



Regulation and Digitalization during the COVID-19 Pandemic in Germany

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Overview

1. Better Regulation in Germany
2. Particularities of Regulation during the Pandemic
3. The Crisis as an Accelerator of Digitalization

Better Regulation in Germany

The Concept of Better Regulation

What is Better Regulation?

**MAKING SURE
THAT A REGULATION PROCESS IS
NEVER MORE COMPLICATED OR
COSTLY THAN IT HAS TO BE TO
ACHIEVE A POLITICALLY DEFINED
OBJECTIVE AND DEMOCRATICALLY
GENERATED POLICY GOAL**

The National Regulatory Control Council - Nationaler Normenkontrollrat (NKR)

- **independent advisory body** located at the Federal Chancellery (since 2006); 3rd term of mandate
- Legal Basis: NKR-Law of 2006 (NKRGG)
- Comprising ten members from businesses/sciences/PA (5-years-term)
- Supports/controls the federal government in the field of Better Regulation
- Checks all legislative proposals of the government in terms of compliance costs for businesses, citizens, administration



The NKR and its tasks

NKR

Established by a formal federal law (August 2006)

Model: The Netherlands

Independent advisory body

Appointment of 10 members for a term of office of 5 years

Start of the 2nd term:
20th September 2011

Task

Support and advice to the Federal Government in the reduction of bureaucracy and improving regulation

