

**Municipal Management
of Administrative Burdens -
Standard Cost Model
as Method of Change**

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Abstract

This thesis investigates the legal conditions, the methodological framework and the sufficient conditions for the application and implementation of the standard cost model (SCM) in German municipalities. Based on the background of the severe financial crisis of German municipalities this thesis examines the potential of using the SCM to assist in requesting the necessary financial funding for transferred public obligations by the federal legislation in Germany. The first step of the research methodology was based on a number of expert interviews conducted with stakeholders of German institutions. Those that are relevant for the SCM implementation into German legislation. Additionally, this thesis analyzes existing projects that utilize the SCM application in public administration, particularly municipalities. Together with a reflective presentation of the author in front of an audience of experts about bureaucracy decrease, the author developed a hermeneutic prejudice as starting point for a hermeneutic text analysis.

First, the thesis analyzes the relevant constitutional jurisdiction and literature about the municipal finance equalization and the principle of connectivity in the federal states and proposes the transfer of essential parameters to the level of federal legislation. Concerning the methodological framework as the second issue, the thesis examines existing methods to measure municipal efforts and proposes a coherent system of public finance equalization within the constitutional conditions. The third issue is a proposal for the possible integration of the municipal cost estimation into the federal legislation regarding existing rules of legislative procedures.

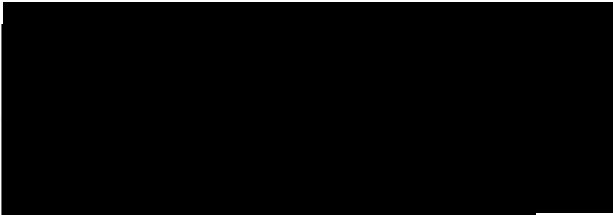
The thesis reveals a lack of municipal cost estimation that is necessary for the impact assessment of federal legislation in Germany. Regarding the constitutional jurisdiction in particular, the text analysis shows that such a municipal cost estimation is not only legally permissible, but is necessary for federal legislation. The analysis of the dualistic system of municipal finances requires an appropriate financial equalization for transferred administrative obligations including

administrative and purposes costs. This estimation is based on a representative investigation in “average economic municipalities.” The consideration of such financial municipal demands must be implemented by the responsible federal ministry as early as possible within the legislative procedures, ideally during the investigation of municipal interests (§ 41 GGO). This thesis describes legal, methodological, and organizational proposals for a SCM application in municipalities; however, additional research is needed about the concrete process of information exchange between the different administrative levels in Germany and the resultant political consequences on federal legislative discussions.

Declaration of original content

I declare, that the work in this thesis was carried out in accordance with the regulations of the University of Gloucestershire and is original except where indicated by specific reference in the text. No part of the thesis has been submitted as part of any other academic award. The thesis has not been presented to any other education institution in the United Kingdom or overseas. Any views expressed in the thesis are those of the author and in no way represent those of the University.

15.04.2015



Date

Signature

Acknowledgement

First of all I wish to thank both of my supervisors, without them this thesis would never have been finished. Dr. Robin Bown from the University of Cheltenham was always at my side and the best consultant for all of my German questions about the British way of writing a doctoral thesis. The idea of this research has its origin in the work of the lawyer and former state secretary Hans-Georg Kluge. I am fortunate that he was at my side through my doctoral journey of the last four years. It was a pleasure to work with him and I hope to continue this fruitful cooperation in the fields of bureaucracy decrease.

As an extra-occupational project this research was supported by my employing public administration of Kreis Lippe and its Landrat Friedel Heuwinkel who recognized that this topic is important to develop the principle of municipal self-autonomy. The critical reader of the huge amount of text was my former colleague Wigbert Gruß who made useful and sometimes provocative remarks about the content and structure of my work.

The past four years have been a great research experience also because I met many interesting people in this doctoral programme. Therefore I wish to say a warm thank you to all of my fellow DBA students for constructive discussions in our action learning sets and for pleasant evenings in Cheltenham, Schmoekwitz and Hannover – they know who is meant.

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The municipal poverty cries for help.
(Joachim Wieland, 2011)

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List of abbreviations

Abs.	Absatz
ACTAL	Adviescollege toetsing administratieve lasten
Art.	Article
AWV	Arbeitsgemeinschaft für wirtschaftliche Verwaltung e.V.
BAföG	Bundesausbildungsförderungsgesetz (Law)
BayKonsultVer	Vereinbarung über Konsultationsverfahren zur Umsetzung des Konnexitätsprinzips in Bayern
BayVBl	Bayerische Verwaltungsblätter (Journal)
BayVerfGH	Verfassungsgericht des Landes Bayern
BEEG	Bundeselterngeld- und Elternzeitgesetz (Law)
BGB	Bürgerliches Gesetzbuch (Law)
BGH	Bundesgerichtshof
BGHSt	Entscheidungen des Bundesgerichtshofs in Strafsachen
BLKA	Bund-Länder-Kommunen-Arbeitskreis
BMAS	Bundesministerium für Arbeit und Soziales
BMWi	Bundesministerium für Wirtschaft
BRTF	Better Regulation Task Force, Great Britain
BT	Bundestag
BVerfG	Bundesverfassungsgericht
BVerfGE	Entscheidungen des Bundesverfassungsgerichts
BVerwG	Bundesverwaltungsgericht
BVerwGE	Entscheidungen des Bundesverwaltungsgerichts
BW	Baden-Württemberg (German federal state)
CA	Cross Case Analysis Statement
CFO	Chief Financial Officer
DLT	Deutscher Landkreistag (Central municipal member association of districts)
DST	Deutscher Städtetag (Central municipal member association of greater cities)

DStGB	Deutscher Städte- und Gemeindebund (Central municipal member association of district incorporated municipalities)
DÖV	Die öffentliche Verwaltung (Journal)
DVBl	Deutsches Verwaltungsblatt (Journal)
EU	European Union
FAG	Finanzausgleichsgesetz (Law)
FHM	Fachhochschule des Mittelstands, Bielefeld
FMI	Federal Ministry of Interior
FVG	Finanzverwaltungsgesetz (Law)
GB	Great Britain
GemHVO NRW	Gemeindehaushaltsverordnung des Landes Nordrhein-Westfalen (Law)
GewA	Das Gewerbearchiv (Journal)
GG	Grundgesetz (Constitution)
GO-BR	Geschäftsordnung des Deutschen Bundesrates
GO-BReg	Geschäftsordnung der Deutschen Bundesregierung
GO-BT	Geschäftsordnung des Deutschen Bundestages
GGO	Gemeinsame Geschäftsordnung der Bundesministerien
GO	Gemeindeordnung (Law)
HessGemFinAusstG	Gesetz zur Sicherstellung der Finanzausstattung von Gemeinden und Gemeindeverbänden in Hessen (Law)
HessStGH	Staatsgerichtshof des Landes Hessen
HGB	Handelsgesetzbuch (Law)
hs.	halfsentence
IA	Interview analysis statement
IfM	Institut für Mittelstandsforschung, Bonn
IRRC	International Regulatory Reform Conference
IV	Innovative Verwaltung (Journal)
KGSt	Kommunale Gemeinschaftsstelle für Verwaltungsmanagement
KiFöG	Kinderförderungsgesetz (Law)
KommJur	Der Kommunaljurist (Journal)

KonnexBW	Konnexitätsausführungsgesetz des Landes Baden-Württemberg (Law)
KonnexAG NRW	Konnexitätsausführungsgesetz des Landes Nordrhein-Westfalen (Law)
KonnexAG RP	Konnexitätsausführungsgesetz des Landes Rheinland-Pfalz (Law)
KonnexEntschl Bdg	EntschlieÙung des Landtages zur Auslegung der Konnexität in Brandenburg
KonnexErkl MV	Erklärung der Landesregierung zur Auslegung der Konnexität in Mecklenburg-Vorpommern
KonsultVer SA	Vereinbarung über Konsultationsverfahren zur Umsetzung des Konnexitätsprinzips in Sachsen-Anhalt
LKV	Landes- und Kommunalverwaltung (Journal)
LV	Landesverfassung
LVerfG MV	Landesverfassungsgericht des Landes Mecklenburg-Vorpommern (Constitution)
NdsVBI	Niedersächsische Verwaltungsblätter (Journal)
NCBR	National Center for Bureaucracy Cost Reduction
NCF	New Communal Financemangement
NJW	Neue Juristische Wochenschrift (Journal)
NKF	Neues Kommunales Finanzmanagment
NKFEG	Einführungsgesetz zum NKF (Law)
NKRG	Gesetz zur Einsetzung eines Nationalen Normenkontrollrates (Law)
NordÖR	Zeitschrift für öffentliches Recht der norddeutschen Bundesländer (Journal)
NRCC	National Regulatory Control Council
NRW	Northrhine-Westfalia (German federal state)
NVwZ	Neue Zeitschrift für Verwaltungsrecht (Journal)
NVwZ-RR	Neue Zeitschrift für Verwaltungsrecht – Rechtsprechungsreport (Journal)
p.	page

PA	Presentation analysis statement
PoB	Principles of orderly bookkeeping
RQ	Research question
s.	sentence
SächsVerfGH	Verfassungsgerichtshof des Landes Sachsen
SCM	Standard-Cost-Model
sec.	section
SGB I	Sozialgesetzbuch Teil I (Law)
SKM	Standardkosten-Modell
SME	Small and medium enterprises
ThürGastG	Thüringer Gaststättengesetz (Law)
ThürVBl	Verwaltungsblätter des Landes Thüringen (journal)
ThürVerfGH	Verfassungsgerichtshof des Landes Thüringen
VerfG Bdg	Verfassungsgerichtshof des Landes Brandenburg
VerfGH MV	Verfassungsgerichtshof des Landes Mecklenburg- Vorpommern
VerfGH NRW	Verfassungsgerichtshof des Landes Nordrhein-Westfalen
VerfGH RP	Verfassungsgerichtshof des Landes Rheinland-Pfalz
VerwA	Das Verwaltungsarchiv (Journal)
VR	Verwaltungsrundschau (Journal)
VwVfG	Verwaltungsverfahrensgesetz (Law)
WoGG	Wohngeldgesetz (Law)
ZfK	Zeitschrift für Kommunal Finanzen (Journal)
ZG	Zeitschrift für Gesetzgebung (Journal)
ZRP	Zeitschrift für Rechtspolitik (Journal)
ZustVOBEEG NRW	Verordnung zur Regelung von Zuständigkeiten nach dem Bundeselterngeld- und Elternzeitgesetz und nach dem Bundeskindergeldgesetz
ZustVOWo NRW	Verordnung zur Regelung von Zuständigkeiten auf dem Gebiet der sozialen Wohnraumförderung und anderer Maßnahmen des Wohnungswesens Nordrhein-Westfalen

I. Introduction

This research addresses the potential of reducing the administrative costs of legislation from a municipal point of view. There is general acceptance that stable growth is a requirement of modern economies. The economic and financial problems of the last two years have contained important lessons for regulatory policy. The implementation of regulation and laws incurs costs. Some costs are linked to legal obligations to provide information to public or private parties and are termed administrative costs. In the European Union, the Commission's Better Regulation strategy is aimed at measuring administrative costs and reducing administrative burdens or costs (European Commission, 2012, p.3). Nevertheless, the approach to better regulation should address the overall benefits and costs of rules and legislation. In the Netherlands the administrative burdens on commercial enterprises amounts to 16.4 billion € per year, this corresponds to 3.6 % of the Dutch gross domestic product (GDP). In Denmark the administrative burdens amount totals 4.5 billion € or 2.4 % of the Danish GDP (SCM-Network, 2005, p. 5). This research project examines the potential for the transferability of the Standard Cost Model (SCM) from its business origin into the area of municipalities. Today the SCM is used by many EU member states and OECD-countries as a standard method to calculate these administrative burdens (European Commission, 2012). Originally, the SCM calculated only the costs of providing information with respect to one particular data requirement: the administrative costs of regulation.

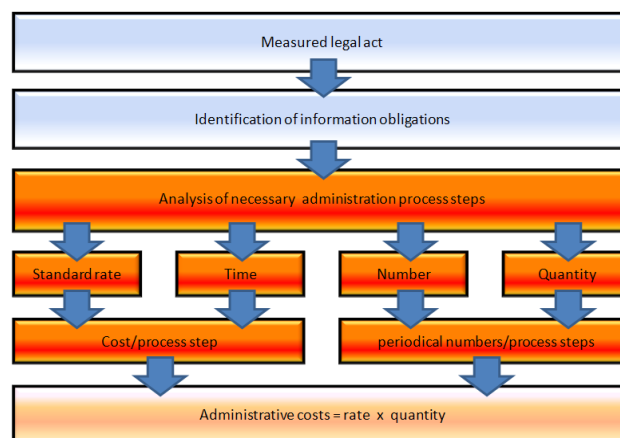


Figure 1: SCM-calculation of administrative costs (Based on Deutsche Bundesregierung, 2006).

Initially, the SCM aimed to limit the bureaucracy costs only of private business (SCM-Network, 2005). In 1994, the Dutch government started the first initiative to reduce administrative burdens using the operation “Marktwerking, Deregulierung en Wetgevingskwaliteit-MDW.” The search for feasible methods brought the measuring of standard costs into focus for the first time under the motto “meten is weten” (Kay, 2008, p. 42).

The SCM has become an accepted and implemented method to reduce the costs of bureaucracy both in Germany and internationally. As the SCM became more accepted by the international community as a method to measure bureaucracy, interest grew in how to apply it toward the bureaucracy costs of the single administrative level itself (Matei & Savulescu, 2009). Currently, it has developed into a general measurement for the overall compliance costs of legislation (destatis, 2011). In 2010 the German parliament widened the legal obligation of the NRCC (Deutscher Bundestag, 2011). By implementation of the new § 2 I NKRG the NRCC has to regard not only the development of administrative costs as the results of information obligations but also a more comprehensive estimation of compliance costs. § 2 I NKRG itself defines compliance costs as the whole measurable effort and costs caused by federal legislation in the business sector, the public administration and the citizens. Administrative costs are a subset of compliance costs (Pfeiffer, 2010, p. 481).

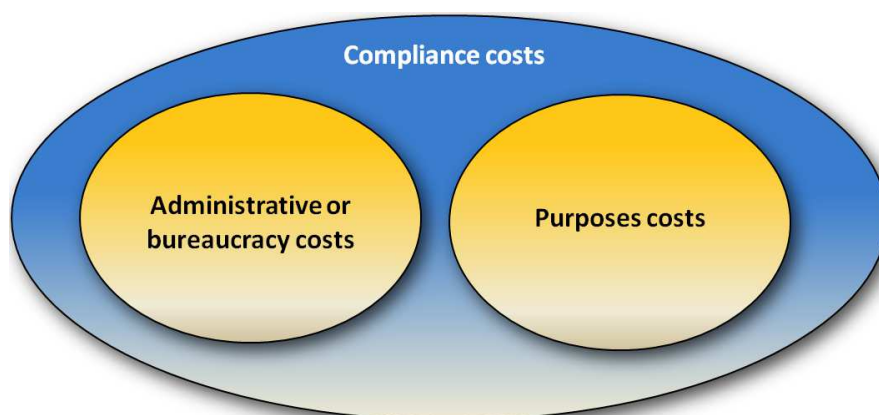


Figure 2: Administrative and purposes costs as subset of compliance costs (own elaboration).

A good example clarify this difference is the jurisdiction about the necessary municipal funding within the principle of connectivity caused by the KiFöG (VerfGH NRW, 2010). This KiFöG states the municipal obligation to care about children aged under three years in municipal kindergardens. Administrative costs come from the necessary management of this new obligation in municipal authorities like personnel and material costs of public administration. Purposes costs are the necessary effort to do the child care itself by the kindergarden teachers in the municipal buildings with an appropriate equipment for the children. Compliance costs means a comprehensive understanding of law execution and contains the administrative costs and the purposes costs.

This new jurisdiction and the concept of applying the SCM to measure administrative burdens and compliance costs is rather new, particularly for the municipalities. In the municipalities, citizens experience a close relationship with their administration. Therefore, reducing bureaucracy on the local level of public administration means simultaneously reducing bureaucracy for the citizens.

I.1 Personal and professional background

I began my professional education as a trainee in the local public administration in my hometown Viersen. This was a very important decision for me because it has influenced my entire professional career. In a very short time I recognized that I had to study at a law school to achieve the really interesting jobs in public administration (see point 1 in figure 3).

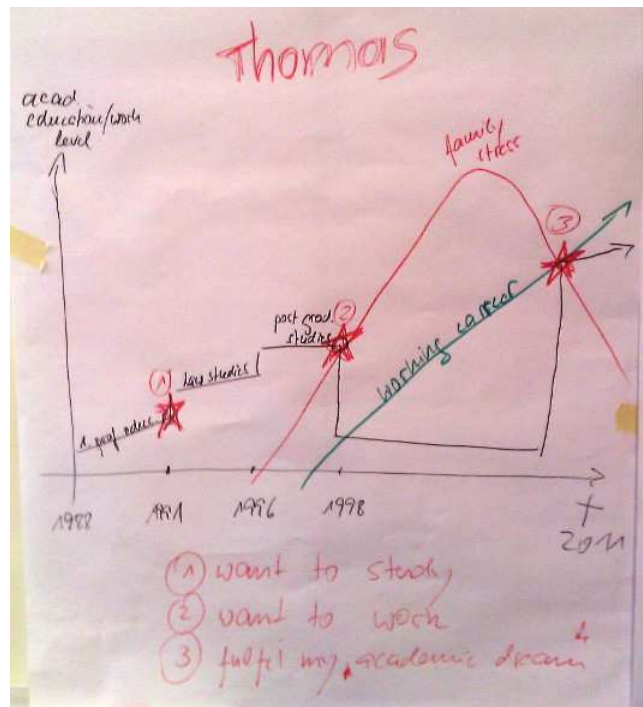


Figure 3: Flipchart drawing about my personal DBA decision, 18.03.2011.

After finishing my law studies in Bielefeld, I received the opportunity to complete a postgraduate programme at the German University of Administrative Sciences in Speyer. This programme led me from my manner of thinking based on a pure legal education to a more scientific point of view on the German administration. During my time in Speyer, it discovered my special field of interests in research: The modernization of public administration and the decrease of bureaucracy. To enter this professional field, I chose a position as a political consultant of the local liberal party (FDP) in Hannover. In that role I learned to think more politically and became more focused on results rather than on processes and their problems. After a brief employment in the regional handicraft association, I entered the public district administration of Kreis Lippe as the speaker of this organization. I held this position for a period of six years. This experience was very important for my professional development because I learned to think more like a politician and less like a civil servant. Like in Hannover, this position was influenced more by politics. While serving in the administration of Kreis Lippe, I moved to the department of business development and learned to work on projects. In 2011, I became the head of the law department of Kreis Lippe and expanded this department into a shared legal

service centre for an additional seven municipalities. Based on my entire professional career, the modernization of local public administration emerged as a focal point. The aim of this research is combine those experiences with new aspects of a possible SCM application into a municipal area. The result will not only be to provide a contribution to understanding in this area but also to make a personal contribution to the modern development of (local) public administration in Germany.

I.2 Self-government in municipalities

The federal constitution of Germany – Grundgesetz (GG), in Art. 83 I GG regulates the responsibility for the execution of law. According to Art. 84 I GG the 16 federal states in Germany decide specifically who should execute the law. To make this decision, lawmakers must consider a basic element in the construction of German public administration: The local autonomy of municipalities as codified in Art. 28 II GG. This constitutional regulation states that the municipalities are part of the administration of the federal states organizationally, but retain autonomy in their daily decisions and actions. Typically, the cities and municipalities are the first addressed administrative level for the execution of laws due to their proximity to citizens.

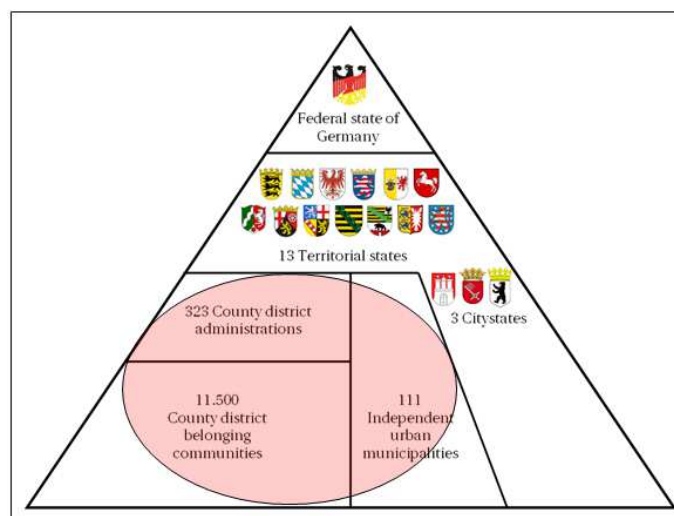


Figure 4: The three levels of public administration in Germany (own elaboration).

The basis of local self-government in Germany was stated in the Prussian City Act (“Preußische Städteordnung”) on 19 November 1808 (Hofmann, Theisen & Bätge, 2013, p.6). This is the constitutional basis for the municipal autonomy in Germany. As a political result of the German Revolution of 1848, local self-government was codified in Art. 184 of the first draft of a German democratic constitution (“Paulskirchen-Verfassung”), and later in the first Prussian municipal law of the 11 March 1850. On 11 August 1919 the constitution of the first German republic (“Weimarer Reichsverfassung”) also integrated local autonomy in Art. 17 II and 127. As a result of a long term of constitutional tradition in Germany, after the Second World War the Grundgesetz from 1949 contains the guarantee of local self-government in Art. 28 II GG.

I.2.1 Local self-government in Germany

Art. 28 II GG formulates the constitutional guarantees for the municipalities. In Germany, the following guarantees of self-government are given to municipalities (Hofmann, Theisen & Bätge, 2013, p. 66 et seq.):

- *Territorial autonomy*, to exercise its sovereignty over all persons, residents and enterprises in its territory.
- *Organization autonomy*, to decide independently about organization or processes to fulfil their given or self-chosen tasks.
- *Personal autonomy*, to select, develop or even dismiss the required personnel.
- *Financial autonomy*, to raise taxes and decide about the concrete use of public expenditures.
- *Planning autonomy*, to arrange urban development and to regulate the use of the land.
- *Autonomy of statutes*, to develop statutes to regulate local affairs.
- *Services of public interests*, to found special public services for social, cultural, ecological, or economic affairs.

Art. 28 II GG gives the cities and municipalities the responsibility for all obligations that have their basis in the communal surroundings of living. Because of this constitutional assumption further regulations for special responsibilities are not necessary. This brings the municipalities to a certain position of government: In general, municipalities are responsible for issues that occur on the local level.

I.2.2 Local administration in England

Such a comprehensive local government does not exist in all European countries. A brief comparison with English municipal law follows. Using the basis of differing historical development, the German constitutional tradition of an independent local self government cannot easily be transferred to English administrative structures. The terminology of "local self government" is rather unknown to the English lawyers and is dominated more by a historical comparison of German and English conditions of municipal law (Gneist, 1871, p. 69). The European Charter of Local Self-Government serves at the basis for a proper comparison (European council, 1985). In article 3 of this charter, local self-government has a European definition.

The question of whether the local government in England meets these requirements is not widely accepted (Dittmar, 2007, p. 24). Even if the English local government meets these requirements, it still does not reach the standard of local government, as established by German case law over the past several decades. Against the background of historical study, it is very difficult to describe exactly the legal relationship between the central government and the communities in England because of the constant changes in the development of English administration. In particular, the position of the communities in this situation seems to suffer the fate of a non-constitutionally guaranteed position similar to that which exists in Germany (Dittmar, 2007, p. 434 et seq.).

Even at the level of simple laws, the tasks of the English municipalities are not generally codified (Dittmar, 2007, p. 448, 454). All local responsibilities are given to the English municipalities by simple laws. This means in converse argumentation, that simple law can remove every local responsibility. So the best way to describe the position of communities in England is semi-autonomous (Wilson & Game, 2002, p. 29). This structural difference in the legal situation between German and English communities is reflected in the literature. Therefore, an assessment of the German legal situation the English sources can be applied only indirectly.

I.3 Constitutional system of municipal funding

In the federal state of Germany municipalities are an administrative part of the federal states. First, the German constitution delegates the execution of laws and regulations to the federal states (Art. 30 and 83 GG). The only exception is if the constitution explicitly states that the responsibility is specific to the national level. In this constitutional system of administrative organization, the municipalities are an administrative part of the federal states, but are equipped with a legal guarantee of certain local autonomy (Art. 28 II GG). As described above (see sec. I.2.1), this autonomy includes financial autonomy, especially with regard to the concrete use of public expenditures. In the light of this constitutionally guaranteed local autonomy, the municipalities have the right to call for the adequate funding necessary to fulfil their legal duties and obligations. This call for necessary funding is put into practice by a dualistic system of financial funding including: The annual regular processes of financial equalization and the principle of connectivity for specific transfers of legal obligations.

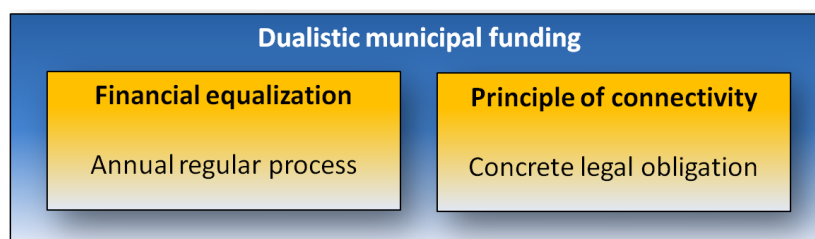


Figure 5: Dualistic system of municipal funding (own elaboration).

I.3.1 Regular finance equalization

All constitutions of the federal states contain regulations that describe the necessary funding of municipalities as administrative parts of the states. Therefore, the federal states decide the manner of executing legal obligations which is conducted using public authorities of their own or by delegation to municipalities. Combining the constitutional guarantee of local self autonomy (Art. 28 I GG), the constitutional statement of municipal funding (Art. 106 VII GG), and the conforming articles in the federal state constitutions leads to the responsibility of the federal states for the necessary funding of local authorities. The political aim of the annual regular processes of municipal finance equalization is to strengthen municipal financial power by general allocations of funds so that municipalities can develop their public administration within the range and tolerance of their local autonomy (Henneke, Pünder & Waldhoff, 2006, p. 499 f.). These general allocations of funds are divided into two general kinds of funding: The general allocation of funds without any purpose appropriation and the allocation of funds for specific purposes (Henneke, Pünder & Waldhoff, 2006, p. 502). In each federal state, the dimensions for funding vary because of different bases and procedures of calculation. A commonality of all German federal states is that the total sum of municipal funding must be adequate to allow the municipalities to fulfil their legal obligations and to support local projects as expression of the untouchable core of political local autonomy (Wohltmann, 2011, p. 486).

I.3.2 Principle of connectivity

With regards to the guaranteed local self-government in the federal constitution of Germany (Art. 28 II GG) every constitution of the 16 German federal states contains a comparable article (1) that provides the local level autonomy for their own public administration. In every federal state constitution there is also an authorization to transfer administrative obligations to municipalities (2). At the very least, a constitutional regulation exists that states that the municipalities have to be funded with the appropriate resources for new legal tasks transferred by the state

legislation, which is termed the principle of connectivity (3). In Germany, large cities have a status more similar to the federal states than the municipalities: Berlin, Bremen, and Hamburg. These cities are divided into a number of districts that are comparable to the regional districts in the other territorial states.

However, these regional districts do not have the same local autonomy as the municipalities. In a legal understanding, the districts are an administrative union of the municipalities (Art. 28 II 2 GG). Especially for the district administrations, no statement mandates that the districts are responsible for everything on their administrative level. This would be a constitutional contradiction of the local self-government of the municipalities (Hofmann, Theisen & Bätge, 2013, p. 549). Therefore, the districts in the city states are always under the supervision of the city state government. The administrative structure in the city states differs from the other federal territorial states in Germany. The following table gives an overview of the constitutional sources of local self-government in the several federal states in Germany.

No.	State	Local self government (1)	Obligation transfer (2)	Principle of connectivity (3)
1	Baden-Württemberg	71 I, II	71 III 1	71 III 2-4
2	Bavaria	10 I, II; 11 II; 83 I	10 III, 11 III	83 III
3	Berlin (city state)	-	-	-
4	Brandenburg	97 I 1, II	97 III 1	97 III 2, 3
5	Bremen (city state)	-	-	-
6	Hamburg (city state)	-	-	-
7	Hesse	137 I, II, III 1	137 IV	137 VI
8	Mecklenburg-West Pommerania	72 I, II	72 III	72 III
9	Lower Saxony	57 I, III	57 IV 1	57 IV 2-4
10	Northrhine-Westfalia	78 I, II	78 III 1	78 III 2-4
11	Rhineland-Palatinate	49 I, II, III 1	49 IV	49 V
12	Saarland	117, 118	120 I 1, II	120 I 2, 3
13	Saxony	82 II, 84 I	85 I	85 II
14	Saxony-Anhalt	2 III, 87 I, II	87 III 1	87 III 2, 3
15	Schleswig-Holstein	46 I, II	46 IV	49 II
16	Thüringia	91 I, II	91 III	93 I 2

Table 1: Constitutional sources of local self government and principles of connectivity

(Table citation adapted from Henneke, 2012, p. 309).

Although the details of the specific formulations in the several constitutions are not identical, the basic intention is always the same. If the state legislation transfers new or extended administrative obligations the municipalities that cause a significant increase of financial burdens, then the state legislation must compensate with funding for these additional costs by special legislation. So there is one law for the new obligation, but the financial results must be considered in the annual law that defines the municipal financial framework. Briefly put: The party that orders must pay! Four of the 16 states in Germany enacted special laws for detailed regulation of their principles of connectivity: Baden-Württemberg, Hesse, Nordrhein-Westfalia, and Rhineland-Palatinate. Other states develop similar regulation as political agreements or parliamentary declarations.

Federal state	Additional regulations
Bavaria	BayKonsultVer, 21.05.2004, BayGVBl s. 214
Baden-Württemberg	KonnexAG BW, 6.05.2008, GBl. s. 119
Brandenburg	KonnexEntschl Bdg, LT-Drucksache 2/6179, 15.03.1999
Hesse	HessGemFinAusstG, 7.11.2002, GVBl. I s. 654; as amended on 28.09.2007, GVBl. I s. 638
Mecklenburg-West Pomerania	KonnexErkl MV, 20.03.3002, AmtsBl. MV 2002, s. 314
Northrhine-Westfalia	KonnexAG NRW, 22.06.2004, GV.NRW, s. 360; as amended on 12.05.2009, GV.NRW s. 296
Rhineland-Palatinate	KonnexAG RP, 2.03.2006, GVBl. s. 53
Saxony-Anhalt	KonsultVer SA, MBl. LSA Nr. 45/2007, 17.12.2007, s. 916 ff.
Schleswig-Holstein	KonnexAG SH, 27.04.2012, GVOBl. 2012, s. 450.

Table 2: Special regulations about the principles of connectivity.

While these laws have a different legal meaning than a constitutional regulation, they are a detailed expression of the federal state about the understanding of the principle of connectivity (Bunzel & Hanke, 2011, p. 34). The function of the principle of connectivity is to protect the municipalities against the erosion of autonomy caused by increased obligations transferred by the state legislation.

I.4 New tasks without resources

In order to clarify that the responsibility for municipal funding is relevant only in the relationships between the municipalities and the 16 federal states in Germany, the federal reform of constitution in 2006 (Deutscher Bundestag, 2006a) led to an amendment of the GG. Generally the reform aims to simplify the very complex interdependences of the regulatory process in Germany especially the participation of the different state levels. The main part of the regulatory reform minimized the participation of the 16 federal states in the legislative process of the federal republic of Germany. As political compensation the 16 states received increased responsibility for their own legislation. It was the strategic result to separate the different legislative processes from one another in order to reduce the complexity of legislation and to speed up the legislation process (Art. 70 et seq. GG).

One practical result of this reform is that the new Art. 87 I S. 7 GG states that the federal legislation is prohibited to transfer new obligations directly to municipalities (Henneke, 2008). Therefore, only the 16 federal states in Germany have the responsibility to decide about the special administrative execution of laws. Because of this reform and clarification, the significance of the principle of connectivity was greatly increased for municipalities. In the German administrative structure this principle of connectivity led to a process in which laws passed by the German Bundestag were often executed by the cities and local administrations. Based on empirical evidence the federal states often decide for an execution competence of the municipalities without giving the necessary financial funding (FHM, 2009, p. 9). This discrepancy between the delegation of tasks and the provision of appropriate resources caused a large number of German cities and towns to fall into situations of extreme financial problems. When the situation became unmanageable, the municipalities are forced to develop a special budget consolidation plan that has to be approved by the state supervision authority. In such a situation they are limited in their potential actions and can no longer fulfil the task for the structural development of the local environment. In these strengthened financial budget

situations, an effective operation of the constitutional guaranteed local self-government no longer exists.

I.5 Cost discussion in a “pre-SCM-era”

This dangerous development of local budget situations clarifies the unique need for more transparency of the financial consequences of legislative decisions about administrative responsibilities. However, increased transparency of costs requires an ex-ante measurement of new task delegations or the extension of existing administrative obligations. A municipality can only request appropriate funding when the cost of a task has been determined. Today the supervision state authority checks the legality and economic efficiency of the annual resource consumption in the cities and local administrations in an ex-post-analysis. Therefore, a discussion about the SCM transfer must always be a discussion about costs and expenses. The constitutional meaning of the term “expenses” was discussed in work published by Peter Eichhorn (1979). He was the first author in the constitutional law discussions who attempted to transfer the conceptual system of economics into the public finance system by the GG. Eichhorn (1979) was unable to find any scientific support in the legal literature. He developed his concept using the reviewed practical management papers of the examined authorities. He used his findings to design a proposal for new legislation. Although this law never was enacted, Eichhorn`s (1979) conceptual work about the planning and control of administrative costs was pioneering in the research field of public legislation.

As in private business accounting, expenses are assigned to certain cost centres, because only there can resource consumption be controlled. In order for this method of control by cost centres to work, it is essential that suitable measurement categories be established for the activities that caused costs (Eichhorn, 1979). Without such measurement categories, it is not possible to distribute costs, especially the indirect overhead costs to the single cost objects. In the past, research discussions about public expenses counselled that these measurement categories should refer proportionally to the activities of public personnel

(Eichhorn, 1979). Those measured costs stand in direct correlation to the certain cost categories. To date, an addition was not possible for the indirect overhead costs. A definition of such a correlation was possible only by using auxiliary constructions (Eichhorn, 1979, p. 50).

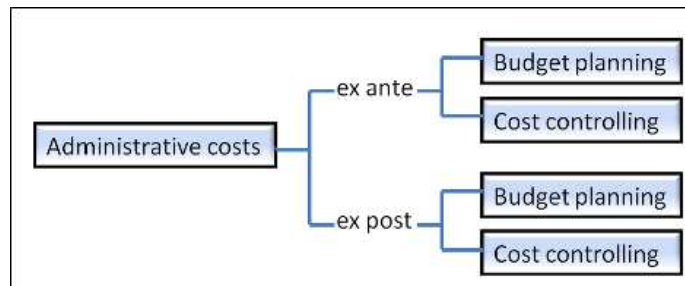


Figure 6: Control of administration costs (own drawing after: Eichhorn, 1979, p. 51).

The traditional practice in public accounting was typical to calculate overhead costs with indirect factors to the cost centres that are responsible for the actual expenses. However, such a calculation does not show a link to the current act that legalizes this administration. Such an approach may be still functional if the overhead costs themselves are measurable by simple and understandable cost indicators. If measurement categories are not available for overhead costs, then it is only a greatly reduced assignment to the single cost centres is possible (Eichhorn, 1979, p. 50). For example, in that circumstance, no objective possibility exists to make a cost distribution of the strategic management guidance. Regarding these system problems, academic discussions about planning and controlling of administrative costs must fail because of a missing functioning measuring method.

