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# Content First, Legal Text Second.

Designing Effective and Practicable Legislation

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The National Regulatory Control Council (Nationaler Normenkontrollrat) is an independent advisory and supervisory body set up by the Federal Government of Germany at the Federal Chancellery. It ensures that a regulation's compliance costs to citizens, businesses, and public administrations are disclosed clearly and transparently as a basis intended to help decision-makers in government and parliament be aware of the implications before making their decisions. The aim is to reduce and eliminate any unnecessary bureaucracy and legal compliance costs.

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# Foreword



In 2019, the Federal Republic of Germany and its *Grundgesetz* (Basic Law) are celebrating their 70th anniversary. Over the years, the Bundestag has enacted over 8,000 laws, most of which were drafted and prepared by the federal ministries. A close-knit web of regulatory requirements has resulted that now spans all areas of life, in some cases regulating them in detail. Even those who would prefer not to refer to it as a regulatory jungle, will acknowledge the daily reality for lawmakers and the addressees of laws alike: the density of regulation is growing, the complexity of the law is ever rising, and it is becoming increasingly difficult under these conditions for them to pursue their daily tasks with creativity, dedication, and enjoyment.

At the same time, the world has changed fundamentally, and continues to do so at an accelerating pace. In an increasingly complex world, the affairs subject to regulation are likewise increasingly complex. Moreover, a growing polarization of opinions and a fragmentation of the landscape of political parties are increasingly burdening the process of consulting stakeholders and finding compromises. Insufficient latitude is left for diligent drafting of legislative content. Faster media cycles all too frequently demand that policymakers hastily adopt presumed obvious solutions – solutions that are more or less formulated ad hoc and therefore lack the requisite maturity. Much has changed since the foundation of the Federal Republic of Germany, yet what has remained practically unchanged is the process by which laws are drafted. As it currently stands, ministries are increasingly struggling in the short time available to develop laws that not only observe legal formalities, but that are also effective and practicable.

As a result, laws are losing their ability to make an impact or their enforcement is proving problematic; the quality of laws is in decline. Aside from making legal compliance unnecessarily cumbersome, this situation also complicates matters to the point where laws can no longer fully exert their intended effects. At the same time, the expectations of citizens and businesses are also changing. Ever-higher standards are being set for good governance. When the response of policymakers or when laws and their enforcement, fail to match the perceived reality on the ground, disappointment and dissatisfaction grow. In order to counteract this trend and win back trust, it is necessary to return to the essence of good governance: Politicians that regulate well can govern more effectively and recover or indeed build up, trust.

The Federal Republic of Germany is founded on the rule of law. That is why the formal quality of laws is of such importance. Legal quality constitutes a necessary criterion for good laws, but not a sufficient criterion. A good law is, first and foremost, effective – i.e., it realizes political objectives, with sustained and measurable effect. In addition, it is addressee-friendly – it minimizes the cost of implementation and compliance for citizens and businesses. And it is suitable for enforcement and service delivery so that the public administration can implement it with legal certainty and cost-effectively. Consequently, policymakers have to do more to ensure a constructive, rather than a destructive, interaction between state regulation and the reality of citizens and businesses. What we need is a paradigm shift: effectiveness and practicability must take center stage and become genuine target values.

Since 2006, the National Regulatory Control Council (NKR) has been advising the Federal Government in the field of better regulation and has been monitoring its efforts to reduce bureaucracy. Meanwhile, the NKR has reviewed numerous draft bills and regulations, and has obtained a broad overview of how laws are developed and promulgated. In view of the challenges of our times, this study aims to provide impetus and recommendations for improving the legislative process and, in particular, the drafting of legislation at the ministerial level.

The recommendations address the current process for drafting legislation at the ministerial level as set out in the Joint Rules of Procedure of the Federal Ministries (GGO). They focus on the early phase of the development of legislation in which there is comparatively ample latitude for shaping the process, i.e., before the ministerial draft leaves a ministry as a finished legal text. This study recommends that greater emphasis than in the past be placed on the elaboration of generally comprehensible key issues papers and concept papers. Such documents are better suited for the broad involvement of the respective stakeholders than the fleshed-out paragraphs of a finished draft bill. In policy labs, ministries, stakeholders, and experts could quickly, directly, and candidly discuss the solution options that are most effective, most practicable, and least bureaucratic. A digital readiness check could help avoid unnecessary barriers to the addressee-friendly, digital enforcement of laws. These measures would appropriately supplement the ministries' existing strengths. Technical aids and exemptions in the drafting of key points papers and bills can create space for a more thorough inspection of effectiveness and practicability.

These recommendations have been put into practice in other countries, i.e., they are generally feasible. However, they require a cultural transformation and the willingness of policymakers and the ministerial administration to advance down this avenue. For policymakers, that means trusting the creativity of ministries, their expertise, and their ability to find solutions in dialog with stakeholders, while concentrating on setting goals rather than prescribing finished solutions from the outset. For ministries, it would mean adopting a more diverse staff profile, extending beyond lawyers and involving the increased recruitment of other experts, while preparing legislative experts (also known as policy professionals) more systematically than in the past for their job as the "architects of laws" and "designers of solutions".

The successful implementation of these recommendations is by no means a foregone conclusion. It requires a change of mindset for many. It also requires investment and staying power. At the National Regulatory Control Council, we are convinced that this investment is worth it and will pay off in every respect. The quality of laws is quite simply decisive for prosperity and well-being in our country and, in turn, for the success and acceptance of the political sphere. Good legislation is key to good governance. It has to keep step with the demands of our times and get into shape for the 21st century.



*Dr. Johannes Ludewig*  
*Chairman of the National Regulatory Control Council*

# Core messages

- 1. Since the foundation of the Federal Republic of Germany, the process of drafting bills and making laws has remained practically unchanged. Meanwhile, however, the world has changed fundamentally, and at an accelerating pace. Developing effective and practicable laws is becoming increasingly challenging.**

In Germany, the process of drafting bills and making laws has remained largely unchanged since 1949. However, key parameters barely resemble those from 70 years ago – primarily as a result of five trends: First, the state has to respond to the accelerated pace of social, economic, and technological change. Second, in an increasingly complex world, the affairs subject to regulation are likewise increasingly complex. Ministries can no longer fully cover all necessary expertise in-house. Third, the density of regulation is growing – it is necessary to integrate new laws with precision in an already highly differentiated national and transnational regulatory structure. Fourth, policymakers face a growing polarization of opinions and fragmentation of the landscape of political parties. The process of consulting stakeholders and finding compromises is becoming increasingly involved; insufficient latitude is left to judiciously draft the content of bills. Fifth, faster media cycles demand that policymakers hastily adopt presumed obvious solutions. Largely formulated ad hoc, such solutions still lack the requisite maturity, and later bind and restrict ministries' substantive and legal drafting.

- 2. As a result, the quality of laws is impaired, while bureaucracy increases, and the intended impact of the laws diminishes. Policymakers have to do more to ensure a constructive interaction between state regulation and the reality of citizens and businesses.**

It is increasingly difficult to make good laws. As a result, laws are losing their ability to make an impact or their enforcement and service delivery is proving problematic. For instance, more than half of companies in Germany report that they engage in the “autonomous reduction of bureaucracy”, i.e., they only observe the regulatory requirements that they deem important and practicable.<sup>1</sup> Another example: some 60,000 objections and claims are filed each month against decisions by public authorities related to long-term unemployment benefits known as “Hartz IV” (SGB II) – and about 40 percent of those cases are ruled in favor of the claimant.<sup>2</sup>

In a changing world, the expectations of citizens and businesses are also changing. Ever-higher standards are being set for good governance. When the response of policymakers or when laws and their enforcement, fail to match the perceived reality on the ground, disappointment and dissatisfaction grow. In order to win back trust, it is necessary to return to the essence of good governance: politicians that regulate well can govern more effectively and recover or indeed build up, trust.

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<sup>1</sup> Institut für Mittelstandsforschung (2019): Bürokratiewahrnehmung von Unternehmen.  
<sup>2</sup> German Federal Employment Agency (2019): Widersprüche und Klagen SGB II.

**3. The quality of laws is quite simply decisive for prosperity and well-being in our country and, in turn, for the success and acceptance of the political sphere. Good legislation is key to good governance.**

Laws are a key lever of policymakers – they should translate political will into workable rules that can be enforced in practice. A good law is effective – i.e., it realizes political goals, with sustained and measurable effect. It is addressee-friendly – i.e., it minimizes the cost of implementation and compliance for citizens and businesses. And it is suitable for enforcement – i.e., the public administration can implement it cost-effectively and with legal certainty.

In Germany, bills are mainly drafted by the ministries. This process is a central element of governance. How well it works has a direct impact on the quality of laws – and, in turn, on Germany's economic and social prosperity. Good legislation is an important determinant of a region's appeal for doing business. At the same time, it is a precondition for the trust of citizens in the ability of the state and the policy making process. After all, good laws allow policymakers to effectively implement political programs and fulfill their promises.

**4. Germany's process for preparing bills has its strengths – yet, these no longer suffice. What we need is a paradigm shift: effectiveness and service delivery must take center stage and become genuine target values.**

The established procedure for creating regulation in Germany has distinctive strengths – also compared with other countries. For instance, the ministry officials responsible for drafting bills (policy professionals) frequently have many years of experience in their assigned field, in which they have built up a high level of expertise. Laws are also of high quality from a legal perspective. At the same time, the German Federal Government goes to great lengths to lend transparency to, and limit, the compliance cost of laws. Tried-and-tested methods are available for this purpose in the interim.

However, the existing strengths no longer suffice. They have to be accompanied by laws that are perceptibly effective and practicable. This paradigm shift is premised on cultural change. To this end, it can be helpful to take a look at other countries that have developed tools for improving the conceptual drafting of pragmatic laws. Yet impetus can also be given by domestic initiatives, e.g., the Governing Effectively project (“Wirksam regieren”).

**5. Swift and detailed political commitments undermine the drafting of legislation at the ministerial level. Politicians have to fundamentally change the way they work at present. They are most effective when they set clear goals rather than concrete solutions.**

The need for change begins with setting political goals for the ministries. Changes in voting patterns are leading to government coalitions spanning a wider political spectrum than in the past. This explains the tendency to enter into agreements that are as detailed as possible from the outset. As a result, the coalition pact is increasingly evolving into a detailed to-do list for the legislative term. Policymakers are thus committing early on – frequently in late-night meetings – to concrete solutions

whose actual effects cannot be reasonably verified in the brief time available. The ministries then have scant latitude to fulfill their original commission and to find the best possible solution for the goal pursued.

In the future, policymakers should thus use goal papers ("Zielepapiere") that only set out which goals should be accomplished by when, but not how. This proposal may well conflict with political efforts to streamline collaboration within a government, by committing to a course of action at an early stage, to secure compromises, or to present policymakers as technically competent "movers". But only an open solution space – for given objectives – enables effective and practicable laws.

## **6. Policy professionals need a modern toolkit for better laws. Conception and content have to take precedence over wording in the future.**

Even when policymakers have sufficient latitude for creativity when drafting legislation at the ministerial level, they currently still lack the right tools for making the most of that freedom.

**Effectiveness and practicability check.** At present, potential solution options are typically not weighed up against each other comprehensively, or above all using a model-based approach on the basis of effectiveness and service delivery considerations. In the future, working with causality models ("Wirkmodelle") and service delivery models ("Vollzugsmodelle") should be part of the policy profession's standard repertoire. Visual presentations to illustrate problems, impact mechanisms, and service delivery processes can help refine the process of comparing solutions and also help to better involve stakeholders. Current practice is typically to use a fully worded, obtuse legal text that makes it difficult, if not impossible, to consider the necessary political trade-offs.

**Digital readiness check.** The digital readiness of laws, i.e., their readiness to be enacted digitally rather than requiring cumbersome paper-based processes, is at present not generally assessed from the outset, but instead ascertained during the implementation phase. At that stage, remedying any deficits can prove challenging, making it difficult to ensure unbureaucratic, digital enforcement. A check of digital readiness is thus needed to identify legal hurdles, such as the need for a signature, early on in the process of drafting a bill.

**Sufficient time for the involvement of stakeholders.** Growing complexity means that more expertise is needed. It is typically those affected by a law who have the relevant expertise. Their involvement in lawmaking is inconsistent at present. There is a lack of clear rules governing interaction with stakeholders and their associations – the mode of interaction is at the discretion of the ministries. In addition, emphasis is placed on large associations. Individual members of associations or less organized experts frequently lack opportunities to get involved directly. In the future, formats better tailored to individual target groups are needed to get stakeholders involved, along with sufficient time in which stakeholders can submit feedback.

**Policy labs.** The established involvement and consultation procedure quickly reaches its limits, in particular when faced with complex legislative projects involving difficult technical issues or multiple groups of stakeholders. Policy labs offer a platform for policy professionals to jointly develop and test alternative solutions in collaboration with



other experts and affected parties – without having to negotiate cumbersome procedures. Such agile methods have already proven effective in the digitization of public administration services in connection with the implementation of the German Online Access Act (OZG). With some 30 digital labs at present, the culture and formats of public administration work are undergoing a profound transformation.

**7. A new model for drafting legislation at the ministerial level is possible, although it requires a more binding commitment and effective quality check.**

Combining the recommendations made in this study leads to a new standard procedure for the drafting of legislation. This standard procedure can be applied flexibly, depending on the nature of the legislative project in question. However, it requires a binding basis – either in the form of an amendment to the GGO or through clear resolutions by the Committee of State Secretaries for the Reduction of Bureaucracy.

In addition, neutral scrutiny and quality checks are needed to ensure the application of all three criteria of good legislation: effectiveness, addressee-friendliness, and suitability for enforcement. Relevant experience in Norway or the EU shows that it is possible to conduct a comprehensive, politically independent review of the technical quality of laws without creating a “bureaucratic monster”.

**8. The policy profession's work is currently burdened by a multiplicity of requirements. To provide space for effectiveness and practicability checks, the current toolkit for better regulation has to be uncluttered elsewhere. This requires coordination through a central office.**

The current drafting of legislation at the ministerial level is overloaded by a multiplicity of requirements. Some 40 manuals, guidelines, and working aids developed by a variety of stakeholders pose a heavy burden. Especially if effectiveness and enforcement checks are to be introduced in the future, current requirements need to be consolidated and reduced. To this end, a central office is needed that is tasked with producing a consistent catalog of requirements for better regulation and creating the corresponding set of instruments. Such a unit would advise policy professionals on methodological requirements and provide them with practical assistance. The process of drafting legislation should also have user-friendly, digital support. To this end, the E-Legislation project ("eGesetzgebung") has to be given greater attention and endowed with more resources.

**9. A law degree alone does not make a good policy professional. Interdisciplinary teams are needed, along with a push for training and education.**

Legal proficiency is a necessary criterion for effective and practicable regulations, but is not a sufficient. Aside from law graduates, ministries should increasingly recruit graduates of other disciplines to obtain a good mix in their policy teams. Such diversity is essential to build up the diverse methodological and service delivery expertise needed for modern regulation.

Policy professionals – law graduates or those with other educational backgrounds alike – need to be systematically inducted into their profession and receive continuous training. Currently, most of this training is provided on the job and is largely left to chance. In order to guarantee uniform standards, career-starters need high-caliber

training, along with readily accessible opportunities to advance their qualifications, e.g., on e-learning platforms. Policy professionals should be trained as “architects of laws” and “designers of solutions”.

**10. Some of the proposed measures could be introduced with immediate effect.  
A “governing effectively” work program is needed for the next legislative term.**

The present recommendations build on the existing strengths and processes of Germany’s lawmaking apparatus and factor in past modernization initiatives. An immediate start to their implementation is therefore possible. The German Federal Government should conduct pilot projects for effectiveness and practicability checks, the digital readiness check, and policy labs before the end of this legislative term.

A bold, integrated strategy is necessary after the next parliamentary elections. Political decisions are needed with respect to institutional reform, i.e., regarding the binding introduction and organizational embedding of the procedural model outlined in this study. Also necessary is an earnest and rigorously run training and education drive for policy professionals. Preparatory work for a “governing effectively” work program of this nature should start immediately.

# 1. Drafting legislation at the ministerial level – a key process under pressure

Legislation is an important instrument for realizing political objectives. Laws shape social coherence. They regulate relationships between private individuals, including under purchase, rental, employment, or other contracts. They set the authorization and limits of government intervention with respect to citizens and regulate economic life. And, lastly, they can sanction, or indeed punish, conduct.

In Germany, bills are typically drafted by ministries, before they are passed by the cabinet, and then put to vote by parliament: in the first six months of 2019, for instance, more than 80 percent of the 124 laws enacted were introduced by the Federal Government.<sup>3</sup> Consequently, the drafting of legislation at the ministerial level is a key process of governance.

It is precisely this key process that this study focuses on, along with the process's interfaces with politics and society. Legislative projects that enter the parliamentary process through other channels – e.g., introduced by members of the Bundestag – are not within the scope of this study, nor are the means by which a political objective comes into being or the consultation and decision-making process within the Bundestag and Bundesrat. Although this study refers to the legislative process at the federal level, many of the recommendations are also of relevance for the legislative process at the state level.

The successful completion of a legislative project hinges on many factors and constitutes a challenging endeavor, be it in collaboration or conflict with the ministries and coalition partners. In their work, policy professionals in the departments observe the procedural framework set out in the (GGO). In practice, the procedure varies depending on the given bill's political importance, the time frame available, the extent to which the group of stakeholders has to be redefined and consulted, and whether the bill covers a new regulatory environment.

