The Question of Digital Responsibility

An Ethnography of Emergent Institutional Formations in the Contemporary Governance of Technology

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THE QUESTION OF DIGITAL RESPONSIBILITY

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FREDERIK SCHADE

THE QUESTION OF DIGITAL RESPONSIBILITY

An Ethnography of Emergent Institutional Formations in the Contemporary Governance of Technology

CBS

The Question of Digital Responsibility

An ethnography of emergent institutional formations in the contemporary governance of technology

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Abstract (English)

In recent years, the social and societal expectation of "responsible digitalization" seems only to have become more pronounced. This development has occurred in tandem with regulatory and other institutional initiatives aimed at governing digitalization, yet from a social scientific standpoint relatively little is known about the particular way(s) in which "digital responsibility" becomes institutionalized in practice. In this thesis, I present the first long-term empirical (ethnographic) exploration of such processes in the context of two Danish organizations working on technological governance. The purpose of this investigation is twofold: 1) it allows me to challenge certain tenets of the emergent literature on "corporate digital responsibility" (CDR) based on insights obtained in the field; and 2) it inspires the development of an analytical framework geared at analyzing processes of institutionalization starting from a particular concept of socio-symbolic performativity.

Abstract (Danish)

I senere år lader den sociale og samfundsmæssige forventning om ”ansvarlig digitalisering” til kun at være blevet mere udtalt. Denne udvikling har fundet sted samtidigt med fremkomsten af regulatoriske og andre institutionelle initiativer rettet mod øget styring af digitalisering, dog er den samfundsvidenskabelige viden om måderne hvorpå ”digital ansvarlighed” i praksis institutionaliseres relativt begrænset. I denne afhandling præsenterer jeg derfor det første længerevarende etnografiske studie af sådanne processer i kontekst af to danske organisationer og deres arbejde med teknologisk styring. Formålet med dette studie er todelt: 1) det sætter mig i stand til at udfordre dele af den eksisterende litteratur om ”digital ansvarlighed” i organisationer (CDR) baseret på indsigter fra felten; og 2) det inspirerer udviklingen af et teoretisk analyseapparat til den videre analyse af institutionaliseringsprocesser på basis af et bestemt begreb for social-symbolsk performativitet.

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Introduction

With his notion of the "network society," Manuel Castells famously pointed to digitalization as *the* defining characteristic of our contemporary era (Castells, 2010). And indeed, digitalization – broadly understood as the restructuring of social and institutional life through new forms of digital and computer technologies (Brennan & Kreiss, 2016) – has certainly brought about deep and pervasive shifts to both the infrastructural and sociocultural condition of human life. This to the point that a lack of internet connection may well lead to both social and institutional exclusion as well as a sense of existential vertigo by the individual. The mere fact that it is becoming increasingly difficult to even imagine one's life absent of digital technologies and networks speaks entirely to the central role these technologies have attained for both people and societies all over the world.

Initially, the perceived social value of digitalization as a process and a socio-political project may have been relatively unquestioned. For example, West (2019) describes how the growing uptake and implementation of digital technologies tended to be framed (at least in Western democracies) by narratives positing their inherent democratic potentials such as transparency, participation, empowerment, and a means of constituting new and vibrant international communities. At the same time, however, the invention and institutionalization of digital tracking technologies such as "cookies" appears to have always been accompanied by a measure of skepticism, with critics characterizing such identification tools as "silent interrogators" or "silver bullets" which might allow institutions to target, track, and ultimately treat people on an increasingly individualized basis (ibid.).

Today, it would seem that this ambivalence towards the perceived social value of digital technologies has only become more pronounced. While the trend towards increased datafication and new forms of data-driven surveillance has become an almost taken-for-granted element in many instances of public policy-making and business strategy, an increasing amount of research and journalism continuously points to the possible social harms associated with these technologies; from concerns regarding individual rights to privacy, to discrimination, digital addiction, embedded asymmetries of information and power, new forms of social and individual manipulation and dispossession, as well as challenges to the very institutional fabric (and, thus, functioning) of the democratic model (see e.g., Zuboff, 2015; 2019; Trittin-Ulbrich, Scherer, Munro, & Whelan, 2021; Schade, 2023). A set of sociopolitical events such as the Snowden revelations and the Cambridge Analytica scandal, in particular, sparked the discussion about the adverse impacts of digital surveillance on democratic mechanisms as well as privacy rights considered fundamental to particularly Western democracies. At the same time, Western commentators found in China's emerging "social credit system" the instantiation of some of their most dystopian concerns related to the affordances and societal implications of digital innovation (e.g., Rolley, 2019; Kobie, 2019). As such anxieties became reflected and portrayed in conventional media outlets as well as in TV shows and documentaries like *Black Mirror*, *The Great Hack*, or *The Social Dilemma,* the debate on the social implications of digitalization has been increasingly popularized. Little by little, public opinion, in turn, seems to have shifted from conceiving of digitalization as a project of inherent social value to one that should be guarded, tamed, controlled, and in other ways governed effectively in order to avoid a variety of potential dangers and risks associated

with its unrestricted proliferation. Put differently, to ensure its social value, the project of digitalization would have to become *responsible* and to be undertaken *responsibly* (see e.g., Flyverbom, Deibert & Matten, 2019; Etter, Fieseler & Whelan, 2019).

While regulation has been relatively slow in the US, perhaps the most obvious instantiation of the sociopolitical tendency towards the responsibilization of digitalization is reflected in the enactment of General Data Protection Regulation (GDPR) by the European Union (EU).[1] Widely regarded as the world's most significant regulatory framework for the protection of the right to privacy in the digital era and applying, in principle, to any organization globally that processes data on EU citizens, GDPR has in many ways come to constitute a gravitational center around which much of the contemporary discussion on so-called "digital responsibility" is framed. By now, however, GDPR is far from the only initiative concerned with making digitalization responsible. Around the world, a growing multitude of regulatory, standardization, and principle-based initiatives are emerging which in different ways seek to define and bring about more responsible conduct in the context of digital technologies (often under related headlines such as "data ethics," "data justice," "algorithmic accountability," "digital trust," etc.). These projects are backed and mandated by everything from multilateral and government institutions to non-governmental organizations, universities, and private businesses alike. Examples include new regulatory initiatives by the EU (e.g., DSA, DMA, NIS2, forthcoming regulation of AI), new forms of national regulation (e.g., ICO, 2020), new standardization and certification programs (e.g., ISO, 2019), as well as new public and/or private labelling initiatives (e.g., the D-seal, 2023; Malta.AI, 2019; CyberEssentials, 2023; Swiss Digital Initiative, 2020). A similar tendency towards the gradual "taming" of especially so-called "big tech" companies is occurring in the US as well (and in other parts of the world[2]) where a number of significant anti-trust cases are pending against corporate actors such as Alphabet (Google), Amazon, and Meta (Lasarte, 2023; see also Chee, 2022). Commenting on these developments, Harvard professor Shoshana Zuboff – one of the most renounced critics of "surveillance capitalism" (Zuboff 2019) – at some point declared her new-found optimism to a Danish reporter:

> "We now begin to turn this super-tanker, but it is only the beginning. And if regulators understand that, then this is the beginning of a very positive development. As I said: I believe this is what is happening now." (Lykkeberg, 2020)

Starting from this observation that something significant may indeed be occurring which affects (or, at least, is intended to affect) the directionality of digitalization as a both political and sociotechnical process, the aim of this thesis is to explore this situation further – and perhaps inform its development – by providing an early empirical account of what the concept of "digital responsibility" comes to entail in the context of actual institutions. To achieve this, the thesis starts by taking account of the literature on "corporate social responsibility" (or "CSR") as well as the more recently coined concept of "corporate digital responsibility" (or "CDR"), constituting a

[1] For the comprehensive legal framework of GDPR, see European Union (2016) in the below literature list.
[2] E.g., in India (see Mahajan & Phartiyal, 2023), China (see (Leng, Zhai & Kirton, 2020), and Russia (Reuters, 2022).

subfield in organizational responsibility and ethics literature relating specifically to the question of companies' socio-moral agency and obligations in the context of digitalization. This theoretical presentation implies a critique of a tendency in these research streams to conceive of and define "responsibility" conceptually (rather than empirically), leading to academic definitions of "digital responsibility" that risk being detached from other, empirically emergent definitions of the term. This thesis seeks to mend this shortcoming by analyzing the establishment of the notion of "digital responsibility" in two concrete organizational settings in Denmark where exactly the definition and enforcement of responsible conduct in the context of digitalization is a primary concern. To conduct such an analysis, it mobilizes theory of socio-linguistic performativity to study the continuous institutionalization of "digital responsibility" in these settings. Through this investigation, the thesis illustrates how digital responsibility becomes established as two radically different (and, thus, seemingly conflictual) concepts depending on its particular institutional contexts of emergence. At the same time, analysis illustrates how the notion of digital responsibility across both settings also appears still ripe with uncertainty, pointing to the still highly politicized character of the field in question. To guide this overall investigation, the thesis seeks to address the following research question and related sub-questions:

RQ: How does the notion of digital responsibility come to be established and direct activity within particular organizational settings?

- SQ1: How and to what extent has the establishment of digital responsibility as an institutional norm been addressed within existing literature?
- SQ2: How might an empirical investigation shed new light on the establishment of digital responsibility as an institutional norm by mobilizing theory of socio-linguistic performativity as a lens for ethnography?
- SQ3: Through ethnographic observation, how does the notion of digital responsibility become established and direct activity within two specific governance-oriented institutions in Denmark?
- SQ4: What might be learned by comparing our findings from these two settings about the meaning, state, and development of digital responsibility as an institutional norm in the Danish context?
- SQ5: Based on the theoretical-analytical approach of this thesis, how might we further theorize the exact relationship between socio-linguistic performativity and processes of institutional formation more generally?

By addressing this research question and related sub-questions, the aim of this thesis is to make a twofold contribution to existing literature: one is mainly empirical by providing the first longitudinal and detailed account of the establishment of different notions of digital responsibility in distinct institutional contexts; the other conceptual by proposing a novel theoretical conceptualization of the relationship between socio-linguistic performativity and institutional formation more generally.

The thesis is structured as follows: I start with a brief account of how organizational responsibility has until now been discussed in existing literature and consider the more recently coined term of "corporate digital responsibility." Noting the seemingly limited amount of empirical knowledge on the subject, I move on to propose a suitable theory and method for studying the emergence and establishment of digital responsibility empirically. On this basis, I present an analysis of two distinctly institutionalized settings in which I conducted ethnographic fieldwork in the period from 2020-2021. This two-part analysis is followed by a comparative analysis in which I reconsider my empirical findings; first against the backdrop of existing literature and its theorizations of digital responsibility and subsequently among the two empirical cases themselves in order to arrive at an approximate diagnosis of the state and development of digital responsibility as an institutional norm in Denmark. Finally – and based on the hitherto theoretical-analytical approach of this thesis – I undertake a theoretical reflection on the more exact relationship between socio-linguistic performativity and institutional formation more generally to further substantiate the analytical approach of this thesis and propose a conceptual framework for future empirical work.

Existing literature

In this section, I will address this thesis' SQ1 as posed above concerning the manner in and extent to which the establishment of digital responsibility as an institutional norm has been addressed by existing literature. Since the 1940s, the notion of "corporate social responsibility" (or "CSR") has undergone somewhat meticulous conceptualization and formalization within the academic discourse of particularly American business schools. It was only later – in the mid-90s – that the notion was finally popularized in Western policymaking and business strategy as the logic of neoliberal governance and its techniques of market responsibilization became widespread (see e.g., Carroll, 1999; Shamir, 2008; Parker & Nielsen, 2009). At its most basic, the notion of *responsibility* seems to suggest the expected assumption by particularly private (or other) organizations of various socio-moral obligations or ethical considerations towards the rest of society in a relatively independent or uncoerced fashion (marking the difference between "responsibility" and "obedience" as different types of moral agency) (see e.g., Shamir, 2008). Yet, while the notion of responsibility indeed seems to presuppose an apparently independent and uncoerced form of agency, it simultaneously appears to presuppose an active *responsibilization* of the agent by some moral authority (be that the state, professions, other organizations, the community, etc.) which demands or enacts an expectation of morally appropriate conduct by private companies in the first place. Arguably, this perspective has potential to explain the rise and popularization of "corporate social responsibility" as a historically recent form of corporate practice and a key mechanism of neoliberal governance. As Shamir (2008) notes, largely quoting Selznick (2002):

> "Responsibilization – namely expecting and assuming the reflexive moral capacities of various social actors – is the practical link that connects the ideal-typical scheme of governance to actual practices on the ground. Responsibility – in contrast to mere compliance with rules – presupposes one's care for one's duties and one's un-coerced application of certain values as a root motivation for action […]. As a technique of governance, responsibilization is therefore fundamentally premised on the construction of moral agency, as the necessary ontological condition for ensuring an entrepreneurial disposition in the case of individuals and socio-moral authority in the case of institutions." (Shamir, 2008: 7)

Arguably, while the discourse on corporate responsibility dates back to at least the 1940s, it was not until the rise of neoliberalism and its strategies of privatization, deregulation, and the active nurturing of markets and economic competition for national economic benefit that the idea of "responsible business" became widespread. Responsibilization – as described above – suddenly came to act as a key ingredient of "governance" signaling the moving away from more traditional forms of centralized, top-down, legalistic, and/or bureaucratic forms of authority (demanding obedience) and gradually towards more horizontal, reflexive, and self-regulatory configurations (demanding responsibility). This rationality, in principle, allowed the possibility of deregulating economic activity while simultaneously pushing or urging economic actors towards increasingly independent, self-regulatory forms of conduct, thus imposing upon business organizations socio-moral expectations which had previously been reserved for states (see Shamir, 2008; Parker & Nielsen, 2009). Generally speaking, a primary, ostensible aspiration of this agenda seems to have

been the hope of harnessing the productive power of markets to enable a more efficient provision of social goods through increased competition and economic incentivization (Braithwaite, 2008).

A wide range of actors have historically taken part in pushing for and facilitating the gradual responsibilization of markets and organizations. For governments, new forms of "meta-regulation" have constituted a technique of law-making through which legal prescriptions would take the form of guiding principles rather than precise rules, asking companies and other organizations to "self-govern" by internalizing social values rather than complying with strict commands from the state (Parker & Nielsen, 2009). Non-governmental and civil society organizations have also increasingly been seen to mobilize in attempts to pressure business enterprises to behave responsibly with a political vigor once reserved for governments (Utting, 2005). Even academia has come to play a somewhat moralizing role seeking to ground the trend towards market responsibilization in a sound scientific basis (see e.g., Carroll, 1999). Particularly in the last 30 years or so, the question of corporate responsibility – of what it means or *should* mean to be a responsible market actor – has been the topic of intense academic debate. In this respect, the seeming ambiguity of "responsibility" as a concept is likely to have fueled both its remarkable popularization as well as its often-skeptical reception. This ambiguity has been debated since well before the idea of corporate responsibility became widespread:

> "The term [corporate responsibility] is a brilliant one; it means something, but not always the same thing, to everybody. To some it conveys the idea of legal responsibility or liability; to others, the meaning transmitted is that of "responsible for" in a causal mode; many simply equate it with a charitable contribution; some take it to mean socially conscious; many of those who embrace it most fervently see it as a mere synonym for "legitimacy" in the context of "belonging" or being proper or valid; a few see it as a sort of fiduciary duty imposing higher standards of behavior on businessmen than on citizens at large" (Votaw, 1973: 25).

Today, this ambiguity of "responsibility" as a concept has manifested across the academic field in a multiplicity of acknowledged theoretical perspectives. The debate concerns key questions about both the origin, content, and supposed function of corporate responsibility initiatives. For example, relatively distinct streams of CSR literature have seemed to argue that some kind of "responsibility" is *inherent* to the relation between business organizations and society, yet disagreeing on whether this responsibility derives from economic wealth creation and the maximization of shareholder value (instrumental theories; see e.g., Friedman, 1970), the responsible wielding of corporate power (political theories; see e.g., Davis, 1960; Matten et al., 2003; Palazzo & Scherer, 2008), the continuous integration of pertinent social norms, values, and interests (integrative theories; see e.g., Sethi, 1975; Freeman, 1984; Preston & Post, 1981), or a more or less generalized ethical reflexivity in relation to the rest of society (ethical theories; see e.g., Freeman, 1994; Donaldson & Preston, 1995; Melé, 2002).[3] This situation has unsurprisingly entailed disagreements about exactly which socio-moral or ethical obligations might be defined *a priori* as "inherent" to private economic actors. For example, while representatives of the instrumental perspective have argued that businesses' responsibility to society consists purely of relevant

[3] For an overview of these streams of academic literature, see Garriga & Melé (2004).

economic and legal obligations, representatives of other views have – in different ways – held that the status of the "responsible" organization should be reserved for actors assuming social obligations *beyond* those strictly economic and legal in character (sometimes referred to as the "expansive" view of corporate responsibility). Finally, these debates have led to the formulation of questions concerning the "essential" function as well as social value of corporate responsibility as an organizational practice. The question is raised whether corporate responsibility should be understood as a means to increase company profits, to secure social legitimacy in the form of a "social license to operate," or, rather, as morally substantial attempts by organizations to "do good" for its own sake. All depending on the perspective assumed, corporate responsibility initiatives have subsequently been evaluated on a spectrum ranging from representing the relative socio-moral virtue of particular companies, to merely constituting instances of "greenwashing," in which case the enactment of "responsibility" is characterized as merely an opportunistic marketing tactic devoid – or even corrosive – of any moral worth (see e.g., Frankental, 2001; Banerjee, 2008; Prasad & Holzinger, 2013; Flemming & Jones, 2013).

For our purposes here, it is worth noting how these discussions about corporate responsibility have tended to revolve around relatively conceptual and/or normative definitions of "responsibility" and evaluations of its moral value outside or beyond the more concrete social practices and historical conditions which have given rise to the term. This trend focusing on conceptual work – as distinct from empirical and open-ended investigation – today extends into an emerging sub-stream of academic literature on corporate responsibility in the specific context of digitalization, usually referred to as "corporate digital responsibility" (or "CDR") (Lobschat et al., 2021; Herden et al., 2021; see also Grigore at al., 2017). Although constituting a nascent academic field, there are already indications of the emergent literature on CDR largely echoing previous debates on CSR. For example, initial contributions such as that of Lobschat et al. (2021) and Herden et al. (2021) both appear to revolve around a discussion similar to the one described above. The central question becomes whether the moral responsibility of companies in the context of digitalization entails merely the relevant economic and legal obligations imposed on organizations relating to technology and data, whether responsibility refers only to the fulfilment of social obligations "beyond" these apparently "fundamental" obligations, or whether the concept involves "all levels of [these] corporate responsibilities" in the context of digitalization (Herden et al., 2021: 14; a view explicitly inspired by Carrol's (1991) cumulative "pyramid" of CSR). On the one hand, the view of Lobschat et al. (2021) appears to be that the digital responsibility of companies is and should be considered an inherently voluntary endeavor, while the proposition forwarded by Herden et al. (2021) is to regard CDR as the "sum total" of various social obligations and responsibilities imposed on companies at any given time, some mandatory in character, others voluntary and up to managerial discretion. Ultimately, these discussions thus imply at least three possible theoretical definitions of digital responsibility as (in the context of digitalization):

D1: Concerning only obligations deemed "basic" or "fundamental" to organizational practices (i.e., economic and legal obligations),

D2: Concerning only obligations "beyond" such basic or fundamental obligations,

D3: Concerning "all levels" of potential obligations (incl., economic, legal, moral, and ethical obligations).

It is worth noting how the existing literature tends to revolve around the possible definitions of D2 and D3 while that of D1 tends to be discussed only briefly based on Friedman's (1970) prior critiques of the CSR paradigm (see also above). The general approach of this thesis is different from these initial contributions in constituting a primarily empirical rather than conceptual exploration of "digital responsibility." For this reason, I have considered it important to initially approach my empirical material without imposing these concepts from extant literature onto it, so as to define "digital responsibility" as inductively as possible. Nontheless, we will return to these theoretically derived definitions of the term in this thesis' comparative analysis to discuss – and challenge – these existing ideas based on our empirical findings. Here, I have chosen to include D1 as a potentially viable definition of "digital responsibility" for – as we shall see – important analytical reasons.

The main difference between these conceptual contributions and this thesis thus lies first and foremost in the empirical (rather than conceptual) and open-ended approach assumed to explore and define "digital responsibility." Until now – and to the best of my knowledge – only a single study by Trittin-Ulbrich & Böckel (2022) take such a more empirically-driven approach to studying the construction and legitimization of digital responsibility as an organizational norm. Conducting their study in a German context, the authors also start from a definition of digital responsibility as a generally voluntary effort which – due to this voluntariness – depends on active attempts by company representatives to both legitimize, implement, and thus institutionalize the concept in a business context. While constituting an interesting and explorative study, rich with empirical exemplifications of what "responsibility" might entail in the context of digitalization, the investigation also tends to subscribe to a rather particular definition of "responsibility" as essentially a voluntary endeavor, depending on a market-driven process of institutionalization based on organizational and managerial discretion (i.e., D2 above).

My aim with this thesis is to contribute to the emergent literature on CDR by broadening our conception further of what digital responsibility can and does entail in the context of existing institutions. While starting merely from the most general concept or idea of organizational "responsibility" as something like certain sets of "practices, policies, and governance structures […] as they relate to the digital transformation" (see van der Merwe & Al Achkar, 2022), this thesis is generally committed to treating the particular notion of "digital responsibility" itself as an inherently emic – rather than an etic – concept (i.e., a concept to be discovered and accounted for empirically rather than derived theoretically). This empirical approach is inspired by views on corporate responsibility such as Shamir's (2008) arguing that "responsibility" as a moral concept (and the forms of governance it involves) never exists outside of or beyond the particular and concrete sets of practices which make it up and/or become incorporated by this notion. To conduct such an open-ended study on the emergence and establishment of particular notions of

digital responsibility in distinct organizational settings, this thesis finds further inspiration in Vallentin & Murillo's (2012) call for research on CSR which proposes:

> "[…] a more critical reflection on the [particular] mindsets and views of CSR that direct and organize its activities, their implications in terms of priorities (inclusions and exclusions) and scope of action, and the conflictual aspects of these developments in general." (ibid.: 832)

This approach to the study of organizational responsibility seems valuable for several reasons. First, it remains open to the possibility that "digital responsibility" does not necessarily mean or entail one thing but can have several different meanings and entail entirely distinct forms of governance depending on its institutional setting(s) and process(es) of production. Second, it is open to the possibility of conflicts and incongruencies occurring within and between emergent notions of "responsibility" as well as their moral and practical requirements. As this thesis seeks to demonstrate, by simply considering two distinct concepts of digital responsibility in the context of Danish governance, the term already appears as both multiple, politicized, and as potentially deeply conflictual in character. This is a point which existing literature on digital responsibility seems to have largely overlooked, yet one which might have both important theoretical and practical implications.

Theoretical approach

In this theoretical section (as well as the following section on method), I will address this thesis' SQ2 concerning the question of how an empirical investigation might shed new light on the establishment of digital responsibility as an institutional norm by mobilizing theory of socio-linguistic performativity as a lens for ethnography. To conduct such an adapted, empirically oriented investigation of "digital responsibility" as an emergent institutional and governmental norm, I start from a broad conception of the notion merely as one which (as we shall see) tends to attain a special kind of performativity in particular organizational settings where representatives are primarily concerned with the governance of digital technologies and data. Specifically, this thesis seeks to demonstrate how "digital responsibility" becomes a key notion around which certain practices of governance are becoming organized and rationalized. The main objective of this thesis, thus, will be to 1) inquire into the particular contextual (i.e., institutional) conditions presupposed by the socio-linguistic performativity of the term, 2) consider how the different institutional conditions characteristic of distinct social settings lead to divergent notions of "digital responsibility," and finally 3) how relatively established notions of responsibility become challenged and problematized by various forms of "counter-performativity" causing certain "pollutions" of or "mutations" within its institutional conditions of emergence. To establish an analytical vocabulary and framework geared towards such an investigation, I will first introduce Austin's (1962) original theory of linguistic "performativity" and then, subsequently, add nuance to his original concept based on some possible critiques.

Performativity and its institutional conditions

The idea of digital responsibility as a notion which comes to be socially established and direct activity in particular ways immediately implies a *pragmatic* theory of language as a socio-symbolic means not merely to "describe" reality but to "do things" within and thus affect and shape that reality in turn (see Austin, 1962).

In Austin's original deliberation, he arrives at a number of principles or rules for understanding this apparent "performativity" of language use. First, all forms of language use entail a performative dimension. That is, even if some instances of language use are more apparently performative than others (e.g., the priest declaring two people "married" which effectively – indeed almost magically – tends to constitute the marriage as a social fact, the judge declaring someone a "criminal" which effectively constitutes the juridical verdict, etc.), even seemingly "passive" descriptions of reality can have performative implications which shape and affect situations in a number of ways. For example, the effectiveness of descriptive acts may often be more a matter of their relative persuasive capacity than their philosophical ability to represent a "true" state-of-affairs. In this perspective, saying something always implies doing something – i.e., an action – and, thus, an attempt to effect some kind of change of or to a social situation.

Second, the relative social "effectiveness" of such linguistic acts as naming or condemning someone, making a promise to someone, or even describing something to someone appears to depend not on the referential relation between these statements and their assumed objects but rather on the socio-institutional context in which such "speech acts" are made. Different social contexts – according to Austin – thus impose distinct sets of *felicity conditions* for what can and

cannot be uttered with the force and/or effect of social legitimacy in a given context, who can make certain speech acts with authority and who cannot, as well as the procedural and/or ritualistic manner in which certain such acts should be carried out to attain their intended effect(s). For example, the act of condemning someone in the legal system usually requires the person to pronounce the verdict to occupy a particular social and symbolic position (i.e., the judge) as well as for that person to pronounce the verdict according to a particular – in this case, highly institutionalized – conventions, rituals, and/or procedures. To Austin, however, contextual felicity conditions were seen to *always* determine the relative performative effects of *any* kind of speech act. For example, in the case of the apparently descriptive statements of science, the performative effectiveness of even seemingly "empirical" statements often would depend on their ability to accommodate particular scientific institutions (e.g., to adhere to scientific method) *before* depending on any "direct" relation between these statements and their proposed objects. Again, the potential performative capacity of speech acts could thus, according to Austin, be generalized to any and all forms of language use.

Limitations and iterations of Austin's view

These general ideas about the pragmatic (and thus socially productive) capacities of language and the socio-institutional conditions regulating this performative potential are indeed very helpful for our proposed investigation of how the notion of "digital responsibility" becomes established and comes to direct social activities in particularly institutionalized settings. Yet, it is also worth noting certain important limitations of Austin's original theory when considering how best to analyze dynamics of socio-linguistic performativity in concrete social settings. Here, I will focus on two general points: 1) the tendency of Austin to consider the institutional as fixed and permanent rather than fluid and temporary, and 2) the assumption of social structures as tacit rather than relatively explicit phenomena or structures.

First, in his theorization of the conditions of felicity presupposed by any performative act, Austin consistently appears to ascertain their relative social effectiveness against what he considers to be deep-seated social conventions which must necessarily be accommodated by the speech act for it to be performative. Yet, as noted by McKinlay (2010), it is possible to imagine a number of ways in which, for example, a marriage ceremony might be "flawed" (e.g., someone stumbling over their vows, one party of the marriage having private reservations, etc.) which might not undermine neither the ritual's symbolic meaning nor its outcome. Furthermore, the institution of marriage has clearly undergone significant changes since Austin's time of writing such that, for example, a socially legitimate couple to be married today would not have to consist of a "bride" and a "groom" in the traditional sense assumed by Austin. Such observations seem to have at least two possible implications: 1) that what constitutes relevant felicity conditions for a speech act to attain its performative effect(s) is somewhat situationally dependent, and 2) that even relatively general formations of such conditionalities and structures surely change over time (i.e., they are both socially and historically contingent and alterable).

Generally, Austin's unfortunate tendency to consider social conventions as relatively fixed rather than fluid leaves him unable to theorize their gradual transformation including – importantly – the ways in which institutionalized forms of authority might be challenged at, in

principle, any given moment. Subsequently, a number of important critiques have been made since to enable such a more nuanced perspective. For instance, Derrida (1988) launched the seemingly fundamental critique that failure – or the mere risk of such failure – far from constituting an external "trap" for language use to fall into should actually be regarded as entirely *internal* to the performance of any speech act constituting its condition of possibility. In other words, no performative act is entirely or inherently successful, rather it is the open question of "success" and its social accomplishment which deserves analytical attention. This broadened perspective which implies the inherent "pollution" of any performative and its situational felicity conditions has allowed feminist scholars such as Butler (e.g., 1997; 1999; 2010) to derive political optimism for the effective re-assertion of traditional gender roles and categories in ways that challenge and potentially upend their socio-institutional naturalization. In this sense, the reconceptualization of the performative act as inherently imperfect seems important insofar as it allows for considering the constant possibility of "counter-performativity" (MacKenzie, 2004) and thus the many ways in which the felicity conditions of any speech act may be challenged and/or reconfigured at any point in time.

The second question I will pose to challenge Austin's original theory of performativity concerns whether the social structures implied by his notion of "felicity conditions" should be regarded as relatively tacit or relatively explicit phenomena. The question arises due to the aim of this thesis to study the establishment of a certain term ("digital responsibility") as a performative in particular settings by analyzing the contextual felicity conditions presupposed by this apparent performativity. However, if these "structural conditions" of the performative tend to be conceptualized as somehow pre-existing and tacit to a given situation – as Austin seemed to imply through depictions of these structures as "accepted conventions" (Austin, 1962: 14) – how might it be possible to observe and record them?

With regards to this question, existing literature on performativity – to the best of my knowledge – seems to fall short. My intuition that it would indeed be possible to study the continuous elaboration of contextual felicity conditions *in situ* is inspired primarily by Latour's (2010) work on "the making of law." In Chapter 4 of this volume, Latour describes his observations of a group of legal counsellors engaged in their work of continuously evaluating and modifying existing legal rules and norms; a kind of work the counsellors themselves describe as "saying the law" (in French, "dire le droit"). To analyze this process, Latour poses the question of "on the basis of which signs do [the counsellors] recognize the *conditions of felicity or infelicity* of legal statements?" (ibid.: 129, italics original).

Now, while Latour's research agenda here (perhaps surprisingly) does not appear to be accompanied by any further theoretical deliberation on or explanation for how exactly the "felicity conditions" of juridical speech acts might become visible – and thus *observable* – through certain "signs" expressed in the situation, I think such an explanation might be derived from his approach in the subsequent analysis of the counsellors' work. Specifically, Latour's object of analysis appears to be what I will refer to as a process of *collective evaluation* in and through which the legal counsellors continuously attempt to determine the relative felicity of each other's professional statements and assertions. In Latour's account, such verdicts appear to become possible through the counselors' continuous references to (or what appears as a "drawing upon")

certain relatively pre-legitimized terms mobilized as *evaluative principles* which enable the counselors to assess each other's statements in the given situational context. What I find so interesting about Latour's analysis for our theory of speech acts and performativity, thus, seems to be that rather than thinking about contextual "felicity conditions" as constituted by an altogether pre-existing and tacit socio-institutional structure, these conditions suddenly appear explicit in the situation as they become mobilized in and through particular speech acts themselves. They do so as principles mobilized in a particular performative modality – i.e., evaluation – to continuously ascertain the legitimacy of forms of language use more broadly. This point is one that I believe may have potentially relevant and important implications for existing theory of speech acts *and* theory of institutionalism, yet I will postpone such a more extensive theoretical deliberation until the end of this thesis (see theoretical reflection below) as this will allow mobilizing and building on insights from the empirical analysis. For now, all I wish to emphasize is that I will regard it as possible to observe, record and analyze the actualization of conditions of felicity in particular social settings by focusing on the particular form(s) and process(es) of collective evaluation (as a particular performative modality) characteristic of that setting.

I have sought to combine the ideas sketched above into a general analytical framework which will guide the perspective and analysis of this thesis regarding the establishment of "digital responsibility" as a performative notion in particular social (here, organizational) settings:

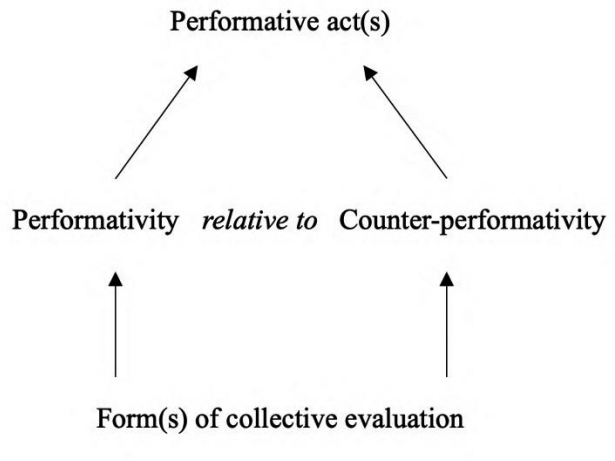

Figure 1: Analytical framework for studying the establishment of a given performative in a given social setting.

The model indicates that, to analyze the establishment of a term such as "digital responsibility" as a performative in particular organizational settings, we need to account for:

1. the particular way(s) in which this term is asserted in the context of situational processes of collective evaluation through which the quality of such assertions is continuously evaluated and assessed,

2. the continuous actualization of particular conditions of felicity in and through these processes (i.e., as particular evaluative principles – and sets of principles – mobilized within a performative modality of evaluation), and
3. forms of relative performativity and counter-performativity expressed as divergences in (or "pollutions" of) the relatively dominant mode of evaluating performative felicity characteristic of the given setting by other, inferior modes.

In the following, I outline how this theoretical-analytical agenda was translated into a particular methodology.

Method

In this section, I continue addressing this thesis' SQ2, focusing now on the ethnographic methodology mobilized to facilitate empirical investigation. The decision to conduct an ethnographic study of the establishment of "digital responsibility" as a performative notion in distinct organizational settings was largely based on a consideration of what might constitute more or less optimal conditions for studying the establishment of performativity in general. First, while I do not at all think it impossible to study dynamics of performativity in ways that do not involve direct observation (e.g., Foucault's genealogical work exemplifies a rather convincing approach (see e.g., Foucault, 2010)), I do think that conducting observations while maintaining a physical presence among the people studied grants a number of advantages when investigating language use in practice. For example, since we are never in fact studying language "in itself" but language *in use*, that is, a concrete *pragmatics* of language, one could argue that physical co-presence provides a dimension of experience as always-necessarily materially embedded which approaches lacking this observational component (e.g., genealogy) would be missing.

