

Ten Years of Work for Better Regulation in Germany

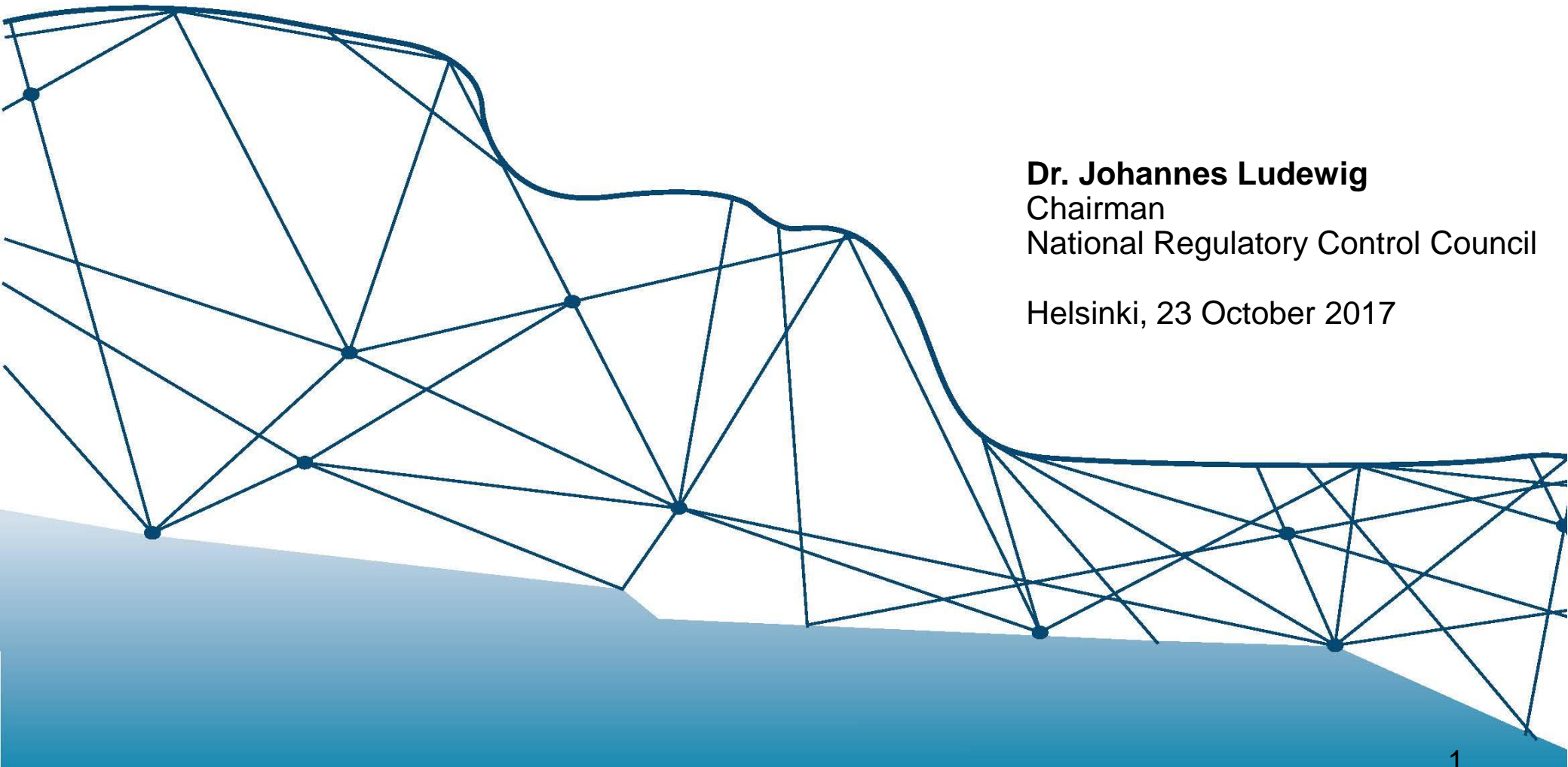
- Key findings and recommendations -

Dr. Johannes Ludewig

Chairman

National Regulatory Control Council

Helsinki, 23 October 2017



Members (10)
Independent

Secretariat (15)
Federal Chancellery

NKR

NKRG,
Federal Government /
Head of State,
since 2006

Government Agenda,
Minister of State,
Geschäftsstelle, Federal
Statistical Office

