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# Regulatory Impact Assessment in Austria: Promising Regulations, Disappointing Practices

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## Introduction<sup>1</sup>

As part of the general discussion on Better Regulation programmes (Mandelkern 2001; OECD 2002) a number of initiatives advancing Regulatory Impact Assessment (RIA) have been created over the recent years (Renda 2006; Jacobs 2006, Meuwese 2008). The main task of this policy instrument is to estimate the impact of regulatory alternatives before a political decision is taken. The most advanced of these assessment tools aim for an approach encompassing not only government-internal effects and administrative costs, but also effects external to the government such as economic, social and environmental impacts (European Commission 2005).

Perhaps the most important document with regard to the establishment of a system of RIA at the EU-level was the Mandelkern Report (named after the chair of the relevant working group), which in 2001 included RIA as a central element of the Action Plan for Better Regulation. By June 2002 the European Commission had to establish a 'new, comprehensive and suitably resourced impact assessment system covering Commission proposals with possible regulatory effects' (Mandelkern 2001, III). Following the recommendations, a twofold system was designed starting with an initial screening process which was to be followed by a more detailed assessment in appropriate cases. In June 2002 the Action Plan led to the publication of an 'integrated method' of impact assessment to overcome partial and sectoral assessments (European Commission 2002), which was followed by the publication of guidelines a few months later. These were replaced by a revised version in 2005, which was updated again in March 2006 to include an EU Standard Cost Model for the assessment of administrative

costs (European Commission 2005). In November 2006 the Impact Assessment Board was established as an internal control body to safeguard the quality of impact assessments. The final report of an independent evaluation of the EU's RIA system was published in April 2007 (TEP 2007), and this identified a number of problems and shortcomings within the existing RIA system as well as options for improvement. As far as inter-institutional cooperation on the EU level is concerned, the 2003 Inter-institutional Agreement on Better Lawmaking (European Parliament, Council, Commission 2003) and the Common Approach to Impact Assessment agreed between the EU institutions in November 2005 provide the institutional basis.

Whilst discussions on RIA on the international level are relatively coherent, the implementation on the national level shows a large degree of variance (Radaelli 2005; Staronová 2007). National political context shapes the realisation of the international political discourse. Important factors influencing the realisation of RIA are, amongst others, differing bureaucratic contexts, governmental capacities and policy processes (Radaelli/De Francesco 2007).

EU regulations encourage but do not oblige member states to establish RIA systems. In 2006 the European Commission provided a summary of the progress with regard to Better Regulation in the member states, stating that although impact assessments were conducted widely, they often remained partial (European Commission 2006). In Austria, discussions on Regulatory Impact Assessment within the civil service were triggered by developments and debates on the EU level as well as in Germany (e.g. Böhret/Konzendorfer 2001). Also, Nordic countries, in particular Sweden, were looked upon as examples by Austrian civil servants (Interview 9). A promising effort to combine scientific work on the topic with the experience of practitioners in a joint conference was undertaken in 2003, and this also resulted in a publication reflecting the state of the art in 2005 (Schäffer 2005). Nevertheless the discussion remained within a small circle of experts from various branches of the civil service. Even though a number of ambitious pilot projects were started from the beginning of the 2000s these efforts have not resulted in a comprehensive RIA strategy so far. This remains true notwithstanding the fact that already in 2001 the so called Deregulation Act passed through Parliament and this, among other things, mandated impact assessments on the federal level. With regard to this law, the difference between legal demands and bureaucratic practice is clearly visible: While the legislation mandates systematic ex-ante RIA, taking into account government-external effects as well as internal ones, it plays a marginal role in the preparation of draft bills. The wide gap between lip service paid to RIA initiatives (OECD 2004) and the practice of legislation seen in Austria remains to be explained.

Since the 1970es – following an influential publication on the implementation of an economic development programme by Pressman and Wildavsky – a body of literature on the implementation of political decisions has emerged, highlighting the potential ruptures between the formulation of a policy and its actual enactment from various points of view (Pressman/Wildavsky 1973; Sabatier 1986; Knill/Lenschow 2005).

Different reasons have been suggested for the incongruity between planned policies and their actual implementation. Wrong causal theories may underlie a policy, so that other outcomes can be expected (Winter 2003). Policies may not be formulated clearly, goals may be ambiguous

or simply not well thought out (May 2003). Intra- and inter-organisational coordination problems can influence implementation policies (O'Toole 2003) and raise the complexity of joint action (Pressman/Wildavsky 1973).

In addition, policy instruments may be wrongly chosen for the issues at hand, thus producing unexpected effects. Yet policy construction problems are not necessarily an effect of insufficient knowledge and experience; they may reflect a design process which is inherently political, with actors pushing their interests (Winter 2003). This reminder is of special significance since policy analysis literature often conveys a technocratic understanding of politics (Parsons 1995, 2003).

Such a technical view of politics is also not congruent with the observation that the civil servants responsible for delivering policies have to interpret rules and policies in order to construct meaning in their daily work practices (Meyers/Vorsanger 2003; Wagenaar 2004). In doing so they are likely to change policies when applying them to real world problems.

Another reason for unexpected policy outcomes was suggested some time ago by Edelman, who pointed out the symbolic uses of politics, suggesting a need to distinguish between the principal and the symbolic value of policies. Whilst the former term denotes the problem-solving aspects of a policy, the latter stands for a policy's performative qualities directed at the public (Edelman 1985). In a somewhat similar vein Gottweis finds that policies regularly incorporate logos, ethos and pathos, with a recent increase in the latter two elements, in discourses on uncertain futures not controllable by politics, such as genomics research (Gottweis 2007).

We will look at the bureaucratic procedures leading to draft law texts in order to see what kind of role RIA plays in Austrian law-making processes. Most importantly we will look at the pre-consultation process (*Vorbegutachtungsverfahren*) involving political and economic stakeholders before these drafts are fed into the consultation mechanism (*Begutachtungsverfahren*). Both periods in the production of a law are barely regulated; both consist in differing degrees of formal and informal elements (Biegelbauer/Griessler 2009).

The specific way in which the pre-parliamentary consultation process is enacted can be understood as predetermined by the Austrian type of consociational democracy, which has been formed over decades of consensual compromise-based neo-corporatist policy making. Since not only ministries, agencies, political parties and the social partners, but also experts close to several of the aforementioned groups are invited to give statements on the draft law, often including remarks on estimated effects, this process displays elements of RIA.

This study is based on eleven interviews and a number of informal conversations conducted between autumn 2006 and summer 2007 with various civil servants from federal and state level administrations and with experts involved in legislation in Austria. Apart from the conducting of interviews, relevant policy documents were analysed and a survey of the – rather scarce – existing literature was undertaken.<sup>2</sup> Concerning literature on RIA, but even more so on the pre-parliamentary consultation process, the lack of contributions from a political science perspective was stunning.

Our most important source of information was the interviews. This was not only due to the lack of written material but also, and even more importantly, an effect of our wish to focus on

the actual practices of civil servants regarding pre-parliamentary consultation and the use of RIA. Indeed, we want to employ a practice perspective to this policy analysis, understanding a professional practice as a localised doing/knowledge nexus in which structure and actor are in a dialectic relationship bringing each other into being (Hajer/Wagenaar 2003; Yanov/Schwartz-Shea 2006).

Practice approaches engage with the taken-for-granted and seemingly self evident daily practices and take these as starting points for analyses. They therefore focus on parts of the social sphere that are often ignored in social science literature. They try not to presuppose rules, mechanisms, intentions or structures, but rather they develop these out of analyses of everyday existence, improvisation, coordination and interaction in general (Wenger 1998). We tried to follow this general thrust when analysing the pre-parliamentary consultation mechanism.

In order to explain our argument in more detail, we first provide an overview of the political economy of post-WW-II Austria as well as a description and analysis of the pre-parliamentary consultation mechanism. After describing these, we turn to the establishment of (aspects of) RIA on the national and regional levels in Austria. This enables us to explain the slow and halting introduction of RIA in Austria.

### **The Political Economy of Post-WW-II Austria**

Typically, the Austrian political system has been classified as an extreme case of consociational democracy and neo-corporatism (Schmitter/Lehmbruch 1979). The first term is a characterisation of the Austrian post-WW-II political system in which the party system is dominated by two large parties. These are the conservative Austrian People's Party (ÖVP) and the Austrian Social Democratic Party (SPÖ). Until the 1980s these two parties together could account for more than 80 per cent of the electoral votes. For most of the last 60 years the ÖVP and SPÖ have formed grand coalitions - they have dominated the political landscape during this period.

