

Chapter 6

The Power of Dialogue: The Regulator–Regulatee Relationship in the Norwegian Oil and Gas Industry



Ulla Forseth

Abstract The aim of this chapter is to investigate the regulator–regulatee relationship and dialogue as a policy instrument in the Norwegian oil and gas industry. Dialogue is used as a lens to shed light on power relations in encounters between regulator and regulatees. The empirical part draws on qualitative research and multiple data sets. Dialogue is the preferred supervisory strategy and is embedded in symmetrical and asymmetrical power relations. The dialogue is formalised, ritualised, and restricted during regulator–regulatee encounters, whereas regulatees call for more informal discussions. The use of dialogue as a policy instrument has contributed to leeway for creativity in operations, learning, feedback, shared understanding and, according to the regulator, innovation and solutions beyond minimum requirements of laws and regulation.

Keywords Regulator–regulatee relations · Dialogue · Tripartism · Power

6.1 Introduction

The aim of this chapter is to explore the regulator–regulatee relationship in the oil and gas industry considering power relations embedded in the Norwegian model of working life. As pointed out by Foucault (1976: 125), power is inevitably associated with resistance (“Là où il y a pouvoir, il y a résistance”), and Stephen Lukes suggests that “Power is at its most effective when least observable” (Lukes 2005: 1). These quotes bring centre stage power as a multifaceted concept. According to Max Weber, power is when somebody can make decisions that influence the action of others and contradicts the interests of them. In the traditional command-and-control model of regulation, the regulator exercises power by conducting inspections or audits, and

U. Forseth (✉)

Department of Sociology and Political Science, Norwegian University of Science and Technology (NTNU), Trondheim, Norway
e-mail: ulla.forseth@ntnu.no

© The Author(s) 2024

J.-C. Le Coze and B. Journé (eds.), *The Regulator–Regulatee Relationship in High-Hazard Industry Sectors*, SpringerBriefs in Safety Management, https://doi.org/10.1007/978-3-031-49570-0_6

55

then issues formal sanctions in case of violations (Baldwin et al. 2012). The regulator relies on the force of law to prohibit certain forms of conduct and enforce other types of action.

Foucault elaborated on forms of disciplinary power and surveillance, but later highlighted power as a productive force to be found everywhere and not only wielded by specific actors or institutions (Foucault 1991), such as the regulator in this case. Rather, power resides in discourse, e.g., in interpretations, use of language and symbols, and there is constantly a struggle between different discourses. How the term ‘regulation’ is conceptualised, developed, and practised in different industries are therefore important areas for investigation. There exists a wide range of regulatory designs, but I limit the scope to a command-and-control model and a dialogue-based approach. Black (2002: 183) employed discourse analysis to analyse regulatory conversations, i.e., ‘the communicative interactions that occur between all involved in the ‘regulatory space’’. These regulatory conversations are sites for the discursive production of the identity of the regulatee and the regulator (Forseth and Rosness 2021). A critical report after an audit or an investigation report, for example, can jeopardise a company’s identity and reputation as a responsible player.

The Petroleum Safety Authority Norway (PSA) presents dialogue as its preferred policy instrument because of its impacts on accountability, learning, innovation and improved health and safety. Discussing the Norwegian petroleum industry’s regulatory regime with non-Nordics, however, they are perplexed as to how it works. From the vantage point of more traditional command-and-control approaches to regulation, they often find the Norwegian oil and gas regulatory regime ‘too open-ended, the inspections are too few and the reactions to non-compliance are too soft’ (Rosness and Forseth 2014: 309). To explore such issues, the following research questions are central:

1. What does the regulator (PSA) flag up as key principles of the regulatory regime?
2. How does the regulator practice dialogue in encounters between regulator and regulatees?
3. How do the regulatees experience dialogue in regulatory encounters?

I draw on a research portfolio on risk governance in the oil and gas industry conducted with Ragnar Rosness, SINTEF, and collaboration with scholars from the University of Stavanger and the University of Oslo.¹ Rosness and I investigated tripartism and a controversy concerning the safety level on the Norwegian continental shelf around the millennium, analysing the voices of the regulator and dialogue as a policy instrument (Forseth and Rosness 2021; Rosness and Forseth 2014). The research design was explorative and qualitative, and the empirical material stems from the PSA website, a strategic sample of investigation reports, and two focus group interviews with a purposive sample of PSA officers in 2016 and 2018. In addition, we analysed anonymised raw data from 36 focus group interviews with the

¹ The projects were funded by the Norwegian Research Council (no. 183251 and 233,971).

PSA and other stakeholders conducted by the principal investigator and his team in an expert committee on health, work environment, and safety in the petroleum industry commissioned by the Ministry of Labour and Social Affairs (Engen et al. 2013). Although some of these data date back in time, they are still useful in investigating a specific, historical example of dialogue in the regulation of health, safety, and environment.