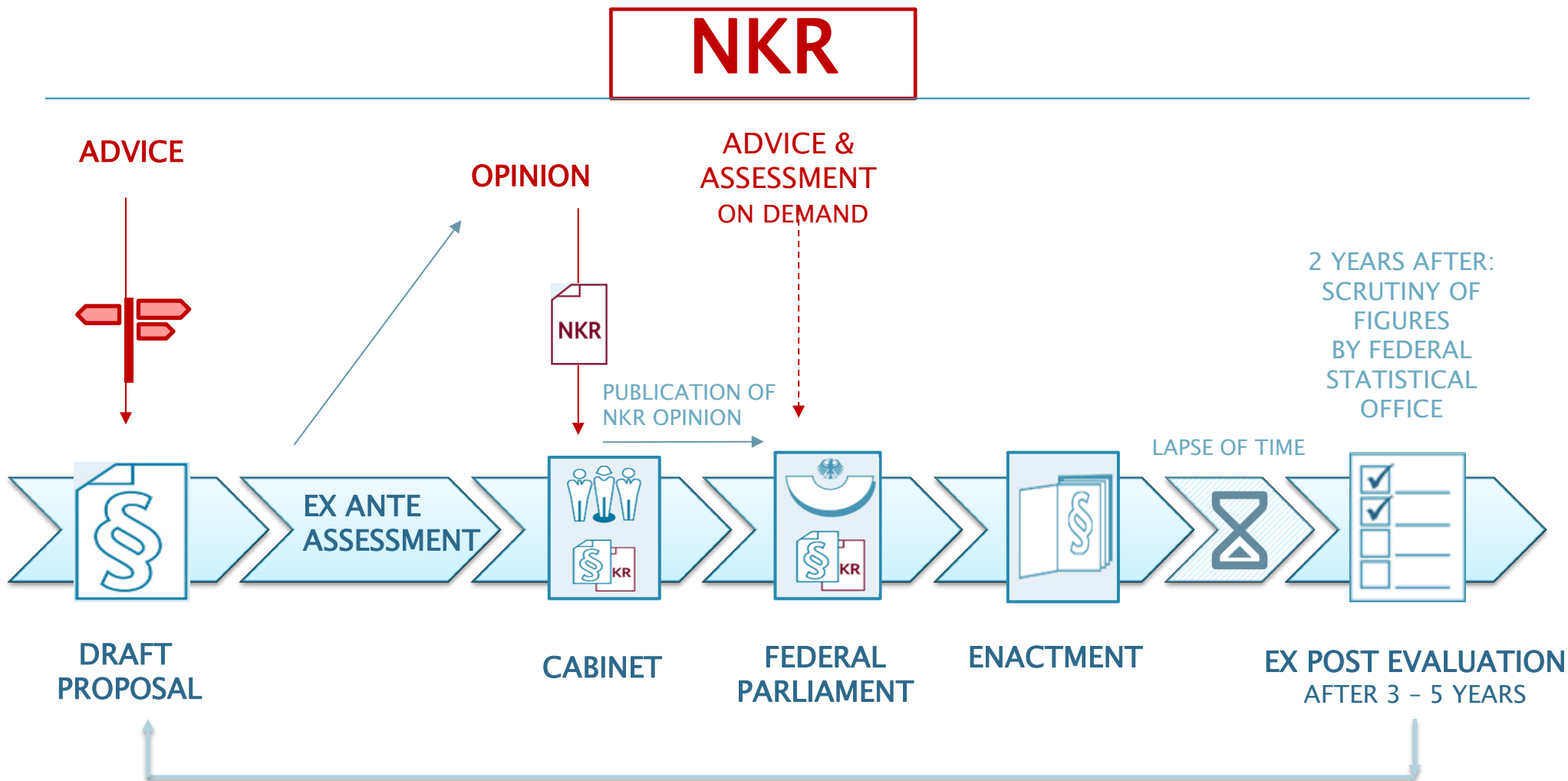
Ensuring transparency
and reducing costs

„know what you
are doing“

COMPLIANCE COSTS

Ex ante scrutiny regarding all
primary and secondary laws
and regulatory provisions

The NKR's Function in the Legislative Process



Example for an NKR opinion

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Normenkontrollrat

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Berlin, 22 August 2016

**Opinion of the National Regulatory Control Council pursuant to § 6(1) NKRK
Legislative Proposal to introduce accreditation rules for commercial estate agents
and real estate managers
(NKR Nr. 3409)**

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

I. **Executive Summary**

| | |
|---|--|
| Citizens | No impacts |
| Businesses | |
| Recurring compliance costs: | 18.3 m EUR |
| Share of administrative costs: | 86.000 EUR |
| One-off compliance costs: | 3.3 m EUR |
| Other recurring costs (charges): | 1.8 m EUR |
| Other one-off costs (charges): | 8.9 m EUR |
| Public Administration | |
| Recurring compliance costs: | 158.700 EUR |
| One-off compliance costs: | 1.6 m EUR |
| 'One in one out'-rule | With regard to the Government's 'one in one out'-rule, the recurring compliance costs for businesses qualify as an „In“ of 18.3 m EUR. |
| Objective and necessity of the legislative proposal | NKR judges that the ministry did not explain both the objective and the necessity |

