

# Regulatory Impact Assessment (RIA): a Driver for Evidence Based Policy Making

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# The National Regulatory Control Council (NKR) - Promotor of Evidence Based Policy Making in Germany

- Independent advisory body located at the Federal Chancellery (since 2006)
- Comprises ten members from businesses, the sciences and public administration appointed by the head of state
- Professional secretariat (15 employees; located in Chancellery)
- 3<sup>rd</sup> term of office
- Legal Basis (NKRG 2006), 2011 Extended Mandate

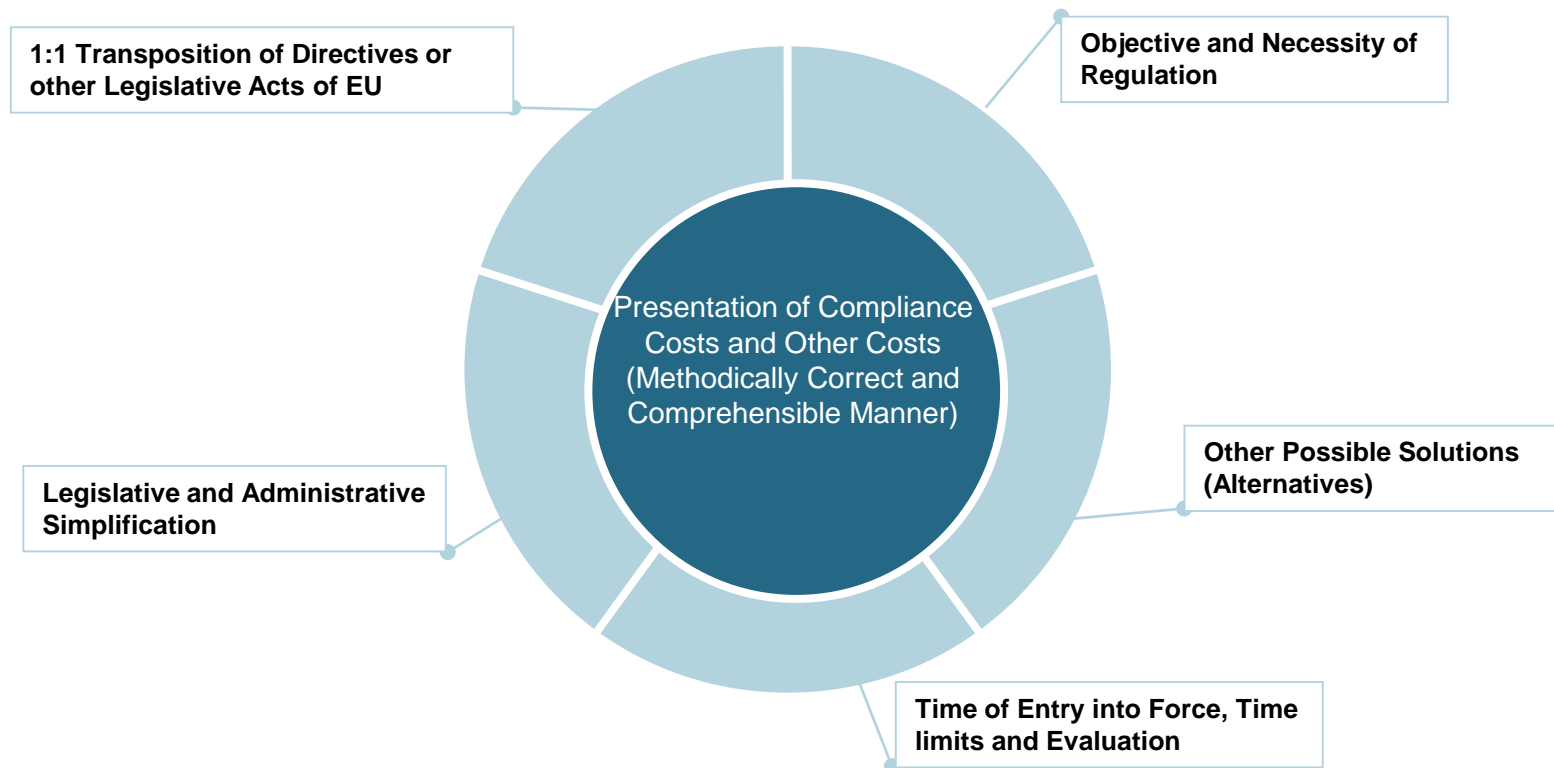


