Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true – impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule-making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.
Assessment and recommendations

Trends in the production of new regulations

There is sustained use of regulation to achieve government policy goals, but no suggestion of regulatory inflation. Austria does not record changes in the overall quantum of the regulatory stock, but the review heard no evidence either of regulatory inflation or of significant trends in the decline in the use of regulation. Available data provided by reference to the publication of new laws in the federal gazette each year generally indicates consistency in the use of primary laws and subordinate regulation over the past decade, with a slight decline in the number of new laws published in the period from 2003 to 2007.

Processes for making new regulations

The forward planning processes for law making are somewhat fragmented in Austria but shows an intelligent use of electronic systems for maintaining standards and quality control in the production of legislation. Cross ministerial co-ordination of rule-making is weak in Austria, with regulations being autonomously conceived within each responsible ministry. As a result forward planning policies vary from ministry to ministry. The proponent ministry is also responsible for initiating consultation with affected ministers, according to its own priorities. When notified, the Ministry of Finance reviews the assessment of the budgetary implications and administrative burdens of the legislative proposal and the federal chancellery checks the legal quality of the draft proposal, the Court of Audit assess compliance with the requirement to report the financial costs and administrative burden.

In this decentralised system, the e-Law system is intended to manage the quality control aspects of rule-making and promote the efficient management of the drafting of laws through a continuous electronic production channel, from the initial drafting to promulgation of the law. The e-Law system ensures that ministries remain consistent with the guidelines issued by the Federal Chancellery through the use of a template approach. The e-Law system is only accessible by password to staff of the federal ministries. This is an innovative approach to the electronic management of rule-making that is not yet in widespread use across the OECD. There is likely to be the potential to extend this electronic tool further in the legislative process to include amendments introduced in parliament and apply compatible tools for use at the level of the Länder.

While Austria reports that forthcoming regulation can be anticipated to be consistent with the published overall programme of the federal government, there is no consolidated legislative plan. The Austrian government reported selected cases of forward planning of rule-making, including examples from ministries which published planned legislative projects, and internal planning tools used by the Federal Chancellery to manage legislative projects. This suggests fragmented practices across the government that could be improved through the application of a consistent planning discipline and notification procedure. The use of a consolidated forward planning schedule would aid transparency and the effective management of legislative drafting, and be useful for monitoring that other policy processes such as consultation and the preparation of impact analysis are being organised in a timely way. A forward planning schedule does need to be binding on agencies to be useful, and it should not be an impediment to the timely development of unanticipated but necessary legislative responses. A planning framework could build on the internal planning tools used by the Federal Chancellery and be linked to proposed regulatory measures identified in the forward budget estimates of agencies.
Recommendation 4.1. The Federal Chancellery should co-ordinate an annual formal plan of forthcoming legislative projects, as a communication and planning tool both for internal government use and to promote public transparency as well as better structure public consultation. This should include lists of all projects which Ministries have under preparation, even before they have reached the (pre)consultation phase.

Ex ante impact assessment of new regulations

In spite of the existence of important administrative provisions and signals of an emerging awareness of the importance of the tool, Austria has not developed integrated and formalised systems for the ex ante analysis of the impacts of proposed regulation. The procedural requirements include an obligation on officials to assess the financial economic, environmental and consumer effects of new legislation. Technically, officials are required to provide an account of these elements in the Vorblatt, a statement of effect that accompanies a legislative proposal. In the recent past, moreover, promising initiatives have been taken that signal an increased attention of the government to enhancing the RIA tool. The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Particular mention deserve the debate on introducing the so-called Climate Impact Test and, more significantly, the new provisions included in the 2009 Federal Budget Law, which requires that from 2013 all “essential” impacts of future legislative proposal be assessed.

In practice, there are no effective systematic mechanisms for ensuring that officials formally undertake ex ante analysis of regulatory impacts during the development of a regulatory proposal. Notable areas of weakness include an absence of systematic guidance material on the calculation of costs and benefits of regulatory alternatives, and no effective oversight of the process to ensure compliance with RIA requirements. OECD analysis has found that RIA is unlikely to be effective in improving the quality of regulatory proposals unless it is supported by these systemic elements as well as training and political commitment. Simply having a procedural requirement for RIA will not produce the benefits of improved regulatory design that are expected from regulatory impact analysis. A potential deficiency of RIA that has been observed in practice in OECD countries is that it is often relegated to a check box exercise. To be effective RIA has to be incorporated early in the policy process and have the potential to influence policy outcomes.

The current arrangements are unlikely to ensure that officials have undertaken a thorough economic assessment of the costs and benefits of alternative regulatory proposals. Where there is a stronger focus on ex ante analysis is in respect to the calculation of the financial impacts of policy proposals. The Federal Minister of Finance has issued an ordinance on presenting and assessing financial impacts and the ministry appears to be alert to the proper assessment of financial impacts. This role is aided by the Court of Audit which examines regulatory proposals for compliance by ministries with the requirement to assess financial impacts. Similarly, with respect to environmental impact assessment, Austria has incorporated formalised practices including an innovative mechanism for assessing the carbon output of government programmes.

