

## THE LEGITIMATION OF PUBLIC SECTOR REFORMS - THE CASE OF ESTONIA

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### ABSTRACT

There is a growing debate on the political legitimacy of government and its deficiency or even crisis but very little attention has been drawn to legitimation as the process of creating legitimacy. The article turns its focus to legitimation and analyses how the theoretical frameworks of F.W. Scharpf<sup>1</sup> (*input vs output legitimacy*) and I. Blühdorn<sup>2</sup> (*subject-centred, abstract and performative legitimacy*) help shed light upon two lengthy reform processes and the creation of legitimacy in Estonia. The basic decision-making rationales reflecting either NPM or network-based governance are also analysed throughout the legitimation process. The article shows how legitimation in Estonia mostly falls into the categories of output-oriented and abstract or performative legitimation with reflections of the prevalence of NPM. Many stakeholders are often seen as institutionally too weak to give their input to policies and in fear of unconstructive engagement, public servants prefer to legitimise ready-made policies. The article explains how legitimation could be seen as a governing tool to overcome these tendencies.

### INTRODUCTION

Legitimacy is a key component of democracy, expressing that the citizens accept those in power. Jessop<sup>3</sup> has stated that legitimate power is the only effective and sustainable democratic power. It is usual to think of legitimacy in terms of the governing party or political decisions, but the institutional structure of the state also has to be in accordance with the changes in society and expected public policy. Therefore, a regular reforming process of the state's institutions is also an important premise for legitimate governing. Not only does the outcome of the reform process have to be legitimate but the whole process of reforming and communicating the reform is of high importance if the state wants to avoid undermining its legitimacy.

The OECD governance report<sup>4</sup> – the latest conducted about Estonia specifically – stated that one of the major problems of Estonian government is the fragmentation between the political institutions and different policy areas. Communicative problems are prevalent among government institutions as well as other political networks. Considering important political decisions there is a lack of explanations and reasoning, the aim of the reforms and the process of reforming is often not transparent. Furthermore, the division of policy areas and short-term electoral cycle contribute to the project-like governing and the longer, wider view of policies falls out of the debate.

Legitimation as a governance tool has been included in most policy-making models and process descriptions, being one of the elements that does not take a fixed place or position. Rather it is an ongoing parallel activity to the whole cycle of policy making. Since in Estonia, and in most of today's democratic parliamentary countries, policies are usually initiated and developed within the ministries, the legitimating role of civil servants and their own attitudes and perceptions about legitimating practices are crucial. Politicians and the wider media definitely also influence legitimation but the majority of the knowledge

<sup>1</sup> Scharpf, F., W. Problem Solving Effectiveness and Democratic Accountability in the EU. Munich: Max Plank Institute for the Study of Societies, 2003.

<sup>2</sup> Blühdorn, I. In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity. Berlin: Barbara Budrich Publishers, 2009

<sup>3</sup> Jessop, B. The State: Past, Present, Future. Cambridge: Polity Press, 2016.

<sup>4</sup> See OECD. Estonia: Towards a Single Government Approach. - OECD Public Governance Reviews. Paris: OECD Publishing, 2011.

and responsibility is in the hands of civil servants who mainly draft the reform acts and communicate the process. There has not been sufficient debate on how they could use legitimation more as a proper governance tool.

The aim of this article is to analyse legitimation practices so as to understand how legitimation could be used better as a useful governance tool. The analysis is based on the example of the Estonian public sector and its reforms. The theoretical framework that is the basis for the qualitative content analysis of the documents and interviews is mainly based on the work of Fritz W. Scharpf and Ingolfur Blühdorn. No earlier studies have been carried out in Estonia specifically focusing on the policy legitimation process. The article discusses the results of research within the theoretical framework and proposing some ideas for better legitimation practices that could be implemented in Estonia and other countries with similar legitimacy problems.

## LEGITIMATION AS A GOVERNANCE TOOL

Legitimation as such combines different ways of communicating, discussing and acting that are used to create legitimacy. Slightly different definitions can be found for political legitimacy since cultural and societal changes have also brought about new governing paradigms but in the context of democratic governance, political legitimacy is generally understood as people willingly giving their consent for political decisions to be made by the institutions and actors representing them.<sup>5</sup> Legitimacy has always been important as a means of political acceptance, approval or consent when pursuing sustainable governance, but the basis for acquiring and sustaining power have changed over time and so have the methods of legitimation. During the absolutist era, divine right, ancestry and military capability were sufficient reasons to accept the governor. Since then, the development of the constitutional state during the 19th and 20th centuries and contemporary citizen-engagement significantly changed the perception of the state's functions and legitimate governance.

Although there is a tendency for societal fragmentation and citizens as the holders of supreme power have become more demanding, sceptical and volatile in their lifestyles,<sup>6</sup> they still expect a stable environment and service provision from a state that respects their individual and collective needs.<sup>7</sup> Therefore, the question of state apparatus design is very much at stake. The state in the narrow sense of a state apparatus describes a politically organized administrative and symbolic structure that acts as a sovereign subject among its citizens and other states.<sup>8</sup> Peter Taylor<sup>9</sup> names five important functions of state – providing security, managing the economy, forming political-cultural identity, providing public services and creating a legitimate administrative system. Since the legitimacy of the government is based on the values and expectations towards the institutional design as well as functionalities of the state, then the legitimating activities have an increasingly important role to play in contemporary governance.

