

*ENBR Working Paper No. 10/2007*

**RIA OR NO RIA:  
THE DIALOGUE BETWEEN  
POLICYMAKERS AND  
STAKEHOLDERS IN THE  
REGULATORY PROCESS IN AUSTRIA**

**PETER BIEGELBAUER  
STEFANIE MAYER**

**IHS VIENNA**

**(draft at 15 October 2007)**

# RIA or no RIA: the Dialogue between Policymakers and Stakeholders in the Regulatory Process in Austria

Peter Biegelbauer, Stefanie Mayer  
IHS Vienna

## Introduction<sup>1</sup>

As part of the general discussion on programmes on Better Regulation a number of initiatives advancing Regulatory Impact Assessment (RIA) have been created over the recent years (Renda 2006; Jacobs 2006). 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 (Radaelli/De Francesco 2007).

Systematic ex-ante Regulatory Impact Assessment taking into account government-external effects as a political tool to support decision-making has had a very hard time taking root in Austria. The leading research question of this paper is why this is the case. Our hypothesis is that RIA has been introduced so slowly because of the specific character of the Austrian political system, structured as a consociational democracy the heart of which is formed by a closely coupled neo-corporatist system (Kittel/Talos 2001; Karlhofer/Talos 2006).

Indeed the intense interactions between key actors in the Austrian regulatory process are historically contingent. One example for such a set of interactions building on previous interactions is the consultation mechanism preceding the legislative process of Austrian parliamentarianism: most draft laws are produced by federal ministries as part of a pre-consultation process (“Vorbegutachtungsverfahren”) in interaction with political and economic stakeholders before they 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.

The specific way in which the pre-parliamentarian 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.

We presume that the consociational Austrian political system, which features a policy style pervasive in the well established consultation mechanism, is the prime reason why RIA has so much difficulties in being established in Austria.

In order to explain this 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-parliamentarian consultation mechanism. After describing these, we turn to the establishment of (parts of)

---

<sup>1</sup> We would like to thank our colleague Erich Griessler for his comments on this paper. We also want to thank our interview partners.

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 signified by the domination of the party system 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% of the electoral votes. For most of the last 60 years the ÖVP and SPÖ have formed grand coalitions - they dominated the political landscape during this period.

Against the backdrop of the historic experience of a short civil war in the interwar period, 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 SPÖ and ÖVP formed a "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 Social Partnership organisations are most importantly the Austrian Chamber of Labour ("Arbeiterkammer"), representing the interests of the employees and the Austrian Economic Chamber ("Wirtschaftskammer"), representing the interests of employers.<sup>2</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).

The two big parties dominated the chambers. There was an intense integration of party representatives in the chambers, which of course can 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 peak of the organisation being represented in the Austrian Parliament. In this way the party and the neo-corporatist interest representation systems were linked and coupled densely through personal and institutional integration (Karlhofer/Talos 1999, 2005).

On top of this, large parts of political and economic life of post WW II Austria were dominated by this densely interwoven system. In a principle called "Proporz"-system 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. Representatives of SPÖ and ÖVP and the Social Partners would dominate the public councils and the supervisory boards ("Aufsichtsräte") of practically all public institutions in politics and economy. In analyses of foreign political scientists and political economists in the 1950s and 1960s the Austrian political and economic systems were characterised as dominated by cleavages and rifts characteristic for democracies in their early stages (Almond 1956). Andrew Shonfield characterised Austria as "outstandingly successful

---

<sup>2</sup> Other Social Partners are the Austrian Trade Union Council (Österreichischer Gewerkschaftsbund) and the Austrian Chamber of Agriculture (die 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.