# Tasks of the NKR and the Review-Process

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

Reduction of existing regulatory burdens

Avoid the creation of new regulatory burdens

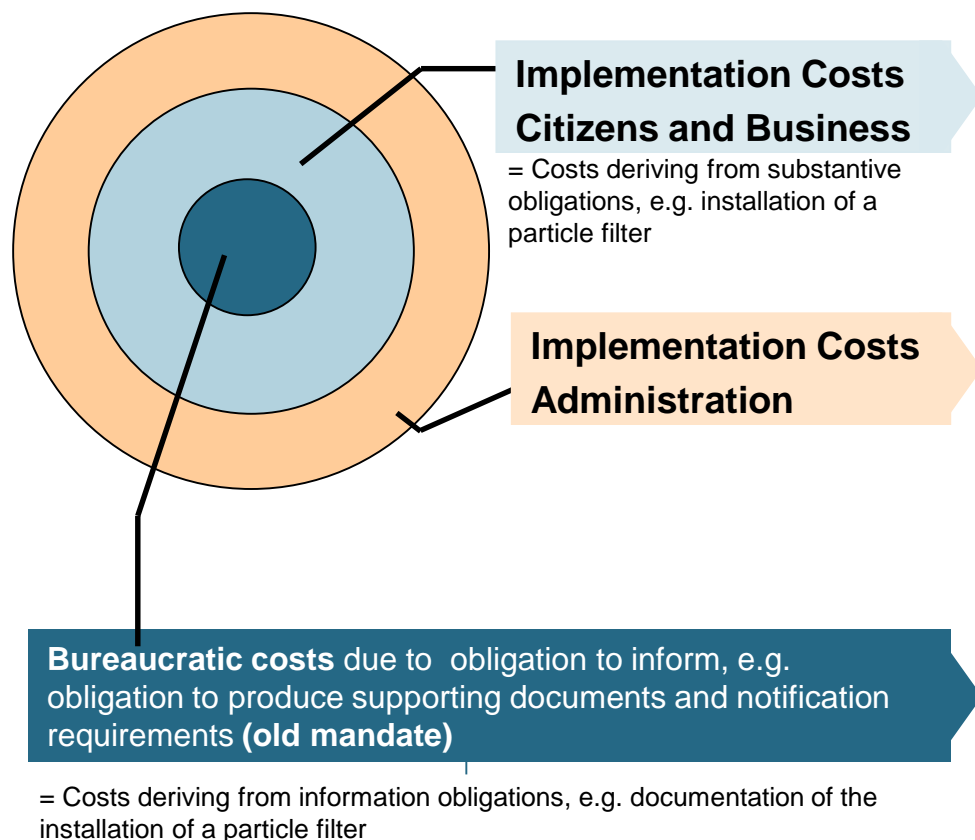


● Core Review Activities of NKR acc. to Section 1 (3) of NKRG    ☞ Other Issues to be Reviewed acc. to Section 4(2) of NKRG

# From bureaucratic costs to compliance costs

**Since July 2011: assessment of compliance costs of each new proposal = Ex ante scrutiny regarding all laws and regulatory provisions**

What is included in „compliance costs“?



