



Better Regulation in Germany and the EU

August 30, 2007

Time to see results



The foundation for a successful reduction of administrative burdens has been laid with individual better regulation concepts in Germany and the EU.

The adoption of a 25% reduction target both in Germany and the EU is an essential step to foster the reduction of administrative burdens and to underpin it with a systematic performance oversight.

The establishment of the *Normenkontrollrat* watchdog and the systematic measurement of bureaucratic costs based on the standard cost model in Germany are a decisive step into the right direction. Flanking these measures with two laws targeted to relieve administrative burdens on small and mid-sized firms is conducive to the reduction of administrative burdens.

The European Commission's intention to introduce regulatory impact assessments for all new laws, and to measure bureaucratic costs on the basis of a modified standard cost model, points in the right direction.

Despite this essentially positive view, further steps are necessary in Germany...

- The German government should make its 25% reduction target more concrete by setting a 25% net reduction target.
- Legislation initiated by the Bundestag should be included in the *Normenkontrollrat's* review process.
- EU law should be implemented into national law on a strict one-to-one basis.
- The use of ex-ante regulatory impact assessments should be the rule rather than the exception.

... and on the EU level:

- The costs and benefits of a potential regulatory act need to be quantified more comprehensively to enhance the quality of impact assessments.
- A neutral body should be set up in the mid term to conduct the regulatory impact assessments.
- The European Parliament and the Council need to perceive impact assessments as an integral part of the legislative process.

Essentially, bureaucracy reduction can only succeed if it is understood by policymakers as an ongoing mission and is pursued preventively so that administrative burdens can be increasingly avoided.

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Two-pronged approach by the German government**I. Introduction**

The issues of better regulation¹ and the reduction of administrative burdens are currently a special political focus in Germany and the European Union. A number of initiatives have been launched recently to improve the quality of regulation and to reduce the bureaucratic burdens for businesses. The German government, for instance, is pursuing a two-pronged approach. Firstly, two laws are being enacted to reduce the administrative costs imposed by legislation for small and mid-sized enterprises. Secondly, an institutionalised process comprising the *Normenkontrollrat*, the Bureaucracy Reduction Coordination Unit, the Committee of Ministerial Undersecretaries, the Standard Cost Model and regulatory impact assessments is being put in place to assure a reduction of bureaucratic burdens on an ongoing basis. It is expected that the combination of these measures will help to reduce administrative burdens in Germany by 25% by the year 2011.

Ambitious EU targets

The European Union is pursuing equally ambitious targets as Germany: under the aegis of Commissioner Verheugen it also aims to reduce the administrative costs imposed by legislation by 25%, but not until 2012.² The European Commission also intends to evaluate the economic effects of all new legislation *ex ante* in the form of a regulatory impact assessment and to prune the EU's body of law, the so-called *acquis communautaire*, by simplifying, codifying and even withdrawing legal texts.

Focus of the study

This study sets out to make a preliminary assessment of the better regulation approaches in Germany and the EU. Have the steps initiated so far created a solid basis for achieving a lasting reduction of the administrative burdens imposed by legislation? Are the instruments that are being used for this purpose effective? What role does the measurement of bureaucratic costs with the Standard Cost Model (SCM) play and how is the work of Germany's *Normenkontrollrat* to be rated? What is the experience with better regulation in other countries and which success concepts are transferable? What standards need to be formulated for regulatory impact assessments from an economic viewpoint? What further steps are needed in the mid term?

II. The regulatory framework of an economy**(a) Why a regulatory framework?**

Regulation is political process of setting specific goals that can be driven by both economic and social motives. While regulations usually generate overall benefit at the macroeconomic level or for society (e.g. preservation of the environment, accounting transparency, general legal certainty, balancing of interests) it may also give rise to burdens at the level of the firm and the individual citizen. From an economic point of view, the overall benefits of a specific regulation should always exceed the costs imposed by a piece of legislation.

¹ The concept of better regulation relates on the one hand to all the steps in the regulatory process, i.e. the formulation and adoption of statutes and regulations, their implementation and application including administrative procedures; on the other, the term regulation covers the entire body of state law, regulations and procedures. The terms administrative, bureaucratic and regulatory burdens are used synonymously in this study.

² On March 9, 2007 the Council resolved to reduce bureaucratic costs by 25% by 2012.

Effects of overregulation

“Micro level”:

- Administrative burdens are a cost factor for businesses.
- They siphon away resources from productive employment and weaken a firm’s price competitiveness.
- Bureaucracy restricts firms’ flexibility and ability to react quickly.

“Macro level”:

- Excessive bureaucracy hampers innovation and slows down structural change.
- It reduces an economy’s international competitiveness and attractiveness as a business location.

While *regulation*, as a comprehensive political process, raises the question of “whether” (in other words, the rationale for and the effectiveness of state intervention), the term *administrative burden* relates to the “how”, or the efficiency of state intervention, and can (also) be classified as the impact that regulation has.

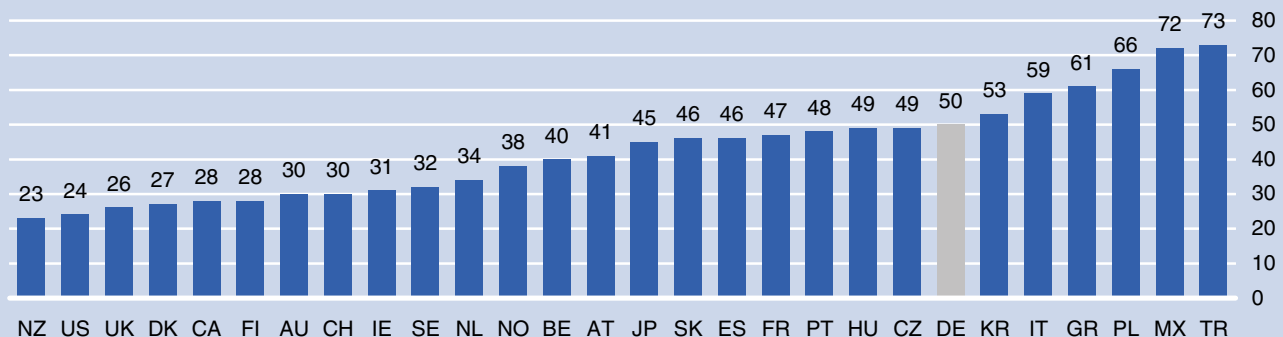
(b) Excessive regulatory density impedes growth

Overregulation and, as a result, high bureaucratic costs are a major constraint on growth and employment in an economy. Excessive regulatory requirements impact negatively in periods of both economic upswing and downswing. For instance, tedious state approval procedures hinder firms’ expansion plans in the upswing phase, while rigid labour markets stand in the way of capacity adjustments in the downswing phase.

