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Interests and Patterns of Participation: Secondary Legislation Drafting in Estonia

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1. INTRODUCTION

1.1. Focus of the study

The broad interest of the study is how decisions happen in the field of delegated legislation in Estonia. Delegated legislation is a sort of legislation given on the basis of primary legislation, that is, the Act of Parliament. In Estonia, these are called the Regulations of the Minister and Regulations of the Government[1]. (The overview about regulation in Estonia is given in Appendix 1.) The study considers delegated legislation as instances of public policy. Governments try to deregulate and cut the red tape and the key functions of government are increasingly carried out by the means of secondary and tertiary rules (Baldwin 1995: 60; Baldwin and Cave 1999: 4). Several developments have led to this: market liberalisation, search for enhanced economic efficiency and productivity associated with 'shrinking of state', which has been followed by a more recent call to bring a greater social dimension into the policymaking.

Analysing this area of public policy is empirically challenging for many reasons. First, relatively little is known about secondary legislation, although it is a big business of modern governments (Hood et al. 1999, 2001; Page 2001). Political scientists have concentrated on 'high politics' and overlooked regulation as instances of policy-making for a long time; regulation has rather been a field occupied by lawyers and economists. Only recently these academic disciplines have started to converge, offering enriched and synergetic insights into regulatory politics[2]. Second, regulation affects a significant part of our everyday lives. Volume of secondary legislation is steadily growing and the supranational regulating bodies, such as the European Union further foster this complexity and growth. National governments are the subjects of sophisticated regulation, which challenges their administrative capacity. Third, much of the decision-making around regulation happens behind the scenes. Delegated legislation is often perceived as something obscure, routine, or even unimportant (Page 2001) and there is often relatively little public discussion and attention of media around these decisions. Not surprisingly, the issues of responsiveness and democratic accountability of regulating institutions have become one the most highlighted issues in the regulation research.

The central issue about regulation is how the rule-makers deal with the emerging interests. The assumption is that in the case of well-organised and powerful groups, there is a danger that private interest will dominate over the public ones. As secondary legislation deals with more specific issues than primary legislation or policy programs in general, the emerging interests tend to be focused and have clearly pronounced demands. Interest intermediation is especially appealing in the context of post-communist countries, where civil society is not yet well developed in contrast to selected powerful business interests. Often the government is under a heavy time-pressure while drafting secondary legislation. Focusing on the

[1] Government of the Republic Act (passed 13/12/1995) constitutes: 'A regulation of the Government of the Republic is legislation of general application. The Government of the Republic shall issue regulations for the management of the structure, operations and work of government agencies, and for the exercise of supervisory control over government agencies' (§ 27; 1,3). A regulation of a minister is legislation of general application. A regulation of a minister shall refer to the provision of law on the basis of which the regulation is issued. If the Government of the Republic is authorised, by law, to pass a matter to a minister for resolution, a regulation of the minister shall also refer to the applicable provision of the regulation of the Government of the Republic' (§ 51; 1, 2).

[2] See for instance Hall, Scott and Hood (2000) about telecommunications regulation; Hood, Rothstein and Baldwin (2001) about risk regulation. Still, lawyers tend to stress the substantive and procedural aspects of regulation, including the content of rules and their enforcement; political scientists emphasise the modes of interest articulation and policy implementation (Hancher and Moran 1989: 4).

participation in the drafting process we could identify the actors and the interests and analyse, how the government was behaving and which patterns of interaction emerged.

The paper examines how the regulations are drafted, how the government is responding to the influence of the interests, and which are the roles and functions of the rule-makers in this process. The main problem of the study is the participation in the regulatory drafting, particularly to what extent can emerging interest account for participation in the drafting process. Regulation is considered a tool by which the government attempts to achieve some change in the existing situation; the importance of participation in regulation drafting is associated with a fundamental question how the state responds to the societal interests.

1.2. Problematic

On the one hand, we are interested in state's interference into the activities of society and people; on the other hand, we are specifically focused on the pattern of participation in regulatory drafting. Thus, we are dealing with policy analysis on the level of small instances of public policy. The aim is to find a suitable theoretical framework for accounting for participation.

Interests of actors are considered as a key factor for understanding the outcomes of and participation in the regulatory decision-making process. Regulation has been prevailingly explained by interest theories (*'private', 'public', 'group'* versions) (Baldwin and Cave 1999: 31) emphasising economic motivations of actors. Interest intermediation has been the subject of numerous studies; and there is a general agreement that we will find a big variety of relationships in the process. Interest group theorists[3] consider regulation as the product of relationships between different groups, and between such groups and the state (Baldwin, Scott, Hood 1998: 10). In other words, the interest-driven way of accounting for policy content and pattern of participation reflects the interplay and lobbying of organised interests.

However, many objections have been made about this way of explaining regulation. Although regulation is a bargaining process, economic rationale is not considered sufficient to explain the complex dynamics of regulatory policy-making (Majone 1996: 28-31). For instance, Page has suggested that the process has a bureaucratic bias (2001: 11-14). Different bureaucratic cultures can generate different grounds for regulatory drafting, and often the logics of arguing is not monetary, but bases on human need or democratic rights of individuals. James Q. Wilson argued that political reality is far more complex than the economic perspectives could explain (1980: 358-363) and regulation entails also non-tangible incentives besides the monetary ones. Relying on these arguments, Wilson developed a policy typology which combined the economic and political accounts. This framework responds to the critique of economic explanations for regulation by showing under which circumstances economic and non-economic interests tend to emerge. The basic assumption of Wilson's typology is that policies can be classified according to the distribution of costs and benefits of the policy (regulation). He introduced four types of issues – majoritarian, interest, client and entrepreneurial policy – and argued that the pattern of participation systematically varies across these policy types.

Though, participation in the policy-making process could be analysed in several ways. One of the most popular theoretical frameworks in policy analysis over the last couple of decades has been the policy network approach. Interest intermediation school (Börzel 1998) of policy network analysis developed as a flexible response to the difficulties of the pluralism and corporatism to account for a big variety and complexity of relationships and participants in the policy making process in the modern societies. The central theoretical problem with the

[3] Such theorists range from open-end pluralism to corporatism.

policy network approach is its difficulty to serve as an explanation. It directs our attention away form the underlying factors which shape the networks, i.e. the reasons why the participation could differ. Instead, the policy network approach focuses on the process and deals with mapping the patterns of participation and interaction. Both policy networks and Wilson's typology deal with pattern of participation. In our opinion the fundamental difference between these two frameworks is that networks were *departing* form the big variety of participants and interactions, but Wilson's argumentation was *concluding* with differences in participants and interactions. Therefore, we are arguing that Wilson's argumentation could implicitly be the response to the weakness of network analysis; by departing from interests, Wilson could look behind the networks.

In order to notice the hidden and dynamic forms of relationships in the drafting process, we would need to look at the process of regulation drafting in a detailed manner. An in-depth study seems the plausible way for analysing under which conditions the interests tend to participate in the process, and what are the obstacles or restrictions the interested group should take into account. Moreover, we would get to know the area of low politics and understand how the decisions are happening in the field of secondary legislation. Here, the microanalysis on the level of the single regulation can give the best understanding and to some extent, we could use the analytical tools of policy network approach. In other words, the interaction of actors and the emerging pattern of participants could be considered as a small network around one regulation. As the concept of policy networks is very flexible, it would be useful to utilize it for describing the process of regulation drafting.

1.3. Objectives of the study

The study has two general aspirations: to learn about regulatory drafting process in Estonia by revealing how the decisions are made and who are the main actors; and to explain the pattern of participation in the drafting process. The paper has the following specific aims. First aim is to find differences and similarities in the pattern of participation in regulatory drafting across the cases. Secondly, the paper seeks to explain how do we understand variation in participation of the regulatory drafting. The emphasis is on understanding to which extent it is possible to explain participation in the drafting process by the policy typology based on interests.

The theoretical aim of the thesis is to find out whether policy typology based on interests helps us to account for differences in decision-making patterns. The empirical intention of the study is to bring some clarity into the decision-making process in *low politics* by illuminating how the regulations are drafted.

This research design is novel in two ways. First, we are using Wilson's policy typology explicitly on the level of secondary legislation in contrast to the existing practices to use it on the level of high politics. Next, we are exploiting Wilson's policy typology for addressing to the problem of the policy network analysis to account for the reasons of emerging participants. It means that instead of a tradition to consider networks as independent variables, we are looking the emerging patterns of participation and interaction (which could be considered as a kind of small network) as the dependent variable.

2. CONCEPTUAL FRAMEWORK

2.1. Theoretical considerations

There are many ways of doing policy analysis. One of the widespread lines of arguing follows the policy sectors: as governmental departments are more or less sectorally defined

and policy is elaborated along these lines, it is a reasonable choice. This perspective is relying on the claim that policy-making differs across these sectoral lines. Another way of looking at policy making would be a policy typology perspective. Here, it is assumed that policy-making is not just varying across policy sectors, but also inside the sectors as there are different kinds of policy issues. The fundamental assumption of policy issue typologies is that distinct issues imply their own way, in which the political relationships between government and groups are arranged. The vanguard policy issue typology was developed by Theodore Lowi, who argued that patterns of politics were significantly determined by the kinds of policies, which were at issue[4] (ibid.). In every type, there exists a range of networks or linkages of varying density and formality. The typology distinguishes among distributive, redistributive, regulatory and constituent policies (ibid.)[5].

Another policy typology was developed by James Q. Wilson, who built on two different strands of literature. On the one hand, he was following Lowi's argumentation that different types of policies embody different types of relationships (1972), but he doubted in some of Lowi's claims. He criticised Lowi's typology by saying that it is ambiguous and incomplete: although the insight that the substance of policy influences the role of organisation in its adoption seems correct, it is hard to use it as an analytical classification (Wilson 1973: 328, 330). Wilson argued that the distinction should be made between the adoption of a new policy and the amendment of the existing one, and the incidence of costs and benefits should not be obscured by the use of categories that are hard to define, such as distributive (ibid.).

On the other hand, Wilson refined the economic approach by considering in more detail the circumstances in which situations the interest activity would be the most likely (Baldwin and Cave 1999: 24). In this sense, Wilson's argument was built on the Stiglerian vision to argue that the regulation is the process where rational actors maximise their wealth (Ibid.: 22). He introduced an issue typology about the likelihood of emerging interests according to the concentration of costs and benefits of the issue. He stressed that it is not plausible to rely only on economic calculation of costs and benefits, and this is the reason why Chicago school[6] cannot fully explain the political process. Wilson claimed his theory to overcome the difficulties of economic theories. To understand the origins of regulation, one should distinguish between cases in which business influence is likely to be strong and those, in which it is likely to be weaker (Wilson 1980: 366). Therefore, Wilson's theory constitutes a combination of economic explanation and Lowi's argument.

Both Lowi and Wilson agreed that not in all cases is the pluralist view of politics accurate, it means that policy is not necessarily the result of organised group conflict (Wilson 1973: 329). For instance, in some cases there might not be organised groups or only one group might lobby. Therefore, Wilson's policy typology was implicitly a response to the rough

[4] It is often cited as '*policies determine politics'* (Lowi 1972: 299).