Having said that, a bill's enactment and signing by the German president is not enough to deem it successful. It is only later that the bill exerts its impact, typically after it has been further detailed and implemented organizationally by the public administration and the courts. Consequently, the extent to which a bill is actually successful – i.e., its quality – also depends on whether the legislator has accurately defined the problem to be solved and whether the bill has the intended effect, i.e., whether it is actually capable of producing a positive impact (without negative side effects).

Another criterion in this context is the extent to which the bill is appropriate for its addressees and suitable for enforcement and service delivery. After all, policymakers will only do justice to their ambitions to shape the sociopolitical reality and meet the approval of the electorate if laws work in practice. The onus is on governments to deliver effective and practicable results in order to secure acceptance of their policies in the long term. A central precondition in this regard is the quality of the legislative drafting process.

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<sup>3</sup> The German Bundestag, parliamentary documentation, legislative statistics – 19th election period, status of database on June 20, 2019; downloaded from: [https://www.bundestag.de/resource/blob/533188/410240c1a2f62b3507bf07c6ebe845b8/gesetzgebung\\_wp19-data.pdf](https://www.bundestag.de/resource/blob/533188/410240c1a2f62b3507bf07c6ebe845b8/gesetzgebung_wp19-data.pdf).

## 1.1 Criteria for a good legislative process

What do good laws have in common? Unquestionably, they have to be constitutional, i.e., they have to observe the formal jurisdictional order prescribed by the *Grundgesetz* (German Basic Law) and its material guarantees. Aside from these fundamental preconditions, there are three primary criteria that laws have to measure up to: effectiveness, addressee-friendliness, and suitability for enforcement and service delivery (see Figure 1).

### Effectiveness – practicable implementation of the political objective

A bill's effectiveness is measured by the extent to which the political objectives for citizens, businesses, and other organizations are realized. The more narrowly defined a political objective is, the more precisely effectiveness can be determined.

### Addressee-friendliness – simple, digital, comprehensible

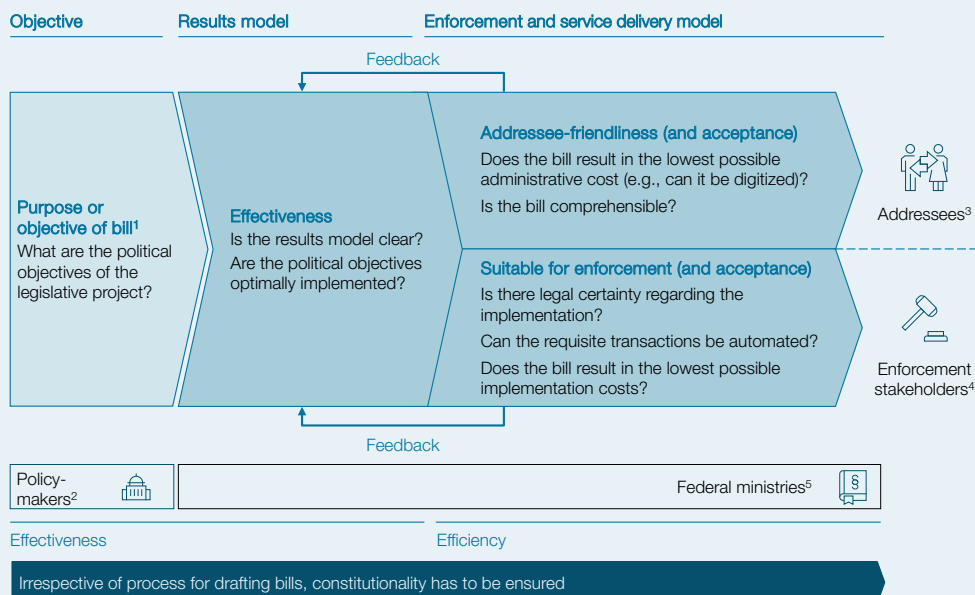
Addressee-friendly laws minimize implementation and compliance costs for citizens and businesses. For instance, the addressees of regulations are only required to furnish evidence that is absolutely necessary, or are provided with a straightforward application procedure with minimal data requirements. E-government solutions, such as digital applications or interfaces for automated compliance with reporting duties, play an increasingly important role today.

Addressee-friendliness is also associated with comprehensibility. Laws address highly diverse groups and the level of comprehensibility required needs to be adapted to each respective group of addressees: the more diverse a group of addressees is, the higher the general comprehensibility standards should be; in contrast, the more specific the scope of application of a law and the more specific the matter regulated, the lower the requirements for general comprehensibility. It follows that specific regulations, e.g., those governing energy law, can be worded in a different manner than regulations that affect the general public, e.g., the one regarding entitlement to parental allowance.

However, general comprehensibility is potentially in conflict with legal clarity in the sense of enforcement with legal certainty (justiciability). Legal certainty frequently requires additional explanations and delimitations, exceptions as well as exceptions from exceptions,

FIGURE 1

### The three criteria of good legislation



<sup>1</sup> Although it is not illustrated here, feedback between the objective of the bill and the target dimensions is also conceivable

<sup>2</sup> Bundestag; Bundesrat

<sup>3</sup> Citizens, businesses, and other organizations

<sup>4</sup> Public administration and courts

<sup>5</sup> Federal ministries

or cross-references. These elements are essential for the application of regulations, but they increase the volume of text and can impair comprehensibility.

### Suitability for enforcement – legal certainty, practicality, cost-efficiency

Laws have to be implemented and their compliance monitored. The authors of a good draft bill take this into account. A law is suitable for enforcement and service delivery if it allows legal certainty, if it is practicable, and if it is cost-effective.

**Legal certainty.** A law can only be applied with legal certainty if its interpretation is, in substance, uncontroversial. Legal uncertainty is the result of a lack of consensus about a regulation's interpretation and application. The more substantial the conflict, the lower the legal certainty with respect to a law's application. The greatest uncertainty arises when there are differences in the way the courts interpret a regulation. A supreme court ruling is necessary to create certainty in such cases. Conversely, laws that can be unambiguously interpreted from day one of their enactment can avoid years of unclarity and conflictive implementation.

**Practicability and cost-effectiveness.** From the perspective of the public administration tasked with enforcement and service delivery, practicable and low-cost processes are the mark of a good draft bill. The more straightforward and quickly that a law can be enforced – while respecting constitutional procedural safeguards – the greater the suitability for enforcement and service delivery. Today, the question increasingly arises regarding the extent to which administrative procedures can be digitized and potentially automated, in full or in part, to increase the efficiency of the enforcement and service delivery of regulations. From the outset, good draft bills thus take into account their digital readiness and the ability to automate their enforcement and service delivery.<sup>4</sup>

In addition, an administrative procedure's general suitability for implementation of a political goal also has to be considered. If the enforcement procedure resulting from the law should appear disproportionately costly relative to the regulatory objective, it might be appropriate to consider an alternative form of government action. For instance, it might also be possible to achieve goals relating to legal information duties by regulating liability under private law, or a financial assistance program might have a better impact than the introduction of a legal obligation.

## 1.2 Old process, new parameters

The legislative process is enshrined in the Grundgesetz and the (GGO). In essence, the current process has been in place since the foundation of the Federal Republic of Germany. In the meantime, however, social, economic, technological, and political parameters are changing at an accelerating pace. Five trends are of particular relevance:

**1. Dynamic change.** Current social and economic changes are mainly a consequence of globalization, greater awareness of environmental issues, and technological change. Particularly the rapid digitization of all areas of life is pushing established regulatory environments to their limits – consider, for instance, the discussion regarding tax reform for digital corporations or the debate regarding online platforms for passenger transport. Lawmakers are being called upon to respond to the new business models of the platform economy.

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4 Kompetenzzentrum Öffentliche IT: Recht Digital – maschinenverständlich und automatisierbar; downloaded from: <https://www.oeffentliche-it.de/publikationen?doc=104099&title=Recht+Digital+-+Maschinenverst%C3%A4ndlich+und+automatisierbar>

At the same time, it is not only necessary to adapt the existing legal system to a digital world, but also to transition the legal and administrative system itself into a new age.

## **2. Growing subject matter complexity and transformation into a knowledge society.**

Globalization and the differentiation of society is causing the complexity of regulatory issues to steadily increase. Lawmakers are likewise tackling fields that can only be understood with specialist knowledge. The ability to acquire such knowledge and secure it for the long term is one of the strengths of Germany's public administration at the ministerial level. However, the policy profession is increasingly having to deal with fields of knowledge (e.g., computer science) beyond the reach of its traditional educational backgrounds. All the while, the global scope of human knowledge is growing exponentially – while the number of ministry officials has tended to remain stable. In addition, far more interdependencies need to be considered in a differentiated (global) society. Accordingly, uncertainty as regards intended and unintended effects is showing an upward trend. As a result, lawmakers have to increasingly open up to external knowledge – be it from the scientific community, or experts among those affected by the law in question.

**3. Rising regulatory density.** Every regulation should, to the extent possible, fit seamlessly into the existing regulatory system. Over the past 70 years, i.e., for as long as the Grundgesetz has been in effect, the legal system has undergone continuous development – not least through European law, which molds many aspects of national law. Regulation permeates more and more areas of life; special cases are increasingly framed in detail. The regulatory structure that has arisen thus contains more and more dependencies that are increasingly difficult to keep track of. It is therefore more difficult than ever to formulate new regulations.

**4. Growing political polarization and fragmentation.** It is getting increasingly difficult to find consensus within society and make political compromises. In 2000, the two strongest parliamentary groups in the Bundestag made up 81 percent of the members of parliament; since 2017 they make up only 56 percent with seven parties represented in total in the meantime. Marginal majorities require more intense consultations within parties and at the coalition level to ensure a common line in votes, which in turn requires greater consideration of the respective interests of individual decision makers. Moreover, politicians increasingly have to make a greater effort to raise their public profile, differentiate themselves, and cultivate their presence in the media. They feel compelled to present fast solutions and commit to concrete measures. In short, there is less and less time for judicious drafting of bills.

**5. Shorter media cycles in an “anxious democracy”.** New media formats and technologies are eroding the public's attention span, leading to an enormous acceleration of the cycle of debates in society. News about legislative projects can also proliferate in seconds through social networks to millions of debating citizens. Accordingly, the response time of political actors is also decreasing – with two key consequences: On the one hand, legislative projects have to ever more quickly deliver a formulation that reflects inter-ministerial consultations and that is suitable for media release. On the other hand, legislation also has to be drafted faster (the German Civil Code [BGB] entered into force in 1900, after being conceived and consulted on in two commissions over the course of 25 years;<sup>5</sup> in contrast, today it is expected that complex legislative projects are completed before the end of a legislative term). Add to this the frequent launch of spontaneous legislative initiatives in

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5 Schubert, Werner (1978): Materialien zur Entstehungsgeschichte des BGB.

response to topical political debates: it is not possible to apply GGO deadlines in conditions, where haste is prioritized at the expense of diligence.<sup>6</sup>

These parameters make it increasingly difficult for the legislative process to ensure effectiveness, addressee-friendliness, and suitability for enforcement. Take, the following challenges as an example: Only 12.3 percent of applications for the child-based new-homeowner assistance program introduced in 2019 are for new construction projects – the majority of the funds provided are spent on the purchase of existing residential property, thus failing to ease pressure on the real estate market as had originally been intended.<sup>7</sup> More than half of companies in Germany report that they engage in the “autonomous reduction of bureaucracy”, i.e., they only observe the regulatory requirements that they deem most important.<sup>8</sup> Some 60,000 objections are filed each month against decisions by public authorities related to the “Hartz IV” long-term unemployment benefits (SGB II) – and about 40 percent of those cases are ruled in favor of the claimant.<sup>9</sup>

### 1.3 Response sought to modernization pressure

Against the backdrop of the changing framework conditions, discourse has continued internationally since about the 1970s as to what can be done for the benefit of “better regulation”.<sup>10</sup> This debate partly reflects the understanding that effective and addressee-friendly laws that are suitable for service delivery afford regions an economic advantage and are a precondition for national prosperity. Many western democracies have already implemented corresponding practical reforms. The German Federal Government is primarily focusing on reducing bureaucracy and measuring compliance costs. To this end, it established the National Regulatory Control Council (NKR) in 2006 and introduced four work programs for better regulation (in 2012, 2014, 2016, and 2018).

By what yardstick is the progress made by these efforts measured? How much progress has Germany made? What additional actions will still be needed in future in response to the modernization pressure stemming from the new framework conditions?

The legislative process should aim for effectiveness, addressee-friendliness, and suitability for enforcement in all steps of the drafting process. This study focuses on the standards for drafting legislation in the departments as well as for their interfaces with policymakers and society. Accordingly, the scope encompasses both the activities of the ministerial policy profession as well as the assignment of the corresponding political mandate, the

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6 National Regulatory Control Council (2019): Annual Report.

7 German Bundestag (2019): Antworten der Bundesregierung auf schriftliche Fragen, Drucksache19/7341.

8 Institut für Mittelstandsforschung (2019): Bürokratiewahrnehmung von Unternehmen.

9 German Federal Employment Agency (2019): Widersprüche und Klagen SGB II.

10 Hecló, H. Hugh (1972): Review article: Policy Analysis, *British Journal of Political Science*, 2/1, 83-108; Jantz, Bastian/Veit, Sylvia (2018): Entbürokratisierung und bessere Rechtsetzung, in: Veit, Sylvia (eds.), *Handbuch zur Verwaltungsreform*, Springer, 1-13; Mayntz, Renate (1980): Einleitung. Die Entwicklung des analytischen Paradigmas der Implementationsforschung, in: Mayntz, Renate (Hrsg.), *Implementation politischer Programme. Empirische Forschungsberichte*, Verlag Anton Hain Meisenheim, 1-17; Parsons, Wayne (2002): From muddling through to muddling up – evidence based policy making and the modernisation of British government, *public policy and administration*, 17/3, 43-60. Pressmann, Jeffrey L./Wildavsky, Aaron B. (1973): *Implementation*, University of California Press; Sabatier, Paul (1986): Top-down and bottom-up approaches to implementation research: a critical analysis and suggested synthesis, *Journal of Public Policy*, 6, 21-48; Wegrich, Kai (2009): Better Regulation? Grundmerkmale moderner Regulierungspolitik im internationalen Vergleich, *Zukunft Regieren, Beiträge für eine gestaltungsfähige Politik* 1/2009, Bertelsmann-Stiftung; Weiss, Carol H. (1979): The Many Meanings of Research Utilization, *Public Administration Review*, 39/5, 426-431; Wollmann, Hellmut (1980): Implementationsforschung – eine Chance für kritische Verwaltungsforschung?, in: Wollmann, Hellmut (ed.), *Politik im Dickicht der Bürokratie*, Opladen, 9-48.

neutral quality assurance of technical aspects concerning draft bills, and the evaluation of enacted laws after a given period of time (see Figure 2).

**Handover to the federal ministry.** The formation of political will includes the process under which the political parties and parliamentary groups find a consensus. It plays a role especially when new governments are assembled (coalition pact) and when topics of major importance to society are discussed. Once there is a political consensus on a matter, it is typically handed over to the ministerial legislative drafting process. The clearer the political goal is defined, the easier it is for the ministries to observe the three criteria. The same applies with respect to measurable indicators of success and a realistic timeline by when such indicators of success should be fulfilled. An excessively rigid commitment to a specific solution can preclude better options – policymakers should primarily focus their attention on formulating the goal.

**Drafting of legislation at the ministerial level.** Drafting of legislation at the ministerial level constitutes a decisive phase of efforts to optimize effectiveness, addressee-friendliness, and suitability for enforcement and service delivery. The ministry with overall responsibility (lead ministry) elaborates a draft bill, involves experts and relevant stakeholders, and consults the other ministries about the text. In this context, policy professionals should aim to cover the entire solution space as fully as possible and weigh up various options using an evidence-based approach. In order to find the best solution by way of the three criteria, it is often necessary to draw on external knowledge.

**Neutral quality assurance.** Once a draft bill completes the process of inter-ministerial consultations, it is then discussed by the cabinet and afterwards in the parliamentary procedure. Before it reaches that stage, it would be helpful to check the technical quality of a draft by referencing the three criteria. This process makes it easier for policymakers and the general public to assess the legislative project and sets a powerful incentive for the ministerial administration to conduct its work diligently.

**Implementation and evaluation.** Only in the course of its implementation does a law reveal whether it is actually effective, addressee-friendly, and suitable for enforcement. It is advisable to objectively evaluate these criteria after a set period. Lawmakers can then use this evaluation as a basis for making adjustments or changing the previously set course.

FIGURE 2

### Modern legislative standards





In the following, the study examines how legislation drafting in Germany measures up to these standards at present (Chapters 2-3). A vision for the future emerges on this basis that is aligned to good practice in other countries and in the private sector (Chapters 4-5). Lastly, the study formulates potential next steps for implementation (Chapter 6).

## 1.4 Value proposition of a modernization initiative

First, however, it is worth going back a step: Why is the further modernization of the legislative drafting process and its interfaces with policymakers and society so important? What is the particular benefit in particular for the stakeholders who would need to shoulder it?

Good regulation is a goal that everybody can agree on. Citizens and businesses evidently benefit from effective and addressee-friendly laws. Civil servants likewise have a natural interest in regulations that are suitable for enforcement and that take into account practical realities on the ground.

At the same time, this goal is highly abstract, as it does not refer to concrete content of regulations along with those they affect and their interests. The goal affects everybody equally and thus nobody in particular.

However, there are direct changes and consequences for politicians and the policy profession. A modernization agenda should therefore formulate a clear value proposition for these groups in particular.