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 comes to legislative affairs, the Social Partners were included in all stages. They could ask for regulations, 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, too, 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). Henceforth the international discourse of monetarism and neo-liberalism and the concomitant budget austerity were cornerstones of the political and economic debates. In the late 1980s these discussions and the difficulties of the Austrian political economy to adjust to the new realities were important elements in the political rise of Jörg Haider's FPÖ. Indeed 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 pressures rising on the party leaderships of SPÖ and ÖVP to implement reforms the Austrian chambers in the second half of the 1990s were not automatically included in each and every political decision anymore. Debates on the sensibility of the by measures of stability and economic growth successful but rigid Austrian political system were being led. In 1999, when the party leader of the ÖVP decided to form a coalition government with the Freedom Party, the importance of the Austrian Social Partnership was diminished rapidly.

The Austrian consociational democratic system, characterised by a specific political style of conflict management by parties and government alike and dominated by frequent compromises, during the period of the conservative government of ÖVP and FPÖ was moved into 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, between 2000 and 2006 was markedly diminished in importance (Talos/Stromberger 2005). The Social Partners were invited for negotiations with government only for 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. An example is the comprehensive pension reform of 2003, which was part of the budget law, for which three weeks time were set aside for consultation and which was passed in the Ministers' Council just three days after the end of the consultation period. The latter fact was commented by an interview partner with the remark that obviously the civil servants in charge could not have included much of the commentaries in the short time period (interview 7).

## The pre-parliamentarian consultation mechanism in Austria

The two most likely ways for a law to come into existence in Austria are<sup>3</sup>: First, a minister is convinced of the necessity to create new legislation and asks the civil service to prepare a new law. Second, and seemingly at least equally important, civil servants by themselves see the necessity to take some action and approach the respective minister's cabinet or, in case of the highest level of ministerial bureaucracy, directly the minister<sup>4</sup>. 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 write the draft law, 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").

First ideas for the new draft law are concretised and in an early stage of the pre-consultation process ("Begutachtungsverfahren") presented to representatives of other organisations. In the cases 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 most cases the constitutional service of the Chancellor's Office ("Verfassungsdienst des Bundeskanzleramtes") also relatively early on is asked 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. These might be large organisations, such as the Austrian Rectors' Conference and the largest Austrian research funding agency FFG ("Forschungsförderungsgesellschaft") in the area of science policy, or spokespersons of interest groups such as a weapons retailer in a case from the field of interior and security policy. Regularly the representatives of the chambers and other Social Partner organisations are being invited to give their opinion at this stage: "the Social Partners expect to be contacted in all matters" (interview 2). Even in cases when 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 is addressed with the first draft of the new law that came out of the pre-consultation process. Usually 6 weeks are provided for gathering the reactions, with a variation of this time span from 2 weeks up to 6 months. On top of the organisations that already have been part of the

---

<sup>3</sup> The Austrian Parliament consists of two chambers, the National Council and the Federal Council. Most legislative competencies are concentrated at 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 of individual Members of Parliament („Initiativantrag") or the Federal Council and through a legislative proposal signed by at least 100.000 voters („Volksbegehren").

<sup>4</sup> Both possibilities normally result in a government bill. The second most important way to start a legislative process is a motion by at least five Members of Parliament („Initiativantrag"), both from government and opposition parties alike. In the 22. legislative period of the Austrian Parliament from 2002 - 2006 these motions were responsible for 30% of laws passed - as compared to 70% 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 bills are usually produced by civil servants.

pre-consultation process a number of other actors is being 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 ("Länder"), 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 interview partners have pointed out that in the consultation process only turf is marked while the "real issues" have already been covered before. Indeed one interview partner pointed out that the statements during the consultation mechanism are published on the website of the Austrian Parliament and therefore also have the function to show 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 the civil servants to analyse them and to judge if they should be included in the draft law. Depending on how politicised the issue the law is to deal with, the administrators may make this decision on their own or after receiving feedback from their minister. In all cases the draft law ("Ministerialentwurf") has to be presented to the responsible minister, before going to the Ministers' Council.

