



The Nationaler Normenkontrollrat in Germany: How to control the regulators?

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(Re)Regulation in the Wake of Neoliberalism. Consequences of Three Decades of Privatization and Market Liberalization

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Bastian Jantz

University of Potsdam

Faculty of Economics and Social Sciences

Chair for Political Science, Administration and Organization

bjantz@uni-potsdam.de

http://www.uni-potsdam.de/u/lis_verwaltung/mitarbeiter/jantz.htm

Introduction:

Cutting red tape is an everlasting topic of administrative reform in Germany and regularly recurring on the political agenda. In the last four legislative periods, six different commissions have dealt with this issue (Jann/Jantz 2008). Also the current government under chancellor Merkel is pushing de-bureaucratisation. Already in their coalition agreement, the Grand Coalition has committed to measure the administrative costs imposed on business by central government regulation through the Standard Cost Model (SCM) and to establish an independent oversight body to prevent new administrative burdens, the National Regulatory Control Council (Nationaler Normenkontrollrat).

In mid-2006, these announcements were followed by the government programme “Reduction in Bureaucracy and Better Legislation” (Regierungsprogramm “Bürokratieabbau und bessere Rechtssetzung”) and by the Act on the Establishment of a National Regulatory Control Council (“Gesetz zur Einsetzung eines Nationalen Normenkontrollrates”). Along with these actions comes the goal to reduce the administrative burdens by 25% before the end of 2011.

So, also Germany became part of the European wide “Administrative Burden Reduction Policy Boom” (Wegrich 2007).

But are the Standard Cost Model and the National Regulatory Control Council really useful instruments on a way towards an “efficient state with greater freedom for entrepreneurial action”, as the Minister of State of the Federal Chancellery, Hildegard Müller, puts it (Müller 2008). Or is the war on red tape rather about “symbolic politics than efficiency gains”? (Radaelli 2007c).

In the following, I will analyze and evaluate the German administrative burden reduction programme by trying to answer the classical question of policy analysis: “What government do, why they do it, and what difference it makes“.

In the first, rather descriptive part, I will present the different elements of the German strategy in its “fight against red tape” (Torrìtti 2007) with focus on the work of the National Regulatory Control Council. Building on that, in the second part, I will analyze why the German government concentrates so much on administrative burdens and the Standard Cost Model without connection to a wider better regulation strategy. Finally, in conclusion, I will discuss the results of the current strategy and future prospects.

Germany's strategy to fight against red tape

The debate about better lawmaking, better regulation and cutting red tape is nothing new in Germany. Much of the current tools of better regulation like sunset-legislation, ex-ante and ex post assessments and Rechtsbereinigung (updating of the law by the removal of obsolete statutes) were already debated in the 1970th and 1980th. The first attempt to introduce a sort of regulatory impact assessment dates back to the year 1984, when the federal government introduced “the blue questions of examinations” (blaue Prüffragen) ¹ containing a broad set of issues for regulators to consider when preparing new federal legislation. In 1996 and 2000 the Joint Rules of Procedure² for Federal Ministries were revised and the obligation that all draft regulations should be accompanied by regulatory impact assessment (RIA) was introduced. But the Joint Rules does not prescribe any particular approach of regulatory impact analysis, nor does it stipulates any form of sanctions for non-compliance (Schäfer 2001, OECD 2004, Veit 2005). In practice, there remains a significant implementation gap between sophisticated concepts and handbooks³ for the execution of RIA on the one hand and regulatory practices on the other. In several investigations, the German Federal Court of Auditors comes to the conclusion that too little heed is paid to the required standards for impact assessments. In particular, it criticized that intended effects and unintended side effects of proposed legislation were not always documented in a comprehensive manner and that the evaluation of alternative governance options as well as the calculation of financial impacts was either lacking or incomplete. Further, it detects a lack of understanding in the administration for the necessity of regulatory impact assessments and their practical handling (Bundesrechnungshof 2004, 2006, 2007). Recent studies on ex ante policy assessment in four countries including Germany (Hertin et al. 2007, 2008) came to the same disappointing results

“In practice, the German RIA procedure is only partially and often formalistically implemented. The framing tends to be extremely narrow, it typically only addresses administrative costs, direct economic costs and price