The economic research institute IW Köln has evaluated the extent and quality of state governance in various countries and drawn up the results of the country comparison in the form of a Regulation Index (see Chart 1). The Regulation Index sets out, at a high level of aggregation, to identify political areas in particular need of reform by examining the quality and density of regulation in the capital, labour and product markets. In this international roster Germany ranks 22nd, in the bottom quartile, while Anglo-Saxon and Nordic countries capture places in the top third. Germany’s shortcomings are particularly pronounced in terms of labour market regulation and in “education/innovation“. The regulatory environment in the capital and product markets, on the other hand, is deemed to be internationally competitive.

IW Regulation Index

Index



Sources: OECD, IW Köln

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(c) Demands raised by the corporate sector

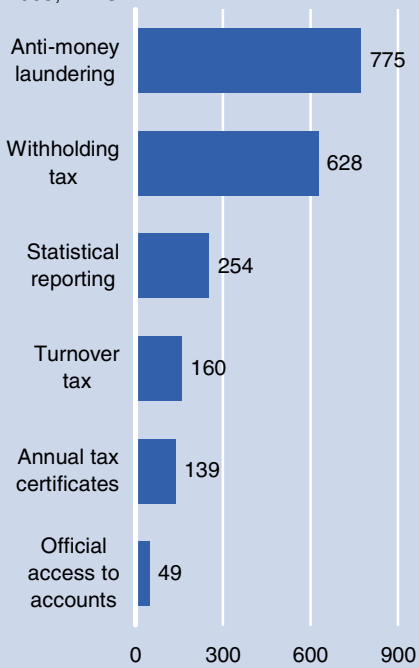
In surveys conducted among German firms labour and welfare law, tax law, rules for business start-ups and statistical requirements are the most commonly cited examples of excessive bureaucratic and regulatory intervention.

From this it is possible to draw up a clear list of priorities for firms. The Federation of German Industries (BDI) for instance comes to the conclusion that a systematic strategy must contain two core elements:

Firstly, instruments and strategies that allow systematic data capture and the avoidance of bureaucratic burdens (e.g. through regulatory impact assessments and the use of e-government structures), and, secondly, the reduction of existing regulation. Environmental and tax law are the areas where the BDI sees the most urgent need for reform (see chart 3).

Bureaucratic costs in the banking sector

2005, in EUR m



Source: IW Consult **2**

Heavy burden for SMEs

Body of legislation in Germany and the EU

At the federal level the German statute book currently comprises 1,813 laws and 2,771 regulations, which are supplemented by over 5,650 administrative rules. The number of information obligations measured by the federal ministries at the end of 2006 came to 10,945.

At the EU level the volume of the "acquis communautaire" is currently estimated at around 80,000 pages.

Strategic action areas for bureaucracy reduction/deregulation

- (a) Overarching regulations (regulatory impact assessment, eGovernment)
- (b) Environmental law (workplace ordinance, plant & equipment safety, environmental liability)
- (c) Tax law (electronic tax return)
- (d) Transport infrastructure (planning procedure acceleration act, contract procedures)
- (e) National security (security surveillance act)
- (f) Statistics (administrative data, SME bureaucracy relief act)
- (g) Capital market legislation (investor protection)

Sources: DB Research data, BDI **3**

For the banking sector, on the other hand, combating the abuse of the financial markets (especially anti-money laundering) and tax law (withholding tax on investment income and the issuance of yearly tax certificates) impose the greatest information obligations (see chart 2).

(d) Bureaucratic burden in Germany and the EU

In Germany, the administrative costs imposed by legislation are estimated at between EUR 46 bn and EUR 81 bn depending on the respective source. According to a study published by *Institut für Mittelstandsforschung (IfM)*, a publicly funded foundation conducting research on SME-related issues, the bureaucratic burden in Germany is estimated at EUR 46 bn. Around EUR 20 bn of the total costs are in connection with tax collection, while the remainder is attributable to reporting requirements relating to social security, industrial safety, statistics and environmental regulations. At small and mid-sized firms with up to 500 employees they average EUR 976 per employee. For large companies the bureaucratic costs are EUR 354 per employee. According to IfM³, 84% of the administrative costs imposed by legislation in Germany are borne by SMEs.⁴

Other studies, which take the Netherlands as benchmark, assume far higher bureaucratic costs for Germany. With this approach, the burden of 3.6% of GDP in the Netherlands is applied to Germany. Given a GDP of EUR 2,244bn for Germany, this yields a bureaucratic burden for German business of EUR 80.8 bn.⁵

For the EU as a whole, the bureaucratic burden for businesses is estimated at EUR 600 bn.⁶ The European Commission considers a reduction target of 25%⁷ or EUR 150 bn to be realistic, which, in purely arithmetical terms, could produce a one-off increase in GDP of about 1.4%.

(e) Interaction between different government levels

Owing to its federal structure and integration in the EU Germany has to rely on the interaction of the different regulatory levels if it is to reduce bureaucracy successfully. The growing importance of EU

³ Institut für Mittelstandsforschung Bonn (2004).

⁴ This effect is largely due to the fact that bureaucratic costs are fixed costs. For small firms with less than 9 employees the bureaucratic burdens average EUR 4,361 per employee.

⁵ Kreibohm/Klippstein in Merk (2005) and Bertelsmann Stiftung (2005).

⁶ This figure includes administrative burdens from both EU and national regulatory acts.

⁷ See the Council of Europe's conclusions of March 8/9, 2007:

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/93135.pdf



rules and regulations involves high costs for implementing them at the national level. Furthermore, Germany's federal structure blurs the lines of responsibility and thus how the regulatory impact is distributed, which makes a clear analysis of how bureaucratic and regulatory constraints can be eliminated more difficult. A clear demarcation of the responsibilities both in Germany and at the EU level would therefore be an important step for preventing avoidable bureaucratic costs.

III. Better regulation: concept and instruments

In practice, the term better regulation serves as umbrella term for a number of paths that aim to enhance the quality of state regulation and to reduce bureaucratic burdens. The most important methods and instruments are discussed below.