In case the minister approves the draft, it is to be presented in the Ministers' Council, where discussions sometimes lead to changes in the draft law. This is especially the case in 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 is 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, whereas at other times votes maybe postponed until the next session (usually a week later).

After having passed the Ministers' Council the draft law becomes a bill, when it enters the parliamentary procedures. A large percentage of bills being sent to the National Council, especially in the cases of amendments and technicalities, are not subject to any changes and pass the National and the Federal Council after having gone through readings and discussion in different committees, sub-committees and the plenum (Sickinger 2000). In case discussions on a bill arise often the civil servants who have drafted the bill are invited to the National Council with other experts and representatives of Social Partnership organisations to explain their draft and sometimes 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. First it makes a difference what kind of policy the draft law is going to cover. Regulations typically are less cost intensive for the state than are subsidies. Accordingly the importance of some governmental 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 interview partner from the Ministry of Interior stated that he never had invited organisations representing employers and employees together to take part in a pre-consultation process. However, he frequently had asked one of the chambers for its opinion (interview 4).

A second important question is if the issue a draft law is to deal with is politicised or rather technical in nature. In the case of politicised laws there is less leeway for civil servants: political directives are set beforehand. One former civil servant ironically has described these as “going back to a set of interest, knowledge and prejudices” (interview 1).

Especially in the years from 2000 – 2006, when the conservative coalition government of ÖVP and FPÖ was in power, a number of changes have taken place regarding the pre-parliamentarian consultation mechanism. Size and importance of ministers’ cabinets have been rising already since the 1970s. Yet in 2000 the cabinets of some ministers, especially those from the Freedom Party, have grown considerably. This development was linked to the limited trust the ministers from the FPÖ had in the civil servants whom they deemed to be adversarial. The problematic relationship between civil servants and the FPÖ ministers is also signified by the fact that a number of laws in these ministries have not been written by civil servants, but by lawyers close to the Freedom Party (interview 5). In these cases there has been either no or a very limited consultation. Furthermore as part of the general loss of importance of the Austrian Social Partnership the chambers have not been invited anymore to provide their input to most draft laws (Talos/Stromberger 2005). In addition if they have been invited the time period to present their opinions often have been 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 have suffered under this circumstance, with the labour side being however in a much more disadvantageous position.

### **Analysis of the pre-parliamentarian consultation mechanism**

Depending on policy field and topic civil servants may have quite some freedom in the way they carry out the pre-parliamentarian 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 the civil servants the content and the degree of politicisation of the law matter. In case of high politicisation 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 necessities 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 than the rough framework provided by, in the case of politicised issues, political will and, in the case of more technical issues, the need to solve some problems structures 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 with 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 ways in which the consultation mechanism is carried out seems to be shaped by stories told about the

---

<sup>5</sup> The consultation process is regulated by the laws on chambers, professional societies and self-regulating bodies only. Important examples are the Economic Chamber and the Chamber of Labour. The two organisations must be consulted in questions pertaining to their own interests and affairs (Fischer 1972; Mock 1988).

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 being part of these institutions (March/Olsen 1989; Peters 1999). In the cases of pre-parliamentarian 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. Yet the practices of civil servants in which these norms materialised were not reified (Reckwitz 2003). They were interpreted, reviewed and – most of the time – reinstated. Nevertheless they kept a certain flexibility and could be adapted if changes were 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 interview partner pointed out that he had not used any of these lists, but 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 were carried out, 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 for the question which persons were contacted, than the position this person would occupy in the hierarchy of the institution it was part of. The acquaintance with the other persons in these networks may have different roots. In one case two persons rose through the ranks of two different ministries, knowing each other from their time at the school of law. They knew each other through their whole work life and shared a number of common interests. Of course such a basis of common understanding eased also their professional relationship and, according to the interview partner, 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 interview partner pointed out that it was primarily important to know people that 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 personal relations between civil servants during the process of consultation seems to be guided by cooperative behaviour, this is not necessarily always the case: especially 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 2005, 2007 forthcoming).

