
Red Tape, Better Regulation and the Regulatory State: The most recent reform agenda in Europe

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Agenda

1. why 'better regulation'?

- regulatory state
- bureaucracy and red tape

2. experiences in Europe?

- Regulatory Impact Assessment (RIA)
- Standard Cost Model (SCM)

3. why has SCM been rather successful?

- not tools but institutional arrangements
- specialists and generalists

Dominating Public Sector Narratives

- democratic state (after WW2)
→ "*Democracy*"
- active state (starting middle of 60ies)
→ "*Planning*"
- lean state (starting end of 70ies)
→ "*Management*"
- collaborating state (starting middle of 90ies)
→ "*Governance*"
- what's next???

Dominating Public Sector Narratives

- regulatory state → regulation
 - the state no longer delivers many services, it regulates them (especially the EU)
 - liberalization has produced more regulations, not less 'more markets, more rules'
 - who wants less regulation?
 - bureaucracy and red tape 'the never-ending story'

→ better regulation / smarter regulation

The better regulation toolbox

- regulatory impact assessment (RIA)
- consultation standards / notice & comment
- use of market-friendly alternatives
- risk-based approaches to enforcement and implementation
- sustainability assessments of proposed legislation
- regulatory budgets
- evaluation
- reduction of administrative burdens (SCM)

The better regulation toolbox

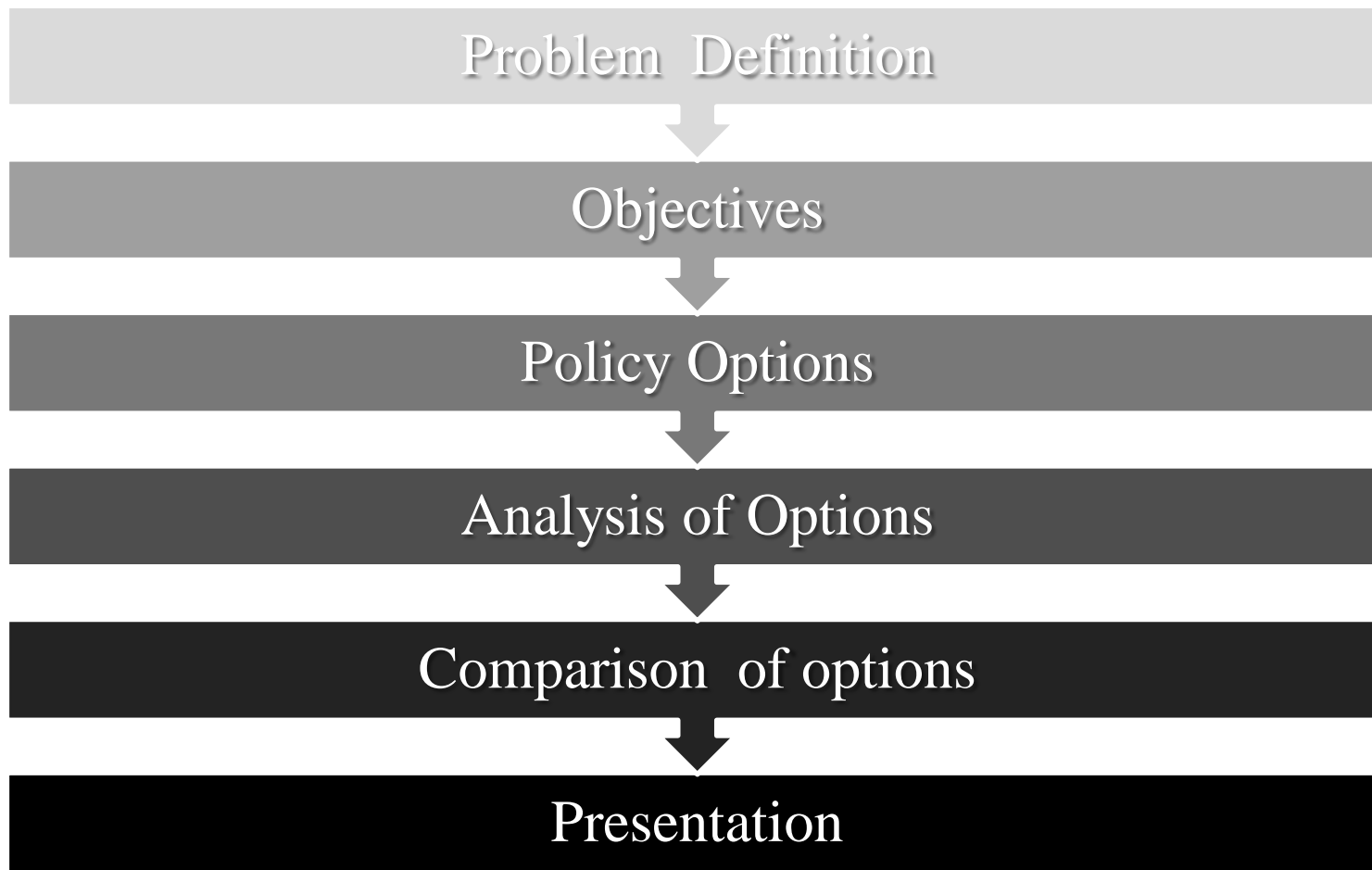
- but does it work?
 - regulatory impact assessment (RIA):
no, not really
 - reduction of administrative burdens (SCM):
yes, quite well

