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AARE KASEMETS

Institutionalisation of Knowledge-Based Policy Design and Better Regulation Principles in Estonian Draft Legislation

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UNIVERSITY OF TARTU
Press

Institute of Social Studies, University of Tartu, Estonia

The dissertation has been accepted for the commencement of the degree Doctor of Philosophy (in Sociology) on 02.11.2018, by the Doctoral Committee of the Institute of Social Sciences, the University of Tartu.

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Commencement: 18.12.2018

The publication of this dissertation is granted by the University of Tartu.

ISSN 1736-0307
ISBN 978-9949-77-927-7 (print)
ISBN 978-9949-77-928-4 (pdf)

University of Tartu Press
www.tyk.ee

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LIST OF ORIGINAL PUBLICATIONS

The dissertation is based on the following original publications, which will be referred to in the text by their respective Roman numerals:

I. **Kasemets, Aare (2018).** Institutionalisation of better regulation principles in Estonian draft legislation: the rules of law-making, procedural democracy and political accountability between norms and facts – The Theory and Practice of Legislation, 6/1, 75–111.

II. **Kasemets, Aare** and Talmar-Pere, Annika **(2014).** Implementation of Better Regulation Measures in the Internal Security Draft Legislation: the case of Estonia – European Journal of Law Reform, 16/1, 80–103.

III. **Kasemets, Aare (2012).** The Long Transition to Good Governance: looking at some changes in the Estonian governance regime and anti-corruption policy 1992–2012 – ViAble Security, Proceedings of the Estonian Academy of Security Sciences, 11, 17–42.

IV. Michael, Bryane and **Kasemets Aare (2007).** The Role of Initiative Design in Parliamentarian Anti-Corruption Programmes – The Journal of Legislative Studies, 13/2, 280–300.

V. **Kasemets, Aare (2003).** Sociological and public opinion research as reflection for the parliament and civil society – in Ageing Societies, New Sociology. Abstracts: The sixth Conference of the European Sociological Association. Murcia, 23–26 September 2003. ESA Publications, 536.

AUTHOR'S CONTRIBUTION

Study I: The author designed two original methodological approaches, conducted two follow-up studies and wrote this article alone. It is an elaboration of former studies from 1996 to 2017 (e.g. II–V) providing context, complementary theoretical frames and two empirical studies.

Study II: The author took the lead and was a major contributor to the theoretical frameworks, methodology, analysis and conclusions.

Study III: The author designed and wrote this article alone. It is based on the report presented at the XXII World Congress of the International Political Science Association "Reshaping Power, Shifting Boundaries", Madrid, July 2012.

Study IV: The author shared in the responsibility and contributed to aspects of parliamentary research and impact assessment.

Study V: The author took the lead in the design of this original sociological parliamentary approach and wrote this article alone. A first version was written for the plenary session of the third Annual Conference of Estonian Social Scientists, Tallinn, November 2002.

ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to the people who have contributed in one way or another to the completion of my dissertation. First of all, I'm grateful to both of my supervisors, Associate Prof. Emeritus Henn Käärik and Prof. Emeritus Peeter Vihalemm, for encouragement, inspiration and constructive criticism. And I recall with gratitude Prof. Marju Lauristin's lectures on communication theory and Asser Murutar, the head of the rural sociology research group at the Estonian University of Life Sciences in the 1990s, who brought me to philosophy and rural sociology, where the academic path led me to media sociology and the sociology of law. Also, I thank Prof. Raul Narits from the School of Law for his inspiration in constitutional theory.

The ordering of multifunctional sociological surveys for the Riigikogu offered me many educative discussions on what-why-how to measure the complex relations between society and parliament. For that, I thank Andrus Saar, Juhan Kivirähk, Kalev Petti, Prof. Raivo Vetik, Prof. Mikko Lagerspetz, Prof. Rein Ruutsoo, Erle Rikmann, Ülo Vooglaid and others. Also, warm thanks go to my co-authors from different periods: Asser Murutar, Prof. Jaan Ginter, Prof. Paul Kenkmann, Kati Tillemann, Kait Oole, Marika Kirch, Andres Siplane, Ülo Siivelt, Mari-Liis Sööt, Eveli Karner, Bryane Michael, Katarina Staronova, Zsombor Kovacsy, Mart Raudsaar, Ülle Lepp, Margus Dsiss, Annika Talmar-Pere, Ero Liivik, Prof. Raul Narits, Elina Orumaa, Lauri Tabur, Tanel Oppi and Prof. Alina Mungiu-Pippidi. Also, I am very grateful to the active participants in doctoral seminars at the University of Tartu, chaired by Prof. Veronika Kalmus, Prof. Andra Siibak and the senior researchers Mare Ainsaar and Dagmar Kutsar. I also thank the Association of Estonian Sociologists for our Annual Conferences of Social Scientists, where I tested many of my ideas. Public service has also been a part of my lifelong learning since 1991: my thanks go to Asser Murutar, Ivar Raig, Liina Tõnisson, Heiki Sibul, Annika Uudelepp, Uno Veering, Prof. Raul Eamets, Kristiina Tõnnisson, Lauri Tabur, Ramon Loik and Illar Lemetti. I would also like to express my gratitude to my former partners in parliamentary research networks: Dr Günther Schefbeck (Austria), Anti Rautava (Finland), Prof Eduard Afonin (Ukraine) and Dick Toornstra (Netherlands). Also, my thanks go to William Robinson (USA) for his answer to my question. *Q: How can we support the use of social sciences in parliamentary legislation? A: If the research report is public then send it informally to the media, and the interest of politicians will rise.* In other words, the question is how to create conditions in society where for policy-makers it is useful to use the best knowledge.

Last, but not least, for their love, patience and good advice I would like to thank my wife Kaja, a scientist in the field of nanotoxicology at the National Institute of Chemical Physics and Biophysics, and our daughter Meriliis, a student of sociology and social work at the University of Tartu. In addition, my deepest gratitude goes to my mother and father, who in childhood sowed curiosity in my lifeworld, and to all of my grandparents, thanks to whom I am here today.

1. INTRODUCTION

Research area, aim and questions

The rule of law, freedom of information, and democratic law-making have always been at the heart of Western political, social and economic institutions. The study of law, as a part of governance regime, has been mainly the monopoly of legal scientists (Deflem 2008). That may be one reason why the impact of social sciences and regulatory reforms on the modernisation of legislative policy, law-making and social control has been a relatively unexplored field in sociological studies of post-totalitarian countries. Estonia returned to the Western world after the restoration of its independence in 1991, launched many liberal reforms and joined the European Union (EU) in 2004 and the Organisation of Economic Cooperation and Development (OECD) in 2010.

This research focuses on the institutionalisation of the modern OECD and EU good governance, the rule of law, freedom of information, and better regulation principles in Estonian legislative policy and law-making measures (Studies I, II and V), and in the social control of corruption and anti-corruption policy measures (Studies III and IV). Studies I, II, III and V contain three or more sub-studies reflecting the complex institutional changes since 1992. Study IV addresses the problems of international parliamentary anti-corruption programmes and political capital.

The main aim of this research is **to analyse,** from the theoretical and empirical perspectives, the gap between the modern rule of law and the social facts of rules recognition and better regulation, **to identify** problems in the policy cycle, and **to provide** some knowledge-based proposals for the improvement of legislative and anti-corruption policies.

The analysis of complementary social science approaches (Chap. 3), empirical findings, and theory-practice links (Chap. 5) is related to the modernisation and democratisation of Estonian legislative institution building under such terms as *regulatory governance*, *discursive democracy, the rule of law, better regulation*, *impact assessment, control of corruption, etc*.[1] I will discuss some theory-practice links and empirically evident changes in the institutional pre-conditions for modern/rational/responsible policy-/law-making in the Estonian context.

[1] Theoretical pluralism reflects the complexity of political knowledge. Due to multi-disciplinary competition connected with policy- and law-making, there are a myriad of definitions. When appropriate in this research, I use the definitions agreed on by inter-governmental organisations (i.e. the OECD and EU), e.g. *regulation* refers to the diverse set of instruments by which governments set requirements for businesses and citizens, including laws, (in)formal orders and subordinate rules issued by all levels of government (OECD 1997). For the terms *sociology of law, the rule of law, institutions, regulatory governance* etc., see Ch. 3.

The central research questions are as following:[2]

- Which theoretical frameworks offer more useable explanatory knowledge in the Estonian transitional context for the analysis of tensions between the modern legal norms and particularistic social facts in the sociological studies of law-making, legislative institution building, and social control of corruption? (Studies I–V; Chaps. 3–5)
- To what extent do initiators of draft acts follow the modern rules of law-making in the mandatory categories of social, environmental, economic, security, administrative and budgetary impact assessment, research references, and civic engagement?[3] And a sub-question: what has been the impact of the "Development Plan for Legislative Policy until 2018" (2011) on better regulation measures concerning ministerial work routines, and on the content of public information in the explanatory memoranda of draft acts? (Studies I–II; 5.1)
- What are the main problems in the institutional pre-conditions and policy cycle frameworks which may support the deviation of politico-administrative actors from the modern rules of law-making? In other words, what are the reasons why officials selectively follow the rules of law-making in the field of better regulation? The same question is asked concerning the macro level (OECD 2000): why do regulatory reform strategies tend to fail? (Studies I–IV; 5.2.1)
- How have the Estonian post-Soviet political elite and society succeeded in the institutionalisation of modern governance norms in such a short time, reaching the levels of many Western countries in the rule of law, good governance and control of corruption rankings? What made a governance regime based on particularism evolve into an open access order? (Studies I–III; 5.2.2)

Disclosure note on multidisciplinarity

In order to make the context and both theoretical and empirical findings more transparent, I will disclose the background of my research: a) as a head of the parliamentary research service (1995–2003: CV), I often worked as a *mediator* between social science communities and policy-makers (Kasemets 1999a); b) I observed the development of better regulation principles in ministries as a trainer of civil servants in impact assessment and civic engagement methods (Kasemets ed. 2011, 2017b); c) according to the rules of law-making (1996,

[2] The first question is linked to Chs. 3-4 and 5.3, the second to 5.1, the third to 5.2.1, and the fourth to 5.2.2.

[3] Without fair impact assessment knowledge, it is hard to seriously argue that the policy options in the draft acts are in accordance with the constitution or EU good governance principles.

2011), the explanatory memoranda of draft acts proposed in parliamentary proceedings has to include information on social, economic, environmental, security, administrative and budgetary impacts, research references and civic engagement. This "mandatory multidisciplinarity" of parliamentary knowledge is one of the reasons why my studies are related to multiple disciplines. The initial literature used in the research design can be divided into six interrelated parts, where I started from the sociology of law, realistic legisprudence, economics of law, and other interdisciplinary "law and …" approaches (e.g. Galligan 1995; Cotterrell 1992; Munger 1993; Posner 1983; Wintgens 1999). The second part includes Jürgen Habermas's work on the rationalisation of the social system, communicative action, discursive democracy and protection of individuals' *lifeworlds*, as well as other authors who applied or disputed his sociological approach. The third part includes studies on the use of social science knowledge in law-making, and the roles of parliamentary research services and applied sociology (e.g. Robinson and Wellborn 1991; Luschen 1992). The fourth part includes regulatory governance, political economy, and impact assessment studies (e.g. OECD 1997; Ben-Gera 1999; Radaelli 2001). The fifth part of the literature links transition studies (e.g. Lauristin *et al* 1997; Vetik 1999) and institutional theory (e.g. North 1990; Scott 2001). The sixth part of the literature involves historical sociology and the [social] control of corruption equilibrium model (Parsons 1951, Mungiu-Pippidi 2012).

Methodologies. Based on the aforementioned "law(-making) and ...." literature, different politico-administrative problems, and the need for parliamentary knowledge, I compiled four original methodologies for applied multidisciplinary studies, which are integrated into this research: a) a concept of parliamentary sociological surveys connecting the theories of democracy, parliamentary functions (e.g. representation and legislation), and the possibilities of representative sociological surveys in parliamentary-public interactions (Study V; Kasemets 1996b), b) a methodology for the normative content analysis of explanatory memoranda of draft acts is in accordance with parliamentary functions, the rules of law-making, and the roles of parliamentary research services. That makes it possible to measure the compliance between the law-making rules and facts in the field of impact assessment (Studies I–II), c) a "better regulation barometer" questionnaire for the survey of officials is based on OECD reports (1995–2000), and tests the fulfilment of 12 institutional preconditions for purposeful regulatory reforms (Study I; Kasemets 2005ab; ed 2011; 2016a), and d) a multiple methods-based methodological approach to analyse the link between legislative policy (e.g. better regulation) and internal security policy strategies as tools for regulatory management to understand the reasons for selective fulfilment of law-making rules (Study II). While the scientific impacts of Studies I, II and V are related to the design of original methodologies, the additional value of Study III is the testing of a relatively new *control of corruption equilibrium model* (Mungiu-Pippidi 2012) and connected liberal concepts (e.g. *ethical universalism*) in Estonian context, including

a dialogic analysis of Mungiu-Pippidi writings on Estonia, and the links between better regulation and the constraints on corruption (Chap. 4).

Importance and actuality in brief

The results of this research provide some additional new information regarding theoretical and methodological literature, empirical socio-legal studies, and regulatory policy measures. For example, the research includes a complementary theoretical review, original methodologies and empirical evidence, which reflect **three dimensions in the Estonian transition** from the post-Soviet governance regime to liberal open-access democracy. Firstly, in the European context, the original Studies I and II show the changes in the institutionalisation of OECD/EU modern better regulation measures in Estonian ministries to examine law-making problems in social change-oriented interaction. Secondly, Studies III and IV are focused on Estonian and international changes in the social control of corruption and political economy frameworks. Thirdly, Study V provides an original theoretical concept of parliamentary sociological surveys and informed communicative action, showing how representative sociological surveys can decrease the deficit in democracy between general elections and support the fulfilment of parliamentary constitutional functions (approx. 37 studies from 1996 to 2003).

The review of **theoretical approaches** (Chap. 3) includes the implications of sociological theories of law(-making), democracy, knowledge, risk society and social control, as well as the implications of institutional theory and political economy. In addition, both contradictory and complementary theories by Habermas, Rawls, Beck, Radaelli and other scientists in the field of multidisciplinary social sciences are analysed to end the review with actual challenges of knowledge management, policy learning and the higher education of law-makers.

This research provides some **empirical evidence on the:**

(a) institutionalisation of the modern rules of law-making and better regulation routines in the ministries based on the content analysis of explanatory memoranda of draft acts (2012–15 compared with 2007–09);

(b) the democratic deficit in the transposition of EU legal acts into the Estonian legal system (more than 60% of national draft acts are related to EU rules, but the results of EU impact assessment reports are not cited);

(c) weak implementation of legislative policy measures (e.g. analysis) in the strategic planning of internal security policy- and law-making;

(d) positive trends, but still insufficient institutional preconditions for knowledge-based policy- and law-making (e-Surveys of ministerial civil servants: 2015 compared with 2011). To sum up a-d, the measurement of compliance helps to explain “the rules of law(-making) in action”.

Both the social control of corruption and anti-corruption policy related studies (III and IV) are important from many perspectives. Before Study III, the links between the control of corruption (as a governance regime), international rankings of states, and such topics as the role of the political elite, democracy, free press, civil society and better regulation were sociologically under-researched in Estonia. In the analysis of ways in which parliamentary anti-corruption programmes can help build political capital by managing voter demands, political competition and law enforceability, I advised on how to bridge the theory-practice gap using better regulation "transparency tools", and parliamentary research services to decrease public information gathering costs (Study IV).

In summarising the actuality aspects, it is clear that institution building for knowledge-based (also: rational, responsible, moral) policy- and law-making *must continue*. The results and policy recommendations of Studies I–III have been made readily available to the ministries, and the committees of the *Riigikogu* responsible for the design of legislative policy, internal security policy and anti-corruption policy strategies (next cycle: 2020–2030). Both research approaches support training programmes for civil servants (Kasemets ed 2011; 2016b; 2017ab). The general endeavour of the research is to provide some reflexive feedback for future discussions of the knowledge-based policy cycles (Figure 9).

The structure of research

The chapters of this doctoral research are structured as follows: Chapter 2 highlights the transitional context of Studies I–V. Chapter 3 elaborates the pluralistic theoretical approaches related to legislative, internal security, and anti-corruption policy studies. Chapter 4 maps methodologies and data. Chapter 5 analyses and discusses the main findings of the studies, reflecting the research problems/questions, to bridge the gap between theory and practice (as well as the norms and facts) in law-making. Chapter 6 presents conclusions, and finally Chapter 7 addresses some proposals for follow-up studies, and offers policy recommendations.

2. REGULATORY POLICY RESEARCH IN CONTEXT

Transition from a post-Soviet regime to an open access democracy

Sociologists of law usually investigate the "social context of laws in action" (Aubert 1963: 14; Munger 1993: 100; Selznick 2003: 181; Banakar 2000: 373), but there is quite fragmented knowledge on the use of social sciences and impact assessment studies in the pre-parliamentary stage of law-making in the context of transitional regulatory reforms (Study I). Estonia's return to the Western world is related to the radical policy reforms and the adoption of the rule of law, good governance, better regulation and other normative concepts agreed on by the EU and OECD. The literature offers many critical analyses on transitional challenges of Central and Eastern European countries and, in most cases, they also apply to Estonia. For example, Blokker's argumentation:

> "for the former communist countries, 1989 signified a kind of rewinding revolution that allowed them once again to catch up with the West... This meant that these societies were to adopt traditions of the Rechtsstaat as well as those of capitalist market economies à la the West" (Blokker 2009: 307, 309).

I will analyse how the gap between Western formal law-making norms and informal social norms/facts has decreased in national law-making. According to many international comparisons, Estonia is the post-Soviet positive example, having made perhaps the most spectacular progress in the world, from the Soviet regime to a relatively stable parliamentary democracy in less than twenty years (Studies I and III; Lauristin and Vihalemm 2009; Mungiu-Pippidi 2012; Vetik *et al* 2012; Abrams 2015).

Estonia restored its independence in 1991 and reached certain societal and governance benchmarks after five years of institution building, when Estonia received an initial invitation to accession negotiations with the EU. This period has been described as an "'Age of Parliaments', with the revitalization of legislatures" (Copeland and Patterson 1994: 1). Those patterns are particularly true for Central and Eastern Europe (Robinson and Hyde 1998; Pettai and Madise 2006). Norton and Olson argued (2007: 1): "The emergence of new democracies in Central and Eastern Europe creates an unrivaled opportunity to examine the transition of legislatures from non-democratic to democratic regimes." According to many scholars, the elected parliament has a special responsibility to safeguard democracy. As Robinson put it (1998):

> "Knowledge is power. For too long, and in too many places, knowledge has been the monopoly of authoritarian executive structures and the handmade autarcy. But with the growth of these new knowledge-based institutions for the legislature, power has been decentralized and diffused in a more healthy pattern for these new democratic nations."

In the late 1990s, many books on similar topics were published and two of them seem to be the most important for my research: *Return to the Western World. Cultural and Political Perspectives of the Estonian Post-Communist Transition* (Lauristin *et al* 1997), and *Society, Parliament and Legislation* (Kasemets *et al* 1999), in which Raivo Vetik explored the periodisation of Estonian politics into Easton's three-stage model, e.g. changes in rhetorics, implementation and institutionalisation (1999: 39).

Periodisation: change of context 1991–2018

There are two complementary periodisations of Estonian institutional development since "Soviet stagnation time" transitions (e.g. Vihalemm *et al* 2017; Vetik *et al* 2012), in which the main democracy- and statehood-related features overlapped (Lauristin and Vihalemm 2017: 61).

According to Lauristin and Vihalemm, the **first** Estonian post-Soviet transition period, 1991–1995, can be described as the creation of the new constitutional and social order and the carrying out of basic economic reforms in order to escape the deep crisis that followed the collapse of the socialist planned economy. In most fields of governance, the Estonian government had to start institution building from the beginning, because Soviet law had been repealed and the pre-occupation law system of the Republic of Estonia of 1918–1940, in force *de jure*, did not fit the new context. From 1992 to 1995, the most fundamental laws were passed (Studies I and III; Lauristin and Vihalemm 2017: 60; also Vetik *et al* 2012: 439; also Lauristin 2013; Kasemets 2014; Kalnins 2017).[4]

The **second** transition period, 1996–1999, was related to the invitation to join the EU. The consensus around the need for rapid modernisation and "Westernisation" of the economy, state institutions (Lauristin 2013) and related regulations (i.e. laws and guidelines) was the most important contextual determinant of my research design (Studies I, II and V).

The **third** transition period, 1999–2004, was for officials mainly related to the adoption of the *acquis communautaire* of the EU; besides the intensive transposition of EU rules, better regulation and civil society development issues were discussed, and policy-makers were relatively open to new ideas, as reflected in the journal *Riigikogu Toimetised* and The Civil Society Development Concept (Studies I–III; Kasemets 1999a, 2001a; Lauristin and Vihalemm 2017: 74; Vetik *et al* 2012: 443).

The **fourth** transition/transformation period, 2004–2008, began with Estonia's accession to the EU and ended after the financial crisis (Lauristin & Vihalemm 2017: 77; Vetik *et al* 2012: 439). My study of explanatory memoranda of draft

[4] It is also important to note that, due to historical fears from the 1930s and 1980s, the Constitution of Estonia (1992) restricted certain people's political rights related to direct democracy (see Liivik 2017).

acts of 2007–2009 reflects the dynamic influence of financial crisis and austerity measures, e.g. the amount of information fell in 2008–2009 in the categories of civic engagement (–14%), administrative impacts (–12%), and social impacts (–4%), but rose in the category of economic impacts (+4%) (Kasemets 2009; Study I).

The **fifth** transition/transformation period, 2008–2012, involved joining the OECD (2010) and the Eurozone (2011), general elections in March 2011, many political corruption scandals (e.g. the *Meikargate),* and many civic protest initiatives (e.g. ACTA and Harta 12). During this period, *The Development Plan for Legislative Policy until 2018* was debated and adopted by the *Riigikogu* (Studies I and III). According to Lauristin and Vihalemm (2011: 10, 18), the transition from a Soviet regime to a stable market economy and open access democracy should be considered to be finished as of 2010, and Estonia could then compare its policies and institutional arrangements with advanced democracies. Vetik *et al's* (2012) discussion on Estonian unilinear governance transformations from 2004 to 2012 involves similar conclusions about the "new level" and "next policy cycle" (2012: 449).

The **sixth** period, 2012–2016, is described, despite achievements in eGovernance, etc, as a period of political and economic standstill, which ended with political shifts and improvement in the economic situation (Lauristin and Vihalemm 2017: 84; Kasemets 2016b). In 2016, Estonia underwent a political makeover involving the election of a new president in October and after that the appointment of a new cabinet: after multiple consultations, the *Riigikogu* approved Kersti Kaljulaid as the new president, and the left-leaning Centre Party headed a new government for the first time in nearly 25 years. The **seventh** period started in 2017, with radical local government reform, the Council of the EU Presidency, municipal elections, some corruption scandals and the activation of civil society (Pettai & Ivask 2017; Lobjakas 2018; Kook 2018).

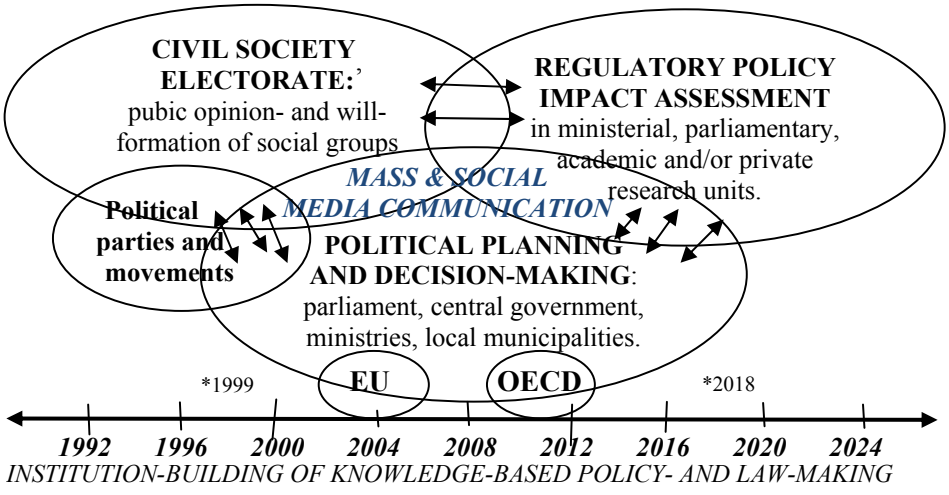
To sum up this overview of Estonian recent transformation periods with some contextual features of Chapters 3–7, I argue that the "Western modernisation"-related transformation in legislative policy and anti-corruption policy areas continues (Studies I–III). This kind of conclusion about unfinished or partly failed regulatory reforms is quite common. As Radaelli wrote: "the emulation perspective... is concerned with the imitation of OECD templates for regulatory oversight by legitimacy-seeking governments" (2010: 90; see also OECD 2000). Haarhuis and Niemeijer, in their legislative evaluation study, identified a variety of organisational responses to contextual incentives, starting with "imitation" (2009). Whether or not the intended better regulation mechanisms are actually activated depends on politics, social context, relations, networks and the norms of legal culture (ibid; Gallagher 2003).

The contextual and practical reasons for the studies

The practical reasons for Studies I, II and V emerged from dynamic policy- and law-making, the scarcity of evidence-based policy justifications, quality problems of draft acts, information requests of parliamentary committees, and some theoretical and empirical pilot studies which assumed that the availability of scientific knowledge leads to changes in policy design and should improve the efficiency and legitimacy of the legislature (Kenkmann and Ginter 1999; Kasemets 1999a; Käärik 2000). Its limited resources often place the parliamentary research services in the position of *mediators* of results obtained by academic social scientists or by ministerial analysts. The aim of well-designed socio-legal knowledge is to help cabinet ministers and members of parliament in their interactions, and to minimise the public information gathering costs for all stakeholders. The selected studies were designed to function as a "mirror" for the *Riigikogu,* reflecting the gap between constitutional norms and the facts of social/political actions. I tend to agree with the authors who argue that the basic source of the development of law, legislative institutions and social order is society, with its needs and interests, not cabinet, ministries or the court system (Chap. 3), but I would like to draw attention to the dual nature of laws and law-making. First, as the Nordic classic Aubert wrote (1989: 76), "the rule of law... seems to answer to the [human] need for certainty, predictability, order and safety." Secondly, "To Pound, the law is not an autonomous system of formal rules, but an important tool of social change" (Hertogh 2016: 47). In brief, Estonian governance and legal policy transformation in 1992–2012 was continually focused on social change through parallel reforms and related legislation. The "hidden research problem" of my studies was twofold: of course, elected politicians and recruited lawyers should act as "social architects and engineers" in law-making to design multidimensional social change, to allocate resources, and to prevent or to address social conflicts in society, but both moral and social problems may arise in those cases where elected or recruited "experts in social engineering" have not learned social sciences in the university, or are not able or willing to use social science knowledge in public policy (e.g. law-making) design.

In this context, the results of sociological research are the subjects of broader political, academic and media discussion to "put communicative power to work" between the parliament and the *silent majority* of society, because policy/law can have no influence on society by itself: the impact of a policy/law depends on the extent of support the policy finds in the social context (e.g. public opinion). I have argued that sociological research creates opportunities for more knowledge-based policy design and supports communicative rationality in public discourses on the intended policy objectives. At the political level, that means that elected parliament, fulfilling such functions as representation, legislation and supervision, must consider society as a whole. Also, in the complicated social context, the parliament should imagine sociologically under what

conditions and when social groups are ready for regulatory reforms to move forward (Studies I and V; Kasemets 1999a, 2000b; see Figure 1).



When is a government/administration ready to implement a new regulation/law?
When is a society / the public (e.g. NGOs and businesses) sufficiently informed to understand the meaning of political decisions and to offer proposals if needed?
When is a society / public (e.g. stakeholders) ready to move forward?
When is it useful for a government and parliament to adopt a political decision?

Figure 1: The role of sociological studies to act as a bridge between institutions of power and civil society. The aspects of institutional development, communicative planning and political timing. Kasemets 1999a: 106; updated in 2018*

As Estonia has been a member of the EU since 2004, and the OECD since 2010, the external "catching up with the West" approach "energy" has transformed into internal institutional "fine tuning" and EU common policy design.

3. THEORETICAL FRAMEWORK

In this chapter, I will elaborate on the multidisciplinary theoretical approaches dealing with the gap between modern regulatory governance norms and social facts in the fields of legislative policy, internal security policy, control of corruption and anti-corruption policy. I will start with some aspects of normative and critical studies, reflexivity, discursivity and the usefulness of social science theories. The departure point of my theoretical position lies in the normative social sciences investigated by Jürgen Habermas, Philip Selznick and many others dealing with democracy, law-making and law issues. As Selznick put it:

> "social science is largely value-centered: economics, political science, social psychology, and sociology are preoccupied with ideals of rationality, legitimacy, self-government, personal development, and social cohesion" (2008 xvii).

On the other hand, studying institutions of power, law-making and laws, the impacts of policies, or contradictions between "laws in books" and "living laws", reflexive sociological studies as mirrors of politics, law and society play a naturally critical role in the observation of legislation (Studies I and V; Aubert 1989; Munger 1993; Guibentif 2003; etc). But this critical role could be generalised as Trubek pointed out (1990):

> "Social knowledge does not mirror an objective reality that is somehow 'out there,' but is instead part of the process through which social relations are formed... The recognition of discursivity changes our whole understanding of the relationship between law and the social disciplines. If social knowledge is discursive, it cannot produce unproblematic maps of social relations or uncontested, factually based answers to questions of social policy. This re-cognition means that whatever social science can do for law, it cannot offer objectivist grounding for legal policy" (ct Freeman 2014: 861; also Nelken 1998).

The third introductory aspect is related to the reflexivity and usefulness of theories for applied policy analysis and legislative institution-building. Weible and Cairney (2018) asked "how theories can offer practical recommendations, ways of thinking, or strategies for influencing the policy process." I argue that usually usefulness is related to the context of current institutional problems. The literature analysed in this chapter is divided into six interrelated parts starting with the sociology of law. Based on original studies, many complementary theoretical frameworks and theory-practice links will be elaborated in 3.1–3.6. The road map of the chapter is shown in Figure 2.

