

# Regulatory procedures, evidence, and governance outcomes

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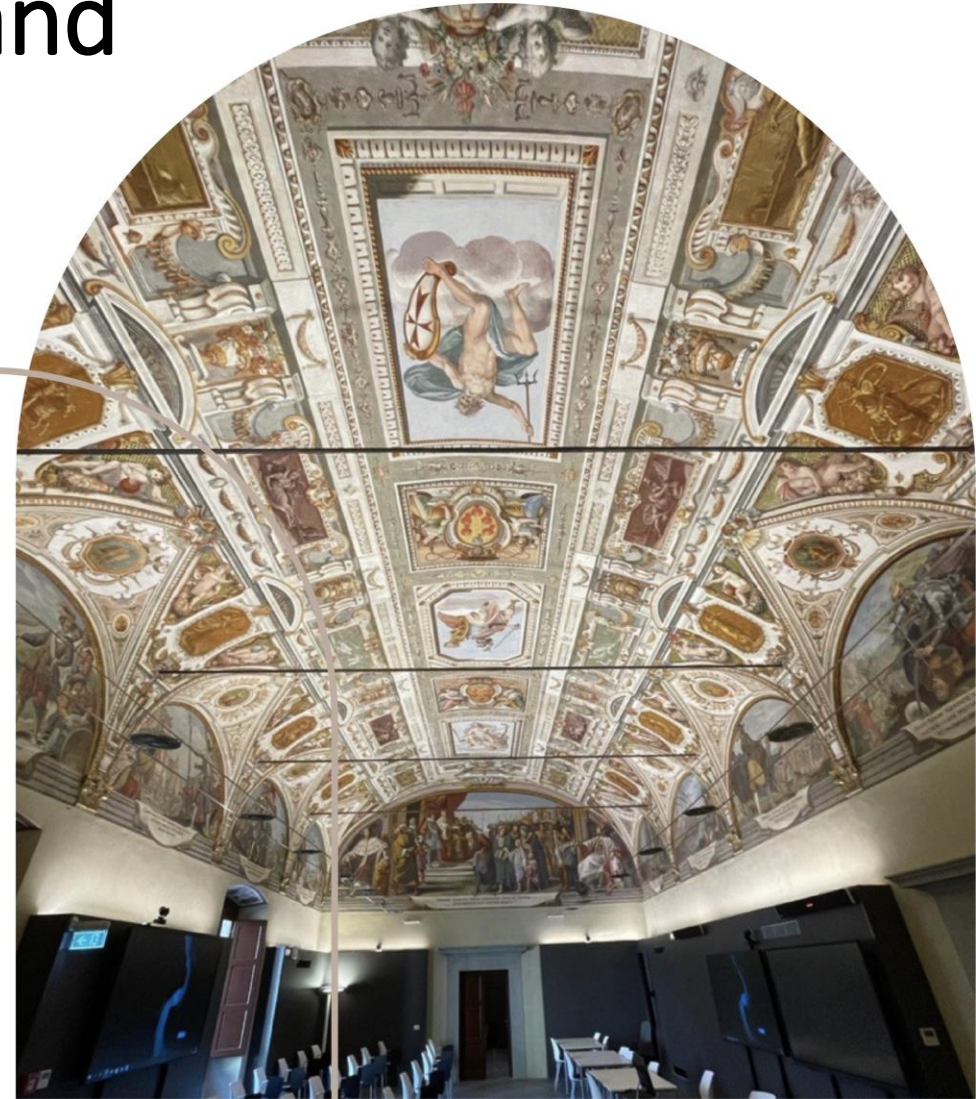
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**Science for Resilience –**

**Learnings from the Pandemic**

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# TOPIC

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Last two decades: adoption of formal regulatory procedures that are expected to increase the role of **evidence, science and stakeholders** in public policy decisions

Example: risk assessment, regulatory impact analysis, consultation, freedom of information acts, Ombudsman offices (national and sectoral)

Key idea is that the regulators does not have full information on choices: opening up the decision-making process is a way to cope with **bounded rationality** and increase **transparency** and **legitimacy**

In short: **rules on how rules should be made**

# During the pandemic

During the **pandemic** some of these regulatory procedures have not been used because of urgency, yet their underlying principles still apply Example: risk-risk analysis

Always during the pandemic: **Right to Science** (General Comment, UN, April 2020)

General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)

# Questions hopefully relevant to our audience today

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Looking back at the experience of the EU 27 and the UK, how do these procedures work?