¹ The Checklist was made available to government officials as a guideline but compliance with the guidelines were not monitored or sanctioned. The checklist included the following questions 1) Is action at all necessary? 2) What are the alternatives? 3) Is action required at federal level? 4) Is a new law needed? 5) Is immediate action required? 6) Does the scope of the provision need to be as wide as intended? 7) Can the length of the period for which it is to remain in force be limited? 8) Is the provision unbureaucratic and understandable? 9) Is the provision practicable? 10) Is there an acceptable cost-benefit relationship? (OECD 2004)

² The Joint Rules of Procedure for Federal Ministries (first published in 1958) establishe in detailed form steps to prepare, co-ordinate and present policy proposals for Cabinet. Chapter 6 specifies requirements for the entirety of the regulatory process, including consultation (within and outside government), structure of bills, justification statements, legal scrutiny, procedures for submission of bills to cabinet and parliament, promulgation, etc. The Joint Rules have the status of internal government instructions (Verwaltungsvorschriften).

³ The first guidelines on Regulatory Impact Assessment were published in Juli 2000 (Bundesregierung 2000). It followed the much more detailed handbook on Regulatory Impact Assessment (Böhret 2001) and the working aid Regulatory Impact Assessment (Bundesregierung 2006).

effects. In many cases, it is considered as an obligation that has to be met with minimal effort: 'RIA is an annoying duty, I don't find it very helpful.'" (Hertin 2007, p. 11)

To sum up, the application of RIA has not yet emerged from its discourse status and the adoption of guides and regulations. To speak with Radalli (2005), RIA in Germany is a new bottle with poor wine, or no wine at all.

After this unsatisfying experience, it is not surprising that the recent orientation in the German reform agenda focus exclusively on administrative burdens. One can interpret this shift as a frustration of policy-makers

“with sophisticated approaches, and their perception that the only way to make a real impact on the regulators (and, perhaps, the media) is to set simple, draconian measures – no matter what their intellectual merit might be.” (Radaelli 2007a, 198)

The main objective of de-bureaucratisation reforms in Germany that are discussed in this paper is the systematic identification, measurement and reduction of a particular type of regulatory requirement: information obligations or administrative burdens. An information obligation is “a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law.” (OECD 2004: 8f.) The reform strategy consists of the reduction of costs stemming from existing information obligations (ex-post) and the avoidance of new administrative burdens (ex-ante). For this purpose,

- the National Regulatory Control Council as an independent review and advisory body is regularly involved in the legislative procedure;
- the Standard Cost Model is introduced to identify and measure the cost stemming from information obligations, ex-post as well as ex-ante;

and

- an institutional structure is created with a Federal Government Coordinator for Bureaucracy Reduction and Better Legislation at its head.

The milestones of the government programme are summarized in the following table

April 2006	Cabinet decision on the government “Bureaucracy Reduction and Better Legislation“ programme
August 2006	Publication of the SCM Methodology Manual of the Federal Government
July–December 2006	Identification of information obligations (IO) incumbent on industry as a result of fed-

	eral and EU legislation (around 10,900 IOs)
September 2006	Constitution of the National Regulatory Control Council
December 2006	Revision of the Joint Rules of Procedure for the Federal Ministries; binding application of the SCM in the ex-ante assessment of administrative burdens and involvement of the National Regulatory Control Council in the legislative procedure
January 2007	Start of baseline measurement for information obligations incumbent on business
September 2007	Publishing of the first Annual Report of the National Regulatory Control Council
October 2007	Publishing of the first Federal Government Report on the Use of the Standard Cost Model – Measurement of 2.100 existing Information obligation completed (estimated cost round about 27 billion €)
April 2008	First progress report on the government “Bureaucracy Reduction and Better Legislation” programme – Measurement of 7.000 existing information obligation completed (estimated cost round about 30 billion €), announcing reduction measures worth 4,4 billion €

In the following, I will concentrate on the ex-ante assessment of the administrative burdens and its principal actor, the National Regulatory Control Council.

Ex-ante assessment of administrative burdens: The National Regulatory Control Council.

