



Nationaler  
Normenkontrollrat



**Expert Report by**  
**IfG.CC – The Potsdam eGovernment Competence Center**  
**commissioned by the**  
**National Regulatory Control Council**

**“Implementation-oriented legislation: How can the EU, the Federal Government, the Federal States and municipalities determine the follow-up costs of legal requirements better?”**

**Summary**

**Full report available here:**  
**[www.normenkontrollrat.bund.de](http://www.normenkontrollrat.bund.de)**

**Berlin, April 2015**

## The current situation

Since 2011, the Federal Government assesses the so-called compliance costs of legal requirements, i.e. the follow-up costs imposed on citizens, the business sector and public authorities due to federal laws, regulations, and administrative provisions. The aim is to make these compliance costs transparent and, if possible, to reduce them before the cabinet adopts the draft regulations.

Compliance costs imposed on public authorities as a result of the implementation of federal legal requirements are also known as administrative costs. These administrative costs are incurred primarily by administrations at the Federal State and municipality levels. With respect to estimating the administrative costs involved, the Federal Government must rely on the Federal States and municipalities, as it often does not have sufficient information. It is difficult for the authorities in the Federal Government to efficiently obtain the relevant knowledge about administrative practices and compliance costs and to ensure that they are considered appropriately. The situation is similar at the EU level, where the challenge is also to base impact assessments on precise figures. Just like the Federal Government, the EU relies on information from the administrative (sub)level – in this case from member states.

## The aim of this report

Placing the legislation process on an implementation-oriented footing and effectively integrating the process of determining accurate compliance costs into the legislation process are therefore problems that extend across the whole multi-level system of governance, from the EU through the level of Federal Government down to the Federal States and municipalities. The aim of this report is to find out how administrative knowledge is obtained within Germany and by the EU with regard to Germany and the other member states. Basis for the analysis are legal, organizational and other parameters which influence the degree and quality to which administrative knowledge and cost-related figures are considered and exchanged between the levels of government.

## The scope of the analysis

The report is based on the identification and analysis of the legislation process at the EU and German Federal Government levels. This was achieved by analyzing documents on legal bases and other documents, interviewing experts, and modelling administrative processes. The analysis of the processes and the development of recommendations were based on the following categories:

- **Institutional framework** – i.e. the legal conditions governing when and under what circumstances administrators may be involved in the assessment of compliance costs as well as the institutional frameworks which determine the responsibilities and incentives to request and provide administrative knowledge;
- **Procedures** – i.e. the regulation of procedures, deadlines, methods, and tools for assessment of administrative costs;
- **Resources** – i.e. the expertise and methodology needed to retrieve or provide administrative knowledge as well as knowledge management skills to re-use existing information.

## Considering compliance costs in EU legislation

At the EU level, administrative costs are, at best, of minor importance. Although the guidance on impact assessments suggests that administrative issues should be taken into account, the administrative costs stemming from EU legal requirements are not in fact determined in impact assessments. One reason for this is that European institutions, above all the European Commission, are not proactive enough in requesting information from the member states. Another reason is that the member states themselves, and this applies especially to Germany, do not play an active part in the EU legislation process when it comes to administrative costs. Thus, Germany is not doing as much as it could to meet its obligations, although doing so would ultimately be in its own interest. However, it would be particularly challenging for the German Federal Government to provide such administrative information, as it often does not have it readily available. This shows all the more clearly that there is a necessity to improve the structures and procedures for determining administrative costs at the national or subnational levels so as to enable an efficient and effective provision of appropriate information to the EU.

The critical legislation phases at the EU level are the “development of a road map” and the “participation of the member states” (within the so-called preliminary phase), followed by the “execution of the impact assessment” while the Commission draft is being drawn up (cf. Figure 1).

Key reasons for the lack of exchange and/or consideration of administrative information in the EU legislation process include:

- **Institutional framework:** There are no provisions on how administrative costs are to be considered; the preliminary phase, which is crucial for administrative knowledge, is neglected and information is considered at too late a stage; there are no formal obligations and only minor incentives to address administration issues at all.

- **Procedures:** There is no methodical basis or proper procedure to determine administrative costs and to extrapolate them for the EU as a whole; there is no technical support (tools).
- **Resources:** There is no broad methodological or procedural competence for gathering and using administrative knowledge; there is no systematic processing, analysis or re-use of administrative knowledge that has been gathered (no knowledge management).



