BACHELOR THESIS

The Reliance on Private Sector Involvement in the European AI Approach: An Application of the Networked Regulatory Capitalism Framework

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Public Governance across Borders

Submission: 30th of June, 2021
Presentation: 1st of July, 2021

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Wordcount: 11950

Abstract

The regulation of Artificial Intelligence (AI) is a significant issue on the current global agenda and, among others, a highly topical matter in the European Union, with a proposal for an AI act being published in April 2021. Acting on the assumption that European policymaking can be adequately described as a result of multi-actor governance, this bachelor thesis examines the ways in which European regulators rely on the involvement of the private sector in the European AI approach. By means of a content analysis, the networked regulatory capitalism (NRC) framework is – for the first time – applied to investigate the reliance on private sector involvement. The analysed data consists of policy documents by the European Commission, European Parliament and documents published by the European Union Agency for Fundamental Rights (FRA) which together are assumed to form the European AI approach. It is shown that European regulators rely on private sector involvement in the AI approach through self-regulation by the private sector, consulting and cooperating with the private sector, as well as overall relying on private sector activities as an integral part of the European AI approach. The research reveals that against the theoretical expectations, the framework holds to a far more limited extent when applied to the AI approach. This research delivers proof of private sector involvement in European policymaking and points at the implications this can have for democratic values.

Keywords: AI Approach, Europe, Networked Regulatory Capitalism, Private Sector

Table of Content

1. Introduction

The development of Artificial Intelligence has a profound impact on everyday life. Considering this transformation of society, the actors involved in the policymaking process enclosing the new technologies are fundamental to examine. The European AI approach is currently evolving, with the proposal for an AI act published in April 2021. It is essential to research which actors are participating in this AI approach since shaping such an approach gives these actors crucial power.

1.1. Background

While multiple concepts examine the division of power and labour between the public and the private sector, a variety of scholars argue that the concept of "regulatory capitalism" captures the current division of labour in the regulatory process between governmental and non-governmental actors best (Braithwaite, 2000; Engdahl, 2018; Gilardi, 2005; Jordana & Levi-Faur, 2004; Klaaren, 2021; Lazer, 2005; Levi-Faur, 2005; Jordana, 2005). Essentially, it is assumed that the content of regulations is determined by the state, and the private sector is participating in the policy process by providing services. With that, the scholars theorise policymaking as a cooperation from the private and public sector, with the public sector dominating.

The authors Farrand and Carrapico (2018) adapted the classification of regulatory capitalism from Braithwaite (2000), Levi-Faur (2005) and Jordana (2005) by describing the current state as networked regulatory capitalism. This derivative of regulatory capitalism is characterised by an increasing role of the private sector in shaping regulation. Whereas regulatory capitalism views the private sector as provider of goods, Farrand and Carrapico (2018) extend the role of the private sector to "regulation shaper" – in contrast to being an object of regulation and regulation adopters. With their study, the scholars illustrate that in some sectors, the influence of the private sector on policy outcomes may be greater than assumed by regulatory capitalism scholars. Notwithstanding the research of Farrand and Carrapico (2018), the NRC framework has not been applied to another policy field yet.

1.2. Relevance and Research Question

In the case that European regulators rely on private sector involvement in the AI approach, Europe's regulators make themselves dependent on the private sector in delivering public policies.

While private sector involvement can be assessed from two points of view – considering both the benefits and threats private sector involvement entails – this research acts under the assumption that private sector involvement should be viewed more critically. Depending on the private sector puts it in a powerful position to negotiate the content of the policies. A close entanglement between the state and the private sector could imply that the private sector is increasingly including its own interests in public regulations. If corporate interests are more represented in the AI approach than civil society interests due to private sector involvement in the regulatory process, this has implications for the structuring of European societies and the credibility for democracy. A fundamental element of democratic systems – equal representation of interests – is touched upon by a disproportionately high representation of corporate interests in European policies. Having corporate stakeholders adopt the role of policymaker might put industry needs over civil society needs which implies that corporate perspectives on AI dominate the AI approach. This threat imposed by private sector involvement is not unsubstantiated, taking, for example, the scholars Gornitzka and Krick (2017) who speak of a balance between the logic of representation and the logic of expertise. To name a more concrete threat if the regulatory framework for AI is shaped by the private sector: The regulations might be more concerned with enabling a structure where European companies can master global competition than the implications of AI for fundamental rights and its social implications.

The European AI approach has not been examined in terms of private sector involvement due to its recent developments. Furthermore, the NRC framework has never been applied to another sector. The lack of an examination of the AI approach regarding private sector involvement and a lack of reproduction of the concept illustrates a research gap that can partially be filled with this study. Therefore, this research's goal is two-folded: On the one hand, the ways in which the European AI approach is relying on the involvement of the private sector, and on the other hand, to research whether the NRC framework still holds when applied to another policy sector. To gain the aspired insights, the following research question (RQ) will guide the study:

RQ: In what ways do European regulators rely on the involvement of the private sector in the European AI approach?

This question is essential to examine since private sector involvement in public policymaking can have drastic implications for the content of the regulation. It is important to find out in which ways the private sector is included to shed light on possible danger arising from

private sector involvement. To answer the research question thoroughly, two sub-questions (SQ) have been formulated. To research the way European regulators rely on the involvement of the private sector in the AI approach, the question of how the private sector is involved is of utmost importance. Referring to the network governance literature, the authors of NRC witness four varying forms of cooperation between the public and private sector. A content analysis enables researching the different forms of involvement of the private sector in the AI approach.

SQ1: What is the division of labour between the public and private sector in the European AI approach?

Furthermore, to understand the involvement of businesses in the European AI approach, the investigation of the arguments for an inclusion of the private sector can give insights. Based on the analysis by Farrand and Carrapico (2018) who identify that perceived technical knowledge and expertise of the industry are the main arguments for relying on the private sector in NIS, this research is interested in whether the same arguments are stated in the documents regarding the European AI approach. With a content analysis, the arguments in the selected documents can be identified.

SQ2: What are the arguments for including the private sector in the European AI approach?

1.3. Research Approach

In order to answer the RQ, an interpretative research is being performed. The NRC framework is combined with a content analysis to reveal the reliance of European regulators on private sector involvement in the AI approach. The European AI approach, and correspondingly the European Union Agency for Fundamental Rights, were chosen as a case and the AI approach is composed of documents regarding AI by the Commission and Parliament, as well as the founding documents of the FRA. The method of content analysis was chosen since "such an analysis may identify the stated priorities of that organization as well as reveal implicit political perspectives. Thus, content analysis is useful for identifying both conscious and unconscious messages communicated by text" (Julien, 2008, p.120). In order to apply the NRC framework, and thereby the reliance and explicit reference to the private sector, a content analysis can unmask the framing of the role of the private sector in European AI policymaking.

The research is structured as follows: The second chapter outlines the theoretical framework of regulatory capitalism (2.1) and NRC (2.2). Thereafter, the methods chapter encompasses the selection of this specific case study (3.1), a detailed description of the analysed data (3.2) and an elaboration of the method of analysis, a content analysis (3.3). Subsequently, the analysis chapter starts with elaborating the role of the FRA in the AI approach (4.1), followed by a section on how the private sector is involved (4.2) and why it is involved (4.3). Lastly, a conclusion chapter provides an answer to the research question (5.1), implies future research directions (5.2) and provides practical information for policymakers (5.3).

2. Theoretical Framework

The goal of this chapter is to generate the theoretical framework which will form the basis for the analysis. To begin with, the concept of regulatory capitalism is being outlined as it forms the basis for the enhancement to NRC (2.1). Hereafter, the development of NRC with its critique and enhancements of regulatory capitalism is elaborated (2.2). This includes a detailed review of the study by Farrand and Carrapico (2018) in order to fully grasp the concept of NRC. A concluding section sums up the insights gained in this chapter that will guide the analysis (2.3).

2.1. Regulatory Capitalism

Regulatory capitalism is a concept describing the division of labour between the state and business, in particular regarding regulatory matters. Regulatory capitalism as a concept was created by Jacint Jordana (2005) and David Levi-Faur (2005) and till now has drawn wide attention in the area of regulatory politics (Scott, 2017). Despite the broad engagement of scholars with the concept, there is no broadly acknowledged definition of regulatory capitalism.