The Austrian administration is aware of the need to strengthen arrangements in respect to the effective implementation of RIA. Further to the new Federal Budget Law of 2009 ordinances as well as guidelines are planned to be issued by the Federal Chancellery and the respective Ministries to address threshold issues such as what impacts are to be considered and what methodology should be used. This is however, an area that requires further work in Austria. The current Handbook on Better Regulation (2008) does not provide an effective tool for guiding policy analysts on how to undertake RIA. Accordingly the construction of a clear and practicable framework for undertaking RIA and carefully assigning responsibility for assessing the quality of RIA will be critical to its effective contribution to policy development in the future.
Responsibility for oversight of the conduct of RIA in the rule-making process should be assigned to a function within the Federal Chancellery, with the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals. It is important that the regulatory oversight role is located at the centre of government to ensure that it has the necessary political authority to promote the effective contribution of impact analysis to policy development, and that it is integrated procedurally in the law making process. The Federal Chancellery seems to be the single best authority to take on this role, however, the skills of analytical staff allocated to the task cannot only be based in an assessment of legal quality, but must also include staff skilled in economic analysis and in particular the economics of regulation.

Some of the issues that will confront the Austrian administration are ensuring that all regulatory proposals with the potential for significant economic, environmental or social impacts are captured, and also balancing the use of scarce policy resources. One way of addressing this chosen by a number of OECD countries, is through the use of a two stage process, including a screening assessment to identify if a policy proposal requires a more elaborated RIA; a compliance cost calculator can help to streamline this process. It is likely to take some time to embed a RIA system in the rule-making process. Accordingly, the preparation of draft guidelines should be commenced without delay. The draft guidelines should be prepared in consultation with ministries to engage them with the scope and application of the guidelines and to encourage their use. However, at their root the guidance should draw on the OECD and EU best practices for RIA and relevant examples from other OECD jurisdictions. Critical aspects include a clear focus on defining the nature and extent of the problem to be addressed (risk analysis).

Another important methodological aspect is the consideration of potential of any regulatory proposal to impact positively or negatively on competition. The OECD Economic Survey of Austria identified that “the rules governing market entry and the creation of new corporations, as well as various sectoral regulations are not sufficiently supportive of competition, innovation and productivity growth.” (OECD 2009:12). This has undermined productivity growth in the services sector. The RIA system can assist in preventing the development of regulations that are welfare reducing restrictions on competition.

A further element is the integration of RIA with public consultation, as transparency and the incorporation of a diverse range of perspectives are integral to the credible use of RIA to ensure its effectiveness and legitimacy in evaluating alternative options. This will require officials to move beyond informal modes of consultation to use a more systematic inclusion of interests external to the government. Experience across the OECD demonstrates that implementing a system of RIA is not straightforward. It is a long-term endeavour requiring cultural change and capacity building. Accordingly, Austrian officials should anticipate that this project will require the reform of some existing practices and modes of working. To be effective it will be necessary that the procedural elements of RIA are clearly defined, integrated with the rule-making process and made mandatory by formalising the requirements of the guidelines.

Recommendation 4.2. Develop administrative mechanisms to support the incorporation of ex ante analysis in the development of regulatory policy including formal administrative requirements, the development of RIA guidelines and training and capacity building involving the ministries. Many OECD examples and models exist for the guidelines, but the implementation of the system is an opportunity for an interactive discussion with ministries and the establishment of a network of officials informed on how to use the RIA process effectively.
Recommendation 4.3. Establish a two-stage process for impact assessment including clear minimum threshold criteria to identify when a RIA is required and the use of compliance cost calculators to simplify the process of determining the extent of regulatory impacts.

Recommendation 4.4. Establish institutional oversight of compliance with RIA processes in the Federal Chancellery including economic analysis skills to assess and comment on the quality of the RIA documents, the role of preparing guidance on the use of RIA, engaging with ministries to ensure its performance (including through training and capacity building) and having some form of oversight and veto role on poor quality regulatory proposals.

Alternatives to regulations

Austria has considerable experience with the use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the social partners. However, as currently formulated, the RIA processes do not appear to be effective in ensuring that alternatives to regulation are considered in the development of regulatory proposals. Formally, the Vorblatt requires ministries to consider alternatives, including the do nothing option in evaluation of the effectiveness of regulatory proposals. In general this is an area of regulatory quality where all governments find it is difficult to encourage rule makers to give serious consideration to alternative approaches once a policy decision has been made to use regulation. It is advisable to provide guidance and training on the use of alternatives in building the capacity of officials to use RIA effectively. The use of co-regulation through the delegation of rule-making powers to public law chambers giving a regulatory role to the Social Partners is a potential strength of the Austrian system. While this may create some risks of compromises to competitive efficiency, there is obviously potential for these measures to reduce regulatory costs and promote economically efficient outcomes which should be fully explored in RIA.

Recommendation 4.5. Guidance and training to build the capacity of officials on the use of RIA should also address the use of alternatives in designing regulations, including an analysis of the most effective roles for the Social Partners having regard to the potential risks to competition.

Risk-based approaches

There is no formalised policy on the adoption of risk-based approaches. There is likely to be considerable potential for improving the contribution of risk-based approaches to improving the efficiency of compliance and enforcement practices. This is particularly the case at the administrative level of the Länder through the identification and sharing of good practices (see the recommendation in Chapter 6 on the development of a principles based framework for assessing the quality of enforcement practices and the preparation of draft guidance for agencies).
Background

General context

The structure of regulations in Austria

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<th>Box 4.1. The structure of regulations in Austria</th>
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**General hierarchy**

Austrian law is primarily statute law, with a very limited role played by customary law. The case law of the highest courts lays down important guidelines as to the application of the law, but it is not formally recognised as a source of law.

