
17. Accountability and regulatory authorities

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INTRODUCTION

In most (Western) countries, regulatory authorities have been set up at arm's length of central governments. The justifications, logics, and rationales behind this trend have been extensively discussed elsewhere in this handbook (Parts I and II; see also, Gilardi 2008; Majone 2001; Overman 2016). This chapter looks at the accountability concerns arising from this empirical trend of 'agencification' and the intense scholarly and political debate that has developed around the ensuing accountability regimes of independent regulatory authorities (Busuioc & Lodge 2016; Bianculli et al. 2014; Koop 2011; Schillemans & Busuioc 2015; Thatcher 2011).

A crucial starting point for this debate is the consideration that when looking at the role and functioning of regulatory authorities, straightforward conceptualizations of accountability quickly become problematic (Maggetti 2010; Nesti 2018). Given their role as *independent* regulators, particular tensions emerge for regulatory agencies in comparison to other organizations in the public sector (e.g. executive agencies). At face value, being independent or autonomous would imply the absence of accountability to others. However, as regulatory authorities are constitutive of democratic governance, *some* form of democratic accountability is clearly needed. In addition, accountability is also a potential source of legitimacy and for this reason a proficient system of accountability is required for independent regulatory authorities (Black 2008; Fernández-i-Marín et al. 2015). The increasing internationalization of their activities have added to these concerns (see Black 2008; Nesti 2018).

In the *Foundations* part of this chapter, we first reflect on the different conceptual distinctions related to accountability and relate those to independent regulatory authorities. We then look at how scholars have made sense of two crucial developments across countries and sectors: *agencification* and internationalization. We analyze how these trends have led to a re-conceptualization of accountability for regulatory authorities, after which we discuss some according lines of empirical research that have emerged. In the *Foresight* part, we first introduce new insights in the accountability of regulatory authorities and compare those to autonomous executive agencies, based on comparative international research. We then identify four lines of future research for the study of regulatory authorities and accountability that scholars could address as the literature continues to develop.

FOUNDATIONS

In broad terms, accountability refers to "the obligation for an individual or an organization to [regularly] account for his/her conduct towards another person or organization" (Bovens 2007, p. 450). Accountability is, as many other academic concepts, not settled and tamed but

is subjected to ongoing theoretical and conceptual debates. Still, there are several widely used conceptualizations of accountability in the literature which revolve around a common core or a minimal conceptual consensus. This entails that accountability (1) is a *relational* concept linking those who owe an account to those to whom it is owed; (2) is a *retrospective* activity in which judgment is passed on decisions or behaviours in the past; and (3) involves the opportunity of *sanctions and rewards*. On this minimal conceptual basis, a long list of descriptive typologies have been developed that help scholars to make sense of the divergent practices and mechanisms of accountability in the public sector. These typologies have also been applied to better understand the role and functioning of regulatory authorities, for which the main foundational challenges are discussed next. We start with some of the conceptual challenges related to accountability for regulators and continue with foundational challenges, related to overarching developments in society and the role of regulators.

CONCEPTUAL CHALLENGES: WHAT'S IN A NAME?

A large part of the academic literature on accountability is conceptual, focusing on the meaning of the term rather than its empirical manifestations (see Brandsma & Schillemans 2012). Although existing empirical studies typically point to *gaps* or *deficits* in accountability systems for regulatory agencies (cf. Overman et al. 2015), the way in which to actually measure these accountability deficits is often left implicit. An important line of research is thus to develop a more systematic body of evidence that traces or maps out accountability processes empirically. First stabs at this effort have been made (see Brandsma & Schillemans 2012; Han & Perry 2019; Overman et al. 2021), but require further elaboration. This also entails a thorough conceptual understanding of the different ways in which accountability is used, as the concept refers to a family of phenomena with a common core rather than one specific phenomenon. To this end we shortly present four important further distinctions.

Accountability as an End or as a Means to an End

A major source of misunderstanding in the academic literature on accountability is about the status of the main concept: is it a descriptive variable and a means to some end or is it a normative concept with which some state of affairs is evaluated and, thus, an end in itself (Bovens 2010)?

When studied as a means to an end, accountability is typically used as an independent variable in research and shifts the analytical focus to the specific mechanisms and norms with which regulatory agencies can be held accountable. These mechanisms and norms entail, amongst other things, legal obligations, annual reports, parliamentary hearings and judicial review. In some of the literature on the accountability of regulatory authorities, the existence or effectiveness of such mechanisms is also discussed (cf. De Haan & Eiffinger 2000; Biela & Papadopoulos 2014).

In other studies, 'accountability' features as an end in itself. It is then the dependent variable and normative benchmark which is invoked to assess some state of affairs. As a normative concept, accountability draws on democratic theory (Biela & Papadopoulos 2014) or can be comparable in meaning to the responsiveness or a sense of responsibility of the focal actor. Specifically with regard to regulatory authorities, this normative perspective on accountability

would imply providing sufficient insight into and transparency of decisions or explicitly taking substantive norms of democracy into account (Black 2008; Buess 2015).

In theory, both usages of accountability can be related. Accountability mechanisms should lead to accountable outcomes; thus linking both usages of the concept. In practice, however, this is not necessarily the case. One can imagine that existing accountability mechanisms do not produce the desired outcomes or, conversely, that accountable outcomes are achieved without formal accountability. The desired or accountable outcomes can for instance also result from internalized professional norms and socialization, particularly for complex governance settings (see Van Kersbergen & Van Waarden 2004).

Formal, Factual or Felt Accountability

Whether or not we can positively speak of accountability to exist will depend on one's (implicit) disciplinary perspective. From a legal perspective, the existence of formal mechanisms of accountability would suffice to draw the conclusion that there 'is' accountability (i.e., *de jure* accountability). The scholar might point at reporting requirements of a regulatory authority, Parliament's right to scrutinize its conduct, and the existence of some formal accountability documents (Fernández-i-Marín et al. 2015).

From an empirical or social science perspective on accountability, however, these formal rights and documents might not be enough to warrant such a conclusion. The social scientist would look at the factual patterns of interaction between the regulatory authority and its accountability forum in order to assess whether this indeed entails provision of information, scrutiny of conduct and the possibility of sanctions or rewards (i.e., *de facto* accountability). Accountability practices need not be formalized, but can also be institutionalized informally (Romzek et al. 2012). Core questions become whether we actually observe accountability processes and what they mean to regulators (Thomann & Sager 2017). The sociologically informed scholar could then proceed to conclude that the formal accountability requirements are dead letters that in practice do not actually lead to factual accountability (Schillemans & Busuioac 2015). Or perhaps the formal (legal) and informal dimensions are uncoupled (Hanretty & Koop 2013) and accountability may rely mostly on informal interactions rather than formal ones (Romzek et al. 2012).

