Chapter 5

The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially small and medium-sized enterprises. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the Standard Cost Model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.¹

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.
Assessment and recommendations

Simplification of regulations

The federal government has engaged in a “spring clean” of the existing regulatory stock, with significant results. The 2004 OECD report had already noted that Germany expends substantial efforts on its reviews of existing legislation. Since 2004, there has been a significant “spring clean”. The federal government has passed eleven laws to repeal redundant regulations, and a Simplification Act to clean up the stock of environmental regulations. The effect has been quite dramatic. The federal legislative stock was reduced from 2 039 laws and 3 175 ordinances to 1 728 laws and 2 659 ordinances, the greatest reduction since 1968. This is a major achievement relative to many other European countries, where legislative simplification has tended to take a back seat to administrative burden reduction programmes (which are not the same thing, although a side effect of the latter can be to remove unnecessary regulations). However, unlike some other countries, the German system does not particularly encourage sunset clauses or other devices that would trigger reviews of individual regulations. It sends out mixed signals – the Joint Rules of Procedure require an indication of whether a draft is to be time limited, but there is a principle that laws should be permanent, and in practice sunset clauses are rarely used. The 2004 OECD report also drew attention to this issue.

Box 5.1. Background comments from the 2004 OECD report

Legislative simplification

As part of the Initiative to Reduce Bureaucracy the Ministry of Justice is currently reviewing existing legislation with a view to identify legal provisions which no longer have any regulatory content.

Germany has expended substantial effort on its reviews of existing legislation. The increase in repeals in 1994, 1998 and 2001-2002 coincide with the end of federal electoral terms and associated peaks in legislative activities. New regulations often include repeals of the regulations they replace. There is no systematic policy in place to review existing laws and regulations, but recent initiatives are important steps towards the establishment of an integral concept for reviewing and updating existing regulations.

Independent committees have been commonly used as a means to review and simplify existing regulations, and to review government administration and procedures. Usually the committees are appointed by and provided with a general mandate from the government, and composed by representatives from academia and industry, trade, and labour organisations.

Review of individual regulations

The principle of reviewing existing laws is enshrined in rudimentary form in the Joint Rules of Procedure. These stipulate that draft regulations’ explanatory memoranda must explain: (a) whether a time limit can be applied to the law concerned, and (b) whether and when the effects intended by the law will be assessed, and whether the accrued costs are proportionate to the results.

In some cases, mandatory reporting obligations require and/or allow regulators to include considerations on possible revisions of relevant laws in light of their experiences with implementing and enforcing the law. For example, RegTP, the Monopolkommission and the Bundeskartellamt in their bi-annual reports to the Bundestag also submit views on selected aspects of regulation.

However, this effect will require a genuine appreciation among regulators of the benefits of such efforts as well as the political support to prioritise such efforts. A systematic approach to the review of existing regulations would help to ensure consistency in approaches and review criteria, would generate momentum and ensure that important area are not exempted from reform due to lobbying by powerful special interests.
It is notable that the mechanisms for reviews of existing regulations are \textit{ad hoc} in nature, rather than being systematic and regular. There is no forward-looking programme for reviews and the actual use of sunsetting as an automatic review requirement is very limited. More importantly, as a general rule, criteria and “tests” for the reviews of existing regulations have not been established \textit{ex ante}, that is, prior to launching the actual reviews. Instead, regulations subjected to reviews and the criteria applied for the actual review have been established as part of the work process, and often with the affected stakeholders participating in the process of selecting the criteria and subjects for the review. \textit{Ex ante} test criteria could be based on cost-benefit assessments, promotion of competitiveness or productivity.

**Recommendation 5.1.** Keep up the spring cleaning of legislation at regular intervals. Strengthen the law making procedures to encourage officials to consider the inclusion of a review mechanism in individual draft regulations, or even a sunset clause (beyond which the law automatically expires) where appropriate.

**Administrative burden reduction for businesses**

A well developed federal programme aimed at reducing administrative burdens for business has been established and is already making a measurable difference. The federal “Bureaucracy Reduction and Better Regulation” programme was a major new initiative of the incoming government in 2005. The 2004 OECD review had highlighted the absence of any systematic approach, which has now been made good. The programme has a precise, carefully defined objective. It seeks to capture the information obligations in all federal legislation using the SCM methodology. The formal target is to reduce administrative costs calculated as at September 2006 by 25\% by the end of 2011 (a full baseline measurement was carried out), with half of the goal to be achieved by the end of 2009. However, since the actual process for taking forward the project includes the identification and measurement of burdens in draft new legislation, the target may be considered a net target (overall, burdens must come down by 25\%, which means that any new burdens from the adoption of new regulations must be offset by corresponding reductions in existing regulations). The business community is a strong supporter of the programme. By 2008, EUR 6.8 billion of reductions had already been confirmed or given effect.

The programme has been an engine of change for Germany’s approach to Better Regulation. The programme has triggered changes in a number of directions. The most important effect of the programme has been to change attitudes. Germany’s approach to law making is traditionally less concerned with the perspective of the enterprise (or citizens), seeking instead to ensure a high standard of legal clarity, coherence and comprehensiveness of the law. In fact, both perspectives are important and need to back each other up. Ministries have established a network of internal co-ordinators to liaise with the federal chancellery and the \textit{NRCC}, and the programme has raised their consciousness of the costs of regulation for external stakeholders, not least by putting a figure on those costs (which - as in most other countries - are significant). The OECD peer review team were told that there is a “new culture of cost awareness”. The importance of evidence based decision is now more clearly understood, which should have positive knock on effects for the future development of \textit{ex ante} impact assessment. Strategically, use of the SCM methodology means that the federal government is now better placed to formulate quantitative goals, determine the degree to which they have been reached, and portray them in an understandable form.
Box 5.2. Recommendation from the 2004 OECD report

Develop a strategy and methodology to estimate and monitor administrative compliance costs.