### **The difficult establishment of RIA in Austria**

As has been established in the introduction, the difficulties in the establishment of RIA have to be understood against the background of the Austrian political system and in particular the pre-parliamentarian consultation mechanism.

Although until now RIA in Austria has not been implemented in a systematic way, some remarkable efforts concerning ex-ante RIA exist on the national level and in some states (“Länder”) also on 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 and blend in with more traditional forms of legislative

procedures, making it sometimes difficult to state which elements can really be accounted for as RIA. One of the consequences of this situation is that different and hardly interconnected debates emerge in a number of regulatory policy fields. One example of this development is the discussion about the “gendering” of budget policies on 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 parts of RIA in a broader sense and which is not limited to specific policy fields. It focuses first on the national level, then some examples of projects undertaken on the regional level are given.

A first step towards the establishment of a RIA system in Austria was taken in 1986 with the Federal Budget Law (“Bundeshaushaltsgesetz”, BGBl 213/1986) which mandated in its 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 appeal 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 (“Länder”) implemented a detailed procedure for the estimation of costs and benefits as well as mutual consultation procedures for all levels of bureaucracy from the federation to the municipalities (BGBl I 35/1999).

In 1999 also an important step was taken towards the establishment of a more complete assessment of the impact of regulation. For the first time not only budgetary costs but also external effects of legislation were to be considered when the Ministers’ Council decided that the effects on competitiveness of the Austrian economy and on the employment situation were to be assessed when proposing new legislation. This decision was substantiated 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 the 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 Law (“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...” (“Alle mit der Vorbereitung von Akten der Bundesgesetzgebung betrauten Organe...” (BGBl I 151/2001 Art. 1 Z 2)). Unlike other regulatory provisions for the preparation of bills the Deregulation Law was never detailed in a circular and the new inclusive approach did not alter the structure of the legislative process – the ministry competent for preparing the legislation still is responsible for the impact assessment as well. The Deregulation Law 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 one of the explanatory factors why the Deregulation Law until now did not have a visible impact on the draft bills prepared by the ministries.

This short overview of Austrian federal legislation regulating impact assessment clearly shows that a systematic RIA-approach still remains to be developed. Until today only costs concerning the administration itself are evaluated in a systematic fashion, while other effects of planned regulations are largely ignored or estimated by rule of thumb. Without a guideline for the qualitative and quantitative assessment of the effects of planned regulations and the necessary administrative structures which enable civil servants to follow them, the Deregulation Law remains lip service paid to the principles of Better Regulation.

However, this rather negative view does not grasp the whole picture. As stated above there are debates and pilot projects in specific policy fields pointing in the direction of RIA, which are often hardly interconnected with the approach followed so far. One important 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 of firms. A survey forming the basis for the attempted reform efforts is supposed to be completed in summer 2007 and should be an important source of information for ministry officials concerned with RIA (interview 8). Another approach developed within the Ministry of Finance concerns the draft of a new output-oriented Federal Budget Law which includes ex-ante assessment of financial matters. The new budget regulation is oriented on international best practice following the examples of Sweden, Great Britain and Finland. Instead of concentrating on input (mainly personnel and material costs) it is oriented on output, i.e. on the question of how to obtain a certain effect with a given expenditure.

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 the Austrian law is mandatory only for plans and programmes with relevant effects on the environment, there are discussions among experts about the possibility to widen this obligation to include legislative acts as well.

Another aspect is that the obligation to evaluate the effects of specific regulations 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 for such policy fields are higher education, research, technology and innovation policies (Biegelbauer 2006).

Yet another topic are impact assessment efforts undertaken by some of the Austrian states (“Länder”). On the one hand new instruments of budgetary planning – most prominently the so-called Gender Budgeting, which for example is in its pilot phase in Vienna – might be taken into account. On the other hand some of the regional governments – particularly in Upper Austria and Vorarlberg – have developed their own models for the ex-ante evaluation of the effects of regulation 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 new 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 influential with regard to 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 part 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). This special political context did not only shape the RIA model developed in Upper Austria to a certain extent, it might also be one of the explanatory factors for the problems encountered which until today hinder its use as a standard tool for – at least some of the more important cases of – legislation.