Regulatory capitalism is one amongst many concepts capturing the participation of different actors in the policymaking process. What makes it distinctive is the clear rejection that there is currently an era of neoliberalism (Braithwaite, 2008; Levi-Faur & Jordana, 2004) and the focus on the proliferation of regulatory agencies (Braithwaite, 2008; Jordana & Levi-Faur, 2010). The concept differs from other concepts by focusing on state regulation – not deregulation or privatisation as neoliberalism would predict – and how the work of regulatory agencies is influencing public policies. The inclusion of agencies in the regulatory process is essential since a "regulatory explosion" (Braithwaite, 2008, p.vii; Jordana & Levi-Faur, 2010, p.344) can be observed in many contexts, thereby highlighting the importance of regulatory agencies in the policymaking process. Additionally, the introduction of rowing and steering the policymaking process – explained below – makes regulatory capitalism distinctive and a suitable framework for examining private sector involvement.

Defining regulatory capitalism is best done by demarcating it to other forms of capitalism regarding two functions of governance, namely rowing and steering. Levi-Faur (2005) categorises capitalism into three distinctive capitalist orders where each is marked by a differing division of labour between the state and industry. The function of governance is divided into two processes, steering and rowing. With steering, the act of leading, thinking, directing and guiding policy action

is implied. The provision of service signified the process of rowing (Osborne & Gaebler, 1992). The different forms of capitalism can be found in Table 1 which was adopted from Levi-Faur (2005) who based it on Braithwaite (2000).

Table 1

The Transformation of Governance and the Nature of Regulatory Capitalism

	Laissez-Faire Capitalism (1800s–1930s)	Welfare Capitalism (1940s–1970s)	Regulatory Capitalism (1980s–)
Steering	Business	State	State
Rowing	Business	State	Business

Source: Levi-Faur (2005)

While both processes of governance were performed by businesses in the nineteenth century, the period of welfare capitalism is coined by a dominant role of the state, taking over both steering and rowing in the regulatory process. From the 1980s onwards, the period described as regulatory capitalism is characterised by intertwined cooperation between governmental authority and businesses. In regulatory capitalism, the state leverages the private sector to provide services and, thus, steers more than it rows (Osborne and Gaebler, 1992).

This differentiation of rowing and steering can be used to examine the division of labour between the state and the private sector, as well as the creation of agencies. Among others through the delegation of tasks to independent agencies, the state outsources policymaking processes and puts essential steps in the decision-making process outside of democratic control. Jordana and Levi-Faur (2010) call this process "agencification of regulatory functions" (p.347). This outsourcing of policymaking enables the industry to exert influence on the policymaking process and, with that, the outcome of public policy. Agencies are, therefore, seen as another way for the private sector to be involved.

To conclude, regulatory capitalism is a concept developed by Levi-Faur (2005) and Jordana (2005) – with reference to the findings of Braithwaite and Drahos (2000) – which describes the participation of businesses in the regulatory process as a provider of goods and services. The proliferation of agencies and the delegation of regulatory matters to agencies are seen as one of the "clearest manifestations of the rise of network governance" and "decentralization of power" (Jordana & Levi-Far, 2010, p.344). The division of labour between the public and private sector is illustrated with the functions of rowing and steering, namely, the public sector takes over the

function of steering, while the private sector is involved by executing the function of rowing. Connectedly, regulatory capitalism is characterised by a blurring between public and private tasks in regulatory processes and increased hybrid forms of governance.

2.2. Networked Regulatory Capitalism

The scholars Farrand and Carrapico (2018) advanced the categorisation of Levi-Faur (2005) and Braithwaite (2000) by adding a fourth type of capitalism, namely NRC. Farrand and Carrapico (2018) observed a further step towards an expanded influence of the private sector on public policymaking in the network and information security sector.

Despite references to the extending importance of the private sector by regulatory capitalism scholars, the authors witness two limitations of the existing body of literature on regulatory capitalism, namely that the literature primarily focuses on multilevel and geographical diffusion of regulatory agencies and that it would illustrate the State and agency regulation as superior to the private sector. "As a result, the role of industry is generally understood as limited to that of a provider of goods and services that requests and implements regulation" (Farrand & Carrapico, 2018, p.202). The authors, hence, assess the concept of regulatory capitalism as underestimating the influence of the private sector. "As the empirical sections of this chapter will point out, however, there are sectors of activity, such as NIS, where the private sector is not only rowing, but also steering" (p.202).

In the research, Farrand and Carrapico (2018) undertake a document analysis on European official documents in order to reveal in which way the role of the private sector is being framed in NIS and use the method of process tracking to depict the role of the private sector along three stages. The derivative to NRC can be viewed in Table 2 along with three stages in NIS which the researchers describe as followed: "(1) Private actor as a passive object of regulation; (2) Private actor becomes responsible for adopting regulation; (3) Private actor becomes an active participant in the shaping of that regulation" (p.198).

Table 2

Adapted table: The Transformation of Governance and the Nature of Regulatory Capitalism

	Laissez-Faire Capitalism (1800s–1930s)	Welfare Capitalism (1940s–1970s)	Regulatory Capitalism (1980s–)	Networked Regulatory Capitalism
Steering	Business	State	State, Agencies	State, Agencies & Business
Rowing	Business	State	Business	Business
NIS Stage	0	0	1 & 2	3

Source: Farrand and Carrapico (2018)

As can be seen in table 2, regulatory capitalism is assumed to depict stages one and two, namely the private sector as a passive object of regulation and as regulation adopter. With the help of the stages, the hypothesised difference between regulatory capitalism and NRC is best illustrated: In contrast to stage one and two – regulatory capitalism –, stage three depicts the private actor as having an active role in the regulatory process. Farrand and Carrapico (2018) speak about the private sector as regulation shaper. To conclude the private sector as a regulation shaper – in contrast to an object of regulation and regulation adopter –, the researchers use communication documents, and council resolutions regarding the Commission's NIS strategy (European Commission, 2006, 2009; Council of the European Union, 2009), as well as founding documents of ENISA (Regulation 526/2013) and documents published by ENISA (ENISA, 2013, 2014, 2015) to review the depicted role of the private sector. In other words, the authors extract passages such as "Given the complementary roles of public and private sectors in creating a culture of security, policy initiatives in this field must be based on an open and inclusive multi-stakeholder dialogue" (European Commission, 2006, p.6) or that ENISA will be "engaging with public and private stakeholders and leveraging its existing knowledge and expertise in the area of secure infrastructure and service" (ENISA, 2015, p.29) and reason that this active involvement and reliance on the private sector in NIS puts the private sector in the position of shaping regulation, rather than adopting it. In essence, NIS stage 3 is characterised by close cooperation between the state, agency and the private sector in defining the content of regulation.

The name of *networked* regulatory capitalism is derived from the reference to the network governance literature which Farrand and Carrapico (2018) view as complementing the regulatory capitalism framework. The derivative to NRC is partially based on the findings by Risse and Börzel (2005) who observed the current regulatory framework as a consequence of four varying forms of

cooperation between the public and private sectors, namely (1) state-led regulation with consultancy and cooptation of the private sector; (2) delegation of state functions to regulatory agencies and private actors; (3) co-regulation between public and private actors and; (4) private self-regulation that is sanctioned by the state. Farrand and Carrapico (2018) observe these four public-private relations in European NIS governance which leads them to conclude that the private sector has a much more active role than regulatory capitalism theorises. Correspondingly, the scholars witness a system that is "actually a more hybrid form of governance, in which public-private relations are collaborative, rather than competitive" (p.203). Furthermore, according to the authors, network governance gives insights into the division of power, "the transnational networks are not formed around formal power and institutional design, but rather around technical knowledge and expertise" (p. 203). The scholars witness that since expertise is mostly seen as closely connected to the private sector, the private sector is assumed to contain the knowledge to best and efficiently manage the regulatory needs. With the study, the authors aim to illustrate not only how the private actor is involved, but also why. The assumed knowledge and expertise, especially in "technology-intensive sectors such as the NIS" (p.202), is concluded to be the main reason to rely on the private actors in shaping public policies. The *how* is answered with a reference to the work of private actors in European agencies, such as ENISA. "As the empirical section of this chapter will point out, although the private sector is traditionally not included in the list of regulatory bodies, it has gradually come to take part in the reregulation process, namely through the encouragement of the state and of regulatory agencies." (Farrand and Carrapico, 2018, p.201). Essentially, the private sector is being involved by the state, as well as by agencies, due to expertise and knowledge which puts it in the position of developing standards and working in expert groups and committees.

The authors conclude their study with "Current developments in this field indicate that this trend is likely to continue, if not accelerate, particularly in areas of technological complexity. The private sector may not serve only to steer the ship; instead, it may determine its ultimate destination" (p. 214). Consequently, the introduction of NRC depicts the importance of private actors not solely in the process of providing services – steering – and adopting regulations but emphasises the key role businesses play in the regulatory process, partially through regulatory agencies. NRC is, therefore, fundamentally objecting to the role of the private sector theorised by regulatory capitalism scholars and observes a further step towards public-private entanglement.