## EU Level: Critical Phases for Administrative Costs

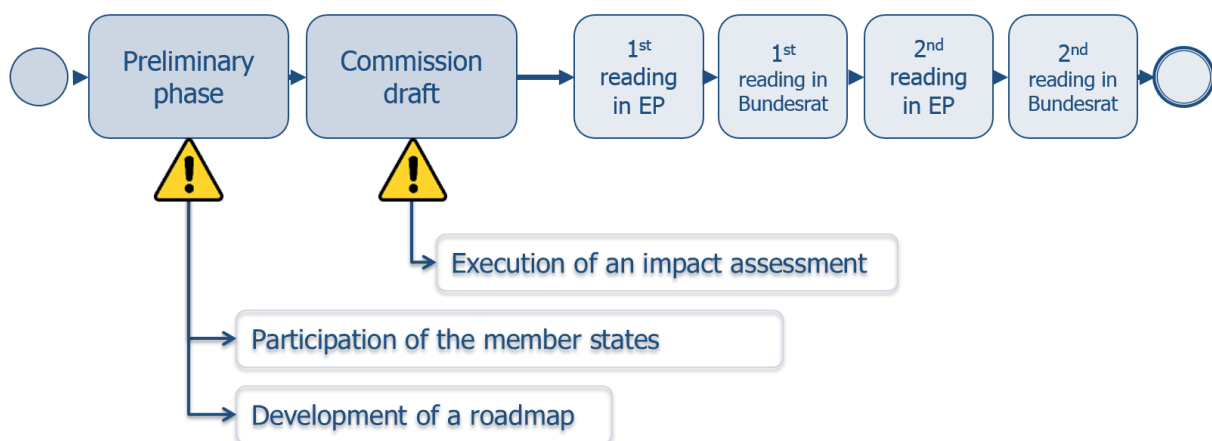


Figure 1: Critical stages in the EU legislation process with respect to the determination and consideration of information on compliance and administrative costs

The following key recommendations can be derived from the analysis for the EU level. They rely largely on the use of existing institutions, procedures and competences. In other words, the recommendations aim to develop existing elements further and to optimize the way they work together.

**A) The obligation to determine administrative costs and to involve administrators in the process should be enhanced**

1. **The EU's obligation to request information and the member states' obligation to provide it should be formalized:** Both the member states and the EU itself should deal with the administrative costs incurred due to EU legislative acts more thoroughly and systematically. Therefore the legal obligation to request and provide figures on administrative costs should be strengthened. That means that, on the one hand, the EU must request administrative knowledge and costs from the member states, and, on the other, the member states must undertake or be required to undertake to provide the information needed in a systematic manner.
  
2. **The positions of the oversight bodies of the EU and Federal Government levels should be strengthened:** Formal requirements for impact assessments can only be effective if the assessment is carried out by the addressees, and this generally requires an institution to supervise the process. On the European level, the Regulatory Scrutiny Board (RSB) that is soon to be appointed could assume this supervisory role. However, the RSB would need to be further developed before it could perform this task. The aim should be to make the RSB a completely independent supervisory and advisory body. This development should be accompanied by similar structures in the Council and the European Parliament. There is also a need for oversight bodies on the member states' level to ensure that government departments check the plausibility of the EU's cost assessments and provide the necessary data. The proposal is for the National Regulatory Control Council (NKR) to be involved in this step in Germany. Within the government, such a role could perhaps even be assumed by the Federal Chancellery, the Ministry for Economic Affairs, and/or the permanent representation in Brussels, all of which already deal with EU matters.
  
3. **Administrative knowledge and figures on administrative costs should be considered at an early stage:** It is only possible to compare the cost effectiveness of different implementation options if the figures on administrative costs are fed into the legislation process at an early stage, i.e. while there is still time to weigh up alternatives. The EU should therefore request information on administrative costs in the preliminary phase while the impact assessment is still being drawn up.

