *e.g.* about the certificate *of* education, academic certificate, degree, diploma or certificate *in* education; about the driving *permit* (fr. *permis de conduire*), driving *licence*, driving certificate (ger. *führerschein*; *fürher* – driver; *scheine* – certificate), registration *certificate* or registration *permit*? The Vienna Convention on Road Traffic (UN, 1968) mentions the international and domestic *driving permit* or fr. *permis de conduire*, while in the English language a driver is licensed, but in French *le conducteur est habilité* (*i.e.* the driver is licensed, empowered, authorized) for the B, C or D category. The French *certificat d'immatriculation*, English *registration certificate*, German *Zulassungsbescheinigung*, Spanish *permiso de circulación* and Slovenian *prometno dovoljenje* (literal translation: “traffic permit”) have the same formal validity, despite of the fact that some are addressed as the “certificate” and others as the “permit”. If we put aside the law for a moment, we can – based on these namings – by syllogistic reasoning validly conclude that license *is* certificate (although they are in the law different):

Permit = licence

Certificate = permit

Licence = certificate?

This example can show that names should be put in context to understand their meanings. Different contexts give different weights to regulatory (and other) elements, so it is of utmost importance for regulatory efficiency to establish the most relevant, objective state of affairs. If we would ask ourselves what is a license or any other regulatory tool, we will probably say something – more or less accurate – in the direction of its basic meaning, but this would be true only if we – as the citizens from a specific country – would have in mind a specific tool from to-us known region. Otherwise we cannot point on differences between *e.g.* the *certificat d'immatriculation*, *registration certificate*, *zulassungsbescheinigung* or *permiso de circulación*, regardless of the fact that we may be the French, English, German or Spanish citizens. Before the basic criteria for different regulatory tools and regarding the different names for the same things from the above subchapter can be given, the emphasis will be given to the most common regulatory tools that could have confusing meanings to emphasise the importance of context on one side and the importance of a specific regulatory tool (it must be balanced with context for appropriate intrusion in the people's lives) on the other.

REGULATORY TOOLS WITH LESS AUTHORITY

The term service is pretty much undisputed in the EU area; article 50 of the Treaty Establishing the European Community gives sufficient meaning to it: '[s]ervices shall be considered to be "services" ... where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Services shall in particular include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions'.²²

Registrations typically do not require a proof of skill or education. In most cases, a registration requires the business or individual to provide some general information about the business. The purpose of registration is to establish a written record of who is providing certain services. It is not a guaranty of competency or expertise. Register means 'to formally enter a record in a government maintained registry that is accessible to the general population'.²³ Standard is something considered by an authority or by general consent as a basis of comparison or an approved model. Standard's primary purpose is to provide a model suitable for the supply of a conforming product or service between two parties – a supplier and his customer. Having regard the founding principles set out in the Treaty of Rome (the free movement of goods, persons, services and capital) it is no wonder that EU have adopted measures to establish the internal market also with the help of standards; the greatest impact of this effort has been in the area of standards in the automotive sector.²⁴ While the Community type-approval system allows manufacturers to benefit fully from the opportunities offered by the internal market, worldwide technical harmonisation in the context of the United Nations Economic Commission for Europe (UNECE) offers them a market, which extends beyond the European borders. 'UNECE sets out the norms, standards and conventions to facilitate international cooperation within and outside the region. ISO has published more than 19,500 International Standards covering almost every industry, from technology, to food safety, to agriculture and healthcare. ISO International Standards impact everyone, everywhere'.²⁵

Standards can be viewed as the autocratic or liberal point of view: for Friedman '[g]overnment can never duplicate the variety and diversity of individual action ... by imposing uniform standards ... government could undoubtedly improve the level of living of many individuals ... but in the process, government would replace progress by stagnation',²⁶ while for Moran '[i]nformality ... [and] autonomy from public scrutiny and accountability ... are succeeded by standardization and formality, by the provision of systematic information accessible both to insiders and outsiders, and by reporting

²² European Union, 'Treaty Establishing the European Community (Consolidated Version), OJ C 325/35 of 24. 12. 2002.'

²³ The Law Dictionary, 'Register', <http://thelawdictionary.org/register-2/>.

²⁴ See Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles.

²⁵ International Organization for Standardization, 'About ISO', <http://www.iso.org/iso/home/about.htm>.

²⁶ Friedman (n 12) 4.

and control mechanisms that offer the chance of public control'.²⁷ The more social control passes from the norm to prescription or instruction, the less is the need for an institutionalized monopoly of coercion; of course it may on the other hand indicate also its rise where there is no need for standards at all.

A certificate is a document that serves as evidence or as written testimony, as of status, qualifications, privileges, or the truth of something. 'To ensure the independence of standard setting and evaluation, most certification schemes appoint a third-party accreditation body to assess the suitability and qualification of certification bodies for their system. Accreditation is the confirmation that a certification body is able to thoroughly assess clients against these requirements and issue certificates in an impartial manner'.²⁸ A standard represents material or formal requirement that some product or service must have, while *certification* is the provision by an independent body of written assurance (a certificate as a declaration of product or service's conformity to some standard) that the product, service or system in question meets specific requirements. Certification can be a useful tool to add credibility, by demonstrating that a product or service meets the expectations of customers.