As already mentioned, the intention to establish an independent oversight body to supervise and advise regulators was part of the coalitions agreement between the Christian Democratic Union (CDU), the Christian Social Union (CSU) and the Social Democratic Party (SPD) in the end of 2005. In this context, it is interesting that an oversight body was neither part of the election programme of the CDU/CSU nor of the SPD. The only party that mentioned an oversight body in their election campaign was the liberal party (FDP) within their 100-day crash programme for cutting red tape (FDP 2005). Nevertheless, the introduction of an independent oversight body became part of the coalition negotiations and what followed was a typical bargaining process. The Social Democrats were strongly pushing for a so called “Reichensteuer”, i.e. a mark-on in the tax rate for incomes from 500.000 € upwards. The CDU made their commitment to these demands contingent on the increase of the value-added tax rate as well as on fixing measures of de-bureaucratization in the coalition agreement. Thus, in a logrolling process, the introduction of a National Regulatory Control Council found entrance into the coalition agreement.

The second controversial subject during the negotiations was the institutional alignment of the oversight body, but this was rather a dispute within the Christian Democrats. The Ministry of Finance was from the beginning out of consideration because it was led by the Social Democ-

rats and it was clear that the responsibility for this topic should lie with a CDU ministry. Under discussion were the Ministry of the Interior because of its traditional responsibility for administrative reform and the Ministry of Economics due to its connection to business. Finally, it was fixed that the National Regulatory Control Council should be inserted inside the Federal Chancellery. The functional explanations for this decision is that cutting red tape is a cross cutting theme that needs political support from the highest level and should not be subject to departmental rivalry. From a more political point of view, cutting red tape was from the beginning a personal topic of Chancellor Merkel and it could be assumed that she was not willing to leave it to the CSU-led Ministry of Economics or to his old rival, the Minister of the Interior, Dr. Wolfgang Schäuble. In her government declaration, Angela Merkel again emphasized that the reduction of bureaucracy is a key priority of the government agenda. After a period mainly spend with the installation the new government, in April 2006 the cabinet passed the “Programme for the Reduction of Bureaucracy and Better Regulation” and with the Act on the Establishment of a National Regulatory Control Council, the National Regulatory Control Council was finally implemented. The legislative procedure was accompanied by a strong dispute between Social and Christian Democrats about the question which draft legislation should be reviewed from the National Regulatory Control Council. While the CDU pleaded hat the National Regulatory Control Council should supervise all draft legislation also legislation initiated by parliament, the SPD want to concentrate the supervisory function on draft legislation introduced by the ministries. The Social Democrats feared to introduce a by-lawmaker and in the end their position was accepted.

The eight members of the Council were officially nominated in September 2006 strictly according to party representation.⁴

The main task of the Council is to act as an independent “watchdog” to prevent new bureaucracy and to ensure the compliance with the SCM method. Ministries are obliged to send all

⁴ The members of the National Regulatory Control Council are (in brackets the nominating party):

- Dr. Johannes Ludewig (Chairman), former Chairman of the Management Board of Deutsche Bahn AG (CDU/CSU)
- Wolf-Michael Catenhusen (Deputy Chairman). former Secretary of State (SPD)
- Hermann Bachmaier, former Deputy Chairman of the Legal Committee of the Federal German Parliament (SPD)
- Dr. Hans D. Barbier, former Business Editor in Chief of the Frankfurter Allgemeine Zeitung (CDU/CSU)
- Prof. Dr. Gisela Färber, University Professor for Public Economics, Speyer (SPD)
- Henning Kreibohm Lawyer, former director of NordWestConsult (SPD)
- Dr. Franz Schoser, former Principal Managing Director of the German Association of Chambers of Industry and Commerce (CDU/CSU)
- Prof. Dr. Johann Wittmann, Chairman of the Management Board of the Munich Administration and Business Academy (CDU/CSU)