Germany should continue efforts recently initiated under the “Reducing Bureaucracy Initiative” to establish targets for burden reduction projects. To match the significant political focus on reducing administrative burdens, mechanisms and procedures should be established to quantify administrative burdens and to systematically integrate these assessments in the RIA process. The measurement of the size of existing burdens can be an important information-based approach to developing a policy on burden reduction and the basis for the evaluation of policy initiatives taken. Where possible the German government should attach specific, quantitative targets to new and existing administrative simplification initiatives. The German government should continue to pursue efforts for a nation-wide strategy to reduce administrative burdens – credibly committing the federation as well as the Länder.

Background comments

The German Government does not have a methodology or practice in place to measure systematically the administrative burdens imposed by new or existing regulations. This is a challenge shared with many OECD countries. Despite the numerous administrative simplification initiatives launched by OECD governments over the past decades, governments – somewhat paradoxically – often do not have a detailed understanding of the extent of the burdens imposed on business. This means that policy is made in an information vacuum, and that the size of the actual burdens (as well as progress and setbacks in reducing them) may remain unappreciated. In some countries there are innovative and advanced practices in place providing detailed estimates of administrative burdens and to various degrees integrating these estimates in the regulatory process.

Appraisals of Germany’s long-lasting and politically high-profile efforts to reduce administrative burdens are fundamentally hampered by the fact that there is no systematic evidence available on the actual size of the actual burdens imposed, nor any methodology in place to do so. The measurement of the size of existing burdens can be an important information-based approach to developing a policy on burden reduction and the basis for the evaluation of policy initiatives taken. The size of existing burdens can raise awareness amongst politicians and help to develop and sustain initiatives and policies on burden reduction. Federation-wide simplification initiatives with comprehensive and committed participation of the Länder would be an important factor for success and dynamic effects of such initiatives.

Federation-wide implementation of simplification projects seems to be constrained by the lack of authority at federal level to decide upon and implement policies in those policy areas where administrative burdens are traditionally high – and would benefit from more uniform structures, incentives, and procedures. The question whether to impose a national programme from above or whether to leave freedom for regional and local initiatives is to a large extent only theoretical in the German context, since federal structures and tradition forbid a centralised approach to administrative and regulatory reforms. The challenge is therefore to improve co-operation with and incentives for the Länder to commit to a coherent and consistent strategy to reduce administrative burdens.

The programme has entailed new and more transparent approaches to public communication and consultation. Use of the SCM methodology also meant the deployment of some novel or little used approaches (for Germany) to capture the views of stakeholders directly and to make the process transparent to the public – including expert panels with business, telephone interviews, simulations and surveys for the baseline measurement - as well as publicly available progress reports. This has sown the seeds of a more inclusive and transparent approach to public consultation in other areas.
Recommendation 5.2. Consider how the new approaches used for engaging and informing enterprises and the public on the burden reduction programme might be used for other issues or sectors which carry an important weight of regulations.

The establishment of the NRCC and the Better Regulation unit in the federal chancellery to oversee the programme's implementation are important institutional innovations. The NRCC in particular was a novel approach for Germany's traditional institutional settings, and in a relatively short time, has been able to establish itself as an actor of some weight in the process of developing regulations, establishing a network of informal relationships with ministries. Both the Act establishing the NRCC and the Joint Rules of Procedure require federal ministries to submit their draft bills to the NRCC as a part of the inter-ministerial co-ordination four weeks before they are forwarded to the Cabinet. The NRCC's opinion is necessary for a draft bill to reach the Cabinet table. If the federal government is not following the NRCC opinion, it must address a written response to the parliament. The NRCC is now a well established advisory and assessment body for quality control as well as methodological issues.

Recommendation 5.3. Consider extending the organisational setting used for the burden reduction programme (centralisation of political/administrative support, independent oversight, creation of a network of contacts in the line ministries) to cover other aspects of Better Regulation and notably ex ante impact assessment.

The programme nevertheless has important limitations and needs to be further developed. There are a number of issues to be addressed if the programme is to reach its full potential. First and most important, the scope of the programme is narrow, limited to information obligation burdens arising exclusively from federal legislation. Second, the target has some loose ends. It is not at this stage “allocated” between ministries, but is an overall federal government goal, and this deprives the programme of a strong institutional incentive to meet the target. Also, it is not explicitly a net target to ensure that overall burdens are kept under control. These issues are considered more closely below. An evaluation of the programme so far in order to set the scene for further development would be helpful.

Recommendation 5.4. It is important to walk before you can run, and the establishment of the burden reduction programme was a major step forward in Germany. However it is now well established and ready for further development, which will also help to sustain momentum at a stage where the “low hanging fruits” of the first stage have probably been harvested. Commit now to the continuation of the programme and to its development in terms of scope. Arrange for a rapid but complete independent evaluation of the programme to pinpoint how and to what extent it should be developed, with the participation of the federal parliament and of interested Länder, and with input from external stakeholders (notably business).

The scope is defined in terms of information obligations, and does not seek to cover other compliance costs. Information obligations are only a small part of the burdens on business. Substantive compliance costs, direct financial costs, or so-called “irritating” burdens (burdens which irritate business but which are not necessarily captured by the SCM methodology) are not covered in the current approach. The more established burden
reduction programmes in Europe (including in the United Kingdom, Denmark and the Netherlands) are now seeking to broaden their base in order to cover all compliance costs, and following pressure from their business communities. The Bertelsmann Foundation has proposed a methodology for this, the so called “Regulatory Cost Model” (Regulierungskostenmodell, RKM), which builds on the existing SCM approach.