Successful policy outcomes alone are not a sufficient basis for legitimacy, often the dissatisfaction of the people derives rather from poor state-citizen relations or from a lack of transparency and accountability. According to Pollitt and Bouckaert,<sup>10</sup> there are different dimensions of political legitimation: (1) legitimising specific policies and achieving acceptance by the success of the policy from ideas to outcome, (2) legitimising the policy process which focuses on the design of process management, transparency, stakeholder engagement, accountability etc, (3) legitimising political/administrative capability

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<sup>5</sup> Blühdorn, I. In *Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.9.

<sup>6</sup> See Hay, C. *Why We Hate Politics*. Cambridge: Polity Press, 2007.

Norris, P. *Democratic Deficit. Critical Citizens Revisited*. Cambridge: Cambridge University Press, 2011.

<sup>7</sup> Blühdorn, I. In *Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.40.

<sup>8</sup> Jessop, B. *The State: Past, Present, Future*. Cambridge: Polity Press, 2016 p.27.

<sup>9</sup> Taylor, P. *The State as Container: Territoriality in the Modern World System*. - *Progress in Human Geography*. Vol.18 No. 2, p. 151-62.

<sup>10</sup> Pollitt, C., Bouckaert, G. *Public Management Reforms. Comparative Analysis: New Public Management, Governance and the Neo-Weberian State*. Oxford: Oxford University Press, 2011.

as enhancing loyalty through the capacity of political actors, and (4) legitimising the governing system itself, which has most to do with the exposure of values in political practice.

Institutional and structural reforms may seem specific internal state matters that need no wider discussion, but considering that the structure of the state is crucial to its administrative and political capability, policy process design, public service provision, among others, we can say that the state apparatus has to change with societal changes. Pollitt and Bouckaert describe public sector reforms as a conscious act of change in structure and management to ensure better functionality.<sup>11</sup> They also describe how changes in institutional structure might arise from either political will in some policy area and its needs or managerial considerations. The main contemporary public administration arguments for institutional and functional reforms are connected with modernising innovative structure design in response to transformed expectations. However, it is important for the state to find the right balance between legitimation methods, while also considering cultural background, public opinion and societal needs. Legitimation is never a separate tool that can simply be implemented in any case; the context is vital for successful legitimation and the prevailing governance paradigms constitute the framework where the whole thing – specific policies, the policy process, political capability and the state as a system – can be legitimized.

## WAYS OF LEGITIMATION

Democratic values and the very content of legitimacy have remained quite resilient over the time of democratic governance, but legitimation methods and their implementation have changed a lot. Max Weber described legitimate governance as domination based on rational, traditional or charismatic dominance. Those attributes were considered to be the main legitimators of the governor. In modern and postmodern democracies, power has become more impersonal; governing is not only somebody's power over somebody else, but it is seen more as a shared power, a wider power chain with many power holders on many different levels. So the main focus of legitimation is not on one person or party in power, but the whole system of governing the state, the power chain with all its impersonal counterparts. As Blühdorn says, the main legitimation methods in a postmodern democracy are those that show how the power mandate from the citizens is transformed into a transparent policy process.<sup>12</sup> Foucault<sup>13</sup> has also emphasized the fact that people or collective stakeholders have to be given a meaningful role in the power chain that helps them to embrace power and elaborate on possible choices. Motivation should be what guides them, not sanctions.

Fritz William Scharpf divides legitimacy into *input* and *output legitimacy*. Input-legitimacy describes trust in institutional arrangements, which ensure that governing processes are generally responsive to the preferences of the governed. Output-legitimacy describes trust in institutional arrangements, which ensure that the policies adopted will generally represent effective solutions to common problems of the governed (Scharpf, 1999:6). Although Scharpf focuses mainly on the political mandate and how it turns into policies when speaking of input-oriented legitimation, scientific rationality or expert knowledge can also be considered an important input. It is crucial for input-legitimacy that policy makers communicate how a combination of inputs is the real basis for policy making. Output-oriented legitimation should be about communicating policy outcomes as not just separate projects but the indicators of a functional system and government capability.

There are some differences between input-oriented and output-oriented legitimation that help to distinguish the two methods. Input-oriented legitimation is generally initiated in the early stage of policy making, political communication is open to different counterparts and different arguments, based on which government institutions and citizens both get information to create their opinion and participate in respective debates. Output-oriented legitimation focuses on the outcome and most of the communication evolves around ready-made solutions and their advantages as a reason to support them. There are au-

<sup>11</sup> Ibid, p.8.

<sup>12</sup> Blühdorn, I. In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity. Berlin: Barbara Budrich Publishers, 2009 p.9.

<sup>13</sup> Foucault, M. Power. Knowledge: Selected Interviews and Other Writings. New York: Pantheon Books, 1980.

thors<sup>14</sup> who argue that legitimacy mostly depends on the state's capacity to engage citizens in the input-dimension. But there are also others<sup>15</sup> who argue that effective and decent policy outcomes justify legitimating the 'ready-made product' and engaging fewer stakeholders in the process. The latter debate says that democratic governing is moving towards expert knowledge since the scientific approach and more precise analysis enable us to estimate potential outcomes. The demand-side of a multifaceted society is so elusive anyway that it has to be curtailed somehow. There is a general understanding that input-oriented legitimation contributes more to creating state-citizen trust relations and political loyalty, output-oriented legitimation, however, makes the policy-making process faster and more efficient. Therefore, the dilemma between input and output legitimation is quite a current issue.

Ingolfur Blühdorn<sup>15</sup> adds three dimensions that describe legitimation focus: (1) subject-centred, (2) abstract and (3) performative legitimation. In modern democracies, the general approach was subject-centred legitimation, which means that policies are directed to certain individuals or collective groups and their needs or expectations. In representative democracies, the subject-centred approach generally meant convincing citizens as voters to favour some party and give them the mandate to make decisions on their behalf. This is still the main legitimation goal but due to the rapid spread of information, the citizen forms opinions constantly and political communication has to be strategic to catch the attention of certain political subjects. Subject-centred legitimation is mostly implemented in different forms of engagement in the policy process but the policy outcome and citizen satisfaction with it is also important.

