Trust and Distrust in Regulatory Governance

White paper integrating the results of the TiGRE project and developing scenarios and recommendations to maintain and restore trust

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1. Setting the stage: Trust and distrust in regulation and governance

The TiGRE project was designed to respond to the call "Governance for the future," which was part of the H2020 Work programme "Europe in a changing world – Inclusive, innovative and reflective societies". In this call, the decline of trust in governments and institutions represents a primary concern, which could negatively impact governance at various levels.[4] Thus, improving or restoring trust in institutions becomes a priority for national governments and European institutions to ensure the well-functioning of democratic systems.

This white paper integrates the main outputs of the TiGRE project. Against this background, the central conclusions of the TiGRE project are twofold: **the first message is that overall trust in core actors populating regulatory regimes is higher than expected**. However, some cross-sectoral and cross-country variations can be identified. In other words, regulatory regimes appear currently weakly affected by broader and well-researched trends towards the decline in political and institutional trust, possibly because of their partial separation from day-to-day politics and the expert-based legitimation strategies of regulatory authorities. **The second message is that maximizing trust is not unequivocally desirable: trust is beneficial, particularly when it comes along with some measure of distrust**. For actors that typically cannot opt out of a given regulatory regime, distrust manifests as a watchful attitude between actors involved in—or impacted by—regulatory regimes, such as regulators, executive bodies, legislators, regulated organizations, interest groups, courts, and intermediaries. Our empirical findings show that the combination of trust and watchfulness enhances the capacity of trustors to put faith in truly trustworthy trustees while also verifying whether this trust is not misplaced. Therefore, a "trust but verify" attitude, involving a combination of trust and distrust, stands out as more adequate, as opposed to "blind trust", for ensuring the well-functioning of regulatory regimes.

The TiGRE project aimed at achieving much more granularity in the study of trust relationships than allowed by the usual focus on citizens' trust in government. We have indeed distinguished two levels of observation: the first one investigates trust towards regime actors by regime outsiders, such as citizens and the media, two types of actors that are only indirectly involved in the regulatory process. The second level implies unpacking trust relations that unfold between regulatory regimes insiders, i.e., legislators, regulators, executive bodies, courts, regulatory intermediaries (such as certification and accreditation bodies), regulated organizations and interest groups. In TiGRE, we argue that being aware of the latter, less visible, trust relationships involving different actors are a prerequisite for improving regulatory governance and developing appropriate policy design.

Various methods have been employed to achieve these goals and provide a comprehensive understanding of these relationships, such as large-scale surveys, directive and semi-directive interviews, experiments, social network analysis, focus groups, and media content analysis. A comparative study across countries (Belgium, Denmark, Germany, Israel, the Netherlands, Norway, Poland, Spain, and Switzerland) and policy sectors (data protection, finance, food safety) have been key to detecting and explaining similarities and variations regarding trust relationships.

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[4] https://ec.europa.eu/research/participants/data/ref/h2020/wp/2018-2020/main/h2020-wp1820-societies_en.pdf

2. A trusted perspective on citizens, media, and actors inside regulatory regimes

2.1 Citizens' trust in regulatory regimes

The first approach in the TiGRE project was to explore citizens' trust in regulatory regimes, particularly towards regulatory agencies and the central actors therein. Citizens' trust in regulatory agencies is important because they are consumers of goods and services produced by those being regulated and rely on regulatory bodies to assess their quality and the risks associated with their use and consumption. If citizens consider regulators untrustworthy, for instance, if they think regulators lack the necessary technical competence, they would be less able to assess the trustworthiness of those being regulated. Such a situation would undermine the performance and the legitimacy of the regulatory regime as a whole.

A survey was conducted to measure the level of citizens' trust in regulatory agencies. This survey has been fielded in six countries (Belgium, Denmark, Germany, Israel, the Netherlands, and Norway) and covered all three sectors (food safety, data protection and finance). According to the main findings of our survey, **trust in regulatory agencies is, on average, rather high**, with slight variation between policy sectors. Regulatory regimes differ indeed across policy sectors in terms of rules, institutions, and actor constellations. Still, remarkably, we find that these contextual differences do not result in considerable trust variations between policy sectors. When we look at the relative scores on a scale ranging from 1 to 7, citizens provide slightly higher ratings for data protection regulator. Additionally, differences are marginal (although statistically significant), as Figure 1 shows.
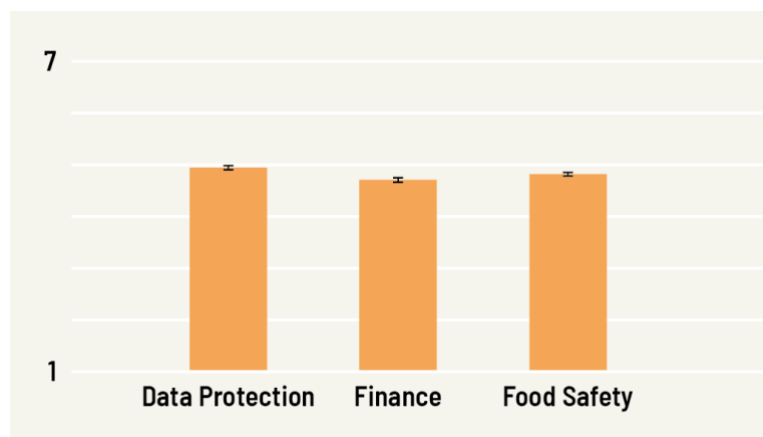