Against the backdrop of an historic experience of long-standing, constantly deepening cleavages which in 1934 culminated in a short civil war which was fought between the representatives of the forerunners of the two parties, and the economic devastation of the country during WW II, the representatives of the SPÖ and ÖVP formed an 'historic compromise'. The epitome of this compromise was the Austrian Social Partnership, which was created by chambers, large organisations with mandatory membership (*Pflichtmitgliedschaft*) representing the economic interests of their members. The most important social partnership organisations were the Austrian Chamber of Labour (*Arbeiterkammer*), representing the interests of the employees, and the Austrian Economic Chamber (*Wirtschaftskammer*), representing the interests of employers.<sup>3</sup> In an intricate neo-corporatist arrangement, the chambers were represented in a multitude of bodies in which bipartite negotiations between the chambers themselves and tripartite negotiations between the chambers and the state could take place (Pelinka 1981; Kittel/Talos 2001).

There was an intense integration of party representatives in the chambers, which of course could also be interpreted the other way around. Indeed the upper echelons of the Economic

Chamber were normally members of the ÖVP, with the head of the chamber being represented in the Austrian Parliament. Similarly, the upper levels of management of the Chamber of Labour were mostly organised in the Austrian Social Democratic Party, with the highest layer of the organisation being represented in the Austrian Parliament (Karlhofer/Talos 1999, 2005).

On top of this, large parts of the political and economic life of post-WW-II Austria were dominated by this densely interwoven system. In a principle called *Proporzsystem*, party members of the two large parties were put in management posts in the public service, the public economy and even in institutions such as universities and extra-university research institutions. In the analyses of foreign political scientists and political economists in the 1950s and 1960s, the Catholic continental European political and economic systems were characterised as dominated by cleavages and rifts characteristic of democracies in their early stages (Almond 1956). Andrew Shonfield characterised Austria as 'outstandingly successful in the postwar world' (Shonfield 1965, 192), ascribing part of this success to the (neocorporatist) Austrian planning system. Moreover, Shonfield points out that 'the mainstream of political life by-passed parliament' and was channelled through the Austrian Social Partnership (Shonfield 1965, 195).

Indeed, when it came to legislative affairs, the Social Partners were included in all stages. They could ask for regulations, and take part in pre-consultation and consultation in parliamentary committees and the plenum alike, as well as in the implementation of regulation, as they were integrated in many committees, boards, advisory councils and commissions (Kittel/Talos 2001).

The political economy of the OECD countries was shaken by the economic and political events of the 1970s and early 1980s, which led to a change in government in most of these states. Most prominently this was the case with the Thatcher government in the UK, the Kohl coalition government in Germany and the Reagan administration in the US. In Austria, the changes were less pronounced. After thirteen years of social democratic governments under Chancellor Kreisky, a new coalition government took office, consisting of Social Democrats and members of the Freedom Party (FPÖ), in 1983. From 1986 until 1999, Austria was governed by a grand coalition of the Social Democrats (SPÖ) and the People's Party (ÖVP).

The rise of the FPÖ and, to a smaller degree, the Greens led to a diminishing of the votes the two large parties could gather, finally leading to the loss of the two-thirds majority of the grand coalition in 1994. With the pressure rising on the party leaderships of the SPÖ and the ÖVP to implement reforms, the Austrian chambers in the second half of the 1990s were not automatically included in each and every political decision any more. Debates on the appropriateness of the successful - by measures of stability and economic growth - but rigid Austrian political system were being initiated.

The Austrian consociational democratic system, characterised by a specific political style of conflict management by parties and government alike and dominated by frequent compromises, was, during the period of the conservative government of the ÖVP and the FPÖ, moved in the direction of a more conflict oriented system. The Austrian neo-corporatist Social Partnership, a system of conflict resolution and interest representation through the

inclusion of privileged societal interests, was, between 2000 and 2006, markedly diminished in importance (Talos/Stromberger 2005). The Social Partners were invited for negotiations with the Government only on a limited number of issues and even in these cases in a rather skewed way, with the Economic Chamber clearly given more voice than the Chamber of Labour. This was probably due to the closer relationship between the Economic Chamber and the ÖVP, with the Chamber of Labour being associated with the Social Democrats.

After the elections of 2006, a grand coalition under the leadership of the Social Democratic Party took office, leading to a limited reinvigoration of the Social Partnership. This makes a current political debate potentially important for the future of the Austrian Social Partnership. The ongoing discussion on a possible change of the electoral system from proportional representation to a more majoritarian voting system is fuelled by widespread criticism of grand coalitions. These are perceived as inflexible and slow-moving due to the necessity of striking compromises between two similarly large parties. A demise in the formerly frequent grand coalitions in turn is likely to weaken the neo-corporatist Social Partnership.

### **The Pre-Parliamentary Consultation Mechanism in Austria**

The Austrian Parliament consists of two chambers, the National Council and the Federal Council. Most legislative competencies are concentrated in the National Council, leaving the Federal Council with nothing more than the right to a suspensive veto (except for constitutional amendments and treaties directly concerning the competencies of the states (*Länder*)). There are four ways a bill can be introduced to the National Council: as a government bill (*Regierungsvorlage*); as a motion presented by individual members of the National Council (*Initiativantrag*) or the Federal Council; and through a legislative proposal signed by at least 100.000 voters (*Volksbegehren*).

The main way for a law to come into existence in Austria is as a government bill<sup>4</sup>. There are two possibilities for a government bill to be initiated: firstly, a minister is convinced of the necessity of creating new legislation and asks the civil service to prepare a new law; secondly, and seemingly at least equally as important, civil servants themselves see the necessity of taking action and approach the appropriate minister's cabinet or, in case of the highest level of ministerial bureaucracy, they approach the minister direct (Pelinka 2008). Once the minister has been convinced of the need for a new law, a civil servant serves as the head of a team that is to draft the law, a team usually consisting of a handful of administrators. Often a law has a single author responsible for drafting the texts. This is not necessarily the highest-ranking person in the team, but often a jurist specialised in public law (*Legist*).

Firstly, ideas for the new draft law are concretised and in an early stage of the pre-consultation process (*Vorbegutachtungsverfahren*) they are presented to representatives of other institutions. In the case of distributive and redistributive policies, the Ministry of Finance is one of the most important negotiation partners. In the words of a civil servant, 'Once you know what you want to do, you should quickly go to the Ministry of Finance' (Interview 3). Similarly important are ministries with overlapping responsibilities, which have to be contacted in order to circumvent vetoes in the Ministers' Council. In many cases the constitutional service

of the Chancellor's Office (*Verfassungsdienst des Bundeskanzleramtes*) is also asked early on for an assessment of the constitutionality and the formal requirements of a draft law.

At this stage only the most central stakeholders, whose interests are going to be affected by the future law, are invited to talks by ministerial representatives. The representatives of the chambers and other social partner organisations are regularly invited to give their opinion at this stage: 'The Social Partners expect to be contacted in all matters' (Interview 2). Even in cases where social partnership organisations are either not ready or do not have the expertise to provide an opinion on a draft law, they might organise someone in their ranks or an expert with whom they collaborate to provide an opinion on the draft law. Towards the end of the pre-consultation process, representatives of political parties may be asked for their statements, too. This is of increased importance in the case of a coalition government, when the coalition partner normally is asked to provide an opinion before the consultation mechanism starts.

The next step is the consultation process, in which a large number of organisations are presented with the first draft of the new law (*Ministerialentwurf*) that came out of the pre-consultation process. Usually six weeks are provided for gathering reactions, with a variation on this time span of between two weeks and six months. On top of the organisations that have already been part of the pre-consultation process, a number of other actors are asked for their opinions. Who is consulted varies considerably depending on case and policy field (Fischer 1972). The lists include the social partner organisations, the states, other ministries, the Court of Audit (*Rechnungshof*), law departments at universities and a variety of stakeholders. Especially in cases of seriously overlapping ministerial responsibilities, the consultation process is seen as a second round of negotiations. Other interviewees have pointed out that in the consultation process only turf is marked: the 'real issues' have already been covered. Indeed one interviewee pointed out that statements made during the consultation mechanism are published on the website of the Austrian Parliament and therefore also serve the function of showing the stances of the different actors in diverse policy fields (Interview 3).

Once the opinions of the contacted organisations have been gathered, it is the task of civil servants to analyse them and to judge if they should be included in the draft law. Depending on how controversial the issue the law is to deal with is, the administrators may make this decision on their own or after receiving feedback from their minister. In all cases the draft law has to be presented to the responsible minister before going to the Ministers' Council.