Recommendation 5.5. Expand the methodological scope of the programme with a view to covering substantive compliance costs as well as irritants. Review the approaches which are being developed by other countries for this, as well as the proposals of independent institutions. Ensure that there is adequate quantification of costs.

The target is not disaggregated between ministries and is not explicitly a net target. Countries with well established programmes (UK, Netherlands) have taken care to set ministries individual targets in support of the overall target. This incentivises ministries to pay attention as they know that they will not be able to melt their efforts into those of others. The current target also does not do justice to the fact that the programme puts significant effort into assessing the burdens in proposed new regulations. A clear commitment to a net target would ensure that there is no burden creep from new regulations.

Recommendation 5.6. Tighten up the current target. Divide it between ministries. Confirm it as a net target.

The scope of the programme also falls short of covering the burdens generated by other institutions at federal level, beyond the federal ministries. Parliamentary amendments to federal legislation, as well as the laws which it initiates, fall outside the scope of the programme (as might be expected) and relevant agencies attached to the federal ministries are not systematically covered, nor are self regulatory bodies. The federal parliament has already taken a considerable interest the federal executive’s own programme and might therefore be expected to show interest in further dialogue.

Recommendation 5.7. Consider how to include relevant agencies and other bodies attached to federal ministries, taking a proportionate approach (only those which may be generating significant burdens). Engage a dialogue with the federal parliament over the best way to capture burdens arising from their role in the law making process.

Last but not least, the scope of the programme only covers the burdens in federal laws, and does not capture the burdens in secondary implementing regulations, which thus excludes the Länder dimension. This issue was already highlighted in the 2004 OECD report (Box 5.2 above), which noted that efforts should be directed at “credibly committing the federation as well as the Länder”, and that the “challenge is to improve co-operation with and incentives for the Länder to commit to a… strategy to reduce administrative burdens”. The programme does not capture the burdens imposed by Länder (and local authorities) in their implementation of federal laws. While up to 95% of legislation affecting business is adopted at the federal level, implementation mainly takes place at the Land or local level, which gives rise to further substantive obligations (not necessarily the same in each Land) as well as “irritants”. This cascade of regulatory obligations likely to be affecting the competitiveness of the German internal market as well as international competitiveness. There is a growing awareness of the need to look beyond federal
legislation if all the burdens affecting the business community are to be captured. So far, however, co-ordination between the federal level and the Länder has been confined to a few pilot projects.

**Recommendation 5.8.** German burden reduction will require the support of all levels of government if it is to succeed. Commission an independent survey of the “burden trail”. Where do burdens (and irritants) actually arise, and who is responsible for the relevant regulations that contain them? Use the results to engage a dialogue with interested Länder over a shared approach to future burden reduction that links the federal programme with Land initiatives, and identifies specific issues for co-operation (for example, databases).

A broader programme will require adequate institutional support and resources. If the federal programme is to extend its reach to cover broader compliance costs, and enhanced co-operation with the Länder, as well as a tighter approach to targets, its institutional support will need strengthening. For example, the NRCC currently only has seven support staff (which is already stretching them in terms of their current responsibilities).

**Recommendation 5.9.** Review the capacities and resources of the federal chancellery Better Regulation unit and of the NRCC for supporting an enhanced programme.

**Administrative burden reduction for citizens and for administration**

The burden reduction programmes for citizens and for the public administration are not as well developed as the one for business; they deserve more attention. There is a commitment to developing a programme for reducing burdens on citizens, and this is work in progress, which includes the development by the federal chancellery Better Regulation unit and the NRCC of an adapted methodology. The OECD peer review team heard some concern that removing burdens from citizens might simply transfer burdens to the administration unless the approach is carefully constructed. A few other countries in the EU have gone some way in the development of programmes to address burdens on citizens (including Denmark and the Netherlands). Their experiences, including the methodology deployed, would be of interest in the German context. This is an area where strong links need to be forged with e-Government initiatives. The same holds true of reducing burdens within the administration, where Denmark’s experiences are especially interesting.

**Recommendation 5.10.** Commit to the development of programmes to address burdens on citizens and within the administration and make this known as part of the federal government’s Better Regulation policy. Draw on the experiences of other countries that have already travelled down this road. Ensure that these initiatives are appropriately connected with e-Government initiatives.
Background

Background comments

Simplification of regulations at the federal level

General reviews of legislation

The principle of concentration of law applies. This means that all regulation covering a given policy area or sector should (at least in principle) be contained within a single legislative act. If no formal codification is undertaken, general regulations for a single area are compiled within a single act which then contains the fundamental regulations for the entire area. Within its area of responsibility, each ministry independently monitors the need for legislative action.

Simplification measures can take various forms, ranging from “legislative clearing” (Rechtsbereinigung) to codification. The latter method in particular has been used to rationalise the legislative stock of specific policy areas, although it has sometimes faced insurmountable challenges (e.g. the failed environmental code). Particularly “young” policy areas may offer scope for segmenting pieces of legislation in order to consolidate parts of them into a new legal act. This procedure is nonetheless rare, as Germany has an extensive legislative body.