2.3. Concluding Remarks

This second chapter has delivered the theoretical background of regulatory capitalism and NRC which serves as a theoretical framework for the analysis of the reliance on the private sector in European AI politics. While regulatory capitalism scholars ascribe to the private sector the role of providing goods and services – rowing the policy process –, NRC attributed the private sector a more active role in the policymaking process. This main difference between the two concepts is illustrated in table 3. The differing belief of the role of the private sector in public policymaking accentuates that private sector involvement needs to be further researched. Since the problem of private sector involvement in the AI approach is that private interests are represented in public policy, it is of utmost importance to examine whether the private sector has an active role in shaping the AI approach.

Moreover, since the NRC framework has never been referenced by other scholars, it is interesting to research whether the NRC framework holds to the same extent when applied to another policy sector or whether the concept cannot be separated from the specific case it has been developed on. Since the European AI approach is in a similar context as the study by Farrand and Carrapico (2018), it is expected that the NRC framework still holds when applied to another policy field than NIS. In other words, the theoretical expectation is that the NRC frame can be separated from the case it has been developed on and applied to other sectors.

Table 3

Regulatory Capitalism versus Networked Regulatory Capitalism

	Regulatory capitalism	Networked regulatory capitalism
Authors	Levi-Faur & Jordana (2005)	Farrand & Carrapico (2018)
Private sector as	Provider of goods and services - rowing	Regulation shaper - rowing & steering
Private sector in regulatory process as	Passive	Active

Source: Author

3. Methods

This chapter clarifies the methodological approach chosen in order to examine the research question. As a first step, the selection of the European AI approach – and with that the FRA – as a case is justified (3.1). Thereafter, the method of data collection is delineated (3.2). Lastly, the use of a deductive content analysis in connection with a coding scheme is outlined (3.3). All three sections are based on the work by Farrand and Carrapico (2018) in order to apply the NRC framework to the European AI approach. Hence, the selection of the AI approach and FRA is based on the choice of NIS and ENISA, the selected documents are adapted from the documents analysed by the researchers and the coding scheme is derived from their analysis. The chapter concludes with a summary of the research activities (3.4).

3.1. Case Selection

The often-used expressions "Age of AI" and "AI revolution" already point at the impact the new technology has on society. AI initiatives are launched all over the world to position organisations or nation-states regarding AI and determine the future handling with it. The European AI approach is chosen as the research case due to the importance of AI regulation, Europe's influence on European nation-states (Treaty of Lisbon, Declaration No. 17) and its role as a significant global actor (Fahey, 2018).

AI is seen as an important matter which leads to a multitude of publications coming from a variety of stakeholders. In reality, many stakeholders form the European AI approach since integrating one's interests in the European AI handling can bring essential benefits to the participating stakeholders. However, this research cannot include all participating actors. The key stakeholders examined in this research are the European Commission and Parliament, the FRA and the industry. The Commission is assessed as *the* European regulator which is influenced by the Parliament. In order to apply the NRC framework to the AI approach, a European agency had to be selected. Foremost, it has to be noted that despite recommendations to create an independent European Union Agency for AI (SHERPA, n.d.), there is none of such kind yet. The choice of the FRA depended on the type of agency as well as on the area the agency is engaged in. The NRC framework was developed on the basis of a decentralised agency, ENISA (European Union, n.d. b). Since the functions of the different agencies vary, it is most appropriate to also select a decentralised agency. After careful consideration, the FRA was chosen due to its thematic focus

on AI. Finally, the research acts on the assumption that the private sector aims at influencing policymaking to profit from public policies.

The starting point of the AI approach is assessed in 2018 with the communication from the Commission to the other European institutions laying out the fundamental positions of the Union. What followed were multiple policy publications from the European institutions, European nation-states and other groups, such as the high-level expert group on artificial intelligence (AI HLEG). In line with the included stakeholder, however, only the most important policy documents of the included stakeholders are encompassed. Whereas the developments in 2021 and in the future are highly pivotal for the AI approach, the time of writing of this research restricts the inclusion of future developments and limits the approach to April 2021. The research case comprises European AI initiatives in the time span between 2018 and 2021 and views Europe's positioning to AI through influential policy papers.

3.2. Method of Data Collection

The analysed data is composed of various policy documents regarding AI and encompasses 476 pages. Taken together, the documents are assumed to form the European AI discourse (Appendix A and B). Consequently, this study makes use of qualitative data which was derived from primary sources, namely the official websites of the European Commission, the FRA or EUR-Lex. The documents can be divided into two groups: First, documents by the European Commission and the European Parliament and; Second, documents by the FRA as well as the founding documents of the agency.

Group 1: Since the multiple European institutions have published many documents regarding AI, the selection of documents is based on the official website of the European Commission titled "A European Approach to Artificial Intelligence" (https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence).There, five documents are repeatedly referred to as an essential part of the European AI approach, more precisely three communication documents, one proposal for an AI act and a text adopted document by the Parliament. Since AI is a relatively new technology, the documents were published within the time span of 2018 to 2021. While the publications depict the AI approach, the documents are non-legally-binding. Adding up the documents, 263 pages are being analysed.

Group 2: The documents analysed from FRA encompass publications, a report and, the strategic plan 2018-2022, as well as the regulation establishing the agency and the multiannual framework 2018-2022. The founding document of the agency is included to research the general cooperation and reliance of the agency on the private sector and to investigate the current focus of the agency's work. Excluding the founding document from 2007, the documents have been published between 2017 and 2020 due to the recentness of AI. The establishing regulation and the multiannual framework are legally-binding, in contrast to the documents concerning AI published by the FRA which are non-legally-binding. The combined number of pages is 213.

3.3. Method of Data Analysis

The analysis will be guided by a deductive content analysis due to the existing body of knowledge (Berg, 2001; Elo & Kyngäs, 2008). The aim of this analysis "is to validate or extend conceptually a theoretical framework or theory" (Hsieh & Shannon, 2005, p.1281). In this regard, the literature examining NRC is leading the analysis, the analysis is deduced from the theory, and the purpose of this study is to apply the NRC framework to the European AI approach. The method of content analysis can reveal conscious, explicit and manifest, or unconscious, implicit or latent messages in the text (Bengtsson, 2016; Julien, 2008). This research will analyse manifest, thus visible, obvious components (Graneheim & Lundman, 2004) in the policy documents since the goal is to research the explicit reliance on the private sector. A strength of a deductive approach is that the generation of code schemata is more reliable when done deductively, in contrast to inductively (Bengtsson, 2016). Moreover, a content analysis provides an in-depth understanding of a certain phenomenon, such as the explicit reliance on private sector involvement in the European AI approach.

"In all research, it is essential to begin by clarifying what the researcher wants to find out, from whom and how" (Bengtsson, 2016, p.9). A deductive content analysis starts with the identification of important concepts, which has been done in the theory chapter. After an initial idea about the aim, the data needs to be identified, and the choice of the data collection method and the analysis method has to be made. Hereafter, a coding scheme is developed on the basis of the theoretical background. The coding scheme enables a "systematic examination of forms of communication used to objectively document patterns" (Norum, 2008, p.24) and, thereby, depicts a key role in the analysis.

The coding scheme is derived from the analysis by Farrand and Carrapico (2018). The authors did not elaborate on their coding scheme which results in a coding scheme derived from the citations the scholars excerpted from the documents and the conclusions they draw. The first step in developing the coding scheme was to scrutinise the observations the authors made. Excerpts from the scholars were collected to illustrate to the reader how Farrand and Carrapico (2018) deduced NRC (Appendix C). Key terms – bold in appendix table – were grouped in line with the subdivision of the researchers into *how* the private sector became a regulation shaper, as well as *why* public regulators rely on public sector involvement. The terms used by the researchers to describe *how* the private sector is involved can be categorised into four groups: reliance, cooperation, consultation and self-regulation. These are in line with the findings from Risse and Börzel (2005) which Farrand and Carrapico (2018) observed in their findings (pp. 8-9 in this research). The observations by the scholars and network governance literature indicate that the reliance on the private sector in regulatory matters is due to perceived technical knowledge and expertise which are linked to business practice. Thereby, the *why* is elaborated and reflected in the following coding scheme. Table 3 illustrates the two elements of the coding scheme, namely (1) how and (2) why the private sector is involved.