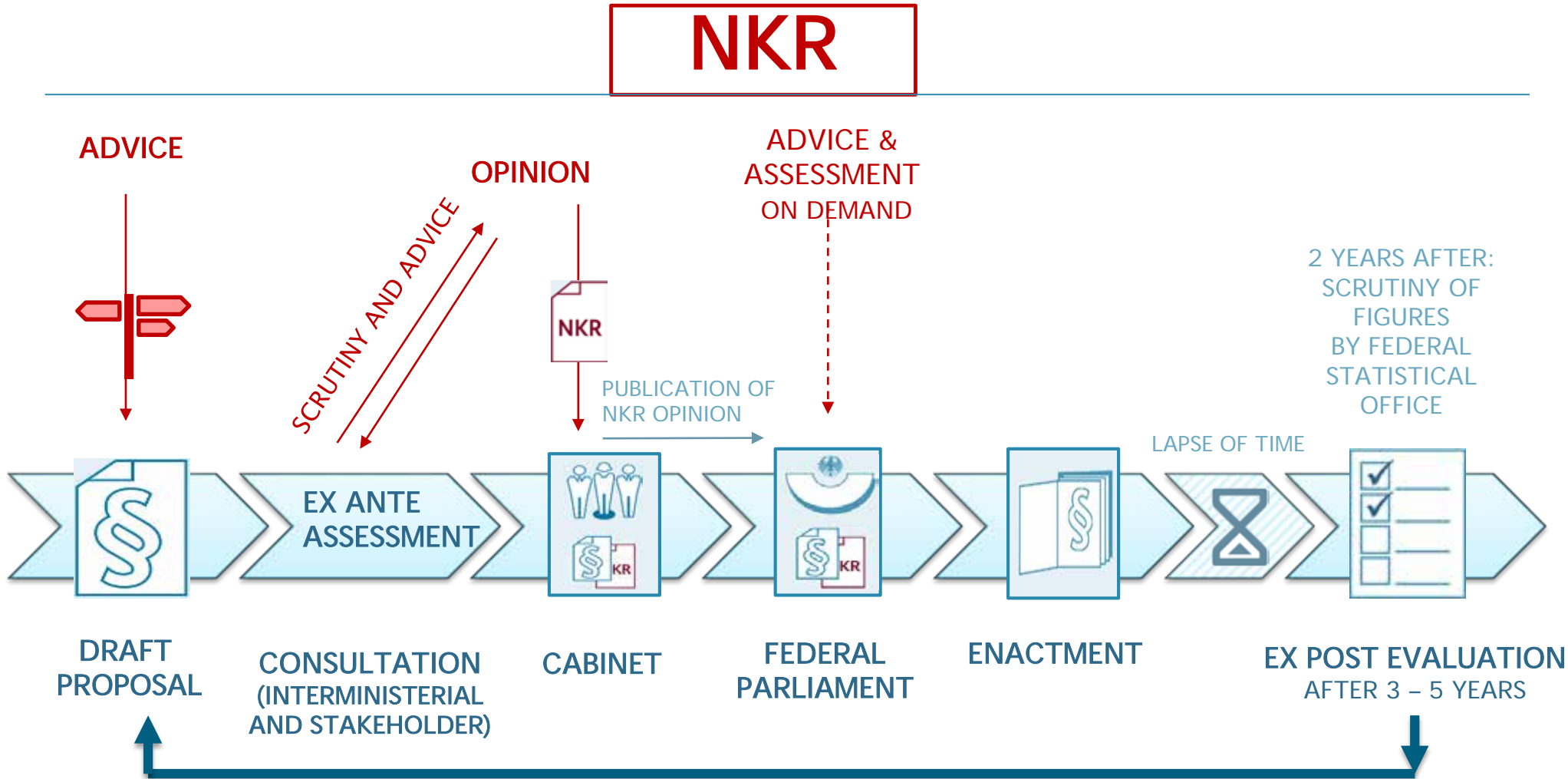
**Example:  
Modifications of the German Medicines Law**

§ **Costs of inherent obligations: 50.2m €**  
§ Measures reducing and improving the use of antibiotics (hygiene measures, changes in vaccination regulations)