Figure 1. Citizens' trust in regulatory agencies per policy sector (1 = totally disagree "no trust" – 7 = totally agree a "great deal of trust") N 5765

We can conclude that, overall, citizens tend to perceive regulatory agencies as mostly trustworthy. Typically, citizens in all countries gave regulatory agencies trust scores above the neutral midpoint. These findings contrast with the common assumption that there is a crisis of trust in public authorities. A speculative explanation may be that regulatory agencies are perceived in a different light than other government and political actors, because of the agencies' relative independence from elected politicians, which is supposed to guarantee their impartiality and thank their technical expertise and professionalism. The results vary slightly across countries. Yet, even countries exhibiting lower levels of trust do not fall below the mentioned mid-point, indicating that situations of absence or (very) low trust are uncommon.
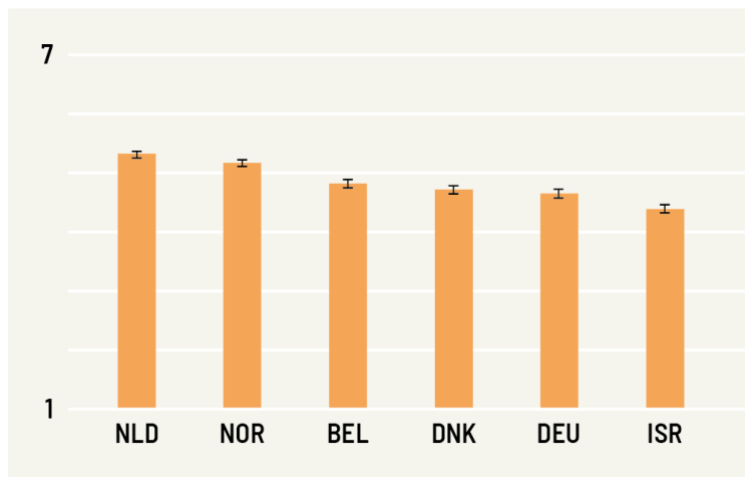
Figure 2. Citizens' trust in regulatory agencies per country (1 = totally disagree "no trust" – 7 = totally agree "a great deal of trust") N 5765

Our research also helped to grasp why citizens think that regulatory agencies are trustworthy and which aspects they value. To do so, a survey experiment focused on the effects of more or less coercive and formalist enforcement styles. The results of the experiment do not indicate regular patterns concerning the effect of such interventions on citizens' trust, instead pointing to the relevance of context-specific factors. To better understand how citizens reason about the work of regulatory agencies and which element they prioritize in their evaluation of the trustworthiness of regulators, focus groups with participants from six countries were also organized. Accordingly, participants from all six countries consistently indicated three main characteristics of a trustworthy regulator: **transparency, expertise, and integrity**. Such findings are of value as they provide new insights into trust relationships between citizens and regulators.

2.2 Media and trust in regulatory regimes

A second approach in the TiGRE project pertained to the analysis of media reporting and case studies exploring how regulatory agencies can restore citizens' trust after a trust breach through communication with the media. The analysis has shown that, unsurprisingly, media coverage has a negative tone when trust incidents such as banking scandals, data leaks and food safety crises make it to the headlines. Importantly, after such incidents, the strategies of regulatory agencies vary. Whereas, in some cases, agencies use the media to actively rebuild trust, in other cases, agencies stay silent, possibly as a way to eschew the blame for the incident or to deny the problem. An experimental part, which focused on a single case study, evaluated five communication strategies performed by regulators after trust incidents: silence, admission of problem and excuse, admission of problem and justification, admission of responsibility and apology, admission of responsibility and promise of future action. As Figure 3 shows, staying silent as a regulator despite being able to respond to media critique is the least effective strategy when confronted with negative media coverage of incidents. In other words, citizens' trust in the regulator is the lowest for all three regulatory sectors when the regulator chooses to remain silent after having negative coverage by the news media. Remaining silent may thus undermine the trust relation between regulatory agencies and the public. The analysis points to **the benefits of more open and responsive communication strategies for repairing the trust of citizens in regulators**: justifying the incident, an apology for the mishap, or a blueprint for preventing the problem from occurring in future.