The psychologically informed scholar would focus on the individual perceptions of the manager or regulatory professional in the agency. Do they hold a belief that they will be held accountable to some salient forum (Hall et al. 2017), and do they hold the belief that this forum is able to pass a meaningful and powerful judgment with actual consequences? Whether a forum is perceived as 'able', is constituted by the perception of its legitimacy, and of its expertise (Overman et al. 2021).

Ideally, formal accountability requirements and mechanisms should lead to factual accountability processes that are felt as meaningful and authoritative by the important decision-makers in regulatory authorities. In practice, however, there can be numerous disjunctions between formal, factual and felt accountability (Schillemans et al. 2021).

Regime, Dyadic or Operational Accountability

A third important distinction regards the level of analysis: whose accountability to whom is analysed? Many studies of the accountability of regulatory authorities take *the organization*

as point of departure and study the dyadic accountability relations of regulatory authorities towards, for instance, central government or Parliament (Hanretty & Koop 2013). This hierarchical form of accountability is the most common and logical dyadic accountability relation to study, although it is also tricky given the autonomous nature of regulatory organizations (Gilardi 2008). Furthermore, this dyadic perspective implicitly assumes that the executive or managerial level of the organization is most important in regulatory agencies. However, regulatory authorities are also *professional* organizations (Scott 1965), in which a major part of the key work is performed by a highly skilled and trained core staff, that is, *professional* regulators.

As the individual regulatory professionals may enjoy quite some discretion in their everyday work and will take many important regulatory decisions themselves (within legal and organizational frameworks), forms of *operational accountability* (Biela & Papadopoulos 2014) are also needed. Operational accountability refers to the accountability of the individual regulatory professionals for operational regulatory decisions and their use of discretion. Particularly given the ‘normal’ errors of judgment to which individual regulators are also prone (Dudley & Xie 2020), these forms of operational accountability have to be effective, as to keep regulatory professionals, as all other professionals, focused and on their toes.

While operational accountability pushes the investigator to look inside the organization, the concept of *accountability regimes* (Scott 2000) invites us to do the opposite and focuses on the wider context of the organization. As we will discuss later, regulatory agencies are subjected to multiple accountability relations and standards, which by wilful design or unplanned institutional growth engross organizations in broader regimes. A regime approach captures this perspective and aims to understand how the different salient dyadic accountability relations operate in conjunction and keep the regulatory authority accountable (or not) from a more holistic whole. The sum total of accountability relationships within which an actor operates is often described as its ‘accountability regime’ (Scott 2000). Importantly, this regime approach allows for the outcome that autonomous bodies may not be under control by one specific principal, yet the regime as a whole still yields sufficient control (Biela & Papadopoulos 2014).

Political, Legal, Public and Professional Accountability

Finally, in the accountability regime of regulatory authorities, many different accountability forums may exist. In practice, regulatory agencies tend to operate in webs of accountability in which they are accountable to various political, legal, societal and professional account holders for different aspects of their behaviour (Thomann & Sager 2017).

Compared to other organizations in the public sector, the hierarchical political accountability of independent regulatory agencies is theoretically more limited. Due to the necessity of credible commitment, decision making powers have been delegated from the political center to the independent regulator. This results in what Levi-Faur (2005) has dubbed as the rise of a second-level indirect representative democracy, in which elected representatives select regulatory experts to carry out some of the tasks of government.

Also, the societal or horizontal forms of accountability that have increased for executive agencies are more challenging for regulators (Brummel 2021). Regulators run the risk of regulatory capture by interest groups (Braun 2012) when fostering too strong (accountability) bonds to societal stakeholders. Moreover, experimental research clearly suggests that account-

ability relationships to regulatees has a softening effect on regulators’ judgments (Harari & Rudolph 2017).

For regulatory agencies, political and societal accountability are thus relatively less applicable than for other types of public organizations. Therefore, legal and professional accountability are theoretically more relevant to consider. Regulators often monitor and assess economic agents and can apply sanctions to enforce compliance with norms (Koop & Lodge 2017). Legal norms are, thus, at the heart of regulatory practice. As a result, legal challenges of regulatory decisions should not follow the route of democratic accountability. Rather, challenges should be incorporated in some form of legal accountability (see Scott 2000; Thatcher 2002). Also, the smaller relevance of political and societal forms of accountability increases importance of forms of professional accountability that provide feedback and assure high level quality of decisions and judgments.

Figure 17.1 summarizes the argument above with a perspective of balance in accountability regimes. It suggests that more legal and professional accountability is needed to balance the more limited possibilities for political and societal accountability for regulatory authorities. The empirical section below will underline and illustrate this logic.

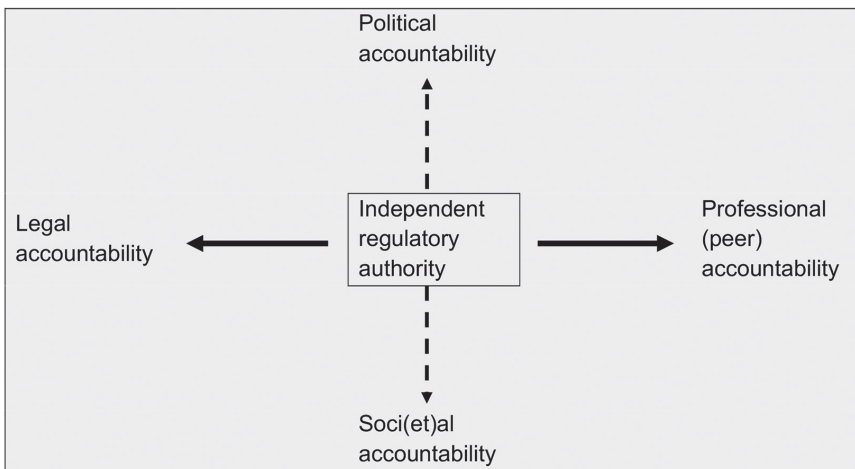


Figure 17.1 Accountability regimes of independent regulatory authorities

ACCOUNTABILITY FOR REGULATORS: FOUNDATIONAL CHALLENGES

In the academic literature on the accountability of regulatory agencies, the issues surrounding accountability often relate to the process of *agencification* and according autonomy of agencies, as well as to the more macro process of internationalization, which has affected regulatory authorities in many ways. Both of these developments and their implications are discussed below.

