

Governance-Choice Method: In Search of the Appropriate Level of State Intervention

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Abstract

The modes and intensity of market interventions are central topics in research on regulation and governance as well as in public-policy debates worldwide. Lately, the quest for an increase in alternative regulatory institutions and initiatives on good governance, better regulation and evidence-based policy-making have given rise to major questions about the choice between available governance mechanisms. Research and policy typically suggest due consideration of alternative modes of governance like self- and co-regulation, but rarely specify the criteria against which the suitability of different options should be scrutinized and compared. This chapter introduces a governance-choice method that has been developed to support researchers and policy-makers who are confronted with the task of exploring and defining the appropriate role of the state in governance arrangements, the right mix of public and private contributions to existing and newly emerging governance challenges. This institutional approach provides a set of interlinked organizational factors and enabling contextual criteria that make it possible to predict the performance of a planned alternative governance arrangement and to assess the performance of an established one. The chapter presents an outline of the governance-choice method and illustrates its application with two examples: content-rating in the audiovisual sector and the prevention of spam on the Internet.

Index terms (key words)

governance, governance choice, regulation, self-regulation, co-regulation, alternative modes of governance, media, communication, Internet, spam, content rating

1. Introduction

The role of the state in general and the intensity and mix of market interventions by public and private players in particular are central and recurring topics in research on regulation and governance as well as in public-policy debates worldwide. This applies especially to the communications sector, where the traditionally strong role of the state has changed drastically in the course of liberalization and convergence (Latzner, 2009; 2013), but holds just as well for many other sectors of modern economies.

This chapter introduces a method that has been developed to support researchers and policy-makers who are confronted with the task of exploring and defining the appropriate role of the state in governance, i.e. of finding a suitable governance arrangement, the right mix of public and private governance modes for existing and newly emerging governance challenges. In a first step, the general logic, the rationale and the specific approach of this governance-choice method is defined and outlined. A discussion of pros and cons of this method is followed by a hands-on “how to” guide, illustrated by two application examples: content-rating in the audiovisual sector and the prevention of spam on the Internet. The final section concludes.

2. Definition, logic and rationale

The governance-choice method described here operates in reaction to a specific governance challenge and systematically guides the search for the choice of an appropriate governance

arrangement that acknowledges and differs by the required *intensity* of state involvement. In other words, on a case-by-case basis this method helps to evaluate and decide on the suitability of private governance interventions, how much state intervention is necessary and how state and private interventions can be combined to solve a given governance challenge.

This technique can be used in order to better comply with a widespread normative guideline in market economies: “As much state intervention in markets as necessary, as little as possible”. Its major *goal* is to improve the legitimacy and effectiveness of public policies in general and of governance and regulation in particular.

The governance-choice method can be *applied* both

(a) to design a suitable *new* governance arrangement for emerging risks from scratch (*ex ante* evaluation), and

(b) to evaluate and modify *existing* governance arrangements (*ex post* evaluation).

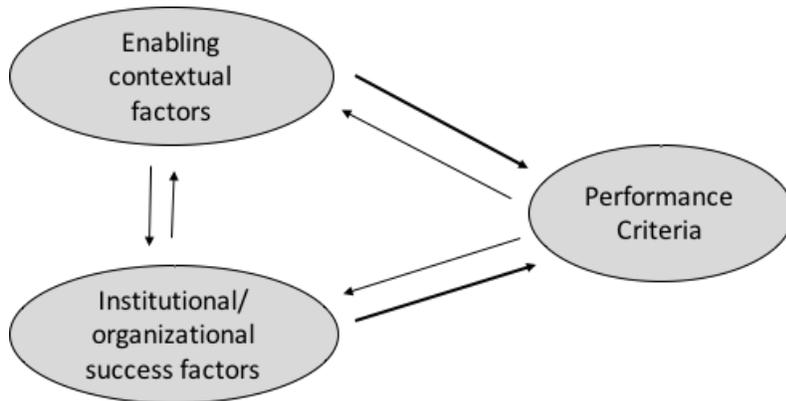
Governance options that are predicated on the intensity of state intervention are located on a continuum ranging from (1) market mechanisms at the one end to (5) command-and-control regulation by state authorities at the other (Latzer, Just, Saurwein & Slominski, 2002; 2003; 2006; Bartle & Vass, 2007). In between, there are *alternative modes of governance* comprising (2) self-organization by individual companies; (3) collective self-regulation by industry branches; and (4) co-regulation – a regulatory cooperation between state authorities and the industry which operates on an explicit unilateral legal basis. The governance-choice method offers an analytical guideline for a case-specific assessment of pros and cons of these governance options. It helps to assess how well a specific risk (e.g. illegal or harmful content, privacy or copyright violations, spam) can be handled by using alternative modes of governance with different degrees of state involvement.