Finally, it appears that regulators tend to have more possibilities to actively pursue strategies for trust reparation in conditions of under-regulation (where more could have been done in terms of regulation or supervision) than in the context of over-regulation (where the agency adopted an approach judged excessively stringent). A possible explanation is that citizens feel less safe when a sector is under-regulated (although political actors and regulatees typically express warnings rather than over-regulation).
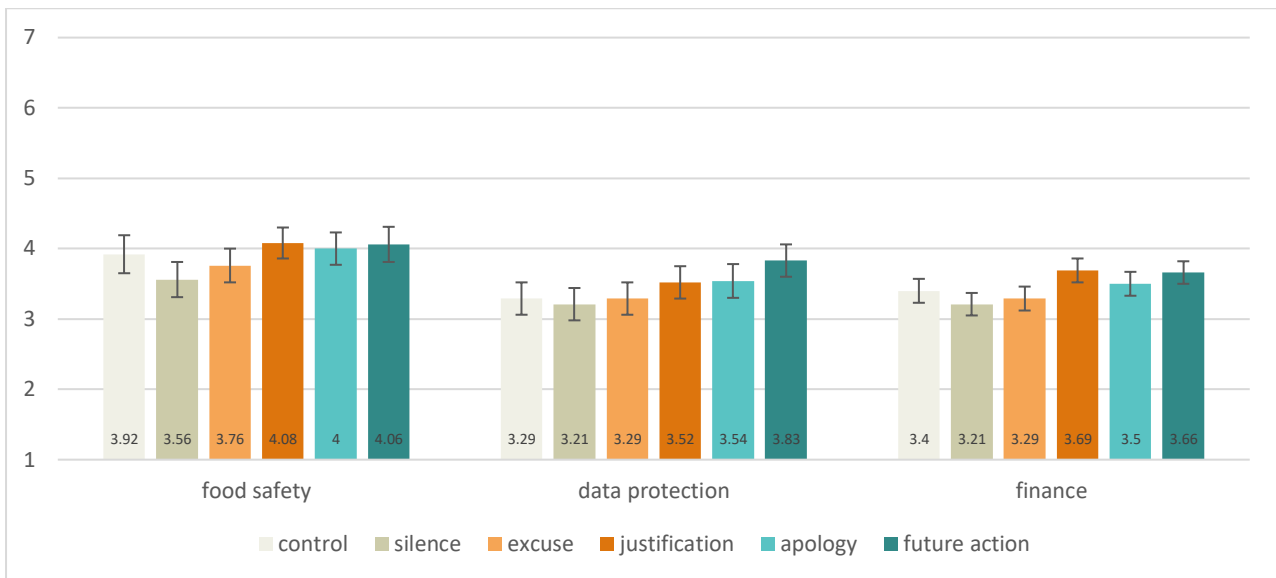
Figure 3. Trust in the three regulatory agencies per communication strategy (95% ci) – (1= lowest trust – 7 high trust)

2.3 Trust between and towards actors inside regulatory regimes

The third approach in the TiGRE project was to examine trust relationships from an insider's perspective. By insiders, we mean the actors operating *within* regulatory regimes, comprising core actors such as regulators, legislators, executive bodies, courts, and regulatory intermediaries, as well as more peripheral ones, such as the regulated organizations, interest groups and consumer organizations. To do so, a large-scale survey in all nine countries delved into actors' perceptions of trust and distrust relationships in the three policy sectors under study, followed by interviews and social network analyses of interaction patterns. The results indicate that, in line with citizens' perceptions mentioned above, **insiders are, on average confident, albeit to varying degrees, in regulating their policy sector** (see Figure 4).
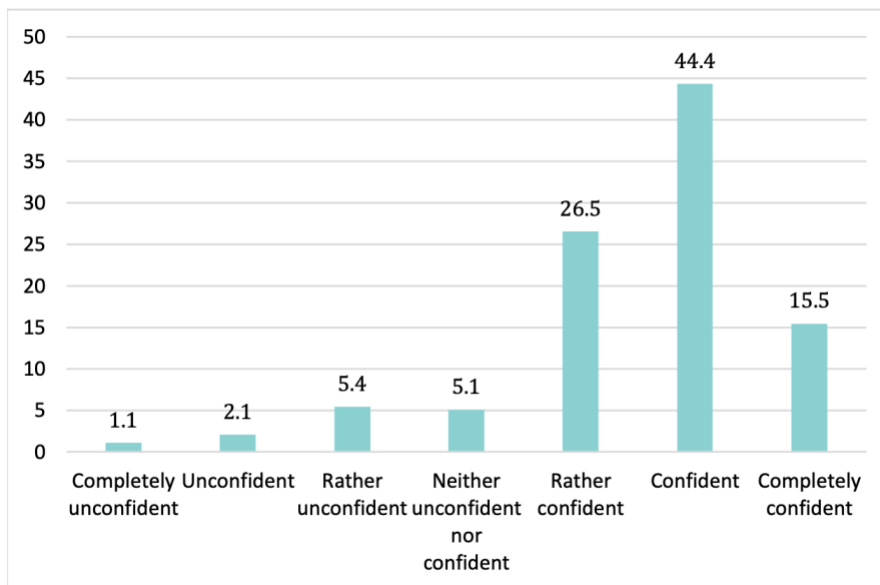

Figure 4. Confidence in the regulatory regimes (%, N=1398)