Accountability and Agencification

In recent decades, elected officials have increasingly entrusted independent authorities with regulatory competencies (see Gilardi 2005; Jordana et al. 2011). However, given that agencies are independent by design (as to ensure credible commitment to market players and other stakeholders that the rules of the game don't change over time), traditional notions of (chains of) accountability towards democratic institutions quickly become problematic (Majone 2001; Lodge 2004; Nesti 2018). In other words, for regulatory agencies to effectively fulfil their tasks, they are required to be *unresponsive* to parent ministries/political interests and act on the basis of their expert judgment (see Maggetti & Papadopoulos 2018). The need to insulate agencies from “petty politics”, while still requiring them to give account for their actions in rulemaking, enforcement, and adjudication has been a challenge for both theory and practice (Everson 1995; Scott 2000).

In tackling this challenge, scholars have primarily pursued a conceptual agenda in mapping out and describing the alternative formal and informal accountability mechanism through which regulatory agencies can be held accountable (Biela & Papadopoulos 2014; Jordana et al. 2018). Given the tensions between independence and forms of vertical accountability, forms of bottom-up and horizontal accountability have been emphasized and applied to the study of regulatory authorities (Maggetti 2010). Here, the focus is less on giving account to authoritative (and democratically legitimate) principals, but more on a broader set of audiences such as organized interests, the media, and the public at large (Maggetti 2012). Regulatory agencies can be held accountable by virtue of openness and transparency in terms of rules and procedures and by requiring them to answer, explain, and justify their actions (see Scott 2000; Lodge 2004; Biela & Papadopoulos 2014). In this fashion, formal and informal accountability mechanisms can ensure that nobody controls the regulators “yet they are under control” (Majone 2001) and independence and accountability can co-exist (see Busuioc 2009; Maggetti et al. 2013).

The above-described conceptual agenda has also spawned several lines of empirical scholarship, of which one has been to map out different forms of accountability and assess the degree to which they vary across sectors and countries (see Koop 2014; Fernández-i-Marín et al. 2015; Jordana et al. 2018). In addition, scholars have looked at what potentially explains this cross-country and cross-sector variation, looking at factors such as political salience (Koop 2011) or government capacity (Yesilkagit & Christensen 2010). More recently, scholars have started to empirically assess the credible commitment claim that justifies the delegation of competences to regulatory authorities, analyzing the effects of independence and accountability on regulatory quality (Koop & Hanretty 2018; see also May 2007).

In terms of theoretical lines of research regarding regulatory agencies and accountability, scholars have also increasingly emphasized the relational nature underlying accountability, focusing on the reputational basis of public accountability and the different *audiences* that regulators have (Carpenter 2010; Busuioc & Lodge 2016). In particular, reputational considerations are theorized as an important driver for voluntary (pro-active) accountability behaviour, while also shaping the intensity of account-holding of agencies by accountability forums (Busuioc & Lodge 2016). In this fashion, the reputational approach provides a powerful theoretical framework for understanding regulatory (organizational) behaviour in accountability relationships.

Accountability and Internationalization

A second main issue for the question of regulatory authorities and their accountability, has been the increasing transnational dimension that has come to characterize their work. To regulate internationalized markets, national authorities are required to collaborate with foreign counterparts as to exchange necessary information and regulate cross-border market activity (Farrell & Newman 2016). In addition, regulatory networks have taken up an increasing role in standard-setting (Koppell 2010; Newman & Zaring 2012). Scholars have debated the likely consequences of these trends of internationalization for the question of the accountability of regulators, in which two main positions can be identified.

On the one hand, studies underline the risk of these regulatory networks becoming “agencies on the loose”, in which they increasingly come to fulfil policy roles outside of public scrutiny (see Slaughter 2004; Papadopoulos 2007). Given the ambiguous and secretive nature of many transgovernmental networks, questions are frequently raised about their legitimacy and accountability (Eilstrup-Sangiovanni 2009). Moreover, the lack of hierarchy within these networks diffuses who is and can be held accountable.

On the other hand, through the concept of horizontal accountability, scholars have noted how transnational networks can also provide a potential new means by which IRAs are held accountable by their regulatory peers (Maggetti 2010; Mills & Koliba 2015). As domestic regulators become increasingly connected to foreign counterparts, reputational considerations may become increasingly important and derive accountable behaviour on behalf of regulators (see Busuioc & Rimkute 2019). Moreover, being part of a network of similarly-minded regulators, helps national agencies to better resist external influence and strengthens their position vis-à-vis regulatees (Yesilkagit & Christensen 2010). In addition, the pooling of resources through transnational networked structures enables them to fulfil their regulatory functions more effectively (Vestlund 2017).

Regarding specific forms of internationalization, the development of EU agencies has been particularly interesting to consider from an accountability perspective. The positioning of these agencies *in between* Members States and EU institutions inevitably complicates accountability relations, for instance regarding the potential “double-hattedness” of national agencies heavily involved in these structures (see Egeberg & Trondal 2017). In response, scholars have analyzed what mechanisms of accountability exist within this multi-level context, underlining the important difference between *de jure* and *de facto* accountability that need not necessarily correspond (Busuioc 2009; Buess 2015).

EMPIRICAL INSIGHTS: FELT ACCOUNTABILITY AND ACCOUNTABILITY REGIMES

As noted in the conceptual discussion provided above, the focus of the scholarly debate on public accountability has shifted from the formal-legal perspective (Bovens 2010; Strøm et al. 2003) towards informal (Romzek et al. 2012), perceptual (Overman 2021), reputational (Busuioc & Lodge 2016), and behavioural perspectives (Aleksavska et al. 2019; Schillemans 2016). These new perspectives also imply different analytical foci, presenting scholars interested in accountability and regulatory agencies with particular empirical challenges. This

section presents an illustration of how these perspectives can be empirically substantiated, focusing particularly on the perceptual and behavioural perspectives towards accountability.

Felt Accountability

The perceptual and behavioural perspectives imply a focus on the individual who anticipates a future moment of accountability (Hall et al. 2017). This conceptualization of accountability has raised interest, as it uncovers the black box that links formal accountability arrangements to decisional and behavioural outcomes for individual public sector workers (Overman & Schillemans 2021).