Three basic questions help to determine the potential of alternative modes of governance for a given governance challenge: (1) *Feasibility*: Is the adoption of an alternative mode of governance by private actors feasible for the specific case? (2) *Suitability*: Are alternative governance arrangements suitable solutions for the given governance challenge? (3) *Performance/Effectiveness*: Are alternative governance arrangements durable and effective in meeting the public interest, and what are the needs and options to stimulate adoption or enhance performance of a private regulatory solution by means of state involvement? (Latzer, Saurwein, Dörr, Just & Wallace, 2015).

A broad theoretical spectrum of institutional and organizational, political and economic insights has thus far been developed on these three basic questions (Ayres & Braithwaite, 1992; Black & Baldwin, 2010; Campbell, 1999; Garvin, 1983; Gupta & Lad, 1983; Héritier & Lehmkuhl, 2008; Hutter, 2005; Latzer, et al. 2002; Levi-Faur, 2010; Newman & Bach, 2004; OECD, 2010; Ostrom, 1990; Pattberg, 2005; Sinclair, 1997; Saurwein, 2011; Schulz & Held, 2002). The governance-choice method brings these insights together and devises a set of organizational and contextual criteria that make it possible to predict the performance of a planned alternative governance arrangement or to assess the performance of an established one.

The approach starts from the basic assumption that the performance of an alternative governance arrangement is influenced by the particular market and *regulatory environment* (enabling contextual factors) and by the specific *organizational design* of a governing entity (institutional/organizational success factors) (see Figure 1).

Figure 1: Assessment approach: Interlinked criteria of the governance-choice method



Source: Latzer, Price, Saurwein & Verhulst, 2007

The *performance* of governance arrangements can be assessed by an evaluation of factors such as the adoption of the regulatory scheme; the awareness of the citizens and institutional players; the public attitude, acceptance and appreciation for the arrangement; and the actions undertaken by those who regulate, who are regulated or affected by regulations. Performance is influenced on the one hand by *institutional/organizational success factors* that can be designed or modified at the organizational level of self- and co-regulation (endogenous factors). They include, for example, the modes of stakeholder involvement and adequate enforcement powers. On the other hand, performance is influenced by *enabling contextual factors* that are related to the type of regulatory challenge, the characteristics of industries involved and the specifics of the regulatory environment. Contextual factors include, for example, the risks and potential impact in case of regulatory failure, and conflicts between public and private interests. In contrast to institutional/organizational success factors, contextual factors cannot be modified at the organizational level of an alternative regulatory institution (exogenous factors). If at all, they can be affected by reforms in the regulatory environment. In combination, they can provide a more or less enabling context for alternative governance arrangements. They affect the possibilities and

probabilities of their adoption (e.g., incentives to cooperate), as well as the performance of established institutions (e.g., effectiveness in reducing market failure). Altogether, the governance-choice-method provides a *checklist*, a set of *interlinked criteria* that guide the assessment. Table 1 summarizes the three dimensions for evaluations and criteria for systematic theoretical or empirical assessments.