[5] Distributive policies involve distribution of new resources and it stimulates the activity of small organisations or individuals, each seeking a particular benefit. Redistributive policies change the distribution of existing resources and encourage the activities of broad categories of citizens. Regulatory policies deal with controlling and regulating activities; these decisions involve a government's choice about who will be indulged and who deprived on the basis of some general rule; it deals with sectors (industry, occupations etc) and thus involves a higher degree of organisation and coalition formation. Constituent policy issues involve setting up or reorganisation of institutions (quoted in: Wilson 1973: 328, Parsons 1995: 132).

[6] 'Chicago' theory (as seen by Stigler and Peltzman) suggested that in the case of failure of competition of the existence of monopoly, the regulated industry would have an incentive to influence the regulator in order to benefit from a 'regulatory rent'. It means that the regulator would be 'captured' by the industry since the latter would have more to loose or gain than the regulator. This economic theory assumed that all actors involved in regulation are income maximisers: regulated industry is maximising their profits, elected officials are their votes, and appointed officials wealth (Wilson 1980: ch 10).

pluralist perspective that did not allow understanding variance across different policy issues. An explicit pluralist discussion would probably only happen in a limited number of policy issues, particularly when there is a competition between organised interests.

Regulation literature suggested that interests are the key problem in the regulatory politics; hence, policy accounts basing on interest intermediation should be able to address this emphasis. Wilson related his issue typology to the likelihood of groups forming (Goodin and Klingemann 1996: 573). His line of arguing was definitely following the logics of politics, not primarily the rationale of the economics. He stressed the importance to build coalitions, find support and legitimise the decisions. Wilson was arguing that in order to understand the origins of regulation, one should distinguish the cases in which business interest is likely to be strong and those in which it is likely to be weaker (1980: 366). He claimed that politics of regulation follows different patterns, mobilises various actors and has different consequences depending on the perceived costs and benefits of the proposed policy (1980: 372). Next, all the four policy types are introduced, and according to Wilson's arguments, some generalisations about the likely role of the regulator will be made.

When both the costs and the benefits are widely distributed, we expect to find majoritarian politics. It means that most of society expects to gain and pay for it. Interest groups have little incentives to mobilise around such issues because no small, definable segment of society (an industry, occupation, region) can capture a disproportional share of benefits. A good example is social security taxes. Citizens have rarely much incentive to join an interest group, because everyone will benefit whether or not they are members of the group (Wilson et al. 1995: 457). Here, the economic interests are either not apparent or not of decisive importance. The only source of controversy is usually the budgetary burden and ideology. Elected officials have an incentive to raise the value of widely distributed benefits; therefore the major organisation, which becomes involved, is perhaps a political party (Wilson 1980: 366; 1973: 332-333). Therefore, organised lobby activity would be relatively low and the expected policy outcome would probably have an inertia bias (Hood, Rothstein, Baldwin 2001: 66). What can we infer about these claims about the roles of the regulators? Although Wilson mentioned that the dominant group might be the political party, the case with delegated legislation could be different. Here, the legislative mandate has specified the matter in such a detail, that ideological issues would hardly emerge. And as there is no active lobby activity, the bureaucracy tends to become a lead actor in the policy-making process. Therefore, the governmental actors would be the policy initiators and they would lead the decision-making process, where the underlying logic would rather be incremental development than active reforms. The emergence of such policies is deriving from the universal needs of the society, such as health and safety, but also other kinds of risks. The likelihood that the general public would become involved in the process is small, and such decisions would probably happen quietly.

When both the costs and the benefits are narrowly concentrated, it generates interest-group politics. The regulation will often benefit a relatively small group at the expense of another comparable group. Therefore, each side has a strong incentive to mobilise and influence the process and issues of this kind tend to be fought by organised interests (Wilson 1980: 368). Decisions will occur as a result of negotiating bargains among pre-existing associations or of changing the balance of power among these interests (Wilson 1973: 336). In the first case, the interests will have to invest into time-consuming mediation, and governmental agency can serve as a mediator solving the societal conflicts. The latter course involves an effort to change the partisan or ideological alignment of the relevant agency or department. Here, the interests can either influence the bureaucrats, or the political leaders, who are responsible for formal approval of the regulation. It is also important, how many interests will be mobilised. Rule-makers are less likely to be captured if there are several strong interests than facing a

single organised beneficiary (ibid.). The expected outcome is deadlock, compromise or policy see-saw (Hood et al. 2001: 66). It can be generalised that here, the lobby activity would be intense, involving the opposing groups fighting for their interests. This type of policy puts bureaucrats under a heavy pressure and the concept of neutral civil service fulfilling a public will is challenged. The role of the regulator would be mediating the opposing interest or arbitrage. This is the situation where it could be sensitive for the government to take an authoritative position and decide on behalf of these struggling interests, because of the potential blame from the side of the disappointed. It is the situation, where the pluralistic perspective should work, and the government could obtain a minimal-state role of not deciding, but mediating in order to achieve the solution. But there might well be situations, where despite of the existing organised opposing interests, no substantial discussion would occur between the counterparts. Here, depending on the regulatory regime, the government could initiate and foster such discussion; or take the lead role and full responsibility for the decision.

When the benefits are concentrated and the costs are distributed, client politics is likely to occur[7]. It means that some small group will benefit and thus has a powerful incentive to lobby; the costs are distributed at a low *per capita* rate over a large number of people who have little motivation to organise in opposition (even if they ever heard about the policy) (Wilson 1980: 369). There can easily be backstage intrigues, quiet lobbying and quick passage with a minimum of public discussion (ibid.). Examples can be found from the areas of regulations licensing and protecting occupations; subsidies to farmers, veterans' benefits, tariffs on commodities, import quotas. Although economic interests are dominant, there can also be non-monetary interests – for instance the bargaining between central government and localities for obtaining new dam, harbour etc. However, the lobby of the client groups could be hindered by the public interest associations (ibid.). In such cases the arguments that the issue is regulated only in the public interest could emerge (ibid: 370). For instance, the client may propose that the regulation is used to guarantee better service quality or to conform to general standards of social justice. Therefore, this is a situation, where a regulation will more or less directly give preferences to a small number of actors. Again, this is a challenge for the regulators as they would need to justify the preference of such groups. In case the regulators perceive the potential blame, they could use several strategies. For instance, they might take an active role in pronouncing the public interest meaning of the decision; or when realizing the probable capture by the client, attempt to maximise the public good elements in the regulation, so that the business profits would not be the most important part of the regulation. For instance, when licensing services, the regulators could guarantee that the established standards must guarantee the safety and well being of the consumer, but maintain at the same time free market situation in order to promote competition. Even if the regulation was quietly and quickly passed, the regulators should be aware that the watchdogs could pick it up anytime and use it for general blaming or even for accusing in corruption. It is the sensitive issue for the regulators and the legitimacy of the policy is crucial. It could be argued that a good regulator would not make quick and quiet passages happen; instead, they would try to find a wider legitimacy or the decision by giving clear explanation and causes why such a decision would be made.

When the benefits are distributed and costs are concentrated, entrepreneurial politics would emerge. A small group will feel the burden keenly and thus has a strong incentive to organise in order that the burdens will not applied, or at least reduced. In this sense, it is remarkable that these kinds of policies are ever adopted (Wilson 1995: 460). The key element in acceptance of these policies is the work of people (policy entrepreneurs) who act on behalf of

[7] The beneficiary is considered to be a 'client' of the government.

unorganised or indifferent majority. They have the ability to dramatise an issue in a convincing way and they can find appropriate time for getting attention. Sometimes entrepreneur is not a necessity and legislators may pass these policies themselves. This has mostly occurred when an accident or disaster has happened. These kinds of decisions heavily depend on third parties, such as the media, recognised writers, opinion leaders, heads of voluntary associations, academic researchers (Wilson 1980: 371). Economic interests are only important for opposing parties (industry has to pay high pollution fines, car producers need to invest in safety etc). If not possible to block the decision, the 'damaged' industry is often trying to impose the costs to the consumers. As the policy entrepreneur can also be the government, i.e. the regulator, all this involvement of the third parties might not happen. In such a case, the regulator perceives the necessity of the regulation and takes action against the unpleasant activity. Again, the government could be in a tough situation, because the powerful organised business interest would probably attack them for restricting the markets. In case the political interests become involved, the situation could be very delicate: the professionals from the government stress the necessity to regulate, but the politicians don't want to lose the votes by being hostile to the business, their potential sponsors.

In his later works, Wilson added another aspect to his argument. He mentioned that although the perceived distribution of costs and benefits shapes which kind of actors will participate in the process, it will not necessarily determine who wins (Wilson and DiIulio 1995: 457). It means that the coalition forming and other lobby activities predicted according to the policy issue might have little to do with the policy outcome. This is an important statement and it may considerably decrease the strength of the typology.

Wilson's theory has been criticised by Peltzman for not giving any account for the role played by institutional arrangements (quoted in Baldwin and Cave 1999: 24). However, it can be argued that by enriching the economic perspective (costs and benefits) with perceived interests, Wilson was implicitly combing the features of rational choice and institutionalism through the perception of interests if the interests were considered on the level of the organisation (or the group), not on the level of the individual. Hancher and Moran argued that the theory does not account for different intensity of stakes. Wilson's assumption that intensity of the interests is reflected in the diffusion or concentration of costs and benefits (Wilson 1980: 366) may be oversimplification.

Therefore, we are attempting to account for varieties in regulatory drafting with the help of emerging interests in a form of policy issue typology. Thus, the type of decision is considered as a general attribute, which is very likely to shape the pattern of participation and relationships around the regulatory drafting. Wilson's classification of policy types allows focusing on dynamic and complex relationships in policy-making process. It implicitly addresses to the problem with pluralism (see above) and builds both on economic rationale and claim that there is a systematic variance across policy issues. This account draws attention to interests, which is considered to be the key issue in the field of regulation, and in state-society relations.

As mentioned above, it could be fruitful to use the policy network approach as a general toolbox for analysing relationships and membership in the regulatory drafting process in order to have a systematic look at the decision-making arena in this policy field. A combination of Wilson's typology with policy network approach is functioning as a mutual gap filling. The problem, that Wilson's framework does not take institutional effects into account, is balanced by the network analysis' ability to identify these effects enabling to understand the extent of explanatory power of the policy typology. Therefore, policy typology developed by Wilson is a theoretical foundation of this study, and network analysis

allows mapping and specifying the existing interests and relationships during the drafting process in a systematic way. It means that only a minor part of policy network analysis is used: primarily in order to get a though understanding of the regulatory drafting process, but not to make theoretical claims on the basis of the policy network analysis. Therefore, a combination of interests-based theoretical framework, and the policy network approach as a toolbox for analysing the rich data in a systematic way will be used in this study.

This study is interested in differences in the drafting process of secondary legislation and the main research question is whether the pattern of participation in the case material is consistent with Wilson's theory and what would account for inconsistency? The theory has also made suggestions about the expected behaviour of the regulating institutions. Hence, it is possible to go further than the participation question and estimate whether the regulating institutions are behaving according to the expectations inferred from the theory. Qualitative case studies could give some evidence about how the bureaucracy responds to the interests and what effect does the response have on the decision. These questions would help us to estimate the usefulness of policy typology in policy analysis and also help to answer a question why a certain pattern of participation emerges in different cases.