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Are they sufficient conditions for governance outcomes that we consider desirable?

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Shall we invest in these procedural regulatory instruments in this post-pandemic period?



**Topic** - The Design of Evidence-Informed Procedural Instruments across the EU-27 Member States and UK

**Claim** – The design of Instruments (and their empirical combinations) has an effect on governance

In the project we look at the effects of design on trust, perceptions of corruption, ease of doing business, and a subset of the sustainable development goals

Trust / corruption / impacts on the economy have been topical issues in the Covid-19 debate - although I have not looked at Covid regulations specifically

Research team working on a book: Claire Dunlop, Jonathan Kamkhaji, Gaia Taffoni and Claudius Wagemann (and me of course)

# What we looked at

When a rule is being made....

- \_consultation;
- \_impact assessment of new legislative proposals (RIA);
- \_freedom of information (FOI);
- \_ombudsman (OMB)

Others? Yes, sure...

# Justification of instruments choice

- These instruments lay down “rules to make rules”, i.e. meta-regulation
- “They open up the rulemaking process” We focus on these instruments because they are **relational, participatory** instruments that bring in and enfranchise stakeholders, **evidence-informed** choice, and the public at large
- OECD, EU, WB talk about “better regulation” but miss FOI and OMBUDSMAN

# Language

Lawyers: administrative procedures / rulemaking

Political scientists: regulatory instruments or  
regulatory policy instrumentation



# Ostrom's Institutional Grammar

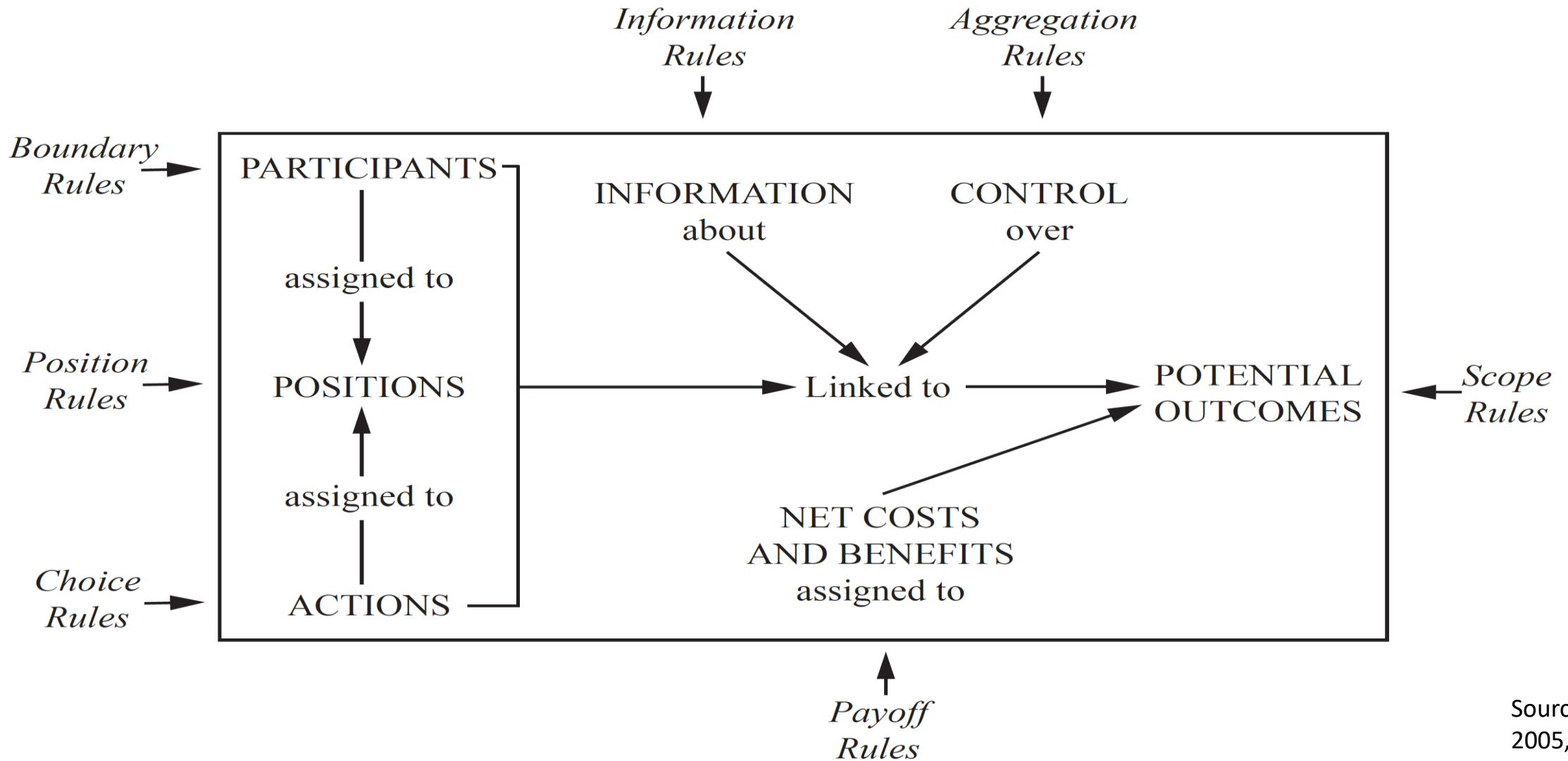
- We analyze the interaction among actors in a context (called action situation by Ostrom)
- We focus on institutional statements that shape incentives in action situations
- These statements describe opportunities and constraints. They create expectations about the behavior of other actors
- In short, we look for a syntax of institutional statements