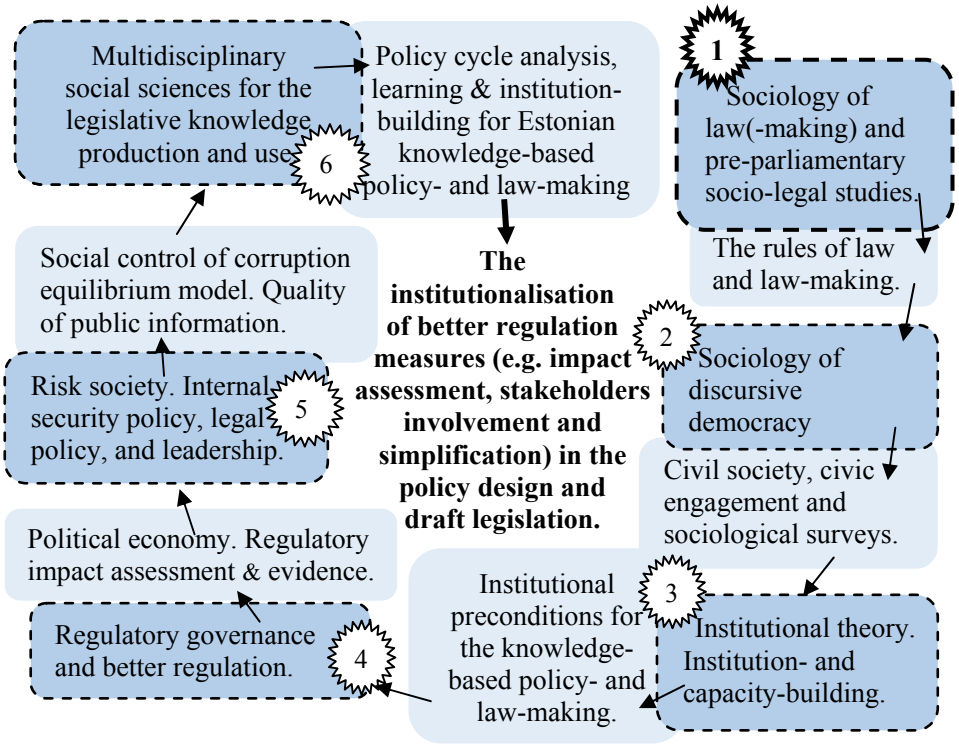


Figure 2: Theoretical approaches, concepts and terms around the knowledge-based public policy- and law-making discourses in 3.1–3.6 and Studies I–V.

3.1. Sociology of law-making, and the rules of law and recognition

3.1.1. Sociology of law-making and socio-legal studies

Sociology of law: the shift from law to law-making

Most of the classic social theorists saw the sociology of law and the sociology of organisation as closely intertwined. In a broad context, Durkheim, Weber, Parsons and other sociological classics contributed mostly to the theoretical study of the role of law in societies (Freeman 2014: 835; Deflem 2007: 1410), but they drew little attention to democratic policy design and the role of social sciences in law-making. What is the sociology of law and what is the sociology of law-making? There are different integrated approaches. According to Timasheff:

> "The sociology of law, a new science, studies human behavior in society in so far as it is determined by commonly recognized ethico-legal norms, and in so far as it influences them" (1937); and "a science that investigates the human behaviour which is defined and coordinated by law", where a law can be positive/state or living/social law (1939).

The sociology of law is a demanding inter- and multidisciplinary field of research bridging knowledge and legal policy. Aubert pointed out that "the sociology of law is in part a branch of the sociology of knowledge" (1963: 16). According to Munger, the reconstruction of the sociology of law as a theory can begin from the de-centring of the production of law: studies have shifted away from the examination of "the impact of law" to "the production of law" in the context of power's decentralisation and law's fragmentation. He also argued that the law is not autonomous due to the lack of political autonomy, and studies of the cultural roots of law have changed our view of what a "normal" production of law is (Study I; Munger 1993: 119; also OECD 1997; Levi-Four 2011: 6).

In the parliamentary context, the sociology of law-making rejects the idea of law as an autonomous system (Studies I, II, IV and V). In addition, Deflem (2008) analysed the question "why is the sociology of law so marginalised?" He explored several reasons for this development, such as the monopolisation of legal thought by the legal profession, the "retreat" of the sociology of law into law and society, and a general preference for "disciplinarity over interdisciplinarity" (2008: 78).

The sociology of law also regards law as a set of interdependent institutional practices which have evolved through interaction with cultural, social, economic and political structures and institutions focusing on how the internal normative orderings of various social groups and communities (e.g. civil servants, politicians, business leaders, lawyers and scientists) interact with each other (Study I; Banakar 2000).

Ervasti emphasised that the sociology of law requires the mastery of methods in social sciences and an understanding of legal thinking. In brief, one should accept theoretical pluralism and see the sociology of law as a field where researchers from different traditions can discuss such themes as the functions of law, legislation and its effects, legal institutions, legal culture, legal policy, social change, etc. Legal policy research can be defined as research that aims at and has the ability to influence decision-making in legal policy matters, the drafting of laws, and the formulation of guidelines, as well as practices. In many cases, legal policy research is applied research to produce research findings for practical use (Study I; Ervasti 2008: 145).

Carbonnier distinguished pre-legislative from post-legislative sociology of law. He argued that laws are special products and legislators have to develop the organisation of "public relations" and "law consumption" (Study V; Carnonnier 1978; ct Käärik 2000: 130). The capacity of a political system to respond to the preferences of its citizens is central to democratic theory and practice. Research regarding the impact of public opinion on policy-making have produced

decidedly mixed views, the normative aspects of the opinion/policy link are also controversial (Manza and Cook 2001). I analysed, in the Estonian institution-building context, how pre-legislative representative sociological studies may support the functioning of parliamentary democracy, and the conditions for Habermasian public opinion- and will-formation, creating an additional communicative power *bridge* between the parliament and the *silent majority* (Studies I and V; Kasemets 1999a; 2000c; Figure 1).

Munger, Ervasti and others have promoted the approach of the problem-focused sociology of law, which is based mainly on the paradigm of rational actors strategically connected by rights to resources and rights to act. According to Munger: "Good theory is a measure of the underlying problem that concerns us and drives the research forward, not merely the generalisation that fits the data best" (Study I; Munger 1993: 119).

In practice, the sociology of law-making is related to multiple scientific and applied disciplines (e.g. the social, economic etc. impact assessment of draft acts), and that is the reason why the sociology of law-making is inherently multi-disciplinary. Scientific methods have evolved primarily through specialisation, but highly complex public policy and parliamentary law-making cases require more solution-oriented and multidisciplinary approaches because the problems usually fall between disciplinary categories. The use of social, economic, environmental, administrative etc. impact assessments in draft legislation has been for me a particularly interesting topic because it often involves problematic but necessary mixes of different scientific disciplines and their cross-connections to social groups and problems (Studies I, II and V). Also, Ervasti pointed out some specific problems of smaller countries, where the challenges of legislative complexity, theoretical pluralism and the lack of researchers require networking and cooperation among different research disciplines, entities and universities (Study I; Ervasti 2008:144).

Plurality of sociological theories of law and law-making

Due to structural changes in Western societies and political institutions, the theoretical and empirical framework for the analysis of legislative policy design, social science knowledge utilisation, draft legislation and civic-parliamentary relations has rapidly changed (Study I). I interpret this change as the inter- and multidisciplinarisation of sociological theories of law (e.g. law-making). As Deflem summarised it:

> "Sociological theories of law are today more diverse than ever before. Particularly influential in recent times has been the cross-fertilization of sociological theories of law with theories from other social sciences and the humanities. Most distinct in this respect has been the popularity of the law and society movement, a perspective that abandons the theoretical grounding of the study of law in any specific discipline in favor of an interdisciplinary orientation that selectively draws from a plurality of intellectual traditions" (2007: 1414).

The label *socio-legal studies,* is a mix of the sociology of law, political sciences, realistic legisprudence and other research traditions investigating the law in a social context (Fitzpatrick 1995; Cotterrell 1998). It is a relatively productive methodological platform for pre-parliamentary law-making research, with its limitations. In brief, socio-legal studies, despite political orientations, "tend to use sociological theories and concepts in a pragmatic and instrumental way" and adopt an "'internal" lawyer's point of view of law and legal institutions, rather than the 'external' view afforded by different varieties of the sociological imagination" (Travers 1993: 443; ct Fitzpatrick 1995).

My approach to the sociology of law-making is focused on the use of social science knowledge, discursive democracy and better regulation measures in legislative institution building and law making. It could be defined as the study of institutional changes to elaborate on the gap between the modern rules of law(making) and social facts. Due to politically enforced rules of law making (e.g. terms and procedures), the empirical compliance analysis of draft acts (e.g. the extent of officials' deviation from law-making rules) has a clear normative basis (Study I).

Political and legal cultures. Political and legal institutions and the legal behaviour of citizens are parts of common cultural subsystems. This is the reason why the relationship between law(making) and society is often observed through the perspective of political and legal culture. The prevalent values, ideas and opinions in society concerning policy, justice and the legal system determine the legitimatisation of norms, where, briefly, legitimacy means "social credibility and acceptability" (Black 2008). The legal system is largely made up of informal norms, including child-rearing values, identities and moral traditions, socio-economic relations, public services, the behaviour of police etc. In this context, the wide-range translation and implementation of foreign legal systems (cultures) lead to institutional "resistance" (Studies I, II and V; 3.3). According to Cotterrell (1992: 23), the term "culture" refers to the complex of beliefs, attitudes, values, ideas and communicative interaction models which are common to a particular society. The design of the national legal system must take into account the specifics of the national legal culture and communication so that the laws can follow their expected role in society, striving for harmony between the three validity requirements of laws, e.g. as legal norms, social facts and shared values of society (Study V; Dorbec-Jung 1999). In brief, I have argued that the massive transposition of foreign legal acts (e.g. of the EU), the lack of regulatory impact assessment competencies, the lack of relevant sociological reflection, and insufficient public debate on actual cultural, social, economic and environmental issues, in combination, can increase the level of systematically distorted communication in Habermasian terms and harm the institutional mechanisms of social cohesion (Studies I and V; Kasemets 2001a). On the other hand, Gallagher has argued that the Estonian legal culture is influenced by the Soviet ideas of the role of law in society: "In the first big round of legal reform from Soviet to western legal thinking, the laws changed, but the legal culture did not change enough" (2003: 80; also Järvelaid 2001: 79).

The legal culture "baggage", with its invisible "borders" between/within different societies and professional communities, is a relatively unexplored topic (Study V; also Sarat and Simon 2001; Hertogh 2016). I found an interesting comparative "split of legal consciousness" study of western and eastern Germany (Noelle-Neumann 1995) and got the idea of interpreting the results of my Studies I and II in terms of the rise in law-making consciousness. Adjusting the most commonly used Pound (1910) conception of legal consciousness *("how do people experience [official] law?"*; see Hertogh 2004), I examined *how ministerial officials experience the official rules of law-making* and *how large the "split in law-making consciousness is.* I found in both national and international studies that comparative studies may produce controversial data because of different institutional settings (Study I; Staranova, Kovaczy, Kasemets 2006). Since there has been difficulty in deciding how to compare legal consciousness related norms between western and eastern Germany, it will be an even more difficult methodological task in the EU. The studies of legal culture and consciousness are closely related to the studies of *the rule of law* (in books), and the rules of law and law-making in action.

3.1.2. The rules of law, law-making and recognition

To analyse the gap between the positivist rule of law and official recognition of the rules of law(-making) in the field of better regulation and impact assessment studies, I will introduce some discourses.

Boucher (2005) emphasised in the EU enlargement context:

> "the idea of the rule of law is central in the European Union's conception of itself, and stands as one of the most important political criteria of the enlargement process"… in terms of "the implications for admitting states with cultures where the rule of law has not featured significantly in their political and social landscapes" (2005: 89, 102).

Galligan (2005) pointed out in his legal culture lecture that one issue of central concern is how the law is transmitted to different groups and interests in society. If there is no general structure and no common ground across groups, then social cohesion is at risk. The central idea of Hart's concept (1961) is that the law is a system of rules that officials accept, because they regard the rules as creating obligations. Galligan focused on the question of why an official recognises obligations and accepts laws as binding. A legal system exists when the officials overall accept the validity of the rule of recognition. In some new democracies, the law is recognised as the law, but as a matter of practice is simply not applied in many situations (Studies II and III; Galligan 2005).

Kramer (2005) discusses the varieties of legal positivism and the rule of recognition issues, emphasising that the sustainability of *inclusive legal positivism* is maintained when morality requirements are followed. According to Kramer

(2005: 49), one of Hart's greatest contributions was his insistence that the foundation of any legal system resides in an array of normative presuppositions that underlie and structure the behaviour of officials as they ascertain the contents of norms that belong to their systems of law. Hart's (1961) label for that array of presuppositions, "the Rule of Recognition", has become one of the most familiar phrases in legal philosophy. On the other hand, Dworkin argued in opposition to Hart's model of law-ascertainment that some degree of variation among officials is common (Kramer 2005: 50).

The explanations of the gap between the normative and actual behaviour of lawmakers vary in the literature. My understanding is as follows: one of the main reasons why Hart's "Rule of Recognition" does not work seems to be a lack of awareness and a lack of motivational measures, e.g. a lack of systematic oversight and both legal or reputational sanctions (Figure 7). In the context of power decentralisation, law fragmentation, a rise in discursive social sciences, media etc., the Rule of Recognition has significantly lost its persuasive power (Studies I–II; Kasemets 2016a).

Aubert noted that "the rule of law has been appropriated by legal experts as their spiritual property" (1989: 78). Looking for interpretations of the rule of law concept, I found useful Marmor's (2004) claims about the limits of the rule of law theory:

> "The most common mistake about the rule of law is to confuse it with the rule of good law, the kind of law, for instance, that represents freedom and human dignity... [T]he challenge for a theory of rule of law is to articulate what the rule of law is, why it is good, and to what extent... First, it requires that governments, *de facto* political authorities, should rule, that is, guide their subjects' conduct, by law. Second, it requires that the law by which governments purport to rule should be such that it can actually guide human conduct" (2004: 1–2).

Marmor argued that there are certain conditions that the rule of law has to meet in order to be able to fulfil its pivotal function of guiding human conduct. The classic Fuller (1969) list of such legal-instrumental conditions is as follows: generality, promulgation, no retroactive rules, clarity, no contradictory rules, no impossible prescriptions, stability and consistent application (Marmor 2004: 5). In addition, in Estonian socio-legal studies, many authors emphasised the links between legitimacy and applicability (e.g. Käärik 2000: 128, Narits 2002: 11, Raska 2006: 59).

One of the research problems in Studies I–III is to what extent the government is ruling law-making according to modern law-making norms, making laws in a transparent and knowledge-based way which are based on the rule of law and "can actually guide human conduct." In other words, the measurement of the research question "to what extent do officials accept law-making rules as a binding obligation in their work routines?" also reflects the "pressure" of national and EU regulatory policy measures, and the extent of modern law-making culture in the ministries (Studies I, II and III; see Figure 3).

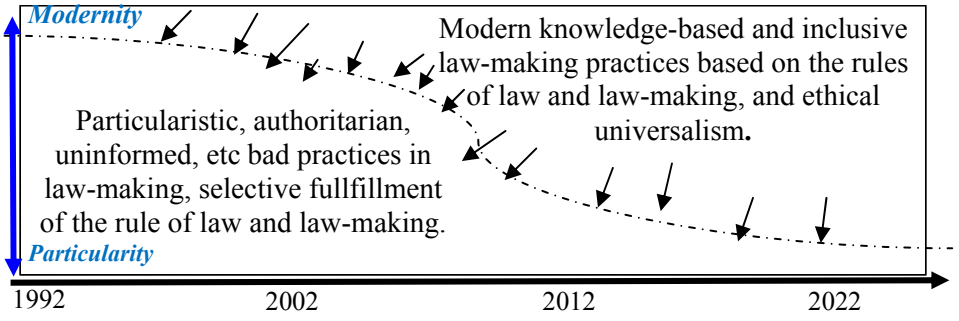


Figure 3. The rule of law, legislation and the pressure of modern law-making rules.

Kasemets 2018, inspired by Galligan 2005 and Mungiu-Pippidi 2017.

Linking the public good, morality and the rule of law-making

Barber asked "Must Legalistic Conceptions of the Rule of Law Have a Social Dimension?" and found that at least some of the confusion around the rule of law concept is generated by rival interpretations offered by writers, "fighting for the same territory" (Barber 2004: 475). Non-legalistic conceptions of the rule of the law include social, political and economic rights, which are not directly related to the structure of law or the processes of the legal system. The core of the rule of law is a demand that the state has to be able to justify its treatment of individuals by reference to the common good (2004: 481). In other words, the analysis of social, economic, environmental, security, administrative, etc. impacts of legislative interventions has to provide evidence of common public good (Studies I, II and V; also Kasemets 2004a; Narits 2004).

Habermas analysed the relations between law and morality, starting with Max Weber's works. In brief, Habermas (1988: 219) argued:

> "Max Weber regarded the political systems of modern Western societies as forms of 'legal domination.' Their legitimacy is based upon a belief in the legality of their exercise of political power... With it, Weber supported a positivistic concept of law: the law is precisely what the political legislator – whether democratic or not – enacts as law in accordance with a legally institutionalized procedure. Under this premise, the form of law cannot draw its legitimating force from an alliance between law and morality... I will develop, at least in rough outline, the thesis that legality can derive its legitimacy only from a procedural rationality with a moral impact. The key to this is an interlocking of two types of procedures: processes of moral argumentation get institutionalized by means of legal procedures."

In this context, I have argued that, in law-making, the extent of biased social, economic and environmental information and systematically distorted political communication should be reduced (Studies I and II).

The rule of law-making: explanatory memoranda of draft acts

A basic principle of the rule of law is that individuals have access to information describing their legal positions/rights. This basic principle is highly relevant when considering the formulation of and access to explanatory memoranda of draft acts. The content of explanatory memoranda is in this context important for many reasons**.** First, the text of a law can rarely be understood in isolation from the context in which it was created. In order to fully understand a text, the reader needs to know its background, purpose and expected consequences. As Narits (2001) noted, there are no juridical purposes of the rule of law. The purposes can be social, economic, environmental etc., and this means that the effectiveness of laws can be mainly measured and controlled by instruments developed in the framework of social sciences (Narits 2001; also Merusk *et al* 1999). Explanatory memoranda can be useful during many phases of a policy cycle (Figure 9), e.g. a) in *the preparatory phase* as a basis for discussions and deliberations, b) in *the implementation phase* to support the public understanding of the law and to serve as interpretative guidelines for private enterprises, administrative authorities and courts who apply the law, and c) during the *monitoring and evaluation phases* (Kasemets 2001a, ct Drinoczi 2017: 39). In addition, I argue in the communicative action theory and political economy theory frameworks that a good/fair explanatory memorandum of a draft act should provide both knowledge- and value-based argumentation to members of parliament, the media and different stakeholders (3.2), and should reduce information-gathering costs (3.4) (Studies I, III and IV).

3.2. Sociology of discursive democracy and civic engagement

3.2.1. Sociology of discursive and procedural democracy

There is a growing body of literature dealing with "deliberative democracy", "justice" and the "legitimacy" of political/legal institutions. Scholars pay more attention to institutional qualities that are needed to make democracy work: "among the deficient institutional qualities, *the rule of law* looms the largest" (Alexander, Ingelhart and Welzel 2011). *Democracy* entails a political community in which there is some form of *political equality* among the people (Held 1996). The existence of *political equality* can be proved in different ways. All five of my studies deal with some aspects of discursive, procedural and participatory democracy, civic engagement of stakeholders in law-making, public information quality, and communicative/discourse ethics.

Searching for an ideology-neutral theory: freedom of information

I have argued that liberal constitutional principles and the preconditions for deliberative democracy, such as freedom of information, access to public information and the quality of information, can be seen as universal principles in political and legal theory, and there are no noticeable tensions between different ideological orientations in the social sciences. This is a common foundation of universal human rights and the rule of law (Studies I and V; Kasemets 2004b; 2005ab).

For example, Rawls (1971) argues that political institutions of democratic choice can be justified according to whether they produce outcomes that conform to the independently specified principles of social justice. According to Rawls, "in justice, as in fairness, the original position of equality corresponds to the state of nature in the traditional theory of the social contract" (1971: 12). Rawls places a further necessary condition on the legitimacy of laws. This is evident when those attempting to construct ideal legislature "attempt to find the best policy as defined by the principles of justice" (1971: 357), and there is no guarantee that they will succeed. Rawls seems to base legislative legitimacy on a regime's meeting at least constitutional essentials or basic liberties. In a modern society, a large number of incompatible and irreconcilable doctrines coexist within the framework of democratic institutions. Rawls asks how a stable and just society of free and equal citizens can live in concord when deeply divided by these reasonable, but incompatible doctrines. His answer is based on a redefinition of a "well-ordered society", and justice as fairness is presented as an example of such (a) political conception(s) related to rational choice theory and intellectual and moral capacities proper to liberal democratic citizenship (Studies I and V; Aubert 1989: 51; Rawls's and Habermas's comparison with Finlayson and Freyenhagen 2011).

Writers on neo-classical economics and liberal political economy (Friedman, Posner, Hayek et al.) argue that for liberalism embodied in social contract theory, rational choice theory and neo-classical economics, the primary concern of political economy is to design a set of social and institutional arrangements that can facilitate the efficient satisfaction of individual preferences. Individuals are rational and such institutions as the market economy are considered, therefore, to represent a rationally chosen set of practices designed to maximise individual liberty and to enable the fulfilment of individual goals. Transparent and adequate market information is for different groups of producers and consumers a precondition for "fair play" and economic freedom. For example, Posner's classical study revealed the primacy of liberal democracy-related political rights over economic rights. He analysed "the economic basis of freedom of speech", arguing that "the government may not limit competition in ideas." He also compared the law and the market "as methods of resource allocation" (Posner 1972: 308, 320) (Studies I and IV; also Friedman 1962; Hayek 1980; Radaelli 2001).

Jürgen Habermas's late-modern theories on legitimisation crises, communicative action, law as mediation and discursive democracy explained many actual "catching up" challenges of Estonian political institutions in the mid-1990s, e.g. the gap between adapted Western normative concepts and many post-Soviet transition problems and radical reforms. Habermas defined the discourse principle as:

> "Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses," adding in the postscript "This formula does not specify the different 'norms of action' (and corresponding normative statements) nor the different 'rational discourses' (on which, incidentally, bargaining depends insofar as its procedures must be discursively justified)" (Habermas 1996: 107, 459).

Based on the rule of law and discourse principles, law-making can provide equal opportunities for all stakeholders to participate in policy debate to establish valid norms, but usually these procedures are not supported by the knowledge necessary to produce informed participants (Studies I–III; Habermas 1996: 111, 303; Kasemets and Liiv 2005: 144).

Proceduralist discourse theory and reconstructive sociology

Habermas's proceduralist discourse theory, with its controversies of communicative rationality/ethics/power and a "reconstructive sociology of democracy", has revealed how a political culture can be rational, stable, moral, non-coercive, legitimate and conducive to social integration, as well as how the knowledge-based communicative forms of democratic opinion- and will-formation can be institutionalised. He sees the rule of law not as part of the problem (where money and power "colonize the lifeworld"), but as a part of the solution underlying the fact that both scientific research and people's participation in the justificatory processes are necessary for rational-legal legitimacy (Study I; Habermas 1996; also Habermas 1994; Serge 2011).

This discourse leads to three conclusions: 1) in the case of conflicts among particular interests in society, they can be reconciled through fair bargaining processes, 2) a sufficiently knowledge-based and inclusive deliberative process of opinion- and will-formation results in collective learning; and 3) a media-based mass and social communication of the political public sphere results in an institutionalised discourse of law-makers. Habermas's proceduralism promises to reconcile legal and factual equality. The acceptance of procedural rules of law-making means that impact assessment knowledge can be a part of the parliamentary bargaining process, where communicative power is derived from citizens (Study I; Habermas 1996; Rosenfeld 1998). Also, as Baumeister found in Habermas's writings: "While a 'rationally motivated consensus rests on reasons that convince all the parties *in the same way*', in a bargaining process each party may accept a negotiated agreement 'for its own reasons'" (Baumeister 2003: 745).

I argue that Habermasian proceduralist discourse's democratic theory with procedural equality and fair socio-economic information should help to improve legislative procedures, and to balance also some socially dangerous political ideologies or philosophies, for example, the Western "hegemonic modernity" (Tabet 2017).

Inspired by Habermas's communicative action and discursive democracy theories, there are many studies on the development of institutionalised norms and fora of debate that facilitate the transformation of confrontation into dialogue and collective policy learning, where a rich knowledge reservoir is a precondition for participatory democracy. In this context, Habermas believes there is a psychological danger in social welfare programmes, which have a tendency to colonise our everyday life with their pre-care. The goal of communicative rationality/ethics is a society made up of dialoguing subjects who strive to achieve a consensus acceptable to the majority. If a legal act functions as an instrument of some lobby group, the market or state interests, the *life-worlds* of people have been colonised because of distorted information and communication (Studies I and V; also Kasemets 1999a; Käärik 2013: 262).

From the critical point of view, there are many open-ended discourses on the applicability of Habermasian discourse principles and the normative model of will-formation in real policy-making (for example, Carlsson 1995), as well as on some contradictions between Habermas's goals of discourse ethics and "bargain politics" in his discursive democracy and communicative power concepts, which are inevitably open to manipulative political communication. Habermas explained the transformation of people's popular sovereignty and the mediating roles of communicative power in law-making from "dual perspectives":

> "Informal public opinion-formation generates 'influence'; influence is transformed into 'communicative power' through the channels of political elections; and communicative power is again transformed into 'administrative power' through legislation" (1994: 8).
>
> "Passing through the channels of general elections and various forms of participation, public opinions are converted into a communicative power that authorizes the legislature and legitimates regulatory agencies" (1996: 442).

Flynn (2004) critically examined Habermas's theory of democracy and the concept of communicative power, reviewing earlier critical references (e.g. Forbath 1998; Günther 1998; Kettner 2002), and then collecting positive references (e.g. Barreyro 2018). For my research, the most important critical references are related to Habermas's "abstract process model" of discursive opinion- and will-formation within a legislature, where Habermas introduces the "parliamentary principle", which establishes representative bodies for deliberation and decision-making (Flynn 2004: 235–38; Habermas 1996: 158–68, 463–90).

Two examples of critical references, starting with Forbath (1998):

> "Popular sovereignty popularly understood means citizens governing themselves. But in Habermas's world of law as popular sovereignty, citizens merely talk and argue, forming opinions and kibitzing and contesting officialdom in the informal public sphere of 'civil society'."

Käärik summed up the contradiction in Habermas's dual-perspective briefly:

> "Habermas carries the people's popular sovereignty to intersubjective and anonymous communicative processes, but at the same time it becomes clear that the free communicative actions of the people are expressed primarily through participation in the elections. These same manipulated elections, previously criticized by Habermas, have now become the basis of communicative power" (2013: 271).

Flynn interprets Habermas's concept of communicative power in the broader frameworks of "classic separation of powers" and the "constitutional state":

> "as the requirement that the administrative system, which is steered through the power code, be tied to the lawmaking communicative power and kept free of illegitimate interventions of social power... Law is supposed to act as a transformer of communicative power and the exercise of state authority through administrative power is only legitimate if bound to this discursively generated communicative power" (Flynn 2004: 435, 438).

In my research, I argue, as have Flynn and many other authors, that such legitimation of law-making and laws depends on the institutionalisation of democratic rationally designed procedures, e.g. mandatory better regulation measures, such as regulatory impact assessment and civic engagement guidelines at the national and EU levels (see 3.4).

Flynn hopes that "Habermas's two-track model of deliberative politics could offer a potentially powerful account of the possibility for democratic practice in modern complex societies" (2004: 450), and I agree with his conclusion that to realise the content of democratic ideals "this would require citizens to mobilize and increase the communicative power of public debate until it could surpass or at least equal the extent to which money and administrative power coordinate action 'behind their backs'" (2004: 451; see also Habermas 1990ab).

In this context, the model of discursive democracy has clear moral and educational requirements: people should be treated not merely as passive subjects to be ruled, but as autonomous agents who take part in the governance of their society. I argue that in the market area concerning law-making and public services, the extent of biased public information should be reduced, and the impact assessments of political options in social, cultural, economic and ecological terms are more important. The quality of public information, equal

access to impact assessment data, sufficient education and the opportunity to participate in law-making can be considered human rights (Studies I–III).

The national discursive democracy and the cosmopolitan Europe

The commitment to formal rationality in political life often conflicts with the goal of substantive rationality and it is one of the reasons why the OECD and European Union (EU) member states are developing an impersonal order of "rational universalistic regulations", providing a calculable, predictable environment ultimately adapted to a greater range of organised interests (Study I; Wellen 1996).

In the EU member states, the borderline between national and EU legislation remains in many cases unclear, and this means that the political and administrative conditions for informed discursive democracy and the protection of individuals' *lifeworlds* require regular analyses. The sociological study of Estonian law-making is tied to EU institutions and there are many questions about democracy in the EU and the future of the EU in the globalised world. I argue that the gap between national discursive democracy models and the "cosmopolitan EU" is one of the key problems for smaller EU member states, such as Estonia.

When Estonia joined the EU along with other "post-communist" countries, the Journal of Democracy published a special edition, *Make Sense of the EU*. Plattner (2003) focused on the relations between democracy and culture, concluding that European publics showed relatively little interest in the EU's future course, the EU meant different things to different people, and there was no real European public space: people speak many different languages, and their media, their party systems and their politics are essentially national. In brief, according to Plattner, there is no European *demos*, and hence the EU cannot be a real democracy. On the other hand, EU laws enjoy supremacy over national laws, and their reach extends to individuals; businesses within member states and EU documents regularly invoke democracy (2003: 42, 52).