Today, politicians must increasingly offer solutions to their voters' specific problems in order to win votes. They are less able to ground themselves on established political world views that offer a clear answer to every critical question in the public debate (e.g., "more government" or "less government"). Instead, they are called upon to take a stance as problem analysts and movers, beyond the scope of ideological considerations.

Against this background, it seems scarcely plausible that politicians should entrust the problem-solving process to the ministerial administration and simply concentrate on formulating objectives. Particularly (potential) ministers could view the endowment of power to a neutral quality assurance body as an unwelcome limitation of their scope for political action.

In the long term, however, being voluntarily bound to better regulation can pay off. Granted, political competition today tends to take the form of offers of (sweeping) solutions for specific matters. Yet the trust of citizens in the actual ability of policymakers to find solutions is suffering regardless. Recent examples include the popularity of the YouTube influencer Rezo and his fundamental criticism of established parties (which has attracted over 15 million views). This loss of trust is also evident in the general level of satisfaction with the political system. A survey by Bertelsmann Stiftung shows that whereas 53 percent of German citizens still had faith in democracy in 2017, both as a principle and as an established practice, this figure had dropped to 46 percent by 2018.<sup>11</sup> According to a study by the German Civil Servants' Association, 61 percent of citizens currently believe that the state does not have the capabilities it needs to function.<sup>12</sup>

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11 Bertelsmann Stiftung (2019): Schwindendes Vertrauen in Politik und Parteien

12 forsa Politik- und Sozialforschung (2019): dbb Bürgerbefragung Öffentlicher Dienst 2019.

From the perspective of politicians, it should therefore be worthwhile to invest in the actual ability of regulation to solve problems as a key mechanism of political governance. This would strengthen the ability to realize political visions in the face of increasingly restrictive parameters. Election promises could be kept and the long-term approval of the electorate won. In the long run, effective and addressee-friendly laws that are suitable for enforcement are also conducive to a stable democratic order as a whole. Particularly as a counterpoint to the rise of authoritarian regimes in other countries, democracy in Germany has to “deliver results” in order to safeguard its legitimacy.

**Policy professionals** might possibly ask themselves whether modernization ultimately means simply additional methodological requirements, more bureaucracy, and less time for substantive work on laws. Moreover, implementing a new approach certainly means an added burden initially, on top of the heavy workload that they already have today.

To get policy professionals to buy into modernization, it is important to thoroughly highlight the benefits and to capture the potential as quickly as possible. By opening up the solution space, it is possible to create more freedom for policy professionals to work creatively and contribute their expertise for a positive outcome. Better-structured communications processes within the Government and with external stakeholders can ease the workload. New formats, such as “policy labs” allow policy professionals to work directly with the addressees of laws and the enforcing authorities and to more easily understand the effects of specific regulations in practice.

In this context, changes to the process of drafting legislation at the ministerial level must also factor in existing requirements. The goal has to be the best-possible interplay between established and new mechanisms in this key governance process. The costs of tools and formats must be in proportion to the benefits they provide. Consequently, amendments should first prove their worth in pilot projects. In addition, the total cost of pursuing a new procedural model should be transparent and remain affordable. Before adding new, binding mechanisms, the status quo has to be reviewed.

The extent to which these value propositions can be realized is the subject of the following analyses and recommendations.

## 2. Drafting legislation today

In order to issue assessments and recommendations based on this study, it is first necessary to gain an empirical understanding of the status quo. An outline is provided in the following of the formal process of preparing bills in Germany and of adjacent factors that influence the practical execution of the process. This chapter concludes with an overview of mechanisms for better regulation that have already been introduced by previous modernization initiatives.

### 2.1 The standard process under the Joint Rules of Procedure of the Federal Ministries (GGO)

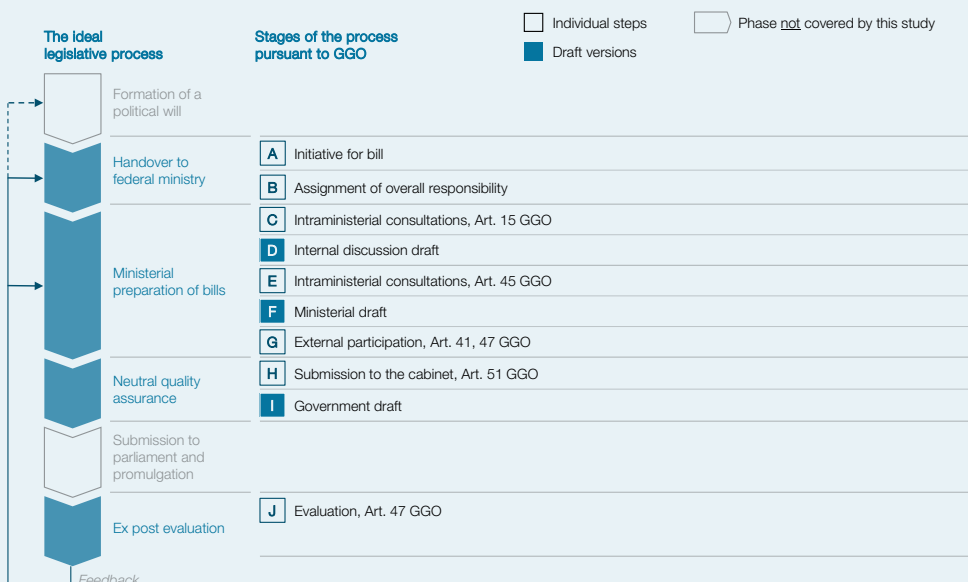
Today, the intragovernmental law-drafting process is performed in separate steps that observe the GGO (see Figure 3). Some of these separate steps are only regulated formally, without detailed substantive rules, such as concerning in-house consultations and the nature of involvement.

**Initiating legislation and assigning overall responsibility.** It is either the political level or public administration that initiates a new piece of legislation. Many political initiatives are already contained in the coalition pact, while others (e.g., implementation of EU directives, technical recommendations from joint federal–state working groups, responses to rulings by the Federal Constitutional Court) arise from topical political developments. Initiatives at the level of public administration arise from the daily work of heads of divisions in the federal ministries. Overall responsibility for further work on a piece of legislation is assigned to the ministry that is primarily responsible according to the schedule of responsibilities. If several ministries lay claim to assuming overall responsibility, the final decision is at the discretion of the Federal Chancellery.

**Intraministerial consultations.** The division with overall responsibility within the ministry (lead ministry) prepares an initial draft bill. Other divisions within the ministry are typically involved and have to also sign off on the draft. The focus at this stage is on policy professionals: they draft the first text proposal and are responsible for the consultation rounds and for integrating feedback. The resulting internal discussion draft reflects a consensus within the ministry.

FIGURE 3

#### Process of ministerial preparation of draft bills (pursuant to GGO)



**Inter-ministerial consultations and ministerial draft.** The lead ministry revises its internal discussion draft to account for feedback from the federal ministries and any commissioners responsible for affected remits (Art. 45 [3] and Art. 21 [1] and [2] GGO). In addition, the NKR is given an opportunity to state its position, particularly regarding the legislative project's compliance costs (Art. 45 [1] GGO). In parallel, the Federal Ministry of Justice conducts an examination in accordance with systematic and legal scrutiny (Art. 46 GGO). The GGO provides for a period of four weeks in each case for all consultations and examinations; this may be shortened only if all parties involved consent (Art. 50 GGO). The outcome of this phase is the ministerial draft.

**External participation.** The lead ministry must involve external stakeholders such as experts and representatives of organized interests as early as possible (Art. 47 GGO). This procedure may take the form of written statements, meetings, or hearings. It is common practice today for this procedure to take place even before the ministerial draft is finalized. In addition to external stakeholders, the German federal states and national associations of local authorities are likewise given an opportunity to comment at this stage. In contrast to intragovernmental consultations, there is no minimum period required in this context. The draft is presented formally to the parliamentary groups' offices, to the Bundesrat, and upon request to individual members of the German Bundestag (Art. 48 GGO).

**Submissions to the cabinet and government draft.** In a final step, the specialist departments of the Federal Chancellery prepare the bill for cabinet submission. It is submitted with a covering letter and a decision proposal (Art. 22 GGO). The cabinet submission is deemed to have been adopted if a majority of the ministers and the Federal Chancellor vote in its favor. As a result, the ministerial draft becomes a government draft. If there is no majority in the cabinet for the bill, there are various means of reaching consensus, such as a meeting of the cabinet members responsible facilitated by the Head of the Federal Chancellery or a coalition committee meeting with the participation of various political stakeholders.

**Evaluation.** The GGO requires that for each bill "the lead federal ministry must state whether and, if so, after what period of time, a review is to be held to verify whether the intended effects have been achieved, whether the costs incurred are reasonably proportionate to the results, and what side effects have arisen" (Art. 44 [7] GGO). In 2013, the Committee of State Secretaries for the Reduction of Bureaucracy resolved to set a threshold determining when such a review should typically be conducted: laws and regulations with expected annual compliance costs in excess of EUR 1 million should be evaluated once they have entered into force.

## Box 1

### A policy professional's work

Policy professionals are heads of division in the departments tasked with lawmaking. Their duties include, but are not limited to, wording new legislative texts and coordinating these with other departments. Most heads of division have a university degree in law. However, law school curricula usually do not cover the process of drawing up and drafting legislative texts.

In their work, policy professionals are required to consider some 40 manuals, guidelines, and working aids. These contain guidance on the methodological approach – for example, the “Manual for Drafting Legislation” explains how to formulate legislative texts. In addition, there are a large number of guidelines and recommendations on how policy professionals should take into consideration important matters when drafting new legislation. These range from general objectives, such as limiting compliance costs, to specific policy-related matters (e.g., “demography checks”).

To learn the skills required for the policy profession, there is a (limited) range of training courses offered by the Federal Academy of Public Administration (BAKöV) and the individual ministries. When formulating legislative texts, policy professionals mostly use templates from previous projects or they are instructed by colleagues in the department. The writing process is supported by the eNorm software tool, which offers templates and formatting tools.









## 2.2 Case constellations

Not all legislative projects run through the legislation drafting stages in the same way. This is particularly true of the duration and intensity of the various internal and external consultations, which are influenced by four key adjacent factors (see Figure 4).

**Urgency.** Legislative projects are always subject to certain time requirements. The less time there is, the narrower the windows are for internal and inter-ministerial consultations and for involving external stakeholders. Consequently, priority is given to working on text versions, whereas results and feasibility checks or the evaluation of alternative solutions are relegated to a second plan. Urgency clauses in the GGO additionally permit shorter time periods in special situations, e.g., for interdepartmental consultation or legal scrutiny. This is an option that is frequently used as a response to the acceleration of the legislative process (see Chapter 1).

FIGURE 4

### Case constellations in drafting legislation

| Adjacent factors  | Potential form   |
|---|--|
|  Urgency                         | Long-term project  Narrow window of opportunity                                      |
|  Political significance          | Merely administration bill  Maximum salience   |
|  Stakeholder landscape           | Inability to reach representative stakeholders  Easy access to relevant stakeholders |
|  Existing regulatory environment | Traditional regulatory environment  New territory                                    |

**Political significance.** The greater the political importance of a legislative project, the greater the pressure on the ministerial administration to deliver results. A highly salient law (i.e., one that attracts keen public interest) is subject to different conditions compared with an administration bill (i.e., initiated by the administrative apparatus without any current political relevance or public exposure). The more salient a project is, the more (political) stakeholders tend to want to be involved in the process of drafting the legislation. Conversely, the stakeholders interested in administration bills are usually known, and they can typically be consulted and involved based on an established procedure.

**Stakeholder landscape.** How well and easily the addressees and implementing authorities of a piece of legislation can be involved in the process, depends not least on how easy it is to reach a representative group of affected individuals. Difficulties reaching relevant and representative stakeholders can slow the entire process down or lead to prolonged preparatory and consultation phases. This is especially true when they cannot be involved at all. Conversely, the process is much more straightforward when relevant associations, for example, are already in regular exchange with the competent policy professionals.

**Existing regulatory environment.** A familiar, established regulatory environment is often characterized by a large number of existing standards and requirements to which the new law is added (one example would be the comprehensive social security regulations in Germany). In such cases, the law-drafting process has to thoroughly take into account existing texts and models. If, however, the law charts new territory (e.g., the regulation of autonomous driving), the solution space is more open and extensive impact assessments are required. This can be difficult if there is insufficient relevant empirical data available. Frequently, ministries have to first build up the required knowledge and identify which groups will be affected by the legislation.

An understanding of these adjacent factors helps to assess which measures for modernizing the law-drafting process are at all applicable or particularly relevant for which case constellations (see Chapter 5).

## 2.3 Previous modernization measures

The aim of “better regulation” and the idea of making legislation effective, suitable for enforcement and service delivery, and addressee-friendly are nothing new. For instance, the Federal Government launched work programs intended to limit red tape and improve regulation in 2012, 2014, 2016, and 2018.<sup>13</sup> In addition, there are mechanisms that can promote better regulation, but are not a direct products of the work programs, such as the use of FIM (Federal Information Management) in the digitization of public administration and the E-Gesetzgebung (E-Legislation) project that is formally part of the “Federal IT Consolidation” program.<sup>14</sup>

The relevant changes in lawmaking are described below. In summary, it can be noted that a large number of mechanisms are in the pilot phase or are only used intermittently, while others are still under development (see Figure 5).

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<sup>13</sup> Federal Government (2018): Work Program on Better Regulation and Bureaucracy Reduction; Federal Government (2016): Work Program on Better Regulation.

<sup>14</sup> <http://egesetzgebung.bund.de/>; <https://fimportal.de/>

## Mechanisms for greater effectiveness

In recent years, the Federal Government has initiated the following new mechanisms to promote, above all, a greater effectiveness of laws:

**Effective government.** The “Wirksam regieren” (Governing Effectively) division at the Federal Chancellery helps departments to develop citizen-centric solutions that are tested under real-life conditions to achieve (political) goals. Their effectiveness is verified using different test- and evidence-based approaches. The process comprises four phases: in the first step, “Wirksam regieren” staff review the existing knowledge together with policy professionals and gain an overview of the persons affected and the situation at hand (understand). Next, citizens are involved in order to jointly generate ideas for new or alternative solutions (“design”). Then, prototypes are developed and empirically tested (test). Finally, the team evaluates the data collected during testing and makes the results available in a further decision-making process (“evaluate”). The lead ministry can choose from a range of methodologies and formats – experiments, workshops, citizen surveys, etc. – to find the most effective solution.<sup>15</sup>

15 <https://www.bundesregierung.de/breg-de/themen/wirksam-regieren/regierungsstrategie-wirksam-regieren-427386>

FIGURE 5

### Overview of selected existing mechanisms

|   | Mechanism                                   | Brief description   | Level of maturity  |
|---|---|---|--|
| Mechanisms for greater effectiveness                                    | Wirksam regieren (Egoverning Effectively)   | Division in the Federal Chancellery that assists ministries with experimental methods for impact analyses, focusing on citizens as the addressees of the regulation | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/><br>Applied intermittently |
|   | Foresight                                   | Development and discussion of future scenarios to identify and take into account at an early stage findings on societal and technological trends                    | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/><br>Applied intermittently |
|   | Evaluation                                  | Evaluation of legislative projects after five years (when threshold for compliance costs is exceeded)   | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/><br>Established |
| Mechanisms for greater addressee-friendliness                           | Participation platforms (“E-Participation”) | Projects in the Federal Government’s work program to involve citizens and organizations digitally in legislative projects in the future                             | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/><br>Concept stage                                |
|   | Living labs                                 | Labs enable empirical tests for laws, e.g., through field experiments or experimentation clauses  | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/><br>Applied intermittently |
|   | Unit for Legal Drafting Support             | Qualified linguists check laws for linguistic accuracy and comprehensibility  | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/><br>Established |
| Mechanisms for greater suitability for enforcement and service delivery | Determination of compliance costs           | Process for calculating costs of bureaucracy to citizens, businesses, and public administrations  | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/><br>Established |
|   | Review guidelines for e-government          | Working aid for identifying and eliminating obstacles to “digital readiness” (digital administration interactions, automated internal processes)                    | <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/><br>Pilot project                     |
|   | Federal Information Management (FIM)        | Standardized information for the enforcement of laws (terms of reference, data fields and forms, and business process models)                                       | <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/><br>Applied intermittently |
| Mechanisms to strengthen legislation drafting across all processes      | E-Legislation                               | Seamless digital support using consistent media for the overall process, tools for drafting texts, and downloadable working aids and manuals                        | <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/><br>Pilot project                     |
|   | Center for Regulation                       | Project in the Federal Government’s work program to create a central organization for knowledge management and capacity building in the area of regulation          | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/><br>Concept stage                                |

Source: 2018 Bureaucracy Reduction; <http://egesetzgebung.bund.de/>; E-Legislation project description; <https://www.bundesregierung.de/breg-de/themen/wirksam-regieren>; <https://www.zeit.de/digital/internet/2010-05/e-participation-edemokratie-edemocracy>; 2018 Bureaucracy Reduction; <https://www.zmwi.de/Redaktion/DE/Downloads/S-T/strategiepapier-reallabore.pdf>; <https://www.skm.de/statistik/webskm/misc/Erfuellungsaufwand-Handbuch.pdf>; <https://www.nomenkontrollrat.bund.de/resource/blob/72494/444076/31af64938dc9a39dc41f8313c704b0/2013-07-09-e-government-pruefleitfaden-bearbeitbar-data.pdf>

**Foresight.** The identification of social and technological trends at an early stage helps strengthen results orientation. Various federal ministries have introduced strategic foresight projects to this end, i.e., to develop and discuss future scenarios. The Federal Academy for Security Policy offers relevant methodology seminars. The aim is to use explorative methods to identify and describe trends, for instance in foreign policy and security policy as well as in other areas such as research and innovation policy.