Since 2004, there has been a significant “spring clean”. The federal government has enacted eleven legislative acts repealing a total of 1 040 federal laws, ordinances and other regulations, including legislation adopted during the occupation period after the World War II and diverse transitional laws related to the German re-unification. In spring 2009 the federal government prepared a Simplification Act repealing some 85 acts and ordinances concerning environmental policy. Although the clearing was partly offset by newly adopted legislation, the federal legislative stock was reduced from 2 039 laws and 3 175 ordinances to 1 728 laws and 2 659 ordinances during the 16th legislature. In the same period, the number of individual regulations in force fell from 86 334 to 83 044. The federal government has thereby achieved the greatest reduction in the federal legislative stock since 1968. The simplification efforts include the removal of approximately 950 legal terms and concepts dating back to imperial Germany as well as regulations predating the Basic Law which are obsolete in terms of language or substance.

There is no specific (fast-track) procedure for legislative simplification. The adoption, amendment and repeal of legislation occur through the same parliamentary legislative process. The law making procedure is also valid also for their abolition. Similarly, the allocation of competences and responsibilities among the various institutions (including co-ordination between the levels of government) remains the same.

Legislative simplification has also involved EU-origin regulations, on agriculture for instance. Many simplification measures were initiated during Germany’s EU Presidency in the first half of 2007 and relate to farm payments; cross-compliance checks; and energy crop premiums.

Review and sunset clauses for individual legislation

The Joint Rules of Procedure require an indication of whether the law is to be time limited. In principle, laws are intended to create permanent regulations. Clauses requiring later review or sun setting mechanisms for entire legislative acts are not systematically included. However, they may be added, for example where a new approach is being tested,
or it is important to check what happened in practice. The lead ministry decides whether an evaluation clause should be included. As a rule, sunset or review clauses do not apply to entire laws but only to specific elements. The procedure aims to focus on critical items and prevent an excess of parliamentary evaluations and extensions.\(^5\)

**Initiative to reduce bureaucracy**

Eliminating superfluous or obsolete regulations is also carried out in the framework of the initiative to Reduce Bureaucracy (*Büreaukratieabbau*). Examples of simplification in this context include the repeal of all administrative regulations not included in the database of federal administrative regulations by 1 October 2006; and the consolidation into a single “integrated landfill ordinance” of all legislation on waste disposal and storage as well as on landfill recovery.

**Administrative burden reduction for businesses at the federal level**

**Early policies**

Reduction of administrative burdens – *Bürokratieabbau* – was an important focus for the 1999 Modern Government – Modern Administration programme. It was also prominent in the 2002 Government Coalition Programme, and was a priority of the government’s programme “Agenda 2010 of April 2003: Courage for Change”.\(^6\) Initiatives were brought together in the February 2003 Master Plan to “Reduce Bureaucracy – Promoting Small Business, Creating Employment, Strengthening Civil Society”. While setting out broad and ambitious goals, these were not quantified, and there was also a relative lack of clarity as to the specific contribution of supporting projects. The plan was led by the Ministry of the Interior. A dedicated unit in the Ministry of Economics and Labour was charged specifically with reducing administrative burdens on SMEs.\(^7\)

**Current policy on administrative burden reduction for businesses**

In 2005, the federal government started a major new initiative. It set the reduction of administrative burdens on business, citizens and public administration as one of the cornerstones of its “Bureaucracy Reduction and Better Regulation” programme. The new thrust was prompted by the priorities set in the 2005 coalition agreement and formalised by the related federal Cabinet decision to introduce the Standard Cost Model (SCM) to measure administrative costs resulting from information obligations included in federal legislation. The target is to reduce administrative costs calculated as at 30 September 2006 by 25% by the end of 2011. Half of this goal (12.5%) is to be achieved by the end of 2009. The focus is on those burdens originating in information obligations included in federal legislation.

A full baseline measurement carried out on information obligations embedded in federal legislation in September 2006 showed that administrative costs to business were roughly EUR 47.6 billion annually. Because the regulation screened had national, EU and international origins, the costs were differentiated into two main categories. Roughly EUR 22.5 billion of the total arose out of national law, while EUR 25.1 billion originated in EU and international law. The 25% reduction target is, in principle, based on the administrative burdens identified on the baseline date (*i.e.* existing burdens). In practice, the process includes the identification and measurement of burdens in draft new legislation, which implies that the target is a net target.
The importance given to this policy is reflected in the institutional developments that accompanied it. A dedicated Better Regulation Unit was established in the federal chancellery, and not least, an independent advisory and control body outside the government, the National Regulatory Control Council (Normenkontrollrat, NRCC) was set up. Both were innovative institutional developments that contrast with the traditional institutional setting of the federal government.

Institutional framework

Federal chancellery Better Regulation Unit and line ministries

Within the federal government, the federal chancellery oversees and co-ordinates the programme, through its Better Regulation Unit. It monitors progress and keeps track of administrative burden reductions achieved. The Unit is politically supported in its work by a Committee of State Secretaries on the reduction of bureaucracy. The Committee meets some 6 to 8 times a year, as needed. All ministries participate in it.

However, as in most other European countries, the actual process is largely in the hands of the relevant federal ministries responsible for the legislation. Within each ministry, some 2-3 staff have been designated for the task of taking forward the steps needed to contribute to the 25% reduction target (which is not, as in some other EU countries, sub-divided between ministries). This has given rise to an internal co-ordinating “SCM network” of contact points between line ministries. These officials are not necessarily full-time on the programme, but they are important actors for sustaining the relationship between operational line ministries, the co-ordinating centre (the Better Regulation Unit in the chancellery), the federal statistical office and the NRCC. They also contribute to training on SCM that each ministry organises internally. The Better Regulation Unit, the NRCC and the SCM contacts meet regularly every second month to discuss methodological refinements and simplification proposals.