2.2. Method of inquiry

The underlying assumption of the study is that there is a systematic variance in the participation in regulatory drafting. We are arguing that interests, which emergence is shaped by distribution of costs and benefits, can explain the variation in the participation. Above the advantages of the policy issue typology developed by Wilson's were discussed and the question was: to what extent could participation be explained by configuration of interests. Therefore, the research design of the study is theory testing. The thesis uses Wilson's model for making predictions about the dependent variable; that is about the pattern of participation.

The structural features of policy networks are observable; moreover, the relevant measuring and analysing techniques have been developed. Policy network approach helps to study the participation in a systematic way; it contributes to explicitness by using special measures and language of comparison and the quality of gathering and presentation of data would only benefit from it. Therefore, the networks are used as observable implications of participation; they help to concentrate on attributes relevant to the theory[8], when collecting the data. Here, the virtues of the policy network approach are clear: networks function as a tool for organising and analysing the data, as an adequate reflection of the drafting process, and as a model for understanding dynamic and complex relationships between government and society. The policy network approach facilitates solving the following methodical and conceptual problems in this study. First, it helps to cope with vagueness of rich data and serve as a guideline for collection and organisation of qualitative information according to the research aims. And second, it addresses the problem of high complexity and diversity of the case material. The policy network approach is flexible enough for understanding hierarchical relationships based on rules and authority, and vertical relationships based on cooperation and shared values. The term *actor* means an institution, not an individual in this study.

The study uses a stratified sample[9] of four cases selected according to the Wilson's typology of policy issues. Consequently, the selected cases are approximating to the policy types. The qualitative approach is suitable for our interest because of its capacity to present a more dynamic account of policy-making. For instance it emphasises the fluidity and dynamic

[8] King, Keohane and Verba: 'observations are either implications of our theory or irrelevant' (1994: 48).
[9] The cases were selected on the basis of the position on some variable (Przeworski and Teune 1970: 31).

character of the policy-making process; encompasses a sense of institutional culture; employs exploratory, flexible research which does not impose constraints on data collection and it values interviews with policy makers because they offer an insider's perspective (Bryman 1989: 136-141; Bulmer 1986: 183). Case study is used because it helps to focus on the drafting process and offers a detailed analysis of the sample.

Difficulty in getting enough data is one of the main problems of network analysts. The study uses triangulation for getting more complete and reliable information. There are two basic sources of data. The most important source is the interviewees; that are the people who participated in the regulatory drafting. The purpose of the interviews is to understand how the drafting process worked, identify the participants and map the networks, evaluate network characteristics, and comprehend the possible effect of the rival or supplementary explanations. The study uses a semi-structured interview format in order to collect comparable data, but still leave enough flexibility.

Documents are the second source of the data. Although the availability of written records will probably vary across the cases, they will still help in giving additional information, give evidence about characteristics of the drafting process and confirm the findings of other sources. There are several kinds of documents, for instance the Act of the Parliament the regulation under consideration is deriving from and the other relevant instances of secondary legislation; papers produced during the drafting process (memos, letters, reports etc); documents on which the regulation is substantially relying on (international standards or regulations, suggestions of the professional organisations, strategic development plans, existing orders and the like).

The cases are analysed from three aspects: process, membership (or actors), and interaction (or relationships)[10]. While describing the process of drafting gives us a general picture of the decision-making, membership and interaction have more specific meaning. The first focuses on the size, permeability and stability of the network; the latter concentrates on frequency and intensity of contacts and atmosphere of interaction[11]. This systematisation enables to have a clearer account of the relationships and it is particularly helpful when using policy network analysis as a method for mapping patterns of participation. This distinction is taken as a clarifying instruction during the collection and systematisation of the data.

This study does not attempt to make representative generalisations about regulatory drafting process in Estonia because the central aim to test the theory will limit the number of cases. There is a big amount and variety of secondary legislation, which will not be touched in this analysis as the study concentrates on in-depth description of decision-making of selected regulations. Other limitations involve the time period and the part of the policy-making process, which is drafting process. The study does not go back in history and analyse the effect of the past decisions or processes, neither does it look at the enforcement process.

2.3. Selection of cases

Four regulations of the minister or of the Government were selected according to approximation to Wilson's policy typology. The cases were selected so that all policy types

[10] *Attributes* (also referred to as nodes, dots, actors, members) are intrinsic characteristics of people, objects, or events. Various types of attributes can be measured – occupation's average income, GDP, riot's duration, person's opinion about the president etc. *Relationships* (also referred to as lines) are actions or qualities that exist only if two or more entities are considered together (Knoke and Kuklinski 1982: 5). According to Dowding, the characteristics of *actors* are for example knowledge, legitimacy, reputation, ability to influence others incentives; the characters of *relationships* are for instance centrality, number of connections, inclusiveness, rules of interaction, level of institutionalisation (1995: 206).

[11] These characteristics are derived from Marsh and Rhodes (1992)

were represented. As described above, Wilson's typology is based on the perceived interests around the regulation. Issues handled in minister's and government's regulations are often very detailed, they are about a narrowly specified issue (deriving from the special delegation), and sometimes also very technical. Selecting the cases according to Wilson's typology requires identification of the perceived costs and benefits, which proved to be quite tough task when considering the nature of secondary legislation. However, Wilson's typology implicitly directed us to the policy fields and problems which the different policy types could include.

These cases are from the different policy areas: waste management, safety at work, food safety, and inspection of electrical installations. They also vary in the respect of time of adoption (one regulation of each year – 1999, 2000, 2001 and 2002) and the issuing authority (two regulations were issued by the Government of the Republic, one by the Minister of Economy and one by the Minister of Environment. The cases are briefly introduced in the following table.

Table 1: The cases of the empirical analysis.

Title of the regulation and policy type	*Issued by, number; time of issue; came into force*	*Primary legislation, delegation.*
The procedure, the intervals and the extent of technical inspection depending on the technical characteristics of the electrical installation. CLIENT POLITICS	Minister of Economy; number 35; 28/06/2002; 14/07/2002	Electrical Safety Act (RT I 2002, 49, 310) § 27, 3: "The procedure for technical inspection, the intervals at which technical inspection is to be performed and the extent of technical inspection shall be established by the Minister of Economic Affairs depending on the technical characteristics of the given electrical installation".
Establishing the procedure for the application for and issue of permits for the handling of food for particular nutritional uses. ENTREPRENEURIAL POLITICS	Government of the Rep.; number 26; 31/01/2000; 06/02/2000	Food Act (RT I 1999, 30, 415) § 14, 4: "The Government of the Republic shall establish the procedure for the application for and issue of permits for the handling of food for particular nutritional uses."
Requirements for the construction, operation and closing down of landfills. MAJORITARIAN POLITICS	Minister of Environment; number 34; 26/06/2001; 01/09/2001	Waste Act (RT I 1998, 57, 861) § 12, 4: "The Minister of the Environment shall, by a regulation, establish requirements for the construction, operation and closing down of waste management facilities designated for waste disposal in order to ensure that waste management facilities are safe to health and the environment during the handling of waste and also after the termination of waste handling."
Requirements for health and safety at work at construction sites. INTEREST POLITICS	Government of the Rep.; number 377; 08/12/1999; 01/01/2000	Occupational Health and Safety Act (RT I 1999, 60, 616) § 4, 5: "The occupational health and safety requirements for specific areas of activity shall be established by the Government of the Republic."

3. COMPARING AND CONTRASTING THE PATTERN OF PARTICIPATION

In this section, the main findings of the empirical study summarised and analysed. The aim is to understand, to what extent and in which aspects the observed network characteristics were different and similar.

3.1. Drafting process

We observed big variation in the drafting process across the cases. Not only did the **length** of preparation vary (from 2 months to 9 years); but also how the drafting was arranged. The longest was the preparation of the landfills regulation; it's drafting became a part of lengthy European Union level discussion about the directive of landfills, which was going on approximately for 10 years before it was finally adopted in June 1999. Another reason for the delayed process in addition to confusion around the directive was that the system of waste management in Estonia needed to be built up. Several detailed analysis were carried out, the new Waste Act was adopted, and strategic documents (about objectives and alternatives, the existing situation, and also the bill of National Waste Plan) were prepared. The shortest was the drafting process of the technical inspection regulation, which was prepared in two months. It was an exceptional situation: the coordinating department of the ministry was heavily overloaded with legislation drafting; therefore the heavy time pressure substantially influenced the process. As a result, the preparation of the first draft of the regulation was contracted out. Two remaining regulations – the regulation about occupational health and safety at construction sites and the regulation about handling permits of food for particular nutritional uses - were relatively similar in the sense of time spent on the preparation. In both cases, the preparation time was approximately one year, although the issue emerged earlier as a part of the preparation of the primary legislation.

The way, how the drafting process was **organised**, varied too. In three cases[12] the regulation draft gone through the official harmonisation procedure with related ministries and other institutions. Logically, it had three kinds of effects: first, it lengthened the process for about one month; second, a bigger number of (mostly governmental) institutions became aware about the particular regulation; and third, it improved the quality of the regulation in the sense of correctness of legal drafting and terminology. In three cases[13], some kind of working group was formed for the drafting process. However, the role of the working group and also its arrangement was relatively different. The most complicated was the situation with the regulation of landfills, where three working groups operated in the different stages of the process. The role and membership of the first two working groups was relatively similar – it was discussing the general principles how to organise Estonian waste management system, worked on specific requirements and consisted of the experts form private, public and voluntary sector. The third working group was built on the results of the previous phases and its main function was to draft the regulation so, that it would be in accordance of the directive. Therefore, it was mostly a bureaucratic activity and all the participants were from the government institutions (the ministry, an environmental service, and the Estonian Environment Information Centre). In the case of particular food regulation: the working group was a tight circle of governmental institutions, which role was to take a lead position in

[12] The only regulation that was not harmonised was the regulation about technical inspection of electrical installations.

[13] No working group was formed for the drafting of the regulation about occupational health and safety at construction sites.

this issue and to fully prepare the regulation. Relatively different picture emerged in the case of the technical inspection regulation. The working group was a remedy, which relieved the overload of the ministry. The content of the regulation was prepared by mainly one actor from the private sector, and the working group was mostly left with three roles. First, to function as a legitimising body for the other external actors, and as an informing body for the Technical Inspectorate. Second role was to operate as an expert body for the actor formally responsible for the drafting (the ministry) as the representatives of the ministry neither had knowledge nor experience. Third role of the working group was to fine-tune the text of the regulation so that it would be clear and legally and terminologically correct.

Despite of the differences in the roles of the working groups, the arrangement of the meetings was quite similar. None of the working groups had regular meetings, nor were the minutes taken. The versions of the drafts were usually distributed in advance and the meetings could last for many hours. All the working groups were rather semi-formal, even informal.

3.2. Participation

The pattern of participation is one of the most attractive issues for us as the main interest of the study is to understand why a certain kind of network emerged. It is important to specify in which stage did the actor get involved in the process. There is a difference between participation in a form of frequent consultations, and the formal harmonisation that is usually a single contribution and does not involve a discussion. The patterns of participation are analysed through the four features: the variety of actors, the size of the network or the number of actors, the continuity of the membership and the permeability of the network.