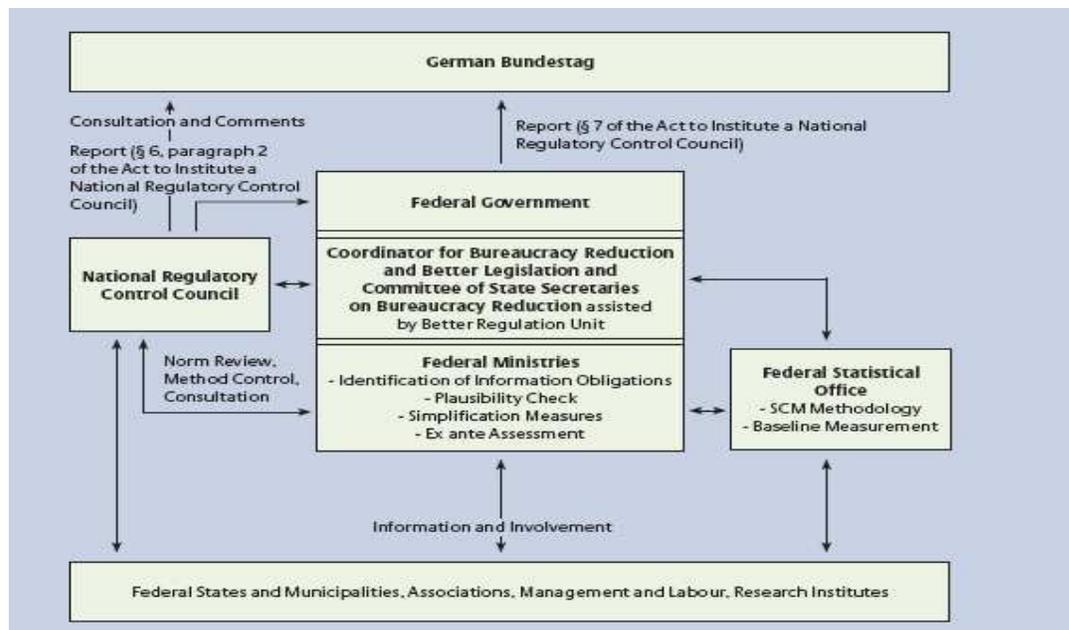
new legislative proposals to the Council, including a calculation of their administrative burdens. The Joint Procedure Rules were amended in December 2006 and now stipulate that, as part of the impact assessment, ministries have to assess the administrative burdens on basis of the SCM and that the Council has to be involved in proposed legislation at the same time as the other federal ministries. The Council and the Better Regulation Unit in the Federal Chancellery produced together guidelines for the ex-ante assessment of administrative burden (National Regulatory Control Council 2007a). It is up to the Council which legislation he wants to prove. Until December 2007, the Council has reviewed 325 legislation proposals (www.normenkontrollrat.de). In general, the evaluation by the Council encompasses three main questions:

- (1) Have the expected administrative costs – resulting from information obligations – been quantified and described in a comprehensible manner?
- (2) Have appropriate efforts been made to consider alternatives which might cause less administrative costs?
- (3) Was the alternative with the smallest burden chosen within the scope of the intended regulation aim?

The Council has no veto power. His comments are sent to the Cabinet and later on – as a part of the draft law – to the parliament. At this point they become public.

Furthermore, the Council will comment on the annual reports that the government has to submit to parliament concerning the question how far the reduction target has been reached.

Along with the appointment of the National Regulatory Control Council, a Federal Government Coordinator - the State Minister in the Chancellery, Hildegard Müller - was nominated. The coordinator chairs the Committee of State Secretaries for the Reduction of Bureaucracy and is responsible for steering the entire process of SCM implementation. Furthermore a “Better Regulation Unit” has been set up in the Federal Chancellery, provided by staff from the federal ministries. The institutional architecture is presented in the following graph:



The Council normally tries to mediate disputes with the departments during informal consultations. Two striking exceptions were the company tax reform and the inheritance tax reform. In case of the company tax reform, the Council strongly disagreed with the ex-ante assessment of the administrative burdens conducted by the Ministry of Finance and demands for revisions in the legislative draft. As the Ministry refused, the Council explained its objections to the Finance Committee of the Bundestag during the parliamentary procedure and some of its proposals were adopted. While the first draft still contained about 40 information obligations with administrative costs of 72 million €, the bill finally adopted reduced the administrative costs by about 168 million €. During the ongoing process of the inheritance tax reform, one member of the council even gave an interview and called publicly for changes in the draft.

