Better Regulation: evidence based policy making

Experiences in Germany and internationally
Germany‘s better regulation environment in a nutshell:

Cooperation is the rule
Regulatory initiatives are primarily drafted by the Federal Government.

The chancellor determines the policy guidelines. Nevertheless, each of the 14 ministers bears responsibility for his/her own domain.

The German Government (Cabinet) acts and makes decisions according to the principle of collective responsibility.

Germany has 1.700 laws.
Administration in Germany

- 16 states
- 11,000 municipalities
- numerous self-administering bodies (e.g. social insurance) providing public services
- numerous chambers with compulsory membership carrying out public duties
Cooperation is the rule: Political Parties

Article 21 of the German Constitution:
“(1) Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. ...”

Chairpersons of CDU, SPD, and CSU sign the „coalition agreement“ 16 December 2013 prior to building a new government. The agreement determines usually most (in practice up to 90 per cent) of the government’s legislative initiatives.

Source: Article 21 of the German Grundgesetz
The better regulation experience 1984 - 2005
Council of ministers adopted a comprehensive checklist in 1984

Each minister agreed 1984 to the obligation to adopt the checklist for every single regulatory initiative. In addition: joint rules of procedures were adopted. During the following years numerous governmental committees issued about a dozen reports making proposals for cutting red tape and celebrating successes.
Claim and reality

All legal drafts introduced by the Federal Government to the Parliament carry a structured cover sheet with a maximum of two pages. Usually the sections on „alternatives“ and on „costs“ (excluding effects on public households) say either „none“ or „not applicable“ or „impossible to estimate“ ... untill 2005.
The better regulation programme as of 2006

“Laws are not made for the statute books. They must be made for real life. They must serve to foster social harmony and solidarity. This means that law-makers must frame laws in comprehensible language, design them to achieve their intended purpose and regulate only what really has to be regulated.”

Key elements of a new better regulation culture as of 2006

- Binding method: estimating costs starts always with a single typical case
- Quality of data and processes: independent scrutiny, public databases, stakeholder involvement
- Monitoring allows to agree + control targets
- Political commitment
Simple calculation of compliance costs by the lead ministry

Compliance costs of a single provision or group of provisions:
Who is concerned? How will legal change affect daily life?

Measurable costs of a single, typical case

Number of cases (per year)

Time

Tariff (business/admin)

Material costs per case

Number of those affected

Frequency per year

Source: Guidelines of the Federal Government for the calculation of compliance costs; www.destatis.de

compare also:
OECD Regulatory Compliance Cost Assessment Guidance
www.oecd.org/regreform;
The closed loop system of better regulations

**Federal Statistical Office does the monitoring**
Changes of compliance costs estimated by the lead ministry, scrutinized by independent advisory board: put in public database, annual report to Parliament

**Empirical validation of compliance costs**
Two years after coming into effect the Federal Statistical Office validates the compliance costs of the regulation in real life; public databases are up-dated

**Systematic evaluation of substancial regulations**
Three to five years after substancial regulations come into effect (e.g. costs > 1 Mio. Euro p.a.) the lead ministry evaluates whether the goals are met
The Independent Regulatory Control Council (RCC)

- Ten members nominated by the Federal Government
  - Experts and scientists with **experience in legislative matters**
  - Members **may not belong** to a legislative body or to a public authority
- Appointed by Federal President for five years (**differs from election term**)
- RCC examines **each** legal proposal, whether information on compliance costs and other parts of the explanatory memorandum are comprehensive and comply with the methodology
- Statement is **attached to the cabinet draft** and is passed to Parliament and Bundesrat (representation of state governments): statement becomes **public**
- RCC shall not comment on the intended purposes and aims of regulations
- RCC reports to the chancellor annually; report is forwarded to Parliament
Some more examples from the German RIA exercise

**Sustainability**
Ministries are obliged to check on sustainability effects, against the German SDG‘s; no fixed methodology; scrutinized by a parliamentary committee

**Effects on public households**
The Federal Ministry of finances has issued a short guidance; all proposals disclose the effects on public households; politicians pay attention intentionally

**More than 40 guidelines available**
In 2012 the council of ministers decided to establish a system of e-legislation, which shall incorporate and streamline all guidelines
Ex post-evaluation following a rather systematic approach

Only a few drafts cause compliance costs of more than 1 Mio Euro or 100,000 hrs p.a.

Regulations beyond the threshold are going to evaluated frequently.

Evaluation reports will be sent to independent advisory board and to the Federal Government‘s coordinator.

Source: Federal Statistical Office
Final proof of concept: Experience of stakeholders?

On behalf of the Federal Government the Federal Statistical Office undertakes a bi-annual survey on the perception of the quality of law and the administration regarding 32 life events for citizens and businesses.

First results (2015):
• high overall satisfaction
• top: no discrimination
• flop: comprehensibility
Focal points of the recent working programme for better regulation

- Re-start of „one-in, one-out“
- Additional attention on implementation costs
- Reducing irritation by common commencement date, packaging initiatives
- Early and direct involvement of those concerned
- Implementing principles of human-centred design
- Pre-testing prior to political decision
- Early internal involvement of layer-linguists (prior to inter-service consultation)
Regulatory Impact Assessment designed to provide complete picture – international trends

“Good legislation is a mainstay of freedom, justice, prosperity, competitiveness and political stability in Germany.“

*Council of Ministers, Germany, 4 June 2014*
Trend in RIA adoption in OECD member states

Note: This represents the trend in number of OECD jurisdictions with formal requirement for regulatory impact analysis (beyond a simple budget or fiscal impact).


Source: OECD Working paper on regulatory policy and inclusive growth, http://dx.doi.org/10.1787/24140996
Different types of impacts in RIA exercises in OECD member states

Source: OECD Working paper on regulatory policy and inclusive growth, http://dx.doi.org/10.1787/24140996
Different types of impacts in RIA-exercises in OECD member states

Figure 4.10. Assessment of impacts in RIA

Source: OECD Regulatory Policy Outlook 2015, page 115
Thank you for your attention!

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