**Evaluation.** The GGO provides a review of implementation of laws (Art. 44 (7) GGO). This review is regularly required when compliance costs exceed EUR 1 million (the 2014 Minimum Wage Act, for example, is to be reviewed in 2020). As part of the 2018 work program, the Federal Government intends to conduct reviews in a more standardized manner in the future and achieve greater process transparency and participation options for stakeholders affected by regulations.

### Mechanisms for greater addressee-friendliness

Other new mechanisms are aimed primarily at involving citizens and companies in their capacity as the addressees of the law:

**Participation platform (“E-Participation”).** The 2018 work program involves the creation of a digital participation platform for all bills published by the Federal Government. It is intended to be open to organized interests (e.g., associations) and individual citizens.

**Living labs.** Experimentation and general clauses set forth in the law (e.g., Art. 2 [7] German Passenger Transport Act<sup>16</sup>) permit the suspension, limited in time and space, of applicable rules. This, in turn, enables companies and the administration to conduct field studies to trial new ideas. This ranges from operating autonomous vehicles to developing technologies further to gathering findings for future regulation.<sup>17</sup>

**Unit for Legal Drafting Support.** The Unit for Legal Drafting Support emerged in 2009 from the initiative to improve the comprehensibility of legal provisions and has since established itself as a permanent institution. The language check has now become part of the wider legal scrutiny by the German Federal Ministry of Justice and Consumer Protection (BMJV) (Art. 46 GGO). Qualified linguists check all laws for linguistic accuracy and comprehensibility. The standard for comprehensibility varies depending on the group of persons affected: if the legislative text affects the whole of society, it has to satisfy stricter requirements than when it regulates sector-specific content and addresses experts.

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16 Art. 2 (7) German Passenger Transport Act (PBefG): “To trial new types of transport or means of transport in practice, the approval authority may in individual cases upon application authorize departures from the provisions of this act or from regulations promulgated on the basis of this act for a duration of no more than four years, provided this is not contrary to public transport interests.”

17 German Federal Ministry for Economic Affairs and Energy (2019): “Freiräume für Innovationen – Das Handbuch für Reallabore.”



**Box 2****eNotary – digital interactions with the public administration in real estate acquisitions**

There are already regulatory projects today which – in accordance with the principle of content first, legal text second – attach great importance to an intensive ex ante review of the effectiveness and feasibility of processes enshrined in law and aim to increase addressee-friendliness by means of digitization. One such example is the eNotary project.

In Germany, more than half a million real estate contracts are notarized each year. Processing these contracts with a total value of EUR 237 billion (2016) is a prime example of the red tape involved in the analog world of administration. The relevant data is initially collected and processed by notaries. The same process then takes place again several times at various administrative offices – from the protected buildings or nature conservation authorities through to the tax office (real estate acquisition tax).

Processing real estate contracts – which involves notaries, administrative offices, and the land registry office – is one of around 575 administrative services that are to be made available online in an addressee-friendly manner by 2022 (OZG implementation catalog). Against this background, the NKR, the Federal Chancellery, the Federal Statistical Office, and the Federal Chamber of Notaries (BNotK) developed the eNotary concept.

The first step involved full-day practitioner workshops to identify the ideal target process for model cases of how to process contracts. The workshop participants were administration practitioners from all offices involved.

A steering group then used the results to develop a proposal of how digital contract processing could work in the future and identified the associated need for an adjustment of legislation.

## Mechanisms for greater suitability for enforcement and service delivery

Previous modernization efforts have also given rise to specific mechanisms aimed at enhancing the suitability of legislation for enforcement:

**Determination of compliance costs.** The most developed instrument is the calculation of compliance costs (Art. 2 Act on Establishing the NKR, Art. 43-44 GGO). This includes costs to public and companies as well as costs to the public administration. The methodology has been in use since 2011 and has since been continuously refined. Policy professionals today can refer to comprehensive guidelines on the determination and presentation of compliance costs. They also have execution support from the Federal Statistical Office. The NKR performs a plausibility test of the calculations of compliance costs provided by the departments.

**Review of guidelines for e-government .** NKR and the IT Planning Council issued these guidelines in 2013. They provide a starting point for optimizing administrative procedures through digitization. For this purpose, policy professionals answer review questions such as: What is the procedure between authorities? Which information and data are needed for the administrative procedure? In what form are they available to the addressees – electronically/not electronically? Which data and forms can be transferred using seamless media? However, the review guidelines for e-government are not widely used at present.

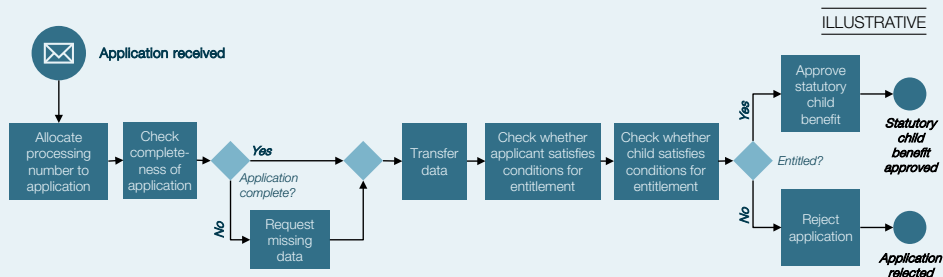
**Federal Information Management (FIM).** FIM sets out rules for the standard description of public services, data fields in forms, and the modeling of administrative processes in accordance with the international Business Process Model and Notation (BPMN) standard (see Figure 6).<sup>18</sup> This instrument was introduced in 2011 as part of the national e-government strategy to provide uniform information for the (frequently local) enforcement of federal laws. This facilitates creating nationwide digital solutions. For every administrative service that is governed by federal law but enforced locally, implementation of the German Online Access Act (OZG) is currently producing standardized master data for the three FIM categories – service descriptions, forms, and processes. But FIM does not just help to “translate” existing laws for enforcement purposes in the future. FIM process models could also provide a basis for simulating the practical impact of potential legislative amendments from the perspective of the competent authorities. If the process descriptions based on the Decision Model and Notation (DMN) standard are supplemented by decision trees, material regulatory content – administrative and decision-making processes – could be illustrated visually and thus made easier to understand.<sup>19</sup>

<sup>18</sup> <https://www.fimportal.de>

<sup>19</sup> The Public Governance Institute (2018): Nicht beim Onlinezugang stehen bleiben – Potenziale der Automatisierung nutzen.

FIGURE 6

### Simplified illustration of FIM process model (statutory child benefit)



SOURCE: Based on description in “The Public Governance Institute (2018): Nicht beim Onlinezugang stehen bleiben”

## Mechanisms to strengthen legislation drafting across all processes

Each of the mechanisms described above focuses on specific quality aspects. In addition to these, there are also efforts to strengthen legislation drafting across all processes:

**E-Legislation.** Introduced in 2016, the E-Legislation project has been building up a new IT procedure for the legislative process as a whole. One key objective of the project is seamless communication using the same media between the Federal Government, the Bundestag, the Bundesrat, the Mediation Committee, and the Federal President's Office. This includes analyzing not only interfaces between departments, but also interfaces and presentation forms used for submission to the Bundestag and Bundesrat. In addition, the project seeks to support policy professionals in drafting legislative texts and provide them with digital aids to facilitate the use of working aids and guidelines. Current plans also include *eZeitplanung* for electronic scheduling and eNAP for impact assessments, as well as other collaboration tools such as a project calendar or the means for collaborative digital editing of drafts.<sup>20</sup>

**Center for Regulation.** The institution outlined in the 2018 work program is intended to offer basic and advanced training for policy professionals. The planned curriculum includes: analyses of complex issues, foresighted results modeling, citizen participation, and addressee- and practice-centered designing of legal texts using existing data.

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<sup>20</sup> <http://egesetzgebung.bund.de/>

# 3. Strengths and deficits

This chapter describes existing strengths and deficits in the ministerial preparation of bills and its political and societal interfaces. This assessment is based on the standards of good legislation practice presented earlier (see Chapter 1.3). As an empirical basis, we have used interviews with over 30 policy professionals and leading public servants from federal and state ministries<sup>21</sup> as well as representatives of national associations of local authorities.

## 3.1 Strengths

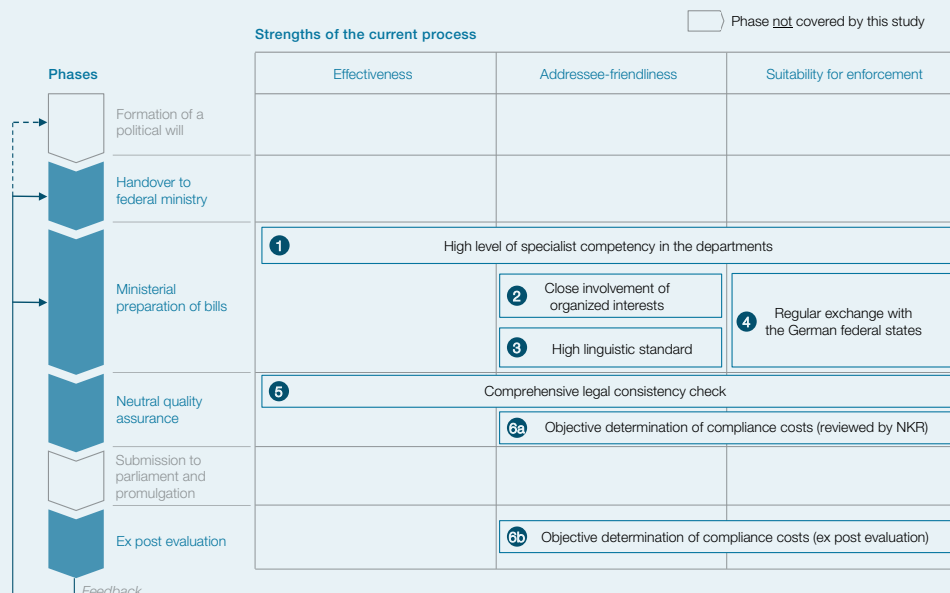
In terms of effectiveness, addressee-friendliness, and suitability for enforcement, the present legislative process has six key strengths (see Figure 7). These can serve as the starting point for further modernization efforts (see Chapter 4).

**1. High level of specialist competency in the departments.** Policy professionals in the specialist departments frequently deal with different regulatory aspects of one issue over long periods of time, even beyond a legislative term. Their knowledge of their respective remit is accordingly broad and deep. Regular knowledge sharing with subject matter leaders in downstream agencies and institutes is an additional source of specialized expertise. Having this knowledge available within the institutions makes it easier to objectively evaluate and assess cases brought forward by interest groups and creates a level playing field for discussing content.

**2. Close involvement of organized interests.** The involvement of relevant associations required by the GGO often takes place at an early stage – frequently before a ministerial draft is available. Policy professionals are typically in regular contact with the relevant organized interest groups, even without regard to specific legislation initiatives. Attendance of relevant sector-specific events (e.g., symposia, podium discussions, trade fairs) leads to deeper dialog beyond a formal exchange of correspondence.

21 Interviews included staff members of the Federal Chancellery (BKAm), the Federal Ministry of the Interior, Building and Community (BMI), the Federal Ministry of Labour and Social Affairs (BMAS), the Federal Ministry of Transport and Digital Infrastructure (BMVI), the Federal Ministry for Economic Affairs and Energy (BMWi), the Federal Ministry of Food and Agriculture (BMEL), the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the Federal Ministry of Finance (BMF), and the Federal Ministry of Justice and Consumer Protection (BMJV).

FIGURE 7  
Six key strengths in today's legislative process



**3. High linguistic standard.** Owing to policy professionals' legal background knowledge, even early-stage draft versions of bills tend to have a high quality of legal language. The Unit for Legal Drafting Support at the Federal Ministry of Justice and Consumer Protection (BMJV) assists departments in editing bills linguistically and helps ensure comprehensibility for their respective target group. The linguists working in the Unit for Legal Drafting Support work together closely with the policy professionals and may even be consulted prior to the stage of formal involvement set forth in the GGO.

**4. Regular exchange with the German federal states.** The federal ministries involve the federal states in the preparation of legislative projects and of specific drafts through regular joint federal-state working groups on particular regulatory topics. Many of these working groups have been in place for decades. They offer the federal states the possibility to voice their political interests, and in particular any issues at the enforcement level, in continuous dialog with the competent federal department.

**5. Comprehensive legal consistency check.** New legislative projects must fit into the existing national regulatory system and comply with European and other transnational requirements. The GGO therefore not only stipulates that the federal ministries are affected by a legislative project, but also that an examination in accordance with systematic and legal scrutiny is required. This is carried out by the Federal Ministry of Justice and Consumer Protection, which examines whether the draft is compatible with the German *Grundgesetz* and European law and whether it affects or even supersedes requirements set forth in other laws.

**6. Determination of compliance costs.** The lead department is required to determine the expected compliance costs for citizens, businesses, and public administrations according to clear methodological rules (with the assistance of the Federal Statistical Office's Bureaucracy Cost Measurement division). The NKR carries out an independent review of the calculation. The Federal Chancellery has stipulated the specific involvement of the NKR as a precondition for cabinet to look at any ministerial draft. Overall, the costs of regulatory impacts are considered in great detail, also by international standards. They are also included in the evaluation of implementation. According to a resolution adopted by the Committee of State Secretaries for the Reduction of Bureaucracy, an ex post evaluation must take place after three to five years whenever laws are originally expected to cost citizens, businesses, or public administrations more than EUR 1 million or cause more than 100,000 hours of work for citizens.<sup>22</sup>

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<sup>22</sup> <https://www.normenkontrollrat.bund.de/resource/blob/267760/444152/a50b2b0987ab4865b514116498d73ba2/2014-02-11-evaluierungsstudie-data.pdf>

## 3.2 Deficits

The interviews with individuals involved in the legislative process clearly show that the GGO provides a suitable framework for the process in general. Specifically in view of rapidly changing conditions (see Chapter 1.2), however, it is frequently not possible to comply with the letter or spirit of existing regulations. A comparison with the objectives of ministerial preparation of bills and the political and societal interfaces outlined above (see Chapter 1.3) highlights the need for adjustments at various stages of the process. In detail, there are nine deficits (see Figure 8).

### 1. Limitation of the solution space due to early commitment to specific measures.

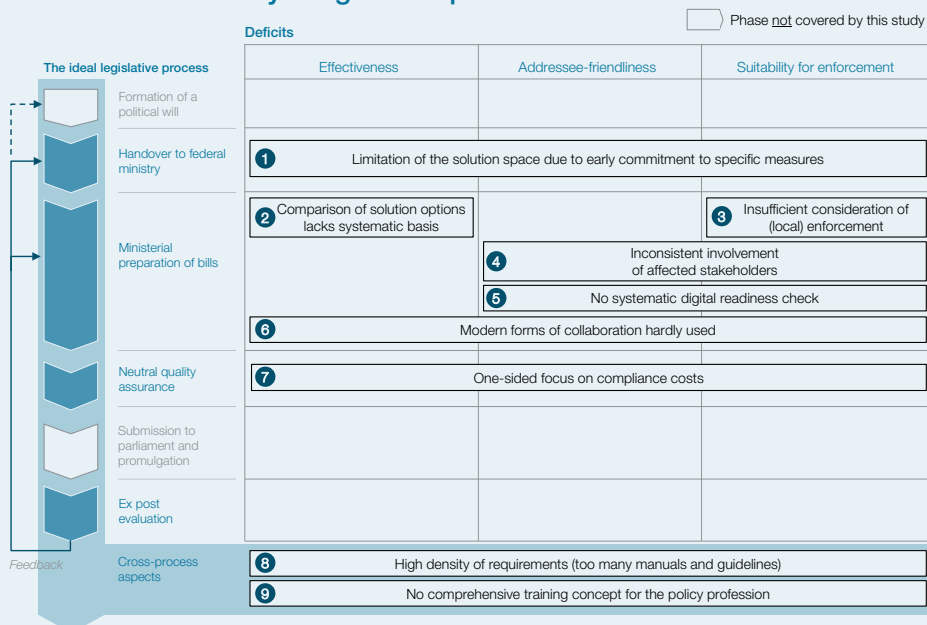
Initiatives for legislative proposals tend to stem from political deals and management policies. The coalition pact is playing an ever-greater role here – increasingly deep political divides between government parties give rise to the need for detailed agreements at the start of a legislative term. In many cases, a political goal (e.g. affordable housing in cities) is linked directly to calls for a specific legal solution (e.g. rental price ceiling). Such stipulations are rarely based on a comparison of the options available in terms of effectiveness, addressee-friendliness, or suitability for enforcement and service delivery (nor would the political parties as they stand today be capable of rendering such a comparison). Thus specifying the instruments at an early stage limits the federal ministries' room to maneuver right from the outset – alternative, perhaps more suitable solutions have to be dropped by the wayside in the further course of proceedings.