Abstract legitimation is very common in the postmodern context. Political identity is often fragmented and volatile in postmodern societies and political subjects are not so easily determined any more. Citizens feel much less connected with the state and its policies, the functionality of the state becomes more vague, but expectations about the state's performance are still high.<sup>17</sup> Abstract legitimation is not directed to any certain subject but to the wider public. The state creates some general channels and forums for getting information and participating in the policy process and whoever finds the channels and wants to voice an opinion is free to do so (considering some systematic rules, of course). Thereby, the state manages the transparency and coordination of the political common ground. Abstract legitimation, mostly output-oriented, claims for efficiency, a successful outcome and rational justification. The role of citizens is rather to react and only those who are able to find access to specific information and opportunities for getting involved can offer an input into the policy making process.

There are three main ways for abstract legitimation: (1) referring to justifiability in accordance with inevitability in the wider system (e.g. socio-economic tendencies, EU directives etc); (2) referring to general transparency and accountability in the system (e.g. availability of information, websites for draft acts etc); (3) referring to procedural correctness (e.g. amendments to some legal acts related to some former amendments to some other legal acts, decisions based on research papers and expertise etc).

Performative legitimation is somewhat an amalgam of the previous two, complementing the former and at the same time trying to approach the actual tendencies of contemporary democratic governance. Performative legitimation does not focus on the politicized citizen but rather on the citizen as a satisfied client. The policy-making process and its outcome is directed to certain project-based subjects in the respective policy area.<sup>16</sup> Performative legitimation sees individual and collective stakeholder engagement as its tool, but the target group to engage is only the group of people who is directly or indirectly affected by the policy outcome and wants to express its political identity in the respective policy process. Blühdorn suggests the performative approach is a solution in contemporary complexity, where subjectivity has become weaker, but the demand

<sup>14</sup> See Gutmann, A., Thompson, D. *Why Deliberative Democracy?* Princeton: Princeton University Press, 2004. <sup>15</sup> See Crouch, C. *Post-democracy*. Cambridge: Polity Press, 2004; Buchstein, H., Jörke, D. *Redescribing Democracy*. - *Redescriptions*, No. 11, p. 178-197.

<sup>15</sup> Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.9. <sup>17</sup> *Ibid*, p. 39.

<sup>16</sup> Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.44.

for legitimacy has grown stronger. Colin Crouch<sup>17</sup> describes performative legitimation as a balancing approach that prevents big crowds from diving into politics and making the policy process overwhelming but still favours those that are politically better informed, active and interested in contributing to policy making.

Although the performative approach is considered to be potentially the best performing option in postmodern network-based governance, it also sets a high bar for communication strategies. Both the input and output dimensions are combined. Stakeholder engagement in many forms, such as opinion polls, consultations, discussion forums, community meetings, and so on, should be present to avoid superficiality but participation ought to be curtailed as well, to eliminate unnecessary and functionally useless engagement.<sup>20</sup> Policy outcomes are targeted to increase the welfare of the citizens and meet their expectations but the focus stays on the specific policy to avoid overwhelming discussion about all the other related policy issues. It is hoped that the citizen as a client will be content with the specific policy process and outcome and the more satisfying one project is for him/her, the more likely it is that he or she will remember it as a political success story. Therefore performative legitimation is also considered to be reputational approach that helps to create positive perceptions of the state, and therefore ensure loyalty.

**Table 1. Framework of legitimation**

	<b>Subject-centred</b>	<b>Abstract</b>	<b>Performative</b>
<b>Input-oriented</b>	Civic engagement, pre-decision consultations, equal treatment, stable political identity	Scientific rationality, expert knowledge, citizens as wider general public subject	Civic participation in depth but on a minimal functional level
<b>Output-oriented</b>	Meeting individual and collective needs and expectations	Systemic influence, efficiency of outcomes, success proven by scientific research or other's experience	Citizen as a client, policy making as a reputational project

Source: Authors based on the approaches of F.W. Scharpf<sup>18</sup> and I. Blühdorn<sup>19</sup>

Therefore, the legitimation process is more complex and strategic than it appears to be in the beginning. Often the communication process tends to remain too shallow and concentrated only on some aspects of some specific policy, which makes it easier to communicate the process. The potential that lies in legitimation, its wholesome, strategic and well-designed nature is often left unnoticed. Legitimation carries more in itself than just marketing, it has the potential to be the process that unveils the secrecy of governing and brings the state closer to its citizens.

## LEGITIMATION IN THE CONTEXT OF GOVERNANCE PARADIGMS

Since legitimacy is an abstract quality and hard to measure, then legitimation definitely needs a context in which to be analysed and implemented. We suggest that there are broadly two main governing paradigms that have shaped democratic governance since the last decades of the 20th century: *New Public Management* (NPM) and *New Public Governance* (NPG) – sometimes referred to as just *governance*. These two approaches have been the most dominant in the development process of modern and postmodern democracies and also enable us to create an analytical framework for a systematic and contextual

<sup>17</sup> Crouch, C. *Post-democracy*. Cambridge: Polity Press, 2004 <sup>20</sup> Ibid, p. 112.

<sup>18</sup> Scharpf, F. W. *Problem solving effectiveness and democratic accountability in the EU*. Munich: Max Plank Institute for the Study of Societies, 2003.

<sup>19</sup> Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009.

case study of the legitimization methods.