More specifically, respondents' answers differ when asked about their agreement with the content of regulations or approval of the enforcement process. On average, respondents perceive the content of regulation to "be just fine as it is" or "slightly too strict". In contrast, they perceive the enforcement of

regulations to be also "just fine as it is" or "slightly too loose" (see Figure 5)[5]. Interestingly, there are some underlying cross-sectoral differences: in finance, content is, on average, perceived to be a bit too strict, while in data protection, enforcement is seen as a bit too loose. This is possibly related to the **maturity of the respective sectors**, with finance as a consolidated sector, whereas data protection is newer and still more fluid.
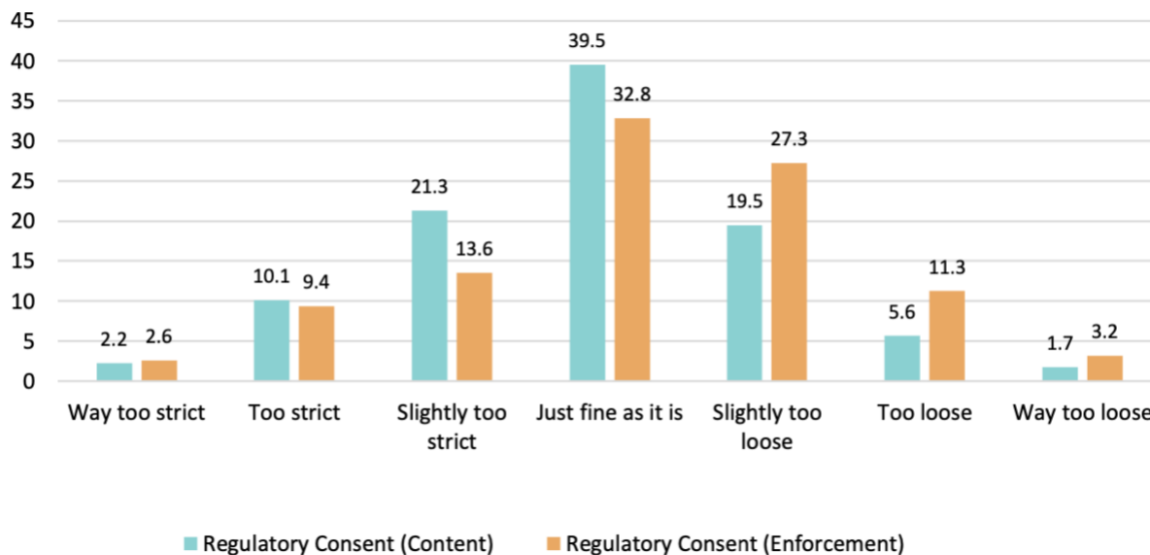

Figure 5. Regulatory consent concerning content and enforcement across sectors (adjusted means, N=1,218-1,223)

Furthermore, it is essential to note that public and private actors frequently report **high trust in the national regulatory agency while remaining watchful** towards them (corresponding to the behavioural manifestation of distrust when one cannot opt out of the relation). In other words, while they trust the national regulatory agency, they are at the same time watchful for any actions of the regulator that might harm them. Figure 6 shows that trust and distrust are indeed separate components of trust relationships: some agencies are both weakly trusted and weakly distrusted (probably out of a lack of interest or knowledge of their operation), and, more importantly, many agencies enjoy high levels of trust while also being subject to highly watchful scrutiny. This finding is particularly relevant as our survey-based research points to a positive association between this combination of high trust and watchfulness between actors and the perception of high performance of regulatory regimes. Specifically, our research shows **that a national regulatory agency perceived as trustworthy matters for the performance of a regulatory regime**, as it possibly facilitates, according to the stakeholders, regulatees' compliance, and helps in keeping citizens safe from harm. However, while a competent, ethical, and benevolent regulatory agency facilitates compliance by the regulatees, this is just one factor contributing to a well-functioning regulatory regime. Relationships unfolding between other actors and stakeholders, such as legislators, administrations, and interest groups, also play a crucial role in the functioning of the regulatory regime. Hence, the level of trust and distrust between regime actors is crucial, even more than the trust in regulators themselves. At the same time, the exact configuration of high trust and watchfulness does not guarantee the social acceptance of regulatory regimes (i.e., more specifically, the acceptance by regime actors of procedures and the way regulatory decisions are taken), as high levels of watchfulness are detrimental for such legitimacy of regulatory regimes. This suggests, thus, a possible trade-off between perceived performance and the legitimacy of regulatory regimes.