The National Regulatory Control Council as well as the integration of the Standard Cost Model into the legislative process can be seen as a form of meta-regulation. Meta-regulation can be defined as

“any set of institutions and processes that embed regulatory review mechanisms on a systematic basis into the every-day routines of governmental policymaking, such that a particular form of economic rationality becomes part of the taken-for granted ways of policymaking.” (Bronwen 2003, 490)

So the basic idea behind meta-regulation is about disciplining the regulatory processes. Meta-regulation is a

“set of centrally imposed rules designed to structure the key stages of the regulatory process (from rule formulation, via RIA, to the simplification of existing rules and the removal of administrative burdens) with the aim of

achieving certain improvements in regulatory performance (e.g. targets of burdens reduction, cost-effective regulation, increased reliance on market-friendly alternatives to regulation, etc.).” (Radaelli 2007a, 196)

In this context, it is important to note that meta-regulation refers not to one policy field or one sector but targets regulation from a government-wide perspective.

Furthermore, the Council could be conceived as a sort of “regulation inside government” with the aim to control the process of policy formulation in the different ministries with a focus on one specific aspect, the production of administrative burdens for business. That leads to the paradox that Germany is seeking less or better regulation mainly through the increasing of meta-rules (Radaelli 2007b).

These two elements, a government-wide structuring of the regulatory process as well as regulation inside government as a sort of control of the policy process sharply contradicts with the constitutional principle that ministries have the freedom to carry out their duties independently (Ressortprinzip). It is also astonishing that this sort of meta-regulation has been incorporated into the coalition agreement, because, as mentioned, meta-regulation does not refer to one policy-field, and so it could be argued that it is difficult to find strong advocates. In the following, I will try to raise some points that can explain the evolvement of the administrative burden reduction policy in Germany.

The adoption process of the administrative burden reduction policy

Before the chancellorship of Angela Merkel, Germany was not a champion in better regulation policies or cutting red tape. All previous attempts to better regulation were mostly decentralized (like the repealing of statutes and provisions no longer used, which was mainly done by each ministries on their own) and not centrally controlled (like regulatory impact assessment, which were formally introduced but without controlling their quality). So, the new approach with the mandatory measurement of administrative burdens ex-post and ex-ante, a central oversight body and a central coordination unit at the chancellery strongly contrasts with all previous approaches as well as with the sacred cow of German government organisation, the Ressortprinzip. In the following, three factors are described that cause this policy shift.

Problem Solving:

The first explanation refers to the paradigm that Renate Mayntz has described as problem solving bias of governance theory:

“In all stages of its development, governance theory has been based on the assumption that policy development is basically concerned with the solution of societal, and especially socio-economic problems.“ (Mayntz 2001)

From this point of view, the Standard Cost Model and the National Regulatory Control Council are instruments to pursue broad economic policy goals and to solve a real world problem: over-bureaucratisation.

Business in Germany have complained since long time that they spent too much time and money on complying with government request for information and in international rankings, Germany is often described as highly regulated state (Jann et al. 2007). In a survey conducted 2003 under small and medium enterprises, 79 % of the respondent answered that they feel heavily loaded by state bureaucracy (in comparison: 1994: 49 %) – whatever bureaucracy means in this context (Institut für Mittelstandsforschung 2004). These statements are supplemented by “scientific” calculations of advocacy think tanks like the Institute of the German Economy (Institut der deutschen Wirtschaft - IW) who claims that Germany could in the short term realise an additional GDP-growth of 1,5 % and in the long term a raise in the labour force of 4,9 million if it reaches a deregulation level like the Anglo-Saxon countries (IW 2006 a, b) Without commenting these numbers, it is still debatable if the focus on administrative burdens is the right approach. Wiener points out that “focusing exclusively on cutting administrative costs could be perverse” (2006, 500) and Torriti (2007) doubts that there is an effect between diminishing administrative burdens and an increase in GDP.

Nevertheless, the CDU/CSU has put the topic of over-bureaucratisation and cutting red tape prominent on their agenda for the election campaign.⁵ In their manifesto, one own chapter was dedicated to de-bureaucratisation but neither the Standard Cost Model nor an independent oversight body were mentioned as instruments for cutting red tape in their action plan (CDU/CSU 2005).