Schmidt-Eichstädt (1981) expanded this theory and tried to estimate the costs for the execution of new laws from an ex-ante point of view. However, Schmidt-Eichstädt was only able to work with the tools for legal cost estimation that had been discussed prior to 1981. The authors work was the first to address the relevance of an ex-ante cost estimation for the municipalities and was founded on the concept that the local level is the most important for the execution of laws. Between 1973 and 1977, ten politically motivated questions arose from different parties in the German parliament requesting the public expenditures for local administrations that had incurred costs resulting from federal laws of the German

Bundestag (Schmidt-Eichstädt, 1981, p. 104 ff.). The German government responded that no documentation existed that proved the financial impact of federal legislation on municipalities (Schmidt-Eichstädt, 1981, p. 105). Schmidt-Eichstädt (1981) found that financial distress on the local level results from federal laws. However, his ex-ante cost estimates were incomplete due to the missing method of measurement.

In terms of legal theory Makswit (1981), examined the question of whether the municipalities can rely on the financial articles in the German constitution if they have to execute administrative obligations. Makswit also discussed the constitutional need to make a clear distinction between administrative expenses and purpose expenses. His work examined the municipal relevance by examining some concrete laws within the constitutional principle of connectivity. However, Makswit only analyzed the need for a financial equalization for municipalities without defining the different kinds of costs. In that "pre-SCM-era," several attempts were made to solve the financial problems of municipalities by state law delegations. That research recognized the need for systematic ex-ante cost estimation, particularly from a municipal point of view. However, the problem was not solved due to the lack of a functional method of measurement. This lack of focus on the municipalities continues today. The 2012 annual report from the National Regulatory Control Council speaks about the results of their work in the business sector, but not the (local) public administration (NRCC, 2012). So there is an urgent need for change.

I.6 Measuring administrative costs as political idea

Since the early 1990's, the prevailing opinion in the Netherlands spoke to the necessity for closely examining administrative burdens in order to guarantee a long-lasting economic growth and to ensure the Netherlands the ability to compete on an international level. In a certain way, methods to measure administrative burdens are comparable with a machine that is developed to implement the production process. Economic theory predicts that a policy governing the reduction of

administrative burdens would increase production by 25 % (Kay, 2008, p. 53). This political concept of integrating quantitative methods into the legislative process of the political-administrative system emerged in the Netherlands (Nijland, 2005). Based on the Dutch royal resolution and article 5 of the Framelaw for the advisory board, the “Adviescollege toetsing administratieve lasten” (ACTAL) was implemented on 30 March 2000 (Staatsblad, 2000). Article 2a of this resolution mandates that the foremost obligation of the ACTAL is to consult the government and both legislative chambers regarding the administrative burdens of enterprises caused by laws and regulations of the parliament and the ministries (Staatsblad, 2000, p. 1). Therefore, the ACTAL works with a simple formula (Nijland, 2008, p. 15 f.):

$$N \times W \times T:$$

N = Number of the concerned enterprises

W = Average rate per hour of the employees in these enterprises need to fulfil the administrative burden

T = Number of hours and the measured time needed for employees to fulfil the administrative burden

The Dutch government stipulated that beginning in 2003 administrative burdens would be reduced up to 25 % and that the reduction would continue until the end of the legislative period in 2007; this goal was realized (Röttgen & Vogel, 2010, p. 25). ACTAL and the Dutch policy of reducing bureaucracy gained international attention and served as the model for the Better Regulation Task Force in Great Britain (BRTF, 2005). Former Prime Minister Tony Blair initiated the report in order to discover a British model of improving business by reducing administrative burdens. The BRTF report is an in-depth analysis of the Dutch model and ACTAL. This analysis resulted in a decision by the British government to adopt the Dutch approach, which was considered to be successful (BRTF, 2005, p. 5). The BRTF report also acknowledged the SCM not only as the first systematic method to

measure administrative burdens, but also the first to receive international attention (Holthusen, 2008, p. 14) as reported by the OECD (2007a).

In autumn of 2003, a number of European countries formed a network that was committed to using the same methodological approach when measuring and tackling administrative burdens. Wegrich (2009, p. 3) described the SCM as an instrument that could be used to promote and disseminate improved regulation policies in Europe and internationally. Using the example of the SCM, it can be recognized that it had spread as a successful method to reduce bureaucratic burdens in the different political systems of Europe (Wegrich, 2009). Therefore, it is logical that the OECD reported about these policies and worked out the systematic differences in the several European countries (OECD, 2007b). The administrations of several countries realized that they faced common problems and that only a common approach could solve these problems (den Butter, de Graaf & Nijssen, 2009, p. 5). The OECD stated that on an international level the SCM is the most widely applied method for measuring administrative costs; the first international SCM manual was published as a result (SCM-Network, 2005). The SCM Network is an informal network of countries that use the SCM to measure and simplify their administrative burdens (www.administrative-burdens.com). This enables the network to make consistent comparisons between countries and acts as a support centre. Today, 29 countries are involved in the SCM-Network including Australia, Turkey, and Kazakhstan. It is important to note that from the beginning the SCM was developed as a method targeting the business sector. As quoted in the international SCM manual (SCM-Network, 2005):

The Standard Cost Model (SCM) is designed to measure the administrative consequences for businesses and is today the most widely employed method to do so. The SCM has been developed to provide a simplified, consistent method for estimating the administrative costs imposed on business by central government. It takes a pragmatic approach to measurement and provides estimates that are consistent across policy areas. (p. 8)

The SCM is an internationally accepted method in the context of better legislation policies primarily in Europe. Regarding the aims of social prosperity and economic growth, the SCM focuses primarily on enterprises and not public administration or the municipalities. This could present a problem for transferring the SCM to municipalities because it was designed to measure the costs of companies, not public expenses.

I.7 Standard Cost Model as method of change

The greatest problem in the unsolved cost discussion is the failed transparency of legally caused expenses, especially on the local level. However, this problem has two distinct issues. On the one hand, there is the guarantee of local self-government from Art. 28 II GG and the comparable articles in the constitutions of the federal states listed above in table 1. On the other hand the result of this autonomy is that laws are not executed in exactly the same manner. When municipalities require additional funding due to new or extended obligations, the costs of those added burdens must be calculated. Because local administrations use different methods to execute laws, it is not possible to determine an exact calculation for financial compensation.

A constructive contribution to the discussion about the necessary transparency in the German system of municipal financial compensation is the Standard Cost Model (SCM). In nearly every modern state, the SCM is a generally accepted and applied method and has become part of international policy and action plans designed to eliminate red tape (NRCC, 2007). The SCM is not a scientific instrument for the exact measurement of administrative burdens, but is an accepted method for the estimation of costs. The SCM is an activity-based measurement of the administrative burdens that facilitates the ability to track the development of administrative burdens. As a result, it is the most widely applied method for measuring administrative costs for businesses (SCM-Network, 2005, p. 8). This shows that originally the business sector was the first strategic target group for the implementation of the SCM as method for better legislation policy. In Germany the

development of better legislation policies internationally led to the establishment of the National Regulatory Control Council (NRCC). The legal obligation of the NRCC is to monitor whether a particular ministry has calculated the administrative burdens of a new law using the right method, the SCM (§ 2 NKRGG). Following this legal obligation in § 2 NKRGG, today the cost estimation within a regulatory assessment process is not only restricted to the business sector, but also to administrative burdens of the citizens and the public administration. The SCM is becoming more frequently viewed as a method to manage the relationship between the different levels of public administration, with particular regard to the financial problems of municipalities. This concept is highly significant for the purposes of this study (Hensel, Bizer, Führ & Lange, 2010, p. 115; Färber, 2011).

The purpose of the SCM is to estimate the costs of a defined standardized case or process from ex-ante point of view, and not to look for every possible process that works in reality. The multiplication with the number of cases or processes in a certain period, typically one year, leads to the sum of amount for this particular process and make it possible to estimate the upcoming costs. This estimation of cost identifies the economic aspects of legislation and brings attention to the necessity in the concrete piece of law by linking the purposes of the law with the costs of it. Regarding this new possibility of political considerations, the first target of the SCM was the cost reduction for the German business sector by identifying the administrative burdens (Deutsche Bundesregierung, 2006, p. 5). As a concrete number the German government aims to reduce these administrative burdens by the SCM application up to 25 % (Deutsche Bundesregierung, 2010, p. 8).

Since 2012 the development of these administrative costs of bureaucracy in Germany is monitored permanently by the index of bureaucracy (www.destatis.de/DE/Buerokratiekosten). The other aspect of the use of SCM will be to allow the identification of necessary costs that should be allowed for the implementation of the law.

Essentially the SCM-method divides the administrative process into single steps and measures the time necessary to conduct a specific process step. By assigning the

time with a calculated price, the result is given. This is typically the wage rate defined by a collective labour agreement. This outcome expresses the administrative burdens. The administrative processes are empirically analyzed using statistical methods. Special processes that are minimally priced are ignored as well as such processes that are too expensive. So the SCM is a suitable method to analyze standardized administrative processes. This is an important result to measure administrative burdens especially in the public administrations that are mostly responsible for the execution of law – the municipalities (Bunzel & Hanke, 2010, p. 27). The common rules of procedures of the federal ministries (GGO) that are relevant for the legislative process on the federal level, codified in § 44 I GGO, are intended to analyze any significant effect on regulatory impacts and to estimate it from an ex-ante perspective before the law is enacted. This includes the intended and unintended effects, particularly the long-term social, environmental and other effects of the proposed legislation act (Seckelmann, 2010).

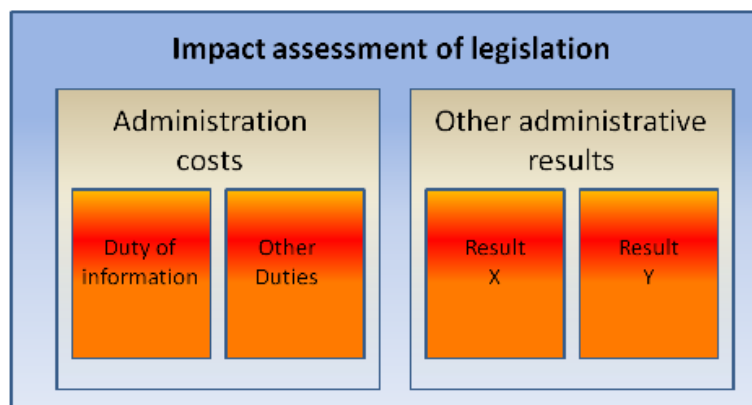


Figure 7: Duty of information as part of the impact assessment (own elaboration).

This system of German impact assessment includes according § 44 III and IV GGO a calculation of administrative burdens for all federal legislation and also for municipalities. If this legislation is relevant for municipalities, § 47 V GGO stated the imperative invitation of the central municipal member associations. In the past, the focus of the SCM-application was the private business sector, not the public administration (NRCC, 2012). To broaden this focus to include municipalities is not only a legal mandate in § 2 I NKRGG, but also an important step for creating a method to reduce bureaucracy for citizens. A reduction in bureaucracy in

municipalities is also a step forward to help the citizens. Transparent communication about the administrative burdens of municipalities gives two essential advantages.

Advantage 1: Better quality of legislation

The better informed the members of the German Bundestag are about the content and impacts of their acts and laws the better is the quality of their decision as legislators. This is particularly related to an advanced knowledge about the costs. An awareness of cost allows for a reasonable assessment of whether the intended policy objective has value and justifies potential expenditures. Ideally this could lead to an examination of the concrete act and prevent increased bureaucracy.

Advantage 2: Higher effectiveness for municipal finance equalization

For the first time in the history of German administration, the SCM allows for the possibility of an ex-ante measurement of administrative costs of laws. Currently, abundant information exists regarding the execution costs of laws for the negotiations between municipalities and the federal German states, the general allocation of funds, and the enforcement of the constitutional principle of connectivity. Therefore the SCM could be an effective method to improve the local budget situations.

1.8 Methodological approach of research

The methodology is a multi-method approach, that combines theoretical and practical aspects together in one solution of a possible SCM application in municipalities. For a process of transfer, “facts” are not the most important facet; the studies of empirical observations and of methods and their effects on social processes emerge as more essential. A research philosophy that centres on social interactions is found in the social constructivists (Hatch & Cunliffe, 2006). A social constructivist influenced methodology is always identified through communication,

discussion and interpretation. Assembling and synthesizing the relevant information of these sources of academic literature, court decisions, project reports, and administrative guides, could lead to a functional way to develop an application for SCM transfer to municipalities.

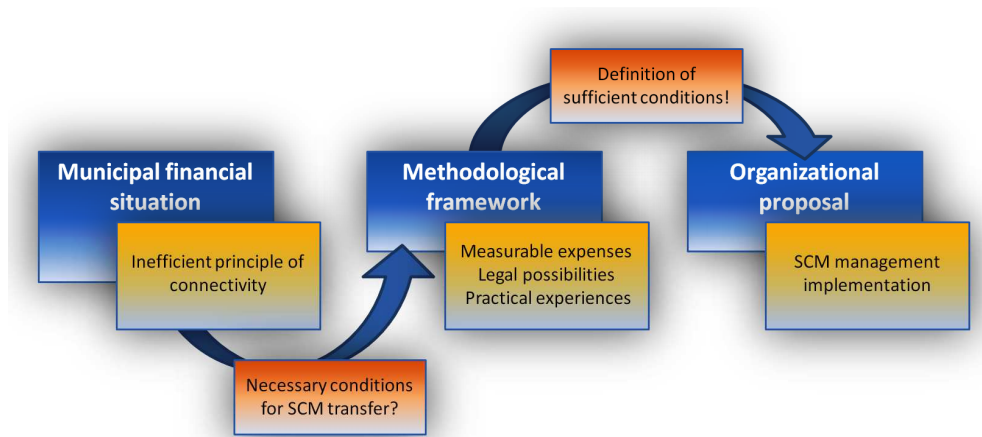


Figure 8: Conceptual mapping of methodological research approach.

The basic research approach used for investigating the transferability of the SCM from its actual application in the business sector to the new one in local government is comprised of four essential steps: stakeholder interviews (see sec. IV.1), a reflective presentation of preliminary ideas (see sec. IV.2), and a cross case analysis of already existing SCM-projects (see sec. IV.3) leading to the summarizing hermeneutic text analysis (see chapter V). It was decided in the beginning of the research phase to conduct interviews with stakeholders. The selection of the interviewees was determined by the relevance of their work for the three research questions. The most important aspect of the selection of the interviewees was their membership and their function in an institution with influence on the implementation of the SCM in Germany. There are several notable and relevant institutions in Germany that deal with the research or the practical implementation of the SCM. Because the selection of the interviewees and the semi-structured interview script are systematically developed, the analysis of the interviews is less phenomenological than content-oriented. The interview analysis is a deductive analysis meant to generate certain statements of the interviewees that give the basis for further text analysis. The search for common statements in the interviews as influenced by the hermeneutic process of legal text analysis is oriented to the

grounded theory approach (Strauss & Corbin, 1998). The central point in this process is the coding, whereby data segments are broken down into component parts that are given names (Bryman & Bell, 2011, p. 580). The essential process of connecting the data analysis of grounded theory into the legal hermeneutic process is to reflect the outcome of interview synthesis as part of this hermeneutic spiral. This will be developed in two steps: a methodical classification of the hypothesis and the development of the subsequent argumentation in the hermeneutic process (Alvesson & Sköldbberg, 2009).

The interview research is combined with a reflective presentation in front of a professional audience. The discussion in this auditorium is documented in a protocol. Similar to the interview analysis the presentation protocol is analyzed in a deductive process to generate similar statements as part of the following text analysis. With regard to the already existing projects about SCM application in public administration: the research design contains a narrative analysis of project reports and descriptions. All research results so far will be integrated into the text analysis as basis of the starting hermeneutic prejudice. The text analysis itself will follow the legal principles of text interpretation like as first described as the four canones by Savigny (1840, p. 212).

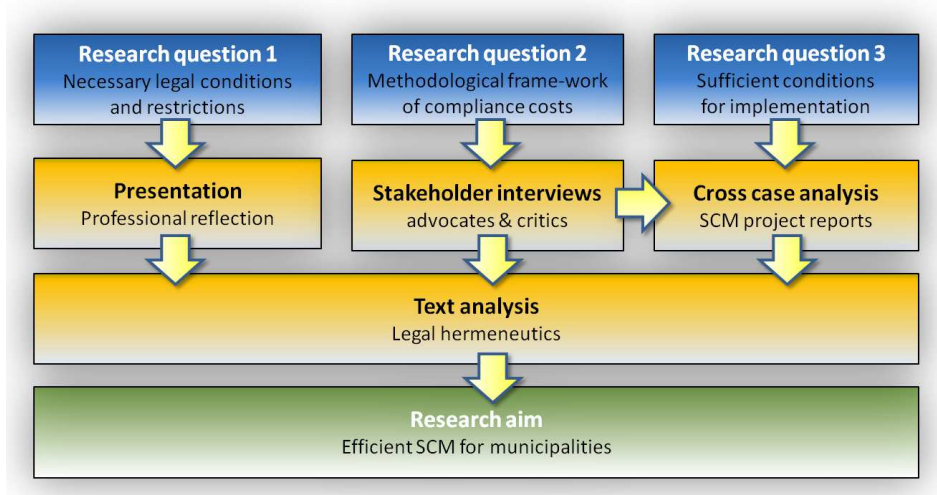


Figure 9: Research design for the SCM-transfer to municipalities (own elaboration)

The present study is no longer intended to perform an additional SCM examination of administrative processes, but to examine, whether a general methodological

framework for the determination of compliance costs in municipalities exists. In recent years, a number of projects have dealt with the question of how the executive costs of laws could be measured using the SCM. Regarding the results of the legal hermeneutic text analysis these extant projects will be examined in a cross case study (Eisenhardt, 1989). This study pursues a viable method for measuring compliance costs from a strictly local point of view on the basis of standardized criteria. Therefore, the research in this study will focus on the methodological aspects of the implementation of an SCM framework.

I.9 Research questions and objectives

To date, no effective application of the SCM exists on the local level of public administration, which is unusual because in the very first discussions about the SCM the public administration was always a target sector (Nijland, 2005). Therefore, even the German parliament was inconsistent in its strategic perspective of better legislation policy to implement the German National Regulatory Control Council (NRCC) in 2006. On one hand, the law describes in § 2 I NKRGG the public administration as a target sector of the NRCC. On the other hand, the documentation of the law about the NRCC given to the deputies in the German Bundestag takes only the business sector into focus of the NRCC (Deutscher Bundestag, 2006). This is understandable regarding the self understanding of the NRCC in Germany that defines its own political mission primarily as a “watchdog” for the economy to avoid ever growing bureaucracy (Schröder, 2007). In the annual report of 2012, the NRCC discusses its mission by targeting only the business sector (NRCC, 2012).

The NRCC worked for five years to publish the first handbook for measuring compliance costs of the public sector (Destatis, 2011). However, this handbook covers only the state administration on the federal level. To date, no comparable guidance exists for measurement of the costs of the municipalities. There is only a short paper about the possible involvement of municipal representatives into federal legislation (NRCC, 2014). However, this proposal was not applied until

today. The cause for this void appears to be in the systematic hierarchy of the administrative levels. It is easier to regulate the measuring of compliance costs if only one federal administration level exists to analyze that can be ruled by a governmental decision. It is more difficult to define the right costs on the local level of public administration and if every municipality can work within its own financial autonomy as guaranteed in art. 28 II GG. This administrative autonomy gives municipalities the right to decide by themselves about the direction of their efforts. An additional reason for the lack of consistency is the difference between the public budget systems on the local and the state level of administration. For the federal administration, the GG itself stated the legal framework in the German constitution in art. 104a et seq. GG.

The local public finance system correlates with its special financial autonomy. For approximately ten years, the New Communal Finance Management (NCF) has attempted to transfer more aspects of the double-entry bookkeeping model, which is derived from the financial system of the business sector, into the finance of public administration. The idea of the NCF is to change the input-oriented steering of public budgets to a new system of output oriented policies (Bernhardt, Golombiewski, Mutschler & Stockel-Veltmann, 2013, p. 45). The NCF works with some elements of business economics like contract management, budgeting and permanent controlling. These constitutional and financial differences between the federal and the local of public administration led to the first research question of this project:

Research question 1:

What would be the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration?

The different budget systems cause another problem for the research about a possible SCM-transfer application to municipalities. When the GG speaks about expenditures within its financial regulation, this is defined differently as the term “expenses” as used in the NCF budget system. The term expenditures in the first

case means the output-oriented flow of costs needed to fulfil the administrative obligations. The term expenses in the sense of the NCF contains more aspects, especially expenses for costing purposes like depreciation allowance or accrued liability (Bernhardt, Golombiewski, Mutschler & Stockel-Veltmann, 2013, p. 15).

In its original version, the SCM focused on administrative burdens by measuring the information obligations of the business sector only. In 2009 the legislation reformed the particular § 2 I NKRGG by changing the legal obligation of the NRCC to measure “information obligations” to “compliance costs.” Therefore, the SCM application in Germany developed into a more comprehensive concept of measuring administrative costs (Pfeiffer, 2010). To date, this purpose of § 2 NKRGG is defined only for the federal state administration, but not for the local level. The handbook for the definition of compliance costs on the federal level restricts the content to only the administration costs for personnel or necessary material (Destatis, 2011). However, based on the difficult budget situations of the municipalities, it is more important to discuss the expenses of purpose that are necessary to fulfil their administrative mission. There is no consensus to the definition of compliance costs common to all levels of public administration. For a functional SCM application in municipalities, the concrete content of compliance costs must be determined. So the second research question becomes:

Research question 2:

Can a general methodological framework be proposed for the determination of compliance costs for municipalities?

Academic discussions about the legal framework and the economic right way of cost measurement do not help municipalities in their financial crisis if there is no way to consider this information in the legislative process. The problem of the financial results for the local public administrations of federal legislation as stated by the German Bundestag occurs primarily in the field of social benefits. Art. 72, 74 No. 7 GG states that the German Bundestag has the competence as a legislator to regulate social benefits; nevertheless, the municipalities are responsible for the

administration of this federal legal obligation. In order to discover the framework for a functional SCM transfer to the municipal field, the federal level in Germany must be addressed first. The parliament transacted its competence for social benefits by enacting the SGB XII. In addition to a wide variety of social benefits, § 3 II SGB XII states that the district free cities and local districts are responsible for the administration of the SGB XII. In general, the districts delegate this responsibility to the municipalities.

Therefore, the federal legislation had little difficulty with deciding the way and volume of administration because the municipalities bear the administrative and purposes expenses. Regarding the principle of connectivity, the discussion about financial compensation must take place in the relationship between the municipalities and the particular federal states in Germany. To solve this structural problem, the GG was reformed by adding a new article. In 2006, the German Bundestag added a new Art. 87 I s. 7 GG that prohibits the federal legislation to delegate new legal obligations to municipalities (Deutscher Bundestag, 2006a). This constitutional step of clarification effectively divided the legislative fields. The German Bundestag can only develop the relationship between the federal level and the 16 federal states in Germany. The 16 federal states define the framework for their cooperation with the municipalities.

Since this reform of the federalism in Germany, the federal parliament could only regulate the relationship between the state levels of administration but could not create new obligations for municipalities (Knitter, 2008, p. 95). The municipal field of administration is only the responsibility of the federal states. It should be noted that this prohibition in Art. 87 I s. 7 GG is not effective enough to fight the municipal budget crisis because it does not help to make the principle of connectivity functional (Röttgen & Vogel, 2010, p. 211).

In the context of the reform of German federalism in 2007, the possibilities of influence were strengthened by the engagement of the local level of administration in the common rules of procedures (GGO) of the federal ministries (BMI, 2011). In

several regulations of the GGO the municipal associations must be asked about the concrete legislative project, but there is no direct possibility of influence in the legislative process. For a functional implementation of the SCM to municipalities it is necessary to describe the sufficient conditions on the federal level in Germany that have a functional impact in the relationship between the municipalities and their federal states. To discover these impacts, the last research question must be:

Research question 3:

What are the sufficient conditions required for the implementation of the SCM to municipalities?

In summary, this introduction to the research contained in this thesis is research regarding a functional model to transfer the SCM application from the federal to the municipal level of public administration. The complexity of this question has been outlined in the previous sections. It includes the legal conditions, the methodological framework of cost measurement, and the conditions for the organizational implementation.



Figure 10: Objective circle for a functional municipal SCM application (own elaboration).

Regarding the three research questions the research objectives are:

1. To understand the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration.
2. To propose a general methodological framework for the determination of compliance costs for municipalities.
3. To identify the sufficient conditions required for the implementation of the SCM to municipalities.

I.10 Introductory conclusion

This introduction shows the urgent need for a new development of the financial framework in municipalities. The idea is to use the SCM as an accepted method in legislative policies to increase the quality of legislation with financial outcomes for the local level of administration. Therefore, it is necessary to present the legal framework for such a methodological transfer. The legal research must reflect the special German legal situation of the constitutional guaranteed local self-government and the complex financial system. To date, the economic aspects and the content of compliance costs are not defined for local public administrations. Therefore, it is necessary to review the possibility of making the existing research about compliance costs on the federal level useful for the local level. The last part of the research is to propose the organizational conditions for an effective implementation of the SCM from a municipal point of view. The next chapter explores the literature and research extant in this field and searches for a research gap about the SCM application in municipalities.

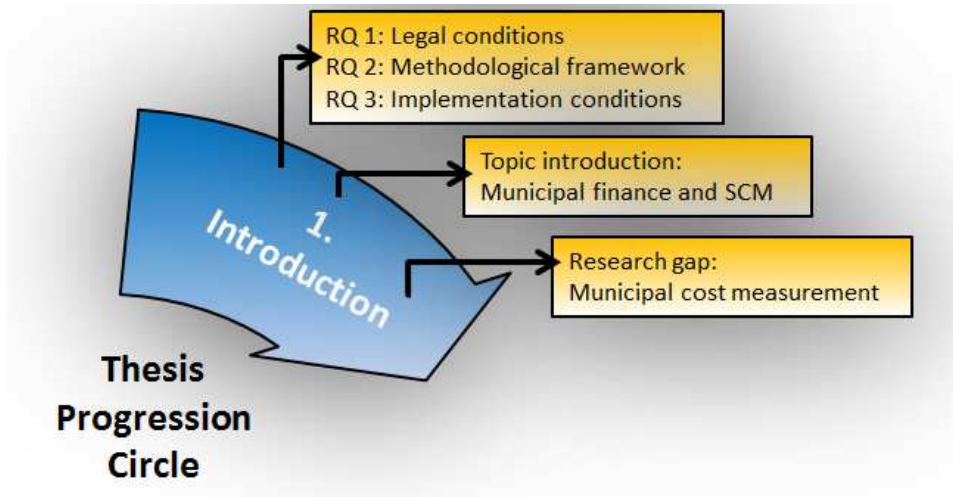


Figure 11: Thesis progression circle – after chapter I.

II. Literature Review

II.1 Literature of better legislation and the SCM

Since the late 1980s, the interest in evidence-based approaches focused primarily in the medical and health research area, because practice was based on poor-quality evaluations of the literature, that sometimes caused inappropriate medical recommendations (Tranfield, Denyer & Smart, 2003). Therefore, researchers were required by government agencies and other institutions to apply a more systematic and scientific approach to the practice of reviewing the literature. But what does the term of systematic mean in this way? Today, the literature review is understood as a systematic, explicit, and reproducible method for identifying, evaluating, and interpreting the existing body of recorded work produced by researchers, scholars and practitioners (Fink, 2009, p. 3.). This corresponds to Tranfield, Denyer and Smart (2003) who defined a systematic review as a replicable, scientific, and transparent process or a detailed technology that aims to minimize bias through exhaustive literature searches of published and unpublished studies providing an audit trail of the reviewer's decisions, procedures and conclusions. Therefore, the literature review aims to provide an exhaustive summary of literature that is relevant to the developed research questions. The systematic process of performing a comprehensive literature review can be divided into three main steps:

Step 1: Planning the review and specifying the research questions

In this statement the relationships and circumstances of the research objects give the guidelines. It asks for the *context* of individuals or institutions, the *interventions* of effects and actions, the *mechanism*, that explains the relationships and the *outcomes* of the intended or unintended effects of these mechanisms (Denyer & Tranfield, 2009).

Step 2: Conducting the review

Based on keywords and search terms a comprehensive search is carried out to produce a list of all books, articles, and sources on which the review will be based (Tranfield, Denyer & Smart, 2003, p. 215). The necessary selection of literature is conducted by a defined strategy based on meaningful criteria and keywords to exclude unrelated sources and to include the relevant literature.

Step 3: Reporting and dissemination

Finally the dissemination of the literature found must give the reader an impression of the research. The sources must be described and analyzed in their temporal aspect and with regard to their content. The main point is an analytical and summative reflection of the literature that is relevant for the research topic. The analysis of relevant literature gives starting points for the synthesis to reassemble the content and to build something new. When concluded, the literature review should show existing relevant research, the potential further inquiry or gaps in the research, and explicit recommendations for additional study. The core of this research is the transferability and application of the SCM from its current economic application within companies and public state administration into a municipal area. The three steps of a literature review should lead the researcher to a research gap that guides further research.

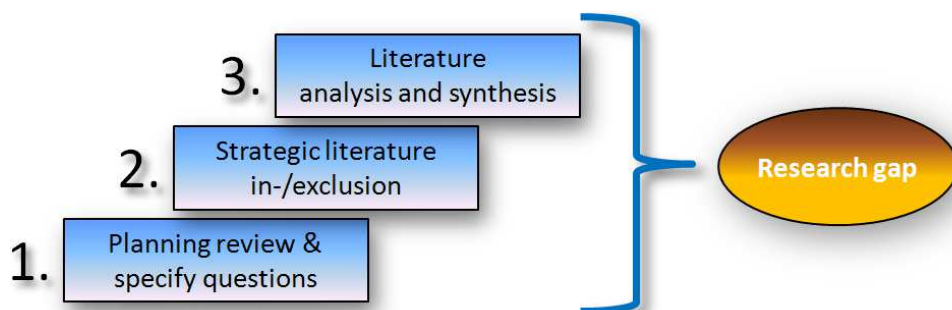


Figure 12: Literature review process (own drawing after Tranfield, Denyer & Smart, 2003).

According to the research questions, the primary goal of a literature review is to evaluate what is already known about the research area of interest so that the researcher does not simply “reinvent the wheel” (Bryman & Bell, 2001, p. 91). In addition to reiterating the theories and opinions of other researchers, the review allows for the interpretation of what has been written and the ability to use these ideas to support or contradict a particular viewpoint or argument. So the purpose of exploring the existing literature should be to identify the following issues:

- What is already known about the explored area?
- What concepts and theories are relevant to this area?
- What research methods and research strategies have been employed in studying this area?
- Are there significant controversies?
- Are there any inconsistencies in findings relating to this area?
- Are there any unanswered research questions in this area (Bryman & Bell, 2007, p. 92)?

These issues provide a structure for starting the literature review according to the three research questions as cited in the introduction of this thesis. The application of the SCM as part of the national better regulation policies of many national states in the European Union is a widely applied method in the field of measuring administrative costs, especially in its current application in the business sector (SCM-Network, 2005). It is a quantitative method that can be applied in all countries and at different levels.

The method can be used to measure a single law, selected areas of legislation, or to perform a baseline measurement of a wide variety of legislation in a country (SCM-Network, 2005, p. 2). From the beginning of the introduction, the SCM was a method targeting only the business sector. The SCM application on different levels of the public sector has not been studied and must be a part of further research.

Since the introduction of the SCM into the political discussion, the method was criticized for not being an exact scientific method but rather a tool for cost measurement and better estimation. This led to the major controversies within the SCM research area: The discussion about the ability of the SCM method itself to create the necessary information for better legislation and the particular determination of administrative or compliance costs in public administration. The quality of political decisions can only become as good as intended when clarity exists about the concrete content of compliance costs.

In Germany, the SCM was implemented by enacting a law in 2006 about the National Regulatory Control Council (NRCC). §§ 1 and 2 NKRK regulates that the NRCC controls the description of costs using a law drafted in the context of the German impact assessment. If there is a law draft coming from the federal ministries, then it must describe the costs of this particular legislation (§ 44 GGO). The NRCC supervises the right use of methods to estimate these compliance costs. But if the ministry describes the administrative and the purposes costs, the NRCC could only watch over the right estimation of the administrative costs. This is an unsolved inconsistency in the political application of the SCM in Germany. This issue led to the still unanswered research questions:

1.	What would be the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration?
2.	Can a general methodological framework be proposed for the determination of compliance costs for municipalities?
3.	What are the sufficient conditions required for the implementation of the SCM to municipalities?

This research looks for conditions to describe the framework for a functional application of the SCM in a municipal area. Even if the SCM itself is a quantitative method to measure costs, the research field of a possible transferability of the SCM into a new municipal area is rather a political discussion with pro and con arguments. To find these political and legal arguments, a qualitative analysis of

strategic selected literature and other sources is more effective than a quantitative analysis of statistical data. This analysis addresses the question of the functional application of the SCM. The existing knowledge about the working SCM application must be analyzed under a specific municipal point of view. The form of synthesis used here will be that of meta-ethnography.

Meta-ethnography is a method that is used to achieve interpretative synthesis of qualitative research and other secondary sources, thus providing a counterpart to meta-analysis in quantitative research. It refers not to developing overarching generalizations, but translations of qualitative studies into one another, possibly done in three different ways: first, a direct comparison of these accounts; second, as an oppositional analysis of accounts; and third, the accounts together represent one common line of argumentation (Noblit & Hare, 1998, p. 25, 36). Under an epistemological point of view, such a distinction between empirical or interpretative research is useful because the analyzed sources clarify where available evidence has been discovered (Steup, 2010). For a constructive work on an actual gain in knowledge of research, it may be useful to combine the methods of investigation of empirical data with a qualitative text analysis (Dixon-Woods, Agarwal, Young, Jones, and Sutton, 2004, p. 4). Today it is a common practice to consider qualitative and quantitative research in one single systematic review and interpretative synthesis (Pawson, Greenhalgh, Harvey, & Walshe, 2004, p. 20). When considering the relevant point to combine qualitative and quantitative learning, Dixon-Woods, Agarwal, Young, Jones, and Sutton (2004, p. 6.) discussed several possibilities. However, the purpose of generating hypotheses and questions is particularly relevant for a systematic literature review.

Since its introduction in the middle of the 1990's, the SCM has been a relatively new method in the political area of better legislation. The discussion of applying the SCM has been minimal, particularly in the municipal sector. A systematic review about the possible transferability of the SCM into a municipal area is an investigation that deals primarily with empirical and qualitative sources. Due to the dominance of qualitative data in the field of better legislation policy and a SCM

application, synthesis methods such as meta-ethnography were applied to analyze the researched transferability of a method application from one research field to another.

II.2 Opening scoping study

For the starting of a literature review Transfield, Denyer & Smart (2003) proposed a scoping study to assess the size of the literature and evidence sources or research and to delimit the subject area by finding studies of different subject areas. This scoping includes searching for existing research, undertaken reviews, or primary studies about the application of the SCM on a local level of public administration. To gain an initial overview about the existence of such primary reviews on the 10.06.2013, the public scientific Internet databases were searched using the relevant German and English search terms and keywords:

No.	Keyword German	Keyword English
1	Standardkosten-Modell	Standard Cost Model
2	Erfüllungsaufwand	Compliance Costs
3	Kommunen	Municipalities

Table 3: Keywords for first scoping literature study.

The scoping study was undertaken in the scientific public Internet databases of google.scholar.de, scirus.com, and forschungspotal.net. The search of the German databases google.scholar.de and forschungspotal.net was conducted using German keywords; the search of the English database scirus.org was conducted using English keywords. Additionally, the scoping study includes the database of Open Access Theses and Dissertations (OATD) to look for research with a similar intention or aim. If possible, several keywords were combined to reduce the found sources.

In the first step, the sources found were analyzed by their title and the visible abstract sentence of the search results. The aim of this first analysis was to find existing research and to undertake reviews about the research objectives of this

literature review. So the headline and the abstract needed to contain the keywords (keyword/X) and an indication regarding a relationship to the public municipal area (X/municipal relation).

	Google scholar	scirus	forschungsportal	OATD
Standard Cost Model	94/1	1107/0	1/0	496/0
Compliance Costs	19/0	49.805/0	6/0	164/0
Municipalities	616/2	162/0	33/0	33/0

Table 4: Quantitative results of scoping study.