If we consider genealogy, this usually constitutes a method of analyzing performativity historically by tracing certain continuities and discontinuities within the usage of language in a constructed body of texts. Continuity, here, would indicate a relatively established form of linguistic practice (and hence, its established performativity), whereas discontinuity would indicate a rupture or a turn in such practice (hence, effective instances of counter-performativity) (Foucault, 2010). The issue, first and foremost, seems to be that there is in principle no guarantee that the texts (i.e., the *written* language) considered by the researcher actually reflect the social practices they bear reference to (e.g., *spoken* language, processes of writing and re-writing, etc.). In other words, while genealogy may give us an idea of performative tendencies based on a very particular and seemingly "finalized" instantiation of language, participant observation allows us to consider practices of language use in a broader and more holistic sense as, indeed, a multifaceted practice. Furthermore, focusing exclusively on texts genealogy seems to miss an important aspect of performativity, namely, the concrete ways in which discourse "captures" or in other ways "shapes" its material circumstances as well as the ways materiality may "act back upon" and "reshape" discourse in turn. Genealogy would only be able to *infer* somewhat indirectly the various ways in which people and their bodies engage with language and how their behaviors and material circumstances become shaped by certain discourses in turn.

There are a number of other advantages to ethnography as a method to study the social establishment of performativity. Its open-endedness as a method counteracts the risk that the researcher forecloses the definition of phenomenological relevance and instead seeks to gain an understanding of such relevance from the perspective of the people or communities studied. It also allows for considering a multiplicity of perspectives which are not necessarily mutually or even internally congruent (see Flick, 2009; Bernard, 2011). These traits all resonate well with our focus on relative performativity and counter-performativity outlined above.

Importantly, ethnography also has its limitations as a method to study our particular object. While arguably better geared towards studying dynamics of performativity as they play out in the present, as a method it is not sensitive to either history or geography in the same way that, for example, genealogy could be. Some of these shortcomings I have attempted to address

by studying the establishment of "digital responsibility" as a performative in two distinct settings rather than focusing on a single case. These organizations were both located in a rather particular place (i.e., Copenhagen) and fieldwork was conducted within a rather particular timeframe (i.e., between 2020-2021). However, as we will see, their respective ways of asserting "responsibility" in the context of digitalization and distinguishing between behaviors considered "responsible" and "irresponsible" are highly diverse, resulting from relatively disparate historical trajectories. Thus, while I would certainly not claim this thesis to provide neither a comprehensive geographical nor a historical analysis of the establishment of "digital responsibility," it does entail a study of a significant institutional discontinuity currently at work in Denmark in the way that governance of emergent technologies is rationalized and organized. As such, the approach assumed in this thesis merely indicates the possibility of future work moving beyond this contemporary Danish setting.

Regarding the choice to study two separate institutional settings, I have thought it absolutely crucial for the current study to include a strong comparative component for a number of reasons. First, studying two rather than a single setting immediately illustrates – and, thus, I would argue, validates – the theoretical point made above concerning the inherent historical-geographic contingency of established forms of performativity and, thus, of apparently performative notions such as "digital responsibility." Furthermore, since the theoretical perspective introduced above could be understood to entail that any instance of evaluation must be rooted in a particular institutional framework, it could seem that *comparisons* of and between such relatively distinct frameworks may in fact be the only way to effectively analyze and characterize them. In other words, if we studied the establishment of a notion like "digital responsibility" in just a single setting, we might not be able to relativize our findings (and, thus, characterize the form of performativity at stake in that setting) without imposing a set of evaluative criteria upon that setting which would be both foreign and arbitrary to it. Thus, to be able to give a relativistic account of our object, it would seem that we fundamentally need to make comparisons *between* the forms of evaluation characteristic of such distinct settings.

With this in mind, the choice of cases was based on an introductory and somehow broad consideration of which sites in Denmark might be said to play relatively more defining roles in constructing and establishing "digital responsibility" as an organizational norm. There are, of course, many possible answers to this question and many different institutionalized settings which might have been meaningful to study (including various government agencies, ethics councils, private sector initiatives, etc.). I decided early on, however, to pay attention to regulatory enforcement and organizations concerned with governance more broadly due to their apparent ability to define, declare, and attribute the status of "digital responsibility" with *relative authority* in the Danish society. For example, the national data protection agency (in Danish "Datatilsynet," from now the "DPA") which enforces key regulatory frameworks in the context of digitalization and usage of digital data – the formal authority of which is itself based on its legal mandate – occurred as an obvious setting in which to investigate how "digital responsibility" comes to be defined and mobilized in a given (European) national context. Notably, the agency's formal strategy centers around the vision statement: "*Responsible use of citizens' data in a digitalized society*" (Datatilsynet, 2020, own translation). The secondary case, a privately

organized labelling program (D-mærket) which defines its purpose as ensuring "*IT security and responsible use of data*" (Danish Ministry of Business Affairs, 2019, own translation) among mainly private companies was selected as a comparative case due to both its immediate structural affinities with the DPA (i.e., as a governance-oriented institution seeking to introduce and enforce a particular concept of "digital responsibility" in a certain way) as well as obvious differences in its institutional orientation (i.e., a private business initiative versus a public agency). This balance between relative formal similarity and modal institutional diversity I believed would create optimal conditions for a meaningful comparison between emergent notions of "responsibility" between these two settings.

As I got in contact with representatives from both organizations, I explained my desire to conduct visits to their offices for an extended period of time and observe their work. I equally informed them that I would be open to participate in their work in ways which might grant me a more profound understanding of local practices and familiarize myself more extensively with its particular logic. Finally – due to the specific focus on processes of collective evaluation outlined above – I simultaneously declared my wish to observe and record organizational work meetings in which the question of responsibility might be raised, elaborated upon, discussed, and negotiated in a rather active and explicit manner (primarily due to the theoretical and methodological inspiration from Latour's (2010) work on legal deliberation described above which takes a similar approach).

The organizational members' respective responses to this proposition, however, were rather different and ultimately forced me to organize my data collection in somewhat different ways between the two settings. That is, while the representatives of the private labelling initiative quickly granted me access and perceived no significant problems with my initial proposal, the public agency's representatives appeared more skeptical and were, for example, outright opposed to the idea of me "participating" in their work. While these considerable differences in how I was first apprehended by the members of these two organizations were of some concern initially, I subsequently came to see the experience itself as a confirmation of – and thus, in fact, itself a positive source of data on – their institutional heterogeneity. For this reason, I will describe the experience of entering each setting more extensively in the analytical sections of this thesis (see below).

For now, however, it is important to note the resulting different forms of data collection conducted in these two settings. In the setting of the private labelling program, I came to perceive what I would consider close to optimal conditions for data collection in a way that adhered to my theoretical approach. That is, I experienced extensive access to a variety of internal and external meetings where the question of "responsibility" was discussed, I could record these meetings in full length as audio files, I had the chance to participate in the work of my informants where I/we deemed it appropriate and had extensive access to various internal work documents and files. In the context of the public authority, my access was much more restricted. Here, I experienced very limited access to meetings, no opportunity to record these meetings by other means than by pen and paper, visits being highly organized and each pre-dedicated to focusing on a particular aspect of the authority's operation, while also my access to internal work documents was quite limited. Even if these differences in retrospect proved both interesting and productive when describing

the institutional heterogeneity at stake in the field, it also entails a potential limitation of the research conducted that I experienced less optimal conditions for collecting data in one setting relative to the other.

After gaining access to each setting, data was gathered according to two main analytical objectives. One was to be able to give a relatively accurate description of each institution's general *modus operandi*, including its formal organization, its distribution of roles and tasks, and its formal strategic orientation. The other was more specific in trying to identify and account for the particular principles of evaluation (i.e., the particular "felicity conditions" (Austin, 1962; Latour, 2010)) at stake in defining a collectively recognized concept of digital responsibility within each setting. Data of the first kind was relatively easily gathered via a combination of formal documents and conversations with informants of relative formal authority in both settings. Data of the second kind on forms of collective evaluation was acquired primarily by observing and recording meetings as audio files in the context of the private labelling program. Due to the limited possibility of this kind of data collection at the DPA, I had to invent alternative ways of collecting data on the forms of evaluation at play in this setting. While I was ultimately allowed to observe a few meetings (the discussions during which proved indeed very valuable for my ongoing research), the primary means of data collection in the agency came to be through conversations with select employees in the form of semi- and unstructured interviews. I usually had these conversations with the person or persons I was planned to follow or interact with on a specific day to gain knowledge about a particular division or aspect of the agency's work. My approach came to center around posing certain questions about when particular aspects of their work (including the ability to reach particular decisions or conclusions on relative "responsibility" as a category assigned to certain types of behavior) was proving relatively easy as well as when it would prove more difficult, problematic, or outright impossible. Particularly the inquiry into the problematic aspects or their work proved a valuable means of collecting data on forms of evaluation, since potential problems were persistently (yet perhaps as expected) rationalized with reference to one or several evaluative principles (in this context, as we shall see, principles such as "legality," "legal basis," "legal certainty," "legal tradition," etc.). A more direct inquiry into these sets of evaluative principles also turned out to be possible by asking simple, yet somehow abstract questions such as "Which parameters, do you think, must be "in place" for you to reach a conclusion on a matter *x*?" That is, if a particular conversation or interview already revolved around a relatively concrete kind of task or assessment (e.g., the treatment of data protection-related complaints from citizens against particular institutions), this type of question was rarely perceived as particularly abstract by informants. Instead, informants would often immediately and without much hesitation provide me with a list of conditions which, to their mind, had to be satisfied before a given actor could be said to have acted "responsibly" or before they found themselves capable of making such an evaluation.

Altogether, fieldwork lasted approximately 14 months. My presence at the private labelling program commenced in March 2020 and ended in June 2021. During this time, in early November 2020, I left the offices of the labelling initiative for approximately 3,5 months to conduct visits to the DPA. During my time at the DPA, I produced approximately 134 pages of digital fieldnotes based on my experience, interviews with local employees, and observations of

select meetings. In comparison, I produced more than 500 pages of digital fieldnotes during my (much more extensive) engagement with the private labelling initiative. Add to this physical fieldnotes (i.e., several notebooks), and more than 60 audio recordings of meetings in full length (a selection of which was translated into digital fieldnotes). In brief, data compiled and produced in the context of the labelling initiative came to be of substantially larger volume and variety than in the context of the DPA.

To structure the analysis, I conducted an open-ended coding of selected digital fieldnotes and transcripts in Nvivo, each code working to identify and isolate (to the extent possible) what appeared to be the key principles of evaluation at stake in each setting in the construction of the notion of "digital responsibility." Since the data set was smallest for the DPA, I started by coding this data set in its entirety to indicate a baseline for how substantial a coding exercise I would have to do for the much larger and more comprehensive data set from the private labelling initiative. In the smaller data set of the agency, I identified a total of 38 principles of evaluation (codes) expressed a total of 1.077 times (occurrences) throughout the data set. For the larger data set of the private labelling initiative, I ended up conducting extensive coding of approximately 300 pages of digital fieldnotes (incl. select meeting transcripts) based on the initial period of observing the project. During this exercise, I identified a total of 48 principles of evaluation (codes) expressed a total of 1.286 times (occurrences) throughout the data analyzed by coding. To this approach, I wanted to add a long-term perspective of the project's overall development during the total of 14 months during which I observed the project. To achieve this, I constructed a timeline of the project based on a thematic transcription of all the "steering committee meetings" conducted during this time (ten meetings in total) where local management would account for and discuss the project's development with its most immediate stakeholders. This exercise allowed me to gain a more comprehensive overview of the developments undergone by the project during the 14 months I had followed it.

During the coding of both data sets, the total aggregate of codes was organized hierarchically in Nvivo to form a coding structure reflecting the theoretical-analytical model forming the analytical basis of this thesis. That is, among the total number of codes for each data set, two were high-level codes ("performativity" and "counter-performativity") each with their respective sub-codes. These sub-codes were further divided into two broad categories ("setting" and "mode of governance"); a further subdivision, however, which was not introduced for any other reason than to maintain a general sense of which evaluative principles appeared more central ("mode of governance") versus more peripheral ("setting") in relation to the definition of responsibility in each context.[4] A comprehensive overview of these coding structures is included in the Appendix.

To get a sense of the degree to which each data set could be held to represent the forms of evaluation at stake in each institutional setting, I calculated the relative saturation of codes in each data set with inspiration from Guest, Bunce & Johnson's (2006) approach to calculating data saturation. For the smaller data set from the DPA, I found 68 % of codes to be present within the first 10 % of the data set, 76 % after 20 % of data, 84 % after 30 % of data, 89 % after 40 % of data, 97 % halfway into the data set, and 100 % after 70 % of data. For the larger data set

[4] In other words, after having conducted analysis, I am not convinced that this further subdivision of codes has any significant descriptive value, for which reason it does not play any significant role in the analytical sections below.

based on fieldwork at the private labelling program, I found 75 % of codes to be present in the first 10 % of the data set, 92 % after 20 % of data, 98 % after 30 % of data, and a 100 % theoretical saturation after 40 % of data. Again, a more comprehensive visual overview of these calculations can be found in the Appendix. Due to the more comprehensive data set describing the labelling initiative, it was no surprise that theoretical saturation would occur earlier in this data set than in the one produced in the context of the DPA. While it can be discussed to which extent it constitutes a limitation of the research conducted (since we do reach theoretical saturation in both data sets), the differential saturation rate of the two data sets does speak to a potential divergence in quality between them.

Research ethics

Finally, I will describe the considerations and actions taken regarding research ethics, which seem particularly pertinent in a project based on ethnographic observations. As described above, my engagement with each organization studied began with a meeting between local representatives (i.e., management), my supervisor, and I. After presenting local representatives with a general outline of the project in this initial meeting, we negotiated an agreement on the conditions of my research in each setting. As described above, these negotiations led to data collection being organized differently in each setting due to the preferences expressed by local management. In the context of the labelling initiative, a standard confidentiality agreement drafted by my university's legal office was signed by both parties. While I presented my contact person at the DPA with the option to enter a similar agreement, we arrived at the conclusion that my own position as a researcher employed in the Danish public sector (i.e., at the university) would automatically impose sufficient requirements with regards to confidentiality. Data was subsequently handled in accordance with these agreements.

Regarding anonymity, important considerations had to be made due to the characteristics of my two field sites. The relative particularity of these two organizations (the DPA and the labelling initiative) in the Danish context meant that guaranteeing the anonymity of these organizations would not be possible. In that situation, anonymity had to be ensured at another level, i.e., for the individual participants in each setting. To ensure such individual anonymity, several measures were taken when writing up this thesis (such as referring to titles, groups, and/or professions rather than particular persons). To maintain the anonymity of my respondents, I will not go into any further details concerning the exact methods mobilized. Importantly, the below text does occasionally make direct references to persons based on their title which might make particular individuals identifiable (e.g., initial reference made to "the director" in the context of both the DPA and the labelling program). Any such references, however, were kept exclusively in passages where no content of their work (or their position towards it) was being discussed, and thus deemed unproblematic for the participant involved. Further, any such occurrences underwent a final process of member checking with local representatives.

This process of member checking was conducted with representatives of both settings after completing a first draft of this thesis. In both cases, I initiated this process by sharing a draft with local representatives and asking for 1) any potential corrections to what they saw as factually incorrect content or analytical points, 2) any potential content or analytical points they would

like to challenge (although not necessarily incorrect), and 3) any potential corrections to or comments regarding anonymization. Corrections falling within the first category (e.g., an outdated organizational diagram, reference made to the wrong institution or actor, etc.) were implemented in the final document. In case of objections falling within the second category, my main supervisor and I assessed whether the proposed change would strengthen or weaken the existing analysis. As a result of these evaluations, changes which were deemed reasonable and beneficial to the existing analysis were made, while those deemed disproportionate were not included in the revised version. Lastly, when objections fell into the third category, appropriate measures were taken to re-install anonymity.

Finally, conducting an ethnography begs a reflection on one's role as a participant-observer. As noted above, I was initially very interested in participating in the local work practices of my respondents to attain more of an insider's perspective to the practices I was analyzing. However, while such participation proved possible in the context of the labelling program, it did not seem possible in the context of the DPA where my position became exclusively observational. While the participant-observer position I came to occupy in the context of the labelling program afforded both more direct, temporally extensive access, enhanced trust between me and the people I studied, and – I believe – a more profound understanding of local work practices, it also brought about its own set of ethical considerations. After a few months of participant-observation, I decided to progressively withdraw from such participation as new employees were hired onto the project. This was mainly due to my own concern that the potential normalization of my role as an "employee" might bear unfortunate consequences for local work dynamics. I will describe these considerations more extensively in the analysis below, since I found the different ways in which I was apprehended as a researcher in each of these settings to be of significant value when trying to describe them.

Digital responsibility in the context of law: The DPA

Having accounted for the theoretical and methodological approach of the thesis, in this section I will begin answering the thesis' SQ3 by describing and analyzing how the notion of "digital responsibility" becomes established and comes to direct activity in particular ways in the context of the Danish national DPA. In doing so, I will start with a brief introduction to the particular field site followed by an analysis of a concrete instance of local deliberation to illustrate my analytical approach. On this basis, I will conduct a more comprehensive analysis of the dominant performative regime (Austin, 1962; Butler, 1999) shaping the way in which "digital responsibility" achieves its particular meaning and force in this setting. I will then conclude this section by analyzing the particular instances of counter-performativity (MacKenzie, 2004; Butler, 2010) at play in this setting which appear to challenge the otherwise established notion of "responsibility."

I first got in contact with the DPA in the winter of 2019. After having introduced myself to the agency's director at an event on data ethics at my home university a few weeks earlier, my supervisor and I met with her in person on December 16th, 2019. The meeting took place in her office at what was at that time the agency's location in Borgergade in the very center of Copenhagen. The agency occupied the three upper floors of this building which is located in close proximity to the Royal Garden.

Image 1: The previous offices of the Danish DPA viewed from street level

I never really had a chance to explore the halls of the office. However, in the short time I spent waiting before the meeting in the agency's canteen, I had a sense that the office, I had entered, constituted neither the most nor the least well-funded part of the Danish public administration. While the location of the office was undoubtedly attractive, its interior decor appeared somewhat humble, with a seeming focus on everyday practicality.

Image 2: Inside the canteen of the DPA's previous offices

Image 3: View from the canteen's kitchen window

The meeting with the agency's director was pleasant, and my supervisor and I left with a shared sense of optimism. I was subsequently put in contact with a local manager who had been tasked by the director with facilitating the necessary arrangements for me to commence fieldwork at the agency.

At the time, I had already started doing fieldwork at the offices of the private labelling program and the experience gained there had made me feel relatively comfortable with my method of observation (as well as progressively balancing the roles of participant and observer). Therefore, I was caught somehow off-guard when the local manager seemed to react with both

hesitation and skepticism to my expressed interested in participating in the agency's work to attain a better understanding of it. Part of this initial caution seemed to result from the fact that the agency had no prior experience with visiting researchers. Perhaps because of this, the idea that I might be moving around the office relatively unchecked while observing local work practices clearly did not resonate well with the manager. Similarly, my proposition of assisting local employees in the agency's daily tasks was quickly dismissed as he did not see what I could possibly "assist" with. Even if these early interactions with the manager left me slightly worried for the outcome of my empirical exploration, the particular way in which I was initially apprehended by the agency's representatives struck me as itself rather interesting. On the one hand, they appeared quite open to the idea of inviting a researcher in to learn about the agency's daily operations. On the other hand, the manager who had become my primary contact point was obviously concerned with protecting the integrity of the institution against what they seemed to perceive as an external invader. The idea of a rogue researcher left utterly unguarded and on the loose, roaming free within the office halls clearly worried him.

These worries about protecting institutional integrity became all the more pronounced when I declared my wish to access and record internal work meetings (like I had been doing on a continuous basis at the private labelling program). The manager's initial response to this request suggested that it might be a definite no. I had to understand, he said, that it was highly important to the agency "to appear completely certain"[5] in its law enforcement activities, for which reason I should not expect to gain access to internal fora where "doubt" might be expressed. This, of course, suddenly appeared as a clear methodological challenge for me and my project since (as described above) I expected such sites of negotiation and deliberation to be of significant value in providing answers to my research question.

As the Covid-19 pandemic swept across Denmark in early 2020, I lost touch with the manager for a few months. Finally, in July 2020, we spoke on the phone, and he assured me that we would figure out a way for me to conduct fieldwork at the agency. It took several months, however, before we finally reached an agreement allowing me to visit its offices a few days per week. These visits would be (somewhat strictly) organized around certain "work tracks" which in sum – the manager explained – constituted the agency's general *modus operandi*. Importantly, while this organization of my visits certainly entailed an element of control, it seemed to me to also derive from a sincere effort by the manager to make each of my visits as relevant and efficient as possible, since in this way I would be sure to get acquainted with each of the different sub-divisions of the agency in a way that I might not otherwise be able to. I was also told – which was, at this point, of some relief – that I would, after all, be able to observe a few work meetings in order to get a sense of the forms of deliberation at play in these fora. "However," the manager told me, "you won't get access to internal decision-making processes. We will control what you get."

On November 4th, 2020, I visited the agency for the first time in its new offices in the outskirts of central Copenhagen by Ny Ellebjerg train station, an area which at the time was – and still is – undergoing significant industrial and housing development.

[5] Or "flawless" (a word that was used on another occasion by one of the agency's junior employees).

Image 4: The DPA's new offices by Ny Ellebjerg station

At the time, the agency operated based on a government-sponsored operating license of approximately 40 million DKK and comprised around 60 employees most of whom were jurists. I would not get to meet most of them, however, since many were working from home due to the ongoing Covid-19 restrictions in force at the time. When I did go to the offices to meet and speak to select employees, the remaining office space would be mostly deserted, with only a few members of staff coming in to work or attend in-person meetings.

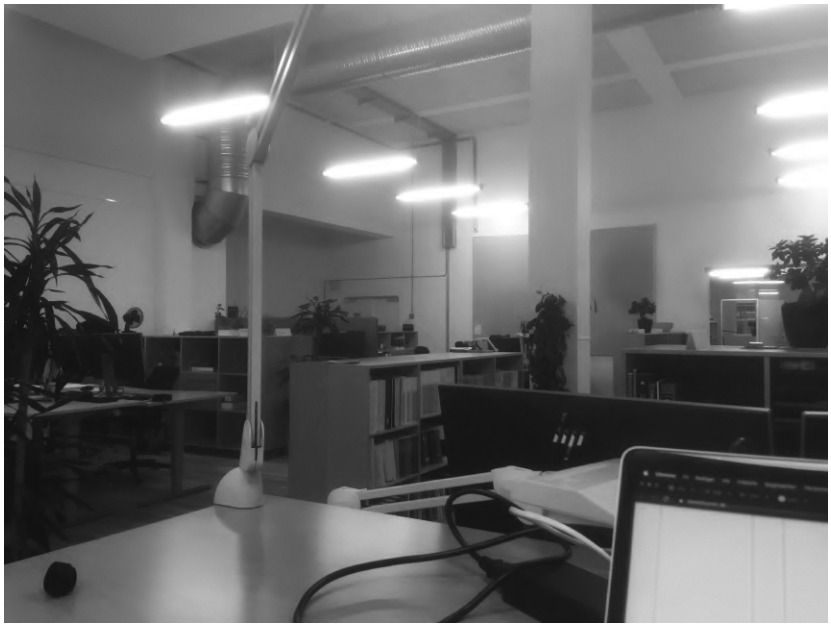

Image 5: Picture from inside the DPA's new offices

As described above, my visits to the agency were organized in a way so that I would follow select "work tracks" one at a time, each of which was associated with a specific sub-division of the

agency. As such, this organization of my visits arguably constituted a reflection of the agency's "proper structure" (and, indeed, its continuous reenactment by its representatives). My initial sessions, I was told, would be with employees from the Guidance and Security division, then the Data Protection division, then the International division. Finally, I would conclude my fieldwork at the DPA by talking to the agency's director to present and discuss my results.

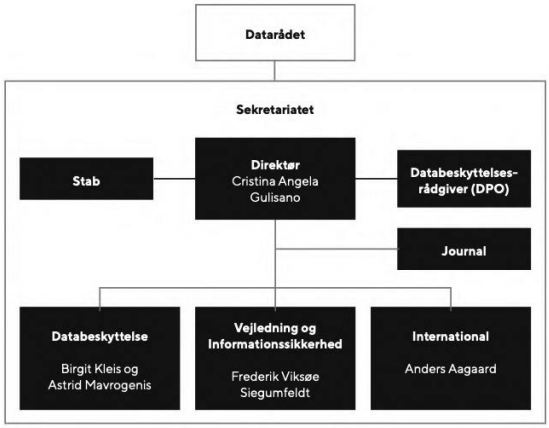

Image 6: Depiction of the DPA's formal structure in 2020

In articulating its own formal structure and institutional mandate, the agency's self-description on its Danish website further states:

> "The Data Protection Agency is an independent supervisory authority responsible for ensuring that rules concerning data protection are complied with. We advise and provide guidance, treat complaints, and conduct inspections of authorities and businesses. The [Agency's] statutory powers, functions, and duties derive from [European and Danish data protection regulation, the law enforcement directive and regulation, as well as the law on TV-surveillance]." (Datatilsynet, 2023, own translation)

The self-portrayal largely echoes the explanation provided me by the manager when I asked him how the agency had come to be organized the way it was. He immediately pointed me to Article 57 of the GDPR, which, he explained, lays out the tasks and responsibilities of national data protection authorities. The institution, in other words, was organized specifically to accommodate the particular prescriptions of a legal document, that is, its organizational form was itself more or less derived from the law. He took the chance to hand me a copy of a book comprising the legal texts deemed "fundamental" to the agency and its activities. I should bring the book with me when I attended meetings or spoke to employees, he told me, since without it I would quite simply "not be able to understand anything."

Image 7: Booklet comprising the laws fundamental to the DPA's operation

These initial experiences and observations provided me with a valuable first impression of the agency's institutional orientation and, thus, ultimately, the foundations for its way of conceiving of and asserting a particular notion of "responsibility."

A deliberation on the legality of cases

Much of what was going on within the DPA on a daily basis might be labelled "casework." Importantly, what constitutes a "case" might be as different as a "hearing" (e.g., an inquiry as to the agency's formal opinion on a legal matter), a "permission request" (e.g., in case an organization wanted to treat a special kind of data such as credit data), a "complaint" (e.g., as data subjects might launch against private or public institutions to test the legality of their data processing activities), a "security breach" (e.g., as organizations were required by law to report IT security breaches to the DPA if such breaches entail "risks to the rights and freedoms of natural persons"), and still others. The notion of "case" would thus not appear at all content specific but rather as attaining a more general operational meaning as something which the agency had to deal with, treat, or handle, usually – if not always – due to the legal prescriptions specifying its institutional mandate and obligations.

The "life" of cases would unsurprisingly differ depending on what type of case it was. However, in the area of legal enforcement, case types such as data protection-related complaints and reported data security breaches would pass through a relatively similar sequence of steps

from an initial report was made to the agency and until the case was closed. First, after receiving a formal complaint or a reported security breach, the report was logged in the DPAs filing system, thus gaining the initial status of a "case" under the agency's treatment. Collections of such cases underwent an initial screening called "visitation" in which incoming cases were sorted according to their perceived procedural demands and the expected workload required to treat each case. After this initial sorting, cases were distributed among employees tasked with their treatment and marked as "awaiting" until enough information had been gathered and/or relevant parties had been inquired. When the relevant circumstances had been sufficiently clarified, the case would be marked "ready for decision" indicating its readiness for legal analysis and evaluation. After a decision was reached, the case would be marked "under treatment" while being written up by one of the agency's jurists. When finished, it was labelled "for signature" or potentially as a "police report" if resulting in the handing over of the particular case to the police for potential criminal charges.

Image 8: To ensure efficiency, some casework was organized around physical or virtual boards where each case was represented by a small card or field noting details such as its case number, expected time, and time limit.

During my time at the agency, I never witnessed any meeting in which final legal decisions were reached. However, I was allowed to observe two of the above-mentioned "visitation" meetings during which incoming reports were sorted according to their perceived procedural demands. In the following, I will provide an account of one such meeting as an initial exemplification of the particular form of performativity (Austin, 1962; Butler, 1999) and collective evaluation at stake within the agency as well as of my own methodology in locating the particular felicity conditions (see also Latour, 2010) (i.e., principles of evaluation) shaping and producing an established notion of "responsibility." In the following text, such conditions (or principles) will be underlined to highlight their occurrence.

The specific visitation meeting I will provide an account of was concerned with IT security breaches reported by various public and private institutions. Importantly – and due to the agreement I had reached with the agency – the transcript below is based on hand-written notes taken quickly during the meeting (rather than transcribed from, for example, an audio recording). This means that it does not include every statement made but rather a selection of what I as the observer deemed to be the most important comments and was able to jot down as the conversation progressed and immediately after the meeting.

As I followed one of the agency's representatives to the meeting, he informed me that the agency received approximately 200 such reports every week. After the initial logging of every case, the cases were to be categorized according to their apparent procedural demands using a simple color-based sorting system to distinguish between 1) the least demanding cases that required only little further treatment (marked "green"), 2) lesser or "medium" demanding cases that required a quick, trivial, and/or semi-automated treatment (marked "yellow"), and 3) more demanding cases which required more extensive and in-depth treatment (marked "red"). Before the visitation meeting, the approximately 200 cases would undergo an initial screening where most of them were pre-sorted in this way. The purpose of the visitation meeting, then, was to focus specifically on the more serious or difficult cases, and then figure out which of these cases most deserved the agency's attention and resources. Importantly, while the main focus, thus, was on identifying the most demanding and/or serious cases, I was informed, attention might also be paid to those cases deemed most "interesting" in terms of their perceived potential to "clarify" new, ambiguous, untested, or otherwise "unexplored" aspects of existing regulation. I was also informed that of the 200 weekly cases reported to the agency, between three and 20 of them would be considered during the meeting. "Resource allocation is always an important factor," the manager reminded me as we entered the meeting room. Only the two of us were physically present. The others were on a Skype call.

[Beginning of transcript]

"You guys just go ahead," the manager instructs the others, signaling the meeting has begun.

The conversation immediately turns towards the first case, which revolves around a particular organization "messing up" in its collection of debt.

"Should we wait for them to discover it or already mark it green or yellow?"

It appears, they agree, that an "insider" from the organization seems to have leaked a potential breach to the agency, most likely without the knowledge of their superiors.

They discuss how to proceed.

"Is more coming?"

"I read it as if they are making stepwise reports and then inform us as they learn more … so should we wait?"

"You will have to send them a mail," the manager says, his tone suggesting this to be a final decision.

Based on the group's treatment of the initial case, it is already possible to observe the outlining of at least two distinct principles of evaluation mobilized by the group as conditions for their ability to assert "responsibility." First, the question of authority; the continuous delegation of formal authority to the manager allowing him – as if magically – to "start" the meeting and make "final" decisions. Second, in this case, we see how a lack of information quickly stops the group from assessing the case any further, deciding instead to gather additional information about the case before a decision about the quality of the organization's conduct can be made. The treatment of the following case, as we shall see, is halted for the same reason that "sufficient" information has not been obtained.

The group goes on to discuss another case. An organization has reported an instance of hacking, stating they are still awaiting a "clarification" of what has happened. It is one of the consultants who explains how the report states that the organization does not yet have a detailed account of the incident. Another consultant proposes a deadline for when the agency should be provided with this information.

"Two weeks, then we send them a notice," the manager finally decides.

Even if it may be slightly premature to identify this aspect of the situation properly (see below), these two initial blocks of deliberation already indicate the relative verticality of the relationship conceived to exist between the reporting organizations and the authority. The organizations appear to be somehow "automatically" required to submit to the agency's demands and supply the DPA with an account of potential breaches. When they do not comply (e.g., within a particular deadline), the agency may demand that account legitimately through a formal notification. It is thus not only the delegated authority of the manager which serves as a condition for evaluating responsible conduct but equally – and, perhaps, even more importantly – that of the institution as such in dictating the proper conduct of its ("subject") organizations.

Next case. The group quietly reads the report displayed by the system. It suggests that a particular kind of receipt has been transmitted without the necessary encryption.

"This description smells like it is *standard* practice to issue a receipt … both transmission and integrity could be a problem … but … is this a normal case? Is it of the type we usually just close? Green?"

The manager: "Do we need to know more? … If this is a general problem?"

The conversation evolves into a discussion of whether this type of "receipt" is *generally* issued digitally without encryption. If so, the "security measures" in place would no longer be considered "appropriate" for this type of receipt, they agree.

[…]

"How is their setup?" someone wonders.

"Besides, is that information enriched with other information beyond those people submit themselves?"

Ultimately, the discussion reverts back to a discussion of "what is actually going on" and they seem to decide to inquire the organization for more details in the form of additional information.

Even if their deliberation ends in the same way as above (with a decision to inquire for additional information), this part displays a different evaluative richness than the previous ones. First, the question is raised whether this case falls within a particular type of case ("is this a normal case?") which is usually treated in a particular fashion (here, marked "green" and "closed"). As will be elaborated later, this relates to the question of legal tradition and the resulting moral imperative that certain kinds of cases which are "usually" treated in one way should continuously be treated in that same way to ensure principles such as legal certainty (and thus consistency, predictability, fairness, etc.) in the application of the law. Second, the question raised to determine if this case is of the type which can quickly be marked "green" (e.g., an "isolated incident") or whether unencrypted transmission is "standard practice" constitutes our first more obvious instance where the general legality of the organization's action is explicitly put into question. Namely, the "non-encryption as standard"-scenario could be interpreted as a transgression of the principle of "appropriate security measures" prescribed specifically by GDPR's Article 32. Thus, here we start to see that what is at stake in evaluating whether an organization has acted responsibly or irresponsibly is less (if at all) about the consultants "personal opinion" than it is about the apparent legality of its conduct when considered against relevant legal prescriptions. This becomes even more obvious if we revisit the prior parts of their deliberation to find that both the formal status of the agency as such, its hierarchical elevation relative to its "subject" organizations, their obligations to provide the agency with certain kinds of information in case of a "breach," etc. – all of this is in fact pre-specified by GDPR's legal text as appropriate and expected forms of conduct under existing law. The group thus appears to be mostly reading*,* interpreting*, and* applying *rather than* inventing *the norms of conduct set forth in their deliberations. Finally, the question raised about whether or not the personal data in question has been "enriched" or not constitutes a step beyond even the question of sheer legality and into the question of the character of the case in terms of its perceived legal seriousness (to which we shall return below). Thus, even as this block of deliberation again ends with a decision to demand more information from the respective organization, we see here the outline of a more comprehensive juridical rationality forming.*

The next case concerns a "mistake" in a letter correspondence. The case is reported by the organization itself – like most other instances of security breaches – and not as a complaint made against that organization.

"Should we wait and see if we receive a complaint about them?"

"It sounds like an isolated error," one ponders.

"Well, it is serious enough …" another argues.

The manager intervenes: "In their report it sounds like … well, this is nuances, we don't want to take a case on that."

They move on to the next case.

Arguably, a slight ambivalence emerges in the brief treatment of this case. It obviously approaches a limit of relevance (mainly due to its perceived character as being potentially "serious enough" or not), yet it is deemed unfit for extensive treatment due to its seemingly isolated occurrence as well as its perceived ambiguous position vis-à-vis the rules of the law ("this is nuances"). Something additional, however, might be at stake in the manager's quick dismissal of the case, a factor which I believe will get a clearer expression momentarily.

There is a moment of silence while their eyes scan the details of the following case.

"I think it should just be marked yellow."