So, the existence or the perception of an over-bureaucratisation problem and the pressure and complaints of the business sector could explain why de-bureaucratisation appeared on the political agenda and why there was some sort of political action at all. But a problem solving approach cannot explain why the new government hasn't relied on “old” instruments (like repealing of statutes or set up a committee) or why it hasn't pushed a broader better regulation agenda including RIA, consultation and transparency or better enforcement practices. Even the business sector was at the beginning rather sceptical about the exclusive focus on administrative burdens and advocated a broader approach including “real” deregulation especially in the regulation of labour market, privatisation, sunseting and so on (Gemeinschaftsausschuss

⁵ The Social Democrats were far less enthusiastic about de-bureaucratisation because for them de-bureaucratisation has always negative connotation with deregulation.

der deutschen Wirtschaft 2004). That leads us to an explanation derived from the literature on isomorphic mechanism and policy learning.

Isomorphic mechanism and policy learning:

As we have seen, cutting red tape was already on the political agenda during the election campaign, at least with respect to the CDU/CSU. But why choosing the Standard Cost Model and an independent oversight body as tools for cutting red tape?

De-bureaucratization is a policy field without clear mean-end relation and even if the goal of the grand coalition has been clear (less bureaucratic burdens for business), the tools to reach it were not. A major German newspaper has stated that until now, all the ambitious government projects on cutting red tape had failed. (FAZ 2006) A striking example is the “Initiative Bürokratieabbau” of the last red-green government, which has been conceived, at least by the business sector, as a failure that has created in the end more than less bureaucratic burdens (Gemeinschaftsausschuss der deutschen Wirtschaft 2004). So the grand coalition was confronted with high uncertainty about how to reach the goal of reducing bureaucratic cost. From neo-institutionalism theory, we know that in organizational fields, individual dealing with uncertainty often leads to homogeneity in structure, culture, and output.

“uncertainty is a powerful force that encourages imitation. When organizational technologies are poorly understood (March and Olsen, 1976), when goals are ambiguous, or when the environment creates symbolic uncertainty, organizations may model themselves on other organizations. (...) Organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful.” (Powell/DiMaggio 1983, 183ff.)

They conclude “that the more uncertain the relationship between means and ends the greater the extent to which an organization will model itself after organizations it perceives to be successful.” (Powell/DiMaggio 1983, p. 154)

For governments that are confronted with uncertainty or difficult policy decisions, it is relatively simple and inexpensive to gain new information simply by observing the results of particular policies in other countries (Meseguer 2005).

So one can hypothesize that the adoption of SCM in Germany and the establishing of an independent oversight body was in fact the consequence of a process of learning from failed experiments with former policies. These failures, coupled with the successes of other countries seen and portrayed as champions of reducing administrative burdens persuaded politicians in Germany of the virtues of the Standard Cost Model. Just as the failures with past de-bureaucratization initiatives provides information about what not to do (no decentralized ap-

proach, no sophisticated instruments like RIA), the perceived good performance or policy successes of other countries provide information about alternative courses of action. What we can observe is what Meseguer (2005) calls purposive learning: a problem (in our case over-bureaucratization) is set and a solution is sought. But how has the solution been found?

First of all, there has been a clear ideal which was conceived as successful in its fight against red tape: the Netherlands. They have experimented with the Standard Cost Model since the Mid-1990 and completed their baseline measurement in 2004. Furthermore, the Netherlands introduced an ex ante-assessment of administrative burdens, established an independent oversight body (Actal) and formulated a 25% reduction goal to be reached until 2007.

In addition, as Wegrich (2007) notes, Dutch bureaucrats “spend considerable time and energy in travelling across Europe to convince governments of the virtues of the model.” (Wegrich 2007, 13).

In the literature about policy learning, international organization plays a crucial role in facilitating cross-national diffusion of ideas and tools.

“International institutions, such as the European Union (EU), the OECD or the World Bank, but also nongovernmental organizations (NGOs) and transnational interest organizations, play a highly active role in this process. In constantly searching for new policy ideas, disseminating best practice and evaluating domestic policy performance, they function as mediators of cross-national policy transfer, urging national governments to adopt successful policy models.” (Holzinger/ Knill 2005, 785)

However, international organisations have played practically no role in the adoption process of the Standard Cost Model in Germany. OECD as well as the EU have for a long-time pushed “better regulation”-initiatives in their member countries, but both organisations have missed the SCM-boom almost completely. Also the SCM-network that is often mentioned as a decisive factor in the diffusion process (Radaelli 2007b, Wegrich 2007), did not have a major influence on the implementation of SCM in Germany. Germany joined the SCM network at the end of 2006, long after the decision for SCM and the National Regulatory Control Council had been taken. That turns us to the domestic side of the policy diffusion process and to the question how political actors take decisions and learn. Meseguer (2005) distinguishes two form of learning:

“Learning (...) can be rational or bounded. It is rational if actors, in our case politicians, are taken to have full analytical capabilities. In such a perfect world, government officials would scan all available information regardless of its origin and interpret all of it in exactly the same manner, drawing the same conclusions about the relative merits of different policies and marginalizing prior beliefs about policies in the light of mounting evidence, positive or negative. In contrast to rational learning, bounded learning entails recourse to particular cognitive short cuts. Rather than scanning all information, governments look at relevant information. According to pros-

pect theory, relevant information is information that is available or near to hand (...) to the learner.” (Meseguer 2005, 72)

It is obvious that we don't live in a perfect world and that especially when negotiating a coalition agreement politicians are bounded actors that decide upon information that is near by. In the following, I will argue, that an influential policy network consisting of the Bertelsmann Foundation, consulting firms and politicians was essential in the decision making process.

A strong policy network as channel of diffusion

In the literature about policy learning, different studies have highlighted the role of specific actors as agents of learning, considering the political role of policy entrepreneurs, international organizations, policy research institutes, networks of expertise, consulting firms, and advisors (Radaelli 2007c). As already noted, the importance of international organisation in the diffusion of the administrative burden reduction policy in Germany was rather limited. The administrative burden reduction policy was foremost the result of a strong interaction between an advocacy think tank (the Bertelsmann Foundation), consulting firms (mainly Ramböll Management, NordWest Consult and KPMG) and some more or less influential politicians.

In fact, the Bertelsmann Foundation could be named as the main driver in the adoption of the Dutch model in Germany. The foundation was created by Reinhard Mohn, founder and long-time chair of the Bertelsmann AG, more than 30 years ago. Since then, the Foundation acts as influential think tank in the fields of education, economic and social affairs, international relations and reform of state and administration. In 2006, the Foundation carried out projects in the worth of 47 million €. That makes the Foundation the most powerful non-party aligned think tank in Germany. The Foundation has begun to focus on de- bureaucratisation out of a project about the reform of German labour market reform. As early as in January 2005 (nine month before the coalition agreement) the Foundation hosted a first workshop about better regulation in the German Länder. In his presentation, the leader of the project “Agenda Moderne Regulierung” has already highlighted the importance of an instrument to measure the administrative burdens because political entrepreneurs need to show their success. Hence, it would be necessary to measure the existing administrative burdens as well as improvements in the reduction of burdens. The foundation committed itself to put better regulation on the political as well as the media agenda (Frick 2005). In the following, a study conducted on behalf of the foundation identified the Standard Cost Model as the most efficient instrument to measure administrative burdens and proposed its adoption in Germany (Müller 2005). Furthermore, the foundation organised a study tour to the Netherlands with 15 participants from 5 German Länder governments, business associations and universities. The second work-shop,

this time with explicit focus on the transfer of the Dutch model, followed on 16th September 2005. Furthermore, the foundation published numerous discussion papers (Bertelsmann Stiftung 2005a, 2005b, 2005c, 2005d, 2005e), organized the first pilot projects in several German Länder and published one of the first SCM manuals (Bertelsmann Stiftung 2006). The leader of the project “Agenda Moderne Regulierung” was also nominated as expert in the consultation about the Act on the Establishment of a National Regulatory Control Council. (Frick 2006).

As the importance of the Foundation could not be overestimated, two other actors pushed the diffusion of the Dutch model. From the beginning, the Foundation was supported by some consulting firms which had a mainly economic interest in the transfer of the Dutch model. NordWest Consult, a small consulting firm from North Rhine-Westphalia, published the first hand-book on the Standard Cost Model in German (mainly a translation of the international Standard Cost Model manual (NordWest Consult 2005)) and, supported by strong ties to the Social Democratic Party (most of NordWest Consult managing partners are former elected municipal officer in North Rhine-Westphalia for the SPD), put the topic on the political agenda at least of the Social Democrats. One managing partner of NordWest Consult, Henning Kreibohm⁶, became even member of the National Regulatory Control Council.