The biggest test for the Upper Austrian RIA model 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). While data on the costs to be expected for the administration was available to the civil servants and could be handled by a standard procedure used in the preparation of all Upper Austrian laws, data which would allow to estimate 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”) – which was not only a pragmatic solution but – as one interview partner indicated – also a political manoeuvre to include potential critics into the project (interview 9). 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. The model developed in Upper Austria can be understood as an attempt to blend a new instrument – RIA – into a traditional structure for the involvement of organised interest groups into policy making.

As the aim was to produce quantifiable data, this arrangement left the chambers with a high burden of workload without leading to the expected results concerning clarity and unambiguousness of the data. As a result the RIA document gets rather vague at the point where costs external to the administration are concerned. The project showed that for pragmatic reasons it would not be possible to use this RIA model as a standard tool for all legislative proposals. But on the other hand it seemingly had the effect of silencing the criticism of the chambers, too, which had in the years before argued for more and more accurate RIAs to be done. After this experience the future of RIA in Upper Austria seems to be rather unclear. At the time being 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.

### **Vorarlberg: RIA and consensus**

The case 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.

There were two different projects of ex-ante evaluation of a proposed legislation undertaken in recent years: first in spring 2002 an analysis of a proposed legislation 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 a legislation on waste management (“Vorarlberger Abfallwirtschaftsgesetz“ 2006). In both cases the project group in charge consisted not only of civil servants but also of different stakeholders in the respective fields. Workshops were held to include expert knowledge. The method specified in a guideline from 2001 (Amt der Vorarlberger Landesregierung 2001) focuses on a set of qualitatively defined aims. 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 gets to 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 of the proposed legislation (Raich 2005).

In the second case, concerning 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 interview partner explained, one important aim of the specific RIA design used in Vorarlberg is to get acceptance for the planned legislation by those most directly affected (interview 10). In this case some of the stakeholders could not agree on a consensus on one important issue, so the project did not lead to a clear cut recommendation for policy makers. Nevertheless the RIA work served as an important source for the political process that in the end led to a regulation.

A problem encountered in Vorarlberg as well as in Upper Austria was the relatively high amount of time, money and effort every RIA process takes – at least as long as they are not standardised. Without the political will to provide the resources necessary it seems unlikely that more RIAs are going to take place in the near future.

A conclusion, which officials from both states (“Länder”) drew, was that a RIA system – no matter how elaborated – 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 can not be solved on that level (interviews 9, 10).

## **Conclusion**

At the outset we have posed the question why RIA has such a hard time to set foot to Austria. We propose an answer to this query consisting of several elements.

First, the pre-parliamentarian 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. Especially the pre-consultation process is barely regulated and during most of the Austrian post WW II history was consensus-oriented. Furthermore it privileges a small number of societal actors, most importantly ministries, states (“Länder”) and the Social Partners, over all other stakeholders.

The similarity and indeed linkage between the system of the Social Partnership and the pre-parliamentarian 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 depend on 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 almost by necessity is in a difficult position.

Second, 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 1990ies, ministries still are large and highly centralised. Under these framework conditions bureaucratic practices based on routines and traditions, which often are specific for particular organisational structures and units, are strengthened. Especially in the case of the only very sparingly regulated pre-consultation process bureaucratic routines guide civil servants. One example are the sheets explaining background, intention and effects of a law (“Vorblatt”), which exist since a number of years but brought few changes to bureaucratic practices. They are seen as a compulsory exercise by the civil servants (interview 3) and are solely filed because they have to be. Despite the existence of a decree of the Ministers’ Council from 1999 stipulating an assessment of the effects of proposed laws on the competitiveness of Austria including government-external costs, financial implications still are 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], ‘no financial implications’ can be filed into the form we write that” (interview 3).