(a) Measuring bureaucratic costs

Various countries in Europe have gathered positive experience with the systematic measurement of bureaucratic costs. On the one hand, quantifying bureaucratic costs makes it possible to take stock of the level of the administrative burden on an economy. On the other hand, it serves as a basis for defining a reduction target, without which effective bureaucratic relief is hardly possible in practice. In many European countries the standard cost model (SCM) has become established as a standardised method of measurement. The Netherlands, Britain and Denmark have all conducted a full survey of bureaucratic costs and set specific bureaucracy reduction targets on an SCM basis (see chart 4).

Benefits of bureaucratic cost measurement are twofold

International comparison of bureaucracy reduction targets

Country	Reduction target	Year set	Target year	Net/gross target
DK	25%	2001	2010	Net
GB	25%	2006	2010	Net
NL	25%	2003	2007	Net
AT	25%	2006	2010	Net
SE	25%	2006	2010	Not known
DE	25%	2007	2011	Not known

Source: German Government (Parliamentary Journal 16/4915)

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Reduction of bureaucratic costs

Ideally a reduction of bureaucratic burdens can be achieved in three steps:

1. The laws are scanned for information obligations;
2. The cost of these obligations is measured using the SCM model;
3. A decision is passed on reducing the administrative burden, i.e. reporting obligations are abolished or the reporting intervals are extended.

The SCM only measures the costs induced by the information and reporting obligations imposed by a regulation. This includes all statistical returns, applications and documentation requirements. To quantify the total burden, the standard cost approach determines the average value of the costs for each entity concerned and then multiplies this by the number of entities concerned.

This method does not take compliance costs and other costs that cannot be measured by a standardised yardstick into account. To determine the administrative burdens as objectively as possible, companies are interviewed and all relevant public statistics and registers are consulted.

Advantages of the SCM approach

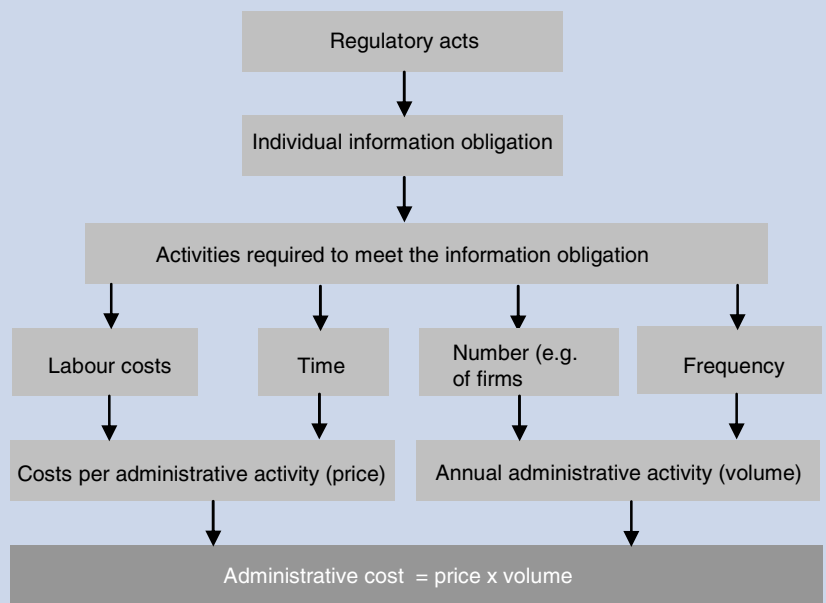
The advantage of the SCM approach is that, in measuring the bureaucratic costs, it *does not question the political purpose of a regulation* but only identifies the – possibly redundant – reporting requirements. Assessing the (political) benefit of a law is thus not part of the analysis but remains the prerogative of the policymakers.

Quick scan

With the quick scan the relevant cost drivers in a statute can be identified relatively quickly, cost effectively and reliably in a first analysis. After this preliminary screening the SCM process can be focused on the quick scan based on a list of political priorities.

This makes it generally easier to win support at the political level for this measuring approach and cost reductions based on it. In order to incentivise the bureaucracy measuring processes, an ex-ante defined bureaucracy reduction target needs to be set. Government departments would be allotted an annual quota for bureaucratic costs and would be responsible for seeing that this is not exceeded within a given legislative period on a net basis, also taking account of any fresh administrative burdens from new legislation.

The standard cost model



Source: German Chancellery **5**

Two main focuses of RIAs

Scope of an impact assessment

(b) Regulatory impact assessments

Regulatory impact assessments (RIAs) originated in the USA and have acquired growing importance in Europe in recent years. Their aim is to enhance the quality of lawmaking by applying scientific methods to evaluate different governance options, thus broadening the information basis for the political decision-making process.

Essentially, RIAs have two main benefits. Firstly, they enable positive and negative consequences and side-effects of a bill to be identified and quantified. Secondly, they evaluate the best *form* of regulation for a given regulatory *objective*, i.e. which type of regulation will best achieve the purpose of the regulation with the maximum net benefit.⁸

Impact assessments therefore go much further than the bureaucratic cost measurement process. Firstly, a regulatory impact assessment not only assesses bureaucratic burdens imposed by information obligations but also evaluates the benefit and *all* the negative effects of a rule in the broader sense, i.e. it also takes account of the costs not considered by the SCM. Secondly, a comprehensive RIA seeks to quantify all the consequences of a rule by discounting the resulting potential costs and benefits to their net present value, thus calculating its net benefit.

⁸ A good introduction to this topic can be found in the Commission's Impact Assessment Guidelines available at: http://ec.europa.eu/governance/impact/docs/SEC2005_791_IA_guidelines_anx.pdf

Alternative governance options

- No regulation
- Self-regulation
- Information campaigns
- Incentivised instruments
- Co-regulation
- Recommendations

Effective institutional framework essential**Streamlining pursues two aims**

Ideally, impact assessments would be carried out by an independent panel of experts or an independent public body. Neutrality of the RIAs helps enhance the quality of the political decision-making process and to achieve more precisely targeted and carefully drafted rules. However, RIAs are not a panacea for curing all excessive and inadequate regulations because their usefulness is qualified by a number of methodological shortcomings, it being particularly difficult for instance to quantify the costs and benefits of market regulation. It is often not possible to put an appropriate figure on qualitative aspects such as financial market stability and investor and consumer confidence.

The value of impact assessments therefore often lies in a comprehensive evaluation of the benefits and costs of a proposed piece of legislation and alternative forms of governance rather than in hard and fast numerical results. Impact assessments should be viewed more as an additional contribution to the policymaking process. They are in no way a substitute for careful political opinion-forming.

