The Theory and Practice of Legislation

ISSN: 2050-8840 (Print) 2050-8859 (Online) Journal homepage: www.tandfonline.com/journals/rtpl20

‘A conceptual framework on legal complexity’

Niels Appermont

To cite this article: Niels Appermont (09 Jun 2025): ‘A conceptual framework on legal complexity’, The Theory and Practice of Legislation, DOI: 10.1080/20508840.2025.2515804

To link to this article: https://doi.org/10.1080/20508840.2025.2515804

Published online: 09 Jun 2025.

THE THEORY AND PRACTICE OF LEGISLATION
https://doi.org/10.1080/20508840.2025.2515804

Routledge
Taylor & Francis Group

'A conceptual framework on legal complexity'

Niels Appermont

Faculty of Law, Centre for Government and Law, Law, Tax & Business Unit, Hasselt University, Hasselt, Belgium

ABSTRACT

This paper presents a novel conceptual framework exploring legal complexity to evaluate the legal impact and necessity of regulatory simplification. Amid widespread concerns over overregulation, legal complexity is a topic of significant debate in European governance and among businesses and civil society, with governmental bodies such as the European Commission and different Belgian governmental levels acknowledging its effect on market competitiveness and legal certainty. This research outlines a multi-dimensional analysis of legal complexity, distinguishing systemic factors (number, scope, durability, and consistency of norms) from rule-specific elements (density, accessibility, interconnectivity, and determinacy of legal provisions), and applies it to Belgian company law as an example. On the basis of this framework, this paper demonstrates that there are inherent trade-offs in balancing simplification against effective legal precision, suggesting that complexity often arises from interacting factors rather than isolated rules. Ultimately, the findings are nuanced and suggest that while simplicity may reduce compliance costs and mitigate misjudgements, regulatory complexity might sometimes be justified if it supports nuanced legal application or incentivizes desired societal behaviours.

KEYWORDS Legal complexity; simple rules; compliance costs; trade-offs; economic analysis of law; quality of legislation

Dans ses écrits, un sage Italien

Dit que le mieux est l'ennemi du bien

Voltaire, *La Bégueule* (1772)

CONTACT Niels Appermont niels.appermont@uhasselt.be Faculty of Law, Centre for Government and Law, Law, Tax & Business Unit, Hasselt University, Hasselt 3500, Belgium

1. Introduction

1. Intuitively, most lawyers feel that 'simplification' of legal rules would be a good thing. After all, law and legal rules are too often perceived as being too complex, and increasingly so.[1] In addition, a variety of social stakeholders regularly complain about 'overregulation'.[2] A classic example in this context is the (perceived) complexity of tax law.[3] Studies examining the concept of 'legal complexity' therefore often examine tax law.[4] Yet complaints about complexity and regulatory burdens are certainly not limited to taxation.[5] Within this context, the oft-repeated mantra is that a complex society also presupposes complex rules.[6]

However, this raises the question what exactly is meant by 'complexity' and 'simplicity' in a legal context. Moreover, why would 'simple rules' generally be preferable over more complex counterparts? Should there be any normative value attached to the concept of 'legal simplicity'? This paper aims to provide an answer to these questions.

[1]Daniel Martin Katz, Corinna Coupette, Janis Beckedorf, Dirk Hartung, 'Complex Societies and the growth of the law' [2020] Nature Scientific Reports. Significantly in this context, the Flemish Lawyers Association organised a colloquium on law and complexity on 26 April 2023. See: https://www.vlaamsejuristenvereniging.be/recht-en-complexiteit-26-april-2023-juristenreis-washington-dag-van-de-rechtsstaat/

[2]Marnix Van Damme, Jean Dujardin, Bruno Seutin and Henri Coremans, *Beginselen van wetgevingstechniek en behoorlijke regelgeving* (die Keure 2016) 121–3.

[3]See, e.g. Federaal Planbureau, 'Working Paper: de administratieve lasten in België voor 2022', February 2024, 16, 26, available at: https://bosa.belgium.be/sites/default/files/content/documents/2-24%20enquete%20planbureau%20NL.pdf

[4]See, among others: Felix Desmyttere, *Fiscale nalevingskosten – Het eigendomsrecht en de vrijheid van ondernemerschap* (Wolters Kluwer 2023) 4; Louis Kaplow, 'How Tax Complexity and Enforcement Affect the Equity and Efficiency of the Income Tax' in Joel Slemrod (ed.), *Tax Policy in the Real World* (CUP 2010) 381–96; Charles Delmotte, 'Simple Rules and the Political Economy of Income Taxation: the Strengths of a Uniform Expense Rule' [2021] European Journal of Law and Economics, 324; J.B. Ruhl, Daniel Martin Katz, 'Measuring, Monitoring, and Managing Legal Complexity' [2015] Iowa Law Review, 193; Gordon Tullock, 'On the Desirable Degree of Detail in the Law' [1995] European Journal of Law and Economics, 204-205; Anne Van de Vijver, 'Belastingen en ethiek' [2013] Tijdschrift voor Fiscaal Recht, 532; R.J. De Vries, 'Delirium Tremens oftewel fiscale desoriëntatie' [2012] Weekblad voor Fiscaal Recht, 1386–78.

[5]For example, a 2023 LexisNexis Risk Solutions study found that financial institutions worldwide undergo more than USD 206 billion in compliance costs in the fight against financial crime. See: https://risk.lexisnexis.com/global/en/about-us/press-room/press-release/20230926-global-financial-crime-compliance-costs See also the following paragraphs.

[6]In this context and in a general sense, see e.g. the introductory text of the aforementioned colloquium of the Flemish Lawyers Association: '*Don't say it has never happened to you. At least one non-lawyer has already addressed you in a reproachful tone and postulated that you and your kind are only concerned with making the world more difficult. Perhaps it was even added with a malicious smile that the only ones who benefit from such complexity are the lawyers themselves. In turn, the latter then object that a complex society cannot* stand up without complex rules.' (translation in English by the author). See also: Bernard Waltl and Florian Matthes, 'Towards Measures of Complexity: Applying Structural and Linguistic Metrics to German Laws' in Rinke Hoekstra (ed.) *Jurix 2014: The Twenty-Seventh Annual Conference* in *Frontiers in Artificial Intelligence and Applications* (IOS Press 2014) 153; Eric Kades, 'The Laws of Complexity and the Complexity of Laws: the Implications of Computational Complexity Theory for the Law' [1997] Rutgers Law Review, 407–8. See also, with regard to taxation: Judith Friedman, 'Managing Tax Complexity. The Institutional Framework for Tax Policy-Making and Tax Oversight' in Chris Evans, Richard Krever and Peter Mellor (eds.) *Tax Simplification* (Wolters Kluwer 2015) 274.

2. In practice, it indeed seems that there exists a desire to avoid legal complexity wherever possible. For example, governments claim to take seriously the problem of complex regulation and the related issue of excess regulatory burdens due to overregulation. For instance, 'reducing the administrative burden on citizens and businesses' was a working point in the Belgian federal government's 2020 coalition agreement.[7] In the novel Belgian government's 2025 coalition agreement, both administrative and legislative simplification have been placed very high on the agenda once again, for example in the domains of labour law, tax law and economic law.[8] According to the Flemish government's coalition Agreement 2024-2029, the fight against 'overregulation' constitutes a central theme within this coalition agreement. For instance, at the start of the coalition period, the Flemish Minister-President has to present a plan for 'much-needed administrative simplification'.[9]

In the same vein, shortly after taking office in December 2019, the European Commission launched an ambitious work programme with ample attention to 'better regulation', including a 'simplification and reduction of burdens'.[10] Striving for simple rules is even one of the core principles in the European Commission's *Better Regulation Toolbox*.[11] Similarly, the 2024 Work Programme of the European Commission puts a strong focus on simplifying rules for citizens and businesses across the European Union and states that the Commission will carry out evaluations and fitness checks to assess how legislation can be simplified and made less burdensome.[12] The research report on the EU's competitiveness presented by former ECB President Mario Draghi in September 2024 at the request of the European Commission also extensively discusses the need for a simplification of existing regulatory frameworks.[13] For instance, the report cites figures showing that companies perceive legal complexity as a crucial barrier to investment in the EU.[14]

[7]Coalition Agreement of 30 September 2020, 15, available at: https://www.belgium.be/sites/default/files/Regeerakkoord_2020.pdf

[8]Federal Coaliation Agreement 2025–2029 of 31 January 2025, available at: https://www.belgium.be/nl/publicaties/regeerakkoord_van_de_federale_regering_bart_de_wever

[9]Flemish Coalition Agreement 2024-2029, 'Samen werken aan een warm en welvarend Vlaanderen', 5. Available at: https://www.vlaanderen.be/publicaties/vlaams-regeerakkoord-2024-2029-samen-werken-aan-een-warm-en-welvarend-vlaanderen

[10]European Commission, 'Commission Work Programme for 2020. A Union that strives for more', COM(2020) 37 final.

[11]European Commission, 'Better Regulation Toolbox, July 2023', 8. Available at: https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf

[12]European Commission, 'Commission Work Programme 2024. Delivering today and preparing for tomorrow', COM(2023) 638 final, 6.