Table 4

Coding Scheme: Reliance on Private Sector Involvement in the European AI Approach
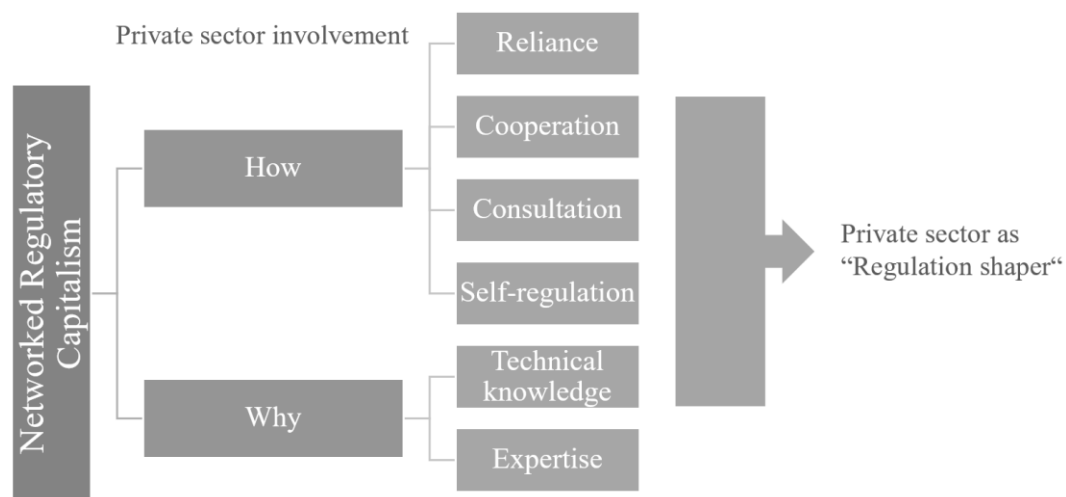
Source: Author

3.4. *Concluding Remarks*

The content analysis can reveal the illustrated role of the private sector in the European AI approach and thereby the ways in which European regulators rely on private sector involvement in the field. Due to the systematic examination of textual data, the content analysis is a suitable technique for answering the RQ.

The coding scheme informs the two methodological steps. First, the division of labour between the public and private sector in the European AI approach (SQ1) can be researched with the insights of network governance and NRC. Subsequently, the main arguments for private sector involvement (SQ2) can be examined. Examining the *how* and *why* the private sector is involved in shaping AI governance, the ways in which European regulators rely on the private sector (RQ) can be elaborated. By performing these methodological steps, answers to the sub-questions and the research question can be generated.

4. Analysis

The core of the chapter is to research the ways in which European regulators rely on private sector involvement in the AI approach.

This chapter is structured along the two sub-questions, namely *how* the private sector is involved (4.2) and *why* European regulators rely on the involvement of businesses (4.3). Following the analysis by Farrand and Carrapico (2018), the documents would not be separated into European institution versus European agency documents, however, the analysis revealed that the European institution's AI approach does not include the FRA. Therefore, this chapter is not only divided along the two sub-questions but also along with the entities which published the document.

Firstly, it will be presented that the European institutions do not rely on the involvement of FRA in the European AI approach (4.1). This finding indicates that the AI approach is not coined by the FRA. As a result, the remainder of the research concentrates on the AI approach as only shaped by the Commission, Parliament and private sector. Subsequently, it is demonstrated that the AI approach – shaped by the Commission and Parliament – includes the four types of public-private cooperation (4.2.1). The AI approach is discovered to be involving the private sector extensively, not only as a provider of services but as an active part in the policymaking process. Private sector involvement is highlighted when compared to the private-public relation illustrated by the work of the agency (4.2.2). Thirdly, the Commission and Parliament convey the message that industry actors possess expertise and technical knowledge and are, thus, required to be involved in the regulatory process (4.3.1). The role of the private sector as an expert is accentuated when compared to the agency's portrayal of who possesses expertise (4.3.2). The chapter ends with summarising the main insights, thereby reflecting on the theoretical expectation, and gives answers to the sub-questions (4.4). Additionally, a graphic illustrates the main findings of the research at a glance (Appendix D).

4.1. Agency-state Cooperation in the AI Approach

As elaborated in the theory chapter, public agencies are seen as a channel through which the private sector can exert influence on regulatory outcomes (Farrand & Carrapico, 2018). Consequently, the European AI approach was composed of documents by the Commission, Parliament, FRA and the founding documents of the FRA. The analysis of the documents unmasked that the FRA is not a suitable agency in combination with the AI approach since it is

not primarily involved in shaping the AI approach. The AI approach is foremost coined by the European institutions and national initiatives rather than agency involvement, despite the fact that fundamental rights compliance is constantly emphasised by the Commission and Parliament.

The accentuation of fundamental rights compliance is omnipresent in the Commission and Parliament documents (European Parliament, 2020, p.5 (L); European Commission, 2018, p.13; 2021a, p.3; 2021b, p.13; 2021c, p.11). The upholding of rights is constantly mentioned to be in line with the European Charter of Fundamental Rights. Surprisingly, the FRA is only referred to once as supervisor of rights compliance and once as an actor to raise public awareness. In terms of drafting AI ethics guidelines, the Commission will pool together relevant stakeholders to develop the ethics guidelines (European Commission, 2018). The draft guidelines will be based on the work of the European Group on Ethics in Science and New Technologies and "take inspiration from similar efforts" (European Commission, 2018, p.15). One of these "similar efforts" references the FRA which will perform an assessment of the current challenges for producers and users of AI regarding fundamental rights compliance. Furthermore, the work of the FRA should inform to help raise public awareness (European Commission, 2018, p.18). Both references to the agency were in the first document published by the Commission in 2018. The later documents, considering the documents from both the Commission and Parliament, do not adopt the role of the FRA and ignore the FRA completely in the AI approach.

Beyond the exclusion of the FRA, some documents do stress the work of other European agencies related to AI, such as ENISA, EUROPOL, EASA, Frontex and eu-LISA (European Commission, 2021b; 2021c; European Parliament, 2020). The Parliament highlights "the importance of coordination at the European level as carried out by the Commission and/or any relevant institutions, bodies, offices and agencies of the Union that may be designated in this context" (European Parliament, 2020, p. 25 (128)) and names ENISA, the European Data Protection Supervisor and the European Ombudsman as examples of relevant existing institutions. Additionally, the Commission names ENISA as responsible for security threats as a "sectoral expert group focused on specific policy areas affected by the application of AI technologies" (European Commission, 2021b, p.8). Moreover, as one of the Commission's cooperation with EU agencies and other relevant European bodies, one Commission's document stresses the efforts by ENISA in terms of AI threats (European Commission, 2021b, p.33).

To conclude it can be said that while the FRA is not assigned a role in the European AI approach, the respect of fundamental rights, however, is constantly reassured. It is surprising to observe that the Parliament does not recall the FRA as an existing institution in the structure of the AI approach. Similarly, it is absurd to witness that whereas ENISA is included in the sectoral expert groups by the Commission, FRA is not. The disregard of FRA's role in the European AI approach by the European institutions depicts that the inclusion of the agency is not insightful in this research. Hence, in the remaining research, the "AI approach" is not encompassing the FRA's activities but is assumed to be solely coined by the Commission and the Parliament. The FRA's illustration of the private sector is still elaborated to pinpoint the contrast between the agency and the European institutions.

4.2. How the Private Sector is involved

Based on the network governance literature and NRC, four forms of division of labour have been identified. These four forms are reflected in the coding scheme, where they are called *reliance, cooperation, consultation and self-regulation*. These forms depict the multiple ways in which the private sector can be involved in policymaking and, thereby, be regarded as regulation shaper instead of solely providing services.

4.2.1. European Commission and European Parliament

The *reliance* on the private sector takes up different forms such as reliance on the private sector as investor, developer and as trainer for the workforce. European regulators do not only aim at cooperating in these fields with the industry but actively rely on its involvement by allocating essential tasks in the AI approach to the private sector.

In the European AI approach, it is constantly emphasised how important investing in AI and its development are (e.g. European Commission, 2018, p.3; 2021a, p.2; 2021b, p.3). The commission stresses that public actors cannot uphold the investment on itself which is "underpinning the participation of and investment from private stakeholders (European Parliament, 2020, (133)). Adopting the accentuation by the Commission, statements such as "**Joint effort by both the public** (national and EU levels) **and private sectors** are needed to gradually increase overall investments by 2020 and beyond" (European Commission, 2018, p.6) and "**The EU as a whole (public and private sectors combined)** should aim to increase this investment"

(European Commission, 2018, p.6) illustrate that private involvement in form of an investor is explicitly wanted, actively mobilised by European regulators (European Commission, 2021b, p.25), even assessed as crucial for the AI transformation (European Commission, 2018, p.8).