'With an increase in specified standards has come a growth in the number of organisations whose business it is to check conformity and compliance with standards by providing services such as testing, inspection, calibration and certification'.²⁹ Accreditation is a formal, third party recognition of competence to perform specific tasks. It provides a means to identify a proven, competent evaluator so that the selection of a laboratory, inspection or certification body is an informed choice. Accreditation is a procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks; certification means 'the action of independent third party, which verifies that product, process or service in question fulfils all the specified requirements of relevant standards, technical regulations or other normative acts in force'³⁰ or is the 'procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements [whereas] registration [is the] procedure by which a body indicates relevant characteristics of a product, process or service, or particulars of a body or person, in an appropriate publicly available list'.³¹ The European approach is to label both quality system registrars and product certifiers as certification bodies and it operates in the way shown in the Diagram 1.

²⁷ Moran (n 10) 7.

²⁸ Accreditation Services International, 'What Is the Difference between Certification and Accreditation?', <http://www.accreditation-services.com/archives/what-is-the-difference-between-certification-and-accreditation> (accessed 14 November 2014).

²⁹ UKAS, 'About Accreditation' (2014), <http://www.ukas.com/about-accreditation/default.asp> (accessed 14 November 2014).

³⁰ Directorate of Accreditation, 'What Is the Difference between Accreditation and Certification | Directorate of Accreditation' (2011), <http://www.dpa.gov.al/en/faq/what-is-difference-between-accreditation-and-certification> (accessed 14 November 2014).

³¹ NEWSLOW, Debby L.: *The ISO 9000 Quality System: Applications in Food and Technology*. John Wiley & Sons, 2001, 3.

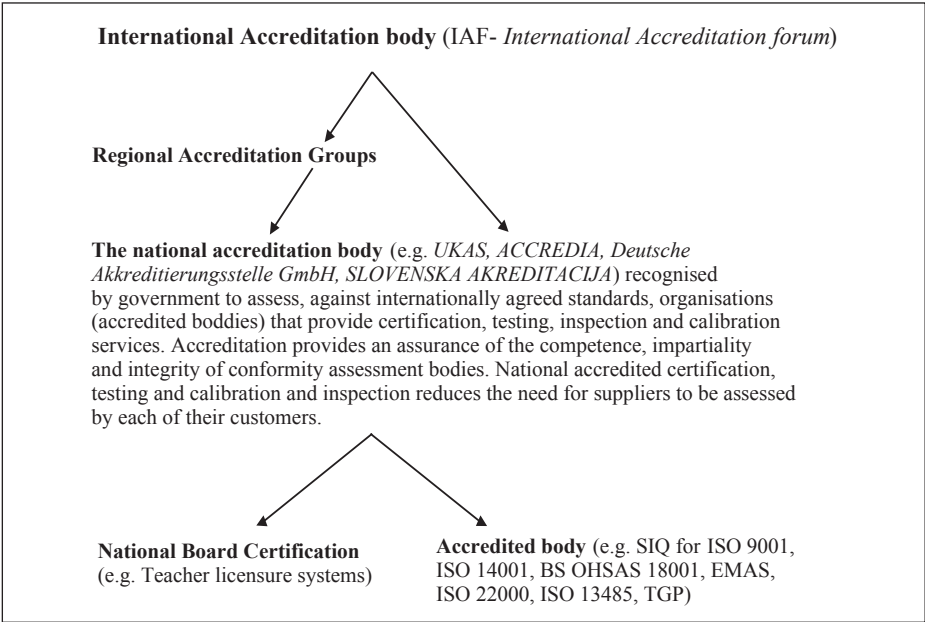


Diagram1. Quality System Registrars

In the procedure of accreditation, an assessment team involves a combination of personnel who have expert knowledge for recognition in a specific institution, together with personnel who have specific knowledge of the policies and practices of the accreditation body and the general systems applicable to all accredited institutions. Thus, the accreditation assessment includes a technical peer-review component plus a systems compliance component (accreditation involves appraisal of the competence of personnel as well as systems). The technical competence and performance of personnel may also be witnessed as part of the assessment process. The loss of key personnel may affect the continuing accreditation of the institution by the accrediting body.

REGULATORY TOOLS WITH HIGHER AUTHORITY

Authorization is the most general term for the official permit, certificate, or empowerment; it is the act of authorizing or permission or power granted by an authority.

The concept of authorisation scheme should cover, inter alia, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or

to obtain a card attesting to membership of a particular profession. Authorisation may be granted not only by a formal decision but also by an implicit decision arising, for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.³²

A license is permission, usually revocable, to commit some act or to carry on some business or profession that would otherwise be unlawful. License is the formal permission from a governmental or other constituted authority to do something; it is granted by a licensor to licensee as an element of an agreement between those parties. The license may also serve to keep the authorities informed on a type of activity, and to give them the opportunity to set conditions and limitations.