[13]Mario Draghi, "The Future of European Competitiveness – In-deph analysis and recommendations', September 2024, 317 *ff*. Available at: https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en

[14]See e.g. also: European Investment Bank, 'EIB Investment Survey 2024 – European Union', 2024: '*EU firms are also more likely to perceive business regulations and availablity of finance as major obstacles*

The political interest in 'legal simplification' skyrocketed after the inauguration of Donald Trump as 47th President of the United States of America in January 2025. One day after president Trump's inauguration, while speaking at the Davos World Economic Forum on 21 January 2025, Commission President Ursula Von der Leyen already announced large-scale initiatives to enhance the ease of doing business in the EU, including 'a far reaching simplification of sustainable finance and due diligence rules'.[15] In February 2025, the Commission proposed a legislative package 'to cut red tape and simplify the business environment' in order to boost the competitiveness of the European economy.[16] Interestingly, several members of the European Commission have indicated that the Commission's aspiration towards simplification should not be regarded as an attempt to engage in 'deregulation', effectively distinguishing both concepts.[17]

3. The question arises whether, and possibly to what extent, these (political) intentions are actually being realised.[18] According to some societal stakeholders, the opposite seems to be the case. Indeed, calls for (administrative) rule simplification and better regulation are launched with clock-like regularity by all kinds of societal stakeholders.[19] For instance, one of these reports, authored by the *Fédération des Entreprises de Belgique* (VBO/FEB) indicated that 'between 2017 and 2022, companies had to swallow no less than 5,422 pages of new European directives, decisions and regulations' (translation by the author).[20] This is reminiscent of the

than their US counterparts'. Available at: https://www.eib.org/attachments/lucalli/20240238_econ_eibis_2024_eu_en.pdf

[15]European Commission, 'President von der Leyen promotes openness and stronger European competitiveness during keynote speech at the Davos World Economoc Forum', 21 January 2025, available at: https://ec.europa.eu/commission/presscorner/detail/en/ac_25_309

[16]European Commission, 'Commission proposes to cut red tape and simplify business environment', 26 February 2025, available at: https://commission.europa.eu/news/commission-proposes-cut-red-tape-and-simplify-business-environment-2025-02-26_en

[17]European Commission, 'Opening Statement by Commissioner Dombrovskis at College read-out presenting Communication on implementation and simplification', 12 February 2025, available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_25_495 ; *Financial Times*, 'Simplification, not deregulation, is the EU's answer to the Trump revolution' 22 January 2025, available at: https://www.ft.com/content/144d4f10-1c52-4f11-b5d9-f8ea9da7962a

[18]According to Van Nieuwenhove, the 'first considered and realistic programme on deregulation still has to see the light of day' (translation by the author), see: Jeroen Van Nieuwenhove, *Handboek Wetgeving. Theorie en praktijk van het wetgevingsbedrijf* (die Keure 2025), 43.

[19]See e.g. the opinion of the *Fédération des Entreprises de Belgique* (FEB/VBO), published on the occasion of the 2024 parliamentary elections, in which it denounces the 'stifling administrative overload' and makes some concrete proposals that include the complexity of tax and administrative procedures. Available at: https://www.vbo-feb.be/nl/opinies/doe-beter-met-minder-administratie/ The Union of Self-Employed Entrepreneurs (UNIZO) launched a similar call in February 2024, see: https://www.unizo.be/berichten/pers/oproep-unizo-maak-van-administratieve-vereenvoudiging-een-topprioriteit
See e.g. also due to social partners: Centrale Raad voor het Bedrijfsleven, 'Towards regulation that achieves policy objectives at minimum cost', Brussels, 2020, available at: https://www.ccecrb.fgov.be/p/nl/717/sociale-partners-pleiten-voor-betere-regelgeving

[20]FEB/VBO, 'Opinie: doe beter … met minder administratie', Available at: https://www.vbo-feb.be/nl/opinies/doe-beter-met-minder-administratie/

newspaper articles that traditionally report at the end of each calendar year on how many pages the Belgian Official Gazette contained in the past calendar year.[21] These social stakeholders also associate regulatory complexity with an impairment of legal certainty, all kinds of costs, burdens and lost benefits, and negative repercussions on productivity and competitiveness.[22] Whether the aspirations of both the European Commission and the new Belgian coalitions will be realised, still remains to be seen. Interestingly, the European Commission has even set tangible goals, as it aims to reduce the administrative burdens for businesses by 25% and 35% for SMEs. According to the Commission, the 25% reduction should translate into 37.5 billion EUR of savings for businesses.[23] It seems that much is expected of this exercise in 'legal simplification'.

An obvious example of legislative complexity in the business sphere and the revamped efforts to curb it is the story of the Corporate Sustainability Reporting Directive (CSRD)[24] and the Corporate Sustainability Due Diligence Directive (CS3D).[25] In their original iterations, these European legislative instruments had a profound impact on both those companies directly subject to these reporting obligations and those indirectly affected by them because, for example, they are part of the value chain of a subject company.[26] In both legal doctrine and the trade press, their introduction has been likened to an 'avalanche'[27], a 'tsunami'[28] or a 'wave of regulation

[21] As also noted by Jeroen Van Nieuwenhove, 'De regeldruk becijferd? Een eerste verkenning en een aanzet tot methodologie' [2021] Tijdschrift Voor Wetgeving, 21. In this context, see also: Patricia Popelier, *De wet juridisch bekeken* (die Keure 2004) 23.

[22] SERV, 'Advies performante overheid in de volgende regeerperiode - Deel 4: Inzetten op betere regelgeving en minder complexiteit', April 2024, 4. Available at https://www.serv.be/sites/default/files/documenten/SERV_20240429_performante_overheid_ADV_thema4.pdf

[23] See: European Commission, 'Simplification', available at: https://commission.europa.eu/law/law-making-process/better-regulation/simplification-and-implementation/simplification_en

[24] Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, in relation to sustainability reporting for companies, *OJ*. 16.12.2022.

[25] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on due diligence in corporate sustainability and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, *OJ*. 5.7.2024.

[26] On this, see among others: Joris De Wolf and Bert Anthonissen, 'Corporate Sustainability Reporting Directive: nieuwe stap richting uitgebreidere duurzaamheidsverslaggeving' [2024] Milieu en Energierecht, 209–21; Thiphaine Saupin, 'La comptabilité environnementale et l'Union européenne: de la publication d'informations non financières à la publication d'informations sur la durabilité' [2022] Revue des Affaires Européennes, 255–64; L.J.M. Baks, J.B.S. Hijink, 'Reuzenstappen op het terrein van de duurzaamheidsverslaggeving: de Europese CSRD en de oprichting van de ISSB' [2022] Ondernemingsrecht, 219–27. For the impact on non-directly subject companies, see: Sina Allgeier, Robertt Feldmann, 'CSRD Sustainability Reporting For Non-Listed SMEs: European Regulators Remain Challenged' [2023] European Company and Financial Law Review, 438–46.

[27] *De Tijd*, 'Lawine aan groene rapportering komt op bedrijven af: wie gaat dat lezen?', 8 August 2023, https://www.tijd.be/dossiers/de-verdieping/lawine-van-groene-rapportering-komt-op-bedrijven-af-wie-gaat-dat-lezen/10485419.html

[28] Ivan Van de Cloot, 'Regeldrift levert zelden het gewenste resultaat op', *De Tijd* 1 May 2024, available at: https://www.tijd.be/opinie/algemeen/regeldrift-levert-zelden-het-beoogde-resultaat-op/10543710.html

engulfing everything'.[29] Yet, even before any of these instruments have fully entered into force, the European Commission proposed in early 2025 a comprehensive 'Omnibus Simplification Package' on *inter alia* sustainability, proposing to severely reducing the scope of application of the CSRD, delaying the transposition deadline of the CS3D and limiting the scope of the latter instrument to 'Tier 1' suppliers.[30] This initiative has drawn substantial criticism from stakeholders, who – in contrast to the Commission – view it as an exercise in corporate deregulation.[31]

4. Business law and company law are indeed also known as a legally-technically complex matters, which moreover often presuppose a high degree of abstract thinking. Yet 'simplicity' is also an important theme in e.g. Belgian company law. Indeed, the Belgian legislator put forward 'far-reaching simplification' as one of the three central tenets for modernising Belgian company law when the novel Code of Companies and Associations (CCA) was introduced in 2019.[32] According to the legislator, this simplification took concrete shape through (i) the abolition of the distinction between commercial acts and civil acts and between commercial and civil companies, (ii) a new dichotomy between company and association law, (iii) the abolition of public companies and the limitation of the rules for listed companies, (iv) the reduction of the number of company forms and (v) the limitation of the number of criminal provisions.

Nowhere in the parliamentary preparatory documents of the CCA does the Belgian legislator explicitly state what is meant by 'simplification'.

[29]Bastiaan Bruyndonckx, Sandra Lodewijckx and Tommy Thielemans, 'Eén tint grijs, vele tinten groen: SFDR en Taxaonomieverordening – golf van EU-regelgeving rond duurzame financiering overspoelt ook de verzekeringssector' [2023] Droit bancaire et financier / Bank- en Financieel Recht, 3–31.

[30]European Commission, 'Proposal for a Directive of the the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements', COM2025 80 final; European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements', COM(2025) 81 final.

[31]See e.g.: Corporate Europe Observatory, 'Deregulation Watch', 28 March 2025, available at: https://www.corporateeurope.org/en/2025/03/deregulation-watch; European Coalition for Corporate Justice, 'Joint Statement: The big EU deregulation. Disastrous Omnibus proposal erodes EU's corporate accountability commitments and slashes human rights and environmental protections', 10 March 2025, available at: https://corporatejustice.org/publications/joint-statement-the-big-eu-deregulation/; WWF, 'Von der Leyen's deregulation omnibus: A devastating blow to EU environmental objectives', 26 February 2025, available at: https://www.wwf.eu/?17206391/Von-der-Leyens-deregulation-omnibus-A-devastating-blow-to-EU-environmental-objectives

[32]Explanatory Memorandum to Bill introducing the Companies and Associations Code and containing various provisions, *Parl.St.* Kamer, No 54-3119/001, 8. See also: Herman Braeckmans, Guy Horsmans, Jean-Marie Nelissen Grade, 'Oogmerk en perspectieven' in Herman Braeckmans *et. al*, *La modernisation du droit des sociétés / De modernisering van het vennootschapsrecht* (Larcier 2014) 11. See also already with regard to the context at the time of the introduction of the Companies Act in 1999: Frank Hellemans, 'De codificatie van het vennootschapsrecht: tijd voor 'legislative governance'?' in Jan Ronse Insrituut (ed.), *Knelpunten van derig jaar vennootschapsrecht* (Biblo 1999) 380–1. This has also been a focus of attention in the Netherlands in recent years, particularly during the sweeping reforms of Dutch company law in 2012 via the Wet vereenvoudiging en flexibilisering BV-recht' and Invoeringswet vereenvoudiging en flexibilisering BV-recht'.

Based on the enumeration given here, simplification seems to consist mainly in reducing, limiting or abolishing norms and legal forms.[33] The 'simplification' of individual rules or articles of law in the CCA is not mentioned as a core aim or aspiration. The parliamentary history does show that – at least on a number of points – simplification of individual rules was also envisaged at the level of certain individual legal provisions.[34]

5. The examples cited in the previous paragraphs constitute just a small sample of the range of (perceived) problems associated with the phenomenon of legal complexity and the drive for legal and administrative simplification.

