Reputational threats and democratic responsiveness of regulatory agencies

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Abstract:

This chapter studies decision-making behaviour of independent regulatory agencies. Theoretical accounts of delegation to regulatory agencies emphasize that losses of political accountability of regulators are traded off against potential gains in regulatory efficiency. The theory of credible commitment suggests that independent (non-majoritarian) regulatory agencies are more effective in regulating markets than organizations under direct political control. However, independent regulatory agencies operate in a political context and need to demonstrate their benefit to a diverse set of stakeholders, including elected politicians. We are hence confronted with a 'paradox of autonomization' according to which more autonomous public organizations have to take into consideration external demands to a greater degree than less autonomous organizations. Independent regulatory agencies will thus be subjected to high accountability demands. We use the analytical lens of bureaucratic reputation theory to analyse how different types of external demands affect regulatory agencies' attention to stakeholders. The chapter argues that reputation sensitive regulatory agencies will exhibit differential response patterns to negative public judgments, depending on the kind of negative judgments and the type of actor criticizing the regulator. We use systematic media analysis of public judgements and regulators' communicative response, using the financial regulator and the utility regulator (electricity, railways etc.) in Germany as empirical cases. We find that regulatory agencies respond differently to negative public judgments, yet are not more (or less) responsive to political actors' criticism compared to other types of actors. This finding questions independent regulatory agencies' democratic accountability, yet the chapter also suggests that public criticism and debate is only one channel among many others through which regulators are held democratically accountable.

Introduction

This chapter studies decision-making behaviour of independent regulatory agencies. Theoretical accounts of delegation to regulatory agencies emphasize that potential losses of political accountability of regulators are traded off against potential gains in regulatory efficiency. The theory of credible commitment suggests that independent (non-majoritarian) regulatory agencies are more effective in regulating markets than organizations under direct political control because of their long-term orientation (as opposed to short term, myopic decisions by office-seeking politicians) and because of their expertise and professionalism (Gilardi, 2008; Majone, 1997). The independent regulatory agency model hence builds upon the idea of output-legitimacy, as opposed to the conventional model of input-legitimacy in which bureaucratic organizations are located at the end of a chain of delegation from the electorate to legislators and governments (Strøm, 2000).

The institutional architecture of the regulatory state has fuelled debates about problems of democratic accountability of regulators and about alternative modes of accountability (Bach & Wegrich, 2016; Scott, 2000). The bottom line is that regulatory agencies operate in a political context and are subject to multiple accountability relations. Although political institutions may be constrained in directly controlling regulatory agencies, the latter operate in a political context and need to demonstrate their benefit to a diverse set of stakeholders, including elected politicians. The relationship between public organizations and multiple stakeholders is at the core of bureaucratic reputation theory (Carpenter & Krause, 2012; Maor, 2015). This theory suggests that audiences hold distinct views about public organizations, and that reputation-sensitive organizations try to cultivate favourable reputations among relevant audiences. Those reputations among relevant stakeholders are essential because they are a source of power vis-à-vis other actors and ultimately ensure organizational survival.

The chapter draws on bureaucratic reputation theory to conceptualize the relationship of regulators with their broader context. More specifically, it builds on the idea that regulatory agencies use accountability relationships to cultivate distinct reputations among multiple actors holding those agencies to account (Busuioc &

Lodge, 2017). In line with a growing body of research, we use regulatory agencies' communicative behaviour to study reputation management (Bach et al., 2019; Bach, Jugl, Köhler, & Wegrich, 2020; Busuioc & Rimkutė, 2019; Carpenter, 2010a; Maor, Gilad, & Bloom, 2013; Moschella & Pinto, 2019). In empirical terms, the chapter assesses whether independent regulatory agencies respond through communicative action to negative public judgments ('threats') which are reported in the news media. The main assumption is that regulatory agencies are well aware of their dependency on a supportive environment. They are therefore more likely to react to negative public judgments targeting fundamental aspects of their institutional identity, rather than those aspects that are of marginal importance to their distinct reputational profile. Moreover, we argue that despite being independent from direct political control, regulatory agencies are well aware of the political context in which they are operating. We therefore suggest that regulatory agencies will try to accommodate political actors' criticism and are more likely to respond to political actors' negative judgments relative to other actors' negative judgments.

The chapter uses data from a systematic media analysis covering the financial regulatory agency and the utility regulator in Germany in a period from 1998 until 2016. Those are prominent examples of regulatory agencies with multiple responsibilities and with high levels of autonomy (Ruffing, 2015). We coded all articles in *Frankfurter Allgemeine Zeitung*, a major broadsheet newspaper with extensive coverage of business affairs, which included a positive or a negative judgment on these two regulators. We also coded the source of the judgment, as well as which reputational dimension was targeted; and whether the regulatory agency responded to the threat (as reported in the same article). This allows us to assess regulators' reputational profiles and whether their response patterns vary systematically with the reputational dimension and the type of actors from which reputational threats originate.