The variety of actors across all the cases included bureaucracy, business, non-profit organisations, academia, and international organisations. In all the cases, the leading ministry and the relevant inspectorate were involved. The most extreme case was the regulation of technical inspection: the substantial input was coming from the external actors and the ministry's role was to guarantee the legal correctness and consistency of the regulation with the primary legislation. In this case, the business actors formed a majority among the actors. At the same time, the features of these external actors were quite homogeneous. The case with landfills regulation was very different from the latter cases – a wide array of actors were involved in various stages of the drafting; there were specialists form the several governmental institutions, experts of private consulting companies, representative of the waste transport and collection companies, academics, and businesses who had to bear the costs. Although highly experienced experts formed the core of the network, the features of other actors varied in the sense of professional background, region, and main activity. The variety of actors was the smallest in the case of occupational health and safety at construction sites: the main drafter was the ministry, and some help was asked from the Labour Inspectorate and Estonian Association of Construction Entrepreneurs (Confederation of Estonian Trade Unions - EACE) during the drafting. In the final phase of formal harmonisation, the representatives of employers (Estonian Employers' Confederation -EEC) and employees (Confederation of Estonian Trade Unions - CETU) and other ministries were included. However, the last phase did not bring considerable substantial changes into the draft. Relatively similar picture to the latter emerged with the case of regulation about handling permits of particular foodstuffs. Here, the circle of drafters consisted of three governmental actors – two ministries and the inspectorate. Though, in the final phase of harmonisation, the local business interest become involved. With the two last cases, the round of participants was relatively homogeneous – they were all the professionals in the area.

As already discussed above, the **size** of network fluctuated from a relatively small group of drafters (here, we are not considering the ministries engaged in a way of formal harmonisation) in the cases of work safety and handling permits regulations, where three actors were involved in the phase of consultation and initial drafting. The biggest number of participants emerged in the case of landfills regulation, where in different phases altogether more than fifteen actors participated. The case of technical inspection regulation fell somewhere in between these two poles: five actors participated in the drafting process.

The aspect of the networks, in which the variation was the smallest, was **continuity** of the membership. In two cases – technical inspection and occupational health and safety – the circle of participants was stable; no new actors emerged during the process. The case of particular food handling permits regulation was similar to the former, as the membership of the working group did not change; the only alteration was the involvement of the local business actors in the final phase of drafting. The most different was the continuity of the landfills regulation, but it could be explained to a great extent by the long process of preparation. Still, the core of the network was perfectly stable over many years, and the changes in continuity were deriving on the necessities of the particular phase. For instance, in the earlier phases, a discussion was generated among the societal groups who were closely related to the landfills issue, but as the principles of the regulation had already been discussed, the final stage only involved the actors from government institutions. Another term closely related to the size and continuity of the network is its **permeability**; in other words, its openness or closeness. It is relevant to generalise that once the working groups had been formed or developed, the network became relatively closed. The most open was the network of the landfills regulation, where a wide range of actors participated. The network around the technical inspection regulation could also be considered as open, as several societal actors were involved, but in the process of drafting, no more actors were incorporated. The drafting process of the regulations of handling permits of particular foods and the occupational health were in general quite closed, but in both cases the affected interest group was incorporated.

Another aspect of policy networks stressed in the literature are the resources of the actors. The configuration of **resources** was relatively similar in all the cases: expertise (knowledge and experience) was an important resource in all the cases; information was mostly coming together with expertise. For instance, in the case of technical inspection regulation, the contracting partner had extensive knowledge and experience, but also information about detailed practical aspects of inspection. As a result, nobody questioned the proposed content of appendixes of the regulation. While the resources of the governmental institutions were a combination of the formal authority (which was dominant in the case of technical inspection regulation, and to some extent also the case with occupational health and safety regulation) and the expertise (dominant in the case of particular food handling permits and landfills regulation), the resources of the external actors varied more. For instance, as a result of the trilateral agreement (Trilateral Agreement, 1996) there was a requirement to involve the representatives of the employers and the employees in the preparation of occupational safety regulation. Economic power or organised business lobby was also observed. It was the case with particular food, where the local producer Salvest Ltd quite successfully lobbied for transition period, but did not have success with a suggestion to establish less strict order for handling permits. The power of big constructing companies was represented by a well-established umbrella organisation EACE. They were consulted with also during the preparation of the draft, not only in the stage of final formal harmonisation. A special case was the technical inspection regulation, where the vision about framework, the principles and requirements for the process was presented by one of the market leaders (Electricity Control Center, in Estonian: Elektrikontrollikeskus) on the basis of contract. Their set of resources

was impressive – the best experience, a wide base of information, expert knowledge, time, strong market position, and contacts with the Technical Inspectorate (TI). As a result, they were able to steer the discussion form the very beginning. The clearest business example of economic power and also political influence was the behaviour of big business corporation Silmet Ltd in the case of landfills regulation, where they successfully negotiated for establishing a transition period.

3.3. Interaction

The following aspects of interaction between the actors of the network are discussed: the centrality[14], the density[15] and the level of institutionalisation[16].

The simplest way to analyse the **centrality** of the network is to make a difference between a core and a periphery of the networks. In three cases (landfills, work safety and handling permits of particular food), one single central actor was identifiable and in every instance, this actor was the responsible ministry. The ministry was the link, through which the communication and information was distributed. Also, the ministry organised the working group meetings, summarised the opinions, and revised the draft versions. It is logical, because in all the cases, the ministry was responsible for the preparation of the regulation. Somewhat different was the case with technical inspection, where the central position was shared by the ministry, and the contracting partner from whom the first version of the regulation was ordered. However, besides a single key actor, in three cases, the core consisted of more than one actor. In addition to the case of shared leadership of the technical inspection case, the Ministry of Social Affairs and the Heath Protection Inspectorate formed the core of the particular food handling permits regulation. Here, the content of the regulation was largely defined by the EU directive and actually the space for interest negotiations and bargaining was very narrow. Landfills regulation had the biggest core, consisting of three actors (the Ministry of Environment, the Environmental Information Centre, and the specialised planning and analysis firm Maves Ltd.). The only case, where just one actor in the core was identified (the Ministry of Social Affairs), was the case of occupational health and safety regulation in construction sites. Consequently, the periphery of the networks consisted of the array of other actors described in previous sections.

A substantial variation was also observed in the sense of **density** of networks. The most frequent interaction was going on in the drafting process of technical inspection regulation; a reason for this could easily be a very heavy time pressure. It is hard to distinguish, whether the network was denser in the case of handling permits of particular foods or in the case of landfills as the process of the latter involved three separate phases. Still, the density of contact in the last stage of landfill regulation drafting and in the handling permits case seemed relatively similar. The least active was the interaction in the case of occupational health and safety regulation.

Discussing the **level of institutionalisation**, it seems that one important factor which facilitates institutionalisation of the network could be whether the actors knew each other

[14] Network centrality tries to capture the property of actors in terms of their links with others. It measures the extent to which communication within a network passes through an actor. The importance of centrality relies on the crucial role of central actors in decision-making and information processing. Centrality is used for understanding the structure of the network (Cole and John: 133-134, in Marsh 1998).

[15] Density measures the ratio of the number of interactions in the network with the total possible ties. It is used to understand the extent to which actors interact (Cole and John: 133-134, in Marsh 1998).

[16] Level of institutionalisation reflects the establishment of the network, i.e. to what extent the interaction between the actors has rooted, and whether certain kinds of rules of interaction and values have emerged (Dowding 1995).

before and whether they were also interacting in other situations besides this particular regulation drafting (it was the case of the regulation of landfills and of the handling permits of particular food). But at the same time it could be argued that the way, how the drafting process was organised, and how intense was the discussion, could also affect the level of institutionalisation. For instance, as a result of a very intense interaction in the course of preparation of technical inspection regulation, a network emerged which is still functioning. The formation of closely together functioning working groups clearly facilitated the development of the network. Generally, it can be concluded that the level of institutionalisation was highest in the case of landfills regulation; the next well-established network was observed around the handling permits of the particular foods. The case with technical inspection is more complicated, because the actors who represented the experts in the area already had some kind of network developed. It could be argued that the intense discussion among the working group rather tied a new actor - the ministry - into this network than contributed to the establishment of the network. The least institutionalised network was observed in the case of occupational health and safety regulation, where was one clear leading actor and discussion with other actors was rather infrequent and in some cases, also relatively formal.

3.4. Conclusions

As we saw, there was considerable variation across the network characteristics in the selected cases. The biggest variance was found in the following characteristics of the networks: the size (from less than five actors to more than fifteen actors), the actors (professional background; level of experience and knowledge in the particular area; geographical location; institutional background - private, public or non-profit sector; role in the process), and the density (from very intense discussion to occasional consultations).

On the one hand, we observed a drafting process where a small homogeneous and relatively tight network developed. It was the case with landfills regulation. The network is functioning as version of consultative body between the state and the society. The emergence of the network was definitely conditioned by such factors as long preparation process and the development of the whole waste management system in Estonia. On the other hand, we saw a drafting process, which was clearly dominated by one or two governmental actors, and the involvement of societal actors was relatively formal or only a selected societal actor could get access. The first was the case with occupational health and safety at construction sites, where the ministry was the key actor; and the second was the case with handling permits of particular foods, where one big business was lobbying the governmental actors after they had prepared the draft. The most exceptional was the technical inspection regulation drafting. Here, the experts from private firms were guiding the discussion and the role of the governmental actors was mostly about legal drafting and conformity with the primary legislation.

4. DISCUSSION OF INTERESTS IN THE DRAFTING PROCESS

4.1. Case 1: Requirements for landfills

In the case of landfills regulation, the general interests of the core of the network coincided – the objective was to adopt the regulation in harmony with EU legislation and to create a solid basis for the business of landfills in Estonia. But this case was not a simple translation of the directive. The articles of the regulation, which were not mentioned or were very loosely formulated in the directive, were prepared by the core drafters. It is hard to separate the

specific features of the bureaucratic incentives because they were a part of the core network and did not represent a separate vision.

As the landfills regulation is relatively technical, and its content was rather abstract for the citizens, no grass-root interest emerged from the side of consumers. However, the citizens became active when the specific issue emerged about construction of a new landfill in their municipality, but this discussion was not targeted to influencing the content of the regulation. Therefore, it could be argued that due to the abstract meaning of the regulation and because of the diffuse consumers' and general public's interests the problem of price raise in waste removal fees did not become pronounced during the process of drafting. Neither were the interests of greens coherently represented, but the case could be that the environmental requirements were strict enough not to activate the green groups in the society.

It could be argued that in the area of landfills, especially on the side of waste transporting and collection services, there are well-organised business interests. It might well be the case, but these interests did not emerge explicitly in the process of drafting of landfills regulation, because these are rather persistent on the local level, where contracts with clients are made. However, the conflicting interests of the two waste collection and disposal companies (Ragn Sells & Cleanaway) emerged with the issues of constructing new landfills, but again, it was a part of wider discussion about the location of the landfills in Estonia not the case emerging from the drafting of this regulation.

Literature says that potential conflicts of interest have usually been between environmentally based arguments and economic targets (Malek et al 2001: 2). This regulation put explicit obligations (which in monetary terms were very significant costs) on a certain group of big polluters, and two of them (Silmet Ltd and Estonian Energy) lobbied heavily in the last phase of drafting in order to negotiate favourable transitional measures. The case with Estonian Energy reflected a huge problem with industrial waste in northeast Estonia about which the core drafters were perfectly aware. Thus, the scope and seriousness of this problem dictated that it should not be considered as the concern of the industry, but it constituted a big societal difficulty. And if looked from the aspect of costs, it is clear that the costs would in the long run be borne by the society at large, because the costs of reducing the environmental risk of the industrial waste would be reflected in the price of electric energy. It was obvious, that this situation could not be solved quickly. Therefore, a common strategy to negotiate in the European Commission was taken and this proved to be successful. The case with Silmet Ltd was rather different; they lobbied in the ministry for getting a transition period for stopping disposing liquid hazardous waste in the landfill. They introduced their program of rearrangements in the ministry and as result, the transition time until the end of 2002 was given.