Upon closer reflection, the above examples are seemingly based on a number of assumptions regarding the meaning of crucial concepts such as 'complexity', 'simplification' and 'regulatory burden'. Does 'simplification' (mainly?) consist in abolishing, slashing, reducing or shortening rules, legal forms or differentiation criteria? Does a reference to a number or amount of rules or pages in the Official Gazette tell us anything meaningful about the increasing complexity of the law or the increase in administrative burdens? In other words, how should we 'interpret' the concepts of 'complexity' and 'simplicity' in law? And why should we attach any importance to the concept of 'legal simplicity' at all?

6. In order to answer these questions, this paper will first provide conceptual clarity regarding the meaning of the 'simplicity' in legal matters and subsequently delve into the questions if 'legal simplicity' should indeed be a normative ideal, and why it should be so.

Given the special role of company law and the call for rule simplification that often rings out from the corporate world, our conceptual thinking will be illustrated first of all through examples from Belgian corporate law. By using company law as our primary means of illustration, we also steer clear from employing tax law as the usual suspect (see *supra*, para. 1) to this end, in order to illustrate that questions on 'legal simplicity' and 'legal complexity' are transversal and can be applied to any field of substantive law.

[33] In a contribution that deals primarily with this objective of the legislator, FRANçOIS and HELLEMANS conclude that while the foundations of company and association law were not touched, the legislator 'deliberately removed or moved a number of partitions' (translation by the author). See: Alain François and Frank Hellemans, 'De definities, basisbeginselen en de structuur van het nieuwe wetboek van vennootschappen en verenigingen: een grondige benovatie' in Hans De Wulf and Marieke Wyckaert (eds.), *Het WVV Doorgelicht* (Intersentia 2021) 44. See also: Danny Van Assche, 'Het nieuwe WVV: overbodige rompslomp of onvermoede mogelijkheden?' in Sofie Cools (ed.), *Lessen na twee jaar WVV* (Biblo 2022) 10.

[34] E.g. the transfer of the company's registered office within a Region without changing the applicable language regime (p. 38), the convening of the general meeting of bondholders (p. 167 for the BV and p. 252 for the NV) and regarding the conditions for acquiring own shares or depositary receipts in the BV (p. 182). Other aspects were also 'simplified' without being explicitly discussed in the parliamentary preparation of the WVV, see e.g. Hans De Wulf and Marieke Wyckaert, 'Effecten bij de BV, NV en CV: categorieën, soorten, overdracht, uitgifte en inkoop' in Hans De Wulf and Marieke Wyckaert (eds.), *Het WVV Doorgelicht* (Intersentia 2021) 78.

This contribution is structured as follows. In Part 2 of this paper, we examine the existing literature on 'legal simplicity' and 'legal complexity' in order to illustrate the state of the art and outline the ways in which they are studied from a methodological perspective. Subsequently, we will develop our own conceptual thinking framework on 'legal simplicity' and 'legal complexity' on the basis of both the existing, but fragmented state of the art and our own contributions. We will argue that this is necessary to overcome the methodological restrictions of the existing approaches towards these concepts in order to develop a more comprehensive approach. We will see that concepts such as 'simple' and 'complex' are to a large extent subjective and that they stand in relation to each other on a spectrum[35] and derive their meaning to a significant extent from each other.

Speaking about 'simplicity' in law is thus not 'simple', just as 'legal complexity' is a 'complex' and multi-layered concept.[36] This conceptual thinking framework will provide us with a tool to engage with our research questions. After all, merely understanding these concepts on a deeper level does not necessarily imply anything about their importance or normative value. Part 3 will then, based on the conceptual thinking framework on complexity, elaborate on why 'legal simplicity', as viewed from the chosen perspective, can or should be important. This will be done on the basis of a legal-doctrinal methodology and by including an economic analysis of law.

2. 'Simplicity' and 'complexity': a conceptual framework

7. As indicated, it is by no means 'simple' to pinpoint what is just meant by 'simplicity' in law. Rather, the law is often perceived as being the opposite, i.e. as 'complex'. For this reason, we will first explore the notion of legal 'complexity' in more detail on the basis of the state-of-the-art. 'Simplicity' then refers to the other end of the spectrum.

2.1. Approaches to legal complexity in the literature

8. There are many ways to describe the phenomenon of legal complexity. Accordingly, different authors have interpreted the concept in various ways.[37] Initially, this was done exclusively on the basis of legal-doctrinal

[35]Peter Schuck, 'Legal Complexity: Some Causes, Consequences, and Curses' [1992] Duke Law Journal, 5.
[36]Daniel Martin Katz and Michael James Bommarito, 'Measuring the Complexity of the Law: the United States Code' [2014] Artificial Intelligence and Law, 340; Mila Sohoni, 'The Idea of "Too Much Law"' [2012] Fordham Law Review, 1607; R. George Wright, 'The Illusion of Simplicity: An Explanation of Why the Law Can't Be Just Less Complex' [2000] Florida State University Law Review, 718.
[37]Diego Vaes and Samantha Bielen, 'Een empirische analyse van de complexiteit van Vlaamse decreten' [2022] *Tijdschrift Voor Wetgeving*, 211.

and qualitative analyses.[38] An influential analysis of the complexity concept from this category was developed by SCHUCK. This author identified four constituent components of 'legal complexity': density, technicality, differentiation and indeterminacy.[39] Density here refers to the amount of rules and how comprehensive they are. Legislation that scores high on this criterion is often very extensive and regulates many situations and hypotheses individually. Technicality assumes a high degree of technical knowledge and/or expertise to understand and apply the rules. Differentiation refers to the fact that the rules applicable to a legal subject in a given matter may have been issued by different regulatory levels, agencies and entities. Indeterminacy essentially refers to norms of a very open or fluid nature, which can therefore be interpreted or applied in different ways.

SCHUCK's concept of complexity proved influential, as mentioned above,[40] but is equally the subject of criticisms,[41] e.g. regarding the lack of empirically verifiable metrics to quantify complexity.

9. A second, more recent set of studies therefore approach the issue of legal complexity from a more quantitative methodological perspective.[42]

[38]See e.g. Peter Schuck, 'Legal Complexity: Some Causes, Consequences, and Curses' [1992] Duke Law Journal, 1–52; Eric W. Orts, 'The Complexity and Legitimacy of Corporate Law' [1993] Washington & Lee Law Review, 1565–623; Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 361 p; Louis Kaplow, 'On the Optimal Complexity of Legal Rules' [1995] Journal of Law, Economics & Organization, 150–63; Gordon Tullock, 'On the Desirable Degree of Detail in the Law' [1995] European Journal of Law and Economics, 199–209; Todd Zywicki, 'Epstein and Polanyi on Simple Rules, Complex Systems and Decentralisation' [1998] Constitutional Political Economy, 143–50; Danièle Bourcier and Pierre Mazzega, 'Towards Measures of Complexity in Legal Systems' [2007] The Eleventh International Conference on Artificial Intelligence and Law. Proceedings of the Conference, 211–5; Danièle Bourcier, 'Sciences juridiques et complexité. Un nouveau modèle d'analyse', [2011] Droit et Cultures, 37–53; Diego Vaes and Samantha Bielen, 'Een empirische analyse van de complexiteit van Vlaamse decreten' [2022] Tijdschrift Voor Wetgeving, 211; Mario Rizzo, 'Abstract Rules for Complex Systems' [2021] European Journal of Law and Economics, 209–27; Richard Epstein, 'A Modern Defence of Simple Rules for A Complex World' [2023] Texas A&M Law Review, 581–617. An early contribution on this topic was authored by Harlan F. Stone in 1923, in which the author argued in favour of restatements of the law in order to enhance the accessibility of the common law, see: Harlan F. Stone, 'Some Aspects of the Problem of Law Simplification' [1923] Columbia Law Review, 319–36.

[39]Peter Schuck, 'Legal Complexity: Some Causes, Consequences, and Curses' [1992] Duke Law Journal, 1–52.

[40]It constituted, for instance, subject to some refinements, the basis for EPSTEIN's study of simple rules, see: Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 25–36. See also: Jeffrey W. Stempel', A more Complete Look at Complexity' [1998] Arizona Law Review, 781–847.

[41]John C. Harrison, 'Richard Epstein's Big Picture' [1996] The University of Chicago Law Review, 859–61; J.B. Ruhl, Daniel Martin Katz, 'Measuring, Monitoring, and Managing Legal Complexity' [2015] Iowa Law Review, 197; Roland Friedrich, 'Complexity and Entropy in Legal Language' [2021] Frontiers in Physics, 1.

[42]Pierpaolo Vivo, Daniel Martin Katz and J.B. Ruhl, 'A Complexity Science Approach to Law and Governance' [2024] Philosophical Transactions of the Royal Society A, 1–7; Juan de Lucio, Juan S. Mora-Sanguinetti, 'Drafting "better regulation": The economic cost of regulatory complexity' [2022] Journal of Policy Modelling, 163–83; Diego Vaes and Samantha Bielen, 'Een empirische analyse van de complexiteit van Vlaamse decreten' [2022] Tijdschrift Voor Wetgeving, 208–21; Tim van den Belt, Henry Prakken, 'Measuring the Complexity of Dutch Legislation"' in Enrico Francesconi, Georg Borges and Christoph Sorge, *Legal Knowledge and Information Systems* in *Frontiers in Artificial Intelligence and Applications* (IOS Press 2022) 249–54; Jeroen Van Nieuwenhove, 'De regeldruk becijferd? Een eerste verkenning en een aanzet tot methodologie' [2021] Tijdschrift Voor Wetgeving, 19–27; J.B. Ruhl and Daniel

The premise is that legal systems are 'complex adaptive systems' and can therefore be studied through the lens of complexity science, has gained increased acceptance over the past decades.[43] Through such quantitative methodological approaches, it is possible to make certain aspects of legal complexity objectively measurable. Such a quantitative perspective is made possible in part by the emergence of *Natural Language Processing techniques*, where large amounts of (legal) texts are analysed as voluminous datasets through *machine learning techniques*. Several authors distinguish in this context a structural dimension, a linguistic dimension and a relational dimension of legal complexity.[44]

The structural dimension here refers to the analysis of a legislative instrument or a body of legislation applicable to a given matter in the form of a hierarchical tree structure, while also taking into account the quantity of rules and the different policy levels from which they originate. The linguistic dimension refers to the way rules are formulated, their arsenal of (legal) concepts, linguistic diversity and linguistic clarity. The relational dimension refers to the interrelationships between rules. Rules can jointly apply to one problem and refer to each other. All these factors can be calculated numerically to measure the degree of 'complexity' with respect to the addressees of these rules.