NRCC

The NRCC provides advice on, and checks the quality of the assessments by the line ministries of draft new legislation. NRCC members organise themselves as “rapporteurs” (Berichterstatter) for specific policy areas. Each rapporteur drafts a proposal for decision for every new draft bill falling in his/her area of competence. The proposals are then discussed by the NRCC board and formalised in an official NRCC opinion. The opinion is not only forwarded to the lead ministry but is also included in the annex to the draft bill which is submitted to the federal Cabinet and subsequently passed on to the parliament together with the Cabinet decision. NRCC opinions are therefore public and seek to draw the attention of decision-makers and stakeholders to the administrative costs involved in the regulatory proposal. In practice, the interface between the federal ministries and the NRCC is tighter and more intense than the formal procedure prescribed by the Joint Rules of Procedures. Federal officials tend to involve the NRCC at a very early stage on an informal basis to share the data gathered, test ideas for measurement reductions, and receive technical and methodological advice. Thanks to this close interaction, the opinions of the NRCC have so far been quite supportive of ministry estimates.
Other players

Two divisions in the federal Ministry of Economics and Technology work on the Burokratieabbau initiative, one of which partially also covers the administrative burden reduction programme. The federal statistical office supports the process by consolidating the baseline measurement, running a database of simplification proposals, and assisting in the development of the SCM methodology.

Figure 5.1 below outlines the interaction among the parties involved in the administrative burden reduction process within the federal government (and beyond).

**Figure 5.1. Administrative burden reduction process in the federal government**

Source: Federal chancellery (Better Regulation Unit), March 2009.

**Methodology and process**

Definition and scope of administrative burdens

The programme covers the information obligations contained in federal regulations. This means that only legal acts adopted at the federal level are considered. Information obligations are defined by the Act establishing the NRCC (Art.2) as “obligations existing on the basis of laws, ordinances, by-laws or administrative regulations to procure or keep available for, or transfer to, authorities or third parties data and other information.” Information obligations in practice are typically imposed by the government, take the form of a general abstract rule, and require the record or transmission of data in written, electronic or other forms. Examples are applications for permissions, entry in a register, or the provision of statutory information.
The programme mainly concerns federal ministries. However, the responsible bodies for self-government tasks (social security system carriers and social insurers) implement federal law and in some cases are also responsible for enforcing federal law within their remits. In addition, within the framework of the self-government tasks delegated to them, they create their own statutes, administrative provisions, etc. The federal government notes therefore that in order to achieve a full cross-level and inter-ministerial reduction of administrative burdens, it would be appropriate to involve these bodies as independent partners in the implementation of the “Bureaucracy Reduction and Better Regulation” programme of the federal government. Such involvement would be expected to increase the number of information obligations examined and make the resulting costs more transparent. Model analyses are now being conducted for individual areas by working groups composed of representatives from the relevant social insurance agencies, the federal chancellery Better Regulation Unit, the NRCC Secretariat, the federal statistical office, as well as experts from the responsible federal ministries. In certain cases, representatives of the Confederation of German Employers’ Associations also take part.

Since May 2009, co-operation is also ongoing with organisations of the Chambers of Commerce.

Baseline measurement

Much of the period since the programme started in 2006 has been devoted to establishing a baseline measurement against which the target reduction could be measured. Germany opted to screen the entire stock of existing federal legislation, thereby differing from the approach followed by the European Commission, which concentrates on selected legislative acts in defined areas. The baseline date for the German SCM measurement is 30 September 2006. The federal ministries took inventory of approximately 10,400 information obligations for business stemming from federal law which were in force on that day. This included legislative acts adopted by the federation to implement EU and international law. The calculations were finalised in December 2008 and published in the second annual report of the federal cabinet on the programme in the same year.

The procedure takes into account specifically German features, including above all the adaptation of concepts such as the definition of the term “business” and a measurement sequence based on a procedure developed by the federal statistical office. In addition, unlike other countries using the SCM, Germany does not add a standard charge for overhead (costs of rent, telephone, heating, electricity, etc.), which in other countries accounts for 25–30% of the total costs measured. Another difference from international practice is that write-offs of necessary capital expenditure are included. In calculating labour costs, social contributions and other indirect labour costs are included. To calculate hourly costs, the federal statistical office uses official tables tailored to specific branches and qualification levels. Additional indirect costs such as postage, fees, etc. are explicitly itemised.

A variety of tools and channels were used to collect data, including expert panels; phone, personal and written interviews; simulations and external studies (See Figure 5.2).
At its own initiative and with the support of business associations, the federal statistical office asked businesses to report on a voluntary basis the time needed to comply with information obligations. It obtained additional relevant information to determine the administrative costs via expert panels and expert discussions. Together with the experts, the office carried out additional research for determining administrative costs.

Implementation and the role of the NRCC

Line ministries are responsible for designing simplification measures, using the 2006 measurements as a starting point. The federal government amended the Joint Rules of Procedure in 2006 accordingly. Because this was a new competence requiring specific skills, supporting guidance material has also been prepared. The procedure and methodology used for the SCM are described in detail in a manual available on line, including in English. Additional information for ministries, such as the guidelines for ex ante assessment of administrative costs, is also available online.

Simplification measures may include the following:

- simplification of the law (e.g. by removing information obligations, reducing the number of enterprises affected, or reducing the frequency of the information transmission);
- simplification of administrative processes (e.g. excluding duplicate assessments, or simplifying forms);
e-Government (notably by transmitting information electronically); and

improvement of communication (in particular by seeking advice from government bodies when introducing new regulations).