**B) Procedures should be defined; methodological and procedural competence should be developed; user-friendly tools and resources should be provided; a**

### **knowledge management system should be set up**

4. **Impact assessment procedures should be standardised and tailored more towards assessing compliance and administrative costs:** The recommendation is to better structure the impact assessment procedure and make it more systematic. Compliance costs in particular should be factored in to a greater extent than at present and due consideration should be given to the administrative knowledge of member states.
5. **Established cost assessment methods should be considered and further developed:** It seems important for the EU to build upon the experience of the member states, for instance by developing its methods in line with the OECD's guidance on the assessment of compliance costs.<sup>1</sup> It seems inefficient to carry out a survey on all the member states for every impact assessment. Instead, a method should be devised to ensure that selective requests for information and responses from member states are representative. It would also make sense to use country-specific fixed rates that reflect country-specific differences.
6. **Information on administrative costs should be processed and re-used:** Standard rates and fixed administrative rates are determined by means of statistical analyses. They require a broad information base. However, the EU currently has no systematically compiled information base at its disposal. If such an information base were to be compiled, it could be re-used whenever changes are made to the law. It is also conceivable that cost simulations based on a combination of generalized administrative models and country-specific fixed rates could be carried out for new regulations.
7. **A user-friendly tool should be developed to retrieve information on administrative costs:** In order to minimize the work required to determine compliance and/or administrative costs, it would be advisable for the relevant procedures to be supported by a user-friendly tool. This online tool should allow figures on national administrative costs to be compiled in a structured and methodically appropriate manner, analysed and accumulated without the personnel involved having to have any advanced methodological and procedural skills. Another recommendation is for relevant help and FAQs to be integrated within the tool and made available online.

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<sup>1</sup> OECD (2014), OECD Regulatory Compliance Cost Assessment Guidance, OECD Publishing.  
<http://dx.doi.org/10.1787/9789264209657-en>

### **C) Responsibilities and resources should be assigned and a cross-level compliance costs network should be established**

8. **Better use should be made of EU expert working groups:** To conduct plausible assessments of compliance costs, the personnel involved must fully understand the regulations and their practical applications. In the existing EU expert groups, legislation experts team up with representatives of the member states responsible for the administration. These expert groups should therefore be used more actively to discuss the compliance and administrative costs incurred due to new regulations and to consider a variety of administrative options in their assessments. As German representatives in these expert groups generally come from the Federal Government level, they first have to request administrative knowledge from the Federal States and municipalities and then use it to make proposals for adjustments to planned EU legislative acts.
  
9. **The post of a compliance costs commissioner should be established in the Directorates-General:** A central contact unit for all issues concerning the assessment of compliance costs should be set up in each Directorate-General. The staff of this central unit should have specialist knowledge of the methods and procedures applied in the assessment of compliance costs. This can be achieved by having them specially sensitised and trained and integrated into an EU-wide or cross-member state network of experts on compliance and administrative costs.
  
10. **EU legislation advisors should be sensitised, trained and motivated:** EU legislation advisors should also be more sensitised than at present to compliance cost assessment issues. This can be achieved by training, for instance. At the same time, the advisors should be provided appropriate help in the form of the aforementioned software tools and guidance, etc. The assignment of greater importance to the subject in personnel performance reviews could act as a positive incentive for members of the staff.

## **Consideration of administrative costs in Federal Government legislation**

The challenges inherent in the exchange of information between the Federal Government, Federal States and municipal administrators are similar in structure to those in the relationship between the EU and its member states. In contrast to the EU level, a methodology exists for determining compliance and administrative costs, but there is still no established procedure

for the Federal Government to systematically and regularly consult the administrators or for administrators to provide reliable and informative feedback to the Federal Government. The flow of information between the Federal Government, Federal States and municipalities is impeded by a lack of political attention, a lack of commitment, late involvement and insufficient time, too few points of contact and too little in the way of procedural support and tools. Successes remain the exception and are usually the result of chance "good will" on the part of the personnel involved and other favourable circumstances (such as sufficient time, trained staff, availability of information and expert groups).

The critical phases in the federal legislation process in terms of administrative costs are the preliminary phase in which the so-called benchmark paper is drawn up, the "write and agree departmental draft" phase and the phase in which the Bundesrat position paper is taken. This paper is handed in after the cabinet decision has been taken and prior to being discussed in the Bundestag (cf.