In some cases, license 'is granted after some kind of test, to make sure that the person receiving the license is capable of doing the activity. A business license does not usually require an examination of any kind. Licenses can be granted by a government agency, such as a license to do business in a particular location'.³³ Individuals or companies may also sell licenses (software licence, trademark and brand licensing, patent licensing). In general, the State usually requires a license for activity that is *potentially hazardous*, or involves a *specialized skill for which training is required*. A professional body or a licensing board composed of practitioners of the relevant occupation or profession grants most occupational and professional licenses. For many licenses, an individual must complete certain education and training, and pass an exam in order to be eligible. Some business types are also subject to inspection.

Permission is the act of permitting. It is 'a written license or a warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without such authority'.³⁴ Permits regulate *safety* and are typically granted following an inspection. A permit is generally limited and is only accepted under certain terms, whereas a license gives you the right to do that action you are licensed to do. Basically it is the difference between a privilege and a right. There is little difference between a license and a permit as both require permission from authorities to carry on certain activities or business, but permits are usually more restrictive and temporary in nature, whereas licenses are (usually) permanent. Permits require the occasional inspection, fulfilling safety regulations and a person may be required to obtain permits even after obtaining a license to start a business (e.g. accreditation of study programme and/or university and its later inscription into the public registry of valid study programmes and/or universities). Authorisations as permits or licences are granted normally on request of the economic operator and not on

³² The European Parliament and the Council, 'Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market OJ L 376, 27. 12. 2006' para 39.

³³ MURRAY, Jean: 'Licenses and Permits' (*About*, 2014), <http://biztaxlaw.about.com/od/glossary/l/g/licensepermit.htm> (accessed 14 November 2014).

³⁴ BLACK, Henry Campbell: *A Dictionary of Law: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern : Including the Principal Terms of International, Constitutional, and Commercial Law : With a Collection of Legal Maxims and Numerous Select Titles from the Civil Law and Other Foreign Systems*. The Lawbook Exchange, Ltd, 1891, 890.

the initiative of the contracting authority, while an operator remains free to withdraw from the provision of works or services.

Franchise in our sense (it can mean otherwise also the right to vote) is a privilege of a public nature conferred on an individual, group, or company by a government (*e.g.* to operate a bus system). ‘Franchises are grants of the right to occupy or to use the city’s inalienable property, such as streets or parks, for a public service, *e.g.*, transportation or telecommunications [whereas] concessions are grants for the private use of city-owned property such as for food sales or recreational activity, with a city’s compensation typically tied to the concessionaire’s revenue’.³⁵ Franchising is the offer to provide a service is tendered by the franchisee in a competitive context. The regime is based on market incentives, with the franchisee bearing at least some of the revenue risk. ‘The essence of [commercial] franchising is the allocation (subject to conditions) of a protected or exclusive right to exploit or carry out an activity’.³⁶ The franchiser and franchisee have a continuing relationship with the franchiser monitoring performance quality. We could see them also see them as the public service implemented by public property. Franchise presents a significant commercial risk for franchisee but also some commercial freedom and potentially greater profits. Governmental franchising may resemble commercial franchising closely but can be distinguished by its public purpose:

The aim of the franchiser is not to maximize profits but to deliver to consumers or the public an advantage—for example, an efficiently produced and competitively priced utility service. As a tool of government influence, franchising is seen by proponents as particularly useful in a number of respects. It is said to avoid the restrictiveness associated with classical command and control regulation while, nevertheless, allowing some degree of control to be retained.³⁷

Some states grant permissions or licences, where a state or a public authority establishes the conditions for the exercise of an economic activity, including a condition to carry out a given operation, granted, normally, on request of the economic operator and not on the initiative of the contracting authority or the contracting entity and where the economic operator remains free to withdraw from the provision of works or services; these cases should not qualify as concessions. In the case of the EU Member State acts, the specific provisions of Directive 2006/123/EC apply. Concession is the act of conceding or yielding, as a right, a privilege, or a point or fact in an argument.

Concessions are contracts for pecuniary interest by means of which one or more contracting authorities or contracting entities entrusts the execution of works, or the provision and the management of services, to one or more economic operators. The object of such contracts is the procurement of works or services by means of a concession, the consideration of which consists in the right to exploit the works or services or in that right

³⁵ Citizens Union, ‘2010 CITY CHARTER REVISION RECOMMENDATIONS Increasing Avenues for Participation in Governing and Elections in New York City’ 43.

³⁶ Baldwin, Cave and Lodge (n 8) 165.

³⁷ *Ibid* 166.

together with payment. Such contracts may, but do not necessarily, involve a transfer of ownership to contracting authorities or contracting entities, but contracting authorities or contracting entities always obtain the benefits of the works or services in question.³⁸

Concession presents comparatively minor risk for contractor, minimal or no commercial freedom, some incentives and revenue reasonably predictable. Concession contracts provide the mutually binding obligations where the execution of the works or services is subject to specific requirements defined by the contracting authority or the contracting entity, which are legally enforceable.³⁹

THE MEANINGS AND/OR CRITERIA OF REGULATORY TOOLS

To have the equal names of regulatory tools in different states is possible only by an international agreement or the supra-state EU law, but we think that – in Hayek’s style – their *character* rather their name, is more important. While we want in our rationalistic era reasons and facts, on the other hand character implies the *human* character and a human is the one who puts a method by which reasons and facts are gathered. We should be aware that there are also trustworthiness, respect, responsibility, fairness, caring, citizenship and other values involved, not only the pure and cold logic of rationality. Based on this predisposition – and the meanings of regulatory tools with the less and higher authority – *criteria* will be given by which one regulatory tool can be distinguished from another. Different regulatory tools and their alternatives can be therefore put on the relative equal footing by stating *criteria* that can be used for a specific tool. By using the meanings of tools from the dictionaries and other sources, we came to Table 1.