The only source found concerning the SCM is a case study about an ex-post cost evaluation of legislation in the district of Osnabrück (Zülka, 2008). This first scoping study shows that there are many sources that deal with the emergence and the evaluation of the SCM in the context of German and international policy of better regulation. Generally, the research topics were unrelated to municipalities or the literature was out-dated. A primary result of the initial examination of literature revealed a lack of a systematic review addressing the application of the SCM in the municipal area. Thus, the following systematic literature review will collect the relevant sources for a municipal SCM application for the first time.

II.3 Definition of necessary boundaries

Beside this scoping study in public internet databases Tranfield, Denyer, and Smart (2003) suggested accomplishing a systematic review by searching in published and unpublished literature. Such grey literature is any published and unpublished material that is not normally identifiable through conventional searches. This grey literature includes: conference proceedings, newspapers, research in progress, reports, sources of institutions or working groups, community information, alternative literature, and fanzines (Hart, 1994). Regarding the legal framework of the German constitution for the local autonomy of municipalities, a literature review for this research must consider the relevance of evidence for this particular research field. Consequently, it is difficult to make international literature useful for the relevant German constitutional situation. Therefore, further investigation of the

three defined research questions focuses primarily on German sources. Literature and sources originating in countries other than Germany must be analyzed additionally about their scientific suitability for the research objectives of this review.

II.3.1 Year of publication

The scientific discussion about cost estimation in public administration has been discussed at length. Beginning in the 1970's, several attempts were made to define the costs of public administration; an estimation of costs is always necessary for budget planning (Eichhorn, 1979). Regarding the objectives of this research, it is not meaningful to examine the whole period of discussion about public expenses. The main point of this research is the application of the SCM in public administration. Therefore, the literature review is restricted to the period in which the SCM became a generally accepted method of better legislation in Europe. In 1994, the Dutch government started the first initiative to reduce administrative burdens by the operation "Marktwerving, Deregulierung en Wetgevingskwaliteit-MDW," which brings the measuring of standard costs into focus for the first time under the motto "meten is weten" (Kay, 2008, p. 42). The report of the British Better Regulation Task Force (BRTF) to Prime Minister Tony Blair (BRTF, 2005) studied the Dutch model intensively and announced it to other governmental programs all over Europe. The considerations about international policies of better legislation and a potential reduction of bureaucracy by measuring administrative burdens led to the publication of the first International Standard Cost Model Manual published by the SCM-Network. This is a collaborative and international group of 29 member states, working together to share experiences and knowledge about the application of the SCM (SCM-Network, 2005). Based on this publication, 2005 is a reasonable restriction for the searching for relevant literature about a municipal application of the SCM.

II.3.2 Language

The basic publication about the SCM is the International Standard Cost Model Manual, which is written in English. This is due to the origins of the SCM in the Netherlands and the widely accepted BRTF-report, which is also written in English. Additionally, the first scoping study shows that the majority of scientific contributions regarding the politics of better regulation are written and published in English. The significance of the publications necessitated a systematic review literature written in of English. Besides the origins of the SCM and other sources about better legislation, this research seeks a particular framework of a SCM application in a German local level of public administration. Regarding the local autonomy of German cities and municipalities as guaranteed in Art. 28 II GG, the literature review must accord German literature primary consideration. The systematic literature review will be restricted to the English and German languages; however, because of the particular German topic the focus will be on German sources.

II.3.3 Object of investigation

After restricting the selection of sources in the literature by the year and the language of the publication, the further review first required an analysis of the content of the sources about SCM application in public administrations. If the SCM is developed to reduce administrative burdens of the business sector of national economy, these sources are less relevant for the specific framework of a functional SCM application in the public sector especially on the local level. These sources may be interesting for research about the methodology of the SCM, but not for the defined research objectives of this thesis. This review must take such evidence and particularly those sources into focus that deal with public administration on a local level. Only the contributions that concern themselves with fundamental questions of the SCM itself or that establish the municipalities or comparable parts of public administrations to the subject of their investigation are considered in this further systematic literature review.

II.3.4 Research location

Studies about the application and evaluation of the SCM can be found in many European countries. Statements about the systematic interaction between the various levels of government vary depending on whether it is a more centralized or decentralized state structure or it is built with elements of the separation of state power or federalism. Therefore, it is useful in the search for relevant literature to examine publications that deal with those structures that are comparable to those in Germany.

The SCM-Network has 29 member states: Australia, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Kazakhstan, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Turkey and the United Kingdom (www.administrative-burdens.com). Many of these member states have a constitutional design that varies widely from those in Western Europe. These constitutional circumstances are as relevant for the democratic state structures as for the comparable autonomy of local public administration in these countries. To bring a useful contribution to the research objectives of this thesis, the publications from completely different constitutional conditions in the public administrations other than in Western Europe (f. e. Kazakhstan or Turkey) must be checked for their significance for the formulated research questions. To bring a suitable contribution to this literature review the following analysis focuses primarily on publications from the following countries:

- Germany: As the state of concrete investigation
- Netherlands: As the origin country of the SCM
- United Kingdom: As the address of the “less-is more-paper”

At this planning stage the systematic literature review needed a strict application of clearly defined inclusion and exclusion criteria (Bryman & Bell, 2011, p. 97). In

summary this systematic planning of further literature review concerns the following criteria:

Criteria	Inclusion	Exclusion
Year of publication	from 2005 until today	before 2005
Language	English, German	not written in English or German
Object of investigation	Public administration, esp. municipalities	other social sectors
Research location	Germany, Netherlands, United Kingdom	other countries

Table 5: In- and exclusion criteria for systematic literature review.

II.4 Systematic review of literature and sources

A literature review regarding the three research questions must lead to results in different aspects of scientific research about the SCM. In particular, these are the legal conditions, the methodological framework, and the conditions of implementation of a SCM application in municipal areas. As a legal question, the relevant literature for the first research question includes books, articles, and reports. However, it must also examine the relevant court decisions. A possible proposal for an economic determination of compliance costs as written in the second research question must deal with more economically oriented databases. The organizational conditions for a successful implementation of the SCM in a municipal area must also consider the legal and political aspects of the legislative process on the federal level in Germany. In addition to the public Internet analysis completed for the opening scoping study, the systematic literature review will involve those academic databases that are relevant because of their relevance to the research fields of law and legal problems, economic business, and private or public management. Generally accepted cross discipline databases were reviewed because of their relevance to scientific research.

In addition to the mentioned databases, research about an application of the SCM in German municipalities must deal primarily with German literature. A specific legally oriented review in a relevant German library must be part of the literature review. The largest public scientific library in Germany is the state library in Berlin (Stabikat). Because of the importance of court decisions for the legal aspects of a

research about the SCM in Germany the literature review must contain a review in special decision databases. Because of the specific German constitutional framework this review is concentrated only on German resources. The most accessed database for German court decisions is the online portal “Juris”. This website encompasses all court decisions that have relevance for jurisdiction in Germany. To conclude the systematic process of review, the last step will be an investigation of literature on the websites of the relevant institutions that were identified for the interviewees already. Also included in the review must be the literature referenced by the interviewees during the personal conversations. These specific sources and the literature generated in a post-interview revision after the interviews must be reviewed carefully if it was not revealed in the systematic process already (see section II.4.8).

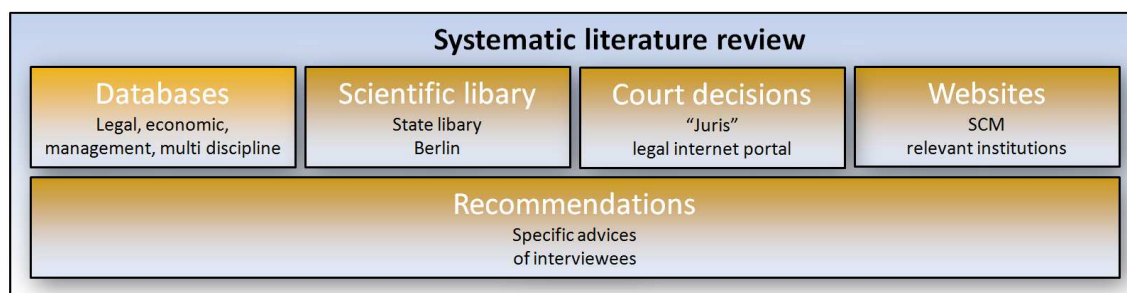


Figure 13: Systematic literature review about SCM (own evaluation).

II.4.1 Academic databases

Regarding the different scientific research areas which are formulated in the research questions the available databases on the website of the University of Gloucestershire (www.glos.ac.uk) were selected by the following items:

- (public) Administration
- Bureaucracy
- Business
- Economics
- Governance
- Law

- Legal
- Legislation
- (public) Management
- Organization
- Politics

A short analysis of the database description informed the decision to use these online resources for the literature review. This selection led to the following list of six online databases, which are listed in alphabetical order:

- ABI/INFORM Global
- MyiLibrary
- SAGE Open
- Taylor & Francis Open and Routledge Open
- Web of Knowledge (ISI)
- Zetoc

In these online databases, the literature review was conducted by the keywords that must be contained in relevant literature.

- Standard Cost Model (SCM)
- Compliance Costs
- Municipalities

These keywords were reviewed as single word and also in combination. This leads to the following systematic review:

	SCM (single)	Compliance Costs (single)	Municipalities (single)	SCM AND Compliance Costs	SCM AND Municipalities	Compliance costs AND Municipalities	SCM AND Compliance costs AND Municipalities
ABI/INFORM Global	57	4.344	23.613	27	27	172	2
MyLibrary	0	34	197	0	0	0	0
SAGE Open	5	163	6.374	3	1	15	0
Taylor & Francis and Routledge Open	13	355	410	13	0	0	0
Web of Knowledge (ISI)	6	51	2.531	111	13	19	3
Zetoc	5	185	743	0	0	0	0
Summary							5

Table 6: Results of the systematic literature review in the online databases

After reviewing the results by analysing the titles and abstracts, ten relevant sources emerged as important for a deeper analysis of their content and necessary for inclusion in the later literature synthesis. They are integrated into the table of relevant sources (see section II.4.8).

II.4.2 Scientific library catalogue (www.stabikat.de)

As one of the largest scientific libraries in Germany the state library in Berlin (Stabikat) permits a detailed scientific literature search especially for German sources. As performed in the scoping study the search process for suitable SCM-literature was performed in a similar way. The literature was first searched by keywords and then analyzed by individual titles and abstracts.

No.	Keyword German	Keyword English
1	Standardkosten-Modell	Standard Cost Model
2	Erfüllungsaufwand	Compliance Costs
3	Kommunen	Municipalities

Table 7: Keywords for the systematic literature review in www.stabikat.de.

Generally, the results in the Stabikat catalogue also provide a view into the content of the book or source. The second step is to prove if the content of the source deals with the right topic (keyword/X) and if it has the necessary relationship to the public municipal area (X/municipal relation).

	SKM (single)	Erfüllungsaufwand (single)	Kommunen (single)	SKM AND Erfüllungsaufwand	SKM AND Kommunen	Erfüllungsaufwand AND Kommunen	SKM AND Erfüllungsaufwand AND Kommunen
stabikat	42/20	2/0	1020/?	0	4	0	0

Table 8: Results of the systematic literature review in stabikat.de

This literature review in the state library catalogue led to another important conclusion. The question for administrative expenditure must consider that the attempt for definition of administrative costs was already a subject of scientific investigations in Germany at the beginning of the 1980's. The use of the defined keywords led directly to literature about financial equalization in the German system of public administration. Although these sources are not only found within the defined boundaries of the systematic literature review, they led to an important conclusion that can be helpful for the question of defining contemporary administrative burdens. This literature is significant to understand the system of public finance and particularly the financial equalization with specific attention to the local administration. 25 relevant sources were found in the scientific Stabikat library catalogue.

II.4.3 Court decisions portal (www.juris.de)

Another important source for the scientific investigation of the research questions is the online portal "juris" which contains all jurisdictions in Germany that have a general relevance. The articles which were found in the systematic literature analysis in particular, often deal with the consequences of such higher court decisions for the financial system of public administration in Germany. The main intention of the constitutional reform of German federalism in 2006 was to systematically differentiate the relationships between the German state to its 16 federal states and the relationship of these federal states to their municipalities

(Deutscher Bundestag, 2006a). As a result, this constitutional construction of German federalism includes the municipal finances as part of the relationship between the local level of public administration and the federal states. The most important court decisions concerning these financial problems of municipalities must be found in the decisions of the constitutional courts of the 16 German federal states.

The main point to create this financial relationship between the municipalities and the federal states is the constitutional principle of connectivity. Based on the guaranteed local autonomy in the federal constitution of Germany (Art. 28 II GG), the principle of connectivity regulates that the municipalities are equipped with the appropriate resources for their legal tasks transferred by the state legislation. Therefore, the object of juridical examination in the relevant decisions of the constitutional courts of the federal states must be the principle of connectivity. Employing this constitutional background, the juris online portal was analyzed not only using keywords previously identified in the literature review, but also by the constitutional sources of local autonomy and principles of connectivity (Henneke, 2012, p. 309).

Within the defined temporal boundaries since 2005, the analysis of constitutional judgements in the juris online portal led to 25 important decisions that are relevant to the legal discussion about the necessary equipment of municipalities with the right expenses for their legal obligations. Additionally, the list of judgements contains one decision of the EuGH* from 2003 that is involved in the data analysis as a connected source from the footnote of one of the discovered articles.

No.	Court	Date of Judgement	File number	Source of reference
1	EuGH*	24.07.2003	C-280/00	NJW 2003, p. 2515
2	ThürVerfGH	21.06.2005	VerfGH 28/03	ThürVBI 2005, p. 228
3	LVerfG MV	11.05.2006	LVerfG 1/05	LKV 2006, p. 461
4	LVerfG Bdg	22.11.2007	VfG Bdg 75/05	DVBI 2008, p. 132
5	BayVGH	28.11.2007	15 VII 05	BayVBI 2008, p. 172
6	BVerfG	20.12.2007	BvR 2433/04	DVBI 2008, p. 173
7	NdsStGH	07.03.2008	StGH 2/05	NdsVBI 2008, p. 152
8	BVerfG	27.01.2010	2 BvR 2185/04	NVwZ 2010, p. 895
9	ThürVerfGH	28.01.2010	VerfGH 52/08	ThürVBI 2010, p. 152
10	SächsVerfGH	29.01.2010	Vf. 25-VIII-09	DÖV 2010, p. 407
11	VerfGH NRW	23.03.2010	VerfGH 21/08	NVwZ-RR 2010, p. 705
12	NdsStGH	04.06.2010	StGH 1/08	NdsVBI 2010, p. 236
13	VerfGH NRW	12.10.2010a	VerfGH 12/09	DVBI 2010, p. 1561
14	LVerfG MV	30.06.2011	LVerfG 10/10	DÖV 2011, p. 778
15	VerfGH NRW	19.07.2011	VerfGH 32/08	DVBI 2011, p. 1155
16	ThürVerfGH	02.11.2011	VerfGH 13/10	ThürVBI 2012, p. 55
17	VerfGH RP	14.02.2012	VerfGH N 3/11	DVBI 2012, p. 432
18	LVerfG MV	23.02.2012	LVerfG 37/10	NVwZ-RR 2012, p. 377
19	VerfGH NRW	08.05.2012	VerfGH 2/11	DVBI 2012, p. 837
20	HessStGH	06.06.2012	P.St. 2292	NVwZ-RR 2012, p. 625
21	LVerfGH SA	09.10.2012	LVG 23/10	DVBI 2012, p. 1494
22	BVerwG	31.01.2013	8 C 1.12	NVwZ 2013, p. 1078
23	VerfGBdg	30.04.2013	VfGBdg 49/11	DVBI 2013, p. 852
24	HessStGH	21.05.2013	P.St. 2361	NVwZ 2013, p. 1151
25	VerfGH NRW	06.05.2014	VerfGH 14/11	DVBI 2014, p. 918

Table 9: Results of relevant court decisions in www.juris.de.

II.4.4 Key institutions websites

Furthermore, a literature analysis about the SCM application in Germany cannot omit the websites of the German institutions that apply the SCM in their daily work or engage in deeper scientific investigation about it. Consequently, the selection of these institutions is similar to the institutional selection for the interviewees.

National Regulatory Control Council - NRCC (www.nkr.bund.de)

The foundation of the NRCC in 2006 emerges as an important factor in the introduction of the SCM in Germany (Schroeder, 2007). The NRCC is the central governmental institution concerned with reducing administrative burdens by using

the SCM in Germany. The NRCC was implemented by the German government to oversee the quality of federal legislation in Germany, and focuses on whether the law-initiating ministries use the right method to make clear what costs this specific legislation will cause. The ministry has to use the SCM for this cost estimation (§ 44 GGO). The most recent publication of the NRCC can be found under the headline “publications.” The most important sources are the annual reports and special project reports that have a certain relation to municipalities. Methodological papers for the SCM application are also available. In summary, there are six relevant papers on the website of the NRCC.

Federal office of statistics (www.destatis.de)

Destatis is the largest public institution in Germany for collection, regeneration, analysis, and publication of statistical data. In this context, Destatis is very important because it executes the concrete measurements of the intended legal projects of the federal ministries. It is responsible for the SCM measurements of all of the different national authorities, in particular the German federal government and the NRCC. Destatis is the publisher of the first SCM manual of the German Government (Destatis, 2006) and also the manual for the calculation and description of compliance costs of regulatory projects of the German Government (Destatis, 2012). No institution in Germany has more competence in the practical aspects of the measurement of compliance costs and SCM implementation in the German legislative process.

Destatis created a specific website for the application of the SCM in federal regulatory projects (www.destatis.de/webskm). This resource catalogues all available investigations of the German government that deal with SCM method. Established on 30 September 2006 this website lists 16.731 legislative measurements of administrative costs caused by regulatory projects of the German government. In this list, it is possible to select the measurements by the addressee of the investigated law or regulation. Possible target groups are the economy, the citizens, and the public administration. A breakdown of the categories shows

14.197 measurements that target the economy and 2.534 measurements that target the citizens. But there is not one measurement that targets the public administration. In summary, there are two relevant papers on the website of destatis, but not one on the webskm-site.

German University of Administrative Sciences (www.dhv-speyer.de)

The University in the City of Speyer was founded to provide postgraduate education specifically for employees in the German public administration. It is the only known university in Germany with a faculty dedicated to public administration sciences. The German University of Administrative Sciences offers only postgraduated studies and requires that students have completed an undergraduate degree. The university website displays the annual reports of the “German research institute for public administration” from 2008 until 2013. This resource lists all of the research publications and speeches of past and present professors of the institute. In summary, there are two relevant research publications listed in the annual reports that correlate with the topic of the SCM in a municipal area of public administration.

University of applied sciences of small and medium enterprises – FHM (www.fh-mittelstand.de)

The Bielefeld University of Applied Sciences was founded in 2003 with focus on small and medium enterprises (SME) in the region of Eastern Westfalia-Lippe. In addition to the main department of business management and media communication, it concentrates its attention more frequently on the aspects of bureaucracy reduction as a strategic part of successful business development in Germany. Therefore, it implemented a new institute only for special research about best practices and research projects about German policy to reduce administrative burdens: The National Centre for Reduction of Administrative Burdens (www.fh-mittelstand.de/nzba/). This institute is also the editor of the first SCM-Manual in Germany and an important player in the scene for implementing this new method

in German legislation processes. The institute's list of publications shows three sources that address the SCM in public administration and municipalities.

Bertelsmann Foundation (www.bertelsmann-stiftung.de)

The Bertelsmann-Foundation is one of the largest private operative foundations of the world, founded by Reinhard Mohn, who was the head the Bertelsmann media concern for over 40 years that now employs over 100.000 people worldwide. In keeping with the longstanding social commitment of its founder, the Bertelsmann Foundation is dedicated to serving the common good. The Bertelsmann Foundation conducts common oriented research and practical projects in six different main fields of policy: politics, society, education, health, and culture. In the Foundation's political field, countless projects and a wealth of research address contemporary government and modern regulation. The Foundation's website includes a special project about measuring regulatory costs that was concluded 2009. This project also focused on the measurement of regulatory costs for the public sector and resulted in a specific handbook and a project report about an application in the German tax administration. In summary, two relevant publications can be found on the website of the Bertelsmann Foundation.

II.4.5 Connected sources

During the studies of the literature and sources found in the systematic literature review, the author also analyzed the footnotes in these texts that appeared to be significant for this research. A cursory analysis of these connected sources clarifies whether they have relevance for additional argumentation. If these sources are recognized as relevant and important for this research they are included into the data analysis, even if they were published before 2005 as the defined year of publication in the systematic literature review. In conclusion, an additional six connected sources needed to be included into the literature review.

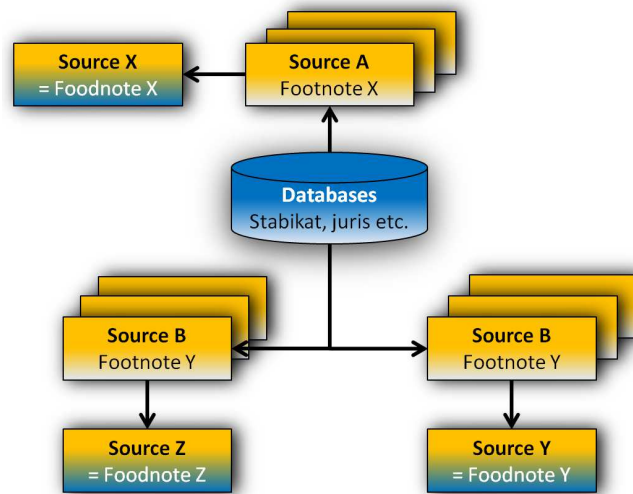


Figure 14: Connected sources from the systematic literature review.

II.4.6 Referenced sources

Furthermore, five sources were added by the author via references given by the interviewees during the interviews (see sec. III.3.1) or after the discussion about the reflective presentation at the AWV (see sec. III.3.2). These papers come from internal processes and political discussions in which the interviewees are involved because of their function or profession.

II.4.7 Emerged sources

Finally, there is the necessity to include four additional sources that emerged during the progress of this thesis. The legal text analysis shows a great scope of interesting aspects aside from the three research objectives of this thesis. The legal analysis of the necessary cooperation between the several levels of public administration and the federal states in Germany shows the necessity to include additional sources into the literature review. These additional sources are basic works or standard commentaries about the relevant topics of this research. Although they were not discovered in the systematic literature review, they have to be considered within the legal text analysis

II.4.8 Quantitative results of review

The combination of the systematic literature review in the online databases and the State Library Berlin, the websites of the juris portal, and the five key institutions added by some referenced sources from the interviewees led to a considerable list of sources and publications. The following table gives a compiled quantitative overview of the most relevant 89 literature sources:

Research	Source	Results	
Systematic review	Online databases	ABI/INFORM Global	2
		MyLibrary	-
		SAGE Open	-
		Taylor & Francis Open and Routledge Open	-
		Web of Knowledge (ISI)	3
		Zetoc	-
	Stabikat		27
	Juris portal	www.juris.de	25
Key institutions	websites	www.nkr.bund.de	7
		www.destatis.de	2
		www.dhv-speyer.de	2
		www.fh.mittelstand.de	3
		www.bertelsmann-stiftung.de	2
Connected sources			4
References			6
Emerged sources			5
Summary			88

Table 10: Quantitative overview of relevant sources.

The following table 11 gives a certain qualitative overview about the relevant 63 sources. This table does not contain the previously mentioned 25 listed court decisions because they differ from the literature. The subject of jurisdiction topics is always the same: The demands of municipalities for necessary funding within the public system of financial equalization in Germany, especially the financial negotiations between municipalities and the different federal states to where they belong. The other found 63 sources ($88 - 25 = 63$) in the following table are structured in alphabetical order by the following criterions:

- Author/editor
- Main topic
- Research object (economy, public administration or municipalities, citizens)
- Area (Germany, Great Britain, Netherlands)
- Year of publication (2005 - 2014)
- Origin, where it comes from

No.	Author	Main Topic	Research Object	Area	Year	Origin
1	Bertelsmann-Stiftung (ed.)	Handbuch zur Messung von Regulierungskosten	Public administration	D	2009	www.bertelsmann-stiftung.de
2	Bertelsmann-Stiftung (ed.)	Vollzugsaufwand in der Steuerverwaltung	Public administration	D	2012	www.bertelsmann-stiftung.de
3	Bertrams, M.	Konnexitätsprinzip und kommunale Finanzhoheit	Municipalities	D	2011	www.stabikat.de
4	Böhret & Konzendorf	Handbuch Gesetzesfolgenabschätzung (GFA)	Citizens, economy, public administration	D	2001	referenced
5	Brems, K.	Aufgabenverlagerung des Landes NRW auf die Kommunen	Municipalities	D	2006	connected
6	Bundesministerium des Inneren (BMI)	Bericht der Arbeitsgruppe „Rechtsetzung“ der Gemeindefinanzkommission	Municipalities	D	2010	referenced
7	Destatis	Leitfaden zur Ermittlung und Darstellung des Erfüllungsaufwands in Regelungsvorhaben der Bundesregierung	Citizens, economy, public administration	D	2011	www.destatis.de
8	Deutsche Bundesregierung	Einführung des SKM-Methodenhandbuchs	Economy, citizens, public administration	D	2006	www.nkr.bund.de
9	Deutsches Institut für Urbanistik (Bunzel & Hanke, ed.)	Das Konnexitätsprinzip richtig angewandt	Municipalities	D	2011	www.dhv-speyer.de
10	Dieter, J.	Ermittlung kommunalen Bedarfs in Hessen	Municipalities	D	2013	www.stabikat.de
11	Dürig, G. et al.	Kommentar zum Grundgesetz	Citizens, economy, public administration	D	2013	connected
12	Engelken, K.	Konnexität im Landesverfassungsrecht	Municipalities	D	2012	connected
13	Engels, A.	Kostenfolgeabschätzung und Evaluation als Elemente verfassungsrechtlicher Konnexitätsprinzipien	Municipalities	D	2011	www.stabikat.de
14	Fachhochschule des Mittelstands (ed.)	Erstes Deutsches SKM-Handbuch	Economy	D	2005	www.fh-mittelstand.de
15	Fachhochschule des Mittelstands (ed.)	Kommunen als Bürokratieopfer	Municipalities	D	2009	www.fh-mittelstand.de

16	Fachhochschule des Mittelstands (ed.)	Gutachten zur Abschätzung der Verwaltungskosten der EU-Bodenrahmenrichtlinie	Public administration	D	2010	www.fh-mittelstand.de
17	Färber, G.	Kann das SKM dem Konnexitätsprinzip zur Wirksamkeit verhelfen	Municipalities	D	2011	www.dhvspeyer.de
18	Färber, G.	Bedarfsermittlung und Finanzausstattung im föderalen Staat	Municipalities	D	2013	referenced
19	Fischbach, D. & Schmal, M.	Bürokratiekostenmessung am Beispiel des EHUG	Public administration	D	2007	www.stabikat.de
20	Grawert, R.	Verwaltungsabkommen zwischen Bund und Ländern	Public administration	D	1967	emerged
21	Henkel, J.	Die Kommunalisierung von Staatsaufgaben	Municipalities	D	2010	www.stabikat.de
22	Henneke, H.-G., et al.	Recht der Kommunalfinanzen	Municipalities	D	2006	www.stabikat.de
23	Henneke, H.-G.	Föderalismusreform II	Municipalities	D	2008	www.stabikat.de
24	Henneke, H.-G.	Kommunen in der Finanzverfassung des Bundes und der Länder- Entwicklungen	Municipalities	D	2012	www.stabikat.de
25	Henneke, H.-G.	Kommunen in der Finanzverfassung des Bundes und der Länder	Municipalities	D	2012a	www.stabikat.de
26	Henneke, H.-G.	Kommunale Aufgaben, Ausgaben und Einnahmen	Municipalities	D	2012b	www.stabikat.de
27	Henneke, H.-G.	Mindestfinanzbedarf der Kommunen	Municipalities	D	2013	www.stabikat.de
28	Hensel et al. (ed.)	Gesetzesfolgekostenabschätzung in der Anwendung	Municipalities	D	2010	www.stabikat.de
29	Hermes, N.	Maßstab und Grenzen der Aufgabenübertragung auf Gemeinden	Municipalities	D	2006	connected
30	Hoffian & Bramann	Gesetzesfolgekosten des AGG	Economy	D	2007	www.stabikat.de
31	Hofmann, H. et al.	Kommunalrecht in NRW	Municipalities	D	2010	emerged
32	Institut für Mittelstandsforschung (ed.)	Ermittlung bürokratischer Kostenbelastungen	Economy	D	2006	www.stabikat.de
33	Kienbaum Consultants	SKM in der Verwaltung	Public Administration	D	2007	ISI web
34	Junkernheinrich, M.	Bestimmbarkeit der Aufgabenangemessenheit kommunaler Finanzausstattung	Municipalities	D	2007	www.stabikat.de
35	Kisker, G.	Kooperation im Bundesstaat	Public Administration	D	1971	emerged
36	Kopp, F. & Ramsauer, U.	Kommentar zum Verwaltungsverfahrensgesetz	Public Administration	D	2014	emerged
37	Knitter, Janna	Das Aufgabenübertragungsverbot des Art. 84 GG	Municipalities	D	2008	www.stabikat.de
38	Kuder, U.-M.	Gesetzgebung und Gesetzesvollzug rücken zusammen	Municipalities	D	2013	www.stabikat.de
39	Ludewig, J.	Interview	Public Administration	D	2012	referenced
40	Matei, Ani I. ; Savulescu, Carmen	Enhancing local government by reducing administrative expenditures	Local government	EU	2009	ABI

41	NRCC	Einfacher zum Elterngeld	Municipalities	D	2009	www.nkr.bund.de
42	NRCC	Einfacher zum Wohngeld	Municipalities	D	2009	www.nkr.bund.de
43	NRCC	Einfacher zum Studierenden-BAFöG	Municipalities	D	2010	www.nkr.bund.de
44	NRCC	Auswirkungen des ELENA-Verfahrens auf Wirtschaft, Bürger und Verwaltung	Economy, citizens, public administration	D	2010	www.nkr.bund.de
45	NRCC	Einreiseoptimierung	Citizens, public administration	D	2011	www.nkr.bund.de
46	NRCC	Handreichung zum kommunalen Erfüllungsaufwand	Municipalities	D	2014	www.nkr.bund.de
47	Nord West Consult	SKM kommunal	Municipalities	D	2008	ISI
48	Oebbecke, J.	Kostenermittlung im Konnexitätsprinzip	Municipalities	D	2011	www.stabikat.de
49	Pfisterer, P.	Bürokratieentlastung der öffentlichen Verwaltung.	Municipalities	D	2008	www.stabikat.de
50	Pieroth, B.	Verbot bundesgesetzlicher Aufgabenübertragung an Kommunen	Municipalities	D	2008	referenced
51	Rauber, D.	Kommunaler Finanzausgleich: Gesetzgeber und Gerichte bleiben gefordert	Municipalities	D	2012	www.stabikat.de
52	Ritgen, K.	Aufgabenübertragungsverbot und Konnexitätsprinzip	Municipalities	D	2011	www.stabikat.de
53	Röttgen, N. & Vogel, B. (ed.)	Bürokratiekostenabbau in Kommunen	Municipalities	D	2010	www.stabikat.de
54	Schmidt-Bleibtreu, B. et al.	Kommentar zum Grundgesetz	Citizens, economy, public administration	D	2011	www.stabikat.de
55	Schwarting, G.	"Angemessene" Finanzausstattung der Kommunen	Municipalities	D	2012	www.stabikat.de
56	SCM-Network	International SCM manual	Public administration	D	2005	ABI
57	Schoch, F.	Bundesgesetzlicher Durchgriff auf Kommunen	Municipalities	D	2007	referenced
58	Vedder, C.	Intraföderale Staatsverträge	Public administration	D	1996	emerged
59	Vorgrimler, D. et al.	Vom SKM zur Messung des Erfüllungsaufwands	Public administration	D	2011	www.destatis.de
60	Walkenstik-man-alone, D.	Folgenabschätzung einer Reform des Gaststättenrechts in Thüringen	Public administration	D	2009	ISI
61	Wittmann, J.	Bürokratieabbau und bessere Rechtsetzung	Public administration	D	2010	www.stabikat.de
62	Wieland, J.	Kommunaler Anspruch auf angemessene Finanzausstattung	Municipalities	D	2011	www.stabikat.de
63	Wohltmann, M.	Bemessung und Ausstattung des kommunalen Finanzausgleichs	Municipalities	D	2011	www.stabikat.de

Table 11: Qualified compilation of relevant sources.

II.5 Synthesis and data extraction

The following narrative synthesis will cover the elements of arguments that are contained in the identified sources (Noblit & Hare, 1998, p. 36). It is structured and oriented at the development of academic discussions about information obligation, compliance costs and administrative burdens in public administration with special attention to the SCM application in and for municipalities.

- The data synthesis starts with the objective to measure administrative costs as part of a comprehensive policy of deregulation and impact assessment methods.
- The next step is the institutional implementation of the National Regulatory Control Council by the German government in the temporal context of the German reform of federalism in 2006. This initiates a new academic discussion about legal conditions for the obligation transfer of new municipal obligations by federal laws.
- During these legal discussions there are also some attempts to find practical solutions for the necessary estimation of administrative and compliance costs. These projects with a municipal participation should give helpful contributions for the necessary organizational implementation of the SCM in municipalities.

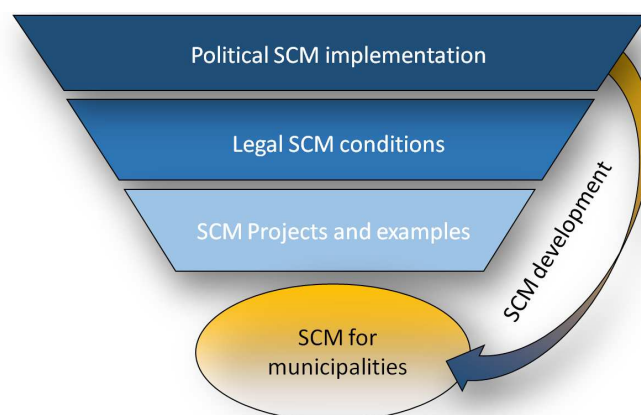


Figure 15: Structure of literature synthesis.

II.5.1 Political SCM implementation

Regarding scientific discussions about international concepts of impact assessment systems, the OECD (2004, p. 8) criticized the German situation. On the one hand there is a great difference between existing instruments and their practical implementation in the legislative process. In 2005, the new German government, ruled by a conservative-liberal coalition of CDU/CSU/SPD, wrote in their coalition agreement the new aim to decrease bureaucracy costs using the SCM (CDU, CSU & SPD, 2005, p. 62). The search for a suitable method for the measurement of administrative costs in Germany was welcomed because in other European countries the SCM was widely accepted as a method for increasing the efficiency of public administration (Matei & Savulescu, 2009). Prior to the parliamentary election in Germany in 2005, the first parliament secretary of the CDU in the German Bundestag, Norbert Röttgen, initiated a working group of experts with the objective of finding innovative ideas for bureaucracy decrease in Germany. This group was headed by the former state secretary Hans-Georg Kluge, who brought the idea of the ACTAL from the Netherlands to Germany (Röttgen & Vogel, 2010, p. 23). The Research Institute of Middle Sized Business in Bonn (IfM) also developed a model of its own to measure administrative costs from a strictly economic point of view (IfM, 2006). Based on the philosophy to learn from international role models, the Bertelsmann Foundation tried very early to transfer the SCM from the Netherlands into Germany by learning from the ACTAL (Nijland, 2005). However, the group led by Hans-Georg Kluge developed the ideas of the Dutch ACTAL into a politically accepted model for Germany.