It was a complicated case, where in certain moments the rationale of the majoritarian politics was punctuated by the emergence of client politics. The latter was the case with Silmet Ltd, who represents strong economic and to some extent, also political power. Preparation of this regulation was a staged process, and interplay of interests was generally driven by a common goal to build up a functioning and good system of waste management.

4.2. Case 2: Work safety at construction sites

Here, we observed the clear domination of the single bureaucratic organisation – the ministry. The regulation was putting obligations for the construction companies by improving the general working conditions and paying more attention to work health and safety at construction sites. The employees should strongly lobby in favour of more detailed and stricter requirements and for more effective state supervision. The both groups – the employers and the employees – were involved in the process, but it could be said that there

was no significant lobby activity by neither of them. This case is the closest to the situation where the organised business interests were absent and some other interest groups (in a form of non-profit representative organisations of the employer and employees) were participating in the discussion. However, the impact of the trade unions was relatively limited; they only succeeded to negotiate for the stricter requirements in one aspect (which was, by the way not specified by the directive, but was deriving from the Danish example). Trade union of construction workers did not function; thus no coherent group of benefactors emerged. Thus, the trade unions interest was relatively low and there were no well-organised victim interest groups either.

The employers were actually interested in adopting this regulation: on the one hand it helps to develop companies' management and quality systems, and on the other way the regulation is a guarantee for the employers to protect themselves against unfair and not reasoned prescriptions. In contrast to the absence or organisation of construction employees, there was a well-organised organisation of the construction entrepreneurs (EACE). In the process of harmonisation, the issue was not substantially discussed in the CEE, but was forwarded to EACE, who was already consulted with in the earlier stages of the drafting process. Though, the remarks of the construction entrepreneurs were actually not about negotiating for softer requirements, but rather involved the technical, terminological concerns of the regulation, and they also draw the regulator's attention to some practical aspects of sub-contracting. To generalise, the existence of the organised interests on the employer's side did not make their influence bigger in comparison of the employees. One reason for low activity of lobbying from the side of employers and employees seems to be the fact that the issues of occupational risks are not in the top of the discussion agenda in Estonia. In this area, monetary issues are the most sensitive ones; for instance the problematic of the minimum wage and the social guarantees of the employees. There was no activity from the side of general public – potentially, a danger at construction sites could affect the pedestrians too (a falling construction detail or collapsing scaffoldings).

In some aspect, the interests of the ministry and the Labour Inspectorate were not consistent. The leading rationale of the ministry was to harmonise Estonian regulation with the European Council directive 92/57/EEC. As explained above, the tone of the regulation and, hence the tone of the regulation, is not prescriptive. The regulation is rather a guide to a better performance in a field of work safety at construction sites. The interest of the inspectorate was to have a detailed set of rules, which fulfilment is easy to supervise. The rationale of the supervising body was thus to get a prescriptive document, which could be used for according to command-and-control principle by the inspectors. Another argument for establishing a detailed set of rules was to give explicit criteria according to which the inspectors could make prescriptions for the companies not following these criteria. In such case, it would be less likely that good attorneys hired by businesses will easily win the potential trials.

In general, the case of occupational safety involved no significant organised lobby group and this situation gave a free play to the regulators from the ministry. The involvement of the EACE in the earlier stage of the discussion had mostly an informing undertone and there was no significant pressure to change a regulatory regime content by them. The different standpoints of the inspectorate did not have effect. It was a perfect example of imported legislation – the articles of the regulation were either copied from the directive or the regulations of the Danish relevant authorities. Therefore, there was almost no bargaining space in this regulation.

4.3. Case 3: Technical inspection of electrical installations

The groups whose fortunes could be affected by price control or restrictions to operate in their markets, are very likely to be well organised according to the Chicago school approach. Following Wilson's argumentation, the business interest capture could be the most likely in such case, because the concentrated profits of the market leaders.

Here, the list of businesses represented in the working group, could be considered as a homogeneous group due to two reasons. First, they were all experts in this area. Second, more importantly, they were all accredited and acknowledged inspection bodies. It means, that they were companies, who already fulfilled these requirements which the established by the regulation. The respondents explained that the reason for involving these actors was that they were already known to the Technical Inspectorate, they had extensive knowledge and experience, but maybe even more important was the modest remark of the bureaucratic actors that it was known that these actors are willing to contribute their time and share their experience. No representative of the lower rank inspection bodies, i.e. the electrical contractors, was involved in the working group. However, the regulation could affect the profits of electrical contractors. Many of these contractors probably cannot fulfil the requirements of this regulation unless some investments were made.

The representatives of the ministry were perfectly aware of the potential business capture, and accordingly, they perceived that their interest was to safeguard that the delegation of the primary legislation was followed, and that the electrical safety of the general public was guaranteed by this regulation. As there was no lobby by the side of the consumers, i.e. the arguments of the diffused population of consumers who had to bear the costs, simply did not arise. It could partly be explained by the short and expert-dominated drafting process, so that the consumers were not aware about the process. Therefore, it is not relevant to hypothesise whether this diffuse group could have become organised. The bureaucrats were also relying on another argument, while deliberating the potential consumer reaction; it was about the deadline of compulsory technical inspection (01.01.2003). They were relying on the deadline for completion of inspection of the 3rd type of electrical installations given in the previous regulation (adopted in 1999). Their first argument was that they are not questioning the adequacy of the political decision made earlier; the second argument was that postponing this deadline would be unfair for these who followed the requirements in time. As a result, the idea that this regulation could initiate a noisy and emotional discussion which could seriously damage the image of regulators and hence, the reputation of the minister, did not come up. Actually, this was exactly what happened in autumn 2002[17].

Here, the coincidence of circumstances worked for the dominance of the business group: the ministry did not have experts in this area, and due to a heavy workload they decided to contract the preparation of the regulation out to the company with the best expert basis, willingness to cooperate, and previous experience in legal drafting. At the same time, this company happened to be the market leader, whose situation worsened with the liberalisation of the market in 1999. Their incentive was to create an order in the market by establishing unified set of rules. By becoming a contracting partner, they were free to define the

[17] The keywords of the discussion were "heavy fines", "compulsory inspection before 1st January 2003", "a short privileged list of inspecting bodies" and the like. At once, the previously technical and neutral solution generating common good become highly sensitive and political. The minister could not ignore the blame (the next general elections were due in 4 months) and as a result, two substantial changes were made. The bill about making an amendment into the Law was introduced; according to the bill the delegation was widened in two ways: a) so, that this regulation could specify, who are the subjects of compulsory technical inspection (which would allow to exempt the dwelling owners from the obligation); b) so, that the regulation could set the deadline for the completion of the inspection of 3rd type of electrical installations.

substantial measures of the regulation. In practice, it meant contributing to the process by sharing their experience in a form of copying their own practices.

Therefore, the regulation was favouring the small coherent and represented group of market leaders, but it was quickly done under the slogan of electrical safety to human health. It is true, that the regulation has a dimension of majoritarian politics as it aimed to reduce the risk deriving from dysfunctional electrical installations.

A good regulator in case of client politics should guarantee that even if one group of producers or service providers is implicitly preferred, the standards guaranteeing the selection of the best services should be adopted. The regulation should depart form the public good and not from the rent-seekers interests. It could be argued that this regulation was meant to contribute to the common good in a way of taking care of electrical safety. However, the emergence of the cost-bearers was hindered.

4.4. Case 4: Handling permits of food for particular nutritional uses

The bureaucrats formed a relatively cohesive group with a clear and consistent view of the need for market regulation in a form of handling permits. They were well organised and the incentives were shared by all the members of the working group. Although both the responsible ministry and the inspectorate had strong positions in the network, there was no conflict of interests among them. Both actors wished to establish a well-functioning system of issuing the handling permits, which was as easy to run as possible. The consumers of the particular foods in general, or mothers of small babies, sportsmen, allergic people with needs for particular food more specifically, did not exert any pressure over the regulation. The initiative was taken by the regulators.

Addition to the bureaucratic interest emerged in the final stage of drafting. Through the Ministry of Agriculture, the local producer of the particular foods became active. Their lobby activity consisted of the clear message to the regulators to make various concessions for them. Salvest Ltd was the only well-organised local producer at that time in Estonia whose interests would be damaged by the regulation; their representation by the Ministry of Agriculture is logical because they use only Estonian ingredients (vegetables, meat etc) and damaging them would have meant damaging the local farmers. However, the demands of the business interests were mostly acknowledging the requirements of the European Commission directive. It means that they had admitted that they cannot change the regulatory regime content, and therefore, their lobby was focused on bargaining for relaxing conditions in a form of transition period. Their only appeal, which did not follow the directive, was about having a simplified order for issuing the handling permits for a similar group of foods. Obviously, this call did not find the acceptance of the regulators.

4.5. Conclusions

This analysis suggests that interest groups other than organised business emerged only in few occasions and even then, they could not influence the regulation content significantly. The values and aims that those bureaucratic and professional “interests” comprised were far from uniform. In some cases, the process of drafting was conditioned by the bureaucracy’s behaviour to use short cuts through the complex questions. An example of this kind of shortcut is the way technical standards were borrowed from international bodies or from other countries with minimal adaptation; a good example was the case of occupational safety and health. Bureaucratic and regulatory interests were usually coherent, and only in one case some contradiction was observed.

The roles of the regulator were not uniform: in the case of technical inspection, the bureaucrats were upholding the interests of the common good and checked that the principles

of primary legislation were followed in the standard-setting process dominated by business groups. Conversely, in the case of occupational health and handling permits of foods, the bureaucrats took evidently a lead role in the drafting process. And in the case of landfills, the bureaucratic interests hardly emerged; they formed a network of core drafters with a selection of societal groups.

5. EMPIRICAL FINDINGS AND WILSON'S TYPOLOGY

In this section, we are discussing the results of the empirical study in terms of theoretical expectations. The questions discussed below are: how the emerging interests differed from our expectations according to Wilson's policy typology and to what extent could the participation be explained by Wilson's theory.

5.1. Client politics – the case of technical inspection of electrical installations

In general, the pattern of participants observed was rather well following the prediction made on the basis of Wilson's policy typology. There was a group of accredited TIBs who took the lead role in the process. The electrical contractors – many of them would need to make investments in order to be able to follow the requirements of the regulation - were not involved in the process. Neither was observed any lobby from the side of diffused group of owners of electrical installation who are the subject of compulsory inspection and have to pay for it.

Therefore, in the case of technical inspection of the electrical installations several features of the client politics as seen by Wilson, were observed. The lobby activity was organised and one-sided; moreover, it happened to be relatively easy for the business group to achieve a dominant position. Another features of the client politics were: quiet lobbying, quick passage and a minimum public discussion (Wilson 1980: 369). All these features were present in this case. For instance, there was an element of majoritarian politics too, which made the business interests less visible.