³⁸ Directive, ‘Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the Award of Concession Contracts Text with EEA Relevance. OJ L 94, 28. 3. 2014’ para 11.

³⁹ See Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance OJ L 94, 28. 3. 2014, at 14.

Table 1. Meanings and/or Criteria of Regulatory Tools

<p>Service Lat. <i>servitium</i> »servitute«</p>	<p>Register/ Registration Lat. <i>registrum</i>, <i>regestrum</i>, alteration of <i>regesta</i> »catalog, list«</p>	<p>Standard/ Standardisation Old Fr. <i>estandard</i>, »stand fast or firm«, from lat. <i>extendere</i></p>	<p>Certificate/ Certification Lat. <i>certificatum</i> »thing certified«</p>	<p>Accreditation Fr. <i>accréditer</i>, from the phrase <i>mettre à crédit</i> »to put to credit«</p>	<p>Licence Lat. <i>licentia</i> »authorization«</p>	<p>Permit Lat. <i>permittere</i> »to let go through, give leave«</p>
<p>Business service</p>	<p>An official register; catalogue, schedule, written record;</p>	<p>To provide a management model</p>	<p>A document serving as evidence or as written testimony of status, qualifications, privileges, or the truth of something</p>	<p>Demonstration of competence by the assessment team that someone has specific knowledge to deal with some expert activity</p>	<p>Demonstration of competence to deal with potentially hazardous activity</p>	<p>Demonstration of competence to deal with hazardous activity</p>
<p>Consumer service</p>	<p>the act of making a list of names if (legal) persons engage in certain kinds of activities</p>	<p>The supply of conforming products or services; material or formal requirement of meeting criteria</p>	<p>A document attesting to the fact that a person has completed some course; a third party or producer itself gives written assurance (certificate of conformity) that a product, process or service conforms to specified requirements</p>	<p>The formal recognition by an independent body that a certification body operates according to standards; a technical peer- review component plus a systems compliance component; appraisal of the competence of personnel as well as systems</p>	<p>The formal recognition by an official/state body that a (legal) person operates according to standards and/or other legal criteria</p>	<p>Regulates safety and is typically granted following an inspection</p>

Renumeration	A member of a profession, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession; registration of quality systems	A basis of comparison, an approved model; an object that is regarded as the usual or most common size or form of its kind; an average or normal requirement of quality, quantity, level, grade, etc.; to add credibility by demonstrating that some product or service meets the expectations	A statement, written and signed, which is by law made evidence of the truth of the facts stated, for all or for certain purposes; the confirmation that a client operates in line with a set of requirements, provided by a standard setter; product certifier/ quality system	To check conformity and compliance with standards to provide services such as testing, inspection, calibration and certification	A formal – usu. revocable – permission or authorisation from a governmental or other constituted authority to do something, or to practice occupation (driving, banking, dog, hunting, vehicle, medical, pilot, television, liquor, gun licence)	A formal – usu. non-revocable – permission from a usu. governmental authority to practice (or to authorize others to practice on behalf of the authorizer) occupation or other activity
Trade	A body indicates relevant characteristics of a product, process or service, or particulars of a body or person, in an appropriate publicly available list	Attesting to the training, aptitude, and qualification of; a document which attests to someone's skills or competences to practice or do something	Attesting to the training, aptitude, and qualification to produce or make services according to demands from standards (e.g. ISO, EMAS, TGP) or other qualified bodies (e.g. vocational qualification)	A formal, third party recognition of competence to perform specific tasks; to credit: commendation given for some action, quality, trustworthiness; credibility, to put confidence in, reputation	A permission of a (business) body to use the licensed material (business, software, brand, trademark, artwork, patent licence, an academic degree)	A permission of an official body or from the latter empowered body to practice (work, residence, building, occupancy, gun permit)

Contract	Making entries for the private/public interest (tax purposes, security, order, transparency)	The authorized exemplar of a unit of weight or measure	A document which attests to someone's <i>authorization</i> to practice skills or competences	To provide or send with credentials	Contract, administrative (court) decision	Administrative (court) decision, discretionary decision
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Sources: GARNER, B. (ed.): *Black's Law Dictionary*. 8th ed. Thomson West, 2004; *The Law Dictionary* (<http://thelawdictionary.org/>); *Legal Dictionary* (<http://dictionary.law.com/>) and *Dictionary* (<http://dictionary.reference.com/>), this dictionary uses meanings from the *Random House Dictionary*. Random House, 2014; *Collins English Dictionary – Complete & Unabridged 2012 Digital Edition*; *Online Etymology Dictionary*. Douglas Harper, 2010 and the *American Heritage Abbreviations Dictionary*. Houghton Mifflin Company, 2005); European Union: *Treaty Establishing the European Community* (Consolidated Version), Rome Treaty, 25 March 1957; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market OJ L 376, 27. 12. 2006.