Where the minister approves the draft, it is presented in the Ministers' Council, where discussions sometimes lead to changes in it. This is especially the case with coalition governments, where there might not have been enough time for a consultation of the coalition partner (Interview 4). It is also possible that a minister from another line ministry with overlapping responsibilities might have objections to the draft law. Since the vote in the Ministers' Council has to be unanimous, all objections pose a threat to the draft law. Therefore the minister advancing the law has a serious interest in dealing with all objections as soon as possible. Sometimes draft laws are amended even during the session of the Ministers' Council; at other times, votes may be postponed until the next session (usually a week later).

With the passing of the draft law through the Ministers' Council, the pre-parliamentary phase of law-making ends. The text becomes a bill (*Regierungsvorlage*), and becomes subject

to parliamentary procedures. A large percentage of bills that are sent to the National Council, especially in cases where these are amendments to existing laws or deal with technical (in the sense of non-controversial) matters, are not subject to any changes and they pass through the National and the Federal Council after having gone through readings and discussion in various committees, sub-committees and the plenum (Sickinger 2000, Pelinka 2008). In case discussions on a bill arise, the civil servants who have drafted the bill are often invited to the National Council with other experts and representatives of social partnership organisations to explain their draft, and sometimes to make amendments, after political negotiations have taken place.

This depiction of the way a law comes into existence is highly stylised. On the one hand, there is variation according to different policy fields and issues; on the other hand, procedural changes take place over time. Firstly, it makes a difference what kind of policy the draft law is going to cover. Regulations are typically less cost intensive for the state than are subsidies. Accordingly the importance of some government actors, such as the Minister of Finance, is very much dependent on the nature of the policy addressed in the draft law. Moreover, despite their overall importance for the Austrian political economy, social partnership organisations do not have the same weight in all policy fields (Kittel/Talos 2001). For example, an interviewee from the Ministry of Interior stated that he had never invited organisations representing employers and employees to take part together in a pre-consultation process. However, he had frequently asked one of the chambers for its opinion (Interview 4).

A second important question is whether a draft law is meant to deal with a politicised or a technical issue. In the case of controversial laws, there is less leeway for civil servants: political directives are set beforehand. One former civil servant has ironically described these as 'going back to a set of interests, knowledge and prejudices' (Interview 1).

It is noteworthy that, in the years 2000 to 2006, when the conservative coalition government of the ÖVP and the FPÖ was in power, a number of changes took place regarding the pre-parliamentary consultation mechanism. The size and importance of ministers' cabinets had been rising since the 1970s. Yet in 2000 the cabinets of some ministers, especially those from the Freedom Party, grew considerably. This development was linked to the limited trust that ministers from the FPÖ had in civil servants, whom they deemed to be hostile. The problematic relationship between civil servants and the FPÖ ministers is also indicated by the fact that a number of laws that were promoted by these ministries were not written by civil servants, but by lawyers close to the Freedom Party (Interview 5; Biegelbauer/Griessler 2009). In these cases there was either no or very limited consultation. Furthermore as part of the general loss of importance of the Austrian Social Partnership, the chambers were no longer invited to provide their input to most draft laws (Talos/Stromberger 2005). In cases in which they were invited, the time they were given to present their opinions was often shortened considerably, sometimes down to one or two weeks. In other cases, there was no consultation at all, as the bill was introduced formally through a motion by members of parliament from the government parties (Interview 1), in which case there is, according to the law, no need for a consultation process. The employers' and employees' organisations both suffered under these circumstances, but the labour side was in a much more disadvantageous position.

The comprehensive pension reform of 2003, which was part of the budget law, provides an example of the diminished importance of the consultation mechanism. Only three weeks time were set aside for the consultation process and the draft law was passed in the Ministers' Council just three days after the end of the consultation period. Obviously, one interviewee commented, in this short period the civil servants in charge could not have included much of the comments they had collected (Interview 7).

### **Analysis of the Pre-parliamentary Consultation Mechanism**

Depending on policy field and topic, civil servants may have quite some freedom in the way they carry out pre-parliamentary consultation in Austria in both stages of the consultation mechanism. The fact that there are almost no laws governing the consultation process<sup>5</sup> makes the only factors limiting civil servants' activities the content and the extent to which politics is a factor in the law being worked on. In cases where the law is highly political, there is closer cooperation with the responsible minister. In the overwhelming number of more technical issues, it is almost completely in the hands of the civil servants to decide whom they are going to contact in which way as part of the pre-consultation and the consultation processes. While this is true for matters of process, the statement also holds for the outcome, in the sense that civil servants are limited in the choice of topics they have to discuss mainly by the exigencies of the set of issues the draft law is going to deal with.

If civil servants are not guided by laws or similar regulations, the question arises what else, other than the rough framework provided by, in the case of political issues, political will, and, in the case of more technical issues, the need to solve problems, governs their behaviour. One might surmise that civil servants should be troubled by the fact that an important part of their work, if not necessarily the largest one, is barely regulated by written law. This should be even more so within a bureaucratic tradition as legalistic as the Austrian one.

Yet this does not seem to be the case. The behaviour of civil servants is very much guided by routines and practices developed over a long time in the Austrian civil service. The way in which the consultation mechanism is carried out seems to be shaped by stories told about the way other consultations have been performed. It is well known that institutions feature a set of norms and values which pre-structure the actions of persons who are part of these institutions (March/Olsen 1989; Peters 1999). In the cases of pre-parliamentary consultation which were discussed in the interviews for this paper, these norms were not written down, but still they were well known and followed by ministerial actors.

According to practice theory, practices and norms are in a dialectic relationship bringing each other into being. Norms are formed out of routines and practices, practices in turn are influenced by norms, which often have a long life and are stabilizing factors in socially inherently unpredictable situations. Yet practices are not reified. They are interpreted, reviewed and – most of the time – reinstated (Reckwitz 2003). This corresponds well with what has been said about the Austrian pre-parliamentary consultation mechanism. The practices of civil servants are normally reinstated, but they are not reified - they keep a certain flexibility and can be adapted if changes are necessary.

An example was the list of addresses used by different administrators for the consultation process. In the Chancellor's Office and in some ministries' lists of institutions to be asked for their opinion on a draft law exist. Yet an interviewee pointed out that he had not used any of these lists, but rather he had looked into examples of other consultations, using the old lists after some modifications (Interview 3). Similar answers were given in another ministry.

Another case in point was the way in which the interactions which were part of the pre-consultation process took place, namely, very personalised and often depending on the personal networks of the civil servants responsible for the consultation. The issue of personal – and often intimate, in the sense of long-standing friendships – knowledge of negotiation partners in other key institutions was more important in deciding which persons were contacted, than the position these people occupied in the hierarchy of the institution they were part of.

Acquaintance with the other people in these networks could have a variety of roots. In one case, two people rose through the ranks of two different ministries, knowing each other from their time at the school of law. They knew each other throughout their working life and shared a number of common interests. Of course, such a basis of common understanding also eased their professional relationship and, according to the interviewee, on one occasion the two of them developed the draft of a major law in a series of meetings in a Viennese coffeehouse (Interview 4). Other personal acquaintances – and often friendships – arise out of longstanding work contacts. An interviewee pointed out that it was of primary importance to know people who would influence the position of their ministries decisively in certain matters. In technical matters, the superiors of these contact persons 'in 95 out of 100 cases would follow their suggestions' (interview 3).

While a number of these relations between civil servants during the process of consultation seem to be guided by cooperative behaviour, this is not necessarily always the case: in particular, in cases of overlapping responsibilities inter-ministerial rivalries can arise. One case in point is the Austrian science and technology policy, which since the 1980s has been characterized by frequent turf wars between the (up to 4!) federal ministries responsible for science and technology (Griessler 2003; Biegelbauer 2007; Pichler et al 2007).

All of this is not very surprising, if the perspective of practice theory is employed (Pickering 1995). As Wagenaar (2004) shows, the behaviour of civil servants is very much guided by routines and practices developed by communities of public administrators engaged in work over a long time. The way in which bureaucratic work is carried out is shaped by the effort of civil servants to negotiate an environment in the face of various changes, e.g. New Public Management reforms, information and communication technologies, and the weakening of the prevalence of legal education in the ranks of the civil service (Aberbach 2003). A shared understanding of how work should be done serves as an orientation for dealing with potentially unpredictable situations and is reflected, for example, in stories told about the way in which similar work has been carried out by others.