(c) Institutionalised framework

Better regulation and an effective reduction of bureaucracy can only be achieved with a suitable governance structure for the legislative and regulatory process. Bodies charged with RIA reviews or the measurement of bureaucratic costs must have clout within the political decision-making process. Ideally, such supervisory bodies should enjoy a high degree of institutional independence so as to ensure that their supervisory function is performed neutrally and objectively. The combination of an independent “watchdog”⁹ and the setting of a binding net bureaucracy reduction target is generally useful since it increases the pressure on policymakers to apply the better regulation concept. For an independent watchdog to function successfully there needs to be close interaction between the different regulatory levels (EU; federal government, state governments and local authorities).

(d) Streamlining the body of law

Efforts to streamline the body of law often go hand in hand with the better regulation approach. In practice, such streamlining processes are mostly of an ongoing nature and pursue two aims: firstly, to abolish rules and regulations which are obsolete and, secondly, to systematically recast rules and regulations which are difficult to find today or whose link with today’s regulatory framework is unclear. Ultimately, the aim is to make the body of law simpler and more transparent and bring it into line with contemporary needs.

IV. Better regulation in Germany**(a) The predominant role of EU law**

Much of Germany’s business legislation derives from EU law. Herzog / Gerken even cite a figure of 84% of the statutes.¹⁰ Often, the only leeway the German legislative has lies in how it interprets discretionary norms when implementing EU directives in national law. In political practice this has led in some areas to so-called “gold

⁹ In Britain this is the Regulatory Impact Unit (RIU) and in the Netherlands the “Adviescollege toetsing administratieve Lasten (ACTAL)” in collaboration with IPAL. In Germany this function is performed by the “Normenkontrollrat”. See the next chapter.

¹⁰ See www.cep.eu. Herzog / Gerken refer to the reply by Parliamentary Undersecretary Alfred Hartenbach of April 29, 2005. See Parliamentary Journal 15/5434 of May 6, 2005, p. 15.

The consequences of goldplating

The General Equal Treatment Act, which came into force in Germany on August 18, 2006, goes beyond the EU requirements in significant points. The German legislation not only prohibits, as required by EU law, discrimination on the basis of ethnic origin, race and sex but also includes discrimination on the basis of age, disability, sexual orientation, beliefs and religion. Another example of "gold plating" is the rights bestowed on the works council or a trade union represented within a firm. In cases of discrimination these bodies can take legal action against the employer even without the assent of the persons concerned. In Germany, employers are also responsible for violations by third parties against their employees and are required to take appropriate action against such violations.

Reduction target of 25% set – but so far not a net target

Number of information obligations for businesses

Ministry/Department	Number
Federal Foreign Office	7
The Federal Chancellor	2
Federal Ministry of Labour and Social Affairs	447
Federal Ministry of Education and Research	30
Federal Ministry of Food, Agriculture and Consumer Protection	1,737
Federal Ministry of Finance	3,488
Federal Ministry of Family Affairs, Senior Citizens, Women and Youth	66
Federal Ministry of Health	581
Federal Ministry of the Interior	500
Federal Ministry of Justice	315
Federal Ministry of the Environment, Nature Conservation and Nuclear Safety	1,105
Federal Ministry of Transport, Building and Urban Affairs	2,042
Federal Ministry of Defence	13
Federal Ministry of Economics and Technology	1,609
Federal Ministry of Economic Cooperation and Development	3

Source: Parliamentary Journal 16/5323, May 11, 2007

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plating", i.e. the addition of national rules on top of the EU requirements. One example is the way in which EU legislation was written into Germany's General Equal Treatment Act. In this instance the level of regulation was increased even further by supplementing the EU norms with national rules.¹¹

(b) Federal government's "Bureaucracy Reduction" initiative

The federal government has committed to reducing bureaucratic burdens in Germany on an ongoing basis. This is to be achieved through the government's "Bureaucracy Reduction and Better Regulation" programme passed in April 2006 which was modelled on a similar initiative in the Netherlands and includes the following measures: setting up the *Normenkontrollrat* as an independent watchdog and advisory body for new legislation, the measurement of bureaucratic costs using the standard cost model and the institutionalisation of the bureaucracy reduction process by creating a coordination unit within the cabinet office and setting up a committee at the ministerial undersecretary level.

To lend concrete form to its programme the federal government passed a cabinet resolution in February 2007 setting a target to reduce bureaucratic costs by 25% by the year 2011. So far it is unclear whether this 25% reduction target is net or gross.

The measures of this government initiative are being flanked by two laws to reduce the administrative burdens for small and mid-sized firms (SMEs). While the first law already came into force in summer 2006, the second was passed by the Bundestag (lower house of parliament) on June 13, 2007 and by the Bundesrat (upper house) on July 6, 2007. Both measures are intended to relieve the burden of bureaucratic obligations for SMEs.

- The first law scales back 16 mostly statistical and bookkeeping obligations for small and mid-sized firms. This includes raising the turnover threshold for mandatory bookkeeping from EUR 350,000 to EUR 500,000 p.a. Some 150,000 firms should benefit from this. In addition, from the beginning of 2007 the statistics for the producing industry will only cover firms with 50 (previously 20) or more employees.
- With the second SME law (MEG II) it is planned to reduce bureaucratic burdens by a net approx. EUR 59 m. This is to be achieved by simplifying or abolishing information and approval obligations in the areas of statistics, bookkeeping, reporting and approval procedures. In particular, trade register reporting procedures are to be simplified, start-ups are to be exempted from statistical reporting obligations for the first three years and quarterly surveys are to be discontinued for smaller service enterprises.

Flanking the bureaucracy reduction process with two laws to relieve small and mid-sized firms is essentially a positive move. However, one criticism of the overall concept is that so far the government has not set a net reduction target. Only a net reduction target will allow an effective reduction of administrative costs since this also takes account of new bureaucratic burdens arising from the current legislative process. In light of the positive experience with net reduction

¹¹ In principle, national adjustments when implementing EU law into national law can also reduce the administrative burdens imposed by EU directives. So goldplating does not necessarily have to increase the administrative burden at the national level. See http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_18315_18316_2.pdf

targets in other countries, the German government should move quickly to remedy this. At the same time, it should be borne in mind that, parallel with the two SME laws, new regulations are coming into force which generate additional bureaucratic burdens and partly neutralise the relief. This includes the Anti-Discrimination Act and the bringing forward of social security contributions.¹²

(c) Measuring administrative burdens: the SCM

Following the positive examples of other countries the government decided in April 2006 to introduce the SCM process in Germany. As a first step, completed by the end of 2006, all the federal ministries took stock of all the information obligations required under German and EC law. This comprises close to 11,000 information obligations for businesses in respect of applications, forms, statistics or documentation in relation to government offices.