Individual forms of law have different derogatory power. Accordingly, the more difficult legislative procedure gives the constitutional law greater durability.¹

- **The guiding principles of the Federal Constitution** are the most important legal provisions in the structure of the legal system. They include the democratic principle, the principle of the separation of powers, the principle of the rule of law, the republican principle, the federal state principle and the liberal principle. In their entirety, these guiding principles form the basic constitutional order.

- **Primary and secondary community law** has autonomous effect. It takes precedence over national law, even over national constitutional law – with the exception of the constitutional principles.

- The “ordinary” constitutional law (“einfaches Bundesverfassungsrecht”) provides the “rules of the game” for political activity as it determines the legislative procedure, the status of the highest bodies within the State, the relationship between the federal government and the Länder as regards legislation and enforcement and the control of government activity by the law courts.

- **Federal law (Bundesgesetz)** is enacted by parliament according to the procedures stated by the Federal Constitution. Federal laws rank below constitutional law and, usually, provide the legal basis for ordinances executing and specifying federal laws (Durchführungsverordnungen).² Like ordinances, federal laws are directed at an abstract group of people. In contrast to ordinances, they are issued by parliament and not by administrative authorities.

- **Ordinances (Verordnungen)** are general legal provisions made by administrative authorities and mainly specify and implement other general provisions (mostly of ordinary laws). They are directed at an abstract group of people, whose individuals cannot be determined. Regulations which amend or supplement the law require express constitutional empowerment.

- **Orders (Bescheide)** are primarily administrative instruments to execute the law which are directed at one or more individually specified persons.

- **Decrees (Erlässe)** are general instructions (generelle Weisungen) addressed to the administration itself. They might have impacts outside the administration, but need not have such impacts.

**International law**

The Austrian constitutional law declares that the generally recognised rules of international law form part of federal law and it provides for international treaties to be incorporated into the Austrian legal
system (general and specific transformation). The ranking of the international treaty provision within the
domestic legal system is determined by its content.

The Länder legal order

The structure of Land legislation essentially follows the federal example.

In accordance with the federal Constitution, the nine federal states have their own (constitutional)
law in addition to the federal (constitutional) law. No order of precedence exists between federal and
state legal provisions. The Länder have also been able since 1988 to conclude international treaties in
matters within their own domain; as before, however, the federal government takes precedence in
external matters.

Municipality regulations (GemeindeVerordnungen)

Municipal authorities can act as administrative authorities in areas where they are provided with
sovereign power. In this cases, they can issue municipality regulations. This type of ordinances is
directed at an abstract group of people.³

“Soft law”

The term "soft law" refers to quasi-legal instruments which do not have any legally binding force,
or whose binding force is somewhat "weaker" than the binding force of law – e.g. according to the
principle of legality. Soft law is not mentioned in the Federal Constitutional Law as a source of law in the
structure of regulations and is not regarded as a particular category considered by Austrian legal theory.
“Soft law” is therefore usually understood as having the status of recommendation. Examples of this
type of instruments are:

- General agreed standards and guidelines for technical, scientific, environmental etc. use (e.g.
- Circulars (Rundschreiben) (e.g. the circular letter issued by the Federal Chancellery
  launching the climate impact test).
- Self-regulating co-regulating instruments, although their use is not very common in Austria.

Source: http://ec.europa.eu/civiljustice/legal_order/legal_order_aus_en.htm (last accessed 23 November 2009); and
Reponses of the Austrian Government to the OECD questionnaire.

Trends in the production of new regulations

There is no formal, yearly calculation of regulatory inflation. Nevertheless, some data can be provided
on the basis of the Legal Information System of the Republic of Austria (RIS). The number of laws
existing on federal level can for instance be determined by the numbers of laws (and ordinances) published
in the Federal Law Gazette every year. In 2009, 139 laws (including amendments) were published in Part I
of the Federal Law Gazette and 447 ordinances (including amendments), mostly issued by Federal
Ministers, were published in Part II of the Federal Law Gazette.
**Figure 4.1. Number of new laws in force at the start of each year 1997-2007**

![Graph showing the number of new laws in force at the start of each year from 1997 to 2007.](image)

*Source: Indicators of Regulatory Management Systems (OECD 2009).*

**Figure 4.2. Number of new subordinate regulations 1997-2007**

![Graph showing the number of new subordinate regulations from 1997 to 2007.](image)

*Source: Indicators of Regulatory Management Systems (OECD 2009).*

**Procedures for making new regulations**

**The law making process**

The initiative for legislation at the federal level emanates in most cases (up to 90%) from the federal government (*Regierungsvorlage*). Other sources of legislative initiative are nonetheless possible in Austria. At least five members of the National Council or Federal Council may propose private members’ bills
4. THE DEVELOPMENT OF NEW REGULATIONS – 97

(so-called “initiative applications”, Initiativeanträge), and people’s petitions for a referendum may also lead to legislative initiatives (Volksbegehren). All forms are usually drafted by civil servants.