### 2. Comparison of alternative solutions lacks systematic basis.

Even if the departments have the creative latitude they need, available options are rarely compared in a genuinely open way without the solution being a forgone conclusion. The ministries use their department's extensive research function to obtain external views on many issues and collect numerous data. However, the scientific approach usually does not extend to work on legislative proposals. Policy professionals typically do not start out with an analysis of whether regulation is required at all, and if so what bandwidth of regulatory options is available for the set goal, and how these differ in particular in terms of their effectiveness. In most cases, a very specific, fully worded proposal is available at a very early stage, which then "only" needs to be coordinated and fine-tuned. Alone through

FIGURE 8

### Nine deficits in today's legislative process



the language used – the text usually consists of “amendment orders” to existing legal provisions – this tends to focus the consultation on legal aspects and more often than not distract from considering effectiveness, addressee-friendliness, and suitability for enforcement. Anyone who has not studied law is excluded from the further discussions.

**3. Insufficient consideration of local enforcement.** According to the GGO, the federal ministries must involve national associations of local authorities when a piece of legislation affects towns and municipalities. To ensure suitability for enforcement, it is typically particularly helpful if the lead department can interact directly with knowledgeable executive officers and senior staff members in charge at the municipalities. The digital labs set up under the German Online Access Act (OZG) have highlighted the importance of this perspective for creating solutions that work in practice. However, there is no requirement to this effect governing the drafting of legislation today, and there are hardly any formats available to policy professionals that permit pragmatic involvement of municipal representatives.<sup>23</sup> This finding applies similarly to other stakeholders who fulfill statutory enforcement tasks.

**4. Inconsistent involvement of affected stakeholders.** The GGO explicitly gives affected stakeholders the opportunity to voice their interests during the legislation drafting process. This applies for private stakeholders as much as for national associations of local authorities. Where there are organized groups, interaction can also take the form of well-established, continuous dialog (see above). However, there are no binding rules governing the details of how stakeholders should be involved when a legislative proposal is actually under way. Besides the requirement that they should be involved “at an early stage”, the federal ministries are neither bound to specific deadlines nor are there any guidelines on how to deal with statements made by affected stakeholders. Especially when a legislative project is under time pressure, policy professionals frequently prioritize intragovernmental consultations over the participation of external stakeholders.

In addition, there are areas of regulation with less organized interest groups or where it is unclear initially who the affected parties are. However, interest groups should be involved regardless of how they are organized and in as reasonable a relation as possible. There is at present no framework to ensure this. Policy professionals interact according to their judgment with the stakeholders and associations they know of. Regulated processes and instruments are lacking to identify affected stakeholders in a structured manner and equally involve different kinds of stakeholders.

**5. No systematic digital readiness check.** The possibility of offering addressee-friendly digital interaction with public administrations and the ability to automate internal processes are playing an ever-greater role as regards addressee-friendliness and suitability for enforcement and service delivery. The law drafting process still lags behind these developments. Most policy professionals lack the knowledge and practical working aids to understand the effects of specific legal provisions on digitization when enforced. While the review guidelines for eGovernment already cover a large number of important aspects, they have to date been applied to a very limited extent only (see Chapter 4.5).

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<sup>23</sup> National Regulatory Control Council (2019): Annual Report.

**6. Modern forms of collaboration hardly used.** In today's legislation drafting process, a fleshed-out draft text is almost always available at a very early stage (see above). This forms the basis for a series of sequential consultations within the ministry, with the departments, with the parties affected, in the cabinet, and finally in parliament. Particularly in the phase before the bill re-enters the political sphere, this approach frequently reaches its limits today. In the face of highly complex issues, a high level of uncertainty about impact, or particularly large numbers of relevant stakeholders, it is helpful to condense interactions between the parties involved in the process through the use of agile presence formats. Otherwise knowledge is lost between the lines of drafts and statements – frequently the parties involved do not even use the same terminology for the issue context and end up talking at cross-purposes. In an increasingly complex world, this phenomenon is not restricted to law-making. In the private sector as much as in public administration, organizations are therefore increasingly turning to lab methods in order to solve complex issues in a less formalized and strongly results-driven approach. Efforts to draft large numbers of bills can also benefit from this approach. The Governing Effectively Project (“Wirksam regieren”) already provides a good starting point, which now needs to be expanded.

**7. One-sided focus on compliance costs.** The politically neutral quality assurance review of legislative drafts focuses very clearly today on the accurate calculation of compliance costs. There are no formal mechanisms to check and make transparent whether and how departments have taken into account the effectiveness criterion and other, not directly cost-related aspects of addressee-friendliness and suitability for enforcement.

**8. High density of requirements (too many manuals and guidelines).** When preparing a law today, policy professionals must follow a large number of methodological requirements. Besides the GGO, there are some 40 different manuals, guidelines, and working aids.<sup>24</sup> Some ministries refuse to co-sign the draft as part of department consultations if guidance issued within their ministry has not been taken into account in the law drafting process. As a result, the plethora of requirements has meanwhile become practically unmanageable. Individuals involved are increasingly calling for a “reduction of bureaucracy in the reduction of bureaucracy”. This development is partly due to organizational reasons. Below the level of the Committee of State Secretaries for the current work program, there is no central office to monitor consistency of the existing requirements and the associated total burden on policy professionals. The departments and other stakeholders involved in the process are in a position to formulate their requirements on the policy professionals relatively independently.

**9. No comprehensive training concept for the policy profession.** Policy professionals mostly acquire their methodological expertise on the job when preparing legal texts. Even law courses of study at university only very rarely cover the relevant content. Especially at the start of their career, policy professionals are therefore reliant on knowledge being passed on to them by their superiors and colleagues. The Federal Academy of Public Administration (BAkÖV) has some relevant courses on offer, such as “Legal thinking and working in practice” or the “eNorm basic module”. However, these can, at present, only meet part of the high demand from the departments. In particular, there is no way of ensuring that all policy professionals receive basic methodological training at the outset.

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<sup>24</sup> See overview of manuals, guidelines, and working aids.



# 4. Agenda for further modernization

An agenda for further modernizing the legislation drafting process and its interfaces with politics and society can be derived from the deficits found in the preceding chapter. For each of these weaknesses in the current process, a corresponding measure is presented below (see Figure 9).

Comparable international examples highlighting relevant good practices have served as inspiration for the recommendations. Implementation need not start from scratch. In most cases, it is possible to build on mechanisms already introduced and expand them for modern lawmaking. The strengths identified in the status quo (see Chapter 3.1) will facilitate these efforts in many instances.

## 4.1 Open up the solution space through goal papers

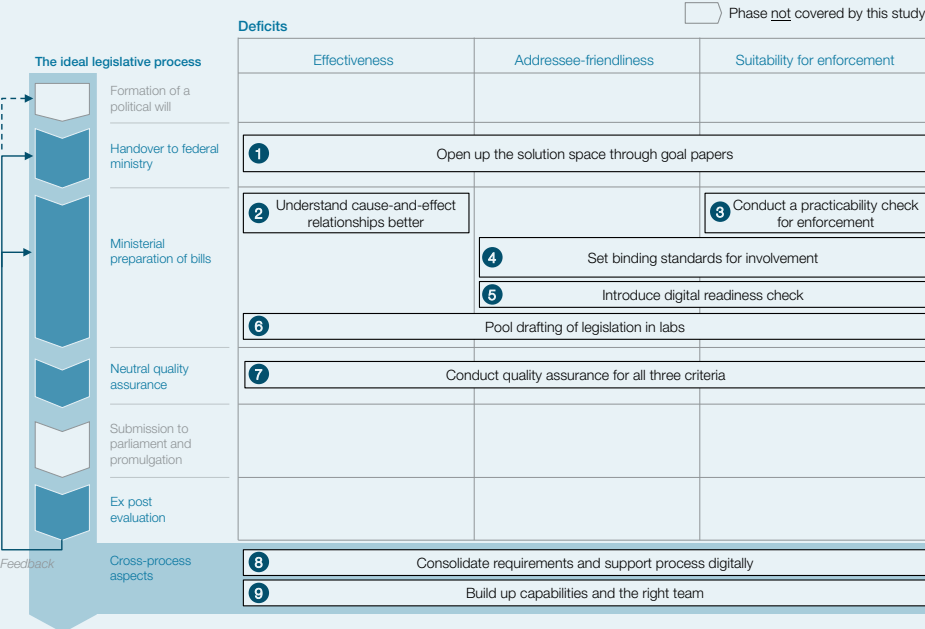
In order to prepare effective and addressee-friendly laws that are suitable for service delivery, the specialist departments need latitude to compare alternatives and find the best solution. A new format for handing the political project over to the competent federal ministry could help here: the goal paper.

In its simplest form, a goal paper is one page that answers five key questions (see Figure 10): What is the goal? Why is the goal currently relevant? What would constitute success? Which indicators can measure progress? What is the time horizon?

Goal papers should be used when the government “tasks” a federal ministry with preparing a new bill. They can be part of a coalition pact or be developed in the course of the legislative term. This format is particularly helpful whenever the relationship between political goal and impact mechanisms is complex. A goal paper is not needed where the latter are identical (e.g., “abolition of the solidarity surcharge”).

FIGURE 9

### Nine measures for further modernization



This standardized format focuses attention on clearly defining the goal, making it measurable, and providing a realistic time horizon. The proposed sheet intentionally does not provide any space for potential specific measures or impact mechanisms.

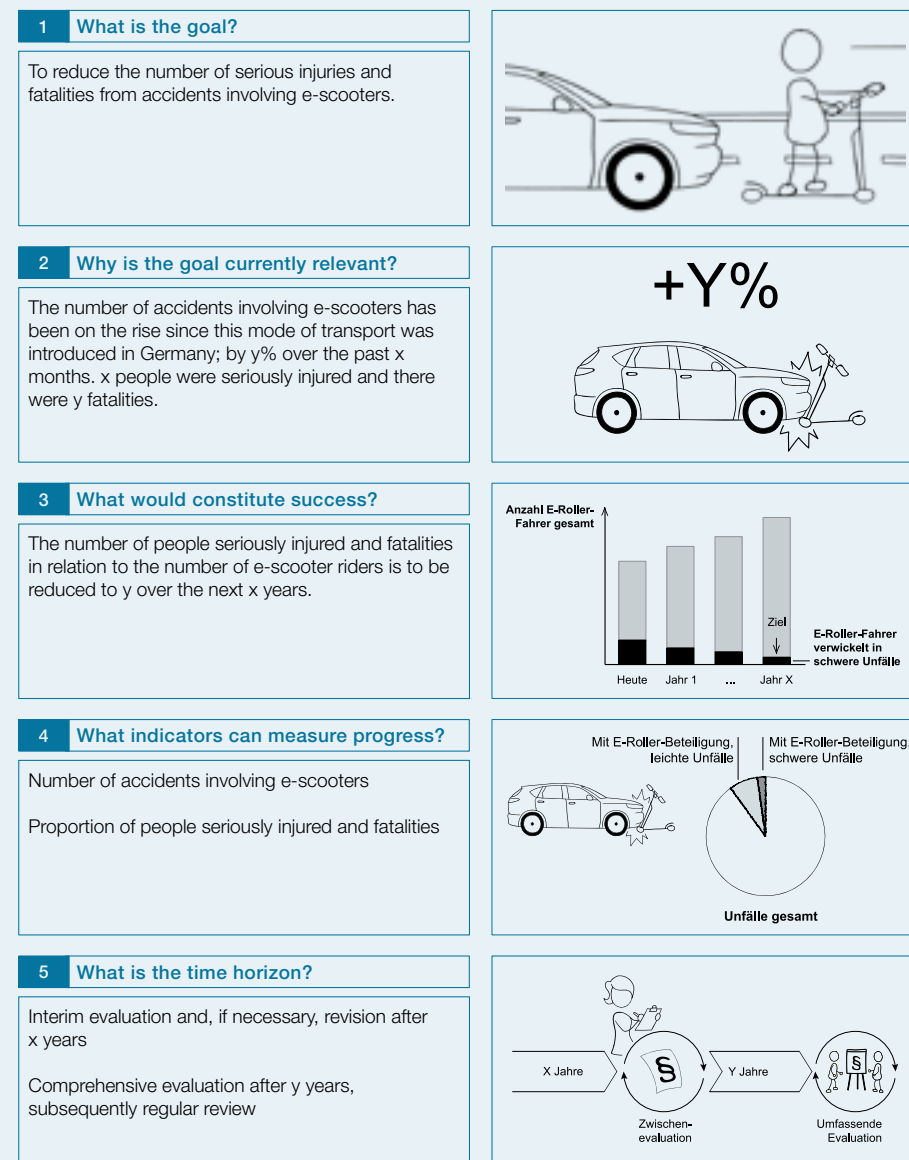
A goal paper is different from the key issues papers that are already frequently used today. The latter typically already contains information about the solution approach and can facilitate consultations before a draft text is available (see Box 4).

The use of goal papers is truly innovative and requires politicians to change their mindset completely. They are often under pressure by the public to have quick, tangible solutions at the ready for any problem within their remit. By using goal papers, their response is initially pushed back. Only when the bill preparation process is at an advanced stage and the ministerial apparatus has weighed up solutions, can political decision-makers publicly formulate measures. The advantage is that they can then make statements with a sounder substantive foundation. In addition, government politicians can then place greater emphasis on honoring their promises to voters in the best possible way.

FIGURE 10

## The goal paper – standardized handover to federal ministries

ILLUSTRATIVE



## 4.2 Understand cause-and-effect relationships better

One core requirement for the judicious preparation of bills is that potential cause-and-effect relationships between measures and the political goal are stated clearly. As a rule, Germany's federal ministries possess the necessary specialist expertise to this end. However, the legislative drafting process tends to focus on a preferred solution path that is often already fully worded in legal language at an early stage. Only rarely are the options available weighed up beforehand using results models.

### Box 3

#### Case study: Results models in Switzerland

The legislative process in Switzerland demonstrates how the systematic use of results models can help compare alternative solutions. Before tackling large-scale legislative projects, ministries there issue public invitations to tender for the preparation of such models. They use specifications for this purpose that (similar to a goal paper) describe the problem at hand and any specific requirements for results modeling. Public-sector research institutes and private-sector service providers can apply to carry out the project.

One example of where results models are used is the regulation of generic drugs. These are two to five times more expensive in Switzerland than in Austria or Germany. To limit rising healthcare costs, the Ministry of Health commissioned an extensive study on the cost structure of generic drugs in spring 2018. Corresponding results models were prepared for various regulatory options. The analysis of comparable international cases showed that a "price ceiling" makes it possible to cut costs by around 20 percent on average. Potential savings were thus calculated on the basis of market data available for drugs with high sales volumes (e.g., ibuprofen and aspirin). The study estimated annual potential savings of up to CHF 430 million. At the same time, however, it forecast a deterioration in patient safety and supply reliability. After weighing up positive and negative effects, the new law was in the end abandoned.<sup>25, 26</sup>

A methodologically consistent impact assessment answers at least four questions: What goal is to be achieved? What are the direct determinants of goal achievement? Which factors influence these determinants? What measures are there to influence these factors? The answers to these questions provide a comprehensive perspective of the solution options and their respective impact mechanisms (see Figure 11). In addition, potential "undesired side effects" need to be considered in each case.

The illustrative example given highlights two important insights. First: Even in simple results models, there are no purely linear cause-and-effect chains. An awareness campaign can result in riders being more attentive and fewer accidents occurring and also in riders wearing a helmet – which reduces the severity of accidents. Second: Enforcement and service delivery should be considered right from the outset. The hypothesis appears logical that a zero-alcohol level results in fewer people driving under the influence of alcohol. However, the result will depend on whether effective enforcement – in this case sufficiently close-knit alcohol testing – is possible with the given means.

25 Bill et al. (2019): Referenzpreis: Sparmassnahme auf Kosten der Patienten?

26 Swiss Federal Office of Public Health FOPH and State Secretariat for Economic Affairs SECO (2018): Regulierungsfolgenabschätzung zur Einführung eines Referenzpreissystems in der Schweiz.

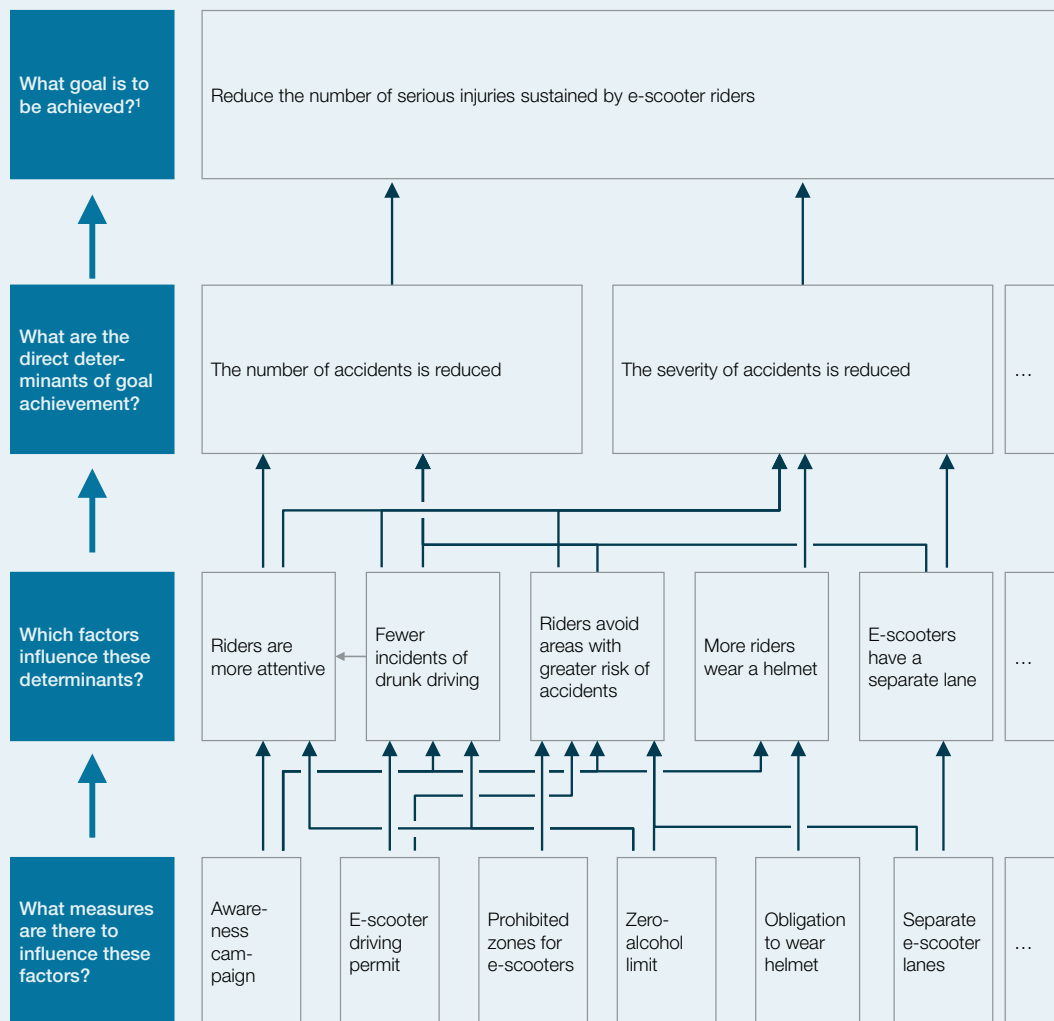
There are different approaches to evidence-based analysis of cause-and-effect relationships. These range from simple estimates to statistically rigorous simulations and to real-world experiments (also see Chapter 4.6). The methodology employed is based on the problem at hand and on the time and resources available.