Table 1: Template for governance choice: Checklist of evaluation criteria

Performance criteria
a) Awareness: Knowledge and understanding of schemes
b) Adoption: Concurrence with schemes and enduring acceptance of authority
c) Attitude: Perception in terms of trust, credibility and legitimacy
d) Action: Compliance with schemes, complaints received, disputes handled, governmental engagement
Enabling contextual factors
a) Direct benefits for the industry
b) Reputational sensitivity of the industry
c) Intervention capacity of governmental actors
d) Impact of regulatory failure and need for uniform and binding minimum standards
e) Intensity of required regulatory intervention
f) Conflicts of public and private interests in a regulatory question
g) Number of market participants and market fragmentation
h) Intensity of competition
i) Availability of organizations that could take over regulatory tasks
j) Support for public-policy objectives by the existing industry culture
k) Involvement of governmental actors
Institutional/organizational success factors
a) Rule making: Clearly defined remit, intelligible objectives and (measurable) standards that go beyond governmental regulatory requirements
b) Enforcement: Adequate, proportionate enforcement mechanisms
c) Adjudication: Adequate sanction power in case of malpractice (effective, credible, commercially significant sanctions)
d) Review: Periodic internal and external review (control, evaluation, monitoring, auditing)
e) Resources: Adequate resources to assure that objectives are not compromised
f) Participation and representation: Balanced representation, involvement of stakeholders, independence from interference by interested parties
g) Transparency: Transparent institutional design and regulatory processes
h) International involvement: Appropriate measures to contribute to international efforts for the solution of transnational regulatory problems
i) Coherence with the established governance architecture
j) Accountability: Clear distribution of regulatory responsibilities between private/industry and public/state regulatory organizations involved in the regulatory process
k) Adequate intensity and modes of involvement of governmental actors

Source: Latzer et al., 2002, 2007, Saurwein & Latzer, 2010, adapted

The factors listed in table 1 are connected with certain theoretical assumptions about the suitability of alternative modes of governance, as exemplified in table 2 for the group of enabling contextual factors.

Table 2: Rationale behind enabling contextual factors

a)	Do alternative modes of governance provide <i>direct benefits</i> for the industry? The greater the direct benefits of an alternative governance arrangement for the industry, the higher the feasibility of adoption.
b)	Is there a strong reputational sensitivity in the industry segment concerned? The higher the reputational sensitivity, the greater the incentives to adopt alternative governance measures to avoid reputation losses.
c)	How strong is the intervention capacity of governmental actors regarding the governance challenge? The greater the government's capacity for intervention, the higher the feasibility for the adoption of alternative modes of governance.
d)	How strong is the impact in the case of regulatory failure? The higher the potential negative impact of regulatory failure, the greater the need for minimum binding standards and the lower the suitability of alternative modes of governance.
e)	How strong is the intensity of the required regulatory intervention? The lower the intensity of regulatory intervention, the better the suitability of alternative modes of governance.
f)	How strong are the conflicts between public and private interests? The stronger the divergence between public and private interests, the lower the suitability of an alternative governance arrangement.
g, h)	How intense are market fragmentation and intensity of competition in an industry? The higher the number of actors and sectors involved, the lower the feasibility for the introduction of an alternative governance arrangement.
i)	Are there organizations available that can assume regulatory tasks? The better the organizational structure of the branch the higher is the feasibility of adoption of alternative governance solutions.
j)	Is there an industry culture that supports public objectives and self-regulation? A pre-existing sensitivity to public interests and a tradition of cooperation with state authorities supports the adoption of alternative governance arrangements.
k)	Is there an adequate level and mode of government involvement in the governance arrangement? A successful institutional design depends on an appropriate mix of measures and an adequate intensity of state involvement. In order to determine appropriateness, it is helpful to derive conclusions from the assessment of other contextual factors.

Not every factor and not even all of the three groups on the checklist are to be considered in each case-specific assessment. The choice of factors analyzed depends on the specifics of the given governance challenge. Furthermore, the assessment of single factors may lead to conflicting

results, which, in a second step, calls for a *qualitative weighing* of partial results in order to derive final conclusions regarding the question of whether a regulatory challenge can be met by market players alone, whether there is a need for state intervention, if existing arrangements are adequate and what a newly designed governance arrangement should look like.