Additionally to an investing role, the private sector gets attributed the role of developer, researcher and experimenter in order to enhance AI (European Commission, 2018, p.8). The commission aims at creating conditions to enable businesses to "play their role in developing and deploying AI on EU-wide scale" (European Commission, 2021a, p.8). By actively "engaging industry (...) in the development and uptake of AI technologies" (European Commission, 2021b, p.3), public actors actively rely on the activities of the private sector. Beyond the pure reliance as a developer, the Commission facilitates the cooperation between research teams in "AI excellence centres" which strive to "facilitate closer cooperation, integration and synergies between research teams and industry" (European Commission, 2021b, p.19). Developments in AI are, thereby, closely linked to industry involvement. Interestingly, the Commission set up an "AI lighthouse for Europe" (European Commission, 2021b) which strives at achieving excellence in research by "bringing together leading players from research, universities and industry (p.19). While the initiative aims at bringing research into public scope, the inclusion of industry is remarkably visible.

Furthermore, the Commission fosters a business-education cooperation and, thereby, relies on the industry as a sort of educating institution. "The Commission will: (...) encourage (...) business-education partnerships to take steps to attract and retain more AI talent and to foster continued collaboration" (European Commission, 2018, p.13). With the aim of "anticipating changes in the labour market" (European Commission, 2018, p.3), the Commission attributes a big role to the private sector: the education of the workforce.

Finally, some documents expose the reliance on the private sector by naming private actors along with the Commission and Member States (European Commission, 2021a, p. 8; 2021b, p.2). Naming these three actors and how they can "accelerate, act and align to seize the opportunities AI technologies offer and to facilitate the European approach to AI" (European Commission, 2021a, p. 8), it becomes clear that the private sector plays a key role in the approach.

Cooperation with the private sector is always referring to stakeholder involvement through general involvement by the Commission and European initiatives, such as Alliances or

partnerships. Throughout the documents, European regulators stress and praise the inclusive AI approach and the "collaboration across a wide spectrum of public and private players" (European Commission, 2021b, p.45). The Commission is no exception to this and is said to have the task of regular exchange with relevant stakeholders, "notably with businesses" (European Parliament, 2020, A(IV)).

The European AI Alliance is referred to in all European documents as a forum for stakeholder cooperation. It is, for example, mentioned under the heading "Joining forces" and the subheading "Engaging stakeholders: setting up a European AI Alliance" (European Commission, 2018, p.17). The multi-stakeholder forum is seen as a crucial platform for information exchange and discussion (European Commission, 2021b, p.9). It aims at mobilising a "diverse set of participants, including businesses, consumer organisations, trade union and other representatives of civil society bodies" (European Commission, n.d. a). Even though a register of the Alliance couldn't be found, the industry influence is observable due to, for example, the order of stakeholders. Besides the AI Alliance, the documents introduce the European Alliance for industrial data, edge and cloud which should "mobilise private and public actors to join forces" (European Commission, 2021b, p.13). In addition to Alliances related to AI, European regulators rely on stakeholder involvement through partnerships, such as the European Partnership on AI, Data and Robotics. The partnerships "bring the Commission, Member States and private and/or public partners together to address and deliver on some of Europe's most pressing challenges" (European Commission, 2021b, p.16). Paradoxically, private partners are, again, illustrated along with public actors on European and national levels, whereas the public sector is not depicted as a required actor in the AI approach. A variety of existing partnerships related to AI, moreover, uncovers the involvement of the private sector (European Commission, 2021b, p.17).

The *consultative* and advice-giving role of the private sector is best observable through public consultation and its work in expert groups. In terms of stakeholder consultation, it is interesting that the commission points at the minimum standards of consultation in its proposal for an AI act (European Commission, 2021c, p.7) which calls consultation a "win-win situation all round" (European Commission, 2002, p.4).

Most of the analysed documents stress the public consultation in 2020 to enable stakeholders' participation in the AI approach. While presenting it as an "extensive consultation

with all major stakeholders" (European Commission, 2021c, p.7) and "a major initiative to collect stakeholders' opinion on the EU's AI strategy" (European Commission, 2021b, p.9), the results of the consultation disclose the dominance of private sector participation. 352 participants were categorised as "business and industry" and 128 as "civil society", as well as 134 position papers were prepared by businesses and 82 by civil society (European Commission, 2020, p. 3, 15). Additionally, the order in which the Commission states the stakeholder it is interested in reveals a focus on businesses: "AI developers and deployers; companies and business organisations; Small and Medium-sized Enterprises (SMEs); public administrations; civil society organisations; academics; citizens" (European Commission, n.d. b).

European regulators constantly stress the essentiality of expert consultation and, thus, created many expert groups concerning AI, such as the horizontal groups AI HLEG, High-level expert group on the impact of the digital transformation on EU Labour Markets and Expert group on liability and new technologies, as well as sectoral expert groups, such as on autonomous vehicles (European Commission, 2021b, p. 8). Taking the group on liability and new technologies as an example, its member register unfolds that of the 19 participating organisations, 12 are trade and business associations (European Commission, n.d. c). The most illustrative example of private involvement through expert groups, however, is the AI HLEG where organisations are the biggest participating group (European Commission, n.d. d). The organisations enclose companies such as Airbus, Bayer, Google, Nokia, Zalando and the Robert Bosch GmbH.

Lastly, the involvement through *self-regulation* can be observed on multiple non-binding elements in the AI approach. Unexpectedly, the fear of overregulation is expressed repeatedly.

While the proposal for an AI Act introduces legally binding measures for high-risk AI systems, non-high-risk developers "only have minimal obligations" (European Commission, 2021c, p.10) and "additionally could choose to subscribe to voluntary, non-binding, self-regulatory schemes, such as codes of conduct" (European Commission, 2021b, p.33). Both the Commission and Parliament highlight the voluntary adoption of code of conducts (European Commission, 2021c, p.36; European Parliament, 2020, (144)), thereby giving parts of the regulatory process in the scope of the private sector. Absurdly, the proposal contains four policy options with varying degrees of regulatory intervention, where option one comprises "setting up a voluntary labelling

scheme" (European Commission, 2021c, p.9) for high-risk systems. Even though this option is not the preferred option, it is paradoxical to observe that a voluntary option is at all considered.

Attributing to the industry the function of regulating itself exposes the reliance on private sector involvement in the AI approach. The European regulators stress the need for an appropriate and proportionate regulatory framework (European Parliament, 2020, A(I)) "to avoid hampering future innovation and the creation of unnecessary burdens" (European Parliament, 2020, (S)), as well as to "avoid regulatory overreach" (European Commission, 2021a, p.6) and "unnecessary burdens" (European Commission, 2021c, p.59). Additionally, the Commission demands a framework which "intervenes only where this is strictly needed", calling this a "light governance structure" (European Commission, 2021a, 6). Strangely, while European regulators constantly stress a proportionate framework, they seldomly, namely only twice, critically reflect upon voluntary measures.

4.2.2. *European Union Agency for Fundamental Rights*

The agency's involvement of the private sector in regulating AI constitutes a reference point to the Commission's and Parliaments's approach. Generally, *reliance*, *cooperation* and *consultation* are mentioned in terms of European institutions, other public institutions, experts and stakeholders, whereas stakeholders and experts – contrasting to the European institutions' perception of stakeholders/experts – refer to civil society actors or, at least, non-private actors. In terms of an involvement through *self-regulation*, the lack of a regulatory framework is viewed as critical by the FRA, in contrast to the fear depicted in the European document of overregulating the new technology.

The agency's stakeholder cooperation through the Fundamental Rights Platform and the Fundamental Rights Forum depict the inclusion of non-private actors. Through a Fundamental Rights Platform, "[t]he Agency shall closely cooperate with non-governmental organisations and with institutions of civil society (...) at national, European or international level" (Council of the European Union, 2007, Art 10(1)). Furthermore, the Fundamental Rights Forum brings together "global and European voices from politics, human rights, international and regional intergovernmental organisations, civil society, religious and faith communities, the arts and sports, businesses and trade unions." (FRA, 2018a, p.13). Whereas the agency does highlight the cooperation with relevant and interested stakeholders (Council of the European Union, 2007, Art.

10 (3); (19)), the focus on non-private actors is observable on the basis of the order in which the stakeholders are mentioned.

Assessing the reliance on private sector involvement, it is paradoxical to notice that only once in all documents – Commission, Parliament and FRA documents –, the reliance on companies is explicitly stated. The FRA remarks (2020a, p.34):

> Public authorities typically rely on private companies for procuring and deploying the technology. Industry and the scientific research community can play an important role in developing technical solutions (...). Placing fundamental rights (...) at the centre of all technical specifications, would ensure that the industry pays due attention thereto. Possible measures could include a binding requirement to involve data protection experts and human rights specialists in the teams working on the development of the technology, to ensure fundamental rights compliance by design.