10. The use of quantitative analysis methods indeed offers particularly interesting perspectives for making legal complexity objectively measurable. Yet the question arises whether numerical results can fully encompass a phenomenon such as legal complexity, and whether qualitative and legal-

Martin Katz (eds.), *Complexity Theory and the Law* (Routledge 2018) 296 p; J J.B. Ruhl, Daniel Martin Katz, 'Measuring, Monitoring, and Managing Legal Complexity' [2015] Iowa Law Review, 191–244; Ryan Whalen, 'Judicial Gobbledygook: The Readability of Supreme Court Writing' [2015] The Yale Law Journal, 200–11; Bernard Waltl and Florian Matthes, 'Towards Measures of Complexity: Applying Structural and Linguistic Metrics to German Laws' in Rinke Hoekstra (ed.) *Jurix 2014: The Twenty-Seventh Annual Conference* in *Frontiers in Artificial Intelligence and Applications* (IOS Press 2014) 153–62; Daniel Martin Katz and Michael James Bommarito, 'Measuring the Complexity of the Law: the United States Code' [2014] Artificial Intelligence and Law, 337–74.

[43]Pierpaolo Vivo, Daniel Martin Katz and J.B. Ruhl, 'A Complexity Science Approach to Law and Governance' [2024] Philosophical Transactions of the Royal Society A, 1–7; Jamie Murray, Thomas Webb and Steven Wheatley, 'Encountering Law's Complexity' in Jamie Murray, Thomas Webb and Steven Wheatley (eds.), *Complexity Theory and Law. Mapping an Emergent Jurisprudence* (Routledge 2019), 3–25.

[44]Tim van den Belt, Henry Prakken, 'Measuring the Complexity of Dutch Legislation" in Enrico Francesconi, Georg Borges and Christoph Sorge, *Legal Knowledge and Information Systems* in *Frontiers in Artificial Intelligence and Applications* (IOS Press 2022) 249; Juan de Lucio, Juan S. Mora-Sanguinetti, 'Drafting "better regulation": The economic cost of regulatory complexity' [2022] Journal of Policy Modelling, 165–6; Diego Vaes and Samantha Bielen, 'Een empirische analyse van de complexiteit van Vlaamse decreten' [2022] Tijdschrift Voor Wetgeving, 201–2; Daniel Martin Katz and Michael James Bommarito, 'Measuring the Complexity of the Law: the United States Code' [2014] Artificial Intelligence and Law, 346. For works relating specifically to the hierarchical and linguistic dimensions see e.g. Yanik-Pascal Förster, Alessia Annibale, Luca Gamberi, Evan Tzanis, Pierpaolo Vivo, 'Information retrieval and structural complexity of legal trees' [2022] *Journal of Physics: Complexity*, 1–28; Evan Tzanis, Pierpaolo Vivo, Yanik-Pascal Förster, Luca Gamberi, Alessia Annibale, 'Graphie: A network-based visual interface for the UK's primary legislation' [2023] F1000 Research, 29p; Roland Friedrich, 'Complexity and Entropy in Legal Language' [2021] Frontiers in Physics, 1–11.

doctrinal methods lose their relevance as a consequence. We argue that they do not. For although lawyers are traditionally less familiar with quantitative methods, they might, for instance, argue that long, complexly formulated regulations essentially add little or no complexity to a legal system if, for instance, they can be easily circumvented, constitute mere default rules which can be contracted out of, or are addressed only to a limited number of (well-informed) addressees who might be easily able to internalise these regulations and they therefore do not bother most of the population.[45]

Upon closer reflection, neither approach can therefore be able to provide a comprehensive understanding of the phenomenon of legal complexity on its own. This is due to the fact that both approaches are restricted by their own methodological working methods. In the following section therefore, we will build upon and move beyond the state-of-the-art and develop a novel and integrated conceptual thinking framework on legal complexity and legal simplicity.

2.2. Formulating an conceptual thinking framework on legal complexity

11. Up to this point, we have mainly discussed the ways in which legal complexity is already being studied in the literature. By building upon the existing approaches and the existing state-of-the-art, we will develop a novel and comprehensive conceptual thinking framework on legal complexity and legal simplicity by recasting and integrating existing approaches while adding our own contributions. which will allow us to capture these phenomena in a more complete manner. This framework will allow the phenomenon of legal complexity to be approached on the basis of both legal-doctrinal (as we will do in the remainder of this paper), qualitative (e.g. through interviews in order to gauge perceptions of complexity by individual or groups of stakeholders) or quantitative methodologies (e.g. through network analyses), rather than being restricted by any single methodological approach. This conceptual framework will then allow us to reflect meaningfully on the question of the importance and desirability of regulatory simplification as a normative ideal, for example in company law, and how it can be approached.

We take as our starting point that a more comprehensive conceptual framework concerning legal complexity is best approached at two levels. On the one hand at a 'structural level' or 'systemic level' and on the other hand at a 'content level' or 'rule level'.[46] Within each level, we then

[45] *Cf.* Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 26.

[46] For a similar approach, see also: Danièle Bourcier and Pierre Mazzega, 'Towards Measures of Complexity in Legal Systems' [2007] The Eleventh International Conference on Artificial Intelligence and Law. Proceedings of the Conference, 212; Diego Vaes and Samantha Bielen, 'Een empirische analyse van de complexiteit van Vlaamse decreten' [2022] Tijdschrift Voor Wetgeving, 210; Felix Desmyttere, *Fiscale nalevingskosten – Het eigendomsrecht en de vrijheid van ondernemerschap* (Wolters Kluwer 2023) 77–82.

distinguish a number of indicators that tell something about the degree of regulatory complexity as determinable within the relevant level.

2.2.1. Complexity at the systemic level

12. The 'structural level' or 'systemic level' refers to (objective) law as a whole. This approach thus adopts a holistic perspective. To avoid confusion with the 'structural approach' as described above (*supra,* para. 9), we will further refer to the system level in this context. In order to estimate the complexity of law at the system level, we argue that four indicators should be taken into account. These indicators are (i) the number of applicable norms within the system, (ii) the number of competent policy levels that can issue relevant norms, (iii) the durability or longevity of norms and (iv) the degree of internal consistency of legal norms.

13. (i) The number of applicable norms within a legal system has an impact on legal complexity because a large number of norms can make it more difficult to correctly identify the applicable legal rule(s). A larger number of legal rules also increases the likelihood of multiple legal rules applying to a given situation and/or of legal rules coming into conflict with each other.

14. (ii) The number of relevant policy levels also has an impact on legal complexity, as a larger number of competent policy levels may imply that more competence-sharing rules or rules dividing competences will (may) apply, spurring a need to identify which policy level(s) are competent to issue rules for a well-defined domain. Furthermore, relevant legal rules will more often have to be sought in different legislative instruments originating from different policy levels. In the Belgian legal order, one finds rules issued by the federal government, by regional and community governments, by provincial, supra-municipal and municipal authorities, as well as by agglomerations and federations of municipalities. Moreover, the (direct application) of norms from various treaties and secondary European law must be taken into account. Moreover, different governmental levels (may)have their own courts that apply and interpret these standards.

15. (iii) The 'durability' or 'lifespan' of rules is equally relevant in assessing the level of legal complexity within the legal system. In the existing literature, steps to measure the growth (in size) of legal systems as viewed through the lens of specific document types, have already been taken.[47] Our concern here however lies with lies not with the growth of legal systems per se, but rather with the durability of the norms which are part of it. The more regularly all kinds of existing norms are amended, modified or replaced, the more complex it will become to identify the (temporally) applicable norm that

[47] Corinna Coupette, Janis Beckedorf, Dirk Hartung, Michael Bommarito and Daniel Martin Katz, 'Measuring Law Over Time: A Network Analytical Framework with an Application to Statutes and Regulations in the United States and Germany' [2021] Frontiers in Physics, 1–23.

applies to a particular (part of a) case. Rules of law can be directly modified by a subsequent rule of law, but also indirectly. An indirect modification occurs when a subsequent norm issued by competent authorities at the same regulatory level conflicts with an earlier norm within the same regulatory level without the former being explicitly modified or abolished. Regularly changing rules also increase the likelihood of temporal conflicts between rules.

16. (iv) Finally, the degree of internal consistency of the law relates to all three previous indicators. In an ideal world, regulators take into account the fact that the norms they issue should fit within a given legal system, so that the norms are aligned and contradictions and ambiguities within a regulatory system are avoided as much as possible. However, this is not always the case. A legal system therefore needs certain 'meta-rules' that can settle conflicts that arise when legal rules between certain levels of jurisdiction, within a certain level of jurisdiction or temporally conflict. The greater the number of norms, the more relevant policy levels and the less durable the rules, the more that use will have to be made of such rules in order to resolve conflicts. Even though they are not often mentioned in the scholarship on legal complexity, these 'meta-rules' are familiar to those familiar with the law in the form of the *lex specialis* rule, the *lex posterior rule* and the hierarchy of norms/*lex superior rule*. In other words, the greater the extent to which the three previous phenomena are present within a system-level legal system, the greater the likelihood of all kinds of conflicts, and of additional complexity within the legal system which may need to be settled by having recourse to these meta-rules.

2.2.2. Complexity at the rule level

17. The 'rule level' or 'content level' refers to (the content of) the legal rules that are part of a given legal system, and more specifically to their comprehensibility and predictability for the addressees of the rule and the authorities that ensure the application of the rules. In order to estimate the complexity of the law at the rule level, four indicators can again be taken into account. These indicators are (i) the density of the rule, (ii) the accessibility of the rule, (iii) the connectedness of the rule and (iv) the determinacy of the rule.