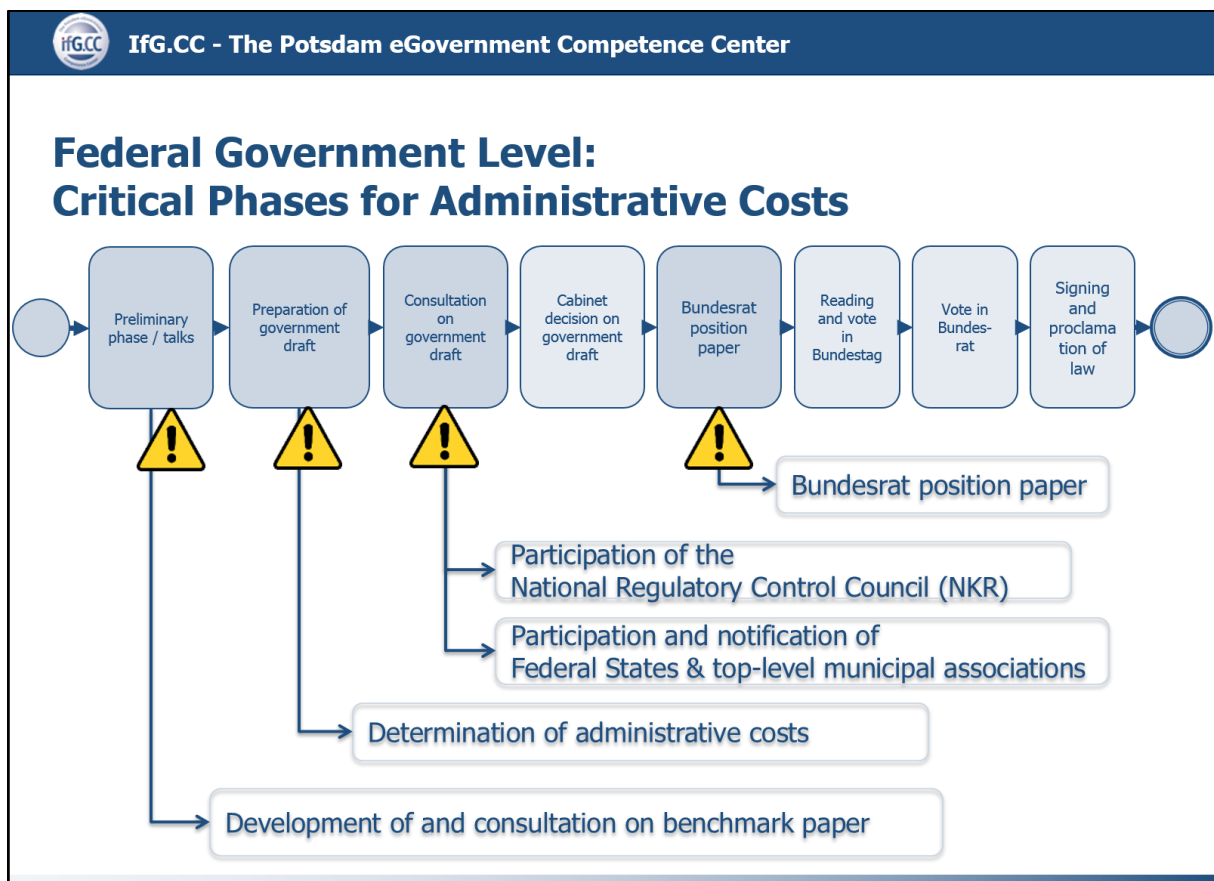


Figure 2).