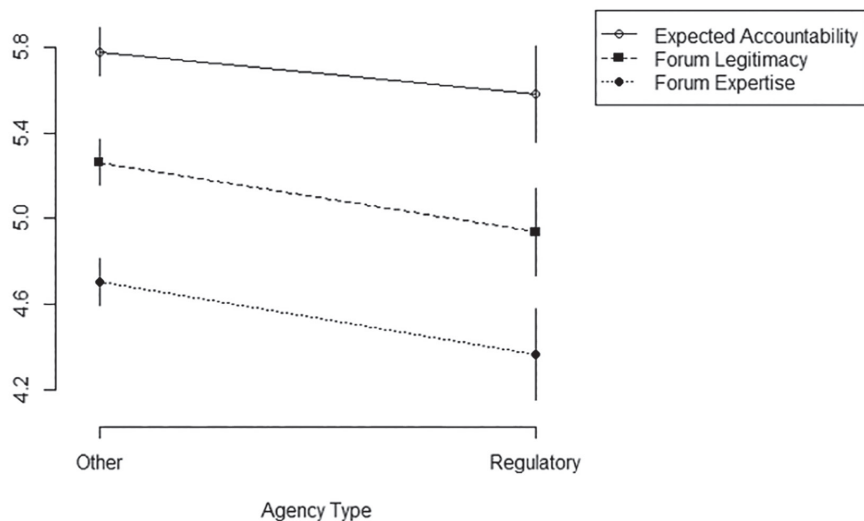
Felt accountability denotes the set of beliefs about a future instance of accountability, and is composed of beliefs about the *anticipation* of accountability, the *legitimacy* of the account holder, and the perceived *expertise* of the account holder (Overman et al. 2021). Felt accountability appreciates the fact that individuals are known to perceive identical accountability arrangements in quite diverging ways (Tetlock 1992). This point is pivotal in the understanding of accountability from a behavioural perspective. Felt accountability, therefore, facilitates the study of individual behavioural consequences, based on accountability arrangements.

The three dimensions of felt accountability (anticipation, legitimacy and expertise) in the public sector have been measured in survey research. Data from a large scale international survey (Schillemans et al. 2021) among agency CEOs in seven Western countries was used to describe regulatory authority CEOs' perceptions of their accountability environment. A total of 496 agency CEOs in Australia, Denmark, the Netherlands, Norway, Sweden, Switzerland, and the UK responded to the survey. We use the analysis of this data to present a number of patterns in accountability perceptions among CEOs of regulatory agencies and compare them to other types of public semi-autonomous agencies.

The analysis demonstrates that felt accountability among CEOs of regulatory agencies towards their parent department is generally lower than for other types of arm's length bodies, including service providers, distributors of benefits, and research agencies.¹ We conducted a multivariate regression to analyze the difference between the regulatory authorities and other semi-autonomous agencies on the three dimensions of felt accountability (anticipation of accountability, legitimacy of the account holder, and perceived expertise of the account holder), while controlling for agency size and country. Based on this analysis, we find a lower anticipation of accountability ($\beta=-0.207$, $p=0.098$), lower legitimacy of the ministry as an account holder ($\beta=-0.326$, $p=0.005$), and lower perceived expertise of the ministry ($\beta=-0.337$, $p<0.001$). See Figure 17.2 for a graphical comparison. These are small but significant effects (total R^2 in the three analyses: 0.08, 0.20, and 0.11 respectively). This shows that the felt accountability of CEOs in independent regulatory authorities is generally lower on all dimensions than the felt accountability of CEOs in other semi-autonomous agencies. This underscores that the leadership of regulatory authorities do indeed, as is theoretically to be expected, feel less accountable to the politico-administrative center than other large governmental organizations.

Accountability Regimes

Furthermore, these data demonstrate that CEOs of independent regulatory authorities see their environment as politicized. We asked them whether they assess their stakeholders as



Note: Error bars represent 95% confidence intervals.

Figure 17.2 Estimates between regulatory and other agencies for the three dimensions of felt accountability to the ministry

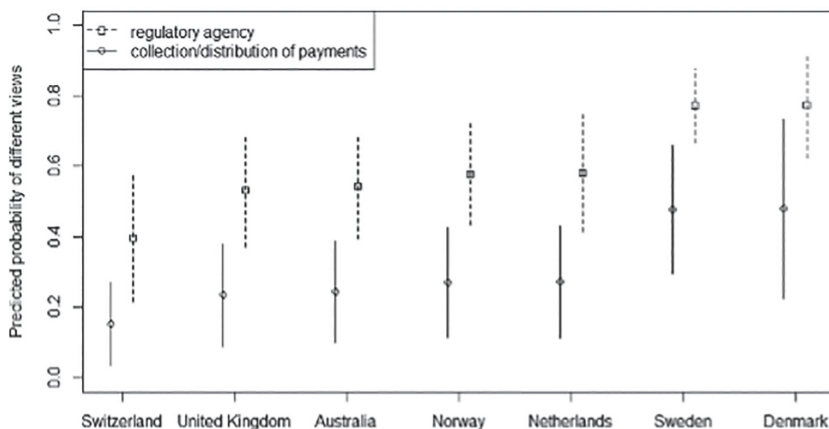


Figure 17.3 Predicted probability for difference in views for two agency types of average size

holding similar, or different views among each other. In comparison with executive agencies, such as distributors of benefits, CEOs of regulatory authorities perceive their stakeholders as having more different views, implying a more politicized context. Figure 17.3 demonstrates the agency CEOs' assessments of the (dis)similarity of viewpoints among various relevant

stakeholders.² Regulatory agencies faced on average 79 per cent more conflictual regimes than other agencies.

That regulatory tasks provoke more conflictual responses can be explained by several task-specific traits. Regulation limits the decision-making autonomy of regulated entities which is naturally more contentious. Also, the outcomes of regulation are more contentious (can market failure be attributed to the regulatory authority?), leaving more room for interpretation and, thus, competing accountability expectations. Lastly, depoliticizing a task does not change the conflicts among stakeholders over task execution. These conflicts may play out at the agency level, rather than at the political level. The politicization of arm's length regulatory authorities was also confirmed in experimental research that involved stakeholders of these agencies (Alon-Barkat & Busuioc 2019).

The politicization would imply more controversy over decisions of regulators and, consequently, that legal battles are more important for regulatory authorities than for other semi-autonomous agencies, which is supported by the data: regulators consider courts more important for the execution of their tasks than other semi-autonomous agencies ($t(162.84) = 5.338$, $p < 0.001$), as are Ombudsmen ($t(138.28) = 3.656$, $p < 0.001$). And, in line with the trend towards more internationalization of regulatory authorities, we see a higher relevance of supranational bodies for regulators than for other semi-autonomous agencies ($t(143.81) = 2.463$, $p = 0.015$). All of this suggests that the accountability regime of regulators is marked more by conflict-resolving forms of accountability than those of other independent public organizations. This also suggests that the main accountability focus is on how core regulatory functions are discharged of, rather than on more general administrative or organizational issues.