This excerpt illustrates that while recognising the reliance on the private sector, the FRA explicitly doesn't involve the private sector in its AI approach but rather expresses demands for a legally-binding framework to restrict companies. While the agency acknowledges that there are efforts of the private sector to support AI impact assessments as well as various codes of conducts or ethics, private standards and non-binding certification schemes (FRA, 2020b, p.90), the agency, meaningfully, doesn't comment on these forms of private regulation – in contrast to the Commission and Parliament. Beyond that, the agency demands stronger regulations, especially in combination with the duty to obey fundamental rights (FRA, 2020a, p.34).

Finally, it can be argued that the agency doesn't rely on the involvement of the private sector at all in its AI approach. Additionally, the FRA constantly stresses its independence, from private, but also from public actors. In its strategy, one of its five priorities is the provision of independent advice (FRA, 2018a, p.9). This focus on independence contrasts the position of the Commission which promotes an inclusive approach.

4.3. Why the Private Sector is involved

Based on the network governance literature and NRC, the reliance on private sector involvement can be reduced to the perceived technical knowledge and expertise in the field. Since the differentiation between technical knowledge and expertise is not elaborated by Farrand and Carrapico (2018), nor observable in the documents, the two arguments are treated interchangeably

in this research. Farrand and Carrapico (2018) observe that technical expertise by the private sector has resulted in technical standards developed by the industry. The following section reviews the standards the documents refer to identify who is seen as possessing expertise.

4.3.1. *European Commission and European Parliament*

Besides the already discussed expert groups which are assessed to possess expertise, the use of expertise is linked to the implementation of policies on the one side, and technical expertise on the other side. While the NRC framework focuses on technical knowledge, expertise on implementation is insightful to observe in this research.

The Commission names the AI on-demand platform AI4EU, the European Digital Innovation Hubs (DIH), the Testing and Experimentation Facilities and the European Artificial Intelligence Board as supporting the implementation of the regulation due to their expertise (European Commission, 2021c). Those four entities all rely on private actor involvement in different ways. The AI platform AI4EU, for example, consists of 81 "academics, technology leaders, policymakers, companies, and businesses in AI, industries, and non-AI sectors" (AI4EU, n.d.). Surprisingly, academics are named as first actors on the one hand, and the majority of included actors are private sector representatives on the other hand. After a closer look at the composition of the DIH, a list of German and Dutch hubs reveals that whereas individual hubs are academically informed, such as the TechMed hub in Enschede (European Commission, n.d. e), most hubs unveil pro-business characteristics, such as the innovation-centrum modern industry Brandenburg (European Commission, n.d. f).

That technical expertise is closely related to the industry is visible perpetually throughout the documents. As said, the Commission has set up multiple expert groups "in order to mobilise expertise related to AI technologies" (European Commission, 2021b, p.7). The Parliament, moreover, refers to industry expertise (European Parliament, 2020, (92)) as relevant for technical development. Expectedly, the inclusive approach is visible when considering the generating of expertise: The Parliament "suggests a centre of expertise be created, bringing together academia, research, industry, and individual experts at Union level, to foster the exchange of knowledge and technical expertise" (130). Absurdly, the regulators highlight the inclusive approach while, for example through the public consultation (European Commission, 2020), it is observable that the inclusive approach is not including all stakeholders equally after all.

Lastly, the analysis manifests that standards in the AI approach are not as clearly defined as in the NIS sector and that the two dominant reference points are public bodies, such as international standardisation bodies and European regulations, on the one hand, and relevant stakeholders on the other hand. It revealed that in the frame of the AI approach, European regulators are concerned with safety, technical, general AI, industry, and international standards. There is no existing set of standards but rather a patchwork of standards imposed by a variety of actors. The Parliament assigns the Commission the task of "cooperating (...) through regular exchanges with concerned stakeholders and civil society, in the EU and in the world, notably with businesses, social partners, (...) including as regards the development of technical standards at international level" (European Parliament, 2020, A(IV)). Highlighting the cooperation with businesses, these relevant stakeholders can be assumed to be private entities rather than public ones. Correspondingly, whereas European regulators mention European standardisation organisations (European Commission, 2021b, p. 34), civil society representatives (European Parliament, 2020, A(VI)) and expert groups (European Commission, 2021c, p. 63) along with relevant stakeholders, the stakeholders are the common factor in the standardisation process. This is shocking assuming their private-sector-nature. Finally, a reference to the regulation concerning the standardisation process in the EU (European Commission, 2021c, p. 32) is insightful to explain this stakeholder involvement. Regulation No 1025/2012, Article 2 states:

> In accordance with the founding principles, it is important that all relevant interested parties, including public auth-orities and small and medium-sized enterprises (SMEs), are appropriately involved in the national and European standardisation process. National standardisation bodies should also encourage and facilitate the participation of stakeholders.

Considering that the regulation concerning standardisation explicitly states that relevant parties, including companies, should be involved, private involvement in European AI standardisation is no surprise.

4.3.2. *European Union Agency for Fundamental Rights*

The agency's perception of who possesses expertise, and who should participate in the standardisation process, differs from the Commission's and Parliament's perception. The agency

constitutes itself as an "expert body" (FRA, 2018a, p.10) and objects to the involvement of external, private experts.

Beyond the internal expertise by the FRA (Council of the European Union, 2007, (20)), the agency relies on stakeholder involvement to uphold expertise. An example is the Fundamental Rights Platform which "shall constitute a mechanism for the exchange of information and pooling of knowledge. It shall ensure close cooperation between the Agency and relevant stakeholders" (Council of the European Union, 2007, Art. 10(2)). Similar to the European institutions, the agency is "drawing on the expertise of a variety of organisations and bodies" (Council of the European Union, 2007, Art. 6(1)), however, these organisations are – as established in section 4.1.2 – non-private actors. The perception of whom the FRA views as "expert" is observable in one report, where the agency speaks of "UN experts" (FRA, 2020a, p.23) and "civil society experts" (p.30).

In accordance with the FRA as an expert in the field of fundamental rights, the agency relies on the fundamental rights standards as set in the Charter of Fundamental Rights (European Union, 2000). Beyond fundamental rights standards, the agency refers to industry standards (FRA, 2018b; 2019), as well as standards developed by Data Documentation Initiative (FRA, 2019), the International Standards Organisation (FRA, 2020a), the OECD (FRA, 2020b), UNESCO (FRA, 2020b) and European Union directives (FRA, 2020b). In contrast to the Commission and Parliament, the agency doesn't emphasise the role of private stakeholders in the standardisation process.

Table 5

Findings of the Analysis: Reliance on Private Sector Involvement in the AI Approach

		Commission and Parliament = European AI Approach	FRA = Reference Point
How		*Reliance* in terms of investor, developer and trainer of the workforce	*Reliance, cooperation* and *consultation* are mentioned in terms of European institutions, public institutions and civil society actors
		Cooperation through general involvement and European initiatives, such as alliances and partnerships	
		Consultation by means of public consultation and the work in expert group	*Self-regulation* in terms of critical witnessing of a lack of a regulatory framework
		Self-regulation in terms of non-binding elements in the approach and the connotation of fear of overregulation	
(4.2)		(4.2.1)	(4.2.2)

Why	Expertise in implementing policies is possessed by multiple actors which are influenced by the industry	Expertise is hold by the agency, public and civil society organisations
	Technical expertise is hold by expert groups and generated through stakeholder involvement	Development of standards by means of public bodies, such as standardisation organisations
	Development of standards through stakeholder cooperation	
(4.3)	(4.3.1)	(4.3.2)
Answer to RQ	In an uncritical, rather encouraging manner, European regulators rely on private sector involvement in the AI approach through self-regulation by the private sector, consulting the private sector and cooperating with the private sector, as well as overall relying on private sector activities as an integral part of the European AI approach.	

Source: Author

4.4. Concluding Remarks

In this chapter, the NRC framework was used to investigate the reliance on private sector involvement in the European AI approach. A summary of the findings can be found in table 4. Foremost, it was identified that the FRA is no fundamental element of the European AI approach which results in the fact that the AI approach is seen as only shaped by the Commission and the Parliament. Thus, the theoretical expectation – hat the NRC framework still holds when applied to a different context than NIS – is not confirmed in the case of the AI approach, due to a missing AI agency and the selection of the FRA as the corresponding agency. Nevertheless, applying the NRC framework to the Commission and Parliament could still deliver helpful insights into the reliance on private sector involvement.