Regulatory impact assessment (RIA):

What is it?

- systematic assessment of regulation as part of the design process
 - planned effects
 - unintended side-effects
 - costs and benefits
- formal procedure with discrete stages that ministries and regulators have to follow
 - consultation of external ‘stakeholders’
 - assessment of cost and benefit of regulatory options
 - consideration of alternatives to regulation
 - planning of implementation and evaluation

RIA: Key analytical steps



RIA: Experiences

- like any regulatory regime, RIA policy needs control system within government...
- the broader the scope of RIA, the more difficult to enforce rules
- replacement of politics (interaction, negotiation) with analysis (cognition, cogitation) unlikely and undesirable
- formal adaptation and compliance (box-ticking) most common scenario for most RIA systems
- more fruitful for regulatory agencies (narrow mandate, e.g. price setting)

RIA: Critics

- too late in the decision making process
 - fig leave for political decisions
- cumbersome bureaucratic procedure
 - box ticking exercises rather than creative design
- problematic quantification of benefits and costs
 - pseudo-objective economization of value judgements
 - unclear who decides about economic and other criteria and how they should be defined and balanced
 - narrows alternatives and prevents learning

→ more of the same?

RIA: Action and Ambiguity



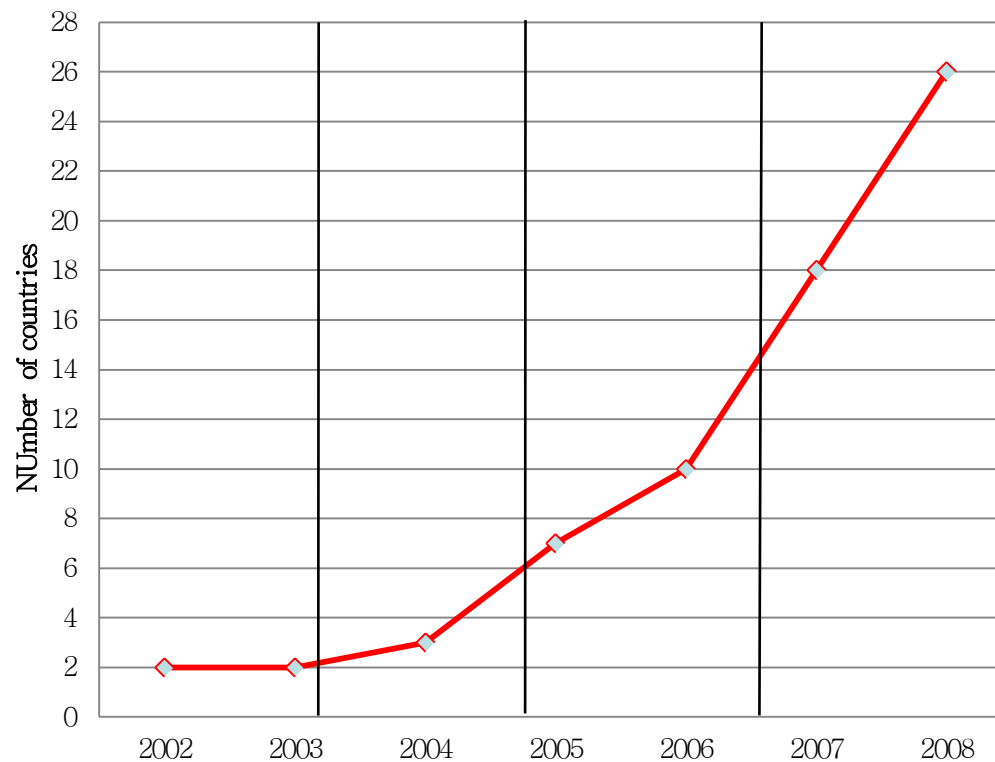
	objectives: clear, uncontroversial	objectives: unclear, controversial
technology: clear, uncontroversial	<ul style="list-style-type: none">• calculation• bureaucracy• hierarchy	<ul style="list-style-type: none">• bargaining• representation• pluralism
technology: unclear, controversial	<ul style="list-style-type: none">• judgement• collegium• professionalism	<ul style="list-style-type: none">• negotiation• network• anarchy

after Thompson/Tuden 1959

Standard Cost Model (SCM): Rationale

- RIA tries to achieve too many things
- toolbox does not fit institutional setting of policy making
 - widespread perception of unnecessary burden of regulation
 - how to reduce burdens, and improve regulation, without upsetting policy making?
- use of particular elements of RIA is possible
- it compatible with existing institutional arrangements

Standard Cost Model: A European Policy Boom



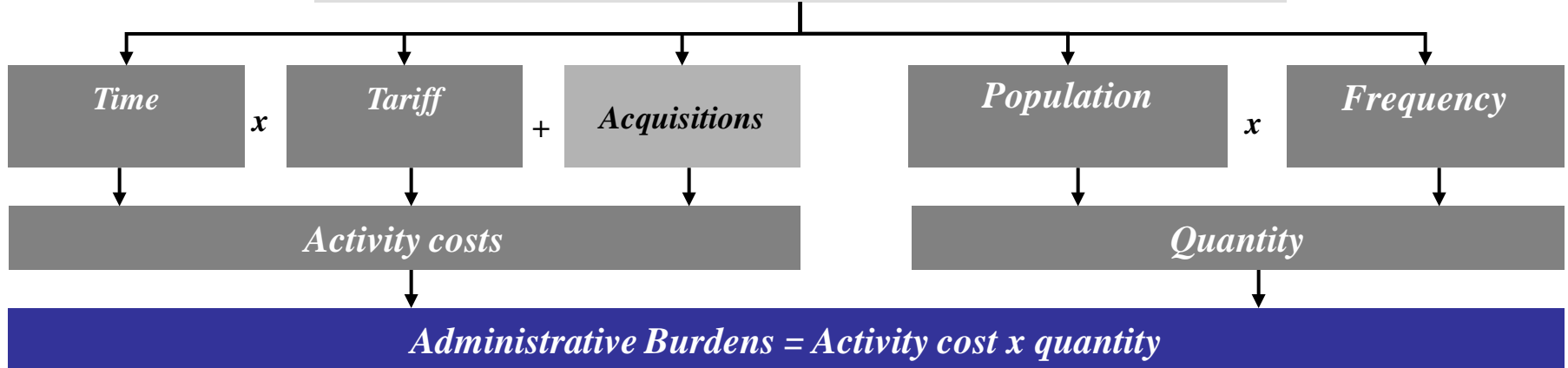
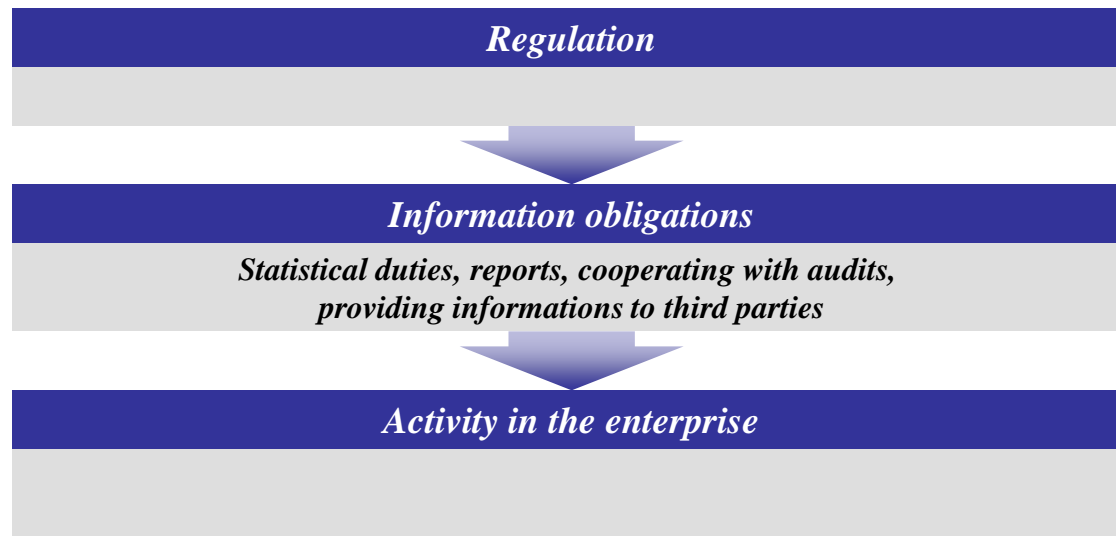
Red Tape, Better Regulation and the Regulatory State
Wellington, Institute of Policy Studies, March 2, 2012