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[5] Averages conflate lower-level variations. Variations in trust levels between different organizations are discussed in detail in deliverable D3.3, available for download at https://www.tigre-project.eu/tigre-library/#public-deliverables when finalised.
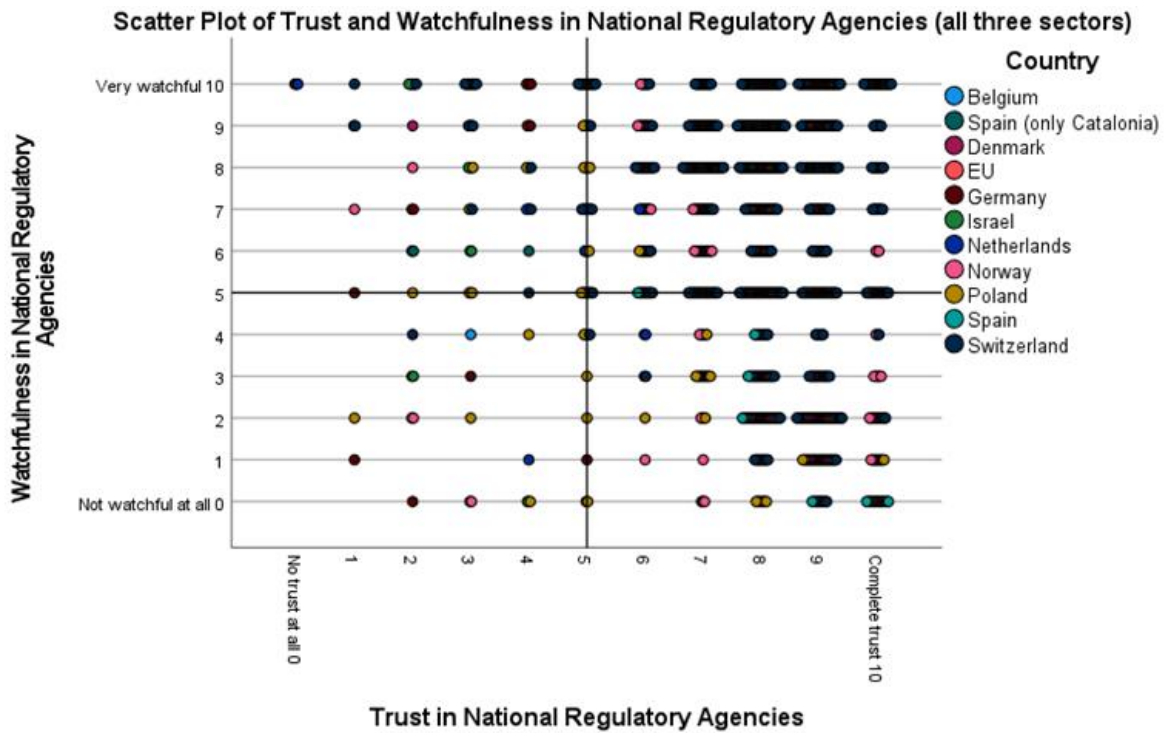
Figure 6. Trust and distrust (measured as watchfulness) in the National Regulatory Agency(ies)

There is also a more fine-grained finding regarding the perceived trustworthiness of regulatory agencies based on a multidimensional measurement encompassing the trustee's ability, benevolence and integrity (see Figure 7 below).[6] Across policy sectors, we consistently witness a lower level of perceived benevolence concerning the other dimensions. We may hypothesize that this is why actors opt for being watchful: they are not confident that their interests are given sufficient consideration.
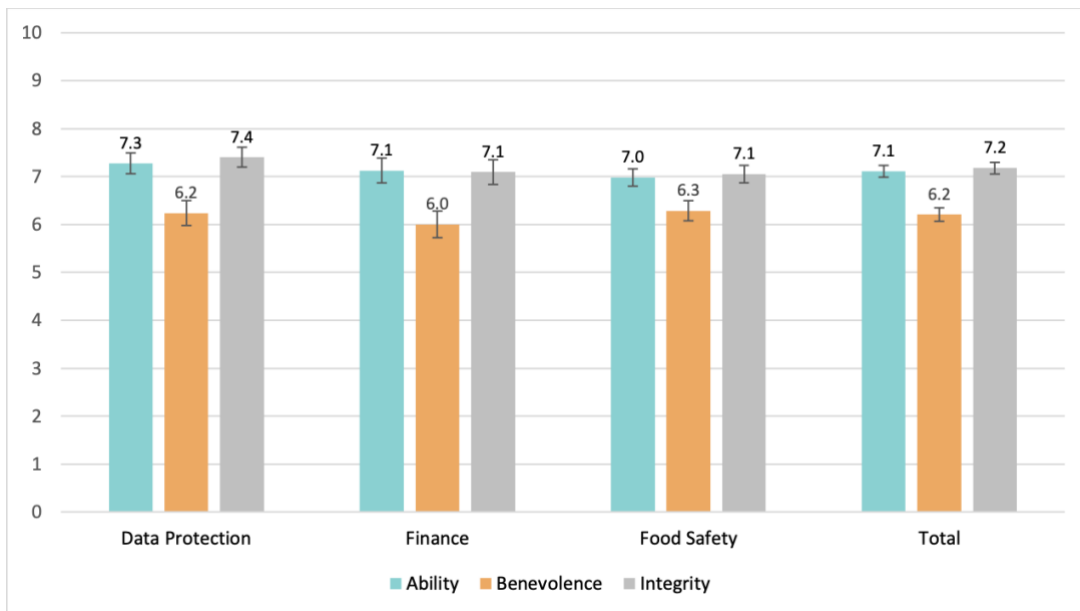

Figure 7. Dimensions of trust in regulatory authorities by policy sectors

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[6] Ability is the expectation that the other party has the competence to successfully complete its tasks. Benevolence is the expectation that the other party cares about the trustor's interests and needs. Integrity is the expectation that the other party will adhere to principles that are deemed as good and acceptable by the trustor.