# Rule types

Rule type	These rules...
<b>Position</b>	Identify positions/roles to be filled by individual or collective actors
<b>Boundary</b>	Regulate eligibility of actors to occupy positions
<b>Choice</b>	Specify actions that actors must, must not, or may undertake
<b>Aggregation</b>	Discipline actions or decisions that require the aggregation of two or more actors
<b>Information</b>	Identify channels and modes of communication/exchange of information between actors
<b>Payoff</b>	Assign benefits and costs – for example rewards and sanctions – to specific actors relative to following distinct courses of action
<b>Scope</b>	Identify required, desired, or prohibited outcomes of the action situation

# Rules **DEFINE** the action situation



# Causes and mechanisms

We are not seeking the average effect of instruments on a given governance outcome

We are asking: what is the sufficient condition (in terms of our rules, instrument by instrument) for a country to fall into the basket of that outcome?

This leads to set-theory, also known as qualitative comparative analysis

# Findings in three keywords

- **Equifinality**
- **Ecology**
- **Granularity**



# Equifinality

- More than one causal path. Typically we find 2-3 causal paths with some countries in each path
- Path 1 Formal procedure hinders informal administrative processes
- Path 2 formal regulatory procedures are sufficient conditions for 'good governance' to occur

# Example: Outcome Ease of Doing Business

CONS\*RIA\*FOIA: Latvia, UK, Estonia, Ireland, Slovenia

But Austria, Denmark, Portugal have a different path, based on light requirements and limited formalization of consultation and access to information

# CLEAN (Absence of Corruption)

~CON\*~RIA\*~OM

Belgium, Luxembourg  
Netherlands, Sweden



# Ecology

- Not a single instrument or reform, but the overall effect of the instrumentation of FOIA-OMBD-CONS-RIA
- Europeanization - old and new Member States – but not convergence
- EoB explanation tracks down varieties of capitalism
- Benelux relatively coherent family of countries
- Austria-Denmark-Portugal often together

# Granularity

- The explanation we found is **granular**.
- Each regulatory procedure is made up of **dozens of Ostrom's rules**, policymakers should look at which rules are important because 'they make the difference' rather than talking about generic terms like 'consultation' or 'impact assessment'
- **Incomplete or weak designs**: aggregation and payoff rules are almost absent, the implication being that the structure of incentives to comply with government guidance on the four procedures can be strengthened.

# Post-Pandemic scenario

- General Comment of the UN on the **Right to science** (April 2020)
- **Calibrate** instruments taking context into account: balancing formality and informality
- Role of **foresight**
- Is Evidence & Science - Informed policy good only for slow times? Is it doomed to be ignored when the **crisis is the new normal**?
- Leveraging Next Generation EU as opportunity to think of rules as levers of **innovation and growth**, rather than rules as prohibition and ‘command and control’
- Beyond the slogan “let us spend the money wisely” lies the more important question of making rules that draw on robust evidence and balanced values in order to achieve **resiliency**

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**Committee on Economic, Social and Cultural Rights**

**General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)\***

# The use of evidence in decision-making during public health emergencies

[www.ecdc.europa.eu](http://www.ecdc.europa.eu)

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