Baseline measurement completed

On the basis of this survey the Federal Statistics Office started measuring the bureaucratic costs using the SCM method at the beginning of 2007.¹³ The reference base for this measurement is the sum of the administrative costs imposed by information obligations as of September 30, 2006 (so-called baseline measurement). First results of the measurement process, covering the information obligations with the highest administrative costs, are due out in summer 2007. Concrete measures to reduce these burdens are to be put forward already in the autumn. The measurement of the other information obligations is due to be completed by the end of 2007, and the information obligations under EU law are to be measured by mid-2008.¹⁴

Further elements of the bureaucratic cost measurement process are the setting of a reduction target and the activities of the *Normenkontrollrat*, which reviews the bureaucratic costs determined by the respective ministries on the basis of the SCM (see the next chapter).

SCM is to be viewed positively

The applicability of the SCM methodology was tested in various model projects and its practicability for measuring bureaucratic burdens was affirmed. Shedding light on the costs imposed by government regulations can already provide important indications for more efficiency-oriented action on the part of the administration. In the course of the model studies the Bertelsmann Foundation for instance found that only 1-5% of the rules are responsible for about 90% of the bureaucratic costs. The biggest cost drivers result from German federal government and EU legislation, while the state governments are responsible for only a small fraction of the bureaucratic costs.¹⁵

(d) The Normenkontrollrat

Integration of the NKR in the legislative process

The Act for the Creation of the National *Normenkontrollrat* (NKR) came into force in August 2006 as part of the government's "Bureaucracy Reduction" programme. The NKR's principal function is to review the federal government's draft legislation for bureaucratic costs imposed by information obligations. The NKR can also put forward proposals for reducing bureaucratic burdens, whereby the SCM measurements are carried out by the respective federal

¹² The German Crafts Federation (ZDH) has published a detailed analysis. See www.zdh.de.

¹³ See also the introduction to the Standard Cost Model Methods Handbook published by the federal government in August 2006.

¹⁴ See Parliamentary Journal 16/5323.

¹⁵ See Bertelsmann-Stiftung „SKM-Projekte in Deutschland“ available at www.moderne-regulierung.de.

Independent members of the NKR

- Johannes Ludewig (Chairman)
- Wolf-Michael Catenhusen (Deputy Chairman)
- Hans Dietmar Barbier (Chairman of the Ludwig-Erhard Foundation)
- Dr. Franz Schoser (former Chief Executive of the German Chamber of Commerce and Industry)
- Johannes Wittmann (former President of the Bavarian Constitutional Court)
- Henning Kreibom (lawyer)
- Gisela Färber (German University of Administrative Sciences, Speyer)
- Hermann Bachmaier (lawyer)

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ministries. The NKR therefore acts as independent, neutral bureaucracy cost comptroller and methods watchdog.

The NKR commenced its activities with the appointment of its members in September 2006. The Common Ministerial Rules of Procedure were amended in December 2006 and now stipulate that in future the NKR is to be involved in proposed legislation at the same time as the other federal ministries. Furthermore, the federal ministries are required to measure the probable bureaucratic burdens imposed by information obligations under the respective bills on the basis of the SCM method and to publish them in a preface to the bill.

By June 1, 2007 the NKR had reviewed 135 draft bills and regulations which together contained 253 information obligations. The NKR's reviews led to a total of 66 information obligations being modified and 45 being dropped, while 142 new information obligations were enacted. All in all, the NKR's work reduced the aggregate level of bureaucratic costs by a net EUR 227m.¹⁶

Case Study: Company tax reform

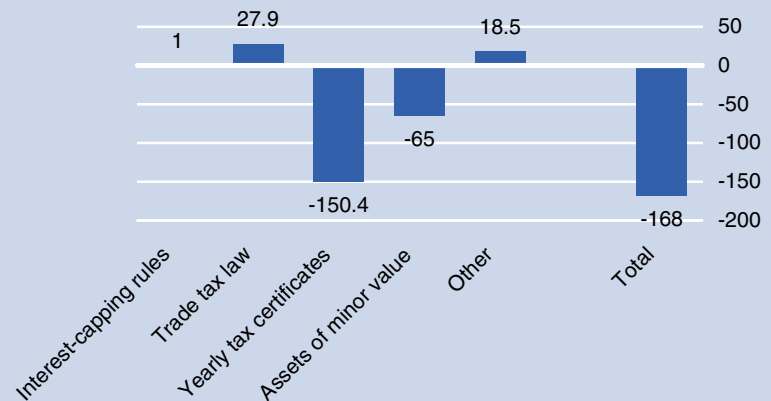
The Company Tax Reform Act 2008 was modified in light of the NKR's calculations. While the first draft still contained about 40 information obligations with administrative costs of € 72 m, the bill finally adopted reduced the administrative costs by about € 168 m. This was attributable in the main to proposals put forward by the NKR on the accounting rules for assets of minor value.

However, there are still shortcomings. Firstly, the structural deficiency that the SCM only measures information costs: the costs for the citizen are not considered at all. The costs for the public sector and the administration are only partly covered. Secondly, adjustment reactions which the law can trigger are not taken into account. For instance, it cannot be predicted as yet what bureaucratic consequences the flat rate/personal tax rate option for withholding tax on investment income will have, and the administrative cost of more frequent tax audits in connection with the new interest capping rules is still unclear.

Foundations have been laid – but no mandate to review legislation initiated by parliament