The chapter is organised as follows: After outlining key features of the Norwegian model of working life, the empirical part illustrates how these are practised in the regulatory regime in the oil and gas industry. The first part spells out how the PSA presents and makes sense of this regulatory regime. The second part deals with how dialogue is practised in regulatory encounters and includes how regulatees take sense. The analysis identifies ambiguities and tensions, and in the final part power relations embedded in this regulatory regime are discussed before concluding on the transferability of the results.

6.2 Context: The Norwegian Model of Working Life

Norway is described as a high-trust country (Skirbekk and Grimen 2012), and trust among the different stakeholders is important for how the ‘Norwegian model’ has developed. Participation and collaboration have a long history back to the 1930s and the agreement between the social partners. A former Norwegian Minister and sociologist described the Norwegian model of working life as a Chinese box (Hernes 2006): there are several layers encompassing bipartite and tripartite collaboration where management and shop stewards collaborate on the micro level in the companies and employers’ organisations, while trade unions and the authorities collaborate on the macro level. This type of tripartite collaboration differs from the way Ayres and Braithwaite (1992: 26) defines tripartism as formal involvement of public interest groups in the regulatory process. In contrast to the antagonistic relationship often found in Anglo-American literature, the relationship between management and workers has been coined as a ‘conflict partnership’ (Dølvik et al. 2017) where the parties acknowledge both shared and conflicting interests. The metaphor *boxing and dancing* is illustrative when elaborating on how conflict partnership is practised over time (Rosness and Forseth 2014). The function of the safety representative is also unique, including the legal right to halt a work operation in case of immediate danger to the life or health of workers, without any risk of economic repercussions for the safety representative.

This brief introduction summarises some features of the Norwegian model of working life, and how it is a result of historical, structural, institutional, and cultural factors. It is an important backdrop for understanding the regulatory regime in the oil and gas industry.

6.3 Dialogue as Policy Instrument

When oil was discovered at the Ekofisk field in the North Sea in 1969, Norway had little competence in this area and had to rely on multinational oil companies. Until 1985, the government pursued a traditional regulatory model which relied on checklist-oriented inspections and government-based approvals (Bang and Thuestad 2014: 245). Several major accidents such as the Ekofisk Bravo blowout in 1977, and the Alexander L. Kielland disaster in 1980 which killed 123 persons, had great impact and led to administrative and political reforms. A new regulatory approach to safety and the working environment was introduced with functional regulation and the introduction of internal control (ibid.). This model of government-enforced self-regulation emphasised the importance of cooperation with those involved and that ‘the regulator should establish a *dialogue* between employees, employers and government on the issues relating to development of regulations...’ (White Paper no. 51 1992–1993) cited in Bang and Thuestad (2014) [my emphasis]. In the next section, I elaborate on how this was implemented in the regulatory regime.

On their website, the PSA spells out the fundamental principles of the petroleum regulations and their role as both ‘guide dog’ and ‘watch dog’. They underscore that they pursue risk-based regulation but that it is the responsibility of the individual company to ensure that they follow the law, rules, and regulations: ‘Each company is responsible for the safety of its own operations. This represents a fundamental principle in the petroleum regulations’ (PSA 2018). The role of the regulator is to develop regulations, define parameters for the industry and monitor that activities are pursued in a prudent manner by the players and, in the event of regulatory breaches, make appropriate use of enforcement powers (ibid.). Regulation and enforcement are structured to emphasise trust in and support the sense of responsibility in the companies. A particular ‘see to it’ obligation (ibid.) comes in addition to each player’s responsibility for complying with the regulations, ensuring that everyone doing work on their behalf complies with the requirements and conducts activities correspondingly.

Dialogue is a non-statutory policy instrument and the preferred supervisory strategy. The term dialogue is multifaceted and includes face-to-face encounters with regulatees, communication after incidents through investigation reports and cover letters, and tripartite interaction. The PSA will, however, make use of more severe instruments such as orders, coercive fines, halting, or administrative fines, if deemed necessary. Coercive power might be the outcome of dialogue, but it is not frequently used according to the PSA website or our interviews. One example dates back to 2017 when the PSA, after dialoguing, halted operation on Goliat, the largest offshore platform in the Norwegian sector of the Barents Sea operated by the Italian company ENI, because problems with the electricity system created a risk of a major accident. It has occurred that a company chose to shut down an operation after dialogue before the regulator acted.