II.5.1.1 SCM as part of impact assessment

During this period, several politicians of conviction from numerous political parties and administrative experts assembled and wrote the first German SCM handbook, published by the FHM in Bielefeld (FHM, 2005). It was based on the International SCM Manual (SCM-Network, 2005) and became the first comprehensive manual about the implementation of the SCM into the German legislative process. The

importance of this manual is illustrated by its mention in the explanatory statement of the political initiative and by introducing the NRCC into the German Bundestag (Deutscher Bundestag, 2006, p. 5). By the implementation of the NRCC, it was also a political decision in § 2 NKRK to introduce the SCM as the definitive method to measure administrative costs in the German legislative process (§ 44 Abs. 5 GGO). In this first step, the SCM was implemented to measure information obligations of the economy, citizens, and public administration (§ 2 NKRK).

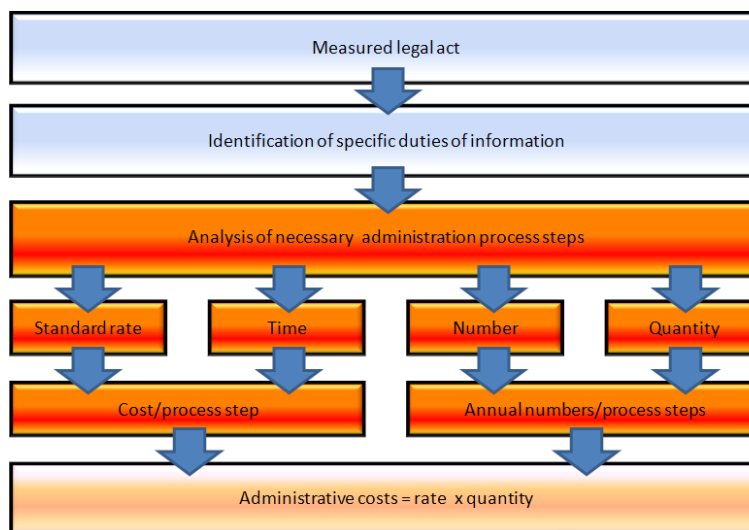


Figure 16: SCM-Calculation of administrative costs
(own drawing after: Deutsche Bundesregierung, 2006).

The work of the NRCC is a prospective aspect in the comprehensive program of Regulatory Impact Assessment in Germany (Böhret & Konzendorf, 2000, p. 14). However, this assessment must examine any significant effect on regulatory impacts (§ 44 GGO, 2009). This includes the intended and unintended effects, particularly the long-term social, environmental, and other effects of the proposed legislation act (Seckelmann, 2010).

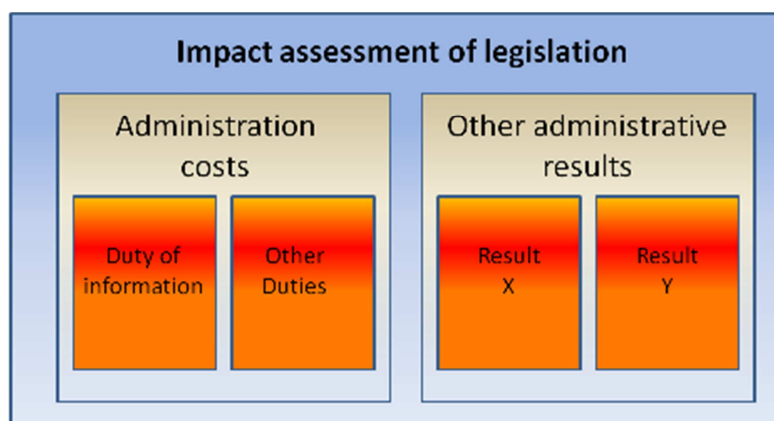


Figure 17: Duty of information as part of the impact assessment (own elaboration).

The NRCC is a relatively new tool of regulatory impact assessment (Lund, 2011), but it is limited to an ex-ante assessment of legislative costs (Kreibohm & Schön, 2008). Nevertheless, today the NRCC has become established as an accepted instrument of reducing bureaucracy both in Germany (Kroll, 2008, p. 73) and in the international debate (den Butter, de Graaf & Nijssen, 2009). It became apparent that measuring only information obligations was insufficient for providing a comprehensive description of administrative results in a legislative process. Subsequently, the Bertelsmann Foundation made a proposal to develop the SCM into a further developed "Regulations Cost Model" (Bertelsmann Stiftung, 2009). This model tries to integrate not only the information obligations into the cost measurement, but also all actions caused by the regulation at the legislative addressees, the so called "Regulation Costs" (Bertelsmann Stiftung, 2009, p. 17). This same economic idea – to bring a comprehensive meaning of costs into focus of the impact assessment – was the motivation for the legislative reform of the NKRK in 2009.

II.5.1.2 From information obligation to compliance costs

The definition of administrative costs depends largely on the type of costs that are included in the certain calculation. For such a calculation it is not enough to use the SCM only for measuring information obligations because the costs of legal obligations cause even more. Although the original concept of the SCM was to measure only information obligations as indicators for administrative burdens

(SCM-Network, 2005). The ex-ante cost measurement in public administrations must contain a more comprehensive sense of costs. The approach of measuring the comprehensive compliance costs based on a specifically defined management or administrative process is frequently discussed (Färber, 2011). By the reform of the most relevant § 2 NKRg, the German Bundestag added the obligation for the NRCC to measure not only the information obligation but also the compliance costs of legislation. To measure these more comprehensive compliance costs, a definition of the particular elements is necessary. The Bertelsmann Stiftung (2009, p. 17) proposed to regard the costs based on the acting duties of public administration as it is commonly practiced in business (Bertelsmann Stiftung, 2009).

In the chronological context of the reform of federalism in 2006 and the implementation of the constitutional prohibition for the federal legislation to transfer new or extending obligations to municipalities directly (Art. 84 I s. 7, 85 I s. 2 GG), discussion arises about the term of “obligation.” Because if the term of obligation is not clear, the municipalities fear abuse by the federal law-giver. To avoid the constitutional prohibition in Art. 84 I s. 7 and 85 I s. 2 GG, the German Bundestag could extend existing municipal obligation instead of enacting completely new laws. Schoch (2007) advocated for an understanding of obligations as a strict responsibility for the real execution of law. Consequently, the extension of an already existing obligation that extends the executing municipal efforts is prohibited by Art. 84 I s. 7 GG. This understanding correlates with the new term of compliance costs as a more comprehensive meaning of executing costs in public administration. This opinion contradicts the analysis of Pieroth (2008) who supported the extension of already existing municipal obligations because of Art. 125a I GG. The academic discussion about the term of obligation and its consequence for the prohibition in Art. 84 I s. 7 GG will not be resolved until the BVerfG gives a relevant judgement. By the order of the German government the Federal Statistical Office (Destatis) published the first manual about the definition of compliance costs in Germany (Destatis, 2011). Destatis defines compliance costs by dividing the administrative process into its several component steps. Every step

has a certain price and the sum of all prices results in the compliance costs of the administrative process.

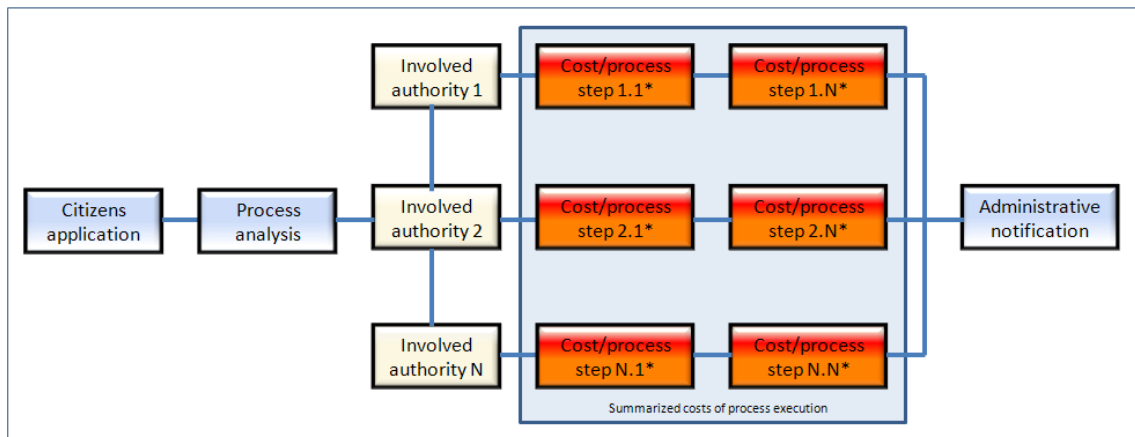


Figure 18: Process oriented analysis of execution costs (own drawing after: Destatis, 2011).

Then the cost for each step is determined based on the needs of human, material, and investment costs.

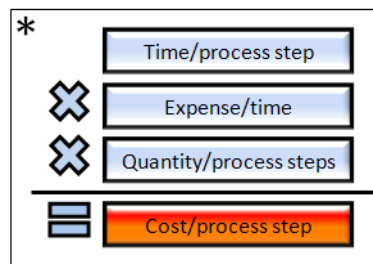


Figure 19: Administrative cost calculation of analyzed process step (own drawing after: Destatis, 2011).

The Destatis manual concerning compliance costs is highly significant because it defines compliance costs in German public administration for the first time. However, the manual possesses two great disadvantages: The Destatis manual focuses only on the administrative costs and leaves the purposes costs behind; also it refers only to the German federal level of public administration and its agencies expressively (Destatis, 2011, p. 12). A more literary explanation of this manual was found in the article written by its authors (Vorgrimler, Bartsch & Zipse, 2011). The article presents additional explanations for the process of cost estimation and is significantly relevant for the discussion about the definition of compliance cost on the federal level of public administration. Therefore, an object of this research to examine these presented methods for their applicability on the municipal level of public administration. As an addition to this Destatis manual, the NRCC edited

another short paper about measuring municipal compliance costs (NRCC, 2014). The methodological description is similar to the Destatis manual, supplemented by some project experiences. Therefore, the significance lies less in meaning than the existence of the manual, which illustrates the necessity of measuring municipal compliance cost in federal legislation.

II.5.2 Legal conditions for municipal cost measurement

In Germany, the basic rules for preparing and developing the federal budget and its financial execution during the year by the government are regulated in the German federal constitution (Grundgesetz - GG). The GG determines which costs and expenses are taken into account for preparing the federal budget. Therefore, an intensive study regarding the specific content of the administrative burdens should be conducted in context of these regulations about the German financial constitution in Art. 104a to 115 GG.

II.5.2.1 Constitutional commentaries

A study of administrative costs that are imposed to municipalities by federal or state laws should begin with the literature that deals directly with the relevant regulations. In Germany these are the articles of the German constitution that deal particularly with the legislation process (Art. 70 – 82 GG), the execution of federal laws by the administration (Art. 83 – 91e GG), and the federal public financial system (Art. 104a – 115 GG). A very extensive commentary involving the GG over the past several decades can be found in the loose-leaf collection commentary of Maunz, Dürig, Herzog, and Scholz (2011). A recent commentary of the GG comes from Schmidt-Bleibtreu, Hofmann, and Hopfauf (2010), which is clearly represented and oriented more towards practical problems and is respected by administrative practitioners like the author.

II.5.2.2 Jurisdiction about municipal funding

For detailed questions about the SCM and its transfer to the local area, the reviews of current court decisions are important (see sec. II.4.3, table 9). An important start in the German jurisdiction about the necessary funding of municipalities is a decision from Thuringia (ThürVerfGH, 2005) that describes the dualistic system of municipal finances in detail and provides a basis for further jurisdiction. The decision of 2010 argued in a similar manner (ThürVerfGH 2010). Also the ThürVerfGH (2011), the VerfGH Bdg (2007), the SächsVerfGH (2010), and the LVerfGH MV (2011 and 2012) clarify that the lawgiver has a wide scope of decision-making concerning the right dimension of municipal funding. It is the LVerfGH MV (2006) that stated that the minimal dimension for municipal funding could not be quantified for methodological reasons. Therefore, the dimension of municipal funding could not be judicable by constitutional courts (BayVerfGH, 2007; LVerfGH SA, 2012). It is permissible to define this dimension by criteria like inhabitants and purchasing power instead of municipal obligations (NdsStGH, 2010). This question is not decided on the level of the federal administrative court (BVerwG, 2013) or the federal constitution court (BVerfG, 2010), but this decision gives certain explanations about the essential funding of municipalities. In the context of the state finance equalization, the BVerfG (2007) does not give strict advices for municipal cost estimation and allows for the recognition of the financial needs of municipalities in an imprecise calculation. An important judgement about the necessity of municipal cost estimation in the annual municipal finance law comes from the VerfGH RP (2012). It is the first constitutional decision that expressly states this necessary ex-ante cost estimation by the lawgiver within regular municipal finance equalization. The same consequence states the HessStGH (2012) also for the principle of connectivity and makes clear that a financial equalization is necessary if the lawgiver extends an already existing municipal obligation.

A strict jurisdiction comes from Northrhine-Westfalia (2010, 2010a) and Lower Saxony (NdsStGH, 2008), which does not set the dimension of financial funding for municipalities in line with their obligations and costs, but rather the condition of

the financial capability of the federal state. These judgements of the constitutional court in North Rhine-Westphalia concern the municipalization of the administration for disabled people, environmental management (VerfGH NRW, 2010), and the KiFöG - a new children's-support-act (VerfGH NRW, 2010a). The jurisdiction of the VerfGH NRW is continued in its decisions about the annual general municipal financial act (VerfGH NRW, 2011 and 2014) and the decision about municipal burdens for the German unity (VerfGH, NRW 2012).

Like the decisions in North Rhine-Westphalia (VerfGH NRW, 2010a), the constitutional court in Brandenburg must decide about the necessary funding for municipalities because of the KiFöG (VerfGH Bdg, 2013). It makes clear that the situation in Brandenburg is the same as in North-Rhine-Westphalia and municipalities must be equalized financially on basis of a highly accurate ex-ante cost measurement. Regarding another legal background – here the constitutional finance act for municipalities – the Hessian court decided in the same direction (HessStGH, 2013). To agree with the principle of connectivity, it is necessary to make a clear definition of legal obligations before defining the financial framework for municipalities. This point of view is supported by Dieter (2013) who analyzed the Hessian court decision and asserted that the law giver is responsible for the definition of the right dimension of municipal funding. The preceding decisions elucidate a general and municipal change in German jurisdiction surrounding the principle of connectivity and municipal funding in general. Finally, the so-called “Altmark-Trans-decision” of the EuGH (2003), which is a connected source from one of the articles, addressed the definition of an average economic logistic business to find the right dimension of public subsidies. Therefore, this judgment is important for the argument that definition of average economic institutions is not unknown in the public sector.

II.5.2.3 Legal literature about municipal funding

The legal relationship between the constitutional position of local governments in Germany and their required financial resources must provide the legal situation

regarding the principle of connectivity first (Art. 28 II GG). In recent years, several notable dissertations have been published that are associated with this relationship. Brems (2006) investigated the financial relationship between municipalities and the federal state of Northrhine-Westfalia after the constitutional implementation of a strict principle of connectivity in Art. 78 III LV NRW. Although the results of this thesis are written about the legal circumstances in Northrhine-Westfalia, they are transferrable to all federal states with similar regulations in their constitutions. A similar dissertation is that of Engelken (2012), whose research about the strict principle of connectivity was constitutionally implemented in Baden-Württemberg by the new Art. 71 III LV BW. Engelken is one of the first researchers who described the ex-ante cost estimation in regular legislative processes in detail. The legal circumstances in Northrhine-Westfalia are also addressed by the article of Bertrams (2011), who is the president of the VerfGH in Northrhine-Westfalia. The text is a manuscript of his speech at a conference for municipal chief financial officers and refers the court's opinion about the legal possibility of ex-ante cost measurements for municipal funding.

Prior to the reform of German federalism in 2006, Hermes (2007) published a dissertation that identified the necessity of financial equalization for the obligation transfer to municipalities by federal laws. The next dissertation by Knitter (2008) deals with the constitutional prohibition for the federal legislator in Art. 84 I s.7 GG not to bring any new tasks and legal obligations to municipalities by German federal laws. Henkel's thesis (2010) investigates the legal framework for municipalization of state administration tasks and comes to a more restrictive result from the local point of view. The dissertations of both Knitter and Henkel have at their centre legal dogmatic considerations to pre-serve the local autonomy. While Knitter focuses on each legal detail of the prohibition in Art. 84 I s.7 GG, Henkel handles this problem with a more federally friendly interpretation of the current law. Like the dissertations of Brems (2006) and Engelken (2012), the work of Knitter and Henkel deals with the guarantee of local self government in Germany and the principle of connectivity. However, those authors did not examine the application of the SCM to municipal public administration.

Much commentary has been written regarding the previously mentioned constitutional decisions. Henneke (2006, 2012a, 2012b), a manager of a central municipal member organization, repeatedly spoke to the need for adequate funding of local authorities. His basic work about the legal situation of municipalities within the constitutional system of public finance in Germany is of great importance for possible measuring of administrative and compliance costs in municipalities (Henneke, Pünder & Waldhoff, 2006; Henneke, 2012b). In his comments regarding the new court decision ruling the children's-support-act, he sees a clear and strict codification of the financial connectivity for the local governments (Henneke, 2012a). The same opinion is represented by Ritgen (2011). Ritgen is an employee in the same municipal member organization as Henneke. The same but independent opinion is voiced by Wieland (2011), from the well-respected German University of Administrative Sciences in Speyer, who described the legal framework for a legitimized right of municipalities for an adequate funding.

Because of the decisions in Northrhine-Westfalia, Engels (2011) observed a strengthening of the legal status of the municipalities. He discussed the dimensions of the possible refund of expenses for municipalities in great detail. In particular, the analysis of his article makes it clear how important it is to define the term of "administrative costs" in § 2 I NKRG. Wohltmann (2011) delivered a structural analysis reviewing all court decisions and described the several systems of financial equalization in the German federal states. His conclusion was that there is no lawful system without cost estimation for municipalities.

There are only a few authors who combine the legal situation based on the cited constitutional court decisions and the SCM as method of a systematic impact assessment. An initial assessment of this question is included in the book edited by Röttgen, and Vogel (2010). In this work, several authors described the necessity of using the SCM for bureaucratic cost reduction in the municipal area. In addition, Färber (2011) from the German University of Administrative Sciences, asked for a new relevance of the principle of connectivity by using the SCM. Several authors

explored the same question in the conference proceedings (Bunzel & Hanke, 2011): What is the appropriate implementation of the principle of connectivity with consideration to the above mentioned constitutional court decisions? Authors such as Oebbecke (2011), Rauber (2012) and Schwarting (2012) described in detail how to estimate the necessary financial equalization for municipalities. In conclusion, the text analysis in this research project must be a combination of court decision study insofar as these decisions are addressed in the literature and represent the first attempts to implement the SCM together with the discussion about an effective principle of connectivity.

II.5.3 Projects and examples of practice

To answer the second research question for the economic measurement of administrative or compliance costs, great importance must be given to the various practical projects that report on concrete experiences about ex-ante cost estimation in public administration. In the early days of implementing cost measurement as part of an impact assessment in Germany, the IfM (2006) published an extensive report about cost estimation in selected branches (p. 7-25). In the branches of social insurance, tax administration, employment, environmental protection, and statistics, the IfM concentrates only on information obligation for enterprises but proposes a method for cost measurement that varies from the SCM. In the end, the IfM proposal was not established because of the political implementation of the alternative SCM. Hoffian & Bramann (2007) used the SCM to measure the costs of the new employment law about gender equality. The first research project about a SCM application in municipalities was the analysis of administrative costs of parents' fees for kindergartens and the business registration process (NWConsult, 2008). It is the first work that developed the SCM from a pure measurement of information obligations to a more process oriented cost analysis.

Another pilot project for the municipal area was the measurement of information obligations in the municipal administration (FHM, 2009). As one of the first attempts to transfer the SCM into the local administration this project is presented

and discussed in various publications (Röttgen & Vogel, 2010; Ley, 2009). However, this project is limited to the original SCM approach that measures only pure information obligations of municipal administration and does not include other types of cost. An attempt to go one step further can be observed in the "Easier-to-projects" (NRCC, 2009a; NRCC, 2009b; NRCC, 2010a; NRCC 2010b). Together with the public state and local administrations in these projects, the NRCC tested the administrative costs of specific regulations and developed systematic cost estimation. The findings of these "Easier-to-projects" were considered in the later manual for the definition compliance costs edited by Destatis (2011). These practical reports consider the cost of the public administration itself and also that of customers and citizens, who initiate the concrete administrative process. In the definition of the defined costs, the projects do not differentiate between the state and local authorities involved in the process. The NRCC also published a report about the costs of execution of the electronic income verification (ELENA) based on a consideration of all stakeholders in the management process (NRCC, 2010). In Thuringia, the costs of the last amendment of the restaurant-law were measured by using the SCM (Walkinstik-man-alone, 2009). Even the financial accountants detected the SCM as a new field of their business when they measured the new EHUG from an economic point of view (Fischbach & Schmal, 2007).

For the first time ever, the FHM (2010) submitted a report to the German federal ministry of environment that made an ex-ante cost measurement of a new regulatory project of the planned EU soil directive. The report uses the SCM as it is described methodology in the handbook for the measurement of regulatory costs (Bertelsmann Foundation, 2009). This guide employs the administrative process as a basis for determining the administrative costs of regulation (Bertelsmann Foundation, 2009, p. 25-35). The most recent comprehensive project is the analysis of regulation costs in the tax administration, which established a proposal for a comprehensive measurement of costs (Bertelsmann Foundation, 2012). This work developed a detailed method to measure administrative and compliance costs in a comprehensive way. The following table gives a comprehensive overview of the relevant 13 projects and examples of practice found in the literature review.

No.	Institution	Project	Year
1	IfM	Cost estimation in selected business branches	2006
2	Hoffian et. al.	Gender equality in employment law	2007
3	Fischbach et. al.	Administrative costs of the new EHUG	2007
4	NRCC	Effects of ELENA to economy, citizens and public administration	2007
5	NW Consult	Selected local administration processes	2008
6	FHM	Municipalities as victims of administrative burdens	2009
7	Walkenstik	Costs of law about restaurants in Thuringia	2009
8	NRCC	Easier to household benefits	2009
9	NRCC	Easier to parents money	2009
10	FHM	Administrative costs of the EU soil protection act	2010
11	NRCC	Easier to education grants	2010
12	NRCC	Immigration process for foreign professionals	2011
13	Bertelsmann	Executive costs in public tax administration	2012

Table 12: Projects about SCM application in public administration.

In the light of the multitude of successful projects as described in the literature, the SCM emerges as a fundamental method of administrative modernization in Germany (Pfisterer, 2008).

II.5.4 Municipalities as addressees of the SCM

Although the SCM is currently a widely accepted method of bureaucracy decrease on the federal level, the discussion of its application on the municipal level is incomplete. Primary issues include the constitutional situation and the responsibility of the 16 federal states for their public administration including the municipalities. If the federal state administration can dictate a SCM application for its own administration, it cannot do so for the administration in the 16 several states, each of which has a specific constitutional framework of its own. Similar to Henneke (2012a, 2012b) and Ritgen (2011), the work of Wohltmann (2011), a public manager in a central municipal member association, provides a comprehensive overview about the different models of municipal finance equalization in all German federal states. This article describes in detail which federal state gives the legal framework to consider municipal costs within the dualistic system of

municipal finances. However, the most economically relevant laws for the municipalities are enacted in the German Bundestag, not in the 16 federal states.

A possible solution for a consistent method application could be a treaty between the several German federal states. Such a treaty between federal states is a well-accepted method to arrange a political solution for Germany as a whole, where the federal states are responsible instead of the national level. In his book, Grawert (1967) described the legal conditions if such a treaty is arranged on the level of the state governments. Kisker (1971) analyzed the legal possibilities of cooperation in the German federalism including a treaty with participation from the federal state parliament. Currently, the standard book concerning the instrument of state treaty in Germany is the comprehensive habilitation treatise of Vedder (1996). The problem still exists regarding the specific costs that the federal government must account for its regulatory impact assessment if the administrative process is designed differently at each level of administration in the German federal system. Junkernheinrich (2007) analyzed the legal possibility of how to determine the dimension of financial needs in the dualistic system of municipal finance equalization regarding the guarantee of local autonomy in Art.28 II GG. This literature is of special interest because it addresses the SCM application for public administration and municipalities. A research project of the FHM (2009) emerged as the first attempt to apply the SCM as a relevant method to estimate costs of federal legislation on the municipal level. The report of Kienbaum Consultants (2007) made another proposal from a municipal point of view and changed the focus from the SCM to a cost estimation oriented at the comprehensive circumstances. In this investigation, the addressee of the regulation is not important.

Wittmann (2010, p. 140) posed the question for cost measuring on different administrative levels. The author acknowledged that the only chance for a voluntary cooperation of federal, state, and local governments could only happen via mutual feedback between legislators and law executive agencies, which would improve the legislative culture and make it sustainable. In addition to this voluntary cooperation, the German legal framework offers the possibility of administrative

help, even between the different levels of public administration. The commentary of Kopp & Ramsauer (2014) is a standard commentary of the law about administrative procedures (VwVfG) and is an important source for the legal framework of administrative help.

This idea of a structured feedback process between the legislative and the administrative state level is the topic of the recent “Standarderprobungsgesetz” in the state of Mecklenburg-West Pomerania – KommStEG MV (Kuder, 2013). As in the federal state of Brandenburg, the KommStEG MV defines new feedback processes between municipalities and the federal states and creates a unique quality of bureaucracy decrease and the possibility of participation for municipalities.

In the midst of discussions regarding the reform of German federalism in 2006, the central municipal member associations proposed an iterative process to estimate the relevant costs before enacting a new legal obligation, which was similar to that in the federal German states and between the federal state administration and the municipalities (BMI, 2010). In a similar way, the head of the NRCC proposed to implement a fast municipal feedback-system because the federal level needs the necessary municipal information for legislation (Ludewig, 2012).

Röttgen & Vogel (2010) generated intriguing work on reducing administrative costs. The book opens with a discussion about the origins of SCM in Germany and its integration into the German policy. In particular the author Hans-Georg Kluge (Röttgen & Vogel, 2010, p. 211) announced the inadequate effectiveness of the constitutional principle of connectivity between the delegated state tasks and financing in cities and towns in Germany. Concurrently, Kluge proposed the possibility to measure administrative costs in municipalities with the help of the SCM. A publication by Hensel, Bizer, Führ & Lange (2010) brings together the different aspects of impact assessment, SCM and the principle of connectivity for the first time. In this work, several authors discuss these problems from different point of views: the state position, the municipal position, and a short comparison of

both (p. 99-179). Therefore, this publication regarding the most recent legislation is of great importance for the further discussion about the research questions of this thesis.

II.6 Literary conclusions

This systematic literature review shows the necessity to bring together the important aspects of an effective financial equalization for municipalities: the constitutional principle of connectivity within the dualistic system of municipal finances, the methods of impact assessment, and as part of it - the SCM. The outcome of the opening scoping study stated that to date no systematic review exists that deals with the application of the SCM in the municipal area. The systematic literature review generated many sources, particularly from the constitutional literature and court decisions that analyse the legal framework for the principle of connectivity from a municipal point of view. As proposed in the first research question, it must be possible to describe the legal framework for a SCM transfer into a municipal area. However, very few sources include an investigation about the SCM application within the context of the principle of connectivity. As a result, the second research question concerning the concrete cost estimation must be intensively explored. During the review, no literature surfaced that examined the political implementation of the SCM in the regulation process in Germany as it is formulated in the third research question. In the following chapter, the scientific methodology and the selected research methods will be developed to bring the three research questions into a comprehensive research design.

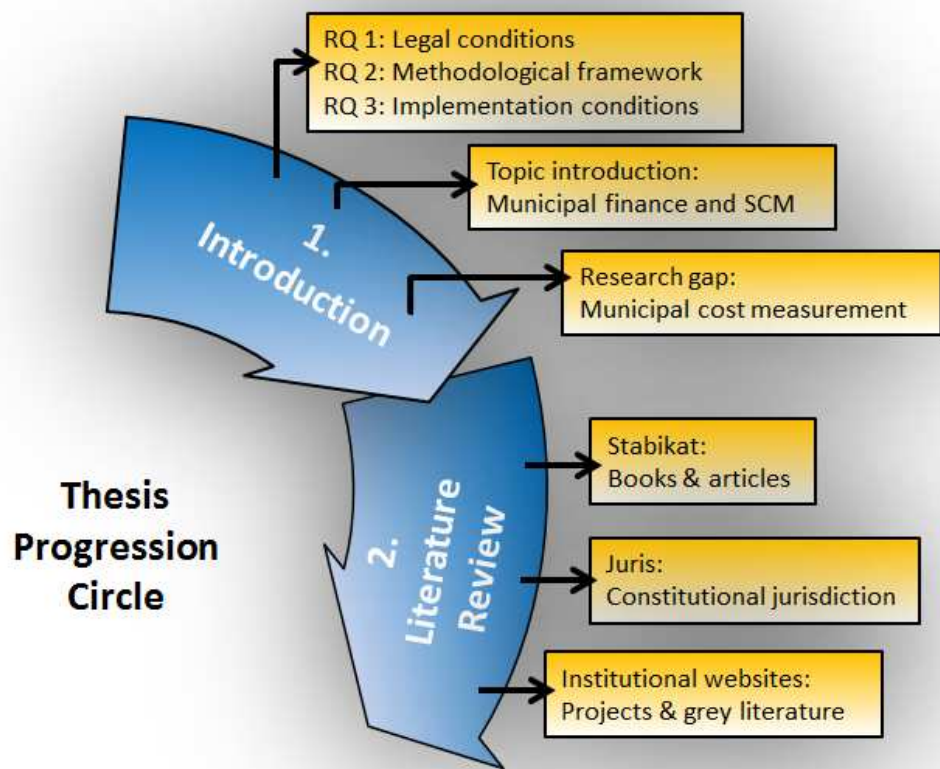


Figure 20: Thesis progression circle – after chapter II.

III. Methodology and methods

When undertaking research about the transferability of administrative management models from one area to another, it is important to consider different research paradigms and matters of ontology and epistemology. Because these parameters describe perceptions, beliefs, assumptions, the nature of reality, and verifiable truth of that reality, they can influence the way in which the research is undertaken (Flowers, 2009). Therefore, it is necessary to examine the grounding of the research in these fundamentals to demonstrate that this research is based on a consistent development of methodology and research methods. Part of this examination will be a personal reflection on the methods considered appropriate by the researcher. In this research design, consideration is given to the personal development of a research philosophy that will yield productive outcomes. One must be aware of what is in the world in order to decide which things enter one's world: How are research aims targeted, methods chosen, and relevant sources managed? Research philosophy authors such as Grix (2002, p. 180) suggest that it is best to proceed by an iterative development in logical order starting from

- Ontology ("What is out there to know?") over
- Epistemology (What and how can we know about it?") to
- Methodology ("How can we go about acquiring the knowledge?") towards the
- Methods ("Which precise procedures can we use to acquire it?") for
- Collecting and analysing data and finally sources ("Which data can we collect?").

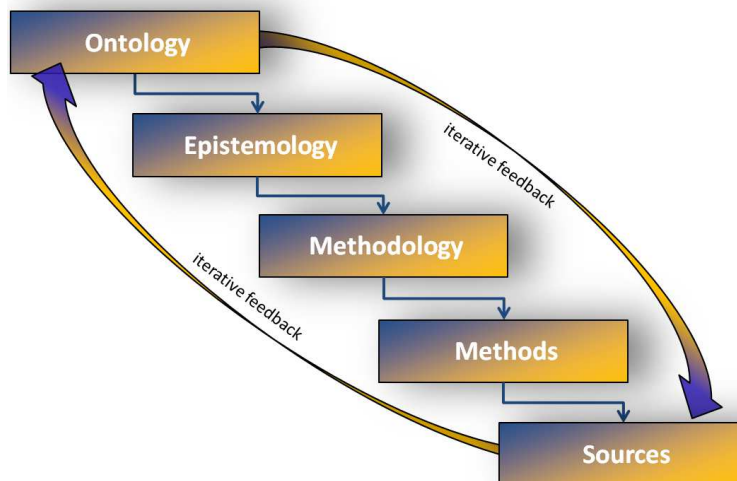


Figure 21: Methodological steps; own elaboration after: Grix (2002), p. 180.

III.1 Reflection of research philosophy

To start to examine the author's research philosophy, the nature of knowledge and its development must be understood. Developing knowledge is precisely the same process as doing the research itself, because even if the purpose has the relatively modest ambition of answering a specific problem in a particular organization it is a development of knowledge (Saunders, Lewis & Thornhill, 2012, p. 127). Johnson and Clark (2006, p. xxv.) noted that management researchers should be aware of the philosophical commitments made through the choice of research strategy. This choice will have a significant impact on not only what we do, but also how we understand what it is we are investigating. The important issue is not so much whether our research should be philosophically informed, but how well we are able to reflect upon our philosophical choices and defend them in relation to the alternatives we might have adopted.

III.1.1 Ontological and epistemological aspects of research

Ontology in social research deals with "the nature of the social and political reality to be investigated (Hay, 2002, p. 63). Two seemingly contradictory ontological perspectives speak to whether there are social entities that exist independently of social actors and observing subjects:

- The *objectivist*, which asserts that social phenomena and their meanings have an existence that is external and independent of social actors (Brymann & Bell, 2011, p. 21).
- The *subjectivist* asserts that social phenomena are created from the perceptions and consequent actions of social actors (Bryman & Bell, 2011, p. 21). To understand ontology under this subjectivist point of view it is necessary to study the permanent social processes and the details of an investigated situation in order to understand what is happening or even the reality occurring behind what is happening (Saunders et. al., 2012, p. 132).

Subjectivism is often associated with term “social constructivism” like an idea of a built structure of knowledge whether it is personal or in property which has a view on reality as being developed in a social manner. Constructivists do not deny the existence of the external world but consider that it is not the important issue when considering social phenomena. This assumption is suitable for this research that examines whether the SCM as an already proven method can be transferred from one administrative application area to another. In this sense, the cost measurement of legislation is also a social structure within the system of politics and public administration. In this research, the objective measurable facts are insignificant.

Rather, the import lies in the studies of meanings and opinions of stakeholders and researchers and their impacts in social and political processes. This is due to the legal relationships in modern societies: Laws governing the social realm are not tangible, but those laws have a concrete impact on individuals’ lives and social interactions. Although these rules are not derived from sense impressions, they still significantly affect the belief in society. A research philosophy that deals with such social interactions is found among ontological aspects especially in the social constructivists (Hatch & Huncliff, 2012, p. 91). It should be distinguished whether questions or problems of the research are substantive issues or the result of communication problems (Wittgenstein, 1963).

The language we use should enable us to describe the world accurately. To understand these social interactions, a critical reflection of the existing knowledge is important and is recognized to be relative to the multiple intellectual realities (Denzin & Lincoln, 2003, p.11). Social interaction becomes reality by the reification of law and becomes a potential object of research. Closely coupled with ontology and its consideration of what constitutes reality, epistemology considers views about what knowledge is and the sources and limits of knowledge. A particularly central issue in this philosophical context is the question of whether or not the social world can and should be studied according to the same principles, procedures, and ethos as the natural sciences (Bryman & Bell, 2011, p. 15). At large, epistemology defines how knowledge can be produced and argued for. It describes the criteria by which knowledge is possible and gives structures for what kind of knowledge is available and its limits (Eriksson & Kovalainen, 2008, p. 14). Briefly, epistemology can be described as “knowing how you can know” (Hatch & Cunliffe, 2006, p. 15). Historically, natural science developed a tradition where a neutral observer attempted to describe an un-biased picture of phenomena under consideration.

- The *positivistic* tradition claimed to find undisputed truth. The positivistic researcher prefers collecting data about an empirical observable reality and searches for regularities and causal relationships in the collected data to create law-like generalizations like those produced by the traditional sciences (Gill & Johnson, 2010, p. 200).
- Similar to the positivism but different in the interpretation of entities, is the epistemological philosophy of *realism*. Unlike empirical realism that directly attempts to capture reality by choosing the adequate method for the purpose, critical realism seeks for structures behind the observation. Its manifesto is to recognize the reality of the natural order and the events and discourses of the social world and holds that we will be only able to understand the social world if we identify the structures at work that generates those events and discourses (Bhaskar, 2011, p. 2).