Habermas (2003) analysed the neoliberalist, nationalist and "third way" arguments regarding the EU's future, and compared three ideological groups: "Eurosceptics", "market Europeans" and "Eurofederalists". Based on the latter group, he constructed a new label: "Cosmopolitan Europe". According to Habermas (2003: 96), "markets, unlike political entities, cannot be democratized" and the "European Union should be developed further into a true federation beyond its current status as a league of states." He believes that only this strategic option would grant the political power to make market-correcting decisions and enforce regulations with redistributive social effects. Habermas argues that it is undisputed that there can be no Europe-wide democratic will-formation and positively coordinated and effective redistributive policies without a Europe-wide solidarity and learning process, where "[d]emocracy itself is a legally mediated form of political integration" that depends "on a political culture shared by all citizens" (2003: 97). Habermas also argued that movement "toward a

global domestic policy without a global state" and "without damaging cultural distinctiveness" is possible (2003: 99).

I observed the *discursive democracy (D) deficit* between the national parliament and civil society in Estonia, and I agree with authors who remain pessimistic about the EU institutions' D-claim (see Figure 4).

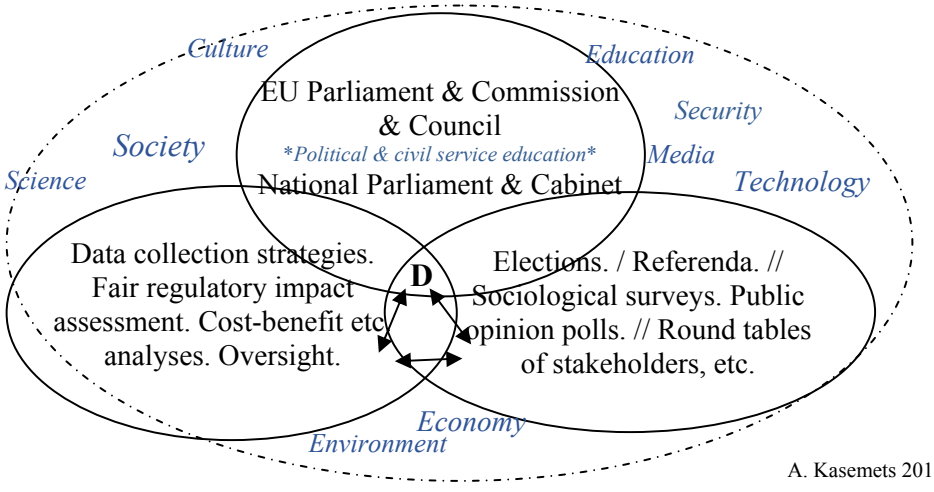


Figure 4. The knowledge-based and informed discursive democracy, "area D".

As a sociologist of law-making in a relatively small EU member state, I have been sceptical about the eurofederalists and cosmopolitan EU concepts, finding more explanatory power in the EU as a polycentric governance regime (for example, Black 2008), but this does not mean that the EU modern regulatory governance approach should not move forward on the basis of common better regulation policies and guidelines (Studies I and V; Kasemets 2001a; COM2015; see also 3.4).

3.2.2. Participation, civic engagement and sociological surveys

Strategic decisions in public sector organisations are often politically charged; studies also find that in difficult decisions which are subject to public scrutiny managers are influenced by a limited set of experts. On the other hand, without the institutional support of business and civic organisations, legislators cannot reproduce public debate or achieve common objectives, because participation is a critical element in establishing the legitimacy and political reliability of knowledge, and in securing the support of key actors in an organisation's environment. The principles of participatory democracy have been translated into major social conventions and institutional reforms but, despite the apparent enthusiasm for participation, this is not as easy to achieve as it might seem (Study I; also Galston 2001; OECD 2001; Kasemets *et al* 2012).

Mutual dependencies, cooperative relationships and responsibility

There are many questions related to mutual dependencies between policy-makers, entrepreneurs and civic actors. Emerson and Nabatchi's (2015) work on collaborative governance regimes stressed the importance of principled engagement and the establishment of formal venues where individuals can deliberate and share knowledge. Also, research on collaborative learning (Gerlak and Heikkila 2011) has stressed that learning is more likely to occur when the institutional and structural features of collaboratives facilitate the ability of leaders and individual members to interact (ct. Anderson and Whitford 2018). Munger (1993) noted in his reconstructive sociology of law framework that when a government's clients can mobilise collectively, bureaucrats may respond by negotiating more cooperative relationships. The tension between the internal pressures of a bureaucracy and the dependency on the external environment may be fruitful terrain for the exercise of "sociological imagination", exploring how public administrators and their clients might benefit from more cooperative relationships based on negotiation, trust, and mutual problem solving. The important issue here is how to transform regulatory relationships from hierarchy to cooperation and shared responsibility (Study I; Munger 1993: 89–90).

The communication channels between parliaments and NGOs are usually not legally "installed". Even if a parliamentary lobby is partly a "black box", different "watch-dogs" can observe the parliamentary law-making in the context of hard political competition (Study IV; Kasemets 2001a: 92)

Sociological and public opinion surveys

Noelle-Neumann (1991) argues that public opinion has existed "in all human societies for thousands of years as a force exerted on governments and individuals, creating and maintaining the consensus necessary for society's functioning." The word "public" has been interpreted in the sense of "public eye", and thus as social control (see also Herbst 2015).

I developed and coordinated the ordering of sociological surveys in the *Riigikogu,* integrating the theories of democracy, sociology of law and parliamentary constitutional functions, to build an additional "bridge" for reflexive public opinion- and will-formation. At the same time, I gave some consideration to the general theory of public opinion research (Study V; Kasemets 2001b). The review article by Manza and Cook (2001) covers many aspects concerning the relations between public opinion theory, law-makers and lay communities. They emphasised two aspects:

> "First, within the broad parameters established by public opinion, politicians and policy entrepreneurs often have substantial room to maneuver policy in detailed ways that are not visible to the public. Second, while public opinion clearly sets important parameters on policy-making, the combination of contradictory public views on many key policy issues and the capacity of political elites to shape or direct citizens' views significantly reduces the independent causal impact of public opinion" (2001: 1).

My Study V covers the central approach of classical public opinion research, arguing that parliamentary committees should respond to the preferences of citizens in public policy and legislative argumentation. According to Manza and Cook (2001), the rise in opinion polling as the dominant method of assessing mass opinion has been subjected to plenty of criticism, but politicians may still perceive it to be in their interests to minimise the distance between their own issue positions and that of the public, focusing on the *median voter*. Surveys are often used strategically to help shape policy proposals or frame policy rhetoric to maximize the "fit" with public opinion. Also, there has been analysis of how policy may be responsive or non-responsive to public opinion, starting with political psychology theories on the "reasoning voter", which show how voters are capable of reasoning through cues and heuristics of various sorts, even in the absence of detailed information (Menza and Cook 2001: 14, 20). Herbst (1998) explores how legislative staffers, political activists and journalists actually evaluate public opinion. She concludes that many political actors reject "the voice of the people" as uninformed, relying instead on interest groups and the media for representations of public opinion (ibid). Despite classical research findings on the long-term rationality of public opinion (Page & Shapiro 1992), public opinion polls are used frequently as manipulative political tools (e.g. Cheminant & Parrish 2010; Druckman & Jacobs 2015). The reasons for manipulation and scepticism are more understandable in the present "post-truth era", where many Western liberal policy institutional carriers are under massive "populist pressure" (Study I; Ilves & Fukuyama 2018).

Study V shows how we designed a balanced decision-making process for the ordering of sociological surveys in the *Riigikogu* involving representatives of coalition and opposition parties and of universities to study policy options, social problems, awareness and preferences of policy target groups, state budget priorities, parliamentary functions etc. The role of parliament is to provide a place for informed political debate and to legitimate laws. I argue that the fulfilment of parliamentary constitutional functions (e.g. passing legislation) requires knowledge from representative sociological surveys today even more than before the rise of glocal social media (Studies I and V; IPU 2016; Figures 1 and 4).

3.3. Institutional theories and legislative institution-building

3.3.1. Institutions, organisations and why-questions

Institutional theories provide a general framework for Studies I, II and III to explain why officials who understand the rule of law or better regulation guidelines may be unwilling to follow them in practice, in other words why some regulatory reforms tend to fail (OECD 2000, 70). According to Meyer and Scott (1983), institutional theory posits that organisational fields "are characterized by the elaboration of rules and requirements to which individual organizations

must conform if they are to receive support and legitimacy." Institutional norms deal with appropriate domains of operation, principles of organising, and criteria of evaluation. That is the reason why different regulatory reforms from across the ideological spectrum focus on developing better institutions and their collective acceptance (Studies I and II; Scott 2001: 85).

According to North:

> "Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence, they structure incentives in human exchange, whether political, social, or economic… From conventions, codes of conduct, and norms of behaviour to statute law, and contracts between individuals, institutions are evolving and, therefore, are continually altering the choices available to us" (North 1990: 3, 6, 20).

As North emphasised, formal rules may change overnight due to political decisions, while informal constraints embodied in customs and traditions are much more impervious to deliberate policies (ibid; Study I).

According to Banakar's methodological sociology of law approach:

> "Institutions are social constructs, which permit and entail concentrated reflexive monitoring of social relations across indefinite time/space distances, thus constituting highly dynamic expert systems of social control" (Banakar 2000: 276).

Scott identifies four types of institutional carriers – *symbolic systems, relational systems*, *routines* and *artefacts* – which operate at different levels of jurisdiction, from the world system to localised interpersonal relationships in ministerial units, businesses, NGOs etc. (Studies I and II; Scott 2001: 44, 77, 85; also Kasemets 2005a, 2006; see Table 1).

Table 1. Levels of institutional analysis (The *catching-up* internalisation of OECD/EU regulatory reforms in Estonian public sector organisations)

Level	**Examples**
World system	OECD and EU: values, norms, conventions, etc.
Societal	Estonia: values, conventions, norms, laws, etc.
Organisational field	The public sector (e.g. Government, Parliament, State Audit, Court, etc.): values, norms, laws etc.
Organisational population	Politicians, civil servants etc.: norms, laws etc.
Organisation	Ministry: .. norms, terms, laws, routines etc.
Organisational subsystems	Units, work groups: norms, laws, routines etc.

W.R.Scott 2001, 85 – adopted by A.Kasemets 2005a, 2006 and 2018.

When may organisations deviate from the modern institutional norms of the rule of law? The central question of Studies I and II is: which obstacles of symbolic and relational authority systems hinder the formation of better regulation routines in the ministries? The literature shows that the implementation of regulatory policy measures depends on the complexity of institutional conditions, e.g.

political and organisational culture, laws, management skills, procedures, guidelines, performance standards, IT, accountability mechanisms, training, oversight, and financial and motivation tools. There are many reasons why the regulatory management system may fail if the political culture is not committed to public service (Study I; Kasemets 2016a; Hodgson 2006; Huising and Silbey 2011). According to Meyer and Scott (1983), organisations can and do deviate from institutional norms, although the stronger the institutional pressures the less frequently deviation occurs. Values and beliefs external to the organisation play a significant role in determining organisational norms, because governments are often motivated to use coercion to ensure their own stability, capability or reputation. However, by the time this occurs, a critical mass of organisations may be reached that provides the new organisational form or routine with sufficient legitimacy to become the new institutional norm for related organisations (ibid; also Zucker 1988; Carpenter and Krause 2011).[5]

As institutional theories have "many faces" (Scott 1987: 493), and the institutionalisation as a process is central to my research, I modified the conceptual figure of the innovation policy related institutionalisation process designed by Tolbert and Zucker (1996: 176–185; see Figure 5).

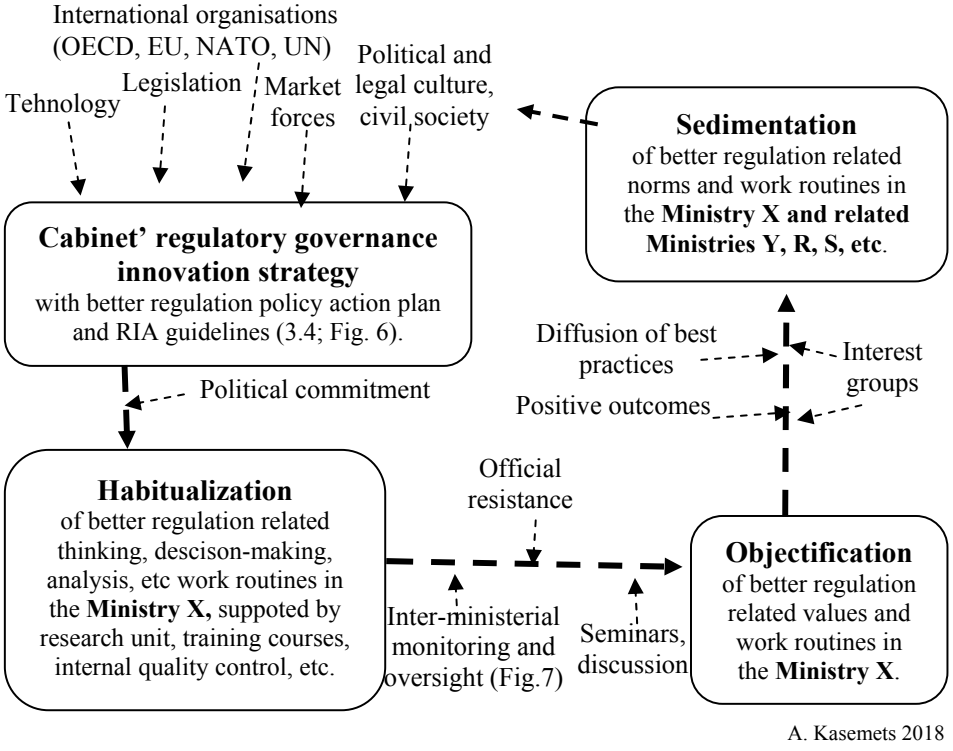


Figure 5: the components of the regulatory policy institutionalisation process

[5] Carpenter and Krause (2011) distinguished four types of reputation: performative reputation, moral reputation, procedural reputation and technical reputation.

3.3.2. Institution building for a knowledge-based legislative policy

In this research, institution building is the process of developing knowledge-based, responsive, effective, inclusive and accountable inter-ministerial legislative institutions and related organisational regulatory management capacities in the ministries, to achieve the goals of the Estonian legislative policy (Studies I–II), and anti-corruption policy (Studies III–IV). The building of modern legislative institutions is based on respect for human rights, effective rule of law and good governance, and effective and accountable organisations. Institution building includes individual, organisational and inter-organisational development dimensions, e.g. officials' professional capacity building (COM2015; UN2017; Fogel and Madhavan 1994; Banakar 2000; Heijden 2013).

Linking institutional theory and the sociology of law

Haarhuis and Niemeijer's study (2009) design involves an interesting mix of institutional theory and sociology of law frameworks:

> "Laws call into being institutions, powers, obligations or financial transactions. This makes them different from other forms of policy…. Laws also fulfill a symbolic function, which is related to the political process through which they enter into effect, involving the government as well as parliament…" (2009: 404–406).

In this context, better regulation measures (e.g. impact assessment) are complementary preconditions in complex institution building. Analysing the explanations of OECD reports to determine why regulatory reforms tended to fail/succeed, I compiled for civil servants' eLearning a list of institutional preconditions (Kasemets ed 2011; see Figure 6).

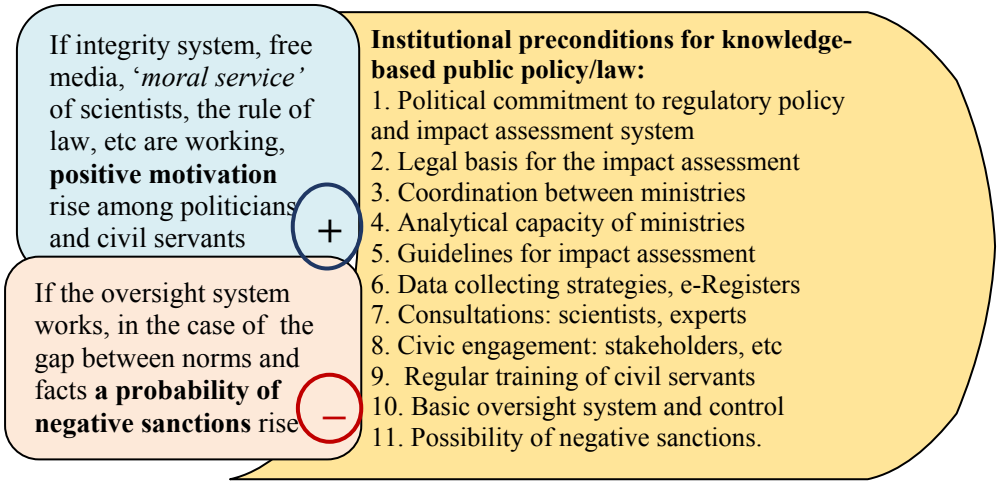


Figure 6: by author (ed 2011, 2016a) on the basis of OECD recommendations 1995–2000 and the control of corruption model (Mungiu-Pippidi 2012).

Studies I and II have used the explanatory 'power' of institutional theory, especially the concept of institutional routines, which has been an intensive field of private sector organisational studies (e.g. Salvato and Rerup 2011; Feldman 2016). In this research, the implementation of interministerial legislative policy regulations and routines (e.g. oversight) have been analysed as a resource to achieve the policy goals (Study I).

Behavioural approach to regulatory management oversight

In the field of regulatory governance, better regulation and impact assessment measures, there are many studies which emphasise the specific role of complementary oversight activities in policy design, implementation and evaluation stages, to support conditions in which the systematic use of regulatory impact assessment and civic engagement methods is designed as a useful policy-making option (Study I; OECD 1997, 2012). As Dunlop and Radaelli (2016) emphasised, a good behavioural impact assessment system should have an implementation plan in which all practical issues are explained, including further complementary oversight options and the chance of sanctions (Figure 7).

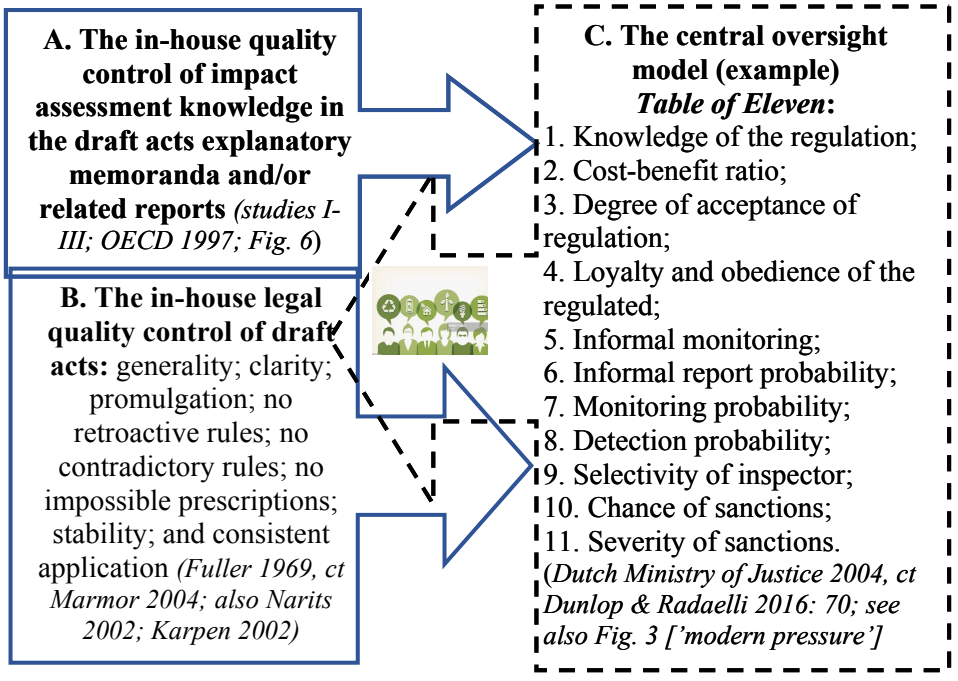


Figure 7: The quality control tools of draft acts and the behavioural approach of oversight. Compiled by the author (2018).

The data on the Estonian regulatory governance oversight system are controversial, from international recognition (OECD 2009; Staranova 2015) to insider criticism in different Estonian ministries (Study I; Kasemets 2016a). I argue that the social control, in terms of political, administrative, academic and civic control, over the professionalisation of ministerial officials should increase to support the institutionalisation of better regulation norms and routines (see Figures 5, 6, 7 and 10).

3.4. Regulatory governance, better regulation and impact assessment

According to the OECD glossary, **regulatory governance** reflects the emergence of de-centred and mutually adaptive regulatory policy regimes. The term captures the tendency of policy regimes to deal with complexity through delegated systems of rules. This is likely to appear in arenas and nations which are more complex, more global, more contested and more liberally democratic. This implies an integrated approach to the deployment of regulatory institutions, tools and processes (OECD 2008). It is related to the **regulative regime**, which "encompasses the norms, the mechanisms of decision-making, and the network of actors that are involved in regulation" (Levi-Four 2011: 13). In addition, **regulatory policy** is the systematic cycle of government-wide policies regarding how governments use their regulatory powers to integrate policy agendas into administrative procedures and to change the cultures of regulators so that outcome-oriented approaches are favoured in policy design (see Figure 9). **Regulatory reform** refers to changes that improve regulatory quality: enhance the performance, cost-effectiveness or legal quality of regulations (OECD 1997, 2008; see also Levi-Faur 2011: 9).

3.4.1. Good governance and better regulation in the European Union

Good governance and the institutionalisation of better regulation

The institutional preconditions for better regulation (BR) measures, e.g. the use of regulatory impact assessment (RIA) and civic engagement methods, start with political will. In the White Paper on European Governance (2001), the EU countries confirmed five principles of good governance: *openness, participation, accountability, effectiveness and coherence.* However, as Schmitter stated (2003): "It is first and foremost a question of political will." The OECD and EU initiatives on good governance and better regulation started in the 1980s: Estonia joined the third wave of those reforms and had an opportunity to learn from the other countries' experience about the plurality of governance concepts and that a one-size-fits-all approach does not exist (for example, Treib, Bähr and Falkner 2007; Andrews 2010). Kersbergen and Waarden (2004) described

"governance" as a bridge between disciplines to analyse and explain the shifts in the problems of governability, accountability and legitimacy. As they stated (2004: 143):

> "In order to get a thorough understanding of 'shifts in governance', political science needs, and is also likely to adopt, a much stronger multidisciplinary orientation embracing politics, law, administration, economics and business administration, as well as sociology, geography, and history... The term governance has different meanings."

Table 2 provides a simplified visual concept of good governance.

Table 2: Good public policy, legislation and public administration (governance)

Quality of **policy-making** (e.g. regulatory impact assessment: RIA)	Quality of **legislation** (better regulation principles are followed)	Quality of **implementation** (good public administration)
A clear description of strategic objectives (desired impacts)	The legislative process is transparent (e.g. RIA information)	Ensuring a customer-centri approach (focus: expectations, needs, etc)
A honest evaluation of problems and analysis of regulatory impacts (*ex-post* and *ex-ante*)	The offered legal, educational, financial, administrative, etc actions are optimal.	Indicators for the measurement of a legal act service quality; data collection and ex-post RIA, etc.
A clear measurable impacts description for those affected by the policy (to ensure voters' / stakeholders' support).	Minimum expenditure (of the State & Local Authorities) for citizens and businesses.	Educated, motivated and trained staff. Readiness for the implementation of publi policies, laws and services.

SOCIETY, BUSINESSES & MARKET

Kasemets (ed. 2011, updated 2018). The main sources of the idea were Brinkmann (2008), Habermas (1996) and Estonian officials in better regulation courses 2009-2011.

Knowledge-based and transparent approaches in EU governance

Despite a *democratic deficit* and other difficulties, the EU institutions and national political institutions co-function quite well in practice. The integrated multilevel democracy model and regulatory governance-related scientific data collection strategies (e.g. Eurostat and European Commission impact assessment guidelines), in combination with multiple civic engagement and lobbying platforms, communication strategies, impact assessment reports etc., can compensate to some extent for the *democratic deficit* in EU institutions (Study I). Also, at the EU level, the Eurobarometer surveys function as a "communicative bridge" between EU institutions of power/law and the silent majority of EU member state populations. The Mandelkern Group Report (2001) was the first EU common initiative to specify the core principles and main areas of

better regulation (Studies I and II). Today, the applied better regulation concept has been adopted by the European Commission to harmonise and simplify the "production of laws", as well as to support the implementation and evaluation of laws in the EU area. In EU institutions, impact assessment is a major part of the better regulation policy, including the use of scientific knowledge, openness and inclusion of stakeholders. The European Commission's recent agenda "Better regulation for better results" (2015) is more detailed and "covers the whole policy cycle". The Commission commits to taking

> "political responsibility for applying better regulation principles and processes in its work and calls on the other EU institutions and the Member States to do likewise" (Study I**;** COM(2015)215).

All significant impacts should be analysed and considered alongside each other, together with fundamental rights. Also, "an improved explanatory memorandum will accompany each Commission proposal" (ibid). The implementation of EU better regulation principles varies greatly in many Western EU member states with long democratic histories, as well as in post-Soviet countries, such as Estonia. The regulations and practices associated with the use of impact assessment in law-making vary considerably between EU countries as the content and socio-economic objectives of laws remain closely related to problems to be solved through policy-/law-making in the particular context of each country (Study I; also Radaelli 2010; Wegrich 2011; Regonini 2017).

There have been many critical analyses of the EU and national better regulation (BR) programmes and related theories. For example, Christensen and Laegreid (2011) described the BR approach as "the new regulatory orthodoxy". Tala (2010) found that many BR programmes had achieved some progress in improving the quality of legislation, but "the results do not altogether correspond with the high political ambitions set up by politicians and many stakeholders" (2010: 197). He identified significant problems in theoretical design and forms of legitimisation. For example, elected politicians, as formal law-makers, are usually left out of ministerial BR activities. As Tala (2010: 203) stated: "The borderline between law drafters and policy planners on the one hand and the political decision makers, responsible principally to their electors on the other, is sharply maintained."

Tala added an *institutional realist model,* which corresponds better with the realities of law-making procedures and various actors with diverse interests and capacities (ibid: 197, 207; also Tala and Pakarinen 2010).

According to Radaelli (2010), the system of BR mainly plays two roles in the OECD countries: political control over bureaucracy and minimisation of uncertainty. I found that in Estonia political parties need some scientific assistance to fulfil those two roles (Studies I and IV).

3.4.2. Political economy, regulatory impact assessment and evidence

Radaelli argues (2010) that, among the elements of better regulation, regulatory impact analysis/assessment (RIA) is the most important. RIA has several useful properties for political principals and provides evidence of how RIA works as a control tool within the rule-formulation process and performs its "fire-alarm" function (Study I). RIA as a core-element of knowledge-based policy- and law-making can be defined as

> "the systematic process of identification and quantification of economic, social and environmental impacts likely to flow from the adoption of a proposed regulation or a non-regulatory policy option under consideration. May be based on cost-benefit analysis, cost-effectiveness analysis, risk analysis, etc" (OECD Sigma 2004).

The recent definition by Naundorf and Radaelli (2017: 189) differs a bit:

> "RIA is a systematic, comparative appraisal of how proposed primary and/or secondary legislation might affect stakeholders, society, economic sectors and the environment. In its ex post version, RIA is an appraisal of how existing rules have affected stakeholders, society, the economy and the environment."

In brief, RIA should be related to the whole policy cycle (Figure 9).

RIA meets four classic criteria for good policy-making: 1) improve the understanding of benefits and costs of government action, 2) integrate multiple policy objectives (e.g. economic, social and environmental changes), 3) improve transparency and consultation, and 4) improve government accountability (Study II; OECD 1997; Ben-Gera 1999).

Radaelli (2010) has explored the question "why would a rational politician design and use RIA?", investigating different theoretical explanations. According to Radaelli, the RIA approach is "a late manifestation of economic paradigms and public management doctrines, testifying to the continuing faith in rational policy analysis", or "an expression of hypermodernist ideas and audit explosions" (2010: 92). He suggests that political actors design RIA to exercise political control over bureaucracy, policy processes and structural choices (Radaelli 2010: 89).

Levi-Four (2011) reached a similar conclusion: the two main challenges of regulatory governance are effectiveness and democratic legitimacy. He analysed the weaknesses of regulations and found five major strategies of response to these weaknesses. The fifth strategy, "to institutionalise regulatory impact analysis and cost-benefit techniques" (Radaelli and Di Francesco 2007, etc., ct Levi-Four 2011: 14), is what the European Commission and many EU member states, including Estonia, are developing as their main strategy (Study I; see also Staroňová 2010).

Estonia joined the third wave of advanced OECD countries' regulatory reforms (Studies I–II), and I argue, that is one reason why the results of many academic articles on the implementation of BR and RIA concepts in the "Western world" are not yet applicable/useful in Estonia. In other words, despite the universal nature of political institutions, the actual problems of regulatory policy are frequently different in the "advanced first-wave countries" and the "transitional third-wave countries".

In addition to OECD countries RIA approaches, there are also evidence-based study approaches. Evidence is defined as the "results of systematic investigation toward increasing the sum of knowledge" (Oakley *et al* 2005) or as Haskins (2018: 8) put it: "... facts or other information that help us to determine whether something is true or false. When applied to programs designed to increase human well-being, evidence allows us to decide whether the program produces its intended impacts."

According to Boaz *et al* (2008), there is a growing interest in evaluating the impact of research to understand how policy-making is evolving and the extent to which policy is directed by research. There are many factors motivating organisations to consider research impact, e.g. accountability, performance and the promotion of organisational achievements, and learning and moderating between competing stakeholders (ibid). Haskins (2018) focused on three factors behind the rise of the evidence-based movement in the U.S.: a) the social sciences have advanced sufficiently to be able to provide evidence that is useful for policy formulation, b) state and local governments have accumulated a critical mass of evidence-based programmes, and c) more and more policy-makers are convinced that they can use evidence to develop and provide political support for policies that work. Howlett (2010) has shown that evidence-based policy represents an effort to reform policy processes in order to prioritize evidentiary data-based decision-making. Its aim is to minimise policy failures caused by a mismatch between government expectations and actual on-the-ground conditions. However, recent studies show that even in advanced countries the level of policy analysis capacity is low (Lianos *et al* 2016). This is a reason why I emphasise the stimulating role of EU common better regulation policy (Study I; also 5.2.1; Chap. 6).