The next section outlines our theoretical argument. Then we motivate our case selection and describe our data collection and methodology. After that, we provide an empirical analysis of regulatory agencies' communicative responses to reputational threats, followed by a discussion and conclusion.

Analytical Framework: Accountability, Reputational Threats, and Communicative Responses of Regulatory Agencies

This section develops a theoretical argument about the reputation-seeking behaviour of regulatory agencies from the distinct perspective of public accountability. The model of independent regulatory agencies has become a hallmark of the regulatory state (Gilardi, 2008). The main argument for making regulatory agencies independent from direct political control has its foundations in economic theory. From this perspective, independent regulators are a technology of credible commitment for politicians to a given set of policy objectives. In order to ensure the trust of market actors in regulatory decisions, politicians delegate powers to regulators, which operate independently of the political election cycle. Hence, this model has an inbuilt scepticism against the ability of democratically elected politicians to effectively regulate market activities (Roberts, 2010). The political independence of regulatory agencies thus ensures that regulatory policies are stable over time, which according to the theory of credible commitment would not be the case if regulatory decisions were in the hands of politicians, who are assumed to have time-inconsistent policy preferences (Majone, 1997).

The problem of politically independent regulators is that conventional models of democratic accountability, which are based on the parliamentary chain of delegation and control, consider independent agencies as being potentially out of (democratic) control. A main endeavour of political science studies of regulatory agencies has therefore been to understand 'accountability in the regulatory state' (Scott, 2000). We can only briefly sketch some of the challenges of accountability in the regulatory state here (see Bach & Wegrich, 2016 for a summary). A first characteristic is 'the problem of many hands' which denotes that there are multiple actors involved in providing public services, making it more difficult to clearly identify responsibilities and to hold actors to account (relative to the provision of public services under the auspices of the government). A second characteristic is a multitude of account-holders (forums) which can demand information from another actor (account-giver) and may pass a significant judgment on the latter (Bovens, 2007). This situation has been labelled 'the problem of many eyes'. A main implication is that regulators are accountable to multiple actors using distinct criteria of accountability (legal, financial

procedural etc.) and hence are under control, even though no single actor effectively controls the regulator (Scott, 2000).

The literature has identified multiple challenges to ensuring accountability in the regulatory state. First, a major challenge for regulatory regimes is to strike a balance between accountability overload on the one hand, where regulatory agencies are confronted with multiple and potentially conflicting external demands, and accountability deficits, where distinct aspects of regulatory agencies' activities fall between the cracks of different account-holders' distinct focus (Bach & Wegrich, 2016). A related argument suggests accountability relations suffer from problems of 'drifting principals' who do not take their roles vis-à-vis regulatory agencies seriously (Schillemans & Busuioc, 2015). This turns the conventional perspective on political control upside down, which highlights that regulatory agencies (and bureaucratic organizations more generally) have a tendency to develop into 'runaway bureaucracies' that undermine the policy preferences of their political principals (or, when looking at accountability relations, will try to avoid being held accountable) (McCubbins, Noll, & Weingast, 1987). Second, independent regulatory agencies (and other non-majoritarian institutions) have been accused to produce technocratic decisions that fail to account for legitimate interests of affected stakeholders (Roberts, 2010). Third, complex regulatory regimes pose particularly challenges in terms of pinning down responsibility for policy failures, as they diffuse blame for such failures among multiple actors and open up possibilities of mutual blame attribution among politicians, regulators, and regulatees (Bach & Wegrich, 2019).

This chapter makes an empirical contribution towards understanding how independent regulatory agencies account for their activities when faced with public judgments about their activities. In terms of understanding the relationship between (independent) regulatory agencies and relevant stakeholders (or audiences), we are confronted with a 'paradox of autonomy' (Bach, 2015). This paradox suggests that autonomization increases, rather than decreases public organizations' accountability load. The higher the formal autonomy of public organizations, the higher and the more complex the demands of accountability (i.e. explaining behaviour towards relevant account-holders) they face. In other words, regulatory agencies' independence from direct political control increases, rather than decreases, the

importance of paying attention to relevant audiences and of being accountable, i.e. explaining behaviour.