- The other end of the epistemological range is the *interpretivistic* term. It requires a different logic of research procedures, which reflect the distinctiveness of humans against the natural order. If the positivistic approach has its emphasis on the explanation of human behaviour, the social sciences deal with the understanding of it (Weber, 1947, p. 88). It includes the views of writers who have been critical of the application of the scientific model to the study of the social world and who have been influenced by different intellectual traditions (Bryman & Bell, 2011, p. 16).

Question	Continua	
Ontology: What is the nature of reality?	external	socially constructed
	objective	subjective
Epistemology: What is considered acceptable knowledge?	observable phenomena	subjective meanings
	law-like generalizations	details of specifics

Table 13: Research philosophy as a multidimensional set of continua, after: Saunders, Lewis & Thornhill, (2012), p. 129.

III.1.2 Personal reflection as a researcher

As previously discussed, this research deals with the transferability of an existing management method from one level of public administration to another. The role of a researcher is to place importance on planning his or her research design and to carefully consider his or her choice of suitable procedures. The research questions examine legal conditions, the methodological framework, and political implementation. So the possibilities of legal interpretation and discussion about political processes show that the central focus of this research is on the relationships and interactions within an existing social system. The development of laws as an important social object allows the researcher to adopt an interpretative epistemological position that tries to discover the meaning of these laws and how they develop our social knowledge. There arises a necessity to adopt one philosophical approach and it must be a position regarding the possibility to change

social phenomena. It is only possible to change social phenomena if you are willing to discuss the external independence these phenomena have from social actors.

The aim of this research is to change an actual social situation by transferring the management method of SCM from the state level of public administration to municipalities. Therefore, it is not enough to explain the social interaction in the legislation system, but also to understand social behaviour. This research can only be successful using a critical reflection of the existing system. The role of inductive interpretation would seem to be the primary epistemological focus of this research, developing new possibilities from a review of existing situations. The role of induction and deduction in the research design is discussed below. Therefore, my ontological position as a subjectivist one, my epistemological understanding is analogous to critical realism.

III.1.3 Pragmatism of research

Recent literature suggests that it is more appropriate for the researcher undertaking a particular study to think of the philosophy adopted as a multidimensional set of continua rather than separate positions like positivist or interpretivist research philosophies and quantitative or qualitative methods (Niglas, 2010, p. 215). But is it unconditionally necessary to adopt a particular philosophical position or is the importance of the meaning of an idea or a research outcome its practical consequence? If the research aim is to answer the research question, then the most important determinant of the philosophical position on each of the continua is, which is more appropriate than another for answering the research question. This is a position of pragmatism as a kind of multi-paradigm research, which asserts that concepts are only relevant where they support action (Kelemen & Rumens, 2008, p. 32). But pragmatism is not the strict focus for answering the research questions while fading out all philosophical background. Pragmatists recognize that there are many different ways of interpreting the world and undertaking research; no single point of view can ever give the entire picture multiple realities may exist (Saunders, Lewis & Thornhill, 2012, p. 130). This does

not mean that pragmatists always use multiple methods, rather they use the methods that enable credible, well-founded, reliable, and relevant data to be collected that advance the research (Kelemen & Rumens, 2008, p. 121). If this research is perceived via a pragmatic point of view, the choice of methods is more oriented towards relevant action than on philosophical aspects. Pragmatists must also think about their pre-understanding of the research. The researcher cannot decide to choose the way of his research process without considering a type of pre-knowledge or pre-understanding about the research problem. For these topics, the researcher has to reflect his pre-understanding of legal or organizational problems regarding his personal and professional experiences. The reflection of his pre-understanding leads to the necessary prejudice of a hermeneutic text analysis.

To investigate a sufficient legal and economic framework, the methods from a pragmatic perspective could be chosen if they are relevant for the necessary development of new theories or – like it is here – for the transferability of an already existing systematic approach from one application area to another. Therefore, the pragmatism of research about the transferability of the SCM into the municipal sector is oriented on the three research questions. The researcher chooses the methods and procedures of his research design on basis of his personal skills and professional education as a lawyer and public administration manager.

III.1.4 Interpretation of law

To concentrate on those philosophical aspects, this research must deal with the legal aspects of the German legislation system and the laws about municipal financial framework. To date, the doctrine about the interpretation of law from Friedrich Carl von Savigny (1840) is the primary guide for those rules. After Savigny, interpretation is the reconstruction of the living ideas within the law, which is ruled by four cooperating principles: the grammatical, the logical, the historical, and the systematic principle (Savigny, 1840, p. 212):

- The *grammatical interpretation* states that the meaning of law or other legal norms is strictly oriented on the literal formulation. Therefore, the common sense of language is not relevant, but within a particular context a specific terminology could be relevant. For example, this grammatical interpretation is very important in criminal law because the German constitution prohibits the extension of meaning of criminal laws to the disadvantage of the accused person (Art. 103 II GG). It is the same result if the law contains enumeration of items and excludes in this way its application to similar but not mentioned circumstances (enumeratio ergo limitation).
- The *historical interpretation* must state the meaning of law as it relates to the intention of the parliament or other law givers. So the materials about the developing process of the law or the explanatory materials play a very important role for the interpretation. As the law becomes older, the less important is this motivation of the law giver.
- The idea of a *systematic interpretation* of law is that the whole legal system is free of contradictions. A deeper understanding of this systematic principle is not a kind of interpretation of law, but more a principle of construction of the legal system as a whole. This is more important for interpretation of those laws that have an inner correlation. It is also the same rule as formulated by Roman lawyers, which stated an exceptional law must be interpreted more strictly than general law.
- Today, the *teleological interpretation* is often seen as the core of legal interpretation methods, which is the most important interpretative rule in doubt. It defines the meaning of law after its inner intention through what is designed to achieve. Therefore, the subjectivist intention of the law giver is not as relevant as the objective recognizable purpose of law. This purpose of law can change over the period of its existence due to social circumstances. The highest civil court in Germany, the Bundesgerichtshof (BGH), states that

no law is limited to the application seen by the enacting parliament, because “it is not dead letter but a living ghost who develops within the social circumstances and must be adapted since it breaks the form in which it is given (BGHSt 10, p. 157, 159 f.).

Principle	Interpretation of law by...
grammatical	...its literal formulation
historical	...the subjective intention of the law giver
systematic	...possible contradictions within the whole legal system
teleological	...its objective purpose

Table 14: The four canons for the interpretation of law, after: Savigny (1840), p. 212.

The discussion about the order of use of these four interpretation principles is highly controversial and is dependent on whether the subjective or the objective meaning is more important than the other. When Savigny (1840) said that the teleological interpretation is not as important as the other ones in modern times, the constitutional jurisdiction in Germany (BVerfGE 1, p. 299, 312; 10, p. 234, 244; 11, p. 126, 130) uses the four “canones” in a way that brings the case to a more fair-minded decision. This is reflected in existing literature (Zippelius, 2012), which uses Savigny’s “canones” without a specific order.

III.1.5 Advancement of law

Savigny (1840, p. 212, 224) stated a basic difference between the interpretation of law and a further advancement of law. The interpretation of law is a strong and strict process and does not allow a further advancement of legal positions. The interpretation of existing law by the principles is a rather positivistic position (Hart, 1994). If interpretation refers to other legal sources, it is possible to find new advanced elements for the development of law. Against the background of this differentiation between interpretation and advancement of law, the obligation of a lawyer is not restricted to the interpretation of law. After Savigny (1840), it is more or less the essential and distinctive obligation of a lawyer to create an organic

advancement of law. By advancement of law, it is possible to create new bodies or institutes of law, or to change existing laws (Savigny, 1840, p. 18).

New regulations are done mostly by positive law in case of newly enacted written law. A positive law is designed to achieve ethical or political ideas of pre-understandings by codified issues. The interpretation of law will establish an illustration of this theory. This concept parallels the positivistic idea of research that searches for the empirical observation of data. In this sense, the interpretation of written or positive law reflects positivistic research more than the interpretivistic approach of analyzing social phenomena focussing on the issue behind written law. Savigny opposed positive laws and argued against the emerging discussion about the codification of the “Bürgerliche Gesetzbuch (BGB)” in Germany. He maintained that it is impossible to codify the complete social rules of human social behaviour. The BGB was a comprehensive work that brought together the most relevant legal problems of the citizens into one law. However, when the BGB was enacted at the beginning of the 20th century, this was an important step within the social evolution in Germany to create one legal framework for the relationships between members of the whole population. Because Savigny refers mainly to the “organic advancement of law” without any positive formulation, his work does not acknowledge the social necessity to bring the German territory under the application of one civil law for all citizens.

III.1.6 Inductive approach of legal research

Savigny makes a valid point with his assertion that aside from the interpretation of existing law, the development of the legal system via deduction is ineffective. This concept is difficult to convey because scientific research is based on deductive methods. It involves the development of a theory that is then subjected to a rigorous test through a series of positions. Deduction is the dominant research approach in natural sciences, where laws present the basis of explanation, allow the anticipation of phenomena, predict their occurrence and permit them to be

controlled (Saunders, Lewis & Thornhill, 2012, p. 145). Blaikie (2010, p. 96) lists six steps by which deductive research approach progresses:

Step	Deductive research approach
1	Set of premise or hypothesis
2	Deducing propositions by using existing data
3	Examination and comparison by logical argumentation
4	Testing the premises by collecting new data
5	No consistent results: Theory is false
6	Consistent results: Theory is corroborated

Table 15: The six steps of a deductive research approach, after: Blaikie (2010).

For the advancement of law, the main point is that using deduction to examine an existing system does not create any new ideas or it will lead to results, correctness, or reasonability that must be proven by elements from outside the system (Kriele, 1976, p. 98). If the result of such a deduction is not fair or unsuitable, the system must be changed until the result is sufficient and reasonable.

The emergence of the social sciences in the twentieth century led social science researchers to question deduction, because enabling a social cause-effect link without understanding the way in which humans interpret their social world is essential (Saunders, Lewis & Thornhill, 2012, p. 146). Criticism directed at the deductive method typically arises from proponents of induction because of its tendency to construct rigid methodology that does not permit alternative explanations of phenomena. Researchers using an inductive approach are more likely to work with qualitative data and to use a variety of methods to collect data in order to establish different views of phenomena (Easterby-Smith, Thorpe & Jackson, 2012). If the researcher wants to generate a new theory he uses rather an inductive research approach rather than a deductive one, which is more sufficient to test a theory. Briefly put, deduction brings theory to data; induction brings data to theory (Saunders, Lewis & Thornhill, 2012, p. 147).

	Quantitative research	Qualitative research
Role of theory	deductive testing	inductive generation
Science	natural sciences	social sciences
Epistemology	Positivism	Interpretivism
Ontology	Objectivism	(Social) Constructivism

Table 16: Fundamental differences between quantitative and qualitative research strategies, after: Bryman & Bell (2011), p. 27.

III.1.7 Presumption of precedents

As shown above, it is difficult to advance new legal theories by deduction. Therefore, logic dictates a focus on an inductive research approach and the following qualitative research methods for this research about the transfer of the SCM into the municipal area. In this legal research area, the lawyers typically begin with the meaning expressed by the former important particular jurisdiction. This so-called presumption of precedents was originally created by Kriele (1976, p. 243). The practical importance of this theory is obvious because in a modern state the legislative power does not have the monopoly for the setting of law, but the advancement of law is created by jurisdiction also. There is also the jurisdictional power that can close the gaps of positive laws and is able to advance the whole legal system. Based on Kriele (1976), the law giver could exercise his or her legal prerogative, but could never fill the legal system at all with its positive law.

Regarding these gaps, the theory of Kriele (1976) regarding the presumption of precedents allows room for the creative advancement of law that is done inductively. But if there is enough space for the legal advancement besides the positive law, the often discussed differences of legal practices between the Anglo-Saxon and the continental-European system are not as important. Traditionally, these differences were considered fundamental. On the continental-European side the legal system is a deductive one because of the mostly codified positive law that must be deduced to the individual case. In the Anglo-Saxonian system, the jurisdiction is more important and finds the solution of individual cases using an inductive legal system (Allen, 1964, p. 162). The continental-European system is not less inductive than the Anglo-Saxonian one because in addition to the codification

of law there are more problems unsolved than those decided by the legislation. The Anglo-Saxonian system is primarily deductive because the parliament enacted many legal problems in positive law. These correlating legal evolutions illustrate that the differences between the two legal systems are not as great as they appear. In both legal systems, the judge is only allowed to overrule a former decision of a higher court or its own court if its explanatory statements are more accurate and more convincing than the existing decision. In both legal systems, it is the precedence by former jurisdiction that governs a lawyer when the law is applied – the binding theory of leading jurisdiction. As asserted by Kriele (1976, p. 259), there are six important reasons which support this theory:

- By a fundamental argumentation for a functional democracy, the *predictability of juridical decisions* is an important reason. The more difficult it is to overrule a former decision, the more the predictable is the result of the actual case. Even in a British legal understanding, this gives more stability in jurisdiction and the reliability of the state system at a whole (Radbruch, 1956, p. 38).
- There are also *economic reasons* for the theory: The more that a court decision differs from the former decision of a higher court or the same court, the more it is probable that the decision will be cancelled in the next level of jurisdiction. This wastes the time, power, and money of all participants.
- The binding on former leading jurisdiction is also a *guarantee for equal decisions* and is therefore a strong argument for justice in the legal system. A different handling of comparable cases indicates inequality and decreases justice in the legal system over all.

- A more human aspect is the *personality of the judge* as a natural person. Judges are humans with feelings, passion, and a certain morality. To think about a judge as an always neutral and emotionless human being is unrealistic. Former decisions give the personal morality specific guidelines and do not make the actual decision arbitrary.
- Another aspect of dealing with the personality is the *need of the judges for independence*. Former decisions give the judge a specific binding in finding legal solutions for the actual case and do not make him or her an object of subjective exercise of influence.
- The last reason for the theory about precedence by former jurisdiction is to be always aware of the future. The responsibility of the judge exceeds the specific case. Even if there is no former decision to guide the actual decision, it could be the *leading jurisdiction for later cases in the future*.

Regarding this inductive approach of research the theory about the presumption of precedents gives a good starting point to advance the legal system. In searching for new ideas to transfer the SCM from the state level of administration to municipalities, the leading jurisdiction and its presumption of precedents emerge as the most important sources for this research to examine. Qualitative methods to investigate the social relationships between the subjects in the legal system will lead the author as a social constructivist to a possible solution for legal conditions, a methodological framework, and organizational implementation.

III.2 Planning the research design

Regarding the previous discussion about the philosophical background and the author's idea of a research strategy, the resulting research design must be outlined. The research design is the general plan of how the researcher will accomplish answering the formulated research questions. A research design provides a framework for the collection and analysis of data relevant for the particular

research project. The specific language of the research questions implies the necessary kind of research design. To reflect this design of the methodological aspects of this research, it must contain clear objectives derived from the research questions (Saunders, Lewis & Thornhill, 2012, p. 159). As described in the introduction of this thesis the author will work with three research questions, which implicate coherent research objectives:

	Research questions	Research objectives
1.	What would be the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration?	To understand the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration.
2.	Can a general methodological framework be proposed for the determination of compliance costs for municipalities?	To propose a general methodological framework for the determination of compliance costs for municipalities.
3.	What are the sufficient conditions required for the implementation of the SCM to municipalities?	To identify the sufficient conditions required for the implementation of the SCM to municipalities.

Table 17: Coherent derivation of research objectives from defined research questions.

Following the description of Sanders, Lewis & Thornhill (2012, p. 161-195), the process of creating the suitable research design for this research about the legal, economic, and organizational transferability of the SCM into the municipal area contains the following steps:

- Choice of qualitative methods
- Recognizing the nature of study
- Choosing the strategic type of research
- Time horizon of research
- Establishing the ethics of research
- The authors role as researcher

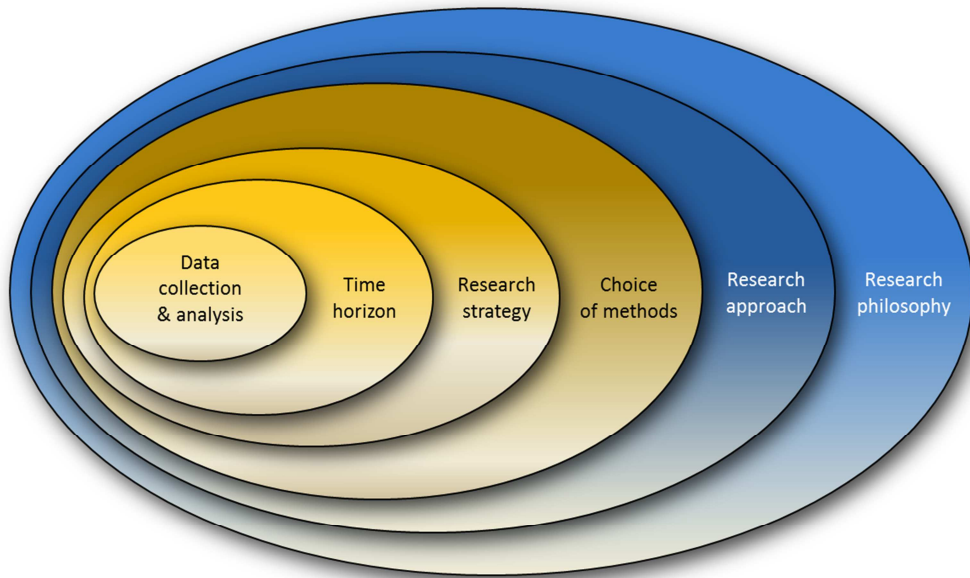


Figure 22: The research “onion”, own elaboration after: Saunders et. al. (2012), p. 160.

III.2.1 Choice of qualitative methods

The classification of this thesis as a social research project and the author’s self reflection as a social constructivist led to the methodological choice of a qualitative research design. Denzin and Lincoln (2011) emphasized that qualitative research is associated with an interpretive philosophy. It is interpretive because researchers need to make sense of the subjective and socially constructed meanings expressed about the phenomenon being studied (Saunders et. al, 2012, p. 163). The choice of methods is not only a rational process of selecting the most effective tool to address a particular question, but a highly complex process (Buchanan & Bryman, 2007, p. 483). Choosing an appropriate method is highly significant for the formulation of the research design and the selection of the concrete data collection techniques. Qualitative research studies participants` meanings and the relationships between them, using a variety of data collection techniques and analytical procedures, in order to develop a conceptual framework (Saunders, Lewis & Thornhill, 2012, p. 163).

In this research, the author intends to analyze the legal, economic, and organizational relationships between the subjects of the SCM research within the financial system of public administration, especially of municipalities. As discussed later, the investigation of these relationships will be conducted by interviews, a conversational analysis of professional presentations, the analysis of legal texts, and a secondary text analysis of existing SCM project reports. So even if qualitative data collection is not standardized, as discussed by Bryman & Bell (2011, p. 389), there are some main research methods associated with qualitative research. Qualitative interviews, language-based approaches like conversation analysis, and the collection and qualitative analysis of texts and documents are relevant methods for such a qualitative research approach.

III.2.2 Recognizing the nature of study

Using a more reflective approach, the author addresses this research project in terms of a question he wants to answer and his research objectives (see sec. III.2). The way in which way these questions are asked will inevitably involve the researcher in exploratory, descriptive, or explanatory research leading to an answer that is either exploratory, descriptive, or explanatory (Saunders, Lewis & Thornhill, 2012, p. 170).

- *Exploratory studies* are valuable to ask open questions to discover what is happening and gain insights about the topic of interest.
- The object of *descriptive research* is to gain an accurate profile of events, persons, or situations. In contrast to an exploratory study, a descriptive approach necessitates having a clear picture of the investigated phenomenon of which the collected data concerns.
- Studies that establish causal relationships between variables may be termed *explanatory research*. The emphasis here is to study a situation or a problem in order to explain the relationships between variables.

The topic of this thesis is the investigation of a transferability of the SCM from currently working circumstances to a new application field. Therefore, the research is not a descriptive one and does not focus only on the relationships between variables, because the research subjects like the municipalities and state administration are clearly defined in their role of the public system in Germany. What is needed for further investigation is to clarify a deeper understanding of the problem. To analyze these insights of the topic this thesis looks into the legal, methodological and organizational problems and conditions. Therefore, this research about the SCM transfer to the municipal area is an exploratory study.

III.2.3 Choosing the strategic type of research

The research strategy could be defined as a plan of how a researcher will go about answering his research questions. So choosing the research strategy is the methodological link between the philosophical background and the subsequent choice of research methods to collect and analyze the necessary data (Denzin & Lincoln, 2005). Because of the great methodological variety in qualitative research (see above, sec. III.2.1), there is also great confusion. But this confusion allows the greatest freedom to “design” the research. There are some typical forms of research strategies oriented at a quantitative or qualitative approach. This regards the nature of this research as an exploratory study (see sec. III.2.2). According to the structure presented from Bryman & Bell (2011, p. 68), combined with additional strategies as outlined by Saunders, Lewis & Thornhill (2012, p. 173), this led to the following table:

Research design (alphabetical order)	Research strategy	
	Quantitative approach	Qualitative approach
Action research	-	Iterative action and qualitative evaluation of hypotheses in a real organizational case
Archival research	Statistical analysis of archival data	qualitative content analysis of archival data
Case study	Social survey study in a single case	Ethnographic research or qualitative interviewing in a single case
Comparative	Social survey study with direct comparison of two or more cases	Ethnographic research or qualitative interviewing in two or more cases including comparison between them
Cross-sectional	Social survey study or structured observation at a single point of time	Qualitative interviews, qualitative content analysis of documents
Experimental	Comparison of experimental and control groups	-
Grounded theory	-	Qualitative data analysis by coding of before broken data
Longitudinal	Social survey research on more than one occasion	Ethnographic research, qualitative interviewing or qualitative document analysis over a long period
Narrative Inquiry	-	Qualitative analysis of interview outcome

Table 18: Accomplishing research design and strategy, own elaboration.

The research strategy for this thesis must regard its qualitative approach and the intended exploratory investigation of the legal, methodological and organizational problems and conditions of a SCM transfer into a municipal application field. Inevitably, the developed research design is oriented on qualitative strategies and its suitable research methods. This research strategy is comprised of four different elements:

- *Stakeholder interviews:* In a first step the most important and relevant institutions in Germany will be asked if the transfer is possible and about the fundamental problems of a transformation of the SCM into local government. Therefore, relevant and responsible persons must be identified for a semi-structured interview. For an academic analysis of the statements of the advocates of a SCM, it is also necessary to conduct interviews with those researchers or practitioners who approach the SCM more critically. The selection of the interviewees was oriented by their function and professions

in a SCM relevant institution or by their specific personal experiences concerning the field of impact assessment systems. The object of this analysis will be the interview transcriptions. Using a grounded theory approach, the analysis will develop general statements from these texts concerning the aspects of the three research questions.

- *Reflective Presentation:* In addition to these interviews, this research strategy contains a presentation of the developed results of this thesis so far. This presentation was a unique opportunity for the author to present his research ideas in a professional auditorium of the “Arbeitsgemeinschaft wirtschaftliche Verwaltung – AWV”) (www.awv-net.de). The AWV was established as a consulting council of independent experts by the German Bundestag and is financed by the German Ministry of Economics and Technology. These experts could evaluate the research results in a professional way and could give the author new ideas from their wide range of experience in the field of better legislation and public administration reforms. Regarding this session and the discussion about the author’s presentation, there is a text protocol of the AWV secretary that will be analyzed as qualitative text data. As a personal experience of the author, this analysis will be a narrative inquiry of the outcome of this reflective presentation.
- *Cross case analysis:* To date, a number of projects have dealt with the question of how the executing costs of laws can be measured using the SCM. In the developmental process of the SCM, the economy was the target sector; therefore, very few practical exercises deal with the public administration, especially the municipal level. However, several of these projects that do not directly answer the research questions, could be useful to answer the research questions of this thesis. It is possible to find specific aspects in these projects that could be helpful for the analysis of the legal conditions, the methodological framework, or the organizational implementation of the SCM. Regarding these aspects of the formulated research questions, the existing projects that are closely related to the field of public administration should be

examined for a viable method for a SCM transfer from a strict local point of view. This will serve as qualitative secondary data analysis.

- *Text analysis:* Based on the literature review, the outlined jurisdiction and literature will be analyzed. In particular, the constitutional jurisdiction from the last years is an important data source for an in-depth text analysis. In recent years, several relevant court decisions exist that deal with the constitutional framework for the financial autonomy of local governments. Those decisions are discussed in a number of articles from the legal and public administrative research fields. This text analysis must consider the results of the other methods and procedures as previously described. Therefore, the process of qualitative text analysis will be a hermeneutic process respecting the special legal rules of text interpretation.

The use of these four different methods of data collection and analysis intends to generate the benefits of a methodological triangulation. Triangulation is a valuable and widely used strategy involving the use of multiple sources to enhance the rigour of the research (Robson, 2011, p. 158). As the major early advocate it was Denzin (1970, p. 310) who suggested that triangulation can serve to overcome partial views and present something like a complete picture of the research field. His idea was that, when many data points converge, the findings are more credible. By looking at an object from more than one standpoint, it is possible to produce a more truthful and certain representation of the research object. The most common application of triangulation in qualitative research is the use of multiple methods (Silvermann, 2014, p. 91 f.). As an effect the use of two or more independent sources of data-collection methods within one study in order to help ensure that the data are telling you what you think they are telling you (Saunders, Lewis & Thornhill, 2012, p. 683). Here the chosen methods of data collection – stakeholder interviews, reflective presentation and cross case analysis – produce a hermeneutic pre-understanding for each research question of this research. Following the idea of triangulation, the application of different research methods bring a more complete picture to this starting point of the legal hermeneutic text analysis as the closing

part of the research design in this study. The rules of law interpretation (see sec. III.1.4) as procedure of a deep text analysis and the chosen methods data collection of the described research design are all different kinds of qualitative research strategies and lead to the following figure:

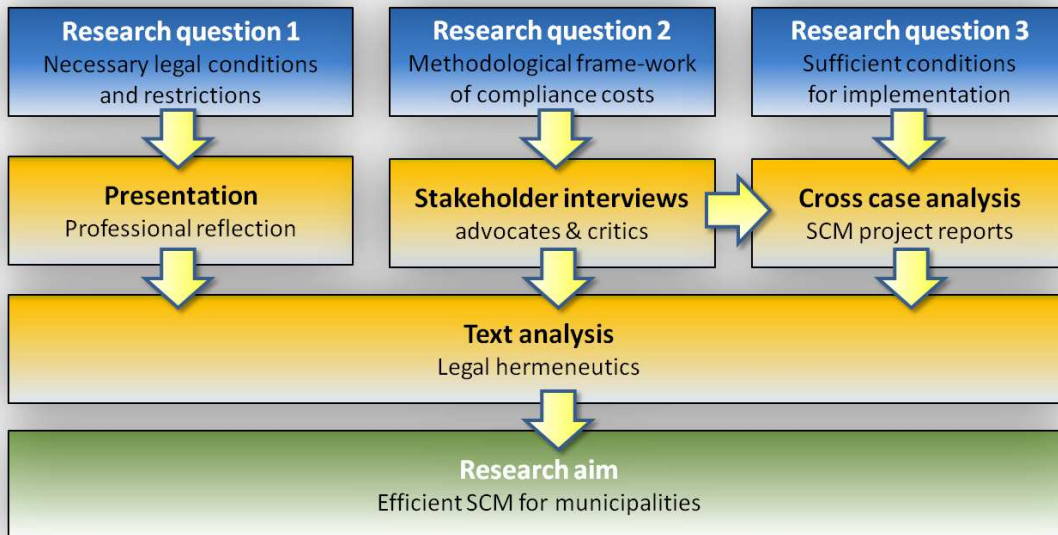


Figure 23: Research design for the SCM-transfer to municipalities (own elaboration).

III.2.4 Time horizon of research

This research takes place over a certain period of time that is necessary to explore the defined sources. This thesis about an assessment of the necessary conditions for a functional transfer of the SCM to municipalities must not regard a clearly defined period to come to suitable proposals. More important is the description of incidences of the research topic and the exploration how factors are related to another within the public system of municipal financing. Nevertheless a strategy for a cross-sectional research also needs a binding time schedule.

			Begin	End	2012				2013				2014				
					Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1	RD1	1.1	Submission	-	10.12	◆											
		1.2	Approval	-	11.12	◆											
2	Literature	2.0	Permanent review	10.12	09.14	▬											
3	Interviews	3.1	Stakeholder interviews	01.13	03.13		▬										
		3.2	Transcription	03.13	05.13		▬										
		3.3	Legitimation	03.13	05.13		▬										
		3.4	Argumentative review	04.13	05.13		▬										
4	Presentation	4.1	Reflective presentation	-	06.13												
		4.2	Protocol analysis	06.13	07.13												
5	Cross case analysis	5.1	Secondary data analysis	09.13	01.14												
		5.2	Statement analysis	12.13	01.14												
6	Text analysis	6.1	Legal hermeneutic	10.13	08.14												
		6.2	Methodological integration	03.14	04.14												
7	Thesis	7.1	Permanent documentation	10.12	08.14	▬											
		7.2	Formatting final draft	09.14	10.14												
		7.3	submission	-	10.14												
	Total duration			10.12	10.14												

Table 19: Structured time schedule of thesis (own elaboration).

III.2.5 Establishing the ethics of research

An essential part of the research strategy is the consideration of its ethical aspects. A discussion about the ethics of business and management research bring the author into a realm where the role of values in the research process becomes a topic of concern (Bryman & Bell, 2011, p. 122). Several useful codes of ethics for business and management researchers can be found on the Internet. The particular guidelines of the University of Gloucestershire (2008) are of primary relevance for this thesis. The ethical principles of business research tend to revolve around certain issues that recur in different forms, which have been broken down by Diener & Crandall (1978) into four main areas:

- whether there is harm to participants
- whether there is a lack of informed consent
- whether there is an invasion of privacy
- whether deception is involved

Because of the stakeholder interviews, the significant principle for this research is to maintain the privacy, confidentiality, and anonymity of research participants. The anonymity and privacy of research participants should be respected and personal information relating to participants should be kept confidential and secure (University of Gloucestershire, 2008, p. 5). Researchers must comply with the

provision of the Data Protection Act. While taking every practicable measure to ensure confidentiality and anonymity, they should also take care not to give unrealistic assurances or guarantees. Where possible, threats to the confidentiality and anonymity of research data should be anticipated by researchers and the identities and research records of participants should be kept confidential, whether or not an explicit pledge of confidentiality has been given.

The *stakeholder interviewees* in this research are all well known in public because of their function and profession in the particular research field of better legislation and the reform of public administration. It may be easy for any interested reader to identify the person as a participant of this research about the transferability of the SCM into the municipal area. Because the interviewees are public spokespeople for their organizations, all participants will have the opportunity to review their statements prior to publication and will sign a declaration that they agree explicitly with the publication of their names in this research. This declaration allows the author to cite the arguments of the interviewees with their names and to use them within the hermeneutic text analysis.

In addition to the interviews, the presentation at the AWV must also consider the ethical aspects of confidentiality and anonymity of research participants. More than 500 voluntary experts and approximately 220 official members of the AWV spend their time in the working groups within or in addition to their their main professional employment. To keep the confidentiality of the participants in this concrete AWV session and to permit the free discussion after the presentation, the AWV did not allow a tape recording of the session. The author had to work with a written protocol of the session that was formulated by the *project manager of the AWV*. The secretary agreed to be cited as an author in this thesis using the same procedure for legitimatizing the interviews. This gives the author the possibility to cite the several arguments from the critical discussion in the AWV session in line with the cited ethic rules of a researcher.

III.2.6 Methodological outcome comparison

Another important practical consideration in deciding how to formulate a research design is related to the author's placement or position as a researcher. The decision centres on whether the business or management research will be conducted within an organization as an internal or practitioner researcher or from outside this organization as an external researcher.

III.2.6.1 Preamble considerations

Regarding the qualitative nature of this research (see sec. III.2.1), the author also considers his pre-understanding of research as a pragmatist (see sec. III.1.3). The consequent derivation of research methods from the authors philosophical background as a social constructivist is not the only way of interpreting the world or undertaking his research. Relevant aspects for the choice of methods include the objectives to achieve and the manner by which the researcher could attain the most relevant outcome. Qualitative research about the meaning of investigated participants or the relationship between them, affords a great variety of data collection techniques and methods. An important aspect of the decision in choosing the most suitable methods is the outcome of research and data analysis is related to what the author can achieve in his specific professional placement and personal potentials.

The author's professional position as an employee of a district municipality in Germany could give him the possibility to do his research as a case study within the structures of this public administration, which would situate the author as an internal researcher. It follows that a case study should be conducted about the municipal SCM application using this authority conferred by employment. According to the iterative feedback between the methodological steps of research development (see sec. III), the author revisited the choice of methods from a different perspective as member of a district municipality. The key data of this local public district administration with its 16 autonomous communities are:

- 350.000 inhabitants on 1246 skm
- 1.9 million overnight stays
- 120 products in a budget of 362 million Euro
- 750 employees



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Figure 24: Screenshot of the official website of Kreis Lippe.

In many social science disciplines, case studies are frequently used, especially in political science, anthropology, comparative sociology, and education (Verschuren, 2001). Often action research finds its concrete application in case studies, because the immediate involvement of the researcher in its research context becomes notably clear (O`Brian, 2001). Yin (1989) defined the case study research method as an empirical inquiry that “investigates a contemporary phenomenon within its real-life context, when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used.” A discussion exists whether a case study must include a certain number of investigated cases. Eisenhardt (1989) proposed a minimum number of four cases. By contrast, Yin (1989) and Stake (1985) argued that under certain conditions one case is enough. The choice between two relevant research methods regarding the author’s personal background is a kind of methodological link between the philosophical derivation of qualitative methods and the practical decision of how to create the

research design of this thesis. If it is possible to undertake a case study about SCM application in only one administration, then the author must decide what qualitative method is suitable for answering the research questions.

III.2.6.2 Research Question 1: Case study vs. text analysis

To decide whether a case study by an internal researcher is suitable the contribution to the research must be considered. The first research question deals with the legal conditions of a possible SCM transfer. The sources for this answer are legal texts, their commentaries in the literature, and the particular court decisions from the previous years. As outlined above (sec. III.2.3), the relevant research method for this procedure is the hermeneutic text analysis. This text analysis must regard arguments and statements from qualitative research methods such as interviews, presentations, and cross case analyses. A case study can never replace a text analysis because it can not generate an intensive discussion about the specific legal problems. For this discussion, it is not helpful to investigate internal information and informal processes in an organization like the administration of Kreis Lippe. Therefore, the case study is eliminated as an instrument for a meaningful contribution for the answer to the first research question.

III.2.6.3 Research question 2: Case study vs. Cross case analysis

The second research question searches for a methodological framework for the determination of compliance costs. A researcher looking for the content of a certain cost-concept is unlikely to find better contacts than the financial controllers of an organization. This is particularly valid for the financial controllers of the Kreis Lippe, if this framework originated from a municipal context. To draw up the budget, Kreis Lippe must work within the regulations of "New Communal Finance Management," which defines the municipal obligation in approximately 120 different products. Within this system, the controllers can give advice about the internal and informal aspects of the administrative financial system.

Cross-case analysis emerges as a possible research method in looking for a general methodological framework for the determination of compliance costs for municipalities. There are different suggestions from various quarters on how to determine such compliance costs for the executing of laws. A cross-case analysis could examine the possibility to propose a general methodological framework for the determination of compliance costs for municipalities. To come to a practical methodological proposal for the application of the SCM in municipalities, it must be in accordance with the legal framework. So it is of great importance to find existing practical projects that report on concrete experiences with such measures of costs. The more deeply the process was examined by its constituent steps, the more meaningful are the possible costs measurement of the single steps of process. So it is necessary to compare which methods will give the best benefit to answer the second research question.

Such a comparison may be resolved not only in a purely qualitative comparison of two different methods, but must supply a contribution to the question in a systematic form that defines, which method is better to answer the research question. The best method to choose systematically between the two possible methods and to reach a decision, is to create a table with necessary contributions and to weigh each individually. Following Keeney & Raiffa (1973), such a utility analysis is the investigation of an amount of complicated action alternatives with the target to order the elements of this amount according to the preferences of the decision maker regarding to a multidimensional target system. For clear and manageable questions it is often enough to create a simple table, where the alternatives of decision, the relevant choice criteria, and their weighting are placed in context to each other in a relevant way. Another column contains the individual weighting factor for the certain choice criterion. Therefore, the question of how high the degree of performance of a possibility stands in correlation to the whole priority.