18. (i) The density of a legal rule refers to its comprehensive and encompassing nature. Typical 'dense' legal rules are legal rules that are lengthy in substance and/or that regulate many individual hypotheses each separately and thus often require the reader to add further structure. A possible example of a 'dense' rule in Belgian corporate law is Article 7:97 of the CCA on related party transactions by listed companies, which provides a long and detailed account of instructions and exceptions spanning 8 paragraphs and almost 1500 words.

19. (ii) The accessibility of a legal rule refers to the (linguistic) comprehensibility of that rule and the level of technical knowledge and legal or

other special expertise required to understand the rule.[48] The more complex a rule is linguistically formulated and/or the higher the level of technical knowledge or expertise required to understand the rule, the less accessible the rule to the general addressee. A possible example of a Belgian company law rule that scores high on this criterion is Article 2:8 of the CCA, on the documents that must be filed with the Commercial Courts for inclusion in the company file, which is held by the Commercial Courts. This legal provision contains a particularly large amount of legal-technical jargon and therefore presupposes a lot of company law knowledge to be understood. A much more comprehensive example of (inter alia) technical regulation is the European Sustainability Reporting Directive[49] and the sustainability reporting standards[50] developed in this context.

20. (iii) The connectedness of a rule of law refers to the extent to which a rule can stand alone or must be read jointly with other legal provisions in order to get the full picture of how the law regulates a particular situation or case. Rules may refer explicitly to other rules, whether or not issued by the same governmental level. For example, a law may refer to acts by the executive branch of government which implement or execute certain legal provisions enshrined in the text of the legislative instrument. This obviously requires more effort from readers to take note of these additional rules. It becomes even more complex when a rule does not explicitly refer to another rule of law, even though they must necessarily be read together in order to constitute a correct application of the law to a given situation.

An example of rule which scores high on this criterion is Article 2:57 CCA, with regard to the monetary capping of corporate directors' liability. Article 2:57 CCA expressly refers to Articles 2:56 of the CCA, 2:51 CCA, Article XX.227 Code of Economic Law, Article III.85 Code of Economic Law, Article 5:138, 1° to 3° CCA, Article 6:111, 1° to 3° CCA, Article 7:205, 1° to 3° WVV, Article 442quater of the Income Tax Code, Article 458 of the Income Tax Code, Article 73sexies VAT Code, 93undeciesC VAT Code, Articles 51 and 93 of the Collection Code and Article XX.226 Code of Economic Law. In addition, Article 2:57 CCA refers to the publications in the Belgian Official Gazette regarding the applicable index, which should therefore be consulted elsewhere.

[48] On this matter, see generally: Vince Liégois, '*Difficilis lex, sed lex?* Een beleidsgerichte visie op klare wetgevingstaal' [2024] Tijdschrift Voor Wetgeving, 2–18. See also, from a quantitative perspective: Roland Friedrich, 'Complexity and Entropy in Legal Language' [2021] Frontiers in Physics, 1–11.

[49] Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, with regard to sustainability reporting by companies, *OJ.* 16 December 2022.

[50] Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards standards for sustainability reporting, *OJ.* 22 December 2023.

21. (iv) The determinacy of legal rule refers to the substantive precision of a legal rule. Indeterminate rules are rules that use vague terminology and whose application to a concrete situation is more difficult to estimate, or which require additional research and/or advice on how competent authorities have applied it to concrete situations in order to obtain a realistic assessment of how the rule might be applied to another concrete situation. Indeterminate rules are characterised by a certain degree of uncertainty as to their application to concrete situations. A typical example of an indeterminate rule in company law is the criterion of the normally prudent and diligent director in Article 2:56 CCA. This criterion is closely related to the obligation contained in Article 2:51 CCA, which obliges directors of legal persons to 'properly perform their tasks', without providing further guidance of what this should mean in any given situation. These are so-called 'open rules' or 'standards' (*infra*, para. 23).

2.2.3. A trade-off *theory of legal complexity*

22. Interestingly, the conceptual thinking framework on legal complexity, reaffirms that the concept of legal complexity should rather be regarded as the result of a dynamic interplay between the individual indicators identified above, rather than as the result of the extent to which one particular individual indicator is present or lacking. The concept of legal complexity thus is a dynamic and complex notion in itself. Moreover, due to the fact that legal complexity and legal simplicity should be regarded as two ends of a spectrum and thus as deriving their meaning from each other, it is equally challenging to provide a simple account of legal simplicity. Neither notion is straightforward.

For example, a hypothetical legal system characterised by a large number of norms need not be complex if those norms are very clear, accessible, stable and logical. Conversely, a hypothetical legal system characterised by a relatively low number of legal norms may be perceived as very complex if those norms are constantly changing, are very 'dense' or just because they foster uncertainty because the norms are predominantly very open and indeterminate and thus continuously require all kinds of additional clarification – such as legal applications in similar or analogous cases or specialist legal opinions – to be applied to an individual case.[51] Legal complexity is most often a result of the interplay between several individual indicators at

[51] In this context, one can think of JEREMY BENTHAM's criticism of the systematics of the *common law*. In contrast to *civil law systems*, the *common law* does not reason deductively from abstract legal rules with general effect that are then given a concrete application to cases, but the exact opposite happens. Many legal rules from *common law systems* just originate in court decisions following concrete disputes and are then generalised on the basis of a precedent. In this sense, *common law* has a strong *a posteriori character*. In *civil law systems*, one also finds such reasoning methods in the application of open norms. BENTHAM strongly criticised this *a posteriori* character of the law which he likened to *'dog law'*: *'When your dog does anything you want to break him of, you wait till he does it*

system and rule levels, rather than the mere consequence of the extent to which one indicator is present in isolation to a greater or lesser extent. Legal complexity can thus manifest itself in many different ways.

23. Therefore, it logically follows from the above that *trade-offs* are often inherent in attempts to significantly reduce legal complexity. Indeed, the interrelationships between these indicators, both at the level of system complexity and at the level of rule complexity, can be highly dynamic. Consider, for example, the choice of whether to regulate a particular company law matter through an open standard or through a closed standard ('*rules vs. standards*').[52] Thus, an attempt to replace an open norm with a closed norm may just increase the complexity of a system if the resulting rule is very dense and technical. For example, Article 2:51 CCA provides that 'each director is obliged towards the legal person to properly perform the task assigned to him'. Well, if this section of the law were to be replaced by a detailed norm setting out for every conceivable hypothesis what a company director is expected to do in order to properly fulfil their duty – a seemingly impossible task – perhaps no one would argue that Belgian company law has become 'simpler'. Such *trade-offs* can also occur at the systemic level. The creation of additional levels of policy may at first sight lead to an increase in complexity, but it equally allows such policy levels to issue rules at the 'right level', taking into account local needs and circumstances. Finally, the system level and the rule level can also interact. For instance, an open or indefinite standard may prove to be more durable than certain specific and technical rules that need to be adapted more quickly to changing circumstances, but in this way it may become more difficult to assess the current state of the law, especially in legal systems in which the courts are not bound by legal precedent.

3 Applying the conceptual framework: (why) should we strive for simplicity?

24. The above framework constitutes an analytical structure that allows for providing substantive meaning to the concepts of legal complexity and legal simplicity and allows making a determination of where (a set of) legal rules can be situated on the spectrum of legal complexity. Moreover, it shows that notions of legal complexity and legal simplicity are both

and then beat him for it', see: William Twining (ed.), *Bentham. Selected Writings of John Dinwiddy* (Stanford University Press 2004) 54.

[52] On this, see among others: Reinier Kraakman *et. al*, *The Anatomy of Corporate Law* (OUP 2017) 32–33; Barbara Luppi and Francesco Parisi, 'Rules versus Standards' in Francesco Parisi (ed.), *Production of Legal Rules* (Edward Elgar 2011) 43–53; Vincy Fon and Francesco Parisi, 'On the Optimal Specificity of Legal Rules' [2007] Journal of Institutional Economics, 147–64; Louis Kaplow, 'Rules Versus Standards: An Economic Analysis' [1992] Duke Law Journal, 557–629; Isaac Ehrlich and Richard A. Posner, 'An Economic Analysis of Legal Rulemaking' [1974] Journal of Legal Studies, 257–86.

complex and dynamic in themselves and that the quest for achieving legal simplicity can present rulemakers with several trade-offs.

Importantly however, this conceptual framework does not tell us anything about the *desirability* or *normative value* of legal simplicity as such. Merely being able to determine whether legal systems or legal rules should be regarded as more complex or more simple does not imply that there should be a bias in favour of simple rules. Therefore, more is needed to provide an answer to the questions outlined above. In other words, it the quest for legal simplicity even worth embarking on?

In the remainder of this paper, we will develop a nuanced rationale on the importance on legal simplicity, as understood within the above framework, on the basis of a legal-doctrinal and economic analysis of law approach.

3.1. Legal simplicity should never be the (only) goal or aspiration of legislation

25. We start our analysis on the basis of the assumption that reducing legal complexity or striving for legal simplicity should not be the main – let alone the only – aim or purpose in designing and issuing legislation or regulations. In essence, the question of the 'purpose' of law is a legal philosophical one, to which answers may differ. Here, it is often stated that law is a system of rules whose purpose is to enable human coexistence and to order society[53] and to create the possibility for individuals to realise their own plans within a legal framework that organises relations between individuals.[54] Yet such a definition is rarely considered sufficient. Ideally, rules are also supposed to approach a particular conception of 'justice'[55] or contribute to human or social welfare.[56]

It becomes somewhat more concrete when considering what the objective of a particular branch of law, or part of it, is. For instance, it could be argued that the objective of company law is to provide companies with an appropriate and efficient working tool to develop, structure and organise business activities.[57] Here too, certain 'fairness considerations' are underlyingly

[53] See, e.g., Henri de Page, *Traité élémentaire de droit civil belge* (Bruylant 1962) 3; Patricia Popelier, *De wet juridisch bekeken* (die Keure 2004) 19, who mentions that this is the 'main function' of legislation.

[54] Patricia Popelier, *De wet juridisch bekeken* (die Keure 2004) 31.

[55] Lon Fuller, *The Morality of Law* (Yale University Press 1969) 157.