SELECTING AN APPROPRIATE COUNTRY – SPECIFIC REGULATORY TOOL

Each country is a world within itself and every part of it is also different; each country is culturally, economically and politically determined and different from other countries. This can be seen by using the grid and group model⁴⁰ or by looking at country's culture (as a catchword for all patterns of thinking, feeling, and acting): Hofstede et al. in the style of cultural relativism claim that '[w]e cannot change the way people in a country think, feel, and act by simply importing foreign institutions ... each country has to struggle through its own type of reforms, adapted to the software of its people's minds'.⁴¹ You can select and see differences for countries at the Hofstede centre⁴² regarding values for the 6 cultural dimensions. Differences can be seen also from the Corruption Perceptions Index, the Worldwide Governance Indicators, Eurostat etc. Knowing about the countries' differences – how can we give some guidance to pick the right regulatory tool regarding its content and countries' goals? The most reliable would be Friedman's approach, so we will balance things according to given criteria:

In any particular case of proposed intervention, we must make up a balance sheet, listing separately the advantages and disadvantages. Our principles tell us what items to put on the one side and what items on the other and they give us some basis for attaching importance to the different items. In particular, we shall always want to enter on the liability side of any proposed government intervention, its neighbourhood effect in threatening freedom, and give this effect considerable weight.⁴³

Based on the author's numerical preferences (from 0 to max. 100) *vis-à-vis* the meanings or criteria for the tools from the Table 1, we can see in the Table 2 their proportions in the regulatory environment, but they cannot be used in different countries, because of the above-mentioned cultural and other differences neither they per se do not tell us anything. It maybe sounds a little bit strange, but one person's preferences do not mean anything *vis-à-vis* regulatory environment.

When the work on regulatory regimes concludes that 'regulatory regimes are subject to constant change ... hardly ever did the reformers get the design of the regulatory regime "right" from the very beginning. Instead they engaged in a process of correcting the initial institutional arrangements and instruments in order to correct the existing structures in the light of accumulating experience',⁴⁴ this can not only mean that forming the right design of regulatory regime is not easy, but also that experiences should be included and non-stop evaluated.

Despite of this difficulty, a holistic method can and will be shown by which each country could pick up its own specific regulatory tools. This can be done by the pre-

⁴⁰ DOUGLAS, Mary: *Cultural Bias*. Humanities Pr, 1978.

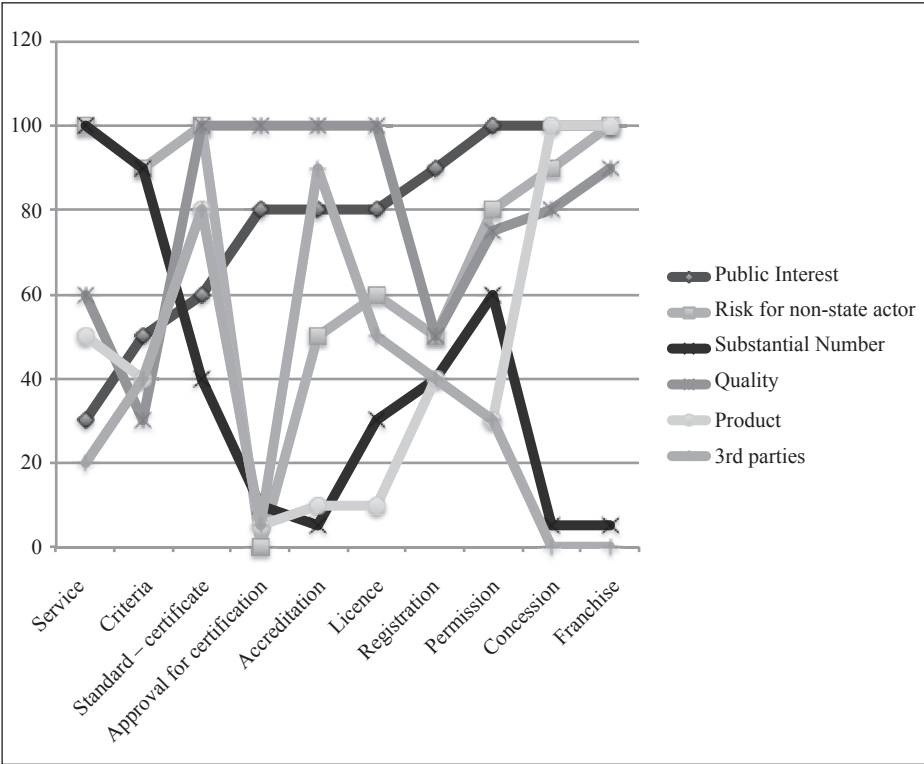
⁴¹ HOFSTEDE, Geert – HOFSTEDE, Gert Jan – MINKOV, Michael: *Cultures and Organizations: Software of the Mind, Third Edition*. 3rd edition. McGraw-Hill, 2010, 25.