The investigation of the division of labour between the state and the private sector (SQ1) reveals that European regulators actively involve the private sector in the AI approach. Four forms of state-private sector division are observable in the European institutions' documents, however, not in the documents by the FRA. Unexpectedly, the entities clearly differ in terms of private sector involvement. On the one side, the Commission and Parliament highlight the essentiality of a proportionate approach and the avoidance of overregulation, and on the other side, the FRA demand more regulation. This finding is not strange, but its explicit mentioning is unexpected. Therefore, the public-private division of labour in AI policymaking is concluded as intertwined and the boundaries where public starts and private ends could be identified as blurred.

Researching arguments for including the private sector in the AI approach (SQ2), the analysis divulges that European regulators illustrate expertise as closely linked to the industry. In contrast to the FRA's generation of expertise, European regulators emphasise the inclusion of private stakeholders in generating expertise and standards. Beyond the theoretically expected technical knowledge and expertise, the inclusive policymaking approach in the European Union was identified as a central argument for stakeholder inclusion. On the one hand, both entities emphasise the importance of wide incorporation of relevant stakeholders, calling it, for example, an inclusive approach (European Commission, 2021b, p.3), but on the other hand, the perception varies fundamentally on who is included as a relevant stakeholder. The inclusion of social and public partners by FRA accentuates the inclusion of industry and private actors by the Commission and Parliament. Hence, the arguments for private sector inclusion in the AI approach can be broken down into expertise possessed by the industry and actors which are influenced by the private sector and the general European goal of an inclusive system. The discovered connotation of an inclusive approach to policymaking goes in line with a Commission's white paper with the title "European Governance", proposing that the EU opens up the policy-making process "to get more people and organisations involved in shaping and delivering EU policy" (European Commission, 2001, p.2). These findings are aligned with the theoretical expectation of NRC and add the inclusive policymaking approach as an argument for including the private sector in the European AI approach (Appendix E).

5. Conclusion

5.1. Answer to the Research Question

The goal of this thesis was to research the ways in which European regulators rely on the involvement of the private sector in the European AI approach. Firstly, the analysis reveals that European regulators, namely the European Commission and the European Parliament, rely extensively on the involvement of the private sector in the European AI approach. Private sector involvement cannot be narrowed down to the role as a provider of goods and services but takes up the form of reliance on -, cooperation with -, consultation of -, and self-regulation by the private sector. The four forms of private sector involvement illustrate the multiple ways in which public regulators rely on the industry in the AI approach. The research, moreover, unveils that European regulators do not critically assess private sector inclusion but rather foster and actively encourage it due to an inclusive European policymaking approach and perceived expertise. Therefore, the research question can be answered with: In an uncritical, rather encouraging manner, European regulators rely on private sector involvement in the AI approach through self-regulation by the private sector, consulting the private sector and cooperating with the private sector, as well as overall relying on private sector activities as an integral part of the European AI approach.

A second finding this thesis has delivered is that the NRC framework only holds to a certain extent when applied to the AI approach. To a policy field such as AI, where the corresponding agency has not yet been formed, the NRC framework holds to a far more limited extent. While the study by Farrand and Carrapico (2018) depicts the ideal setting, a policy field with a directly corresponding agency, this ideal setting cannot be found in reality when examining the AI approach. This illustrates a major limitation of the framework as novel developments cannot be examined with the NRC framework due to a missing corresponding agency. Another limitation of the framework is the missing coding scheme and missing conceptualisation of the framework by the researchers. In retrospect, the creation of a coding scheme based on the analysis by Farrand and Carrapico (2018) leaves room for subjectivity and interpretation by the researcher so that the framework illustrated in this research might not capture all facets of NRC described by its developers. Nonetheless, the framework of how and why the private sector is involved could be applied to the AI approach. Hence, the enhancement from regulatory capitalism to NRC does deliver insights into how and why the private sector is involved, as well as the extent to which the

private sector gets attributed an active role in European policymaking regarding AI. The finding that the role of the private sector can not be narrowed down to the role as a provider of goods and services but takes up an active steering role in the AI approach supports the expectations of the NRC framework. In this regard, the NRC framework – combining regulatory capitalism and network governance literature – can be assumed to be an enrichment of the regulatory capitalism framework. Altogether, this study uncovers that while the NRC framework only holds to a limited extent when applied to the European AI approach, it does deliver illustrative proof that the private sector has a steering function in European AI policymaking, based on the fact that European regulators rely on the involvement of the private sector in the AI approach.

5.2. Suggestions for Future Research

The findings of this research fill two research gaps. First of all, the topical European AI approach is examined for the first time in terms of the reliance on private sector involvement in the policy field. Secondly, the analysis researched whether the NRC framework still holds when applied to another policy sector. This research of the AI approach is, thus, unique and a first step in researching a policy field that can be assumed to gain more importance in the future. On top of that, the NRC framework was for the first time operationalised and applied to a different policy field than NIS. Further research should be directed at further investigation of the European AI approach, as well as further engagement with the concept of NRC. Since only a limited number of studies have been investigating the European AI approach (e.g Dias Pereira, 2021; Smuha, 2020), further research focusing on the inclusion of actors is needed to ensure that the AI approach is not driven by industry interests. Another approach of scrutinising the AI approach and its participants is to apply the regulatory intermediary framework (RIT) which theorises the roles stakeholders can adopt in the regulatory process (Kourula, Paukku, Peterman, & Koria, 2019). RIT hypothesises regulation changed from a two-party relationship to a three-actor structure where intermediaries fulfil diverse roles, from providing expertise and feedback to monitoring (Abbott, Levi-Faur & Snidal, 2017). Applying the RIT framework might clarify the role the private sector has in the regulatory process, thereby viewing private sector involvement not necessarily as a danger for interest representation but as an integral part of the regulatory process. Beyond examining the inclusion of actors in shaping the AI approach based on textual data, an investigation of private sector involvement through tracking the Commission's meetings with specific stakeholders might

shed light on the actual involvement beyond the involvement revealed in the policy documents. Another research direction should be to scrutinise the content of the AI approach and research who benefits from the position and what are shortcomings. Researching the reliance on private sector involvement on the AI approach is one thing, but an actual investigation of whether the involvement is visible in the content of the AI act is another thing. Additional to the AI approach, the findings of this research reveal that the NRC framework requires further application on another European policy field to see whether it holds when applied to another field than the AI approach. The NRC framework needs more attention, such as the insight of whether the AI approach and the FRA were an exception to an intact theoretical framework or whether the NRC framework only holds when applied to NIS. These insights are needed to support or falsify a framework that has the potential for being a widely-used framework for the examination of private sector involvement.

The finding of this research – that European regulators rely on private sector involvement in the European AI approach – goes in line with the literature about polycentric governance (Van Zeben & Bobić, 2019), multi-actor governance (Koopmans, Rogge, Mettepenningen, Knickel, & Šūmane, 2018), (decentralised) network governance (Bevir & Rhodes, 2003; Castells, 2010; Zwitter & Hazenberg, 2020) and the literature on the regulatory state in transition (Journal of European Public Policy, 27(11), 2020). Moreover, the scholars of the research stream of hybridity of public governance (Kemper & Partzsch, 2018; Quélin, Kivleniece & Lazzarini, 2017) argue that there is a "deep and mutual dependence between public and private in which the EU relies on a private system of compliance and verification" (Kemper & Partzsch, 2018, p.837). The common element of these research streams is the rejection of a clear distinction between public and private activities in the policymaking process and the classical idea of a single, central regulator in the process. The insights developed in the analysis position this research along with other hybrid forms of governance which reject the belief that the state is the centre of power in the policymaking process, but rather stakeholder involvement as an integral part of policymaking. Given the findings, this research does not fundamentally disagree with scholars since private sector involvement through, for example lobbying, has a wide consensus among scholars. What is new is the finding that also in the AI approach, the private sector is extensively involved, assessed through a systematic review identifying four differing divisions of labour between the public and private institutions.

Regarding the theoretical expectation of this research, the findings of this research support the extended role of the private sector as a regulation shaper introduced by NRC. Even though the FRA didn't fit with the AI approach, the theorised involvement of private stakeholders through European agencies is supported by Arras and Braun (2018) which identify a high degree of non-state stakeholder involvement in European agencies and the findings by Busuioc and Jevnaker (2020) revealing that agencies are independent in choosing their level of stakeholder involvement. Given the analysis and the support for the NRC framework, this research discredits the hypothesised role of the private sector as a provider of goods and services by regulatory capitalism scholars.

5.3. Practical Implications for Policymakers

This research has illustrated that European regulators rely on private sector involvement in the AI approach due to expertise possessed by the industry, as well as an inclusive approach in policymaking. As an active role in the AI approach implies that private interests are incorporated, concrete actions are required to combat an overproportional representation of industry interests.