RESEARCH FORESIGHTS

In this section we conclude by identifying four salient challenges for future research on accountability of regulatory agencies. Varying from the micro- to the macro-level, these challenges are (1) behavioural, (2) relational, (3) transnational, and (4) normative.

The Behavioural Challenge

The behavioural perspective on public accountability of regulatory agencies opens up a new avenue of empirical research for the time to come. The current public administration and political science literature does not have a very good understanding of what the causal effects are of accountability mechanisms on individual decision-making and behaviour, particularly for regulators. However, there is a recent surge of experimental research on the effects of accountability pressures on individual decision-making and behaviour (Aleksovska et al. 2019). One key outcome of these studies is that although accountability arrangements often have positive outcomes, they can also lead to accountability pathologies and overloads (Koppell 2005; Power 1999). Particularly the concept of “felt accountability”, relating to the expectation that one will be held accountable for one's actions or decisions (Hall et al. 2017; Overman et al. 2021), is important to consider here, as well as the characteristics of and the relationship between account-givers and account-holders (Lerner & Tetlock 1999).

Research in the behavioural sciences documents that accountability has its effect on judgment and decision making by individuals (Aleksovska et al. 2019; Hall et al. 2017; Lerner & Tetlock 1999). This research focuses on important aspects of judgment and decision making, including the cognitive complexity of and biases prior to a decision (Schillemans 2016). The effects of accountability depend, among other things, on the timing of accountability, the focus of the accountability demand – that is, on the process or on the outcome of a decision, and on whether the views of the account holder are known to the account giver (ibid.). What this research does not yet document, however, is the moderating effect of the accountability environment (Hall et al. 2017). The particularities of the regulatory environment should be taken into account in the translation of this research. For instance, what is the effect of accountability conditional on the different professional roles that individuals have? It is expected that a CEO of a regulatory agency reacts differently to accountability than a street-level regulator (Thomann et al. 2018). Also, given the heuristics and biases that are likely prevalent for regulatory decision-making, organizational or institutional structures that help mitigate cognitive biases should be further explored (see Dudley & Xie 2020).

Another challenge that lies ahead is the alignment of accountability information. As witnessed in several accounts of voluntary accountability, many people are motivated to be accountable independent of a formal obligation to give an account of decisions and performance (Karsten 2015; Koop 2014). These motivations can vary from veracious to downright strategic (Busuioc & Lodge 2016). More insight is needed in the particular conditions under which an individual has a tendency to be accountable. At the same time, the substance of accountability – that is, about which topic an account is rendered – may lead to disagreement among the account holder and account giver (Busuioc & Lodge 2016; Overman 2021). It is, therefore, essential to analyse the substance of accountability in relation to the specific accountability relationship as well. This point leads us to the relational challenges for the study of accountability, which are discussed next.

The Relational Challenge

As discussed in the foundations-section of this chapter, the idea of “relational accountability” is firmly established in the standing literature that has studied regulatory agencies. However, despite important steps in theorizing about different forms of relational accountability and their potential effects, the analytical challenge of operationalizing and measuring the effects of these forms of accountability have been lagging behind. Most importantly, the empirical analysis of relational phenomena requires particular analytical methods that can account for the relational interdependence of observations (i.e., actors and organizations) and data structures. One way to do so is through social network analysis (SNA). In particular, SNA can help us map out the way in which agencies are embedded within a broader network of public authorities (e.g., government, specific ministries), regulatees, and other stakeholders representing economic interest groups (e.g., business associations, trade unions), to whom they give account of their activities through information exchange, ongoing reporting, and hearings. This helps to better assess the empirical manifestations of *ex post* accountability arrangements (see Romzek et al. 2012).

Initial steps have already been made in using SNA-methods to map out accountability relationships (see Maggetti et al. 2013). By operationalizing accountability as the *out-degrees* of an agency in its contact network, Maggetti et al. (2013) provide a straightforward measure of

the extent to which agencies are *relationally* accountable (see also Ingold et al. 2013), that is, the extent to which they provide information and disclosure on their actions to external actors, how often, and to whom. Importantly, such an operationalization can measure variation in terms of the degree to which agencies engage in relational forms of account-giving, allowing us to also model relational accountability as either a dependent or independent variable.

In addition, given the importance of accountability norms, investigating the *network structures* in which such norms can develop (i.e., network embeddedness) is an important agenda for future research. Rather than merely focusing on the direct *ego-networks* of agencies (see Maggetti et al. 2013), a broader network-analytical approach focuses more on the shape of (local) networks structures by which agencies are embedded. Particular network structures give rise to institutionalized norms and according expectations about appropriate behaviour (see Powell et al. 2005). For instance, accountability pressures may be much more severe if the external actors of regulatory agencies are themselves also connected to each other (Gulati & Gargiulo 1999). In that sense, a network-analytical approach can give more empirical substantiation to “the shared norms and facilitative behaviours that foster informal accountability for collective outcomes” (see Romzek, LeRoux, & Blackmar 2012).

Lastly, network analysis can also improve our analysis of the *power dynamics* involved in transnational forms of networked interaction. Powerful actors can use transnational networks to promote policy export and shape foreign legislative agendas (Bach & Newman 2010), and this potentially raises a number of accountability concerns. Network analysis, can identify the way in which actors within a network influence each other in terms of attitudes or behavioural change (e.g., standard adoption). In this way, it provides an idea of which agencies play a prominent role in international standard-setting and processes of regulatory harmonization. For instance, through measures of centrality, network analysis can identify the actors that are able to shape the flow of information within the network and can potentially influence the adoption decisions of others to align with their own preference. Studying which actors are in structurally advantageous or disadvantageous positions can go a long way in identifying the winners and losers in processes of regulatory harmonization and helps to ascribe responsibility to actors for products of international standard setting (Van der Heijden & Schalk 2020). Exposing these power dynamics are important for questions of accountability and the concerns we should have about increased forms of transnational collaboration. This is the challenge to which we turn next.

The Transnational Challenge

The internationalization of regulation has shifted the accountability relationships in which domestic regulatory agencies find themselves and have altered the way in which rules and regulations are formulated, enforced, and implemented. Not only are domestic regulators increasingly forced into transnational collaborative structures and international policy arenas, regional and global standard setters have also entered the scene (see Koppell 2010). These empirical developments call up a wide range of analytical challenges, of which the most prominent are noted here.