3.5. Risk society, internal security and social control of corruption

3.5.1. Better regulation: linking risk society, internal security policy, the rules of law-making and leadership

I argue that the concept of better regulation with regulatory impact assessment measures is providing some instrumental solutions for the rationalisation, democratisation and legitimisation problems of legislative policy (Study I), internal security policy (Study II) and anti-corruption policy (Studies III and

IV). Radaelli's metaphor (2010) that better regulation works as a "fire alarm" for political governance fits well here. In practice, this "fire alarm" is quite variously interpreted in different countries and ministries (Study I; Staranova, Kovazcy and Kasemets 2006). The role of political leadership requires special attention and reflexive studies, because the missing information, political discretion and uncertainty regarding "man-made" regulatory risks are linked in the risk society context. According to Beck, the distribution of "man-made" risks is the result of knowledge, rather than wealth. Whilst the wealthy person may have access to resources that enable him or her to avert risk, this would not be an option were the person unaware that the risk even existed (Beck 1992: 8–9, 23).

Beck defined a risk society as "a systematic way of dealing with hazards and insecurities induced and introduced by modernisation itself" (Beck 1992: 21), and observed how Western societies with critical social scientists are experiencing a transition to a "global risk society", where "more and more social conflicts are no longer treated as problems of social order but as problems of risk" (ibid; Studies II and V; also Wimmer and Quandt 2007; Beck 2009). In addition, there are many critical assessments of Beck's sociology of risk dealing with the social construction of risk, uncertainty (e.g. in social relations), "reflexive modernisation", links between risk and reflexivity, modernity and postmodernisation etc. (e.g. Zinn 2009). Among others, the notions "modernity" and "uncertainity of social relations" need more attention in this research. First, the interpretations of "modernity" differ in sociological theories, and in legal sciences (Beck 1992: 50). The latest – modernity in law – focuses more on the rule of law and universal human rights issues (for example, Goodrich 1986). The second notion, "uncertainity of social relations" reminds me of Hillyard's argumentation that sociological studies need to focus more on the materiality of everyday life and, in particular, the growing inequalities in the world, and the role that law and legal institutions play in the structuring of these inequalities: scholars have to stand against the unfair and unjust distribution of resources (Hillyard 2001). In the framework of Studies I–III and V, the knowledge of social problems and policy impacts on social relations has to be made public before parliamentary debates. In other words, the need for reflexivity in the context of glocal risk society may remind us of the Weberian and Habarmasian discourses on political education in order to be responsible participants in policy-making and to understand both theoretical and empirical models, because the cost of regulatory failure in the field of social, environmental, economic, security or administrative experiments can be too high (Studies I and II).

Among other constitutional functions and tasks, the parliament as a representative body of citizens has to understand, in the risk society context, whether people are aware of probable socio-economic, financial, environmental, security etc. risks, and has to determine if people are ready for political reforms and changes in their *lifeworlds* (Figure 1). Even more important is that the initiation of regulatory changes in the national legal system (where institutional, technological and legal aspects are integrated) does not lead to new social, economic,

technological, environmental or security problems/risks. In this mixed glocal risk society and modern regulatory governance context, I agree with authors who emphasise the responsibility of sociologists and sociological studies (Studies I, II and V). In the Scandinavian tradition, one of the most important tasks of sociology has been to strengthen and defend modern rationality in public discourses, e.g. in policy- and law-making (Kalleberg 2000). At the same time, some critical studies show that the role of the sociologist has been marginalised in risk assessment studies (e.g. Wendling 2012). Based on Estonian observations, I think that this is due to the lack of complex multidisciplinary risk society studies, the disciplinary separation of specialist languages, and the disguised competition between natural, technological and social sciences. This kind of separation and weak reflexivity may create new risks in public communicative actions and regulatory management (Studies I and II).

In the OECD risk and regulation framework:

> "Regulation is often developed as a measure to respond to a perceived risk. In such cases, the design of regulatory solutions should be based on an assessment of the risk that they are designed to address... Risk assessment, risk management and risk communication are part of a cycle of responsive regulation" (OECD 2012: 12).

In the empirical Studies I and II, the results of risk assessment fall into the security impact assessment category, and in Studies III and IV the prevention of corruption risks is analysed in the framework of internal security and anti-corruption policies. I have found that the notion of risk means very different things in public policies, the concepts of regulatory impact assessment and risk assessment are not integrated, and there is a need for an applied theoretical concept of regulatory risk assessment, because "controlling risks is a concern central to any regulation" (Pesendorfer 2011), and there are many institutional origins of risks (Rothstein, Borraz and Huber 2013). I think that, in the context of regulatory impact assessment practices, the main information categories of impact assessment (e.g. social, economic, environmental and security) should include relevant sub-categories of risk assessment.

Interdependence of internal security, legal and criminal policies

The implementation of better regulation measures in the internal security policy cycle has received little attention in academic literature. The analysis of better regulation and internal security policy concepts has revealed the complexity and structural variability of both concepts, indicating communicative, regulatory and operational risks (Study II).

The internal security policy area is traditionally referred to the territorial state and its geographic border beyond which "inner" should become "outer", and where security is traditionally one-dimensional, military security. On the other hand, the notion of "security" has become increasingly diversified in the sense of both the overall security that the state offers to society and the feelings

of personal safety of citizens, including such diverse issues as economic security, the prevention of all forms of crime and violence and social security (Study II; Brenninkmeijer 2001: 42; also Zadner 2003; Brauch 2008). That seems to be the main reason why the EU Internal Security Strategy (CoEU 2010) gives this overall definition: "EU internal security means protecting people and the values of freedom and democracy, so that everyone can enjoy their daily lives without fear." The EU emphasises the "wide approach" (ibid):

> "The concept of internal security must be understood as a wide and comprehensive concept which straddles multiple sectors in order to address these major threats and others which have a direct impact on the lives, safety, and well-being of citizens, including natural and man-made disasters, such as forest fires, earthquakes, floods and storms."

In today's Europe the dangers to people's life and health are considered to be terrorism, organised crime, drug trafficking, cyber-crime, human trafficking, sexual exploitation of minors, child pornography, economic crime, corruption, trafficking in arms and cross-border crime (CoEU 2010). Overall, "internal" and "external" seem to have merged.

The research question of Study II was related to the selective application of better regulation measures in internal security policy cycle design. One function of better regulation programmes and quality standards for legislation, based on the positivist legisprudence approach, could be that following them increases the legitimacy, applicability and acceptance of proposed internal security rules. These, in turn, are the preconditions for a state based on the rule of law. The legitimacy of rules is especially critical in the "borderline area" of legal policy, internal security policy and criminal policy, because here the rules directly constrain the constitutional rights of people (Study II; Bigo *et al* 2008). The minimisation of uncertainty and related legitimate expectations are central in the aforementioned three policy areas. Therefore, if a gap exists between the modern rule of law principles and the actual internal security policy cycle, it indicates general problems of regulatory governance. In this research, better regulation key measures are seen as the quality management instruments for effective and legitimate internal security policy design (Studies I–IV; see also Table 2 and Figure 9).

3.5.2. Social control and the control of corruption equilibrium model

The sociological theory of social control offers some explanatory keys for the interpretation of my Studies I–IV. According to Janowitz (1975):

> "in the emergence of sociology as an intellectual discipline, the idea of social control was a central concept for analysing social organisation (order) and the development of industrial society. In the most fundamental terms, social control referred to the capacity of a society to regulate itself according to desired principles and values" (1975: 189).

Parsons argued in his social system theory framework that "the theory of social control is the obverse of the theory of the genesis of deviant behaviour tendencies" (1951: 201), where the processes of socialisation and of social control are closely related, and the preventive aspects of social control "consist in a sense of processes which teach the actor not to embark on processes of deviance" (ibid). Parsons emphasised:

> "Many of the most fundamental elements of social control are built into the role structure of the social system.… The central phenomena are to be found in the institutional integration of motivation and the reciprocal reinforcement of the attitudes and actions of the different individual actors involved in an institutionalized social structure" (1951: 202).

In my research, the tensions between modern governance norms and particularistic social facts in legislative institutions or the control of corruption framework are to some extent related to the social (e.g. political, administrative and academic) control mechanism among ministerial civil servants and policy advisers (Studies I–III).

The theoretical framework of Study III is based on the *control of corruption equilibrium model* developed by Mungiu-Pippidi (2012). It is the first pilot study to explain the drivers of Estonian post-Soviet governance changes according to this model. The question is how the Estonian political elite and society achieved this relatively advanced social control of corruption in less than 20 years. The other countries in the upper third of the global good governance, control of corruption, free media etc. rankings reached their positions over longer periods.[6]

According to the prevalent definition used by Transparency International, "corruption is the abuse of entrusted power for private gain" (TI 2017). As is widely recognised, corruption is probably as old as government itself. Like a cancer, corruption "eats into the cultural, political and economic fabric of society, and destroys the functioning of vital organs" (Amundsen 1999). Wolfensohn, the president of the World Bank (WB), called for a global fight against corruption, arguing that corruption is among the greatest obstacles to socio-economic development, and that it is "distorting the rule of law and weakening the institutional foundation on which economic growth depends" (Study III; WB 1996, 2016).

Mungiu-Pippidi's (2012:xiii) complementary approach differs somewhat:

> "Corruption is a deviation from an otherwise established norm of ethical universalism, where every citizen is treated equally by the state and all public resources are distributed impartially. In fact, outside the developed world, the norm is not ethical universalism, since the process of modernization leading to an impersonal state autonomous from private interest was never completed in

[6] Study III was a part of the EU 7FP research project "Anticorruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption" (ANTICORRP).

> most countries... Particularism exists by default, since most human societies have limited resources to share, and people tend to share them in a particular way, most notably with their closest kin... Modern states are based on universal citizenship, which entails fair treatment of every citizen by the government. But there are very few states that have thus far succeeded in moving from the natural state to this ideal of modernity."

Forms of political and administrative corruption vary, from bribery to influence trading. The control of corruption index is an aggregation of various indicators that measure the extent to which public power is exercised for private gain, including both grand and petty forms of corruption, as well as the "capture" of the state by elites and private interests (Study III; Kaufmann *et al* 2010; Mungiu-Pipidi et al 2011).

Starting with Max Weber's (1921–22) approach to historical sociology and his study of bureaucracy, and Talcott Parsons' (1951) theories of social system and social control, Mungiu-Pippidi (2012) argues:

> "Social corruption needs to be conceptualized as a governance regime. If we consider governance as the set of formal and informal rules determining who gets what in a given polity, a governance regime is any stable configuration of governance rules, norms and practices. Control of corruption is the outcome of a governance regime based on ethical universalism, with the state ruling impartially and impersonally in favour of public interest" (see Box 1).

Box 1: Control of corruption in the equilibrium model

The equilibrium concept includes many of the factors already tested, e.g.:
Resources:
Discretionary power resources (due not only to monopoly, but also to privileged access under power arrangements other than monopoly or oligopoly, for example Weber's status groups, Mancur Olson's negative social capital networks, North, Wallis and Weingast's social orders, cartels etc.).
Material resources (state assets and discretionary budget spending, foreign aid, natural resources, public sector employment, and any other resources which can be turned into spoils or generate rents).
Constraints:
Legal: This supposes a democratic parliament/cabinet, a knowledge-based draft legislation and an autonomous, accountable and effective judiciary, and law enforcement able to enforce legislation.
Normative: This implies that existing societal norms endorse ethical universalism and monitor, permanently and effectively, the deviation from this norm (through public opinion, media, civil society and critical citizens). For an effective sanction, we need citizens capable of collective action.
The model can be summarized in the formula: *Corruption/control of corruption = Resources (Power discretion + Material resources) – Constraints (Legal + Normative).*

Source: Mungiu-Pippidi (et al 2011, 2012) – adopted by A.Kasemets 2012 and 2016b.

Mungiu-Pippidi (2017) elaborated on the link with the rule of law:

> "Control of corruption and rule of law overlap within a complex equilibrium that includes a government subject to law, equality of citizens before the law, respect for individual rights, equal and fair distribution of public resources and corresponding social norms, such as respect for rules and widespread observation of the ethical universalism norm" (Mungiu-Pippidi 2017: 4; also 3.1.2).

In addition, based on Parsons, Mungiu-Pippidi defined *particularism* as "a deviation from the ethical universalism norm of social allocations (as defined by law, rules and modern principles of administrative impersonality, impartiality and equality, as well as by market relations) resulting in private benefit not warranted by merit" (2017: 5).

I found in Study III that the social control of corruption equilibrium model clearly explains the "drivers" of Estonian change from a totalitarian post-Soviet [corrupt] governance regime to a [less corrupt] open access governance regime,[7] integrating historical sociology and institutional theory with legal and economic explanations dominant in international organisations (Study III; also 5.2.2).

3.6. The shift towards knowledge-based policy- and law-making

3.6.1. The production and use of multidisciplinary knowledge

The extent and reasons for the selective use of multidisciplinary social science knowledge in the ministerial law-making process is a central research problem of Studies I and II. Due to the complexity of political knowledge in parliamentary interactions, and the multidisciplinary nature of regulatory impact assessment (see 3.4), I have become interested in review literature on inter-, trans- and multidisciplinary studies. I agree with Moran (2002) and Vick's (2004) argument that the foundational methods of science have evolved primarily through specialisation, and for interdisciplinary analysis we need disciplinary data. On the other hand, highly complex public policy cases require more solution-oriented interdisciplinary research, because social, economic, security etc. problems usually fall between the disciplinary categories (Study I).

Pohoryles and Schadauer's (2009) ambitious article on the future of the social sciences and humanities aims to contribute to the literature on the sociology of social sciences and knowledge, emphasising the role of interdisciplinary studies in the new knowledge economy, in society and in evidence-based policy. As they emphasised (2009: 147):

[7] According to Mungiu-Pippidi (2011), the distinct types of governance regimes are: a) the open access or ethical universalism regime, and b) the closed access regime, divided into neo-patrimonial and competitive particularistic.

> "In complex societies, it is evident that single disciplines cannot provide solutions for problems on their own. The collaboration between all types of knowledge producers is important and necessary. 'Useful' research combines knowledge from different disciplines. Hence, interdisciplinary research plays a key role in the acceptance of the new mode of knowledge production, which is expected to better address policy concerns and social demands" (ibid, also van Langenhove 2007).

Pohoryles and Schadauer argue that a new paradigm seems to have entered the debate on the role of science, and the relationship between science and society. The key to the future is to overcome the current "mismatch" between the modes of scientific knowledge creation, the attitudes of the scientific knowledge providers and the perception of knowledge stakeholders. "Applied social science" refers to knowledge production that is supposed to be "useful" (2009: 148).

Looking at academic literature from the law-making and policy-learning perspectives, I found a lot of multidisciplinary methodologies and the extensive marketing of "new" scientific concepts in the context of project-based "academic capitalism". Also, international comparative studies frequently show significant variability in data, which is often related to the variability in institutional contexts (Studies I–III). Overall, the search for "useful knowledge" is like "panning for gold in a river".

Knowledge as the capacity to act

In the parliamentary and ministerial research units, it is a well-known methodological/communicative problem that most academic social science knowledge is not directly applicable in the explanatory memoranda of draft acts, or in ministerial or parliamentary decision-making (Robinson & Wellborne 1991; Kasemets 1999a, 2001a).

Radaelli (1995) explores the questions of when and how knowledge (as data, ideas or arguments) matters in the interactive policy process, arguing that "the institutionalisation of ideas is the main factor at work when we move from the micro to the macro level," and the "co-operative nature of politics" should be emphasised (1995: 178; also Radaelli and Meuwese 2009).

Stehr (2003) defines knowledge as the "capacity to act" in the sense of Max Weber's social action. He insists on the difference between "knowledge" and "information". Information from separate disciplines is raw material and does not allow for social actions *per se*, i.e. knowledge-based decisions. Stehr distinguishes between two concepts of knowledge: "capacity building" and "instrumental knowledge", with the latter understood as both academic knowledge production and its application by "experts" (Stehr 2003, 2004; ct Pohoryles and Schadauer 2009; also Stehr 2008).

This knowledge definition leads me to a deductive conclusion: depending on the context and aims, multidisciplinary knowledge of "social, economic, environmental, legal, political etc. interdependencies" can be designed and used in communicative actions, such as educational knowledge (teachers), political know-

ledge (politicians and policy advisers), legal knowledge (lawyers and police), public administration knowledge (civil servants) etc. I see the production of useful knowledge for the explanatory memoranda of draft acts mainly as a pre-condition for knowledge-based law-making and effective public administration.

Anderson and Whitford's (2018) article presents many studies on "knowledge in the context of complexity" and the factors influencing policymakers' use of university research, such as perceived relevance and importance, knowledge acquisition efforts, levels of administration, greater trust, technology transfer and the applicability effect of positive knowledge-sharing activities and effectiveness (Study I; also Richards and Duxbury 2014). As Anderson and Whitford (2018) put it:

> "Applicability increases knowledge acquisition. Management matters as managers can facilitate the connecting and transferral of knowledge. Another important predictor is the contextual information (e.g., organizational strategies and intended goals) that helps public employees better understand the relevance and importance of external knowledge and encourages knowledge acquisition activities."

Pohoryles and Schadauer (2009) argue that the development of the knowledge society, knowledge-based economy and evidence-based policies have made it obvious that the dichotomy between basic and applied social sciences is becoming superfluous. Similarly, according to Weible and Cairney (2018), "the challenge today is not whether policy theories should make their work relevant but how it should be done." They also emphasise that there is a growing body of literature on the role of "co-production" or "engaged scholarship", in which academics work with policy actors to produce new policy/knowledge (ibid). In the context of my legislative studies, the final part of Weible and Cairney's (2018) review is for this research fairly problematic:

> "few theories provide directly applicable normative advice on matters such as accountability. If the policy process is as complex and dynamic as we suggest, containing many different policy actors in many venues at many levels of government, and responding to events and policy conditions often outside of their control, it seems unrealistic to expect policy actors at the 'centre' to control all policy outputs (many actors make and deliver policy), and even more unrealistic for them to determine the effect of those outputs on policy outcomes."

I argue that to maintain a sense of responsibility and accountability among politicians and officials in the law-making processes we need transparent decision-making procedures with regulatory impact assessment, civic engagement and an oversight system, as well as some output, performance and impact indicators with relevant data collection strategies (for example, Jacobzone *et al* 2007; OECD 2011e). The modermist-rationalist approach to public policy- and law-making is driven by scientific advice. As Sanderson summed it up nicely:

> "although the rationalist assumptions of evidence-based policy-making have been subject to severe challenges from constructivist to post-modernist perspectives... the attempt to ground policy-making in more reliable knowledge of 'what works' retains its relevance and importance… [I]ts importance is enhanced by the need for effective governance of complex social systems and the 'reflexive social learning' informed by policy and programme evaluation constitutes the increasingly important basis for 'interactive governance'"(2002: 2).

I have analysed the roles of parliamentary research services "in the political and social interactions" on the national level (Kasemets 1999a), but this analysis is no longer useable because of intergovernmental (EU, OECD) complexity. Also, thinking about the rising uncertainty in OECD and EU level interactions, and the contradiction between regulatory policy recommendations and some recent economic policy deals, I tend to agree with the above-mentioned ideas of Weible and Cairney (2018).

3.6.2. Policy cycle, policy learning and professionalisation as a challenge to knowledge-based law-making

In this last sub-point of the theory chapter, I will focus on the four issues which are significant for long-term institutional problem-solving leading to an increase in modern policy- and law-making capacity.

First, based on the results of my empirical Studies I and II, I am looking for forms of professionalisation and capacity-building in public policy- and law-making. Secondly, the connections between the policy cycle, multidisciplinary impact assessment, civic engagement and the transparency of policy debate need more attention. Thirdly, the conditions for policy learning, and fourthly, both academic education and a governmental training system are vital to increase professional multidisciplinary socio-legal research and teamwork competencies.

Professionalisation and capacity building

Banakar (2000) refers in his sociology of law methodology to the vital links between the self-monitoring role of institutions, professionalisation as a strategy, and the importance of knowledgeability for the agency, e.g.:

> "'Profession' is used here to highlight the institutionalization of the way expertise, which underpins occupational practices, is created, applied, and controlled" (2000: 276).

According to Stehr (2003), professional "capacity building" is a distinct concept of knowledge, a problem-oriented approach based on inter- and transdisciplinary thinking: "The knowledge created and provided is not necessarily merely scientific, but might include local, cultural and tacit existing knowledge as well" (ibid, ct Pohoryles and Schadauer 2009). In most EU documents,

scientific evidence is central in knowledge-based policy arguments (for example, European Commission 2007) and this also means that civil servants in all EU countries could be professionals in scientific knowledge use. The key challenge is how to improve the effectiveness of the "knowledge continuum" cycle, which involves interactions between three communities (researchers, policy-makers and practitioners) and three dimensions of knowledge-based policy practice (knowledge creation, application and mediation). The relationship and inter-dependence between these communities and dimensions is non-linear (ibid; on the policy cycle see Zamparutti *et al* 2012, and Figure 9).

According to my theoretical and empirical analyses (Studies I–V), the professional knowledge and skills of officials dealing with policy design and law-making in the ministries should include the abilities: a) to strategically analyse institutional preconditions for knowledge-based policy-/law-making, e.g. risks (Figure 6), b) to analyse the policy cycle as a whole (Figure 9), c) to use the RIA "toolbox" (3.4.2) to plan and provide balanced social, economic, environmental, security etc. *ex ante* and/or *ex post* impact assessment of national and/or EU level regulatory policies, and d) due to complexity and multidisciplinarity "problems" of policy analysis, teamwork capacities are essential.

Policy learning

Weible and Cairney's (2018) review article on actual policy theories includes lessons of policy learning, starting with practical messages by Dunlop and Radaelli (2018): "Learning is often the by-product of bargaining and the effort to secure compliance with the law, rather than the intended product of research to improve public policy" (ct Weible and Cairney 2018: 183; also Radaelli 1995: 170).

Anderson and Whitford (2018) have shown the interdependence of knowledge acquisition, policy learning and organisational success, where the role of middle managers is seen as being culture setters and liaisons between management, front-line staff and target groups. Research related to policy learning can be found in the areas of evidence-based policy, collaborative governance, governance networks, information use and performance management (ibid; also Gerlak and Heikkila 2011).

I found in my civil servant surveys that the awareness of managers regarding the usefulness of better regulation measures is quite limited, and this means that the quality of impact assessment-related task setting of those managers is questionable. In combination with the absence of *ex post* impact assessment programmes, the conditions for knowledge-based policy learning are not met (Studies I–II; also Kasemets and Oppi 2013).

Academic education and training systems for law-makers

The literature on law-makers' education has been historically focused on the legal profession. It is usually rooted in the works of Max Weber, a legal-rational

type of bureaucracy, and considers political education necessary for the consolidation of limited parliamentary democracy (Study I; Serge 2011). In the Nordic context, Aubert's ideas on the sociology of law, the legal profession and academic education (1989: 331–33) still seem influential. As Kalleberg (2000) summed it up:

> "One reason for the breadth of Aubert's contribution is that law and legal institutions regulate the whole of society, and have to be understood in their interplay with the informal norms in society.... His discussion of the legal profession can be located in science studies, as 'members of a variety of professions are trained in the same institution, the University'" (Aubert 1989; ct Kalleberg 2000).

The handbook article by Almeida and Moll (2017) on the legislative training systems in Europe reflects the evolution of educational concepts, starting with "traditional legislative quality" without any links to better regulation. On the other hand, they precisely summarised a challenge which has also been crucial in Estonia:

> "The traditional methodology, the science of law, was focused on the interpretation and application of law, not on the production of law. In fact, the 'genetic moments of law' were excluded from jurists' education. In order to understand the current professional production of law, we must take into consideration developments in legisprudence. We can say that this leads to the professionalism of law production" (Almeida and Moll 2017: 257–258; also Merusk *et al* 1999).

In addition, Almeida and Moll emphasised the conventional idea that "parliaments should also be involved in legislative training programmes, to achieve legislative quality" (2017: 261), and then introduced an interesting study on better regulation training programmes created by Radaelli (in Italian, 2009b). In brief, according to Radaelli, the "bottom-up approach" of training programmes is considered more realistic because it is not possible to address better regulation measures in the same way in different countries, which have different political and socio-economic contexts (Radaelli 2009b, ct Almeida and Moll 2017). This is very similar to my experience since 2000, when we started systematic better regulation training programmes in Estonia, e.g. the translation of concepts (Kasemets 2001a; Kasemets *ed.* 2011). As Almeida and Moll stated:

> "Radaelli recognises that training programmes have to adapt to the individual country conditions, taking into consideration, by intensive interaction, the knowledge and possible suggestions made by the individual trainees for achieving better regulation in their countries. But a strategy is also necessary that allows the introduction of a new approach to law making.... The idea should be to demonstrate to the participants 'that better regulation training is about practical knowledge, not abstract and generic knowledge'" (2017: 264).

The Estonian strategy – the Development Plan for Legislative Policy until 2018 (2011) – is based on the EU better regulation agenda (e.g. Impact Assessment Guidelines 2009), integrating both "formal" and "material" legistics, but I cannot confirm that the dominant legal culture of legal drafters has noticeably changed towards "material" legistics (Study I). In my opinion, the roots of this problem lie at the "crossroads" of legal culture, legislative policy, legal public service and the professional development of law-makers, e.g. higher education. As Gallagher (2003: 80) put it: "the goal should be to enhance the accountability of lawyers to societal expectations."

According to my research, the modernisation of the Estonian law-making system in the EU has taken more time than expected and I would like to promote the idea of multidisciplinary research of professional law-making and legal culture in cooperation with social scientists and legal scholars interested in legislative education and institution-building. In addition, better regulation training programmes for political leaders and civil service managers require special studies, knowledge production, and designs related to weekly decision-making and knowledge acquisition processes (Studies I, II and IV; see also Almeida and Moll 2017: 264).

4. METHODOLOGICAL CONSIDERATIONS AND DATA

This research involves four original methodological contributions (Studies I, II and V) and two applications of methodological approaches designed mostly by other authors (Studies III and IV).

1) In 1996 I designed an integrated concept of parliamentary sociological surveys connecting the theories of democracy, parliamentary constitutional functions and the possibilities of representative sociological surveys. The main research questions were as follows: what kind of democratic principles and parliamentary functions could be supported by representative sociological studies, and how was it possible to integrate sociological knowledge into parliamentary policy- and law-making processes? (Study V; Kasemets 1996; 1999a; see Table 3: D3).

2) In 1997 I designed a methodology for the normative content analysis of explanatory memoranda of draft acts in accordance with constitutional functions of the *Riigikogu* (e.g. representation, legislation, supervision), the rules of law-making, and the roles of parliamentary research services using a pluralistic theoretical framework (Study I; Kasemets 1999a, 2000a).[8] This methodology was designed to measure the gap between normatively required and (f)actually presented socio-legal information in the draft acts. In a broader context, this method of normative content analysis of explanatory memoranda of draft acts made it possible to evaluate the connection of Estonian legislative policy with the OECD and EU regulatory policy recommendations. The main research questions were: a) to what extent did the ministries follow the rules of law-making in the categories of social, economic, environmental etc. impact assessment, research references and civic engagement?; and b) what was the impact of the "Development Plan for Legislative Policy until 2018" (2011) better regulation measures on ministerial work routines? (see Table 3: A1).

3) Since 2004 I have combined the sociology of law, political economy and institutional theories to explain the institutionalisation of good governance, better regulation and anti-corruption measures in Estonian public policy and draft legislation (Kasemets 2005ab; 2006). For example, based on the OECD reports (e.g. 1997, 2000 and 2008), I compiled the e-Survey "Better regulation barometer" with twelve institutional pre-conditions for knowledge-based policy-

[8] Scientific literature database searches have not revealed similar methodological approaches to the content analysis of draft legislation. Most of them, dealing with similar problems of evidence-based policy-making, implementation of regulatory impact analysis tools, participatory democracy etc. (e.g. Korhonen 1997; Tala, Korhonen and Ervasti 1998; Munday 2008, Howlett 2009; Lascoumes and Gales 2007), have used institution-specific methodologies of their own countries, while others have started from different theoretical platforms, mainly political economy (for example Radaelli 2009, 2010), and in most cases there are interesting *ex ante* and *ex post* case studies focused on one or another mechanism of policy/law-making (e.g. Zubek 2011; Lianos ant Fazekas 2014), or *ex post* evaluations of legislation (Aubert 1969; Karpen 2002; Pawson 2002; Haarhuis and Niemeijer 2009; Bussmann 2009 – Study I).

and law-making, from political commitment and legal basis to regulatory quality oversight and sanctions. The question was: why did the regulatory reforms tend to fail or succeed? (Study I; Kasemets ed 2011; 2016a; Table 3: B1–B2).

4) In 2011 I designed a multiple methods-based methodological approach to analyse the link between legislative policy (e.g. better regulation) and internal security policy strategies as tools for regulatory management, strategic communication and resources allocation. One research question was: how systematically were the elements of better regulation (e.g. terms and impact assessment) implemented in the strategic planning documents of internal security policy, and what were the reasons for selective fulfilment of law-making rules in the better regulation measures? (Study II – see Table 3: A2, C1, C2).

In brief, both Studies I and II involve a "multiple method" methodology based on four stages: a) a problem definition based on the literature and my previous studies in the field, b) a content analysis of documents (draft acts, strategies), c) an e-survey of civil servants, and d) the use of other relevant studies in the discussion of the findings. Study I was planned as a central integrating part of this dissertation. In addition to original methodological approaches, it is an elaboration of former articles (e.g. Studies II–V) providing the context, complementary theoretical concepts and empirical studies focusing on the institutionalisation of better regulation measures in the legislative policy in 2007–2017 (see Table 3).

5) While the scientific impact of Studies I, II and V is related to the design of the original methodologies, the additional value of Study III is the implementation of a new *control of corruption equilibrium model* (Mungiu-Pippidi *et al* 2011) in the Estonian context, including a dialogic analysis of Mungiu-Pippidi's writings on Estonia, and the links between better regulation, transparency and normative constraints on corruption. The logic of the qualitative analysis is based on the model (Table 3: D1).

6) Study IV is a literature-based analytical review article, which explores in the political economy framework the problems of political capital and motivation in parliamentary anti-corruption programmes, and the reasons for insufficient legal regulation. The donors treat reforms as "institutional changes" which are extremely politicised. The scientific evidence is mixed and Study IV explores some approaches bridging the theory-practice gap. A general question is: what are the key political factors of success or failure of regulatory reforms dealing with parliament anti-corruption programmes and how should the impact assessment and the parliamentary research services support democratic politics? (Study IV; also Kasemets 2000b; 2016b; Michael and Kasemets 2004).