Here the alternatives of choice are both the methods of cross-case analysis and case study. To evaluate both of these methods of research using utility analysis, it requires some assessment criteria and a decision about a certain weighting. These assessment criteria must orientate themselves by the question and whether the method makes a contribution to the answer of the research question. For the further execution of the utility analysis, relevant criteria must get a certain weight to define the concrete benefit for the research question. These weights can only be subjective by the author of the utility analysis, but must always correlate to their benefit for the research question. A proportional distribution that proves all together the value 1 is a meaningful and usual subdivision (Keeney & Raiffa, 1973). The weights can be declared with simple percent quotation, whose totality corresponds to 100 percent.

No.	Criteria	Weight
1	Generate the method information about local public administration?	
	This criteria is more or less self-evident, but it correlates to the analysis criteria of the cross case analysis. So the weight is neither very important nor very unimportant and will get the weight of 0.05.	5 %
2	Give the method a contribution for the SCM application in municipalities?	
	The core of research is the transferability of the SCM to municipalities. So all aspects, which give a contribution to this, are very important and must get a very high weight of 0.2.	20 %
3	Is there a local process as subject of the method, that can be measured?	
	The particular charm of a cross case analysis is, to investigate different cases for such attributes, which allow a generalization of contents or methods. Just if it is about the definition of possible contents of compliance costs in local authorities, such methods must be applied, which could bring a concrete contribution for this definition. So this criterion is quite important and receives the value 0.2.	20 %
4	Is there a type of cost definition, which can help to define compliance costs?	
	Everything what can assist to determine closer the contents of the compliance costs is of great importance. An investigation of such contents of cost concepts makes particularly sense, if it concerns cost analyses at municipal level. So it is also from importance with the value 0.2.	20 %
5	Generate the method information about the considered laws?	
	Up to now the objects of measurements by using the SCM were federal state laws and their effects on the economy. So the research approach elected here, to apply the SCM from the point of view of the local authorities, must refer to federal and state laws conceptually So it is a necessary, but not an urgent criterion and receives the value 0.05	5 %
6	Give the method a contribution for possible generalization of SCM in municipalities?	
	But there is a additional criteria, which is most important to describe the benefit of the analysed method. The contribution for the possibility of generalization of methodological frameworks is the core of research and therefore it gets the weight of 0.3	30 %

Table 20: Utility analysis for methodological decision (own elaboration).

These defined criteria and their weights must be combined with the concrete performance for the answering of the research question. A typical and useful application of the benefit analysis is a free scaling of points for the performance in the particular criteria. This could be defined as:

- Bad:** 0 to 2 points
- Middle:** 3 to 5 points
- Good:** 6 to 8 points
- Best:** 9 points

So the outcome for the concrete utility analysis is:

Criteria	Weight	Cross case analysis		Case study	
		performance	benefit	performance	benefit
1	5 %	5	25	5	25
2	20 %	8	160	0	0
3	20 %	7	140	5	100
4	20 %	5	100	9	180
5	5 %	6	30	3	15
6	30 %	7	210	0	0
total	100 %		665		220

Table 21: Methodological decision taking by utility analysis (own elaboration).

Even if the choice of the weights for the single criteria and the assessments of the concrete performance are absolutely subjective, the result is obvious and possible change in some of the basic appraisals would not change the result in the end. This is due to the fact that an analysis of several projects and reports offers a better possibility for generalizations than a single investigation could give. Therefore, the research aim of a finding a generalization and a possible transferability of the SCM to the level of the local public administration works better using a case-covering analysis than with an integrated single case study. So it is suitable to look for an answer for the second research question by the cross-case analysis than a case study. This led to the conclusion that a case study by an internal researcher was not as suitable for this thesis as the work by an external researcher. This must also be the author's role, even being an employee of a local public administration.

III.3 Research methods and procedures

Following the choice of the research strategy and the research design, the chosen methods and procedures will be developed. The order of description follows the time schedule of the research strategy (see sec. III.2.1.3) because of the interdependences of the different methods. The results of the interview analysis have to be regarded within the following methods: The reflective presentation contains some derived statements of the interviews to get a professional reflection from the audience of experts. The cross-case analysis of the already existing SCM projects also reflects the results from the interviews. Mainly the hermeneutic process required the statements from the interviews to argue different meanings and opinions within the text analysis.

III.3.1 Institutional interview analysis

The research interview is a purposeful conversation between two or more people requiring the interviewer to establish rapport and to ask concise and unambiguous questions that encourage the interviewee to respond and to listen attentively. This definition is significant because the nature of any interview should be consistent with the research questions and objectives, the purpose of the research, and the research strategy that is adopted (Saunders, Lewis & Thornhill, 2012, p. 372). The choice of procedures for the analysis of interviews depends on the content to be analyzed. As previously discussed, the researcher chose an inductive approach for qualitative data analysis. Qualitative data are likely to be characterized by their richness and fullness, based the researchers opportunity to explore a subject in as real of a manner possible. In qualitative research, the meanings are principally derived from words rather than numbers, and the abstraction of results is more “thick and thorough” than a “thin description” from quantitative data (Brekhus, Galliher & Gubrium, 2005). Using the transcription of the described interviews the analysis of interviews will be an analysis of text as qualitative data.

III.3.1.1 Semi-structured type of interview

The research interview is a general term for several types of interviews. The main differentiation relates to the levels of formality and structure and whether it is more standardized and structured or non-standardized and unstructured. Structured, standardized interviews are normally used to gather data that will be the object of quantitative analysis. Unstructured, semi-structured, or non-standardized interviews are used to gather data that is normally analyzed qualitatively to understand not only the “what” and “how” but also to place emphasis on the “why” (Saunders, Lewis & Thornhill, 2012, p. 376). The semi-structured interview is a term that covers a wide range of instances. It typically refers to a context in which the interviewer has a series of questions that are in the general form of an interview schedule, but that the interviewer retains the ability to vary the sequence of questions (Bryman & Bell, 2011, p. 205).

The questions are frequently more general in their frame of reference than those typically found in structured interview schedules. Also, the interviewer usually has some latitude to ask further questions in response to what are seen as significant replies. For an exploratory study or a study that includes exploratory elements, it is likely that the researcher will include an in-depth or semi-structured interview in the research design (Cooper & Schindler, 2008). Therefore, semi-structured interviews provide the researcher with the opportunity to “probe” answers where the interviewee is asked to explain or build on his responses.

The research strategy of this thesis has a qualitative inductive approach and investigates the legal, methodological and organizational problems, and conditions of a SCM transfer into a municipal application field. For a deeper understanding of these legal and organizational relationships, the “what” and “how” questions are not in the foreground, rather the focus is on the “why.” Semi-structured interviews with the opportunity to ask additional questions and to diverge from the interview schedule are important for an interpretivistic epistemology, where the researcher is concerned with understanding the meanings that participants ascribe to various

phenomena (Saunders, Lewis & Thornhill, 2012, p. 378). This allows a certain possibility to vary the questions while conducting the interview.

To investigate the complex relations between the subjects within the financial system of municipalities, the semi-structured interview is a mirror of the research questions and objectives. However, it is open enough to handle the different types of interviewees and their specific professional context. The aim of these research interviews is to collect arguments for and against the application of the SCM in local management and to use these arguments in the following legal discussion. It is necessary to give the interviewees a short introduction into the motivation of this research and the intentional background of the interview. With a better understanding of the aim of this research, the interviewees will be able to arrange the questions better in their professional context and the utility of the answers will be improved. The essential statements should become summarized at the end of the interview once again. This leads to the following semi-structure of the interviews:

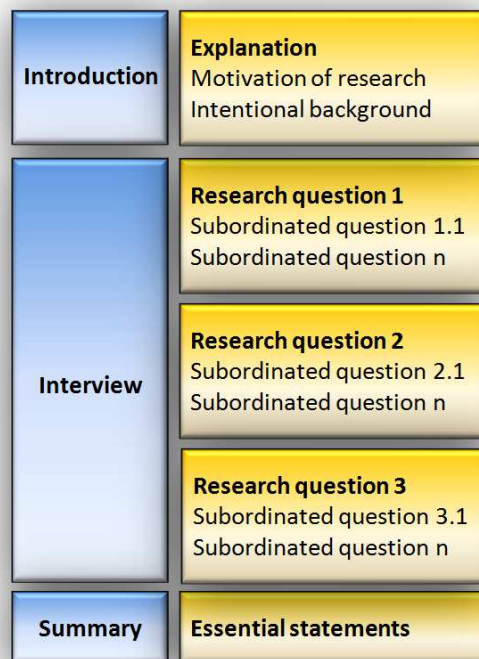


Figure 25: Semi-structure for the institutional interviews (own elaboration).

The semi-structured interview guide with the concrete questions is added to this thesis as appendix A2.

III.3.1.2 Preparation of interview data

Once the researcher has started to collect data, he or she will need to prepare these data for analysis. The transcription of audio-recorded or handwritten interview notes is one preparation reproducing a written and word-processed account using the actual words from the interview (Saunders, Lewis & Thornhill, 2012, p. 550). The structure of the interview guide oriented at the three research questions also gives the written transcriptions a clear structure. In this research there is no necessity to use methods to quantify the qualitative data. Nevertheless, qualitative data analysis needs to achieve a balance between providing necessary contextual descriptions and presenting analytical findings (Saunders, Lewis & Thornhill, 2012, p. 563).

Although many approaches are viable for a qualitative data analysis, there are two main strategies of qualitative data analysis that are the most frequently cited approaches: analytic induction and grounded theory (Hycner, 1985). Analytic induction is an approach to the analysis of data in which the researcher seeks universal explanations of phenomena by pursuing the collection of data until no cases that are inconsistent with a hypothetical explanation of a phenomenon are found (Bryman & Bell, 2011, p. 575). An analytic induction helps to explain a found phenomenon by analyzing the particular collected data. But because the selection of the interviewees and the structure of the interview guide are systematically developed, the analysis of the interviews is less phenomenological than content-oriented. The SCM stakeholders were interviewed because of their profession and their function in the SCM-relevant institutions. The person and/or their personality is not in the foreground, rather the focus is on the opinion and point of view of the represented institution. It is necessary to interpret the statements of the interview partners not only on in their contents, but also to analyze them before their respective personal and professional background. To put the interview in a personal and intentional context, the interview analysis starts with the 5-W-questions.



Figure26: The five W-questions as method of interpretation
 (Author's illustration based on: http://www.teachsam.de/arb/arb_tinh1.htm).

This introduction into the interview analysis helps to examine the data beyond the conversational data (Coffey & Atkinson, 1996). In addition to this reflection on the personal aspects of the interviewees, this research is not to explain a found phenomenon but to find new answers for open research questions. Especially the “How-question” is not covered in this 5-question-approach. Therefore, analytic induction is not the suitable method of analysis for the qualitative interviews described above. The grounded theory approach is appropriate.

II.3.1.3 Grounded theory approach

By far, grounded theory has become the most widely used framework for analyzing qualitative data since 1967 when Glaser & Strauss created this approach. In its most basic incarnation, grounded theory has been defined as theory that was derived from data “systematically gathered and analyzed through the research process” (Bryman & Bell, 2011, p. 576). In the grounded theory approach, data collection, analysis, and theory stand in close relationship to one another (Strauss & Corbin, 1998, p. 12). Thus, two central features of grounded theory are that it is concerned with the development of theory out of data and that the approach is iterative or recursive, meaning that data collection and analysis proceed in tandem, repeatedly referring back to each other (Bryman & Bell, 2011, p. 576).

If the research questions ask for legal conditions, methodological framework and organizational implementation, then the interview analysis should deliver answers to these topics. The interview analysis should pursue those items that are important for these research questions. The primary aspect of this process is the coding, where data is broken down into component parts that are given names (Bryman & Bell, 2011, p. 578). The coding is one of the most central processes in grounded theory. This coding entails reviewing transcripts or notes and giving labels or names to component parts that seem to be of potential theoretical significance (Charmaz, 1983, p. 186). In their grounded theory approach, Strauss & Corbin (1990) distinguished between three types of coding practice:

- *Open coding*: Categorizing data, broken and examined before, yielding new concepts (Strauss & Corbin, 1990, p. 61)
- *Axial coding*: New ways of putting broken data together to detect interactions and causes (Strauss & Corbin, 1990, p. 96)
- *Selective coding*: Finding of data categories and their further refinement and development (Strauss & Corbin, 1990, p. 116)

In this research about the SCM transferability into municipalities, the categories are determined by the three research questions in the interview guide about the legal, methodological, and organizational aspects. Therefore, if this research is about investigating answers for these three aspects of municipal SCM transferability, the different data fragments are put back together in new ways after an open coding by making connections between the categories. From a municipal point of view, this coding process within the grounded theory approach is an axial process oriented at the three research questions.

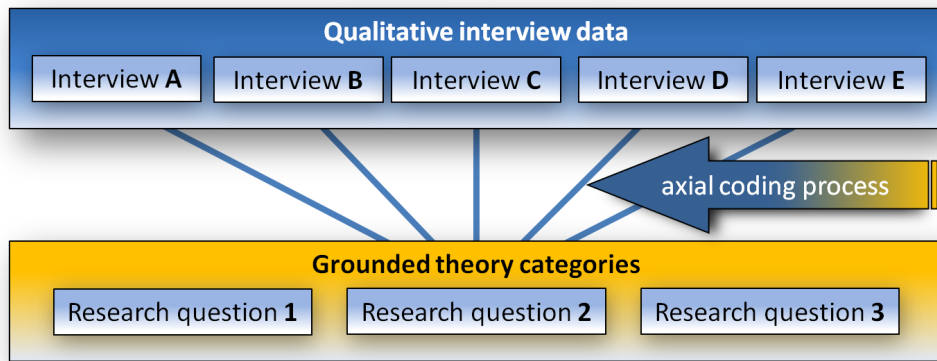


Figure 27: Axial coding process of grounded theory (own elaboration).

Regarding these categories, all interview data should be analyzed for particular statements concerning the different research questions. If there are similar statements from different interviews regarding the same item, then the interview text is deconstructed and the fragments are re-categorized concerning these similar items. In the next step, the qualitative material is analyzed for content with parallel and common ideas. By generalizing the analyzed citations from different interviews, the outcome will result in one generalized statement to one special item. The coding process is composed of the following steps:

Step	Coding procedures
1	Collecting of statements of all interviewees concerning similar items
2	Listing of all literal citations from the different interview data
3	Generalization of the literal citations to their basic content or message
4	Aggregation of the generalizations to one statement per item

Table 22: Four steps of axial coding process.

This interview data analysis will be undertaken in one table for each item:

Interview	literal citation	generalization	statement X
A	" ... "		
B	" ... "		
C	" ... "		
D	" ... "		
E	" ... "		

Table 23: Statement derivation by interview analysis coding.

This axial coding process within a grounded theory approach leads to emerging hypotheses and statements from the interviews, which have to be discussed in the later hermeneutic text analysis. The interview analysis ends with a reflection of the developed statements overall: Is the coded statement suitable for the interview, and suitable for the person in their personal context and professional or institutional background? This leads to the following qualitative interview analysis process:

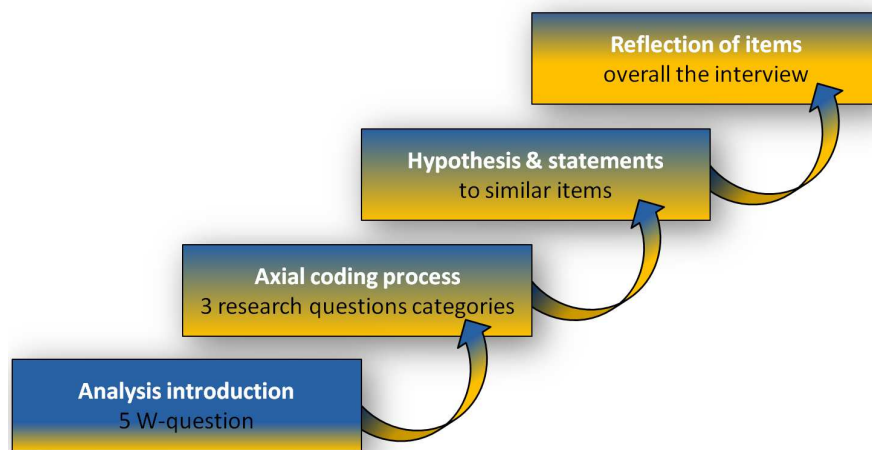


Figure 28: Interview analysis process (own elaboration).

III.3.2 Reflective presentation

After collecting qualitative data, the next step is the possibility for the author to present this research project to a professional audience. In the context of the author's professional background he joined the "Arbeitsgemeinschaft für wirtschaftliche Verwaltung e.V. - AWV" (www.awv-net.de). The AWV is a professional platform designed to improve public and business services by encouraging networking between the public and business sector. With particular regard to helping middle-sized businesses in Germany, the AWV gives a platform to improve the modernization of public administration and to decrease bureaucracy. As a public administration practitioner, the author visited the AWV working group 1.3 as a voluntary member. On the occasion of one of these meetings the author discussed the topic of his research with the project manager of the working group *Dr. Petra Pfisterer*. Because of the close relationship of this research to the topics of

the AWV working group 1.3, Dr. Pfisterer invited the author to do a presentation about the results of this thesis so far.

The meeting protocol is the object of the analysis. As written text, the data analysis of the protocol of the reflective AWV presentation basically follows the same ideas like the qualitative interview analysis as described above (see sec. III.3.1). But differing from the interview texts with a greater volume, the AWV protocol contains only two sides of written text with 753 words (appendix A3). No preparation of data was necessary as previously described for the interview analysis. As arranged with Dr. Petra Pfisterer, no literal protocol existed. Rather, it consisted of a concentrated listing of critical amendments of the audience to the author`s presentation. The discussion about choosing possible strategies of qualitative data analysis is irrelevant in this case. For additional argumentation regarding the SCM, this thesis must consider that these AMV amendments did not originate with Dr. Petra Pfisterer personally, but from anonymous AWV members coming from the discussion in the AWV meeting. So the amendments of the AWV protocol will be analyzed in a similar way of text analysis like in the interview analysis.

III.3.3 Cross case analysis

In addition to the collected data from the institutional interviews and the reflective presentation, this research must review the existing sources. As a result of the literature review, various practical projects emerged that addressed concrete experiences of SCM applications by several attempts of ex-ante cost estimation in public administration (see sec. II.5.4.5). The research results of these projects will be analyzed by a cross-case analysis.

III.3.3.1 Types of projects

As mentioned in the literature review, there are 13 relevant project reports about the application of the SCM within the context of public administration. These are listed in order by their year of publication:

No.	Institution	Project	Year
1	IfM	Cost estimation in selected business branches	2006
2	Hoffian et. al.	Gender equality in employment law	2007
3	Fischbach et. al.	Administrative costs of the new EHUG	2007
4	NRCC	Effects of ELENA to economy, citizens and public administration	2007
5	NW Consult	Selected local administration processes	2008
6	FHM	Municipalities as victims of administrative burdens	2009
7	Walkenstik	Costs of law about restaurants in Thuringia	2009
8	NRCC	Easier to household benefits	2009
9	NRCC	Easier to parents money	2009
10	FHM	Administrative costs of the EU soil protection act	2010
11	NRCC	Easier to education grants	2010
12	NRCC	Immigration process of foreign professionals	2011
13	Bertelsmann	Executive costs in public tax administration	2012

Table 24 = Table 12: Projects about SCM application in public administration.

For a better understanding of these reports, the analysis starts with a differentiation of the types of reports. A differentiation of the reports allows for classification of the quality of the reports and is the first step of report analysis. There are two important aspects that have direct impact of the relevance of these SCM reports for this thesis.

- *Target group:* The more the project deals with specific municipal problems rather than focusing other parts of public administration the more relevant is the found data analysis.

- *Depth of investigation:* The more the project is done like a systematic scientific research rather than a report about a practical SCM application, the more relevant is the found data analysis.

Therefore a type differentiation of the found SCM reports is done by these two criteria:

	Aspect	Criteria
1	Target group	Municipalities or other public administration
2	Depth of investigation	Scientific or practical

Table 25: Type differentiation of SCM reports.

This led to the following analysis of different kinds or types of project reports to be analyzed in order of the quantity:

	Municipal	Public administration
Scientific research	1	4
Practical application	6	2

Table 26: Quantity of different types of SCM reports.

This first step of a more quantitative analysis of the SCM reports shows that there is only one report that is scientifically done with a special focus on municipalities.

III.3.3.2 Systematic Cross Case Analysis

A variety of assumptions and different suggestions exist about how to determine compliance costs for the executing of laws. These proposals include collected data and some basic conclusions. This research is not about performing an additional experiment to test another method for the local applicability of the SCM. This research seeks a general framework for it and a method to develop new proposals for a SCM application. Therefore, the existing models must be analyzed. An analysis that examines themes, similarities, and differences across cases is referred to as a cross-case analysis, which is a qualitative methodology widely used in social science

(McGuiggan & Lee, 2008). Like a traditional meta-analysis, a cross-case analysis is designed with the presumption that there were many small-scale studies, chiefly evaluations that gathered some common data; however, these individual studies were too limited for reliable generalizations. Driven by the wish to overcome this problem, a meta-analysis guided the pooling of data from the studies (Noblit & Hare, 1988, p. 15). Pooling such data in a cross-case analysis is primarily of a comparative nature. Based on the work of Rihoux & Lobe (2009, p. 229), this comparative process is detailed in four steps to reduce the common information of different cases to relevant data and to review them in a feedback loop:

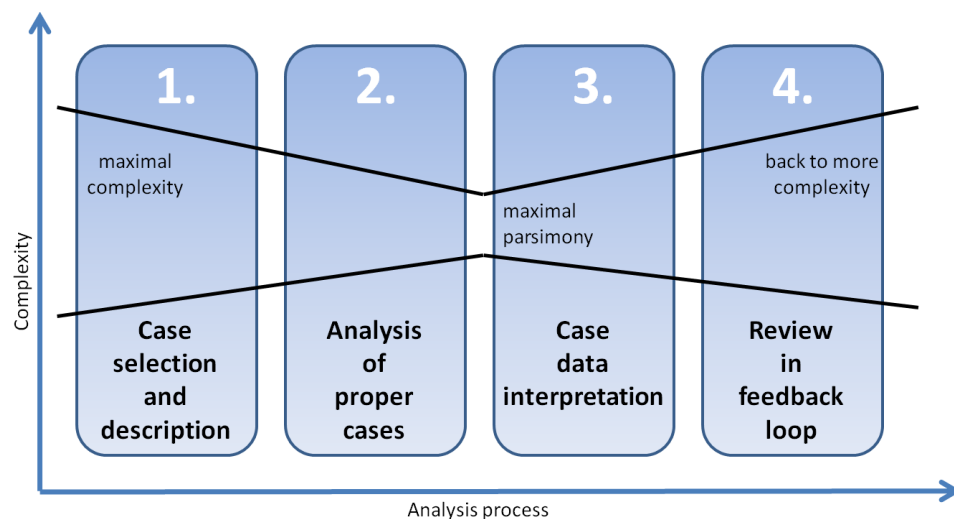


Figure 29: Cross case comparative process, own elaboration after: Rihoux & Lobe (2009), p. 229.

Yin (1994) suggested two general strategies for analyzing single or multiple case studies. The preferred strategy uses theoretical propositions that guide the study and data collection to focus on specific data. The second strategy develops a descriptive framework for organizing the case study data. In this study about the transferability of a transferability of the SCM into municipal areas, the goal is to find answers for the research questions. Therefore, also the cross-case analysis follows Yin's (1989) preferred strategy and focuses on specific data concerning the research questions. Each research question establishes a specific area of enquiry and all cases are analyzed within this area. Following the structure given by these three research questions, the cross-case analysis examines each case for separate parts to each of these questions.

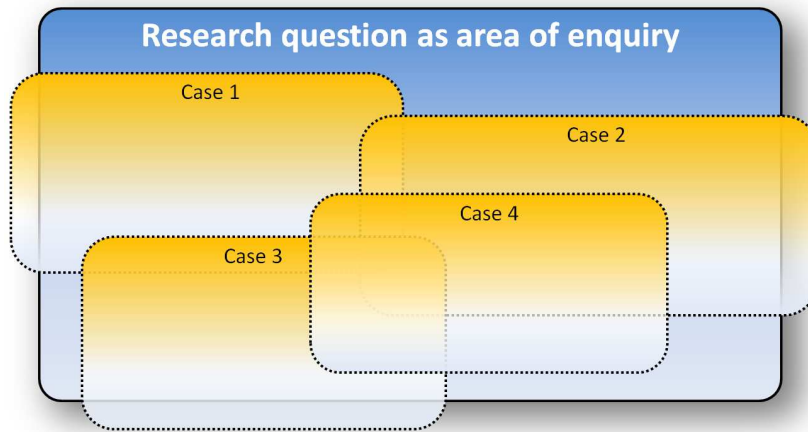


Figure 30: Sampled case impetus, own elaboration after: McGuiggan & Lee (2008), p. 4.

After these data analysis the cases must be put together. As the studies are reviewed, the points of similarity, overlap, or connections are discerned. For a narrative meta-analysis, Noblit & Hare (1988, p. 38) proposed four ways to relate the cases to each other:

- Putting different things in obvious opposition
- Sampling studies with roughly similar things
- Discussing opposing studies
- Sampling studies with a line of arguments

For each research question, the cases are put together like the pieces of a jigsaw puzzle in order to create a new and complete picture. Combining the approach of a cross-case analysis with the narrative meta-analysis of data, and the three research questions of this study, led to a systematic cross-case analysis process for existing SCM projects and reports:

- *Step 1* is the selection of the reports and cases about the application of the SCM within the field of public administration (see sec. II.5.4.5)
- *Step 2* is a cursory relevance screening of each case about its relevance for each of the three research questions

	SCM project X	SCM project Y	...	SCM project Z
Research question 1	X	X		
Research question 2	X			X
Research question 3		X		X

Table 27: Cursory relevance screening of SCM reports

- Step 3 is a narrative meta-analysis following the proposals of Noblit & Hare (1988, p. 38). Only the data from the selected relevant SCM reports are put together by sampling and discussing different or similar data in the reports. Where it is possible, these data are sampled to abstract statements concerning each research questions as an area of enquiry. The sampled data from different cases are combined to generate one common statement concerning each of the three research questions.

		SCM project X	SCM project Y	SCM project Z
Research question 1	Statement A			
	Statement B			
	Statement C			
Research question 2	Statement D			
	Statement E			
	Statement F			
Research question 3	Statement G			
	Statement H			
	Statement I			

Table 28: Narrative data analysis of relevant SCM reports.

- Step 4 is a review of all statements about their contribution to a possible answer to the relevant research.



Figure 31: Systematic Cross Case Analysis of relevant SCM report.

III.3.4 Legal text analysis

The analysis of relevant literature and texts for this research as discussed in the literature review (see sec. II.4.7) represents the main body of investigation. According to Kriele's previously discussed theory (see sec. III.1.7) about the assumption of precedents (1976, p. 243), former court decisions are the basis for all relevant discussion about legal problems and questions. But the legal conditions are only one of the three research questions that ask also for methodological frameworks of compliance costs and organizational proposals for a functional implementation of the SCM in the municipal area.

III.3.4.1 Types of documents

Generally speaking, the interpretation of documents is the most common approach to the qualitative content analysis. However, in business and management, it remains less frequently used than quantitative content analysis (Insch, Moore & Murphy, 1997). The approach adopted by social constructivism indicates that meanings are dependent on human cognition and individuals' interpretations of the events that occur around them. Because meanings in qualitative research depend on social interpretation, qualitative data is more likely to be ambiguous, elastic, and complex than quantitative data. Therefore, analysis and understanding of these data needs to be sensitive to these characteristics to be meaningful (Saunders, Lewis & Thornhill, 2012, p. 546). To understand the meaning of such content, the analysis has to start by a differentiation of the types of chosen documents.

As outlined in the literature review, there are 63 relevant sources and 25 jurisdictions for the further discussion of this research, especially the text analysis. Based on Kriele's theory (1967) about the assumption of precedents, the court decisions are particularly important for the starting point of the text analysis. Relative to the discussion about a possible methodological framework for the definition of compliance costs, 13 practical projects exist that report on concrete experiences about ex-ante cost estimation in public administration (see sec. II.5.4.5). These documents and their context must be considered when the content analysis asks for their meanings and relevance for this research. Categorizing the documents by type is accomplished using the followings criteria:

	Aspect	Criteria
1	Message	Reporting or scientific contribution
2	Depth of investigation	Scientific or practical
3	Formal aspect	Article or book
4	Legitimation	Classically published or grey content

Table 29: Type differentiation of documents.

This led to the following analysis of different kinds or types of documents to be analyzed in order of the quantity:

	Type of document	Quantity
1	Project reports	13
2	Scientific articles	19
3	Court decisions	25
4	Books	19
5	Manuals and compilations	7
6	Practical articles	3
7	Speaking manuscripts	3
8	Grey sources	1

Table 30: Quantity of different types of documents.

III.3.4.2 Hermeneutic interpretation

In addition to a semiotic analysis of coded symbols and a historical analysis of older documents and artefacts of organizations, hermeneutic interpretation is an appropriate method for understanding the meaning of written qualitative data material. The central idea behind hermeneutics is that the analysis of a text must seek to bring out the meanings of a text from the perspective of its author. This will entail attention to the social and historical context within which the text was produced (Bryman & Bell, 2011, p. 563). Philosophical hermeneutics refers primarily to the theory of knowledge as outlined by Martin Heidegger in his main work "Being and time" (1927) in which he tries to give a new philosophical foundation to the ideas of ontology. Heidegger shifted the focus from interpretation to existential understanding, which was treated more as a direct, non-mediated, and more authentic way of being in the world than merely as a way of knowing. Heidegger's work is viewed as the primary basis for modern philosophy, especially modern hermeneutics. The ontological being has a certain pre-understanding of itself, the being itself and the being in its real context. According to Heidegger, there is "no way back beyond this being," beyond this so-called pre-understanding. If this study speaks about prejudices, this means the pre-understanding will be based on the interpretation provided by Heidegger. Within the legal framework of this study, this pre-understanding will be replaced by the term of prejudice.

However, there must be a future world that is focused on the understanding. Findings of these states of being and the pre-understanding could be discussed in texts and the reciprocity between text and context is part of what Heidegger (1927) called the hermeneutic circle. The idea of a hermeneutic circle was first published by the German philosopher Friedrich Ast (1808, p. 179) and developed by Heidegger and his scholar Hans-Georg Gadamer (1965). Gadamer asserted that methodical contemplation is opposite to experience and reflection. We can reach the truth only by understanding or mastering our experience. According to Gadamer, our understanding is not fixed but is changing and always indicating new perspectives.

Unfolding the nature of individual understanding is of primary importance. Following his teacher's hermeneutic ideas, Gadamer pointed out that prejudice is an element of our understanding and is not without value. Prejudice is a theoretical-ontologically necessary part of the process of understanding (Gadamer, 1965, p. 252). The process of understanding is a development of meanings influenced by the historical or non-historical context and circumstances. Gadamer pointed out this process in his hermeneutic circle.

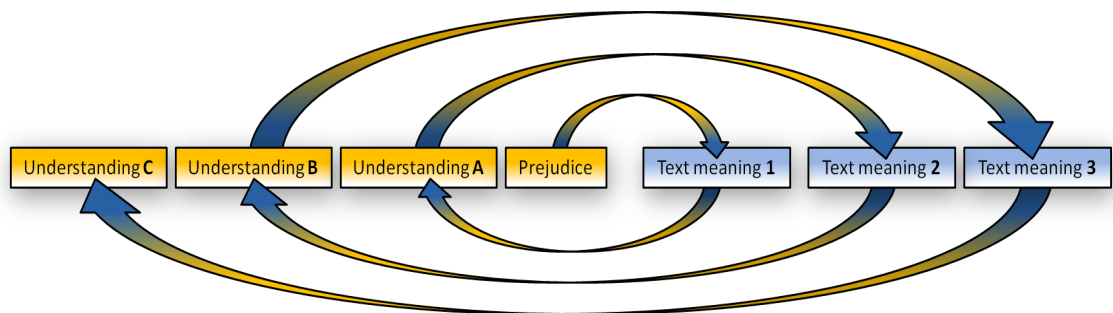


Figure 32: The hermeneutic circle, own elaboration after: Ast (1808) and Gadamer (1960/2001).

Based on this work, Phillips & Brown (1993) identified an approach to the interpretation of documents that they described as a critical hermeneutic approach. This more formal approach of Phillips & Brown entailed the examination of the advertisements in terms of three “moments”:

- The *social-historical moment*, which involves the examination of the producer of the text and the context in which it is produced (1993, p. 1558).
- The *formal moment*, which involves the structural and conversational aspects of the text (1993, p. 1563).
- The *interpretation-reinterpretation moment*, which involves the synthesis of the other two moments (1993, p. 1567).

These “moments” of critical hermeneutics by Phillips & Brown defined a differentiation between formal, contextual, and teleological aspects of interpretation that resembled the previously discussed four “canones” of legal text interpretation given by Savigny (see sec. III.1.4). The terms of “canones” is also used

by Betti (1967) who proposed four main criteria called “canones” that should guide the hermeneutic process:

- *Canon 1: The hermeneutic autonomy of the object*, which means the understanding of texts in terms of itself, e.g. a grounded theory study on its own inherent criteria (Alvesson & Sköldbberg, 2009, p. 105).
- *Canon 2: The coherence of meaning*, which gives the hermeneutic two applications: First a literal sense of words and second the area of meaningful action (Alvesson & Sköldbberg, 2009, p. 106).
- *Canon 3: The actuality of understanding*, which means the necessary reflection of a prejudice in the actual circumstances (Alvesson & Sköldbberg, 2009, p. 106).
- *Canon 4: The Correspondence or adequacy of meaning*, which asks the researcher for a kind of “resonance” with the object of investigation and leads him to a new stage of empathy or what Betti called “Verstehen” (Alvesson & Sköldbberg, 2009, p. 107).

In these four “canones” Betti brings together the essential aspects of a hermeneutic text analysis:

- The prejudice as the point of “no way back beyond” (Heidegger, 1927)
- The primary concentration on formal and systematic aspects of the text (inherence and coherence)
- The interdependent elements of text meaning and researchers understanding (hermeneutic circle)
- The new understanding as a result of these reflexive processes (ontological impact)

III.3.4.3 Hermeneutic in legal application

The research questions of this thesis deal with the legal conditions, the understanding of municipal compliance costs, and the implementation of the SCM in the legislation process. For legal research as a text-based social science, the hermeneutic seems to be the right method. Some scholars argue that law and theology are particular forms of hermeneutics because of their need to interpret legal tradition or scriptural texts. Moreover, the problem of interpretation has been central to legal theory since the first attempt to establish legal rules into written law, especially by the first "Body of Civil Law" ("Corpus Juris Civilis") issued from 529 to 534 A.D. by order of Justinian I, the Eastern Roman Emperor.

The University of Bologna gave birth to a "legal Renaissance" in the 11th century when the Corpus Juris Civilis was rediscovered and systematically studied and interpreted. Since then, interpretation has always been at the centre of legal thought. One of the most esteemed legal philosophers, Friedrich Carl von Savigny, made significant contributions to general legal hermeneutics and proposed the four canones for the interpretation of law (see sec. III.1.4). Therefore, it is logical that hermeneutics are well applied within the philosophical process of understanding and interpreting legal sources and texts. Methodologically, legal hermeneutics are not a special case, but fitted to restore the full scope of the hermeneutical problem and so to retrieve the former unity of hermeneutics in which jurist and theologian meet the student of the humanities (Gadamer, 1965).