First, scholarship focusing on accountability and regulation first has a descriptive challenge of mapping out the (empirical) manifestations of transnational regulation. Documenting the “networks of rule” is an important way in which accountability can be improved (see Papadopoulos 2007; Richardson 2009). This means analyzing the structures through which

decisions about international standards are made (see Iborra et al. 2018), identifying which actors are involved (see Van der Heijden 2021), and, as noted above, critically analyzing whose interests are reflected in products of transnational collaboration (Drezner 2008; Van der Heijden & Schalk 2020). Such a research agenda forms the basis for discussions on who can and should be held accountable for outcomes of regulatory networks/international standard setting.

Second, we should acknowledge that peer pressure and scrutiny of foreign regulators in regulatory networks not only provide a form of accountability (e.g., towards a professional community), but are also a form of influence. Several scholars have argued that powerful actors can use transnational networks to promote policy export and shape foreign legislative agendas (Drezner 2008; Bach & Newman 2010). Peer influences are thus dictated by the more powerful peers (with particular interests). This can be problematic given that transnational regulation and international standards also lead to national adoption and thus have consequences for domestic stakeholders and audiences. In that sense, there is a hard edge to international soft law that raises a number of accountability concerns (Shaffer & Pollack 2012). On the one hand, these problems lie in the considerations that domestic stakeholders are confronted with rules and regulation flowing down from international arenas that reflect the interests of foreign governments/administrations, with whom they have accountability relationship. On the other hand, they lie in the weak visibility and secretive nature of international standard-setting, creating further problems of due process and a lack of channels for stakeholders through which to communicate concerns (see Bogason & Musso 2006; Zaring 2009).

Third, the transnational networks in which domestic agencies are increasingly required to operate are layered upon already existing domestic bureaucratic structures and accountability relationships. These developments may bring about competing accountability demands and requirements for regulatory agencies, potentially resulting in accountability overload. More studies should focus on what *internal* problems these competing accountability demands create for domestic agencies. Particularly problematic in this regard is the consideration that the organizational changes required to effectively operate in complex transnational environments may not be compatible with those needed to remain accountable in a national context (see McGuire & Agranoff 2010; Van der Heijden 2020). Insights and concepts from organizational theorists can be valuable to consider in this regard and can help answer questions about how domestic agencies can cater to the various accountability forums/demands of a transnational context, without losing the overall coordination and integration needed to remain accountable within a national context.

The Normative Challenge

Besides challenges for empirical analyzes, processes of internationalization and the development of polycentric governance arrangements (Nesti 2018) also problematize the normative underpinnings of accountability. National states are no longer the sole locus of authority. Within polycentric regulatory regimes, fragmentation, complexity, and interdependence exists between actors and state and non-state actors are both regulators and regulated (Black 2008). Given these developments, there is thus also a challenge in answering normative questions about the accountability and legitimacy of new forms of regulation that have and continue to emerge as regulatory regimes develop further (e.g. soft law standard setting, non-state actors, private regulators etc.). For regulatory governance, there are inevitable tensions between

governability and accountability (Van Kersbergen & Van Waarden 2004). In other words, further checks and balances potentially render regulatory institutions incapable of governing, while a lack of checks and balances potentially result in technocratic rule and “agencies on the loose”.

At the same time, we witness a displacement of the politics of regulation. Granting independence to regulators was, for a large part, inspired by a depoliticization of regulation (Majone 2001). However, the institutional separation of politics and regulation have not eradicated the differences in perspectives, opinions, and interests of the involved stakeholders. The empirical data in this chapter have demonstrated that regulators see more relevance of courts and ombudsmen. This is an indication of conflicts that are no longer settled in the political arena, but in the direct environment of the regulator (see also Alon-Barkat & Busuioc 2019). The displacement of regulatory politics also increases the relevance of regulatory regimes and, thus, to other forms of accountability, in all directions, as illustrated in Figure 17.1. These developments in the politics of regulation increase the relevance of new instruments of power, including the reputation of the regulatory authority (Busuioc & Lodge 2016; Carpenter 2010). These are not only empirical questions, but should be assessed from a normative perspective, as well.

NOTES

1. We selected 1,096 public semi-autonomous agencies at the national level in the seven mentioned countries. We selected all of the agencies that can be classified as an internally autonomous agency without legal personality or as an autonomous agency with legal personality. These were all organizations that carry out public tasks, but are not structurally a part of the parent department (Verhoest et al. 2012). The survey was completed by 496 agency heads (response rate 45%). Felt accountability was measured using the Utrecht Felt Accountability scale (Overman et al. 2021). Agency heads self-classified the main task of their organization as regulatory or one of 10 other tasks, including collection/distribution of payments (Figure 17.2). In total, 118 (20.5%) of the responses were classified as belonging to a regulatory agency.
2. Figure 17.1 contains out-of-sample predictions based on a logistic regression analysis that predicts the probability of different views among stakeholders, based on task (see note 1), country, and size in full time equivalent staff (as reported in the agency’s 2018 annual report). The analysis is estimated using maximum likelihood, with a statistically significant model fit ($\Delta-2LL = 76.00$, $\Delta df = 22$, $p < .001$).

REFERENCES

- Aleksovska, M., Schillemans, T., & Grimmelikhuijsen, S. (2019). Lessons from five decades of experimental and behavioral research on accountability: A systematic literature review. *Journal of Behavioral Public Administration*, 2(2).
- Alon-Barkat, S., & Busuioc, M. (2019). Testing the link between agency independence and credibility: Evidence from a survey experiment with regulatory stakeholders. Paper presented at 2019 EGPA conference, Belfast.
- Bach, D., & Newman, A. (2010). Transgovernmental networks and domestic policy convergence: Evidence from insider trading regulation. *International Organization*, 64, 505–528.
- Bianculli, A., Jordana, J., & Fernández-i-Marín, X. (2014). *Accountability and Regulatory Governance: Audiences, Controls and Responsibilities in the Politics of Regulation*. New York: Springer.