New regulations are also covered by the process, which requires federal ministries to identify and cost the burdens embedded in new regulatory proposals, using the SCM methodology. The federal statistical office assists the ministries in the measurement. The lead ministry must state in the explanatory memorandum to a draft bill which information obligations it plans to abolish, amend or introduce, using the SCM. Both the Act establishing the NRCC and the Joint Rules of Procedure require federal ministries to submit their draft bills to the NRCC as a part of the inter-ministerial co-ordination four weeks before they are forwarded to the Cabinet. All legislative proposals submitted to the NRCC are documented in a database maintained by the NRCC. Since 1 December 2006, federal ministries have submitted a total of 1089 draft bills (for laws, ordinances and administrative regulations), approximately half of which contained information obligations to businesses. The NRCC has given its opinion on 996 of these. This represents the examination of 2 296 obligations for private businesses to provide information. Of these information obligations, 1 339 were new, 629 were amended and 328 were repealed.

The NRCC assesses draft bills against criteria based on the following questions:

- Has the responsible federal ministry clearly quantified the expected administrative costs using the SCM?
- Has the responsible federal ministry sufficiently examined less costly alternatives?
- Has the responsible federal ministry chosen the least burdensome alternative while taking the legislative intent into due consideration?

Database and the federal statistical office

The federal statistical office runs a database of all information obligations. It planned to launch a new Internet database in mid-2009 (www.destatis.de/webskm). The new platform will allow anyone to access information obligations data and to the proposed simplification measures on-line without prior registration. The tool will operate an extensive search and filtering system. An inter-ministerial decision is nonetheless still needed in this regard. The database allows interested business associations to notify the federal statistical office of additional data such as missing quantities for individual information obligations, suggested options for simplification.

Public consultation and communication

The programme is based on the active and continuous participation of stakeholders (business associations, social partners and economic research institutes), both in the identification and costing of information obligations in current legislation and in the development of options for simplification. Stakeholders are provided with federal ministries’ estimated administrative burden measurements as part of the impact assessment process, before the costings are finalised. This enables them to inform the competent federal ministries about diverging experience or estimations, where appropriate. The strong emphasis on transparency and early involvement of stakeholders aims to capture only “genuine” burdens, as some government requirements for the collection and provision of data are a useful and integral part of business processes. The federal statistical office database (see above) is also a means of ensuring the active participation of stakeholders.
Both the federal government and the NRCC are legally required to report annually on the programme (the burdens and the reductions achieved). These reports are an important tool for encouraging results. The first government report was presented to the parliament and the public in October 2007. An interim report drafted by the Committee of State Secretaries on the reduction of bureaucracy was presented to the federal cabinet in April 2008. The 2008 report was adopted by the cabinet on 10 December 2008. The second report of the Committee of State Secretaries was issued in June 2009. All reports are available online on the central federal government’s homepage relating to the reduction of bureaucracy. The NRCC also publishes an annual activity report, which is available online in German and English on its website.10

Relationship of the federal programme with the sub-federal levels of government

The federal initiative is focused on federal legislation. The federal nature of the German state means that any shared initiatives with the Länder are developed on an optional, voluntary basis, respecting the competences conferred on each authority by the Basic Law. That said, there is a growing awareness of the need to look beyond federal legislation if the overall programme is to capture all of the burdens affecting the business community. While most legislation (up to 95% of legislation affecting business) is adopted at the federal level, implementation mainly takes place at the Länder or local level. Federal legislation, for example, is usually implemented by the Länder which will issue their own implementing regulations. The Länder in turn may delegate aspects of implementation to the counties and municipalities. The NRCC plays an important role in co-ordinating and supporting initiatives between different levels of the German government to reduce administrative burdens overall. It is an integral part of joint pilot projects carried out by the federal government and the Länder on credit to parents, housing benefits, and student loan legislations (Box 5.3).

Box 5.3. Co-ordinated measurement of administrative costs in Germany

Two joint projects, involving respectively three and four Länder and selected local authorities (counties and municipalities), were launched in spring 2009 with the participation of the Better Regulation Unit of the federal chancellery, the National Regulatory Control Council, with the aim of examining the potential for simplifying and optimising enforcement of administrative regulations in the three areas of the federal Education Assistance Act. The legal areas addressed are those of parental allowances and benefits, as well as housing benefits (Einfacher zum Wohngeld und Elterngeld Projekt).

The municipalities are contributing their experience, including the challenges related to the implementation phase. The federation is supporting the projects by compiling overviews of the relevant information obligations under federal law and undertaking corresponding assessments. The SCM method will be used to assess enforcement in the legal areas of housing benefits and parental allowances. Where appropriate, the relevant information obligations under federal law may be amended. The results of the project were published in September 2009.

A third project is at the pilot stage. This concerns student loans (Einfacher zum Studierenden-BAföG) and is being designed with the participation of seven Länder and 14 Offices for the Promotion of Education, besides the federal chancellery and the NRCC.

These projects are to be considered as a starting point for closer interaction and integration. The relevance of this project is two-fold. It not only tests current co-ordination mechanisms between the levels of government, but it also helps to establish which burdens are created at what level and by which authority.
The government has also proceeded to targeted calls for proposals from the Länder to reduce bureaucracy. Red tape-cutting proposals from the Länder and Länder industry and administrations were examined as to their feasibility and could be implemented, at least in some cases. Overall, as a first step, every third proposal (48 out of 138) submitted by the regions in the second round of calls for proposals to reduce bureaucracy and on deregulation have been implemented. Further to a change in the government, the system changed and included all remaining proposals. 58 additional measures were implemented through three special laws (see Box 5.4).

The federal government has involved the local authorities’ national associations in implementation of the government programme. This has happened in the context of the government’s co-operation with key industrial and business associations, as well as through the collaboration of their national associations with the federal government and the Länder in bureaucracy reduction.