SEITE 2 VON 7

| | |
|------------------------------|---|
| | of the legislative proposal sufficiently well. The ministry considers that the risk of potential financial harm to flat owners arising from a lack of professional expertise warrants obligatory professional indemnity insurance. But the proposal's explanatory memorandum does not show any causal relationship to underpin this argument. Additionally, the level of any potential financial damage has not been quantified. |
| Alternatives | An alternative with fewer impacts for the persons concerned would be self-regulation by the branch and certification on a voluntary basis. The ministry considers this alternative to be ineffective by drawing on narrative evidence from the respective branch. The proposal does not provide conclusive detail on whether customers have favoured those estate agents or real estate managers lacking sufficient expertise. Taken together with the lacking statistical analysis, the NKR considers the rationale to be unconvincing. |
| Small and Middle Enterprises | Estate agents and real estate managers usually meet the criteria of small and middle enterprises (SME). Therefore, these SMEs are subject to particular burdens, caused by the increase of insurance premiums in case of an obligatory insurance. Larger enterprises usually have reasonable master agreements and are therefore not affected to the same degree as SMEs. Measures causing fewer burdens for SMEs are not apparent, which is plausible from the NKR's point of view. The NKR appreciates the so-called grandfathering-clause regarding enterprises which have been active in the market for many years; these enterprises do not have to comply with the future rules. |