NPM was quite contrary to Max Weber's former bureaucratic theory and the later concept of the welfare state, when it started to spread in the 1990s. As Ferlie<sup>20</sup> describes the process, market-driven technocratic efficiency was aimed to transform governing into a more efficient, transparent and sustainable system.

Performance indicators, the logic of competition and quality management were the keywords ingrained in government practice to provide the citizen-client with wider choice and better options. Many public sector institutions were divided into departments and the vertical power hierarchy was redesigned into horizontal managerial units to enable the departments to focus on their specific areas. Precise auditing methods were also introduced to ensure the effective use of resources. Legitimation of such changes was not too difficult considering the harm of the oil supply crises and the exhaustive effect that the welfare state had had on public expenditure. The message of the effective and sustainable state along with the practical governing methods that NPM offered was welcomed among different groups of society.

Regardless of high expectations, legitimacy problems were quick to arise. A system that relies on economic growth and aims to eliminate inefficiency often fails in finding flexible solutions to meet the actual needs of citizens. By the end of the 1990s, Hood<sup>21</sup> criticized the NPM approach as a pursuit for one general model and stated that in the context of societal pluralism and increasing knowledge, implementing one homogenous model is not a sustainable action-plan anymore. The strong focus on efficiency had attributed the citizen a role as a client but alongside this came the growth of political passivity. Osborne<sup>22</sup> also analysed how the concentration on policy outcomes brought structural fragmentation among government institutions. Legitimation arguments were also mostly based on effectiveness and successful outcomes. The debate about a legitimization crisis became more evident with its core argument the government's incapability to embrace the real inner problems of the society and be flexible in respective actions.<sup>23</sup> The legitimacy deficit brought the need to not only legitimise specific policies but the whole governing system needed a legitimating reboot.

From the 21st century on, public governance theorists have focused more on the inter-institutional coordination of wider policy networks that could embrace the contemporary multifaceted and complex governing problems. *The governance* approach sets different actors on a more equal horizontal level. Government institutions do have a stronger coordinator and resource distributor role but non-government institutions and other stakeholders are provided with detailed relevant information, grass-roots knowledge, expertise, additional resources and political support.<sup>24</sup> The legitimization methods of NPG are mostly input-oriented, and since policy making is a cooperative process engaging all important stakeholders, the policy outcome should also meet the expectations of all the people represented by various counterparts. The subsidiarity principle is also important – if political issues are dealt with at the most immediate level possible then the process and outcomes are also more easily perceivable and acceptable.

**Table 2. Legitimation in contemporary governance paradigms**

	<b>New Public Management</b>	<b>New Public Governance</b>
<b>Citizen's position</b>	Consumers/clients	Cooperating partners
<b>State's position</b>	Service provider, system manager	Coordinator

<sup>20</sup> Ferlie, E., Ashburner, L., Fitzgerald, L., Pettigre, A. *The New Public Management in Action*. Oxford: Oxford University Press, 1996.

<sup>21</sup> Hood, C. *The Art of State: Culture, Rhetoric and Public Management*. Oxford: Oxford University Press, 1998 p.19.

<sup>22</sup> Osborne, S., P. *The New Public Governance*. - *Public Management Review* Vol. 8 No. 3. p. 377-387.

<sup>23</sup> See Habermas, J. *Legitimation Crisis*. Boston, Beacon Press, 1975.; Beetham, D. *The Legitimation of Power*. Houndmills: Macmillan, 1991.

<sup>24</sup> Sorensen, E., Torfing, J. *Theories of Democratic Network Governance*. New York: Palgrave Macmillan, 2007 p.155.

<b>Institutional structure</b>	Market-based approach, activities divided by policy area	Cooperation networks, subsidiarity
<b>Policy goals</b>	Efficiency, performance indicators	Customer satisfaction
<b>Legitimation methods</b>	Mainly output-oriented and abstract	Mainly input-oriented, subject-centred or performative
<b>Legitimating arguments</b>	Efficiency, performance, expertise, efficient usage of resources	Engagement, cooperation for policy inputs, openness, consensual decisions

Source: Authors based on Hood 1998; Osborne 2006, Scharpf 2003 and Blühdorn 2009<sup>28</sup>.

Since legitimacy and legitimation are promising governance tools that very much depend on the context and a vast array of details, they require careful consideration and analytical support for best usage. Legitimation is not easily operationalisable but the theoretical approaches provided in the article can be used as frames for such analysis.

## METHODOLOGY OF EMPIRICAL ANALYSIS

Legitimation is a communicative process, and therefore depends on the patterns of relations between different actors. Legitimation is not operationalisable in numbers or a measurable objective value only, which makes the role of the theoretical frames more important in defining and interpreting the results. A deductive approach is chosen for applying the framework on two case studies. Although the categories of input vs output legitimation are well known and much written about<sup>29</sup> and also the subject-centred – abstract – performative division has been created a while ago, which Ingolfur Blühdorn already incorporated with the input/output distinction,<sup>30</sup> the empirical analysis of actual policy cases following such a framework is missing. Since legitimation as such is quite an abstract phenomenon and policy tool, then empirical research would help to show the validity and practical perspectives of such a framework and also add to the explanatory capacity of theoretical frames. The article does not aim to falsify the theoretical frames but rather shows their applicability from the more pragmatic viewpoint of policy making and contribute to the understanding of legitimation as a strategic policy making tool.

<sup>28</sup> Hood, C. *The Art of State: Culture, Rhetoric and Public Management*. Oxford: Oxford University Press, 1998.