Bureaucratic costs of the company tax reform

Change versus the status quo
+ burden: - relief, in EUR m

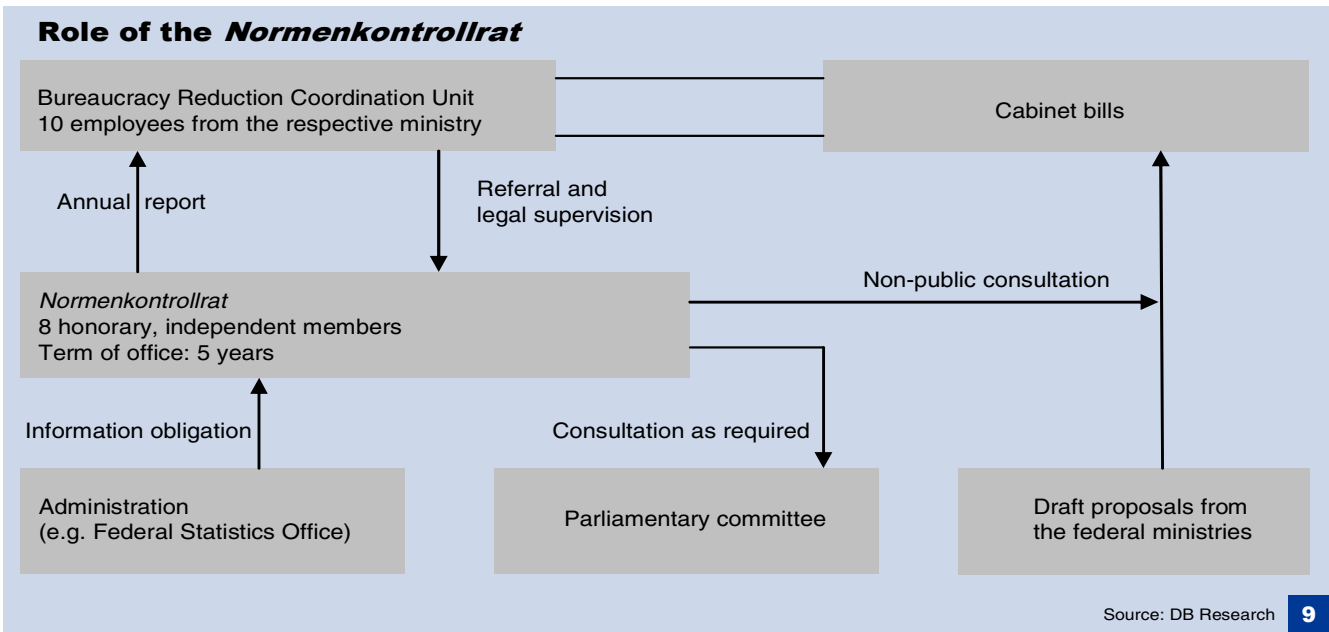


Source: Adjusted appendix to Company Tax Reform Act 2008, see Parliamentary Journal 16/4841, March 27, 2007

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The NKR's institutional integration in the legislative process and the systematic measurement of the administrative costs imposed by legislation according to the SCM method are to be viewed positively. They create an important precondition for a successful reduction of bureaucracy. A key weakness of the NKR's work is that it has no mandate to review legislation initiated by parliament (about 30% of all legislative initiatives). Only draft legislation from the ministries and the federal cabinet has to be submitted to the NKR. Whether there will be a sufficient political will to close this gap at the end of the NKR's initial test phase is at least questionable. Another criticism of the NKR's work is that the review mandate is too narrowly formulated and bureaucratic burdens not resulting from information obligations are not taken into account. In the mid term, the government should extend the NKR's mandate to include the review of regulatory impact assessments.

¹⁶ See Wolf-Michael Catenhusen. Paper given on April 17, 2007



Impact assessments generally required

(e) Regulatory impact assessments

The Common Ministerial Rules of Procedure (CMRP) amended in September 2000 stipulate a RIA generally for all draft bills, regulations and administrative rules. The CMRP defines an RIA as a method for ascertaining alternative governance options and for assessing the suitability of the measure chosen to achieve the desired objectives. A manual and guidelines on the RIA have been drawn up by the Ministry of the Interior in collaboration with the German University of Administrative Sciences in Speyer for guidance. The results of the RIA have to be set out in the explanatory grounds for the legislation and in a preface to the bill.

The CMRP were amended in November 2007 to integrate the NKR institutionally into the legislative process. In this context the respective ministries are required to estimate the bureaucratic costs imposed by information obligations ex ante as an integral part of the regulatory impact assessment.

An evaluation by the Federal Audit Office in 2004 concluded that in practice too little heed is paid to the required standards for impact assessments.¹⁷ In particular, it criticized the poor transparency of the legislative process since intended effects and unintended side-effects of proposed legislation were not always documented in a comprehensive manner and the evaluation of alternative governance options was either lacking or incomplete. Further, it censures the administration's lack of understanding for the necessity of regulatory impact assessments and their practical handling. On a positive note the Federal Audit Office concludes that the criteria of the CMRP are essentially conducive to better regulation since they provide benchmarks for professional standards and guidelines for legislation. So, while the RIA is institutionalised at the federal level by law, there are considerable deficiencies in its implementation in practice. The federal government therefore needs to take steps to encourage a change of thinking in the ministries. In this way, bureaucratic costs could already be avoided or reduced ex-ante RIA

§ 44 CMRP

“Regulatory impact denotes the material consequences of the statute. This includes the intended effects and the unintended side-effects. The assessment of the probable regulatory impact must be undertaken in collaboration with the respective federal ministries responsible and, with regard to the financial consequences, must indicate the basis on which the calculations or assumptions are made. The Federal Ministry of the Interior can issue recommendations for assessing the regulatory impact.”

Impact assessments not established in practice

¹⁷ See Federal Audit Office (2004). This was based on a random sample of 25 laws in the years 2001 and 2002.

in the initial phase of drafting the legislation and not in the final stages of the legislative process through intervention by the NKR.

(f) Streamlining the body of law

As part of the bureaucracy reduction initiative launched in 2003 the federal ministries pledged to take steps to streamline the body of law in their respective areas. The streamlining has been initiated as an ongoing process and is perceived by the federal government as an integral part of good governance.

In a first streamlining process the Ministry of the Interior for instance has abolished about 90 laws and regulations and has already presented a draft proposal for a second streamlining programme. A core element of the streamlining process is the elimination of obsolete transitional rules from the German Unification Treaty. Other streamlining laws have been initiated in the areas of Justice, Internal Affairs and Trade and Technology/Labour and Social Affairs.¹⁸

Streamlining criteria

- Age of statutes: critical review whether still in use or in line with contemporary needs,
- Relics from amendments: especially transitional rules as a result of changes in the law,
- Special rules: Better integration of secondary statutes,
- Pre-Constitution terminology: statutes enacted prior to 1945.

Best practices in other European countries: the Netherlands and Great Britain as role models

Netherlands

The Netherlands play a pioneering role in reducing red tape and in better lawmaking. The Dutch government puts the administrative burden on business at 3.6% of GDP (~EUR 16.4 bn). This only includes the costs resulting from statistical and reporting obligations (i.e. bureaucratic costs in the narrower sense). The government pledged to reduce bureaucratic costs in the narrower sense by 25%, or roughly EUR 4.1 bn, by 2007. The political situation in the Netherlands is characterised by a broad consensus to reduce administrative burdens. The successes to date have been achieved through a package of some 130 legislative measures. The huge success of the Dutch model largely rests on three core elements:

- I. The administrative burden on the economy is measured by the Standard Cost Model, which is applied in all ministries.
- II. The government pledged to reduce administrative costs by a net 25% within four years, i.e. all new legislation increases the basic stock of legislation and thus the level of bureaucratic costs.