Irrespective of this, visualization of the results hypothesis underlying a legislative bill should become standard practice in the future. This would reduce the communication threshold, in particular for practical knowledge holders, to participate in the discussion (“a picture is worth a thousand words”). This would raise the quality of the content of government-internal and external discussions of draft bills and reduce the number of laws that do not produce the desired results.

FIGURE 11

### Illustrative effectiveness check for assessing measures

ILLUSTRATIVE



NOTE: This example is purely illustrative and not exhaustive. It cannot serve as a basis for recommendations for the formulated goal.

### 4.3 Conduct a practicability check for enforcement and service delivery

Good lawmaking practice also considers the effect on enforcement authorities. Policy professionals should endeavor to identify challenges for implementation at an early stage and choose a solution option that combines effectiveness, addressee-friendliness, and suitability for enforcement and service delivery in the best possible way.

Enforcement issues are currently systematically considered in Germany through calculation of the compliance costs to public administrations. The federal states and national associations of local authorities represent enforcement-side interests in this respect. Despite these mechanisms, policy professionals at the federal level often do not have an in-depth understanding of what effect changes in legislation will have on the practical realities on the ground.

The Federal Information Management (FIM) can help close this gap in the future. The purpose of FIM is to describe all administrative service processes established by law in a standardized process model. This will provide the federal states and local authorities with legal certainty for enforcing federal law. Implementation of the German Online Access Act (OZG) is currently producing process models for all administrative services (see Chapter 2.3).

The FIM models make it possible not only to represent today's legal situation, but also to simulate future changes with foresight. This standard should also be able to depict internal decision-making logic in the future in addition to the administrative processes (e.g., rules for the approval of social benefits).

In an ideal scenario, policy professionals work together directly with specialists from the enforcement authorities on the simulation. The common starting point (visualized in simplified form) permits objectively assessing what results a specific change in law is expected to have and where there are any inconsistencies, gaps, or undesired interdependencies with other regulatory areas. On this basis, they can systematically weigh up different options for the enforcement authorities (see Figure 12).

FIGURE 12

#### Illustrative practicability check for enforcement and service delivery

| Requirements of enforcement        | Implementation options (potentially in parallel)  | Any variants   | Analysis based on FIM model | Assessment of suitability for enforcement | Assessment of addressee-friendliness |
|------------------------------------|---|--|-----------------------------|---|--------------------------------------|
| Distinct identification of citizen | Appearance in person at authority   | ... responsible for offering the service               |                             | (+)(+)(+)                                 | (+)(+)                               |
|                                    |   | ... not directly tasked with the service               |                             | (+)                                       | (+)(+)                               |
|                                    | Personal identification by nongovernment office   | ... by persons holding a public office, e.g. notaries  |                             | (+)                                       | (+)(+)                               |
|                                    |   | ... by private-sector actors, e.g. post offices, banks |                             | (+)                                       | (+)(+)(+)                            |
|                                    | Use of personal identity card's or electronic residence permit's electronic identity function |  |                             | (+)(+)(+)                                 | (+)(+)(+)                            |
|                                    | Link to other administrative service for which the citizen has been distinctly identified     | ... from the same jurisdiction as measure selected     |                             | (+)(+)                                    | (+)(+)(+)                            |
|                                    |   | ... from a different jurisdiction                      |                             | (+)                                       | (+)(+)(+)                            |
| ...                                | ...   | ...  | ...                         | ...                                       | ...                                  |
| ...                                | ...   | ...  | ...                         | ...                                       | ...                                  |

NOTE: This example is purely illustrative and not exhaustive. It cannot serve as a basis for recommendations for the example given.

## 4.4 Set binding standards for involvement

The GGO explicitly provides for involvement of affected stakeholders and their organizations. This includes private and civil society stakeholders as well as the relevant enforcement authorities, in particular national associations of local authorities. Draft bills must be sent to the relevant stakeholders “as early as possible” (Art. 47 GGO). Beyond that, in many instances there are well-established structures for relevant stakeholders to make their case (e.g., informal exchange with associations, joint federal-state working groups – see Chapter 3.1). The specific form of involvement, however, ultimately is at the policy professionals’ discretion. To guarantee to a greater extent that different stakeholders are adequately involved, binding standards should apply in the following areas in the future:

Early-stage involvement on key issues. The latitude for creativity is greatest while there is no finally worded text version available yet. Affected stakeholders should receive a key issues paper about relevant legislative projects at an early stage in the future setting out the effectiveness and practicability check for the planned new legislation (see Box 4).

### Box 4

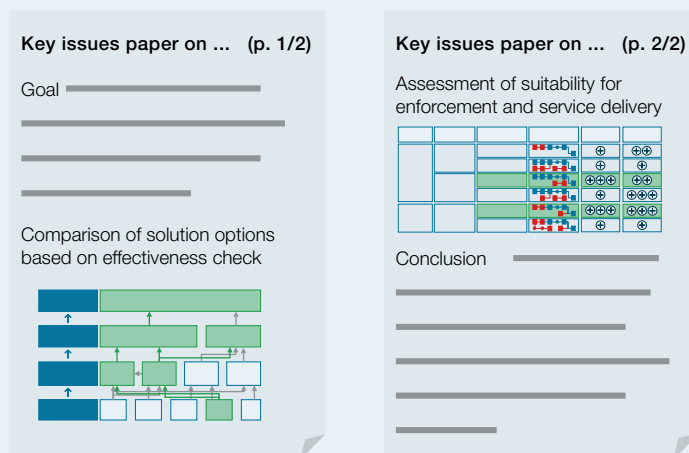
#### Key issues paper before the first draft of the text

Key issues papers are already widely used today in the preparation of bills. They set out key aspects of a measure that is already specified in detail and facilitate technical or political consultations.

In the future, policy professionals should use this format before they draft the first legislative text (at least for major changes – this format is naturally less suited for amendments of individual regulations). The key issues paper then summarizes the political goal as well as findings from the effectiveness and practicability check. On this basis, departments involved within the government and affected stakeholders can make their statements before a specific legislative draft enters formal consultations with set deadlines.

#### Prototype of a key issues paper

ILLUSTRATIVE



**Deadline for comment letters.** The GGO sets a time limit of four weeks for interministerial consultations and the legal scrutiny of a finally worded draft bill. This can be shorter in urgent cases if all the parties involved agree. To ensure that interest groups have sufficient opportunity to submit their comment letters on a draft version, the same time

period should apply to them. Such a rule is not exclusively or primarily in the interest of the external stakeholders. Comment letters with higher-quality content help above all policy professionals to formulate effective and addressee-friendly regulations that are suitable for enforcement.

**New formats for less organized interest groups.** Policy professionals today have virtually no means of involving affected parties if they do not have any organized representation. In the future, better instruments should be available for this purpose. One obvious possibility would be to create an open participation platform comparable to the EU Commission’s REFIT platform (see Box 5). Once suitable new formats are available, policy professionals should be required to conclusively state whether their project affects less organized interests and how they have involved them in the drafting process.

The policy professionals’ existing high specialist competence is a valuable asset in the intensified involvement of experts and affected parties. It enables them to objectively assess any additional external impetus.

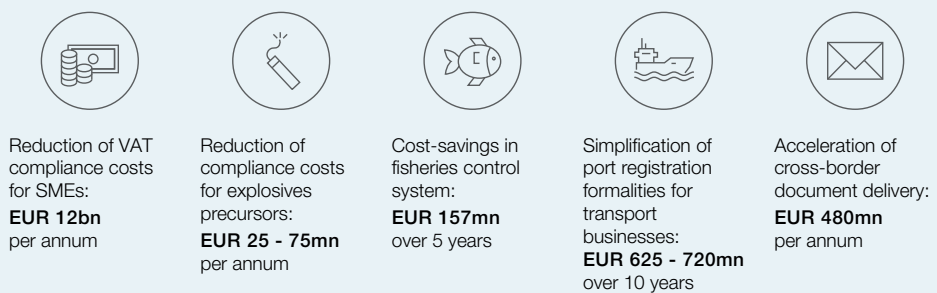
**Box 5**

**Case study EU: Direct communication line between Commission and affected party**

The European Commission’s REFIT platform gives national authorities, businesses, organizations, and citizens the opportunity to submit suggestions regarding EU legislation. These can be ideas for new regulations, but mostly they are suggestions on how to improve existing ones. The focus is on reducing regulatory and administrative costs. The suggestions submitted by addressees of the regulation via the REFIT platform are analyzed by the Commission and translated into recommendations for change.

The EU Commission publishes the resulting initiatives online. The REFIT Scoreboard allows tracking a legislative proposal over its entire life cycle from the first parliamentary session to annulment of the piece of legislation in question.

**Savings achieved through REFIT**



SOURCE: European Commission (2019): REFIT – making EU law simpler and less costly

## 4.5 Introduce digital readiness check

The IT Planning Council and the NKR have already issued review guidelines for e-government. To date, their use is optional. To facilitate digital service delivery across the board in the future, it is advisable to introduce a mandatory digital readiness check. It should comprise as few as possible, simply worded questions that policy professionals can use to make sure their draft meets all digital readiness requirements. Denmark shows how this can be done (see Box 6).

## Box 6

### Case study Denmark: Mandatory digital readiness check

Six years later and costing EUR 600 million more than planned, in 2013 Denmark's taxation authorities introduced a central, digital fee payment system – that had to be taken down again, however, as early as 2015. The project failed because of insufficient digital readiness of the underlying legislation for service delivery purposes.

In response to this and similar failures, in 2018 Denmark introduced a digital readiness check for legislative proposals.<sup>27</sup> This takes place at the ministerial bill preparation stage. The Agency for Digitisation carries out an assessment of the project within a few days. Only if significant questions arise or flaws become apparent is the legislative process delayed by an extended period.

For every law that could in principle be enforced digitally, the ministry responsible has to comment on seven principles.<sup>28</sup> As part of this process, for example, various authorities should to the extent possible use uniform concepts and associated data fields (e.g., definition of income). This facilitates an automated exchange of information.

One example is the law governing home-sharing platforms (such as Airbnb) that was enacted in 2018. In order to satisfy the principle of “consistency across authorities”, the law sets out the registry data that the competent municipalities are required to use (e.g., information from the Central Population Register, Central Register of Buildings and Dwellings, and Municipal Property Register). This facilitates nationwide automation of service delivery.<sup>29</sup>

The existing review guidelines for e-government include questions such as “Who transmits which data to whom?”, or “Which data, documents, and forms need to be obtained?”. They help policy professionals to realize the effects that a regulatory project will have on its addressees and enforcement authorities and how it can be implemented using digital means at a minimum cost.<sup>30</sup>

Expanding the review guidelines on e-government to include a digital readiness check ought not make matters more complex. The idea is to require policy professionals to answer key questions – at a reasonable level in proportion to a specific regulatory project. To create an incentive to do this diligently, neutral quality assurance is advisable (see Chapter 4.7). On aggregate, the aspect of digital service delivery is thereby accorded more weight in the legislation drafting process. The criteria and questions for a digital readiness check could also refer to the Danish model as well as the existing guidelines (see Figure 13).

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27 IT University of Copenhagen (2018): Damage and damage causes in large government IT projects.

28 <https://digst.dk/afbureaukratisering/digitaliseringsklar-lovgivning/vejledninger-og-vaerktoejer/syv-principper-for-digitaliseringsklar-lovgivning/>

29 Agency for Digitisation (2019): Control and sanction of the residence obligation.

30 <https://www.normenkontrollrat.bund.de/resource/blob/267760/444076/31aff64a938dc9a39dc41f-8313c704b0/2013-07-09-e-government-pruefleiftaden-bearbeitbar-data.pdf?download=1>



## 4.6 Pool drafting of legislation in labs

The high standards for an effectiveness and practicability check, involvement of affected stakeholders, and a digital readiness check set out here can overstretch today's sequential consultation process for draft legislation. The same applies especially when legislative projects chart new territory in terms of subject matter or have a particularly strong impact on individuals affected or the enforcement authorities (also see Chapter 5.2). If that is the case, a policy lab should be held in future – a format that brings the required work steps and interactions closer together in space and time – and makes it possible to deliver better and faster results.

At the same time, the new format encourages a cultural change in drafting legislation. A direct exchange with experts as well as citizens or businesses gives policy professionals the opportunity to discuss and refine their proposals for the effectiveness and practicability check with affected parties. The direct feedback and collaboration with representatives from other departments as well as the local enforcement authorities cuts down communication barriers and streamlines the process of finding a solution. Such practice of new cultural codes could have a positive influence on the ministries' work overall in the long term. The procedural model of policy labs has been well tried and tested. The UK's Policy Lab or the EU Commission's Joint Research Centre are relevant international examples (Box 7). Germany also already has a similar project in "Wirksam regieren" (governing effectively), which can be expanded in the future. In addition, agile methods have been widely introduced in public administrations via the digital labs set up under the German Online Access Act (OZG) where teams composed of the federal government, the federal states, municipalities, as well as users come up with digital solutions for currently around 30 administrative services with the help of design thinking experts. They also develop possibilities for amendments to laws in order to eliminate obstacles to digitization.

FIGURE 13

### Six possible criteria for a mandatory digital readiness check



#### Promoting digital communication

- Does the law promote digital communication with citizens, organizations, and businesses?
- If not: why not?



#### Secure data management

- Are relevant standards issued by the German Federal Office for Security in Information Technology applied?
- Has the Federal Commissioner for Data Protection and Freedom of Information been involved?



#### Automated case management options

- Is automation possible within existing or new IT processes?
- Does the regulation contain specific obstacles to digitization (e.g. written form requirement)?



#### Use of public IT infrastructure

- What software and hardware is used?
- Can federal IT be used?
- Are XÖV standards used?
- If not: why not?



#### Consistency across authorities

- Does the law promote seamless media use and consistency in the application of data standards across authorities (uniform concepts, data fields)?



#### Preventing errors and fraud by digital means

- Where is there a risk of errors or fraud (e.g., social benefit fraud)?
- Does the law permit digital preventive test routines?

## Box 7

### Case study UK: Policy lab

The UK Cabinet Office set up a policy lab to design laws and other government policies in an interdisciplinary, evidence-based, and user-centered way.

Ideas as a service. The departments can buy in the policy lab services for projects. Each project team comprises policy professionals, addressees of the regulation (e.g., citizens), and enforcement and service delivery authorities (e.g., staff from the authorities), as well as researchers – supported by methodology experts from the policy lab. Participants are intentionally removed from their familiar processes and hierarchies to work in surroundings that are conducive to communication and collaboration.

Use of agile working methods. The teams use agile methods and design thinking to develop effective, addressee-friendly solution approaches that are suitable for enforcement. They can also draw on a network of external experts. The focus is on a policy's "users". The methodology applied covers not only explicitly stated issues and needs – implicit and unconscious factors are also revealed through observation and iterative testing of solution approaches.

Since it was set up in 2014, the 12 policy lab staff members have already accompanied more than 50 projects in different fields. Over 7,000 public administration staff have taken part in workshops and training courses.<sup>31</sup> One example: After the Grenfell Tower fire in 2017, the Secretary of State for Housing, Communities and Local Government commissioned the policy lab to increase the quality of life and safety in social housing. The project team then visited affected families in their apartments and held several residents' meetings with the secretary of state. Over 500 individuals attended a total of 14 events. A further 1,000 residents responded to an online survey. This provided the policy lab with a basis for identifying a range of possible solutions that were subsequently incorporated in the political decision-making process. These included, for example, the promotion of neighborhood initiatives and improving communication between landlords and tenants. One key insight was that quality of life and safety can be improved in social housing even without costly construction measures.

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<sup>31</sup> Cabinet Office (2019): About Policy Labs.

### Case study EU: The Commission's Joint Research Centre

The European Commission applies lab methods to leverage the Joint Research Centre's extensive research capacities for legislation drafting purposes.