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

SEITE 3 VON 7

II. **Im Einzelnen**

II.1 **Regelungsinhalt**

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

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

II.2 **Vorgaben, Erfüllungsaufwand und Weitere Kosten**

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

- **Sachkundenachweis**

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

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„aiming higher“

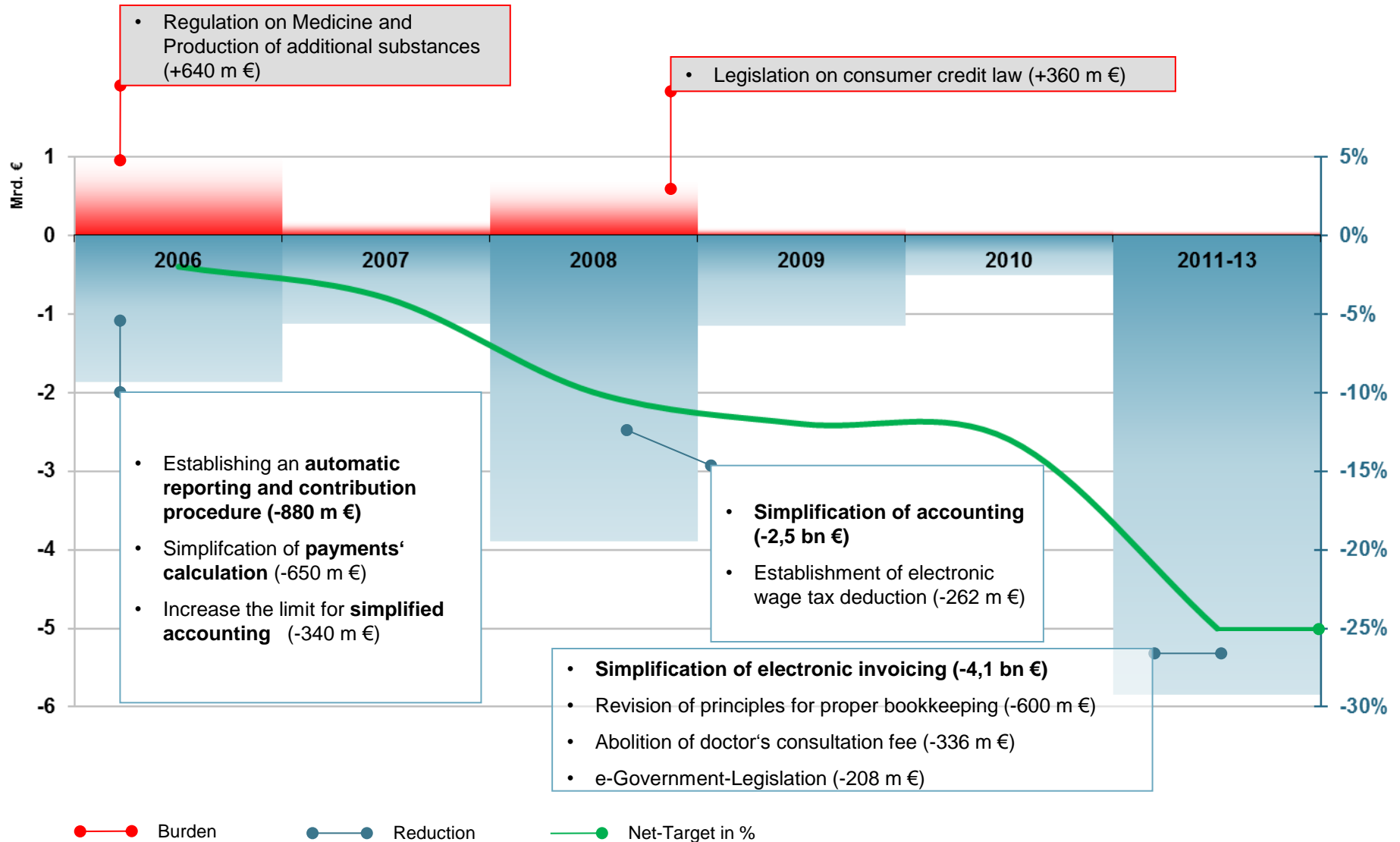
25% reduction target

with regard to businesses

Standard-Cost-Model
The Netherlands

Baseline Measurement
ca. EUR 50 bn

Most important steps for achieving the 25% net reduction target

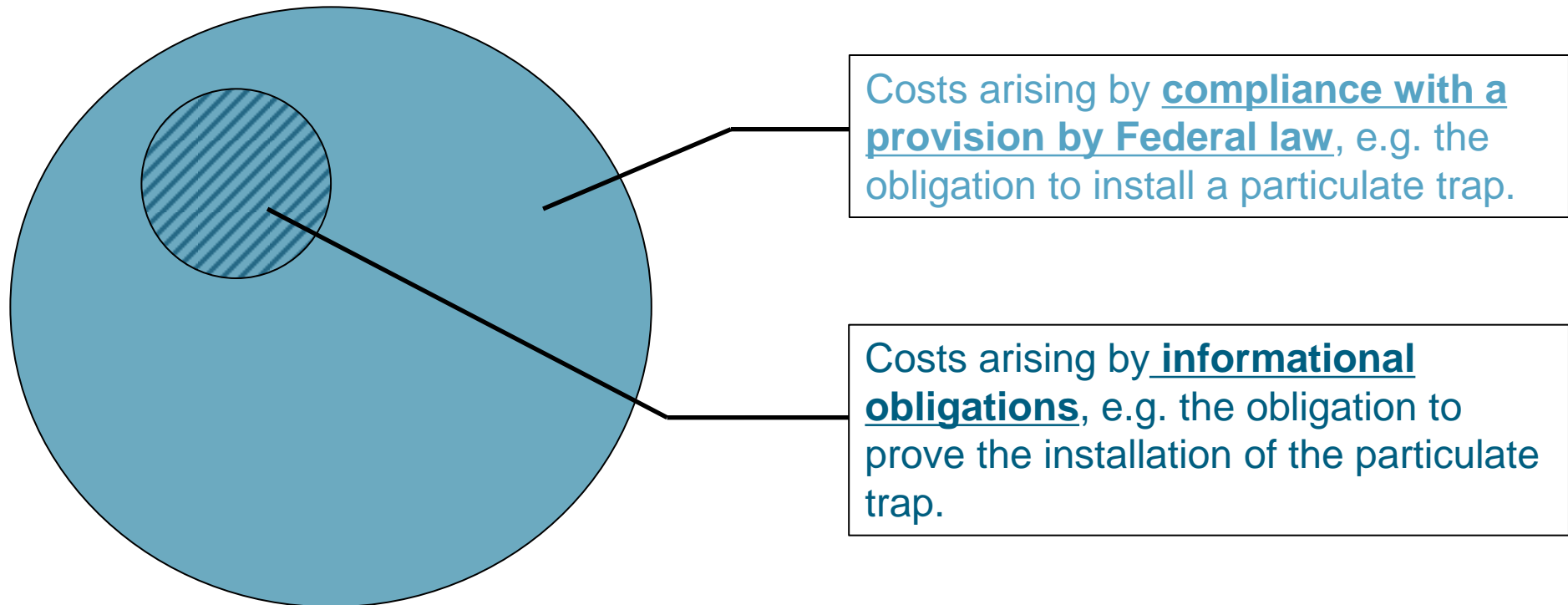


**from
administrative costs
to