3. Critical assessment of the method

The governance-choice method is part of an *institutional* governance approach; it is considered as an *institutional choice* (Latzer, 2007). It builds on early debates of “governing without government” (Rhodes, 1996), shifts from “the positive to the regulatory state” (Majone, 1996), and of “alternative modes of governance and regulation”, in particular to self- and co-regulation, (Latzer, Just & Saurwein, 2013), which are marked by the growing consideration of the *involvement of private actors* in governance arrangements. It is also related to ideas such as “good governance,” “better regulation” and “evidence-based policymaking,” and may be applied in the comparative part of a “regulatory impact assessment” (RIA).

Governance is understood as the *horizontal* (including private actors) and *vertical* extension (including multi-level activities/interventions) of government (Latzer et al., 2003, 2007). It also goes beyond *regulation*, which is limited to intentional constraints on market players, by including other forms of intervention, e.g. incentives, nudging, information and education.

The *advantage* of this method is its wide applicability to all sectors and areas of governance and regulation. It is both a valuable tool for scientific governance research and can assist policy-makers, in particular regulators, in their *ex ante* assessments and governance design of upcoming regulatory challenges and in the *ex post* evaluation and reform of existing governance arrangements. If it is the political will that state interventions should be limited to a minimum, such governance-choice analysis might be introduced obligatorily and publicly documented

before forms of state intervention (e.g., laws) are even prepared. This could improve the quality of decision-making and also its transparency, if the outcomes are published and publicly discussed.

Applications of this governance-choice method yield several findings that demonstrate the value of this approach for research and policy-making. The method described here was, for example, applied to explorative assessments of the suitability of self-regulation for transparency in electronic commerce and of interconnection in telecommunications (Latzer et al., 2002; 2003), for the comparative assessment of content-rating schemes in the audiovisual industry on behalf of Britain's OFCOM – Office of Communication – (Latzer et al., 2007; Saurwein & Latzer, 2010), and for an evaluation of the governance of spam (Just, Latzer & Saurwein, 2007).

Furthermore, it was used in a comprehensive assessment of industry self-regulation with regard to the protection of minors in film, computer gaming, telecommunications and the Internet in Switzerland, which was conducted on behalf of the Swiss Federal Social Insurance Office – FSIO (Latzer et al., 2015). Selected parts of the checklist were also applied for the assessment of options and limitations regarding the governance of algorithms on the Internet (Latzer, Hollnbuchner, Just & Saurwein, 2016; Saurwein, Just & Latzer, 2015).

A *disadvantage* of the governance-choice method may be the *high cost*, among other things, due to the need for *advanced know-how* of the subject area in order to select, evaluate and weigh the various assessment factors and corresponding outcomes. Some factor assessments may be quite intensive in terms of time and resources, thus resulting in considerable expense (e.g., for representative surveys to evaluate the public awareness and attitude towards specific regulatory measures). It has to be kept in mind that the precondition for a solid governance-choice procedure is a thorough assessment of risks that accompany the governance challenges (e.g., abuses of market power, decreases in privacy, insufficient youth protection), and that the results of this

method are limited to questions regarding the mix of private and public market interventions or rather the degree of state involvement. The governance-choice method concentrates on *institutional* choices regarding the question of by whom (actors) and how (processes) governance/regulation is carried out. The *substantive* dimension of governance, which asks what is being governed (e.g. market access, prices, transparency), and what approaches/instruments are chosen, e.g. governance by technical design, by trust and reputation, receives less attention, and calls for additional, complementary assessments.

Altogether, the governance-choice method provides a helpful tool and guideline for researchers and policy-makers, and contributes to strengthening the link between communications policy research and policy-making. However, these guidelines are not a technocratic formula that can be applied mechanistically. In the end, governance choices remain political choices, but they may be more transparent and better informed if this method is systematically applied and its results are well-documented and publicly available.