⁴² See <http://geert-hofstede.com/countries.html> (accessed 14 November 2014).

⁴³ Friedman (n 12) 32.

⁴⁴ HERITIER, Adrienne: 'Conclusion: Refining Regulatory Regimes'. In COEN, David – HERITIER, Adrienne (eds): *Refining Regulatory Regimes: Utilities in Europe*. Edward Elgar Pub, 2006, 217.

Table 2. Regulatory Tools in Regulatory Environment



sented regulatory model that depends on the ISO standard 9001:2008’s elements: a) organizational environment, changes in that environment, and the risks associated with that environment; b) varying needs; c) particular objectives; d) the products it provides; e) the processes it employs; and f) its size and organizational structure). By this the elements of environment and risk, public objectives, products, processes, size and organisational structure can be extrapolated to which are also added the elements of g) 3rd parties (i.e. non-state, actors that can participate in the regulatory processes) that (can) enhance independence and impartiality from daily politics and h) transparency (public tender, reports on work and financial conditions, performance disclosure) for control. To these material criteria are also added the enforcement criteria (because regulation must not only be established but also has to be implemented): i) detection of problems, j) responsiveness in real time, k) enforcement, l) assessment, and m) modification. Through evaluation of these material and enforcement elements (they give us overall qualitative and quantitative information) the right regulatory tool can be more effectively chosen according to its main characteristics and our wanted goals (the latter can be different in a light of specific needs or interests that have to be fulfilled. As an example the final goals are: 1) protection against fraud, 2) equal quality of products or services, 3) the pur-

suit of other aims, 4) spill-over effects, 5) a device to facilitate taxation, 6) elimination of incompetence, 7) potentially hazardous activity, 8) dangerous activity, 9) anti-trust policy, 10) trade policy, and 11) anti-discrimination.

These elements are presented in the Table 3 (see Appendix); they could be at first filled by a ministry responsible for a specific field (because ministries usually prepare draft laws in their fields); this approach of getting the averages on answers can be used for the wider democratic purposes and elimination of special interests, lobbies, corruption, etc. Distribution of results is driven by the complex combination of distribution of interests of those who would fill the table and not by their personal and/or material influences among potential winners and losers. The individual's personal preferences are grouped with other preferences on the basis of which is then calculated the average, so bias is cancelled out. Whether an industry gets deregulated, for example, will more likely depend on the aggregate of participants' answers, not on political and other interests.⁴⁵ If all sides cooperate, they will usually – if there are minor transaction costs – achieve more efficient result regardless of the formal law that would be otherwise given by a classic, representative way. If there is wide deliberation, better (more agreeable and efficient) decisions – closer to the Coase's theorem⁴⁶ – can occur (if the persons involved strive towards solution that could benefit them). Because persons cannot know all data that are relevant to their decisions, the proposed model incorporates also the cost of acquiring knowledge about various opportunities. In this exemplary case it was done from the author's point of view to show *modus operandi* of this model, while in real situations it should be done by *ex ante* and *ex post* known “the larger – the better” number of people.

The exemplary results – obtained from the completed Table 3 – are divided in four groups according to the summation of results (20–23 points; 16–19; 11–15; and 10 or less) by horizontal (regulative tools and their alternatives) and vertical elements (final goals, enforcement and material criteria). The point (checkmark) was given if some vertical element could be present in a horizontal one and *vice versa*; based on these divisions the following results are shown in Figure 2.

The results show the rough approximations between the regulatory or alternative tools and the material and enforcement criteria and final goals. It has to be emphasised that each public authority due to the mentioned cultural and other differences will receive different results with different or even the same tools.⁴⁷ In the demonstrated

⁴⁵ By this way we can avoid the negative consequences of winners and losers that are present in Brennan: ‘[t]he allocation mechanism we get, and how it is implemented, is more likely driven by some complex combination of the distribution of influence among potential winners and losers, evaluated over the range of policy options (taxes, subsidies, trade and entry barriers) affecting the distribution of wealth’, BRENNAN, Timothy: Regulation and Competition as Complements. In CREW, Michael A. – SPIEGEL, Menahem (eds): *Obtaining the best from Regulation and Competition*. Softcover reprint of hardcover 1st ed 2005 edition. Springer, 2010, 5.

⁴⁶ COASE, Ronald: The Problem of Social Cost. *Journal of Law & Economics* 1960, vol. 3, 1.

⁴⁷ One of the latest confirmations of the similar conclusion came from the field of alternative dispute resolution: ‘the jurisdictions analyzed in this book [Germany, France, Netherland, Denmark, Belgium, Austria, Spain, United Kingdom, Hungary, Slovenia, Serbia, Czech Republic, EU] offer a mixed picture and mixed blessings’, DRAGOS, Dacian C. – NEAMTU, Bogdana (eds): *Alternative Dispute Resolution in European Administrative Law*. 2014 edition. Springer, 2014.