In brief, my research includes five studies, which, in turn, contain a mix of five different types of methods, as described in Table 3.

Table 3. Multiple methods, periods and the sources of data

Study	Methods	Period and data
A. Content analyses of draft acts and strategy documents		
A1. Study I	Normative content analysis of the explanatory memoranda of draft acts in the categories of impact assessment (6), research references and civic engagement. The categories are based on the mandatory better regulation requirements. The source of draft acts is the governmental public database "Eelnõude infosüsteem" (Draft acts information system). See Studies I–II.	2012–2015: 268 draft acts compared with 2007–2009: 170 draft acts* (*Kasemets 2009)
A1. Study II	Normative content analysis of the explanatory memoranda of draft acts forms the basis of research problem definition: see Study II appendix: methodology)	2007–2009: 170 draft acts compared with 2004–2005: 86 draft acts* (*Staranova, *et al* 2006)
A2. Study II	Content analysis of internal security policy documents in the categories of better regulation terms and measures (e.g. the use of impact and/or risk assessment activities in the policy cycle). Three sources: a) Mandelkern Group report (2001) on better regulation, b) Radaelli (2010) on better regulation, and c) Birkland (2005) on policy process.	2004–2012: three Estonian internal security policy strategies, and the European Union internal security strategy (2010).
B. Survey "Better Regulation Barometer" of civil servants dealing with regulatory impact assessment and draft legislation in their ministries		
B1. Study I	Survey "Better Regulation Barometer" 2 (via e-mails and the eLearning website)	2015: 141 civil servants (general sample ca 900)
B2. Study I	Survey "Better Regulation Barometer" 1 (via training groups, e-mails and the eLearning website: Kasemets ed 2011)	2011: 74 civil servants (general sample ca 180).
In Study I, the results of an eSurvey of ministerial civil servants (2015, n=141 compared with 2011, n= 86: Kasemets 2016a) are reused in the discussion of results of normative content analysis. The categories of 12 institutional preconditions for the knowledge-based policy-/law-making are based on the OECD regulatory reform recommendations of 1995–2008. I created a questionnaire with 12 closed questions [Likert scale] and one open question [for problems and recommendations], and it was a part of the civil servants' eLearning web "Better regulation and impact assessment" (Kasemets *ed* 2011).		

Study	Methods	Period and data
C. Sociological surveys of civil servants in the internal security organisations		
C1. Study II	An eSurvey of Ministry of the Interior officials. I designed a questionnaire for data collection which includes about 500 closed and 33 open questions. More than 50 sub-questions were related to better regulation and organisational culture. The E-survey was conducted with LimeSurvey (Kasemets, Orumaa, Tabur 2011).	2011: n=104 civil servants / respondents (general sample: n=261).
C2. Study II	An eSurvey of top and mid level managers from the internal security organisations on necessary competencies and training needs. The e-survey was conducted with GoogleDocs (Kasemets and Oppi 2013).	2013: n= 34 internal security managers in civil service (general sample approx. 40 participants in the training group).
D. Discursive analyses of literature, available surveys, statistical data and written documents in the field of related studies.		
D1. Study III	The aim of Study III was to analyse the reasons for Estonia's relatively high position in global good governance, the rule of law, control of corruption, free media, civil society etc. rankings.	1992–2012: theoretical explanations and empirical data about the Estonian transition(s)
D2. Study IV	The aim of Study IV was to analyse in the political economy framework the ways in which the parliamentary anti-corruption programmes should help build political capital by managing voter demands, political competition and the use of impact assessment.	1990–2003: international parliamentary anti-corruption programmes and related literature
D3. Study V	The aim of Study V was to analyse the functional references of representative sociological surveys in the framework of parliamentary constitutional functions, and the concepts of democracy.	1996–2003: theoretical framework of 37 social science studies ordered by the Chancellery of the Riigikogu (parliament).
E. Observation of ministerial micromanagement and discussions in the regulatory impact assessment training groups 2009–2018.		
E1. Studies I and II	Training courses of regulatory impact assessment, e.g. discussions in working groups and round tables (context: Kasemets 2000a; 2009; ed 2011; 2016a).	2009–2017: more then 400 civil servants dealing with draft legislation in different ministries.
E2. Studies I and II	Estonian Ministry of Interior governance area (2010–2016: I was a researcher at the Estonian Academy of Security Sciences)	2010–2016: training seminars and discussions with policy-/law-makers.
E3. Study I	Estonian Ministry of Rural Affairs (since 09.2016 I have been an adviser on impact assessment and civic engagement).	2016–2018: more than 55 face-to-face discussions with legal drafters.

A.Kasemets 06.10.2018

5. REFLEXIVE DISCUSSION OF FINDINGS

Researchers' paradox: *The more I study society, policy and law, the more I imagine sociologically how different social phenomena and processes are (or may be) related and how much I don't know* (1.1.2018).

This chapter reflects on central research questions, (p. 10) and the exact meaning of *reflexivity*[9] depends on the research questions and findings under discussion in sections 5.1, 5.2 and 5.3.

5.1. Institutionalisation of the rules of law-making in the field of impact assessment, research references and civic engagement

In this section, the central question is to what extent the initiators of draft acts follow the rules of law-making (1996)[10] in the mandatory categories of impact assessment, research references and civic engagement? I will compare the periods before and after the adoption of the "Development Plan for Legislative Policy until 2018" (2011), and I argue that without specific impact assessment and civic engagement knowledge it is hard to seriously claim that the provisions of draft acts are in accordance with the constitution, stakeholders' rights, or such good governance principles as subsidiarity, transparency, cost-efficiency and simplicity.

From the methodological point of view, the explanatory memoranda of draft acts are the documented "materialisation" of institutional politico-administrative behaviour, a "policy window", where it is possible to measure the compliance between the norms and facts of draft legislation, which also reflects the dominant values, use of knowledge and the work routines in ministerial law-drafting "black boxes" (Studies I and II).

Between norms and facts: selective obedience to rules of law-making

According to many comparative studies, the institutionalisation of OECD and EU good governance and better regulation concepts in the relatively small Estonian governance system has been quite successful and, as of 2010, the

[9] Reflexivity has different meanings and levels in the social sciences and humanities: reflexivity as self-awareness, as philosophical critique, as a critical comparison of empirical findings and theoretical structure, etc. See http://www.qualityresearchinternational.com/socialresearch/reflexivity.htm

[10] The norms of the *Rules for Good Legislative Practice and Legislative Drafting* (2011) have remained the same since 1996.

transition period from a totalitarian Soviet regime to a stable market economy and open access democracy should be considered finished (Chap. 2). My research supports this conclusion partially. The results of content analyses of explanatory memoranda draft acts (2007–2009; 2012–2015), the eSurveys of officials (2011 and 2015) and many insider observations in the ministries (2004–2018) show positive trends and new challenges. In 2011, the *Riigikogu* approved the strategy "Development Plan for Legislative Policy until 2018", completing institution building in terms of symbolic systems and organisational structures. My Study I confirms the preliminary hypothesis that this policy/ strategy has had a positive impact on the ministerial better regulation management routines, which is "materialised" in the content of explanatory memoranda of draft acts. The data show positive trends: the average level of compliance with the better regulation-related law-making requirements has risen 18% in comparison to an earlier study in 2009. The gap between law-making norms and the fulfilment of those norms decreased in all ministries observed (Study I; Kasemets 2009).

The positive trend is especially visible in the category *economic impact assessment*, but in most cases, there is room for improvement (Study I). On the other hand, the compliance with *environmental impact assessment* minimum requirements has showed a remarkable rise (23%) since 2009, but it is still the weakest category (61% of draft acts had 0-information). This also means that the consultation and oversight mechanisms are weak and the long-term sustainable development agenda (e.g. green public procurement and climate) has not reached the intended aims of regulatory management. The category of *impacts on internal security* is the second weakest (in 2012–2015 the cabinet average compliance was 48%). The main reasons are related to the lack of specific guidelines, training and oversight dealing with risk assessment. Also, one structural problem has been how to integrate legislative policy and internal security policy measures (Studies I and II; 3.5.1).

In the field of *administrative and organisational impacts,* there are also many developmental challenges. For example, in most cases the added draft acts implementation plans are quite legalistic, and there is a lack of behavioural analysis to understand the *drivers* of organisational change.

The seventh category, *research references, studies, analyses, expert opinions and/or statistics,* is closely related to the present research, reflecting the extent of transparency and controllability in other regulatory impact assessment subcategories. This category also had a remarkable positive rise, from 35% to 55% (Study I). Hopefully, this trend will continue. In a broader context, the data on the use of social science knowledge (e.g. studies, terms and methods) indicate a positive trend in the institutional carriers (e.g. working routines) of ministries, reflecting the rise in analytical capacity. In addition, the subcategories for the *impact assessment information complexity* analysis show a positive trend: from 2012 to 2015, 77 of 268 draft acts' explanatory memoranda (28%) contained more systematic impact assessment information on intended social, economic, environmental etc. impacts, related research references and extensive involvement

of stakeholders. In most cases, the explanatory memoranda contained partial impact assessment information. In comparison to previous complexity analysis, explanatory memoranda with higher impact assessments data complexity rose 12% (Study I; Staranova, Kovacsy, Kasemets 2006). On the other hand, the eSurvey of civil servants showed, on the level of subjective experiences, a negative trend in scientific knowledge utilisation (5.2.1: Table 4).

The content analysis of draft acts also showed that more than 60% of national legislative initiatives in Estonia were related to EU directives and regulations, but in most cases the impact assessment report by the European Commission was not cited (Study I). This gap between "formal" legistics-related public information, and "material" legistics-related social, economic, environmental etc. public information reveals a democratic deficit in the EU, and the risks of distorted political communication before or after parliamentary proceedings.

The category of *consultations with civic and private sector stakeholders* also had a remarkable rise, from 49% to 78%. In my opinion, this level (78% transparency of civic engagement) is not satisfactory for Estonia, where the Cabinet first adopted the civic engagement guidelines in 2005. There may be many complementary reasons or justifications. For example, not all consultations with stakeholders are documented and published. Secondly, the state budget related "austerity acts" leave less room for democratic consultations (Study I; Kasemets and Liiv 2005).

Problem: the lack of fair socio-legal information leads to a rise in risks and a distortion of communication, and reduces the legitimacy of laws. To sum up the empirical studies on the selective obedience of the rules of law-making, a key problem is that legislators and other stakeholders lacked legislation-related and well-structured knowledge before the public debate. This means that both legislators and stakeholders may have run the wrong problem, wasting public attention, time and money. The lack of fair and transparent impact analyses before law-making, in turn, created favourable conditions for *distorted public communication* and the initiation of draft acts that may have created different problems in the implementation stage. There is a need for a legal analysis to clarify in which circumstances the impact assessment report and its quality could be interpreted as a human or business rights issue.

Secondly, I argue from the sociological point of view that the main legal issue of Studies I and II is not the measured gap between the mandatory rules of the draft legislation and the real socio-legal information available to the public. The main legal-normative problem seems to be that, without this information on social, economic, environmental and security impacts, transparency of research data, and involvement of stakeholders, the prerequisites for assessing the legitimate compatibility of the draft acts with the constitution are not fulfilled. This means that the central government and the *Riigikogu* cannot claim with full confidence that the content of the draft acts is in accordance with the constitution (both legal and social validity exist). This applies to § 12 (equal treatment), § 28 (protection of health) § 31 (freedom of enterprise), § 32 (protection of property),

§ 53 (protection of natural environment) etc. If the target groups, problems and impacts of the draft acts are empirically undefined, the cabinet, parliament, ombudsman or the court cannot assess without related impact information the actual accordance of draft acts with constitutional principles (Studies I–II; also Alexy 2001: 8, 61, 89).

Empirical facts and institutional factors behind those facts

The fact is that the mandatory rules for the *ex-ante* impact assessment of draft acts in the categories of social, economic, environmental, security, administrative and budgetary impacts, as well as related research references and civic engagement have been in force since 1996 (the structure of "The Rules for Good Legislative Practice and Legislative Drafting" (2011) is comparable to previous versions from 1996, 2001 and 2004). My research provides evidence that after more than 15 years of enforcement of good legislative rules, and despite positive trends, there is still a noticeable gap between normative minimum requirements and the public impact assessment information in the explanatory memoranda of draft acts proposed in parliamentary proceedings (Studies I and II).

On the level of ministries, the implementation of impact assessment work routines (e.g. research references and civic engagement) depends on many complementary institutional factors/preconditions, e.g. political and organisational culture, applied socio-legal knowledge, strategic and regulatory management skills of top- and mid-level managers, procedures, guidelines, IT infrastructure, financial instruments, performance standards, training sessions, accountability mechanisms, oversight and positive/negative motivation tools (Studies I, II and IV; Kasemets 2016a; see also Figures 5–7, and 5.2.1).

5.2. Institutional preconditions for knowledge-based law-making and social control of corruption

This section has two sub-sections with complementary central questions.

5.2.1. Institutional preconditions for knowledge-based policy- and law-making

The central research question of this sub-section is: what are the main problems in the framework of institutional preconditions and the policy cycle which may support the deviation of politico-administrative actors from the modern rules of law-making? In other words, why do regulatory reforms tend to fail? (Studies I–IV; also OECD 2000; Kasemets 2016a)

Political culture and will (strategic political commitment)

The political commitment to better regulation policy and regulatory impact assessment (RIA) measures has been the first, and maybe most important, pre-condition (Table 4) for knowledge-based and responsible regulatory policy reform to manage political control over the bureaucracy within the rule-formulation process, and to perform its "fire-alarm" function (Study I; Radaelli 2010). Positive change in political culture is a key precondition, because many problems identified in the policy cycle analysis can be solved on the political level (Figure 9). The officials in the ministries perceive the problem of the political culture through their missions and positions. Some free responses (Study I; Kasemets 2016a):

> "If the decision is already made at the political level, as a rule politicians are not interested in the RIA. On the contrary, the RIA does not reveal unwanted consequences" [R6].
>
> "Smart regulation (e.g. RIA and engagement) is fine, but in fact, it all depends on political will because the minister has no time to wait. Or, there is a lack of budget to hire more experts" [R18].
>
> "Quality control and monitoring system may operate, but if the politicians believe that one or another initiative has to be undertaken, it will be undertaken, despite the Ministry of Justice's objections" [R38].

Comparing the results of Studies I and II with the OECD Regulatory Policy Committee recommendations (2012), there are many differences, starting with the insufficient political commitment to "an explicit whole-of-government policy for regulatory quality". The initial descriptive RIA is integrated into the early stages of the policy process, but there is a lack of resources for the networking of experts and complex RIA *"*to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs… and the net benefits are maximised." In addition, appropriate risk assessment strategies are rare in public policy.

In addition, as the planning and budgeting of better regulation measures (e.g. impact assessment) in the ministries took place through politically adopted strategy documents, I expected that one reason for the problems connected with the quality of law-making was that the guidelines for better regulation had not been taken into account in the objectives and measures of Estonian internal security (IS) strategy documents. The content analysis of IS strategies confirmed this hypothesis (Study II).

Table 4. The fulfilment of institutional preconditions for better regulation in Estonia: *Better regulation barometer* according to ministerial officials dealing with impact assessment and draft regulation (2015 compared with 2011)

eSurvey 2015: n= 141 eSurvey 2011: n= 74 (ministerial civil servants)	Preconditions are fulfilled		Depends on … (discretion)		Preconditions are not fulfilled		I don't know / Hard to say	
	2015 (%)	2015–2011	2015 (%)	2015–2011	2015 (%)	2015–2011	2015 (%)	2015–2011
1. Political culture and will (e.g. resources for the impact assessment: IA)	18	–2	**56**	+ 7	**25**	– 2	1	– 3
2. Legal basis for law-making, IA, civic engagement and oversight	**67**	+ 18	23	– 4	8	– 4	3	– 8
3. The coordination between ministries.	25	+ 9	**37**	– 4	**33**	– 6	5	0
4. The analytical and administrative capacity of the ministries, e.g. units	**38**	– 1	**36**	+ 6	26	– 5	0	– 1
5. Methods, guidelines and training tools for IA	**49**	0	25	+ 5	21	– 2	6	– 3
6. The strategies for information gathering, e.g. research, databases.	26	– 15	**39**	0	**30**	+15	5	0
7. Systematic involvement and use of scientific expertise as a routine	23	– 7	**35**	– 4	**35**	+ 8	7	0
8. Systematic civic engagement of stakeholders	**40**	– 6	**38**	+ 8	19	– 1	2	–2
9. Civil servants are sufficiently qualified in IA and civic engagement	**40**	+ 14	28	– 8	28	– 4	4	0
10. The transparency of decision-making and the quality of public information (e.g. IA in the strategies and draft acts)	**32**	+ 14	**47**	– 8	20	– 4	1	–3
11. The quality control of IA and sufficient oversight system works.	**32**	+ 24	**30**	+ 2	17	– 19	27	0
12. There are applicable sanctions to protect the legitimacy of law-making (e.g. IA requirements)	27	+ 8	16	+ 4	**35**	– 7	27	0
Change:		**+52**		**+4**		**–31**		**–19**

A.Kasemets 2016a, translated by author 2018.

The coordination of policy- and law-making between ministries

Considering Estonia's limited resources and modest experience with multi-disciplinary regulatory impact analyses in most ministries, the inter-ministerial cooperation and the parliamentary supervision activity should increase in the next legislative policy cycle. My Study I indicates at least four coordination challenges: a) both a whole-government approach and a whole-policy-cycle approach require systematic data collection strategies and related ex-post RIA programmes, b) the accountability of decision-makers, c) the involvement of stakeholders and scientists depends too frequently on political discretion, d) the development and oversight practice has been law-centred; there is a lack of cost-benefit analyses of intended social, economic, environmental etc. policy impacts, and the use of evidence-based financial instruments, ex post impact assessment, advisory services, etc. I argue that a new inter-ministerial Regulatory Scrutiny Board should be established (Study I).

In addition, Studies I and II show that the consultations between ministries have had quite limited influence on the impact assessment information in the draft acts. There is a lack of common responsibility, because, for example, the Ministry of Social Affairs is not helping other ministries in the field of social impact assessment, and the Ministry of Economy and Communication does not assist with business impact assessment; the low oversight capacity in the Ministry of Environment and in the Ministry of Interior is partly the reason for the lower level of environmental and internal security impact assessment categories.

The administrative and analytical capacity of the ministries

The comments on the analytical and administrative capacity of ministries were mostly related to the problems of planning and lack of human or budgetary resources. Two free comments (Study I; Kasemets 2016a):

> "The problem of analytical capacity begins often with the planning of draft legislation. The working groups dealing with RIA and draft legislation need adequate time and an opportunity to focus" [R10].
>
> "In order to achieve the aims of better regulation (BR), we need a change in the attitudes of all participants. The implementation of BR has been going on for years but, unfortunately, the main result is an increase in official workload: this is disproportionate to the outcome because in most cases no one is interested in substantive findings of impact assessment…. We do not want to admit to ourselves that studies and analyses require far more time and money" [R27].

Study II made clear that there are no international or national political obstacles or regulatory restrictions to apply better regulation principles in the ministries: the application of better regulation depends mainly on the choices made by vice-chancellors and heads of departments, their values and their under-standings of how to implement better regulation measures in the context of policy-making interactions and budgetary limitations.

According to the institutional analysis of organisational culture at different management levels, conflict in values and dissatisfaction with management can be interpreted as a desire for changes. For example, according to the survey, officials' satisfaction with the quality of decision-making "for the preparation of important policy documents and draft laws, the impact assessment and public participation methods are used" was low (only 28% agreed) (Study II; Kasemets, Orumaa and Tabur 2011; see Figure 10). The gap between modern law-making norms and the fulfilment of law-making requirements refers to problems/risks of management, because better regulation, legislative policy and internal security policy have to be based on the principles of the rule of law.

The sociological survey of officials indicated discontent with regulatory management, and revealed that it was, first, a question of ministerial strategic management, priorities and political will, and then a question of officials' training system and motivation (Study II; see also Figure 10).

My insider observations in the ministries and during the discussions of training courses (see Table 3: E) helped to explain some challenges of Estonian regulatory reform. In addition to the strategic planning and horizontal networking problems in the national austerity period, an important problem among the managers was the lack of awareness of the deep connectedness of legislative policy and other policies. In the ministries, there were also some hidden problems of organisational culture, trust and interpersonal relations, which negatively affected networking and multidisciplinary analysis capacities. The lack of mutual trust may have been related to the general neo-liberal competition context and the recent austerity measures (a reduction in officials) (Study I; Kasemets 2016a).

The strategies for systematic impact assessment information gathering and the involvement of scientific expertise

In political institutions, knowledge, political power, law-making and political accountability are interdependent. This means that a) the *ex post* and *ex ante* regulatory impact assessment knowledge[11] of intended or unintended policy impacts for society was/is usually a part of political debate, and b) the problems of unsystematic impact assessment information gathering (the quality of information) may have become problems of public political communication and legislative interpretation.

In the "Rules for Good Legislative Practice and Legislative Drafting" (2011) the *ex-ante* regulatory impact assessment is mandatory, and the *ex post* is a non-mandatory option for the ministries. According to the Estonian Ministry of Justice web site, until 2017 the OECD Regulatory Policy Committee recom-

[11] Precondition No. 6 "The strategies for systematic information gathering, e.g. research agenda, registers, databases": "is not completed": 30% [compared to 2011 it rose 15%]; "depends on …": 39%. / "Systematic" here means that all related impact assessment categories are observed in the policy cycle (see Figure 9).

mendation (2012) on the systematic regulatory governance programmes and the conduct of *ex-post* impact assessment reviews was not followed in Estonian ministries. This means that there was a lack of systematic feedback information (e.g. reflexive studies) to foster the knowledge-based policy debate and learning (Study I).

In general, despite the OECD regulatory reform recommendations since 1995, and the European Commission impact assessment guidelines since 2005, the economic reasoning concerning the costs and benefits of proposed social, business and environmental regulatory options was quite rare in practice. On the other hand, the results of the stakeholders' engagement process ("lay knowledge") and the results of quantitative sociological, economic etc. studies were only in some cases compared to justify policy options (Study I; also Lianos and Fazekas 2014).

In Study V, I suggested a cooperative framework for the parliamentary groups and universities to develop the parliamentary approach to representative sociological surveys, which can be used for strategic law-making related information gathering in all stages of the policy cycle (see Figures 9). The political competition in the parliament in combination with research-based sociological imagination concerning social, economic, environmental, security, etc. problems in different social groups should be one precondition for the discursive democratic forum models (see for example, Winter 1999). Today, this approach seems even more important in the context of the glocal risk society, distorted media and cyber security threats (Study I).

The aim of Study V was to explore the functional links of representative sociological surveys in the framework of parliamentary constitutional functions and the concepts of democracy. I started from the idea(l) that in a democratic state the important decisions of the public authorities should strive to be in harmony with the opinions, development opportunities and justified expectations of the *silent majority*. In one or another way, the constitutions in the Western legal cultures define people/nations as the highest authority, democracy as the best form of government and the values and competencies established by the constitution as a social contract. In general, citizens can use their political rights and information channels to increase the quality (e.g. legitimacy) of the decisions of the parliament or cabinet but, besides general elections, referenda and sociological surveys, there are not many other methods for finding out the opinions and preferences of the majority of the population about decisions with high social impacts. A precondition for those methods is that people are sufficiently educated and informed. I argue that an important role of representative sociological surveys, ordered in cooperation with parliamentary factions and universities, is to create conditions for informed parliamentary public policy discussions, to understand when social groups are ready for changes in their *lifeworlds*. In other words, correct timing in political decision-making supports the achievement of intended policy impacts without undermining social cohesion or the dignity of interest groups (Studies I and V; Figure 1).

The strategies for systematic impact assessment information gathering are directly related to the next weak precondition: "Systematic involvement and use of scientific expertise" (Table 4; Study I).

Systematic civic engagement of stakeholders and the public

The citizens' right to be informed and involved in policy/law design is also regulated in the Estonian "Good Engagement Practices" (2005, updated 2011 and 2014), whose methodology is based on the OECD report (2001) and a related Estonian study (Lepa, Illing, Kasemets, Lepp and Kallaste 2004). I participated in the co-drafting of the first version (2005), where the principle of "involvement in the earliest possible stage of the proceeding and during the whole process" in the latest version (2014) is worded: "4.1. When developing drafts, a government authority consults with interest groups and the public at the earliest possible stage of the proceeding and during the whole process...."

In addition, the *Riigikogu* adopted the "Estonian Civil Society Development Concept" (EKAK 2002), whose goal No 9 states: "to involve citizens and their associations more widely in the process of developing, implementing and analysing public policies and legal acts, to develop necessary information channels and mechanisms."

The problem is that the principles of the "Estonian Civil Society Development Concept", and the "Good Engagement Practices" have been integrated into the mandatory rules of law-making since 2005, but have not been institutionalised in formal procedures of ministries at the required level (Studies I and II). The gap between EKAK's partnership agreement norms and law-making practices has been significant for many years, and it was a starting point for many civil society and civil service projects to realise the citizen right to be informed and to participate when a policy influences (y)our *lifeworld* (Kasemets, Lepp and Dsiss 2012).

The aforementioned studies and the consultations with ministerial civil servants (Table 3: E) revealed that in many cases the improvement in inclusive policy design and civic engagement should start with theoretical knowledge and basic operational definitions (operational knowledge). We improved the figure of the OECD Civic Engagement Framework (2001), adding a fourth operational component (*sociological "homework")* to *informing*, *consulting* and *participation* (ibid: 1+3 civic engagement framework; see Figure 8).

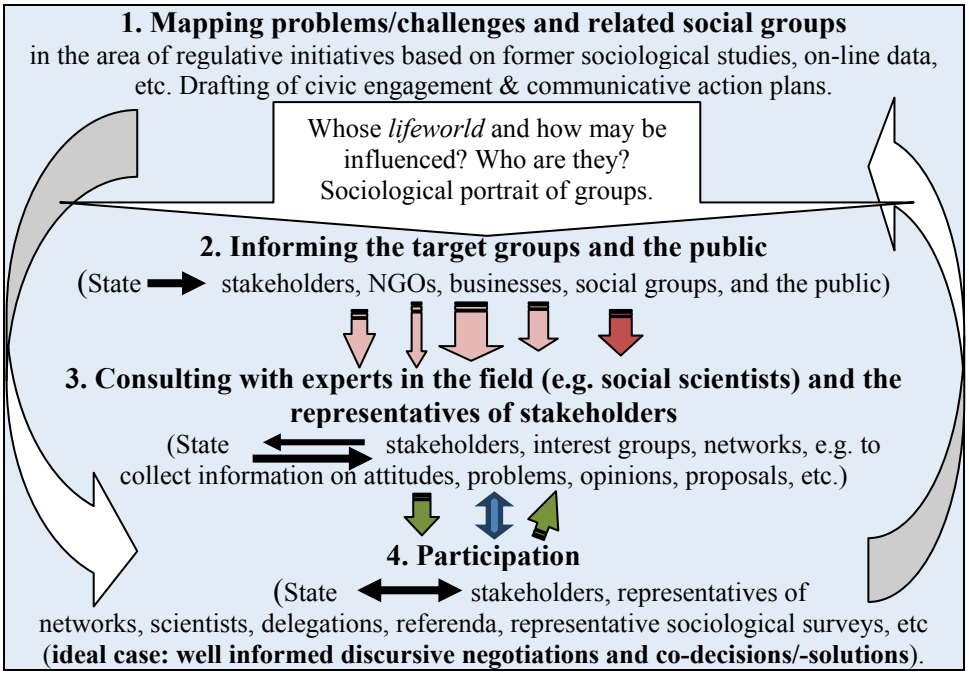


Figure 8. Civic Engagement Framework: 1+3 model. Sources: OECD 2001; Lepa, Illing, Kasemets, Lepp and Kallaste 2004; adjusted by Kasemets, Lepp and Dsiss 2012, and Kasemets 2018.

Civil servants qualification in regulatory impact assessment

The empirical studies and in-house observations showed in many cases that the reasons for insufficient social, economic, environmental etc. impact assessment information and "officials' resistance" to the "Rules for Good Legislative Practice and Legislative Drafting" (2011) were also related to the lack of multi-disciplinary higher education, and to the rarity of professional teamwork among officials. I argue that in Estonia the systematic implementation of socially, economically and environmentally responsible better regulation principles in the policy cycle requires a new strategy for law-makers' professionalisation (see also Banakar 2000), which includes both higher education curricula and a public service training system (Study I; Figures 6, 9 and 10).

In comparison with many OECD countries, it seems that the academic education of Estonian law-makers requires some reforms to provide the state with educated officials, multidisciplinary research knowledge and practical labs for policy cycle analysts and law-drafters. The need for complex multidisciplinary knowledge production and its use in glocal regulatory governance is well described in the recent editions of better regulation, regulatory impact assessment and legislation handbooks, for example the *Handbook of Regulatory Impact Assessment* (Dunlop & Radaelli 2016), *Legislation in Europe: A Com-*

prehensive Guide For Scholars and Practitioners (Karpen & Xanthaki 2017), and the European Commission's *Better Regulation Guidelines* (COM(2017)350).

In addition, both knowledge-based higher education and law-making, as professional systems, need some autonomous research funds for critical policy analysis and solution-oriented knowledge production, because politicians may personally understand and recognise the importance of independent policy research (as a "fire alarm"), but the basic majority logic of political institutions and competition tends to limit the role of independent policy analysis, especially before general elections.

The regulatory policy quality control and oversight system

I agree with Staranova (2015) that the Estonian oversight model has achieved many structural changes because the Ministry of Justice has checked the formal compliance of initial RIA with the "Rules for Good Legislative Practice and Legislative Drafting." The eSurvey of officials shows that the biggest positive changes among the preconditions for knowledge-based legislative policy are related to oversight: in 2011 8% and four years later 32% of respondents agreed that the precondition "11. The quality control of RIA and sufficient oversight system works" had been fulfilled (an increase of 24%). On the other hand, free responses show: a) the need for the development of oversight functionalities (e.g. an advisory service), b) that the most important problem is that legal drafters of ministries sometimes experience double standards, and c) the rules for providing policy oversight have been established but, for different reasons, legal compliance control dominates social content (Study I).