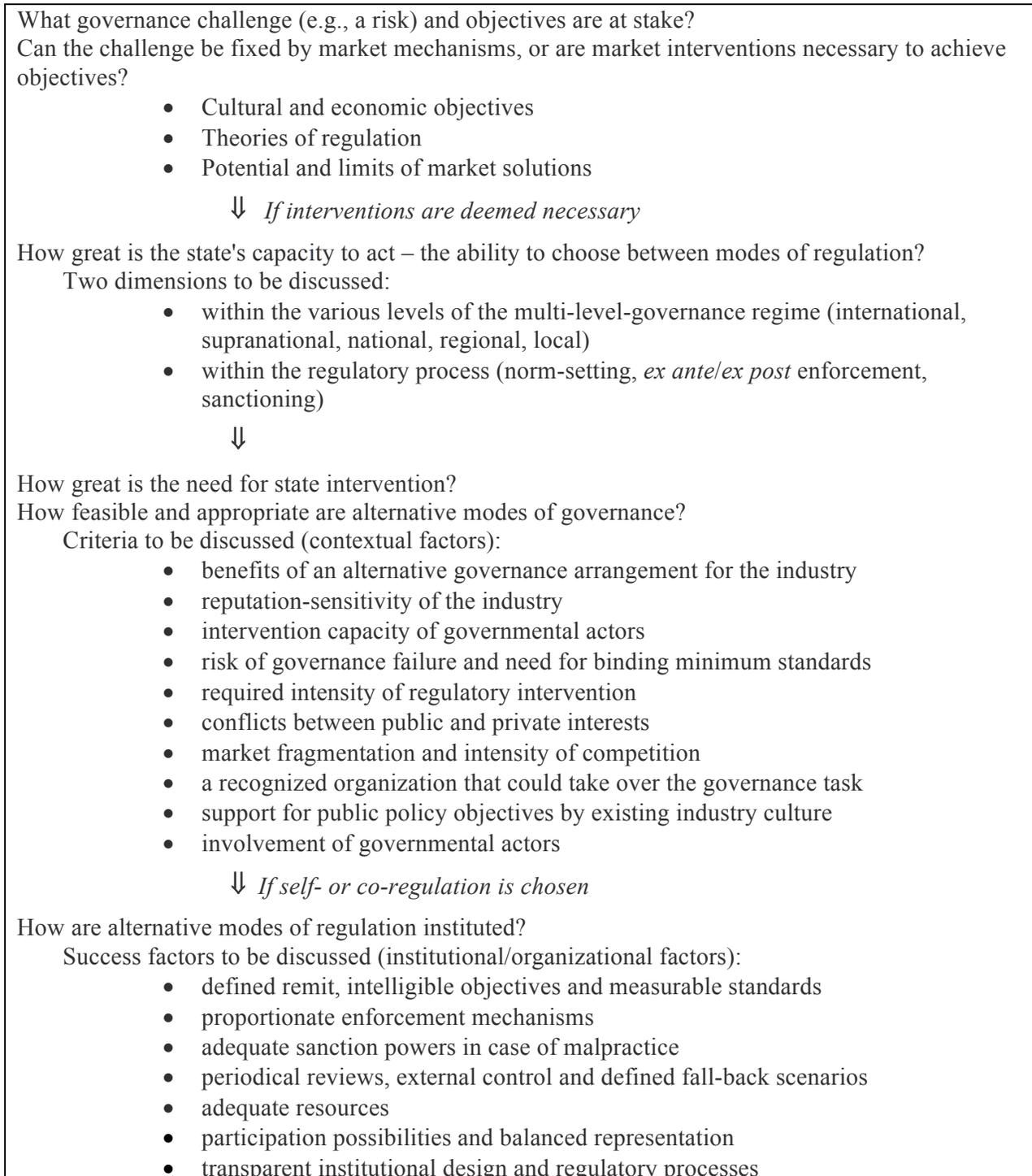
4. Planning and conducting: a hands-on ‘how to’ guide

Because the method presented here is not a technocratic formula, there is no one-size-fits-all solution and every governance challenge requires a tailored solution. The first major task is therefore to clearly define the governance objectives that are at stake and the type of review, i.e., is this an evaluation of existing arrangements with a possible reform in mind (*ex post* evaluation) or is it about the design of a completely new arrangement in reaction to a novel governance challenge (*ex ante* evaluation).