III. The reduction of bureaucracy is embedded in an efficient organisational structure. In the Netherlands an independent advisory body, ACTAL (“Adviescollege toetsing administratieve Lasten”) advises the government. ACTAL acts as a watchdog and is institutionally integrated into the legislative process with the brief to reduce administrative burdens. All position papers drafted by ACTAL are presented to government and parliament. ACTAL’s work is supported by the interdepartmental steering group IPAL, which coordinates between the individual ministries and agrees annual reduction targets with the ministries. IPAL is attached to the Ministry of Finance. The finance minister reports half-yearly to the Dutch parliament.

ACTAL examines the costs of draft legislation calculated by the individual ministries, and can put forward suggestions for improvement or reject bills. However, ultimately, the Dutch government decides which bills are tabled in parliament, and how. ACTAL has reviewed over 500 bills since May 2000 and has put forward recommendations in roughly one-fourth of the cases. ACTAL’s work is performed by a small permanent staff and is assessed very positively overall by various observers.

Given the similar legal culture, the Dutch model is considered to be basically transferable to Germany. However, one problem could be Germany’s federal structure. This means that in the worst case scenario deregulation would be confined to central government.

Great Britain

The first initiatives to reduce bureaucracy in Britain date back to the Thatcher government. It laid the foundations for a reduction of bureaucracy in the eighties within the framework of its policy to cut back state influence on business. Prime Minister Major stepped up these efforts to reduce bureaucracy with the Deregulation and Contracting Out Act (DCOA). The DCOA empowered the government to intervene in primary law by issuing orders to reduce administrative burdens. To avoid undermining primary law this intervention is subject to parliamentary review. In practice, this right has been exercised in more than 50 instances since 1994.

Under Tony Blair’s premiership the Regulatory Impact Unit (RIU) was set up within the Cabinet Office to review the impact of bills and existing laws on business subjects. The RIU’s task is to find a balance between a necessary regulatory act and the cost burden on the entities concerned.

The RIU is supported by an independent panel of experts, the Better Regulation Task Force (BRTF). The BRTF’s mandate is to advise the government on regulatory matters, especially with regard to fairness, transparency, consistency and accountability. The BRTF for instance has drawn up principles of good regulation, whose implementation is to be overseen by the RIU.

The assignment of the RIU to the Cabinet Office provides the unit with a greater measure of independence in carrying out RIAs than if it were attached to a ministry. It is felt that intraministerial political pressure on the unit to give a positive vote on a bill would be much greater. With the enactment of the Regulatory Reform Act in 2002 the Blair government also resolved to confine political action to really essential areas and to press ahead with further deregulation. For the first time the reduction of bureaucracy is seen as an ongoing mission. Various international rankings rate Britain’s regulatory framework as highly competitive. Business and industry also take a very positive view of the measures.

¹⁸ BT-Drs. 16/47, 16/678, BT-Drs. 16/28, 16/464, BT-Drs. 16/34 and 16/399.

The Second Interim Report on the Bureaucracy Reduction Initiative¹⁹ comes to the conclusion that, with the elimination of obsolete rules and regulations, a first step has been made towards reducing bureaucracy. However, it needs to be highlighted that the benefit to businesses and citizens from scrapping legislation that is obsolete anyway is small.

V. Better regulation at the EU level

The European Commission is pursuing a better regulation approach that comprises several components. In contrast to Germany's approach, RIAs play a prominent role.

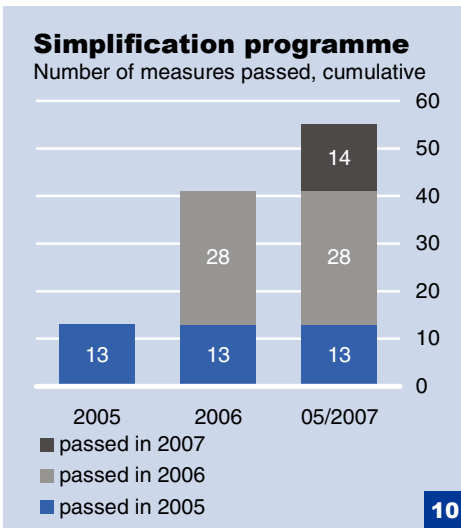
(a) Simplifying, reducing and codifying EU law

Under the aegis of Commissioner Verheugen the European Commission is seeking to systematically simplify and reduce the EU's body of law, the so-called *acquis communautaire*. In October 2005 the Commission announced its intention to launch about 100 simplification initiatives under a so-called rolling simplification programme, covering a total of over 200 underlying laws and some 1,200 related statutes, to be completed in the years 2006 to 2009. In 2006 the Commission passed 28 of the 54 measures planned after completing 13 projects in 2005. 59 initiatives are planned for 2007, 14 of which were passed by the end of May 2007. In 2007 the simplification measures were incorporated for the first time in the Commission's legislative and work programme, a move designed to lend greater weight to the simplification programme and to secure the active involvement of the Council and the European Parliament.

The Commission is also striving to reduce the volume of the *acquis communautaire* and improve its accessibility through tighter codification. The Commission plans to propose around 350 codification initiatives by 2008. How many of these measures can be passed will ultimately also depend on the stance adopted by the Council and the European Parliament.

(b) Measurement and reduction of administrative burdens

In November 2006 the Commission put forward an action programme for the measurement and reduction of administrative burdens. The programme contains, firstly, proposals for ascertaining and reducing information obligations and, secondly, plans to measure administrative costs imposed by legislation in the EU and to review which costs are unreasonable. The Commission uses a modified standard cost model (the so-called "EU Net Administrative Cost Model") to measure bureaucratic costs.²⁰ Unlike the German government, the EU measures the net administrative cost that businesses, citizens and the administration have to bear as a result of information obligations imposed by a regulatory act (i.e. the new bureaucratic costs incurred less the costs eliminated by a regulatory act). The Commission aims to measure the administrative costs in



Commission's action programme

Commission's action plan

- Principles for the reduction of administrative burdens
- Methods of cost measurement
- Proposed organisational structure
- Target-setting for bureaucracy reduction
- Proposals for immediate action

¹⁹ See Federal Ministry of Justice (2005).