To sum up this subsection, the list of interdependent institutional preconditions for knowledge-based policy cycle design helps to explain the measures which play a significant role in the institutionalisation of better regulation principles in the working routines of ministries (3.3).

Regulatory reforms (institutional changes) take time. The data from 2011 and 2015 show improvement in most institutional preconditions (Table 4), but in my opinion, the better regulation system as a whole is far from stable and sustainable. There are primarily three reasons for this:

1) the fulfilment of eleven preconditions out of twelve falls under 50% (Table 4 "Preconditions are fulfilled": only "Legal basis.." is assessed at over 65%; the other categories are 40% or less);
2) the extent of institutional preconditions dependent on the discretion of politicians has increased (Table 4: Points 1, 4, 5, 8 and 12).
3) the most problematic preconditions (Table 4) which require attention: a) Coordination of policy- and law-making between ministries (No. 3), b) Strategies for systematic information gathering (No. 6), c) Systematic involvement and use of scientific expertise (No. 7), d) Sufficient oversight system (No. 11), and e) Sanctions to protect the legitimacy of law-making (No. 12) (see also Figure 7).

The question "which institutional preconditions have to be sufficiently fulfilled to avoid the failure of regulatory reform?" should be analysed from other perspectives. For example, according to Meyer and Scott (1983), organisations can deviate from institutional norms, although the stronger the institutional pressure, the less frequently deviation is observed. The ministries are often motivated to follow the best practices to ensure their stability, capability or reputation. However, by the time this occurs with the help of external or internal "pressure", when a critical mass of ministries reach a new organisational level, it may become a new norm for all ministries (Study I; Figures 5, 6, 7, 8 and 10).

Next Figure 9 is based on the analysis and synthesis of Studies I–V. The significant problems identified are linked to the main stages of the policy *life cycle* to facilitate the discussion of some ideas for future law-makers' training system, and to provide some policy recommendations (Chap. 7).

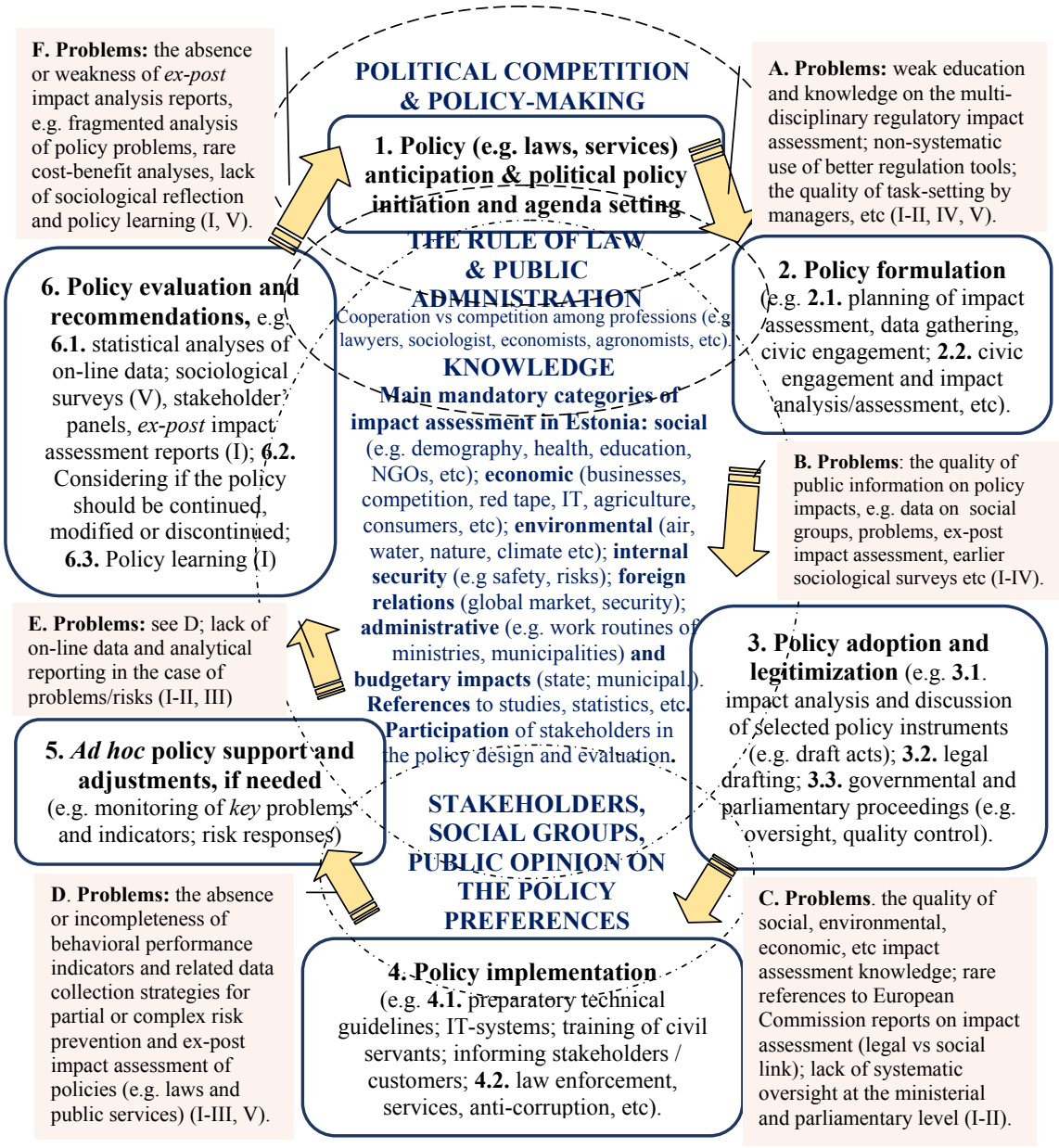


Figure 9. Regulatory policy cycle and some problem areas identified according to legal policy analyses in 2007–2017 (a summary by the author, July 2018). The main stages of the policy cycle are in accordance with the impact assessment guidelines of the European Commission (2015), and the Estonian Cabinet (2012).

Comment: linking the institutional preconditions (Figure 6) and the stages of the cycle, we can design an operational system for strategic policy oversight (Figure 7) and professional training (see p. 3.6.2).

5.2.2. Politics, institutional settings and social control of corruption

The central question of this sub-section is multidimensional: how did the Estonian post-Soviet political elite and society succeed in the institutionalisation of modern governance and control of corruption norms in such a short period, reaching the level of many Western countries in the rule of law, governance and control of corruption rankings? In other words, what made a governance regime based on particularism evolve to an open access democratic order in Estonia? (Studies III–IV) Study III explains the "drivers" of Estonia's post-Soviet policy and institutional changes in the control of corruption equilibrium model framework developed by Mungiu-Pippidi (2012, 2015). Countries that fall in the upper third of the global good governance, control of corruption etc. rankings reached this position during longer periods of time, with very few exceptions. Estonia restored its independence in 1991 and reached certain societal and governance benchmarks after five years of reform. There are many interrelated factors and questions for discussion.

According to the Worldwide Governance Indicator's Control of Corruption score and European Commission reports, Estonia has been a "green country" since 2000, and since it joined the EU in 2004 Estonia belongs to the third generation of achievers (Mungiu-Pippidi 2012, 2015). Estonia also scores high on a number of other indicators that represent constraints on corruption: the Internet Freedom Index, Press Freedom Index, Doing Business Index and Corruption Perceptions Index. In brief, according to comparative studies and global rankings, the Estonian transition was a positive case of progress in all four control-of-corruption equilibrium model dimensions (Table 5), despite doubts (Study III; Kasemets 2016b).

Estonian control of corruption scores: some selected explanations

Political leadership and power. Personalities matter and strong leadership is essential in the anti-corruption policy cycle. Their active participation as drivers of change is most evident in the adoption of anti-corruption policies, i.e. in the legal constraints component of the model. Some Estonian politicians are clearly associated with leadership roles in promoting an anti-corruption agenda: Prime Minister Mart Laar (1992–95; 1999–2002), Minister of Justice Kaido Kama (1992–94), Prime Minister Juhan Parts (2003–05), Minister of the Interior Ken-Marti Vaher (2011–14) and since 2015 the MP Artur Talvik, to name only a few key people. Looking at the electoral campaigns of parties from 1992 to 2015, anti-corruption as a campaign platform was most apparent in 1992 (Laar *et al "Clean up the politics!"*), 2003 (Parts & the *Incorruptibles*) and due to Russia's related security spin to a lesser extent in 2015 (Talvik & the Free Party). There have also been many other important MPs; for example, behind the Civil Service Act (1995) and the Anti-Corruption Act (1999) was the tandem Ivar Tallo (Social Democrat Party) and Daimar Liiv (Reform Party). This kind of cooperation between MPs from different parties was quite common in the

1990s. Secondly, considering the implementation of scientific concepts, it is important to note that, in addition to donors, experts and Estonian academics living abroad, many of our politicians studied in Western universities (Study III).

Table 5. *Example of the control of corruption resources and constraints in Estonia*

MAIN RESOURCES OF CORRUPTION	MAIN CONSTRAINTS ON CORRUPTION
A.POLITICAL DISCRETION: A1. Year of Independence (1992). Government system (**parl. democracy**). Restart of free elections (1991). Authoritarian rule (SU 1945–91). **A2. Background of political elites.** Ruling party and **Coalition**. **Opposition.** Alternation in power**. Party competition. Separation of powers**. **Government tenure.** Power concentration. **Transparency and accountability tools**.	**C. REGULATORY [e.g. LEGAL] CONSTRAINTS: Anti-corruption regulations: GRECO, OECD etc conventions, national strategies, laws,** statutes**. Open Information Act**. **Political parties finance regulation**. **Public Service Act**. **Legal basis for regulatory impact analysis**. **Oversight institutions**. **Ombudsman. Prosecution for corruption. Judicial independence**. Open Data, **eGov etc. conventions and standards;** etc.
B. MATERIAL RESOURCES: Natural resources (forest, oil shale etc.). Government consumption spending. ***State-owned companies, property*** (e.g. lack of transparent eGov). **Public contracting, eProcurement**. **Public employment**. Privileges for private firms and NGOs**. Public services**, e.g. **eServices**. **Transparent and effective relocation of foreign aid, EU funds** etc.	**D. NORMATIVE CONSTRAINTS: Civil society (anti-corruption NGO network**). Autonomy and financing of NGOs. **Communication infrastructure**. **Press freedom.** Independent anti-corruption research. **Codes of conduct** for **MPs, civil service, businesses, NGO**s. **Anti-corruption education**. **Political pluralism** and participation. **Public opinion against corruption.** Trust in political institutions.

Source: idea by B. Vaz Mondo (2011), adapted by A.Kasemets 2012, 2016b and 2018 (Particular Estonian relative strengths are in **bold**). See also Box 1 in Section 3.5.2.

Thirdly, an important fact is that many political leaders active in policy-making in the 1990s were also active in the independence movement of 1986–1991. This period saw a fundamental shift toward competitive politics and preparation for the replacement of the Soviet era elite, which was facilitated by the decision to limit Estonian citizenship to those who had had it before the Soviet occupation. In 1992 Laar's *Pro Patria Party* won an overwhelming victory with a liberal-conservative coalition; many of his party members were former Soviet prisoners of conscience (in *gulags*). In brief, Laar's coalition won a parliamentary majority and, in replacing the Soviet era judges, managers of ministries etc., there was a hope of "cleaning the Estonian political system of the Soviet past". I observed this dynamic change as the synergy of the "Singing Revolution" with "parliamentary democracy"; where the former Soviet era *nomenclature*

was sitting in opposition, the Communist Party had no support, Soviet era socio-economic concepts were stigmatised (e.g. "Soviet" and "planned economy"), and the socio-technical set-up had a clear line distinguishing "Us" from "Soviet". Looking back on the parliamentary "regulatory industry conveyor" and large-scale reforms, it seems that the individual integrity of particular politicians played an important role in getting corruption under control, and the main hard political choices justified the many social, economic and security risks of the 1990s (Study III; Kasemets 2014). According to Kalnins:

> "Overall, the strong anti-communist/Soviet and nationalist mood of Estonians appeared to be a key driving force behind the high degree of replacement of the ruling elite, which culminated in 1992. Moreover, a remarkable feature of Estonia was a large pool of people who had qualifications appropriate for elite positions but who had kept their distance from Soviet power structures...." (Kalnins 2015: 11, 27).[12]

Reduction of material resources and strengthening legal constraints. During the first government of Laar in 1992–1995, policies were implemented that reduced material resources and strengthened legal constraints, e.g. Estonia pioneered important liberal economic reforms (a non-tariff open market, privatisation, a flat-rate income tax, a decrease in the number of ministries, etc.) and had the most radical policy towards the Soviet era judiciary, replacing most of it. In many fields of governance, Estonia had to start institution building from the beginning, because Soviet law had been repealed and the pre-occupation law system of the Republic of Estonia 1918–1940, which was in force *de jure*, did not fit the new context. As Anderson and Gray (2000) stated:

> "Reforms in the early 1990s were focused on the macroeconomic stabilization, prize and trade liberalizations, privatization and establishment of the legal foundations of a market economy."

Looking at radical ownership reforms and free movement of capital in the 1990s, there were many "learning issues for new democracies". Despite its overall success, Estonia did not stay free from suspicion of unethical privatisation practices in 1992–1995. In brief, political, economic, social and security aspects are deeply interrelated, and the comparison of countries' historical transitions is quite tricky (Study III; see Tierney 2006).

eGovernance as a tool for the reduction of material resources and the rise in transparency. "E-stonia", with its eGovernment infrastructure, is one driver of change to open-access governance with limited human and financial resources**.** There are many examples, e.g. a) e-Police ended corruption among the traffic police, b) the Estonian company registration and management portal allows one

[12] I was a consultant and reviewer for this report, which was a basis for another article; see Kalnins 2017.

to establish a company, to submit annual reports, etc., c) the public e-procurement portal, and d) the e-procurement oversight system led to the integration of eRIK registers, databases and digital services via X-Road. If there is suspicion, auditors can search for data from different registers (Kasemets 2016b). To sum up, the implementation of transparency provisions supported by new IT solutions was one of the hallmarks of the second Laar government in 1999–2002. According to Laar:

> "the second period was mostly normal anti-corruption matters and publication. We made everything public and that also worked very well. That was the start of e-government reforms" (Kalnins 2015: 22).

High normative constraints: civil society and free media. It is true that "normative constraints are also high, with public opinion intolerant of bribing, an active civil society, and a free press which benefited from investments from its Scandinavian neighbours" (Mungiu-Pippidi 2012).

The relations between dominant **civil society** networks and political parties in Estonia developed in a quite peaceful framework of negotiatory democracy until 2012. There are many explanations, e.g. the new generation of post-Soviet "self-made" political leaders came from civic movements, universities etc., and during the restoration of statehood the leaders of NGOs were on the same side as the new political leaders (in a "common civil war against the Soviet regime"). Also, Estonia is frequently described as a *small power distance society*, where different interest groups have relatively good access to policy-making. The demonstrations in the streets against the ruling government were rare until the *Meikargate* corruption scandal and *No ACTA!* in 2012. Those initiatives mobilised hundreds of volunteers (Study III; Kasemets 2016b).

Estonian **media** are considered free by most observers. Media outlets are numerous, and legal protections for press freedom exist and are practised. Considering the small size of the country, the Estonian public enjoys an impressively diverse selection of information sources. Most media outlets are privately owned (e.g. by Nordic firms). As Kalnins (2015: 23) stated:

> "the virtuous circle perpetuated by the interplay between... pressures from public opinion (largely through the media) required more efficient and universalistic governance and... initiatives from governments in response to public needs (e.g. by providing more transparency). More transparency, in turn, added more opportunities for public oversight."

From the functional media theory perspective, media are platforms of societal interactions. The hit stories on political corruption reflect the transparency of the *open access regime* and promote civic education.

Foundations of ethical universalism in Estonia. In general, it seems to be true that the foundations of ethical universalism in governance are dominant in the Estonian public sphere. The sociological follow-up survey carried out by the

Ministry of Justice confirmed the positive trend in anti-corruption attitudes in general and also found that there are remarkable differences between different groups (residents, entrepreneurs and the public sector) and socio-demographic divisions (gender, nationality, age and region) (Study III; Sööt and Rootalu 2012). A number of studies have found that levels of trust are negatively correlated with levels of corruption. The European Bank "Life in Transition Survey II" (2011) provides some evidence in support of these findings, plotting the average score of the generalised trust question against the average perception of the need to make unofficial payments when accessing the eight public services. According to the survey, Estonia belongs to the Western European group. In the context of international integration, Estonia's special closeness to Nordic countries deserves particular attention. In the Soviet era, more than half of the population (in northern Estonia) was psychologically connected to the West via Finnish TV. In addition to the general cultural proximity, since 1991 the links with Nordic economies arguably have influenced the business and indirectly the political environment of Estonia. The EU's role is mainly acknowledged in the strengthening of public administration, thus entrenching universalistic principles and helping to "clean the system". It seems that the logic of EU accession served as a safeguard against possible reversals (Study III; Kalnins 2015; Kasemets 2016b).

Both Studies III and IV end with my arguments that better regulation is a good policy "toolbox" for more knowledge-based, transparent and fair public policy debate, but it has minimum requirements: political will, regulatory impact assessment (RIA) and democratic civic engagement procedures (see also 3.2 and 3.4).

5.3. Some linkages between theory and practice

In this section, the main question is: which theoretical frameworks offer more useable explanatory knowledge in the Estonian context for the analysis of tensions between the modern legal norms and particularistic social facts in the studies of law-making, legislative institution building, and social control of corruption? (Studies I–V; Figure 2)?

Firstly, in the sociology of law tradition, regulatory governance difficulties can be interpreted in a different way. In general, the Estonian regulatory "industry" has been mainly focused on the "production of laws", and has devoted too little attention/resources to impact assessment, communication, marketing, risk assessment, consumption, evaluation, education and innovation of laws (as public services) (Studies I, II and V; Sections 3.1, 3.5.2). The sociological theories of law and applied better regulation concepts are shifting the focus from the rationalisation of law to the rationalisation and democratisation of the law-making process, which requires a multidisciplinary framework to deal with theoretical pluralism, decentralisation of power, fragmentation of law and the fact that the legal system is not closed or autonomous in terms of political

discretion and parliamentary democracy (Study I; Munger 1993; Ervasti 2008). This research in the field of the **sociology of law-making** provides some evidence as to what extent the normative rules of law-making and the "production of laws" differ in the main better regulation measures, and how political discretion and restrained accountability influence the implementation of legislative policy. The gap between the normative rules of law-making and the actual behaviour of law-makers seems to me the most important obstacle preventing the achievement of Habermasian "procedural discourse democracy" and "rational justice" (Study I).

In addition, during the writing of this research, and while reading the literature, I came to better understand the connections of **sociological theories of social control** (e.g. Parsons 1951; Janowitz 1975; Banakar 2000; Mungiu-Pippidi 2015) with institutional changes in governance (Studies I–V).

Secondly, there is the moral basis of the democratic governance regime. The remarkable extent of asymmetric or missing socio-legal information in law-making is, above all, a moral problem, which can activate political, economic, security etc. problems. Studies I and II show that political equality among people in terms of such constitutional principles as freedom of information and the quality of public information in the distribution of regulatory costs and benefits is usually not understood as a civic right or a core element of Western deliberative democracy and public administration (Study I; Habermas 1996: 107, 459; Serge 2011; Kasemets 2016a). The eSurvey also shows that for many civil servants the gap between legislative policy norms/ideals and practices was deepening and they became more pragmatic, sceptical or sometimes frustrated (Study I; Kasemets 2016a). The lack of substantive public consultations and regulatory impact assessment information supports conditions where institutional trust is low and the political participation of stakeholders is quite passive. This is related to the missing public information that in combination with the lack of civic knowledge may increase the degree of alienation and/or radicalisation among citizens (Studies I and IV; Kasemets and Liiv 2005). In addition, the "moral compass" of political leadership is also very important for civil servants in the ministries because the rationality, fairness and legitimacy of political decisions seem to be key problems. The eSurvey shows that many civil servants are concerned about the "double standards", quite often a negative experience and distrust in the better regulation measures dominate in informal opinions, and the requirements of the Rules of Good Legislative Practice (2011) seem for many civil servants to be "excessive bureaucracy" (Study I; Kasemets 2016a). I argues that the problems of "moral compass" and selective fulfilment of good law-making rules in the ministries are mostly related to the low political, administrative or analytical capacity, the lack of mutual trust, and the awareness of how the use of better regulation measures may improve political and administrative performance even in the context of limited human, time and budgetary resources. A social control-related question is how to create such motivational conditions via civic, academic and media interactions, where for policy-makers it could be useful to have the best knowledge (Study I; OECD 2011).

Thirdly, the institutional theories (3.3) are usable in combination with other theoretical approaches, such as the sociology of law, the sociology of social control, etc. For example, in Study I the level of deviation from the better regulation norms in observed categories (26%) can be interpreted in the framework of institutional theory to explain why many officials may be unwilling to follow those norms in ministerial decision-making (Kasemets 2016a). In general, Study I shows that the symbolic institutional framework (e.g. terms, aims and regulations) and organisational structures (e.g. coordination, guidelines and oversight) of regulatory governance are mostly in accordance with the EU and OECD recommendations; two other institutional "carriers" (Scott 2001), relational authority systems (e.g. leadership, strategic planning and resources) and regulatory management routines (e.g. implementation plans and quality control) need more professional support and commitment at the political level. Study I confirms the preliminary hypothesis that the legislative policy strategy from 2011 to 2018 has had a positive impact on ministerial better regulation knowledge management routines, which is "materialised" in the content of explanatory memoranda of draft acts.

On the other hand, the findings of sociological surveys (Table 3: B-C) of civil servants responsible for regulatory impact assessment and law-making tasks in different ministries clearly show the tensions between institutional symbolic and authority/governance "carriers". In particular, the institutional symbolic systems (e.g. modern values, terms and rules) are for many civil servants disturbingly in contradiction with actual authority systems, allocation of resources, and related regulatory management (e.g. law-making) routines. In my opinion, this tension between institutional carriers and noticeable dissatisfaction among officials shows readiness for institutional changes and explains some specific requirements for regulatory governance institution building (Studies I–III; also Scott 2001; Table 4; Figures 5, 6, 10)

In general, by analysing the role of normative influences in organisational decision-making processes of ministries (e.g. the constitution), institutional theory offers many important analytical approaches to explain the changes in organisational structures, procedures, processes and the actions of decision-makers.

How and why Western liberal regulatory good governance, better regulation and anti-corruption policies/programmes tend to fail or succeed in such post-Soviet transition countries as Estonia are questions that have rarely been addressed. I argue that institutional theory offers a framework that can be useful in addressing both normativity- and rationality-related questions on good governance and law-making, but its methodological potential requires further elaboration to clarify both the preconditions and processes that lead modern values, concepts and organisational structures to become institutionalised in the decision-making routines of elected and recruited officials. A clearer understanding of institutionalisation as a process, and some explanations of institutional inertia would allow us to specify the outcome and impact indicators of regulatory policy strategies and related administrative measures (see Figures 4, 9 and 10). Addressing issues of preconditions (see 5.2.1), and applicability

problems of better regulation measures in Estonian ministries requires further development of multidisciplinary theory and empirical methodology with a relevant data collection strategy. In this research, I focused on the "materialisation" of good governance and better regulation related symbolic and authority systems/carriers, including regulative, normative and cognitive (for example, terms, concepts, rules) in the operational processes (see 3.3 and Figure 10), which are measurable in the content of political strategy documents and explanatory memoranda of draft acts (Studies I–II).

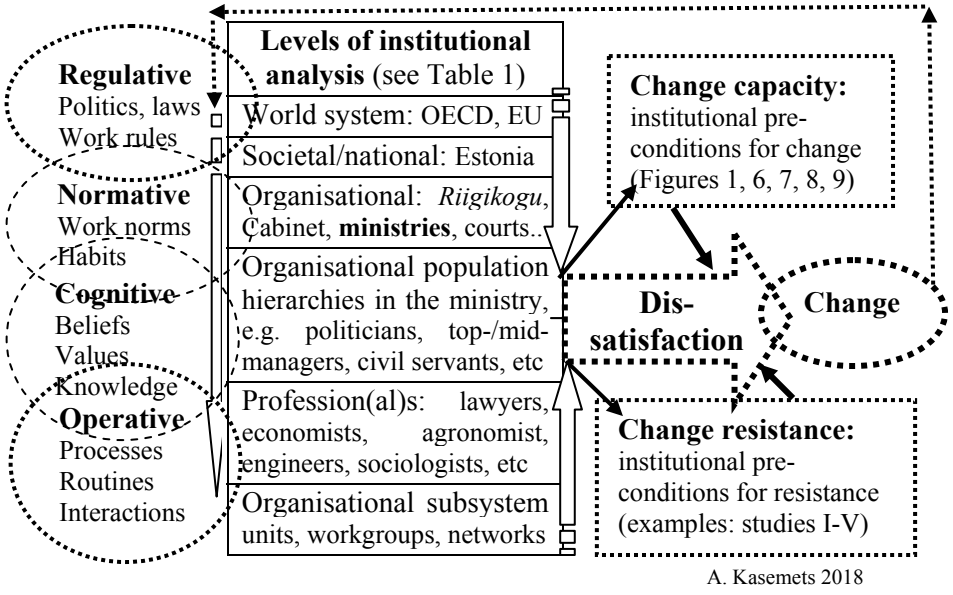


Figure 10. Conceptual model of tensions between institutional carriers and "dis-satisfaction-based" organisational change in the context of institution building. Sources of inspiration: Studies I-IV, Scott 2001; Banakar 2000; Palthe 2014.

Fourthly, better regulation and the risk society. The better regulation concept provides some instrumental solutions for rationalisation, democratisation and legitimisation problems of legislative policy. As Radaelli (2010) stated, better regulation works as a "fire alarm." This "fire alarm" is still quite variously interpreted in different ministries. The eSurvey clarified that the application of better regulation principles depends greatly on the choices made by politicians and top civil servants. It is above all a problem of political will and ministerial strategic management priorities, including officials' competencies, training systems, guidelines etc. The role of political leaders needs special studies, because the missing information, political discretion and uncertainty regarding "man-made" regulatory risks are linked in the risk society context. According to Beck, the distribution of "man-made" risks is the result of knowledge, rather than wealth (Study I; Beck 1992: 8, 23). This reminds us of the Weberian and Habarmasian discourses on political education (Studies I–II; Serge 2011).

At the EU and national levels, an improved explanatory memorandum should accompany each regulatory proposal explaining the purpose, stakeholders' input and what the likely social, economic and environmental impacts and risks are for different social groups, businesses and regions (Study I).

Fifthly, politics, rational ignorance, accountability and the building of institutional trust. Civil servants experience political pressure and "double standards" if a legislative initiative is related to the Coalition Agreement of ruling parties, or to political leaders. In knowledge utilisation literature, this kind of political will, discretion or ignorance is sometimes called the "endemic priority of politics", which hinders the use of knowledge and may increase the risks in the policy cycle (Study I; Daviter 2015; Olson 1991; Habermas 1996).

On the meta-theoretical level, the "wicked problems" of political (non)use of scientific knowledge are the meeting points for normative discourse democratic approaches to the rationalisation of policy processes bound by law and statutes in politically constituted society, on the one hand, and the institution theory approaches to human economic interactions and (in)formal constraints on institutional change, on the other hand (Study I; Habermas 1996: 288, 302; North 2000; also Radaelli 2010). Reflecting the conceptual study of Daviter, the data presented in Study I show that the knowledge of regulatory impact assessment is not sufficiently "bound by the organizational structure of policy-making and used in the policy process to expand policy authority and exercise control" (Daviter 2015: 491). The dynamic transition period after the Estonian restoration of independence in 1992 can be seen as a permanent knowledge shift in the framework of the enlightenment model, where policy-makers were more open to knowledge-based policy learning from the "Singing Revolution' (1987) to Estonia's first EU Presidency (2017). For insiders, the problem seems to be that the normative enlightenment model works too slowly (Study I).

Analysing the knowledge shift of legislative knowledge use in 2007–2017, my opinion is that in Estonian ministries the selective use of mandatory impact assessment knowledge has been more frequently a case of political and administrative capacity, and less a "priority of politics" case in terms of political interests (Study I). The frequent problems with the normative law-making ideals in the context of the global risk society and charismatic "post-truth" media interactions could lead the solution-oriented discussion back to the pragmatic minimum standards of good governance and political accountability. The accountability of ministries should include transparency, controllability, responsibility and responsiveness measures (Studies I and IV; Zumofen 2016).

Finally, it seems that the capacity of Estonian political parties to use the better regulation "toolbox" for their political goals could be more developed. If *ex-ante* and *ex-post* regulatory impact assessment is not bound by the organisation of policy-making and the control of policy implementation, the legitimation of policy authority may be at risk. According to policy recommendations, all ministries and parliamentary political parties need impact assessment services.

Looking back at the implementation of Estonian legislative policy measures from 2007 to 2017, it is clear that institution building for knowledge-based and

responsible public policy and law-making *must continue*. An additional value of studies is information regarding the gap between the system of the rule of law, the rules of law-making and the recognition of rules. In other words, to what extent social groups (e.g. officials) accept the rule of law or law-making rules as binding obligations. On the other hand, according to some international comparative studies, globally Estonia made the most successful "jump" from a totalitarian Soviet Union to a modern, rule of law-based society (Studies I–III; Kasemets 2016ab; Mungiu-Pippidi 2012, 2015; WB 2016; Kalniņš 2017).

6. MAIN CONCLUSIONS

In this doctoral research, from theoretical and empirical perspectives I analysed the gap between the modern rule of law and social facts about rules recognition and better regulation (Chaps. 2, 3, 4 and 5). I also discussed the theoretical and empirical findings, and identified the problems of Estonian regulatory governance according to the institutional preconditions for regulatory reforms, and policy cycle stages (Chap. 5).

The interaction between the theoretical and empirical findings of Studies I–V added new analytical knowledge, which means that this doctoral research is an elaboration of earlier studies, in terms of theoretical approaches, relations between theoretical and empirical findings, and the discussion and interpretation of earlier empirical data (Chaps. 3 and 5). Based on this fresh multidisciplinary knowledge, I will offer some conclusions (Chap. 6), and proposals (Chap. 7). My main conclusions are structured according to the four central research questions (Chap. 1) and include four key conclusions (a synthesis), with related sub-conclusions.