A rough procedural step-by-step guideline for the systematic analysis is provided in figure 2. In this case, a newly designed governance arrangement is envisaged (*ex ante* evaluation). Hence, contextual and organizational factors are selected for the governance-choice procedure (see table

1). In the case of an *ex post* evaluation and reform of existing arrangements the performance criteria would have to be applied as well.

Figure 2: Outline of the procedural guideline for the systematic search of governance arrangements



- appropriate international involvement
- coherence with established governance architecture
- clear distribution of governance responsibilities
- adequate modes and intensity of government involvement

Source: Latzer, 2007; Latzer & Saurwein, 2008, adapted

4.1 Sample Application of the Method

The application of the governance-choice method according to the guidelines in tables 1 and 2 is now demonstrated with the assessments of two governance challenges: (1) content-rating in the audiovisual industry and (2) the prevention of spam on the Internet. The basic characteristics of these two challenges are briefly summarized in box 1.¹

Box 1: Brief description of two application examples

Content-rating in the audiovisual industry:

The governance challenge is to provide sufficient youth media protection. There is the risk of lack of information on the suitability of certain media content for minors before audiovisual products (which are experience goods) are selected and consumed. Content-rating schemes are expected to provide reliable information, increase transparency and thus allow well-informed selections by consumers. However, performance and effectiveness of rating systems that inform parents and protect children are the subject of controversy. The increasing amount of digital media content on convergent platforms and the decline in controllability challenge existing rating systems and call for governance reforms. Part of these reforms are assessments regarding the adequate role of the state in content rating, including evaluations of the potentials and limits of alternative modes of governance (self- and co-regulation).

Prevention of spam on the Internet:

The governance challenges associated with spam or undesired content like unsolicited advertising are an inefficient allocation of scarce resources (attention, infrastructure), violations of privacy, threats to communication security, and negative effects on reliable advertisers. Measures against spam should contribute to increasing the efficient use of resources, consumer trust in advertising and network security. The governance task is, among other things, to differentiate between solicited and unsolicited e-mails and to filter the latter effectively. The share of spam continuously increased until 2008, when it was reported to be above 85% of all e-mail traffic. During the past decade this figure has dropped to below 60% in 2016 (Gudkova et al., 2017). This partial success in the prevention of spam serves as a reason to assess the mix of public and private governance modes in existing arrangements.

In general, governance-choice assessments are carried out in two consecutive modules:

- The first module includes a step-by-step analysis of selected context factors (see table 1, a-k). Every factor assessment provides indications of whether and to what extent alternative governance arrangements by private actors are feasible and suitable in this specific context (e.g., rating or spam prevention).
- In the second module, these indications are pulled together and weighted in order to draw final conclusions regarding the potentials and limits of alternative modes of governance, and consequently regarding the appropriate mix of public and private governance modes.

Module 1: Step-by-step analysis of selected context factors

a) Direct benefits for the industry

The adoption of an alternative governance arrangement depends on its benefits for the industry. The greater the direct benefits of an alternative regulatory solution for the industry, the higher the feasibility of its adoption. Direct economic benefits may create win–win situations for public and private interests, for example, when improvements in standardization also enhance economic performance. *Indicators* for this evaluation factor include overlaps between public and private interests and the potential benefits of self-regulation for the industry.

In the case of *content-rating* schemes, there are only costs but no direct economic benefits for the industry. This situation calls for state involvement to stimulate the adoption of a rating scheme. In the case of *spam*, there are benefits for the industry, especially for e-mail service providers. The lack of an efficient filtering system decreases the attraction of an e-mail service. This constellation favors industry solutions at the level of e-mail service providers.

b) Reputational sensitivity of the industry

The more a company's success depends on reputation, the greater are the incentives to adopt self-regulatory measures to avoid reputation losses. *Indicators* of reputational sensitivity include the extent of public concern regarding risks, the probability of detection of malpractice, or industry investments in reputation development. In general, reputational sensitivity is higher in business-to-consumer markets than in business-to-business markets.