²⁰ In March 2005 the Council of Europe called on the Commission and the Council to develop a common methodology for assessing administrative costs imposed by EU legislation. In a working paper the Commission put forward the EU Net Administrative Cost Model based on the Standard Cost Model ("Minimising Administrative Costs Imposed by Legislation, Detailed Outline of a Possible EU Net Administrative Cost Model", SEK(2005) 175), which was revised in the course of a pilot phase in September 2005 and is now known as the "EU-SCM" (see the working document "Developing an EU common methodology for assessing administrative costs imposed by EU legislation – Report of the Pilot Phase", SEC(2005) 1329).

Role of the modified standard cost model

Moderate prospects of success

Inter-institutional agreement

An inter-institutional agreement was concluded in 2003 to coordinate the use of the RIA process within the Commission with the European Parliament and the Council. Within the Council and the European Parliament the RIA process is used only on a voluntary basis. In 2004 the process acquired fresh momentum with the Joint Initiative on Regulatory Reform launched by the finance ministers of Ireland, the Netherlands, Luxembourg and Britain. Austria and Finland joined the initiative later.

Role of the Impact Assessment Board

Still room for improvement

the EU and draft suitable proposals for their reduction by November 2008.²¹

The EU-SCM was also incorporated in the Commission's Regulatory Impact Assessment Guidelines²² and has already been applied in a number of impact assessments. The EU-SCM therefore has a two-fold function. Firstly, as part of the regulatory impact assessment it is used for the ex-ante evaluation of the administrative costs of a given policy initiative. Secondly, within the framework of the bureaucracy reduction process the EU-SCM is used for a comprehensive ex-post calculation of the administrative burdens to serve as a basis for putting forward concrete reduction targets.

Parallel with this, the member states are required to measure the administrative costs induced by purely national rules and likewise to put forward proposals for their reduction. So the success of the action plan hinges to a large extent on the level of cooperation from the member states. The Commission therefore proposes that the Council should call on the member states to set comparable targets at the national level by October 2008 at the latest.

(c) Regulatory impact assessments

In the context of its Lisbon strategy the EU formulated the goal to systematically improve the quality of EU legislation. It has been introducing a regulatory impact assessment system in successive stages since 2003. 23 of the 244 legislative initiatives in 2003 underwent an RIA review. In 2004 the number of RIAs already rose to 50. Although these RIAs display shortcomings (for instance no market research, effects not quantified), the Commission draws a positive balance on the whole: ten proposals were at least modified in the light of the results of the RIA.

The RIAs are conducted within the respective Directorate General (DG) on the basis of guidelines. In 2004 Better Regulation units were set up within the DG Enterprise and Industry and the DG Internal Market. The Commission intends to conduct RIAs for all proposals in the Commission's work programme. In 2005 the Commission put forward new guidelines for the ex-ante evaluation of the economic, social and environment-related impact of proposed legislation. In 2006 the EU model for the measurement of administrative costs was integrated in the impact assessment system. In principle, the Commission plans that all proposed regulatory acts in its annual work and legislative programme will undergo an RIA.

In 2006 the Commission set up the so-called Impact Assessment Board (IAB), which is responsible for reviewing all regulatory impact assessments conducted by the Commission. The IAB is an internal body within the Commission which is presided over by the Deputy Secretary General and reports directly to the President of the Commission. The board consists of directors from other Directorates General. The purpose of the IAB is to assure a high quality of the regulatory impact assessments through a timely ex-post review of the RIAs conducted by the Commission. The IAB's work is to be evaluated next year.

However, it has been found that, in practice, the quality and scope of the 70 RIAs conducted by 2005 vary considerably and often fall short of the expected standards. Only 28 of the RIAs quantified the costs and only 10 took account of firms' compliance costs. A

²¹ http://ec.europa.eu/governance/better_regulation/index_en.htm.

²² http://ec.europa.eu/governance/impact/docs/key_docs/sec_2005_0791_en.pdf.

cost/effectiveness analysis was conducted in only six cases and little consideration was given to alternative options to a rule. In 2007 the Commission has initiated an independent review of its RIA system and an external study of how the impact assessment system can be improved is currently in progress. Widely discussed, but not politically feasible at present, is the creation of an independent body to carry out the RIAs.

VI. Conclusions

The institutional foundations have been laid for a successful reduction of bureaucracy in Germany and the EU. In light of the positive experience in other countries both better regulation concepts, taken as a whole, can be viewed positively. In particular, setting a reduction target of 25% in Germany and at the EU level is an important step to take the reduction of bureaucracy forward and underpin it with systematic performance controls.

First steps point in the right direction...

Other positive elements in Germany are the creation of the NKR and a systematic measurement of administrative costs imposed by legislation based on the SCM model. Flanking these measures with two laws to relieve the burden on small and mid-sized firms makes economic sense, too. At the EU level, the Commission's intention to conduct impact assessments for all new legislation proposed and to measure administrative costs using a modified SCM model is to be welcomed. Its aim to achieve further relief by simplifying, scrapping and codifying EU legislation is also right.

... but further action is still needed in Germany and the EU

Despite this essentially positive view further steps are still needed in Germany and at the EU level:

- First, the German government should set a net reduction target of 25%. Second, roughly 30% of the laws – namely those which are initiated by parliament – are not reviewed by the *Normenkontrollrat*. Third, EU law should be implemented in German law on a strict one-to-one basis. Finally, the use of ex-ante regulatory impact assessments should be the rule, not the exception. With the ex-ante application of RIAs excessive bureaucratic costs can be avoided already in the early stages of drafting legislation. This is far more difficult in later stages of the legislative process when the reduction of bureaucratic burdens hinges primarily on the activities of the NKR.
- On the EU level, the quality of the impact assessments varies considerably because the costs and benefits of a potential rule are not sufficiently quantified and a cost/effectiveness analysis is generally not conducted. In the mid term it would make sense to set up an independent body to carry out the RIAs so that the objectivity and quality of the impact assessments can be systematically improved. The creation of the IAB is a first practical step towards improving the quality and transparency of the RIA process. The European Parliament and Council also need to perceive the impact assessments as an integral part of the legislative process. The Commission's simplification programme points in the right direction, too, although the results achieved to date are disappointing.

Only an ongoing political commitment can produce results

It is to be hoped that the measures initiated in Germany and at the EU level will be pushed forward with determination so that businesses and citizens feel tangible benefits in their day-to-day lives from a reduction of red tape. So it's time to see results.

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