Ramböll Management, which has conducted several SCM-measurement projects in Denmark as well as in Great Britain, carried out pro bono the first measurement of administrative burdens in Germany in April 2005 (Ramböll 2005).

In the following, NordWest Consult, Ramböll Management and KPMG monopolized the market for administrative burdens measurement in Germany and maintained the topic on the political agenda.⁷

The last part of the network were some mayor politicians that promoted the SCM as well as an independent oversight body during the coalition negotiation. Hartmut Schauerte (CDU) and Reiner Wend (SPD), the two chief negotiators for economic issues during the negotiations formulated the passages in the coalition agreement. Also to mention is Norbert Roettgen (whip of the CDU), who is sometimes named as father of the administrative burden reduction programme.

⁶ Henning Kreibohm was also nominated as expert for the consultation about the Act on the Establishment of a National Regulatory Control Council (Kreibohm 2006)

⁷ Except of some minor projects that were conducted by Steria Mummert and Kienbaum Management.

Future prospects:

As we have seen, the adoption of the Standard Cost Model in Germany and the establishment of an independent oversight body was driven by the intention to solve a real world problem, an international champion that served as blueprint for an administrative burden reduction policy, a policy window in form of the coalition negotiations and a strong domestic policy network that pushed the adoption of the Dutch model. But what are the outcomes and impacts of this administrative burden reduction policy? Is there any impact at all or does business not care much about administrative burdens? If someone looks on the recent literature of better regulation, the conclusion would be clear. For Radaelli (2007b), there is no reason to believe that the reduction of administrative obligations will deliver a more competitive Europe. The elimination of an information requirement in a given rule may, for example, affect negatively the benefits. Or, another example, administrative burden reductions may prompt an increase in regulatory policy costs. Wiener (2006) doubts the apolitical character of administrative burdens because in many cases administrative costs support valuable information collection efforts that are necessary for policies to yield benefits or reduce other costs.

In Germany, however, the first reaction about the administrative burden reduction policy, even from outside the described policy network, are somewhat more positive. For Knill et al. (2006), the Standard Cost Model and the National Regulatory Reform council are first steps in the right direction. Hesse (2006) points out that already the process of the measurement and the systematic assessment of all regulation is a major success because the regulators get for the first time a complete overview about what they are doing, who is concerned and what amount of costs they produce.

However, it is clear that the concentration on administrative burdens in Germany comes more from political considerations than from a careful analysis if the Standard Cost Model or a National Regulatory Control Council are really effective instruments for better regulation. The politicians of the grand coalition were uncertain how to handle the perceived over-bureaucratization problem and so quite happy to concentrate on a narrow agenda. In this situation, the concentration on the Standard Cost Model was seen as an apolitical approach that makes it possible to cut administrative costs without affecting the objectives of the legislation itself and so without harming someone.

But, policy instruments, if they are institutionalized, acquire their own autonomy and transcend the original constellation of actors and problems that created them (Radaelli 2007b).

The main function of the National Regulatory Control Council as well as of the Standard Cost Model in this context is to enhance the knowledge-base and the influence of adversaries of new regulation and over-bureaucratisation in the legislative process through the collection and publication of new information and data and through the consideration of this information in the decision-making process. That's the main difference to the former practice of RIA in Germany. Impact assessment were mainly conceived as an imposition, conducted without public attention and with nearly no influence on the decision-making process. By contrast, the ex-ante assessment of administrative burdens and the comments of the National Regulatory Control Council have a high public attention (especially if the legislation is controversial) and are used by actors of the executive as well as the legislature in the political process.

The assessment of administrative burdens and the work of the National Regulatory Control Council are not about "rationalizing" the legislative process. That would be a technocratic illusion. About the necessity and the amount of legislation of regulation must be decided in the political process. The main task is rather to provide information that were not present before and to change the legislative process that is dominated by specialised sector and departmental interests.

To conclude, the National Regulatory Control Council as well as the SCM may not be the most sophisticated instruments, and perhaps not the SCM but RIA is the instrument with the highest potential in terms of rational regulatory policy making (Radaelli 2007b). But what is the use of the most elaborated instrument if it is ignored in the political process?

It is too early to evaluate the administrative burden reduction policy in Germany as a whole and future research is needed, but the first experiences are not as bad as some critics of administrative burden reduction policy may suggest.

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