The others agree.

Some cases are treated much more quickly than others and with a lesser need for deliberation. The condition of legal tradition noted above is likely key to such situations if each of the members of the group recognize a given case as being clear-cut, that is, of a certain type which is usually treated in a particular manner.

Next case. An organization has reported a ransomware attack. As always, the consultants scan through the key bits of information presented by the system. Besides me, the manager's facial expression suddenly changes, assuming a different and somehow graver attitude.

"Why do they even have the social security number?!" someone exclaims.

"Social security number, payment information …"

"That is *so bad!* I think we should take it. They choose not to inform …"

Among the meeting participants, the mood seems to have changed.

"I think this is one we should take …"

"What should we ask them? What have they done? We usually ask that in this type of case … along with those we report to the police."

The manager: "Perhaps interesting in relation to the risk assessment?"

One of the others suddenly intervenes. "Can I just toss some gravel in the machinery? We currently have 120 [active cases] … which we are four [employees] to administer."

There is a short pause.

The manager: "Can it just receive a yellow letter then?" After a moment of silence, he continues by supporting his colleagues' observation of the perceived incongruity between the existing caseload and the resources available to process these cases.

"I don't think we should take any more unless it is a clear police report," he ponders.

The case is marked yellow, and they continue to the next case.

Initially, this case captures everyone's attention. The potential legal transgression appears along at least two axes; 1) the organization seems to be in possession of personal data that may not be strictly necessary for their basic operation (i.e., potentially transgressing the principle of data minimization specified by GDPR's Article 5), and 2) when their system is breached, representatives of the organization choose not *to inform the persons to which the lost data relates,*

potentially violating the principle of transparency specified by Articles 5 and 34.[6] *Thus, the general legality of the organization's conduct is clearly at stake, spurring some in the group to argue "this is one we should take" and even mentioning the possibility of filing a police report. Note, then, how the initial evaluation of legality is immediately followed by a consideration of circumstance. Why is the organization in possession of their customers' social security number? Why have they chosen not to inform their customers about the breach even if they may be legally required to? How do they themselves assess the "risk" of the data breach to their customers and their data? The general question, as one of the consultants puts it: What have they done to address the situation? On the one hand, again these questions all appear to relate to the question of the character of the case and the potential transgression. For example, a certain set of circumstances may appear "aggravating" (e.g., certain decisions made by the organization's representatives such as not informing their customers of the breach), making the case appear more "serious" in character, while other sets of circumstances might be considered "mitigating" (e.g., if other actions have been taken to address and contain the situation), making the case appear less "serious." On the other hand, we see how this evaluation of the case's character quickly comes to imply a simultaneous evaluation of the relative responsibility enacted and displayed by the organization's representatives. This is the first time, I believe, that the question of responsibility is raised directly and explicitly throughout the meeting (even if it may have been implicit in the previous sections). At this point, the question of responsibility appears to be parallel to the question: In what ways and to which degree has the representatives of the organization in question actively and independently (i.e., before – and thus absent of – any coercive effort by the agency) tried to address the potential illegality of the situation? In this case, since there are indications of potentially aggravating circumstances (e.g., possessing more data than is necessary, choosing not to inform the relevant customers, etc.) the organizational conduct strikes the agency's security consultants as rather "irresponsible." Finally, it is worth noting how the condition of legal tradition appears to make the matter of responsibility key to the further investigation of this type of case (i.e., the question and comment: "What have they done? We usually ask that in this type of case …").*

And yet, even as the case provokes both the professional attention and moral indignation of the group (which, notably, appears itself as closely tied up with the question of legality and legal responsibility), something happens which stops them from categorizing it as "red" (i.e., requiring extensive treatment), and instead marking it "yellow" for a quicker, more trivial treatment (sending the organization a "yellow letter" which entails a kind of automated message or warning). Specifically, the question is raised whether the agency wants to allocate scarce resources to prioritize the treatment of this (and, thus, this type of) case. As the answer proves to be negative, the group's apparent desire to assume the case for more extensive treatment comes to be problematized by an economic rationale that seeks to direct the limited resources available

[6] For example, GDPR's Article 34 paragraph 1 states: "*When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay.*" It is, however, also worth noting how paragraph 3 lists a number of circumstances in which communication to the affected data subject(s) is not required such as if the data controller has taken subsequent measures to neutralize potential risk to the data subject or if communication would require "disproportionate effort."

towards the treatment of more "obvious" and more "serious" instances of potential legal violation (i.e., no more cases assumed for extensive treatment "unless it is a clear police report"). This, then, is the first time during the deliberation that we encounter an instance of effective counter-performativity (i.e., an apparent economic rationale suddenly problematizing the hitherto dominant and seemingly "pure" juridical modality) and get a sense of its potential effect upon the juridical mode of evaluation characteristic of the setting (i.e., the active diminishment of the legal "gravity" of the case in question due to apparent "economic necessity"). Thus, in the particular instance, the question of economy suddenly seems to challenge and/or reframe the question of legality as posed by the group. Of course, we might have to consider the ways in which such economic considerations might have already been implicitly present in the group's evaluation of cases until this moment when it is suddenly made explicit.

[…]

After categorizing a few additional cases of a less serious or demanding character, one case again suddenly draws the group's attention.

"Did we make a news post about this? … We need to make a news post about this right away … [about] what you can do wrong with just a PowerPoint."

The report describes a PowerPoint file which has been forwarded by the public institution in question to the attendees of an official presentation at its premises. The key issue is that the PowerPoint file contained a graph which – due to the way it had been imported into PowerPoint from some other program (likely, Microsoft Excel) – still contained the data it was originally built on. The result is a situation in which a significant amount of personal data has been accidentally disclosed to a group of "outsiders" (i.e., people without any formal access rights to that institution's data). Due to the character of the institution in question, it appears to involve an accidental disclosure of a significant amount of health data on a large group of individuals. The mood of the agency's security consultants has once again changed into one of sharpened attentiveness and possible alert.

Initially, the manager seems worried by the prospect of the case becoming a matter of controversy between the public institution in question and the agency. The group debates the possibility of addressing the case through a simple telephonic inquiry with the institution in question followed by the issuance of a news post on the agency's website to warn about this particular kind of issue (i.e., what to be aware of when disclosing digital files and/or graphs of this sort). All of a sudden, however, one of the younger consultants intervenes by addressing the manager. "Is it a problem that we filed a police report on [another organization] for the same thing?"

"No, this is an isolated case …" the manager starts but then suddenly interrupts himself. "No, I agree … we are going to run both cases. Two police reports. Then we also have the same argumentation in case number two … We are going to wait with the news post … Then we are really under pressure with the case load … Write that we are opening a case against [the institution in question] … even if we are kicking someone who is already lying down … this is *really* … this is going to go straight on the front page …"

One of the consultants jumps in. "I have an idea. In this case they are sending it to a limited group, it is not made public in that sense …"

"I still think this can sustain a police report, " the manager argues. "You can just write … in relation to the publication [of the PowerPoint's data set], what consequences that has. We will have to revisit that issue. But the point is the same. The problem is the same."

Assessing the general legality of the reported situation, the case appears to the consultants as a rather both obvious and serious violation – even if accidental – as copies of a personal health data set have been distributed among a number of unauthorized individuals (i.e., these now being in possession of data they are not legally entitled to possess). Further, as "health data" constitutes a "special category" of data under GDPR (implying a heightened risk to the data subject's rights), the unwarranted disclosure of this particular kind of information adds to the potential seriousness of the case's character. Initially, however, something seems to halt the manager's willingness to assume the case for substantial treatment (i.e., his concern about the case becoming a matter of controversy between the particular institution and the agency). Even if somehow ambiguous, this position seems to indicate a problem of politics by locating the agency as enmeshed in the potentially political landscape of other government institutions where potential controversies might subsequently cause political issues for the agency (notably risking a problematization of the DPA's formal independence). However, as the junior consultant's invoking of the principle of legal tradition is deemed valid by the manager (again, marking the effect of his authority), the group suddenly appears forced to mark the case for a police report to avoid breaking with legal tradition in the enforcement of this particular type of case. The assertion of legal tradition – and the perceived importance of maintaining it as a fundamental principle of evaluation – thus eclipses both the momentary consideration of politics (even if assuming the case might become a matter of controversy, even if the case might "go straight on the front page") as well as potential empathy with the other institution in question (i.e., even if it means "kicking someone who is already lying down"). Notably, it also makes the manager temporarily disregard the problem of economic resources (i.e., "Then we are really under pressure with the case load …") which seemed to compromise the force of legality in the previous section. It is worth noting, however, how an economic rationality displays its continuous presence in the proposed (economic) benefits of conducting case work "at scale" (i.e., "Then we also have the same argumentation in case number two …"). The example does, however, give an impression of the primacy, general dominance, and peculiar force of law and legal discourse in this setting; as a single comment by a junior consultant (i.e., absent formal authority) questioning the preservation of legal tradition in an instant takes precedence and makes all other considerations appear relatively superfluous.

[End of transcript]

With these considerations, we leave the deliberation of the agency's security consultants. The example, I believe, exemplifies the analytical method mobilized in this thesis as we begin identifying particular patterns of respectively juridical, economic, and political forms of evaluation at work within this particular setting. In the following, I will conduct a more abstract analysis of these patterns based on the coding of the full data set in order to further specify the particular

principles of evaluation (i.e., felicity conditions) at stake and their relations to help define the juridical concept of "digital responsibility" emerging within this context.

Responsibility as a performative in the juridical context

Based on the above, the organizational setting in question might be categorized fairly well as *juridical* in its general institutional orientation. The most important, overall question addressed by the agency's consultants and jurists in their attempt to define what constitutes morally "responsible" action concerns the perceived legality of that action. We could rephrase this to say that the question of legality thus constitutes a primary "felicity condition" (Austin, 1962; Latour, 2010) for local articulations and assessments of responsibility. When someone does something (i.e., engages in a particular form of data collection and/or -processing), is that action "legal" or not? In one's capacity as a citizen within a state, this question might seem entirely trivial or commonplace signaling nothing but the taken-for-granted view – or theory – that one should always behave in accordance with the law in order to avoid legitimate punishment by and within the state one belongs to. However, as anyone who has watched courtroom dramas would recognize, the question of legality is not always simple or clear-cut, but can be a rather complex, multifaceted, and altogether difficult matter. Furthermore, to understand more substantially what it means to think and speak effectively in terms of "legality" (e.g., to deem a particular action "legal" or "illegal"), we will have to pay closer attention to the peculiar quality, internal composition, and overall rationality of law as such.

According to some of my respondents at the DPA – and taking GDPR as our example – one might begin to deduct this general logic from the introductory articles of this (or any) legal framework. Article 1 of GDPR presents the "subject-matter and objectives" of the regulation as "[laying] down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data." Article 2 then defines the regulation's "material scope" (the particular kind of action it aims to regulate) as "the processing of personal data wholly or partly by automated means" as well as processing of data which form – or are intended to form – "part of a filing system." It also stipulates the kinds of data processing the regulation does *not* apply to. Article 3 subsequently defines the regulation's "territorial scope" stating that it "applies to the processing of personal data in the context of the activities of a controller or processor in the [European] Union, regardless of whether the processing takes place in the Union or not." Finally, Article 4 presents a set of "definitions" where the key terms of the text are specified. For example, terms such as "personal data" and "processing" are defined:

(1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
(2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording,

organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.

One might notice how these "general provisions" of GDPR taken together construct a rather particular spatial cosmology, one that allows for a both theoretical and analytical isolation of a particular kind of "objective" action or phenomenon in the world (e.g., "personal data processing" in the above sense) and its separation into discreet instances where the regulation would apply and where it would not. The most important implication of this composition, however, seems to be that for any activity which could be said to fall within these definitions (i.e., within the regulation's material and territorial scope) the rules are declared to always/already apply in an almost "magical" fashion[7] to the extent that the authority of the regulator (in this case, the EU) is socially recognized. At the very least, the enacted law would constitute a possible epistemological and moral framework to be used by legal professionals in the further production of legal verdicts and knowledge.

Starting by considering the legal text as constitutive of a particular kind of spatiality becomes, I think, all the more helpful when moving from this initial question of general application to the more specific question of the legality – or "lawfulness" – of instances of data processing. Here, any concrete practice or activity which would fall within the material and territorial scope of the regulation could be considered "legal" only insofar as it was capable of assuming for itself a legal basis (or *hjemmel* in Danish), that is, a legally substantiated reason to engage in the specific kind of activity regulated by law. Importantly, what would count as a legitimate "legal basis" for any such activity would be provided in and by law itself. For example, GDPR's Article 6 provides that:

1. Processing shall be lawful only if and to the extent that at least one of the following applies:
a. the data subject has given consent to the processing of his or her personal data for one or more specific purposes
b. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
c. processing is necessary for compliance with a legal obligation to which the controller is subject
d. processing is necessary in order to protect the vital interests of the data subject or of another natural person
e. processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
f. processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

[7] For an extensive reflection on the apparent "magical capture" of state legislation, see, e.g., the chapter "7000 B.C.: Apparatuses of Capture" in *A Thousand Plateaus: Capitalism and Schizophrenia* by Deleuze & Guattari (1987).

Notice the form of the introductory stipulation that activity *x* (here, processing of personal data) could be said to be lawful "only if" and "to the extent that" it would be capable of assuming for itself one of these legal bases as a kind of "grounding" or "cause." The law tends to work, then, first of all by defining an entirely negative space, one in which a given activity is altogether banned – or "outlawed" – only then to set out and define a set of relatively particular instances or conditions under which that activity might still be engaged in *legally.* Law thus produces its own "positive space" in the midst of a prefabricated and generalized "negative space." This form is crucial, I believe, to any understanding of what law is and how it works. The ultimate implication would seem to be that within its particular space of application, law – according to its own logic – comes to define virtually *everything*, thus achieving its apparently both "global" and totalizing mode of imposition. That is, by law, *any* organization engaged in the processing of personal data (in the specific sense defined by GDPR) of other persons located within the relevant territory (here, the European Union) should, in principle, always keep in mind and follow existing regulation. Indeed, it is law itself which provides the only possible answer to the question of legality, and thus the only possible basis of moral legitimacy. For a visual metaphor, the effect of this artificial spatiality constructed by law could seem to be a general sense that "the floor is made of lava" (negative space) and then the subsequent putting-into-place of narrow pathways (i.e., legal "bases") upon which one might still tread to avoid legal sanction or moral condemnation (positive space). Hereby, already at this point we get a sense that the "responsible" subject in the context of law would have to be someone experiencing – or assuming the experience of – a rather general sense of paranoia or caution in their daily activities, being, therefore, both careful and restrained in their way of acting. This subject would also be equipped with sufficient knowledge of existing law to adjust their activities according to its moral prescriptions and act *only* insofar as they had a legally substantiated reason or basis for doing so.

The more exact composition of law's "positive space" is further characterized by intermingling legal rights and duties. As long as any actor would manage to navigate the slim passages of legitimacy defined by available forms of legal basis, that actor would remain legally entitled to act while respecting the legal entitlements of other actors in its environment. One might even be legally entitled to various rights provided by other actors which were under an obligation to provide or enable such rights. For example, according to the GDPR's framework, a "data controller" (e.g., a company or a public administration processing personal data) is obliged to enable the "data subject" (i.e., a "natural person" to whom personal data relates) to exercise their legal rights under the regulation. The "responsible" organization thus maneuvers within a complex space populated by various legal duties and rights (entitlements) which must be simultaneously observed, performed, and respected in relation to one another. Generally speaking, the link between obligation and entitlement – and the abstract directional imperatives of activity deducible from these links – are sought encapsuled in a set of legal principles formulated by GDPR's Article 5. It states:

1. Personal data shall be:

a. processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, and transparency')
b. collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes […] ('purpose limitation')
c. adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed ('data minimization')
d. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased, or rectified without delay ('accuracy')
e. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical or organizational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation')
f. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction, or damage, using appropriate technical or organizational measures ('integrity and confidentiality').
2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

From this, we get a sense of the set of general duties and obligations – here formulated initially as abstract principles – which the law imposes on "data controllers" and "processors" to ensure the rights of "data subjects." As one of the agency's security consultants passionately explained to me during my visits, it had always occurred to him that these initial articles of any law – defining the particular law's material and territorial scope, its conceptual apparatus, and its general principles – were in principle "all anyone needs" to understand and be able to live up to any legal framework. That is, everything that followed in a lengthy legal document such as the GDPR framework should in principle be deducible from these initial articles. In other words, the remaining pages of any legal framework tend to contain only specifications of what it should mean to live up to those principles within more concrete circumstances. With regards to forming an understanding of what it means to be a "responsible" actor in the context of law, we might thus add to the seemingly necessary qualities (i.e., of being generally cautious and/or vigilant in one's activities and of both respecting and having a certain appropriate amount of knowledge of the law) the quality of living up to – or perhaps rather *embodying* – legal principle (an idea sometimes referred to as the embodiment of "legal spirit" or "the spirit of law"). In fact, this quality of the embodiment of legal principle or "spirit" in one's life and one's activities would appear to form exactly the theoretical as well as practical link between legal knowledge (knowing the principles of morally legitimate action) and everyday vigilance (enacting and performing those principles in one's daily – here, data processing-related - activities).

To be sure, it might not always be obvious how these abstract principles of law might be supposed to translate into concrete forms of action. For example, a case might arise in which various legal duties and/or rights appeared to be in conflict, pushing the agency's lawyers into a state of uncertainty as to which legal duties and/or rights should take precedence in the given case. That is, I was told, there might be a problem of legal clarity surrounding any given case. In the lawyers' deliberations, this problem of unclarity tended to be followed by an exercise in "weighing" the various legal considerations at stake in the case (e.g., such as "oppositional" duties and rights) to determine their relative legal weight. To make these determinations, the lawyers would draw on a comprehensive body of "legal sources" (*retskilder* in Danish) such as alternative legislative frameworks as well as prior verdicts from other similar or related cases. The objective would usually be to apply existing law to a new and – as the lawyers say – untested and, thus, "interesting" case (i.e., a somehow unusual case where the way the law should be applied and various legal dimensions "weighed" in relation to one another would not be given beforehand). This should be done in a way which simultaneously respected and upheld legal tradition (the manner in which the law had been interpreted and applied historically) and ensured legal certainty (continuity, stability and, thus, predictability in how the law was interpreted and should be applied in the future). While this was itself a complex matter in practice, we can see how the rationality ultimately provides for the concept of democratic "rule of law" qualified by principles such as legal predictability, fairness, and justice.[8]

Let us now turn, however, to the question of what happens when someone is perceived to be acting in *violation* of the prescriptions of law, that is, seen as moving beyond the positive space of legal legitimacy (i.e., the space of legal basis, duty, and entitlement), and into the negative space of potentially illegal ("outlawed") activity. To illustrate this, I will focus on a concrete case in the area of information security which was being processed by the DPA at the time of my visits. The case, described to me by an agency employee, revolved around a business which had reported a security incident that might have caused risk to the personal data of its digital customer base. One or several hackers had gained access to the digital platform underlying the business' web shop and created new administrator rights in the company's backend. As an administrator, the hacker(s) had achieved access to "all information on [the platform]" including the customer database, but not access to other systems or infrastructures. To begin with, the company could not see that personal data relating to any of their customers had been compromised. In collaboration with NETS (a major Nordic supplier of electronic transaction services), however, the company soon ascertained that a potentially significant number of web shop customers had been redirected to a "non-standard DIBS URL" at the time of payment through the web shop.

To determine whether and to what extent the incident involved a legal transgression, the agency's representatives urgently needed to gather the information necessary to understand in some detail the social and material circumstances of the case. This also emerged, in the above transcript, in the agency's continuous demands for additional information from organizations whose conduct might have been legally problematic. The processing of this particular case also commenced with a request for additional information from the agency to the company in question. From that information, the agency's representatives started constructing a timeline detailing

[8] See also Bertea (2008).

relevant events in the given case. It appeared that, after the attack, the company had shut down and checked the web shop, assessed that the "attack" had failed, after which they had reopened the web shop again for new costumers. Later, however, the company received a message from its transaction service provider (NETS) stating that the personal data of their customer base "might be affected." To comply with their obligation of transparency under GDPR, the company then informed via email a couple of thousand customers about the attack (customers whose personal data might have been compromised).

When the agency inquired directly into the perceived cause of the breach, the company's initial reply was that this remained somehow "uncertain." They replied further that "it must be assumed that there is an unknown way to gain access to [the platform used by the company]." The uncertainty about the technical cause of the incident manifested itself in several subsequent responses provided by the organization to the DPA's questions, for example questions regarding the preexisting security measures in place to protect personal data, the particular vulnerability exploited to allow the incident to happen, and which – if any – security updates had been put in place to cancel out this vulnerability in the future. Generally speaking, the organization's representatives were not aware of any such vulnerabilities as the "root cause" of the breach remained "uncertain."

The case then suddenly developed when the DPA received another report of a new security breach from the same organization, now revolving around the presence of a "malicious script" at work in the organization's system which had again let to customer data (including credit information) being compromised. Again, the DPA requested additional information along with a risk assessment from the company. From the information provided by the company – now in collaboration with a hired IT-security subcontractor – it appeared that the "malicious script" had been in place on the website throughout the entire period and had likely led to both security breaches.

Having attained a clearer picture of the circumstances of the case, at least two central questions were raised. First the question of general legality of the situation. According to GDPR's Article 32 on information security, a data controller must ensure "appropriate security measures" to ensure that personal data is not compromised. In this case, the general attitude among the security consultants seemed to be that the company in question had failed to ensure such "appropriate measures" since their reopening of the web shop *before* being able to locate the "root cause" of the breach meant that customer data might still be – and risk being further – compromised. As noted in the case file by the security consultant tasked with processing the particular case on the question of its apparent legality:

> "The web shop was reopened without the foundational cause of the attack having been found and [the company] should have realized that the system [still] had weaknesses which might be exploited for additional attacks. […] The reopening of the web shop before having confirmed the elimination of the security breach [leads to the assessment that] the organization has not ensured "appropriate security measures" […] Hereby, the company has not acted in accordance with Article 32."

On the general question of legality (as described above) – i.e., whether the organization's action had a proper legal basis, including whether the organization lived up to its legal obligations and respected the rights of other actors (primarily relevant data subjects) – the answer in this case would appear to be negative.

Thus, approaching the conclusion that the case indeed constituted a punishable legal violation, the following question concerned the perceived character of that transgression. The question of character, however, would still be intimately connected to the question of circumstance but only occur at the moment when an apparently "neutral" set of circumstances was apprehended from the perspective of juridical morality. In other words, the circumstances of the case would no longer be considered from their purely descriptive value but now as relatively "aggravating" and/or "mitigating" from the perspective of law to determine the relative moral severity of the violation and thus the character of the case (was this a relatively "mild" or "severe" case?). This evaluation of a case's character was by no means a trivial or inconsequential affair as in practice the same question might become phrased as "reasons for and against" reporting a given organization to the police.

In this particular instance, the security consultant had jotted down a number of seemingly aggravating circumstances or "reasons for" filing a police report. For example, the company chose to reopen the web shop before the cause of the breach was fully understood which ultimately led to further breaches of customers' private information. The company had an obvious economic incentive (i.e., "motive") to do so, which might have led them to "forget" – as the security consultant stressed when I asked about the case – the juridical principle that "duty surpasses economic considerations." The same vulnerability, thus, led to two breaches instead of just one since the flaw in the system was not discovered after the first breach and thus left unattended. The company in question had in the process attempted to install a security update to address the problem, but the patch installation had failed which prompted no apparent reaction from the IT department (even though this failure might have indicated that a foreign agent was still present in the system). This led the DPA's security consultant to note in bold letters in the case file: "[The company's IT personnel] CANNOT install security update and does not reflect upon this." Finally, a relatively large amount of people's personal information (including credit data) had been compromised due to the breach; data which might now be at risk of further abuse. The only mitigating circumstance noted – hence, "reasons against" filing a police report – was the argument forwarded by the company itself about the practical difficulties of discovering the ultimate cause of the breach.

Now, what is crucial about all this for our understanding of the juridical notion of "digital responsibility" is how a very particular idea of responsibility is in fact being established throughout this entire interaction. As I discussed the case with the consultant tasked with processing it, he explained: "It is an accident. A hack […] it could happen to anyone. The problem is when they open [the web shop] again and *don't know* how the hackers got in to begin with." The major issue, thus, was not necessarily the breach(es) as such but rather the significance and kinds of activities undertaken – or not – by the organization *in response to* the initial incident. As the consultant subsequently put it, the key issue in this case was that "they [the company] have not acted as *bonus pater*."

Now, this juridical and rather curious persona of *bonus pater familias* (or "the good family father")[9] is a welcome encounter for us at this point because it neatly confirms several of our hitherto assumptions about the juridical concept of responsibility. This is not necessarily to claim that the particular notion fully encapsulates the notion of "responsibility" from the juridical point of view. Yet the concept has seemed intimately tied to the local understanding of the meaning of acting responsibly which I encountered at the DPA and in fact implies a rather rich idea of responsibility. Confirming our previous speculations, the jurists deem a *bonus pater* to be exactly the kind of "diligent guardian" we have been looking for, an agent which, by definition, exhibits both generalized caution, vigilance, care, and orderliness in its daily activities (as opposed to, for example, carelessness, negligence, or selfishness). In the context of law, this implies that a *bonus pater* constitutes an agent which is both familiar with the law and its prescriptions and – as expected from our hitherto analysis – does what it can to embody the spirit of law in its daily activities. In other words, a *bonus pater* is an agent which carefully ensures the legality of its dealings 1) by engaging in regulated activities only insofar as the agent has a legal basis (and, thus, a legally substantiated reason) to do so, and 2) by faithfully performing its legal duties while respecting the rights of others in a manner which is characterized by both persistent care and vigilance. A *bonus pater* hereby navigates the positive space of law we described above with noticeable skill and capability. The moment this agent becomes aware of a risk of potential unlawfulness in its own activities – i.e., of transgressing legal limits and entering law's negative space – a *bonus pater* would quickly and independently engage in various activities in a both proactive and prophylactic manner to avoid any potential illegality from either festering or spreading within its organization or risk causing harm to others and their rights. A *bonus pater's* primary intention, in other words, is to persistently mitigate any potential unlawfulness of the situation in an active and independent fashion with the purpose of continuously restoring and ensuring the status of legality to its activities. Finally, as a legally and morally "reasonable" agent that is both aware of and content with its duties, a *bonus pater* tends to prioritize its legal obligations before other concerns and is willing to forego personal self-interest in the name of legal principle, duty, and socio-moral virtue more generally.[10]

To be sure, in the above example, the company is seen by the security consultant to have *failed* to act as a *bonus pater* (and, in that sense, to have behaved relatively "irresponsibly"). Their first response to their digital system having been compromised was neither vigilant nor effective but wrought by apparent neglect, carelessness, and a prioritization of economic self-interest before the necessary and appropriate degree of respect for data subject rights. The company's response, in other words, appeared somehow "corrupted" by economic self-interest which seemed to have led its representatives to fail to notice obvious signs that their digital system

[9] For the purposes of this analysis, I will consciously disregard the potential gendered/gendering implications of the concept – just as the DPA's representatives tended to do when conducting legal analyses – even if these might seem most apparent.

[10] As mentioned above, I wish to postpone a more detailed comparison of these empirically emergent notions of "responsibility" with the prior definitions of the term in existing CDR literature until the comparative section of this thesis. For now, however, it might be sufficient to note that while existing literature does mention law as potentially relevant for CDR, propositions such as that of Herden et al. (2021) simply stating that "it is mandatory for companies to abide by existing laws and regulations concerning digital technologies and data" (ibid.: 17) seems to fall short of presenting a definite juridical concept of responsibility (such as the one emerging above).

might still be infected with "malware" and reopen the company web shop before the system had been properly inspected. This, in turn, caused unnecessary risks to their customers' legal rights and entitlements. We see this in the DPAs treatment of other cases as well; that the legal awareness and know-how displayed by an organization's representatives as well as the effort made to restore legality to a legally questionable situation by that organization independently of (i.e., *before* its interaction with) the DPA both became important indicators of the relative responsibility of its conduct and might affect the agency's perceived need for filing a police report against the particular organization.

Counter-performative tendencies

While we have attained a better sense of the dominant performative regime and mode of evaluation giving rise to a particularly juridical notion of digital responsibility, it is now time to consider the counter-performative tendencies (MacKenzie, 2004; Butler, 2010) at play in the context of the DPA. During my observations, these tendencies found expression particularly through the ways in which the institution was perceived by its members to be either challenged or gradually transformed. For example, during one of my very first days of doing fieldwork at the agency, a local manager told me of their initial doubts about when to report a given organization to the police for a breach of data protection law. In this regard, he informed me that the agency since the enactment of GDPR had modified its approach significantly so that a case which might previously have been considered for a large economic fine might now not even be reported to the police. "We have become wiser," he told me, indicating that the agency and its praxis did not exist in a mode of stasis but had undergone (or were undergoing) a certain transition.

During my time at the agency, several examples of and reasons for these changes were suggested to me by various of the employees. The first (also indicated in the above transcript of juridical deliberation) had to do with the availability, allocation, and prioritization of economic resources to and within the agency. When I visited the DPA at the beginning of 2021, the agency functioned on the basis of a government-funded operating license of around 45 million DKK and comprised around 60 employees. At the same time, in 2021 alone, the agency undertook no less than 17.291 new cases. 8.554 of these concerned potential data security breaches (that is, between 150-200 breaches per week, reported by various Danish organizations), 2.237 concerned complaints under current data protection law, and the remainder a significant variety of cases relating to potential breaches of Danish law enforcement regulation, consultations on new legislative measures, legal guidance and education, cases undertaken on the DPA's own initiative, etc. (see Datatilsynet, 2022).

These numbers, I believe, might explain the perceived need experienced by the agency's representatives to make case work both more efficient as well as to focus time and resources on those cases which occurred as clear and/or serious legal violations. At the same time, the perceived lack of resources experienced in relation to the agency's tasks seemed to sometimes cause bewilderment or a slight sense of resignation among certain employees. During my time at the agency, a young jurist expressed his frustration to me, repeating the story I had already heard from other employees that the agency had "significantly scaled down" the number of cases subjected to extensive treatment and closed several cases which had in principle already been started.

The new question raised within the agency, he told me, was in relation to citizens' rights: "where can you get the most security for the money?", which implied a continuous balancing act between the cases assumed for extensive treatment and the resources available to process those cases. While this reasoning was obviously quite sensible from an economic point of view, it also seemed noteworthy how the question of resource availability, allocation, and/or prioritization more or less directly might affect the legal analyses of cases (also indicated in the exemplified deliberation above). For example, as one manager put it, having more resources available might reduce the number of cases deemed "disproportionate" under current legislation, thus affecting, for example, both the speed and extensiveness of its treatment. The general implication seemed to be that the impact of economic resource scarcity upon the agency's legal evaluation(s) might affect the treatment of particular types of cases and thus, ultimately, entail a problematization of the idea(l) of the rule of law as such (incl. principles such as legal certainty and tradition identified above).

Another relevant aspect would appear to be a kind of politics, here in the form of a variety of more or less direct pressures from a multitude of actors experienced by the agency's employees in their daily activities. As GDPR was adopted in 2016 (becoming enforceable in May 2018), the general take among the jurists of the DPA was that it constituted "more of an evolution than a revolution" of previous data protection rules. Interestingly, the laws on data protection which preexisted GDPR were seen by the agency's jurists as almost *identical* to the new law. As a manager at the DPA told me: "There are some tweaks every time [data protection laws are updated] but altogether […] it is fundamentally the same." The manager continued: "But in practice, it has been a revolution. Nobody lived up to the old rules and therefore it was experienced as a significant leap to suddenly have to ensure compliance [with the new rules]." Thus, while the agency largely perceived of itself as a politically "independent" entity, the adoption of GDPR – and the renewed international focus on data protection as an important legal field – had given rise to perceived pressures from both various governmental and business actors upon the agency. The agency, in turn, according to certain employees, found itself in a "new reality" in which "data must be utilizable." A manager described how the agency was passing "from a time before where focus was primarily on law enforcement" to a new situation where the agency was expected not to enforce the new rules too harshly (e.g., by imposing large fines on business or government institutions) while ensuring a continuous provision of "guidance" material to "help," rather than force, non-compliant actors into a state of legal compliance. According to another manager, the heavily politicized situation had thus led to the "[acknowledgement by the DPA] that going out and only conducting enforcement and beating down harshly on everything [might not work well] […] the truth is that we may get further by providing some guidance. […] this is also why we made an organizational change from an [IT security] inspection unit to one called Guidance and Information Security. This has been sort of a cornerstone."

The change towards an increased strategic focus on guidance – and thus, in our vocabulary, the effective counter-performativity of "guidance" as an established element of institutional strategy and practice – appeared to be followed by both optimism and skepticism among the agency's employees. On the one hand, it was seen by many as entailing a potentially beneficial preemptive effort which, if carried out well, could lead to an overall decrease in the future

case load imposed on the agency through higher levels of legal compliance among Danish organizations. For example, high quality guidance material might – the members of the agency all seemed to agree – lead to higher levels of compliance among various organizations, thus leading to fewer legal complaints from citizens and fewer reported IT security breaches from public and private organizations. It could even reduce the number of cases related to the legislative work of government since enhanced legal knowledge in the field of data protection among public officials could in theory reduce the need for formal consultations with the agency (a task which also required substantial resource allocation). However, while there were indeed such perceived synergies between guidance and enforcement, there were also perceived conflicts. As pointed out to me by several of the agency's representatives, even if guidance worked preemptively, this positive outcome remained rather uncertain. Meanwhile the reallocation of scarce resources in the present risked "stealing" resources from the remainder of the agency's enforcement task. Put simply, the more you engaged in guidance, the less you would be able to punish. And since resources for enforcement were already considered scarce (as we have seen), the potential reallocation towards guidance *rather than* enforcement was sometimes considered problematic if seen to result in a further reduction of the agency's punitive capacity.

Finally, a rather interesting question about the general desirability and sheer practical possibility of enforcing GDPR and thus spurring "digital responsibility" among societal actors and organizations appeared to have seeped into certain corners of the agency. As we shall see in the remainder of this thesis, such questions appear to haunt the field of data protection and may in fact have significant explanatory value when seeking to understand why, for example, there might be a certain political opposition to the national enforcement of GDPR. During my visits to the agency, this question found its clearest expression in one particular conversation with a young jurist who struck me as particularly cynical about the current regulatory situation and appeared to have entirely lost faith in the Danish agency's (as well as other national agencies') ability to ensure the rule of law.

Initially, the young jurist declared his view of the delegation behind the formulation of GDPR's legal framework as rather idealistic. To substantiate his view, he pointed me specifically towards the recent so-called Schrems II verdict by the EU's Court of Justice which was of significant news value at the time I was doing fieldwork. Many considered – and still consider – this particular verdict significant because it deemed transfers of data from within the EU to "third countries" (i.e., countries outside the EU including the United States and China) illegal unless that transfer could assume a legal basis for doing so which guaranteed the rules and norms of GDPR as a minimum standard for legal data processing. What was most interesting was that apparently many of the most common and deeply institutionalized data transfers between organizations in the EU and the US could *not* guarantee GDPR standards, including a significant number of transfers of data from European organizations to "tech giants" such as Microsoft, Facebook, and Amazon.[11] At the time, the Schrems II verdict would thus appear to render collaborations involving data transfers to these companies effectively illegal under European law.