6.1. *This first section of conclusions is related to pluralistic theoretical approaches (Chaps. 3; 5.3) asking which theoretical frameworks have offered more useable explanatory knowledge for the sociological studies of law-making, legislative institution building and the control of corruption.*

My main conclusion/synthesis is that **theoretical pluralism reflects the complexity of political and socio-legal knowledge in the context of interactive policy- and law-making, and the institutionalisation of better regulation measures (e.g. impact assessment) can be analysed from different competing social science perspectives:** for example, from the more normative sociology of democracy and realistic legisprudence perspectives (3.1; 3.2), or the more value-neutral institutional theory and political economy perspectives (3.3; 3.4). **Regulatory impact assessment (3.4) is a modern-rational policy advice "toolbox", multidisciplinary in nature. It was/is the reason why I have looked for more ideology-free (e.g. human rights) or complementary (multi-perspective) theoretical explanations in the analysis of policy-/law-making, and why I have tried to synthesise some seemingly controversial theoretical approaches from the practitioner perspective**.[13]

Of course, there is and will be **tension between disciplinary and multidisciplinary socio-legal research approaches**. I partly agree with Moran (2002) and Vick's (2004) argument that science and its foundational methods have evolved primarily through specialisation, and that before interdisciplinary

[13] An example from Study I: "...On the metatheoretical level, the 'wicked problems' of political (non)use of scientific knowledge are the meeting-point for the normative discourse democratic approaches on the rationalisation of policy processes bound by law in politically constituted society, on the one hand, and the institution theory approaches on the human economic interactions and (in)formal constraints of institutional change, on the other…."

analysis we need good "disciplinary" data. However, **complex real-life policy/ law cases require more solution-oriented inter- and multidisciplinary research, because the problems/solutions usually fall between the disciplinary categories**. The social, economic, environmental, security, administrative etc. impact assessments of the draft acts form an interesting topic because they often involve problematic but necessary mixes of different scientific disciplines and require multi-criterial methodology (Studies I and II).

Related sub-conclusions:

1) In the parliamentary and ministerial research units, it is a well-known methodological/communicative problem that most academic social science knowledge is not directly applicable in ministerial and parliamentary decision-making (Robinson and Wellborne 1991; Kasemets 1999a). Stehr (2003) defines knowledge as the "capacity to act". This definition of knowledge leads me to a deductive conclusion: depending on the context and aims, the multidisciplinary social science knowledge of social, economic, environmental, legal etc. inter-dependencies can be designed and used in communicative actions as educational knowledge (teachers), political knowledge (politicians), legal knowledge (lawyers and police), public administration knowledge (civil servants) etc. I interpret the production of useful instrumental knowledge for the explanatory memoranda of draft acts as a precondition for knowledge-based law-making and effective law enforcement, but different stakeholder groups look for specific knowledge important in their activities. For example, depending on the aims and area of activity, some NGOs are more interested in the results of social and/or environmental impact assessment, business owners in economic impact assessment, etc. (3.6).

2) My approach to the sociology of law-making (as a part of the sociology of law tradition) is focused on the pre-parliamentary use of social science knowledge and the implementation of better regulation measures in law-making and legislative institution building. It is related to multiple scientific and applied disciplines (e.g. multidisciplinary social, economic, environmental etc. impact assessments of draft acts). According to Munger (1993), the focus of the sociology of law studies has shifted to the examination of the production of law in the context of the decentralisation of power. I support the argument that the law is not autonomous due to the lack of political autonomy on the level of the national or EU parliament, but my research also shows that the decentralisation of power is not always the case: some economic, security, budgetary etc. law-making issues are centralised on the highest political level (Study I).

3) Ervasti (2008) emphasised that legal policy research can be defined as research that aims, and has the ability, to influence decision-making in legal policy matters, the drafting of laws etc. I agree with this aim, but I argue that in many cases it is not as easy also in the relatively small Estonian legislative institutions, because in the context of political competition the

results of policy- and law-making research cannot be neutral (Studies I, II, IV and V).

4) The socio-legal explanations of the gap between normative rules and the actual behaviour of law-makers vary in the literature. I argue that the main reasons why Hart's "Rule of Recognition" does not (yet or any longer) work on the expected level seems to be the lack of both awareness and motivational measures, e.g. the lack of complex legislative policy design, systematic oversight and negative sanctions (Figures 6, 7 and 9). In the context of power decentralisation, over-regulation, political discretion, law fragmentation, the rise of discursive social sciences, social media etc., the Rule of Recognition has significantly lost its persuasive power in the ministries (Study I).

5) The *ex ante* analysis of social, economic, environmental etc. impacts of the draft act has to provide evidence of the common public good, and reduce the extent of biased public information. In the discursive democracy context, the explanatory memoranda of a draft act should provide both knowledge- and value-based argumentation to members of parliament, stakeholders and the media. From the political economy perspective, a good explanatory memorandum with fair data will reduce information gathering costs. My research shows that the data-based evidence of the social, environmental etc. public good is frequently not available to the public (Study I, 3.2; 3.4).

6) All of my Studies I–V deal with some aspects of discursive democracy, civic engagement ethics and other legislative modernisation issues. I argue that such liberal constitutional principles and conditions for deliberative democracy, such as freedom of information, access to public information and the quality of information (as a public service) can be observed as universal principles in political and legal theory and there are no noticeable tensions between different ideological orientations in social sciences (Friedman, Rawls and Habermas). This is the common ground of universal human rights and the rule of law (Studies I and V; 3.2).

7) I found during this research that the institutional change to modern law-making and control of corruption can be described as a "changing border-line" between the modern constitutional norms "in books" (e.g. the rule of law, equal treatment and informed participation), and particularistic social facts/behaviour (e.g. biased public information, a lack of trust and participation, and influence trading). The research problem is to what extent the government controls law-making according to modern norms, making in a transparent and knowledge-based way laws which "can actually guide human conduct". The question of the empirical study "to what extent officials accept law-making rules as a binding obligation" reflects both the "pressure" of policy measures, and the extent of modern law-making in the ministries (3.1.2; Figure 3).

8) Habermas's late-modern theories explained many actual "catching up" challenges of Estonian political institutions in the mid-1990s, e.g. the gap between translated Western normative concepts and many post-Soviet

transition problems. Habermas defined the discourse principle as: "[j]ust those action norms are valid to which all possibly affected persons could agree as participants in rational discourses," (1996) and this fits well with a realistic legisprudence approach to the value-based validity of law (Berbel-Jung 1999). Based on the rule of law and discourse principles, the law-making procedures provide equal opportunities for all stakeholders to participate in policy debate to establish valid norms, but usually these procedures are not supported by the knowledge necessary to guarantee informed participants (Studies I and V; 3.1.1; 3.2.1).

9) Estonian law-making is politically, legally, administratively and economically tied to EU institutions and the distinction between national and EU legislation in many cases remains unclear. This means that the preconditions for informed discursive democracy and the protection of citizens' social and economic rights require regular analyses. I argue that the gap between national democracy models and the supranational cosmopolitan EU is one of the big research problems for smaller EU member states with limited human and financial resources. My analysis shows that Habermas's theories of communicative action and discourse ethics (1987, 1990a) contradict his later cosmopolitan EU approach (2003), because the conditions for discursive democracy are related to national culture, language and other institutional subsystems. I tend to be pessimistic about EU institutions' cosmopolitan democracy claim, but I believe that the EU modern governance approach should go forward on the basis of common better regulation policies (Study I; 3.2.1; Figure 4).

10) The institutional theory provides a general framework for this research to explain to what extent and why officials, politicians etc. generally may be unwilling to follow the modern rules of law(-making) in practice, and why regulatory reforms tend to fail or succeed. In the institutional theories literature, I found the conceptions of institutional *routines* and *social control* most useful for my empirical studies to explain the ministerial policy design, regulatory management and law-making activities in a broader context (3.3; Table 1; 5.3; 6.3).

11) The governments in OECD countries have launched various evidence-based policy and better regulation programmes to improve the quality of policy design and legislation (Boaz *et al* 2009; Tala 2010). According to Radaelli (2010), the system of better regulation has mainly two roles in the OECD countries: political control over bureaucracy and minimisation of uncertainty. I found in Estonia that political parties in the parliament require some scientific assistance in fulfilling those two roles (3.4). I argue that better regulation measures provide some instrumental solutions to rationalisation and legitimisation problems of legislative policy (Study I), internal security policy (Study II) and anti-corruption policy (Studies III–IV). Radaelli's metaphor (2010) of better regulation as a "fire alarm" for political leaders is apt. In practice, this "fire alarm" is quite variously interpreted in different countries and ministries (Study I).

12) In the global risk society and regulatory governance context, I agree with authors who emphasise the responsibility of sociologists as professionals. At the same time, many critical studies have shown that the role of the sociologist has been marginalised in legal policy- and security-related risk assessment studies (Deflem 2008; Wendling 2012). I believe that the reasons are related to the lack of multidisciplinary studies and poor policy cycle design, which is connected with the "professional separation" (e.g. terms) and the project-based competition between natural, social etc. sciences. This kind of separation and the lack of reflexivity may create regulatory "man-made" risks (Studies I and II).

13) The tensions between modern regulatory governance norms and particularistic social facts in legislative or control of corruption frameworks are related to the lack of social (e.g. political, academic, administrative, civic or media) control. The theoretical framework of Study III is based on the control of corruption equilibrium model (Mungiu-Pippidi 2012) looking for explanations of how Estonian elites achieved this relatively advanced control of corruption level in less than 20 years. I argue that this research model has a good ability to explain the "drivers" of Estonian transition from the post-Soviet governance regime to the (less corrupt) open access governance regime (3.5.2, 5.2.2).

14) To maintain a sense of responsibility and accountability among politicians and officials in law-making processes, we need transparent procedures with regulatory impact assessment, civic engagement and oversight quality management systems, e.g. some output, performance and impact indicators with relevant data collection strategies. The modermist-rationalist approach of public policy-/law-making is driven by scientific advice. I analysed the stages of the regulatory policy cycle (Figure 9) and the competence areas for the professionalisation of public policy- and law-making, and arrived at the conclusion that the transparency of policy design, multidisciplinary impact assessment methodology, stakeholders' engagement, policy learning, and an applied multidisciplinary education for law-makers need more attention (5.2.1.).

15) Estonia joined the third wave of leading OECD countries' regulatory reforms (Studies I and II), and I argue that that is one reason why the results of many critical studies on the implementation of the RIA concept are not [yet] applicable/useful in Estonia. In other words, despite the universal nature and procedures of political/legislative institutions, the actual problems and solutions of regulatory policy may be different in the "advanced first wave countries" (e.g. Radaelli 2010; Wegrich 2011) and the "transitional third wave countries" (3.3–3.4, 5.3; Kasemets 2016ab).

16) The institutionalisation of OECD/EU better regulation principles and measures in the Estonian regulatory governance context has taken more time than expected, but that does not mean there has been a failure of regulatory reform (the trend of most institutional preconditions is positive: Table 4). I argue that determining the reasons for this institutional inertia

require further multidisciplinary research/reflection, in cooperation with social scientists and legal scholars dealing with the problems of socio-legal culture, political discretion, professional law-making, and related science-based education (Study I; 3.6; 5.2).

6.2. *The next section of conclusions is related to the findings of normative content analyses of explanatory memoranda of draft acts (5.1), and the question of to what extent the initiators of draft acts follow the modern rules of law-making in the mandatory categories of impact assessment, research references, and civic engagement; in general, what has been the impact of the Development Plan for Legislative Policy until 2018 (2011) measures on ministerial law-making routines and content?*

My research on law-making provides some evidence as to what extent the normative rules of law-making and "real production of laws" differ in observed better regulation measures. **The gap between the rules of law-making and the actual behaviour of officials seems to me to still be the most important problem that hinders the rationalisation, democratisation and legitimisation of Estonian law-making and laws in social interaction**. On the other hand, the latest study shows that the impact of the "Development Plan for Legislative Policy until 2018" (2011) better regulation measures on ministerial law-making routines and related contents of explanatory memoranda of draft acts is positive in terms of the observed better regulation categories. Overall, **the trends in formal norms/facts compliance are positive** (Studies I–II; 5.1; 6.3).

Related sub-conclusions:

1) The remarkable extent of asymmetric or missing socio-legal information on social groups in law-making is, above all, a moral problem. My studies show that political equality among people in terms of such constitutional principles as freedom of information and the quality of public information regarding the distribution of regulatory costs and benefits is usually not understood as a civic right or a core element of good public administration. On the other hand, for many civil servants the gap between legislative policy norms and practices is deepening and they have become more sceptical and frustrated. The lack of impact assessment information and informed substantive public consultations lead to conditions in which institutional trust and participation remain low (Study I; Kasemets 2016a).

2) The normative content analysis of explanatory memoranda of draft acts shows the implementation of OECD and EU recommendations on better regulation. Study I shows that many measures which were rhetorically targeted before Estonia's accession to the EU (2004) and OECD (2010) have not yet been systematically implemented in the ministries.

3) The principles of the Estonian Civil Society Development Concept (2002), and The Good Engagement Practices (2005, 2014) have been integrated into mandatory rules of law-making since 2005, but are not fully institutionalised in the work routines of ministries (Study I; 5.2).

6.3. *This section of conclusions is related to the institutional pre-conditions (Table 4; 5.2) for knowledge-based policy- and law-making, which in the case of problems may support the deviation of politico-administrative actors from modern rules of law-making.*

According to my research, the main conclusion (synthesis) is that **in general the institutionalisation of the OECD and EU good governance and better regulation concepts into the relatively small Estonian regulatory governance system has been successful, and the transition period from a totalitarian Soviet regime to a stable open access democracy regime based on the rule of law should be considered finished in order to raise awareness of the new challenges of institutional development in Estonia.** The results of content analyses of explanatory memoranda draft acts (2007–2009; 2012–2015), the eSurveys of officials (2011 and 2015), and the control of corruption studies (2012, 2016a, 2017) show both positive trends and new challenges. The *Riigikogu* approved the Estonian first better regulation strategy "Development Plan for Legislative Policy until 2018" (2011), completing institution building in terms of symbolic systems (e.g. terms, aims and rules), and also mostly in terms of organisational structures (e.g. coordination, guidelines and oversight). My research confirms that this legislative policy strategy has had a positive impact on ministerial regulatory management routines, "materialised" in the content of explanatory memoranda of draft acts. On the other hand**, the eSurveys of officials show that the majority of institutional preconditions for knowledge-based legislative policy do not have stable configurations (Table 4). This means that the transformation period of the Estonian regulatory governance system will continue, and knowledge-based institution building should also continue**.

Related sub-conclusions:

1) The first institutional precondition – political commitment – is related to the "moral compass" of political culture and leadership because the rationality, fairness and legitimacy of political decisions seem to be key problems. Many civil servants are concerned about the "double standards", and quite often negative experiences and distrust in better regulation measures predominate in informal expressions of opinion (Study I; 5.2.1; 6.2).

2) The problems of the selective fulfilment of modern law-making rules in the ministries are mostly related to low political, administrative or analytical capacity, the lack of mutual trust, and the awareness of how the use of better regulation measures may improve the political and administrative performance even in the context of limited human, time and budgetary resources. My research shows that impersonal laws and law-making rules are in place, but there is still a lack of impersonal competent bureaucracy to guarantee the quality of public information. In this context, scientists could play a more active role in knowledge production, and a social control

question is how to create better motivational conditions for policy- and law-makers (Studies I–IV).[14]

3) The parliamentarisation of legislative policy evaluation requires, first of all, the analytical review of all draft acts and related impact assessment reports proposed to the *Riigikogu* proceedings. The quality of socio-legal, economic and environmental information in the explanatory memoranda of draft acts should be considered as a constitutional human rights issue. The committees of the *Riigikogu* could strengthen the role of parliamentary supervision and convene regular public hearings, providing a platform for legislative policy learning. In this way, the *Riigikogu*, as the co-creator of the political culture, could also encourage the cooperation of the ministries and universities (Study I).

4) Regulatory impact assessment (RIA) and civic engagement have been formally required since 1996 in Estonia, and legislative decision-making is in line with the main principles of the Mandelkern Report (OECD 2009). I argue that the formal symbolic institutional framework (e.g. terms and aims) has mostly been in accordance with the OECD/EU recommendations since 2011, but there are many other preconditions that need more political, administrative or academic support. In brief, the institutionalisation of better regulation principles in the organisational values, authority systems, and management routines of ministries is hindered mainly due to a lack of a) political commitment (e.g. resources), b) inter-ministerial coordination, c) involvement of scientific expertise, and d) both internal and external quality control (3.3.2; 5.2, Table 4).

5) The principles and procedures of open government, including transparency and participation in the regulatory process, have been adopted in Estonia since 2002, but without supporting analysis and impact assessment data, the preconditions for informed participation cannot be fulfilled. In the public information disclosure index (OECD 2011), Estonia ranked first, but according to the OECD "OUR data Index" (Open, Useful, Reusable Government data, 2015), Estonia ranked only 24th among 32 countries (Study III; Vihalemm 2013; Kasemets 2016ab). I argue that an increase in public information quality should start with law-making related data.

6) After analysing the shift of the legislative socio-legal knowledge use in 2007–2017, I think that in the Estonian ministries the selective presentation of mandatory impact assessment knowledge has been more frequently a case of political and administrative capacity, and less a *priority of politics* case in terms of political interest. The frequent problems with normative law-making ideals in the context of a global risk society and a "post-truth" media interactions could lead the solution-oriented discussion back to the pragmatic minimum standards of good governance and political account-

[14] The Estonian Development Plan for Legislative Policy until 2030 (draft, ET) aims to resolve many of the abovementioned problems. Available at: https://www.just.ee/et/oiguspoliitika-pohialused-2030 (25.10.2018)

ability. In particular, the accountability of ministries, responsible for the fair regulatory impact assessment, could include transparency, controllability, responsibility and responsiveness measures. Transparency and controllability mean that the facts regarding impact assessment are made available before parliamentary debates, and responsibility means complying with the rules of law-making (Study I).

7) Very important preconditions for the institutionalisation of better regulation measures are complementary training and oversight activities, to support conditions where the systematic use of regulatory impact assessment methods is designed as a useful policy-making option (with a focus on mid-level managers). My research revealed controversial data on the Estonian regulatory oversight system, from foreign recognition to insider criticism. The existence of insider criticism means that the complicated institutionalisation process is going on at the grass-roots level (Table 1), and organisational "energy of dissatisfaction" with the "change resistance of bureaucracy" may be the case in some ministries due to regulatory management capacity problems and multidimensional institutional inertia (Studies I, II and V; Figures 6, 7 and 10).

6.4. *The fourth section of conclusions is related to the general questions of Estonia's relatively successful transition period (Chap. 2; 5.2.2): how the Estonian post-Soviet political elite and society succeeded in the institutionalisation of modern governance and control of corruption norms within such a short period of time, reaching the level of many Western countries in the rule of law, good governance, free media and control of corruption rankings.*

The fourth main conclusion (synthesis) is based on Study III and is complementary to a previous conclusion. **Despite relatively good positions in global rankings since 2004, the transformation to modern open access democracy, the rule of law and developed social control of corruption should continue**. **The success and/or failure of regulatory reforms in the field of social control of corruption (as a governance regime) depends to a great extent on political leadership and both external and internal support/pressure by international organisations and local academic and civic networks.** In general, the case of Estonia confirms that progress on social control of corruption is achieved by a change in the equilibrium involving all four dimensions (see 3.5.2 – Box 1, and 5.2.2 – Table 5).

Related sub-conclusions:

1) Estonia stands out among Central-Eastern Europe and among other post-totalitarian countries worldwide, having reached the levels of many Western European "old democracies" in the rule of law, good governance, free media and control of corruption rankings (Study III; Kasemets 2013, 2016b; Mungiu-Pippidi 2012, 2015; Kalnins 2017).

2) On the other hand, since 2012 there have been some signs of political stagnation (the "glass ceiling effect"), with many global good governance,

open data, democracy and social control of corruption related rankings having remained at about the same levels (Study III; Kasemets 2013; 2016b; 5.2.2).

3) Looking for explanations for how the Estonian post-Soviet political elite, public administration and civil society succeeded in the institutionalisation of good governance and control of corruption norms in less than 20 years, I analysed the drivers of dynamic changes mainly on three levels: (1) the foreign policy environment (the UN, EU, OECD and Nordic countries), (2) internal policy environment, and (3) the Estonian elites whose personal motivation, education and ability have been important factors behind the Estonian transition to a liberal democracy. In general, my analysis of the changes in the Estonian governance regime since 1992 is not as positive as Mungiu-Pippidi's (2012 and 2015) global comparative studies show, but (a) it confirms Estonian progress in good governance and control of corruption elements, and (b) it should be further investigated as to what extent the Estonian public policy, law-making, public administration, private businesses and society as a whole can be described as constituting open access democracy, based on the rule of law and *value universalism* (Study III; Kasemets 2016b; 5.2.2).

7. STUDY PROPOSALS AND POLICY RECOMMENDATIONS

Searching for actual research and development topics in ensuring the positive trends of knowledge-based policy- and law-making, I identified many suggestions and recommendations related to theoretical studies, empirical studies and public policy.

7.1. Theoretical and empirical studies

1) There is a need for a constitutional analysis by legal scientists to clarify under which circumstances the public *ex-ante* regulatory impact assessment information and/or its scientific quality could be interpreted as a human rights issue before parliamentary proceedings (a reason for the parliament to reject draft acts, or for the Legal Chancellor to initiate an analysis). In other words, what kind of legal guarantees are (or should be) in place to ensure citizens' rights to relevant knowledge and informed public consultation? (Context: Studies I, II and III).

2) The implications of the legal minimalism concepts in the context of the global risk society, public sector reforms and/or EU better regulation principles: the cases of smaller EU member states. (Context: the idea of legal minimalism in Estonia was under discussion before joining the EU and before the Estonian EU Presidency in 2017: Study I).

3) The challenges of multidisciplinary regulatory governance, legislative policy and law-making. Some questions: a) How is it possible to build up a sustainable regulatory policy and multidisciplinary research system with limited human and financial resources? b) How is it possible to ensure sufficient quality of regulatory impact assessment knowledge in the policy cycle and to provide multidisciplinary research for the ministries and parliament? (Context: Studies I–III; Figures 6, 7, 8 and 9).

4) The quality of public information used in policy design, regulatory impact assessment and draft legislation: the case of Estonia. Applied research problem/question: how is it possible to support the fair and transparent use of social science knowledge in policy- and law-making? (Context: the rationality, fairness and legitimacy of political decisions seem to be key problems for both media-related public opinion and civil servants in the ministries: Study I; Kasemets 2016ab).

5) The institutionalisation of OECD and EU better regulation principles in Estonian regulatory governance requires more time: determining the reasons for this institutional inertia in the ministries, *Riigikogu* and universities requires further multidisciplinary research in cooperation with social scientists and legal scholars dealing with the problems of legal culture, professional law-making and related academic education (Context: 3.6.2, 5.2.1).

6) A socio-legal comparative study should be initiated to explore why the officials of ministries so rarely use the information of European Commission impact assessment reports in the explanatory memoranda of national draft acts which are directly related to EU directives and regulations (Context: at both the European Commission and national levels, an improved memorandum might accompany each regulatory proposal explaining the "purpose, stakeholders input and likely social, economic and environmental impacts and risks for different social groups, businesses and regions." – COM(2015)215; Study I).

7) The role, structure and content of explanatory memoranda of draft acts required by governments and parliaments could be a common topic of comparative studies in EU countries (in big data and social media contexts), because social science research (e.g. RIA) on proposed legislation is usually provided as a part of explanatory memoranda of draft acts (Context: discourses about "good lawmaking" and the functions, content and methodological standardisation of explanatory memoranda of draft acts at the EU and national level lead to the standardisation of better regulation checklists and the structure of explanatory memoranda: Study I; Kasemets 2001a; see 3.1.2).

8) There is a need for reflective regulatory policy learning studies. Which factors support policy learning? How is it possible to create the conditions for law-makers' and stakeholders' common policy learning? (Context: research on policy learning can be found in the literature of evidence-based policy, collaborative governance, performance management, policy networks etc.: Anderson and Whitford 2018; 3.6.).

9) The independent/academic monitoring of the strategy "Development of legislative policy until 2030" implementation and evaluation (Context: Studies I, II and IV; Riigikogu 2018).

7.2. Public policy and administration

1) The implementation of the *Development Plan for Legislative Policy until 2018* has been a legal policy learning process for the next legislative policy cycle. Study I indicates at least five legislative policy coordination challenges: a) both whole-government and whole-policy-cycle approaches require systematic data collection strategies and *ex-post* RIA programmes, b) the accountability of decision-makers, c) the involvement of scientists and stakeholders depends too frequently on political discretion, d) oversight practice has been law-centred, e) law-makers' professionalisation agenda could include a cost-benefit analysis of intended social, economic, environmental, security and administrative policy impacts, advisory services etc., and f) an inter-ministerial Regulatory Scrutiny Board could be established (Context: Study I; 5.2).

2) The committees of the *Riigikogu* could strengthen parliamentary supervision, critically review the submission of draft acts and related RIA reports, and convene regular public hearings, providing platforms for legislative policy learning. In addition, parliamentary political factions could be supported (by programmes and advisers) in the implementation of an RIA toolbox as a "fire alarm". (Context: Studies I, II, IV and V).

3) EU and national commitments to better regulation. Based on the European Commission commitment to take "*political responsibility for applying better regulation principles and processes in its work and calls on the other EU institutions and the Member States to do likewise",* (COM(2015)215) and because of EU multi-level regulatory governance, there is a great demand for better coordination between EU and national better regulation measures. The use of the RIA "toolbox" (e.g. terms, methods and indicators) could be harmonised throughout the EU (Context: Studies I–IV).

4) The national governments and EU institutions should strengthen their support for the systematic use of regulatory impact assessment (RIA) and civic engagement methods. The structure and quality of RIA information in the explanatory memoranda of draft acts should be considered to be a public service with fixed quality standards (Context: Studies I–II).

5) The professional knowledge and skills of officials and policy advisers dealing with regulatory policy design and law-making in the ministries and the *Riigikogu* could include: a) a capacity to strategically analyse the institutional preconditions for knowledge-based policy- and law-making, e.g. risks in the regulatory management system, b) analysing the policy cycle as a whole, c) being based on the definitions of RIA (3.4.2), planning and providing balanced social, economic, environmental, security, administrative, budgetary etc. *ex ante* and/or *ex post* RIA of national and/or EU level regulatory policy proposals, and d) due to complexity and multi-disciplinarity "problems" in the policy cycle analysis, the inter-organisational teamwork capacities are essential (Context: Studies I and II; see also Figures 5, 6, 7, 8, 9 and 10).

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KOKKUVÕTE

Käesolev väitekiri "Teadmistepõhise poliitika kujundamise ja parema õigusloome põhimõtete institutsionaliseerumine Eesti õigusloomes" on järg mu magistritööle "Sotsiaalteaduste rakendusvõimalusi Eesti seadusloomes: teoreetlisi ja empiirilisi aspekte" (Kasemets 2001c). Väitekiri põhineb viiele ingliskeelsele teaduspublikatsioonile aastatest 2003–2018, mille ühiseks lähtekohaks võib lugeda õhtumaade humanistliku eetika, õigusriigi ja teadmistepõhise poliitika ning avaliku halduse modernistlikke väärtusi. Kuigi õigusriigi väärtused on Lääne poliitiliste, sotsiaalsete ja majanduslike institutsioonide (vt ptk 3.3) südameks, on totalitaarsest režiimist väljunud riikide õiguspoliitikaga seotud reformide sotsioloogilised uuringud suhteliselt haruldased.

Pärast iseseisvuse taastamist 1991. aastal pöördus Eesti Läände tagasi ja ühines 2004. aastal Euroopa Liiduga (vt ptk 2). See üleminekuaeg on mu elus seotud poliitikute, ametnike ja sotsiaalteadlaste koostöö uurimisega, sest paralleelselt õpingutega Tartu Ülikoolis töötasin riigiametnikuna nii riigikogus kui ka ministeeriumides. See on üks põhjusi, miks viis valitud ühiskonna, teaduse, võimu ja õiguse suhteid kajastavat uuringut keskenduvad Eesti kui siirdeühiskonna poliitika- ja õigusloome arengule.

Riigikogu analüüsiosakonna teabeteenuste kujundamise ajal koostasin ka mitmeid uurimismetoodikaid (sh uuringud I, II ja V). Nii teadmistepõhise poliitika/õiguse institutsionaalsete eelduste (uuringud I–II) kui ka sotsiaalse korruptsiooni kontrolli uuringud (III–IV) lisavad uut empiirilist teadmist eri teoreetiliste lähenemiste kasutamise võimaluste kohta Eesti kontekstis ning aitavad ehk paremini mõista, miks sotsiaalteaduste ühiskonna heaks "töölepanek" ei tarvitse alati õnnestuda või miks õigusloomega seotud ametiisikute otsustused ei vasta sageli õigusloome normidele. Samuti, miks Eesti inimeste, ettevõtete ja loodusega arvestava teadmistepõhise poliitika ja õigusloome kujunemine rohkem aega võtab.

Uurimistöö eesmärk on **analüüsida** nii teoreetilisest kui ka empiirilisest perspektiivist **vastuolu** õigus(loome)normide ja nende normide järgimist puudutavate sotsiaalsete faktide vahel, et **selgitada probleeme** teadmistepõhise poliitika-/õigusloome institutsionaalsetes eeldustes (12) ja poliitikatsükli etappides (6), ning **pakkuda lahenduste leidmiseks poliitikasoovitusi** ja **jätkuuuringute ideid** (vt joonised 1, 6 ja 9).

Uurimistöö alaeesmärk on anda ülevaade neist sotsiaalteaduslikest teooriatest, uurimissuundadest ja teooria-praktika seostest, mis hõlmavad Eesti õiguspoliitika moderniseerimise ja demokratiseerimise, samuti korruptsiooniriskide ennetamise algatusi (vt ptk 3). Minu uurimistöö kitsam alaeesmärk on selgitada, miks ja kuidas on multidistsiplinaarsed teadusuuringud ning terviklik arusaamine institutsionaalsetest eeldustest kasulikud nii õiguspoliitika kui ka korruptsioonivastase poliitika eesmärkide poole liikumiseks. Lähtudes sotsioloogia ja sotsiaal-õiguslike uuringute kirjandusest, samuti mitmedimensioonilisest mõjude hindamise praktikast Eestis ja Euroopa Komisjonis, selgitan, kuidas teoreetiline pluralism peegeldab poliitika- ja õigusloome konteksti.