The local authorities and the Länder co-operate on Better Regulation policy. The local authorities’ experience as enforcement agencies is used in Länder projects aimed at reducing bureaucracy, and the resulting proposals from local authorities are said to receive due consideration by the parties involved. The SCM remains the privileged methodology.

Achievements so far

The 2009 interim report of the federal government lists 357 among already realised or planned reduction measures for businesses, which represent an overall reduction of EUR 7.2 billion, of which EUR 6.8 billion have already been confirmed through a Cabinet decision or effected through ordinances (untergesetzliche Verfahrensänderungen). If all measures become effective as scheduled, up to 15% (i.e. over half the overall target of 25%) would be achieved by the end of 2009, meeting thereby the intermediate target set in the 2005 coalition agreement (see Table 5.1).\textsuperscript{11} The NRCC has assessed that new regulations have yielded reduction measures of EUR 4.46 billion. At the same time, new regulations are estimated to have produced an increase of EUR 1.2 billion in administrative costs. The net saving in administrative costs for new regulations is therefore estimated to be EUR 3.3 billion.\textsuperscript{12}

Table 5.1. Reducing burdens from information obligations in Germany – An overview

<table>
<thead>
<tr>
<th>Administrative costs for the economic sector</th>
<th>Total</th>
<th>National law (D)</th>
<th>National law originating from EU and international law</th>
<th>EU and international law (I)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered information obligations Number</td>
<td>10 407</td>
<td>5 804</td>
<td>1 961</td>
<td>2 642</td>
</tr>
<tr>
<td>Measured information obligations Number</td>
<td>9 234</td>
<td>5 804</td>
<td>1 961</td>
<td>1 469</td>
</tr>
<tr>
<td>Overall burden in thousand EUR</td>
<td>47 614 422</td>
<td>22 502 068</td>
<td>25 112 354</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Simplification measures</th>
<th>Total</th>
<th>Division of reduction of burden according to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Measures Number</td>
<td>338</td>
<td></td>
</tr>
<tr>
<td>Measures quantified</td>
<td>167</td>
<td></td>
</tr>
<tr>
<td>Reduction of burden for the economic sector in thousand EUR</td>
<td>7 110 385</td>
<td>6 618 365</td>
</tr>
<tr>
<td>Measures already decided on in thousand EUR</td>
<td>6 577 793</td>
<td>6 168 068</td>
</tr>
<tr>
<td>Measures planned in thousand EUR</td>
<td>452 592</td>
<td>370 296</td>
</tr>
<tr>
<td>Other in thousand EUR</td>
<td>80 000</td>
<td>80 000</td>
</tr>
<tr>
<td>Other reductions of burden (public administration sector) in thousand EUR</td>
<td>352 907</td>
<td></td>
</tr>
</tbody>
</table>
Box 5.4. Examples of simplification measures for business

Federal government simplification measures within the framework of the government programme “Bureaucracy Reduction and Better Regulation” include initiatives on on-line registration. An integrated, fully automated procedure was for instance created for social insurance registration and contributions and discontinuing employer notifications in paper form in the registration procedure for 2006 and 2009. This has already resulted in multi-sector relief for business totaling more than EUR 1.4 billion. Moreover, administrative burdens on businesses in a variety of sectors have been reduced by EUR 262 million as a result of discontinuing paper wage and tax statements and introducing the programme ELSTERLohn II for electronic access to the relevant tax information. Further planned initiatives include the ELENA project (see above), as well as the possibility for employers to send requests for reimbursement to health insurance funds in electronic form, so that the request can be processed automatically. The resulting reduction in notification and processing costs is estimated at roughly EUR 37 million per year. The gradual introduction of electronic health cards and electronic prescriptions for anaesthetics may reduce administrative costs by at least EUR 16 million.

In terms of repealed and discontinued regulations, the Second Ordinance Amending Transport Staff Regulations, which entered into force in early 2008, provided relief estimated at EUR 36.5 million a year, especially for crafts and trades businesses. It abolished obligations for certain vehicles between 2.8 and 3.5 tonnes to keep records of driving and rest times. Ending the registration requirement in hospitals and care homes freed all institutions from the obligation to keep special records of admissions. The admitting institution will in future be able to record client reservation data already in electronic form on the admission form. Relief for relevant institutions is estimated at EUR 119.1 million. The abolition of the requirement for employers to submit accident insurance data when making their annual report to the relevant agency is planned for 1 January 2012, reducing administrative costs for businesses in every sector by EUR 56 million.

In accounting law, a threshold size was set for assigning a business to one of the categories “small”, “medium”, or “large”. As a result, there is a greater number of businesses that now belong to the category of small - or medium-sized businesses and therefore enjoy less strict accounting obligations (auditing duty, disclosure of balance sheet, annex information). In addition, the duty to keep books of account under the Commercial Code will be lifted for nearly 500 000 unicorporated enterprises. These measures will reduce the burden on the private sector by EUR 2.5 billion per year.
Other simplification measures for businesses

Germany has continued to invest in facilitating business start-ups to boost its economy. Since 2006, the Startothek (www.Startothek.de) is a database providing entrepreneurs and consultants with information on relevant federal and Länder legislation and secondary regulations affecting businesses, especially SMEs. As a part of the policy in support of SMEs, a series of important simplification measures have been taken at the federal level (Box 5.5). Subnational authorities, notably municipalities, are largely responsible for issuing licensing and permits in various policy sectors, and simplification measures are also taking place at that level. Significant facilitation effects have been achieved at the local government level by the introduction of electronic licensing and registration procedures (model projects), for example for business registration.