compliance costs**

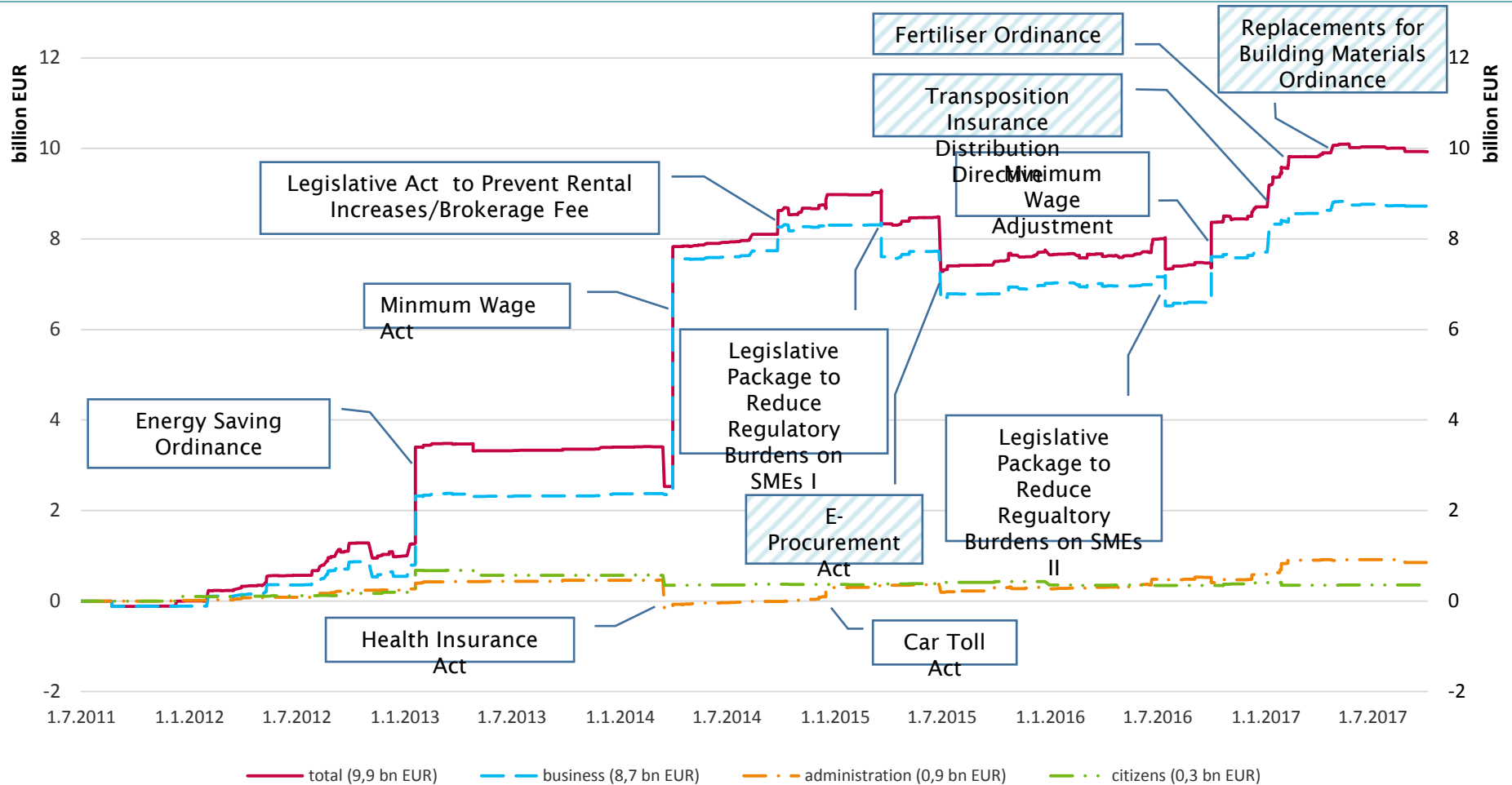
What are Compliance Costs?

Legal definition of compliance costs in the statutory basis of the NKR (§ 2 Sec. 1 und 2 NKRG):

„The term compliance costs embraces the entire measurable time and costs incurred by the citizens, the business sector and public authorities through compliance with a provision under Federal law. Compliance costs include the costs of bureaucracy. Bureaucracy costs within the meaning of this Act are costs incurred by natural or legal persons due to information obligations. Information obligations are obligations existing as a result of laws, regulations, by-laws or administrative provisions to procure or keep available for, or pass on to, authorities or third parties data and other information.“