§ **Costs of public administration of the Länder: 22m €**  
§ Provision and maintenance of a data base  
§ Processing of transmitted data  
§ Monitoring of measures minimizing the use of antibiotics

§ **Bureaucratic costs of the private sector: 5m €**  
§ Quarterly reports on the use of anti-microbial substances

# The NKR's Function in the Legislative Process





# Example for an NKR Opinion

**Nationaler Normenkontrollrat**

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Berlin, 27. August 2018

**Opinion of the National Regulatory Control Council pursuant to § 6(1) NKRGG**  
**Legislative Proposal to introduce accreditation rules for commercial estate agents and real estate managers**  
 (NKR Nr. 3469)

The National Regulatory Control Council has scrutinized the following legislative proposal including its impact assessment:

**Executive Summary**

Criteria	No impacts
Businesses	
Recurring compliance costs:	18.3 m EUR
Share of administrative costs:	88.000 EUR
One-off compliance costs:	3.3 m EUR
Other recurring costs (charges):	1.8 m EUR
Other one-off costs (charges):	8.9 m EUR
Public Administration	
Recurring compliance costs:	158.730 EUR
One-off compliance costs:	1.6 m EUR
'One in one out'-rule	With regard to the Government's 'one in one out'-rule, the recurring compliance costs for businesses qualify as an 'in' of 18.3 m EUR.
Objective and necessity of the legislative proposal	NKR judges that the ministry did not ascertain both the objective and the necessity

**Small and Middle Enterprises**

Estate agents and real estate managers usually meet the criteria of small and middle enterprises (SME). Therefore, these SMEs are subject to particular burdens, caused by the increase of insurance premiums in case of an obligatory insurance. Larger enterprises usually have reasonable master agreements and are therefore not affected to the same degree as SMEs.

Measures causing fewer burdens for SMEs are not apparent, which is plausible from the NKR's point of view. The NKR appreciates the so-called grandfathering-clause regarding enterprises which have been active in the market for many years; these enterprises do not have to comply with the future rules.

With regard to shortcomings concerning the objective, the necessity of the legislative proposal and the lack of analysed alternatives, the NKR states that the legislative proposal does not meet the legal requirements. Therefore, the NKR, in accordance with its statutory mandate, raises serious concerns regarding the account of the impact assessment.

**8. In Einzelnen**

**8.1 Regelungsinhalt**

Bestimmte Berufsgruppen, darunter die Immobilienmakler, benötigen für die Ausübung ihrer Tätigkeit eine gewerberechtliche Erlaubnis. Mit dem Regelungsvorhaben sollen die bisher ausgenommenen Wohnungspolizeiverwalter (WEG-Verwalter) in den Kreis der erlaubnispflichtigen Berufe einbezogen und zugleich die Erfordernisse für die Erlaubniserteilung erweitert werden: Sowohl Immobilienmakler als auch WEG-Verwalter sollen künftig einen **Sachkundenschweis** führen, WEG-Verwalter darüber hinaus auch eine **Berufshaftpflichtversicherung** nachweisen müssen. Das Vorhaben zielt auf Qualitätssteigerung von Makler- und Verwalterdienstleistungen sowie auf Stärkung des Verbraucherschutzes vor finanziellen Einbußen.

Der Zusammenhang zwischen fehlender Sachkenntnis und erhöhtem Schadenrisiko wird im Regelungsentwurf behauptet, aber nicht empirisch belegt. Auch zur Höhe durch fehlendes Sachkenntnis verursachter Schäden macht das Ressort keine Angaben. Eine vom NKR durchgeführte Anhörung hat weder diesen Zusammenhang noch entsprechende Schäden bestätigt. Sowohl die Tätigkeit eines WEG-Verwalters als auch die eines Immobilienmaklers weist eine relativ geringe Schadenstätigkeit auf, was sich auch in den relativ geringen Prämien der heute schon existierenden freiwilligen Haftpflichtversicherung widerspiegelt. Schäden entstehen in erster Linie durch vorsätzliches Verhalten (z.B. Veruntreuung von WEG-Geldern durch WEG-Verwalter). Dieses Fehlverhalten könnte jedoch weder durch einen Sachkundenschweis vermieden noch durch eine Haftpflichtversicherung abgedeckt werden.