In the case of *content rating*, the level of public concern is high, but reputational sensitivity is not evenly distributed across the industry. Not all content producers and suppliers regard reputation as a central value. This results in free-rider problems that might call for state intervention in order to achieve sufficient participation. In the case of *spam* there is also a high level of public concern. Reputation, consumer trust and security are important for e-mail service providers and serious players in the direct marketing industry. Altogether, high reputational sensitivity in pivotal industry segments (ISPs, marketers) provides an argument in favor of industry solutions.

c) Intervention capacity of governmental actors

Self-regulation is often the result of credible threats of government intervention. The greater the government's capacity for intervention, the higher is the feasibility of adopting alternative regulation. *Indicators* of intervention capacity include formal regulatory responsibilities and available resources. It is higher if there are legal remits in the regulatory field and if authorities can resort to appropriate knowledge, resources, and instruments for monitoring and enforcement. Intervention capacity is lower if the demand for transnational coordination is high.

In the case of *content rating* there are high intervention capacities in terms of public regulatory responsibilities regarding the protection of minors. At the same time capacities are limited because of censorship concerns and high cost of external ratings by the state. These are

arguments for delegating governance powers to the industry. Similarly, in the case of *spam* there are capacities for state intervention via anti-spam rules and sanctions in the case of non-compliance. However, state-intervention capacities are limited because of the strong demand for international coordination, the high amount of advertising and the impracticability of a state solution for monitoring and filtering. These difficulties for state interventions are an argument for industry solutions, especially at the enforcement level.

d) The impact of regulatory failure and need for uniform and binding minimum standards

The higher the potential negative impact of regulatory failure, the greater is the need for binding public standards. A high demand for binding standards decreases the suitability of private governance modes. *Indicators* for consequences of regulatory failure include the impact of a single case of noncompliance with regulatory standards, the degree of reversibility, as well as hazard or adverse effects of regulatory failure and the likelihood of it occurring.

In the case of *content rating*, regulatory failure may result from the absence of a scheme or from a systematic failure of a scheme to provide reliable information. There are potentially negative impacts of non-adoption that call for measures to stimulate the adoption process. However, there is little need for binding minimum standards, because a single case of non-compliance has little impact. This is an argument in favor of alternative modes of governance. Also in the case of *spam*, the effects of a single case of non-compliance are often negligible and individual providers may develop their own anti-spam instruments. But the total absence of filtering systems would threaten e-mail services in general. Moreover, an effective fight against spam is facilitated by existing global legal regulations to avoid spam oases. Altogether, the high impact in the case of regulatory failure and the benefits of common transnational standards are arguments for state oversight.

e) Intensity of the required regulatory intervention

The demand for governmental oversight increases with the intensity of intervention. The lower the intensity of regulatory intervention, the better is the suitability of alternative regulatory solutions. *Indicators* for the required intensity of intervention include what is being regulated (e.g. high intensity for regulation of entry and costs, low intensity for regulation of transparency). In the case of *content-rating* schemes, at first glance, the intensity of intervention seems rather low (governs transparency). However, ratings may have considerable economic impact, which calls for public institutional measures that guarantee fair practice. In the case of *spam*, intervention intensity depends on the measures taken (low: flagging, spam folders; high: deletion systems, penalties). Similar to the issue of rating there is a need for institutional measures that guarantee fair practice.

f) Conflict between public and private interests

Diverging interests between companies hamper the emergence of self-regulation, and the greater the divergence between public and private interests the less suitable is an alternative regulatory solution. For example, private regulation for competition (market-power control) or to solve distributive conflicts is unlikely. *Indicators* to be observed include the specific interest constellations within the industry.