This chapter uses bureaucratic reputation theory to analyse how independent regulatory agencies respond to complex demands of public accountability. Bureaucratic reputation theory conceives of public agencies as political actors in their own right. In this perspective, the power of public agencies does not result from the delegation of formal powers by politicians, but from the agencies' own cultivation of favourable reputations among relevant audiences (Carpenter, 2010b). This theory points to the importance of understanding bureaucratic behaviour as emerging from a relationship with a broad set of audiences, rather than focusing on the relationship with the political principal. A basic assumption of bureaucratic reputation theory is that reputation is multi-dimensional concept (Busuioc & Lodge, 2017; Busuioc & Rimkutė, 2019; Carpenter & Krause, 2012). The theory suggests that organizations develop a distinct reputational profile, highlighting some reputational dimensions rather than others. In terms of public accountability, this means that account-giving will be biased in the sense that regulatory agencies are more likely to render account in areas that are the core of their reputation relative to non-core areas of reputation. From a reputational perspective, the rendering of public accountability is an opportunity for public agencies to cultivate favourable reputations (Busuioc & Lodge, 2017). Accordingly, organizations will 'respond with higher degrees of attention toward their audiences' signals' (Busuioc & Lodge, 2017, p. 95) if the latter target the core reputational profile of the organization.

Public organizations may cultivate a distinct reputation through multiple ways. Amongst others, scholars have uncovered reputation seeking behaviour through the use of public participation in decision making (Moffitt, 2010); the speed of decision making (Carpenter, 2002); changes in organizational outputs and policy instruments (Hinterleitner & Sager, 2019; Maor & Sulitzeanu-Kenan, 2016); changes in regulatory enforcement activities (Carpenter, 2010a); the prioritization among multiple tasks (Gilad, 2015); and priority-setting in leadership decisions (Bækkeskov, 2017). This chapter follows a body of scholarship that focuses on agencies' communication behaviour as a means of reputation seeking.

Public organizations can use communication behaviour to cultivate a favourable reputation in different ways. For instance, they may change the kind of activities or qualities they emphasize in their proactive communication such as top leadership speeches (Carpenter, 2010a; Moschella & Pinto, 2019) or regular reporting (Busuioc & Rimkutė, 2019). Another type of regulatory agencies' communicative behaviour consists of reactions ('talk') or non-reactions ('silence') to negative public judgments. Maor et al. (2013) address this type of behaviour most explicitly and show how a financial regulator is more likely to react to public judgments targeting functional areas for which it enjoys a comparatively weak reputation, whereas it tends to remain silent on functional areas where it enjoys a strong reputation. In a study of a financial regulator, Bach et al. (2020) demonstrate that regulatory agencies display differential responses to public judgments depending on the reputational dimension that is targeted. Gilad, Maor, and Bloom (2015) study the substance of communicative responses to public judgments, showing how a regulator responds differently to judgments on overregulation as opposed to lenient regulation. Bach et al. (2019) study communicative responses to public judgments by financial regulators before, during, and after the financial crisis. They find that financial regulators are primarily exposed to performative threats and show different response patterns to such threats across countries. This chapter follows the approach by Maor et al. (2013), Bach et al. (2019), and Bach et al. (2020) by distinguishing between communicative responses and non-responses to reputational threats. Hence, whether a regulatory agency responds to a reputational threat (understood as a negative public judgment) or not will be used as an indicator of reputation seeking behaviour.

The basic theoretical expectation is that regulatory agencies will exhibit differential response patterns to public judgments. This chapter focuses on negative public judgments or reputational threats, building upon the main analytical focus of bureaucratic reputation theory: *'look at the audience, and look at the threats'* (Carpenter, 2010a, pp. 832, italics in original). We therefore expect that regulators will exhibit distinct regulatory profiles and differential reactions to threats depending on the reputational dimension that is being targeted. The key reputational dimensions include an organization's ability to achieve the organization's core mission (performative reputation); its compliance to existing rules of decision making

and due process (procedural reputation); its status as a guardian of important societal values (moral reputation); and its technical expertise and organizational capacity (technical reputation) (Busuioc & Rimkutė, 2019; Carpenter & Krause, 2012). A fifth dimension concerns the organization's internal management, such as the efficient use of resources (processual reputation) (Boon, Salomonsen, Verhoest, & Pedersen, 2019).

As outlined above, a core argument for delegating decision-making powers to regulatory agencies was their expertise. Therefore, we expect technical reputation to be a key component of regulatory agencies' reputational profile (Busuioc & Rimkutė, 2019). Moreover, following the logic of output-based legitimacy, we expect regulatory agencies to cultivate their performative reputation. Finally, the independent regulatory agency model also implies the unbiased implementation of regulatory policies towards regulatees. For instance, this is particularly relevant for the regulation of infrastructure sectors with incumbent regulators (former state monopolists). Hence, we would also expect regulators to cultivate a reputational profile in terms of procedural reputation. That being said, we cannot know beforehand which of these dimensions are at the core of a single regulatory agency's reputational profile (Bach et al., 2020) and therefore have to formulate general expectations about differential agency responses to threats targeting different dimensions. We expect regulatory agencies to react differently to public accountability demands depending on whether those demands are central to the agencies' reputational profile, and whether the agency has a weak or a favourable reputation concerning a given reputational dimension (Bach et al., 2020; Busuioc & Lodge, 2017; Maor et al., 2013). We suggest the following *reputational profile hypothesis* as follows:

> H1: Independent regulatory agencies are (1) more likely to react to negative public judgments targeting reputational dimensions which are central to their mission and for which they enjoy a weak reputation and (2) less likely to respond to negative public judgments targeting reputational dimensions that are peripheral to their mission.