The Joint Research Centre of the European Commission was founded in the late 1950s as a nuclear research institution to support the European Atomic Energy Community (EAEC). As of 1973, further research areas were added. The Joint Research Centre has meanwhile become a Directorate-General of the Commission in its own right. With almost 3,000 staff in six European research centers,<sup>32</sup> it provides a wide range of research capabilities comprising expertise in the key legislative areas of futurology, model simulation, and behavioral research.<sup>33</sup>

In 2016, the Joint Research Centre set up the EU policy lab to assist with the preparation of European regulatory projects. The aim is to develop solutions to complex issues for the Directorate-General. The methodological toolbox covers traditional instruments such as social science surveys, but also scenario analyses based on computer simulation or field experiments.

Policy labs stand for an interdisciplinary approach. Civil servants in the ministries work together with affected stakeholders and enforcement authorities as well as specialists to prepare a draft bill. Ideally, this takes place in dedicated surroundings that are conducive to interaction and collaboration. The team also receives methodological instructions, which place particular emphasis on three elements:

**Design thinking.** In a first step, the policy lab conducts field observations, interviews with addressees, and service delivery and enforcement authorities and holds an exchange with subject matter specialists. This conveys a deeper understanding of the needs of relevant stakeholders and relevant adjacent factors. On the basis of the sharpened understanding of the issue, the team can then formulate a range of possible solutions – usually also solutions that were not apparent beforehand.

**Agile iteration.** In a next step, the ideas are translated into specific suggestions for action. The team tests these continuously with affected addressees and enforcement authorities. Fine-tuning and renewed testing of solution approaches initially rated as positive then produces a set of optimized solution options. In particular, the process also reveals practical discrepancies between different requirements (e.g., occupational safety aspects require anti-slip floor tiles at a butchery whereas the tiles must be easily washable for hygiene reasons – both requirements are important, but are not readily reconcilable).

**Evidence-based comparison.** In order to identify which of these is the best possible option, a policy lab can draw on different approaches – depending on the issue at hand – e.g., focus groups, social science surveys, lab and field experiments, computer simulations, or scenario analyses. The team then issues a report on this basis setting out how these solution options differ in terms of their effectiveness, addressee-friendliness, and suitability for enforcement. This is made available for further political consultations (ideally as a key issues paper).

<sup>32</sup> Located in Ispra, Karlsruhe, Geel, Brussels, Petten, and Sevilla.

<sup>33</sup> European Commission (2018): Joint Research Centre – Annual Report 2018.

For the practical implementation of policy labs, policy professionals need assistance from qualified methodology experts. It is advisable to have the requisite resources available at a central office. In Germany, this could be achieved by expanding “Wirksam regieren” to meet the already high demand of the departments for such support. In order to pragmatically involve addressees and enforcement stakeholders, the departments can also expand their existing networks with the respective associations – these could set up member pools that are in principle willing to participate in policy labs.

## 4.7 Conduct quality assurance for all three criteria

The GGO today already requires an account of the foreseeable regulatory impacts (Art. 44 GGO). In practice, the focus is placed on compliance costs. The NKR ensures independent quality assurance of the calculation, providing a strong institutional incentive for departments to submit a diligently calculated estimate. In the future, legislation drafting work should be subject to broader content-related quality assurance. This should include how the departments have considered effectiveness, and thus addressee-friendliness and suitable suitability for enforcement and service delivery, beyond the actual compliance costs (e.g., use of a digital readiness check).

There is one pitfall to avoid in expanding the neutral quality assurance: a duty for departments to issue a statement for subsequent review can in the worst case lead to a lot of extra paperwork without any substantial change being achieved. It is therefore important to give the departments sufficient latitude in meeting the test criteria and to apply reasonable judgment in their review. A review of regulatory impacts for draft legislation that will affect all citizens (e.g., rent reform), for instance, should be more extensive than for a legislative project that affects only few parties. The findings of the quality assurance check should in turn also not be set out in lengthy reports, but succinctly conclude publicly whether material professional standards have been complied with. Political impartiality is an indispensable condition here.

To implement this recommendation, the Federal Government can build on its many years of experience with institutionalizing the calculation of compliance costs. A look across the border is also helpful: Norway provides one example of how a holistic model can be implemented in practice; the EU has also already adopted the practice of extensive impact assessment with neutral quality assurance (Box 8).

## Box 8

### Case study Norway: Color-coded rating system with six key questions

In Norway, the Regelrådet (Norwegian Better Regulation Council, a politically neutral body set up in 2016, comparable to Germany's NKR) carries out broad quality assurance for legislative proposals. It covers all three criteria of good legislation: effectiveness, addressee-friendliness, and suitability for enforcement and service delivery.

In their explanatory memorandum, institutions are required without exception to answer six key questions and reflect on the analyses and test routines they carried out in the preparatory phase.<sup>34</sup> The Norwegian Better Regulation Council examines whether the lead ministry has answered these questions satisfactorily, and publishes a color-coded rating on its website:<sup>35</sup> “green” means that the key questions were on the whole adequately answered; “yellow” that there are weaknesses in the argumentation, and “red” that the answers are not adequate. Since July 2016, the Norwegian Better Regulation Council has assessed 109 legislative initiatives in this way – of which 23 were given the green light, 49 a yellow light, and 37 a red light in the overall rating.<sup>36</sup>

The Council's six members are responsible for the evaluation. Its composition is intended to ensure that it can act as a neutral, independent, and impartial body.<sup>37</sup> Together with its color-coded rating, the Norwegian Better Regulation Council also issues a brief conclusion about the strengths and weaknesses of a submitted report on the preparation of a bill.

The assessment does not have any direct formal implications for the legislative project. However, its publication puts pressure on the ministries to continuously improve their work to prepare draft legislation. In some cases, assessment by the council also had direct consequences for an ongoing legislative project. One example: In 2016, the Norwegian Ministry for Local Government and Modernisation submitted a draft law on establishing a central register for cable ownership associated with a registration duty. The council criticized the fact that the ministry had not adequately answered the six key questions, and carried out a benefit-cost analysis from the perspective of cable owners. The ministry then withdrew the legislative proposal with explicit reference to the results of the external assessment.

#### Assessment of bills in Norway based on six questions



What is the problem and what exactly do we want to achieve?



What are the positive and negative effects of the measures, how sustainable are they, and who is affected by them?



What are the relevant measures?



What measures are recommended and why?



What fundamental questions do the measures raise?



What are the prerequisites for successful implementation?

SOURCE: Regelrådet (2018): Regelrådets årsrapport 2018; Norwegian Ministry of Finance (2005): Instructions for Official Studies and Reports

34 Norwegian Ministry of Finance (2005): Instructions for Official Studies and Reports.

35 [www.regelradet.no/uttalelser/](http://www.regelradet.no/uttalelser/)

36 Regelrådet (2019): Testimonials.

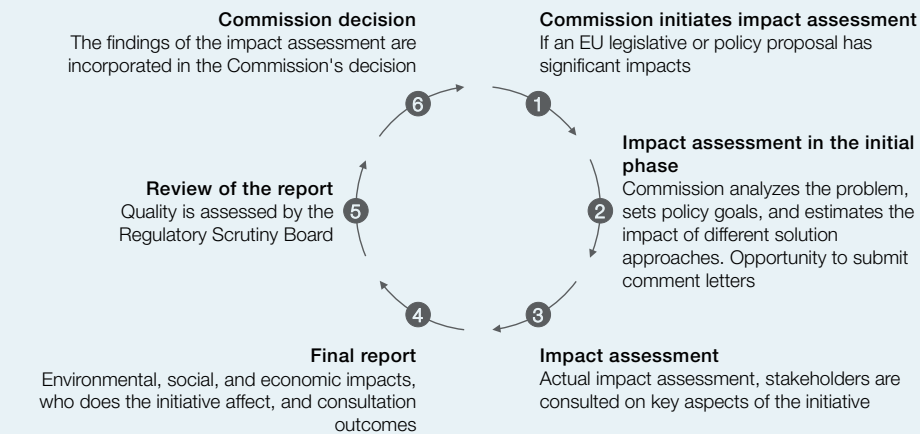
37 Regelrådet (2019): Mandate and Organisation.

## Case study EU: Impact assessments

In 2002, the European Union introduced a comprehensive impact assessment for directives and regulations expected to have significant impacts. The Secretariat-General's Evaluation and Impact Assessment Unit coordinates the impact assessments, which are prepared by the respective lead directorate-general. The findings are assessed by a committee composed of seven members, with four high-ranking civil servants from the Commission and three external experts – the Regulatory Scrutiny Board. It reviews in particular the proportionality of the proposed policy initiative and the consistency of conclusions.

A negative verdict is issued for about a one-third of the impact assessments reviewed, i.e., the impact assessment quality is deemed insufficient. If that is the case, the directorate-general with overall responsibility has to revise the impact assessment. If the evaluation is still negative after that, the Commission must issue a public statement justifying why it still intends to pursue the regulatory project further.

### Impact assessment by the European Commission



SOURCE: Developed from European Commission material (2019): Impact assessments

## 4.8 Consolidate requirements and support process digitally

Today's legislation drafting process is subject to numerous methodological requirements. Policy professionals are required to consider some 40 manuals, guidelines, and working aids from various sources (e.g., NKR, specialist departments). In some cases, there is a formalized process for checking the requirements (such as for calculating compliance costs), in other cases, ministries impose "their" guidance via the co-signing procedure.

Not all methodological requirements apply to all legislative projects. For example, the "demography check" working aid is only relevant when a regulation can have an impact on the demographic development, e.g., birth rates. The relevance and binding nature of a large number of requirements often remains unclear to policy professionals, and clarification costs time and money. There is no central office to manage all standards for drafting legislation and advise the policy profession.

Consolidation of the existing rules is urgently required, especially if new requirements are added by further modernization efforts. It would be advisable to set up a central office for this purpose, which would initially take stock of the existing requirements and assess which standards are needed going forward in the interest of effectiveness, addressee-friendliness, and suitability for enforcement – and which of the existing policies and processes can be simplified, combined, or discontinued. A robust mandate is needed for this task, with the power to overrule the departments' individual interests where necessary. The central office could subsequently act as a service center and advise the policy profession on applicable rules and the tools, working aids, and formats relevant for their work.

The E-Legislation project plays an important role in this respect and is already working on an analysis and assessment of working aids and guidelines. In addition, there are plans to ideally cover a simplified and streamlined process digitally end to end. Policy professionals could then use the software to easily identify requirements, methodologies, and working aids relevant for their legislative draft. Future adjustments of the process could be taken into account directly in the workflow. Policy professionals would be alerted to new developments directly within the electronic working environment – if relevant to their work – and would not have to actively seek to keep up to date.

In view of the central importance of the legislation drafting process as a key governance process, the required investments would be worth making. New (and some existing) methodological requirements will be adopted in practice only if they reach policy professionals in a self-explanatory form. This includes, where possible, functionalities to ease the workload such as automatic plausibility tests or interactive form wizards. The more user-friendly the future digital process support is, the higher the acceptance of the modernization measures as a whole will be.

## 4.9 Build up capabilities and the right team

To date, policy professionals are mostly trained individually on the job. The Federal Academy of Public Administration (BAkÖV) offers individual relevant modules, such as “Legal thinking and working in practice” or the “eNorm basic module”.<sup>38</sup> However, at present there is no comprehensive basic and advanced training concept. Much is left to chance and depends on the specific legislation drafting culture of a ministry, directorate-general, or even a particular specialist department and the particular working methods used by experienced colleagues.

At the same time, the qualifications that policy professionals bring to the job are too one-sided – as in the past, the majority are law school graduates. To cover the manifold skills required for present-day legislation drafting, it is advisable to have a more diverse mix of staff at the ministries in the future.

What are the specific capabilities policy professionals need today? Besides subject matter knowledge, in a first instance, there are some particular methodological core competencies that are needed. These naturally include the ability to formulate legal texts, and a detailed procedural knowledge (processes, using E-Legislation, calculating compliance costs, referring to other manuals, etc.). On top of that, policy professionals should in the future

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38 [https://www.bakoev.bund.de/SharedDocs/Publikationen/LG\\_1/Programm\\_im\\_Ueberblick\\_2020.pdf](https://www.bakoev.bund.de/SharedDocs/Publikationen/LG_1/Programm_im_Ueberblick_2020.pdf)

also be able to apply the new or adjusted instruments recommended here (effectiveness and practicability check, digital readiness check, standardized key issues paper). Mixed teams including members who have studied subjects other than law can help to achieve this.

Aside from the core competencies listed, there are also special skills that experts who have had the requisite training are better able to cover. Today these include methodologies for checking comprehensibility and legal consistency. If the use of policy labs is to be expanded in the future, this would also require support from specialists. Policy professionals should have a basic understanding of these methodologies and be able to assess when and how to best refer to experts.

Basic and advanced training in core competencies and special skills should be provided via three channels in the future: when onboarding graduates, via a digital learning platform, and classroom-based training.

**Onboarding.** New policy officers in ministries should in the future receive training on the basic skills needed to work as policy professionals directly when they are hired. This includes in particular basic procedural knowledge and use of key tools such as eGesetzgebung (E-Legislation). There should be a basic module covering this content that all departments can integrate in their own onboarding process.

**Digital learning platform.** Policy professionals should have the opportunity to repeat and deepen individual skills as needed in “digestible portions”. For example, readily understandable working aids and explanatory video content should be available on how to prepare effectiveness and practicability checks. Ideally, such modules would be made available on a central digital learning platform.

**Classroom-based training.** Traditional training courses should also be offered, in particular to deepen special skills. For instance, it is advisable to cover the methodology of policy labs in a course spanning several days, which looks at design thinking basics as well as different approaches to systematically assessing regulatory impact.

It would also make sense to set up a central office responsible for basic and advanced training. This could be within the Federal Academy of Public Administration (BAkÖV) or at the “Center for Regulation” that is referred to in the Federal Government’s current work program.

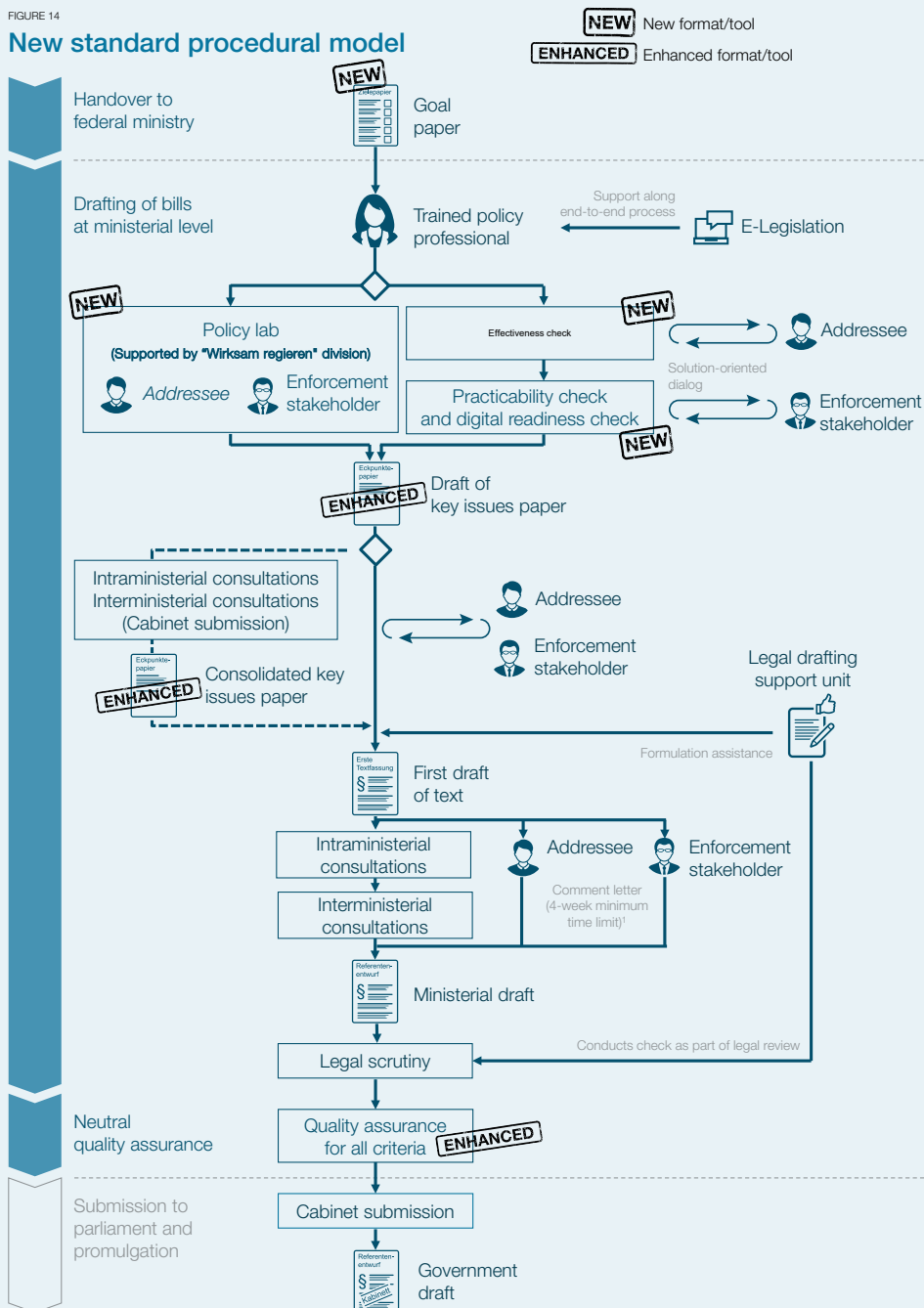


# 5. A new procedural model – standardized, yet flexible

As a whole, the recommended measures for a better legislation drafting process give rise to a new standard procedural model. Within this model, the policy professional can choose between different paths. The standard procedure can be phased and varied – depending on the specific case constellation at hand.