First of all, while the incorporation of multiple actors in the policymaking process is not per se a negative characteristic, the overrepresentation of private actors in contrast to civil society and social actors in the AI approach is problematic. Therefore, the inclusive approach should be maintained but adjusted to ensure equal representation of the diverse participating actors. This transformation could perhaps be accelerated by public awareness, but ultimately, the fair inclusion of actors has to emanate from European regulators. Such a reform would be beneficial for non-private actors to increase their role in the AI approach but on the other side difficult to manage. Incremental, structural changes in the European system initiated by the Commission and the Parliament could include information about current stakeholder involvement and mechanisms balancing the inclusion of private, social, and civil society actors. Information about the current situation could include easy access to member registers – such as the member register of the AI Alliance –, and an improved version of the transparency register. Balancing mechanisms could encompass monetary support of non-private actors to increase their research abilities to establish expertise in AI and to counteract the reliance on the private sector in developing AI.

On the contrary, the focus on private stakeholders in the AI approach illustrates that European regulators voluntarily do not foster equal representation. Hence, mandatory mechanisms

to ensure the equal inclusion of all actors could combat private overrepresentation. It remains unclear who is to initiate such mandatory measures if the European institutions are identified as not highlighting such actions. Ultimately, the only possible solution to initiate the transformation of the European structure is to mobilise the broad public. Changes in voting behaviour, as well as demonstrations, might force European regulators to reconsider the involvement of businesses in European policymaking. The citizens are the ones who need to coerce the European regulators to review private sector involvement more critically and, thereby, initiate the changes needed to transform the European Union into a system where equal representation is guaranteed. Another actor as a driver of change could be the private sector which could decrease its involvement in European policymaking. This option, however, is considered rather unrealistic so that the most likely initiator of change is civil society engagement.

In addition to the mobilisation of civil society, more institutionalised and regulated cooperation between the private and public sector, such as in a public-private partnership (PPP), could decrease the involvement of the private sector in decision-making and foster the benefits of public-private cooperation: The joint supply of infrastructure and public service. Through PPPs, the boundaries between public and private functions in delivering the services, as well as the risks associated with the partnership, are clearly defined (Wang, Xiong, Wu & Zhu, 2018). The structure of PPPs, therefore, can combat the threat of private interests in policies due to decreased collective decision-making. Whereas there are already existing partnerships regarding AI – such as the European Partnership on AI, Data and Robotics – the structure could be expanded by the European regulators.

To conclude, the findings of this research clearly illustrate that the reliance on private sector involvement in the European AI approach needs to be decreased in order to combat a disproportionately high representation of corporate interests in European policies. Such a reform would need to be extensive and supported by the European institutions, civil society and, above all, the private sector in order to work. Since private sector compliance cannot be expected, civil society as a motor for change is most prosperous.

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7. Appendix

7.1. A: Selected Policy Documents of the Commission and Parliament

Title	Publisher	Source type	Date	Pages	Link
Artificial Intelligence for Europe	Commission	Communication from the Commission	2018	20	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A237%3AFIN
Framework of ethical aspects of artificial intelligence, robotics and related technologies	Parliament	Text adopted	2020	59	https://www.europarl.europa.eu/doceo/document/TA-9-2020-0275_EN.pdf
Fostering a European approach to Artificial Intelligence	Commission	Communication from the Commission	2021a	10	https://digital-strategy.ec.europa.eu/en/library/communication-fostering-european-approach-artificial-intelligence
Coordinated Plan on Artificial Intelligence 2021 Review	Commission	Communication from the Commission)	2021b	66	https://digital-strategy.ec.europa.eu/en/library/coordinated-plan-artificial-intelligence-2021-review
Laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts	Commission	Proposal for a legislative act	2021c	108	https://ec.europa.eu/newsroom/dae/items/709090
Total number of pages				263	

7.2. B: Selected Policy Documents of the European Agency for Fundamental Rights

Title	Publisher	Source type	Date	Pages	Link
Establishing a European Union Agency for Fundamental Rights	Council of the European Union	Regulation	2007	14	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R0168&from=EN
Establishing a Multiannual Framework for the European Union Agency for Fundamental Rights	Council of the European Union	Council Decision	2017	4	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D2269&from=EN
FRA Strategy	FRA	Strategy Plan	2018a	17	https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fra-strategy-2018-2022_en.pdf
#BigData: Discrimination in data-supported decision making	FRA	Publication	2018b	14	https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-focus-big-data_en.pdf
Data quality and artificial intelligence - mitigating bias and error to protect fundamental rights	FRA	Publication	2019	20	https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-data-quality-and-ai_en.pdf
Facial recognition technology: fundamental rights considerations in the context of law enforcement	FRA	Publication	2020a	36	https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-facial-recognition-technology-focus-paper-1_en.pdf
Getting the future right – Artificial Intelligence and fundamental rights	FRA	Report	2020b	108	https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-artificial-intelligence_en.pdf
Total number of pages				213	

7.3. C: Base for Coding Scheme: Extracts of the Analysis by Farrand & Carrapico (2018)

Policy document reference	Interpretation by Farrand & Carrapico (2018)	Derivative for coding scheme
Direct interaction and engagement with **private stakeholders**, based on "**dialogue, partnership** and empowerment" (European Commission, 2006)	The commission views the roles of **private and public sectors** regarding NIS as **complementary**, necessitating policies based on **multi-stakeholder dialogue** (p.206)	Multi-stakeholder, dialogue
"**cooperation** is key for successful responses to […] new security challenges" (European Commission, 2017a)	Given the perception of **industry expertise**, and that **industry** is best placed to combat these security threats, the importance of such cooperation is likely to be reinforced, rather than dismissed (p.213)	Cooperation, industry expertise
The Commission expressed hope that a **multi-stakeholder** governance model, facilitated by ENISA, could "foster **the involvement of the private sector** in the **definition** of strategic public policy objectives as well as operational priorities and measures" (2009, p.6)	This is linking national policy-making to **operational expertise**, and putting the private sector at the centre of the regulatory process, 'steering' as well as 'rowing' (p.208)	Definition, objectives, involvement
As a document published by ENISA in 2012 demonstrates, the standards applied to ensuring information security and integrity are based heavily upon a set of twenty **industry standards** in use in the EU telecommunications market (2012, p.4)	Through the **identification of standards of best practice**, as well as the perceived position of **experts** in the field of telecoms, although the Commission has imposed binding legislation upon them, they have nevertheless been able to influence the standards by which the legislation is applied and interpreted by feeding into the **multi-stakeholder** process. It is likely that the **private sector** will be as actively **involved** in such activities in the future (p.209)	Standards, industry-standards, best practice, multi-stakeholder, involved

7.4. D: Findings of the Analysis

Private sector Involvement	Subcategory	Element in European AI Approach	Example
		Investor in AI	"Joint efforts by both the public (...) and private sectors are needed to increase overall investment"
	Reliance	Developer of AI	"Engaging industry (...) in the development and uptake of AI technologies"
		Trainer of workforce	"The commission will (...) encourage (...) business-education partnerships"
		European AI Alliance	"Engaging stakeholders: setting up a European AI Alliance"
How	Cooperation	EU Alliance for industrial data, edge & cloud	"Launch a European Alliance (...) to mobilise private and public actors to join forces"
		Partnerships: Partnership on AI, Data & Robotics	"(...) bring the Commission, Member States and private and/or public partners together"
		Minimum standards	„Win-win situation all round"
	Consultation	Public consultation	Participants: 352 business and industry versus 128 civil society
		Expert groups	Members of the High-level expert group on AI include Google, Nokia and Airbus
	Self-regulation	Non-binding elements	"Businesses (...) that develop (...) AI applications not classified as high-risk would only have minimal obligations"
		Fear of overregulation	"To avoid regulatory overreach, the proposal (...)"
		AI4EU	The majority of included actors are private sector actors
		DIH	Most hubs disclose pro-business characteristics
	Implementation	TEF	"Testing and experimentation infrastructure that are open to businesses of all sizes"
		AI Board	"The Board may hold exchanges with interested third parties to inform its activities"
Why	Expertise — Technical	Expert group	"(...) in order to mobisile expertise related to AI technologies (...)"
		Industry	"Common EU AI capabilities (...) can bridge the (...) lacking industry expertise (...)"
	Standards	Stakeholder	Establishment of standards through a regular exchange with concerned stakeholders
		Inclusive approach	"(...) it is important that all relevant interested parties (...) are appropriately involved"
	Inclusive approach	Importance of stakeholder involvement	"Together, we can place the power of AI at the service of human progress"

Network Regulatory Capitalism