In line with literature on bureaucratic practices implementation research suggests that the results discussed above can be interpreted as a community oriented production and reproduction of shared norms which are tested, reinforced and reproduced in the daily work practices of public administrators (compare with Meyers/Vorsanger 2003 on street level

bureaucrats). In such a perspective, the very stability of administrative work and the consistency of administrative structures and routines can be seen as collective accomplishments.

This is all the more the case when workloads are increasing and civil servants have to deal with changing demands. In such a situation, individual actors have to deal with a variety of tasks which have to be fulfilled under the constraint of scarce resources (Wagenaar 2004). In order to navigate through each work day, coping strategies are developed as part of bureaucratic practices, including a prioritisation of different tasks on the basis of already established routines.

Exemplifying this is the document explaining the background, intention and effects of a law (*Vorblatt*), which has been in use for a number of years but has brought few changes to bureaucratic practices. It is seen as a compulsory exercise by civil servants (Interview 3) and is filled in solely because it has to be. Despite the existence of a decree of the Ministers' Council from 1999 stipulating that there must be an assessment of the effects of proposed laws on the competitiveness of Austria, including government-external costs, financial implications are still only considered if they are internal to government. Moreover, benefits are not taken into consideration. As a civil servant put it succinctly, 'Whenever, without getting red in the face [due to embarrassment, PB/SM], "No financial implications" can be written on the form, we write that' (Interview 3).

With the introduction of Regulatory Impact Assessment (RIA), these bureaucratic routines are confronted with a policy instrument demanding a stronger formalisation, and an increased transparency and consistency, as well as a more systematic inclusion of interests external to the government.

### **The Difficult Establishment of RIA in Austria**

Although until now RIA in Austria has not been implemented in a systematic way, some remarkable efforts concerning ex-ante RIA exist at the national level, and in some states also at the regional level. The regulations concerning impact assessment – or rather, concerning parts of what are defined standards of more advanced RIA-systems (see e.g. European Commission 2005) – are split among a number of legislative acts and bureaucratic responsibilities. They blend in with more traditional forms of legislative procedures, making it difficult sometimes to state which elements can really be counted as RIA. One of the consequences of this situation is that different and scarcely interconnected debates emerge in a number of regulatory policy fields. One example is the discussion about the 'gendering' of budget policies at a national and municipal level, or recent developments in the field of traffic policies. Legislation in this field now includes elements that can be perceived as parts of an environment-centred RIA, but these developments seem to be completely disconnected from broader efforts to establish principles of Better Regulation.

The following section of the paper concentrates therefore on existing legislation mandating RIA, or aspects of what can be seen as RIA in its broadest sense, which is not limited to specific policy fields. It focuses first on the national level; then some examples are provided for projects undertaken at the regional level.

A first step towards the establishment of an RIA system in Austria was taken in 1986 with the Federal Budget Law (*Bundeshaushaltsgesetz*, BGBl 213/1986) which mandated in Article 14 the estimation of costs of new regulations with respect to fiscal aspects. The responsibility for this assessment lies with the ministry responsible for the respective draft and has to include all levels of government (national, regional and municipal). The law does not apply to regulations drafted by parliamentarians (*Initiativantrag*). In 1999 a decree of the Ministry of Finance widened the obligation stated by the Federal Budget Law to include operational accounting as well (BGBl II 50/1999). In the same year, an agreement between the Federal State and the states implemented a detailed procedure for the estimation of costs and benefits as well as shared consultation procedures for all levels of bureaucracy from the federation to the municipalities (BGBl I 35/1999).

In 1999 an important step towards the establishment of a more complete assessment of the impact of regulations was taken. For the first time not only budgetary costs but also the external effects of legislation were to be considered when the Ministers' Council decided that the effects on the competitiveness of the Austrian economy and on the employment situation were to be assessed when new legislation was proposed. This decision was given substance by a circular of the Federal Chancellery designed to spread the information to the concerned departments of all ministries and to serve as a guideline to ministry officials concerning the formal presentation of their estimates in draft legislative papers (*Vorblätter*) (Bundeskanzleramt 1999). A study carried out by economists indicated that – while the formal obligations are fulfilled – the quality of assessments or estimations is often questionable (Kostal/Obermann 2005).

A last legislative step concerning the implementation of RIA was taken in 2001 when the Deregulation Act (*Deregulierungsgesetz*; BGBl I 151/2001) was passed, mandating, in one of its articles, an assessment of the effects of new legislation with respect to financial, economic, environmental and consumer protection policies. In contrast to older legislation, this law is not exclusively directed at ministry officials but at 'all officials concerned with the preparation of acts of federal legislation . . .' (BGBl I 151/2001 Art. 1 Z 2). Unlike other regulatory provisions for the preparation of bills, the Deregulation Act was never detailed in a circular and the new inclusive approach did not alter the structure of the legislative process – the ministry in charge of preparing the legislation is still responsible for the impact assessment as well. The Deregulation Act leaves civil servants with a huge task but does not provide them with the necessary instruments to fulfil it (compare Bußjäger 2004; Konrath 2006). This might be the main reason why the Deregulation Act has not yet had a visible impact on draft bills prepared by federal ministries.

This short overview of the background to the progress of RIA in Austrian federal legislation clearly shows that a systematic RIA approach still remains to be developed. Until today, only costs relating to the administration itself have been evaluated in a systematic fashion, while other effects of planned regulations are largely ignored or estimated by rule of thumb. Without guidelines for the qualitative and quantitative assessment of the effects of planned regulations and without the administrative structures necessary to enable civil servants to follow these, the Deregulation Act remains a matter of paying lip service to the principles of Better Regulation.

However, this rather negative view does not convey the whole picture. As stated above, there are debates and pilot projects in specific policy fields which point in the direction of RIA but which are often hardly connected with the approach followed so far. One step is the implementation of the Standard Cost Model – imported from the Netherlands – by the Ministry of Finance, which is supposed to lead to a sound basis for the calculation of costs resulting from legal information duties imposed on firms (Interview 8). A survey to elicit the information which would provide the basis for the attempted reform was completed at the end of 2007, a catalogue of 133 measures was adopted by government in the spring of 2008.<sup>6</sup>

These activities are in line with a broader approach developed within the Ministry of Finance which resulted by the end of 2007 in a new output-oriented Federal Budget Law featuring ex-ante assessment of financial matters. The new budget regulation draws on international best practice and follows the examples of Sweden, Great Britain and Finland. Instead of concentrating on input (mainly personnel and material costs) it addresses output, i.e. the question of how to obtain a certain effect with a given expenditure (BGBl 20/2008).

A different line of debate centres around the topic of Environmental Impact Assessment, which is partly realised in legislation (*Strategische Prüfung im Verkehrsbereich (SP-V-Gesetz)*, BGBl I 96/2005) following the Strategic Environmental Assessment Directive of the European Union (Directive 2001/42/EC). Whilst Environmental Impact Assessment according to the EU regulation and Austrian law is mandatory only for plans and programmes with relevant effects on the environment, there are discussions among experts about the possibility of widening this obligation to include legislative acts as well.

Another aspect of RIA is the obligation to evaluate the effects of specific regulations. This obligation is included in an increasing number of laws, such as the University Law (*Universitätsgesetz 2002*). In several policy fields this form of ex-post evaluation has even become standard practice in cases in which there is no legislative obligation. Examples of such policy fields are higher education, research, technology and innovation policies (Biegelbauer 2007).

To sum up the situation, it seems fair to state that while regulations mandating RIA do exist on the federal level, Austria is far from following a coherent policy in this respect.

Yet another aspect of RIA is presented by the efforts undertaken by some of the nine Austrian states. On the one hand new instruments of budgetary planning – most prominently the so-called Gender Budgeting which, for example, is applied in Vienna as a means of Gender Mainstreaming – might be taken into account. On the other hand some of the regional governments – particularly in the states of Upper Austria and Vorarlberg – have developed their own models for the ex-ante evaluation of the effects of regulations in a broader sense (Steiner 2005; Uebe 2005; Raich 2005). The pilot projects undertaken in these two states seem to be of particular interest because they show the blending of RIA elements with the traditional routines of legislation in Austria in two different variations.