## 5.1 Proposed new standard procedure

The new standard procedure (see Figure 14) is largely within the framework of the GGO as applicable today. Many of the changes would formally already be possible today. In



<sup>1</sup> The involvement of associations is still to be executed as provided for in the GGO, with the only addition of setting a minimum time limit for comment letters. Draft bills need not necessarily be sent to associations in parallel, but can instead be held back until the ministerial draft is prepared.

some instances, however, amendments to the GGO could help to establish measures as a binding standard (e.g., minimum period for comment letters from affected stakeholders).

The starting point for the procedure should normally be a goal paper. That commissions the ministerial administration with formulating a bill in order to realize a certain political project (see Chapter 4.1).

Policy professionals then identify solution options and compare these on the basis of an effectiveness and practicability check. In the process, they involve the regulation's addressees and enforcement stakeholders, and apply the digital readiness check (see Chapters 4.2, 4.3, 4.5). These work steps can also take place in a policy lab so as to involve stakeholders and experts more intensively and at the same time (see Chapter 4.6).

In a next step, policy professionals summarize the findings so far in a key issues paper. This sets out the selected solution option and explains why it is best suited to implement the political goal in an effective and addressee-friendly way that is suitable for enforcement and service delivery (see Chapter 4.4, Box 4). It could also already provide a basis for intraministerial and interministerial consultations, and potentially an initial submission to cabinet. The key issues paper is sent to addressees and enforcement stakeholders, who can then issue their comment letters.

As a rule, the policy professionals do not draft a legal text until after the end of these preparatory work steps and consultations. Only in specific cases might it make sense to start formulating the wording immediately – e.g., when a legislative project is particularly time critical (see Chapter 5.2). When formulating the draft, policy professionals can refer to the Unit for Legal Drafting Support to help make the text comprehensible for the respective group of addressees. The Federal Ministry of Justice and Consumer Protection's examination of the bill in accordance with systematic and legal scrutiny is based on a finally worded draft text as in the past.

The thus finalized ministerial draft then runs through a politically neutral quality assurance review. This checks – also based on the available explanatory documentation (such as effectiveness and practicability check, compliance costs) – to what extent effectiveness, addressee-friendliness, and suitability for enforcement have been taken into account in the legislation drafting process.

Thereafter, the draft goes through cabinet and parliamentary procedure, as it does at present.

## **5.2 Flexible adaptation depending on the case constellation**

Urgency, political importance, stakeholder landscape, and existing regulatory environment determine the legislation drafting process (see Chapter 2.2). The combination of these factors gives rise to a large number of possible case constellations.

The analysis below looks at three typical situations and illustrates how the new standard procedure can be adapted to different requirements: (1) Ad hoc bill – a politically controversial project that is additionally subject to considerable time pressure. (2) Administration bill – a project developed by a department based on continuous dialog with addressees and enforcement stakeholders. (3) New territory bill – a project addressing a completely new challenge (often politically sensitive, but with less time pressure).

## (1) Ad hoc bill

If a bill attracts much political attention and is urgent, it must run through a reduced form of the standard procedure. What does this mean for the recommended changes?

**Open up the solution space through goal papers.** Especially when amendments are urgent, it is vital to have a clear, shared understanding of the intended results. In order to avoid communication problems, policymaking should be based on goal papers, especially in such circumstances.

**Model cause-and-effect relationships and enforcement practice.** The need for an ad hoc bill arises from a serious issue that needs to be addressed immediately. Therefore, effectiveness is paramount. It is essential that policy professionals analyze various solution options within the time given. The comparison can be based on hypotheses if it is not possible to obtain evidence fast enough. The same applies for implementation. A “quick fix” that, due to a lack of understanding of the practical realities, does not work in practice in terms of enforcement is not adequate in view of the seriousness of the issue.

**Set binding standards for involvement.** Good involvement practice takes time – and that is limited in the case of an ad hoc bill. Policy professionals should therefore ask relevant stakeholders to cooperate in an expeditious manner so as not to have to allow for the otherwise applicable minimum periods. Not involving stakeholders is not an option, however – that can produce a regulation divorced from reality that does not achieve the intended results.

**Introduce digital readiness check.** This check should be carried out pragmatically. If a “digital-friendly” bill can be easily drafted, policy professionals should do so even on urgent projects. However, if amendments are necessary in adjacent areas of law, a phased approach may be advisable. In that case, the ad hoc bill enters into force first – and further amendments are subsequently introduced in stages.

**Pool drafting of legislation in labs.** There is typically not enough time for a fully-fledged policy lab. However, policy professionals can potentially even speed up individual work steps and consultations by bringing together relevant stakeholders in workshops and developing outputs together.

**Conduct quality assurance for all three criteria.** In particular with ad hoc bills, the neutral quality assurance review should apply the principle of proportionality and assess the procedural and content quality of the legislation drafting process taking into account the time pressure given.

## (2) Administration bill

This kind of project is initiated by the ministerial administration. Feedback from associations or government agencies can provide the impetus for such bills. Frequently, departments also have to develop measures to realize cross-sectional matters, such as “bureaucracy reduction”. Such bills are typically not subject to time pressure and attract little attention in the political arena. Policy professionals can usually easily reach relevant stakeholders, but the regulatory environment tends to be complex.

**Open up the solution space through goal papers.** As administration bills are not political projects, the goal paper format is less relevant. Policy professionals might use it themselves

to consult relevant stakeholders (e.g., associations, government agencies) in a structured manner on the intended goals.

**Model cause-and-effect relationships and enforcement practice.** Depending on the issue at hand and existing evidence, policy professionals should weigh up how extensively to analyze the expected impact. For small-scale amendments, in particular, it is often not necessary to apply a model in its entirety or develop a new model. The same applies to taking practical implementation matters into account. If the initiative for an amendment stems from the enforcement authorities, however, it should be verified that the proposal actually solves the issue that needs to be addressed.

**Set binding standards for involvement.** There is sufficient time to involve affected parties and experts on administration bills. The scope of involvement should be in reasonable proportion to the project and take place within the proposed minimum periods.

**Introduce digital readiness check.** It is advisable to carry out an extensive examination of the front-end and back-end digital potential. Administration bills provide the opportunity to make existing areas of regulation thoroughly digitally ready.

**Pool drafting of legislation in labs.** Administration bills tend to be aimed at minor amendments to existing laws. In many cases, a policy lab is not necessary regarding the content. If the issue at hand is more complex, policy professionals should however consider using this instrument.

**Conduct quality assurance for all three criteria.** It is possible to review thoroughly the technical diligence applied in administration bills, thereby creating an incentive for departments to broaden their perspective and include all three criteria of good legislation. Over time, this could progressively and continuously optimize the existing body of regulations.

### (3) New territory bill

The accelerated pace of social, economic, and technological change increasingly leads to entirely new fields requiring regulation (e.g., rental price ceiling, business models in the platform economy, autonomous driving). Such legislative projects tend to be highly salient, but there is a longer period of time to prepare them.

**Open up the solution space through goal papers.** The need for a new territory bill often arises because factual developments challenge legal or moral standards. The political objective that society should pursue in this context is often highly controversial. It is therefore important for policymakers to make clear statements in this case, so as not to overtax the federal ministries with having to solve what are actually political conflicts. However, it is even more important that policymakers refrain from prematurely formulating specific solution approaches and give the ministries a chance to develop the best solution to achieve the objective.

**Model cause-and-effect relationships and enforcement practice.** Research into cause-and-effect relationships tends to be scarce or insufficiently documented in new areas of regulation. Frequently there are also no established enforcement models (e.g., the legal assessment of software is a relatively new field for regulatory authorities).

Both of these circumstances point to a particular need for thorough modeling and evidence-based benchmarking of several solution options.

**Set binding standards for involvement.** In particular when new topics emerge, at the start ministries often have less competence than external stakeholders. They should therefore hold a particularly intensive dialog with neutral experts and also permit affected parties to voice their concerns and contribute objective specialist expertise. Minimum periods for comment letter must be complied with without exception – mostly there is even time for more intensive participation formats.

**Introduce digital readiness check.** Entirely new regulations often give rise to a new enforcement mechanism. That is a valuable opportunity to consider digital interactions among public administrations and automated internal processes (for example, the 2006 law governing the parental allowance could have designed the benefits calculation such that it can be carried out register-based end to end).

**Pool drafting of legislation in labs.** In view of the particularly high requirements placed on the effectiveness and practicability check and the involvement of external stakeholders, a policy lab should be the rule. This methodology unfolds its full potential particularly when the government charts new territory and has to find solutions to previously unknown problems.

**Conduct quality assurance for all three criteria.** Due to the usually particularly high complexity and the groundbreaking nature of first-time regulation of a new topic, neutral quality assurance is particularly important. It should be performed thoroughly and challenge policymakers and the administration at the ministerial level to fulfill their roles particularly diligently within the process.

## 6. “Governing effectively” program

For all of the measures recommended, there is preparatory work that can be done already in the current legislative term. Lessons can be learned and the first visible success be achieved by piloting new approaches and instruments. In order to anchor the measures in the long term, the next Federal Government should set up a governing effectively work program as a continuation of the initiatives to date (see Figure 15).

The go-ahead can be given to implement measures with direct modernization impact provided a department volunteers to test goal papers as a new format for selected bills in conjunction with the restructured key issues paper instead of an early-stage legal text. A voluntary undertaking to comply with the proposed minimum periods for stakeholder involvement would also be conceivable.

Regarding other measures, the preparatory work could start now. Pilot projects could develop and test working aids for the effectiveness and practicability check and the digital readiness check. Ahead of expanding the use of policy labs, it is advisable to analyze the demand from departments – i.e., the proportion of legislative projects suitable for this methodology. Finally, the Federal Government can commission an examination of the options available in terms of formats, process, and organization of quality assurance for the legislation drafting process.

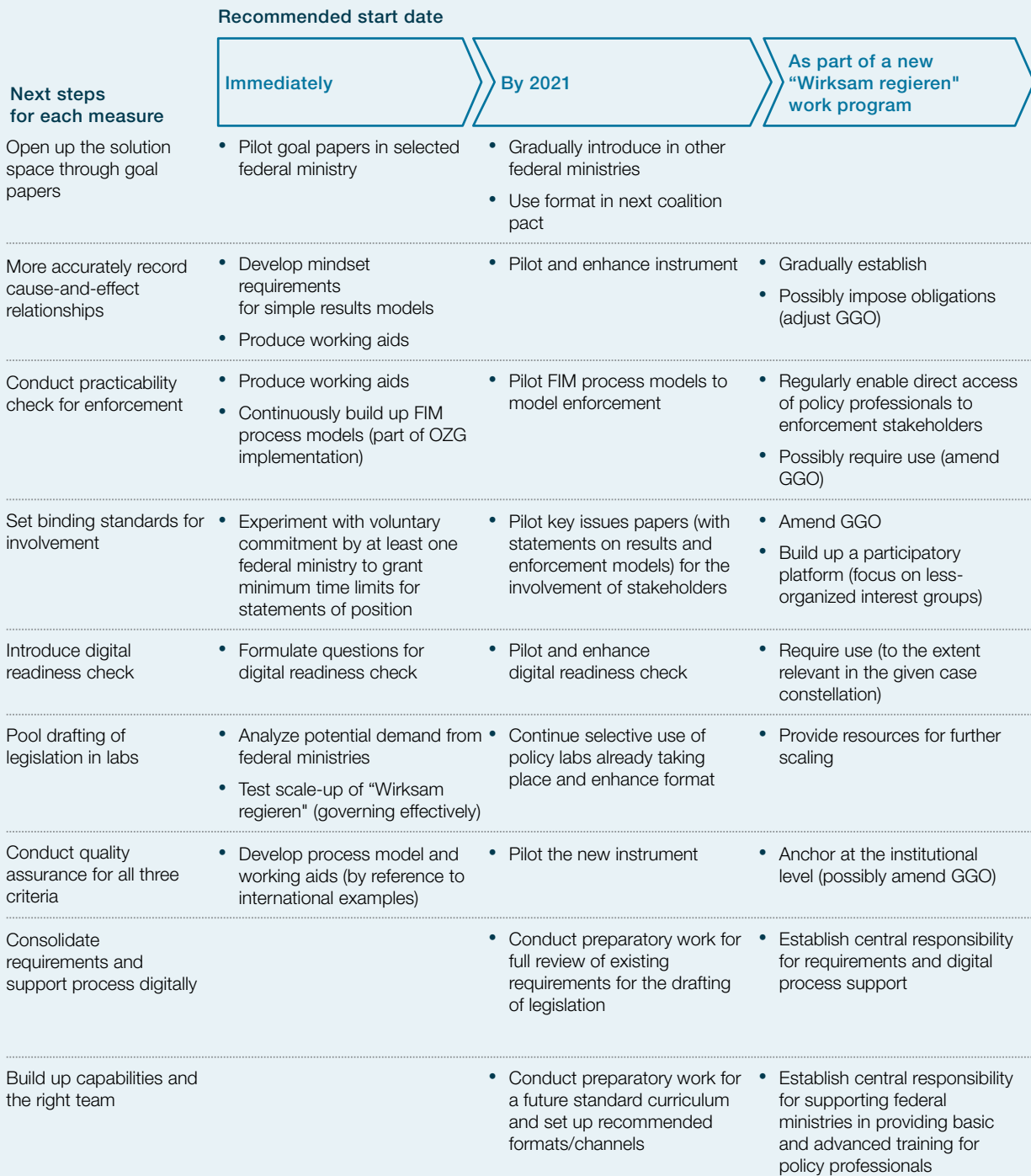
The political impetus for mandatory and universal implementation of these measures as well as the proposed institutional changes should come from a new work program of the Federal Government for the next legislative term. Specifically, rules need to be developed governing the effectiveness and practicability check, the digital readiness check, and better involvement of affected parties. A participation platform should be set up for less organized interests, and the resources required to introduce policy labs across the board need to be built up. The same applies for comprehensive quality assurance, a central office responsible for consolidating and updating procedural rules, and for strengthening basic and advanced training for the policy profession. Each of the latter measures also requires new organizational structures.

The contents of such a work program are likely to play a minor role in the political parties' electoral campaigns, which mostly concentrate on sector policies, or in the next coalition negotiations. “Governing effectively” in the sense of this study is a classic cross-sectional matter that is at an institutional disadvantage relative to the pressing sector-specific concerns of the day-to-day politics.<sup>39</sup> Yet the importance of the modernization agenda described here could not be greater. As determined at the beginning: the state's governance capacity and, in turn, the acceptance of policymakers are increasingly under pressure. Political leaders in the next Federal Government are urgently called upon to counter this trend and to make “governing effectively” a leadership priority.

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<sup>39</sup> Jann, Werner/Wegrich, Kai (2019): Generalists and specialists in executive politics: Why ambitious meta-policies so often fail, *Public Administration*, 2019, 1-16.

## A potential work plan for the implementation



# List of abbreviations

| Abbreviation | Explanation   |
|--------------|---|
| BAköV        | Bundesakademie für öffentliche Verwaltung<br>(Federal Academy of Public Administration)   |
| BKAmt        | Bundeskanzleramt (Federal Chancellery)  |
| BMAS         | Bundesministerium für Arbeit und Soziales<br>(Federal Ministry of Labour and Social Affairs)  |
| BMEL         | Bundesministerium für Ernährung und Landwirtschaft<br>(Federal Ministry of Food and Agriculture)  |
| BMF          | Bundesministerium der Finanzen (Federal Ministry of Finance)  |
| BMI          | Bundesministerium des Innern, für Bau und Heimat<br>(Federal Ministry of the Interior, Building and Community)                                      |
| BMJV         | Bundesministerium der Justiz und für Verbraucherschutz<br>(Federal Ministry of Justice and Consumer Protection)                                     |
| BMU          | Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit<br>(Federal Ministry for the Environment, Nature Conservation and Nuclear Safety) |
| BMVI         | Bundesministerium für Verkehr und digitale Infrastruktur<br>(Federal Ministry of Transport and Digital Infrastructure)                              |
| BMWi         | Bundesministerium für Wirtschaft und Energie<br>(Federal Ministry for Economic Affairs and Energy)  |
| BNotK        | Bundesnotarkammer (Federal Chamber of Notaries)   |
| BPMN         | Business Process Model and Notation   |
| DMN          | Decision Model and Notation   |
| eNAP         | Elektronische Nachhaltigkeitsprüfung<br>(electronic sustainability impact assessment)   |
| EU           | European Union  |
| EAEC         | European Atomic Energy Community  |
| FIM          | Föderales Informationsmanagement (Federal Information Management)   |
| GG           | Grundgesetz (Basic Law of the Federal Republic of Germany)  |
| GGO          | Gemeinsame Geschäftsordnung der Bundesministerien<br>(Joint Rules of Procedure of the Federal Ministries)   |
| NKR          | Normenkontrollrat (National Regulatory Control Council)   |
| NKRG         | Normenkontrollratgesetz<br>(German Act on Establishing the National Regulatory Control Council)   |
| OZG          | Onlinezugangsgesetz (German Online Access Act)  |
| REFIT        | Regulatory Fitness and Performance Program  |
| SGB          | Sozialgesetzbuch (German Social Security Code)  |
| XÖV          | XML in der öffentlichen Verwaltung (XML in public administration)   |