Osborne, S., P. *The New Public Governance*. - *Public Management Review* Vol. 8 No. 3. p. 377-387. Scharpf, F., W. *Problem solving effectiveness and democratic accountability in the EU*. Munich: Max Plank Institute for the Study of Societies, 2003.

Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009.

Lindgren, K-O., Persson, T. *Input and Output Legitimacy: a Synergy or Trade-Off? Empirical Evidence From an EU Survey*. - *Journal of European Public Policy*, Vol. 17 No.4 p. 449-467.

<sup>29</sup> Scharpf, F., W. *Problem solving effectiveness and democratic accountability in the EU*. Munich: Max Plank Institute for the Study of Societies, 2003. Lindgren, K-O., Persson, T. *Input and Output Legitimacy: a Synergy or Trade-Off? Empirical Evidence From an EU Survey*. - *Journal of European Public Policy*, Vol. 17 No.4 p. 449-467

Schmidt, V. A. *Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'*. - *Political Studies*, No. 61 p.2-22.

Strebel, M., A., Kübler, D., Marcinkowski, F. *The importance of input and output legitimacy in democratic governance: Evidence from a population-based survey experiment in four West European countries*. - *European Journal of Political Research* .Vol. 58 No.2 p.488-513.

<sup>30</sup> Blühdorn, I. *In Search of Legitimacy: Policy Making in Europe and the Challenge of Complexity*. Berlin: Barbara Budrich Publishers, 2009 p.45.

Qualitative guided content analysis was chosen since the method reckons with the communicative context of the texts and helps to draw connections between codes and categories that describe the core issues of the topic.<sup>31</sup> The theory-guided framework already provides some codes and categories for the empirical analysis, which are supported with additional codes found from the data.

In terms of the cases, similar but also discernible empirical cases were analysed in the created frames to generalise legitimation practices in Estonia. There are not many structural nor institutional reforms of broad scope to choose from during recent decades in the Republic of Estonia. Two that were comparable in terms of being long-lasting reform processes, and cross-sectoral in scope and target groups are the civil service reform and the administrative reform. The legitimation of these structural reform processes gives a significant insight into how the government decides upon and communicates its institutional structure design and changes occurring in it.

Both reform processes lasted longer than 15 years and acts have now been adopted and come into force. Structural reforms were chosen to curtail the scope of the research and to focus on the state apparatus (institutional design being one of the core issues), but the paper aims to generalise the results to make them useful in analysing other policy processes as well.

The data consists of documents and interviews. Document-wise, the draft acts and explanatory memoranda for both the civil service reform and administrative reform were analysed as were coordination documents. Altogether, six lengthy documents were chosen that are essential to any law-making process. After that, 9 interviews were carried out between March 2016 and May 2016.

The main source for the analysis is from primary data – interviews with 9 civil servants. Guided sampling and partly also snowball sampling are used. Based on the reform draft, the author contacted the public servants who mainly dealt with writing and communicating the specific reform act. Several times, the public servants guided the author to the next public servants to interview to get a better and comprehensive understanding. Since both reform processes lasted a long time, some of the former public servants were also interviewed to enable analytical comparison between different periods of reform. The interviews were semi-structured and carried out based on a case-specific questionnaire along with some descriptive open questions. The civil servants are referred to as CS1; 2; 3 and so on, in the text extracts used in the analysis.

Both deductive theoretical coding and inductive open coding techniques were used for the data analysis process. The deductive codes and categories were derived from the frameworks created in the theory part. The main keywords were found from the literature describing the most common features of different legitimation methods and governing paradigms. These codes became the main axial codes, which other additional codes were matched with and added to.<sup>25</sup> By using open coding, additional categories were found from the secondary and primary data. The codes were derived from the keywords that were repeatedly used or discernible by their reference to some specific features of the legitimation methods and governing paradigms described in addition to the theory-based initial axial codes. The codes were developed into categories, which laid out the structure for the analysis part.

## BACKGROUND AND CONTEXT OF THE TWO CASES

### *Civil service reform*

The first civil service act in the Republic of Estonian came into force in 1996, but already in 1997, the government created an administrative reform committee to develop an intact public service conception. Civil service reform was initiated because of the malfunctions in the previous system. The choice between a career system and position system is one of the important foundations in public service institutional design. A career system is based on a Weberian legal-rational bureaucratic

<sup>31</sup> Mayring, P. Qualitative content Analysis. – Forum: Qualitative Social Research, Vol.1 No.2 (on-line journal).

<sup>25</sup> Charmaz, K. Constructing Grounded Theory. London: Sage Publications. 2006.



approach and is hierarchical in essence: a civil servant enters the system at a low level with lower qualification requirements and starts to build his/her career from there according to his/her professional performance. The system offers many opportunities and the motivation to develop professional competencies. Due to the prerequisites in the system, the personnel outflow remains marginal.<sup>26</sup> A career system is rather stringent and regimented but on the other hand, effective, comprehensible and motivating. A position system relies more on NPM principles: the state does not focus on special training for the civil servants, instead, those with adequate skills and somewhat related educational degree can apply for the respective post in the public service.<sup>27</sup> The core of the position system is the position itself with its unique specific tasks and requirements.

By institutional structure, the first public service act adopted in the Republic of Estonia favoured the career system. Civil servants were distinguished by senior and junior categories in which annual evaluation was carried out (Public Service Act 1996). The new goal was to create an open, efficient and more flexible system that would support cooperation among government institutions and also with external counterparts. Making amendments to the Public Service Act or the idea of drafting a new act was intermittently on the political agenda in 1997, 2001 and 2008. A new act was not adopted until 2012 (came into force in 2013). Although the regulations of the final adopted act were very similar to previous drafts, the previous versions did not make it to enactment. This very fact gives us substance to research legitimation throughout the public service reform process.