- Biela, J., & Papadopoulos, Y. (2014). The empirical assessment of agency accountability: A regime approach and an application to the German Bundesnetzagentur. *International Review of Administrative Sciences*, 80(2), 362–381.
- Black, J. (2008). Constructing and contesting legitimacy and accountability in polycentric regulatory regimes. *Regulation & Governance*, 2(2), 137–164.
- Bogason, P., & Musso, J. A. (2006). The democratic prospects of network governance. *The American Review of Public Administration*, 36(1), 3–18.
- Bovens, M. (2007). Analysing and assessing accountability: A conceptual framework 1. *European Law Journal*, 13(4), 447–468.
- Bovens, M. (2010). Two concepts of accountability: Accountability as a virtue and as a mechanism. *West European Politics*, 33(5), 946–967.
- Brandsma, G. J., & Schillemans, T. (2012). The accountability cube: Measuring accountability. *Journal of Public Administration Research and Theory*, 23(4), 953–975.
- Braun, C. (2012). The captive or the broker? Explaining public agency–interest group interactions. *Governance*, 25(2), 291–314.
- Brummel, L. (2021). Social accountability between consensus and confrontation: Developing a theoretical framework for societal accountability relationships of public sector organizations. *Administration & Society*, 53(7), 1046–1077.
- Buess, M. (2015). European Union agencies and their management boards: An assessment of accountability and democratic legitimacy. *Journal of European Public Policy*, 22(1), 94–111.
- Busuioac, M. (2009). Accountability, control and independence: The case of European agencies. *European Law Journal*, 15(5), 599–615.
- Busuioac, E. M., & Lodge, M. (2016). The reputational basis of public accountability. *Governance*, 29(2), 247–263.
- Busuioac, M., & Rimkutė, D. (2019). The promise of bureaucratic reputation approaches for the EU regulatory state. *Journal of European Public Policy*, 1–14.
- Carpenter, D. (2010). *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA*. Princeton, NJ: Princeton University Press.
- De Haan, J., & Eijffinger, S. C. (2000). The democratic accountability of the European Central Bank: A comment on two fairy-tales. *Journal of Common Market Studies*, 38(3), 393–407.
- Drezner, D. W. (2008). *All Politics is Global: Explaining International Regulatory Regimes*. Princeton, NJ: Princeton University Press.
- Dudley, S. E., & Xie, D. Z. (2020). Nudging the nudger: Toward a choice architecture for regulators. *Public Administration Review*, Advance Access.
- Egeberg, M., & Trondal, J. (2017). Researching European Union agencies: What have we learnt (and where do we go from here)? *Journal of Common Market Studies*, 55(4), 675–690.
- Eilstrup-Sangiovanni, M. (2009). Varieties of cooperation. Government networks in international security. In M. Kahler (Ed.), *Networked Politics: Agency, Power, and Governance* (pp. 194–227). Ithaca: Cornell University Press.
- Everson, M. (1995). Independent agencies: hierarchy beaters?. *European Law Journal*, 1(2), 180–204.
- Farrell, H., & Newman, A. (2016). The new interdependence approach: Theoretical development and empirical demonstration. *Review of International Political Economy*, 23(5), 713–736.
- Fernández-i-Marín, X., Jordana, J., & Bianculli, A. (2015). Varieties of accountability mechanisms in regulatory agencies. In A. Bianculli, X. Fernández-i-Marín & J. Jordana (Eds.), *Accountability and Regulatory Governance* (pp. 23–50). London: Palgrave Macmillan.
- Gilardi, F. (2005). The institutional foundations of regulatory capitalism: The diffusion of independent regulatory agencies in Western Europe. *The Annals of the American Academy of Political and Social Science*, 598(1), 84–101.
- Gilardi, F. (2008). *Delegation in the Regulatory State: Independent Regulatory Agencies in Western Europe*. Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.
- Gulati, R., & Gargiulo, M. (1999). Where do interorganizational networks come from? *American Journal of Sociology*, 104(5), 1439–1493.
- Hall, A. T., Frink, D. D., & Buckley, R. M. (2017). An accountability account: A review and synthesis of the theoretical and empirical research on felt accountability. *Journal of Organizational Behavior*, 38(2), 204–224.

- Han, Y., & Perry, J. (2019). Employee accountability: development of a multidimensional scale. *International Public Management Journal*, 1–28.
- Hanretty, C., & Koop, C. (2013). Shall the law set them free? The formal and actual independence of regulatory agencies. *Regulation & Governance*, 7(2), 195–214.
- Harari, M. B., & Rudolph, C. W. (2017). The effect of rater accountability on performance ratings: A meta-analytic review. *Human Resource Management Review*, 27(1), 121–133.
- Iborra, S. S., Sáiz-Carranza, A., Fernández-i-Marín, X., & Albareda, A. (2018). The governance of goal-directed networks and network tasks: An empirical analysis of European regulatory networks. *Journal of Public Administration Research and Theory*, 28(2), 270–292.
- Jordana, J., Fernández-i-Marín, X., & Bianculli, A. C. (2018). Agency proliferation and the globalization of the regulatory state: Introducing a data set on the institutional features of regulatory agencies. *Regulation & Governance*, 12(4), 524–540.
- Jordana, J., Levi-Faur, D., & Fernández-i-Marín, X. F. (2011). The global diffusion of regulatory agencies: Channels of transfer and stages of diffusion. *Comparative Political Studies*, 44(10), 1343–1369.
- Karsten, N. (2015). Scrutinize me, please! The drivers, manifestations and implications of accountability-seeking behaviour. *Public Administration*, 93(3), 684–699.
- Koop, C. (2011). Explaining the accountability of independent agencies: The importance of political salience. *Journal of Public Policy*, 31(2), 209–234.
- Koop, C. (2014). Theorizing and explaining voluntary accountability. *Public Administration*, 92(3), 565–581.
- Koop, C., & Hanretty, C. (2018). Political independence, accountability, and the quality of regulatory decision-making. *Comparative Political Studies*, 51(1), 38–75.
- Koop, C., & Lodge, M. (2017). What is regulation? An interdisciplinary concept analysis. *Regulation & Governance*, 11(1), 95–108.
- Koppell, J.G.S. (2005). Pathologies of accountability: ICANN and the challenge of ‘multiple accountabilities disorder’. *Public Administration Review*, 65(1), 94–108.
- Koppell, J. G. (2010). Administration without borders. *Public Administration Review*, 70, s46–s55.
- Lerner, J. S., & Tetlock, P. E. (1999). Accounting for the effects of accountability. *Psychological Bulletin*, 125(2), 255.
- Levi-Faur, D. (2005). The global diffusion of regulatory capitalism. *Annals of the American Academy of Political and Social Science*, 598 (1), 12–32.
- Lodge, M. (2004). Accountability and transparency in regulation: Critiques, doctrines and instruments. In J. Jordana & D. Levi-Faur (Eds.), *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (pp. 123–139). Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.
- Maggetti, M. (2010). Legitimacy and accountability of independent regulatory agencies: A critical review. *Living Reviews in Democracy*, 2.
- Maggetti, M. (2012). The media accountability of independent regulatory agencies. *European Political Science Review*, 4(3), 385–408.
- Maggetti, M., Ingold, K., & Varone, F. (2013). Having your cake and eating it, too: Can regulatory agencies be both independent and accountable? *Swiss Political Science Review*, 19(1), 1–25.
- Maggetti, M., & Papadopoulos, Y. (2018). The principal–agent framework and independent regulatory agencies. *Political Studies Review*, 16(3), 172–183.
- Majone, G. (2001). Two logics of delegation. *European Union Politics*, 2(1), 103–122.
- May, P. J. (2007). Regulatory regimes and accountability. *Regulation & Governance*, 1(1), 8–26.
- McGuire, M. S., & Agranoff, R. (2010). Networking in the shadow of bureaucracy. In R. F. Durant (Ed.), *The Oxford Handbook of American Bureaucracy* (pp. 372–395). Oxford, NY: Oxford University Press.
- Mills, R. W., & Koliba, C. J. (2015). The challenge of accountability in complex regulatory networks: The case of the Deepwater Horizon oil spill. *Regulation & Governance*, 9(1), 77–91.
- Nesti, G. (2018). Strengthening the accountability of independent regulatory agencies: From performance back to democracy. *Comparative European Politics*, 16(3), 464–481.
- Newman, A. L., & Zaring, D. (2012). Regulatory networks: Power, legitimacy, and compliance. In J. Dunoff & M. A. Pollack (Eds.), *Interdisciplinary Perspectives on International Law and International Relations* (pp. 244–265). Cambridge, MA: Cambridge University Press.