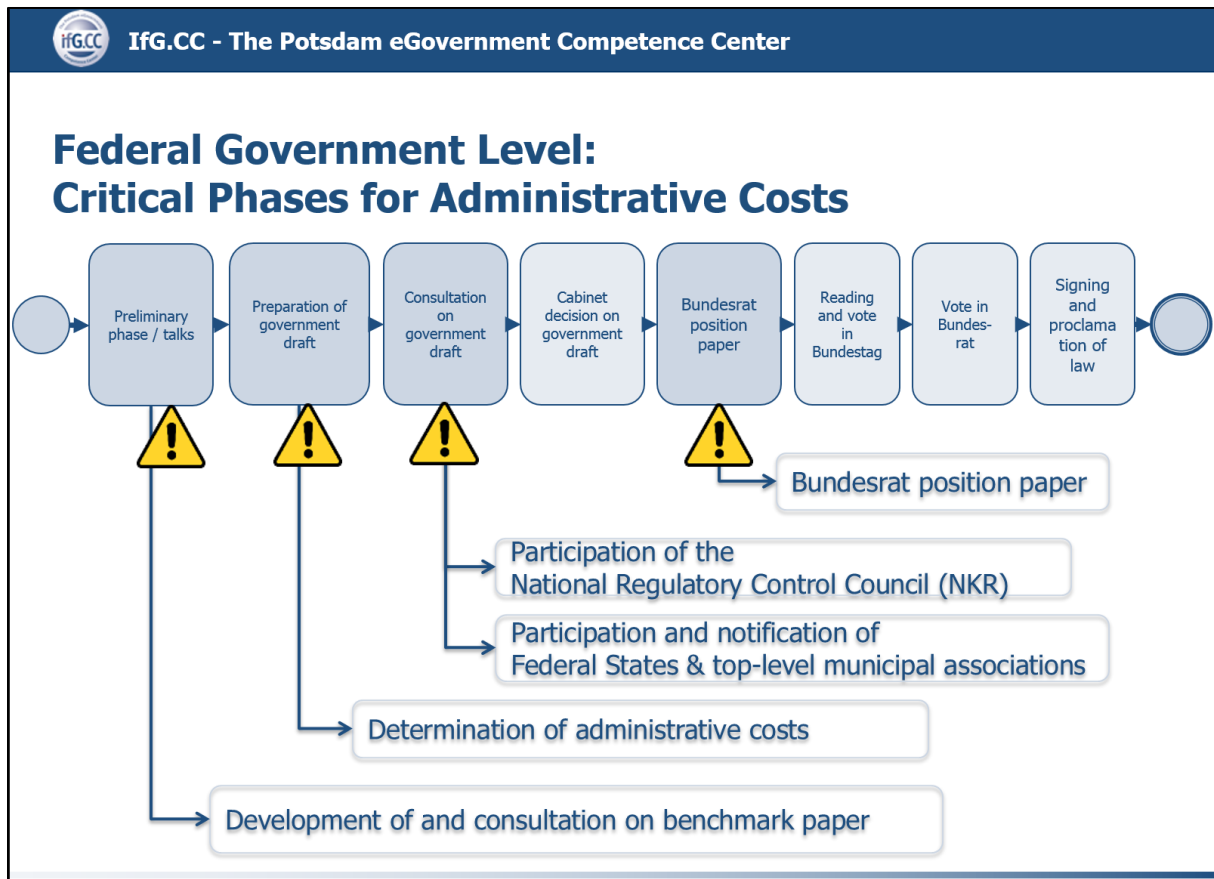


Figure 2: Critical stages in the Federal Government legislation process with respect to the determination and consideration of information on compliance and administrative costs

Key reasons for the lack of exchange and/or consideration of administrative information in the Federal Government legislation process include:

- **Institutional framework:** a lack of legal specification, e.g. regarding the necessity, schedule and deadlines for the request of administrative knowledge from Federal States and municipalities; neglect of the preliminary phase, which is so important for administrative knowledge; low incentives for Federal States to provide administrative information (possibly for fear of benchmarking and related action); the unclear role of the Bundesrat; lack of competence, especially among the administrators required to provide information;
- **Procedures:** uncoordinated and unsystematic requesting of information on administrative costs by the Federal Government; no stipulation of procedures or deadlines; infrequent use of the existing Federal Government/Federal State expert groups; little focus on the process in the assessment of costs; no technical procedural support (tools);
- **Resources:** There is no broad methodological or procedural competence for gathering

and using administrative knowledge (especially among the Federal States and municipalities); there is no systematic processing, analysis or re-use of administrative knowledge that has been gathered (no knowledge management); there is only sporadic use of process models.

The following key recommendations can be derived from the analysis for the Federal Government level. As is the case at the EU level, these recommendations rely largely on the use of existing institutions, procedures and competences. In other words, the recommendations are aimed at further developing existing elements and optimising the way they work together.