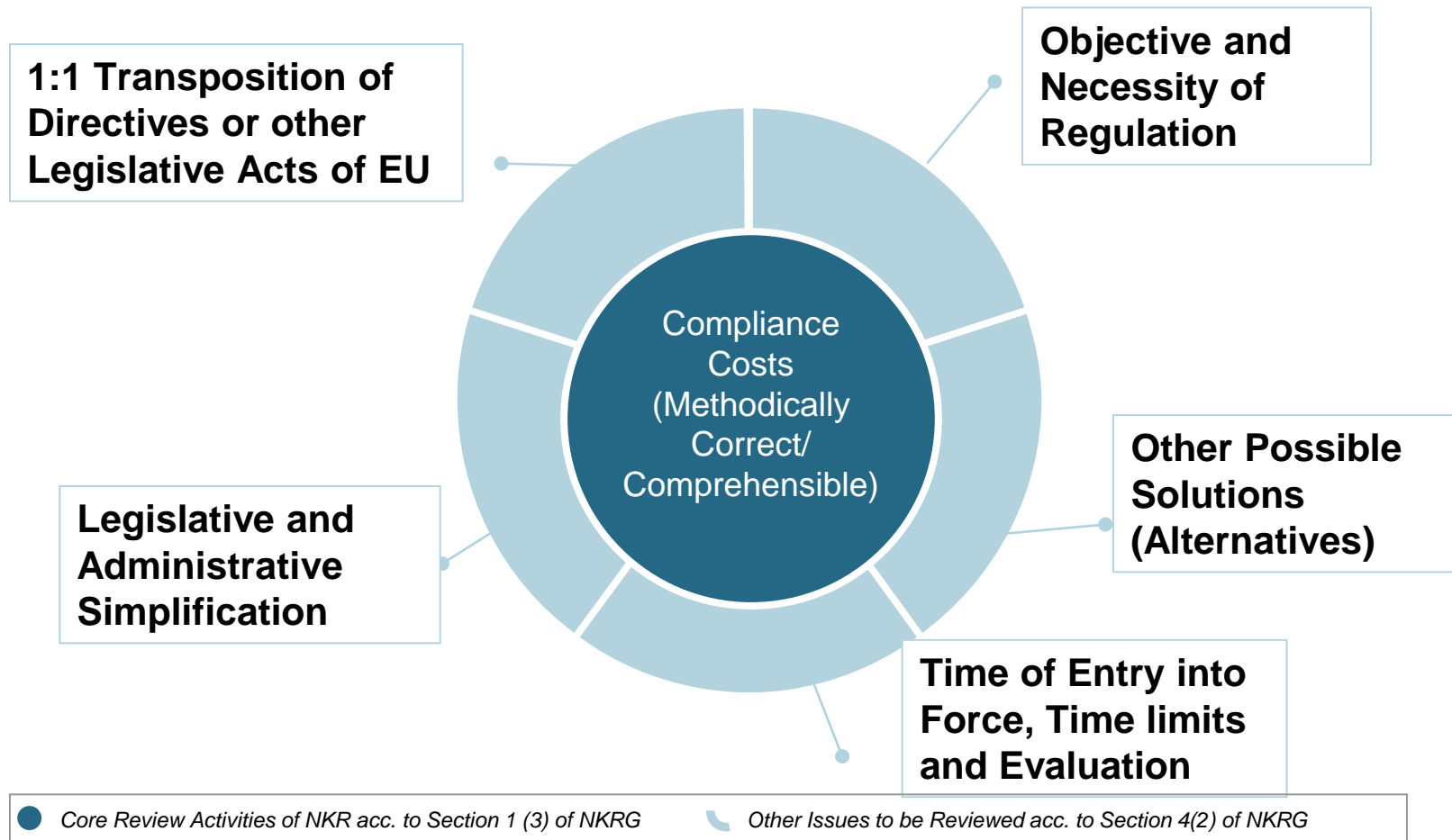


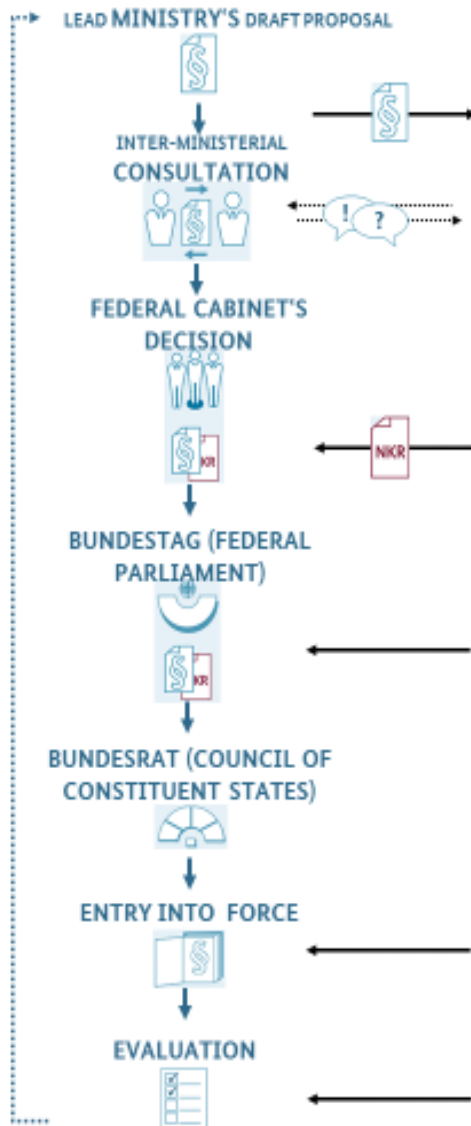
Avoid the creation of new regulatory burdens



Reduction of existing regulatory burdens

NKR Powers of Review





NKR receives the draft proposal and reviews

- the ministries' estimations of consequential costs ,
- considerations relating to possible solutions or „alternatives“,
- considers the outcome of official hearings
 - regarding the Federal States and
 - the associations or
 - the consultation of experts



NKR's comments are submitted with the draft proposal

if necessary: consultation of NKR's experts in the parliament's commissions

Follow-up measurement conducted by the Federal Statistical Office (2 years after entry into force)

Evaluation of relevant laws and decrees conducted by the responsible ministry (3-5 years after entry into force, threshold of 1 Million EUR annual compliance costs)

Particularities of Regulation during the Pandemic

Particularities of Regulation during the Pandemic

- March-June 2020 regulatory activity of the federal government predominantly focused on pandemic mitigation
- 56 regulatory proposals related to pandemic mitigation and its social/economic impacts scrutinized by NKR
- COVID-19 related regulatory proposals coordinated and agreed within a few days only
- NKR abstained from a formal statement in very urgent cases (provided that the compliance costs were correctly displayed by the ministry)
- Important condition: crisis related legislation was to follow the principles of Better Regulation and evidence-based policy-making (e.g. evaluation requirements, transparency about costs etc.)

Particularities of Regulation during the Pandemic

- Key legislation: amendment of the Federal Law on the Prevention of Infection
 - declaration of an epidemic emergency of national concern (by the Bundestag)
 - authorization of the federal government to enact orders and statutory ordonnances without the parliament
- Within the state of emergency the Minister of Health gains additional powers and discretion to issue orders in the (otherwise decentralized) pandemic management system, unilaterally without consulting the *Länder* and the *Bundesrat*
- Centralizing impact (in view of the highly decentralized pandemic management setting in Germany)
- Downgrading of parliamentary powers (during the state of emergency)
- Crisis as the “moment of the executive”

Particularities of Regulation during the Pandemic

- Statutory orders on the provision of the population with medicine and cures, staffing in public health service, hospital capacities
- Legislation basically related to employment, economic rescue, social welfare, financial and tax policies (adjustment of the federal budget, suspension of the debt brake, running up new debts)
- Considerable compliance costs resulting from COVID-19 related federal regulations enacted March-June 2020:
 - 9.9 million Euro of annual compliance costs
 - 792.1 million Euro one-off compliance costs (449.4 mio. incurring for businesses, 294.4 for the administration, 48.3 mio. For citizens)
- Many regulations are “sunset regulations” (limited period)
- High burdens for the economy resulted from tax legislation (adaption in accounting procedures due to VAT reduction) and hospital ordonnances (stocking requirements regarding ICUs)
- However, most regulations related to pandemic containment and crisis management are enacted by the Länder executives