Government bills may either draw from the political agenda of a minister, or be initiated on the initiative of the civil servants themselves, who approach the appropriate minister’s private office. Once the necessity of taking action is approved by the minister, an official serves as the head of a team charged with drafting the law. Often, a single author is responsible for the dossier. This is not necessarily the highest-ranking person in the team, but often a jurist specialised in public law (Legist).

The appropriate bills must be adopted unanimously by the Council of Ministers and are then sent to parliament. Most legislative competencies are concentrated in the National Council, as the Federal Council enjoys the mere right to a suspending veto.

The law making process at the federal level is outlined in more detail in Box 4.2 However, it is not followed systematically, as the drafting process varies across ministries. Land legislation is the responsibility of the Land authorities.

Box 4.2. The law-making process in Austria (federal level)

Preparation of a bill

The process for the preparation of laws is not set in any legally binding act. Regulations are normally drafted by the competent units in the lead federal ministry, on the basis of the regulatory guidelines issued by the Constitutional Service. This practice differs from the one at the subnational level, where drafting is often centralised in the state constitutional services. The drafts are first scrutinised by the internal legal department of the lead ministry.

The lead ministry organises the (pre)consultation as it best deems, publishing the draft on its webpage. The Ministry of Finance is brought in the loop at an early stage, notably when distributive and redistributive policies are at stake as well as in relation to information obligations for enterprises, as a part of the administrative burden reduction programme. The lead ministry also usually informs ministries with overlapping responsibilities in order to minimise the risk of vetoes in the Council of Ministers.

Beyond these practices, cross-ministerial co-operation is rather weak and occasional. A so-called Begutachtungsprozess exists between the ministries but there is no formal requirement for internal consultation. The main co-ordination task lies with the Chancellery.

The Constitutional Service of the Federal Chancellery (Verfassungsdienst) nonetheless plays a pivotal role as it performs a number of checks upon the submission of the draft by the lead ministry. The checks include scrutinising the correspondence with national constitutional law and regulatory policies, and EU and international law. The service also checks the clarity, comprehensibility and coherence of regulation. The opinion of the Constitutional Service is not legally binding. Consultation with the Constitutional Service is obligatory as soon as the consultation mechanism (Konsultationsmechanismus) between the Federal and the Länder level is at work.

When assessed, regulatory impacts are reported in the introductory remarks (Vorblatt). This includes the results of the economic and financial analysis and of the ex ante measurement of administrative burdens. Essential environmental, social, gender and consumer protection impacts are also to be reported in the Vorblatt.

The responsible minister must see the draft law (Ministerialentwurf) before this is submitted to the Council of Ministers.
Adoption by the Council of Ministers

When discussed for adoption, the draft law has to contain the introductory statement (Vorblatt), usually of one page; the explanatory remarks (Erläuterungen); and a part where the old text is contrasted with the new version (Textgegenüberstellung). The Vorblatt provides a short summary and an overview of the proposed regulation. It may include the results of the regulatory impact assessment. The explanatory remarks provide deeper general information (allgemeiner Teil der Erläuterungen) on the draft piece of legislation and specific information on its particular provisions (besonderer Teil der Erläuterungen).

Once adopted, the text becomes a bill (Regierungsvorlage).

Decision of parliament

Because of the intense and strongly compromise-driven consultation rounds at the earliest stages of the preparatory phase, the majority of the bills presented to the National Council are passed without amendments or only small amendments. If needed, the civil servants who drafted the bill are invited to explain their draft, and make the appropriate amendments if necessary. Other experts and the representatives of the Social Partners after political negotiations may also be asked to present their views.

Authentication of the Act by the Federal President and counter-signature

Bills passed by the National Assembly must be submitted by the Federal Chancellor to the Federal President for authentication. Every bill passed by the National Assembly must be referred to a plebiscite before authentication, if the National Assembly so resolves or if the majority of the members of the National Assembly so demand. Additionally, every overall amendment of the Federal Constitution must be referred to a plebiscite.

The President’s signature authenticates the constitutional enactment of federal legislation. The authentication must be countersigned by the Federal Chancellor.

Promulgation

Upon such certification, federal legislation is published in the Bundesgesetzblatt. Unless a federal act makes express provision to the contrary (retroactive effect or vacatio legis), it comes into force at the end of the day on which the issue of Bundesgesetzblatt containing the announcement is published and distributed.


The importance of the preparatory phase in the overall decision-making process is remarkable, both with regard to the efforts to reach political compromise and in terms of formal quality checks of the legal texts. More than half of the bills adopted by the Council of Ministers are passed by parliament by consensus.9

Austria was a pioneer in the development of the application of ICT to the law making process. The Federal Chancellery has been one of the first public authorities in Europe implementing a completely digital system, which is used by all ministries (see Box 4.3).
Box 4.3. E-Government and the law making in Austria: The e-Law

The system called “e-Law” (e-Recht) allows for the electronic involvement of all institutional stakeholders and interested parties during a law making process. The system was introduced further to a decision by Council of Ministers in May 2001. It plays a vital role through the lifecycle of a legislative act, and is believed to bring about a fundamental cultural change in the Federal Executive.