The PSA flags up tripartite collaboration and dialogue as crucial for reaching the ambitious goal expressed by the government to be world-leading in safety, health, and environment on the Norwegian continental shelf. Tripartism is institutionalised

in various arenas, such as the ‘Regulatory Forum’ and ‘Safety Forum’—arenas for information sharing, discussions of key HSE challenges, how to develop parameters and implement measures to maintain a safe industry (see chapter by Lindøe in this volume). ‘In these arenas, the parties can join forces in a constructive collaboration on improvements, including for safety and the working environment—an asset all the parties say they want to preserve and develop’ (PSA 2016, The Norwegian Model). These structures are important because they facilitate dialogue and set in motion different aspects of power by the stakeholders such as definition power, agenda power, decision power, and implementation power (Falkum 2015). The introduction of an annual monitoring system to measure how the level of risk is developing, ‘Trends in the risk level’ in 1999, can be seen as a ‘boundary object’ (Star and Griesemer 1989). It facilitates cooperation between parties with different viewpoints and can reframe a local understanding. Institutionalisation of collaboration and power among stakeholders is a countermeasure against too close relations between regulator and regulatee, capture and corruption. Transparency is another factor and the result of audits, investigation reports and cover letters are published on the PSA website in line with the Act relating to the right of access to documents held by public authorities.

6.4 Properties and Impacts of Regulatory Dialogue

Officers, supervisor coordinators, and managers from the PSA underscored the importance of dialogue and explained why it is the preferred mode of working. When the goal is continuous improvement of HSE in the whole industry, inspection, control and fining individual companies fall short. It was mentioned that this differs from the command-and-control model of the Labour Inspection Authority due to different philosophy and different characteristics of the industry. The dialogue is *formalised, restricted, and ritualised*, and the regulator and the regulatee have their roles to play. The PSA refrains from proposing specific solutions to a problem raised by regulatees because this would imply taking responsibility away from the player. The PSA exercises power by setting the terms of collaboration. As I see it, it illustrates asymmetrical power relations between regulator and regulatee because when deemed necessary, dialogue is substituted by more coercive forms of power. Involving companies and people at the sharp end gives them leeway for innovation in operations and allows them to provide feedback to the regulator. Officers at the PSA gave examples of how regulatees had come up with new, creative solutions that went beyond minimum requirements. The outcome is better compliance and improved safety, health, and environment.

Overall, representatives from the companies appreciated this use of dialogue, but there were diverse interpretations of the term. Some managers called for more informal dialogue where they could discuss openly without risking issues coming back in a future audit, and participants from small companies called for more specific advice. It was also mentioned that there was a shift towards challenging the regulator and some shop stewards reported more pressure in the ‘conflict partnership’ with

management. The context of the dialogue is important, and a safety representative mentioned how they prepared for encounters with the PSA and conducted window dressing before the visit. I interpret this as an example of impression management on the part of the regulatees where they try to appear in the best possible way to stand out and strengthen their reputation as a responsible player.

Tripartite arenas are institutionalised to strengthen dialogue and collaboration and help to build situational awareness and a shared vision of reality. These arenas can also be used to discuss controversial issues. In a particular case concerning a new well design, the PSA employed agenda power and invited the other parties to discuss the controversial case. The end result was a unanimous veto. Rosness and Forseth (2015) suggest that these tripartite arenas thrive on tensions and ambiguities due to their ability to shift between collaborative and antagonistic modes of interaction.

Through analysis of a strategic example of investigation reports after incidents and accidents, we found that event sequence descriptions were mostly ‘de-individualised’ as individuals did not function as grammatical subjects (Forseth and Rosness 2021). The PSA used rhetorical means to frame non-conformities as deficiencies of the safety management system rather than individual violations, thus counteracting the search for scapegoats.

According to the initial quote by Foucault, where there is power, there is resistance. Players had been known to request a combination of individual violations into larger categories, to reduce the number of violations to protect their reputation, but without any success. I propose that another way of demonstrating resistance was to postpone answers or be reluctant to share strategic documents when asked by the PSA.

6.5 Concluding Remarks

Dialogue as a policy instrument in this context is not spontaneous, frank and ‘dominion-free’, but stimulates communicative action. Besides, other types, properties and impacts of dialogue are likely to be found in other industries and countries. Some regulators might open up for more informal dialogue than in this case.

The regulatory regime has evolved since the beginning of the Norwegian oil adventure, and the environment and the circumstances have changed. Representatives from the PSA and the companies did not talk a lot about power, but the analysis identified both symmetrical and asymmetrical power relations in encounters with regulatees as well as examples of resistance on the part of the regulatees. The regulatory regime has institutionalised dialogue and collaboration as cornerstones, and this has reinforced situational awareness among stakeholders. In addition, it has contributed to space of manoeuvre on how to carry out operations, innovation and, according to PSA representatives, solutions beyond the minimum requirements of laws and regulations. Tensions and ambiguities, however, seem to play a double role, sometimes facilitating ‘boxing and dancing’ for improved health and safety among stakeholders, while in other cases inhibiting initiatives for further HSE improvement (Kringen 2014).