[11] At their most basic, the Schrems lawsuits have targeted what is perceived as a fundamental conflict between the rights guaranteed by European data protection law and US intelligence laws which – according to the plaintiff Max Schrems – allow US intelligence authorities to collect data on European citizens in a manner incongruent with those

Describing these circumstances to me while shaking his head in a sense of resigned disbelief, the young jurist asked me to consider the implications, then, of demanding immediate and effective law enforcement in and across Denmark. The entire country would suffer from the consequences, he concluded, pointing out several instances where key digital systems and infrastructures underlying, for example, daily operations within the Danish government as well as in Denmark's public and private sector appeared to rely heavily on American-based cloud solutions to function, making strict and immediate legal enforcement both politically and economically undesirable (as well as enormously challenging in practice). Instead, he argued, these systems simply continued to exist and be used even though they might appear illegal under GDPR. It is worth noting here that while this rather profound doubt about the efficacy of legislation in the area of data protection was very clearly pronounced by this one jurist in the DPA, the Schrems II verdict was the subject of much discussion in virtually every context where I conducted fieldwork during my PhD and might be seen to entail potentially interesting implications for existing theoretical conceptions of "digital responsibility." I will revisit this question in the comparative section and discussion of this thesis.

For analytical purposes, however, it may be worthwhile to dissect a bit more carefully the assertion that "Denmark" as an entity would suffer from the consequences of a very strict form of legal enforcement. For example, we might question exactly which "Denmark" the young jurist was referring to when making this rather noticeable claim. For it would seem that it is not "Denmark" in the sense of, at least, a particular state characterized by the rule of law (i.e., *retsstaten* in Danish), that is, as a state first and foremost defined and constituted by its laws and its legal system, which would not endure in case its laws were enforced more strictly. Rather, I think he had one of two conceptions of the nation in mind, perhaps both at the same time or perhaps one presupposing the other: On the one hand, "Denmark" as a functioning welfare state and thus an efficient provider of public welfare, and, on the other hand, "Denmark" as a functioning national economy and a well-economized state. Only in such a sense, I think, does the assertion seem to be meaningful.

What appears interesting here, is how the problem of economy constantly appears to re-enter – and persistently (although not necessarily always) challenge or contradict – the more general juridical pattern of evaluation conveyed by the DPA and its representatives. We have seen how the legal profession formally insists on placing duty before economic concerns, maintaining that economic cost is no excuse for legal non-compliance, and that self-interested economic incentives may be considered a corrupting influence under the effect of which organizations might be subjected to progressively harsher forms of legal punishment. However, from the internal workings of the DPA, we identified economic resources as a persistent problem in the daily operations of the agency, one which might even affect and change – i.e., "water down" in the worst case of resource scarcity – the legal status of certain cases and case types and thus, to some extent, shape the practice of legal enforcement in turn. Further, we saw how the agency

rights. The Schrems lawsuits have focused especially on Section 702 of the US Foreign Intelligence Surveillance Act (FISA), Executive Order 12333, and Presidential Policy Directive 28, which regulate how the US government may conduct surveillance of non-US persons outside the United States based (also) on corporate data (see e.g., Tzanou, 2021).

had experienced a variety of pressures from both private and public actors in Denmark to "guide" rather than (or as well as) "force" organizations into compliance, and a tendency to impose less substantial economic fines on organizations engaged in illegal activity. This appears to be primarily due to pressures stemming from a multiplicity of political actors beyond the confines of the DPA's offices to avoid damaging the nation as an economy while focusing on its preservation as a juridical and punitive state. As we now see, there appears to be an extreme point at which it is deemed outright undesirable or even "impossible" to enforce existing regulation since one might risk the simultaneous "destruction of society" perceived primarily in terms of its national economy. We thus witness the interplay of forms of performativity (Austin, 1962; Butler, 1999) and counter-performativity (MacKenzie, 2004; Butler, 2010), including the continuous and gradual problematization sometimes of principles of legality by issues of an economic character, sometimes of principles of economy themselves which are continuously warded off by the dominant juridical rationality characterizing the DPA's general institutional orientation.

The identification of various economic principles contesting and problematizing the more general juridical mode of performativity characteristic of the DPA is interesting also now that we will move on to the second context in which I studied the formulation of "digital responsibility" during fieldwork. This is because we are moving to a setting where economy suddenly would take precedence over and above law and its juridical rationality as the dominant mode of evaluation. We thus move to another location in downtown Copenhagen where a project concerning the establishment of a private labelling program had recently secured funding when I started visiting them as part of my fieldwork.

Digital responsibility as commodity and resource: The D-seal

In this section, I will continue answering this thesis' SQ3 by describing and analyzing, based on ethnographic observation, how the notion of digital responsibility becomes established and comes to direct activity in particular ways in the context of a private labelling initiative. In doing so, I adhere to the same structure as in the previous section, starting with a brief introduction to the particular field site, an analysis of a concrete instance of local deliberation, a more general analysis of the dominant performative regime (Austin, 1962; Butler, 1999) characteristic of the setting, and concluding by analyzing the particular instances of counter-performativity (MacKenzie, 2004; Butler, 2010) which appear to challenge an established notion of "responsibility."

The announcement of a Danish labelling program aimed at cultivating and enhancing "*IT security and responsible use of data*" among Danish companies constituted a news story at approximately the same time I started my Ph.D. I first heard about the initiative in a Danish newspaper article from October 2019 describing how the establishment of a new label should "make it more easily transparent for consumers which companies process their data safely and responsibly" (see Pröschold, 2019, own translation). The following day, the Ministry of Business Affairs published a news story on their website about how the Danish government (which had, it stated, a "big focus on data ethics and IT security"), and the Minister of Business Affairs in particular, were pleased to reveal the plan to help develop a voluntary labelling initiative to strengthen the digitalization of Danish companies (Ministry of Business Affairs, 2019). The Danish Industry Foundation – a private philanthropic foundation with the formal purpose of supporting and enhancing the competitiveness of Danish industry (Danish Industry Foundation, 2023) – had granted 18 million DKK to fund the development of this labelling initiative based on a "user-tested prototype" of the label, the establishment of which had until now been spearheaded by the Danish Business Authority. While the project's funding during development would come from the Industry Foundation, the practical organization of its further establishment would be carried out and monitored by a "partnership" of Danish interest organizations including the Confederation of Danish Industry, the Danish Chamber of Commerce, SMEdenmark, and the Danish Consumer Council, as well as the labelling program's own organization which still had to be constituted (see Ministry of Business Affairs, 2019).[12]

Despite the fact that my own PhD supervisor made a rather direct public criticism of the initiative as merely providing "false safety" for consumers in the very same newspaper which had brought the original story about the initiative (Politiken, 2019b), my supervisor and I got in contact with the project's representatives and decided to meet. Thus, we and two representatives from the Confederation of Danish Industry met on December 12th, 2019, to discuss the possibility of me observing the project during the label's next stages of development. The local representatives were – despite my supervisor's critical position – surprisingly open to the idea, and although I had to meet with the two representatives again along with the newly hired director of the project in January 2020, negotiating access to this setting proved relatively easy.

[12] While such collaborative constellations of state and non-state actors are relatively normal in Denmark and with regards to the Danish economy, this might be different in, for example, a US context (see e.g., Campbell, Hall & Pedersen, 2006).

Like with the DPA, the initial meetings involved me laying out the basic tenets of my project to discuss the potential collaboration with local representatives and align expectations. However, as the newly hired director and the two industry association representatives seemed to see no immediate issue with me coming in to observe and potentially record internal work meetings, we quickly came to an initial agreement whereby I could visit them in their offices a few days per week. My main object of observation would be so-called "working group meetings" in which the newly hired staff of the label's own organization (such as the director, a secretary, and a couple of auditors who had yet to be hired) would deliberate and make strategic decisions on the project with representatives of the respective partnership organizations (listed above). Also, as with the DPA, I had declared my desire to participate in their work (i.e., conduct participant-observation) in ways and to an extent which would allow me to form a deeper understanding of that work and the rationalities shaping local practices. Contrary to the DPA, however, local representatives appeared rather pleased with this idea and seemed very interested in discussing how I might actively "contribute" to their project during fieldwork. Ultimately – considering and negotiating my academic interests in relation to their interests – we agreed that I might assist in certain research-oriented tasks, for example in "mapping the environment" of similar or comparable initiatives around the world to enable a "learning process" within the project organization. The project representatives were equally keen on signing my supervisor up for the project's advisory board of recognized experts from across various Danish institutions, likely due to his initial criticism of the project in the Danish media. My supervisor agreed to do so. I was subsequently invited to sit in on my first working group meeting in February 2020 where I met for the first time the remaining representatives of the organizational partnership behind the label.

After this initial observation, fieldwork formally began on March 3rd, 2020, at the label organization's office within the domicile of the Confederation of Danish Industry (the so-called "House of Industry"). This setting was planned to act as an incubator of the labelling program while it was still under development and until a point in the future where the initiative could move out and become financially self-sufficient and independent. Located immediately across the always-busy H. C. Andersen's Boulevard from City Hall, the glass building constitutes a rather well-known and recognizable piece of architecture for residents and visitors of central Copenhagen.

Image 9: The House of Industry seen from the City Hall Square

The general experience of entering the domicile was radically different from entering the offices of the DPA. While most of the office spaces were kept in neutral colors with white tables and black chairs, one often stepped into a room or setting framed by intensely colorful walls (e.g., a sharp red in the below picture) and various pieces of artwork greeting employees in the hallways. One example was this sharply yellow-coated metal installation called "Screwball" by Rolf Nowotny which – according to an explanatory text on the nearby wall – was meant to inspire a feeling of joy and of "maintaining faith in success or a positive outcome" in its audience.

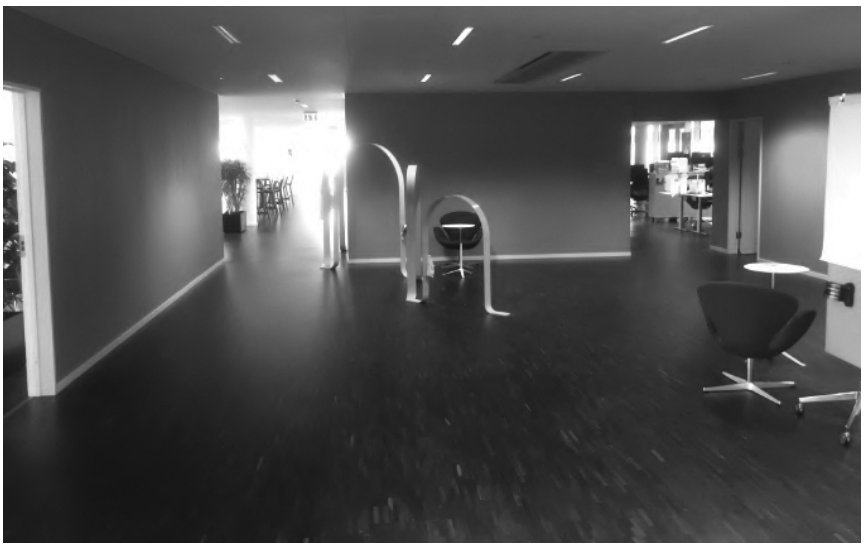

Image 10: Inside the House of Industry – "Joy" area

Travelling between the different floors of the building, each floor was assigned such a general theme; from "Ambition," "Balance," "Ability," "Fighting Power," and, as we saw, "Joy," to "Beauty," "Courage," and "Outlook" (on the top floor).

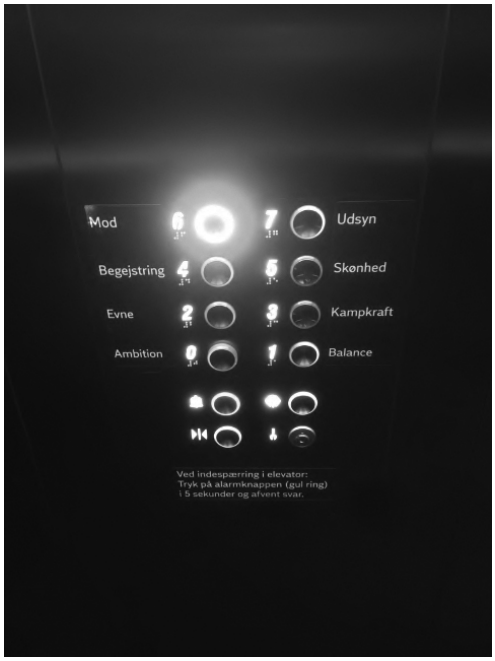

Image 11: Inside the House of Industry – elevator buttons

Entering the domicile of the industry association and its somewhat peculiar universe of meaning, colors, and artwork, I soon became interested in finding an explanation for the selection of these expressive elements and their general curation. Yet, among the people employed by the industry association, no one (or, at least, nobody I spoke to) seemed to know where the different elements came from, what they were supposed to mean, or who had been in charge of their selection. All I learned was that "some consultancy" had at some point in time been tasked with decorating the building and that the various themes, colorful walls, and artistic objects one encountered in the building was the arguably flashy – yet somewhat ambiguous – result of that process.

When I commenced fieldwork at the labelling program, the organization was still so young that the office space it was meant to occupy was still under construction. Therefore, when the recently hired director of the project cheerfully picked me up in the building's lobby on my first day of fieldwork, he brought me to a place on the sixth floor where three desks had been placed as a temporary office. One desk belonged to the director himself, and one to the project's secretary. The last table was meant for me.

Image 12: The label organization's office under construction

Image 13: The label organization's temporary office

With only two employees hired at the time – the director and the project secretary – my observations of the labelling program's organization started in its very early days. After an initial period, the organization moved to its newly refurbished office space within the domicile and a couple of new employees, specifically two "lead auditors" and a "senior consultant," were hired. While my initial agreement with the label's representatives was that I could visit a few times per week, my presence quickly became normalized, and I started following the project on more of a daily basis. During the Covid-19 lockdowns in Denmark, which partially coincided with my fieldwork, I was able to maintain this continuous presence via digital video conferencing platforms.

Besides the labelling program's own organization, the main forum in which the project was developed was the so-called "working group," which comprised both representatives of the

label, the respective partnership organizations (i.e., the interest organizations named above), and representatives of the Danish Business Authority that had hitherto been deeply involved in establishing the initiative. The main function of the working group was both practical (e.g., sorting out potential problems and dilemmas, making key decisions, etc.) and political (e.g., ensuring that all partnership organizations were heard in relation to important issues). Besides via this working group, the project was continuously directed, monitored, and held accountable in a more formal sense through a "steering committee" equally consisting of representatives from the label, the respective partnership organizations, and a group of professionals from the field of IT security and data processing (each invited by one of the partnership organizations). The Danish Business Authority and the Danish Industry Foundation both held "observer positions" within the steering committee and were thus represented at these meetings. While members of the working group met on a regular basis for meetings or work sessions, the steering committee was scheduled to meet once per quarter unless extraordinary meetings were required. Finally, to inform its process of development, representatives of the labelling program had invited a number of "experts" from both private companies, consultancies, business associations, standards organizations, universities, and the Danish human rights institute to sit on the project's "advisory board." At the start of my fieldwork, the advisory board consisted of a total of 24 members which the labelling program continuously sought to "involve" in the development of the label through both general meetings (where all 24 members were invited) and dedicated thematic sessions concerned with particular topics or issues (where only select members would be invited based on their perceived expertise regarding a certain topic). By drawing on members of the advisory board, representatives of the label generally hoped to strengthen the project by basing it on existing "best practice" among companies as well as the most recent research and expert knowledge.

While progressively introducing this setting, it is also well worth noting the significantly different participant-observer position I came to occupy in the context of the labelling program relative to the DPA. At least two aspects led to this situation: 1) the fact that I commenced fieldwork in this setting when the organization was still very young and under establishment, and 2) the fact that local representatives were – as mentioned – not only open to but genuinely interested in me participating in and aiding their work (contrary to the experience at the DPA). Thus, over time, my own role as participant-observer came to entail that I would to some extent affect and shape the particular environment I found myself in to a much more considerable degree than at the DPA. One obvious and visible example of this dynamic became how the initial "mapping" of similar initiatives and labelling program-like projects, which I helped local representatives create as a digital document with color-coded columns, would eventually transform into physical "columns" of paper hanging from all over the office walls. This physical installation eventually came to function similarly as a temporary "mapping" of the label's own criteria while these were still being developed (see images below).

Image 14: Initial "mapping" of similar initiatives worldwide and their criteria

Image 15: Office space with "mappings" of possible criteria on the walls

As previously noted, occupying this position of participant-observer in a both meaningful and legitimate fashion, however, was not without its challenges and ethical dilemmas. The interest I had in partaking in the work of my informants to gain more of an insider's perspective on the setting came with an immediate concern about potential conflicts of interest. For example, I did not want to make decisions which directly affected the character or outcome of the project I was studying, yet my participation had to make sense for the setting's occupants. To address this tension, the label's representatives and I initially agreed that I could undertake certain tasks – such as the above-described "mapping" exercise – as long as I was not deciding how to go about this myself but instead received instructions which I could then execute (while reflecting on the

internal logic of those instructions). Early on, before additional employees were hired for the project, this approach worked rather well in maintaining a simultaneously formal and functioning separation between me as an observer and the work conducted in the setting. However, as the project matured and additional staff was hired, it suddenly became apparent that simply and "directly executing" the instructions of local management is, of course, *not* necessarily how employees usually go about their work. Thus, as new employees were hired, I decided to progressively withdraw from participating in the organization's work due to a fear that my professional need to engage in that work in a rather "uncritical" manner might (in a worst-case scenario) affect internal work dynamics as well as management-employee relations, including, for example, the expectations management might develop towards employees in the office (these were, of course, my private reflections as a researcher). While this progressive withdrawal from the work did not go entirely unnoticed, it occurred at a point in time (i.e., after a few months) when I sensed my presence as an observer had been sufficiently normalized so that it would not affect my ability to continue fieldwork.

Being present in this setting, I was suddenly exposed to a form of deliberation and sense-making which – I would later realize – differed remarkably from what I encountered at the DPA. An early example of this abrupt change in local discourse was a comment made by one of the business association representatives from the "partnership" behind the label as we were walking together to a meeting on one of the first days of my observations. Pointing out the window to the horizon where a number of industrial cranes towered above central Copenhagen, he noted how these cranes, to him, constituted a "good sign." When someone asked what he meant, he replied with a grin, that when there were many cranes on the horizon it was a sign that the economy was doing well.

Image 16: View from the House of Industry

And a certain logic of this form was not specific to this one person. All around the building of the Confederation of Danish Industry one continuously encountered the slogan: "When Danish businesses are doing well, Denmark is doing well!" From early observations like these, I got some of the first indications of the particular morality characteristic of the setting I had entered, one which would translate in a certain way into the formation of a label for "digital responsibility."

Deliberating on the selection of criteria

At the specific time I started my fieldwork, the small team behind the labelling program faced a number of considerable tasks resulting largely from the project's state as something like a "start-up" enterprise. These tasks were initially sorted into – and thus became defined as – seven overall "work streams," including:

1) establishing the label as a formal organization,
2) outlining the label's "strategic positioning" in its particular market incl. setting evaluative targets and "key performance indicators" to measure the organization's performance,
3) defining the set of criteria companies should meet before attaining the label and constructing a control apparatus to ascertain their compliance,
4) building an IT platform to facilitate the "onboarding" of companies as customers of the labelling program (as well as digitalizing certain measures of compliance control),
5) agreeing on the label's name, logo, and visual identity, and defining a broader communications and marketing strategy,
6) outlining a strategy for acquisition and potential strategic partnerships, and
7) agreeing on a pricing strategy for what individual companies should be paying the labelling program to use the label in their marketing.

Of these tasks, by far the most difficult and time consuming would turn out to be that of reaching agreement on and defining (in depth) the set of criteria which companies should live up to before being able to attain the label. Luckily for me and my research, this particular challenge seemed closely related to the issue of defining what "responsibility" might and/or should entail with regards to digital technologies and use of digital data.

To provide an illustrative example of the particular form of performativity (Austin, 1962; Butler, 1999) and its felicity conditions (see also Latour, 2010) (i.e., principles of evaluation) continuously mobilized in order to define and assert "responsibility" in this particular context – as I did for the Danish DPA above – in the following section I will present a partial transcript from and analysis of a meeting dedicated to exactly the selection and definition of relevant criteria occurring in the somewhat early days of the project. This particular meeting transcript is interesting first of all due to the analytical richness it affords, yet also – and importantly – in the way it exemplifies the relatively different observer-position I occupied in this setting (particularly in the early days of my fieldwork) compared to the position I would inhabit at the DPA. This particular meeting might, in fact, constitute the instance where my participation in the work practices of the local setting was the most direct as it involved me presenting the findings of my

research-based task to the "working group" as inspiration for their discussion on relevant criteria to build the labelling program around.

As described above, I had agreed with local representatives that I might help conduct some initial research looking into what kinds of similar initiatives to this Danish labelling program were emerging elsewhere in the world. This work eventually manifested in a PowerPoint-deck developed in collaboration with the project's director. This deck started with a first half of slides from the initial conception of the Danish label as a "prototype" (i.e., a collection of slides produced by a Danish consultancy during the previous "sprint" process) and a second half of slides on similar labelling and standardization frameworks globally, their overall criteria for qualifying organizational certification, and a few notes on what seemed to define their control mechanisms. To introduce this particular meeting dedicated to a discussion of the selection of criteria for the Danish label, I had been asked to present these slides to the label's working group as inspiration for their discussion. Thus, while the material was developed in collaboration with the project's director, I was also directly participating in – and partially framing – the session I was about to observe, while still abstaining from giving recommendations or otherwise imposing my own views on the group's decision-making.

[Beginning of transcript]

At the beginning of the meeting, my Power Point presentation to the group concerns the proposed set of criteria for the existing "prototype" of the label and what seemed to have been the selection procedure for its proposed criteria. From the slides produced by the consultancy firm which facilitated the "sprint" process, it appears that the initial step was to "filter out" any so-called "GDPR-related" criteria from the label. As I present the slide to the group, one of the industry association representatives jumps in:

"Perhaps it is important to stress; well, it is not because it wasn't important to help [companies] into compliance with GDPR, but it was because we had made a principled decision that we couldn't award the label on the basis of regulatory compliance. So … you might say, GDPR is important and also problematic for many companies but … it is regulation and therefore it shouldn't be a part of the label's criteria." […]

A representative from a Danish government authority adds: "Yes, and then there was a consideration of, well, what was possible, right? If all our investigations point in the direction that this shouldn't become too complex then there was a need to cut something out, right, so [those criteria] which were in any case naturally covered by GDPR were perhaps not what one should spend most of one's … energy on in a labelling program … was the idea."

This brief and initial part of the transcript already signals the stark qualitative difference between the mode of evaluation we encountered at the DPA – where law was absolutely central – and the one mobilized in this setting, where law is actively sought excluded as a basis for defining "responsibility." The idea (which appears implicit to the comment made by the industry association representative) seems to be that because everyone is always/already expected to comply with the law, one cannot distinguish "more responsible" from "less responsible" companies by

awarding them a visible label on this basis. Thus, the criteria for this analysis – in this context – must be somehow simultaneously both non- and/or extra-legal in character (an issue which we will return to below). Further, as suggested by the second comment, this proposed "filtering out" of GDPR-related criteria may also provide a means of ensuring a certain simplicity to the label and its criteria (i.e., "this shouldn't become too complex") which, in turn, seems to become initially related to a matter of economic resources (i.e., what to "spend most of one's ... energy on in a labelling program"). We will encounter these apparent felicity conditions for the effective assertion of "responsibility" again below.

In response to the above comments and based on my initial understanding of the previous "sprint" process and its predefined goals, I ask the group whether the aim was indeed to arrive at a "minimalist" version of the label in the sense of having as few criteria as possible.

The same representative from a government authority answers affirmatively. The representative from the industry association adds: "Yes, well, so it was this thing that one … one can't do it all, so [the idea] was to bring it down to a level where we [included] that which was [simultaneously] most important, and which had the biggest effect. […] By which I mean "effect" with regards to strengthening companies' IT security and responsible use of data."

The government authority representative: "Yes and also, it also has to do with keeping the costs for the individual company down … so that you might say: okay, how do we make a labelling program which is … where the *content* is so strong that it can stand … by itself but- but at the same time, that it doesn't become a gigantic bureaucratic exercise we put on the companies, right?"

Responding to my question of what guided the initial "minimalist" selection of criteria, the industry association representative recalls two interlinking principles; one concerning the relative – and somehow ambiguous – "importance" of select criteria, the other their relative effectiveness in the sense of actualizing or realizing the labelling program's formal (dual) purpose by enhancing digital "security" and "responsibility" among Danish businesses. While it seems premature to pin down what the rather ambiguous notion of "importance" might entail, we already see a logic taking shape between the principle of simplicity (having as few criteria as possible) and effectiveness (a few criteria with the most significant material effect vis-à-vis guaranteeing "secure" and "responsible" conduct among companies). For now, the principle of importance merely seems to act as a limit condition of simplicity insofar as the set of criteria for attaining the label does not become too simple *but also considers what is deemed "important" to effectively enhance digital security and responsibility in the private sector. As the subsequent comment made by the government representative suggests, ensuring the simplicity of the label is also considered important to further ensure its relative operationality for the companies who might qualify to attain it (i.e., "[so] that it doesn't become a gigantic bureaucratic exercise"). Simplicity, thus, is not merely important to save resources for the labelling program's own organization (as suggested in the previous section) but equally to spare companies – i.e., the labelling organization's potential customers – a disproportionate economic expense when seeking to attain the label. In other words, rather than being too time- and resource-demanding, attaining the label*

should be as economically attractive as possible for other companies targeted as potential clients of the label. As we shall see in the following section, this rationale is about to get a clearer expression.

[Break in transcript]

A few minutes later, I present the group with a bit of general information from the website of an English IT security label with similar characteristics to the Danish counterpart with respect to technical IT security. Some of the meeting attendees seem to be already familiar with the English label. As I bring it up, they engage in a discussion of how the English government have in certain instances made the label a requirement for companies wishing to bid on public contracts. This makes one of the industry association representatives inquire the government representatives on the call about whether it might be possible for the Danish label to gain a similar status and, at some point in the future, be introduced as a legal requirement for companies to enter into contractual relationships with the state. After some discussion, they seem to agree that it *might* indeed be possible (although, perhaps, difficult) for public authorities to enact such a requirement in cases where, for example, IT security would be a "key part" of the product or service entailed by a given contract. Yet, even so, one of the government representatives remains slightly skeptical.

Government authority representative: "Agreed, […] there may already be requirements about this sort of thing, I think, at least … from the side of government you already have ISO and so on … so I am not sure exactly how much … how much *added value* it would give to require a label, besides that it could push the label forward right? But-"

Industry association representative: "Yes, but that was also what I was thinking!" He says this with a joking attitude and starts laughing. People on the call laugh with him.

[…]

The label representative intervenes: "Yes, a comment in this … this report [by a private international consultancy firm] from March 12th 2019 where there is a … a paragraph about [the English IT security label] … it says on page 23 […]: 'The value of the certificate is […] not measured based on the quality of the standard,' – so, you know, if there was good protection against IT crashes and attacks – 'but measured as good value for money, since the certificate helped winning new contracts, for example within public procurement.'"

The industry association representative: "Mhm …"

The government authority representative: "Yes."

The label representative: "Yes."

The government representative: "But, well, of course it also makes a difference if public authorities require it. However, my concern could be that companies might sometimes get the label just so that they can sell [their products] to the government."

The label representative: "Mhm …"

The government authority representative: "But I think it would be great to have a label which had a value that made *private actors* demand it, and perhaps that public institutions would start to use it voluntarily instead of it becoming something like; oh, but you *have to*, so we do it, and then we all do it. But uhm … of course it is a possibility."

Industry association representative: "I just think that now in … in the beginning, I think that any help [we might get] to have [the label] distributed is important. I also did a presentation to a committee for standardization policy where there were several representatives from these existing labelling programs from other areas present and they all said: *It is really, really difficult* […] in the first very long period of time to get the label distributed among companies." No longer in a joking tone, the industry association representative adds stress to this final sentence, seemingly to underline the seriousness of the issue of distribution. The parties agree to identify the relevant authorities and inquire whether it might be a long-term possibility to have public authorities introduce the label as a requirement in public procurement.

This discussion is interesting in at least three regards. First, the key issue which appears to be at stake concerns the distributability of the label among the companies it targets as potential clients. To address this issue, two different strategies are outlined which are not necessarily opposed but appear potentially complimentary. One is to seek assistance from the state and public authorities to have the label introduced as a contractual requirement in public procurement, effectively forcing *companies who seek to win contracts with the Danish state to attain the label. The other strategy – interestingly asserted by a representative of government – is derived from a wish to avoid such regulatory coercion by enhancing the perceived value of the label by companies and public authorities alike. The idea is to make the label appear sufficiently valuable and thus economically attractive in its* own *right so that private companies (and, ultimately, even public entities) will start requesting and subscribing to the label on their own initiative (i.e., on a voluntary basis). The difference in strategy is thus to be found between regulatory coercion, on the one hand, and a kind of "spontaneous accumulation" based on the dynamics of the "free market," on the other hand, ultimately depending on the enhancement of the perceived value of the label and thus its economic attractiveness to market actors. While distribution based on market dynamics generally appears as the preferable strategy by the meeting participants, certain coercive mechanisms* might *be "helpful" due to the sheer practical difficulties of achieving a wide distribution of the label among Danish companies in the early days of the project. We might thus add to our above observations about the label's relationship with law and regulation that the form of evaluation at play in this setting is not necessarily* opposed *to law in every respect but also* relies *on it to the extent that it serves to satisfy certain other integral conditions of success (e.g., the condition of distribution).*[13]

[Break in transcript]

A few moments later, the label representative takes over the presentation from me and presents the group with a suggestion from a member of the project's advisory board to incorporate two additional criteria into the label dealing specifically with emergent technologies under the umbrella term "internet-of-things" (or IoT). One proposed criterion concerns the "validity and

[13] Obviously, a private organization like the labelling program relies on existing law in many regards. For example, the laws which constitute the market as such as well as the corporate form itself is, of course, presupposed by the label and other market organizations.

interoperability of data," referring to a perceived issue of uncertainty in the quantitative measurements conducted by a multiplicity of digital sensors (i.e., whether such uncertainties might – if not disclosed to possible subsequent users of the data – lead to calculative fallacies). The other proposed criterion is somewhat different in character and concerns the issue of ecological "sustainability" in the context of IoT. It problematizes the unrestricted production and proliferation of IoT devices globally which is likely to entail considerable ecological implications due, for example, to massive amounts of electronic waste. As the label representative finishes his introduction, a representative from the industry foundation that provides funding for the labelling program is the first to reply:

"Just a comment; well, of course I can … well, one cannot help but buy into the- the sustainability agenda, perhaps I just think there is also a danger of broadening … the scope too much … in this regard, then it doesn't become a criterion that contributes to … to govern data or security, […] [instead] it adds an *additional* dimension …"

Someone else on the call mumbles: "Yes …"

The foundation representative continues: "… then I think it will really increase the complexity in relation to … and perhaps also a bit … the communicative- well, the *sharpness of profile* if one also begins to incorporate the sustainability element."

Label representative: "Yes. That … that is a good point."

Industry association representative: "I also agree."

Label representative: "One can … but one can say, the first criterion, that is certainly [related to] data … the first one … the one with validity and interoperability?"

While the discussion of whether or not to incorporate this particular criterion gets interrupted at this point, the group ultimately reaches a decision to omit "sustainability" as a potential criterion for attaining the label, while attempting to introduce certain requirements related to IoT-based data processing as sub-criteria *within* the existing criteria structure. A similar rationale is mobilized later during a brief discussion of whether or not the label should include criteria dealing specifically with data processing relating to children.

The industry foundation representative: "I also have [a comment] regarding this thing about children which I … think is hard … again it is not something one can really be against but … I might also appreciate that you [i.e., representatives of the label's organization] just tried to consider how one might incorporate that dimension perhaps *via* some of […] the *existing* [criteria]. Because we have already […] tasked ourselves with making something which is inclusive, I mean which is both relevant to companies and consumers and … children are, of course, also consumers in some situations, but as I understand you […] then you also consider them as something *else* than just consumers here … so … but again this thing that we don't broaden ourselves too much and make ourselves hazy in our profile, then I think it could be very relevant to think something like: well, how could that … that *flank* – so to speak – or target-audience flank potentially be covered through some of the *existing* criteria? Because, well, […] if one of the criteria will have something to do with adding certain measures into IoT devices in the early stages [of development], well, that is also, then, in relation to toys at home … and all kinds of other things and …"

Someone agrees: "Yes."

[Continued]: "… control over one's data and so on. So again, this idea that we really try to … to stick to that, well, *core*, so it doesn't get too *complex* and too … too comprehensive. Both with regards to not … not having a *huge* number of criteria with all kinds of sub-criteria, but also with regards to *communication* and *conveyance* of *what the label stands for*, so that we won't have to cover the *entire* spectrum within this … little label."

The label representative's presentation of two possible additional criteria related specifically to IoT devices is met (again) by the mobilization of the issue of excessive complexity and, thus, as a potential challenge to the aforementioned principle of simplicity. This time, however, simplicity is seen as important not necessarily or directly in relation to operational or resource-related concerns (as above) but primarily in relation to communication and the relative communicability or, perhaps, more specifically the "branding" or "marketability" of the label (e.g., the "sharpness of profile"). Again, different strategies are mobilized to construct the label as a distinctly branded, marketable product. One strategy is to exclude criteria which are perceived to lead to unacceptable levels of complexity (here, the issue of ecological "sustainability" which is seen as too far removed from the label's "core" focus). However, regarding certain proposed criteria which are considered more directly relevant for the label (here, issues related to particular technologies like IoT or particular – and perhaps sensitive – "audiences" such as children), these might to some extent be incorporated as sub-criteria within the existing criteria structure. This approach seeks to avoid "broadening" the scope of the label too much (i.e., risking making the label's profile and, thus, brand "hazy") – thus maintaining a sense of simplicity, communicability and, thus, marketability of the label – while covering certain "flanks" or issues considered too "important" to exclude entirely. As such, the question of coverage also appears as a central principle and problem in this regard, that is, the challenge of striking a good balance between covering a sufficient range of "important" topics or issues within the label, while not covering too *broad a range of topics either.*

[Break in transcript]

At some point during the meeting, another potential criterion is brought up by a representative of the label, namely the concept of "privacy-by-design and -default" referred to in GDPR's article 25.