The rationale behind the e-Law project is to have legal texts pass through a continuous electronic production channel. All stages are covered, from the initial drafting phase, via preparation and evaluation, to the adoption of the bill by the Council of Ministers, down to the debate in parliament and its authentic publication on the Internet.

The system not only ensures transparency with regard to the making of the text drafting throughout the entire process, but also facilitates the individual tasks and significantly speeds up the law making and publication procedure. The implementation of the project also allows for financial savings.

Each bill recorded in the e-Law system consists of meta-data (descriptive information) and the following documents:

- Draft bill (mandatory).
- Relevant documents (usually consisting of the introduction, comments, comparison of texts).
- Annexes.
- Opinions of bodies which were invited to evaluate a ministerial draft bill.
- Various cover notes.
- Other documents.

The creation of electronic texts within the law making process follows specific layout guidelines issued by the Executive Office for Constitutional Matters of the Federal Chancellery. MS Word-based templates were developed which facilitate the structuring of texts and the layout design for the federal ministries. Additional functions which allow for a more comfortable editing of the legal texts are made available to the users. The e-Law application consists of different components that allow a uniform standard information workflow from the federal ministries to parliament; central server-based conversion routines, and a full text retrieval system with a high-performance search engine for the publication of evaluation draft bills, government bills and Federal Law Gazettes on the RIS.

To date, only the staff of the federal ministries, using their user ID and password, can access the e-Law on the intranet of the public authorities.

Source: Responses of the Austrian Government to the OECD questionnaire.

Forward planning

Rule-making activity is determined by the overall programme of the federal government, which is publicly available on the Internet, compliance with EU and international legislation (such as implementing EU regulations and transposition EU directives), and might be influenced also by internal priorities arising from initiatives of the different ministries and external demands.

Beyond these broad indications, there are no annual formal and centralised forward planning procedure and legislative programme at the federal level. Individual ministries may have own practices,
though. The Ministry of Defence and Sports, for instance, lists planned legislation projects, including their degree of implementation and the time frame for their realisation semi-annually. The Federal Chancellery lists planned legislation projects on an annual basis. These lists are not publicly available. Other ministries do not have any system for forward planning.

The lack of formal forward planning is somewhat compensated by the relatively comprehensive and timely communication of initiated legislative dossiers on the websites of the government and the parliament, as outlined above.

Administrative procedures

The General Law on Administrative Procedure (allgemeines Verwaltungsverfahrensgesetz, AVG) of 1991 regulates the administrative modus operandi of the Federal Executive. The AVG includes general provisions on administrative procedures regulating how authorities have to execute law:

- **Part I**: General Provisions (e.g. authorities, persons involved and their representatives, communication between authorities and the persons involved, service, deadlines, definitions).
- **Part II**: Investigation procedures (e.g. objective and course, evidence).
- **Part III**: Rulings (e.g. issuance, contents and form).
- **Part IV**: Legal protection (e.g. appeal, special provisions at the independent appeal panels, public oral hearing).
- **Part V**: Costs (e.g. incurred by the persons involved, incurred by the authorities).
- **Part VI**: Final provisions (e.g. references).12

Since 1979, regulatory guidelines (legistische Richtlinien) exist at federal level that provide for a standard procedure for the development of draft primary and subordinate regulation. The guidelines were updated in 1990 and 1995 (the latter in the context of Austria’s accession to the EU). The manual (Handbuch der Rechtssetzungstechnik) was issued by the Chancellery and adopted by decree of the Council of Ministers. This guidance material is binding for all federal ministries.

The Handbook “Better Regulation” (Österreichisches Handbuch “Bessere Rechtsetzung”) of 2008 also provides some practical guidance for a better regulatory practice. It strongly relies on international approaches and practices.

In addition, further internal guidelines for standard procedures have been issued for certain ministerial departments. An example of such guidelines are the standard procedures of the Ministry of Finance, which were revised in 2005 and became binding for all departments in the Ministry one year later.

Legal quality

The responsibility for ensuring the legal technical quality of regulations, including reviewing the legal basis and consistency with higher level regulations, lies primarily with the Constitutional Service (Verfassungsdienst) of the Federal Chancellery. The Service also updates existing and develops new regulatory policies and legislative guidelines on the matter.
Only some of the respective units in the Ministry of Economy, Family and Youth prepare circular letters (Rundschreiben and Erlässe) to simplify and guarantee a uniform application and implementation.

The role of the parliament

Parliament is an integral part of the legal quality scrutiny mechanisms in Austria. As a part of the e-Law system, when a government bill is transmitted to parliament or when a members’ motion is moved, the parliamentary administration checks the technical standards of the legal text according to the guidelines issued by the Federal Chancellery. It is also responsible for the integration of any amendments that will be resolved during parliamentary procedures. Whenever inconsistencies are found, these are reported back to the parliamentary group that motioned the proposal or to the lead federal ministry. The parliamentary administration also checks legal sanctions and coming-into-force clauses so as to take account of possible retroaction. A review of the rights of the Federal Council with regards to specific legislative proposals is also carried out. All these tasks are nonetheless primarily technical. Only under exceptional circumstances does the President of the National Council ask the parliamentary administration to review the legal basis and consistency with the valid and applicable statutes that shall be amended or with constitutional law.