**8.2 Vorgaben, Erfüllungsaufwand und Weitere Kosten**

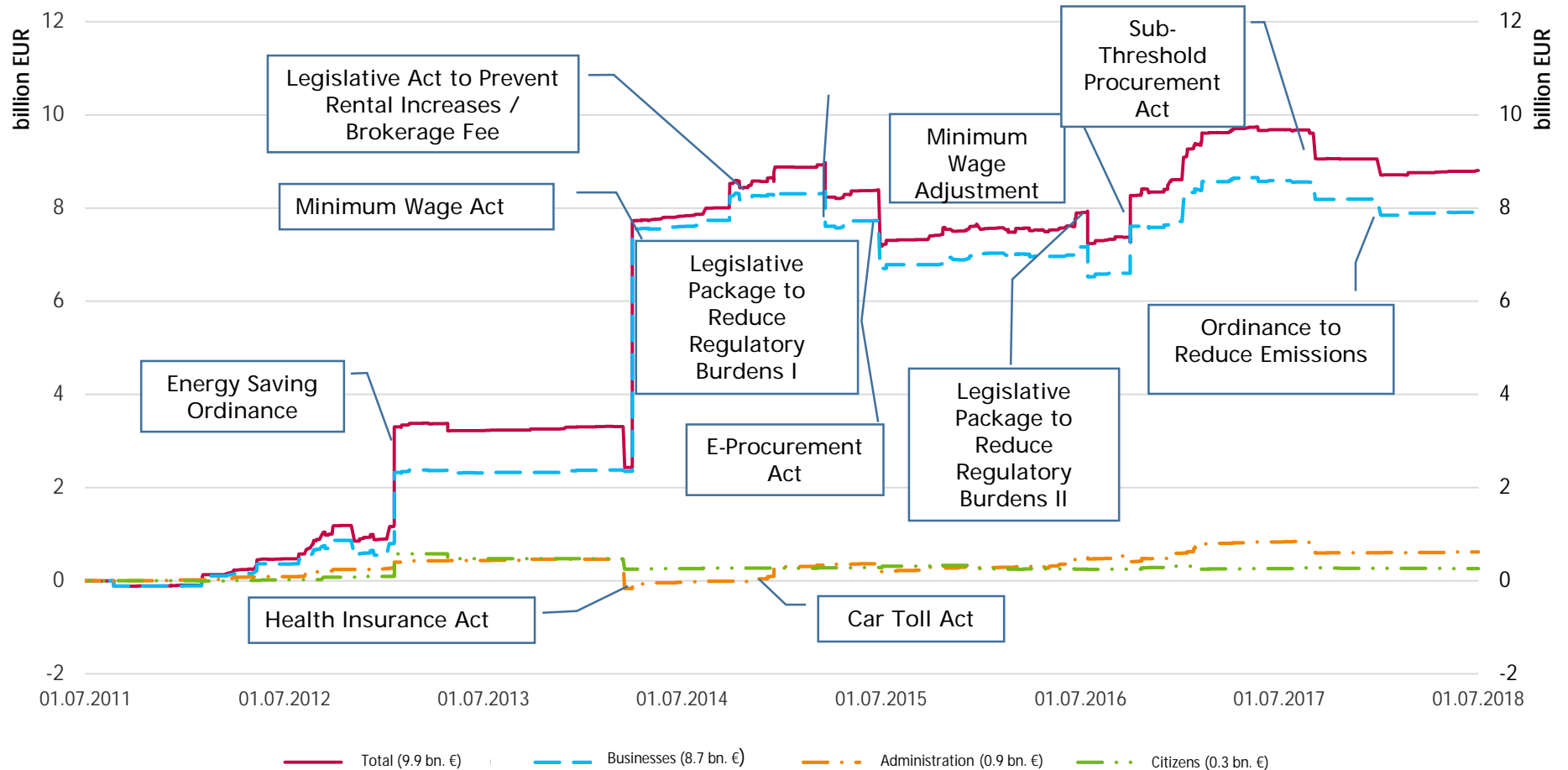
Das Regelungsvorhaben betrifft rund 27.000 Immobilienmakler sowie rund 17.700 WEG-Verwalter. Bei den insgesamt also 44.700 Normadressaten handelt es sich überwiegend um kleine und mittelständische Unternehmen.