When we zoom in on specific actor types, we can observe interesting variations regarding respondents' trust and distrust in different actors involved in regulatory policy, namely national agencies, EU bodies, ministries, the parliament, and intermediaries (e.g., certification and accreditation bodies). On average, **insiders' trust is higher towards actors of the executive-administrative and especially for the judiciary branch, and lower towards legislators**: parliamentarians stand out as the only actors that suffer from levels of distrust (watchfulness) that exceed those of trust (see Figure 8). Contrarily, courts enjoy high levels of trust and have the lowest levels of distrust. This confirms the argument that levels of trust are higher for independent bodies than for more politicized institutions. Note also that trust in EU regulatory bodies is related to trust in the national regulatory agencies, a finding which reflects the interconnected multi-level interdependencies between European and national regulators in a shared administrative space.
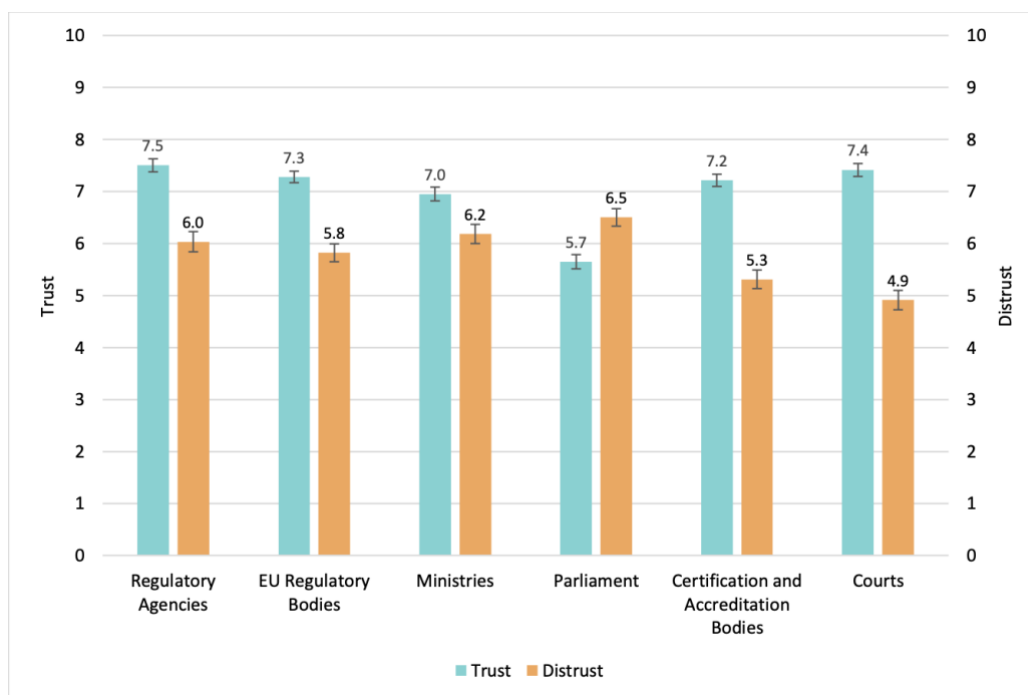

Figure 8. Trust and distrust in key actors in regulatory regimes

Finally, the insiders' perspective provides an account of the connection between the frequency of interactions (in terms of contacts and information sharing) among actors within regulatory regimes and the extent to which there are relations of high trust among them.[7] Our social network analyses based on relational data specifically show **that there is a positive association between the frequency of interactions and relations of high trust among regimes' actors**. We also notice some cross-sectoral variations: we observe less dense contact patterns and fewer relations of high trust among regime actors within the data protection sector compared to the other two sectors (Figure 9). Our interpretation of this finding is again that data protection is a newer and less institutionalized sector compared to the food safety and the finance sector, as the current data protection regulation regime mainly came into force in EU member states with the introduction of the General data protection regulation (GDPR) in 2018. In contrast, food safety and finance sectors are more mature and thus feature more established relationships between institutional and non-institutional actors, in which actors better know each other's roles, interests and capacities. Since contacts and collaborations between actors require time to be put in place, building high-trust relationships also takes longer in sectors still in flux. Interestingly, the high frequency of contacts and information sharing among actors also contribute to the perceived performance of the regulatory regime.