- Overman, S. (2016). Great expectations of public service delegation: A systematic review. *Public Management Review*, 18(8), 1238–1262.
- Overman, S. (2021). Aligning accountability arrangements for ambiguous goals: The case of museums. *Public Management Review*, 23(8), 1139–1159.
- Overman, S., & Schillemans, T. (2021). Toward a public administration theory of felt accountability. *Public Administration Review*. <https://doi.org/10.1111/puar.13417>
- Overman, S., Schillemans, T., & Grimmelhuijzen, S. (2021). A validated measurement for felt relational accountability in the public sector: Gauging the account holder's legitimacy and expertise. *Public Management Review*, 23(12), 1748–1767.
- Overman, S., Van Genugten, M., & Van Thiel, S. (2015). Accountability after structural disaggregation: Comparing agency accountability arrangements. *Public Administration*, 93(4), 1102–1120.
- Papadopoulos, Y. (2007). Problems of democratic accountability in network and multilevel governance. *European Law Journal*, 13(4), 469–486.
- Powell, W. W., White, D. R., Koput, K. W., & Owen-Smith, J. (2005). Network dynamics and field evolution: The growth of interorganizational collaboration in the life sciences. *American Journal of Sociology*, 110(4), 1132–1205.
- Power, M. (1999). *The Audit Society: Rituals of Verification*. New York: Oxford University Press.
- Richardson, A. J. (2009). Regulatory networks for accounting and auditing standards: A social network analysis of Canadian and international standard-setting. *Accounting, Organizations and Society*, 34(5), 571–588.
- Romzek, B. S., LeRoux, K., & Blackmar, J. M. (2012). A preliminary theory of informal accountability among network organizational actors. *Public Administration Review*, 72(3), 442–453.
- Schillemans, T. (2016). Calibrating public sector accountability: Translating experimental findings to public sector accountability. *Public Management Review*, 18(9), 1400–1420.
- Schillemans, T., & Busuioc, M. (2015). Predicting public sector accountability: From agency drift to forum drift. *Journal of Public Administration Research and Theory*, 25(1): 191–215.
- Schillemans, T., Overman, S., Fawcett, P., Flinders, M., Fredriksson, M., Laegreid, P., Maggetti, M., Papadopoulos, Y., Rubecksen, K., Hellebø Rykkja, L., Houlberg Salomonsen, H., Smullen, A., & Wood, M. (2021),
- Scott, C. (2000). Accountability in the regulatory state. *Journal of Law and Society*, 27(1), 38–60.
- Scott, W. R. (1965). Reactions to supervision in a heteronomous professional organization. *Administrative Science Quarterly*, 65–81.
- Shaffer, G., & Pollack, M. A. (2012). Hard and soft law. In J. Dunoff & M. A. Pollack (Eds.), *Interdisciplinary Perspectives on International Law and International Relations* (pp. 197–222). Cambridge, MA: Cambridge University Press.
- Slaughter, A.-M. (2004). *A New World Order*. Princeton, NJ: Princeton University Press.
- Strøm, K., Bergman, T., & Müller, W. C. (2003). *Delegation and Accountability in Parliamentary Democracies*. Oxford, NY: Oxford University Press.
- Tetlock, P. E. (1992). The impact of accountability on judgment and choice: Toward a social contingency model. *Advances in Experimental Social Psychology*, 25, 331–376.
- Thatcher, M. (2002). Regulation after delegation: Independent regulatory agencies in Europe. *Journal of European Public Policy*, 9(6), 954–972.
- Thatcher, M. (2011). The creation of European regulatory agencies and its limits: A comparative analysis of European delegation. *Journal of European Public Policy*, 18(6), 790–809.
- Thomann, E., Hupe, P., & Sager, F. (2018). Serving many masters: Public accountability in private policy implementation. *Governance*, 31(2), 299–319.
- Thomann, E., & Sager, F. (2017). Hybridity in action: Accountability dilemmas of public and for-profit food safety inspectors in Switzerland. In P. Verbruggen & H. Havinga (Eds.), *Hybridization of Food Governance* (pp. 100–120). Cheltenham, UK and Northampton, MA, USA: Edward Elgar Publishing.
- Van der Heijden, M. (2020). Transnational networks and domestic agencies: Making sense of globalizing administrative patterns [Phd Dissertation]. Leiden University.
- Van der Heijden, M. (2021). Agencies without borders: Explaining partner selection in the formation of transnational agreements between regulators. *Regulation & Governance*, 15(3), 725–744.
- Van der Heijden, M., & Schalk, J. (2020). Network relationships and standard adoption: Diffusion effects in transnational regulatory networks. *Public Administration*, 98(3), 768–784.

- Van Kersbergen, K., & Van Waarden, F. (2004). 'Governance' as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy. *European Journal of Political Research*, 43(2), 143–171.
- Verhoest, K., Van Thiel, S., Bouckaert, G., & Lægreid, P. (2012). *Government Agencies: Practices and Lessons from 30 Countries*. New York, NJ: Palgrave Macmillan.
- Vestlund, N. M. (2017). Pooling administrative resources through EU regulatory networks. *Journal of European Public Policy*, 24(1), 61–80.
- Yesilkagit, K., & Christensen, J. G. (2010). Institutional design and formal autonomy: Political versus historical and cultural explanations. *Journal of Public Administration Research and Theory*, 20(1), 53–74.
- Zaring, D. (2009). International institutional performance in crisis. *Chicago Journal of International Law*, 10(2), 475–504.