Rahvusvahelisi regulatiivsete reformide raporteid ja teaduskirjandust uurides selgus, et alates 1990ndaist on OECD juhtriikides tähelepanu nihkunud õigusaktide juriidiliselt kvaliteedilt õigusloome protsessi kvaliteedile ning sellega seotud poliitika/õiguse mõjude, legitiimsuse ja sotsiaalse kehtivuse teemadele (uuringud I ja V). Eesti on olnud vastavate poliitikate ja teadusuuringute osas OECD (sh EL) juhtriikide „tagaajaja". Minu seaduseelnõude seletuskirjade sisuanalüüside (uuringud I–II) keskmes on kaksik-küsimus: 1) miks ei järgi paljud Eesti ametiisikud õigusloomes mõjude hindamise, uuringutele viitamise ja huvirühmade kaasamise teabe esitamise norme, mis on vajalikud nii sihtrühmade riskide ennetamiseks kui ka seaduste elluviimiseks; 2) mida teha, et sotsiaalteaduslike uuringute kasutamine ja seaduste rakendamisega seotud sotsiaalsete rühmade kaasamine muutuks õigusloomes poliitikute ja ametnike jaoks institutsionaalselt kasulikuks väärtuseks ning mõtlemis- ja käitumisrutiiniks?

Täpsemalt, uuringus I (2018) esitletud seaduseelnõude seletuskirjade sisuanalüüsi ning seostuvate uuringute ülesanne oli koguda empiirilisi tõendeid selle kohta, millisel määral järgivad seaduseelnõude algatajad ministeeriumides „Hea õigusloome ja normitehnika eeskirja" (2011) nõudeid sotsiaalsete, majanduslike, keskkonna-, julgeoleku-, administratiivsete ja riigieelarveliste mõjude hindamise, uuringutele viitamise ja huvirühmade kaasamise kategooriates. (Argumentatsioon: ilma spetsiifilise mõjude hindamise infota on raske tõsiseltvõetavalt väita, et seaduseelnõu säte on kooskõlas põhiseaduse, huvirühmade õiguste või selliste hea valitsemise ja parema õigusloome põhimõtetega nagu subsidiaarsus, läbipaistvus, kulutõhusus, mõjusus või lihtsus.)

Uuringus I on olulised ka õigusloome moderniseerumisega seotud alaeesmärgid, mis näitavad Eesti regulatiivse valitsemisrežiimi muutusi. Esiteks, milline on olnud „Eesti õiguspoliitika arengusuundade aastani 2018" (2011) meetmete mõju ministeeriumide juhtimisprotsessidele ja seaduseelnõude seletuskirjade avaliku teabe kvaliteedile? Teiseks on oluline uurida, milles on Eesti õigusloome normide ja ametiisikute otsustustega seotud faktide vahelise ebakõla põhjused. Teiste sõnadega, soovin paremini mõista, miks paljud Eesti poliitikud, tipp- ja keskastme-juhid ning nõunikud järgivad kehtivaid õigusloomenorme valikuliselt.

Kuna võrdlevuuringutes on alates 2000ndatest esitletud Eestit sageli kui rahvusvahelist edulugu – riiki, mis on teinud võib-olla globaalselt kõige kiirema pöörde totalitaarsest Nõukogude Liidu valitsemisrežiimist avatud demokraatlikuks e-riigiks –, vaatlen neid aspekte ka oma uurimistöö empiiriliste tulemuste arutelus (vt 5.1–5.2). Kui lugeda põhjendusi, miks suutis Eesti mitmes riigiehituse valdkonnas poliitilis-õiguslike reformidega 1990ndatel ja hiljemgi nii tõhusalt edasi minna, võib kirjandusest leida üsna vastuolulisi väiteid. Minu uuringud näitavad „mustvalgel", et Eesti edusammudest sõltumata on arenguruumi küllaga. Uuringus I esitatud seaduseelnõude seletuskirjade mõjude hindamist, uuringutele viitamist ja huvirühmade kaasamist käsitleva teabe normatiivseid sisuanalüüse ja ka ministeeriumides õigusloomega tegelevate ametnike e-küsitluste tulemusi võib käsitleda õiguspoliitika lubaduste ja õigusloome normide täitmise vastavuskontrollina, kus ametnike küsitluste abil on võimalik

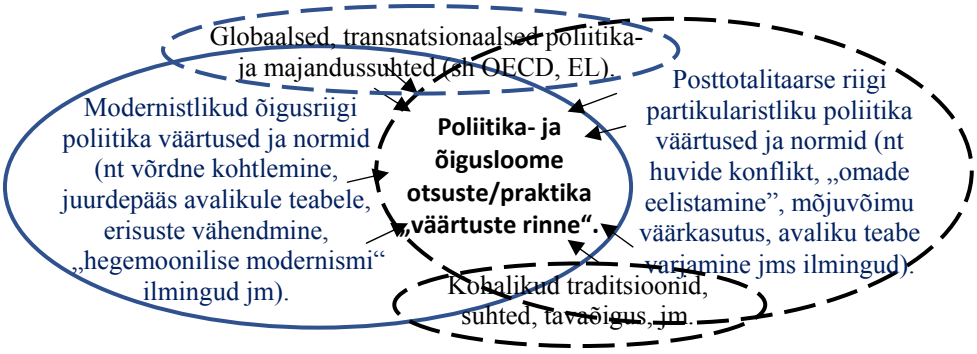
vastata ka selektiivse õigusloomekuulekuse *miks*-küsimustele (uuring I; Kasemets 2016a).

Kui võtta minu viiest artiklist lähtuva väitekirja teoreetiliste ja empiiriliste analüüside tulemuseesmärgid üldistavalt kokku, võib uurimistöö taandada praktilisele kolmik-küsimusele: kuivõrd on väitekirjas uudset ja aktuaalset teavet Eesti ühiskonna, sotsiaalteaduste, õigus(loome)poliitika ja korruptsiooni sotsiaalse kontrolli seoste kohta a) teoreetilis-metodoloogilise teaduskirjanduse lugejate; b) empiiriliste uuringute tegijate ning c) poliitika kujunduse, õigusloome ja avaliku halduse praktikas osalejate jaoks? Rõhutades nii rahvusvahelise, Eesti ühiskonna kui ka üksikute organisatsioonide institutsionaalse analüüsi tasandil sotsiaalse konteksti olulisust (vt ptk 2 ja joonis 1), loodan autorina veenda akadeemilist kogukonda, et eelnimetatud kolmele küsimusele on võimalik vastata kas „jah" või „pigem jah". Eesti inimeste *eluilma* sekkuvate poliitikate/seaduste mõjude hindamisega seotud uute või suhteliselt uute funktsionaalsete teadmiste hulk vajab aegajalt aktiveerimist riigivalitsemises osalevate inimeste mõtlemises ja avalikus poliitilises kommunikatsioonis. Loodan, et käesolev väitekiri annab õigusloome kvaliteedi aruteludele hoogu.

Viie uurimistöö omavahelised seosed

Viis teadusartiklit on seotud õigus(loome)poliitika, siseturvalisuspoliitika ja korruptsioonivastase poliitika valdkondade ning demokraatia, õigusriigi ja hea valitsemise kontseptsioonidega. Seetõttu lõimuvad uuringud I–V nii teoreetilistes kui ka empiirilistes käsitlustes. Esimene artikkel (2018) on kirjutatud varasemaid uuringuid hõlmava katusuuringuna (sh teooriate ülevaade ja kahe empiirilise jätku-uuringu tulemused). Teine artikkel (2014) täiendab esimest riigi arengukavade sisuanalüüsi ja ametnike küsitlusuuringutega siseturvalisuse valdkonnas. Kolmas (2012) keskendub Eesti kui korruptsiooni piiramise globaalse eduloo fenomeniga seotud uuringute ja andmete analüüsile korruptsiooni kontrolli tasakaalumudeli alusel. Neljas artikkel (2007) täiendab eelmisi poliitökonoomika raamistikus parlamentaarse korruptsiooniuuringuga, milles poliitikute normatiivset käitumist soodustavateks teguriteks on näiteks teabe kogumise kulude vähendamine ja kvaliteetse mõjude hindamise teabe abil poliitilise kapitali suurendamine. Viies uurimistöö (2003) käsitleb esinduslike sotsioloogiliste uuringute funktsionaalseid seoseid demokraatia teooria ja riigikogu põhiseaduslike funktsioonidega ning täiendab uuringuid I–IV õigusloome institutsioonide (sh riigikogu töörutiinid) ja ühiskonna kommunikatiivse sidustamise teemadega.

Doktoritöö teooriapeatüki multidistsiplinaarsete „ühiskond, teadus, poliitika, õigus ja …" käsitluste ülevaade hõlmab metateoreetilisel tasandil pingevälju modernistliku ja partikularistliku poliitilise kultuuriga seotud struktuursete lähenemiste vahel. Seda võib institutsiooniteooria, diskursiivse demokraatia ja õigusriigi teooriate raamistikes piltlikult avada kui ajas muutuvat õiguspoliitika "väärtuste rindejoont" modernistlikest õigusriigi põhimõtetest lähtuvate normide ning mitmesuguste "omasid eelistavate" ametkondlike, äriliste jm sotsiaalsete käitumispraktikate vahel (vt joonis 11, vrd joonis 3).



Joonis 11. Poliitika- ja õigusloome otsustusprotsessi praktika „väärtuste rinne“, kus poliitika/õiguse mõjude hindamisega põimuvad eri metateoreetilised pingeväljad, sh modernistlik *vs*. partikularistlik, globaalne *vs*. kohalik jm.

Kahes esimeses artiklis esitatud empiirilised uuringud ja vaatlused näitavad, et aastatel 2007–2017 on õigusloomenormide kohase käitumise osakaal õigusloomes seoses mõjude hindamise, kaasamise ja uuringutele viitamise nõuete täitmisega märgatavalt suurenenud. Teisisõnu, Eesti Vabariigi põhiseaduse, samuti nii Eesti õiguspoliitika (2011) kui ka Euroopa Liidu parema õigusloome poliitika (2001, 2015) normide institutsionaliseerumises (ametiisikute käitumisrutiinides) on märgata õigusloome normide ja faktide vastuolu vähenemist. Väide tugineb õigusloome protsessi „dokumenteeritud nähtava osa“ sisu mõõtmise tulemustel. Jürgen Habermasi (1996) diskursiivse demokraatia teoorias esitatud sotsiaalsete (sh õiguslike) normide ja faktide käsitlusest inspireeritult kujundasin lihtsad normide-faktide suhte mõõtmise metoodikad, mille normatiivne struktuur lähtub riigis poliitiliselt heaks kiidetud õiguspoliitika ja õigusloome nõuetest (uuringud I ja II).

Esitan siinkohal mõned metoodika kujundamise asjaolude ja uuringute tulemuste näited. Alates esimestest seaduseelnõude seletuskirjade normatiivsetest sisuanalüüsidest (Kasemets 2000a) kordub küsimus: miks ei järgi paljud Eesti riigiametnikud mõjude hindamise, infoallikatele viitamise ja huvirühmade kaasamise teabega seotud hea õigusloome norme, mis on kirjas „Hea õigusloome ja normitehnika eeskirjas“ (1996, 2011)? Sotsiaal-õigusliku teabe esitamise normide täitmise ja järelevalve tõhususe mõõtmisele keskenduva normatiivse sisuanalüüsi teoreetiline taustsüsteem ja metoodika on uuringutes I ja II. Seaduseelnõude sisuanalüüside käigus kerkis küsimus, millised teadmistepõhise poliitika- ja õigusloome institutsionaalsed eeldused vajaksid tugevdamist selleks, et valitsuse algatatud eelnõude mõjusid/riske Eesti inimestele (ühiskonnale), majandusele ja loodusele vähemalt miinimumtasemel hinnataks, seaduste elluviimisega seotud sihtrühmi kaasataks ja otsustusahelat läbipaistvalt dokumenteeritaks?

Neile küsimustele vastamiseks ja varasemate uuringute tulemuste tõlgendamiseks oli-on vaja uurida õigusloomes osalevate riigiametnike arvamusi ja ette-

panekuid. Selleks koostasin OECD regulatiivsete reformide uurimisraportite soovituste (1995–2010) alusel riigiametnikele loodud parema õigusloome e-õppevahendis küsimustiku (Kasemets *et al*. 2011; Kasemets 2016a), mis hõlmab kahteteist teadmistepõhise poliitika ja õigusloome institutsionaalset eeldust. Üks keskseid OECD (2000) uuringute küsimusi oli-on: miks riikide õiguspoliitilised jm strateegilised reformid kalduvad ebaõnnestuma ega saavuta soovitud mõjusid?

Doktoritöös kajastatud riigiametnike küsitlused peegeldavad valitsuse algatatud ja riigikogu kinnitatud õiguspoliitika edueelduste tugevdamise tahet ja toimunud muutusi „Eesti õiguspoliitika arengusuunad aastani 2018“ (2011) meetmete elluviimisel (vt tabel 4). Samas selgitab ametnike küsitlus, miks õigusloome normid ja faktid lahknevad ning miks võtab teadmistepõhise/vastutustundliku õigusloome institutsionaalsete eelduste kujunemine rohkem aega vaatamata selleks määratud riigiasutuste suhteliselt süsteemsele tööle (uuring I; Kasemets 2016a, 2017a).

Peamised tulemused, lähtudes olulisuse aspektist Eesti kontekstis

Minu doktoritöö lähteuuringute analüütilised tulemused 2.–6. peatükis lisavad mõningast uut teavet õigus(loome)sotsioloogia teoreetilisele ja metodoloogilisele kirjandusele, samuti poliitika- ja õigusloome mõjude hindamise empiirilistele uuringutele ning nii Eesti kui ka Euroopa Liidu tasandi regulatiivse poliitika meetmete aruteluks. Esitan siinkohal kokkuvõtlikult kaheksa hetkel olulisena tunduvat doktoritöö tulemust.

1. Doktoritöös on originaalselt lõimitud multidistsiplinaarseid teoreetilisi lähenemisi empiiriliste uuringute tulemustega, mis võimaldab peegeldada kolme olulist dimensiooni Eesti poliitiliste institutsioonide üleminekul Eesti NSV (1945–1991) valitsemisrežiimilt liberaalsele avatud ühiskonna, õigusriigi ja turumajanduse põhimõtteid järgivale Eesti Vabariigi valitsemisrežiimile. Esiteks, ka Euroopa Liidu kontekstis originaalsed uuringud I ja II näitavad muutusi EL-i parema õigusloome (ingl *better regulation*) põhimõtete institutsionaliseerumises aastail 2007–2017. Teiseks, uuringud III ja IV keskenduvad nii Eesti kui ka teiste riikide muutustele korruptsiooni kontrolli (ingl *control of corruption*) ning korruptsioonivastase poliitika valdkonnas 1992–2012. Kolmandaks, uuring V pakub originaalse parlamentaarsete sotsioloogiliste uuringute kontseptsiooni, millega toetada informeeritud osapooltega poliitika- ja õigusloome eeldusi. Siin on palju argumente, miks ja kuidas esinduslikud sotsioloogilised uuringud saavad vähendada nn demokraatia defitsiiti valimistevahelisel ajal ja toetada riigikogu põhiseaduslike funktsioonide täitmist (tegu on Eesti parlamentaarse demokraatia ajaloos põneva eksperimendiga aastail 1996–2003, mil Riigikogu Kantselei tellis üle 35 sotsioloogilise uuringu).
2. Doktoritöö teooriapeatükis olevate poliitika- ja õigusloomet käsitlevate teoreetiliste lähenemiste ning teooria-empiirika seoste (ptk 5.3) analüüsi edendamise osas soovin nelja näidet üldistatult esile tuua:

a) täiendan uurimustes I–V õigussotsioloogia (ingl *sociology of law*) käsitlusi rahvusvahelises teaduskirjanduses seni selgesti eristamata õigusloomesotsioloogia (ingl *sociology of law-making*) aladistsipliiniga, mis keskendub regulatiivse poliitika tsüklis (joonis 9) eelparlamentaarsele otsustusprotsessile, sh eelkõige sotsiaalteaduste kasutamisega seotud mõjude hindamise, uuringuviidete ja kaasamise teabe vastavusele multidistsiplinaarsete õigusloome eeskirjadega.
b) teine panus on seotud Jürgen Habermasi kommunikatiivse tegevuse, diskursiivse demokraatia jm sotsioloogilise teooria empiiriliste rakenduste ja tõlgendustega (uuringud I, II, V). Siin väitekirjas avan lühidalt ka „hilisema" Habermasi diskursuse eetikast taandumise ja kosmopoliitilise Euroopa käsitluse kriitika, sest institutsionaalse arenguga seotud ajaloolistel ja keelelis-kommunikatiivsetel põhjustel on võimalik väita, et „varasema" Habermasi diskursiivne demokraatia koos informeeritud rahvaga ei ole EL-i tasandil teoreetiliselt võimalik;
c) institutsiooniteooria käsitlusi (North, Scott jt) olen kasutanud alates 2005. aastal Euroopa Komisjonis peetud ettekandest (Kasemets 2005a) parema õigusloome (ingl *better regulation*) põhimõtete rakendamise väärtusneutraalse raamteooriana. Olen keskendunud poliitika- ja õigusloome analüüsis mõningatele institutsionaalsetele "kandjatele," sealhulgas mõisted ja regulatsioonid (sümboolsed süsteemid), autoriteedisüsteemid ja rutiinid (ptk 3.3), mis „materialiseeruvad" ministeeriumide töörutiinides ja eelnõude tekstides (uuringud I–II).
d) neljandaks rõhutan multidistsiplinaarsete poliitika- ja õigusloome uuringute tulemuste rakendamise probleemide ja teadussotsioloogia uurimisväljaga seotud mõiste „teave" täpsema käsitlemise vajadust (ptk 3.6) – sotsiaalteadusliku teabe kvaliteeti poliitika- ja õigusloomes näitab kokkuvõttes kasutajate vaates see, kuivõrd see teave arvestab konteksti ning kuivõrd on see kasulik ja rakendatav poliitikatsükli (joonis 9) eri etappides. See tees viib mind tagasi parlamentaarse teabe käsitluse juurde, mille kohaselt ei saa ülikoolide akadeemilisi uuringuid tavaliselt otse poliitilises otsustusprotsessis rakendada. Eri sihtrühmad (nt poliitikud, ametnikud, õppejõud, ettevõtjad, ajakirjanikud) vajavad uuringute informatsiooni (ingl *information*) „tõlkimist" nende jaoks kasuliku/kasutatava teabe (ingl *knowledge*) keelde. See kontekstide, erialaterminite jm „tõlke" võime on seotud õigusloomes osalejate eri-, ameti- ja kutsealase kõrghariduse tasemega, sh juristide, sotsioloogide, ökonomistide, psühholoogide jt ettevalmistusega ülikoolides. Teiste riikide õigusloomehariduse algatusi uurides leian, et ka Eestis tuleb võtta ülikoolides suund multidistsiplinaarsete õigusloometeaduse ja -hariduse ainekavade kujundamisele (ptk 3.6; uuringud I ja V; Kasemets ed 2011).

3. Andmed tõendavad parema õigusloome põhimõtete (sh mõjude hindamine, kaasamine, uuringutele viitamine) institutsionaliseerumist Eesti ministeeriumide töörutiinides aastail 2007–2015. Täpsemalt, Vabariigi Valitsuse algatusel kinnitas riigikogu 2011. aastal strateegia „Eesti õiguspoliitika

arengusuunad aastani 2018“ ja uuringus I on esitatud seaduseelnõude seletuskirjade normatiivse sisuanalüüsi alusel kahe perioodi (2007–2009 ja 2012–2015) võrdlus, mis näitab, et mõjude hindamise, kaasamise ja uuringuviidete teabe koha pealt on seaduseelnõude vastavus „Hea õigusloome ja normitehnika eeskirja“ nõuetega märgatavalt paranenud. Võrreldes eelmise uuringuga (Kasemets 2009) on valitsuse keskmine „teadmistepõhine õigusloomekuulekus“ paranenud 18% (keskmine 74%), sh kõige suurem normifakti vastavus oli kultuuriministeeriumis ning haridus- ja teadusministeeriumis koostatud seaduseelnõudes (vastavalt 94% ja 86%).[15] Teiseks on uuringus I esitatud andmed ministeeriumide ametnike kahe küsitluse (2011, 2015) võrdlusega, mis näitab, et teadmistepõhise poliitika ja õigusloome 12 institutsionaalse eelduse struktuursed suundumused on positiivsed (vrd Kasemets 2016a). Kuigi nii normatiivsed seaduseelnõude sisuanalüüsid kui ka ametnike küsitlused tõendavad positiivseid suundumusi õiguspoliitika rakendamises, on vastuolu kehtivate modernsete õigusloomenormide miinimumnõuete ning nende tegeliku järgimise vahel mõjude hindamise ja kaasamise koha pealt siiski üsna suur. Seetõttu leian, et õigusloome kvaliteeti mõjutavate institutsionalsete reformidega tuleb edasi minna.

4. Andmed sotsiaal-õiguslikke ja -majandusikke mõjusid käsitleva teabe lünkade kohta viitavad demokraatia defitsiidile (ingl *democratic deficit*) EL-i õiguse ülevõtmisel Eesti õigusruumi. Seaduseelnõude seletuskirjade sisuanalüüsis selgus, et üle 60% riigikogu menetlusse antud eelnõudest on seotud vähemal või rohkemal määral EL-i direktiivide jm regulatsioonidega, kuid Eesti seaduseelnõude seletuskirjades viidatakse harva Euroopa Komisjoni mõjude hindamise raportite sotsiaalsete, majanduslike ja keskkonnamõjude hindamise tulemustele. See näitab, et regulatiivsete muutuste sisuliste, inimeste heaoluga seotud mõju-eesmärkide teave ei jõua sageli kvaliteetsel kujul Eesti avalikku arutellu ja selle asemel domineerib EL-i ja Eesti õiguse juriidilis-formaalset kooskõla käsitlev info (uuring I).
5. Andmed Eesti õiguspoliitika ja parema õigusloome meetmete nõrga rakendamise kohta Eesti siseturvalisuspoliitika strateegilises juhtimises ja sellega seotud õigusloomes. Õigusloome reeglite (sh mõjude hindamine ja kaasamine) selektiivse järgimisega kaasnevad probleemid hõlmad uuringus II õigusriigi, strateegilise juhtimise, keskastmejuhtide pädevuse, üleregulatsiooni ja riskide hindamisega seotud küsimusi riskiühiskonna kontekstis (vt ka ptk 3.5; Kasemets, Talmar ja Liivik 2011; Kasemets, Orumaa ja Tabur 2011; Kasemets ja Oppi 2013).
6. Andmed teadmistepõhise poliitika- ja õigusloome juhtimise ebapiisavate institutsionaalsete eelduste kohta. Eelduste loendi koostasin OECD regula-

[15] Ühtlasi vajab jätkuvalt tähelepanu tõsiasi, et seaduseelnõude seletuskirjades õigusloome normitehnika eeskirja (1996, täpsustatud 2011) nõuete kohaselt esitatud sotsiaalsete, majanduslike, keskkonna- jm mõjude hindamise, uuringute viidete ja huvirühmade kaasamise informatsiooni formaalse vastavuse suurenemine ei tähenda seda, et esitatud avaliku informatsiooni kvaliteet oleks samavõrd paranenud (uuring I).

tiivsete reformide raportite (1995–2010) põhjal, milles üks keskseid küsimusi on, miks kalduvad regulatiivsed reformid luhtuma ega saavuta eesmärki. Eesti ministeeriumides õigusloome ja mõjude hindamisega seotud ametnike küsitluste põhjal võib väita, et positiivsed struktuursed muutused on nähtavad (kõigi 12 institutsionaalse eelduse kohta tõus on kokku 52%), ent tervikuna on teadmistepõhise poliitika- ja õigusloome süsteem veel ebastabiilne, sest vastanud ametnike arvates on 12-st eeldusest piisavalt täidetud ainult 1 (õiguslik alus, 2011: 49%; 2015: 67%) ja ülejäänud 11 jäävad alla 40%, samas on kasvanud poliitilise suva osakaal (uuring I; Kasemets 2016a; vt tabel 4).

7. Rahvusvaheliste parlamentaarsete korruptsioonivastaste programmide ebaõnnestumise põhjuste analüüs uuringus IV keskendus küsimusele, kuidas aidata kaasa parlamendi liikmete poliitilise kapitali/motivatsiooni kasvule, juhtides a) valijate nõudlust korruptsioonipoliitika järele, b) poliitilist konkurentsi, c) parlamentaarset täitevvõimu järelevalvet, d) poliitilise patronaaži võimalusi ja e) seaduste rakendamise tõhususe määra populistlike, liberaalsete jm poliitiliste valikute kontekstis. Minu panus on teooria-praktika vastuolude analüüsis seotud parema õigusloome põhimõtete süsteemsema rakendamise ja parlamentide uurimisteenistuste kaasamisega, mis aitavad nii parlamendi liikmete kui ka avalikkuse (sh meedia) jaoks (poliit)ökonoomiliselt vähendada teabe kogumise ja analüüsi kulusid (uuring IV; Michael ja Kasemets 2004).

8. Eesti Vabariigi taastamist ja institutsionaalset taasülesehitust käsitletakse rahvusvahelistes hea valitsemise, õigusriigi ja korruptsiooni taseme uuringutes fenomenaalse eduloona. Uuringus III korruptsiooni kontrolli tasakaalumudeli (ingl *control of corruption equilibrium model*; vt Mungiu-Pippidi *et al*. 2011, 2012) alusel esitatud analüüs keskendub küsimusele: millised tegurid aitavad partikularismil ehk „omade eelistamisel" põhinevat valitsemisrežiimi (ingl *governance regime*) muuta osalusdemokraatia, õigusriigi ja võrdse kohtlemise põhimõtteid järgivaks valitsemisrežiimiks. Uuring III rakendab Eestis esimest korda selle mudeli raamistikku, vaadeldes korruptsiooni „võimaldajate" ning „piirangute" nelja dimensiooni (ptk 3.5.2) järgmiste tasemete ja tegurite kaupa: a) välispoliitiline keskkond (sh EL, OECD, Põhjamaad, NATO); b) sisepoliitika, meedia ja kodanikuühiskond (nt liberaalsed reformid, erastamine, kohtureform, e-riik, vabaühendused) ning c) Eesti eliit; eriti poliitiline eliit, kelle isiklik motivatsioon ja võimekus olid Eesti üleminekureformides väga olulised. Eesti erineb rahvusvahelistes õigusriiki, valitsemist, meediat ning korruptsiooni käsitlevate uuringute edetabelites teistest endistest "sotsialismileeri" riikidest sarnanedes pigem Lääne-Euroopa riikidega. Paljusid eelnimetatud teemasid oli Eestis seni sotsioloogilises vaates vähe uuritud, domineeris Transparency Internationali jt üsna legalistlik valitsemise ja korruptsiooni käsitlus, mis ei selgita Eesti fenomeni. Uuring III on käsitletav pilootuuringuna, sest täiendavate empiiriliste uuringuteta on raske ammendavalt vastata paljudele küsimustele, sh kuivõrd saab Eesti poliitilist valitsemisrežiimi (sh õigusloome) või Eesti

ühiskonda tervikuna kirjeldada avatud demokraatiana, mis põhineb isikute võrdset kohtemist austaval väärtuste universalismil (vt ka Kasemets 2013a, 2016b, 2017bc).

Olen eelviidatud sõltumatud uuringud I–III koos poliitikasoovitustega saatnud vastavate ministeeriumide ning riigikogu komisjonide ametiisikutele ja seetõttu võib neid käsitleda ka Eesti järgmise perioodi õiguspoliitika ning korruptsioonivastase poliitika kujundamise sisendina.

Väitekirja ingliskeelsete artiklite ideed on seotud mitmete Eesti sihtrühmadele mõeldud rakendusuuringute ja eestikeelsete artiklitega Riigikogu Toimetistes jm, sest olen töötanud peamiselt avalikus teenistuses. Eri riigiasutuste ja projektidega seotud kogemused on toonud uurimiseesmärkidesse, metoodikatesse (vt tabel 3) ja tulemuste arutellu teatud lisaväärtust rakendusliku teabe loomiseks avalikes huvides.[16]

Kokkuvõttes, kuigi uuringud näitavad positiivseid muutusi nii õigus-, siseturvalisus- kui ka korruptsioonipoliitikate regulatiivses juhtimises, on vastuolu kehtivate modernsete õigus(loome)normide ning nende tegeliku täitmise vahel siiski üsna suur – institutsioonide-ehitus peab jätkuma. Siin on väga tähtis roll ka ülikoolil, sest Eesti vajab multidistsiplinaarset õigusloometeaduse ja -hariduse tegevuskava. 'Erialakastide' ülesed poliitika/õiguse mõju-uuringud koos uuringutepõhise kõrgharidusega on eelduseks teadmistepõhise poliitika kujunemisele (vt ptk 3.6.2 ja 5.2.1).

[16] Lisaväärtuse all mõtlen eelkõige poliitikate kujundamise ja õigusloomega seotud sihtrühmadele mõeldud rakenduslikku refleksiivset teavet, vähemal määral ka akadeemilisele auditooriumile mõeldud teooria-praktika sünteesi jms. Kuna väitekirja valitud ingliskeelsed uurimistööd on enamasti (v.a III) eesti keeles ilmunud uurimistööde edasiarendused koos vastavate viidetega, siis soovitan lugejat huvitavate artiklite uurimis-probleemide, tulemuste, arutelude ja poliitikasoovitustega tutvuda Eesti Teaduse Infosüsteemis (www.etis.ee) olevate eestikeelsete artiklite kaudu. Seejuures vajab tähelepanu asjaolu, et rahvusvahelistele sihtrühmadele mõeldud ingliskeelsed ja samadel teemadel Eesti sihtrühmadele mõeldud artiklid on eri rõhuasetusega. Juhendaja Henn Kääriku sõnadega: „Tõlge tähendab tõlgendamist."

PUBLICATIONS

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