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Act of 19 June 2022 (Federal Law Gazette I, p. 920)

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Act Establishing a National Regulatory Control Council (Gesetz zur Einsetzung eines Nationalen Normenkontrollrates – NKRG)

Act Establishing a National Regulatory Control Council of 14 August 2006 (Federal Law
Gazette I, p. 1866), as last amended by Article 1 of the Act of 19 June 2022 (Federal Law
Gazette I, p. 920)

Section 1

Establishment of a National Regulatory Control Council

- (1) This Act establishes a National Regulatory Control Council within the Federal Ministry of Justice, with headquarters in Berlin. It shall be bound solely by the mandate arising from this Act, and shall operate independently.
- (2) The task of the National Regulatory Control Council is to assist the Federal Government with the implementation of measures for bureaucracy reduction and better regulation.
- (3) In particular, the National Regulatory Control Council shall scrutinise the extent to which compliance costs to citizens, business and public administration arising from new regulations, as well as other costs to business – especially SMEs – have been presented in a methodologically sound and coherent manner.
- (4) Scrutiny of the object and purpose of regulations shall not fall within the remit of the National Regulatory Control Council.

Section 2

Compliance costs

- (1) Compliance costs are the total measurable time expended and costs incurred by citizens, business and public administration to comply with a given federal regulation.
- (2) A subset of compliance costs are bureaucracy costs. For the purposes of this Act, bureaucracy costs are costs incurred by natural or legal persons as a result of information obligations. Information obligations are obligations arising from acts, ordinances, bylaws or administrative regulations to obtain, retain or transmit data or other information for authorities or third parties.
- (3) Bureaucracy costs are to be measured using the Standard Cost Model (SCM). The internationally recognised rules for application of the Standard Cost Model are to be followed. Deviations from this methodology require a majority decision by the members of the National Regulatory Control Council and the consent of the Federal Government. The need for a decision is to be considered in particular where a deviation from the internationally recognised rules for application of the SCM is otherwise to be anticipated.
- (4) In the initial determination of the cost parameters required to conduct the measurement for businesses (costs per unit; time required for each individual activity triggered by the legislation and the annual frequency of that activity; and the number of affected businesses), all bureaucracy costs arising from federal law are to be taken into consideration.

Section 3

Composition and organisation of the National Regulatory Control Council

- (1) The National Regulatory Control Council shall be made up of ten members. They are proposed to the Federal President by the Federal Minister of Justice in agreement with the other members of the Federal Government and appointed for a term of five years by the Federal President. Reappointment is possible. Members may resign their office by submitting a declaration to this effect to the Federal President. If a member leaves office before the end of their term, a new member shall be appointed for the remainder of the departing member's term. Sentence 2 applies accordingly.
- (2) Members should have experience in legislative matters within institutions of state or civil society, and knowledge of economic affairs.
- (3) During their membership of the National Regulatory Control Council, members may not belong to a legislative body, federal authority or *Land* authority, nor may they be bound by a permanent employment or service relationship to such a body or authority. Exceptions are permitted for university teachers. Members must also not have held a position or been in a relationship within the meaning of sentence 1 in the year preceding their appointment as members of the National Regulatory Control Council; however, a position in or relationship with a legislative body within the meaning of sentence 1 is not an impediment to appointment to the National Regulatory Control Council.
- (4) The Federal Ministry of Justice shall select a member to chair the National Regulatory Control Council. That member may only be reselected once.
- (5) Membership of the National Regulatory Control Council is an honorary office.
- (6) Decisions by the National Regulatory Control Council must be passed by a majority of its members. In the event of a tied vote, the draft bill under examination is not challenged. Minority opinions are not permitted.
- (7) The activities of the National Regulatory Control Council shall be governed by rules of procedure approved by the Federal Ministry of Justice in agreement with the other federal ministries.
- (8) Legal oversight shall be exercised by the Federal Ministry of Justice.
- (9) A Secretariat of the National Regulatory Control Council shall be established within the Federal Ministry of Justice. The head of the Secretariat shall attend the meetings of the National Regulatory Control Council in an advisory capacity. The head of the Secretariat shall be subject solely to the instructions of the National Regulatory Control Council. The staff of the Secretariat shall be subject solely to the instructions of the National Regulatory Control Council and of the head of the Secretariat. The members of the Secretariat may not concurrently exercise duties of direct or indirect public administration at Federal or *Land* level in either a full-time or part-time capacity.
- (10) The members of the National Regulatory Control Council shall be entitled to compensation at a fixed rate and reimbursement of travel expenses. The corresponding amounts shall be set by the Federal Ministry of Justice in agreement with the Federal Ministry of the Interior.
- (11) The members of the National Regulatory Control Council and the staff of the Secretariat are bound to confidentiality regarding the Council's deliberations and any associated documents classified as confidential by the National Regulatory Control Council.
- (12) The costs of the National Regulatory Control Council shall be borne by the Federation. The National Regulatory Control Council is to be provided with the staff and material resources necessary for the performance of its duties. The head of the Secretariat shall be appointed in agreement with the National Regulatory Control Council. The remaining appointments to the Secretariat shall be made in agreement with the chair of the National Regulatory Control Council. If they do not wish to accept their appointment, the staff of the Secretariat may only be transferred, seconded or reassigned in agreement with the chair of the National Regulatory Control Council.