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[7] For additional information please see Deliverable D3.3, available for download at https://www.tigre-project.eu/tigre-library/#public-deliverables when finalised.
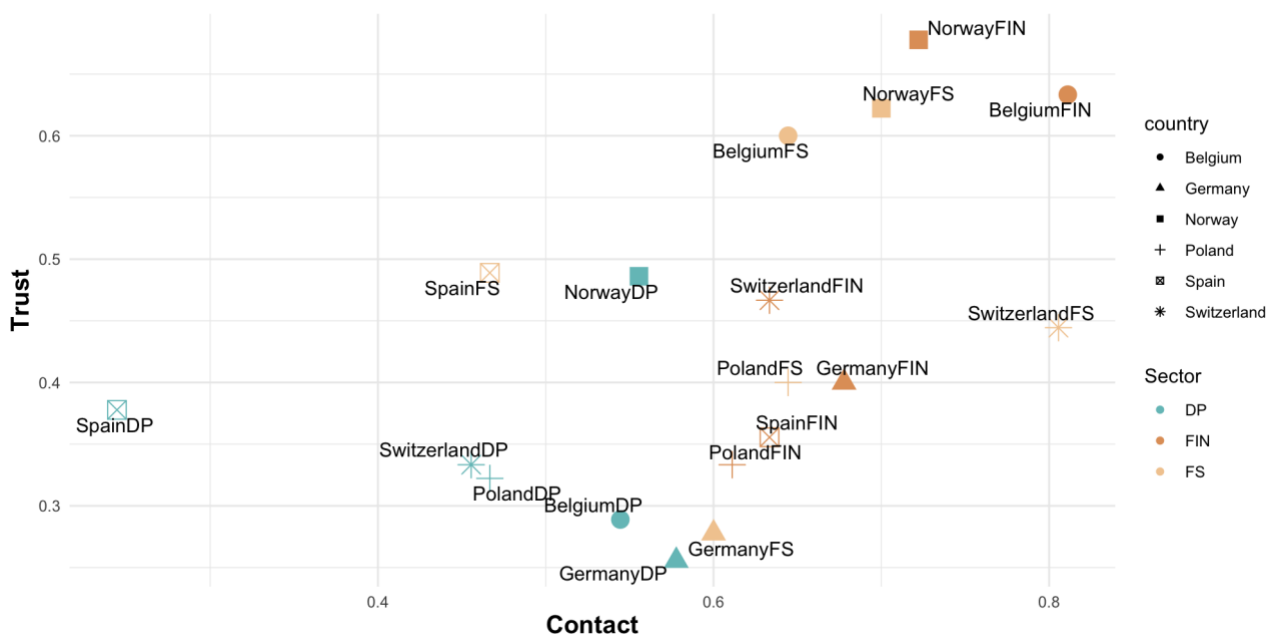
Figure 9. Frequency of interactions (i.e. contacts) among actors within regulatory regimes and the extent of high trust relations among them

Our social network analyses also examined how having similar or different views on policy issues may affect trust relationships among insiders. When actors share similar views on the same matter, reciprocal trust tends to be high as well, probably because these actors feel close on regulatory matters and tend to identify with each other. We also observed that when stakeholders exchange information with multiple actors, they tend to agree more with the regulations put in place. Furthermore, we focused on three institutional mechanisms about agencies' interactions with other actors: governance structures, relationships with stakeholders and political institutions, and communication with different audiences. In the eyes of stakeholders, the quality and credibility of the information that regulatory bodies provide is key for them to be trusted. Feedback and dialogue appear to be instrumental in that respect, while, conversely, not disclosing enough information about, for example, implementation may affect trust negatively or even spark distrust. These findings highlight the importance of contacts and information sharing for trust-building.

To conclude, we investigated the formal institutional design of regulatory agencies and how it facilitates interactions between regulators and stakeholders in regulatory regimes. These data have been collected through legal and documental analysis. We focused on four key characteristics related to the democratic quality of regulatory bodies: transparency, accountability, participation, and inclusiveness. Our findings indicate that there is considerable variation concerning these factors across the examined countries and sectors. For example, we found that stakeholder participation has the lowest score among our sample of agencies. When comparing sectors, we found that the food safety sector had the fewest legal obligations to integrate aspects of democratic quality, while the data protection sector had the most. When comparing these aspects across different levels of governance (EU, national, and regional), we observed that levels of accountability, participation, and transparency were, on average higher for EU regulators than for national and regional bodies.

3. Wrap-up and conclusion

The TiGRE project specifically aimed to explore whether regulatory regimes experience the same well-known trust deficits towards governments and, more broadly, public authorities. Our empirical results indicate that this is not the case. Trust both of outsiders and insiders towards regulatory regimes and actors

therein remains, on average, rather high across policy sectors and countries. At the same time, we claim that more attention should be given to the phenomenon of distrust, which must be considered distinct from trust, particularly its behavioural manifestation in terms of watchfulness. The coexistence between trust and distrust (conceived as watchfulness), and specifically a "trust but verify" attitude, incentivizes regulatory actors to care about performing well. We argue that balancing both trust (which facilitates collaboration and reduces transaction costs) and reasonable watchfulness (which implies a certain degree of vigilance and scrutiny) helps sustain stable and effective regulatory regimes. Although regulators benefit from considerable trust from citizens and other institutional actors, high trust cannot be equated with directly legitimising their operations. Blind trust could potentially be detrimental to regulatory performance and compliance as it may produce regulatory capture. In contrast, a healthy level of distrust in terms of watchfulness combined with high trust can persuade regulators to be more reflective. This is nevertheless a balancing act, as too high distrust may lead to the erosion of the legitimacy of the regulatory regime and, more precisely, may undermine the acceptance of the procedures and the way regulatory decisions are made.