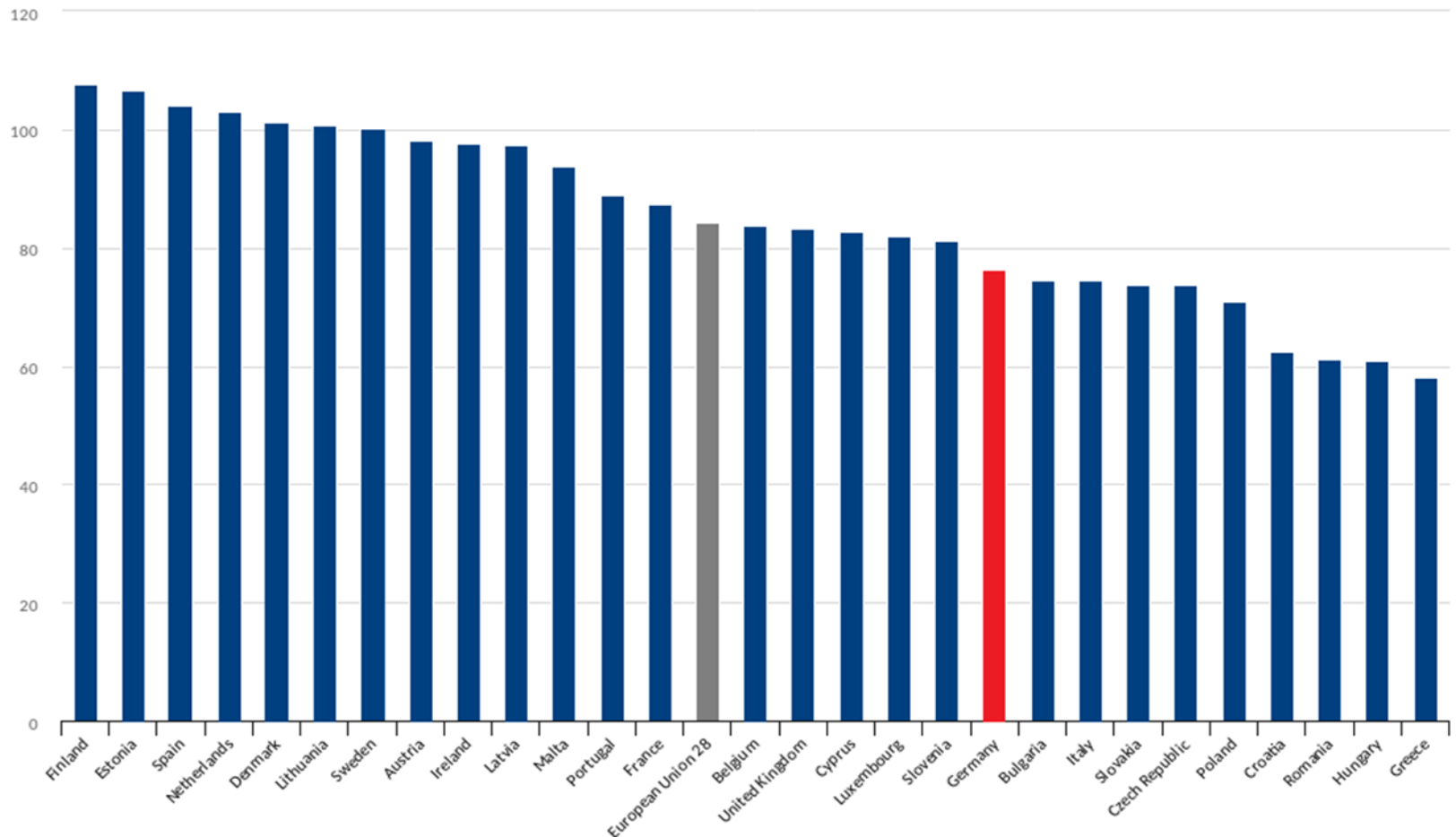
Particularities of Regulation during the Pandemic

- To secure the operational functioning of the Bundestag, initially amendment of the Basic Law was considered (legal “necessity of a physical presence of the members and other participants at meetings and in sessions of the Bundestag”)
 - Small emergency parliament (as possible in defence situations) considered
 - “parliamentary operations in a limited forms (based on the French model also discussed.
- However resistance of the opposition to rush through a constitutional change on this sensitive issues
- Solution: amendment of the Rules of Procedure
 - Quorum is possible also with more than a half of the members (applicable for plenary and committees)
 - Electronic means of voting and decision-making possible
 - Deliberations/hearings in virtual formats possible
 - All parliamentary groups switched to digital formats