Recurring Compliance Costs



Regulations transposing EU law (by at least 50%)

one in, one out
United Kingdom

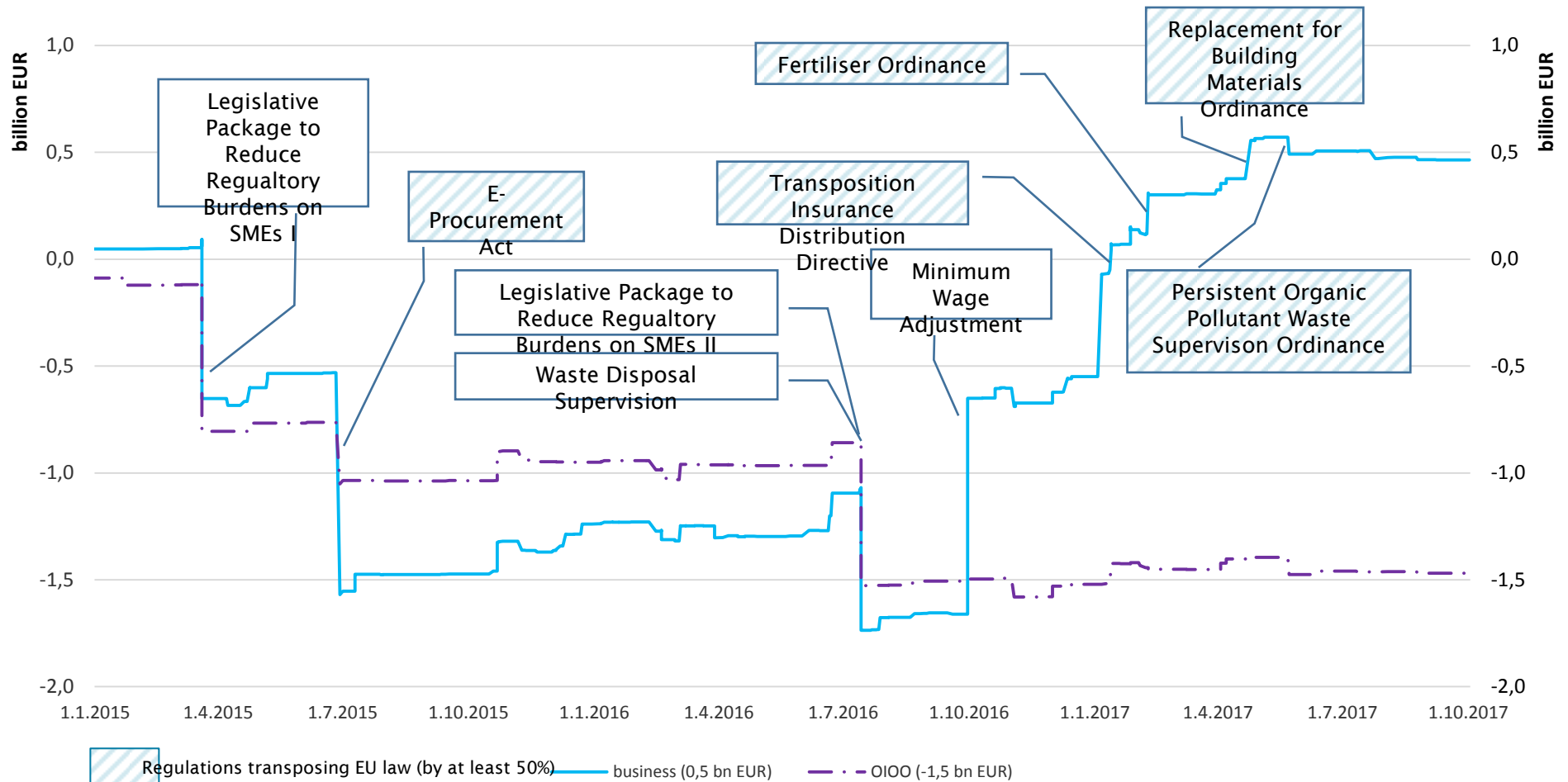
target group
businesses

OIOO

„aiming higher“
after 2 years
positive results

exception for
implementing acts
from the EU level

Recurring Compliance Costs and OIOO Stocktake



1:1 implementation
of legislative acts
from the EU level

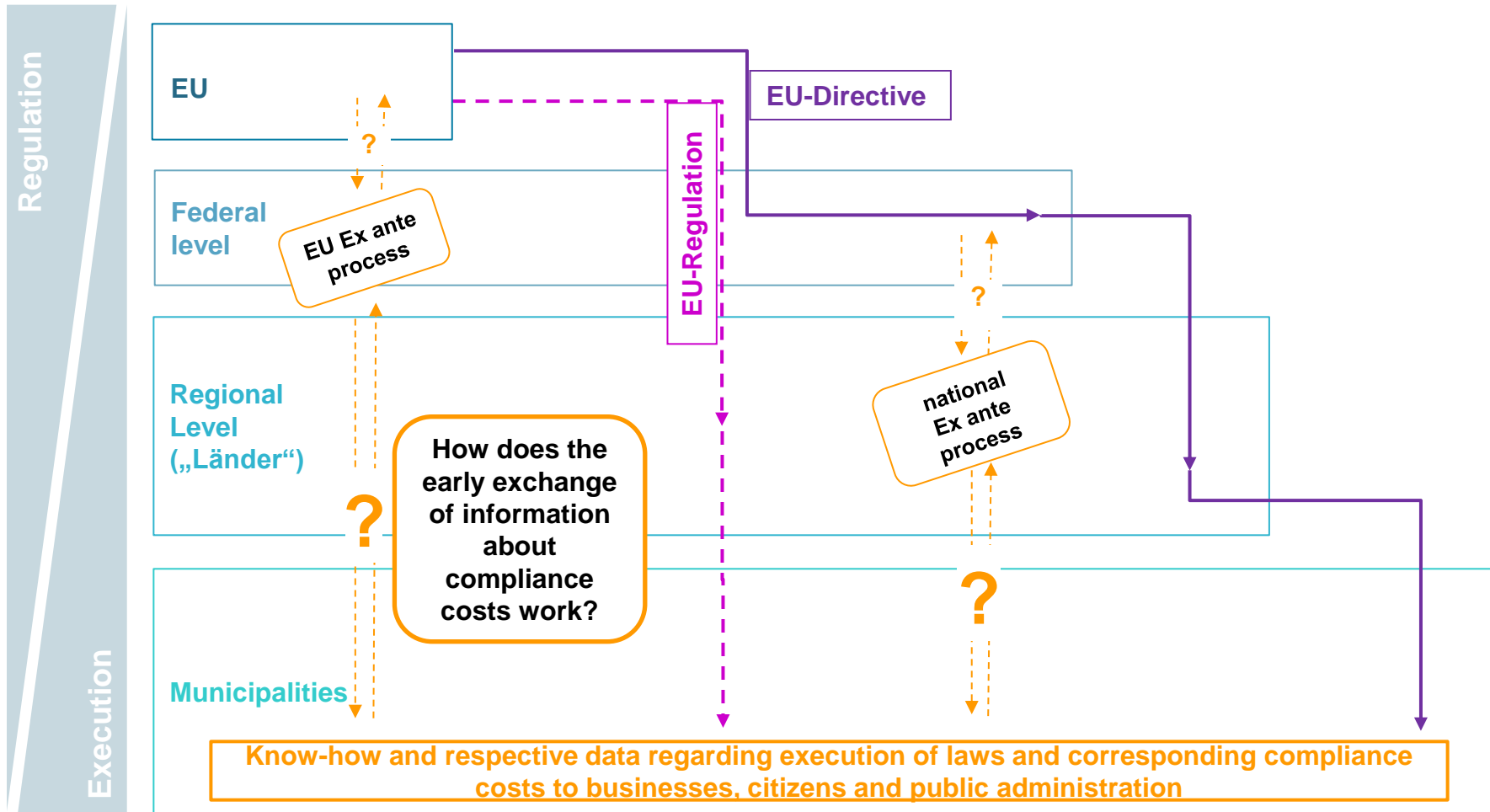
EU ex ante
process

MULTI LEVEL PROBLEM

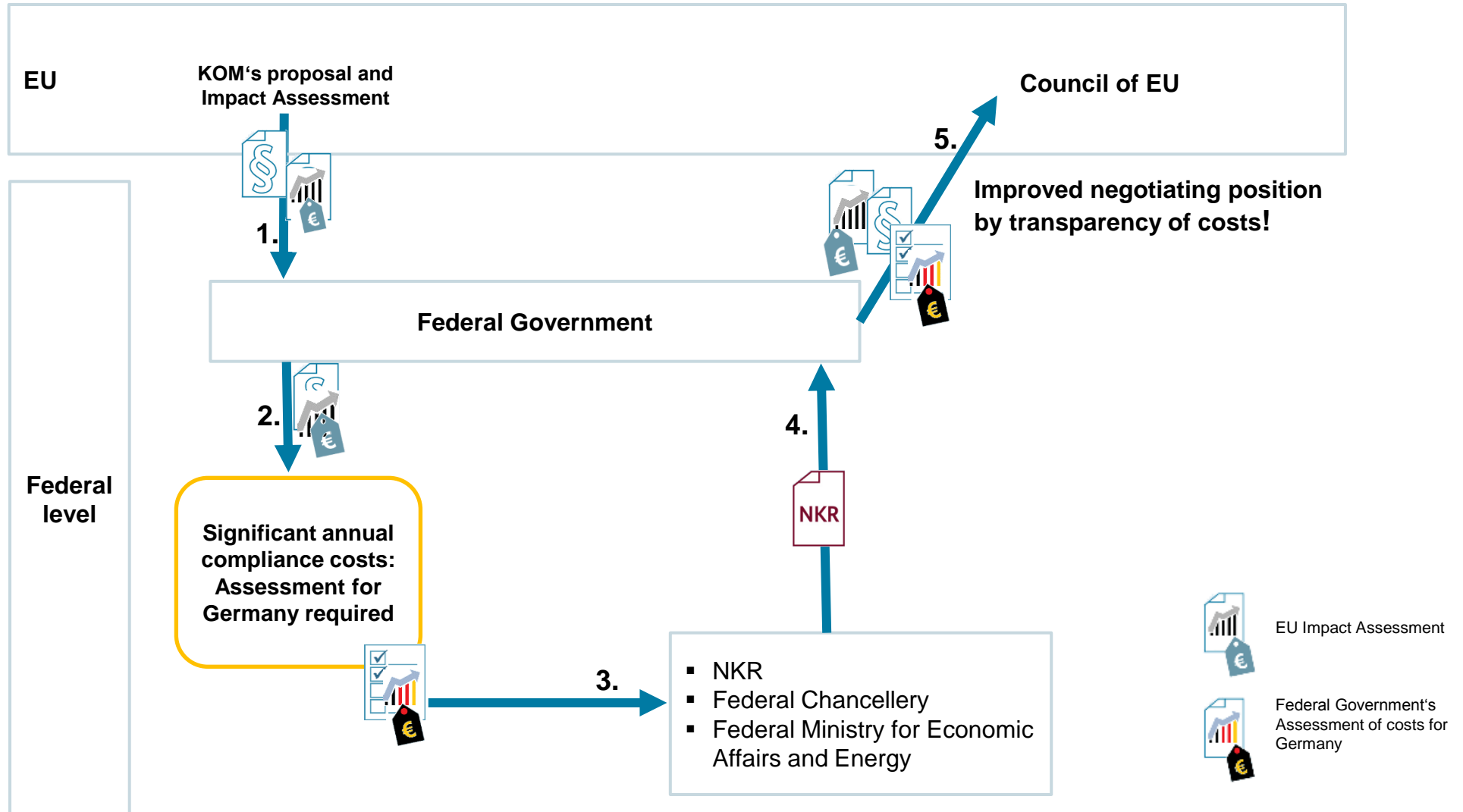
Enforcement of Laws by
Länder and Municipalities

ERBEX

Multi-level Problem



EU ex ante-process



Ex ante vs. ex post

Effectiveness

EX-POST EVALUATION

Systematic approach,
After 3 to 5 years
after enactment

First
Evaluations
in early 2018

Comprehensive
coverage of impacts

Difficult to
quantify

BENEFITS

International experiences
e.g. USA, GBR, AUS

Pilot projects

Existing stock of legislation,
based on proposals from people
concerned

Satisfaction surveys,