Another basic assumption is that organizational reputation is located among multiple audiences, and that some audiences are more relevant for the organization than others are. Accordingly, we suggest that regulators' responses to threats originating from different kinds of actors are a valid indicator of their internal calculus about these actors' relative importance. In terms of democratic responsiveness – the overarching theme of this volume – such an analysis also allows us to gauge whether regulatory agencies respond differently to threats originating from political actors relative to other types of actors. Agencies' differential responsiveness to various types of actors is well documented in the literature. For instance, Carpenter (2002) shows that the time-to-approval of medical drugs by the US regulator FDA is a function of public attention and the number and wealth of disease-specific interest organizations. Focusing on reputation-seeking through communicative behaviour, Maor et al. (2013) and Bach et al. (2020) show that a regulator's inclination to respond to public judgments is higher for political powerful actors over which the regulator has little influence, compared to other types of actors. Hence, this body of scholarship suggests that regulatory agencies are relatively more inclined to respond to audiences that have a credible potential to undermine their reputation (and, in consequence, their autonomy).

We suggest that independent regulatory agencies are more likely to respond to negative public judgments by political actors relative to other actors. While being independent from direct political control, regulatory agencies have to be responsive to their environment in order to be able to attract continuous support (e.g. financial resources) to the agency. In this sense, political actors are powerful as they ultimately decide about regulatory agencies' tasks and budgets. The *democratic responsiveness hypothesis* reads as follows:

> H2: Independent regulatory agencies are more likely to react to negative public judgments originating from political actors in comparison to other audiences.

Case Selection: Regulatory Agencies in Germany

The chapter focuses on two of the most prominent regulatory agencies in Germany. The financial regulator in Germany *(Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin)* was created in 2002 following the merger of three separate regulators for banking, insurance, and securities. The reform also implied a change in the integrated regulator's formal autonomy. The predecessor organizations of BaFin were semi-autonomous agencies, whereas the BaFin is a legally independent agency (Bach & Jann, 2010). BaFin's formal autonomy is first and foremost related to managerial autonomy with regard to financial, personnel, and organizational matters. A key difference to the status quo ante is the agency's budget, which is fully funded via fees paid by the regulated industries, and which provides the agency with a greater leeway in financial decisions. However, the BaFin is not legally protected from hierarchical control by its parent ministry (the Ministry of Finance) in policy implementation, including the handling of single cases. That said, empirical research indicates a high degree of actual autonomy of BaFin vis-à-vis the ministry, due to limited oversight capacities and information asymmetries in favour of the regulator (Handke, 2012). Although the ministry has tried to gain more control over the BaFin by imposing formal reporting requirements, in particular with regard to the regulator's multiple EU level activities, the agency's involvement in supranational decision making have been shown to further increase BaFin's actual autonomy from its parent ministry (Ruffing, 2015).

The Federal Network Agency (BNetzA) was established in 2005 as a multi-functional regulator covering energy and postal services and since 2006 also railways. Its main function is to ensure the liberalization of former state monopoly markets. Its predecessor organization *(Regulierungsbehörde für Telekommunikation und Post, RegTP)* was created in 1998 following a hiving-off process of ministry tasks and personnel to a self-standing organization (Bach & Jann, 2010). BNetzA is considered as being among the most formally autonomous agencies in the federal administration, and empirical research suggests that it also enjoys substantial de facto autonomy (Ruffing, 2015). In terms of formal autonomy, there are clear limitations to political control by the ministry in charge, as all instructions by the ministry have to be published and explained, which is unusual in the German context and a clear indicator of formal autonomy from political control. In addition, major

decisions of BNetzA are made by so-called ruling chambers, which are collegial bodies that follow a quasi-judicial procedure.

The two regulatory agencies studied in this chapter thus both enjoy substantial levels of de facto autonomy, despite having somewhat different degrees of formal autonomy. They are widely considered as typical examples of the regulatory agency model which is based on the idea of higher degrees of discretion in substantial decision making compared to agencies with executive tasks (Bach, 2016). Hence, while they do not comply with the strict definition of non-majoritarian institutions, as responsible ministers have the possibility to use hierarchical means of control over agency decisions; ministers are clearly restrained in the exercise of hierarchical control.