If there is no basic difference in the understanding of historical or theological sources and legal texts, the hermeneutic "moments" or "canons" must also have a suitable application in legal sciences. In legal sciences, the hermeneutic circle appears in the relationship between questions and answers via the understanding of applied norms. This means that without a pre-understanding about the necessity of regulation, the literal formulation of the particular norm cannot express what it is made for: a fair solution of social challenges (Esser, 1970, p. 134). Kriele said (1976, p. 213) that it is never enough to find a meaning of law only by lingual and

literal interpretation. In addition, Gadamer (1965, p. 252) made clear that the prejudice about an object, even a legal one, is a necessary condition for the understanding of its teleological intention. In a legal context, the hermeneutic understanding is the interpretation of texts, knowing about already understood texts (Esser, 1970, p. 138). In words of Habermas (1967, p. 157): “In the moment the understanding regards traditions, they are continued.”

III.3.4.4 Integration of data and text analysis

Regarding the described reflexive process of a hermeneutic text analysis, this research needs a methodological idea for the integration of the collected data. The analysis of the interviews by a grounded theory approach will produce certain statements and possible answers according to the semi-structured interview guide. In addition to these interviews, the reflective presentation at the AWV raised new questions and arguments that must be regarded in the further discussion. The cross-case analysis will also contribute some ideas and aspects by the narrative statement analysis according to the axial coding process oriented at the categories of the three research questions. If the data collection and analysis yield certain ideas, statements, and proposals, then the results must be incorporated into the hermeneutic process.

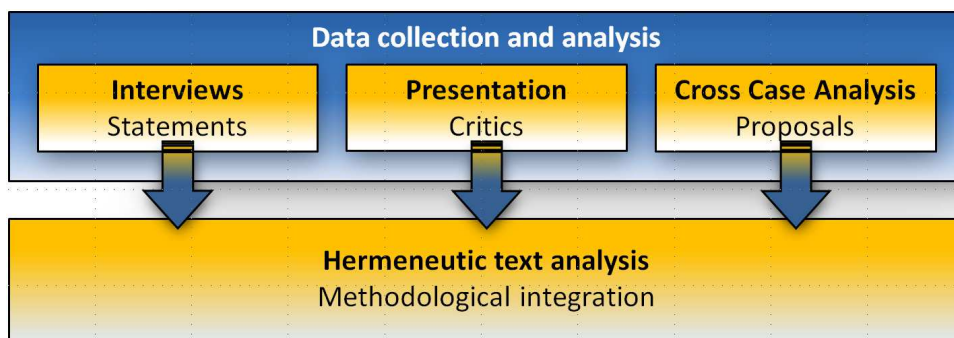


Figure 33: Data Integration into the hermeneutic text analysis (own elaboration).

The essential process of connecting the data analysis of grounded theory into the legal hermeneutic process is to reflect the grounded hypothesis as part of this hermeneutic spiral. (Alvesson & Sköldberg, 2009).

- *Step 1* is the point of “no way beyond,” *the pre-understanding or the prejudice* of the researcher about a fair solution for the research questions. This pre-understanding is the author’s views and opinions that emerge from the analyzed interviews, presentation protocol, and the cross case analysis before starting the legal text analysis.
- *Step 2* is the integration of the *concrete statement* as a coded data from the interview, presentation and cross case analysis. This statement is *categorized as one of the “canones”* of legal interpretation. Following the proposed “canons” of Savigny these are etymological, historical, systematic, or teleological statements. At this stage of analysis, the type or kind of “canon” or legal interpretation given by the interviewee statement does not matter. But the hermeneutic process will always start with these interview results.
- *Step 3* is the *comparison with other sources*. According Krielle’s theory of the assumption of precedents (see sec. III.1.7), this comparison must start with the particular jurisdiction. The argumentation found in these court decisions is discussed and reviewed by the different types of documents found in the literature review (see sec. III.3.4.1). If there is a certain argument from these documents in a legal text analysis, this argument must also be recognized as one of Savigny’s four “canones”.
- *Step 4* is the review of the *researchers own opinion*. The qualitative analysis leads to a personal review of the author itself. He must develop an internal argument based on the extracted and coded data to come to a personal opinion.

- *Step 5* is the *proposal for this research*. Following his opinion, the author could propose a “fair solution” for his research.



Figure 34: Argumentative data integration into text analysis (own elaboration).

Bringing together the linked research methods of deductive interview and protocol analysis, a narrative analysis of the found SCM project reports and the hermeneutic text analysis enables this study to analyze the complex topic about the aimed SCM application in a municipal area. The combination of data and text analysis following the described five steps of argumentative integration, oriented at the semi-structured interview guide, yields a systematic methodological approach that brings together the results of data analysis and legal text analysis.

III.4 Methodological summary

This research centres on social phenomena within a legal and organizational area of legislation and public administration. Therefore, the methodology of this social research is based on a social interpretivistic attitude of the researcher. However, the author does not strictly follow the derivation of methods from a philosophical point of view, but attempts to regard the three research questions of this research as a guideline also for the methodological choices. As appropriate in social research, the data are mostly qualitative. Consequently, the chosen methods follow this type of methodological approach.

The main idea of this methodology is to bring together the research approaches of organizational fields with the rules of interpretation and application of German law sciences. This approach entails conducting qualitative research using methods like interviews, professional reflections of research proceedings, or hermeneutic text analysis. However, the research must also regard the necessary rules of German legal sciences to find suitable solutions for an application of this research in Germany. In every step of the qualitative data analysis the author proposes systematic approaches and develops a methodology in which several steps interact with each other and succeed one after another. The next step of this research is to start the data analysis in all qualitative data sources: interviews, protocols, reports, and legal texts and to bring them together to possible contributions to each of the three research questions.

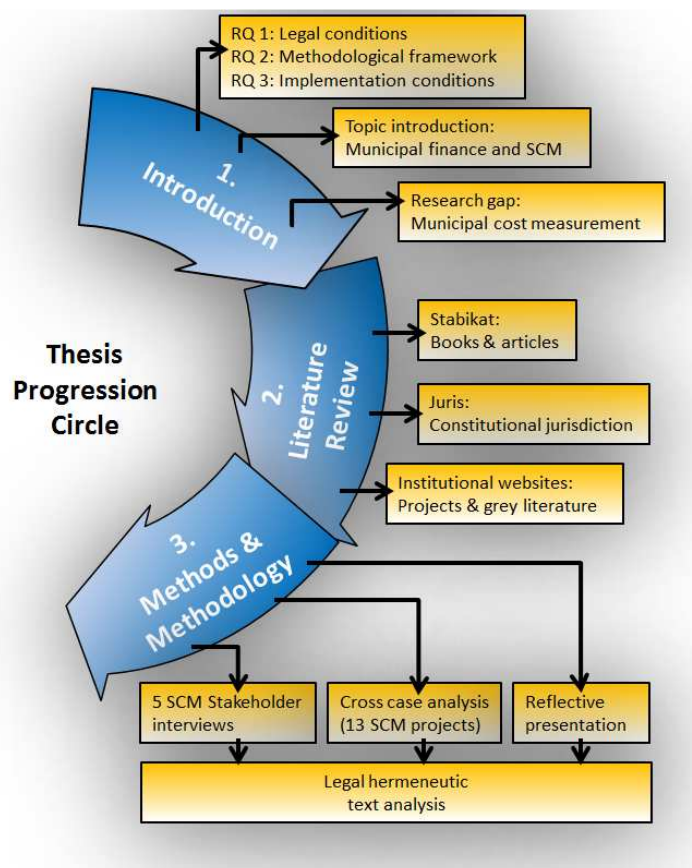


Figure 35: Thesis progression circle – after chapter III.

IV. SCM research and data analysis

The primary focus of this research is the analysis of the collected data in the order described in the research design. It starts with the interview analysis (see sec. III.3.1.4) and short protocol analysis of the reflective AWW-presentation (see sec. III.3.2.4). Followed by the cross-case analysis of the found SCM reports and projects (see sec. III.3.3.2), all results developed are integrated into the hermeneutic text analysis (see sec. III.3.4.2 and 3) of the data sources like compiled in the literature review (see sec. II.4.7).

IV.1 Interview data analysis

As previously described in detail, the interviewees were selected because of their professional experience and their function in SCM-relevant institutions. The interview analysis is divided into three parts:

1. the introduction using the five w-questions for a context description of the interviewees themselves,
2. the main part of interview analysis applying the grounded theory approach is the axial coding of specific fragments of the interviews according the three research questions and,
3. the reflection of the developed results and interview statements over the whole interview, and whether the statement is in line with the tendency of the interview at all.

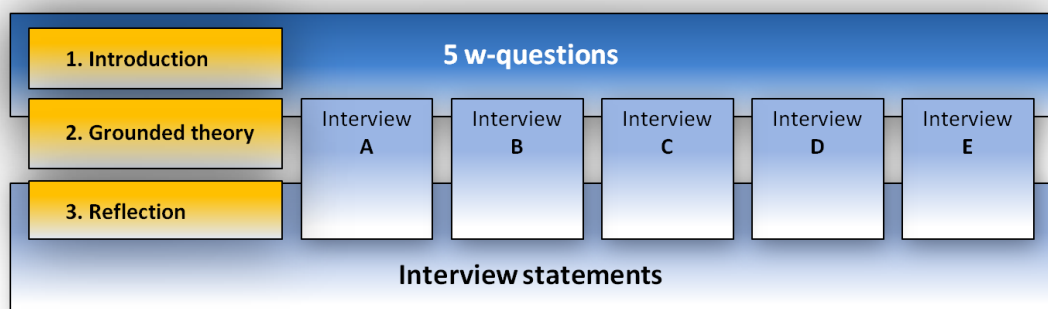


Figure 36: Three analysis parts of SCM interviews in professional context (own elaboration)

IV.1.1 Selection and access of interviewees

In addition to the specific literature discussed, the literature review revealed that there are special institutions that are important for the implementation of SCM in Germany. At first it was a matter to apply the SCM with a clear focus on the economy. Currently, these relevant institutions have also recognized the importance of the transferability of the SCM into the public administration, which may improve the overall quality of legislation – particular in the municipalities. This question is not entirely an economic question, but includes multiple aspects of legal and public administration. While general statements can be read in the existing literature, detailed questions about deeper legal problems, the methodological framework of compliance costs, or an organizational implementation from a municipal point of view are unanswered. There are some very important and relevant institutions in Germany that deal with the research of or the practical implementation of the SCM. The right addressees for these questions are the recognized institutions working with the SCM in the context of public administration. An important aspect of the selection of the interviewees was their membership in these institutions, their professional function within, and their possible influences on the implementation of the SCM in Germany. The protocol of conducting the interviews is discussed below (see sec. IV.1.2). The interviewees in these German institutions are listed in alphabetical order:

	Name	Function	Institution	Web-address
1.	Catenhusen, Wolf-Michael	Vice-President	National Regulatory Control Council, Berlin	www.nkr.bund.de
2.	Dreier, Prof. Dr. Anne	Rector	University of Applied Sciences for the Middle Sized Business, Bielefeld	www.fhm.de
3.	Konzendorf, Prof. Dr. Gottfried	Extraordinary Professor	German University of Administrative Sciences, Speyer	www.dhv- speyer.de
4.	Tebbe, Günter,	Senior Consultant	Bertelsmann- Foundation, Gütersloh	www.bertelsmann- stiftung.de
5.	Vorgrimler, Dr. Daniel	Head of division for SCM measurements	Federal office of statistics (Destatis), Wiesbaden	www.destatis.de

Table 31: Selected professional interviewees and institutions

IV.1.1.1 National Regulatory Control Council (NRCC), Berlin

Most important for the application of the SCM, is the implementation of the National Regulatory Control Council (NRCC) in Germany in 2006 by the German federal government. The central discussion and action point created by the federal government addressed reducing administrative burdens by using the SCM in Germany. The NRCC was implemented by the German government to watch over the quality of federal legislation in Germany. Within the German legislation process, the NRCC acts as a kind of “watchdog” reviewing whether the ministries make clear what costs an initiated legislation will have in its further execution. For this cost estimation, the responsible ministry has to use the SCM (Deutsche Bundesregierung, 2009).

The author was granted access to this important institution by Dr. Dominik Böllhoff, the chairman of the NKR-secretary. The author knows Dr. Böllhoff personally by a former professional cooperation about the introduction of the unified telephone number 115 for the whole public administration in Germany. Dr. Dominik Böllhoff introduced the author personally to Wolf-Michael Catenhusen, the vice-president

of the SCM. This personal contact took place at the International Regulatory Reform Conference in January 2013 in Berlin, held by the federal government of Germany. A few weeks later, the author had the possibility to conduct the interview with Wolf-Michael Catenhusen in the office of the NRCC in Berlin.

IV.1.1.2 University of Applied Sciences for the Middle Sized Business, Bielefeld

The University of Applied Sciences for the Middle Sized Business (FHM) in Bielefeld is the only university with an established special institute for the reduction of bureaucracy costs in Germany. The FHM is also the editor of the first SCM-Manual in Germany and edited the first ex-ante-measurement of expected administrative burdens of a new directive of the European Union about soil protection. In addition, municipalities were objects of a research project that investigated the administrative burdens in local administrations given by federal legislation. Because of these concrete research experiences about the application of the SCM, the FHM is an important addressee for the research interviews.

Based on the author's former profession as head of the business service of the administration of Kreis Lippe, he had close contact to the FHM and its institute for middle-sized business in the district of Lippe (www.fhm-impl.de). The director of this institute introduced the author to Prof. Dr. Anne Dreier, the rector of the FHM. While working on securing an interview date with the office of Prof. Dr. Anne Dreier, the author and Prof. Dr. Anne Dreier both attended the International Regulatory Reform Conference in January 2013 in the Federal Foreign Office in Berlin. Through contact at the conference in Berlin, a personal meeting was arranged for conducting the interview.

IV.1.1.3 German University of Administrative Sciences, Speyer

The postgraduate University of Administrative Sciences in Speyer (DHV) is Germany's centre of competence for administrative sciences. The university was founded by the federal government of Germany and the 16 federal states after the

second world war and was modelled on the renowned French “Ecole nationale d`administration” (www.ena.fr). Its obligation is the education of the incoming leading personnel in every sector and level of the public administration in Germany. The DHV is the foundation of all relevant research and discussion regarding public administrative topics in Germany. To date, within the research field of better legislation, it was Prof. Dr. Gottfried Konzendorf who published the most relevant and fundamental literature about the impact assessment system in Germany (Böhret & Konzendorf, 2000). Today Prof. Dr. Gottfried Konzendorf is an extraordinary professor of the DHV, who is working also as head of division in the interior federal ministry in Berlin. The second supervisor introduced the author to a former colleague of Prof. Konzendorf in the ministry. This former colleague brought the author in contact with Prof. Dr. Gottfried Konzendorf. So the author got the possibility to make an interview with Prof. Dr. Gottfried Konzendorf in the interior ministry of Germany in Berlin.

IV.1.1.4 Bertelsmann-Foundation, Gütersloh

The Bertelsmann-Foundation is one of the largest private operative foundations in the world and employs over 100.000 people. It was founded by Reinhard Mohn, who has led the Bertelsmann media concern for more than 40 years. In keeping with the longstanding social commitment of its founder, the Bertelsmann Foundation is dedicated to serve the common good. Its work is based on the conviction that competition and civic engagement are essential for social progress. It carries out only its own project work and its centre is based in Gütersloh. In recent years, the foundation has undertaken a large project about cost estimation of legislation. The project results of the Bertelsmann Foundation have had considerable impact all over Germany and also outside its frontiers (Bertelsmann Foundation, 2009, 2012). Because of the author’s former position as a free working consultant for the Bertelsmann Foundation, he had contact with the administrative division of the Bertelsmann Foundation. One of the former colleagues introduced the author to Mr. Günter Tebbe, who had served as the treasurer of the City of Herford, and currently works as a senior consultant for the Bertelsmann

Foundation. He is the central expert in such projects of the Bertelsmann Foundation that deal with local public administrations. He was willing to grant an interview with the author in Gütersloh about the practical aspects of a possible integration of the SCM into the financial system of local administration.

IV.1.1.5 Federal Office of Statistics (Destatis), Wiesbaden

Destatis is the largest public institution in Germany for collection, regeneration, analysis, and publication of statistic data. Within the well-regulated legislation process on the federal level in Germany, every ministry has to document the compliance costs of a new law (§ 44 IV GGO, 2011). In this context, Destatis is important because it executes the concrete measurements of planned legal projects by order of the federal ministries. It is also responsible for the SCM measurements in the different national authorities, and in particular, the German federal government and the NRCC. No institution in Germany has more competence about the practical and procedural aspects of the SCM measurements in the German legislation process. The head of this division, which is responsible for these SCM measurements, is Dr. Daniel Vorgrimler. My second supervisor introduced the author to Dr. Daniel Vorgrimler. So it was very easy to arrange a personal date for an interview at Dr. Vorgrimler`s office in Wiesbaden. It was an extensive interview and we had the possibility to discuss my research topics during the formal interview and at and additionally over lunch.

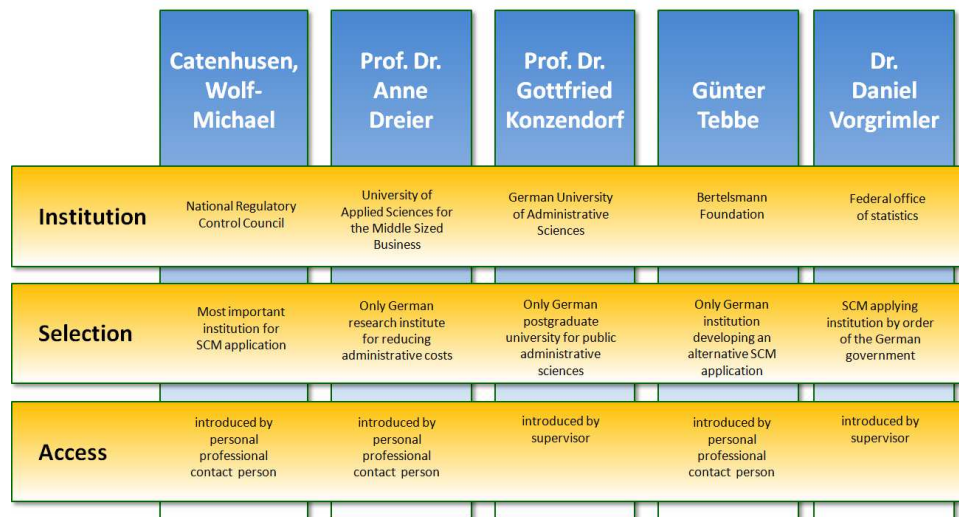


Figure 37: Selection and access of institutional interviewees (own elaboration).

IV.1.2 Conducting the interviews

While it was fairly easy to select the interviewees oriented by objective criteria, the next step was to conduct these interviews in reality. The characteristics of the interviews done for this thesis were based on the professional standing of the selected interviewees. The interviewees are recognized public figures. While this standing gives the statements coming from the interviews a high level of significance, it was difficult to contact these individuals. The difficulty of contacting the selected interviewees continued in further communication about legitimizing the results of the interviews. This process of interview conduction can be divided into three phases that were more or less problematic for the researcher:

IV.1.2.1 Phase A: Preparing the interview

To get in contact with the interviewees, the author was introduced by different interceders (1). The author knows these interceders personally via professional contact. One important interceder is the author's second supervisor in Berlin. These interceders are in professional contact with the selected interviewees. The first step was always to be introduced by a personal announcement to the interviewees. After these announcements, the author made contact by telephone, mostly arranged in advance as a telephone date scheduled by the secretary of the

interviewees (2). The first telephone contact was intended to give a preliminary explanation about the research project and to request a personal interview. After contacting the interviewees by telephone, the author sent the interviewees a standardized e-mail with the same content (3):

- Introducing information about the research project
- Semi-structured interview guide
- Question for willingness to conduct the interview

It was necessary to give the interview partners a short introduction into the motivation of this research and the intentional background of the interview. All interviewees answered by e-mail that they were willing to conduct the interview. After this stage of basic arrangements, the interview process moved into the organizational phase B.

IV.1.2.2 Phase B: Executing the interview

The next step was the arrangement of a date for doing the interview (4). This was difficult because of the public status of the selected interviewees. In general, the interviewees were willing to welcome the author into their office. In only one case, it was so difficult to find a date that the author accepted the interviewee's proposal to meet on the occasion of a conference attended by the interviewee and the author. This location was not as appropriate as the other meetings because an international conference does not allow for the necessary privacy. However the author decided to accept. The location was proposed by the interviewee, was not as intimate as a private office. Furthermore, the conference's topic was the same as the topic of this thesis, which helped boost the interviewee's interest in discussing this research project.

	Catenhusen, W.M.	Dreier, Prof. Dr. A.	Konzendorf, Prof. Dr. G.	Tebbe, G.	Vorgrimler, Dr. D.
location	NRCC office, Berlin	Public side room of IRRC, Berlin	FMI office, Berlin	Foundation office, Gütersloh	Destatis office, Wiesbaden
date & time	Wednesday, 27.02.2013, 9.05 to 10.15 h	Thursday, 31.01.2013, 11.05 to 12.10 h	Wednesday, 27.02.2013, 11.20 to 13.25 h	Thursday, 5.03.2013, 9.00 to 10.40 h	Friday, 15.02.2013, 11.30 to 13.10 h

Table 32: Locations, dates and duration of the interviews.

In the individual meetings, the interviewees were prepared because of the pre-information given by e-mail before the face-to-face encounter (5). Following the semi-structured interview guide (see sec. III.3.1.1), the author opened the interview by introducing himself with some personal and professional information and discussing the selection of the interviewee. This purpose of the opening minutes of conversation was not only to introduce the author as responsible and credible researcher, but also to gain the interviewees' confidence. Every interviewee understood the intention of this research and was very interested in it. It was found that explaining the intention of this research project served as the conversational bridge from the personal introduction to the semi-structured interview.

Regarding the structure of the interview guide, the author formulated the questions with the same wording for each subject. In spite of the previous preparation, it was not always possible to ask the questions in the order of the interview guide. Often the author found that the interviewee had something important to say and that he or she did not want to wait for the corresponding question. It was sometimes difficult to adhere to the structure of the interview guide. As a compromise, the author agreed to depart from the strict order of the questions, but asked the interviewee if the particular answer belonged to another following question. The author got a consensual correlation from research questions and given answers. The duration of the interviews varied. The shortest interview was with Prof. Dreier at the IRRC 2013 in Berlin, which took only one hour and five minutes. The longest interview was with Prof. Dr. Konzendorf, which lasted for more than two hours.

According to the wishes of the interviewees, the author decided not to make an audio taping of the interviews and chose to write notes about the statements of the interviewees. If the author felt that a specific statement could be very important for this thesis, then he asked once again if he could directly cite the interviewee. The transcription of the interview (6) was made by using special dictation software that allows the ability to speak into a microphone while the computer writes the text by itself (Dragon Naturally Speaking 12 by Nuance). This transcription resulted in a word-document of every interview. According to the duration of the interview the volume of word documents varied between 168 and 277 lines respectively between 1.394 and 2.251 words.

	Catenhusen, W.M.	Dreier, Prof. Dr. A.	Konzendorf, Prof. Dr. G.	Tebbe, G.	Vorgrimler, Dr. D.
lines	194	168	277	235	205
words	1.611	1.394	2.251	1.967	1.706
appendix of thesis	A2.1	A2.2	A2.3	A2.4	A2.5

Table 33: Volume and length of the interviews.

IV.1.2.3 Phase C: Legitimizing the interviews

According to the procedural agreements with the interviewees and in order to follow the ethics rules of a researcher (University of Gloucestershire, 2008, p. 5), the author gave all interview partners the opportunity to review what they had said in the interview by sending the transcribed interview via e-mail (7). Every interviewee used this possibility to make minor or major changes in these transcriptions. Finally, the author reviewed and completed the interview texts from all interviewees about the topic of this research.

In the e-mail about the review of the transcription the author asked the participants to sign a formal declaration, which allowed the author to cite the names and professional data of the interviewees in this thesis (8). Normally, the ethical rules make clear that the identity and research records of participants should be kept confidential. A departure of this rule is only possible if the participants give their

explicit permission to cite their name and data in a public research project. So only the explicit declaration of the selected interviewees legitimates the author to make a citation of their name in the thesis. After reviewing the transcriptions of their interviews, every interviewee signed this declaration and allowed the author to keep in line with the ethic rules of research (appendixes A3.1 - A3.5). In an overall view, the interview process looks like the following drawing:

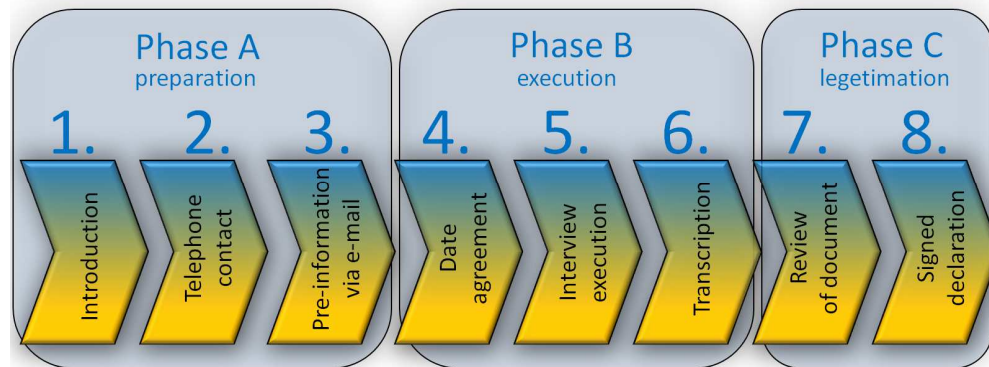


Figure 38: Three phases of interviews process (own elaboration).

IV.1.3 Context analysis of interviewees

To start the interview analysis, the interview partners were placed into their personal and professional context using the five W-questions: who, where, when, why, and what. This helps to interpret the developed statements by the grounded theory approach. While not every w-question may be suitable or helpful for the upcoming interpretation, it gives an introduction into the professional context of the interviewees and about their intention and motivation. Integrating the five w-questions with the five interviewees led to the following table, which gives a certain structure in alphabetical order to the introduction of interview analysis:

	Who	Why	Where	When	What
Catenhusen, W.M.	function	intention	place	temporal context	content
Dreier, A.					
Konzendorf, G.					
Tebbe, G.					
Vorgrimler, D.					

Table 34: Structure of interview analysis introduction (own elaboration).

IV.1.3.1 Catenhusen, Wolf-Michael

Wolf-Michael Catenhusen is the Vice president of the NRCC in Germany. The NRCC was implemented by the German government to integrate the SCM into the impact assessment system of German federal legislation. As one of the most powerful representatives of the NRCC, Catenhusen would have a general position advocating for the SCM application in German legislative systems. He had a part in initiating the “Better-to-Projects,” which also involved the municipalities. Therefore, he is familiar with the problems of an ex-ante cost measurement in municipalities. The NRCC is a federal institution; therefore, Catenhusen’s perspective on municipalities could be marked with a certain distance to the local level of public administration. From his federal position, he recognized the anatomized landscape of local administrations in Germany, and the resultant issues in articulating one’s political position from such a municipal point of view. For Wolf-Michael Catenhusen this is a general organizational problem with integrating municipalities into the federal legislative process.

The interview took place in the office of the NRCC in the governmental district of Berlin. Four weeks lapsed from the first introducing contact to W.M. Catenhusen at the International Regulatory Reform Conference in January 2013 in Berlin, to the interview conducted at the end of February 2013. The date of interview roughly coincided with the first reform of the NKRK, which mandated additional obligations of the NRCC to measure the administrative costs of legislation and the compliance costs. The historical context of the interview must be considered as it occurred within the first five-years of the NRCC becoming an operational entity. Because of the need of political self-legitimation, the press information and publications of the NRCC unfailingly reported positive results. Only a few weeks before the interview the NRCC published its annual report 2012 and announced a greater engagement of the German federal states and the municipalities to get a realistic measurement compliance costs in German public administration (NRCC, 2012, p.6). There is a great interest of the NRCC to come to a closer cooperation between the federal and the local level of German administration. It must be noted that in all statements

from the interview with W.M. Catenhusen, his interest is always and in first place the success of the NRCC.

IV.1.3.2 Dreier, Prof. Dr. Anne

Since 2009, Prof. Dr. Anne Dreier has held the position of Vice-rector for the educational development of the University of Middle Sized Business (FHM) in Bielefeld. Since 2010, she is the only rector of this private university. As a social scientist, she has a great experience in marketing strategies for middle-sized business. Therefore Prof. Dreier is a representative of a private university that holds interests parallel to business in whole northern Germany.

Although Dreier's personal background is more business oriented, in 2007 the FHM founded a scientific institute that performs research about the different aspects of the impact assessment systems on German and international legislation: The National Center for Bureaucracy Cost Reduction (NCBR) (<http://www.fh-mittelstand.de/nzba/>). This institute was the result of the successful edition of the first manual about the SCM application in Germany (FHM, 2005). The topics about better legislation and impact assessment are important aspects for the academic reputation of the FHM. It follows that Prof. Dr. Dreier would advocate for the SCM application in Germany. She has a professional interest in the positive communication of research results of NCBR as an institute of the FHM.

The interview was the shortest one conducted during this research. There was some difficulty in arranging a meeting with Prof. Dr. Dreier. Because of her position as a university rector, her schedule is extremely full. After some weeks of looking for such a date with her office we agreed to make a side date at the 2013 International Regulatory Reform Conference (IRRC) in Berlin. This conference is an important event for the NCBR and the FHM. In addition, it was significant for this research because of the opportunity to connect with relevant professionals like Prof. Dreier and Wolf-Michael Catenhusen. On the one hand, it was a good occasion to make the interview with Prof. Dreier, but on the other hand, it was not possible

to conduct the interview within a quiet and focussed surrounding. The interview with Prof. Dreier took only one hour and 5 minutes. Even if the discussion with Prof. Dr. Dreier was very interesting, there was not a separate environment at the conference such as a private office. Although there was not a quiet and private environment for the interview, the general point of view of Prof. Dr. Dreier as a business oriented scientist is obviously an economic one. Since 2004, she has been a professor at the FHM and acted as the dean for the faculty of media and communications. During that time she has developed a range of study courses at the FHM within this field. This is also the background for her answers in our interview because she has always an economic perspective on the questions about the SCM application in municipalities. This was the thread of our interview. Prof. Dr. Dreier could not answer the specific legal questions, but always tried to give me an economic oriented answer. This was a good occasion to change the perspective of this research.

IV.1.3.3 Konzendorf, Prof. Dr. Gottfried

I was fortunate connect with Prof. Dr. Konzendorf, because he is expert in several areas. First, he is the co-author of the most relevant and fundamental literature about the impact assessment system in Germany (Böhret & Konzendorf, 2000). Since that publication, he has been in demand as one of the most competent experts about the impact assessment system of legislation in Germany. Today he works as head of division in the German federal ministry of interior (FMI) in Berlin (www.bmi.bund.de).

In addition to his professional standing, which gives him an intensive insight into the practical aspects of federal legislation in Germany, he is also an extraordinary professor of the postgraduate University of Administrative Sciences (DHV) in Speyer (www.dhv-speyer.de). At this university he teaches the different aspects of federal legislation processes, which gives Prof. Dr. Konzendorf the unique competence to combine the practical and scientific aspects in this research field. Therefore, the interview with Prof. Dr. Konzendorf was very important.

After the initial introduction from my second supervisor, Prof. Dr. Konzendorf invited me to his office in the German FMI. Like the NRCC, the FMI is located in the governmental district of Berlin. The interview took place in the personal office of Prof. Dr. Konzendorf. He was very well prepared by the information I had sent to him and he gave generously of his time for our lengthy interview. It was the most intensive discussion with the interviewees and lasted more than two hours. After the interview, Prof. Dr. Konzendorf invited me to have lunch with him in the canteen of the FMI, so we had time to talk about my research apart from the framework of the semi-structured interview guidelines. As one of the most important researchers about impact assessment in Germany, Prof. Dr. Konzendorf was a bit critical about the SCM and its introduction into the legislative process. We discussed the practical and legal aspects of the SCM and the philosophical and systematic background of impact assessments in general. This interview gave me a deeper understanding of the entire legislative. Because of this intensive and rich discussion, the amendments of Prof. Dr. Konzendorf are highly significant for this research.

IV.1.3.4 Günter Tebbe

Chance provided an excellent opportunity to contribute to research by giving me a possibility to contact Günter Tebbe. It was on the way to the IRRC in Berlin in January 2013 by train when I met a former colleague of the Bertelsmann Foundation. By a chance meeting with a former colleague from the Bertelsmann Foundation, I was introduced to Günter Tebbe. Although I was aware that the Bertelsmann Foundation has a large division dedicated to public administration and modern regulation (www.bertelsmann-stiftung.de), I did not have information regarding the appropriate contact. As former treasurer (CFO) of the City of Herford (www.herford.de) and currently a senior consultant for the Bertelsmann Foundation, Tebbe brings together the experiences of a professional municipal finance manager and those of a senior consultant in this field. The Bertelsmann Foundation is committed to further advancing accepted political proposals. Mr.

Tebbe is not satisfied with the SCM being considered only in municipal areas. As the central expert of local public administration of the Bertelsmann Foundation, he also has a close look on the systematic lack of the SCM. As a representative of the Bertelsmann Foundation, he is a bit critical about the research results of the FHM because the Bertelsmann Foundation proposed alternate solutions for the reduction and measurement of compliance costs, even in tax administration (Bertelsmann Stiftung, 2012).

The interview with Mr. Tebbe was the final one conducted for this research and took place in Gütersloh, at the headquarters of the Bertelsmann Foundation. I was Mr. Tebbe's first appointment of the morning and he did not put a time limit on the interview. Because Mr. Tebbe has great experience as a municipal manager of finance, our discussion concentrated more on the economic aspects of a SCM application. He also gave me important advice regarding the legal aspects of a possible SCM transfer to municipalities, which are mostly restricted to the legal framework in Northrhine-Westfalia. So the data analysis of Mr. Tebbe legal advice must always consider the legal framework in other federal states in Germany. But as a municipal CFO, his main competence is the financial constitution on the local level of public administration in Germany. None of the interviewees could give me such a deep insight into the financial aspects of compliance costs.

IV.1.3.5 Vorgrimler, Dr. Daniel

In the process of cost estimation of legislation, Dr. Vorgrimler is the most relevant expert of practical execution. He leads the division of the Federal office of statistics in Germany (www.destatis.de) and is responsible for the cost measurement of legislation for the German Government, the ministries, and institutions. Dr. Vorgrimler saw the SCM application in federal legislation through its whole development from its implementation of the NRCC in 2006. He is the central author of the manual of German government for the determination of administrative and compliance costs (Destatis, 2011). He was an important and constructive partner in discussions concerning a municipal SCM application. While our discussion was

informal, the amendments given by Dr. Vorgrimler primarily advocate for the position of the German government. Certain issues arose which caused me to press for answers. These formulations of the answers include my demands and are legitimated by Dr. Vorgimlers explicit declaration. However, any statement made by Dr. Vorgrimler that markedly deviates from the political position of the German federal government will be clearly marked.

Dr. Vorgrimler invited me to conduct the interview at the headquarters of Destatis in Wiesbaden. The date was arranged for a late morning on a Friday, and Dr. Vorgrimler reserved a special conference room. He brought a colleague of his who is also an SCM expert in the administrative division of Dr. Vorgrimler. The conference room allowed for a quiet environment and allowed for full concentration. Both interview partners were well prepared for the interview because of the information previously sent.

The interview took more than one and a half hours and was very thought provoking. Based on his extensive experience, Dr. Vorgrimler was able to explain many circumstances and historical aspects of the cost estimation within the impact assessment system in Germany. As one of the most experienced SCM experts in Germany, he understood the intention of this research and looked on it as an organizational problem more than a constitutional one. As a manager in federal public administration, he was interested to involve the municipal aspects into the federal legislation process as his professional obligation. Because Dr. Vorgimler is not a lawyer, his answers to the legally oriented questions were limited. His advice was very valuable for the organizational research questions.