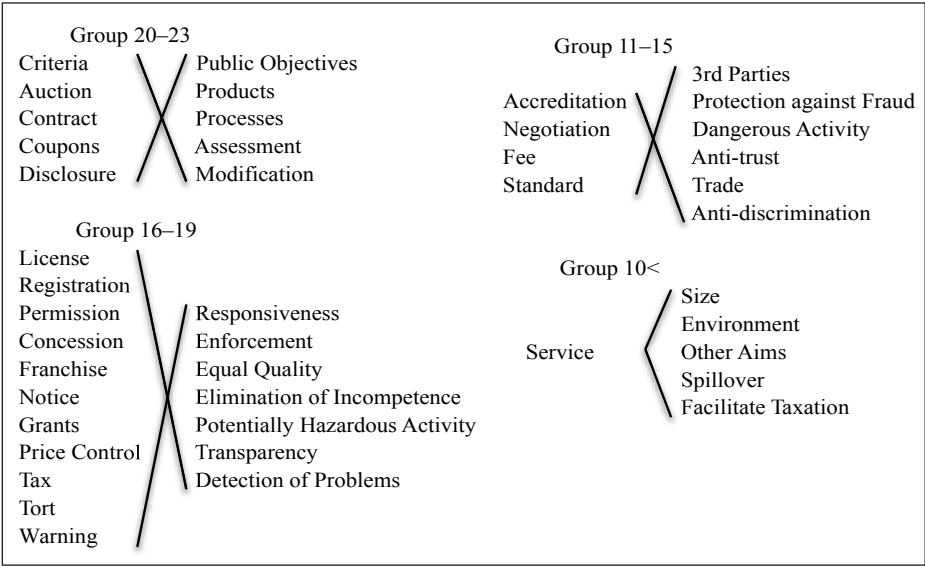


Figure 2. Results from the Table 3

case, if we want *e.g.* to achieve public objectives (material criteria), the first step would be to look on the regulatory tools or their alternatives within the same group (Group 20–23), *i.e.* criteria, auction, contract, coupons or disclosure. If this public objective is more specific, *e.g.* protection against fraud (final goals) from the Group 11–15, the most appropriate would be accreditation and negotiation (regulation and alternative). If we want to see to what criteria (based on the highest score) from other groups could be similar, we could look on the groups’ right/left side (*e.g.* to criteria and auction from the Group 20–23 is similar standard or negotiation from the Group 11–15, to fee is contract etc.). If we know the characteristics of the regulatory tools (we put them for some tools in the Table 1) we can then more easily decide which tool should be the most appropriate for a specific goal. These results can give us the possible directions, while final decisions will depend on the specifics of time, place, finances, quantitative and other elements⁴⁸ or questions, which will be available in a given moment of time. Given all the differences between countries there is no right answer for all, but it can be – by the proposed method – at least fully transparent, accountable and the right one for a specific country.

⁴⁸ One of them could be the OECD Reference Checklist for Regulatory Decision-Making: 1. Is the problem correctly defined? 2. Is government action justified? 3. Is regulation the best form of government action? 4. Is there a legal basis for regulation? 5. What is the appropriate level (or levels) of government for this action? 6. Do the benefits of regulation justify the costs? 7. Is the distribution of effects across society transparent? 8. Is the regulation clear, consistent, comprehensible and accessible to users? 9. Have all interested parties had the opportunity to present their views? 10. How will compliance be achieved OECD, ‘Policy Framework for Effective and Efficient Financial Regulation’ 42–43?

For Hayek '[c]ertainty we cannot achieve in human affairs, and it is for this reason that, to make the best use of what knowledge we have, we must adhere to rules which experience has shown to serve best on the whole, though we do not know what will be the consequences of obeying them in the particular instance'.⁴⁹ Most of the time regulations are not tested as the scientific experiments in laboratories, so we have mainly good practices (that cannot be automatically transplanted in other countries as was mentioned above), and trial-and-error-type experiences:

Regulation of many industries, including telecommunications, has changed substantially over the past several decades. Some of the changes are in the nature of evolution: slow changes that seem part of a trial-and-error approach to see what works, what produces the benefits sought (such as industry stability, control over prices, or allocation of costs to limit burdens on particular groups) at tolerable cost. Other changes have been more radical, replacing wholesale a regulatory regime that has been in place for many decades, sometimes for more than a century.⁵⁰

The more people we would invite to fill the Table 3 (after they get to know the criteria from the Table 1), the bigger average (and more independent, unbiased) result we would get, and less difficulties we would have in finding the right tool for a specific problem. Larger is the number of people – less there is a need for command. Similar idea can be found when cyberneticists speak about the principle of redundancy of potential command: 'command in a viable system is a potentiality spread all through the system. Command is highly redundant; all sorts of people are capable of taking small decisions which finally add up to a big decision'.⁵¹ In viable systems coordination arises out of the local interactions between the components of an initially disordered system. This process of self-organization is spontaneous: it is not directed or controlled by any agent or subsystem inside or outside of the system; however, the laws followed by the process and its initial conditions may have been chosen or caused by an agent. 'The potential to command becomes actual in a given instance solely because of the way that information is distributed through the system at the time' (ibid.). And here fits our proposed model: its formal mission is (only) to bias the informational distribution, but during the process it provides democratically obtained and unbiased information. In the present time, informational technology is developed enough to allow very good e-surveys or the other kinds of modern collection of information that could enable determining the will of the affected people, political parties, interest groups and non-government organizations. If we have information, there are only averages and no political position and opposition; there would be only professionally prepared document (of the public administration) about which politics should later decide.