Though, it was not the purest case of client politics, as it had an aspect of majoritarian politics too. In this case, it made it easier for the business interest to become involved and to be in an acknowledged expert position. It could be said that the both incentives become realised: first, the motive of the bureaucracy was to establish an order which would reduce the risk of danger to the human health, property and environment departing from electrical installations; and second, the motive of the market leaders to stabilise the market by setting higher standards for conducting technical inspection.

5.2. Interest politics – the case of work safety at construction sites

The prediction made according to the theoretical considerations did not find much confirmation during the empirical study. In other words, there was no real bargaining between the two groups of interest. The regulation was not a decision which occurred in the course of negotiation. These interests did not put pressure on the regulator and there were no challenges to the civil service to maintain its neutrality. Hence, the role of the regulator was not to be a mediator, but to take the initiative.

Actually, the participation in a very strict sense matched well– both the employers and the employees were represented – but their participation had little impact on the regulation content. The whole drafting process was driven by a need to harmonise the directive and this situation left the local interests with a formal role of harmonisation. The main use of their participation was the informational one – they become aware about the regulation before it

was officially published in *Riigi Teataja* and entered into force. Another way of reasoning departs from the relatively weak role of the trade unions and the employers' organisation in Estonia. Another problem with the work safety regulation which considerably hindered the consultation was a pre-defined and very narrow bargaining space due to the EU detailed regulations. And finally, one more reason why active discussion did not happen could well be the relatively low position of the occupational health and safety issue in a common discussion agenda of the government, the employers and the employees.

Therefore, the pattern of participation in this case would rather match to the one described in the case of majoritarian politics. Although the case theoretically was an example of the interest group politics, the *realpolitik* of Estonia turned it into the majoritarian politics.

5.3. Entrepreneurial politics – the case of handling permits of foods for particular nutritional uses

Entrepreneurial politics is characterised by the emergence of the policy entrepreneur, who is lobbying against the strong organised interests. The case of handling permits of particular foods matched with the prediction made on the basis of the theory, which says that in some cases the legislator can take the role of the entrepreneur (Wilson 1980). Here, the bureaucrats were acting on the behalf unorganised and indifferent majority. The motivation behind their activity was to establish some sort of control for the market in order to prevent the distribution of the products, which could harm the health of babies, and other consumers of the particular foods. As the so-called policy entrepreneur had the necessary formal authority, there was no need to engage the third parties such as the media, the recognised academicians or the opinion leaders in the process. Theory says that the economic rationale would be important for the opposing groups and this was exactly the case with Salvest Ltd. They were interested in selling the already produced foods and using the supply of printed labels. They understood that it would be highly unlikely to block the decision, so their strategy was to ask for realistic concessions that proved to be successful.

Both, the pattern of participation and the impact of the actors are in accordance with the predictions made according to the policy typology. It was the good case for entrepreneurial politics, and the behaviour of the business interest was logical. It could not be said that it added a facet of client politics, because the producer had to bear the costs anyway, not only in the sense of rearranging their production process, but also in the sense of preparation of all the necessary documents and paying the state fees for the permits.

5.4. Majoritarian politics – the case of requirements for landfills

The prediction according to the theory is that the process of drafting would be incremental and no clear interest emerges. The pattern observed was far more complicated with the case of landfills regulation. The reasons for complexity could be explained by two circumstances. First, the complexity was partly deriving from the delays in legislative process on EU level, which it stretched the process in Estonia too. Second, the landfill regulation was one of the key parts of waste management regime, and it's drafting was developing in parallel to formulating the general principles of waste management system in Estonia. It was a long row of strategic planning and in-depth practical analysis.

What matched with the theory was that the role of business interests was very small in the process, and that the drafting was steered by the bureaucracy. However, due to the complexity and extensive substantial impact on society, the additional experts form other governmental institutions and private companies were involved. The circle of participants was also affected by the precondition of having detailed technical expertise in the area.

The question about to what extent is the case of landfills a pure majoritarian politics was discussed above. It was found that although in principle, it was a majoritarian politics; it included a small facet of client politics too. However, the role of the organised business interested in the process was quite insignificant, and an instance of emergence of client politics does not change the general character of the regulation.

5.5. Explanation of the unexplained results

The questions discussed in this section are: first, to what extent Wilson's typology helped us to explain the participation in the regulatory drafting in these four cases; and second, which of the alternative explanations could account for the residuals, i.e. the unexplained part?

In two cases, predictions made on the basis of the policy typology were well matching with the observed pattern of participation and interests. These were the cases of entrepreneurial politics (handling permits of particular foods) and client politics (technical inspection of electrical installations). The first was a perfect match in the sense of participation, the behaviour of the regulator, the result of lobby activity, and the purity of the case[18]. The second case had a good match in the aspects of participation, result of the lobby activity and the result of the lobby activity. However the case of technical inspection was not the perfect example of client politics as it contained some elements of majoritarian politics. What was interesting, that situation was giving the interested business groups a possibility to act under a slogan of common good. The behaviour of the bureaucrats was mostly as expected; they perceived the possibility of business capture and were standing for establishing fair and clear standards. Irony of the situation lies in the fact that this was exactly the rationale of the business interests, whose aim was to guarantee that the market will be stabilised and that they will get rid of the competitors, who cannot or do not want to guarantee the high quality of service. Therefore, the outcomes were the same, but the underlying logics were perceived differently.

The case with landfill regulation, which was selected as an example of the majoritarian politics was more or less following the predictions made according to the theory. This was an exceptional case both in the sense of majoritarian politics, and in the sense of deviation from a normal drafting process. The reasons for these deviations were deriving from the general context – the lengthy process of drafting which incorporated features of EU level discussions, and the creation of the whole waste handling system. Due to the complexity and many dimensions of the discussion, the main part which was not explained by the policy typology was the emergence of the client politics.

The biggest deviation from the prediction was observed in the case of occupational health and safety at construction sites. Although the pattern of participation was generally in accordance with the theory, the predicted intermediation of these interests did not occur. No substantial discussion took place between the conflicting counterparts, nor did the regulator take the role of neutral arbiter or of the mediator. What happened was that substantially the case of interest politics transformed into the majoritarian politics.

Two basic alternative explanations can be derived from Wilson's claims. First the relevance of the concept of *type of decision* could be questioned: instead, the degree of specialisation of the regulation or whether the regulation is dealing with routine or strategic matters could account for the variance in participation. Second, there are the explanations criticising the claim that *interests matter*: dominance of bureaucracy may override the interests; or the level of organisation of the group, and the size of stakes might well matter more than the perceived

[18] By purity of the case we mean the extent to which the studied case was representing the particular policy ideal type.

interests. Which of these accounts could fill the gaps of Wilson's typology in the case of two somewhat unexplained observations?

The problem with the case of majoritarian politics was the emergence of incidents of client politics. This deviation could be explained in a best way by the argument of size of stakes. Silmet Ltd had to bear costs anyway in order to modernise its production process and waste management procedures. They had a lot on stake – success in bargaining for a transition time could extend the period, where they could carry on environmental dumping. In other words, externalise the production costs and get bigger profits than in the situation where they would not able to dispose the hazardous liquid waste in the existing way.

The example with interest group politics was the least explained case the selection and here, a combination of alternative accounts could fill the gap. First, the despite of the trilateral agreement and formal participation of the expected interest, no substantial lobby from the side of employers and employees happened. Instead, the bureaucracy dominated in the process. It was the outcome of an import of international regulations, so that there was nearly nothing to negotiate about. Second reason could be the existing situation where the bargaining positions of one group were apparently weak. It was the case with absence of the trade union of the construction workers. However, it could be argued that even in case this trade union were active, its role probably would not be significant. This guess is done according to the role of the EACE. The only advantage they had over the opposing group was that they were briefly consulted with in earlier stages of drafting. Still, this fact did not increase much their impact on the outcome. The last reason why the interest mediation was low, could be that the issues of occupational safety and health are not in top of priority list for these groups; in other words, there was not very much on the stake.

From these alternative accounts, the biggest explanatory power should be the first one: the domination of the bureaucracy as a result of absent bargaining space. If the general expected outcomes and the specific means for reaching these outcomes is explicitly fixed by the international legislation subject to harmonisation, the substantial participation could well be eliminated or reduced to a minor role of becoming aware of the process.

6. CONCLUSIONS

This study considered the regulations of the minister and the regulations of the government as small instances of public policy. In other words, regulations were chosen as a focus of the study since they provide windows through which we may look at the hidden world of everyday policymaking. The volume of the delegated legislation is huge and we could find a big variety of things done by regulations. What we observed during our empirical study was that these issues, which are often considered as boring and technical, might easily be associated with substantially important policy choices and steering tools, which tend to affect a significant part of the society.

The main interest of this study was to examine the phenomenon of participation in the regulatory drafting process. It was argued that a general perspective departing from the configuration of interests could be a useful theoretical departure point. Wilson's policy typology was used as a theoretical framework for analysis. Wilson's policy typology relies on the assumption that there are different kinds of policies and depending on the emerging interests, the pattern of participants and the features of the process tend to vary.

6.1. Empirical conclusions

Empirical aspirations of this study were associated with offering insights into the everyday life of policy-making. The thesis considered regulations as state efforts to change the existing situation in order to relieve market failures, address social risk or equity concerns in the society. We studied how the process of drafting was arranged, who were the participants (or the actors) and how these actors interacted with each other. A conditional notion of network was used to denote the array or participants and their interaction around each regulation. The networks around the selected regulations were relatively sparsely populated; there was no rigorous competition between the groups or interests for the right and chance to have a say in the process. The regulations aroused the interests of only a small number of specialist actors. Formal authority or responsibility explained quite successfully which actors formed the core of the network. It means that the actor, who was formally in charge of drafting, became the centre of the drafting process (circulating information, revising drafts, consulting with other actors, organising meetings etc). Still, the relationships were rather non-hierarchical, but were based on the common goals, values, and also on previous experience in mutual cooperation.

In Estonia, the process of secondary legislation drafting tends to be the playground of rank-and-file specialist, and it is not under the keen interest of the political leadership. The observation that people lower in the hierarchies are likely to get involved in regulation drafting was not accurate only in the case of external interests, which were either represented on the level of top management (which was the case for instance with non-profit actors) or on the level of middle-level managers (which was mostly found in the representation of business groups). The behaviour of the business groups was not surprising; the groups relied on their strong market position, expert basis, and economic and political power. The behaviour of the bureaucracy varied across the cases: in the cases of occupational safety and handling permits of particular foodstuffs, the bureaucracy took the lead role. Landfills regulation was the case, where regulation drafting became an integral part of creating the whole waste management system in Estonia, and it had an international dimension. Here, the bureaucracy was an integral part of network of various actors who were together discussing the content of the regime of waste management and landfills. And in the case of technical inspection of electrical installations, the bureaucracy had mainly coordinating and legal drafting functions, whereas the external groups contributed with the substantial part of the regulation. The role of lawyers in the legislative drafting process confines mostly to the revision of legal drafting and juridical expertise. According to the interviews, their role has increased in the process, but it could rather be associated to the establishment of Estonian legal system, but not so much with the lawyers' involvement into the substantial discussion.