Third, the consultation mechanism, again very similar to Social Partnership arrangements, takes place in network structures. Regularly civil servants use their own personal networks in order to negotiate draft laws. As has been established before these enduring networks rely on personal acquaintances, 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). Formality, which is a precondition for RIA, here is almost problematic in itself as it hinders the striking of compromises in these informal network structures.

Fourth, resources for RIA processes are scarce. In both Vorarlberg and Upper Austria the RIA pilot projects have 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 and manpower. The political will to implement RIA seems to be dependent on outside pressure by strong and organised interest groups. Bußjäger (2004) argues with regards to existing legislation stipulating RIA that there is little will on the side of Parliament and government alike to actually implement these measures.

Fifth, civil servants in general seem to be sceptical about the introduction of RIA. Several reasons for this scepticism have been provided in interviews. One opinion voiced was that in the case of politicised law matters the existing political will normally would 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 consisting mainly of technicalities or small amendments of 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 communities in Austria in most areas are fairly small and the number of persons one has to know and can contact is small enough so that relationships can stay informal. This informality is not seen as a problem with regard to the quality of legislative output. Moreover as an additional benefit a resource-intensive process would be circumvented (interview 3).

In addition one interview partner had doubts on the possibilities 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).

Sixth, the question remains how deep the existing expertise on RIA on the side of the Austrian civil service at the moment already is, given that only the very first steps have been taken towards a systematic training of civil servants.

Considering the experiences with RIA in Austria until now it seems unlikely that a systematic and comprehensive RIA mechanism will be established in the near future, which includes social, economic and environmental impacts. Even if it was, the exercise would be likely to end up in a further "ticking off the boxes" by the civil service. Framework conditions would have to change radically to produce different outcomes. This would pertain to the organisation of the law making process as well as to the policy style established by the Social Partnership, which is highly informal and based on exchange-relations in densely coupled networks.

However the experiences with RIA made in Vorarlberg could point out a potential alternative. The pilot RIAs blended this policy tool new for Austria with more traditional structures 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 policy style of legislation, but also, and perhaps more importantly, a sustainable shift in power-relations. Indeed if RIA is 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 realms of the civil service when the administration is to prepare 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 of 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.

## References

- Almond, G. A. (1956). "Comparative Political Systems." *The Journal of Politics* 18: 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.
- Biegelbauer, P. (2005). *The Austrian Innovation and Technology Fund: Between Power Play and Policy Learning*. Working Paper No 72 of the IHS Sociology Series. Vienna, IHS.
- Biegelbauer, P. (2007). "Learning from Abroad: The Austrian Competence Centre Programme Kplus." In: *Science and Public Policy*. forthcoming.
- 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* 19(43): 701-705.
- Directive 2001/42/EC. *On the assessment of the effects of certain plans and programmes on the environment*
- European Commission (2005). *Impact Assessment Guidelines*. SEC(2005) 791. 15 June 2005.
- Fischer, H. (1972). *Zur Praxis des Begutachtungsverfahrens im Prozess der Bundesgesetzgebung*. In: *Österreichische Zeitschrift für Politikwissenschaft*, 1(1), 35-54.
- 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. 290-312.
- Hammerschmid, G./Meyer, R. (2005). *New Public Management in Austria: Local Variation on a Global Theme?* In: *Public Administration*, 83(3), 709-733.