## Upper Austria: RIA and the Social Partners

In Upper Austria, a dedicated civil servant in the legal department (*Verfassungsdienst*) was important for the efforts to establish a systematic RIA (Interview 9). The RIA model developed in Upper Austria aims at quantifying costs not only for the administration itself – this is done regularly for every proposed regulation – but also for the economic sector and the public at large (Hörtenhuber/Steiner 2002). Its development was to some extent a result of external pressure on the government by organised interest groups – mainly the Federation of Austrian Industry (*Industriellenvereinigung*) – which at the end of the 1990ies were highly interested in the topic (Interview 9). As in the role model used, that of Germany, this political context shaped the RIA model developed in Upper Austria.

The civil service integrated RIA efforts into a more general Better Regulation approach, which led to the establishment of a Concept for the Formulation of Regulations (*Leitbild für die Erarbeitung von Normen*, see <http://www.land-oberoesterreich.gv.at>) in 1999. In fact this concept is a catalogue of questions designed to support civil servants drafting regulatory texts. It also includes two questions on the presumed costs of the regulation and asks for an assessment of different effects on men and women (gender mainstreaming). In addition to the above mentioned concept an RIA model was developed. This is meant to systematically assess the effects of a planned regulation, but has so far only been utilized in pilot projects. Publications – also within scientific contexts – were produced by the civil service (Hörtenhuber/Steiner 2002; Steiner 2005; Uebe 2005).

The biggest test for RIA in Upper Austria was the ex-ante evaluation of the proposed legislation on Prevention of Air-Pollution and Energy Technology in Upper Austria in 2002 (*Oberösterreichisches Luftreinhalte- und Energietechnikgesetz* 2002). Data on the costs anticipated for the administration were available to civil servants and could be handled by a standard procedure used in the preparation of all Upper Austrian laws. Yet, data on the costs for enterprises and the public at large had to be gathered from sources outside. This task was delegated to the Social Partners – the Economic Chamber Upper Austria (*Wirtschaftskammer Oberösterreich*) and the Chamber of Labour Upper Austria (*Arbeiterkammer Oberösterreich*). Therefore, the Social Partners were directly involved in the project team and a representative of the Economic Chamber had even been part of the team working on the RIA design. This was not only a pragmatic solution but – as one interviewee indicated – also a political manoeuvre to integrate potential critics into the project (Interview 9). The RIA model developed in Upper Austria was an attempt to blend a new instrument into a traditional structure for the involvement of organised interest groups in policy making.

As the aim was to produce quantifiable data, this arrangement left the chambers with a heavy burden of work without leading to the expected results of clarity and unambiguousness in the data. As a result, the RIA document gets rather vague when it comes to costs external to the administration. The project showed that it would not be possible to use this RIA model as a standard tool for all legislative proposals for pragmatic reasons. Yet it seemingly had the effect of silencing the criticism of the chambers, which had in the years before argued for more and more accurate RIAs to be done. 'A critique voiced again and again has been countered

by this formal procedure. One [politicians, PB/SM] is quite content about that'. (Interview 9).

After this experience, the future of RIA in Upper Austria seems to be rather unclear. For the time being the effects of proposed regulations (apart from those on the administration) are dealt with in most of the draft bills; but the assumptions rely on the rule of thumb rather than on a systematic approach. In the consultation process stakeholders especially are invited to comment on the assumed impacts. A civil servant stated: 'As long as we do not have any better ideas which can be fulfilled with reasonable effort, this is a possibility which has obviously proven itself' (Interview 11).

### **Vorarlberg: RIA and Consensus**

The case of the state of Vorarlberg is especially interesting because this state uses a very specific RIA model which does not focus upon costs and does not rely primarily on quantification.

As in the Upper Austrian case, a civil servant charged with policy initiatives played a crucial role in the work on impact assessments in Vorarlberg. He was also important to efforts undertaken to establish a network of civil servants interested in the topic. These efforts led to a meeting in 2002 but did not develop further. The process of RIA development in Vorarlberg closely resembles the one in Upper Austria. Again civil servants from the state level looked to Germany for examples, and again the Federation of Austrian Industry was one of the actors pressing for the development of an RIA concept (Interview 12). Another similarity concerns the interest of the policy entrepreneur as well as other civil servants in the state of the art, which has led to several publications (e.g. Bußjäger 2004; Raich 2005). Nevertheless the RIA method developed in Vorarlberg is quite unparalleled.

There were two different projects of ex-ante evaluation of a proposed legislation undertaken in recent years: firstly, in spring 2002, an analysis of a draft law on betting (*Wettengesetz Vorarlberg* 2003) was completed, and later in the same year a project group used the same method to work out a proposal for the regulation of waste management (*Vorarlberger Abfallwirtschaftsgesetz* 2006). In both cases the project group in charge consisted not only of civil servants but also of various stakeholders in the respective fields. Workshops were held to incorporate expert knowledge.

The RIA method specified in a guideline from 2001 (*Amt der Vorarlberger Landesregierung* 2001) focuses on a set of qualitatively defined aims for the regulation in question. Every paragraph of the planned legislation is then tested against these aims, leading to its assessment on a scale from -2 to +2. By squaring these marks in a matrix, the project team arrives at an evaluation of the proposed legislation along two lines of analysis: on the one hand, every paragraph can be evaluated across all aims; on the other hand, the degree of fulfilment of the different aims across all paragraphs becomes visible.

In the case of the legislation on betting – which was the first test for this model – the RIA process led to some adjustments (Raich 2005). In the second case, that of the regulation of waste management, the task of the project group was not to evaluate an existing draft bill but to work out a proposal for a regulation. This meant working on different alternatives first, evaluating each of them and looking for consensual solutions. As an interviewee explained, an

important aim of the specific RIA design used in Vorarlberg was to get acceptance for the planned legislation by those most directly affected. 'One wanted to make sure that once one has a proposal those who are affected agree with it. Another possibility would have been to simply take experts, who are not representatives of the institutions, which have to live with the regulation. It was also a politically desired step to include those primarily affected' (Interview 10).

In this case the project did not lead to a clear-cut recommendation for policy makers because some of the stakeholders could not reach a consensus on a single but crucial issue. Nevertheless the RIA work served as an important source for the political process that in the end led to a law.

A problem encountered in Vorarlberg as well as in Upper Austria was the relatively large amount of time, money and effort every RIA process takes. Without the political determination to provide the resources necessary, it seems unlikely that more RIAs are to be carried out in the near future.

A conclusion, which officials from both states drew, was that a RIA system – no matter how elaborate – cannot render political decision making irrelevant. While it works well as a sensible tool for gathering and analysing relevant information, conflicts that touch upon political values cannot be solved on that level. This was especially obvious in the case of the regulation of waste management in Vorarlberg where the team working on the impact assessment did not reach a consensus. Concerning the disputed topics, one interviewee stated: 'Then a political decision was taken, which however could not be directly based on the RIA project' (Interview 10).

Another conclusion drawn concerned the need to choose carefully the proposals that ought to undergo RIA: only regulations which offer a certain scope for decision making, i.e. which are neither determined by EU legislation nor by a predefined political attitude, should be subject to the process.

The pilot projects undertaken in Upper Austria and Vorarlberg are not likely to lead to the implementation of an encompassing and comprehensive RIA system anytime soon; but they may provide important experience for the future design of impact assessments at the federal as well as at the regional level.

## Conclusion

At the outset, we posed the question of why RIA has had such a hard time taking root in Austria. In order to answer this question we employed practice theory and implementation research. These perspectives proved to be helpful. They enabled us to better understand the role that RIA has played in Austrian regulation, where RIAs are indeed being called for, but the means to carry them out are not provided. This is seen most clearly in the case of the Deregulation Act of 2001 (compare Bußjäger 2004), which can be interpreted as symbolic politics directed at the public (Edelman 1985) without a problem-solving component.

Another problem becomes clearer when the efforts of the legal departments in the states of Vorarlberg and Upper Austria to introduce RIAs are taken into account. These were not

directly or overtly stopped by politicians; yet since no additional resources were made available to the civil service, it was not possible to sustain the efforts to introduce RIA models.

Practice theory lent us a perspective that helped us to better understand the role of the civil service in the hesitant introduction of RIA elements. The relative success of existing practices of the pre-parliamentary consultation mechanism, which have been in place for several decades and are embedded in the structures of the cooperative neocorporatist system of interest intermediation, make it difficult for another set of bureaucratic practices to take root in the ministries. The production and reproduction of shared norms, which are tested, reinforced and reproduced in the daily work practices of a bureaucracy (Wagenaar 2004), are not unchangeable; yet they are also not likely to cave in quickly, especially when a new set of demands resting on an idea alien to the prevailing structures – as is the case with RIA – is introduced.