The case studies indicated that the process of drafting was not significantly influenced by the media attention or by the party political concerns. What can we say now about the line of arguing that *policies determine politics*? How do we understand the meaning of *politics* in the context of secondary legislation on the basis of the study? We can say that the term *politics* should rather be considered in the context of interest lobby and decision-making situations that made the bureaucracy make choices whom to engage and how to organise the process. No mobilised partisan support or opposition was observed during the preparation and adoption of these regulations. Neither was a coherent and clearly pronounced public opinion observed in these cases. Still, we can ask how much of the drafting process happens behind the scenes? Here, the meaning of *behind the scenes* should not actually be associated the general public in the sense of wide societal discussion, but rather in terms of the groups who are directly affected by the regulation. We evidenced that in most cases these groups were somehow involved in the process, which yet does not mean that they definitely had a significant impact on the discussion or on the outcome.

Due to the high level of specialisation on the level of secondary legislation, the array of participants and hence the extent of the public attention and social dialogue could be limited. However, it cannot be said that the government did not engage the societal groups in the participation or that the regulation drafting happens behind the scenes in Estonia. On the contrary, the regulators consulted with the organised groups which were affected by the regulation. But we saw the cases where some of the affected groups were not organised and therefore not consulted, and this can be considered as an expression of *behind the scenes* situation. For instance, the target group of the occupational safety regulation – the construction workers – was not organised and for them this regulation was drafted behind the scenes. Higher awareness of the construction workers about the clauses of regulation which they could use for demanding better working conditions, would probably contribute to more efficient policy implementation. Another example of unorganised interests was the case with technical inspection of electrical installations. The public discussion and dissatisfaction, which emerged after the regulation was adopted, actually pointed to the hidden drafting process. Still, the consulting seemed to work quite constructively in the case of organised interests, and here the process of drafting gave evidence about the responsiveness of the bureaucracy. Though, the activity of regulators was not targeted to the latent interests. The discussion about this aspect of state-society interaction definitely deserves policy-makers' and researchers' attention, but it extends the scope and limits of our study.

One reason why the debate around the regulation drafting is not loud and why there is no active interest lobbying and struggling going on could be the feature of Estonian institutional system. There is no parliamentary scrutiny over secondary legislation and the regulation adoption is exclusively the business of the executive. Neither are there other formal access points designed into the system of secondary legislation drafting for the societal interests. It means that there is no discussion triangle consisting of the regulatory agency, the parliament and the interest groups.

There is a clear tendency to borrow legislation from the international organisations and in our opinion it has two aspects. First, it is functioning as a shortcut through complex and highly technical issues and in many cases; and it definitely contributes to the growth of high-quality legislation, as there are often no such experts in Estonia who could prepare the regulations with the comparable expertise. Second, it means that a portion of our original law-making is significantly decreasing and some results of this tendency were also revealed in the cases studies. For instance, the bargaining space is very narrow and it does not give much possibility for the societal groups to have a say in the process. It could lead to the situation, where societal participation in the substantial discussions is diminishing and it puts the implementing bodies in a difficult situation. The societal actors may keep on participating in one way or another, but their role would be rather limited. The underlying rationale of the participation might well be just to become aware of the process.

This is an important generalisation in Estonian context. The growing role of supra-state level regulations allows less leeway on the national level and if accompanied by a heavy time-pressure, the regulation making might become a formal activity behind the scenes. It is a challenging situation for the regulators (especially for the top executive, the ministries), because the involvement of societal interests heavily depends on their initiative. This again leads us to the efforts in the implementation phase. What makes it even more challenging besides the flow of European level regulation is the division of work inside the bureaucracy in Estonia. Our study showed that the regulation-drafting is mostly the task of the ministry; and it is up to the responsible civil servant how active consultation with other actors inside and outside the government to develop. At the same time, the implementation of the regulation is the job of executive agencies and inspectorates. In all the studied cases, the relevant executive bodies were engaged, but their role and contribution varied. Hence, in

addition to the involvement of societal interests, another crucial point is about the cooperation between the drafting ministry and the implementing agencies.

To conclude about the empirical findings we could say that the pattern of participation, the features of the drafting process and the interaction among the actors varied considerably across the cases. Biggest variance was observed in the range of actors (bureaucratic dominance, a tight network of professionals from public and private sectors, a strong business representation), in the number of actors (from three to more than fifteen), and in the features of drafting process (length varied from a couple of months to nearly a decade). The smallest variance occurred in the sense of continuity of actors (the circle of participants was relatively stable); the process was in most cases rather closed, only the professional actors could get access to the drafting; and the central actor was mostly the relevant ministry. Although the range of actors varied significantly across the cases, we could say that the circle of participants was relatively homogeneous in all the cases: the actors were mostly the experts and practitioners of the relevant policy issue. Therefore, professional identity is a clear feature of the circle of participants in regulation drafting process in Estonia.

6.2. Theoretical conclusions

The research question of this paper was whether the pattern of participation found in the case material was consistent with Wilson's policy issue typology and what could account for inconsistency?

The observations suggested that in three cases the findings were generally in accordance with the claims made according to Wilson's policy typology. We noticed the elements of stable capture in the case of client politics, inertia bias and initiative of the government in case of entrepreneurial politics, and incremental development in the case of majoritarian politics. The most significant case, where the findings considerably deviated from the predictions, was the case of occupational health and safety at construction sites approximating to the interest politics. Although the pattern of participation was generally following the assumptions made according to theory, the influence of these actors was far from it. As a result, there was no substantial discussion between the societal actors and the drafting process would rather fit with the description of a drafting process of majoritarian politics. There was actually very little bargaining space as the content of this regulation was imported from European Union.

Although a small number of cases would not allow making generalisations about a bigger population, it can be said that a broad perspective of interests was found relatively adequate for explaining the emerging pattern of participation in these cases. But another question is about whether these participants had, apart from being involved in the process, also the expected influence on the policy process or output. The case studies gave evidence that in three cases the pattern of participation was relatively well reflected in policy outcomes. A logical question about the policy typology follows: why should the framework be useful, if the emerging pattern of participation could in some cases not say much about the policy outcomes?

This dissonance between the expected pattern of participation and the real influence of the actors is well reflecting the disagreement between rationally pronounced behaviour and the *realpolitik*, which is conditioned by such aspects how the actors perceive their roles and how is the decision-making process organised. Wilson's perceived costs and benefits might remain relatively abstract here, because the precondition is that the participants are aware of the drafting process and that the expectations and interests are clearly formulated. Perception of interests presumes that there is a framework in which the actor is able to estimate the costs and benefits, that is, the regulatory problem and the government's plan to regulate it is known those affected. Our study indicated that the bureaucracy plays the key role in the delegated

legislation drafting process, thus their initiative to inform and involve the affected groups becomes crucial.

As we attempted to understand the process of regulation drafting as completely as possible, it should be pointed out that not only was the explained portion of observations valuable, but also all these more or less significant deviations from the framework. These have opened new and valuable facets about the practice of regulation making in Estonia, and also about the content of this particular regulation. The case with occupational health and safety showed us how the import of the international level legislation modifies or even deforms the roles and relative importance of all the actors. A different situation was found in the case of landfills (majoritarian politics), where in the last phases of discussion, an element of client politics emerged. But this deviation should not be attributed to the explanatory power of Wilson's typology, but rather to the diverse and complicated nature of the case.

This actually implies to the trouble associated with Wilson's typology; i.e. the problem of operationalisation, which was the main difficulty with application of Wilson's typology. On the one hand, it could be explained by the limited scope of claims on the level of secondary legislation as the fundamental principles of organising a specific policy area are given in the Acts of *Riigikogu* in Estonia. That leaves relatively little power to regulation in the sense of affecting the interests of the societal groups. As the legal system is gradually establishing in Estonia, it seems that the general principle that the fundamental rights, obligations and financial responsibilities are fixed in the primary legislation, is becoming more and more important. For instance, some issues which were previously regulated by secondary legislation, is now given in the Act of Riigikogu (this is for instance the case with pollution charges). Here, we should revisit one novel aspect of the analysis; that is applying Wilson's typology on the level of delegated legislation. The conclusion is that in the political systems, where the secondary legislation deals with implementing the detailed aspects of the principles fixed on the higher level, there could be difficulties in using Wilson's typology for studying delegated legislation. This typology would probably offer more insights into the policy-making process on the level of high politics; where the discussion tends to be more open and produce some media attention. In other words, in a situation, where there are more possibilities for the formulation of expectations towards the policy and for the emergence of interest groups.

Besides, the difficulties of operationalisation might depart from complexity and dynamics of the regulations. It means that in addition to a dominant policy type, there could also be elements of other policy types. Clearly, all ideal types are simplifications and generalisations and therefore it is obvious, that such classification does not grasp the finest details of reality. What can be said on the basis of our study about Wilson's typology is that regulations might involve dimensions of several policy types, and a regulation initially representing one Wilson's type might develop so that it ends up in another 'box'. It may decrease the potential usage of Wilson's typology, because in reality there might be relatively few cases, which could be clearly classified under some of the types.

We saw that although the pattern of participation was generally in line with the prediction made according to Wilson's typology – following the rationale of interests -, the real influence of the interests were in some cases a bit different. Now we should come to the suggested supplementary explanations.

These outlined supplementary explanations are to some extent applicable – dominance of the bureaucracy, relatively low stakes and the latent interests. In some cases the bureaucracy implicitly represented the latent interests (the consumers of food for particular nutritional uses in the case of handling permits regulation), but in some cases it was not the case (the owners of technical installations in dwellings in the case of regulation of technical

installation of electrical installations). The dominance of bureaucracy could partly be explained by the executive dominance in the field of secondary legislation, and partly by the impact of the European Union legislation, which hardly left any bargaining space to the drafters and the societal interests. However, some other additional explanations emerged, which were not discussed earlier – these are the situational decision-making factors. The examples are for instance heavy time pressure and involvement into European-level negotiations, which definitely had an impact on the drafting process.

To generalise, there were two basic factors which should be pointed out when discussing the findings weakly explained by the theoretical framework: first, the factors deriving from the features of delegated legislation and the situational factors in the particular decision-making situation; and second, the level of establishment of the societal interests. First, the participation could be impeded by the characteristics of delegated legislation. It means that the potential target groups of the regulation might not be aware about the drafting process, or even if they were aware, their involvement could have the function of informing, but might not necessarily bring about a significant influence. Apart from the awareness about the drafting there could be also situational reasons emerging from the particular regulation or drafting process: the issue might be highly technical and not all the affected could have the necessary expertise to participate (both the skills of legal drafting and substantial expertise); the bargaining space might be extremely narrow; there might be a heavy time pressure; but also the eagerness of the bureaucracy to consult with the external groups. Second, we evidenced the absence of some organised interests, which definitely hindered the possibilities of consultation. Probably, in case the societal interests were better established and the particular professional elites in the society had emerged, the discussion could have been more active between the regulator (the bureaucracy) and the society (the regulated). But when trying to estimate which could have more importance – the establishment of the societal groups or the situational and delegated legislation features, it seems that in our cases the effect of the latter was larger than the impact of weakly established societal interests. Thus, the conclusion is that in the area of secondary legislation, the restrictions deriving from decision-making situation could in some cases neutralise or diminish the effect of interests.