The Crisis as an Accelerator of Digitalization

Crisis as an Accelerator for Digitalization

Germany's position in international rankings



digital-agenda-data.eu/charts/desi-components (2018)

Crisis as an Accelerator of Digitalization

- Crisis as an opportunity of re-enforcing investments into the digitalization of public administration
- Social Protection Package II provided for a digital proceedings and hearings regarding social and labour courts
- Changes of the General Rules of Procedure of the German Bundestag to legally facilitate virtual meetings in the plenary and in committees and voting based on a lower quorum
- Proposal of an experimental clause in the Bundestag's Rules of Procedure to permanently allow for digital meeting formats
- Economic stimulus package enacted on 4.6. grants additional measures to kick-off the economy, strengthen LGs, invest into digitalization, health capacities, sustainable technologies
 - Allocation of 4.3 billion Euro to the digitalization of public administration, including 3 billion allotted to the introduction of local e-services only
 - Speeding up the implementation of the Online Access Act

Crisis as an Accelerator for Digitalization: Implementation Status of the Online Access Act

THEMENFELDER (575 LEISTUNGEN)	FEDERFÜHRUNG BUND	FEDERFÜHRUNG LAND	MITARBEIT LAND	STATUS THEMENFELD	Planung abschließen!	Zwischenziele festgelegt	Nur noch 3 Jahre!
					ABSCHLUSS THEMENFELD	UMSETZUNG (GESETZE, SOFTWARE ROLLOUT)	BUNDESWEITE VERFÜGBARKEIT
Familie & Kind	BMFSFJ	HB	SL	Themenfeldplanung abgeschlossen	abgeschlossen	ELFE-Gesetz in Planung	bis 2022
Querschnitt	BMI	BE	BB HH TH	Durchführung Digitalisierungs-Labs	OKT 2019	nicht begonnen	bis 2022
Bauen & Wohnen	BMI	MV	BW IHW	Themenfeldplanung abgeschlossen	abgeschlossen	Rollout Wohngeld bis Dez 2019	bis 2022
Ein- und Auswanderung	AA	BB	BY BW IHW SH	Themenfeldplanung abgeschlossen	abgeschlossen	Umsetzung begonnen	bis 2022
Unternehmensführung und -entwicklung	BMWi	HH	BY HB IHW	Durchführung Digitalisierungs-Labs	NOV 2019	Umsetzung begonnen	bis 2022
Arbeit & Ruhestand	BMAS	IHW		Themenfeldplanung abgeschlossen	abgeschlossen	Umsetzung begonnen	bis 2022
Steuern & Zoll	BMF	HE	TH	Analyse / Planung	DEZ 2019	nicht begonnen	bis 2022
Bildung	BMFSF	ST	RP	Durchführung Digitalisierungs-Labs	OKT 2019	Umsetzung begonnen	bis 2022
Forschung und Förderung	BMI	BY		Vorgepräche	DEZ 2019	nicht begonnen	bis 2022
Recht & Ordnung	BMJV	SH		Themenfeldplanung abgeschlossen	abgeschlossen	Planung begonnen	bis 2022
Umwelt	BMU	SH RP		Themenfeldplanung abgeschlossen	abgeschlossen	Umsetzung begonnen	bis 2022
Gesundheit	BMG	HI		Themenfeldplanung abgeschlossen	abgeschlossen	Planung begonnen	bis 2022
Engagement und Hobbies	BMI	KSV IHW SH		Analyse / Planung	JAN 2020	nicht begonnen	bis 2022
Mobilität & Reisen	BMM	HE BW		Themenfeldplanung abgeschlossen	abgeschlossen	Planung begonnen	bis 2022
Hier spielt die Musik!							

Obstacles to digitalization in Germany

- Numerous reasons for digitalization backlog
- Legalistic administrative culture → high number of written form and documentation requirements + authentication and attendance requirements (norm screening by the federal government has so far been unsuccessful)
- Historically rooted fear of the "transparent citizen" → restrictive data protection regulations; no modernization of the data protection law and privacy rules
- Technical/structural problems: lack of basic digital components, e.g. for "once only" (need of comprehensive modernization of registries; current legislative proposal → intense political debates because of privacy concerns)
- Capacity problems (personnel, IT/process know-how)
- Missing overall digital architecture in the federal system (decentralized systems and solutions do not fit/connect to central/standardized digital components)
- Governance problems in the federal multilevel system