**Sachkundenschweis**

Immobilienmakler und WEG-Verwalter, die ihr Gewerbe **nachweislich seit mindestens sechs Jahren** ununterbrochen ausüben, sind von dem neuen Sachkundenschweis befreit. Der **Befreiungstatbestand** greift nach Einrichtung des BMWV für die Hälfte aller

With regard to the shortcomings concerning the objective, the necessity of the legislative proposal and the lack of analysed alternatives the NKR states that the legislative proposal does not meet the legal requirements. Therefore, the NKR, in accordance with its statutory mandate, raises serious concerns regarding the account of the impact assessment.

# Recurring Compliance Costs since 2011



# One In, One Out

Borrowed from the UK

# OIOO

for each new proposal generating compliance costs for businesses (“**In**”) a equivalent cost relief has to be proposed (“**Out**”) in the same or a different legislative proposal at the latest until the end of legislative period

## Exceptions

for the 1:1 transposition of EU legislation in national laws = weakness of the approach

## Target Group:

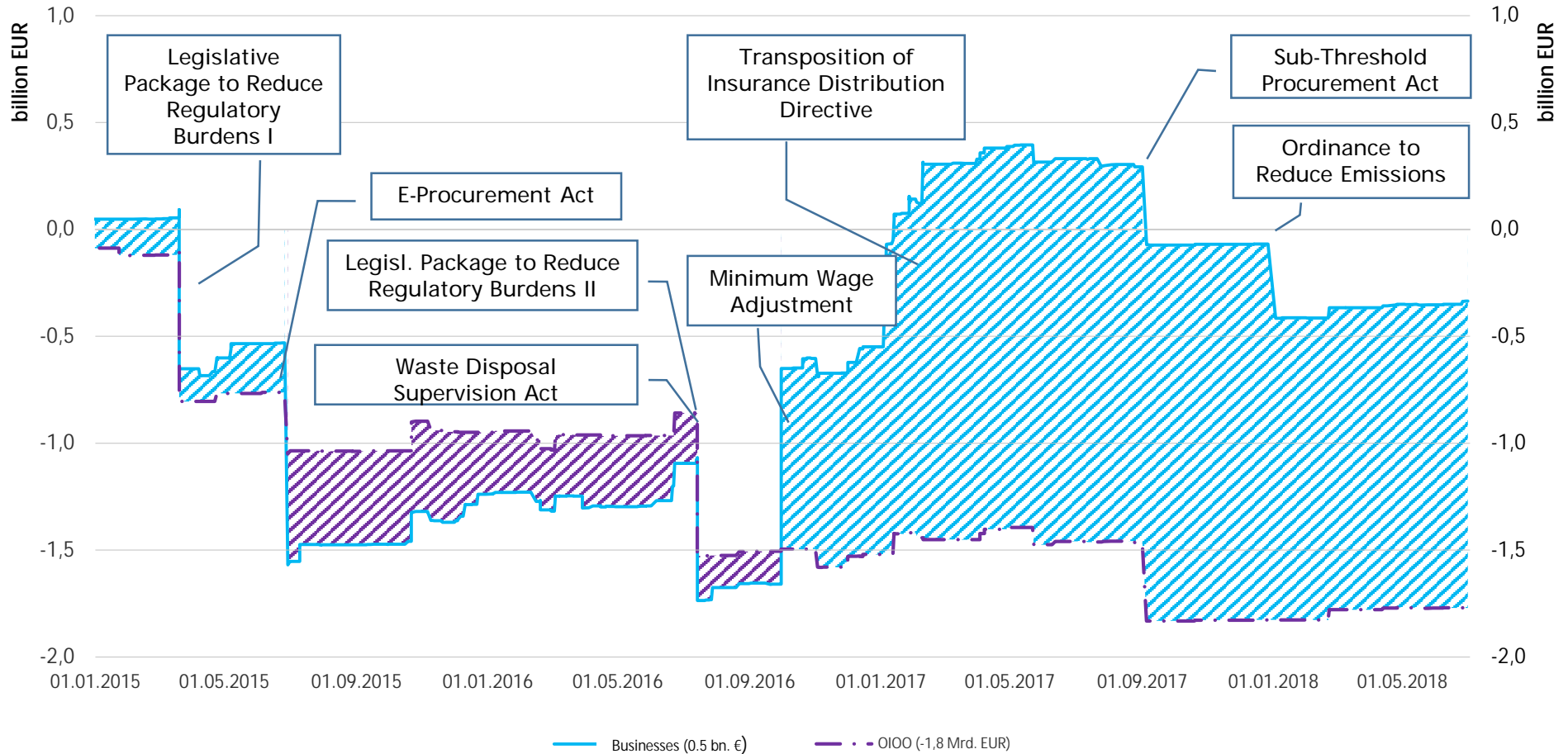
Businesses

## Positive Results after 2.5 Years:

trend of increasing compliance costs slowed down;  
cost relief for businesses since 2015 by 1,8 Billion Euro



# OIOO Stocktake since 2015



# EX – POST-Evaluation – Focusing on Effects

## IV. Conclusions

- Against the backdrop of reducing unnecessary financial consequences:
  - Adjustment of rules > new legislative procedure
  - Optimisation of the administrative process

## I. Legislative Procedures

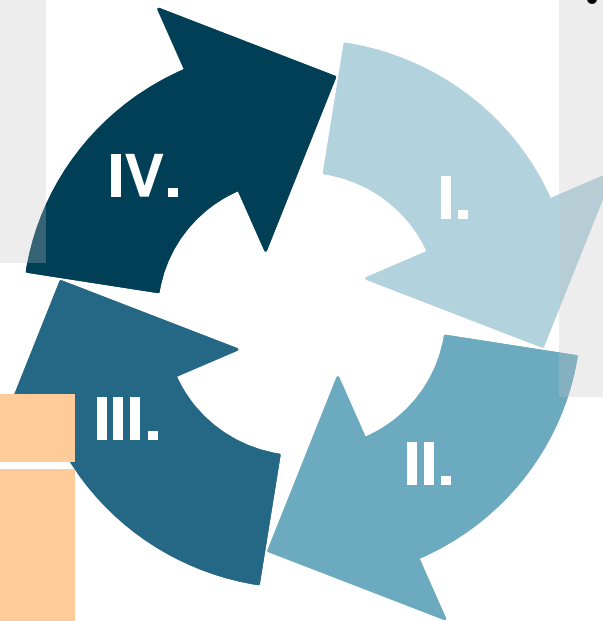
- Federal Government Decision
  - Ex-ante stipulation of evaluation criteria in regulatory initiatives and/or the explanation relating thereto
  - For all essential projects (above a threshold of € 1 million for compliance costs)