Label representative: "Yes, […] this thing about "privacy-by-design" […] "and-default," this … this is not *really* represented in the eight criteria we have right now. And that is why it might be good to have … a ninth [criterion] which had this, and where we also, you might say … because we have talked about […] that *cookies* … are an *evil*, and that is … well, there are now some new rules and … also the ruling from the Danish DPA regarding DMI [i.e., the Danish Meteorological Institute], that it *has to be* opt-in … fundamentally, and that opt-out is not [an option]. […]"

The industry association representative responds: "Yes, I think this is just … part of [criteria] number four and … six … you know, "clear communication" and "control of your own data," at least it was some of this which was the idea behind these. But regarding this thing about

"privacy-by-design and -default" and "security-by-design and -default," uhm, I did … I have actually raised the point [during a previous workshop] that this is really something which is *missing*, when we are labelling entire *companies* uhm … but if people are to trust the products of those companies … subsequently […] the fact that you then *have* … can *document* that you work with "privacy-by-design and -default" and "security-by-design and -default" in a way that … which then … well, we do not really have any … criteria that *really* ensure that one can trust in the product specifically … and not just in the company."

After a brief interruption, the meeting participants return to the question of whether or not to include this criterion within the label's normative frame.

The label representative: "So, back to [the question about] "privacy-by-design and -default" and "security-by-design and -default" uhm … what … was … the opinion here?"

Industry association representative: "Well, my opinion is that it should have its own independent criterion. Then it is also … *externally* in relation to when we have to communicate about this that we also, well, consider product development in the company and so on […]."

The label representative responds: "Yes. And there, I thought- … yes … and then, if we … think in these terms … then … [the current criterion] number 8: "depersonalization of personal data," is that *really* important?"

Industry association representative: "Uhm …"

The label representative continues: "Because I almost think that we should … well, "privacy-by-design and -default," "security-by-design and -default" is … perhaps … *more important.*"

[…]

The government authority representative joins the conversation: "[…] maybe this is something which could be tested with … with your Advisory Board, you know, how- how- … how crucial it is. But, you know, I tend to agree … the other category – that is, "privacy-by-design" […] – strikes me as more general, where this thing [about depersonalization of data] seems more like … a technical thing, which one certainly should do but which perhaps might fall under … technical security or technical responsibility or whatever you might call it …"

[…]

The industry association representative: "Regarding [the existing criterion about] depersonalization of data, well, I am just a bit unsure about … about whether this was something that [a representative of the consumer council] was very passionate about […]. So, I definitely think that – and I also tend to think this is quite important […] – that it shouldn't be excluded entirely but that we should work it into some of the other … within the existing criteria."

Slowly, the mood of the group seems to lean towards a solution where "privacy and security by design and default" is established as a new independent top-level criterion, whereas "depersonalization of personal data" should be attempted integrated within the pre-existing criteria structure as a sub-criterion.

The proposition of "privacy-and-security-by-design and -default" as a new potential top-level criterion differs from the proposition of other potential criteria during this meeting, depicted as something which is effectively "missing" from the current criteria set. Now, there is slight

disagreement on why *this criterion might be said to be "missing." The label representative deducts this from the fact that the regulatory environment already demands certain forms of technologically mediated privacy enhancement (i.e., the reference to a recent DPA verdict on "cookies" and website consent interfaces). The industry association representative does not disagree with this argumentation as such but believes that other criteria in the existing criteria set already address this issue. Instead, he argues the criterion to be "missing" – I believe ultimately – due to a perceived problem of credibility. That is, since the label is meant for organizations rather than specific products, a criterion seems to be "missing" which ensures that not only the organization has committed to treat data in a certain "responsible" way, but that this particular way of treating data translates effectively into the products and services of that organization. Having a criterion on "privacy-and-security-by-design-and-default" might – in his view – not only make this more likely but could allow both labelled companies and the labelling program itself to "communicate externally" that this potential dimension is in fact covered. On this basis, we might slightly nuance our above analysis regarding the problem – or "balance" – of coverage. On the one hand, covering too wide a range of topics or issues as criteria in the label appears to problematize the principle of simplicity linked to the general operationality, economic attractiveness and, thus, marketability of the label (both in terms of product branding but also in terms of the perceived economic value versus cost of attaining the label for companies). On the other hand, covering too few topics or too limited a range of issues risks the perceived credibility of the label, which, in turn, might itself problematize its perceived economic value in the long term. Hence, the balancing act implied by the principle (or problem) of coverage relates both and simultaneously to the relative marketability* and *credibility of the label, both ultimately necessary conditions for realizing and optimizing its economic value.*

How to strike the right balance with regards to this problem? Guiding this selection of issues to cover within the label's criteria set is exactly where we encounter the seemingly ambiguous notion of their relative "importance" (i.e., is a given criterion "really important?" Is a criterion "more important" than another criterion? How "crucial" is it?). At this point, however, we get a better sense of the apparent politics implied by this question of "importance." For example, one consideration stopping the group from simply replacing the criterion "depersonalization of personal data" seems to be that a particular member of the working group concerned with consumer rights might be "very passionate about [it]." It is also proposed that the relative "importance" of these particular criteria could be "tested" with the advisory board, consisting of a number of external professionals with various forms of expertise and institutional affiliations. The problem of coverage thus seems to be accompanied by a problem of the satisfaction of relevant interests in a more directly political sense (we shall return to this below).

[Break in transcript]

It is worth noting how – during the meeting – these issues of coverage and interest satisfaction are continuously balanced against the perceived need for simplicity. For example, this comment made later during the meeting in response to the integration of additional topic-issues as criteria or sub-criteria:

One of the business association representatives: "[…] I think that we … are moving along the border of making it enormously complex and perhaps *incomprehensible* for many … for many companies, if we want … if we want everything and nothing with this label … and then we might perhaps think in terms of that exactly within the individual criteria having a *graduation of* … both with regards to what kind of target-audience you have, how complex you are [as a company] … and so on."

Further, as this particular quote illustrates, one way in which this seemingly fundamental problem might (to some degree) be resolved is through the introduction of a principle of adaptability into the construction of the label and its criteria set. The idea seems to be one of covering a relatively broad range of issues within the label's general criteria structure, while subsequently differentiating between particular types *of companies and only ascribing those criteria to a certain company type which appear relevant to that type. For example, the general criteria set might include a top-level criterion on "artificial intelligence" (AI) – thus "covering" this theme as an "important" sociopolitical issue – while only imposing this criterion as a requirement onto companies which are engaged specifically in AI development and/or deployment. Theoretically, this allows for relatively broad coverage in the general criteria structure, enabling a broad satisfaction of interests and, thus, potentially strengthening the label's credibility, while equally ensuring a perceived simplicity (and thus, theoretically, a perceived attractiveness, operationality, and potential economic value) for companies targeted as potential clients. This relation between adaptability and perceived economic value is also well-reflected in a subsequent part of the meeting:*

Government authority representative: "[W]hat we have talked about today perhaps point in the direction that … well, I guess it is fundamentally about avoiding that [certain companies] … are exposed to certain demands or criteria which are not relevant to their business and which they, then, have to spend time on while it does not … create value."

An industry association representative: "Yes, exactly."

A representative from a different business association: "Exactly, exactly, and then it doesn't create value."

[Break in transcript]

An equally noteworthy – although in this particular meeting quite brief – discussion concerns the problem of the form and extent of control which companies should be subjected to in order both to attain the label (i.e., control efforts to check whether they actually comply with the relevant criteria). While it is not always easy to gain information on this question from the public websites of various labelling initiatives, my presentation to the group has included a few bits of information about the kinds and extents of control conducted by other similar labelling organizations.

Responding to the part of my presentation concerning possible forms of control conducted by other, similar labelling organizations, the industry association representative asks:

"I have a few doubts … uhm … well, for some of them it seemed that … that there is some external audit […] … but the way you wrote it, it seems a bit like it was perhaps … well, some self-assessment, where there was then some sample-based checking or how … should this be understood? [And then] there are *some* who simply have external audit as their *general* approach? For example, that one …"

[…]

I explain – based on my immediate impression from the websites of various labelling initiatives – that there appears to be a continuum of possible control mechanisms at play among these organizations. At one end, there are more comprehensive forms of external audits, possibly – although, it seems, rarely – involving in-person inspections of company facilities and their technical infrastructures (or digital "backends"). At the other end of the spectrum, labels are awarded to companies based on "self-assessments" produced by the companies themselves in the form of documentation – documents that are, in turn, inspected by the labelling organization or by an external "third party." Between these two poles, various forms of sample-based checking (or "spot checking") are introduced to move beyond control based merely on companies' self-documentation.

"Okay … yes," the industry association representative starts and ponders: "because something like this kind of introductory self-assessment and documentation-based control that is a bit like the way [another Danish labelling program in the context of E-commerce], for example, currently operates […]. It is just- it is just this thing again that … that there is a big difference in terms of how resource-demanding it is … what we propose … what our level of ambition is. Yes, well, thanks!"

Although this meeting does not include a more extensive discussion of how the Danish label should organize and prioritize its control efforts, this brief interaction does serve to illustrate what appears as a key problem in this regard, i.e., the tradeoff between effective control and resource scarcity. The question of effective control appears to be integral to the problem of the labelling program's credibility, as it would seem to affect the degree of confidence stakeholders might have in the label's effectiveness. Resource scarcity, on the other hand, constitutes an ever-present constraint which has to be considered when deciding on the way in which control efforts should be organized and carried out in practice (e.g., to ensure the possibility of the label becoming financially self-sustaining in the future).

[Break in transcript]

Slowly approaching the end of the meeting, the label's representative takes stock of considerations and decisions made so far regarding the selection and definition of criteria for the label.

"Yes … okay well … now, let's see, the time is … 11.10 … we … we should, of course, end up with a list … I … we are taking note of these comments which have been brought up today. I think … we should seek to incorporate this issue regarding privacy-by-design and -

default … most likely as a top-level [criterion] … regarding children, we should consider ways to incorporate criteria concerning children into the pre-existing set of criteria. Regarding IoT, here this thing about sustainability, hardware, installation, that should probably *not* be included. [The other IoT-related criterion] regarding valid and interoperable data, this could … could possibly be incorporated within other existing criteria or … yes. I think this is sort of the conclusion for now. And then […] we actually *have* some [other] criteria currently which … which we haven't yet … *challenged* in … in their current form. And there, the real task will be to – also there – try and get these … *described further*, you know … currently [these are only described] on a quite … high level, but of course we will have to get these … *further specified* into sub-criteria … […]. And here, […] it would … be good, I think, that we … try and look at the individual criteria [and consider] who we might … use as external help to get … to help us with … to actually get these … defined."

Industry foundation representative: "[…] [In] relation to whom we involve, because, well, we have discussed how the Advisory Board should be involved at some point … [we should] begin to consider *how* and *in what depth* should they be involved … we have also discussed that we need to test [the label] on some companies, some consumers, when we have come a bit further and so on … but the reason I mention it is because, well, there is a consideration about how we want to use the Advisory Board, because there might be- we have a lot of smart people sitting on that Board … so I could imagine … that there might also be some of them [whom] it would be relevant to bring into the working group … already now … to get their take on some of this. So perhaps it might be nice to have a talk and a proposal from your side about how we do that in the best possible way."

Responding, the label's representative explains how the team – despite the ongoing Covid-19 situation – plans to organize the upcoming Advisory Board meeting. This involves sending out pre-reading material to the participants that would present them – among other things – with certain "strategic dilemmas" that the Advisory Board might help clarify. After the general meeting, the plan is to identify members of the Advisory Board who might be able to provide specialized "input" on particular criteria, including their further definition and specification into concrete sub-criteria.

This section highlights the rationale involved in both choosing and finalizing potential criteria to attain the label. Rather than basing such decisions on a logic internal to the criteria structure as such, the general logic has an outward orientation to it and seems to be one of external involvement of different actors, and their views and interests. The main purpose of involvement in this respect is to "test" the criteria set (the entire set or specific parts of it) before launching the label as a marketable product. Actors to involve may be actors of expertise (e.g., "expert" members of the Advisory Board), potential customers (i.e., various companies), consumers, political actors, and others deemed important in ensuring the label's future value, each involved and "tested" against with a different purpose in mind. For example, criteria might be tested against actors of expertise to ensure that definitions are "correct" relative to professional definitions, or against companies to ensure that the label appears attractive and that individual criteria appear operational vis-à-vis their existing setups, systems, or practices. The idea that the Advisory

Board might or should be used to "help" decide on "strategic dilemmas" perceived by the labelling organization's representatives also indicates – and perhaps confirms – our hitherto analysis of the active attempt to strengthen the label's credibility is actively attempted strengthened through a politically geared satisfaction of interests (incl. consensus-building methods). This seems to be due to the idea that reaching consensus within a relatively broad group of external "experts" on key dilemmas of how to organize and construct the label might buffer the project against criticism in the future (recall, for example, that my own – rather critically-minded – supervisor was invited to sit on the advisory board).

After this, the label's representative goes on to explain that a senior lawyer from a large Danish law firm has proposed to help the team revisit and redefine certain criteria "from a juridical point of view." He adds that he and at least two members of the working group are in favor of this idea. It might allow them, he argues, to get a better sense of how to finish particular criteria and, thus, attain a better understanding of what the "end product" of the label and its criteria should be.

The industry association representative adds with hesitation: "Can I just say two quick things about the criteria? … Regarding all that which is GDPR-related, I am thinking that we need to have a conversation about, well … because there is this grey area … you know: is it okay that we enter certain of those areas where GDPR is a bit too unclear and set a *direction* for how to live up to this in a responsible manner? […] Or must we *entirely* abstain from anything which … looks like GDPR, because then there are also certain things in the existing […] criteria set, where we have to be a bit careful … uhm … Well, *I* might think that we can go in and … give some direction … in those places where there is a bit much … grey area within GDPR … […]"

[…]

The label's representative comments by describing how one of the other working group members (who is absent from today's meeting) "[…] has been of the opinion that we, for every criterion, when we … you know, define them in depth, that we then also consider … what is it that lies *beyond* uhm … regulation […] … that we are aware of that. And that we *challenge* … ourselves … on that per criterion. Yes."

Industry association representative: "Yes, but- but that was my … my point was a bit … okay, *does that mean* that we do not *at all* include anything which has something, for example-"

Label representative: "No, no, I don't think that is what it means …"

Industry association representative: "… which is covered by GDPR or … does it mean that … we just have to be … aware of that and decide to which degree we wish to do that?"

Label representative: "I think it is more … more in favor of the last option."

Industry association representative: "Yes."

There is a brief silence, and I take the chance to ask the group if they have already been in contact with the national DPA regarding these questions about the label's relation to GDPR.

The label's representative replies negatively, but adds that there has been some dialogue with regards to the DPA. One of the industry association representatives intervenes:

"It was actually [a particular Danish ministry]. And I can see that they … they may have slightly misunderstood things a bit […]. That was regarding the fact that … that in GDPR there is an *option* to make certain codes of conduct [and] certification initiatives. But, well, that is only

with regards to GDPR compliance. So … so that is actually entirely … out of scope in the context of the label."

[…]

Taking part in the discussion, the government authority representative adds: "The [ministry in question] was incredibly nervous that *all of this* [i.e., the "entire label"] … at some point would become GDPR. So, I actually just think that they would like to talk to you [i.e., the label's representatives] about the risk of that happening. I think … I don't think there is anything more to it than that."

At this point in the meeting, the discussion suddenly reverts back to the initial question – and, we understand, challenge – regarding the label's relation to existing data protection law. While comments made in the initial part of the meeting suggested a relatively clear separation between the label's criteria and the law – what appeared as a "total exclusion" of seemingly GDPR-related criteria – the picture now suddenly becomes more blurred. While the label's objective is still seen as something different from – or "beyond" – regulatory compliance, there is a perceived risk that some of the criteria currently proposed are, in fact, not entirely unrelated *to GDPR but* still *have some legal content inherent to them. This makes some members of the group wish to seek assistance from a lawyer (considered an expert on GDPR) to "revisit" the existing set of criteria set "from a juridical point of view." The main objective of involving this particular person and his expertise is to become more "aware" of these potentially legal elements, in turn becoming better capable of distinguishing between parts of the criteria set which are still somehow "legal" in character versus "what it is that lies beyond […] regulation." Thus, while certain exercises had been done previously to – as we saw above – "filter out" seemingly GDPR-related criteria, law and its legal prescriptions somehow* still *seem to infiltrate the existing criteria set in ways that are deemed both problematic and rather unintelligible to the meeting participants.*

While this general uncertainty might, as is proposed, be addressed by involving the expert lawyer, there is also a secondary uncertainty tied to the question of whether the label should "entirely abstain" from including any such potentially "legal" criteria, or whether the label might legitimately "enter certain areas" where GDPR seems "unclear" to "give some direction" (i.e., concrete and helpful guidance) to companies. While members of the group seem in favor of the last option, we also sense a lingering uncertainty regarding this question (e.g., "I think it is more … more in favor of the last option.").

Finally, my question about whether there has been previous contact with the DPA about this uncertainty spurs some interesting remarks. While there had been some interaction with the DPA "very early on," more recently it is noted that a certain ministry of the Danish government has been "incredibly nervous" that all the label's criteria will ultimately be derived from existing law (i.e., "that all of this at some point becomes GDPR"). Now, while the government representative believes the situation might be resolved simply by talking to the ministry, these comments also indicate a level of politics surrounding the labelling program which goes beyond the active involvement of various parties to bolster the label's quality and credibility. We might thus differentiate between the politics organized by the labelling organization itself in the hope of strengthening the label (e.g., most obviously in the form of the Advisory Board) and the politics

which appear imposed upon *the label from the outside (e.g., a ministry of the Danish government becoming increasingly "nervous" about the labelling program's make-up).*

[Break in transcript]

As the meeting is about to end, the label's representative sums up and makes a few final propositions about the way forward.

Label representative: "[…] I think it is important that we move … a step further, you know, attempt to define a criterion, well, that we simply try to delve into it […]"

People on the call voice their agreement.

Label representative: "Because […] it is by working with it that we find out where the challenge lies. […] And it is also good to have … to use it to align expectations, you know … so I really think we can … we can get somewhere by trying to … to take one criterion and then work through *that* and see where … what we then … where we land … and then … discuss that on Thursday … next week … amongst other things […]. Yes. Yes. Well, I think that's it … for right now. Is there anyone […] of you on this call who wants to in- … in- … what is it called, to participate in … what is it called … to produce this … one of the … a criterion? … Anyone who will commit … their- their … resources?"

Two individual members of the working group voice their commitment to assist in the attempt to "fully" define a criterion, after which the meeting is ended.

The challenge of defining relevant criteria to obtain the label remains. It seems worth noting how the execution of this task is proposed to require a rather open-ended and pragmatist approach (i.e., "we can […] take one criterion and then […] work through that and see where […] we land") rather than being determined in advance by professional norms or rules. Further, from this and certain of the above sections, we get the sense that the "final version" of the label remains open and unknown in the present and seems likely to be recognized only when certain "expectations" are "aligned," e.g., when processes of involvement have been properly conducted, when a certain satisfaction of interests (in perhaps both an economic and political sense) has been achieved, including when the label seems to "work" (e.g., when it is deemed operational through various "tests" with companies or other external actors).

The final problem that we recognize – again – is the issue of the economic resources available to invest in the further production and development of the label and its criteria. This time around, the label's representative secures the commitment of two individuals from the working group to assist the team in the further development of the label's criteria. Yet, the hesitant manner in which the question is posed seems to suggest both a sense of polite unease in asking for this potential "commitment of resources," and thus simultaneously indicating the experienced necessity to do so.

[End of transcript]

From the above example, we start to get a sense of the particular form(s) of evaluation at play in this setting, which shape and direct the construction and organization of the labelling program. In the following sections (as with the DPA), I attempt a more structured presentation and analysis of the particular felicity conditions (Austin, 1962; Latour, 2010) for the assertion of "responsibility" at stake in this context, as well as intervening forms of counter-performativity (MacKenzie, 2004; Butler, 2010) observed during my time of fieldwork.

Responsibility as a performative of economic orientation

Having exemplified the particular performative rationality at play in shaping and constructing the Danish label (which would ultimately be named the "D-seal"), it seems safe to assert that the overall rationality characteristic of this setting is *not* juridical as it was for the DPA. A more accurate characterization, I think, would be to call it *economic* in its general institutional orientation and particular way of conceiving of "responsibility." From the point of view of the labelling program, this general economic orientation translated into the central challenge of how to constitute "digital responsibility" as a functioning and viable commodity within, first and foremost, the Danish market economy. Hereby, the key challenge for the labelling program seemed ultimately to rest on a condition of economic value creation, including whether or not a label attesting "digital responsibility" could be made into an economically sustainable product. This challenge had multiple dimensions which, I believe, are rather well-reflected in the particular felicity conditions (Austin, 1962; Latour, 2010) mobilized by local representatives to evaluate their own work and their ability to assert "responsibility" effectively in the context of this initiative.

At its most basic, the challenge faced by the label's organization of constituting "responsibility" as an economic commodity depended on its ability to make the label itself appear valuable to potential client organizations and to effectively *sell* the label to these organizations (i.e., making the label marketable and ultimately saleable). Constituted itself as a private business enterprise within an economic marketplace of other such enterprises (i.e., potential clients of the label), there would be no other immediate way of distribution available to the labelling program (and thus, of accomplishing a gradual "responsibilization" of those actors) than through this form of voluntary market-driven interaction, transaction, and continuous negotiations of economic value.[14] In other words, whether the labelling initiative could make other actors responsible ultimately depended on the degree to which "responsibility" itself could be commodified.

First, to build the perceived economic value of the label, representatives of the labelling program were concerned with the label's ability to spark the interest of other economic actors by making the product appear economically attractive and/or advantageous. A general principle here seems to be that the perceived advantage of obtaining the label should generally outweigh any perceived disadvantages (or costs) associated with this project. While, for potential client companies, the most obvious advantage consisted in being able to "wear" a seal of responsibility and use it in various marketing efforts (distinguishing their business as morally superior to their competitors), there was a simultaneous cost associated with becoming able to fulfill the label's

[14] Of course, the label could be given away for free which is in fact something project representatives considered as an early "go-to-market" strategy to ensure an initial distribution of the label to a group of "first mover" companies.

criteria. This included, for example, the price of purchasing and re-purchasing (i.e., through mandatory annual re-certification) the contractual right to use the label in one's marketing, as well as the necessary investments in technical system updates and the production of documentation required to fulfill the label's criteria. For the labelling program, in turn, a key challenge became one of enhancing these advantages perceived by potential client-companies while reducing any of the perceived costs. A number of strategies were mobilized to accomplish this. One of the more immediately apparent was perhaps the efforts put into the label's "visual identity," including the design of the logo, the website, and the digital platform through which companies would apply for the label. To make the "user experience" as appealing and attractive as possible, a marketing agency was hired to design the logo, the font, the color scheme, and the artwork, etc., consistently used by the labelling organization in its own marketing initiatives. Importantly, for example, the logo should be of sufficient appeal for other companies to would want to "wear" and use it. Similarly, the "user experience" for company representatives seeking to sign up to become labelled should be as inviting, aesthetically pleasing, and technically "smooth" as possible.

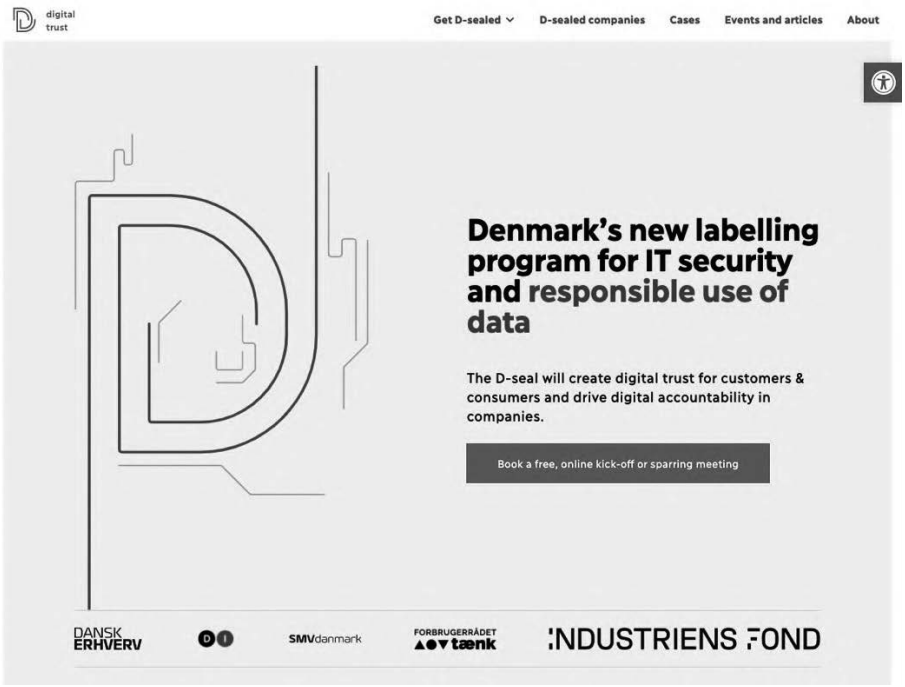

Image 17: Screenshot of the D-seal's current website

Another strategy to ensure the economic attractiveness of the label was to reconceptualize the criteria for obtaining the label – and the cost associated with fulfilling these criteria for companies – as a "resource" and an "investment." This reconceptualization became reflected in arguments – or, perhaps more accurately, "selling points" – such as that, by complying with the label's criteria, companies might strengthen their relationship with existing customers (e.g., by increasingly earning and securing their "trust"), acquire new customers and/or enter new markets, ready themselves for future regulation before their competitors (e.g., in the field of AI or IT security), or reduce the economic risks associated with digital system failures, accidents, or cyber-attacks.

The reconceptualization of the potential "costs" of becoming compliant as, rather, a type of positive "investment" or the acquisition of a "resource" became further reflected in the construction of the labelling program's digital "self-assessment tool," through which companies could apply for obtaining the label. Rather than comprising a mere overview of the criteria which a given company should fulfill to attain the label, the platform was designed as a management tool through which company representatives could track and manage internal compliance. At the same time, a major concern during the definition of the label's criteria were to make these as operational for companies as possible (e.g., easily understandable, precise, as easy as possible to implement, etc.) and consistently accompanied by various forms of guidance (i.e., helpful texts and material) to make the certification process more straight-forward and manageable.

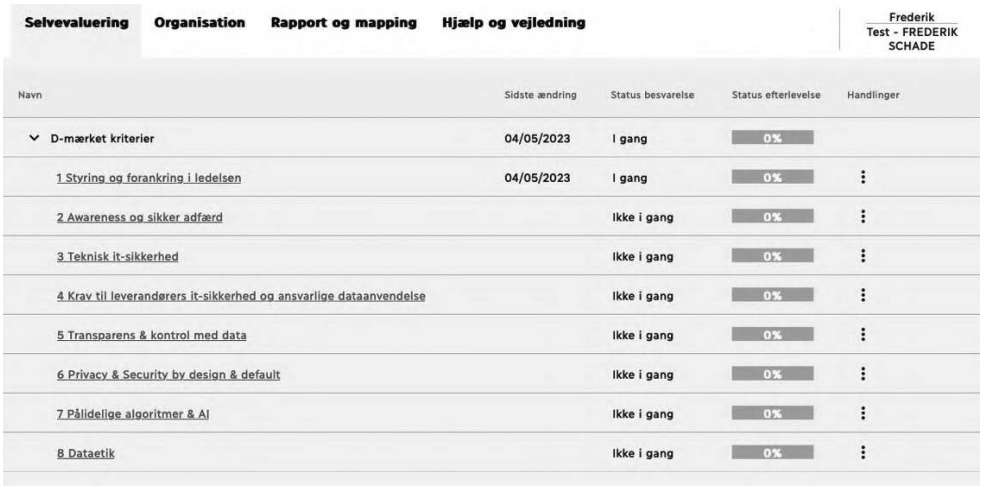

Image 18: Screenshot of the D-seal's "self-assessment tool" (1)

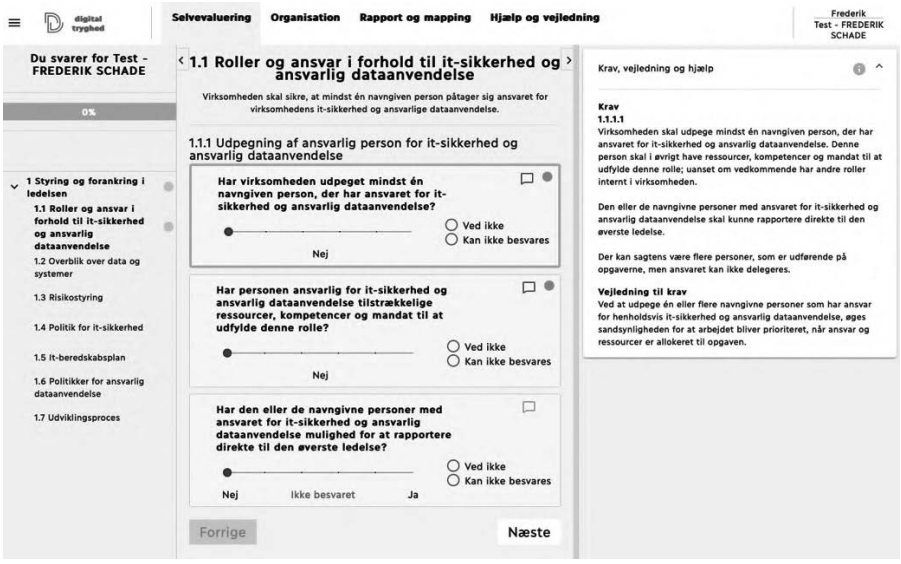

Image 19: Screenshot of the D-seal's "self-assessment tool" (2)

Finally, the perceived challenge of making the label appear economically attractive and valuable was intimately tied to the way it was made saleable as a commodity. Here, the label's "pricing strategy" was an obvious example. On the one hand, the initial economic fee of becoming

certified for companies should be attractive enough that it – coupled with other potential costs of becoming compliant – should be lower than the perceived economic value gained by "wearing" the label, resulting, ultimately, in the creation of surplus economic value. Thus, for any given company, becoming "responsible" should ideally entail also becoming economically profitable. For the labelling program, this of course led to an incentive of lowering the initial price for potential customer-companies of purchasing and, thus, subscribing to the label. However, at the same time, the price of selling the label had to be high enough so that the labelling program *itself* would profit or (at least) remain economically sustainable as a private enterprise. That is, the selling price also had to remain high enough to cover the labelling program's own expenses associated with developing and maintaining the label and its criteria, defining and maintaining a functioning control apparatus, maintaining technical infrastructures, and other such related costs. Making the label saleable thus involved a careful balancing act with the aim of making the label economically profitable (or, at least, sustainable) *both* for the labelling program itself *and* for other companies targeted as potential clients (i.e., users of the label).

Now, if we think through the points drawn out in the above analysis, together they might be seen to imply a shared (and seemingly problematic) economic incentive for both the labelling program and its clientele of other companies to *reduce* the formal requirements for attaining the label (i.e., its criteria), as well as to *limit* the forms of subsequent control imposed on companies before and after acquiring the label. That is, in principle, limiting and/or reducing these requirements and mechanisms would seem to be in the economic self-interest of both the labelling program (which might, potentially, be able to sell more labels) and client companies (which would experience reduced costs of becoming compliant, potentially entailing a higher economic profit gained through the label). The crux of the issue here, of course, is the incentive towards so-called "greenwashing"[15] in a nutshell, or, as a member of the label's own advisory board put it, the risk of the label becoming "an empty rubber stamp" with no guaranteed effect on existing company practices.

In practice, however, this issue was continuously (to some extent) sought warded off through a sequential taking account of a wider population of actors with seemingly divergent interests vis-à-vis the label. Importantly, these actors did *not* need to be economic actors per se, yet they tended to be perceived as directly involved in the equation of the label's potential economic value. What seems in theory to characterize these actors was that they did not themselves necessarily derive an immediate economic benefit from the above-described transaction involving the label, yet their perception(s) of and/or interaction(s) with the label in its given market might substantially affect its economic value for both the labelling program and its clientele of companies. The key principle which appeared to be at stake in this regard (as we have seen) was that of the label's relative credibility towards this, in theory, specific, yet, in practice, rather broad and heterogenous group of actors. In practice, this group ranged from potential customers of the companies "wearing" the label (both individual and organizational customers), to spokespersons and "experts" representative of certain associations or institutions, networks, or professions, to political actors representing certain particular interests or political affiliations. To the extent that this broad range of actors appeared to subscribe to the label's credibility, this was expected to

[15] Again, see e.g., Frankental (2001), Banerjee (2008), Prasad & Holzinger (2013), or Flemming & Jones (2013).

increase the label's economic value, as it confirmed the narrative of the label as an effective way to distinguish moral superiority among companies (i.e., companies which "in fact" treat data "better" and "more responsibly" than their competitors). Conversely, if certain or several of these actors – depending, of course, on their relative authority – did *not* appear to regard the label as credible, this might effectively decrease its economic value as the label might be seen as failing to cultivate this sense of moral preference. Failing to do so would ultimately entail a more general failure to reorganize or "push" economic transaction patterns in the given market to favor companies wearing the "responsibility" label, in turn inherently problematizing its economic attractiveness to the labelling program's potential clients. The issue of credibility, thus, did not appear as external to the logic of market-driven responsibilization (as sometimes implied by existing literature on "greenwashing"[16]), rather it seemed integral to it.

As with the general problem of ensuring the label's economic attractiveness, the problem of ensuring its perceived credibility was accompanied by a number of different sub-conditions and a diverse set of strategies to accommodate these. First of all, the issue – and principle – of coverage (as we saw above) was often mobilized and concerned the question of whether the label "covered" a sufficient amount and variety of potential topic-issues deemed relevant to the formal focus area of "IT security and responsible use of data." As a general rule, the criteria for attaining the label should "cover" a sufficient variety of issues to accomplish a satisfaction of interests of the above-described heterogeneous group of actors potentially involved in ascertaining the label's perceived credibility. Not all the conceivable interests of this group needed to be satisfied; only those seemingly integral to ensuring and maintaining the generally perceived credibility of the label. This points to one of the most crucial functions of the project's advisory board and other external actors actively engaged in the development of the label through processes of involvement which were continuously facilitated by the labelling program. That is, in practice, by allowing a variety of external actors (such as various "experts," political actors, other companies, etc.) to challenge and problematize the label's criteria during its process of development, there was a continuous attempt to incorporate the suggestions made by these actors (often referred to simply as "input") into the label's criteria with the ultimate aim of securing the label's future credibility. To guide the selection of which voices and interests to incorporate into these criteria and which to exclude we find only vague principles such as that of "importance" noted above. The principle of "importance," however, seemed to be of a certain practical value since what often seemed most vital for representatives of the label was to ensure sufficient flexibility and/or adaptability to continuously keep the divergent interests of key parties (or "stakeholders") involved in the label aligned and relatively satisfied. Relying on somewhat ambiguous principles for selecting which voices or interests should be given priority in a given situation – such as a condition of "importance" – would seem to accomplish just that.