**A) The obligation to determine administrative costs and to involve administrators should be enhanced**

1. **The obligation of the Federal Government to request information and the obligation of the Federal States / municipalities to provide it should be formalised:** The first step towards ensuring that the issue of administrative costs is addressed more thoroughly and more systematically is to enhance the legal obligation involved. Although the role of the Federal States and top-level municipal associations is laid down in the Common Rules of Procedure of the Federal Ministries, these rules make no specific reference to the determination of administrative costs. Similarly, there are no binding stipulations or agreements in or with the Federal States and municipalities regarding the provision of such information.
2. **The positions of the procedural watchdogs at the Federal Government level should be strengthened:** The effectiveness of formal stipulations crucially depends on their being complied with and enforced. The recommendation is therefore that, in addition to the National Regulatory Control Council, both the Federal Chancellery and the Bundesrat should pay closer attention to whether administrators are appropriately involved in the process and, if necessary, insist that they are. As the Bundesrat is the first institution to deal with the issue, it in particular could take a firm position on whether the administrative information is adequate and/or considered adequately.
3. **Administrators should be involved at an early stage and sufficient reporting time should be granted:** The recommendation is for the first cost estimates to be already requested and provided in the preliminary phase, as this would allow the

administrative costs to be estimated as early as possible and a “true” examination of alternative policy and implementation options to be conducted. Administrators should be granted at least four weeks’ reporting time for the final determination of the administrative costs.

**B) Procedures should be defined; methodological and procedural competence should be developed; user-friendly tools and resources should be provided; a knowledge management system should be set up**

4. **Procedural and methodological issues should be settled and processes should be structured in advance:** Despite the fact that the methodology applied for determining compliance and administrative costs is established, there is no standardised and systematic procedure for involving administrators in determining administrative costs. It would seem sensible to agree on such procedures and to present them, using simple models, in some kind of procedure handbook. Possible model procedures should also be linked with the personnel who apply them and conceivable support tools.
5. **The Federal Statistical Office, a neutral cost assessment institution, should be granted direct access to selected administrators:** In order to shorten reporting channels and ensure that the procedure applied is efficient, the Federal Government should have the option to request administrative knowledge directly from municipalities. One conceivable way of doing this is to pool a representative number of municipalities chosen by Federal States and top-level municipal associations. The Federal Statistical Office could then directly access this pool of municipalities. By means of projection methods yet to be devised, the administrative costs could then be projected for the whole of the country with a minimum of work. The Federal Statistical Office should be strengthened in its role as a “neutral cost assessment institution”, and its involvement should be mandatory and binding. Another conceivable option is that of increasing the degree to which the statistical offices of the Federal States are connected with each other.
6. **Information on administrative costs should be re-used, processed and combined with other administrative models:** The work required to estimate administrative costs could be reduced by re-using data already collected and setting standard rates and fixed administrative rates based on this data. These fixed administrative rates could also conceivably be combined with other, more general administrative models. In this way, the impact of legal requirements and

their follow-up costs could be simulated and estimated (approximately at least) for a variety of administrative options. Existing model regions and trial areas could be of assistance in this. In addition, standardised process elements could be developed and then re-used and combined for a variety of specialist processes as required. Relevant methods and procedures are available or under development in connection with the IT Planning Council's FIM (Federal Information Management) project.

7. **A user-friendly tool should be developed to retrieve information on administrative costs:** In order to minimise the work required to assess compliance and/or administrative costs, the relevant procedures should be supported by a user-friendly tool. This tool should allow figures on the administrative costs retrieved to be compiled in a structured and methodically appropriate manner, analysed and accumulated without the personnel involved having to have any advanced methodological and procedural skills. Relevant help and FAQs could be integrated within the tool and/or be made available online. Ideally, the tool would be integrated as a module in the "e-legislation" project, meaning that methods, procedures and help for assessing compliance costs would be an integral part of a workflow-based legislation software package. This would make it considerably easier for legislation advisors to comply with and apply provisions.

**C) Agreement should be reached on responsibilities and resources and a cross-level compliance costs network should be established**

8. **Better use should be made of Federal Government and Federal State expert working groups:** To conduct plausible assessments of compliance costs, the personnel involved must fully understand the regulations and their practical applications. There are experts with these competences in the Federal Government and Federal State working groups. These working groups should therefore be used more actively to discuss the compliance and administrative costs associated with new regulations and to consider alternatives in their assessments. Although these groups cannot do this down to the last detail or fully due to having only benchmarks and initial rough drafts at their disposal, it should at least be possible for them to recognise potentially costly regulations as such and to earmark these for closer scrutiny later in the legislation process (an early-warning system).
9. **A cross-level network of compliance costs commissioners and**

**administrative experts should be established.** The methods and procedures for assessing compliance and administrative costs must be accepted among the specialist administrators for them to be appreciated and complied with. It would therefore seem sensible to support the existing contact units and commissioners at the federal ministries and to establish posts for counterparts at the level of the Federal States, municipalities and top-level municipal associations. These commissioners should be specially sensitised, trained and integrated into a cross-level network of experts on compliance and administrative costs (compliance cost controllers). Within this network, the Federal Statistical Office could act as a neutral “figure processor” so as to avoid any politicisation of the topic of administrative costs.