3.1 Scenarios – in case of a crisis

The results presented in this white paper bring us to consider potential future scenarios on trust and distrust in regulatory governance. In particular, we posit that any concern about scenarios needs to be connected with potential economic or political crisis situations, such as defaults, bankruptcy or major critical junctures such as Brexit. This white paper shows that trust levels within regulatory regimes are relatively high despite some cross-sectoral and cross-country variations. Nevertheless, a plausible scenario could be a possible decrease in trust levels in the future. Our findings suggest that regulators are generally seen to perform well and should, therefore, not fear a decline of trust too much. However, it may be objected that this is only valid under "fair-weather" conditions. Thus, it is crucial to consider that regulators are not powerless in crises but can select more or less appropriate strategies for crisis management. For example, it is worth bearing in mind that rather than remaining silent or shifting the blame, it is more effective as a trust-repair strategy when agencies respond to criticism of regulatory failure (i.e., under- or inadequate regulation that did not succeed in preventing harm) by admitting the problem, explaining its causes, apologizing for their responsibility, and promising to learn from their errors. Therefore, our core message is that **frankness pays in critical times too**, and this should be kept in mind when considering potential scenarios in case of a crisis.

3.2 Recommendations

Our findings also have some direct practical implications. Therefore, several recommendations can be formulated according to the two main perspectives presented in this white paper, which are the 'outsiders' and 'insiders' views. For the 'outsiders' perspective (such as citizens and the media), three main recommendations can be specifically put forward.

1. According to the findings presented in the first part of this white paper, citizens consider integrity, competence, and transparency to be the core characteristics of trustworthy regulatory agencies. As the integrity and competence of an agency are only visible to citizens via agency transparency, we **recommend that regulatory agencies pay particular attention to transparency**. In this regard, transparency means that information about the agency's processes and decisions should be made more visible, reachable, and detailed. This can also apply to information about the structure and governance of the agency itself.

2. As shown by the experiments that the TiGRE team conducted with citizens, we do not observe any direct systematic relation between the punitiveness of enforcement styles and citizens' trust in regulatory agencies. In particular, a more or less accommodative style towards regulatees does not undermine citizens' trust. Therefore, **if a regulatory approach that is either more or less accommodating proves to be more effective in achieving compliance from those being regulated or in producing other desirable outcomes, agencies can confidently adopt it**, as it is unlikely to unequivocally affect trust negatively.

3. A further focus on trust in regulators from an outsider's perspective aimed at evaluating communication strategies performed by regulators after trust incidents. The results point to the benefits of a more open and responsive strategy for repairing trust by citizens, such as providing justifications or blueprints for preventing the same problem from occurring in the future. We, therefore, **recommend regulators avoid staying silent or resorting to 'no comment'** but rather quickly adopt an active repairing trust attitude (see also the scenario above).

We now turn to the lessons that can be drawn from the second part of our white paper, which focused on trust relationships from an insider perspective (such as legislators, regulators, executive bodies, courts, certification and accreditation bodies, as well as regulated organizations and interest groups), based on which we can list another three recommendations.

4. Generally, agencies are at the centre of regulatory regimes and often have intense and frequent contacts with other insiders. We observed a positive association between the frequency of interactions among regime actors and high levels of trust. Therefore, we can **encourage regulators to foster and maintain regular contacts with all stakeholders**. The frequency of contacts is indeed beneficial to build and also to maintaining trust relationships and possibly also to prevent trust decline. Yet, frequent contacts do not necessarily translate into direct influence for stakeholders. Hence, we believe it is also useful for regulators **to enhance stakeholder inclusion, ensure balanced and pluralist representation, and provide accountability mechanisms allowing for integrating multiple stakeholders in the regulatory process, even if their participation is not formally foreseen in statutory prescriptions.** Regulators should ideally be able to not only disseminate relevant information but also to receive discordant arguments from a pluralist panel of actors, which may differ in terms of interests and resources. It may be argued that openness to criticism makes agencies more vulnerable but also makes them more credible. In this regard, the role of design can be crucial: setting up, for instance, an **advisory council or reflection group** can contribute to pooling helpful information and feedback from a diverse set of stakeholders.

5. The insiders' perspective also indicated that not only trust but also watchfulness levels are relatively high overall. From the perspective of those being regulated, being watchful requires being able to clarify and voice any demands for appropriate modes of regulation regarding substance and style. Therefore, another recommendation we provide is that actors have an advantage in adopting a "trust but verify" attitude (i.e., watchful trust) concerning regulation. This means that **if actors trust regulatory agencies and their functioning, they must also be able to critically review their behaviour and outcomes**. Our results show that such an attitude of high trust combined with high watchfulness is associated with the perception that the regulatory regime is performing well. Hence, it is not the maximization of trust that should be aimed at, but rather the **optimization**.

6. Our findings indicate that participatory mechanisms—which facilitate communication—are unevenly developed: despite some virtuous examples, several regulators still present a gap in their design which needs to be bridged.[8] Therefore, we recommend **reviewing and possibly improving the institutional design concerning the four democratic qualities of agencies that we scrutinized, which are participation, inclusiveness, accountability, and especially transparency**, this time towards stakeholders and, more specifically, towards the regulated organizations, interest groups, and consumer associations.

The goal of this white paper was to provide a synthesis of the main findings of the TiGRE project. We believe that such findings contribute significantly to our knowledge of trust and distrust in the area of regulatory governance. We hope that this topic, which is very complex but also essential for the well functioning of contemporary democracies, remains a priority both for the academic community and for the European Commission in the upcoming years.

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[8] For additional information regarding variation across agencies, sectors and countries please check deliverable D4.3, available for download at https://www.tigre-project.eu/tigre-library/#public-deliverables.

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