An important reason for the difficulties that RIA has had in gaining a foothold in Austria therefore is that it is not accepted by the civil service for reasons that have been discussed before. Moreover, administrators have to cope with ever rising and changing demands, which they tend to view with scepticism. One example was the document explaining the background, intention and effects of a law (*Vorblatt*), which incorporates RIA elements, but which is not accepted by civil servants, who just tick off the boxes in the form without much further ado. It would be too easy to interpret this behaviour as utility maximisation in the sense of public choice theory (overview in Knott/Hammond 2003, critique in Peters 2001); rather, we see this as coping behaviour as advanced by the literature on bureaucratic practices (Wagenaar 2004) and street-level bureaucrats (overview in Meyers/Vorsanger 2003). Indeed, there is little shirking visible in the actions of the civil servants, but rather the effort to do their work as well as they possibly can. In the interpretation of the administrators, good outputs are more likely to be obtained on the basis of proven and tested bureaucratic practices than as a result of the application of yet another set of ideas based on New Public Management (NPM), which is often seen as being impracticable and thought out by theoreticians.<sup>7</sup>

By way of conclusion, we propose an answer to the query of why RIA has had such a hard time taking root in Austria, and this has several elements.

Firstly, the pre-parliamentary consultation mechanism, which is the first step towards the creation of a law, is structured by the political style of the Austrian Social Partnership. The Social Partnership is characterised by a high degree of informality and a corresponding low degree of formal regulation. It is highly consensus-oriented and privileges the Social Partners as negotiation partners of state institutions such as the ministerial bureaucracy. All of this can be said about the consultation mechanism, too. The pre-consultation process especially is barely regulated, and during most of Austrian post-WW-II history has been consensus-oriented. Furthermore, it privileges a small number of societal actors, most importantly ministries, states and the Social Partners, over all other stakeholders.

The linkage between the system of Social Partnership and the pre-parliamentary consultation mechanism leads to an early incorporation of organised interests in the process of law making. Due to this early stage negotiation process between the civil service, the government and a number of societal interests, it is difficult for interest groups and opposition parties not included

in the pre-consultation mechanism to influence the legislative process. As mentioned before, in many cases governmental bills pass Parliament without being changed.

Advanced RIA systems are based on the idea of an open political negotiation process focusing on discussions in Parliament on the basis of the expertise provided in the form of reports to members of parliament. The inclusion of privileged interest groups in an early stage of the law making process follows a different – consociational and neocorporatist – logic. Under these circumstances, RIA is, almost by necessity, in a difficult position.

Secondly, the Austrian civil service is characterised by a 'strong preoccupation with processes with far less emphasis on output and outcomes ... [and] the principle of lifetime tenured civil servants with little workplace mobility' (Hammerschmid/Meyer 2005, 716). Although there has been a tendency towards decentralisation through agencification since the second half of the 1990es, ministries still are large and highly centralised. Under these conditions, bureaucratic practices based on routines and traditions, which are often specific to particular organisational structures and units, are even more important in structuring the behaviour of civil servants than in cases of more flexible work conditions. In the case of the pre-consultation process, which is only very sparingly regulated, bureaucratic routines are what primarily guides civil servants.

Thirdly, the consultation mechanism, again very similar to Social Partnership arrangements, takes place in network structures. Civil servants regularly use their own personal networks in order to negotiate draft laws. As has been established before, these enduring networks rely on personal acquaintanceships, friendships and longstanding work relationships. They play an especially prominent role in the informal phase of the consultation process, which is far more important than the formal one (Fischer 1972, 48; interview 4). Formal procedures, which are a precondition for RIA, here appear problematic in themselves as they hinder the striking of compromises in these informal network structures.

Fourthly, resources for RIA processes are scarce. In both Vorarlberg and Upper Austria the RIA pilot projects have been shown to be more costly than expected. As civil servants of the respective states said, without a strong political commitment, RIA projects prove to be difficult to handle for the administration because of lack of resources. The political will to implement RIA seems to be dependent on outside pressure by strong and organised interest groups. Bußjäger (2004) argues, with regard to existing legislation stipulating the use of RIA, that there is little will on the part of Parliament and Government alike to actually implement these measures.

Fifthly, the question remains of how deep the existing expertise on RIA currently is within the Austrian civil service, given that only the very first steps have been taken towards a systematic training of civil servants.

Sixthly, civil servants in general seem to be sceptical about the introduction of RIA. Several reasons for this scepticism have been provided above. In addition, opinions were voiced that in the case of politicised law matters, the existing political will would normally override the outcomes of RIA (Interviews 6, 10). Moreover, the lion's share of legislative acts was considered to be either driven by EU regulations or to consist mainly of technicalities or small amendments to existing regulation. This meant that there was no room for alternative options to be considered, rendering RIA irrelevant (interview 3).

It has also been pointed out that the policy-making communities in Austria are, in most areas, fairly small, and the number of persons policy-makers have to know and can contact is small enough for relationships to stay informal. This informality in interviews has not been seen as a problem when it comes to the quality of legislative output.<sup>8</sup> Moreover, an additional benefit is that a resource-intensive process can be circumvented (Interview 3).

In addition, one interviewee had doubts about the possibility of using cost-benefit analysis in even its weakest forms in policy areas such as interior and security policies. The example provided was: a good policeman catches a lot of criminals, a better policeman hinders criminals from committing crimes. It is easy to quantify what the good policeman does. Yet the question remains how to assess what the better policeman does and how to count the crimes prevented (Interview 4).

Considering the experiences with RIA in Austria so far, it seems unlikely that a systematic and comprehensive RIA mechanism including social, economic and environmental impacts will be established in the near future. Even if it were, the exercise would be likely to end up in further 'ticking off the boxes' by the civil service. Of course, this situation is not confined to Austria. The results from the research network ENBR (European Network for Better Regulation) indicate that RIA is slow to advance in many European countries, although for different reasons. Except in the UK, and to a lesser extent the Netherlands and some Nordic countries, systematic ex-ante assessment systems are still to be developed.<sup>9</sup> In the Austrian case, the conditions surrounding RIA would indeed have to change radically to produce different outcomes. This would involve the organisation of the law making process as well as the policy style established by the Social Partnership, which is highly informal and based on exchange-relations in densely coupled networks.

However the experiments with RIA in Vorarlberg could point to a potential alternative. The pilot RIAs blended this policy tool with more traditional structures of policy-making in Austria oriented towards consensual politics. The mechanism used in these cases was process-oriented and its main goal was to find a compromise between existing interests. Such a form of RIA based on the principles of a consociational democracy differs in process and outcome significantly from models used in conflict-oriented systems. It rests on the granting of privileged access to a small number of organisational actors, is more process-oriented and puts less of an emphasis on quantification and monetarisation.

Finally, it has to be taken into account that the introduction of RIA would mean not only a decisive shift in the way a draft law comes into existence, but also, and perhaps more importantly, a sustainable shift in power relations. Indeed if RIA were taken seriously it would transform the Austrian legislative process into a more open and transparent one. The informal negotiations preceding the making of a law would be pushed back into the province of the civil service when the administration was preparing the very first draft of a law. This would result in the strengthening of public discussions and perhaps also in the weakening of the importance of personal networks amongst civil servants and Social Partnership arrangements for the legislative process. It is precisely for these reasons that the introduction of RIA to Austria at the moment seems possible only in peripheral areas of the political process.