[16] For example, Frankental (2001) argues that CSR only can be said to have a "real substance" (see p. 18) on the condition that it is enforced and implemented effectively, that is, if it is *more* than a – as he calls it – "PR invention." This argument, however, seems to entail that the primary objective of economically oriented responsibilization must lie *outside* or *beyond* its potential for economic value creation. This does not seem to be the case here, where the issue of the label's perceived credibility is itself mobilized as a condition for its potential economic attractiveness for companies.

One alternative and key strategy considered central by the label's representatives to ensure its perceived credibility among relevant parties concerned the "origin" of its criteria. With the aim – again – of aligning and satisfying the interests and expectations of actors with professional or institutional expertise, a key strategy became to ensure that all individual criteria and sub-criteria to attain the label were constructed with a "basis" in various pre-acknowledged "frameworks." To representatives of the label, these "frameworks" might be anything from regulatory frameworks (including but not limited to GDPR) to frameworks produced by standardizing organizations (e.g., various ISO standards), private interest organizations (e.g., Danish IT's "Data Ethical Recommendations") or private companies (e.g., Microsoft's "Security Development Lifecycle"). Close attention was paid to which frameworks appeared to inform institutional approaches to particular technological topic-issues (e.g., privacy, security, artificial intelligence, data ethics, etc.) rather than the character of the frameworks themselves. In other words, it was relatively unimportant to distinguish between whether a given "framework" was regulatory or non-regulatory in character as long as it appeared to be socially acknowledged (e.g., among members of the project's advisory board) as a source of "input" vis-à-vis a particular topic issue.

Another strategy considered highly important with regards to ensuring the label's credibility concerned not the origin but rather the "outcome" or "effect" of the label's criteria. In this regard, both the perceived effectiveness of the criteria in terms of transforming companies' behavior and the subsequent controllability of this transformation (i.e., of organizational compliance with relevant criteria) constituted key conditions for the label's perceived credibility.

Regarding the first problem of effectiveness, the relative (often hypothesized) "impact" of the label and its criteria set on both individual companies as well as on Danish society at large was often mobilized in relation to the question of its relative credibility. Considering the potential effectiveness of the label's criteria on company activities, internal or external actors sometimes would question whether criteria proposed to resolve or prevent a specific issue "actually" served to address that issue. For instance, would demanding a "representative data set" resolve the potential issue of "bias" in the context of algorithmic decision-making and/or artificial intelligence? Could consumers trust that data relating to them were not processed illegitimately through the *products* of a labelled company if only the company (and not its products) was certified against the label's criteria? In other words, would the label's criteria work effectively to transform company activities into a state which might be termed "responsible"? And, by extension, would the label thus effectively elevate part of the Danish economy by constituting a distinguishable segment of companies acting more "responsibly" than others? Such concerns led to a series of discussions about the exact formulation of criteria and what would be their ultimate implications for a company's data processing activities.

The second problem of controllability was intimately tied up with this issue but concerned specifically the aspect of whether and to what extent companies' asserted compliance with relevant criteria could be made the subject of inspection, control, and, thus, reassurance. To what extent could representatives of the labelling program be certain that companies applying for the label did "in fact" comply with relevant criteria? Part of making organizational compliance controllable was to strive towards a formulation of every criterion to make it as "objective" – and thus as "measurable" – as possible. To take an example, the labelling program would

require all companies to make and maintain a register or "map" of both existing IT systems and types of data in the company's possession. And while the label's auditors would be considering the relative *quality* of such registers or "maps" to some extent, requiring their mere *existence* (it occurred to me) sometimes seemed more straight-forward, since this matter could more easily be settled as an "objective yes or no" question (e.g., either such registers exist, or they do not).

Importantly, seeking to make the label's criteria "objective" and "concrete" in this fashion also derived from the desire to "help" and "guide" companies by making requirements as operational as possible. That is, by making requirements as specific and concrete as possible (rather, for example, than principle-based and abstract), companies themselves might be enabled to track their performance and ascertain precisely when actions taken would be sufficient to live up to the relevant criteria and, thus, to qualify for the label.

So how does the notion of "responsibility" fit into all of this? Until now, we have left the concept relatively unspecified, and so it is time to consider specifically how the word attains a special meaning and performative force (Austin, 1962) in the context of the above-described felicity conditions (ibid.; see also Latour, 2010) for its effective assertion. The meaning and force of "responsibility" in this particular context, however, did not always appear as clear-cut. It might seem unsurprising that the notion was sometimes linked to the question – and condition – of the label's credibility, and the idea of effectively transforming company practices into a state of enhanced morally appropriateness relative to a variety of diverse societal interests. Yet, at other times, "responsibility" was conceptualized differently as a commodity to be bought and sold among economic actors (hence, the "responsibility label" as a *de facto* product within the economy), and/or as a potential resource for companies which, by becoming "responsible," might reap a variety of economic benefits (e.g., consumer trust, competitive advantage, incl. advantage in winning private or public contracts, etc.). Whatever "responsibility" entailed, it would seem, could amount to both or simultaneously a question of relative credibility or trustworthiness as well as to a matter of economic incentivization, competition, and value creation depending on which actor the label was seen to relate to. In that way, the semiotic content of "responsibility" often appeared to be defined based on its pragmatic purposes, leaving the notion rather broad, open for continuous re-interpretation and, in that sense, as strategically ambiguous (see Eisenberg, 1984). For example, it was not my experience that representatives of the labelling program ever sought to arrive at a highly specific semiotic meaning of the term. Sometimes the two "legs" of the labelling program – i.e., "IT security" and "responsible use of data" – were seen as two separate political projects, yet at other times arguments would be made that "IT security" *was equal to* "responsibility" and vice versa. This apparent ambiguity also became reflected in the labelling program's name – the "D-seal" – where, according to its representatives, the "D" could refer, simply, to whatever people would like it to refer to (whether, for instance, referring to "data," "digital," etc.).

For us here, the question remains whether it is at all possible to specify the local conceptualization of "responsibility" any further in a way which is both open to or perhaps even *explains* these possible different meanings and apparent ambiguities of the term within the context of the Danish label. Fortunately, I believe it is. Specifically, I think we might approximate this local conceptualization of the term by thinking of "responsibility" theoretically as the point

at which a variety of different interests coagulate (e.g., become incorporated into the label, its criteria, and its control apparatus), a synthesis based on which economic value might be created and derived. That is, if we follow the rationality emergent in the labelling program, its ideal scenario seemed to be one in which the label appeared as simultaneously 1) economically attractive, operational, and useful for its clientele of companies, thus both manageable and valuable for both these companies (purchasing the label) and the labelling program itself (selling the label), and 2) credible to consumers, experts, political actors, and others, who would find the label to effectively represent and bring about a certain form of social transformation corresponding with their particular interests. What characterized this ideal scenario was the accomplishment of a successful balancing act between a variety of interests (only some of which were economic) resulting, ultimately, in their not necessarily "perfect," yet functional alignment. This alignment of interests, in turn, would give rise to a situation where the label's economic value could be optimized – at least in theory – since every actor irrespective of their particular interest would tend to regard the label as valuable. On the one hand, both the labelling program and its clientele of companies would perceive an economic value in buying and selling the label. On the other hand, a variety of other actors – who might not derive economic value directly from this transaction – would still perceive the label as "valuable," in the sense of being *credible*, insofar as it effectively corresponded to or represented their particular interests. If these actors perceived the label as, indeed, credible in this sense, their "crediting" the label, in turn, would serve to strengthen its potential economic attractiveness to both companies and the labelling program itself, ultimately feeding back into (and thus strengthening) its potential economic attractiveness. In the context of the labelling program, responsibilization would thus ultimately seem to occur in tandem with and dependent upon 1) an identification of relevant societal interests, 2) the creation of economic value from the functioning alignment and satisfaction of these interests, and 3) the subsequent accumulation of actors attaining the label, driven primarily by market dynamics and each actor's economic (and/or political) self-interest. The best immediate example of this logic of responsibilization, I think, derives from the original document on the label's "strategic positioning" in its given market. An illustrative excerpt of this logic is today visible on the D-seal's website describing the aim(s) of the initiative:

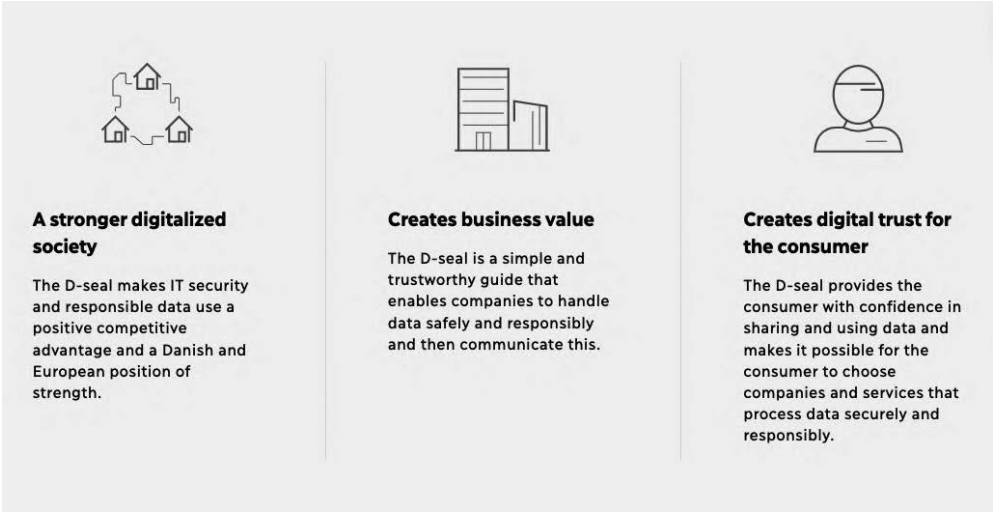

Image 20: Excerpt from the D-seal's website

The idealized scenario of this logic of responsibilization would appear to be a kind of "win-win" situation for a large variety of actors, here exemplified as business actors, consumers, and society as such (here, "Denmark" and possibly even "Europe" to which the Danish project hoped to expand to in the future). It implied the positionality of the labelling program as a central node in a network from which various forms of "value" would flow (here exemplified as "business value" for companies, "digital trust" for consumers, and a "competitive advantage" or "position of strength" for Denmark or even Europe as such). Responsibilization appeared, thus, not mainly as a consequence of restriction but as a *means of production*; of unleashing a productive flow of "value," supposedly to the ultimate benefit of "everyone" (although obviously benefitting different actors in rather different ways). If the criteria set imposed on companies would in fact effectively restrain them and their data processing activities to some extent, this degree of restraint would merely serve as a means to an end, namely the activation of market dynamics and, through this, the creation of economic value from processes of making and becoming responsible. To achieve this, the semiotic meaning and content of "responsibility" simply had to be rather open-ended and ambiguous to enable and secure an alignment of relevant interests in relation to the labelling program without excluding any actors or interests *a priori*. The rather "spacious" and strategically ambiguous notion of responsibility would thus seem to play a key role in facilitating market-driven responsibilization by fostering the production and circulation of economic along with other possible forms of "value." [17]

Counter-performative tendencies

When accounting for the seeming counter-performative tendencies (MacKenzie, 2004; Butler, 2010) at play in the context of the labelling program, it is first of all important to note how challenges to authority were altogether more normalized in this setting and played a very different role here than, for example, in the juridical setting of the DPA. Since the label's credibility largely rested on a functional alignment of interests of a significant variety of actors, counter-performativity was, in a sense, *built in* from the very conception of the initiative and throughout its process of development. First of all, it is worth noting how the initial credibility of the label might be derived exactly from the *divergence* of formal interests represented by the partnership organizations behind the label, that is, the three industry associations and the Danish Consumer Council. Add to this the variety of interests represented by different members of the project's advisory board as well as the various private companies targeted as potential clients of the label, and the potential alignment of all these interests which would constitute yet another level of credibility for the label in relation to different audiences and publics.

[17] Again, while we postpone a more detailed theoretical comparison until after this section, we might note how the idea of responsibilization through the production of "value" in this rather ambiguous and conceptually vague sense is somewhat akin to Porter & Kramer's (2006; 2011) notion of "shared value" as a "meaningful benefit for society that is also valuable to the business" (Porter & Kramer, 2006: 6). This idea itself, however, appears to derive from previous CSR literature such as on the "business case" of CSR and instrumental stakeholder theory mentioned in the above literature review (see also Crane, A., Palazzo, G., Spence, L. J., & Matten, D. (2014)).

Accomplishing a functioning alignment of these diverse interests in practice was, unsurprisingly, not always an easy task for the label's representatives. Particularly in the early days of the project (around the time I started conducting fieldwork) certain select members of the project's advisory board were claiming seemingly irreconcilable positions regarding which issues each of them thought was more important for the label's criteria to address. These divergent opinions became organized in and around two main "camps": one concerned primarily with cybersecurity and with strengthening the basic security level among Danish SMEs, the other with consumers' and/or citizens' rights-related issues, privacy, and "data ethics." While the second group sought to have the label cover a rather broad range of topics spanning cybersecurity, privacy, algorithmic accountability, AI, and data ethics, the first group – for a time – consistently argued that this would make the label's criteria much too broad and complicated in scope. Too broad a focus, they argued, would risk deterring companies, and Danish SMEs in particular, from seeking to attain the label, thus problematizing the purpose of the labelling program – as they saw it – of enhancing IT security among these Danish firms. Ultimately, however, this group was somewhat persuaded by an argument that due to the label's adaptability to the needs of different segments, smaller companies – such as most SMEs – would only have to comply with criteria relevant to their operation which would anyhow mainly relate to IT security. Only larger companies with more comprehensive data processing activities or SMEs dealing specifically with sensitive data, software and/or algorithmic (or AI) development, would be subjected to the more comprehensive criteria structure. For the purposes of this thesis, what seems important to notice for analytical reasons is how the initial argument of the cybersecurity-oriented group directly problematized the principle of interest satisfaction. Their initial attempt to limit the label's criteria to deal solely with cybersecurity as a specific – albeit, in practice, broad – issue appeared to exclude *a priori* too many of the other interests which were gradually becoming invested in the labelling program (i.e., interests concerned with privacy, corporate and algorithmic accountability, data ethics, etc.). To resolve this tension, the principle of adaptability – in a similar way to how this principle acted in our deliberative example above – allowed for a broader set of interests to become re-aligned, thus seemingly strengthening the potential credibility of the labelling program in relation to a broader societal audience. To be sure, some potential criteria proposed during the label's process of development were entirely dismissed as "out of scope" for the label. For example, the issue of ecological sustainability related to digital technologies (e.g., due to problems of energy consumption and electronic waste) was dismissed entirely to preserve the label's "profile," that is, due to a perceived need of enhancing the marketability of the label as a clear brand with a limited and specific focus.

While a significant degree of politics seemed, in fact, to characterize and effectively *feed into* the labelling program in this way due to the way the project was organized, it is, however, worth noting how the initiative at other times risked becoming subjected to political agendas which they had not themselves invited in or actively sought out. In the above example, one such situation materialized when the particular interests of a ministry of the Danish government suddenly risked intervening in the project in a way that local representatives had not themselves asked for and which – it seemed at the time – might have affected the content of the label's criteria quite substantially (e.g., if the labelling was not "allowed" to include so-called GDPR-

related criteria at all). Another example well worth mentioning occurred later, when a large Chinese corporate manufacturer of digital technologies started showing interest in attaining the label for their Danish subsidiary. This situation sparked some unease among several of the project's representatives since awarding the Chinese corporation the label might threaten the label's perceived credibility in the eyes of other (particularly local) actors. Concerns were raised especially regarding the Danish label's ability to effectively audit the company, including concerns about access to relevant documentation as well as about competencies within the label's team of auditors. The logic is, of course, theoretically interesting in itself, since it suggests that the label's perceived value might be directly affected by actors attaining the label based on *their* perceived position and social credibility. For a moment, at least, representatives of the Danish label appeared to have a somewhat uncomfortable experience of being enrolled in international – or even global – politics. Ultimately, however, the Chinese company in question was disqualified as a potential candidate even before applying for the label as key representatives of the labelling program insisted on a principle not to award the label to corporate subsidiaries (only to entire companies). Part of this decision was to launch the initiative with a focus on Danish (rather than international) companies and SMEs, although both local representatives and the Industry Foundation funding the project still saw expansion into the European market as a future possibility and ideal objective for the label.

Another key aspect of the labelling program's operation which gave rise to disagreement among various parties during my fieldwork was the question of economic resources available to the labelling program itself. Now, again it is first of all worth noting how the economic structure of the labelling program differed in important ways from that of the DPA. While the DPA's work was funded by an operating license from the Danish state, the labelling program relied initially – and still largely relies – on the grant from the Danish Industry Foundation to fund its development and its early years as an enterprise. However, constituted as a private company itself, the labelling program should start making its own money and funding its own operations by selling rights to use its label to other Danish companies. Ultimately, the aim for the labelling program was (or, rather, is) to become entirely self-sustaining and economically self-sufficient as an enterprise. This goal of economic sustainability would unsurprisingly translate into several key decisions regarding both the pricing of the label, on the one hand, and management of its operating costs, on the other. Most importantly, perhaps, the pricing of the label would need to be balanced against the costs associated with the label's control efforts, thus affecting (or even determining) the level of reassurance with which the label's organization could guarantee the compliance of other companies with its criteria.

This particular issue was not uncontroversial, however, since the quality of compliance control conducted by the labelling program was intimately tied to the initiatives' perceived credibility by both internal and external actors. As representatives of the label progressively realized that the economic resources available to finance its control efforts were likely rather limited compared to what they had imagined, the project partners decided to base the label's control efforts mainly on a selective "risk-based" review of documentation provided by companies (i.e., sample-based checking based on a company self-assessment). A substantial review of documentation related to all relevant criteria would simply be too time-consuming and costly, just like in-person

inspections of company facilities was deemed outright economically unfeasible. About one year after the start of my fieldwork, this decision – along, of course, with other possible considerations – led to three out of the total of five employees (the two auditors and the senior consultant) leaving their job at the labelling program shortly before the initiative was planned to launch and take on its first company clients. The fact that people were leaving simultaneously gave the appearance of a concerted action by the employees in question and, thus, seemed like a form of protest. According to the auditors who would have otherwise been tasked with conducting the label's control effort, they could not "see themselves" in conducting audits based almost entirely on documentation and paperwork. At the same time, they seemed worried that only two people had been hired to ensure the compliance of potentially hundreds of Danish companies.

For the labelling program and its remaining staff, the resulting situation was obviously rather critical. On the 4th of May 2021, the situation was presented to the project's steering committee during an extraordinary meeting dedicated specifically to deciding on the future of the initiative. At this meeting, members of the steering committee expressed their ongoing belief in the prospects of the labelling program and their determination to help resolve the difficult situation. Acknowledging that the recent employee exodus in itself could challenge the credibility of the label after its launch, the solution quickly became framed as an attempt to make the best of an otherwise challenging situation. Specifically, since the now open "senior consultant" position had received a higher salary than had the auditors, the possibility emerged to split that position into two additional auditor positions and hire a private consultancy firm with previous experience in auditing digital systems to co-develop the label's control apparatus. This would allow the labelling program to double its auditor capacity (by hiring four new auditors to replace the previous two), strengthen its control apparatus and attempt to secure the label's credibility in this regard.

Now, the two above examples of counter-performativity, dissensus, and challenges to authority occurring in the context of the labelling program were interesting in their own right but ultimately not significant enough to radically challenge the general economic and market-oriented rationality of the project as such. Rather – as we have seen – the above-described instances of counter-performativity were eventually resolved within and absorbed by the prevailing logic characterizing the setting. One issue, however, which emerged in the very beginning of the project, and which never seemed to be entirely resolved, had to do with the labelling program's relation to regulation and law as such. Having spent the first part of this thesis' analysis on examining the juridical setting of the DPA which was continuously challenged by apparently economic concerns, it is, of course, of the utmost interest that law should re-enter and problematize the workings of this economic setting in turn, allowing our analysis to come somehow "full circle." As I found the issue of legality to constitute probably the most important instance of counter-performativity in the context of the labelling program, I will spend the remainder of this section exploring the somewhat uneasy relation between the labelling program's economic orientation towards "responsibility" versus that of law.

As illustrated in the above example of local deliberation, the labelling program and its criteria set were initially conceived as being entirely different from and thus, in that sense, "beyond" the law. Ideally, the label should contain no criteria which were directly derived from legal frameworks such as GDPR, thus concerning itself only with criteria which were somehow extra-

legal in character, spending its scarce resources solely on evaluating companies against such extra-legal requirements. As described above, this vision of the label entailed an initial attempt to "filter out" any potentially GDPR-related issues from the label's proposed criteria set in its prototype version. When I started fieldwork in March 2020, however, the label's newly hired personnel were still experiencing slight unease with this decision and seemed skeptical about whether GDPR-related concerns had effectively been removed from the existing criteria structure. Therefore, again as described above, the project representatives sought council with a lawyer from a major law firm specializing in regulation of privacy and data processing. And indeed, after the lawyer had reviewed the label's proposed criteria set, his conclusion in an email to the label's representatives was unambiguous: "There is still a significant overlap between the elements which the new labelling program seeks to cover, and elements already regulated by the GDPR." To substantiate this assessment, his email included a table which linked every single one of the criteria from the label's prototype version to specific articles in the GDPR framework,[18] seemingly proving that those GDPR-related elements which had supposedly been "filtered out" of the label was, in fact, still very much present in its current criteria set. Additionally, the lawyer expressed concern that the label might eventually be at odds with existing marketing and consumer protection law as interpreted by the Danish Consumer Ombudsman. The question was whether the label might suggest to consumers that companies "wearing" the label were – by accommodating its criteria – effectively in compliance with GDPR without this necessarily being the case, potentially constituting a case of "false advertising."

This message from someone whom representatives of the labelling program considered a senior legal expert caused quite a bit of commotion among the project participants. Most importantly, it led to a series of meetings and discussions dedicated primarily to the issue of the labelling program's relation to GDPR. Through these discussions, apparent consensus emerged that the label should still not amount to a pure and legally oriented "compliance exercise." Some participants kept arguing for the need to cleanse the label of GDPR-related criteria to focus solely on criteria deemed extra-legal or – as they were sometimes referred to – "ethical." Others (including key representatives of the label's own organization) started arguing for the need to accept and incorporate *some* GDPR-related criteria into the label without adopting the entire regulation, focusing merely on selected aspects such as – but not limited to – IT security, transparency, privacy-by-design, and user control of data. Further, to legitimize the adoption of regulatory requirements, the idea arose to collaborate with the Danish DPA and construct the label's criteria

[18] The at the time criteria 1 on "management commitment" was linked to GDPR's article 24 on the responsibility of data controllers; criteria 2 on "data processing by suppliers" was linked to article 28 on use of data processers; criteria 3 on "awareness and safe behavior" was linked to article 25 on privacy by design and default and article 32 on information security; criteria 4 on "clear communication" was linked to article 13 and 14 on the duty of transparency; criteria 5 on "technical IT security" was linked to article 32 on information security; criteria 6 on "control over one's own data" was linked to article 4 and 7 on consent, article 15 on the right to insight, and article 17 on the right to be forgotten; criteria 7 on "fair and unbiased algorithms" was linked to article 5 on fairness; and criteria 8 on "depersonalization of personal data" was linked to article 5 and 32 on data minimization, deletion, and pseudonymization.

set as a "code of conduct" under GDPR's article 40[19] (an idea which the lawyer had also proposed in his above-described message to the project participants).

According to its proponents, this strategy of adopting certain parts or aspects of GDPR into the label's criteria structure had multiple benefits. First, people tended to agree that it was generally proving too difficult to keep GDPR-related aspects entirely out of the label. Further, as several parties agreed, it might actually be a "big help" to concretize certain of GDPR's legal requirements for Danish companies for whom legal compliance in this area still constituted a significant problem. At the same time, the proposed strategy might also bring about a closer collaboration between the labelling program and the Danish DPA, which most parties agreed would be a good thing. Finally, basing the label's legitimacy upon a code of conduct approved by the DPA, in turn, might strengthen the label's own credibility towards its audience of both companies, consumers, and experts.

Importantly, as additional project participants started to agree on the need to test this strategy with the DPA, they equally agreed that the label would still have to include criteria "beyond" mere regulatory compliance (i.e., extra-legal or, in their words, "ethical" criteria) to legitimize the labelling program as such. As put by a member of the project's steering committee: "You can't really advertise the fact that you comply with regulation, right?" A few critical voices remained, however. For example, a member of the advisory board – another corporate lawyer – continuously argued that in the specific field of data processing, legal compliance (here, compliance with the GDPR) was, as he saw it, *equal* to "ethics." While the project participants tended to find this logic rather provocative, it was also met with a certain understanding as people close to the project tended to recognize that very few companies were likely to be in "full compliance" with GDPR, effectively framing existing privacy regulation as a relatively high moral standard to hold Danish companies and institutions accountable to.

As the representatives got in contact with the DPA, however, the idea of construing the labelling program's criteria based on a "code of conduct" under GDPR's article 40 was again progressively suspended. At least three aspects of the labelling program and its organization made the DPA's representatives doubt whether the approach would be valid under current law. First, GDPR required a narrower specification of the sector targeted by the labelling program than, for example, the Danish "private sector" which constituted the labelling program's main target group. Second, the "associations or other bodies" which might publish codes of conduct for specific sectors had – according to GDPR – to directly represent that sector in a way that it could formulate the code to address problems of a specific nature to that sector. The four partnership organizations behind the label (including the three business associations and the consumer council) did not, it seemed, fit this description of representing a specific sector with specific challenges (rather – again – the label targeted the "private sector" at large). Finally, GDPR required a separation and, thus, independence between the "code owner" and the control apparatus meant to enforce the code of conduct. In this case, the labelling program would

[19] According to GDPR's article 40, the EU, member states, supervisory authorities should encourage the drawing up of "codes of conduct" intended to contribute to the proper application of GDPR, considering specific features of the various processing sectors and the specific needs of micro, small, and medium-sized enterprises. Associations and other bodies representing categories of controllers or processors may formulate such codes of conduct for the purpose of specifying the application of GDPR with regards to particular aspects of the regulation.

simultaneously define and own the code *and* function subsequently as the control apparatus for checking and ensuring compliance among its clientele of companies. Thus, altogether, the labelling program seemed not to qualify as a potential owner of a GDPR-mandated code of conduct.

Although this caused additional frustration among representatives of the label, the parties ultimately agreed to stick with the strategy of incorporating certain select elements of GDPR into the label's criteria structure to make these requirements more "concrete" and, thereby, "help" companies attain higher levels of regulatory compliance. At the same time, the labelling program would consistently state in its own marketing material that it generally presupposed that companies complied with relevant regulation (e.g., GDPR), yet could not through its own control mechanism guarantee their legal compliance. Further, the strategy of including "parts" or "elements" of GDPR into the label's criteria remained somewhat problematic during the label's development due to law's totalizing character (which we saw in the previous chapter). As put by a member of the project's steering committee: "It's exactly the problem when you [evaluate companies against] "part" of a regulation, someone might say: well, what about the rest of the regulation?" Finally, the need to legitimize the act of labelling companies against somehow extra-legal criteria "beyond" mere regulation was eventually sought accomplished through two top-level criteria which – project participants agreed – went further than GDPR. One was on "trustworthy algorithms and AI" which, besides attempting to regulate Danish companies' algorithmically-facilitated processes, was equally meant to pre-empt the coming AI regulation by the European Union. This would also place the Danish labelling program and its partnership organizations (and perhaps the Danish state as a whole) in a better position to influence future AI policy at the European level. The other was a criterion on "data ethics" requiring select companies to complete a questionnaire on ethical considerations related to the company's outward-facing activities, have the document approved by top management, publish the written considerations on their website, and update the document on an annual basis. Here again, it is worth noting how large Danish companies have since July 2020 been required to include data ethical considerations in their annual report, a rule which the labelling program would now effectively generalize to a larger pool of smaller companies (albeit not the smallest SMEs).

For our purposes here, what seems striking is how law, legal matters, and regulatory requirements were typically regarded by representatives of the labelling program as practically difficult, unclear (thus rather incomprehensible), and altogether *different in kind* from the kinds of "concrete and objective requirements" they preferred to characterize the label's criteria. From this position, the very instigation of the labelling program as a project equally seemed to represent a general frustration with existing legislation and its normative prescriptions which were perceived as abstract, non-concrete, and therefore not sufficiently "operational" for Danish companies (hence, the perceived need to "concretize" or "flesh out" GDPR's requirements via the label's criteria). This sense of frustration was exemplified by a member of the project's steering committee and his argument that "[…] GDPR is not something you [as a company or institution] can be compliant with; it is something you agree with yourself that you are compliant with." At the same time, and throughout my time of doing fieldwork in this setting, it was clear that law continuously seemed to seep in virtually *everywhere* into the label's criteria structure, apparently framing every single criterion set out for companies to qualify for the label. At once, there are

multiple instances where we witness the effective counter-performativity of law (e.g., the general influence of GDPR's legal framework on the label's criteria, the dismissal of the labelling program as a potential "owner" of a legally mandated code of conduct, the lawyers' warning relating to the Danish Consumer Ombudsman, etc.). Yet, the general rationality of law as such and its particular concept of responsibilization – which we encountered at the DPA in the previous chapter – *never* effectively replaced the more general economic logic characteristic of the labelling program. Notions of legal "right," "duty," and/or "principle" in the legal sense might be mobilized occasionally in discussions of the label's criteria, particularly in discussions involving juridically oriented members of the label's advisory board, yet such terms never became used and incorporated directly as conditions of performative felicity (Austin, 1962; Latour, 2010) in the same way principles such as "value," "operationality," "credibility," and "communicability" did in this setting. The general logic thus remained different in kind from the juridical, that is, the complex of felicity conditions mobilized for asserting and proclaiming "responsibility" in this setting remained qualitatively different from those conditions we encountered at the DPA. How exactly these conditionalities were different and what might be the implications for our understanding of "digital responsibility" will be the subject of the following section in which we compare the distinct forms of performative felicity encountered in each of these two settings.

Comparing juridical and economic responsibilization

In this section, I address this thesis' SQ4 concerning what might be learned by comparing our findings from these two settings about the meaning, state, and development of digital responsibility as an institutional norm in the Danish context. To help inform our comparison of the ways responsibilization is performed and enacted in our two respective settings of observation, let us begin by considering our empirical findings against the definitions of "digital responsibility" proposed by pre-existing literature on CDR (see literature review above). As the reader may recall, three overall definitions could be deduced from this literature so that in the context of societal digitalization, "digital responsibility" was defined as either:

D1: Concerning only obligations deemed "basic" or "fundamental" to organizational practices (i.e., economic and legal obligations),

D2: Concerning only obligations "beyond" such basic or fundamental obligations,

D3: Concerning "all levels" of potential obligations (incl., economic, legal, moral, and ethical obligations).

Recalling that existing literature have tended to focus on – or perhaps favor – the viability of D2 and D3 (while we ourselves added that of D1), the first noteworthy observation, of course, is that the main forms of "responsibilization" we encounter in the context of an increasingly digitalized Danish society are exactly legal and economic in their general institutional orientation (i.e., D1). Indeed, if we start by considering these three theoretical definitions against our findings in the context of the national DPA, it could seem as if we might quickly discard of both D2 and D3 when trying to describe this setting. At the DPA, the continuous enactment of "digital responsibility" as an institutional norm clearly centers around a juridical concept of responsibility which springs from law, legal frameworks, and juridical praxis and method. However, while responsibility tends to be conceptualized in this setting as a "fundamental" obligation of organizations subject to legal authority (D1), legal obligations tend to *take precedence* over economic obligations in evaluations of responsible conduct. In the context of law, the responsible legal subject may even have to act contrary to, and thus forego, their economic obligations in order to behave responsibly. Thus, as stated above, D1 does not entirely capture the specificity of juridical responsibilization, the *de facto* primacy of law and legal obligations in this context, and the fact that legal and economic obligations are often regarded as conflictual in practice.

Furthermore, one might move on to argue that the juridical notion of responsibility we encountered at the DPA – if understood, in part, as the embodiment of an abstract "legal spirit" and/or "principle" – actually always-already implies a moral obligation *beyond* the law itself, that is, beyond that of the specific prescriptions of any legal framework (e.g., GDPR). Responsibility, in other words, is not measured merely against the "word" but also against the (more abstract) "spirit" of the law. Thus, juridical responsibilization is not necessarily reducible to simply the most "basic" obligation(s) of a given organization (as implied by D1) but always-already implies an extended moral obligation being placed upon its subject-organizations as these are

expected to both comply with the law *and* act beyond it (in accordance with its normative principles). While we can thus meaningfully relate both D1 and, to some extent, D2 to the context of the DPA, D3 still does not seem to make much sense to describe the context of juridical responsibilization since legal obligations in particular seem to remain the only type of obligation relevant to evaluations of responsibility in this context.

If we attempt a similar comparison between the three above-stated definitions and our findings at the private labelling initiative, things become more complicated. This is initially because all of the above theoretical definitions of "digital responsibility" might be said to be accurate in the context of the labelling program – a situation which, in turn, may suggest that none of these definitions are precise enough to capture the specificity of this setting. Considering our observations of this project, it seems as though proponents of all three of these perspectives were present within and across the labelling initiative's own and extended organization (e.g., its advisory board). During project development, some proponents argued for a version of the label which focused on the more "basic" obligations of Danish organizations (such as economic and legal obligations, i.e., D1); others that only obligations "beyond" these basic considerations should be prioritized within the label (D2); and others yet argued for more of an appropriate mixture of both "basic" (e.g., legal) and more extensive (e.g., "ethical") obligations (D3). The most central consideration, of course, still had to do with acknowledging the specifically economic obligations and interests not only of the label's potential clientele of other companies but also for the label itself as inherently a business enterprise. In an attempt to optimize the label's potential economic value for its clientele of companies (and thus ensure the labelling initiative's own economic prospects), over time, it became increasingly important to "help" and "guide" other companies into compliance with existing *legal* frameworks (including, but not limited to, the GDPR). As legal compliance constituted a major challenge experienced by the label's potential clientele of companies, legal guidance – in other words – became a key "selling point" for the initiative. Thus, while the labelling program's formal focus was initially exclusively on obligations deemed "beyond" those derived from law (D2), the initiative increasingly and ultimately (i.e., at the time of its market launch) came to center around legal guidance, thus giving priority to – exactly – the legal and economic obligations of Danish companies (D1). Importantly, however, certain of the label's criteria did go "further" than existing regulation (D2), either by giving existing legal prescriptions more concrete form (e.g., the label's criteria on privacy-and-security-by-design-and-default), extending existing legal prescriptions to a broader number of companies (e.g., the label's criteria on "data ethics"), or pre-empting future regulatory initiatives in the context of emergent technologies (i.e., the label's criteria for responsible AI pre-empting the coming "AI Act" by the EU). Of course, a key reason to include such criteria which seemed to reach "beyond" existing regulation was to avoid potential accusations and sanctions from the Danish Ombudsman for "false advertising" on the basis of existing marketing law. From that perspective, even as the labelling program would seem to move "beyond" obligations of a legal nature (D2), a key consideration for doing so sometimes appeared to have a legal undertone (D1). Finally, this discussion also tells us that while the labelling initiative was, in principle, initially open to all conceivable types of obligations (as, for instance, members of the project's advisory board could freely propose what they thought to be relevant criteria for companies to qualify for the label,

i.e., D3) the result focused increasingly on translating the existing legal obligations of Danish companies into a commercially sensible framework (D1). At the same time, the addition of certain select criteria which could be said to reach "beyond" existing regulation (D2) might either be understood as doing exactly that, or as itself a way of addressing various legal and economic concerns (e.g., as certain extra-legal criteria would legitimize the label vis-à-vis existing marketing law and/or become mobilized by the label and other companies as a form of promotion and marketing, i.e., D1).