[56] See the famous quote by former counsel CARDOZO in the US *Supreme Court*: '*The final cause of the law is the welfare of society*'. See: Kermit L. Hall, 'The Final Cause of the Law' [1997] Civil Rights Journal, 55. See also: OECD, *OECD Regulatory Policy Outlook 2018*, Paris, OECD Publishing, 2018: '*Laws and regulations are a critical tool for policy making that supports well-being and economic performance*'. available at: https://www.oecd-ilibrary.org/sites/9789264303072-5-en/index.html?itemId=/content/component/9789264303072-5-en

[57] Explanatory Memorandum to Bill introducing the Companies and Associations Code and containing various provisions, *Parl.St.* Kamer, No 54-3119/001, 6. See also: Herman Braeckmans, Guy Horsmans, Jean-Marie Nelissen Grade, 'Oogmerk en perspectieven' in Herman Braeckmans *et. al*, *La modernisation du droit des sociétés / De modernisering van het vennootschapsrecht* (Larcier 2014) 11.

present, such as the search for the right balance between flexibility and adequate protection of the interests of third parties[58] and the search for implementing sustainability considerations.

26. That simplicity can never count as the (only) objective of regulation can be made immediately clear by means of a *reductio ad absurdum*. A hypothetical rule which states that all shareholders of a company that is declared bankrupt may from then on never again establish a company or hold, directly or indirectly, shares in a company may not immediately look like a complex rule, but that does not make it a desirable rule. The same applies to an analogous hypothetical rule that states that directors of a company that goes bankrupt are subject to a perpetual management ban. Ditto with a hypothetical legal rule that would, for example, reintroduce the minimum capital needed to constitute a company and set it at EUR 1 billion. Without even delving into the question whether such 'simple' rules are in conformity with higher norms, they would have (strongly) undesirable social consequences and can be expected to have an overall welfare-destroying effect.

27. Indeed, the question arises whether striving for simple regulation should be an end in itself at all. Avoiding unnecessary legal complexity in all its facets can also be seen as part of qualitative regulation. Viewed in this sense, striving for simplicity constitutes a means to achieve more qualitative regulation rather than a goal as such. Although 'simplicity' is not usually formulated as a criterion for qualitative regulation, its importance can be implicitly appreciated in some accepted criteria for proper regulation, such as requirements for consistency,[59] clarity, accessibility and legal certainty[60] and the necessity[61] of regulation.

A commitment to simplicity in law should therefore always serve the other objectives and considerations underlying a particular legal rule or set of legal rules. Here too, in other words, a *trade-off* manifests itself. This is discussed in more detail in the following paragraphs.

3.2. Why even care? On regulatory costs

28. The previous paragraphs explained why legal simplicity can never be the only, or even the main, aspiration when drafting regulations, but why should we have to worry about it at all? One possible reason could be that can

[58] Explanatory Memorandum to Bill introducing the Companies and Associations Code and containing various provisions, *Parl.St.* Kamer, No 54-3119/001, 12.

[59] Patricia Popelier, *De wet juridisch bekeken* (die Keure 2004) 50; Luc J. Wintgens, 'Coherence of the Law' [1993] Archives for Philosophy of Law and Social Philosophy, 483–519.

[60] See e.g. ECHR 26 April 1979, *Sunday Times*, §§49-50; ECHR 7 July 2011, Serkov v Ukraine, §§38–40; Patricia Popelier, *De wet juridisch bekeken* (die Keure 2004) 50–52; Patricia Popelier, *Rechtszekerheid als beginsel voor behoorlijke regelgeving* (Intersentia 1998) 529 *et seq*.

[61] Marnix Van Damme, Jean Dujardin, Bruno Seutin and Henri Coremans, *Beginselen van wetgevingstechniek en behoorlijke regelgeving* (die Keure 2016) 121–3.

question the ethics of creating a situation where the law becomes so complex that it becomes incomprehensible to most people.[62] It could be countered that it is especially important that those to whom the rule is addressed should be able to understand it. Certain technical forms of regulation that apply only to certain market participants, such as, for example, specific regulations aimed at the energy sector, may not necessarily be easily understood by everyone, nor does that seem to be a requirement.

However, another important reason to not lose sight of the possible value of legal simplicity is that regulation always involves all kinds of (transaction) costs.[63] In general, we can talk about 'regulatory costs'. These regulatory costs can be broken down as follows.

29. First, governments and regulators face a variety of regulatory costs associated with drafting and issuing laws and regulations, such as costs related to support the creation of support or social consensus, drafting costs, information costs and planning costs.[64] Regulators can therefore choose, within certain limits, the extent to which they devote time and resources to drafting regulations.

Second, governments face a variety of regulatory costs in the implementation phase, such as start-up costs, operational costs and enforcement costs.[65] The importance of these should not be underestimated, as a sufficient (qualitative) level of enforcement of legal rules is usually crucial for their degree of effectiveness. Implementation costs also include costs associated with the operation of the judiciary.

Both in the start-up phase and during the implementation phase, moreover, there are opportunity costs: attention and resources that go into drafting and/or implementing rule A may not always go hand in hand with drafting and/or implementing rule B at the same time.

30. In addition, those subject to the laws and regulations also face a variety of regulatory costs.[66] This is again a composite of different costs associated

[62]For Fuller, moreover, the criterion of clarity concerns one of the most essential criteria for the 'internal morality' of the law. See: Lon Fuller, *The Morality of Law* (Yale University Press 1969) 63.

[63]For some taxonomies of rule, see: Wim Marneffe and Lode Vereeck, 'The meaning of regulatory costs' [2011] European Journal of Law and Economics, 351; OECD, *OECD Regulatory Compliance Cost Assessment Guidance*, Paris, OECD Publishing, 2014, available at: https://www.oecd-ilibrary.org/oecd-regulatory-compliance-cost-assessment-guidance_5jz78m5mpm0t.pdf?itemId=%2Fcontent%2Fpublication%2F9789264209657-en&mimeType=pdf

[64]Wim Marneffe and Lode Vereeck, 'The meaning of regulatory costs' [2011] European Journal of Law and Economics, 341–56; Isaac Ehrlich and Richard A. Posner, 'An Economic Analysis of Legal Rulemaking' [1974] Journal of Legal Studies, 267–8.

[65]OECD, *OECD Regulatory Compliance Cost Assessment Guidance*, Paris, OECD Publishing, 2014, 13; Wim Marneffe and Lode Vereeck, 'The meaning of regulatory costs' [2011] European Journal of Law and Economics, 346–8; Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 31.

[66]OECD, *OECD Regulatory Compliance Cost Assessment Guidance*, Paris, OECD Publishing, 2014, 13–14; Wim Marneffe and Lode Vereeck, 'The meaning of regulatory costs' [2011] European Journal of Law and Economics, 348–51; Felix Desmyttere, *Fiscale nalevingskosten – Het eigendomsrecht en de vrijheid van ondernemerschap* (Wolters Kluwer 2023) 25–28.

with the preparatory phase of regulation as with the implementation phase. As far as the preparatory phase is concerned, one can think of lobbying costs and the costs of informing oneself about upcoming regulations and starting to prepare for their implementation.

As far as the implementation phase is concerned, a variety of 'compliance costs' borne by those subject to regulation[67] can be considered, such as administrative burdens, start-up costs, opportunity costs, indirect costs, etc. These costs include *inter alia* the acquisition of equipment and the development of *know-how* in order to be compliant, as well as the opportunity cost arising from the fact that resources spent on *compliance* cannot be used for other purposes, and the indirect costs related to changes in market prices and supplier and consumer behaviour.

Moreover, there are again trade-offs between regulatory costs borne by the government and regulatory costs borne by those subject to the law or regulations.[68] An additional reporting requirement may reduce the implementation costs for the government but saddle those subject to the law with a significantly increase in compliance costs, or vice versa.

31. The degree of complexity of a legal system is often associated in the literature with high regulatory costs, including high enforcement costs for the government as well as high compliance costs for legal subjects.[69] Legal complexity is also specifically associated with a form of regulatory cost not yet mentioned, the costs related to erroneous decisions.[70] The more complex the legal subject matter, the higher the likelihood of erroneous and/or contradictory applications by both legal subjects and enforcers of the rules, which are possibly to the detriment of the objectives underlying the rules, and which may lead to the application of sanctions or other unforeseen and/or unintended consequences. It can be added that legal complexity can lead to opportunistic behaviour by those who are still able to understand the rules at the expense of those who are no longer able to, or do not have the means to seek expert advice.

[67] Defined by the OECD as: "*costs that are incurred by businesses and other parties at whom regulation may be targeted in undertaking actions necessary to comply with the regulatory requirements* […]", see: OECD, *OECD Regulatory Compliance Cost Assessment Guidance*, Paris, OECD Publishing, 2014, 12.

[68] OECD, *OECD Regulatory Compliance Cost Assessment Guidance*, Paris, OECD Publishing, 2014, 39.

[69] See, among others, J Juan de Lucio, Juan S. Mora-Sanguinetti, 'Drafting 'better regulation': The economic cost of regulatory complexity' [2022] Journal of Policy Modelling, 180; Diego Vaes and Samantha Bielen, 'Een empirische analyse van de complexiteit van Vlaamse decreten' [2022] *Tijdschrift Voor Wetgeving*, 211, 208–9; Juan S. Mora-Sanguinetti and Ricardo Pérez-Valls, 'How does regulatory complexity affect business demography? Evidence from Spain' [2021] European Journal of Law and Economics, 205; Peter Schuck, 'Legal Complexity: Some Causes, Consequences, and Curses' [1992] Duke Law Journal, 6.

[70] Shruti Rajagopalan and Mario Rizzo, 'Introduction to the special issue on the importance of simple rules' [2021] European Journal of Law and Economics, 203; Christopher Mufarrige and Todd J. Zywicki, 'Simple Rules for a Complex Regulatory World: the Case of Financial Regulation' [2021] European Journal of Law and Economics, 285; Todd J. Zywicki, 'Epstein and Polanyi on Simple Rules, Complex Systems and Decentralisation' [1998] Constitutional Political Economy, 143; Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 31.

As a rule of thumb, therefore, the more complex a legal system is, the greater the *likelihood* that regulatory costs will also be high.[71]

The above does not mean that complexity would be the *sole* cause of compliance costs. Hence, merely measuring a single indicator of complexity, such as a quantity of standards, to give an indication of 'regulatory burden' is not a particularly useful exercise.[72] Anyone who has ever had to deal with excessive bureaucracy knows that administration does not have to be endlessly complex to absorb a lot of time and other resources.