Interests do have an important effect, but they are not enough for explaining the drafting process in detail. The supplementary explanations implicitly suggest that for giving a more complete account, an interest-based account should be supplemented with decisional factors, which would bring more dimensions of real politics into Wilson's model. Therefore, even on the level of small instances of public policy, such as the secondary legislation is, the real picture is more complex than assumed by the generalisation made in the form of policy typology. This statement is made in the context of in-depth analysis; and if carrying out a more general study over a bigger number of cases, we might come to a different conclusion such as Wilson's typology is functioning well enough for less detailed study.

The second novel aspect of the study was about the difficulty with the policy network typology to serve as an explanation for a participation pattern in the policy-making process. We argued that policy issue typology could help us to look beyond the networks by explaining the emerging pattern of actors. Policy network advocates claim that the resources of the actors are important in this sense that who could get in and who will be left out. This question would become relevant once the potential actors have emerged. This discussion implies, that we should look far beyond the actual network and resources in order to understand the participation. We tried to do this with a help of policy typology based on interests. Our observations gave evidence of the relevance of interests in accounting for participation. Wilson's typology was in a great deal able to explain the actual participants in the regulatory drafting process.

Although our study was not designed on the basis of arguments of the policy network approach, there is a point we would like to stress. It seems that a classical policy network analysis would have been hard to use here as an underlying framework at least because of the empirical reason: we were studying only one specific stage of the policy-making process. However, policy network studies have proved to be the most valuable if a longer process has been analysed, ideally a whole policy cycle from formulation to evaluation. The policy network argumentation could probably not be very convincing if applied only on one part of the policy-making process. We could provisionally speak of the pattern of participation and the interaction of the actors in our cases as about a small network, but a general conclusion would be that there was not so active interaction and exchange of resources in the sense of state-society relations. At this point, some network researchers would probably lose the interest, as mapping of the network would be confined to discussing the bureaucracy's role in the process. Network development is a longed process and it was also seen in the case of landfills, where during a decade, a tight network of professionals from various institutions has developed. Thus, if designing a policy network study, it would be useful to consider whether these kinds of relationships, which the study is interested in, would actually appear or not. It applies both to the object of the study and the involved stages of the policy-making process.

The main value of Wilson's framework is that it points our attention to the systematic variance in policy-making process; i.e. it serves as an explanation why in some cases there might be intensive lobby activity and in some cases not, and how the roles of the regulators and societal interests differ across the policy problems. Despite all the obstructions to the free interest intermediation found in the course of delegated legislation drafting, we still saw significant variation across the policy types. It is a useful finding suggesting that regulators should bear in mind these variances deriving from the regulatory problem. Furthermore, it should be pointed out that policy typology was useful for studying only a small part of the policy-making of the process. Theoretical frameworks relying on the policy cycle would probably required involving more stages of the process in the analysis.

By exploiting and discussing Wilson's typology we actually started to perceive its limits and possibilities as an analytical framework. Our case material was a challenge for the framework and it successfully draw the attention to the possible difficulties with the theoretical framework. This study showed us that there is an interesting big world of participants and interactions inside a small world of single regulation and this research should definitely continue already on the next level. The next steps would involve supplementing the analytical framework with decision-making factors, and it would also be challenging to cover a bigger number of cases in order to make representative generalisations.

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Kersti Simm: Ministry of Environment; 27.11.2002

B) Work safety at construction sites

Ivar Raik: Ministry of Social Affairs; 06.12.2002.

Ants Vurma: Labour Inspectorate; 29.11.2002.

Jüri Veisberg: Tallinn and Harju Labour Inspectorate;06.12.2002.

Harri Taliga: Confederation of Estonian Trade Unions; 04.12.2002.

Ilmar Link: Estonian Association of Construction Entrepreneurs; 10.12.2002.

C) Technical inspection of the electrical installations

Ago Pelisaar: Ministry of Economy and Communications; 03.12.2002.

Kati Viimne: Ministry of Economy and Communications; 04.12.2002.

Tõnis Mägi: Elektrikontrollikeskus Ltd; 04.12.2002.

Meelis Kärt: Technical Inspectorate; 04.12. 2002.

D) Handling permits of food for particular nutritional uses

Tiina Paldra: Ministry of Social Affaris; 29.11.2002.

Natalja Valter: Health Protection Inspectorate; 04.12.2002.

Marina Karro:Health Protection Inspectorate; 03.12.2002.

Katrin Lõhmus: Ministry of Agriculture; 18.12.2002.

Appendix 1. Ministers' and Government's regulations in Estonia

The right to issue regulations for the government and of the minister derives from the Constitution (§ 87, 6; § 94 (2)). These are predominantly *intra legem* type of regulations, which means that they are produced in exercise of a power to legislate that is conferred by an Act of *Riigikogu*. Regulation of the Government of the Republic (GRA) and of the ministers is legislation of general application (§ 51, (1)). Both types o regulations are with equal legal power as both are issued on the on the basis of and for the implementation of primary legislation (GRA § 27, § 51). GRA says that only published regulations of the Government and of the Minister have obligatory force (§ 29, 1; § 51, 3). Regulations of Government and of the Minister are published in Riigi Teataja[19]. Estonian system has emphasised the leading role of ministry in regulatory drafting, although regulatory agencies are widely involved in the process. This bias can be explained by the formal legal reasons: the legislative mandate is given either to the minister or to the government, not to the head of the executive agency or inspectorate.

In case the regulation does not follow the requirements of the existing legal order, it is legally null and void, or invalid. Generally, the regulation is lawful only if it follows the requirements of competence[20], procedure[21] and format, and if the content of the regulation corresponds with existing law (Olle 1999: 102). Although *Riigikogu* gives the legislative mandate to the Government, it does not have any authority to control how the latter has performed the task. In other words, there is no parliamentary scrutiny dealing with secondary legislation in Estonia. It means that *Riigikogu* does not have to approve these regulations in any manner, differently form the UK, for instance. The State Secretary and the authority giving the regulation is responsible for guaranteeing that the regulation is not *ultra vires*[22] and that it does not include mistakes. The competent state authorities to challenge the lawfulness of the regulations are the courts and the legal chancellor. Courts can challenge and have challenged the validity of regulations; they can also declare parts of regulations, or the whole regulation to be invalid.

The average number of regulations of government adopted each year is 360 and an approximate number of ministers' regulation issued in each year is 500 (see tables 1 and 2 below). From the ministers, the most active regulator has been the Minister of Finance and the most passive the Minister of Foreign Affairs. It comes out that there has been a steady growth up to 1999 (elections were in March) and a slight decrease since 2000. Number of Government regulations gives us somewhat different picture – there was a rapid growth up to 1994, while the number of regulations nearly doubled, and similarly quick decrease until 1997 what has followed by considerable increase again[23].

[19] Riigi Teataja is an official publication of Republic of Estonia, where legal acts, and other official announcements are published. It is both available in printed format and electronically (free public access through Internet).

[20] Requirement of competence means that the relevant institution (Government, Minister, local authority) has a legal authority to issue the regulation on the territory to which its legislative powers apply; and only in these issues in which the legislative mandate has delegated the institution to issue regulation.

[21] Requirement of procedure means that the regulation must be adopted by following the certain procedural rules. Olle is arguing that currently this aspect is not sufficiently regulated (1999: 103). GRA specifies the procedural requirements for regulations of the Government (for instance, agenda-setting, necessary documents and their format, sufficient quorum in the Government Session, harmonisation etc), but such general rules are not given for the regulations of the minister.

[22] Beyond the powers.

[23] The changes might be partly explained by political situation – 1993 and 1994 were very unstable years, with active radical government launching extensive reforms. In the end of 1994 coalition broke up and a

Table 1. Number of Regulations of the Minister per year during 1990-2001

	Regulations per year													
Name of the Ministry	*1990*	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001**	**Total**	**Av.***
M. of Education	md	3	md	md	md	md	32	31	36	46	41	59	**248**	**40**
M. of Justice	md	md	md	12	38	49	35	31	60	65	81	71	**442**	**57**
M. of Defence	md	md	md	md	3	12	2	13	2	6	13	19	**70**	**9**
M. of Environment	3	16	33	31	61	44	64	93	76	107	84	48	**660**	**78**
M. of Culture	md	md	2	md	md	md	13	80	30	27	20	12	**184**	**30**
M. of Economic Aff.	78	63	35	56	54	60	45	45	50	69	48	70	**673**	**54**
M. of Agriculture	md	md	5	22	27	40	17	19	48	44	74	63	**359**	**44**
M. of Finance	14	120	94	208	231	161	104	100	121	125	117	94	**1489**	**110**
M. of Internal Aff.	md	md	md	3	26	27	18	23	66	123	76	88	**450**	**65**
M. of Social Aff.	md	20	9	32	70	66	33	46	73	94	97	105	**645**	**74**
M. of Transp.	md	7	7	41	68	32	46	46	70	81	125	96	**619**	**77**
M. of Foreign Aff.	md	md	md	md	2	1	1	1	8	22	1	9	**45**	**7**
Total	**95**	**229**	**185**	**405**	**580**	**492**	**410**	**528**	**640**	**809**	**777**	**734**	**5884**	**54**

md - missing data in the Internet

AV* - average 1996-2001

Average per year 1990-2001: 490

Average per year 1996-2001: 650

Shaded cells mean that the number showed was the rank number of the last regulation in the list, but the list was not complete (that is - some numbers of regulations were missing) and it is not clear, whether the last regulation in the list was actually last.

Table 2. Number of Regulations of the Government of the Republic per year during 1990-2001

	Regulations per year												
	1990	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001**	**Total**
No. of Regul.	272	280	367	417	494	388	328	269	310	446	458	336	**4365**
Average: 364													

Looking at the titles of the regulations, it is generally possible to understand what is the regulation about or which matter it is dealing with, and what is the action attempted to achieve by the regulation (prohibiting, setting rules of procedure, reorganising etc). Exceptions are the titles of these regulations what only say that it is amendment of existing regulation (referring to its number and date).

The whole population of secondary legislation is enormous and looking at the titles of regulations, we can see different kinds of issues, problems that the field of delegated legislation deals with in Estonia. There are for instance regulations of prescriptive or enabling character, such as approving orders, different kinds of lists, standard and norms. We can also find regulations dealing with financial matters; for instance specifying the amount of financial support or subsidies and setting the prices for services. Another big body of regulations are about procedures and machinery of governmental organisations, such as

"compromise" Prime Minister was in office to carry out until the next elections in March 1995. Period of 1995–97 can be characterized by conflicting ideologies in the coalition, without clear policy-making preferences, which ended up in minority government formed in 1997. New Prime Minister was mediating this minority government, also known as a government of civil servants and specialists, up to general elections in 1999.

arrangement for governmental institutions and their personnel. Many regulations are amendments of the already adopted regulations.

After having looked at the titles of regulations in Estonia, we could generalise that it seems that the majority of the regulations can be divided in a two broad categories. First, there are regulations about procedures and structure of governmental institutions. Another huge portion of regulations are dealing with procedures, orders, standards, and requirements. These may be highly technical and detailed, but much of them are also regulatory in the sense that they express the state involvement into the society. For instance there are regulations about what must be done (like *Operations and Examinations during Abortion*); and procedural regulations or requirements how something must be done (like *Order of identifying, classifying and marking hazardous chemicals*); but there are also standards which could address both to *what* and *how* questions (such as *Health standards for schools; Veterinary standards for meat animals, General prescript of food hygiene)*; and lists or classifications (for example: *Lists of occupational diseases*). Our cases would belong in the second category.