Ex ante impact assessment of new regulations

Development of Impact Assessment

A first step in the development of RIA was the Federal Budget Law of 1986, which mandated the estimation of costs of new regulations with respect to fiscal aspects. Responsibility for undertaking this assessment lay with the lead ministry responsible and the scope had to include the national, state and municipal level. The law did not apply to regulations initiated by parliamentarians (Initiativanträge).

An important milestone was a 1999 decree of the Ministry of Finance which widened the obligation stated by the Federal Budget Law to include operational accounting as well. An agreement between the Federation and the states was also signed establishing a procedure for the estimation of costs and benefits as well as shared consultation procedures for all administrative levels.

In the same year, the scope was also widened to include a more complete assessment of regulatory impacts, notably the effects on the competitiveness of the Austrian economy and on the employment situation. A circular of the Federal Chancellery was issued to provide guidance to ministry officials concerning the formal presentation of their estimates in draft legislative papers (Vorblätter).

The widening of the scope of analysis and its embedding in legally binding provisions occurred with the latest legislative revision of the legal basis for RIA in Austria - the Deregulation Act of 2001. The Act mandated the assessment of essential financial, economic, environmental, social and consumer protection impacts of new legislation. In contrast to older legislation, the requirement was not exclusively directed at ministry officials but at “all officials concerned with the preparation of acts of federal legislation”.

However, unlike other regulatory provisions for the preparation of bills, the requirements set by the Deregulation Act 2001 were never detailed in an implementing circular and the new inclusive approach did not substantially alter the structure of the legislative process and the RIA practice. Commentators conclude that the Deregulation Act, as a result, leaves civil servants with a huge task but does not provide them with the necessary instruments to fulfil it. Similarly, while the formal obligations seem to be fulfilled, the quality of assessments or estimations is often questionable.

Environmental Impact Assessment (EIA) has been conceived and implemented separately from RIA, and the tool is more sophisticated and better rooted in administrative practice. EIA is partly realised in
legislation further to the Strategic Environmental Assessment Directive of the EU. EIA is for the time being mandatory only for plans and programmes with relevant effects on the environment (as provided for by the directive and the Austrian law), but discussions among experts are ongoing about the possibility of widening this obligation to also include legislative acts.

Current policy on impact assessment

In the recent past, tools and practices for the assessment of policy and regulatory impacts in Austria have evolved. The so-called “Climate Impact Test” (Klimaverträglichkeitsprüfung, KVP) was introduced in October 2008. This new tool seeks to make the Austrian Climate Strategy operational, since it should help to address climate impact aspects of new regulations (aspects of mitigation and adaptation).

More significantly, parliament adopted a new legal basis for RIA in Austria. The new Federal Budget Law (Bundeshaushaltsgesetz, BHG) of December 2009 proscribes an “efficient impact assessment of all regulatory and other relevant proposals” (wirkungsorientierte Folgenabschätzung bei Regelungsvorhaben und sonstigen Vorhaben). The law will enter into force in 2013. Under the new system, federal ministries will have to assess all “essential” impacts, be they linked to financial, economic, environmental, consumer policy, social and gender aspects, as well as to administrative burdens on citizens and businesses. Financial impacts are always to be assessed. The explanatory remarks to the budget law (BHG 2013) lay down that a two stage process for impact assessment including threshold criteria is foreseen; but only essential impacts have to be assessed in-depth.

The law will have to be complemented by guidelines issued by the Federal Chancellor in accordance with the Ministry of Finance. The guidelines should not only clarify the scope and methodologies to be applied for the future assessments, but also establish criteria to determine when impacts have to be considered “essential” or not.

Some efforts to develop a more structured approach have also been made in some states. The Land governments of Upper Austria and Vorarlberg, for instance, have developed their own RIA models (see below).

Austria has not yet developed a full RIA system, and the implementation of forms of impact assessments is still not systematic. The provisions concerning impact assessment or part of that process are split among a number of legislative acts and bureaucratic responsibilities. They blend with other forms of legislative procedures, including pre-consultation practices, making it difficult sometimes to state which elements can really be counted as RIA.

Institutional framework

Responsibility for assessing regulatory impacts is de-centralised. In preparing the legislative drafts falling under their respective competences, each lead ministry has to comply with the regulatory guidelines (legistische Richtlinien) of the Federal Chancellery, including the provisions therein on impact assessment.

No RIA specific guidelines have been issued to assist officials in the process. The regulatory guidelines of the Federal Chancellery were issued in 1979. They generally refer to RIA, but do not provide detailed and concrete guidance. Strikingly, the updated version of 1990 no longer includes the same degree of instructions on how to prepare RIAs.

There is no central oversight body responsible for regulatory quality across the whole federal government. However, there are units within the ministries responsible for overseeing the RIA process. Often, these are the ministry’s legal units or departments and work closely with the minister’s cabinets and the director general on the legal drafting.
With regard to quality control and *ex post* evaluation of the RIA process, on an annual basis the Austrian Court of Audits examines the level of compliance of the individual ministerial departments with the RIA requirements. Such analyses are partly performed on an *ad hoc* basis, putting emphasis on the financial impacts. Beyond this scrutiny, there is no further formalised quality oversight.