### *Administrative reform*

The need to make administrative changes was also discussed in the very first years and first stages of state-building after regaining independence in 1991. The main goals, from the very beginning, were to cut down the costs of administrating the state's territory but at the same time create a system that would make local governments capable of providing citizens with high quality public services. Reform plans were thoroughly dealt with in 1997, when the government initiated the administrative reform committee. The process did not go as smoothly as planned. Between 2000–2009 five administrative reform plans were laid out, 51 municipalities out of 254 merged, but the result was not considered successful enough. Mostly the vagueness of the reform plans and at the same time high ambitions were found problematic and many times a new government was elected before the responsible minister was able to succeed with the reform plan. Even quite generous subsidies offered for voluntary mergers did not help achieve the set goals. From 2008 on, the Ministry of Finance procured studies to support merging. Studies, researching optimal solutions and merging effects were carried out in 2008, 2010, 2011 (3 studies), 2012, 2013, 2014, 2015 (3 studies), 2016. The studies provided the Ministry of Finance with new arguments and mitigated the strong oppositions.

In 2015, a new government entered office and a comprehensive State Reform was chosen as a wider vision, administrative reform being one part of it. Implementation of the administrative reform was written into the coalition agreement in greater detail than ever before. Conduct of the reform was the regional minister's duty but responsibility for the successful enactment of the reform was submitted directly to the Prime Minister's office on the basis of the agreement. Principles were also established for creating criteria to use for evaluating local government performance. Those municipalities that did not fulfil the requirements and were evaluated as functionally not optimal, had to choose between voluntary merging with some other local government or a compulsory merger led by the central government. Elaboration of the new financial model, specification of the local government's duties, strengthening of the local government's role and autonomy, doubling the subsidies and adding some regional investment categories was all agreed on in the coalition agreement as well.<sup>28</sup> For the first time in 19 years, the administrative reform obtained the needed approval from the ministers and the law was adopted in the Parliament. Like the civil service reform, it is traceable that the ideas finally adopted were actually present several times throughout the lengthy process but the support needed was not acquired. Therefore, it is reasonable to analyse what those who drafted the law consider the key issues of its success and how the legitimation process evolved through the process.

<sup>26</sup> Bossaert, D., Demmke, C. *Civil Services in the Accession States: New Trends and the Impact of the Integration Process*. Maastricht: European Institute of Public Administration, 2003.

<sup>27</sup> Roots, H. *Eesti bürokratia järjepidevus ja uuenemine (Sustainability and Renewal of Estonian Bureaucracy)*. Tallinn: Sisekaitseakadeemia, 2000.

<sup>28</sup> Government Office. *Good Practice of Engagement*, 2014. On webpage: <https://riigikantselei.ee/et/kaasamise-hea-tava>

## ANALYSIS: LEGITIMATION OF THE REFORMS

### *Legitimation of the civil service reform*

According to the civil servants interviewed, there was no definite strategy for how to communicate the civil service reform in the Estonian case. Still, on analysing the documents from the process and interviews with those drafting the act, some clear indicators of output-oriented and abstract legitimation choices were found. The argumentation in output-oriented legitimation mostly lies in systemic and scientific rationalities. The draft document and explanatory memorandum of the Estonian Civil Service Act from the very beginning explicitly brought out the need for systemic change, since the old system had lost its functionality and the trend in Western contemporary bureaucracy had been moving towards the principles of NPM for more than a decade. An additional systemic incentive that was referred to by the officials was the labour market with its recent changes in the Employment Contracts Act. The Minister for Justice and the civil servants drafting the new law tended to focus on the outcome, a new and better system for Estonia. Throughout the whole process, the most common messages were about the need to follow up popular tendencies in civil service, to reduce the number of civil servants, and therefore curtail the costs of governing, to make rotation possible and open the civil service up for everyone interested and competent.

What was missing in the beginning was expertise and analysis about the kinds of changes the Estonian system actually needed and to what extent it is reasonable to copy practice from other countries. Since the reform was politically hastened, the civil servants drafting it themselves carried out a small comparative jurisdictional analysis. It is also quite common to rely on some external 'authority' when legitimating an inconvenient policy change. The 'external entity' is vague, far away and hard to criticise, and is therefore often perceived as a *force majeure* that can impose all kinds of ideas on those subordinate to it. Accordingly, suggestions from the EU and OECD were followed. In the following years, some Estonian-specific analyses were also carried out.<sup>36</sup> The interviewed civil servants agreed that at first there was not much to rely on or to use for argumentation. The subsequent analyses were useful but there was still a great lack of expertise in some of the core issues and according to the civil servants, there were no good stakeholders to engage in the process and to consult with.

*CS 2: When the task of renewing the civil service system came to us, we took a blank sheet, EU and OECD suggestions, and started from the beginning. To be honest, the reform was carried out among small numbers of officials, there was only a marginal amount of external communication and engaging of stakeholders in the process. I cannot recall any examples of how we changed something in the draft act based on some opinion from outside of the ministry. Communications with others was rather about informing and explaining.*

In addition, there were other implications visible of mostly abstract legitimation. One of the methods of abstract legitimation is opening available public channels providing information for a wider circle of people. That way it can be said that transparency is ensured and hypothetically interested stakeholders are engaged. The problem is that often times it is just a one-way channel. In the civil service reform case, information was shared on the webpage of the Ministry of Justice and two public channels were opened – a participation web, where people could voice their opinion, and another policy forum where everyone was allowed to post questions.

The officials drafting the act were also writing blog posts during the process. All these three options were present but used only marginally. The civil servants admitted that mostly only journalists wrote and asked specific questions.