Bureaucracy from the
perspective of businesses

PROJECTS

- „Facilitating the Application for-Projects“
- e.g. for housing subsidy, parental benefits
- Work permits for specialised non-EU personel,
- Reduction of bureaucracy for physicians and dentists,
- Settlement dates for national insurance contributions

NKR role as an advisor to government

Contributed half of
25% reduction target

E-Government-
Guidance

E-GOVERNMENT

Place 18 in
Europe

NKR study: There is no E-
Government in Germany!
Savings potential: 3 bn EUR p.a.!

NKR role as an advisor to government

Once-only-principle

More than 200 registers,
incompatible, not connected
with each other

CROSS-LINKING OF REGISTERS

LATEST NKR STUDY

Data protection:
Following the example
set by Austria

Savings potential: 6 bn EUR p.a.!
Investment costs: 2.5 bn EUR

RECOMMENDATIONS

- (1) An independent body can serve as a **scrutiny body** and a valuable **adviser** for the Government at the same time. To ensure maximum effectiveness of an independent body, **political support from the highest level** is needed.
- (2) For the further and continuous development the Better Regulation Agenda, it is important to have an **ongoing dialogue** between the independent body and the highest political level.
- (3) With regard to the Better Regulation Agenda, an independent body should be **involved** in all **relevant measures** and at **all stages in the policy cycle**, e.g. ex-ante assessments, ex post evaluations, reduction targets, etc.
- (4) With regard to the core of the NKR mandate - the independent scrutiny of impact assessments - our extremely **simple methodological approach** to calculate compliance costs has proven to be successful.
- (5) Furthermore, with regard to the calculation of compliance costs, the **support of the Federal Statistical Office** has proven to be critical to success as well.

THANK YOU FOR YOUR ATTENTION!

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