Data and Methods

The following analysis builds on a database of media articles covering the Federal network agency and its predecessor organization, as well as the Federal financial supervisory agency. In a first step, we collected all articles from the *Frankfurter Allgemeine Zeitung* that mention either BNetzA, RegTP or BaFin in the title or text of the article in the time between their respective founding (1998 for RegTP and 2002 for BaFin) and 2016; this resulted in a total of 7,158 articles. The Frankfurter Allgemeine Zeitung is one of Germany's leading quality newspapers and has a strong and dedicated focus on economic topics. In a second step, we read all articles and selected those 1,445 articles (about 20%) which contain an opinion about the agency; we then coded those articles together with a research assistant and repeatedly evaluated the consistency of our coding. The unit of analysis in this research are single newspaper articles. In this chapter, we only analyse articles containing a negative opinion about one of the two agencies under scrutiny (N=923).

The outcome variable is a binary variable indicating whether an article contains a reaction put forward by the respective agency (coded as '1') or not (coded as '0'). We define a communicative reaction as a response that directly refers towards a judgmental opinion within the article in question; this may be a statement by an agency representative (such as the agency head or a press spokesperson) or a

decision by the agency that is explicitly described in the article. In the latter case, we assume that the agency has informed the public about the policy action, which is then reported by the press. The number of agency responses to reputational threats is N=202 or 21.9% of all articles containing reputational threats.

The following analysis focuses on the effects of three main independent variables: the agency mentioned in the article, the reputational dimension(s), and the type of actor(s) who raised an opinion. We coded a variable for the agency affected as 1 if the article and opinion address the BaFin and as 0 if they address the BNetzA/RegTP. For the coding of reputational dimensions we follow the categorization by Carpenter and Krause (2012) (performative, technical, moral, procedural reputation) and Boon et al. (2019) (processual reputation) and used a codebook developed by the latter authors. Based on those dimensions, we will be able to test the reputational profile hypothesis.

For the source of the opinion judgment, we coded dummy variables for 17 potential sources including governmental actors, private firms, NGOs, experts and international actors. Table 1 contains a detailed breakdown of those actors. In the analysis, we aggregate those actors to four categories: political actors, regulatees and stakeholders, judicial institutions and other regulators, and other kinds of actors. This categorization allows us to test our theoretical argument about regulatory agencies' responsiveness to political actors (democratic responsiveness hypothesis).

We further employ two control variables. We control, first, for the media salience of the respective agency in a given period, for which we computed the number of all articles published about the agency in the respective month based on our larger database of 7,158 articles mentioning the respective agency including those with and without a judgmental opinion. Finally, we include the year in which the article was published to control for potential time effects. Table 1 reports descriptive statistics for all variables in the final dataset.

Table 1. Descriptive Statistics for all articles with threats

Variable	Mean	Std. Dev.	Min	Max	N
Agency (1= BaFin, 0= BNetzA/ RegTP)	.4972914	.5002637	0	1	923
Reaction	.2188516	.4136919	0	1	923
Salience	22.49079	11.49482	1	63	923
Dimension					
Performative	.6933911	.4613355	0	1	923
Technical	.084507	.2782975	0	1	923
Moral	.1451788	.352472	0	1	923
Procedural	.2166847	.4122093	0	1	923
Processual	.2058505	.4045409	0	1	923
Opinion source detailed					
Minister parent ministry (1)	.0065005	.080407	0	1	923
Parent Department (1)	.0065005	.080407	0	1	923
Minister non-parent ministry (1)	.0097508	.0983169	0	1	923
Member of cabinet (1)	.0010834	.0329154	0	1	923
The Government (1)	.0010834	.0329154	0	1	923
Government party (1)	.0216685	.1456775	0	1	923
Non-governmental party (1)	.0314193	.1745426	0	1	923
Political actor other level (1)	.0184182	.134531	0	1	923
Interest group (2)	.1516793	.3589042	0	1	923
Private company (2)	.3618635	.4808001	0	1	923
Citizens (2)	.0184182	.134531	0	1	923
Media (2)	.0444204	.2061389	0	1	923
Expert (2)	.0628386	.2428039	0	1	923
Non-governmental public organization (3)	.1180932	.3228934	0	1	923
International political actor (4)	.0541712	.2264779	0	1	923
Former or present employee (4)	.0021668	.0465242	0	1	923
Government organization same level (4)	.0032503	.0569493	0	1	923
Governmental organization other level (4)	.0162514	.1265092	0	1	923
Not explicit (4)	.227519	.4194576	0	1	923

For dimension and opinion source one article may fit several categories. The opinion sources are categorized as follows in the analysis: (1) political actors, (2) regulates and stakeholders, (3) judicial institutions and other regulators, and (4) other.