<sup>36</sup> Haav, K. European integration and public administration reform in Estonia. In J. Jabes (ed.), Ten years of transition. Prospects and challenges for the future of public administration. NISPAcee. Budapest: University of Ottawa, 2000.

OECD. Estonia: Towards a Single Government Approach. OECD Public Governance Reviews. Paris: OECD Publishing, 2011.

SIGMA Papers. Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession. 2009.

Ministry of Justice. Avaliku teenistuse moderniseerimine (Modernisation of Public Sector). 2007. On webpage: <http://www.just.ee/orb.aw/class=file/action=preview/id=35433/Avaliku+teenistuse+anal%FC%FCs,+2007.03.pdf>.

Generally, every Estonian citizen has the right to access the Estonian e-Law System, read the public documents and even write an opinion (that then has to be digitally signed). Public knowledge about such an opportunity seems to be low and there are usually few if any suggestions from those that are not invited to co-ordinate the draft. The same applies to the civil service reform case.

There were also examples of performative legitimation in the civil service reform. Major stakeholders – local government representative associations and constitutional institutions – were engaged in the process, albeit quite late in the process. Therefore, according to the performative legitimation principles, substantial cooperation with some stakeholders was ensured and unnecessary participation prevented. Why I would not define the process as performative is the fact that there were only 28,000 public officials in Estonia at that time and local officials, that make up a significant part of these, were heavily under-represented in the process. The excessive coordination process, later confusions, lawsuits and problematic differences in the implementation practices at the local level highlighted that the former phases of the reform were poorly executed. Some public officials drafting the act said that the local government representative associations were not partners of considerable capacity and knowledge. The idea of performative legitimation expects the policy coordinator to engage at least these stakeholders that are directly affected by the policy and find ways to consider their opinion as an input. And if needed, to inform and consult them better to enable their participation.

Considering the governing paradigms the reform relied on, there were many implications of an NPM-driven process. The officials interviewed on the civil service reform said straight away that one of their goals was to approach from the NPM perspective, to assimilate the public sector career system with the Employment Contracts Act, thereby making rotations and competence evaluation easier. A manager-style of coordination was palpable: a small number of civil servants started to draft the act, carried out a comparative jurisdictional analysis, went abroad to study the practices of other countries and worked out their draft plan. Some expertise came from external institutions from the European Union and OECD. The communication task was handed over to the Ministry of Finances. During the later stages of the policy process the Minister of Justice, as the process manager, organized meetings with important stakeholders to facilitate the concluding stage. Another all-encompassing aspect was the political rush and the constant pursuit to keep the reform process efficiently going.

*CS 3: In drafting an act, the biggest fear of the civil servant is nonconstructive engagement, it is just a waste of time and energy. We ourselves saw that career-system elements in the old act did not function at all. The act was over-regulated and no one followed it. The new act aimed to go along with actual life, implement NPM ideas, and create flexibility, transparency and openness.*

A civil service reform might seem somewhat too specific to use as a case study. Although it is an important part of the State's institutional design, it directly affected only 28,000 former public officials. Therefore, the administrative reform is a good supplementary case, since it falls similarly in the structural formation category of the state apparatus but is wider in its scope. According to the Good Practice of Engagement document (Government Office, 2014), administrative reform should be considered one of the policies directly or indirectly affecting every individual living in Estonia, and therefore wider options for substantial participation have to be ensured by the state at every stage of policy making

### ***Legitimation of the administrative reform***

The legitimation of the administrative reform can be categorised as output-oriented and performative. The main argumentation relies on different studies, criteria created by the commission of experts on the principle of sufficient economic scale (economic optimising for local service provision). All the studies carried out reached the conclusion that local municipalities in their former (pre-reform) structure were not capable of fulfilling the tasks that the Local Government Organisation Act and Constitution of the Estonian Republic require of them. Furthermore, like the civil service reform process, studies were carried out at quite a late stage of the reform. Many of the reform drafts did not find sufficient political support because of the lack of expertise and their superficial approach. In the end, the main legitimating messages used were the ones that relied on studies and expertise carried out between 2013 and 2015.

Legitimizing arguments in the administrative reform were quite impelling and all levels were covered: local government, local businesses, local collectives, local individuals etc. Even the involuntary merging idea that awoke much resistance was strongly communicated under the “better future in a more capable and richer municipality” narrative. In every county a merger consultant was appointed, who organized local discussions, engaging the major stakeholders on the local level, and the regional minister also visited every county with his advisers to talk about the merging process. Still, the main incentives and even technicalities (the exact number of inhabitants etc.) were decided within a small circle of civil servants and experts and the meetings with the locals concentrated more on the implementation details. In the case of a policy with such a wide scope, the Estonian Good Practice of Engagement stipulates much wider engagement in much earlier policy-making stages.

In engaging the stakeholders, elements of the performative approach are prevalent. The reform primarily focused on a State-wide representative association level. All the local governments and major local entrepreneurs were asked to send their representatives to county seminars. The seminars were technically open to everybody, but information was only sent out to the specifically chosen institutions. The Ministry of Finance, coordinating the administrative reform, engaged the wider public with four opinion polls that were carried out in May 2013, September 2013, March 2014 and November 2015. It is important to pay attention to the fact that public support for the reform decreased within that time. The local governments were legally bound by the obligation to carry out opinion polls in local communities as well, but the questions and the form was up to the municipality to decide. Some local municipalities decided to draw up a detailed questionnaire while some remained at the ‘yes-no’ level. It was also up to the local municipality whether to take the results into consideration or not. The administrative reform confirmed the problem that arose in the civil service reform study about local governments being institutionally too weak to be considerable input-giving policy partners for the central government.