Thus, based on our analysis here, we might conclude that "digital responsibility" in the Danish context would be described most precisely by D1 (as legal and economic concerns some to seem primary in the institutional fabrication of "digital responsibility" in Denmark) and to some extend D2 (since both our institutional contexts in their own way appear to reach "beyond" what is considered merely the most "fundamental" or "basic" obligations of digitalized organizations). D3 does not seem to possess much descriptive value in relation to our empirical material, either because it implies a far too optimistic view of the state of the digital economy (and is thus simply unrealistic), because it neglects the phenomenon of institutional diversity altogether, or – of course – due to methodological choices underpinning the thesis' investigation.[20]

For our purposes here, the above discussion seems to indicate that while definitions concerned with the possible "extent(s)" of responsibility, customary in existing CDR literature, might be useful for certain analytical purposes, they also prove relatively ill-suited to capture what appears as qualitatively different *kinds* of responsibilization emerging within and from a set of particular institutional contexts. It may therefore be worthwhile to also move away from the quantitative and cumulative logic expressed by these theoretically derived definitions of "responsibility" and towards a different, qualitatively-articulated conception of *different institutional forms* of responsibilization (here, its juridical versus its economic, market-oriented form). Below, I have attempted to compare these two forms of responsibilization according to what appears as their distinct, yet seemingly comparable, dimensions (see Table 1). The dimensions proposed as the basis for this comparison are ones which I have deduced from the two prior analytical sections, and are merely meant to bring out key differences in how "responsibility" tends to be conceptualized in the two empirical settings examined:

[20] For example, we might consider if conducting fieldwork in the context of the Danish organizations subjected either to the legal authority of the DPA or attempting to gain the Danish label might have yielded different results.

Structural dimension	**National data protection agency**	**Labelling program (the D-seal)**
Institutional orientation	Juridical	Economic
Concept of responsibility	Legal duty, enactment of legal spirit	Economic product and/or resource
Source	Legal texts (legal tradition)	Acknowledged "frameworks"
Mode of imposition	Obligatory	Voluntary
Central problem	The legality of action	Commercialization of moral conduct (attractiveness vs credibility)
Unit of measurement	Relative legal compliance, relative embodiment of legal spirit (totalizing morality)	Fulfilment of objective criteria (peripheral morality)
Relation of power	Vertical (the authority and its subject organizations)	Horizontal (a business among other businesses)
Form of power	Restrictive; responsibility as persistent vigilance and caution. Responsibilization through public punishment and (the threat of) economic sanctions.	Productive; responsibility itself a resource to increase production and profit. Responsibilization through economic incentives, public reward, and spontaneous accumulation.
Challenges	Resource scarcity (directing focus towards the most legally problematic cases). Fulfilling core tasks while dealing with political pressures. The undesirability/impossibility of strict legal enforcement.	Resource scarcity (limiting the ability to produce and to accumulate clients). Positionality relative to law and legal "frameworks." Fulfilling core tasks while dealing with political pressures.
Lines of transformation	Reduction in extent of treatment according to economic necessity. Accommodating pressures to protect (rather than punish) economic actors by "guiding" (rather than forcing) organizations into compliance.	Accommodation of legal pressures challenging both credibility and perceived value proposition. Basing the label increasingly on legal requirements while ensuring that some criteria can be said to reach "beyond" regulation.

Table 1: A comparison of juridical and economic responsibilization

As the table illustrates, rather than constituting different *degrees* of "responsibility," what we encounter in our two settings might be better described as two qualitatively different *kinds* or *forms* of responsibilization. One of these is juridical in orientation. It is concerned mainly with the legality of an organization's data processing activities, leading to a notion of "responsibility" which centers on a concept of legal duty and of the relative enactment of legal principle or "spirit" (i.e., the intention of the law). It derives its particular moral requirements from a historical body of regulatory texts and source material (i.e., legal tradition), imposing these requirements as obligatory for an entire population of organizations subjected to the rule of law within a given territory. Hereby, it reconstitutes a vertical and hierarchical relation of power between the given

state (or regulator) and its population of subject-organizations. The form of power implied by this mode of responsibilization is relatively totalizing and restrictive as it demands the perpetual vigilance and caution (as well as the legal knowledge and know-how) necessary for its subject-organizations to successfully *limit* themselves exclusively to practices which can assume a legitimate legal basis. In case of non-compliance, the DPA may subject organizations to public punishment (i.e., published on the DPA's website), either symbolically (by issuing a formal reprimand of a given organization) or by sanctioning organizations economically.[21] In this context, the legally responsible actor thus appears as one that proves consistently aware of its legal obligations, and which perpetually and carefully ensures (or, in case of potential deviations or errors, restores) a state of legality to its activities, thus respecting other actors, their legal entitlements and rights. Importantly, it does so even when this entails an economic cost or disadvantage to that organization itself signaling the primacy of law for evaluations of responsibility.

The alternative form of responsibilization we have encountered, the economic form, appears as altogether different in kind from the juridical. It is mainly concerned with the commercialization of moral conduct, conceptualizing "responsibility" as a potential commodity to be subject to economic transactions among market actors, as well as a potential economic resource for those actors (who, by signaling the "responsibility" of their practices to others, might, in turn, gain an economic advantage and/or profit). It derives its particular moral requirements not, in principle, from a historical body of source material but from a broad variety of current "frameworks" (some legal and some non-legal in character) deemed relevant to the project in the present. More specifically, the relative relevance and quality of possible requirements (i.e., criteria set for companies to attain the label) is assessed against both the economic interests of the label itself and its potential clientele of companies (hence, the problem of the label's economic value and attractiveness) and a more heterogeneous set of professional, political, and societal interests of a broader group of potential "stakeholders" (hence, the problem of the label's perceived "social value" and general credibility). Ultimately, the label and its moral requirements are presented to potential client-companies as a voluntary endeavor which they may or may not want to engage in based primarily on their respective evaluation of the label's potential economic value. Hereby, the initiative reconstitutes the relatively horizontal relation of power characteristic of the market between the label's organization as a business challenged with attracting other businesses as potential clients. Further, the form of power through which market responsibilization is sought achieved is both 1) local and peripheral rather than "global" and totalizing (as requirements are posed as "objective criteria" to a limited selection of companies rather imposed as abstract principles on the entire population), as well as 2) economically productive rather than restrictive. That is, even if the label's criteria may in practice restrict the label's client-companies in certain respects, voluntarily succumbing to this degree of restriction is merely considered a means of further unleashing – rather than limiting – the economic potential of those companies. This economic productivity should ideally result from labelled companies gaining an economic advantage over their competition derived from perceived moral superiority, thus securing new customers and contracts, expanding production, increasing company revenue, and ultimately maximizing economic profits. The key mechanism is, thus, not mainly one of public punishment (or the threat

[21] To be sure, in Denmark, this is ultimately a court decision.

of such punishment) but one of public and economic reward (i.e., by creating a visible "responsibility" label for companies to earn and use in their marketing). Thus, in this context, the responsible organization is one which perceives a potential economic advantage in complying with the moral demands of society and is subsequently able to mobilize and exploit such moral "compliance" to maximize its economic profitability.

While the above descriptions serve relatively well to distinguish between these diverse forms of responsibilization, they also tend to amount to seemingly ideal-typical depictions of the institutions encountered empirically. However, based on the fieldwork conducted for this thesis, it is clear that, while it is indeed possible to construct such tendentially ideal-typical depictions of institutionally embedded conceptions of "responsibility," such conceptions easily come to face a number of challenges in practice, leading to possible "pollutions" and/or "mutations" within local meanings and usages of the term. Further, with our above-sketched comparison of the two settings in question, we get a better sense of how these challenges and transformations manifest as certain socio-political tendencies of which the select institutional settings of observation are merely parts. In this regard – and as noted previously – we see how both our settings of observation, each with their primary institutional orientation, also seem profoundly affected by the presence of the institutional rationality and orientation primary to the alternate setting. For example, we saw how law and its legal prescriptions (which otherwise seemed the purview of the DPA) ultimately came to penetrate and characterize the majority of the normative content of the private labelling initiative, making it increasingly difficult to identify criteria reaching "beyond" existing regulation. While there seem to be several possible causes for this transformation (such as the perceived low levels of legal compliance among Danish companies, the perceived value of offering legal "guidance" to those companies, the increased ease of selling a label which does not impose many additional requirements on corporate data processing, etc.), the resulting situation speaks to the significant way in which newer regulatory initiatives like GDPR seem to shape (and, indeed, have already shaped) the broader socio-political agenda and discussion on "digital responsibility" in Denmark. If we, in turn, consider the increasingly important role of "guidance" as a strategic element of the DPA's law enforcement apparatus (as well as the mere existence of the labelling program which, as we have seen, embodies this logic of "guidance" directly), we get a sense of the strong pressures, emerging concurrently with the above-mentioned regulatory developments, to translate new legal norms and frameworks back into a format which the Danish market and its economic actors can more easily comprehend and turn into an economic advantage. Ultimately, when viewed in this way, these seemingly profound tensions between "the juridical" and "the economic" appear to characterize the developments within not one but *both* of our settings of observation.

So, what does this emerging situation tell us about the meaning and state of "digital responsibility" as an institutional norm in Denmark? First, while the introduction of new regulatory interventions such as GDPR appear to have indeed shaped the general discussion on moral responsibility in relation to organizational data processing in a profound way, these legal developments also seem to have struck the Danish economy (and economically-concerned actors) as something of an uncomfortable surprise. For example, the legal requirements of GDPR were still considered relatively difficult and costly to live up to when I concluded my fieldwork in 2021,

legitimizing the launch of a labelling initiative concerned largely with legally inspired criteria and guidance material for Danish companies. This situation, in turn, also serves to indicate how the question of "digital responsibility" – no matter from which position we analyze and define it – remains a question largely underpinned by politics and political prioritizations both within and beyond the Danish context. For instance, the apparent tensions between continuous proclamations by the Danish government of the nation as a "digital frontrunner" (see e.g., Danish Ministry of Finance, 2022) and the day-to-day experiences among the DPA's jurists of economic restrictions limiting the agency's enforcement capacity seem to point exactly to this issue of political (and democratic) prioritization. The launch of Denmark's new labelling program (which, as we saw, actually began as a project initiated by government) equally has to be understood within this more general political context. On the one hand, "Denmark" appears as a nation and a geopolitical actor that is attempting to spearhead a development towards increasingly "responsible" forms of digitalization by being the first country in the world to present a labelling program of this kind. On the other hand, with what we have identified as the progressive political prioritization of "guidance" (as opposed to strict legal enforcement and punishment) as a key mode of responsibilization in Denmark, the "digital frontrunner" also increasingly appears as a nation which, in the context of digitalization, is at least as concerned with guarding the "health" of the economy against the potential costs imposed by new regulation as it is with ensuring the basic legal rights and protections set out by those same laws. Of course, some of the uncertainty around what constitutes "legal" data processing by organizations results from the fact that many such questions remain politically controversial at the highest level of the EU legal system (as with the Schrems II case concerning the issue of international data transfers). Thus, in some respects, even the assertion that "digital responsibility" presupposes the legality of an organization's data processing activities necessarily depends on a number of still-unsettled political conditions to even be meaningful. Interestingly, and based on our hitherto analysis, this broader political space and its multiple possibilities all seem to fall under or relate back to the notion of "digital responsibility," signaling both the remarkable ambiguity and possible political potency of the term at this time.

As to whether there is something particular about "digital responsibility" relative to other prevalent ideas of organizational responsibility (such as "corporate social responsibility") either historically and/or more broadly, this does not seem to be obvious based on our investigation here. Certainly, distinct notions of "digital responsibility" constitute young and, thus, emergent institutional concepts, which might explain the still prevalent socio-political contingency and uncertainty of the term. At the same time, the more general process of institutionalizing "digital responsibility" seems in many ways to echo the traditional narrative around CSR (e.g., with regard to the continuous "softening" of coercive regulation in favor of increasingly market-oriented, voluntaristic forms of control and "self-regulation" characteristic of neoliberal governance; see e.g., Carroll, 1999; Shamir, 2008; Parker & Nielsen, 2009). If accurate, however, that existing institutions (whether legally or economically oriented) tend to treat "digital responsibility" similarly to other, pre-existing notions of organizational responsibility, this, of course, may itself work as a way of hiding or disregarding the material particularities of digital technologies and infrastructures themselves. However, as to the question of whether "responsibility" *should*

mean something more particular in the context of digitalization, the approach of this thesis does not seem to lend itself well to such a normative discussion.[22]

My aspiration with this thesis, as I hope is obvious, is thus *not* to circumvent the politics of "digital responsibility" or attempt in any way to settle the meaning of the term. Rather, it is to open up the discussion further by showing that multiple concepts and practices of "responsibility" are emerging in the context of Danish (and, by extension, European) digitalization which appear entirely irreducible to one another. While these distinct institutional concepts are certainly not "innocent" – in the sense that they will likely each play into, affect, and possibly shape the future politics of digitalization – the purpose of this dissertation needs not be to make readers overly concerned with the ways "responsibility" is currently practiced (or not practiced) in contemporary society. Of course, a dissertation like this one may raise certain questions about how different modes of responsibilization are currently rationalized, organized, and prioritized in the context of technological development and in relation to certain expectations we might have of "functioning" democracies. However, the identification of these existing concepts and practices of making processes of technological innovation and implementation "responsible" might also serve as an inspiration for rethinking responsibilization altogether and coming up with new (even if peripheral) ways of integrating technological and socio-moral concerns into forms which are hitherto unimagined.

[22] For normative discussions of the seeming democratic benefits and drawbacks of frameworks like GDPR, see e.g., Andrew & Baker (2021) and Schade (2023).

Reflection on performativity and institutional formation

Before discussing the general analytical approach and points raised in this thesis, I will devote this section to address the above-stated SQ5, concerning how we might – based on our hitherto approach – further theorize the exact relationship between socio-linguistic performativity and processes of institutional formation more generally. Essentially, I will revisit the slight theoretical uncertainty described in the above theory section, which has been haunting our analytical approach until now. To specify: I have thus far ventured an analysis of two relatively distinct modes of institutionalizing notions of "digital responsibility" based primarily on a theory of linguistic performativity. This approach, however, tends to assume a productive relationship between speech acts and social institutions in such a way that the performative assertion of a given concept (here, "responsibility") is assumed to somehow further the institutionalization of that concept or norm in its particular context of enunciation. This assumption, however, to some extent contradicts the most common theories of performativity (such as the perspective originally proposed by Austin (1962) and later attempts by Bourdieu (1992)), where performativity itself is thought to *presuppose* rather than produce instances of institutionalization. In what follows I will delve into and attempt to resolve this tension theoretically, ultimately leading to the proposition of a reconfigured theory of institutionalization based on a particular reconceptualization of popular concepts such as "performativity," "institution," and "institutional structure."

First of all, we will have to consider in a bit more detail how the relationship between performativity and institutionalism has tended to be theorized among social scientists until now. As we saw in the above theory section, for Austin (1962), the effectiveness of a given performative act was thought to be determined by a limited set of relatively fixed and necessary felicity conditions. These conditions were generally understood to be preparatory (i.e., the institutional circumstances of the act having to be "appropriate," the performative act having to comply with certain pre-established protocols and procedures, etc.), related to the speaker's sincerity (i.e., the speaker having to intend the act and its consequences, for example, intending to make a promise and carry out their obligations), as well as "essential" (i.e., that such acts entailing the *de facto* changed state of the speaker, for example, from not being obliged to being obliged in the case of a promise).

While Austin's concept of "felicity conditions" thus had an obvious institutional dimension (most apparent in his notion of preparatory conditions), the idea of a fixed and seemingly ahistorical view of what might constitute such conditions would later receive substantial criticism from scholars like Bourdieu. To Bourdieu (1992), the conditions of felicity for any given performative act had to be located solely in its institutional context (e.g., rather than in a speaker's intentions, including their relative sincerity). This simultaneously provided a way for Bourdieu to underscore the inherently historical and artificial character of such conditions, thus denaturalizing performative "felicity" as deeply contingent on its historical – and thus continuously *changing* – institutional contexts. The view, however, led Bourdieu to suggest that the apparent power and effects of performative acts had to be *derived from* an institution external to language itself. For example, he writes:

> "By trying to understand the power of linguistic manifestations linguistically, by looking in language for the principle underlying the logic and effectiveness of the language of institution, one forgets that authority comes to language from the outside, a fact concretely exemplified by the *skeptron* that, in Homer, is passed to the orator who is about to speak. Language at most *represents* this authority, manifests, and symbolizes it. There is a rhetoric which characterizes all discourse of institution, that is to say, the official speech of the authorized spokesperson expressing himself in a solemn situation, with an authority whose limits are identical with the extent of delegation by the institution" (ibid.: 109).

While recommendable for its introduction of historicity to the question of performative felicity, Bourdieu would thus maintain a view of performative speech acts as the *outcome* of institutionalization rather than its potential cause. In that way, Bourdieu's notion of performativity would still seem to be in opposition to the one implied by the analytical approach of this dissertation, where a key assumption becomes that institutions themselves are somehow effected in and through the performative act.

A subsequent and alternative perspective which would seem all the more open to the possibility of performativity being, in fact, *productive* of social institutions is that of Judith Butler. In their critical reading of Bourdieu, they agree that his "conservative account of the speech act presumes that the conventions that will authorize the performative are already in place" (Butler, 1997: 142). With reference to Derrida's conception of the power of language and his argument of performativity's inherent fallibility (which I have introduced above), they criticize Bourdieu for depicting language as a "static and closed system whose utterances are functionally secured in advance by the 'social positions' to which they are mimetically related" (ibid.: 145). According to Butler, the sheer possibility of counter-performativity – that is, the possibility of utterances effectively challenging or subverting an otherwise monological institutional authority, which has until now been key to this thesis and its empirical analysis – directly opposes Bourdieu's more deterministic view. It does so specifically by indicating the possibility of institutional iterability and transformation through defiant, unconventional, or otherwise alternative forms of language use within a given social setting. Thus, as Butler writes, "it is precisely the *expropriability* of the dominant, 'authorized' discourse that constitutes [a] potential site of its subversive resignification" (ibid.: 157). What Butler's perspective opens up for is thus the theoretical possibility that language use *can* in practice (at least partially) disregard and transcend its conventional, institutionalized contexts of enunciation, in turn affecting, altering, and/or reconfiguring the very institutional conditions presupposed by its effective (i.e., performative) utterance. The analysis conducted in this thesis seems to support this view, as the institutional formations analyzed appear simultaneously relatively as stable as they are iterable and changing. Importantly, whereas Bourdieu conceived of a seemingly unidirectional relation between the social institution determining the fate of the performative and its effects, Butler's theory thus implies at least a *bi-directional* relation between linguistic performativity and social institutions. In this view, the latter now appears as both the basis for *and* the potential effect of the performative act (a view thus seemingly echoing the Giddensian (1984) theory of institutional "structuration"). We shall return to this view below.

Butler's critique of Bourdieu appears strengthened by their additional and noteworthy observation that the "delegation of authority," which Bourdieu claims to be a key characteristic of institutions and thus, to him, must be presupposed by any successful performative act, paradoxically seems to *itself* presuppose a performative act of delegation. This observation, however, it seems, could be generalized to virtually any conception of the "appropriateness" of institutional circumstance deemed necessary for performatives to be "felicitous" and thus achieve their social effects. That is, we might say that for anything to be deemed either "appropriate" or "inappropriate" in any given situation, a delegation of institutional authority as well as a value judgement (i.e., a performative act or form of assessment and/or evaluation) rooted in a particular institution seems to be necessarily presupposed. Again, our above account of two distinct institutional forms and their evolving conceptions of "responsibility" based solely on an analysis of local performative activity seems to support this view. When regarded in this way, the idea that institutional structures not only pre-condition performative acts but in fact themselves depend on such acts for their social existence would seem only to be verified.

The idea, however, of a bi-directional productive relationship between social institutions and performative acts is not without certain lingering theoretical problems. The most obvious and important question has to do with the nature of "institutions" themselves which Butler only describes somewhat loosely (and, thus, imprecisely), for example, when theorizing "social positions" as "temporarily reproduced effects […] subject to a logic of iteration, dependent on unstable forms of rearticulation" (Butler, 1999: 125). Such notions, however, does not seem sufficient as a theory of institutional ontology capable of explaining exactly how institutions and performative acts might be essential to each other's continuous reconstitution.

To arrive at such a theory, I think Butler's view might be complemented with that of Searle (1995; 2011) who himself has entertained the relation between language, performativity, and institutionalism quite extensively. To Searle, what we tend to refer to as "institutions" are essentially specific instances – as well as elaborate systems – of *symbolization.* With this notion, Searle argues that what essentially constitutes an "institution" is the social attribution of *symbolic status-functionality* to a given object or materiality, where this status-functionality becomes an attribute of its object that is irreducible to its physical traits, depending instead entirely on a form of social and collective agreement. By this logic, a physical human body may not qualify as an institution. However, such a body reconceptualized as a "legal subject," an "employee," or a "consumer" would immediately qualify since the particular body thus attains a symbolic significance beyond its mere physical composition. An institution such as the "nation state" is thus not reducible to the bodies, buildings, concrete activities, or any other of its physical components, but is constituted, rather, by the collectively enforced status-function of itself and its component institutions (i.e., institutions of government, territory, its borders, national artefacts, national identity, etc.). Again, however, such status-functions – including moral concepts such as "responsibility" – have no immediate reality outside the social and individual conception of these symbolic constructs as "real" (see also, Berger & Luckmann, 1966).

Interestingly, however, being himself a key figure in the debate of symbolic performativity, Searle's ideas about how performative acts and language use might play into the formation of social institutions is quite different from – and, in fact, sharply opposed to – those of Butler.

Most importantly, whereas Butler seems to see institutionalizing potentials in virtually any kind of performative act, Searle reserves such potential for a highly specific type of performative, namely, the declarative act. Further, while Butler finds it difficult to distinguish absolutely between the material and the institutional (due to the inherent dependence of symbolic entities on their material embodiments), Searle sees no issue in maintaining such a theoretical distinction by insisting on what he sees as an absolute qualitative difference between the "material" and the "symbolic." While I tend to favor Searle's position in this second regard strictly for reasons of theoretical clarity (a conceptual clarity which will aid us in developing our argument in the subsequent sections), I tend to agree with Butler that performativity *in general* seems capable of effecting institutionalization. In the following sections, I will therefore develop a compromise between the two perspectives and thus outline a "third option" for theorizing the relation between performativity and institutionalization.

Which speech acts can potentially produce institutions?

For Searle, it becomes exactly the sharp theoretical distinction between the material, on the one hand (i.e., non- or pre-institutional "matter"), and the symbolic, on the other (i.e., the institutional), which allows him to argue that *language* – usually constituted as itself a highly institutionalized and grammatically structured symbolic system – likely plays a key role in constituting and formatting social institutions such as the nation state, the corporation, the market, education, religion, etc. As we have seen, however, disagreement persists between him and Butler regarding the question of exactly *which* instances of language use – i.e., which *types* of speech acts – might be involved in the continuous creation and reconfiguration of institutions: declarative acts in particular or performativity in general. Upholding the declarative as special in this regard, Searle is explicitly drawing upon his own, pre-developed typology of speech acts where he distinguishes between:

- *assertives* and *expressives*; speech acts both of which are meant to *describe* a pre-existing reality (whether used to depict an "inner" or "outer" reality),
- *directives* and *commissives*; speech acts meant to *bring about a physical change* within a pre-existing reality (for example, giving an order or a promise, committing the subject to carry out certain actions), and finally,
- *declaratives*; speech acts with the capacity to *produce* their own symbolic objects and realities (for example, declaring two people "married" which – if successfully carried out – constitutes the "marriage" as a symbolic and, thus, institutional fact) (see e.g., Searle, 2011: 11-15).

According to this typology, declaratives would indeed appear as the only type of performative capable of producing symbolic (i.e., institutional) facts such as a marriage, whereas speech acts of the remaining types would seem entirely passive and without productive capacity in this regard.

Here, Butler's proposition seems rather different as it implies that speech acts of *any* type might actually have institution-building potentials similar to that which Searle reserves for

declarative acts. For example, when it comes to the institutionalization of norms of gender and sexuality (which constitutes one of their main interests), Butler's intuition is that such norms, often characterized by everyday taken-for-grantedness, are likely to be effectuated mainly in and through the most common and subtle performative accomplishments of everyday life (i.e., everyday discourse) rather than exclusively through highly ceremonial acts of declaration (such as a marriage ceremony). In this case, everyday discourse asserting and reasserting particular gender roles, Butler argues, does not merely amount to a passive "description" of a pre-existing reality. Rather, assertions of gender entail an active and continuous *gendering* of the subject to which such acts appear merely to refer (Butler, 1999). Although not necessarily theorized in great detail, this argument – along with similar arguments made by scholars such as Foucault on the productive relation between discourse and subjectification (see e.g., Foucault, 1982) – seems highly problematic for Searle's typology of speech acts and his insistence on declarative acts as the only type of performative capable of effecting and reproducing institutions.[23]

Thus, to reiterate, while I do find Searle's concept of "institution" (as essentially instances of symbolization) useful for theoretical purposes, I would equally tend to disagree with his idea that only performative acts of the declarative type can effectuate the assignation of symbolic status-functionality to otherwise material phenomena. Butler's view on gender and the kindred perspective(s) of Foucault's histories of madness (1961), crime (1977), and sexuality (1978) all provide rather forceful examples of and arguments for supposing that discourse and language use *in general* may have the potential to affect the symbolic status-functionality of its objects (and subjects). In this regard, Foucault's accounts – which depict the shifting ways in which the human body has been described, objectified, subjectified, and rationalized historically in scientific discourse – strongly suggest that seemingly "passive" acts of description and assertion can, and in fact do, tend to affect and alter the symbolic status-functionality of their objects (e.g., the subject) with real symbolic and material implications for a given person, their body, their life and social existence, etc. Specifically, the perspectives of scholars like Foucault and Butler indicate that speech acts of the *assertive* type – such as the acts of description or "truth claims" pertinent to scientific discourse which Searle holds to be merely representational and descriptive – may actually work in a way similar to declarative acts insofar as they display a potential to create and reconfigure institutional realities. They would do so to the extent that they effectively *assign* and/or *modify* symbolic identities, subjectivities, and – for a lack of a better word – "objectivities" to the physical bodies or matter constituting their material environment (which could seem to be an inescapable effect when representing the world via symbolic means – words or otherwise). What we might distinguish between would thus merely be the particular ways in which these different "speech acts" produce the institutional. For example, whereas acts of declaration seem to effect relatively radical *transformations* of their objects' symbolic status (e.g., the sharp transition from being "innocent" to "guilty" marked by the declarative act of the legal verdict, or from being "unmarried" to "married" equally marked by the declarative act of pronouncing a

[23] Interestingly, Searle's insistence here could also seem to contradict Austin's original view that all speech acts have a performative potential. For example, Searle's insistence on assertive speech acts as essentially acts of representation seems to directly contradict Austin's view that a performative capacity is essential to all conceivable speech acts (i.e., saying something is always *doing* something). This may be surprising considering that Searle was a student of Austin.

marriage), acts of assertion, on the contrary, could seem to effect forms of relative *maintenance* of their objects' symbolic status. This would be the case if, following an effective declaration (or even working to confirm and ensure that same declarative effectiveness), continuous assertions of someone being either legally "guilty" or "married" could be seen as *upholding* those status-functions socially, whereby assertive statements would be maintaining the apparent social reality of institutional status-functions initially assigned by declaration.[24] In this perspective, speaking the "truth" thus has very little to do with inherent objective relations or correspondence between statements and material "facts," but becomes a matter, rather, of upholding and preserving a certain established structure of symbolic status-functionality within a given social setting.

Similar issues persist, however, if we consider the remaining types of speech acts proposed by Searle. Let us start by reconsidering speech acts such as directives and commissives. I will consider these performative types in tandem since they appear to concern two sides of the same situation or act: respectively, the issuance (directives) and assumption (commissives) of orders, commands, and obligations. An example here could be the effective issuance of an order (directive) or the making of a promise (commissive), both of which generally seek to make their object (i.e., a given person) obliged or committed to carry out certain activities. To Searle, such acts do not create symbolic realities in the same way declaratives do. Rather, their aim is to direct and effect changes in the material world by causing their interlocutors to act in certain, prescribed ways. What Searle misses here, I think, is that performative acts such as issuing orders and making promises do not directly "cause" or "force" people to carry out the actions they imply. Rather, the essential condition for such acts to be effective seems to be of making their subject(s) "committed" and/or "obliged" to carry out those actions in a *purely symbolic sense*, thus constituting such "commitments" and "obligations" as their particular symbolic products. The key performative effect of such acts would thus not exactly be one of bringing about certain actions from their interlocutors but rather of *changing their symbolic status* from being, e.g., "non-obliged" to "obliged." Viewed in this way, acts of the directive and commissive types do indeed *produce* symbolic facticities in a very similar way to declaratives. Furthermore – as demonstrated avidly by Cooren (see e.g., 2000; 2004) and others – they appear to do so, ultimately, by producing and facilitating more comprehensive patterns of *organization*. This to the extent that the issuance of numerous directives and commissives in an elaborate pattern (as well as their formalization and material fixation through documents such as laws and contracts) leads to the formation of increasingly complex and durable symbolic networks of actors with diverse obligations and commitments towards one another. Acknowledging such a theory of organization rooted in a particular concept of performativity, Searle's distinction between speech acts of the declarative, directive and commissive types would thus (as with acts of the assertive type) not seem to hold up with regards to the question of institutional fabrication.

Finally, let us consider the type of performative categorized, by Searle, as acts of expression. Similar to assertives, Searle argues the essential function of such acts to be one of

[24] To be sure, we can think of a great variety of assertive acts as well as different ways of formulating and understanding various truth claims. The point made here is thus only meant to stress what appears as a theoretical difference between declarative and assertive acts, a difference which may be problematized and challenged by a larger multiplicity of diverse speech acts and their more particular modalities.

expressing (in the sense of representing) a pre-existing "inner" reality of personal sentiments, convictions, and emotions. Examples would seem to be statements of personal opinion, satisfaction or dissatisfaction with a given state-of-affairs. Again, however, we may raise the question of whether such acts of "expression" do in fact represent something preexisting or whether, to the contrary, they serve primarily to (re-)produce particular symbolic realities. To get a sense of the particular capacity of such acts to (re-)produce social institutions, I think we might reconceive of this type of performative as essentially indicating acts of *valuation* (see, e.g., Boltanski & Thevenot, 2006). That is, if we consider the potential symbolic product of the expressive act (such as expressing one's satisfaction or dissatisfaction with a given situation), the "social product" of such acts seems to be a relative valuation or devaluation of their object whether mediated by "personal" or "public opinion" (themselves, we might note, highly institutionalized instances of contemporary subjectification). Viewed in this way, the expressive act suddenly appears less like an act of representation and increasingly as an act of production; namely, of the active assignation of value as a particular symbolic status-function onto a given subject, object, or situation. If accurate, expressives – just like assertives, directives, and commissives – would appear to display a similar capacity for producing symbolic (i.e., institutional) realities as that which Searle originally reserved for declaratives.

The ultimate result of this exercise is, I think, twofold. First, the product of this general discussion might be synthesized into the following proposition: if – following Searle – what we mean by "institution" consists in the effective and continuous assignation of symbolic status-functionality to a given object, such assignations of symbolic status do not necessarily result from declarative speech acts per se but *are the product, rather, of performativity as such and in general*. This way of thinking, in turn, allows me to propose an alternative conceptualization of "performativity" in general (rather than declarative acts per se) as essentially *the socially effective assignation and/or modification of symbolic status-functionality to or of a given object or situation*. Things now start to get more interesting since, reconceptualized in this manner, performativity starts to appear increasingly as *the* "engine" proper to – rather than merely the product of – processes of institutionalization, that is, a relatively specific socio-symbolic accomplishment facilitating both the creation, actualization, maintenance, and transformation of social institutions.

Second, without going too much into detail with these resulting issues here, we get a sense that Searle's typology of speech acts – while not necessarily presenting a convincing way to differentiate between the institutionalizing potentials of different types of speech acts – might indicate different dimensions of or trajectories according to which performativity effects institutionalization. Specifically, these different types of performative acts seem to assign institutional status-functionalities to their objects in (roughly) the following ways:

Declaratives: Transformation
Assertives: Maintenance
Directives/commissives: Organization
Expressives: Valuation

This typology is obviously a simplification, providing us with nothing more than a set of theoretical ideal types. Empirically, these types of acts and their respective institutionalizing potentials and modalities seem more than likely to overlap and present themselves as altogether messier. For example, the effective assertion which assigns an alternative status-function to a given object (e.g., scientific recategorization) would immediately work more like a declarative act according to the above typology (i.e., constituting a transformation rather than maintenance of that object's symbolic status-function). Further, one could ask whether not any of the above acts always-already imply a value judgement and thus an implicit expressive performative act. Yet, acknowledging the simplified, ideal-typical character of such a typology, it does present interesting avenues for further research into how exactly institutions emerge along different dimensions or trajectories when analyzed through the lens of performativity.

Which speech acts effectively produce institutions?

Whereas the section above focused primarily on the question of which performative acts might have the *potential* to effect symbolic facticities characteristic of institutionalization, a question which seems just as important concerns when and how such acts actually attain this effect in practice. This, of course, is the point where the notion of "felicity conditions" became most important for Austin as – generally speaking – the institutional conditions presupposed by and regulating any performative utterance and its potential effect(s). For Austin, any effective performative relied on an institution for how it should be enacted "appropriately" such as a particular, institutional setting, a conventionalized procedure, the authorization of the speaker, a rather specific use of words (e.g., "I hereby pronounce you husband and wife," "I promise you that …," etc.), as well as the "correct intentions" (i.e., the speaker's sincerity).

First of all, as noted above, the importance Austin ascribed to the speaker's intentionality has since been the subject of considerable criticism. For our purposes here, it should be sufficient to say that I equally do not see how the speaker's intentions could in fact influence the effect of the performative act since, simply, we usually do not have access to those intentions of any given speaker. Whether a priest "truly" intends to marry the couple undergoing a marriage ritual, or the judge "truly" intends their verdict at the end of a court procedure, what really seems to matter for the effect of the performative act is whether and to what extent it is carried out "appropriately," i.e., according to particular institutionalized norms, prescriptions, and procedures.[25] Thus, we can say that performatives, while potentially effecting and producing institutional effects, simultaneously depend on certain "pre-existing" institutions to attain those same effects. We are thus back at Butler's proposition of a *bi-directional* relationship between performatives, the effectiveness of which produce institutional facts, and institutions, which, in turn, regulate the potential performative effectiveness of any given speech act.