Analysis

In a first step, before moving to the analysis of reputational threats, we look at all articles containing an opinion on the regulators, both positive and negative (N=1,279). This provides us with a 'reputational profile' of the two regulators as evidenced by newspaper reporting. In particular, this kind of analysis shows for which reputational dimensions the two regulators have a favourable reputation (Table 2). Overall, we see that negative opinions clearly outweigh positive opinions, which is hardly surprising given a widely diagnosed 'negativity bias' of the public (Hood, 2011). In other words, media reports on regulatory agencies are much more

likely to consider negative judgments, rather than positive judgments. In terms of single reputational dimensions, the most striking finding is that for both agencies, positive judgments on their technical reputation outweigh negative judgments. In view of H1, this suggest that we would expect the two agencies to have a lower propensity to react to negative judgments on this (core) dimension, relative to other dimensions. For both agencies, a reputation for being expert bodies and having appropriate capacities to perform their tasks stands out as the dimension in which the regulators have the most positive public standing.

For the other core dimensions of regulatory agencies' reputation (performative and procedural), negative opinions clearly overweigh positive ones. Moreover, in absolute terms, the performative dimension is the most targeted for both regulators.[1] Independent regulatory agencies' ability to fulfil their mission – such as ensuring banking stability or fair access to utility-based services – is at the core of public accountability, as reflected by newspaper reporting. In relative terms, both BaFin and BNetzA are most heavily criticized on the moral dimension, i.e. whether they consider the consequences of their decisions for those who are adversely affected and show flexibility and compassion under such circumstances (Busuioc & Rimkutė, 2019). That being said, following our analytical framework, we consider the moral dimension as peripheral for regulatory agencies' reputational profile, together with processual reputation.

Table 2. Reputational profile: opinion by agency and dimension *(here: all articles with an opinion*)

		Agency			
		BaFin		BNetzA / RegTP	
		positive	negative	positive	negative
Dimension	Performative	22.6% (68)	72.1% (217)	26.3% (89)	63.1% (214)
	Technical	57.4% (31)	37.0% (20)	51.9% (14)	48.2% (13)
	Moral	26.7% (4)	73.33% (11)	11.8% (2)	88.2% (15)
	Procedural	31.9% (23)	65.3% (47)	33.3% (26)	62.8% (49)
	Processual	27.7% (18)	66.2% (43)	34.7% (17)	63.3% (31)
	Multiple	17.7% (36)	62.1% (126)	12.4% (28)	60.9% (137)
	Total	25.4% (180)	65.4% (464)	24.0% (176)	62.5% (459)

Cell entries are rounded row percentages per agency (frequencies in parentheses), percentage points missing to 100% (per dimension and per agency) are articles with mixed (positive and negative) opinions.

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[1] The 'multiple threats' category includes articles in which at least two reputational dimensions are being targeted. In the statistical analysis, we use the individual dimensions that are part of multiple threats.

Table 3 contains a breakdown of negative opinions by agency and provides a further illustration of the relative importance of different reputational dimensions when it comes to threats. We note in particular (again) that the performative dimension is the main target of negative opinions, and using a χ^2 test we find no significant differences between the two regulators in terms of the content of reputational threats.

Table 3. Reputational dimension addressed in threats by agency *(threats only)*

		Agency		
		BaFin	BNetzA / RegTP	Total
Dimension	Performative	46.8% (217)	46.6% (214)	46.7% (431)
	Technical	4.3% (20)	2.8% (13)	3.6% (33)
	Moral	2.4% (11)	3.3% (15)	2.8% (26)
	Procedural	10.1% (47)	10.7% (49)	10.4% (96)
	Processual	9.3% (43)	6.8% (31)	8.0% (74)
	Multiple	27.2% (126)	29.9% (137)	28.5% (263)
	Total	100% (464)	100% (459)	100% (923)

$\chi^2(5) = 4.54$ (insignificant)

Cell entries are rounded column percentages (frequencies in parentheses).

We now move on to the statistical analysis of regulatory agencies' responses (or non-responses) to reputational threats. Table 6 reports the results of logistic regression models for all articles with negative judgments and including control variables. The above analysis of positive and negative opinions (Table 2) indicated similar reputational profiles for both agencies; yet we analyse the agencies' responses separately, rather than having one regression model including both agencies. This approach takes into consideration that individual agencies may deploy different reputation management strategies. As one article may contain more than one dimension and opinion source, we include a dummy variable for every dimension and each opinion source, there are no baseline categories left out.

According to H1, we expect a higher propensity of reaction to negative public judgments targeting reputational dimensions which are central to the agency mission and for which an agency enjoys a weak reputation. Following the analysis of reputational profiles, this applies to the performative and the procedural dimension for both agencies. A corollary is that we do not expect a higher propensity of reactions to reputational threats targeting the technical dimension, which is central to the agencies' mission, but for which they enjoy a more favourable reputation. At the

same time, we expect a lower propensity to respond to negative public judgments targeting reputational dimensions that are peripheral to the agency mission. For both agencies, this applies to the moral and processual dimensions.