32. The costs of regulation are offset by its benefits. The main benefit of regulation is that it provides behavioural incentives ('*incentives*') that contribute to social order, socially desirable behaviour, human welfare and the desired (re)distribution of welfare. Consequently, there is quite a lot of literature examining how legal rules can be 'optimised' from a cost-benefit perspective.[73] The trade-offs a regulator may make when deciding whether to regulate a certain matter via a (detailed) closed norm or via an open norm are also often examined by the literature from this perspective.[74]

Moreover, it is wrong to think that the benefits of regulation can always be expressed (easily) in quantitative terms. This leads to the question of why a cost-benefit perspective should be relevant at all. Justice may be (much) more important than cost optimisation.[75] Why not simply strive for substantively optimal regulation anyway and consider any associated forms of legal complexity a necessary evil?

[71] Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 31. In the field of taxation, the relationship between tax complexity and regulatory costs (incl. compliance costs for taxayers) is also regularly addressed, see e.g: EUROPEAN PARLIAMENT, *Overview on the Tax Compliance Costs Faced by European Enterprises with a Focus on SMEs*, Brussels, DG for Internal Policies, 2023, 8. For a review of relevant literature, see: Felix Desmyttere, *Fiscale nalevingskosten – Het eigendomsrecht en de vrijheid van ondernemerschap* (Wolters Kluwer 2023) 76–77.

[72] In a similar vein, see Jeroen Van Nieuwenhove, 'De regeldruk becijferd? Een eerste verkenning en een aanzet tot methodologie' [2021] Tijdschrift Voor Wetgeving, 19–27.

[73] Shruti Rajagopalan and Mario Rizzo, 'Introduction to the special issue on the importance of simple rules' [2021] European Journal of Law and Economics, 203. See exemplarily: Louis Kaplow, 'General Characteristics of Legal Rules' in Francesco Parisi (ed.), *Production of Legal Rules* (Edward Elgar 2011) 18–42; Vincy Fon and Francesco Parisi, 'On the Optimal Specificity of Legal Rules' [2007] Journal of Institutional Economics, 147–64; Colin S. Diver, 'The Optimal Precision of Administrative Rules' [1983] Yale Law Journal, 65–109; Isaac Ehrlich and Richard A. Posner, 'An Economic Analysis of Legal Rulemaking' [1974] Journal of Legal Studies, 257–86; Louis Kaplow, 'A Model of Optimal Complexity of Legal Rules' [1995] Journal of Law, Economics & Organisation, 150–63.

[74] Louis Kaplow, 'Rules Versus Standards: An Economic Analysis' [1992] Duke Law Journal, 557–629; Isaac Ehrlich and Richard A. Posner, 'An Economic Analysis of Legal Rulemaking' [1974] Journal of Legal Studies, 257-286; Barbara Luppi and Francesco Parisi, 'Rules versus Standards' in Francesco Parisi (ed.), *Production of Legal Rules* (Edward Elgar 2011) 43–52.

[75] On this, see Klaus Mathis and Deborah Shannon, *Efficiency Instead of Justice? Searching for the Philosophical Foundations of the Economic Analysis of Law* (Springer 2009) 220 p.

3.3. Perfect legislation does not exist

33. Like a contract, legislation is never perfect. The underlying causes are essentially very similar.[76] Legislators and regulators, like parties to a contract, can never foresee in advance all possible situations to which the rules they have agreed or promulgated will be applied. After all, circumstances can change, and wholly unexpected or unforeseen situations can occur. Rules also sometimes lend themselves to opportunistic use, or even abuse by those to whom they apply. Even the best rules usually do not withstand bad faith. Also, for all their good intentions, rules can result in wrong incentives on the part of those subjected to them, implying they do not lead to their desired outcome, or even any socially desirable outcome at all. After all, intentions are not the same as results.

34. In practice, this implies that the application of legal rules, however well intentioned, can always lead to consequences that are felt to be unjust, unintentional, and/or socially undesirable.

Moreover, experience shows that when society is confronted with an undesirable phenomenon, a crisis, or problem, the traditional societal call for more regulation often soon follows, by e.g. expanding the scope of certain regulation, refining existing regulation and the like.[77] Moreover, regulatory bodies also have little incentive to limit an increase in regulatory complexity when issuing rules.[78] By way of example, if we look only at some of the 'neighbouring plots' of company law, one can think of the expansion in terms of financial regulation since the 2008 financial crisis,[79] the expanding

[76]Barbara Luppi and Francesco Parisi, 'Rules versus Standards' in Francesco Parisi (ed.), *Production of Legal Rules* (Edward Elgar 2011) 43; Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 37–40; Ejan Mackaay, *Law and Economics for Civil Law Systems* (Edward Elgar 2013) 1, 427; Isaac Ehrlich and Richard A. Posner, 'An Economic Analysis of Legal Rulemaking' [1974] Journal of Legal Studies, 268.

[77]Van Nieuwenhove labels this phenomenon as a 'rulemaking paradox', whereby there are, on the one hand, complaints regarding the increases in regulatory pressure, while society often calls for increases in regulation on the other hand. See: Jeroen Van Nieuwenhove, *Handboek Wetgeving. Theorie en praktijk van het wetgevingsbedrijf* (die Keure 2025), 43.

[78]Office of the Parliamentary Council (UK), "When Laws Become Too Complex. A Review into the Causes of Complex Legislation", London, March 2013, 29. Available at: https://assets.publishing.service.gov.uk/media/5a7a2ce9e5274a34770e4c80/GoodLaw_report_8April_AP.pdf

[79]Consider the many examples of financial regulation enacted in the aftermath of the 2008 financial crisis, such as the *Dodd-Frank Act* in the United States. It is estimated that this legislation increased banks' compliance costs by an average of about USD 50 billion. On this, see Christopher Mufarrige and Todd J. Zywicki, 'Simple Rules for a Complex Regulatory World: the Case of Financial Regulation' [2021] European Journal of Law and Economics, 286; Thomas L. Hogan and Scott Burns, 'Has Dodd-Frank affected Bank Expenses?' [2019] Journal of Regulatory Economics, 214; see also: Chester S. Spatt, 'Complexity of Regulation' [2012] Harvard Business Law Review Online, 1–9. For the EU, see: Prasanna Gai, Malcolm Kemp, Antonio Sánchez Serrano and Isabel Schnabel, *Regulatory complexity and the quest for robust regulation – Reports of the Advisory Scientific Committee*, European Systemic Risk Board, 2019, available at: https://www.esrb.europa.eu/pub/pdf/asc/esrb.asc190604_8_regulatorycomplexityquestrobustregulation~e63a7136c7.en.pdf See also the following research report of the European Association of Co-Operative Banks, published on 10 February 2025 on the (need for) simplification of European financial law: *Less is More. Proposals to simplify and improve European rule-making in the financial services sector*, available at: https://www.eacb.coop/en/studies/eacb-

personal scope of anti-money laundering legislation[80] and the implementation of all kinds of rules seeking to curb tax avoidance.[81] By and large, these initiatives add to legal complexity more often than to any form of legal simplicity.

As far as company law is concerned, there has also been an increase in all kinds of regulations since the introduction of the old Company Law Code in 1999. The associated complexity, incidentally, was one of the reasons for pursuing a thorough simplification exercise with the new Code of Companies and Associations in 2019, because of '*the danger of our companies becoming snowed under by an avalanche of cluttered regulations*'.[82]

Despite the legislators' efforts at simplification, as indicated above (*supra*, para. 2), based on the cries for regulatory simplification, it continues to appear that the trend remains predominantly that of increasing legal complexity.

35. Moreover, to the extent that substantively optimal regulation should be highly comprehensive, complete and detailed, there is also a real risk of a correlative increase in legal complexity and hence higher regulatory costs. If the ideal picture of substantively optimal regulation is unattainable and the pursuit of it in practice often means that regulation only becomes more complex, it just becomes all the more important to ask ourselves whether an increase in complexity can also justify the marginal increase in terms of regulatory costs. Not asking ourselves that question may rather lead to the result that needless legal complexity just jeopardises the already

studies/less-is-more.html. Interestingly, one of the findings of this research report is that regulatory complexity can contribute to systemic risk in various ways. See also: Andreas Horsch and Jacob Kleinow, 'The Challenge of Regulatory Complexity' [2022] European Business Law Review, 421–41.

[80] Although such regulations were originally designed for banks and financial institutions, the scope of money laundering legislation has been systematically expanded. When comparing the scope of the Council Directive of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering with the Anti-Money Laundering Regulation on which the European Parliament and the Council will reach a political agreement in January 2024, it can be noted that the scope of European anti-money laundering regulation was extended to, among others auditors, accountants and tax advisers, notaries, insurance agencies, crypto platforms, lawyers and other independent legal professionals, real estate agents and other intermediaries active in the real estate sector, dealers in precious metals and gems, casinos and gambling offices, crowdfunding services, art dealers and entrepots, professional football clubs and players' agents in the football sector. See: EUROPEAN PARLIAMENT, 'Deal on a single rulebook against money laundering and terrorist financing', 18 January 2024, available at: https://www.europarl.europa.eu/news/en/press-room/20240115IPR16802/deal-on-a-single-rulebook-against-money-laundering-and-terrorist-financing

[81] These include the ATAD directives to combat tax avoidance (Directive (EU) 2016/1164 of 12 July 2016 laying down rules to combat tax evasion practices that directly affect the functioning of the internal market, and Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) as regards hybrid mismatches with third countries), the so-called *Pillar* 2 Directive (Directive (EU) 2022/2523 guaranteeing a global minimum level of taxation for groups of multinational companies and large domestic groups in the Union) and successive adaptations to the Administrative Assistance Directive (meanwhile we are already at DAC 8, see Directive 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation).

[82] Herman Braeckmans, Guy Horsmans, Jean-Marie Nelissen Grade, 'Oogmerk en perspectieven' in Herman Braeckmans *et. al*, *La modernisation du droit des sociétés / De modernisering van het vennootschapsrecht* (Larcier 2014) 8.

cited goals of social order, welfare and its equitable distribution. In other words, '*le mieux est l'ennemi du bien*'.