10. **Legislation advisors should be sensitised, trained and motivated.** Awareness of the issue of assessing compliance costs should be raised among both the federal ministries and the Federal States. This can be achieved by training, for instance. At the same time, the advisors should be provided appropriate help in the form of the aforementioned software tools and guidance, etc. The assignment of greater importance to the subject in personnel performance reviews could act as a positive incentive for members of the staff.

## Overview of recommendations

	EU <> Federal Government	Federal Government <> Federal States and municipalities
<b>A)</b>	<b><u>The obligation to determine administrative costs and to involve administrators should be enhanced</u></b>	
	<ol style="list-style-type: none"> <li>1. The obligation of the EU to request information and the obligation of member states to provide it should be formalised</li> <li>2. The positions of procedural watchdogs at the EU and Federal Government levels should be strengthened</li> <li>3. Administrative knowledge and figures on administrative costs should be considered at an early stage</li> </ol>	<ol style="list-style-type: none"> <li>1. The obligation of the Federal Government to request information and the obligation of the Federal States/municipalities to provide it should be formalised</li> <li>2. The positions of the procedural watchdogs at the Federal Government level should be strengthened</li> <li>3. Administrators should be involved at an early stage and sufficient reporting time should be granted</li> </ol>
<b>B)</b>	<b><u>Procedures should be defined; methodological and procedural competence should be developed; user-friendly tools and resources should be provided; a knowledge management system should be set up</u></b>	

	<p>4. Impact assessment procedures should be standardised and tailored more towards assessing compliance and administrative costs</p> <p>5. Established cost assessment methods should be considered and further developed</p> <p>6. Information on administrative costs should be processed and re-used</p> <p>7. A user-friendly tool should be developed to retrieve information on administrative costs</p>	<p>4. Procedural and methodological issues should be settled and processes should be structured in advance</p> <p>5. The Federal Statistical Office, a neutral cost assessment institution, should be granted direct access to selected administrators</p> <p>6. Information on administrative costs should be re-used, processed and combined with other administrative models</p> <p>7. A user-friendly tool should be developed to retrieve information on administrative costs</p>
<p>C)</p>	<p><b>Responsibilities and resources should be assigned and a cross-level compliance costs network should be established</b></p>	
	<p>8. Better use should be made of EU expert working groups</p> <p>9. The post of a compliance costs commissioner should be established in the Directorates-General</p> <p>10. EU legislation advisors should be sensitised, trained and motivated</p>	<p>8. Better use should be made of Federal Government and Federal State expert working groups</p> <p>9. A cross-level network of compliance costs commissioners for compliance costs and administrative experts</p> <p>10. Legislation advisors should be sensitised, trained and motivated</p>

## Concluding remarks / summary

A comparison of the parameters for determining regulatory follow-up costs at the EU and German Federal levels clearly shows that the EU and the Federal Government face similar challenges. Neither has a functioning systematic flow of information between the legislative and administrative levels. The task should be to create the necessary legal, organisational and political conditions at all the levels to ensure that the institutions involved request, provide information on administrative costs and systematically consider it in their policy-making.

As our recommendations show, the best way of improving the motivation and competence of those involved in exchanging information seems to be to combine legal requirements, motivating incentives, clear responsibilities, understandable and efficient procedures, training to enhance expertise and tools to support the methods applied. It would be best to start with the processes at work within the Federal Republic of Germany. The better the exchange of information between the Federal Government, Federal States and municipalities, the easier it would be to manage the required information at the EU level. It is possible to build on the existing structures and procedures such as those governing the participation of the Federal States and municipalities. However, this requires more than just “official assistance via existing channels”. There is a need for an institutional infrastructure that is robust enough for administrative costs to be determined regularly and at an early stage, with a minimum of work, and yet in a way that is representative and comprehensive.