Trade unions raised concerns about an increasing number of incidents and accidents in the wake of cost-cutting in the industry, and whether the sanctions imposed by the PSA were sufficient. In response, The Office of the Auditor General in Norway (2018–2019) initiated an investigation. The report concluded that the PSA is too reluctant in using rigorous sanctions and could strengthen their follow-up but did not suggest changing the principles of the regulatory regime or the use of dialogue as a policy instrument and mode of working.

The case analysed in this chapter is influenced by historical, structural, institutional, and cultural factors and the model cannot be transferred as a blueprint. There are, however, some lessons to be learnt about the impacts of promoting health and safety through a dialogue-based approach.

Acknowledgements Thanks to Ragnar Rosness for inspiring discussions in preparing this chapter.

Ethics Statement Informants for the focus group interview data were treated as institutional informants, and the researchers did not register any personal details. All informants gave their informed consent for their statements to be used anonymously for research purposes and were invited to review transcripts. The Norwegian National Research Ethics Committee does not require independent ethics board approval for this type of study.

References

- L. Ayres, J. Braithwaite, *Responsive Regulation* (Oxford University Press, Transcending the deregulation debate, 1992)
- R. Baldwin, M. Cave, M. Lodge, *Understanding Regulation: Theory, Strategy and Practice*, 2nd edn. (Oxford University Press, 2012)
- P. Bang, O. Thuestad, Government-enforced self-regulation: the Norwegian case. in *Risk Governance of Offshore Oil and Gas Operations*, ed. by P.H. Lindøe, M. Baram, O. Renn (Cambridge University Press, 2014)
- J. Black, Regulatory conversations. *J. Law Soc.* **29**(1), 163–196 (2002)
- J.E. Dølvik, T. Fløtten, J.M. Hippe, B. Jordfald, *The Nordic Model Towards 2030: A New Chapter?* Report no. 7. (The Fafo Institute for Labour and Social Research, 2017)
- O.A. Engen, et al., *Tilsynsstrategi og HMS-Regelverk i Norsk Petroleumsvirksomhet*, Report from an expert committee appointed by the Ministry of Labour and Social Affairs (2013)
- E. Falkum, *Omstilling: Muligheter og Utfordringer i Trepertssamarbeidet*, (Presentation at the Safety Forum, 2015). <https://www.ptil.no/sok-hele-nettstedet/?q=falkum>. Accessed 26 Jan 2022
- U. Forseth, R. Rosness, Paradoxes of power: dialogue as a regulatory strategy in the Norwegian oil and gas industry. *Saf. Sci.* **139**, 1–11 (2021)
- M. Foucault, *La Volonté de Savoir* (Gallimard, 1976)
- M. Foucault, *Discipline and Punish: The Birth of a Prison* (Penguin, 1991)
- G. Hernes, *Den Norske Mikromodellen. Virksomhetsstyring, Partssamarbeid og Sosial Kapital*. Working paper no. 25. (The Fafo Institute for Labour and Social Research, 2006)
- J. Kringen, Contested terrains in risk regulation: legitimacy challenges in implementation processes. in *Risk Governance of Offshore Oil and Gas Operations*, ed. by P.H. Lindøe, M. Baram, O. Renn (Cambridge University Press, 2014)
- S. Lukes, *Power—A Radical View*, 2nd edn. (Palgrave, 2005)
- Office of the Auditor General, *The Office of the Auditor General's Investigation of the PSA's Follow-Up on Health, Safety and Environment in the Petroleum Industry*, Document 3:6 (2018–2019)

- Petroleum Safety Authority [PSA] n.d. *Tripartite Collaboration Explained*. <https://www.ptil.no/en/tripartite-cooperation/responsibility/tripartite-collaboration-explained/>. Accessed 24 Oct 2021
- Petroleum Safety Authority [PSA], *The Norwegian Model*, (2016). <http://www.ptil.no/sss2016/the-norwegian-model-article11837-1216.html>. Accessed 22 May 2017
- Petroleum Safety Authority [PSA], Who is responsible for safety? (2018). <https://www.ptil.no/en/technical-competence/explore-technical-subjects/video/2018/who-is-responsible-for-safety/>. Accessed 24 Oct 2021
- R. Rosness, U. Forseth, Boxing and dancing—Tripartite collaboration as an integral part of a regulatory regime, in *Risk Governance of Offshore Oil and Gas Operations*, ed. by P.H. Lindøe, M. Baram, O. Renn (Cambridge University Press, 2014)
- S.L. Star, J.R. Griesemer, Institutional ecology, ‘translations’ and boundary objects; Amateurs and professionals in Berkeley’s Museum of Vertebrate Zoology, 1907–39. *Soc. Stud. Sci.* **19**(3), 387–420 (1989)
- H. Skirbekk, H. Grimen, *Tillit i Norge*. Oslo: Res Publica (2012)

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