*CS 6: We are not there yet that the local governments or their representative associations would be capable enough to initiate, plan and develop such kinds of policies. And there is lots of fighting for their own interests, of course. They sent every kind of suggestion that we just cannot take into consideration. And the State cannot be so engaging that after seminars we just go and rewrite our coalition agreement. We do not have that many resources to analyse and compare every idea. We just need to move from general to individual.*

Analysing the process from the angle of governing paradigms, the NPM-like managerial style is also visible in the administrative reform process. The civil servants interviewed emphasized that creating the post for regional minister and his systematic activities (creating the expert committee, public seminars and 48 presentations that the minister gave) enabled the whole process to constantly move forward. A small number of public officials dealt with economic analysis, a few officials with content questions and mainly one with jurisdiction. On the local level, merger consultants discussed and mediated the process. So policy making was divided between different officials and the system was optimised that way. The short deadline agreed on in the coalition agreement left no time for inefficiency. Also, the central State (via the Ministry of Finance) expressed itself mainly through its service-provider and system manager identity: the reform outcomes should be legitimate project results because when (even forcefully) enhancing local government capacity, the quality of service provision increases.

There are also some implications of the *governance* approach. Many stakeholders were engaged, especially in the administrative reform. Every stakeholder seriously interested in the topic actually had the option to dive into the process and voice his/her opinion. But some crucial aspects of the *governance* approach were still not present in the cases analysed. Stakeholders were engaged, but too late and in the form of an explanatory one-way communication. No considerable input was received from them and the central State did not do anything to empower them, enabling quality partnership. One civil servant aptly commented:

*CS 8: We have to consider ourselves guilty. We have not taught the citizens how the law-making process works. And we ourselves have to stick to the actual process requirements and engage at every stage where it is originally intended. Right now the people are very aware of the fact that when draft documents are ready, everything is set to go already.*

One important precondition for network-based *governance* is the attitude of the civil servants that values the input that other stakeholders can give to the process. Their willingness to cooperate with potential partners and invest time in such a

process is also needed for actual partnership. Some of the interviewees expressed such an attitude but it is not a generally held opinion, which shows there are still big steps to take by the ministries in the direction of network governance.

## DISCUSSION AND CONCLUSION

Legitimation is a necessary tool for contemporary governing. Given the complexity of the growing expectations and increasing information load, state-citizen communication has to be planned carefully and strategically to create legitimacy. Institutional changes are necessary to stay in accordance with societal developments. There are legitimation frameworks to apply and suggested directions in order to deepen and strengthen democratic governance. Combining F.W.Scharpf's *input vs output-oriented* types with I. Blühdorn's *Subject-centred, abstract and performative* focal approaches, we have a two-dimensional framework for carrying out case studies.

In this article we analysed two Estonian structural reforms, for which the idea was partly initiated by previous studies of Estonian governance problems,<sup>29</sup> which highlighted the fragmentation between policy-making institutions, communication problems between these institutions, lack of reasoning and transparency of decisions. The case studies of two large-scale public sector reforms showed that in both cases – the civil service reform and the administrative reform – elements of the NPM paradigm were prevalent. Political haste and the pursuit of efficiency, managerial conduct, division of tasks but low communication, low engagement of stakeholders and argumentation strongly biased towards pleasing the citizen-customer were discernible patterns. *Governance* principles were found in documents as requirements for policy making but were almost absent in actual practice. According to the Good Practice of Engagement document, the civil servants planning a policy change are obliged to objectively inform the potential stakeholders about the goals of the policy and potential solutions to enable them to participate in the process and give their input. In practice, civil servants were more afraid of nonconstructive and exhaustive engagement than of undermining legitimacy.

In the Estonian cases output-oriented legitimation with an abstract or performative focus was prevalent. Policy subjects were given information and participation options on a general, abstract level or some most necessary participants were selected to be engaged more intensively. Stakeholders were engaged in a late phase of the policy process that was more about explaining the political decisions than two-way constructive discussion. Postmodern governing has shifted away from input-oriented legitimacy and we can already see how literature on citizen passivity, depoliticisation and democratic deficits has increased. The citizens and stakeholders as subjects have to be brought back to policy making to ensure the sustainability of legitimacy. The performative approach is one option, but this type of legitimation requires more strategic planning and might also have side-effects if the overall cohesion of policies is not ensured. It is important to remember that in addition to specific policies, the state has to legitimise the policy process, political/administrative capacity and comprehensive governance as a cohesive system as well.

The narrow pursuit of efficiency and low level of reflection causes the reoccurrence of similar patterns of failure. According to Hood,<sup>30</sup> in relying heavily on some certain habitual strategy (or non-strategic way of policy making), the system becomes more vulnerable and adverse effects start to appear. Under-rating stakeholder and civic engagement in the policy process is a threat that the Estonian cases well represent. The sporadic use of legitimating messages does not refer to the strategic use of legitimation as a governance tool. Procedural improvement towards greater stakeholder and civic engagement have already been made in the documents but the first practical step would be to follow the regulations. Another practical step would be to ensure that legitimation activities and the respective communication would not suffer from political haste. The most difficult part of it all is changing the patterns of the governance culture. Civil servants need to embrace the potential functions of legitimation and their role in the process as well as contributing to enhancing stakeholder participation and two-way communication for legitimation to work more functionally.

<sup>29</sup> OECD. Estonia: Towards a Single Government Approach. OECD Public Governance Reviews. Paris: OECD Publishing, 2011.

<sup>30</sup> Hood, C. The Art of State: Culture, Rhetoric and Public Management. Oxford: Oxford University Press, 1998.