In the case of *content rating*, conflicts of interest are considerable, because companies and consumers do not share a common interest. There are, for example, incentives for the industry to “underlabel” products, because lower protection levels increase audiences. Hence, content-rating is not suitable for pure, unlimited industry self-regulation. In the case of *spam*, there is a broad common interest in the reduction of unsolicited e-mail, with the exception of the rather small segment of professional spammers. However, there are some conflicts of interest between

consumers and businesses regarding the modes of spam reduction (e.g. opt-in or opt-out solutions), which call for state oversight.

g, h, i) Market fragmentation, competition and industry organizations

The higher the number of actors and sectors involved, the more difficult it is to arrive at a universally acceptable set of standards. The maturity of a market may have an influence if there is already an established umbrella organization. Taking over additional tasks is, for example, easier for an established industry association. In contrast, many single-issue organizations may cause awareness problems, transparency losses, regulatory competition (forum shopping) and even decreasing standards (race to the bottom). *Indicators* to be considered include the total number of market participants, the diversity of the actors involved, market fragmentation and the existence of organizations that might possibly assume governance tasks.

In the case of *content rating* the old industry structure supported the establishment of self-regulation (few actors, established industry organization). Changing contextual conditions (digitalization, fragmentation, transnationalization) complicate both public and private governance solutions. The issue of spam is characterized by high technological complexity and the large number of actors and businesses involved. However, there are established industry associations (marketers, ISPs) that can take over governance tasks. The most effective alternative regulatory arrangements have emerged in the form market-driven technological solutions like governance by design, especially the Bayes filter, based on machine-learning algorithms, which accounts for the detection of 90% of spam mails (Freist & Hosbach 2017).

j, k) Industry culture and state involvement

The practicability of the adoption of alternative governance depends on the extent to which public policy objectives are supported by the existing industry culture, and on adequate support and governmental involvement. *Indicators* include the options and the deployment of instruments to support, foster and control alternative regulatory institutions. These range from soft forms of governmental involvement (symbolic support, inspiration) to financial subsidies and direct control in a co-regulatory framework.

In the case of *content-rating* schemes the intensity and modes of state involvement differ and the differences reveal differing industry and policy cultures. A combined analysis of performance and state involvement, for example, shows that the success of a rating scheme is not a linear function of the intensity of state intervention (Saurwein & Latzer, 2010). In the case of *spam* there are no direct formal and legal links between anti-spam measures of the industry and state regulation. The regimes co-exist. However, state regulatory agencies frequently point to difficulties of cross-border legal prosecution and emphasize the need for consumer self-help and the use of filter software.

Module 2: Drawing conclusions and recommendations

In order to draw conclusions, the (conflicting) results of module 1 – the assessments of contextual factors – are pulled together and weighted.

In the case of *content rating*, for example, freedom-of-speech concerns, high costs of rating content, and little demand for uniform binding minimum standards support the suitability of alternative modes of governance. However, the lack of direct economic benefits for the industry, sharp conflicts between public and private interests, incentives for free riders, the potential for major economic impacts of rating, and increasing fragmentation of the audiovisual market are

indicators that content-rating is not suitable for pure, unlimited industry self-regulation and that some kind of governmental control seems appropriate. Taken together, the governance-choice method suggests a regulatory arrangement with significant industry involvement in the rating practice, combined with some degree of public oversight to stimulate adoption and compliance, and avoid under-labeling.

5. Conclusion

There are various options to assess the appropriate role of the state or the right mix of public and private governance modes in reaction to a given regulatory challenge. The governance-choice method presented here has proven to be a multifunctional, flexible tool in this context. It can be applied to assess and explore the suitability of alternative modes of governance (self- and co-regulation), the quality of the institutional/organizational design of specific governance arrangements, the effectiveness of specific governance arrangements and the reasons behind them.

On the one hand, this method strictly guides the assessment procedures step-by-step, ensures that potentially influential factors are not unintentionally disregarded, directs the focus towards certain indicators and draws from multidisciplinary research findings on governance and (self-) regulation. On the other hand, the application of this technique leaves leeway in the interpretation of partial results, and in the drawing of final conclusions and recommendations, requiring altogether a high level of know-how on the part of the evaluators. However, a good documentation of the systematically conducted assessment process makes it possible to reconstruct and understand possible differences in the interpretation of factor assessments.

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ⁱ For space reasons, the following explanations are confined to the *enabling contextual* factors and focus on the procedure not on the results. The assessment of *institutional* and *performance* factors would follow the same logic.