SCM:

Basic Idea

- focus only on measuring and reducing 'bureaucratic' costs of regulation (instead of all costs)
 - costs from complying with information obligations of regulations ('paperwork')
 - differentiated from policy or substantial costs
 - no concern with benefits
- measure burdens of existing regulations and track progress against a quantitative target

SCM: The measurement model



SCM: Policy template

- baseline measurement (ex post)
 - 'measurement' of information requirements of all regulations at one point in time
- reduction target
 - 25% in most European countries
 - individual targets for ministries
- incoming new regulations (ex ante)
 - 'measurement' of all new regulations
 - net reduction
- monitor effects of simplification

SCM:

Simplification measures

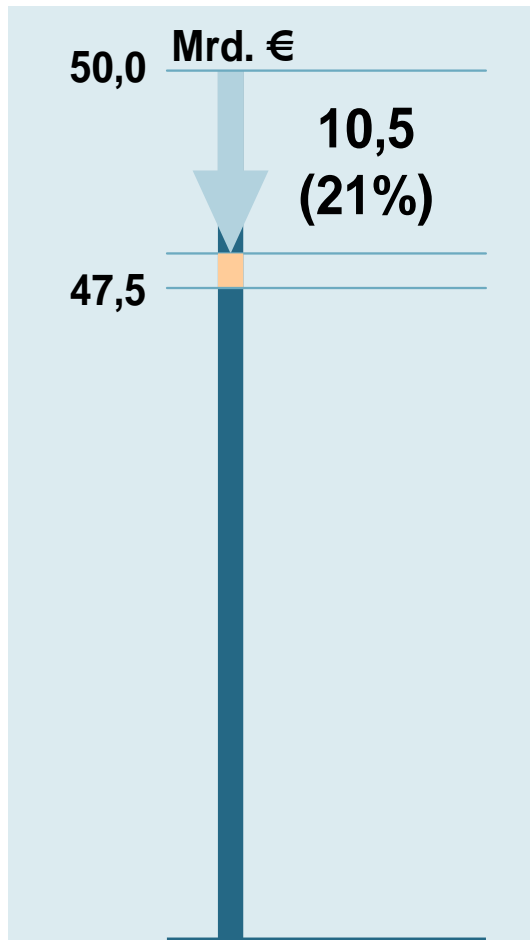
- prohibition of new or abolition of existing information obligations
- simplification of information obligations (esp. time, target group and frequency)
- optimization of the coherence between regulations (e.g. avoidance of double or parallel information requests by public authorities, recourse on existing data)
- E-Government (e.g. ensure easy access and linkage between public authorities and addressees)