## Notes

- <sup>1</sup> We would like to thank Erich Griessler, Bernhard Kittel, Birgit Klausser, Dvora Yanov and two anonymous reviewers for their helpful comments on this paper. We are also grateful to our interview partners for their patience with us.
- <sup>2</sup> The research was undertaken under the auspices of the European Network for Better Regulation (ENBR). The ENBR is an international research network funded through EU Framework Programme 6 (Coordination Action, Contract Number 028604) and created in 2006. For further information please consult [www.enbr.org](http://www.enbr.org).
- <sup>3</sup> Other Social Partners are the Austrian Trade Union Council (Österreichischer Gewerkschaftsbund) and the Austrian Chamber of Agriculture (Präsidentenkonferenz der Landwirtschaftskammer). Whilst formally not a Social Partner, the Federation of Austrian Industry (IV) is in fact an influential actor in the neocorporatist arrangements making up the Austrian Social Partnership. Of these, the Austrian Trade Union Council and the Federation of Austrian Industry do not feature mandatory membership.
- <sup>4</sup> The second most important way to start a legislative process is a motion by at least five members of parliament (Initiativantrag), either from the Government or the Opposition. In the 22. legislative period of the Austrian Parliament, from 2002 – 2006, these motions were responsible for 30 per cent of laws passed – as compared to 70 per cent initiated by government bills (Regierungsvorlage, numbers from [www.parlinkom.gv.at](http://www.parlinkom.gv.at) and personal communication with Johann Achter, Parliamentary Archive, 25-06-2007). Both forms of bill are usually drafted by civil servants.
- <sup>5</sup> The consultation process is regulated by the laws on chambers, professional societies and self-regulating bodies only. For example the Economic Chamber and the Chamber of Labour must be consulted in questions pertaining to their own interests and affairs (Fischer 1972; Mock 1988; Adamovich/Funk et al 1998).
- <sup>6</sup> <http://www.verwaltungskostensenken.at/> [09-03-2009]
- <sup>7</sup> The defensive stance against NPM was a motif in a number of conversations we had with Austrian civil servants who, since the 2000s, have faced a series of training measures and changes based on NPM (compare Hammerschmid/Meyer 2005, Neisser 2006).
- <sup>8</sup> Different from the classic debate in the US on 'iron triangles', stable, close and informal relationships in single policy fields formed by representatives of Congress, civil service and industry, which have been seen as dangerous for democratic policy-making (White 1973, critique of the concept in Hrebrenar/Scott 1990).
- <sup>9</sup> Compare the working paper section in <http://www.enbr.org>.

## References

- Aberbach, J.D. (2003) 'Introduction: Administration in an Era of Change', *Governance* vol. 16, no. 3, pp. 315-319.
- Adamovich, L., B.-C. Funk, et al. (1998) *Österreichisches Staatsrecht, Band 2*, Wien; New York, Springer.
- Almond, G. A. (1956) 'Comparative Political Systems', *The Journal of Politics* vol. 18, pp. 391-409.
- Amt der Vorarlberger Landesregierung (2001) *Gesetzesfolgenabschätzung in Vorarlberg – ein Leitfaden für die Praxis*.
- BGBI 213/1986, Bundeshaushaltsgesetz.
- BGBI I 151/2001 Bundesgesetz, mit dem Bestimmungen über einen Deregulierungsauftrag erlassen sowie das Eisenbahngesetz 1957, das Rohrleitungsgesetz und das Umweltverträglichkeitsprüfungsgesetz 2000 geändert werden (Deregulierungsgesetz 2001).
- BGBI I 35/1999, Vereinbarung zwischen dem Bund, den Ländern und den Gemeinden über einen Konsultationsmechanismus und einen künftigen Stabilitätspakt der Gebietskörperschaften.
- BGBI I 96/2005, Bundesgesetz über die strategische Prüfung im Verkehrsbereich (SP-V-Gesetz).
- BGBI II 50/1999, Richtlinien für die Ermittlung und Darstellung der finanziellen Auswirkungen neuer rechtsetzender Maßnahmen gemäß § 14 Abs. 5 des Bundeshaushaltsgesetzes (BHG). Verordnung.
- BGBI I 120/2002, Bundesgesetz über die Organisation der Universitäten und ihrer Studien.
- BGBI 20/2008, Änderung des Bundeshaushaltsgesetzes.
- Biegelbauer, P. (2007) 'Learning from Abroad: The Austrian Competence Centre Programme Kplus', *Science and Public Policy* vol. 34, no. 9, pp. 606-618.
- Biegelbauer, P. And Griessler, E. (2009) 'Politische Praktiken von MinisterialbeamtInnen im österreichischen Gesetzgebungsprozess', *Österreichische Zeitschrift für Politikwissenschaft* vol. 38, no. 1, pp. 1-19.
- Böhret, C. And Konzendorfer, G. (2001) *Handbuch Gesetzesfolgenabschätzung (GFA)* Baden Baden, Nomos.
- Bundeskanzleramt (1999) *Legistik und Begutachtungsverfahren; Auswirkungen von Rechtssetzungsvorhaben auf die Beschäftigungslage in Österreich und auf den Wirtschaftsstandort Österreich; Gestaltung von Vorblatt und Erläuterungen (Rundschreiben GZ 600.824/0-V/2/99)* 19 Februar 1999, Wien.
- Bußjäger, P. (2004) 'Symbolische Gesetzgebung als Realität und Rechtsproblem: Das Deregulierungsgesetz 2001' *Österreichische Juristen Zeitung*, vol. 19, no. 43, pp. 701-705.
- Directive 2001/42/EC, On the Assessment of the Effects of Certain Plans and Programmes on the Environment.
- European Commission (2002) *Communication from the Commission on Impact Assessment*, COM(2002) 276, 5 June 2002.

- European Commission (2005) Impact Assessment Guidelines, SEC(2005) 791, 15 June 2005.
- European Commission (2006) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A Strategic Review of Better Regulation in the European Union, COM(2006) 698, 14 November 2006.
- European Parliament, Council, Commission (2003) Interinstitutional Agreement on Better Law-Making (2003/C 321/01)
- Fischer, H. (1972) ‚Zur Praxis des Begutachtungsverfahrens im Prozess der Bundesgesetzgebung‘, *Österreichische Zeitschrift für Politikwissenschaft*, vol. 1, no. 1, pp. 35-54.
- Gottweis, H. (2007) ‚Rhetoric in Policy Making: Between Logos, Ethos and Pathos‘, in F. Fischer, G. J. Miller and M. S. Sidney (eds), *Handbook of Public Policy Analysis: Theory, Politics, and Methods*, Boca Raton, CRC Press, pp. 237-250.
- Griessler, E. (2003) ‚Innovation und Politikgestaltung: Administrative Kulturen in der Technologiepolitik. Ein Vergleich zwischen Österreich und den Niederlanden‘, in R. Pichler (ed.) *Innovationsmuster in der österreichischen Wirtschaftsgeschichte*, Innsbruck, Studienverlag pp. 290-312.
- Hammerschmid, G. and Meyer, R. (2005) ‚New Public Management in Austria: Local Variation on a Global Theme?‘, *Public Administration*, vol. 83, no. 3, pp. 709-733.
- Hörtenhuber, H. and Steiner, W. (2002) ‚Normsetzung und qualitative Deregulierung. Das oberösterreichische Modell zur Qualitätssicherung‘, *Journal für Rechtspolitik* vol. 10, no. 1, pp. 7-26.
- Hrebennar, R. J. and Scott, R. K. (1990, 1<sup>st</sup> edn 1982) *Interest Group Politics in America*, Englewood Cliffs, Prentice Hall.
- Jacobs, S. (2006) ‚Current Trends in Regulatory Impact Analysis: The Challenges of Mainstreaming RIA into Policy-making‘, ENBR-Steering Group Meeting, 15 December 2006, Rotterdam.
- Karlhofer, F. and Tálos, E. (eds) (1996) *Sozialpartnerschaft und EU*, Wien, Signum Verlag.
- Karlhofer, F. and Tálos, E. (eds) (2005). *Sozialpartnerschaft. Österreichische und Europäische Perspektiven*, Wien, Lit Verlag.
- Knill, Christoph and Lenschow, Andrea (2005) ‚Compliance, Communication and Competition: Patterns of EU Environmental Policy Making and Their Impact on Policy Convergence‘, *European Environment*, vol. 15, pp. 114-128
- Knott, J. H. and T. H. Hammond, T.H. (2003) ‚Formal Theory and Public Administration‘, in G.B. Peters and J. Pierre (eds) *Handbook of Public Administration*, London, Sage, pp. 138-148.
- Konrath, C. (2006) ‚Nachhaltigkeit und gute Gesetzgebung‘ (Thema des Monats 2/2006) <http://www.nachhaltigkeit.at/reportagen.php3?id=9#k4> [15.06.07]
- Kostal, T. and Obermann, G. (2005) ‚Finanzielle Auswirkungen von Gesetzen: Eine Evaluierung der Kalkulationsverpflichtung des § 14 BHG‘ in *Wirtschaftspolitische Blätter* 2/05, 208-216.