## III. Evaluation

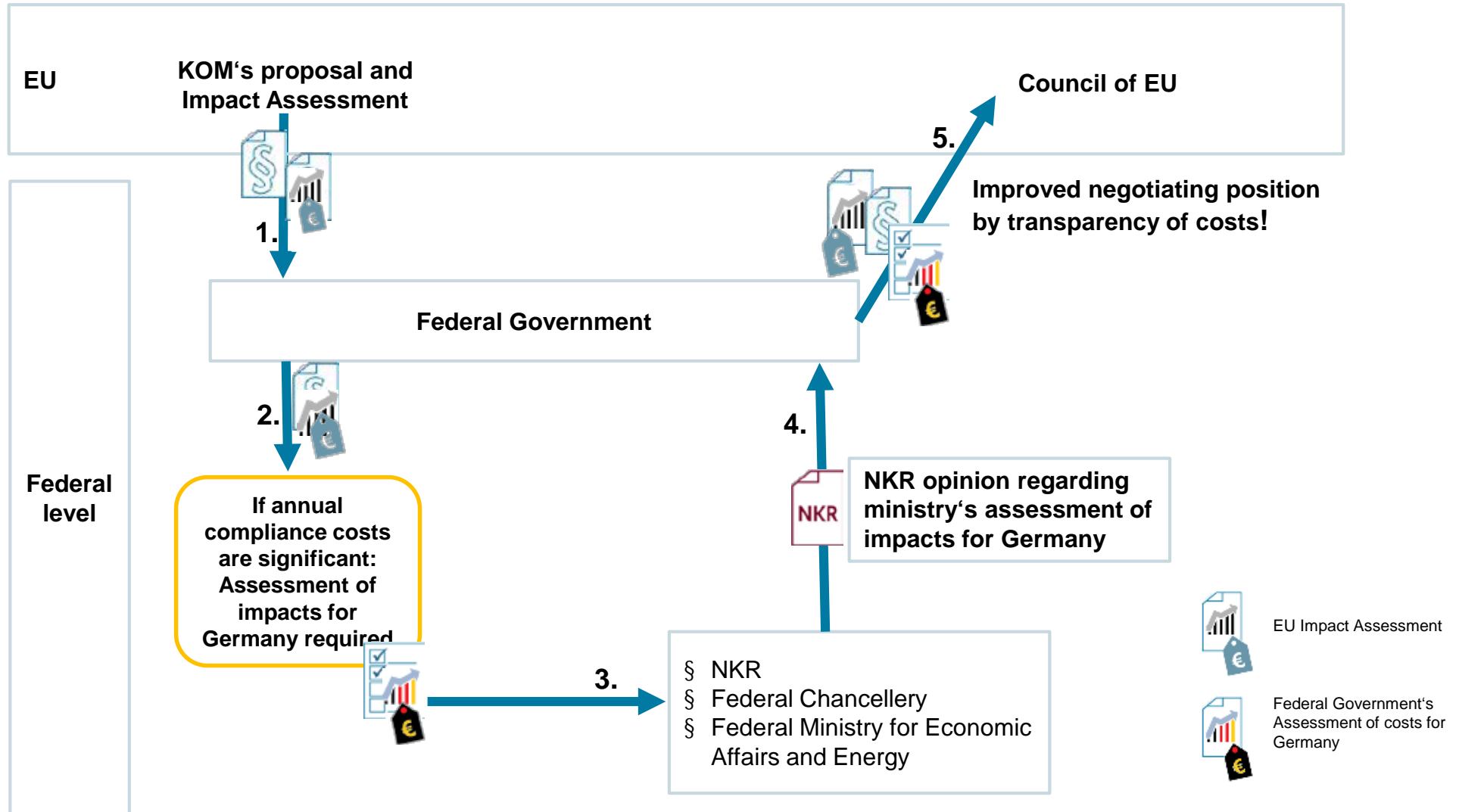
- Usually takes place 3 to 5 years after a regulatory initiative has become effective
- Review of the evaluation criteria
  - Target attainment
  - Cost efficiency

## II. Implementation/Application of the Legislative Act

- For the first time a systematic approach has been introduced
- Study available on best practises of evaluation (UK, Sweden, Canada as well as the system of the EU-COM)



# EU ex ante - Process



**THANK YOU FOR YOUR ATTENTION!**

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