SCM: Experiences in Germany



- Programme for the Reduction of Bureaucracy and Better Regulation (2006)
 - ex ante: National Regulatory Control Council (NRCC / NKR) has to be involved and give his opinion for each bill proposed by the federal government
 - ex post: the Federal Government implements a 'baseline measurement' of all administrative burdens for the economy (private firms) and declares a reduction target (25 %)
 - each ministry is responsible
 - method developed and controlled by the National Statistical Office

Experiences in Germany: Reduction of administrative burdens



Basis:

administrative burdens out of 9,500 federal information obligations (as of 30 September 2006)

Result of baseline measurement:

50 bn. Euro p.a.

Target:

net-reduction of 25% by the end of 2011

Current Status:

More than 250 simplification measures have been adopted with a reduction potential of 10,5 bn. Euro (21 %)

Examples:

- *Electronic invoicing (- 4 bn. €)*
- *Modernisation of accounting regulations (- 2,5 bn. €)*
- *Simplifications of procurement regulations (- 265 Mill. €)*

SCM: Results & Critics

- 25% target (nearly) achieved
 - in most countries
(the Netherlands, UK, Germany)
- but no real perceived impact for business
- reasons
 - data manipulation?
 - minor cost reductions for a high number of companies

SCM: Results

- why a (comparable) success?
 - because SCM fits into the basic institutional setting of policy making in Germany
 - formal rules
 - normative assumptions
 - worldviews
 - and it gradually changes the role and the perceptions of different actors in policy making
 - specialists
 - generalists

SCM: The Generalists-Specialists explanation

	Specialists	Generalists
Societal Actors - producers - consumers - clients	representing specific - sectors - interests - regions	representing - 'general interests' - cross-cutting concerns (i.e 'cutting red tape')
Administrative Actors - bureaucracies - regulators - enforcement agencies	specialised (line) - agencies - ministries - divisions - sections	coordinating organizations - centre of government - ministry of finance - budgetary units - 'reform units'
Political Actors - promoters - representatives - political entrepreneurs	- sector politicians - specialised committees	- cross-section politicians - budgetary committees

SCM:

The Generalists-Specialists explanation

	Specialists	Generalists
Support of interest - articulation - mobilisation - representation	- concentrated - well organized - highly mobilized - low transaction costs - low collective action problems	- diffuse - hardly organized - difficult to mobilize - high transaction costs - collective action problems
Expertise	- high - detailed - policy area specific	- broad - general - cross policy area

Germany:

The National Regulatory Reform Council

Legal basis: Joint Rules of Procedure

- *NRCC is treated like a Ministry in the legislative process*
- *The ministries are obliged to make an ex-ante assessment of administrative burdens by using the standard-cost model*

Procedure

- *Each draft has to be presented to the NRCC during inter-ministerial coordination*

The NRCC in the legislative process

- *Has an assessment of administrative burdens been made?*
- *Sufficient consideration of less burdensome alternatives?*
- *Selection of the least burdensome alternative?*

- *Informal consultation with drafting ministry*
- *Formal opinion attached to the cabinet draft*
- *Becomes public with cabinet decision and is passed to Parliament Bundesrat*

Questions of the NRCC

Opinion of the NRCC

Summary

- 'better regulation' will be a major topic of the next years
- we will see more attempts at 'regulatory management'
- to improve regulation is not a technical question of tools but a political question of institutional design
- new procedures have to fit into the basic institutional setting of policy making
- and they have to change the balance between specialists and generalists in government

Thank you very much!

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