36. In conclusion, again an important *trade-off* thus emerges.[83] As a starting point in the search for 'good regulation', the behavioural incentive effects of legal rules need to be weighed against the degree of regulatory cost that these rules result in. In other words, which rules generate the best possible socially desirable *incentives* at the lowest possible regulatory cost? By departing from this perspective, an assessment can be made whether any improvement that can be made to a rule in terms of *incentives* is balanced against any increase in the regulatory cost. This also implies that if the behavioural drivers of two hypothetical rules were the same, it is best to choose the rule that represents the lower regulatory cost. While theoretically straightforward, this can constitute a complicated exercise in practice, because of the difficulties in gauging the value or effectiveness of socially desirable incentives versus regulatory costs, both of which can shift overtime. Furthermore, the circle of beneficiaries of the desirable societal incentives of regulations might not fully coincide, or even fundamentally differ, from those bearing the regulatory costs. The contested 'simplification proposals' concerning the EU's sustainability reporting and due diligence regulations being a case on point. Due to the complex nature and the numerous trade-offs which the quest for legal simplification might ensue, regulators may be tempted to implement 'simplification' in its most crude form, i.e. through effective 'deregulation', which can be understood as simply removing (parts of) regulations or restricting their scope, rather than achieving *actual* simplification through a thorough refinement of the rules. In these cases however, the incentive effects of the regulation are most often removed altogether as well.

3.4. Not all rules are the same: on default and mandatory rules

37. A final point to note here is that the nature of individual legal rules also plays a role, and in particular their qualification as mandatory rules (of public policy) or default rules. In this respect, certain authors take the view that, in principle, a default rule from which can be deviated can never be a complex rule, given the possibility of deviating from such a rule by means of a contractual agreement, for example.[84] For example, the Belgian CCA is also characterised by a policy choice of the legislator in favour of rules of default rules whenever possible.[85]

When talking about legal complexity, and the related concept of regulatory burdens, the first thing that may come to mind is all kinds of obligations

[83]Richard Epstein, *Simple Rules for A Complex World* (Harvard University Press 1995) 30–31.
[84]Ibid, 27.
[85]Explanatory Memorandum to Bill introducing the Companies and Associations Code and containing various provisions, *Parl.St.* Kamer, No 54-3119/001, 7–8.

imposed by mandatory rules and regulations. This is logical, as these are invariably rules that weigh on individual legal subjects in their relationship with the government and/or cannot be derogated from by agreement between legal subjects. In other words, the rules imposes its application on legal subjects bound by the rule.

However, the foregoing need not preclude that the degree of complexity is irrelevant for default rules. More so, even for default rules, it is important to keep in mind the potential value of simplicity.

38. The classic law and economics view on default rules is that the legislator or regulator should ideally aim to design rules that (most) parties would have agreed to contractually anyway if they were fully informed and if transaction costs were sufficiently low.[86]

More recent literature points out that default rules can have a 'sticky' character, which makes it difficult or impossible to deviate from them in practice.[87] It is precisely for this reason that such rules, according to some, harbour an important policy tool[88]: well-designed default rules allow policymakers to pursue a desired outcome without restricting the freedom of those subject to the law or regulation, even if the chosen default rule provided by the legislator does not reflect the desired outcome of a hypothetical bargaining process.

39. Although a legal subject can in principle choose to opt out of the application of a default rule, this will as a matter of principle only happen if the legal subject is willing to undertake the necessary effort to do so. Consequently, the literature argues that if a party wants to opt-out of the default rule, this will involve costs. These include, first of all, the immediate costs of opting out, such as the costs of negotiating an alternative arrangement with a possible counterparty, designing a new contractual arrangement and so on ('transaction costs of bargaining').[89] Other authors add that other types of 'information costs' should also be taken into account.[90] In order to make an (informed) decision on whether or not to opt out, one needs information on the default rule, relating to its content and possible

[86]Frank Easterbrook and Daniel Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1996) 15; Ian Ayres and Robert Gertner, 'Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules' [1989] The Yale Law Journal, 90.

[87]Omri Ben-Shahar and John E. Pottow, 'On the stickiness of default rules' [2006] Florida State University Law Review, 652; Oren Bar-Gill and Omri Ben-Shahar, 'Rethinking Nudge: An Information-Costs Theory of Default Rules' [2021] The University of Chicago Law Review, 533–4; Marieke Wyckaert and Jasper Van Eetvelde, 'De BV verlost van of verloren zonder de cocon van het kapitaal? Een verkenning van een gelaagd speelveld voor aandeelhouders en schuldeisers' in Sofie Cools (ed.), *Lessen na twee jaar WVV* (Biblo 2022) 227.

[88]Richard H. Thaler and Cass R. Sunstein, *Nudge. Improving Decisions About Health, Wealth and Happiness* (Yale University Press 2008) 6-8; Cass R. Sunstein, 'Deciding by Default' [2013] University of Pennsylvania Law Review, 5.

[89]Robert Cooter, 'The Cost of Coase' [1982] The Journal of Legal Studies, 17.

[90]Oren Bar-Gill and Omri Ben-Shahar, 'Rethinking Nudge: An Information-Costs Theory of Default Rules' [2021] The University of Chicago Law Review, 535–6.

applications, as well as information on the value of possible alternative arrangements.

When a default rule is very complex, the consequence may be that its comprehension implies more information costs. This may discourage one from correctly assessing the merits of the default rule and thus lead to an uninformed opt-out, which is not necessarily in that party's interest, *a fortiori* when the transaction costs of an opt-out are low. This problem can be particularly pressing where a default rule is intended to protect the interests of a particular, less sophisticated party, in cases where it is not designed as a mandatory rule.

Legal complexity can also be used as a policy tool in another way. For instance, the legislator may propose a default regime that is undesirable or so complex as to provide an incentive for contracting parties to reach a negotiated solution ('*penalty default*').[91] Although the concept of penalty default is not unanimously accepted by the doctrine,[92] the application of the (very complex) *Chapter 11* procedure in US restructuring law is cited as an example of a penalty default.[93] By reaching a negotiated settlement, the parties can avoid the application of this regime.

40. The conceptual thinking framework outlined above is thus not only particularly relevant for mandatory rules, but is thus also important when formulating default rules. We can therefore assume that a healthy amount of attention to legal simplicity also has a positive impact on the use of rules of default rules, as well as any objectives that might be pursued by the legislator.

4. Conclusion

41. The starting point of this contribution was the observation that the call for regulatory simplification seems to be stronger than ever, especially in the business world. Businesses and civil society organisations regularly complain about the complexity of the legal system and the regulatory burden because this phenomenon undermines the productivity and competitiveness of our economic system and imposes all kinds of costs on both companies and consumers. Belgian authorities as well as the European Commission claim to take this issue seriously and just as regularly present policy plans that provide for all kinds of regulatory and administrative simplification. In early 2025, the European Commission aims to take some first comprehensive

[91] Ian Ayres and Robert Gertner, 'Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules' [1989] The Yale Law Journal, 91.

[92] Eric Posner, 'There are no Penalty Default Clauses in Contract Law' [2006] Florida State University Law Review, 563–87.

[93] Jonathan M. Seymour and Steven L. Schwarcz, 'Corporate Restructuring under Relative and Absolute Priority Default Rules: A Comparative Assessment' [2021] The University of Illinois Law Review, 1–36.

steps towards 'simplification' through its Omnibus legislative packages, for example in the field of corporate sustainability reporting and corporate sustainability due diligence requirements. However, before we can delve into the question on the possible normative value of legal simplicity, if any, it first became necessary to gain a deeper understanding of notions such as simplicity and complexity in a legal context. The starting point is the idea that simplicity and complexity are not unambiguous concepts, but rather represent two opposing ends of a spectrum.

42. To this end, this paper developed a conceptual thinking framework that attempts to map the phenomenon of legal complexity on a structural level and on a rule level. Within each level, an assessment of the degree of complexity of a regulatory system can thereby be made using a set of indicators. By considering both levels together, substantive meaning can then be given to the concept of complexity and thus also to the concept of simplicity as its natural counterpart. This conceptual framework demonstrates that the path to legal simplicity may be littered with all sorts of *trade-offs* that make simple regulation an objective that is anything but easy to achieve. Indeed, in reality, it will rarely be possible to make an abstract, binary choice between regulation that is 'simple' or 'complex', but rather often involves a (possible) choice between different forms and degrees of complexity. This also helps explain why regulators, when implementing a 'simplification exercise' might be tempted to opt for 'simplification' in its crudest form, being deregulation. In such cases, rather an actually simplifying the rules, they are removed in part or in whole. Equally important, merely gaining a closer understanding of the concepts of legal complexity and legal simplicity does not tell us anything about the why the one should be preferable to the other.

43. Based on a closer analysis of this analytical conceptual framework on legal complexity, we were able to formulate some important insights regarding thinking about simplicity and complexity in law. First, it sheds a new light on legal simplicity as a normative ideal. After all, simple rules can have socially undesirable and/or welfare-destroying consequences. Pursuing simple rules should therefore never be the main, let alone the only, objective when designing legislation.

Nevertheless, the importance of legal simplicity should not be underestimated. After all, legal norms have a certain regulatory cost, both for the body imposing the rules and for the legal subjects to whom the rules apply. In this respect, legal complexity can be seen as an important, but not the only, cause of compliance costs. Legal complexity also increases the risk of misjudgements by litigants. These costs should always be weighed against the benefits that regulation can have in the form of desirable behavioural incentives. Behind this lies the real importance of striving for legal simplicity: the

behavioural steering effect of rules should always be weighed against the regulatory costs associated with these rules.

It only makes sense to opt for a 'simple' rule if the behavioural steering effect emanating from the rule is of sufficient quality to actually achieve the objectives of the rule. But the reverse is equally true: opting for complex regulation only makes social sense if the complexity can justify the increase in terms of regulatory cost. The answer to the question on the normative value of legal simplicity is therefore nuanced.

Acknowledgements

This contribution presents the results of a research stay at the Classical Liberal Institute at New York University, School of Law. This research stay was made possible by a Mobility Grant from the UHasselt Special Research Fund. The author is extremely grateful to professors Mario Rizzo and Richard Epstein of NYU for hosting him during his research stay.

Disclosure statement

No potential conflict of interest was reported by the author(s).

ORCID

Niels Appermont http://orcid.org/0000-0002-1334-1205