Such a theory, however, quickly starts to seem paradoxical. How can the performative both depend on *and* produce the institutional? How is it possible for the institutional to regulate the effects of the performative if it is those same effects which produce institutions? The way to

[25] Of course, the perceived intentionality of the speaker may matter a great deal to a given institution or within a particular institutional context, but in that case this condition of performative felicity again would seem to belong to the institutional rather than the "truly" intentional (which, it would seem, cannot be known).

resolve this apparent paradoxical tension, I think, will be to follow Giddens' (1984) intuition and suggest that human agency and action must be somehow *recursively implicated* in the formation of institutional structures. The particular concept of "performativity" I have been developing in the discussions above, however, may not only serve to validate the Giddensian theory of institutionalization, but also to slightly specify it. That is, while Giddens' focus is indeed on the relation between human "agency" and social institutions, our proposition here would have to be that it is, in fact, not "agency" per se but *performativity* as such and in general that appears to be recursively implicated in the production and reproduction of institutions. If this is accurate, it simultaneously problematizes the Giddensian (as well as any other) emphasis of the role of "agency" as a seemingly a-symbolic and/or relatively individualized form of action in the production of institutional structures. Different from notions of "agency," performativity constitutes an *inherently symbolic and collective accomplishment,* one which simultaneously presupposes language (or some other symbolic means[26]) as well as a group of (rather than single specific) individuals. Performativity, quite simply, cannot be accomplished by any individual in isolation but constitutes an inherently social phenomenon. The theory of institutionalization I am proposing, which puts performativity at the center, could thus seem to bear equally close affinities to the early Durkheimian (2014) idea of institutionalization as a kind of collective "synthesis" depending, essentially, on a form of social rather than individual production and reproduction.[27]

The question which remains to be answered, then, will be how to further theorize performativity as "recursively implicated" in the (re-)production of institutional structures in a way that effectively reconceptualizes the institutional "conditions" of performativity as simultaneously the product of this same process. Luckily, such a seemingly paradoxical relationship is exactly what is implied by the notion of "recursion." According to Morin (2008), recursivity entails "a process where the products and the effects are at the same time causes and producers of what produces them" (ibid.: 49; see also Fan & Christensen, 2023). The way to resolve the seeming paradox should thus not be to distinguish absolutely between situationally enacted performativity, on the one hand, and a set of pre-established institutional felicity conditions, on the other. Rather, the way forward could be to propose a *relative* distinction between the seemingly opposed axes of or dimensions within and, indeed, *inherent to* the social accomplishment of "performativity" itself. This is since, when adopting a notion of recursivity, all the elements necessary to processes of institutionalization suddenly appear to be present somehow "all at once" in every situation where symbolic performativity is accomplished socially.

Considering the hitherto theoretical-analytical approach of this thesis, a way forward might be to draw such a relative distinction between performativity's 1) *iterative* dimension where relatively innovative or alternative forms of speaking and sense-making (including

[26] A lingering problem with theories of socio-linguistic "performativity" is exactly the tendential focus on language use rather than the use of symbols much more broadly (including symbolic artefacts, symbolic actions, body language, etc.). This issue is too broad for me to deal with in detail here, yet I believe theories of linguistic performativity would benefit greatly from a broadening into other forms of symbolic performativity more generally.

[27] In the preface to his *Rules of Sociological Method* (2014), Durkheim refers to institutionalization as a kind of "collective synthesis" – i.e., as a process which can only be achieved collectively rather than individually – without ever arriving at a clear conception of the nature of such a process. Based on my argument here, I believe performativity (when viewed as an essentially social accomplishment) presents a compelling solution to Durkheim's problem.

emergent ways of typifying, classifying, describing, and/or categorizing events or objective phenomena etc.) gain traction within particular social settings, and 2) its *evaluative* dimension where such iteration is continuously assessed against, conditioned, and restricted by previous (and in that sense, "pre-existing") performative accomplishments, including their particular ways of speaking and acting. What seems crucial to note is how both of these dimensions inherent to any performative are essentially *productive* of institutional structures and realities – yet give rise to opposing trajectories of production. While iteration entails the production of relatively "new" institutional facts (in this thesis exemplified by emergent concepts and categories of "digital responsibility"), evaluation entails an equally productive *re-affirmation* of previously accomplished institutional facticities and structures (for example, a broader set of structures and institutional domains such as "law" or "economy"). What we ultimately gain, then, for our theory of institutional formation is a novel conceptualization of how the production of "new" institutional facts (exemplified in this thesis by emergent concepts of "digital responsibility") always and necessarily involves the simultaneous mobilization and re-fabrication of seemingly "pre-existing" facticities in an evaluative mode. Here, the symbolic status-functions of such "pre-existing" institutional regimes are necessarily (yet actively) re-affirmed and potentially reconfigured in the process – and *must*, to some extent, be continuously re-affirmed in this way for any "new" performative act to ever attain meaning and performative force within a particular social setting. Any "single" performative act thus always and necessarily entails the simultaneous reproduction of a more elaborate structure of institutional facts and symbols to attain its performative effect.

We thus arrive at a relatively innovative formulation of two additional classic concepts: 1) that of *institutional facts* defined as the symbolic product(s) of performativity, that is, the active assignation and/or modification of symbolic status-functionality to or of a particular object, "matter," or situation, and 2) that of *institutional structures* as broader constellations (e.g., "systems," "orders," "regimes," "domains," etc.) of seemingly "pre-existing" facts mobilized – and thus reproduced – to assess and evaluate the meaning and institutional "appropriateness" of specific performative acts (where such evaluation necessarily implies the active re-affirmation of such institutional facticities in turn). What seems important to notice, however, is that there are thus always, in a sense, multiple instances or dimensions of performativity present within any "single" performative act since any "next" assignation of symbolic status-functionality to a given object always and necessarily requires the active re-affirmation of a more elaborate symbolic structure in turn. By implication, performative acts likely to gain effectiveness within a given social setting will be acts which appear to "fit" – at least relatively well or to a socially acceptable degree – within an existing pattern of symbolic re-affirmation perceived and performed by that setting's occupants, thus allowing for such symbolic re-affirmation to occur continuously. Indeed, this continuous re-affirmation seems as exactly what creates the effect of institutional durability and, thus, the sense of a relatively durable "society." The moment any attempted performative act does not "fit" within a localized pattern of symbolic re-affirmation, either the attempt is likely to be deemed wholly or partially infelicitous, or the institutionalized structure itself might be the subject of symbolic contestation, thus opening new possibilities of institutional change, reconfiguration, or potential degradation.

Conceptualizing institutional change

At this point we would seem to have our most basic concepts in place for a theory of the formation of institutions based on a specific reconceptualization of performativity. According to this theory, institutionalization occurs with instances of performative assignation of symbolic status-functionality to an otherwise material environment, to the extent that such assignations allow, further reinforce, or, at least, do not radically challenge the continuous collective re-affirmation of symbolic order in general. A key question which remains to be addressed, however, becomes how institutional change then occurs according to this theory, one which might otherwise appear to focus solely on the maintenance and reproduction of institutions.

This seeming focus on maintenance, however, is only a matter of appearance. My choice of the notion of symbolic "re-affirmation" is not entirely accidental in this regard, as it is meant to imply a dynamic specific to that of repetition; namely that of affirming "the same" while simultaneously affirming that same "anew." Viewed in this way, the possibility of institutional change is already inherent to the proposed framework in that there is in principle no requirement of re-affirmation to entail a completely monotonous form of symbolic repetition. Institutional maintenance and conservation, thus, starts seeming like a theoretical problem as important as institutional change and transformation (see also Latour (2008)). Importantly, however, the notion of "repetition" will not suffice in itself, since our concept of choice, I believe, should imply the positive enactment of (and, in that sense, a kind of positive "investment" in) a given symbol or symbolic structure. This, altogether, is what I would like the notion of "re-affirmation" to entail.

Even if the possibility of change seems already inherent to our proposed model, however, we may still draw inspiration from the theoretical framework which has hitherto guided this thesis and distinguish between different possible modalities of re-affirmation which – in case of certain "collisions" and "mutations" between such modes of institutional re-affirmation – might affect more abrupt institutional transformations than those we might expect from a continuous, slowly changing process of institutionalization. This idea of different "modes of affirmation" might quickly start seeming akin to certain (post-)modern sociologies such as Luhmanian systems theory (Luhmann, 2000; see also Borch, 2011) which proposes the existence of several, horizontally distributed "functional systems" (e.g., the economic, the political, the juridical, the aesthetic or artistic system, etc.), which together make up and characterize modern human societies. The Luhmanian view would thus seem to present interesting affinities to the view proposed here such as the characterization of societal institutional domains in terms of distinct patterns of symbolic functionalism. While indeed interesting, a key difference between the view on institutionalization presented here and the Luhmanian perspective emerges mainly from the latter's insistence on "systemic autopoiesis." More precisely, there is nothing in our view of institutions and institutionalization which should make these processes appear neither "self-producing" or "-sustaining," nor necessarily horizontally distributed, or inherently "systematic" in nature. Now, to be sure, while processes of symbolic re-affirmation absolutely presuppose and depend on a variety of materially embedded activities conducted by the occupants of a given setting, we do observe *empirically* how a particular mode of re-affirmation in practice comes to entail *degrees of systematization* within and among the multiplicity of symbolic status-functions enacted within

that setting. For example, during the empirical observations of this thesis, we do witness the emergence of a relatively juridical as well as economic "system" of facts, each of which attain their particular meaning(s) and function(s) in relation to other facts in that "system." In this regard, we saw how the juridical notion of "digital responsibility" became both meaningful and functional in relation to other, seemingly "pre-existing" facts such as "legality," "legal basis," "rights," "legal certainty," etc. However, such an observation in itself is no good reason to suppose that the juridical, the economic, or any other institutional "system" are inherently systematic in nature. Indeed, by paying attention to various forms of "counter-performativity" (as introduced above), we observed several ways in which different patterns of affirmation (and their respective modes of systematization) collide, become inserted into, cause pollutions and mutations within, as well as blur the boundaries between one another. For example, we saw how economic principles effectively penetrated the daily affairs of a juridical institution, tendentially affecting the juridical conceptualization and enactment of "responsibility" in turn. Similarly, we saw how an economically-oriented labelling initiative simultaneously attempted to ward off the general rationality of law at the very same time as the make-up of the label's criteria increasingly came to reflect emergent legal and regulatory frameworks in the context of digitalization.

While these processes should not, I think, be considered any less messy and incoherent than they appear empirically (such messiness and incoherence being, indeed, well worthwhile our attention as social scientists), we might for analytical purposes and to better theorize institutional change introduce yet another relative distinction between our concept of "affirmation," on the one hand, and that of *contestation,* on the other. Hereby, we may reserve the notion of institutional re-affirmation to locate modalities of status-function assignation (i.e., a set of successive performative accomplishments) which effect and continuously confirm a relatively dominant, coherent, and/or systematized order of symbolic status-functionality assigned to an otherwise material setting. We may then use the notion of contestation to identify any alternate, yet relatively "inferior," modalities of status-function assignation at play in a given setting which contradict this relative systemic coherence of the dominant mode of affirmation. Effective contestation would occur, then, either through effective reconfigurations in the uses of existing status-functions and symbols or through the introduction of a more comprehensive, altogether distinctive, qualitatively different mode of symbolic affirmation (e.g., the general conflict between and/or the comprehensive transition from the generally "juridical" to the generally "economic" mode of institutional re-affirmation). As testified by our above analysis, such dynamics between the modalities of relative re-affirmation and contestation characteristic of a given setting (as well as certain tendencies in the movements between the two) most certainly entail the possibility of progressive (even radical) institutional transformation. It will be crucial to keep in mind, however, that symbolic contestation is itself constituted as a form of re-affirmation (i.e., *counter-affirmation*) and may thus only be identified *relative to* a seemingly dominant mode of institutional re-affirmation characteristic of a given setting. For example, in the context of the DPA, we witnessed the contestation of a dominant juridical mode of performative re-affirmation by a less prominent economic (or economically-oriented) logic, which at certain times problematized an otherwise "purely legal" form of decision-making. Similarly, in the context of the labelling initiative, we encountered continuous contestations of a dominant economic logic by an altogether

less pervasive juridical rationality, yet one which came to have significant effects upon the formulation of the label's set of criteria. It is worth noting here, that while our proposed theoretical framework seems well suited for analyzing both of these cases, we also get a sense that the particular dynamics at play between modes of re-affirmation and counter-affirmation in any given setting is likely to depend on the particular quality and rationality characteristic of those particular modes. This would make processes of institutionalization difficult to predict and get a sense of if not through empirical investigation.

Finally, processes of institutionalization, shaped by sequences of relative performative re-affirmation and contestation of symbolic status-functionality, will equally and inevitably involve a degree of gradual *suspension* of certain institutional facts and structures. This possibility of suspension somehow escapes the vocabulary of "performativity" and "counter-performativity" that we tentatively relied upon in the above analysis. The reason would seem to be that the possibility of suspension is somehow non- or post-institutional in and of itself, as it merely marks the endpoint at which the performative re-affirmation of a given status-function (or broader structure of such functions) comes to a halt. In our above analysis of two Danish institutional settings, the perhaps most obvious instance of suspension occurred when the problem of ecological sustainability was suspended as a potential criterion for the labelling initiative, leading to the total exclusion of such sustainability-related concerns from the project's normative frame. Interestingly (yet, perhaps unsurprisingly) suspension, in this case, occurred due to the perceived need to secure (i.e., re-affirm) the label's marketing value and counteract growing concerns about the project's "scope" becoming too broad and encompassing. The principle of ecological sustainability was thus suspended as a possible condition for evaluations of "digital responsibility" due to a re-affirmation of the project's more general economic (or market-based) orientation and structure. In theory, the possibility of suspension marks the dissolution or even historical disappearance of certain institutions, their meaning(s), and their social function(s) from society and its remaining institutional fabric (which, due to this partial functional dissolution, is inevitably left changed in turn; see e.g., Agamben, 2005). Yet, the "suspensive dimension" of institutionalization and institutional transformation entails, of course, much broader and far-reaching implications regarding the direction in which existing institutions (and, by extension, society) change over time, which institutional elements are re-affirmed in practice, and which are left behind (and ultimately forgotten).

The model of institutional performation

Together, these discussions, considerations, adjustments, mergers of, and detours from prior theories of performativity and institutionalism lead me to propose a slightly modified theory and analytical model of the institutionalization process which I think we might call the model of *institutional performation:*

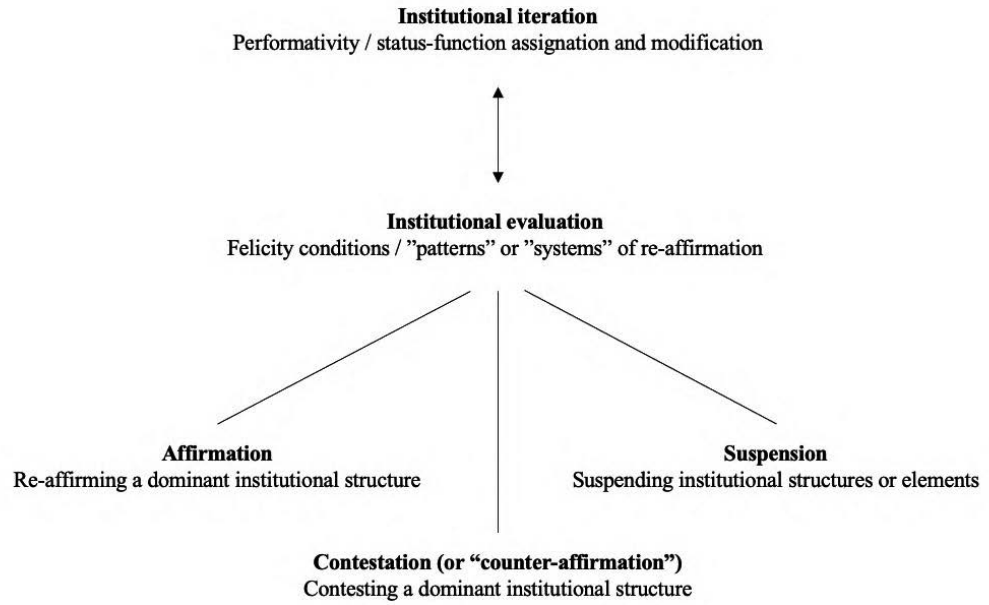

Figure 2: The model of institutional performation

The term "institutional performation" is to some extent borrowed from Callon (2006) who was himself significantly inspired by Butler's broadened notion of performativity in his description of the ways in which the discipline of economics tends to construct "the economy" as its own scientific object. While his argument thus fits well within our theoretical deliberations here, Callon himself – somewhat like Butler – never seems to engage directly in developing a theory of institutionalization per se. Thus, my main intent when proposing the concept of "institutional performation" is to highlight what I find to be not merely the close but the *inherent* relation between performativity in general and institutional formation, as well as the broader processual orientation to instances of institutionalization implied by such a view (i.e., as institutions depend on continuous performative accomplishments for their existence). While the primary purpose of the above theoretical exercise in the context of this thesis has been to present a solid theorization of and argument for the hitherto mostly pre-assumed institutionalizing effects of performativity and its social accomplishment, the theoretical implications of such a theory of "institutional performation" are obviously both broader and more considerable when viewed against prior sociological theories of institutionalism. Throughout the above argument, I have continuously attempted to highlight certain key important differences between my view and related theories of performativity and institutionalization. A comprehensive account and discussion of the possible implications of the above argument for sociological theories of institutionalization more generally, however, would be beyond the scope of this thesis.

For our purposes here, and in particular in relation to this thesis' research question, the above theoretical exercise and argument is meant to serve as a theoretical and conceptual substantiation for its general research design (i.e., particularly its way of coupling social scientific theory and method). The proposed theory and theoretical framework of "institutional

performation," however, is one which might – and, I believe, should – be discussed further in relation to pre-existing anthropological and sociological theories of social institution as well as mobilized in future empirical work to better ascertain its potentials and limitations as scientific theory. In the following section, I will discuss the approach and the findings of the investigation conducted in this thesis and thus commence this reflection on the seeming strengths and weaknesses of my approach to answer the dissertation's initial research question concerning institutionalizations of "digital responsibility."

Discussion

Until now, we have accounted for the state of the concept of "digital responsibility" in existing literature, proposed an alternative approach to study the notion as a performative in particular institutional contexts, studied two organizational settings in which the notion becomes institutionalized in relatively divergent ways, and compared these particular formulations of "digital responsibility" to draw more general conclusions vis-à-vis existing literature. Finally, we have elaborated further on the theoretical underpinnings of our investigation to substantiate the proposition that the emergence of "digital responsibility" as a notion characterized by a certain performativity in the contemporary governance of technology always-already entails both processes of institutionalization and institutional transformation. This theoretical elaboration thus lends weight to certain analytical points drawn previously such as the simultaneous re-constitution of a broader legal and economic "system" in conjunction with certain particular notions of responsibility, the mutual influences exerted by these institutional formations upon one another, and the apparent transformational tendencies resulting from such interactions.

On this background, let us look back and consider how this study situates itself in relation to the existing literature. As already noted, the most obvious distinction between this thesis and existing theories of "digital responsibility" is meant to lie in the empirically driven and open-ended approach to studying the notion as an inherently emic concept. In this regard, previous contributions have tended to subscribe to conceptual – that is, theoretically derived – definitions of the term; either as a concept implying either certain "extra-legal" obligations in the context of digitalization (e.g., Lobschat et al., 2021), or a summation of "all levels" of possible moral and/or ethical obligations (Herden et al., 2021). Studying the empirical emergence of the notion of "digital responsibility" in two distinct settings, I have illustrated how the term is in fact characterized by significant divergence in both its semiotic content and performative force depending on its particular institutional conditions and underpinnings. Importantly, while we do encounter the idea of responsibility as implying certain "extra-legal" obligations in the field, this idea in practice appears to gain performative traction mainly within the economic domain where "responsibilization" is meant to occur as a market-driven process based (primarily) on organizational marketing efforts. In contrast, we encountered a more purely legal definition of digital responsibility focused on legal compliance, the fulfilment of legal duties and obligations, and – importantly – the embodiment of "legal spirit" by organizational representatives in their daily data processing activities. Such a "purely" legal conception of responsibility interestingly seems rather foreign to existing literature. However, as this study suggests, the emergence (or "update") of the European regulatory paradigm on organizational data collection and processing appears to play a crucial role in both facilitating and shaping discourse on "digital responsibility," not only in the legal domain but also in the economically oriented context of the Danish labelling program. At the same time, the particular rationality of economy and its economic prioritizations equally seem to sift in everywhere as it not only structures the Danish labelling initiative but also seems to affect certain aspects of current law enforcement praxis at the DPA (e.g., the increased focus on organizational and market-oriented "guidance" relative to traditional enforcement). By highlighting such dynamics and their relations to emergent notions of "digital responsibility," this thesis makes two substantial contributions to existing literature: first, it problematizes existing

theoretical concepts and proposing alternative ones; second, it rethinks the social scientific approach to studying a moral concept such as "responsibility" empirically.

As already partially discussed in the methods section above, this approach displays both potentials and limitations to be considered in relation to future research. If we start by considering its seeming potentials, the longitudinal study of the establishment of "digital responsibility" as an institutional norm in distinct contexts has afforded a rather extensive and, I would argue, detailed analysis of its particular, institutionally embedded form(s) of emergence. The comparative aspect of this investigation, in particular, has allowed me to analyze the characteristics of particular institutional modes of responsibilization relative to the characteristics of an alternative such mode without relying too heavily on pre-established conceptions of what responsibility might or perhaps "should" entail arbitrary or wholly foreign to the empirical field sites considered. As this constitutes a deliberate effort to attempt a rather inductive and descriptive (rather than deductive or prescriptive) analysis of emerging forms of responsibilization in the context of digitalization, I would argue that this aspect constitutes a significant strength vis-à-vis existing literature on "digital responsibility." Finally, the analytical framework mobilized, centered mainly around the dual concepts of performativity and counter-performativity, has enabled a nuanced analysis of relatively dominant forms of responsibilization without disregarding the ways in which such dominant institutional formations in practice become challenged, problematized, and gradually transformed by alternative (yet, locally and temporally inferior) institutionalizing tendencies in turn. This level of nuance to the analysis of the institutionalization of concepts such as "digital responsibility" arguably constitutes another potential of the approach taken – an analytical potential which might be built on in future studies mobilizing the proposed theoretical framework for studying processes of "institutional performation."

While the approach taken has thus displayed several strengths, it is worth reiterating some of the limitations stemming from the approach I opted for. First of all, while the necessity to adopt slightly differential ethnographic approaches in the two settings studied became itself interesting for analytical reasons, it might of course constitute a potential limitation. With relatively limited access to internal meetings and other such deliberative fora experienced at the DPA relative to the labelling initiative, it becomes a legitimate question whether and to what degree the investigation's findings might have been different with increased access. In this regard, it can be discussed whether the difference in quality between the data sets produced in the context of these two settings constitutes a *de facto* limitation of the research conducted (i.e., since we do reach theoretical saturation in both cases). This being said, having been able to attain more extensive access to data in the context of the DPA could only have been a benefit to this study.

Second – and more generally speaking – the investigation conducted for this thesis arguably constitutes neither a historical nor a geographical study of the institutionalization of "digital responsibility" in the context of contemporary governance. Our investigation concerns two distinct institutional settings at a particular point in time (i.e., in the period of 2019-2021) and located in a rather particular place (i.e., Copenhagen, Denmark). While we do – based on our comparative analysis of these local settings – discover significant discontinuities in the way "digital responsibility" is becoming institutionalized, it is not possible to say much about the broader (e.g., "global") socio-political tendencies giving rise to this process in the present, nor

historically. The investigation conducted here might thus be thought of as a sample of a particular approach to study the institutionalization of "digital responsibility," which would benefit greatly from being complemented by more comprehensive historical, geographical, and/or geopolitical studies of such processes in the future.

We can thus think of several types of studies which might further contribute to social-scientific understandings of how moral concepts such as "digital responsibility" become established, institutionalized, and, potentially, de-institutionalized in the context of technological governance. I have already pointed to genealogical approaches as a possible avenue for future studies, specifically historical explorations of the use of notions of "responsibility" in the context of digitalization and contemporary governance which might provide important contextual knowledge on this subject. Further, while the study conducted for this thesis does seem to indicate certain tendencies emerging within the Danish politics of digitalization and organizational responsibility, conclusions regarding broader political tendencies internationally would quickly become rather speculative. This situation might be amended by similar investigations undertaken in other institutional settings internationally, enabling further comparisons between findings and thus both more analytical nuance and generalizability than what this study has afforded.

Conclusion

Starting from a general interest in something like a "responsibility-turn" in the contemporary politics and governance of digital technologies, and a perceived lack of empirical exploration of such developments, this dissertation has sought to address the following research question:

RQ: How does the notion of digital responsibility come to be established and direct activity within particular organizational settings?

Based on long-term ethnographic exploration of two distinct organizational settings in Denmark concerned with the governance of digital technologies and data, our most general finding is a significant qualitative difference in the way "digital responsibility" becomes institutionalized as a performative notion and (moral) norm between these settings. That is, from our ethnographic investigation two highly divergent concepts of "responsibility" emerged: one *legal* and *juridical* in its general institutional orientation, key to the practices of the Danish DPA and its enforcement of regulation such as GDPR; the other generally *economic* and *market-oriented,* central to the rationality involved in the establishment and organization of a new labelling initiative called the D-seal. This initial observation allows us to question the hitherto focus in literature on "corporate digital responsibility" (or "CDR") on socio-moral obligations "beyond" those otherwise deemed "basic" to organizations – i.e., economic and legal obligations – since these are *exactly* the two main institutional perspectives we encountered when studying the institutionalization of "digital responsibility" in Denmark. Referring to these types of obligations as merely "basic" to organizations, however, disregards the stark qualitative divergence in institutional notions of "responsibility" marked by points and/or instances of mutual exclusivity. For example, digital responsibility in the legal sense requires the prioritization of legal principles and concerns over and above concerns of an economic nature in all instances of data processing regulated by law (e.g., personal data processing). In comparison, the economic notion of responsibility seeks to mobilize legal (and possibly other forms of moral) compliance as a means of enabling economic advantage(s) and value creation via organizational marketing. Moral precedence thus shifts between concerns of a legal and an economic character depending on these institutionally established notions of "responsibility."

And yet, even if it is possible to identify relatively dominant institutionalized conceptions of responsibility in each setting, it also seems clear that such ideas remain underpinned by both intra- and interinstitutional, national, and international politics. For example, recent regulatory efforts such as GDPR by the EU appears to have had a broad and significant impact on shaping the moral content of "digital responsibility" not only in its juridical setting but equally in the context of the private labelling initiative. At the same time, and among these two organizations, we witness a significant trend towards economically oriented "guidance" as well as (or perhaps rather than?) coercive law enforcement with regard to organizational data processing, indicating a broader national politics. Finally, the most obvious implication of international politics for local understandings of "digital responsibility" appears to be persistent uncertainties concerning key regulatory issues and questions following the enactment of GDPR (e.g., the Schrems lawsuits). Depending on the way(s) in which such institutional politics evolve, this may

have important implications for both the possible meaning(s) and institutionalized practices deriving from notions of "responsibility" in the context of digitalization.

To provide these answers for the above-stated research question, the ethnographic investigation conducted here relied on a particular theory of socio-linguistic performativity and counter-performativity. This theory was mobilized to study locally expressed "felicity conditions," as well as broader "patterns" of such conditions, for performative assertions of responsibility in both settings. Ultimately (and in the wake of our analysis) this theoretical-analytical approach inspired a partial reinterpretation of previous theories of performativity and institutionalism to arrive at a conceptual and analytical framework of "institutional performation" (i.e., the way in which social institutions become produced and effectuated in and through performative action). While the tenets of this framework are largely parallel to the approach assumed for this dissertation's empirical investigation of the institutionalization of "digital responsibility," its potential as an analytical tool for the social sciences should be determined through its mobilization in future empirical explorations of institutions, their formation, and disintegration.

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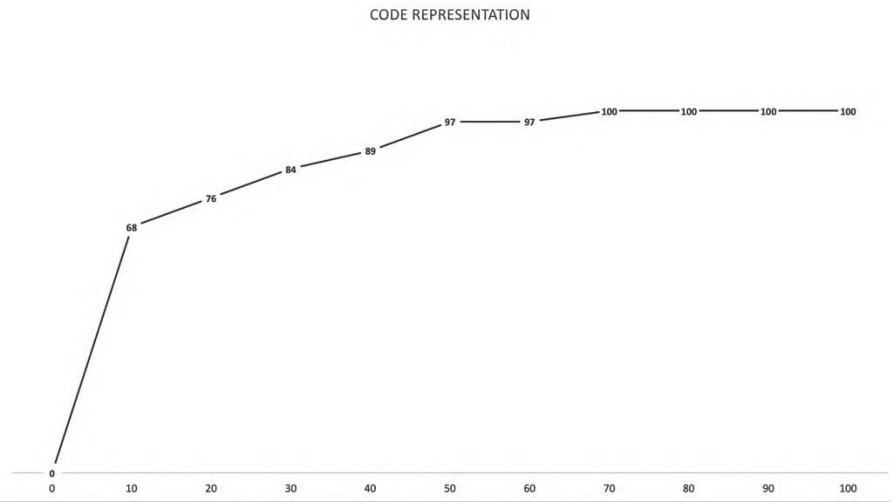
Appendix

	Nvivo codes				1-13 (10%)	14-27 (20%)	28-40 (30%)	41-54 (40%)	55-68 (50 %)	69-81 (60%)	82-94 (70%)	95-108 (80%	109-121 (90	-100%
	Top level codes		Principles of evaluation	Occurrences										
1	Performativity	Setting	Organization	137	x									
2			Authority	28	x									
3			Environment	9				x						
4			Independence	13	x									
5			Secrecy	17	x									
6			Politics	31					x					
7			Truth (legalist)	29	x									
8			Certainty-perfection	27	x									
9			Firmness / devotion to pri	11			x							
10			Information	35	x									
11		Mode of governance	Legality (gov....)	135	x									
12			Character	22			x							
13			Circumstance	25			x							
14			Duty-obligation	46	x									
15			Legal knowledge / knowh	22	x									
16			Enforcement (tre...)	32	x									
17			Education (guidance)	16	x									
18			Technology	10		x								
19			Interest	11				x						
20			Legal basis	51		x								
21			Priority-weight	13		x								
22			Responsibility	36	x									
23			Right	38	x									
24			Risk	41	x									
25			Tradition	19		x								
26	Counter-performativity	Setting	Organization	20	x									
27			Environment	9					x					
28			Ressources	47	x									
29			Efficiency	12	x									
30			Information	3		x								
31		Mode of governance	Ambivalence	15	x									
32			Economy - or Leg...	33	x									
33			Enforcement	20	x									
34			Guidance	34	x									
35			Risk-based	3	x									
36			Technology	3	x									
37			Politics	15					x					
38			Responsibility-as-ressourc	9							x			
				TOTAL	26	29	32	34	37	37	38	38	38	38
				Saturation %	68,421053	76,315789	84,2105263	89,473684	97,368421	97,368421	100	100	100	100
				Rounded %	68	76	84	89	97	97	100	100	100	100

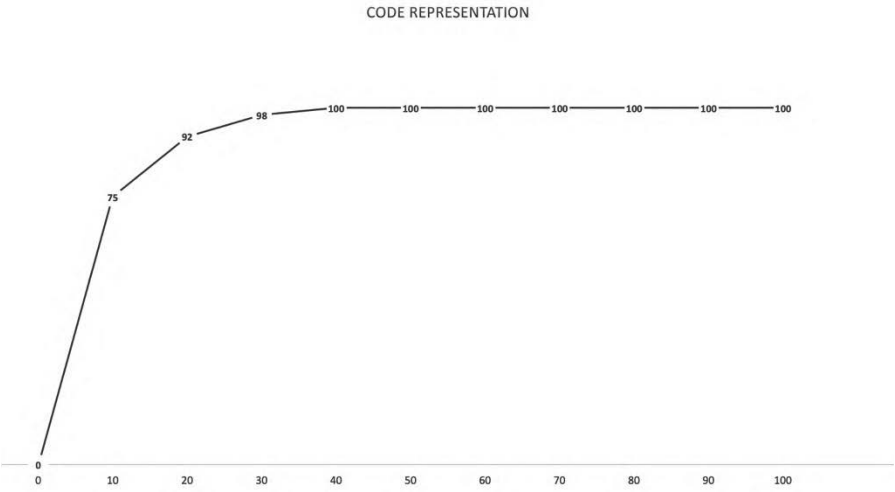
1. Coding structure and representation of codes in data set (DPA)



2. Code identification through data set (DPA)

	Nvivo codes				1-31 (10%)	32-62 (20%)	63-92 (30%)	93-123 (40%)	124-154 (50 %)	155-185 (60%)	186-216 (70%)	217-246 (80%)	247-277 (90 %)	-100%
1	Top level codes		Principles of evaluation	Occurrences										
2	Performativity	Setting	Organization	51	x									
3			Accountability (to foundatic	26	x									
4			Competitiveness	2	x									
5			Environment	13	x									
6			Involvement ("input")	57	x									
7			Of authorities	13			x							
8			Of client-businesses	19			x							
9			Of expertise	55		x								
10			Ressources	29	x									
11			Efficiency	43	x									
12			Personnel	32	x									
13			Production	39	x									
14			Technology	23	x									
15			Politics	20	x									
16			Truth (economic)	3	x									
17			Information-data	4	x									
18		Mode of governance	Compliance with criteria	16	x									
19			Criteria definition/structure	112		x								
20			Effectiveness	22	x									
21			Importance	12		x								
22			Non-/extra-legal	61	x									
23			Value/advantage	43	x									
24			Distribution/uptake	5	x									
25			Adaptability	44	x									
26			Attractiveness/useful	37	x									
27			Operationality	36	x									
28			Simplicity	6		x								
29			Communicability	40	x									
30			Marketing/branding	14	x									
31			To State/EU	11	x									
32			Credibility	14	x									
33			Basis	62	x									
34			Control	4	x									
35			Coverage	11	x									
36			Interest satisfaction	56	x									
37			Responsibility-as-ressource	13	x									
38			Saleability	21	x									
39			Enforcement/control	9	x									
40			Guidance	6		x								
41			Objectivity-concreteness	33			x							
42			Risk-based (adaptable)	13	x									
43	Counter-performativity	Setting	Organization	22	x									
44			Politics	8				x						
45			Technology	2		x								
46		Mode of governance	Ambivalence	33		x								
47			Ecology/sustainability	10		x								
48			Legality	81	x									
				TOTAL	36	44	47	48	48	48	48	48	48	48
				Saturation %	75	91,66666667	97,91666667	100	100	100	100	100	100	100
				Rounded %	75	92	98	100	100	100	100	100	100	100

3. Coding structure and representation of codes in data set (D-seal)



4. Code identification through data set (D-seal)

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