Box 5.5. Simplify to promote entrepreneurship: Germany’s small companies acts

In 2005 the federal government agreed to free companies from excessive regulation hindering growth; to support Small and Medium-sized Enterprises (SMEs); and to encourage start-ups. Parallel to the measures aimed at reducing the related administrative burdens, the government adopted three legislative acts to reduce bureaucratic obstacles for SMEs (“Small Companies Acts”).

The First Small Companies Act (MEG I), enacted in 2006, included 16 measures to reduce administrative burdens for SMEs particularly in the area of statistics and accounting, for total savings of approximately EUR 970 million.

The Second Small Companies Act (MEG II) was adopted in 2007 and included 16 measures to reduce administrative burdens in the areas of statistics, accounting, and law on social insurance, trade, pricing and road traffic, especially for SMEs and start-ups. The bill contained, inter alia, a reduction in burdens imposed by statistics, bookkeeping, social insurance, commercial law, price legislation and road traffic regulations. At the same time, it further promoted regional economic structures. This act reduced administrative burdens for business by an additional EUR 203 million.

The Third Small Companies Act (MEG III) was adopted in 2009. It provides for additional 23 measures to reduce administrative burdens by roughly EUR 100 million. The main features of the draft legislation are the simplification of the crafts and trades census and a series of measures simplifying trade law requirements.

The Länder are also contributing to administrative simplification by developing a nationwide network of start-up agencies (so-called “Starter Centres”), which offer start-up entrepreneurs advice and practical services. The Länder have also promoted training for graduate students as well as “incubators” at higher education institutes. Enterprises in Germany can meanwhile register within a few hours, with registration taking one day at most. Entrepreneurs setting up a limited liability company should expect the registration process to take four or five days on average. It has also been made easier for employers to hire staff.

Administrative burden reduction for citizens at federal level

The federal government is also committed to reduce administrative burdens generated from information obligations that fall on citizens. Compared to the analysis of the business sector, the programme for measuring and reducing administrative burden on citizens is less developed and still work in progress. Because of the special nature of this target group, the SCM needs to be applied in a modified form (e.g. by quantifying the burden not in monetary terms but in time units). The federal government has developing the methodology jointly with the NRCC. The ex ante assessment of citizens’ information obligations began on 1 January 2009 with the drafting of policy papers. The guidelines for the ex ante assessment of administrative burdens were revised accordingly.
As part of the *ex ante* assessment, the competent ministries also analyse the baseline information obligations on which the current project is based. It is up to them to decide whether it would be advisable to measure the administrative burdens using the SCM. They also decide at their own discretion and on a case-by-case basis whether the impacts for individual groups of persons (burden reduction or increase) should also be determined and analysed in depth. They can also request that the information obligations associated with particular circumstances or areas of life be analysed, independently of an *ex ante* evaluation. The overall objective remains a complete baseline measurement.

**Administrative burden reduction for the administration at federal level**

The “Bureaucracy Reduction and Better Regulation” programme government also seeks to significantly reduce administrative costs bearing upon the federal administration. Particular emphasis is put on reducing the burdens from mandatory information obligations and avoiding the creation of new information obligations.

Unlike business, however, processing information is often a core activity of public administrations. The methods used for business and citizens cannot be directly applied to measure government burdens. A number of ministries have started pilot projects with a view to tailoring and refining the analytical and methodological approach. The SCM is for instance believed to be useful in determining the success of simplification measures or identifying particularly burdensome administrative tasks. The federal chancellery intends to develop a method to be applied uniformly to all federal ministries after evaluating the results of these tests.

The critical review of tasks and ongoing improvement of operating procedures are additional methods applied within the public administration. Measures introduced to reduce burdens on businesses and/or citizens also provide relief for government. The use of e-Government and the electronic transmission of data accelerate data processing and allow standardisation. In this respect, the Government programme “Focused on the Future: Innovations for Administration”, which includes the e-Government 2.0 programme, has helped streamline and rationalise administrative processes. The federal Ministry of Defence is using the SCM to monitor the success of own burden-reduction measures. The aim of one in-house programme is to reduce unnecessary bureaucracy in distinct, logical and clearly recognisable steps.
Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification through consolidation. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is taking account of the impact of new regulations in meeting target reductions.

2. As of 6 March 2009.

   — See: www.normenkontrollrat.bund.de/Webs/NRCC/DE/Publikationen/publikationen.html (last accessed 30 April 2009).

4. Section 43 (1), no.6.

5. Sunset and review clauses have for instance been included in the Act on “Prevention by the federal Criminal Police Office of threats from international terrorism” of December 2008. The Act assigns the task of preventing international terrorist threats to the federal Criminal Police Office (BKA) and provides for giving the BKA the powers necessary to fulfil this task. In addition to standard police powers, the BKA will be authorised to carry out covert interventions in IT systems (also referred to as “conducting remote searches of computer hard drives”). Provision has been made for an evaluation of the relevant parts of the Act “with the assistance of a technical expert five years after entry into force” of the Act. This evaluation clause was inserted because so far there has been no regulatory example for the instruments in question, or because there has been no regulatory example in federal legislation, and because therefore there is a lack of experience/empirical data. In view of the degree of interference with the fundamental rights, this is to prevent the instruments from interfering unreasonably with citizens’ fundamental rights. In addition, it is intended to evaluate the impact and the implementation of the Act. Moreover, the relevant paragraph on accessing information technology systems will automatically expire on 31 December 2020, requiring legislators to address this issue again in 12 years.


7. Referat VIII A7 (Bürokratieabbau).


13. As estimated by the Instituts für Mittelstandsforschung Bonn.