Section 4

Tasks of the National Regulatory Control Council

(1) The right to scrutiny exercised by the National Regulatory Control Council shall encompass the following:

1. drafts for new federal legislation,
2. including the original legislation in the case of draft amending legislation,
3. drafts for subsequent subordinate statutory and administrative provisions,
4. preparatory work for legal acts (framework decisions, decisions, agreements and associated implementing measures) of the European Union and for regulations, directives and decisions of the European Community,
5. for transposition of EU law, the legislation in question and subordinate statutory and administrative regulations,
6. existing federal legislation, as well as statutory instruments and administrative regulations based thereon.

(2) Besides the scrutiny provided for in section 1 (3), the scope of scrutiny by the National Regulatory Control Council may include the methodologically sound execution and coherent presentation of the following aspects:

1. clear presentation of the object and necessity of the regulation,
2. considerations regarding alternative approaches,
3. considerations regarding the time of entry into force, limitation and evaluation,
4. statements on legislative and administrative simplification,
5. the extent to which, in the case of transposition of a directive or other legal act of the European Union, additional regulations have been created above and beyond the requirements of the EU legislation.

(3) Besides the scrutiny provided for in section 1 (3), the scope of scrutiny by the National Regulatory Control Council may also include the extent to which digital implementation options for new regulations have been explored (“digital-readiness check”).

(4) The National Regulatory Control Council shall scrutinise draft regulations by the federal ministries before they are presented to the Federal Cabinet. The National Regulatory Control Council shall scrutinise bills by the Bundesrat if these are referred to it by the Bundesrat. It shall scrutinise bills from the floor of the Bundestag at the request of the parliamentary group or the members of the Bundestag introducing the bill. The order in which drafts are scrutinised is at the discretion of the National Regulatory Control Council.

(5) The National Regulatory Control Council shall deliver an opinion on the annual report of the Federal Government regarding the extent to which the Federal Government’s bureaucracy reduction and better regulation targets have been achieved.

(6) The scrutiny powers of the *Bundesrechnungshof* (Federal Court of Auditors) and the Federal Commissioner for Economic Efficiency in the Administration shall remain unaffected. (+++ Section 4 (3): for application cf. section 9 +++)

Section 5

Powers of the National Regulatory Control Council

(1) The National Regulatory Control Council shall have the authority to

1. use the database created by the Federal Government for data received in the course of determining bureaucracy costs,
2. conduct its own hearings,

3. commission expert opinions,
4. submit special reports to the Federal Government.

(2) Federal authorities and the *Länder* shall provide administrative assistance to the National Regulatory Control Council.

Section 6

Obligations of the National Regulatory Control Council

(1) The National Regulatory Control Council's statements on bills shall not be made public. These statements and the responses of the Federal Government thereto shall be attached to the bill when it is introduced in the Bundestag or referred to the Bundesrat, as applicable.

(2) The National Regulatory Control Council shall report to the Federal Government on a yearly basis. It may submit recommendations along with its written report.

(3) The National Regulatory Control Council shall be at the disposal of the lead and co-advisory standing committees of the Bundestag and the Bundesrat in an advisory capacity.

Section 7

Obligations of the Federal Government

The Federal Government shall submit a report to the German Bundestag each year on

1. the current status of bureaucracy reduction in relation to current targets,
2. experience with the methodology used to estimate compliance costs,
3. compliance cost trends in the individual ministries and
4. results and developments in the field of better regulation.

Section 8

Tasks of the Federal Statistical Office

The Federal Statistical Office shall assist the Federal Government, the Bundestag and the Bundesrat as needed with the tasks arising from this Act, in particular by evaluating available data and performing cost estimates. It shall be responsible for creating and maintaining the databases required for reporting and performance monitoring purposes pursuant to this Act.

Section 9

Transitional provision

Section 4 (3) shall apply from 1 January 2023.