**Methodology and process**

Each legislative draft has to include explanations on “impacts” in its introductory remarks. Particular importance is given to assessing and presenting the financial impact of new legislation. Special attention must be given to administrative burdens imposed on enterprises and citizens. They must be estimated using the SCM methodology. Nonetheless, ministries must also take into account sectoral impacts. For example, the Ministry of Economy, Family and Youth especially considers impacts on SME and the internal market.

Although overall there seems to be little diffusion of quantification methodologies such as Cost-Benefit Analysis, specific assessments are supported by written guides. Guidelines on assessing and presenting the financial impact of new legislation have for example been issued by way of ordinance of the Federal Minister of Finance. Legal guidelines on the calculation of administrative burdens for business have been in place since September 2007 for businesses and since September 2009 for citizens. The Climate Impact Assessment Guidelines and Tables were established in October 2008 to support the climate impact assessment (see Box 4.4).

**Box 4.4. Assessing impacts on climate: The new impact assessment tool in Austria**

Since 2008, the Climate Impact Test (*Klimaverträglichkeitsprüfung*, KVP) should assess the potential effects of the regulation with regard to emissions of greenhouse gases (“mitigation”); and the expected effects on vulnerability as well as the contribution to climate change response measures (“adaptation”).

According to the Climate Impact Assessment Guidelines and Tables accompanying this assessment, the KVP shall follow the overall principle to exhaust positive effects (emission reductions, reduced vulnerability/increasing adaptive capacity) and avoid negative effects to the extent possible.

The methodology foresees a number of assessment steps that the responsible authorities have to follow when preparing new regulations or an amendment:

- the examination of the effects on climate relevant goals and measures (Austrian Climate Strategy);
- the estimation of the effects (with regard to greenhouse gas emissions – in tones CO2 avoided/produced and contribution to climate change adaptation);
- if relevant, adverse effects can be expected, possible alternatives have to be elaborated and assessed in terms of their potential impacts;
- at best, the most “climate friendly” alternative shall be chosen; and
- in any case an explanatory statement has to be indicated in the law materials.

*Source:* Reponses to the Austrian Government to the OECD questionnaire; and mentioned website.
Methodology and competition enforcement

Sometimes, the relatively small size of the Austrian market is brought forward as a justification for less formal and standardised procedures for communication. The Austrian Federal Competition Authority (FCA), for instance, estimates that Austrian “competition community” is small enough to be easily overviewed. Elaborated techniques and sophisticated instruments are therefore not believed to provide added value in many cases but, on the contrary, probably create additional costs. The communication channels between the FCA administrators and the relevant stakeholders would therefore remain short and often informal, and hence cheap. Moreover, individual, ad hoc initiatives may be better suited to enhance the efficiency and effectiveness of competition enforcement. Nevertheless the FCA also considers more formal assessments and it is currently implementing the evaluation of past remedies applied in competition cases.  

Public consultation and communication

No specific procedure and requirement is in place to organise public consultation in the framework of RIA. However, because of its strong corporatist character, the pre-parliamentary consultation process involves at an early stage not only ministries, agencies, political parties and the Social Partners, but also experts close to several of the aforementioned groups. The information gathered in this process, besides being used to reach political compromise and consensus, includes analyses of estimated effects. It therefore displays elements of RIA.

Because all parts of the legislative proposal are submitted to the stakeholders for comment, the impact assessment also forms part of the consultation process, generally included in the introductory remarks (Vorblatt). If there are special studies, these are also included in the consultation procedure. This documentation is usually posted on the webpage of the lead ministry and of the parliament (see above).

Ex post evaluation

The obligation to carry out ex post evaluation of the law is not systematic but is included in an increasing number of laws. In several policy fields, ex post evaluation has become standard practice even if there is no legal requirement. Examples of policy fields which use ex post evaluation are higher education, research, technology and innovation policies.

In the consultation process, the Court of Audits looks at whether a proposed new regulation implements a recommendation made in earlier audits of the Court. In the course of its audits, the Court has repeatedly pointed to the need for new regulation or streamlining existing regulation in different spheres of law. In addition, the Court conducts special reviews of the impact and the implementation of regulation. Examples of such reports are those related to the “Reform of the Pension Systems for Civil Servants at Federal and Land Level”, and the “Austrian Pension Insurance Agency: Implementation of the Federal Act on Nursing Allowances (Bundespflegegeldgesetz)”.

While new findings during the implementation phase and afterwards are collected and considered in future amendments of regulations, ex post monitoring and evaluation of impact assessments does not take place in a systematic manner. An example is the general evaluation study of the impacts on enterprises of the Amendment Act 2002 to the Trade Act (Gewerberechtsnovelle 2002). In the context of the Balance Sheet Accounting Law (Bilanzbuchhaltungsgesetz), it was agreed that the Ministry of Economy, Family and Youth provide an evaluation report two years after the entry into force of the law, which was on 8 January 2008.
The Courts of Audit of the Länder may also perform ex post evaluations. The Upper Austrian Court assesses whether the Landtag has taken up its recommendations. These ex post evaluations may be more influential than the Court’s comments during the consultation phase.

**Alternatives to regulation**

Normally, consideration of alternative policy options is a requirement and the introductory remarks (Vorblatt) accompanying the proposal should describe it, including the “no action” scenario. The alternatives are intended to be considered before the law-making process starts. In general, a discussion on the range of possible instruments should also take place within the lead ministry, and involves the various departments, the director general and the minister. Most of the time however, no alternatives are considered. Approaches based on other than legally binding instruments are considered to be in contrast with the legality principle (rule of law, Legalitätsprinzip) enshrined in the federal Constitutional Law.33

Because of the strong corporatist character of the Austrian system, co-operative arrangements exist with semi and/or non-governmental bodies, such as industry associations and public corporations (see Box 4.5).