Table 5. Logistic regression of agencies' tendency to respond to threats

VARIABLES	BaFin		BNetzA / RegTP	
	Coefficient	OR	Coefficient	OR
Dimension:				
- Performative	1.186***	3.274	0.559*	1.749
	(0.415)		(0.308)	
- Technical	0.165	1.180	0.741	2.097
	(0.475)		(0.506)	
- Moral	0.0226	1.023	0.724**	2.063
	(0.390)		(0.314)	
- Procedural	0.772*	2.164	0.0549	1.056
	(0.419)		(0.296)	
- Processual	0.167	1.182	0.480	1.615
	(0.368)		(0.318)	
Opinion source:				
- Political actors	0.462	1.588	-0.303	0.739
	(0.545)		(0.514)	
- Regulatees & stakeholders	0.496	1.642	0.649*	1.914
	(0.468)		(0.377)	
- Judicial institutions and other regulators	1.389***	4.010	0.933**	2.541
	(0.493)		(0.430)	
- Other	0.0503	1.052	0.389	1.475
	(0.503)		(0.399)	
Salience	-0.00715	0.993	0.0207	1.021
	(0.0158)		(0.0244)	
Year-fixed effect	Yes		Yes	
Constant	-3.503***	0.0301	-1.735**	0.176
	(1.068)		(0.754)	
Observations	464		459	
Log likelihood	-181.18		-247.83	
LR chi-square	$\chi^2(24) = 48.2$***		$\chi^2(28) = 45.8$**	
Pseudo R-squared	0.117		0.085	

Entries are unstandardized logistic coefficient estimates with standard errors in parentheses; for each model odd ratios (OR) are reported in a second column. One article may fit several dimensions and source categories. *** $p<0.01$, ** $p<0.05$, * $p<0.1$

Turning to the empirical results, we find that both agencies are more likely to respond to performative threats relative to other kinds of reputational threats, which corresponds to H1. BaFin also displays a higher propensity to react to procedural threats relative to other kinds of threats, and this effect is also substantially large (OR>2). In contrast, the likelihood of BNetzA responding to procedural threats is not statistically different other kinds of reputational threats. When it comes to the technical dimension, both regulatory agencies do not display a higher propensity to

react, which is in line with our expectations. As to the peripheral dimensions, our theoretical expectations are fully confirmed for BaFin, but only partially confirmed for BNetzA. As can be gleaned from table 5, BNetzA is more likely to respond to moral threats relative to other reputational dimensions, which is contradictory to our expectations, as we do not consider this dimension to be at the core of regulatory agencies' ideal typical reputational profile.

When it comes to regulators' response behaviour as to the opinion source (i.e. the kind of actor from which a reputational threat originates), the democratic responsiveness hypothesis suggests a higher propensity of responses to negative public judgments originating from political actors in comparison to other audiences. In contrast to this hypothesis, both regulators are not particularly likely to respond to threats originating from political actors, all else being equal. The democratic responsiveness hypothesis is thus not empirically supported. This does not mean that regulatory agencies are indifferent to the opinion source. We find that both regulatory agencies are more likely to respond to judicial institutions and other regulators' public judgments (for instance, in the case of BaFin, the central bank). For BaFin, this effect is substantially large (OR>4). For BNetzA (but not for BaFin), we find a significantly higher propensity of reactions to reputational threats originating from regulatees and stakeholders relative to other opinion sources.

Discussion and Conclusion

This chapter has empirically tested two hypotheses concerning independent regulatory agencies' responsiveness to reputational threats. In view of the overall focus of the book, we focus on our (null) findings concerning the democratic responsiveness hypothesis. Our findings suggest that regulators are not more responsive to political actors than to others, which speaks to a broader conceptualization of agencies' accountability to multiple actors in general and demands greater attention to the role of courts in particular in holding regulators accountable. Future research on agency accountability could check the generalizability of this finding and disentangle whether it is due to drifting (weak) political principals or strong (and so far underestimated) courts, or whether the

behaviour of these two types of account-holders is complementary. A related question is about appropriate levels of responsiveness to criticism – when exactly is a regulatory agency responsive (enough)? The descriptive analysis shows that in the majority of articles, regulatory agencies remain silent when facing reputational threats. On average, both agencies do not respond to approximately 78% of all reputational threats (Table 1). Those instances could be considered as unresponsive behaviour, but they could also be considered as instances of failed communication by the regulator.