- LGBI. Nr. 1/2006, Gesetz über die Vermeidung und Erfassung von Abfällen (Vorarlberger Abfallwirtschaftsgesetz – V-AWG)
- LGBI. Nr. 114/2002, Landesgesetz über das Inverkehrbringen, die Errichtung und den Betrieb von Heizungsanlagen, sonstigen Gasanlagen sowie von Lagerstätten für brennbare Stoffe (Oö. Luftreinhalte- und Energietechnikgesetz 2002 - Oö. LuftREnTG)
- LGBI. Nr. 18/2003, (27/2005) Gesetz über den Abschluss und die Vermittlung von Wetten (Wettengesetz Vorarlberg)
- Mandelkern Group on Better Regulation (2001), *Final Report*.
- March, J. G. and Olsen, J. P. (1989) *Rediscovering Institutions*, New York, Free Press.
- May, P. (2003) 'Policy Design and Implementation' in G.B. Peters and J. Pierre (eds) *Handbook of Public Administration*, London, Sage, pp. 223-233.
- Meuwese, A. (2008) *Impact Assessment in EU Lawmaking*, in the series by the E.M Meijers Institute of Legal Studies of Leiden University.
- Mock, E. (1988) 'Die politische Dimension der Rechtssetzung', in Heinz Schäffer (ed.) *Theorie der Rechtssetzung*, Wien, Manz, pp. 125-144.
- Neisser, H. (2006) 'Verwaltung' in H. Dachs, P. Gerlich, H. Gottweis et al (eds) *Politik in Österreich: Das Handbuch*. Wien, Manz, pp. 201-212.
- OECD (2002) *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris, OECD.
- OECD (2004) *Regulatory Impact Analysis (RIA) Inventory*, Paris, OECD (Note by the Secretariat).
- O'Toole, L. J. (2003) 'Interorganizational Relations in Implementation' in G.B. Peters and J. Pierre (eds) *Handbook of Public Administration*, London, Sage: 234-244.
- Parsons, W. (1995) *Public Policy. An Introduction to the Theory and Practice of Policy Analysis*, Cheltenham, Edward Elgar.
- Parsons, W. (2003) *Public Policy. An Introduction to the Theory and Practice of Policy Analysis*, Cheltenham, Edward Elgar.
- Pelinka, A. (1981) *Modellfall Österreich? Möglichkeiten und Grenzen der Sozialpartnerschaft*, Wien, Braumüller.
- Pelinka, A. (2008) 'Gesetzgebung im politischen System Österreichs' in W. Ismayr (ed.) *Gesetzgebung in Westeuropa – EU Staaten und Europäische Union*, Wiesbaden, VS Verlag, pp. 431-462.
- Peters, G.B. (1999) *Institutional Theory in Political Science: The New Institutionalism*, London, New York, Pinter.
- Peters, G. B. (2001) *The Politics of Bureaucracy*, London, New York, Routledge.
- Pichler, R., Stampfer, M. et al. (2007) *Forschung, Geld und Politik. Die staatliche Forschungsförderung in Österreich 1945-2005*, Innsbruck, Studienverlag.
- Pickering, A. (1995) *The Mangle of Practice. Time, Agency and Science*, Chicago, University of Chicago Press.
- Pressman, J.L. and Wildavsky, A. (1973) *Implementation: How Great Expectations in Washington Are Dashed in Oakland; Or, Why It's Amazing that Federal Programs Work at All*, Berkely, University of California Press.

- Radaelli, C. (2005) 'Diffusion without Convergence: How Political Context Shapes the Adoptions of Regulatory Impact Assessment', *Journal of European Public Policy*, vol. 12, no. 5, pp. 924-943.
- Radaelli, C. and De Francesco, F. (2007) *Regulatory Quality in Europe: Concepts, Measures and Policy Processes*, Manchester, Manchester University Press.
- Raich, T. (2005) ,Gesetzesfolgenabschätzung (GFA) in Vorarlberg' in H. Schäffer (ed.) *Evaluierung der Gesetze*, Wien, Manz, pp. 91-100.
- Reckwitz, A. (2003) ,Grundelemente einer Theorie Sozialer Praktiken. Eine sozialtheoretische Perspektive', *Zeitschrift für Soziologie*, vol. 32, no. 4, pp. 282-301.
- Renda, A. (2006) *Impact Assessment in the EU. The State of the Art and the Art of the State*, Brussels, Centre for European Policy Studies.
- Sabatier, P. (1986) 'Top-Down and Bottom-Up Approaches to Implementation Research: A Critical Analysis and Suggested Synthesis', *Journal of Public Policy*, vol. 6, pp. 21-48.
- Schäffer, H. (ed.) (1988) *Theorie der Rechtssetzung*, Wien, Manz.
- Schäffer, H. (ed.) (2005) 'Evaluierung der Gesetze/Gesetzesfolgenabschätzung in Österreich und im benachbarten Ausland: ÖGGL-Tagung 2003', *Schriften zur Gesetzgebungslehre*. Wien, Manz.
- Schmitter, P and Lehmbruch, G. (eds) (1979) *Trends Towards Corporatist Intermediation*, London, Beverly Hills, Sage.
- Shonfield, A. (1965) *Modern Capitalism – The Changing Balance of Public and Private Power*, New York, London, Oxford University Press.
- Sickinger, H. (2000) ,Die Funktion der Nationalratsausschüsse im Prozess der Bundesgesetzgebung', *Österreichische Zeitschrift für Politikwissenschaft*, vol. 29, no. 2, pp. 157-176.
- Sickinger, H. (2006) ,Parlamentarismus', in E. Tálos (ed.) *Schwarz-Blau. Eine Bilanz des ,Neu-Regierens'*, Wien, Lit Verlag, pp. 70-85.
- Staronová, K. (2007) 'The Quality of Impact Assessment in Slovakia', in C. George and C. Kirkpatrick (eds.) *Impact Assessment and Sustainable Development*, Cheltenham, Edward Elgar, pp. 230-254.
- Steiner, W. (2005) ,Evaluierung und Gesetzesfolgenabschätzung in der Landesgesetzgebung. Erfahrungen und Leistungen am Beispiel des Landes Österreich' in H. Schäffer (ed.) *Evaluierung der Gesetze*, Wien, Manz, pp. 101-116.
- Tálos, E. And Kittel, B. (2001) *Gesetzgebung in Österreich. Netzwerke, Akteure und Interaktionen in politischen Entscheidungsprozessen*, Wien, Facultas/WUV.
- Tálos, E. and Stromberger, C. (2005) ,Zäsuren in der österreichischen Verhandlungsdemokratie' in F. Karlhofer and E. Tálos (eds) *Sozialpartnerschaft. Österreichische und europäische Perspektiven*, Wien, Lit Verlag, pp. 79-216.
- TEP (The Evaluation Partnership Limited) (2007) *Evaluation of the Commission's Impact System. Final Report. April 2007*
- Uebe, T. (2005) .Gesetzes(kosten)folgenabschätzung im Land Oberösterreich', *Wirtschaftspolitische Blätter*, vol. 2, no. 5, pp. 217-229.

- Wagenaar, H. and M. Hajer, (eds) (2003) *Deliberative Policy Analysis. Understanding Governance in the Network Society*, Cambridge, Cambridge University Press.
- Wagenaar, H. and Hajer, M. (2003) 'Introduction' to *Deliberative Policy Analysis. Understanding Governance in the Network Society*, Cambridge, Cambridge University Press, pp. 1-32.
- Wagenaar, H (2004) "'Knowing" the Rules: Administrative Work as Practice' in *Public Administration Review*, vol.64, no. 6, pp. 643-655.
- Wenger, E. (1998) *Communities of Practice. Learning, Meaning, and Identity*, Cambridge, Cambridge University Press.
- White, T. H. (1973) *The Making of a President 1972*, New York, Bantam.
- Winter, S. C. (2003) 'Implementation Perspectives: Status and Reconsideration' in G.B. Peters and J. Pierre (eds) *Handbook of Public Administration*, London, Sage, pp. 212-222.
- Yanow, D. and P. Schwartz-Shea (eds) (2006) *Interpretation and Method. Empirical Research Methods and the Interpretative Turn*. Armonk, New York, M.E. Sharpe.

### **Interviews:**

- Interview 1: scientific staff member, Austrian Parliament, conducted in 09/2006
- Interview 2: former civil servant, Ministry of Science and Transport, 05/2007
- Interview 3: civil servant, Ministry of Transport, Innovation and Technology, 06/2007
- Interview 4: former civil servant, Ministry of Interior, 06/2007
- Interview 5: political staff member, Austrian Parliament, 02/2007
- Interview 6: civil servant, Ministry for Health, Youth and Family Affairs, 06/2007
- Interview 7: staff member, Chamber of Labour, 10/2006
- Interview 8: civil servant, Ministry of Finance, 10/2006
- Interview 9: former civil servant, Upper Austrian regional government, 11/2006
- Interview 10: civil servant, Vorarlberg regional government, 12/2006
- Interview 11: civil servant, Upper Austrian regional government, 12/2006