- Hörtenhuber, H./Steiner, W. (2002). "Normsetzung und qualitative Deregulierung. Das oberösterreichische Modell zur Qualitätssicherung." In: *Journal für Rechtspolitik* 10(1): 7-26.
- 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./ Tállos, E. (1996) (Eds.). *Sozialpartnerschaft und EU*. Wien, Signum Verlag.
- Karlhofer, F./Tállos, E. (2005) (Eds.). *Sozialpartnerschaft. Österreichische und Europäische Perspektiven*, Wien, Lit Verlag.
- 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./Obermann, G. (2005). *Finanzielle Auswirkungen von Gesetzen: Eine Evaluierung der Kalkulationsverpflichtung des § 14 BHG*. In: *Wirtschaftspolitische Blätter* 2/05, 208-216.
- LGBL.Nr. 1/2006. *Gesetz über die Vermeidung und Erfassung von Abfällen (Vorarlberger Abfallwirtschaftsgesetz - V-AWG)*
- LGBL.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)*
- LGBL.Nr. 18/2003, (27/2005). *Gesetz über den Abschluss und die Vermittlung von Wetten (Wettengesetz Vorarlberg)*
- March, J. G./ Olsen, J. P. (1989). *Rediscovering Institutions*. New York, Free Press.
- Mock, E. (1988). *Die politische Dimension der Rechtssetzung*. In: Schäffer, Heinz (Ed.): *Theorie der Rechtssetzung*, Wien, Manz: 125-144.
- Pelinka, A. (1981). *Modellfall Österreich? Möglichkeiten und Grenzen der Sozialpartnerschaft*. Wien, Braumüller.
- Peters, G. B. (1999). *Institutional Theory in Political Science - The "New Institutionalism"*. London/New York, Pinter.
- Radaelli, C. (2005). "Diffusion without convergence: how political context shapes the adoptions of regulatory impact assessment." In: *Journal of European Public Policy* 12(5): 924-943.
- Radaelli, C./De Francesco, F. (2007). *Regulatory Quality in Europe: Concepts, Measures and Policy Processes (European Policy Studies)*. Manchester, Manchester University Press.
- Raich, T. (2005). *Gesetzesfolgenabschätzung (GFA) in Vorarlberg*. In: Schäffer, H. (Ed.): *Evaluierung der Gesetze*. Wien, Manz: 91-100.
- Reckwitz, A. (2003). "Grundelemente einer Theorie Sozialer Praktiken. Eine sozialtheoretische Perspektive." *Zeitschrift für Soziologie* 32(4): 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.
- Schäffer, Heinz (Ed.) (1988). *Theorie der Rechtssetzung*, Wien, Manz.
- Schmitter, P./Lehmbruch, G. (1979) (Eds.). *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. In: *Österreichische Zeitschrift für Politikwissenschaft*, 29(2), 157-176.

Sickinger, H. (2006). Parlamentarismus. In: Tálos, E. (Ed.): *Schwarz - Blau. Eine Bilanz des "Neu-Regierens"*, Wien, Lit Verlag: 70-85.

Staronová, K. (2007). The quality of impact assessment in Slovakia. In: C. George/Kirkpatrick, C. George and C. Kirkpatrick (Eds.): *Impact Assessment and Sustainable Development*. Cheltenham/Northampton, Edward Elgar: 230-254.

Steiner, W. (2005). Evaluierung und Gesetzesfolgenabschätzung in der Landesgesetzgebung. Erfahrungen und Leistungen am Beispiel des Landes Österreich. In: Schäffer, H. (Ed.): *Evaluierung der Gesetze*. Wien, Manz: 101-116.

Tálos, E./Kittel, B. (2001). *Gesetzgebung in Österreich. Netzwerke, Akteure und Interaktionen in politischen Entscheidungsprozessen*, Wien, Facultas/WUV.

Tálos, E./Stromberger, C. (2005). Zäsuren in der österreichischen Verhandlungsdemokratie. In: Karlhofer, F./Tálos, E. (Eds.): *Sozialpartnerschaft. Österreichische und europäische Perspektiven*, Wien, Lit Verlag: 79-216.

Uebe, T. (2005). "Gesetzes(kosten)folgenabschätzung im Land Oberösterreich." In: *Wirtschaftspolitische Blätter* 2/05: 217-229.

**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