Moreover, our unexpected findings could imply that press articles report only a biased selection of agencies' responsiveness. It might be fair to assume that responsiveness to political actors happens mostly behind closed doors and thus remains unnoticed by the media and the public. This challenges the assumptions underlying several earlier studies: Is an agency's public responsiveness really representative of its overall account-giving? Do political actors such as ministers or government ministries use public criticism or negative judgment of agency behaviour regularly or as an exceptional tool in specific situations? And (even) if public judgments are a regular tool, how do we know that newspaper articles are an accurate operationalization? It seems fair to assume that media report on agencies' criticism and responses in a selective way.

A related point is whether an agency directs its response really at the criticizing actor or account-holder or whether it uses this actor's criticism to defend or nurture its reputation in front of a broader or different audience. From a reputational perspective, criticizing and responding may also be considered as 'myth and ceremony' rather than instrumental, goal-directed behaviour. When an agency responds publicly to a threat by a political actor, does it really aim at that actor or the public more broadly? Again, from a normative perspective, we need to ask whether it is desirable that account giving happens in public, or whether it is sufficient that account-giving to political actors happens behind closed doors. These are important questions hinting at an even more complex communication behaviour of regulators and their account-holders; future research along these lines can help to refine and update the assumptions of reputation theory.

This brings us to the unexpected findings regarding regulatory agencies' reactions to threats originating from political actors. A plausible interpretation is that a fair share of accountability (and reputation building) from agencies to political principals happens behind closed doors (Maor et al., 2013). In other words, our methodological approach has an obvious blind spot, as we are unable to see distinct types of reputation management. The literature shows that public organizations may cultivate reputations in multiple ways; and communicative behavior (in the narrow sense of talking to the media or publishing press releases) is only one possible reaction among many others. A task of future research is to unpack different types of responses to public accountability, which may range from changes in the internal prioritization of tasks with the aim of improving performance on a given reputational dimension to other types of communication, such as annual reporting (Busuioc & Rimkutė, 2019).

A reputational approach to accountability also directs attention to the reputational stakes of account-holders (Busuioc & Lodge, 2017). Similar to account-givers, also account-holders, such as politicians, regulatees, or other stakeholders, can be understood as driven by reputational concerns. A core implication is that unless holding regulatory agencies to account is a core function of an account-holder, the latter will have limited incentives to invest in this kind of activity. From such a perspective, ensuring the democratic responsiveness of independent regulatory agencies is only partially a story of e.g. mandating transparency rules, but instead of making account-holding a key reputational concern of democratic actors. A lesson from such a perspective is that regulators are responsive via other channels than simply the hierarchical chain of delegation, but that very much depends on other actors raising their voices and putting pressure on regulators. This is the well-known mechanism of 'fire alarms' which functions as a source of information about potentially problematic behaviour of bureaucratic agents for political principals (McCubbins & Schwartz, 1984). The problem, then, is not one of regulators getting more autonomy, but one of ensuring that other actors have the resources and incentives to hold non-majoritarian organizations to account.

In terms of explaining the regulators' differential reactions to different types of reputational threats, the reputational profile hypothesis received some empirical

support, whereas other empirical findings are puzzling in view of our theoretical expectations. We based our assessment of reputational profiles on a simple measure of whether praises or threats dominate among public judgements. However, when looking more closely at the regulators' reputational profiles (Table 2), we also find clear differences. For BaFin, we see that the performative reputation is more under threat (higher share of negative opinions) than for BNetzA. In the regression models, we also see a higher effect size and clearer significance of the performative dimension when compared to BNetzA. A similar, though less clear-cut pattern emerges for procedural reputation. As to BNetzA, we see that technical and moral reputation are clearly more under threat (i.e. the agency has a relatively weaker reputation on these dimensions) than BaFin has. In the regression analysis, we see a stronger effect size and statistical significance for the moral dimension, as well as a stronger effect size (but insignificant) for technical dimension when compared to BaFin. In sum, our findings resonate with a view that regulatory agencies will show a higher propensity to react to threats on those aspects of their reputation which are weakest (Maor et al., 2013).

The broader implication of agency-specific variation is whether it is defendable to develop general hypotheses on response behaviour for different types of regulatory agencies, or whether such an endeavour needs to consider the specifics of each organization. After all, bureaucratic reputation theory emphasizes that reputation management is about cultivating the unique contribution of an organization to public governance (Carpenter, 2010b). In view of the overarching question regarding the democratic responsiveness of non-majoritarian institutions, this raises interesting questions as to potential limitations of expecting similar patterns of accountability for organizations with very different kinds of tasks and stakeholders. From a normative point of view, independent agencies' selective response might as well be considered problematic. In this regard, we may end on positive note. From the viewpoint of output-legitimacy, the agencies' higher likelihood of responses to performative threats is very much in line with normative expectations. That being said, a favourable reputation may also serve as a kind of 'accountability buffer' for independent regulatory agencies. This suggests that a positive reputation may undermine democratic responsiveness as the agency does not feel the pressure to respond to public criticism.

Acknowledgements

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