**Box 4.5. Delegation of regulatory powers in Austria: The public law chambers**

So-called public law chambers are a manifestation of the principle of self-government – i.e. the idea enshrined in the Austrian Federal Constitution that groups of people characterised by common features (such as their profession) can be joined together by law in a corporation in order to perform duties which lie in their exclusive or predominant common interest and which are suitable to be performed by them. It is therefore parliament which creates public law chambers. Parliament not only provides groups of people with a means to administer their own affairs but also realises the principle of subsidiarity insofar as it creates an administrative entity charged with administering affairs which otherwise would have to be managed by the state itself.

The delegation of such powers must be explicitly referred to in a law. Public law chambers are always provided with a sphere of autonomy (their own sphere of powers) in which they are free to pursue their tasks (among those the right to enact regulations) without government intervention. State officials and members of the government cannot instruct public law chambers. The sphere of autonomy is nonetheless always correlated with state supervision aimed at ensuring that the public law chambers do not over step the boundaries of the law in their dealings.

Parallel to their autonomously pursued activities, public law chambers often function in certain areas as administrative entities of the state insofar as they are charged with administering certain administrative duties. In this assigned sphere of powers they are bound by instructions issued by government officials and members of government.

An example of public law chamber is the Austrian Federal Economic Chamber. Regulation can thus be delegated to it. So far, delegation has occurred in the fields of certification of the origin of goods; issues concerning apprentices; the examination for the master craftsman’s certificate; regulations about exams according to trade law; and the commission responsible for accountants. The responsible minister has directive power and can review the decisions of the Economic Chambers. It is not possible to delegate the power of law-making itself. Only regulations and decisions can be issued by the designated bodies.

*Source: Responses of the Austrian Government to the OECD questionnaire.*

Another example of delegated regulatory functions is the Austrian Standardisation Institute (Österreichisches Normungsinstitut, ON),34 a not-for-profit organisation under the aegis of the Federal Ministry of Economy, Family and Youth aiming at increasing the efficiency of economic actions, the
compatibility of products and services, and the facilitation of the national, European and international exchange of goods and services.

**Risk-based approaches**

In general, there is no formalised process of risk assessment in the preparation phase of proposals. Risk assessment, management and communication tools do form an explicit part of the overall regulatory management policy of the Ministry for Science and Research. In accordance with the current regulatory guidelines, the introductory remarks (Vorblatt) have to evaluate alternative policy options for achieving the objective aspired by the respective regulatory act. The quality of the collection and use of scientific advice in the decision-making process is secured by studies from university professors and/or the Ministry works together with scientific experts for the drafting and content of a law. This however is not standard practice.

**Notes**

1. “A federal constitutional provision thus normally requires a majority of two thirds of the votes in the National Assembly, with at least half of the members being present. Additionally, the provision produced in this manner must be expressly designated as a “constitutional law” or “constitutional provision”. A valid resolution on federal legal provisions in the National Assembly, on the other hand, requires the presence of at least one third of the members and an absolute majority of the votes cast.”, quoted from http://ec.europa.eu/civiljustice/legal_order/legal_order_aus_en.htm (last accessed 23 November 2009).

2. See: Art. 18 Para. 2 B-VG). Therefore, federal laws rank above ordinances, with the exception of ordinances amending or supplementing federal law, which need a special constitutional empowerment (e.g. see Art. 18 Para. 3 B-VG).

3. According to the principle of legality, the entire public administration shall be based on law and every administrative authority – including municipal authorities – can, on the basis of law, issue ordinances within its sphere of competence (Art. 18 Para. 1 and Para. 2 B-VG): e.g. local police ordinances issued by municipal authorities according to Art. 118 Para. 6 B-VG).


7. Except for constitutional amendments and treaties directly concerning the competencies of the Länder.

8. In the case of the EU Services Directive, the responsible unit for negotiating on EU-level within the Federal Ministry of Economy, Family and Youth is also responsible for the co-ordination of the implementation into national law.


10. The government programme for the 24 Legislature is available online at: www.bundeskanzleramt.at/site/3354/default.aspx (last accessed 6 April 2010).


14. In particular Units I/7 (trade law) and I/8 (trade related environmental law).

15. For instance obviously wrong references within the text or inconsistent use of definitions, obviously lacking parts of the proposal etc.


17. See: BGBl II 50/1999, and BGBl I 35/1999, respectively.


(last accessed 6 April 2010).


28. According to section 14 of the Federal Budget Act (Bundeshaushaltsgesetz, BHG),
every draft budget act must be accompanied by an agreement pursuant to Article 15a
Federal Constitutional Act or by a financial impact assessment.


30. For example, the programme of investigation into the liquid fuel markets was discussed
with the automobilists associations and the social partners. Their main proposals have
been taken on board. (Information provided by the Austrian government in its responses
to the questionnaire.)


33. See: Art. 18 B-VG.

See: www.on-norm.at/ (last accessed 1 December 2009).