⁴⁹ Hayek (n 13) 82.

⁵⁰ Cass and others (n 8) 897.

⁵¹ BEER, Stafford – ENO, Brian: *Think before You Think: Social Complexity and Knowledge of Knowing*. David Whittaker ed. Wavestone Press, 2009, 26.

CONCLUSION

We should try as many times as possible to gather experience, to have data in real time and not forget on regulations after they are enacted; the evaluation of existing rules through *ex post* impact analysis is necessary as much as it is *ex ante* to ensure that the legal rules are effective and efficient. By this way we could build the regulatory, transparent and accountable management system that would enable the quality regulation through a mix of regulation, deregulation and re-regulation at the same time. Regardless of the fact that ‘it is our inability to control complex social phenomena that leads to demands for deregulation – and for reregulation as well⁵² we are humans who built our institutions mainly by the practice, experiences, trials and errors. After all, democracy itself (Gk. *ta pragmata*, literally “things”) is the pragmatic, practical thing. This is confirmed every time when we participate in the forms of direct democracy. The proposed model enables us to decide more professionally, while still respecting the individuals’ preferences.

Associate Professor Mirko Pečarič, PhD.
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⁵² Cass and others (n 8) 913.

Appendix – Table 3. Regulatory Tools and their Alternatives vis-à-vis the Material and Enforcement Criteria and Final Goals

		REGULATORY TOOLS									
		criteria (c&c)	standard-certificate	accreditation	licence	registration	permission	concession	franchise		
MATERIAL CRITERIA	environment and risk	✓	✓		✓		✓	✓	✓		✓
	public objectives	✓	✓	✓	✓	✓	✓	✓	✓		✓
	products		✓	✓	✓	✓	✓	✓	✓		✓
	processes	✓	✓	✓	✓	✓	✓	✓	✓		✓
ENFORCEMENT CRITERIA	size and organisational structure		✓	✓	✓	✓	✓	✓	✓		✓
	3 rd parties		✓	✓	✓	✓	✓	✓	✓		✓
	transparency	✓	✓	✓	✓	✓	✓	✓	✓		✓
	detection of problems		✓	✓	✓	✓	✓	✓	✓		✓
ENFORCEMENT CRITERIA	responsiveness / real time				✓	✓	✓	✓	✓		✓
	enforcement	✓		✓	✓	✓	✓	✓	✓		✓
	assessment	✓	✓	✓	✓	✓	✓	✓	✓		✓
	modification	✓	✓	✓	✓	✓	✓	✓	✓		✓
FINAL GOALS	protection against fraud	✓			✓	✓	✓	✓	✓		✓
	equal quality of products or services	✓	✓	✓	✓	✓	✓	✓	✓		✓
	the pursuit of other aims	✓				✓					
	spillover effects	✓	✓				✓				
	a device to facilitate taxation	✓				✓					
	elimination of incompetence	✓	✓	✓	✓	✓	✓	✓	✓		✓
	potentially hazardous activity	✓			✓	✓	✓	✓	✓		✓
	dangerous activity	✓				✓	✓	✓	✓		✓
	anti-trust (competition) policy	✓				✓	✓				
	trade policy	✓	✓			✓	✓				
	anti-discrimination	✓						✓	✓		✓

		ALTERNATIVES												
		service	negotiation	auction	notice	warning	disclosure	contract	grants, subsidies	price controls	tax	fee	tort	coupons
MATERIAL CRITERIA	environment and risk			✓		✓	✓		✓		✓	✓	✓	✓
	public objectives	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
	products	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	processes	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
ENFORCEMENT CRITERIA	size and organisational structure			✓			✓	✓						
	3 rd parties		✓	✓	✓	✓	✓	✓	✓			✓		✓
	transparency		✓	✓			✓	✓	✓	✓		✓	✓	✓
	detection of problems		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
FINAL GOALS	responsiveness / real time		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	enforcement		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	assessment		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	modification	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
FINAL GOALS	protection against fraud		✓	✓			✓	✓		✓	✓		✓	✓
	equal quality of products or services		✓	✓		✓	✓	✓	✓	✓	✓		✓	✓
	the pursuit of other aims	✓		✓			✓	✓	✓	✓	✓	✓		✓
	spillover effects	✓		✓					✓		✓	✓		✓
	a device to facilitate taxation	✓		✓			✓	✓			✓	✓		✓
	elimination of incompetence		✓	✓			✓	✓	✓		✓		✓	✓
	potentially hazardous activity		✓	✓			✓	✓	✓	✓	✓	✓	✓	✓
	dangerous activity			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	anti-trust (competition) policy		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
	trade policy	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
	anti-discrimination	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