IV.1.4 Axial coding of interview content

The most central process within the grounded theory approach as described in the methodology, would be to analyze the qualitative interview data with the coding process. As described above (see sec. II. 3.1.4.2), the five interviews are broken down into new pieces of data by an axial coding process concerning the three

research questions. This led to the following matrix constructed out of the five interviewees and the three research questions:

	Research question 1	Research question 2	Research question 3
Catenhusen, W.-M.			
Dreier, A.			
Konzendorf, G.			
Tebbe, G.			
Vorgrimler, D.			

Table 35: Matrix of axial interview data coding (own elaboration).

The citations of the five interviewees are cited by the first capital letter of the interviewee's family name and the line of the interview transcription:

- Catenhusen, Wolf-Michael: C, line X
- Dreier, Prof. Dr. Anne: D, line X
- Konzendorf, Prof. Dr. Gottfried: K, line X
- Tebbe, G. T, line X
- Vorgrimler, Dr. Daniel: V, line X

In the following chapters, the data analysis is conducted in order of the aspects of the three research questions. Therefore, the literal citations are referred to in German because the interviews were conducted in this language. The following generalization of the literal citations to their basic content or common message is described in English, as similar to the derived statement for the later text analysis.

IV.1.4.1 Legal conditions for municipal SCM-transfer

IV.1.4.1.1 Enforcement of municipal SCM application

The first axial coding is focused on the legal aspects of a possible SCM transfer to municipalities.

Aber auch hier gilt, dass es keine Rechtsgrundlage dafür gibt, dass die Kommunen das SKM verpflichtend anwenden müssen.	C, 19
Sicherlich kann man ohne eine Änderung der Gemeindeordnung oder des GFG die Kommunen nicht zwingen, das SKM anzuwenden	T, 18

Generalization: Like Wolf-Michael Catenhusen also Günter Tebbe recognized that there is no legal possibility to enforce municipalities to apply the SCM within their budget planning process or the later execution. Therefore, if the research question asks for the necessary legal conditions for municipal SCM-transfer, the failed possibility of enforcement is an important result. But if there is no possibility to enforce a SCM application, there is also no contradiction for municipalities to do so. As an aggregation of this generalization the derived statement is:

Statement IA 1.1

It is not possible to enforce municipalities the SCM application.

IV.1.4.1.2 SCM as part of negotiation processes

The next coding recurs on the interaction process and the aspects of federalism in Germany.

Ich sehe hier als einzige Möglichkeit nur Absprachen bei neuen Aufgaben zwischen den Ländern und den Kommunen im Kontext des Konnexitätsprinzips.	C, 115
Die Berücksichtigung kommunaler Belange ist also ein wichtiges Element unseres Föderalismus... Hier entwickelt jedes Bundesland für sich selbst eigene Lösungen. Die damit einhergehenden Leistungsvergleiche sind aber vom Grundgesetz durchaus gewollt.	C, 177
Vielfach dürften die gesetzesbezogenen kommunalen Finanzausweisungen Ergebnisse der Verhandlungen im Rahmen der jeweiligen Konnexitätsregeln sein.	K, 95
Ich glaube, dass sich das SKM in den kommunalen Finanzausgleich implementieren ließe...	C, 133

Generalization: Wolf-Michael Catenhusen and Gottfried Konzendorf placed the SCM application into the context of the constitutional principle of connectivity.

They viewed the SCM application within a procedural context as an aspect in the process of financial compensation between the federal states in Germany and the municipalities in the geographic area of these states. Therefore, the SCM may be a method or step in the negotiations between states and municipalities. Therefore the derived statement is:

IV.1.4.1.3 Legal fundament of SCM application

The following coding concerns an essential point for the legal conditions of a municipal SCM transfer: The legal fundament of this aspect.

...nach meinem Verständnis hat der Bundestag mit dem Gesetz über den Normenkontrollrat die erforderlichen rechtlichen Grundlagen geschaffen. Mit der dort verankerten Methode soll das SKM auch den Aufwand in der Verwaltung messen. Dazu gehören für mich natürlich auch die Kommunen.	D, 15
Ich denke, dass die Belange der Kommunen im Rahmen der Vorbereitung von Gesetzen durch die Bundesregierung bereits einbezogen sind.... So sieht § 41 GGO im Wege der Vorabfassung bereits in einem sehr frühen Stadium (vor Abfassung eines Entwurfs) die Ermittlung der Interessen bei den kommunalen Spitzenverbänden vor... Das SKM kann zu diesem Zeitpunkt noch nicht angewandt werden.	K, 12 K, 17
Ein Ergebnis der Gemeindefinanzkommission war die stärkere Berücksichtigung kommunaler Belange in der GGO. Nach § 47 Abs. 1 GGO ist der Gesetzesentwurf den kommunalen Spitzenverbänden möglichst frühzeitig zuzuleiten.	K, 45
...die Beteiligung der Kommunen an der Gesetzgebung im Grundgesetz zu verankern. Dies dürfte aber vor dem Hintergrund des ohnehin schon sehr komplizierten Gesetzgebungsprozesses wenig hilfreich sein	K, 54
Über die GGO und das NKRK ist meines Erachtens auch die Anwendung der Messung des Erfüllungsaufwands auf kommunaler Ebene abgedeckt.	K, 64
Vielleicht ließe sich eine Anwendung auch über die Experimentierklausel der Kommunalverfassung realisieren.	T, 22

Das NKRK, mit dem das SKM gesetzlich verankert wurde, ermöglicht eigentlich nur eine gewisse Kontrollfunktion. Als rechtliche Grundlage zur Anwendung des SKM wäre es aber gar nicht notwendig gewesen. Viel wichtiger für die Anwendung des SKM ist seine Verankerung in der GGO, weniger im NKRK.	V, 16
Im Ergebnis bedeutet das, dass man SKM im Rahmen des bestehenden Rechts auch bei den Kommunen durchaus einführen kann.	V, 27
Ich könnte mir vorstellen, dass auch die Länder die Aufwandsmessung ihrer Gesetze in ihrer Geschäftsordnung regeln, wie es der Bund in der GGO gemacht hat.	V, 173

Generalization: It is remarkable that all interviewees share the opinion that there is already a legal basis or foundation for the SCM application in a municipal context. Anne Dreier is convinced that the NKRK is the necessary legal framework for the SCM application in public administration. Gottfried Konzendorf, as a specialist about the impact assessment system in Germany, focused on the GGO (Gemeinsame Geschäftsordnung der Bundesministerien, BMI, 2011), the interdepartmental rules for legislation procedure. This regulation considers the municipal interest sufficiently so that there is no need for further legislation. This opinion is acknowledged by Daniel Vorgrimler who also sees no necessity of further legislation for an SCM application but rather a consideration of the SCM within the GGO and similar regulations in the German federal states. As a local and experienced politician, Mr. Tebbe referenced legal possibilities within the local constitutions. So the last common statement to the legal aspects is:

Statement IA 1.3

There is no need for further legislation of an SCM application, but important is the consideration in the interdepartmental rules for legislation procedure.

IV.1.4.2 Methodological framework for municipal compliance cost determination

IV.1.4.2.1 SCM standardization in administrative processes

The next coding process searches for a methodological framework to determine compliance costs on the local level of public administration.

Das bedeutet für mich, dass es für Kommunen, die mit dem Land über ihre Finanzausstattung diskutieren möchten, immer wichtig ist, eine unabhängige Instanz einzuschalten. Das ist für die Messung von reinen Informationspflichten mithilfe des SKM sicherlich möglich. Für die umfassendere Messung des Erfüllungsaufwands ist das bestimmt schwieriger. Hier muss man zu Standardisierungen kommen.	C, 60
Schwieriger wird es, wenn es um z.B. Prüfung- oder Kontrollaufgaben in der Umweltverwaltung geht. Hier ist es ja durchaus gewollt, dass die eine Kommune ihre Kontrollen anders gestaltet als eine andere Kommune. D.h. es gibt hier mit Absicht kein standardisiertes Modell.	C, 89
Das bedeutet, dass Bedarfsermittlungen nur kommunalübergreifend möglich sind, und zwar so, dass auf die Situation der Kommunen im jeweiligen Bundesland Rücksicht genommen wird. Die Betrachtung einzelner Kommunen erscheint mir wenig sinnvoll, da es sonst zum Taktieren einzelner Kommunen kommen kann.	C, 123
Ich glaube deshalb, dass es der grundsätzlichen Weiterentwicklung des SKM im Bereich der Gesetzgebung nicht weiter hilft, wenn jeder nur seine eigene Verwaltung sieht.	D, 86
Für die Schätzung des kommunalen Erfüllungsaufwands sollten die Beteiligten dementsprechend auf die „durchschnittlich effiziente Kommunalverwaltung“ abzustellen.	D, 134
Ein Problem der Messung des Erfüllungsaufwands ist der uneinheitliche Verwaltungsvollzug. Dieser ist aufgrund der föderalen Ordnung in Deutschland nicht einheitlich und soll es auch nicht sein.	K, 59

Für die systematische Erfassung des Erfüllungsaufwands lässt sich z.B. auf Folgenverläufe und Folgentypisierungen zurückgreifen, die Destatis (Statistisches Bundesamt) systematisiert hat. Die Typisierung von Gesetzesfolgen stellt z.B. darauf ab, ob sich Gesetzeskosten progressiv oder degressiv entwickeln. Diese Typologie von Gesetzesfolgen ließe sich ggfs. mit den Rechnungssystemen auf kommunaler Ebene harmonisieren.	K, 145
Hieße das, dass eine Kommune die höhere Informationskosten aus einem Gesetz hat, einen höheren Finanzbedarf im kommunalen Finanzausgleich anmelden könnte?... Schon aus diesen Ausführungen wird deutlich, dass die Integration des SKM in den kommunalen Finanzausgleich mit etlichen praktischen Problemen verbunden wäre.	K, 201 K, 208
Anders als z.B. in Großbritannien gibt es in Deutschland keine allgemeinen Kennzahlen, um kommunal Dienstleistungen miteinander zu vergleichen.	T 126
Allerdings sind Kennzahlenvergleiche auch kein Allheilmittel zur Ermittlung des Erfüllungsaufwands. Nehmen wir als Beispiel die Hilfe zur Erziehung. Die eine Kommune hat viele Bürger mit sprachlichen Defiziten, und eine andere hat gar keinen Aufwand, weil bei ihr keine entsprechenden Bürger wohnen. Kennzahlen können deswegen immer nur ein Grund sein, berechnete Frage zu stellen.	T 132
Auch die Aufwandsmessung in den Unternehmen ließ sich schließlich systematisieren, und zwar egal, ob die einzelne Informationspflicht in dem Kleinunternehmen vom Geschäftsführer selbst oder im Großkonzern vom Lehrling wahrgenommen wird.	V 113
Deswegen soll das SKM ja keine Einzelfälle widerspiegeln, sondern Standardprozesse definieren, in denen sich möglichst alle Beteiligte wiederfinden.	V 119

Generalization: As representatives of a business oriented universities or as experienced experts in public administration, all interviewees are common in their opinion that it is not sufficient that every municipality could decide on its own how to apply the SCM. The only way to find an accepted way of SCM application is to

define standardized processes. Wolf-Michael Catenhusen presumed that such standardized processes are not yet indicated because this could lead to a certain kind of benchmarking. Gottfried Konzendorf stated that different processes are necessary in the German system of federalism, and its constitutional intention to address the administration on the local level first. Günter Tebbe also views standardization as the only possibility for a methodological framework. But he also warns that indices or key figures that are necessary for standardized administrative processes are not the only viable solutions, they are only a reasonable initiation to ask questions. In the end the first derived statement about the methodological aspects is:

Statement IA 2.1

Measurement of municipal compliance costs is not possible in every administration, but by standardized and systematic procedures.

IV.1.4.2.2 Municipal model testing of SCM application

Another methodological aspect is the proposal how to generate the necessary data for a reasonable measurement of compliance costs in municipalities.

Es ist für die Absprachen der Länder mit ihren Kommunen für den Vollzug von Bundesrecht auf jeden Fall sinnvoll, bedarfserhebende Modelle zu machen. Dabei kann das Land in einem ex-ante-Verfahren die Kosten- und Leistungsrechnung des NKF gut nutzen.	C, 65
Ich hielte es für einen guten Vorschlag, so etwas im Rahmen von Pilotanwendungen mit solchen Ländern und Kommunen zu versuchen, die bereit sind, hier mitzuwirken.	C, 136 C, 191
Nach meinem Kenntnisstand werden die Kostenfolgen einzelner Gesetze bislang beim kommunalen Finanzausgleich allenfalls indirekt berücksichtigt, die Steuereinnahmen werden z.B. nach Größenklassen der Gemeinden verteilt.	K, 195

Überlegenswert wäre, ob die kommunalen Spitzenverbände Abschätzungen von Referenzkommunen in den Prozess einspielen könnten – ein Beirat könnte hier ggfs. unterstützend wirken.	K, 240
Eine andere Idee könnte es sein, die Kostenfolgen von Gesetzen in Referenzkommunen zu ermitteln. So etwas gibt es beispielsweise in der Konsumforschung.	K, 163
Eine Unterscheidung ist für mich eher nach dem Untersuchungsgegenstand sinnvoll. D.h., gibt es bei den Kommunen grundsätzliche Unterschiede, die das Messergebnis für den Aufwand verzerren können... ob die Firma ein eigenes Rechnungswesen hat...oder Steuerberater...verschiedene Branchen.	V 121
D.h. es kann durchaus sinnvoll sein, auch bei den Kommunen vergleichbare Gruppen zu bilden... mit konkreten Wirkungen auf das jeweilige Regelungsvorhaben.	V 123
...bei Destatis machen wir ebenfalls solche Unterscheidungen für Regionen, ob sie sich z.B. im Binnenland befinden oder in Grenzregionen. Handelt es sich um von der Schifffahrt geprägte Orte, ist eine Hochschule vorhanden oder nicht, oder wie sieht die Siedlung-, Sozial-, oder Wirtschaftsstruktur aus?...Letztlich wird die Bildung solcher Kriterien immer eine Einzelfallentscheidung beim konkreten Regelungsvorhaben sein.	V 131
Eventuell lassen sich ja auch die Vergleichsringe der KGSt für die Suche nach solchen Kommunen nutzbar machen, die bereit sind, hier mitzuarbeiten.	V 192

Generalization: If all interviewees agree to the necessity of standardized processes as a basis to measure compliance costs in municipalities, all interviewees also agree that these measurements could not be conducted in every city or local administration. Wolf-Michael Catenhusen spoke about “pilot projects” and Gottfried Konzendorf about “reference municipalities.” Daniel Vorgrimler proposed a possible system of categorized municipalities as already used in consumer.

This brings together two methodological aspects in one derived statement: The model testing and the categorization of municipalities:

Statement IA 2.2

Compliance costs could be measured by model testing in selected municipalities.

IV.1.4.2.3 Possibilities of New Communal Finance Management (NCF)

The next methodological aspect is about the financial system in municipalities and its consequences for the measurement of compliance costs.

So wissen wir noch nicht endgültig, wie wir z.B. mit der Kalkulation von Herstellungs- oder Investitionskosten umgehen sollen. D.h. eine Übertragung des Erfüllungsaufwands vom Bund auf die Kommunen ist grundsätzlich möglich, wobei wir uns über die relevanten Kostenfaktoren noch Gedanken machen müssen.	C, 82
...durch den doppischen Ansatz spricht doch einiges dafür. Schließlich muss ein detailliertes Kostenmanagement, die Kosten- und Leistungsrechnung den Aufwand genauer und detaillierter in den Blick nehmen.	C, 100
Bei dieser Ex-ante Betrachtung können die Angaben in den Rechnungssystemen bestenfalls einen Anhaltspunkt geben... Die Ex-ante Kostenermittlung ist eine Schätzung, dies gilt auch für SKM und Erfüllungsaufwand. Die Angabe einer exakten Zahl ist dabei vielfach nicht realistisch	K, 79
Auf der Aufwandseite ist also zu fragen, ob in den Erfüllungsaufwand auch die Vermögensabschreibungen mit eingerechnet wurden. Auf der Ertragsseite könnte ich mir vorstellen, dass es bei der Auflösung von Sonderposten durchaus Unterschiede gibt.	T 89
Das NKF berücksichtigt den Wertverzehr des kommunalen Vermögens und die Personalkosten für solche Mitarbeiter, die nicht mehr aktiv sind... Gerade solche Kosten lassen sich mit dem NKF sauber und exakt definieren. Insofern bildet das NKF alles ab, was den Erfüllungsaufwand ausmacht.	T 104

Würde man hier sauber doppisch alle Personalrückstellungen mit einrechnen, dann wären Bund und Länder nach handelsrechtlicher Betrachtungsweise möglicherweise insolvent. Das ist politisch aber so nicht gewollt.	T 108
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Generalization: As experts in public administration sciences, all interviewees know about the municipal implementation of the aspects of New Public Management (NPM). One basic element of the NPM is the New Communal Finance Management (NCF), which transfers more aspects of the double-entry bookkeeping from the financial system of the business sector into the public administration. In contrast to the state system of public finances the term of expenses in the sense of the NCF contains more aspects, especially expenses for costing purposes like depreciation allowance or accrued liability. For Wolf-Michael Catenhusen it is the cost and activity accounting within the NCF that gives municipalities new chances to measure compliance costs. Also Gottfried Konzendorf sees the NCF as a chance for a comprehensive measurement of municipal compliance costs. So the derived statement about this methodological aspect is:

Statement IA 2.3

NFC gives comprehensive possibilities for compliance costs estimation.

IV.1.4.2.4 Municipal comparability in different federal states

The following coding concerns the constitutional differences between the federal states and the federalism in Germany.

Da aber jedes Land für sich selbst entscheidet, wie es gesetzlichen Aufwand betrachtet, gibt es keine generelle Kostenbetrachtung für die Länderebene allgemein, sondern nur auf jedes Land selbst bezogen. Das ist auch für den NKR noch eine offene Frage bei der Ermittlung des Erfüllungsaufwands.	C, 35
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Es wird von den Ländern unterschiedlich gebucht, so dass Kapitel und Titel nicht direkt vergleichbar sind. Das Neue Steuerungsmodell mit seinem doppelten Rechnungswesen für die Kommunen hat diese Situation nicht verbessert, die Uneinheitlichkeit hat zugenommen.	K, 72
Die Erfahrung hat gezeigt, dass bereits die Finanzstatistik der verschiedenen Bundesländer nicht mehr vergleichbar ist. Umso mehr sind die Kommunen bundesweit nicht mehr miteinander zu vergleichen.	T, 35
Wie bei den Ländern ist auch bei den Kommunen nicht zu erwarten, dass sie sich untereinander auf einen kommunalen Finanzausgleich einigen. Aktuelles Beispiel dafür ist die kontroverse Diskussion über die so genannte Einwohnerveredelung.	T, 183

Generalization: Constitutional federalism and the municipal self-government give administrative responsibility to the local level as much as possible. However, the executive differences of these responsibilities vary widely from municipality to municipality. But if there is little comparability between municipalities, there is less between the federal states. Therefore, because there is no comparability between the federal states it is very difficult to find one methodological proposal for the determination of compliance costs in Germany as a whole. The derived statement is:

Statement IA 2.4

If every federal state has different budget systems, there is no comparability in German municipalities concerning compliance costs.

IV.1.4.2.5 Cost differences between municipal and state level administration

Another item in the research about the methodological framework of compliance costs is the difference between the financial systems in the state level and the local level.

Das heißt, dass immer dort, wo die gesetzliche Aufgabe wahrzunehmen ist, tendenziell eher mehr Transferkosten entstehen als dort, wo nur verwaltet wird. Wenn also der Bund ein Gesetz macht, dass auf lokaler Ebene in den Städten und Gemeinden auszuführen ist, werden hier tendenziell auch die höheren Kosten entstehen.	D, 61
Ein wesentlicher Unterschied zwischen der Kameralistik und der doppelten Buchführung ist die Berücksichtigung von Rückstellungen und Abschreibung. Wenn ich den Erfüllungsaufwand des Bundes und den in den Kommunen um diese Posten bereinige, müsste der Erfüllungsaufwand vergleichbar sei.	T, 81
Unternehmen bewerten ihre Gebäude – vereinfacht gesagt - nach dem Marktwert. Für ein Rathaus oder Straßen gibt es einen solchen Marktwert aber nicht. Die Abschreibungen sind also insoweit rein fiktiv. Das gilt im Grunde auch für die Darstellung des Vermögens beim Bund und den Ländern.	T, 114
Aus meiner Sicht dürften diese unterschiedlichen Finanzsysteme keinen Unterschied machen, weil es letztlich nur darum geht, Daten zu produzieren.	V, 37
Auf Bundesebene werden also die finanziellen Auswirkungen eines Gesetzes sowieso unter D dargestellt. Der Erfüllungsaufwand unabhängig davon unter E. Ich will damit sagen, dass es keinen Unterschied machen kann, mit welchem Finanzsystem diese finanziellen Auswirkungen untersucht werden, da es unterschiedliche Fragestellungen sind.	V, 42
Wenn also eine Kommune ihren gesamten Aufwand für die Ausführung eines Gesetzes messen möchte, muss sie natürlich alle finanziellen Auswirkungen betrachten, wie sie im Gesetzesvorblatt unter den Buchstaben D und E dargestellt sind... Dieser Unterschied auf Bundesebene darf aus Sicht der Kommunen für ihren Aufwand jedoch keine Rolle spielen.	V, 49 V, 64
...wenn eine Bundesbehörde ebenfalls operativ arbeitet, kann es für den Erfüllungsaufwand keinen Unterschied geben.	V, 86

Die Erfahrung aus den "Einfacher-zu-Projekten" an denen ja auch Kommunen beteiligt waren, hat gezeigt, dass eine Anpassung der Methode für Kommunen nicht notwendig war.	V, 88
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Generalization: As noted by Anne Dreier and Daniel Vorgrimler, the transfer costs in the execution of laws are the main difference between the state and local administration. As a former municipal treasurer, Günter Tebbe points out the differences in the financial systems. If the determination of compliance costs considers the depreciation allowance or accrued liability on the local level, the comparability with compliance costs at the state level will be no problem. Daniel Vorgrimler outlined the different kinds of costs in the description of the legislative proposals for the German Bundestag. The financial results and the compliance costs must be referred to in different sections of the legislative proposal. If both sections are put together, then there is no difference in content between compliance costs in the state level and the local level of administration. So the derived statement is:

<p>Statement IA 2.5</p> <p>There is no systematic difference in the compliance costs between the state and municipal administration.</p>

IV.1.4.2.6 Benchmarking motivation

The last methodological aspect is – once again – the differences in the execution of laws caused by German federalism.

Modellerhebungen haben deutlich gemacht, dass es hier große Unterschiede bezüglich des Verwaltungsaufwands gibt. Daraus folgt, dass die Abschätzung des Erfüllungsaufwand bei Kommunen - aufgrund der Vielfalt des Verwaltungsvollzugs – komplizierter ist... Diese Unterschiede sind in unserer föderalen Ordnung der Normalfall.	K, 109
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<p>Mit Art. 91d GG wurde der Leistungsvergleich von Verwaltungen in die Verfassung aufgenommen...(Leistungsvergleiche) sind ein Instrument mit dem der unterschiedliche Erfüllungsaufwand auf kommunaler Ebene transparent gemacht werden kann. Von den Ergebnissen können Verwaltungen lernen und einen möglichst effizienten und effektiven Vollzug organisieren.</p>	<p>K, 122</p>
<p>Allerdings wird das Instrument des Leistungsvergleichs nach Art. 91 d GG bislang wenig genutzt und ist auch offensichtlich nicht von allen gewollt. Die Vergleichsringe auf kommunaler Ebene – die vielfach mit Unterstützung der KGSt – durchgeführt werden, heben sich davon positiv ab.</p>	<p>K, 132</p>
<p>...Großteil des Verwaltungsaufwandes würde durch europarechtliche Vorgaben und Gesetze des Bundes verursacht, aus der Informationskostenmessung nach dem SKM herausgezogen. Dass durch die Länder im Vollzug eigene Regelungen hinzukommen, wurde so ausgeblendet; Goldplating durch die Länder findet aber vielfach statt.</p>	<p>K, 137</p>
<p>...die einen haben einen doppischen Haushalt (Hessen, Hamburg), die meisten anderen wie zur Zeit NRW nicht.</p>	<p>T, 39</p>
<p>Der Umfang der Finanzausstattung hängt dabei wesentlich vom Kommunalisierungsgrad der Aufgaben ab. Was in einem Bundesland der Staat selbst macht, ist in dem anderen Bundesland auf die Kommunen übertragen.... In NRW haben wir einen relativ hohen Kommunalisierungsgrad, während z.B. im Saarland durch die Größenordnung bedingt das Land viele Aufgaben selbst wahrnimmt.</p>	<p>T, 55 T, 62</p>
<p>Dabei ist aber auch die innere Verteilung der Finanzmittel zwischen den Kommunen sehr strittig, insbesondere zwischen den ländlichen Bereichen und den städtischen Regionen... Zur Akzeptanz solcher Regelungen hat gerade der „Stärkungspakt“ für die Kommunen in NRW gezeigt, wie wichtig es ist, belastbare Zahlen für die Aufwände der Kommunen durch staatliche Aufgaben zu bekommen.</p>	<p>T, 62 T, 71</p>

Ich glaube, dass es in den Kommunen Vorbehalte geben wird, eine solche systematische Aufwandsmessung zu betreiben, weil sie sich dann einer Vergleichsbetrachtung aussetzen, die nicht unbedingt gewollt ist.	V, 198
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Generalization: The administrative experts, in particular, focus on a consequent problem of different financial systems in the federal states: It is the federalism in Germany that is intended to produce different financial systems even if the German constitution could use these differences for a systematic benchmarking process. However, in recent years, no federal states applied this constitutional possibility. This led the interviewees to the conclusion that administrations are not willing to get in a situation of comparability – on the state level and the local level. So the following derived statement is:

Statement IA 2.6

There is no motivation of municipalities to benchmark their administrative processes.

IV.1.4.3 Sufficient conditions for SCM-implementation to municipalities

IV.1.4.3.1 Role of central municipal member associations

The last coding process concerns the possible implementation of a possible SCM application in municipalities. The first aspect is the role of the municipal member association on the German federal level.

Die kommunalen Spitzenverbände müssen eine solche kommunal übergreifende Betrachtung organisieren, sie spielen also eine wichtige Schlüsselrolle.	C, 170
Ein Ergebnis der Gemeindefinanzkommission war die stärkere Berücksichtigung kommunaler Belange in der GGO. Nach § 47 Abs. 1 GGO ist der Gesetzesentwurf den kommunalen Spitzenverbänden möglichst frühzeitig zuzuleiten.	K, 45

Meines Erachtens sind die Belange der Kommunen gegenüber den Belangen anderer gesellschaftlicher Gruppen in der GGO auf diese Weise besonders hervorgehoben.	K, 50
Die Kommunen werden von den kommunalen Spitzenverbänden repräsentiert und vertreten. Ansprechpartner für den Bund können daher praktisch nur die kommunalen Spitzenverbände sein.	K, 175
Bei Fragen des Verwaltungsvollzugs ist die Rolle der kommunalen Spitzenverbände besonders herauszuheben. Die kommunalen Spitzenverbände haben die Funktion, Angaben zu diesen Kosten in den Prozess einzubringen. Die Mechanismen einer kommunalen Beteiligung bei Gesetzgebungsvorhaben des Bundes sind wie besprochen bereits vorhanden.	K, 200
Für die Kommune insgesamt wäre es daher gut, wenn die kommunalen Spitzenverbände sich noch besser untereinander abstimmen und ihre gemeinsamen Vorstellungen beim Bund einforderten.	T, 220
Förderlich ist die Einbindung der kommunalen Spitzenverbände sicherlich deswegen, weil es in ihrem eigenen Interesse liegt, belastbare Zahlen für den kommunalen Finanzausgleich zu erhalten.	V, 183
Sie (Anm.: die kommunalen Spitzenverbände) wären für mich auch der erste Ansprechpartner, um sich auf einen grundsätzlichen Leitfaden zu verständigen.	V, 190

Generalization: All interviewees hold the opinion that the central municipal membership organizations are very important players in the negotiations about financial compensation for municipalities. But Gottfried Konzendorf suggested that the existing rules could be adopted for the extended consideration of municipal interests within the legislative process. Günter Tebbe recommended that the municipal interests would be better represented if the different municipal lobby associations would harmonize their political communication among each other. Daniel Vorgrimler sees the necessity for the integration of lobby associations in the impact assessment, particularly to generate reasonable data and to develop a

manual for the municipal determination of compliance costs. These common points of views led to the following statement:

Statement IA 3.1

The central municipal membership organizations are the right addressee for the federal state administration within the legislation process.

IV.1.4.3.2 NRCC-like institutions in federal states

The second aspect of data coding about the organizational implementation of the SCM transfer in municipalities is the question about a certain kind of NRCC in each federal state.

Ich bezweifle jedoch, ob sich ein solcher (Anm.; gemeint sind Normenkontrollräte in den Ländern) Kraftaufwand für länderspezifische Regulierungen lohnt.	C, 146
Allerdings darf man dabei das Kosten-Nutzen-Verhältnis nicht aus den Augen verlieren... hätte ich daher Bedenken, ob wir mit 16 Länderkontrollräten nicht einen Riesenapparat aufbauen, dessen Effektivität sich jedoch in Grenzen hält.	D, 112
Mir persönlich wäre es lieber, wenn die Ministerien so arbeiteten, dass ein Normenkontrollrat nicht notwendig ist.	T, 165
Stets aber setzt die Arbeit eines Normenkontrollrates eine politische Unabhängigkeit voraus. Die Mitglieder eines solchen Rates müssen stark und unabhängig sein, so dass sie nicht in die Fänge der jeweiligen Landesregierungen geraten.	T, 167
In den einzelnen Bundesländern gibt es viele Normenprüfstellen, die aber mit dem Normenkontrollrat auf Bundesebene nicht vergleichbar sind. Alle diese Stellen haben meines Wissens nach unterschiedliche Aufgaben.	V, 152

Generalization: All interviewees take the same position that there is no need for an institution similar to the NRCC in Berlin in every federal state in Germany. Wolf-Michael Catenhusen and Anne Dreier doubt the cost-benefit-ratio of such a great administrative effort. Gottfried Konzendorf advocated for the political independence of such an institution. Such independence is strongly necessary for a successful contribution to legislation. Daniel Vorgrimler knows about the different institutions in the federal states that have the obligation to prove legislative impacts. Common sense dictates the following derived statement:

Statement IA 3.2
 Institutions like the NRCC in every federal state are too expensive and not necessary.

IV.1.4.3.3 Transparency and communication

The last aspect is about the communication between the state and municipal level.

Geht es zum Beispiel ausschließlich um Fragen der Transparenz, dann wird die Verständigung leichter möglich sein, als wenn es um Fragen des Finanzausgleichs geht.	K, 237
Gerade bei solchen Gesetzen des Bundes, die zu mehr Aufwand bei den Kommunen führen, reicht die bloße Beteiligung der kommunalen Spitzenverbände nicht aus. Besser wäre es, die Arbeit der Kommunen selbst transparenter zu machen, z.B. durch einheitliche Produkthaushalte.	T, 192
So müssen z.B. in Sachsen die Kommunen regelmäßige Finanzkennzahlen an das Land berichten. Hier kommt der staatlichen Kommunalaufsicht automatisch eine stärkere Rolle zu, in dem sie durch laufende Beratung stärkeren Einfluss auf das kommunale Management gewinnt.	T, 197
Die Beziehungen zwischen der Kommune und den Ländern sind oft durch unzureichende Kommunikation geprägt. Die handelnden Personen auf Bundes-oder Landesebene haben nicht immer eine hinreichende Kenntnis, was in den Kommunen abläuft. Ich plädiere deswegen z.B. für eine höhere	T, 203

Personaldurchlässigkeit zwischen den verschiedenen Verwaltungsebenen.	
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Generalization: Gottfried Konzendorf and Günter Tebbe spoke to an inadequate level of communication as a cause for the systematic struggle between municipalities and state legislation about financial equalization. Therefore, a solution for better negotiation between these two areas of politics and public administration could be increased information exchange between municipalities and the federal states. This leads to the following derivation:

Statement IA 3.3

A better comparability between municipalities needs more governmental communication and consultation.

IV.1.5 Interview statements reflection

The last part of the interview analysis is the reflection of the derived statements against the background of the interviewees' personal, professional, or institutional context. This reflection will review the derived statements and will be followed by a reflection of each interviewee. For an overview, the derived statements are compiled in the following table:

IA No.	Derived interview statement
1.1	It is not possible to enforce municipalities the SCM application.
1.2	The SCM application is a topic of negotiation between the federal state and their municipalities.
1.3	There is no need for further legislation of an SCM application, but important is the consideration in the interdepartmental rules for legislation procedure.
2.1	Measurement of municipal compliance costs is not possible in every administration, but by standardized and systematic procedures.
2.2	Compliance costs could be measured by model testing in selected municipalities.

2.3	NFC gives comprehensive possibilities for compliance cost estimation.
2.4	If every federal state has different budget systems, there is no comparability in German municipalities concerning compliance costs.
2.5	There is no systematic difference in the compliance costs between the state and municipal administration.
2.6	There is no motivation of municipalities to benchmark their administrative processes.
3.1	The central municipal associations are the right addressee for the state administration within the legislation process.
3.2	Institutions like the NRCC in every federal state are too expensive and not necessary.
3.3	A better comparability between municipalities needs more governmental communication and consultation.

Table 36: Assembled interview statements

A view of this statement compilation gives a starting idea of possible proposals to answer the research questions. The interview statements are coherent in with one exception. RQ 2.4 gives a contradictory statement to the other constructive statements. It is a discussion regarding the differences between cost determinations in German federal states, which is also relevant for the local level of public administration. This statement is an expression of organizational difficulties in the search for standardization of administrative processes and their costs. However, it is not more than the consequence of a living federalism and functional local self-government in Germany. The following discussion must show if this is an unsolvable contradiction or a simple difference of opinion.

For Wolf-Michael Catenhusen these statements are suitable, especially the NRCC is looking for new models of a systematic regarding of municipal compliance costs. From his point of view as a member of a German federal institution, his focus is the practicality of administrative differences in all of Germany, its 16 federal states, and its thousands of municipalities. The contribution of **Anne Dreier** to these statements is based on her primarily economic perspective.

In particular, the statements that support the standardization of an administrative process analysis or the failed necessity of NRC-like institutions in the several federal states are coherent. Gottfried Konzendorf introduced himself as no lawyer, but the content of his interview is very constructive to the statements. As an expert for impact assessment procedures on a federal level, he views municipalities as part of the federal states. He is also the strongest advocate for an implementation of standardized cost estimation within the existing system. From his point of view, the municipal interests are regarded well enough. These opinions of Gottfried Konzendorf are mirrored in several statements. A more critical point of view about too much standardization comes from Günter Tebbe. His contribution was more practically oriented when he announced a more holistic view on cost estimation. He advocates systematic cost estimation within the constitutional system of connectivity. Tebbe advise to review not only quantitative financial data, but to also examine the qualitative aspects of municipal obligations as expressed in the statements about the NCF and better communication between the different levels of politics. The interview content of **Daniel Vorgrimler** was very helpful for the methodological and organizational aspects. It was his experience as the Destatis-expert for the SCM application in federal authorities that introduces the ideas of standardization and model testing into the statements. He also gives a contribution to transfer the consideration of municipal interest in the GGO from the federal level into the legislation of the federal states.

IV.2 Reflective presentation analysis

IV.2.1 Selection of audience

Apart from the larger conferences, few working groups discuss the topic of this thesis about the finance of compliance costs caused by federal legislation in Germany. This discussion is about the divided levels of legislation by the German Bundestag and the legislation in the 16 federal states in their particular parliaments, the Landtage. As outlined in the introduction (see sec. I.3.1), one result of the federal reform of German constitution in 2006 was that the federal legislation is prohibited to transfer new obligations to municipalities (Art. 87 I S. 7

GG). On the one hand the legislative decision about new tasks of municipalities is technically responsible for the 16 federal states in Germany. On the other hand the municipalities have become a greater part of the legislative discussion on the federal level. The application of the SCM for federal legislation from a municipal point of view is discussed politically, in particular (see sec. II.5.4.3).

IV.2.1.1 Governmental program of better legislation

Consequently, the German Government decided to adopt a program for better legislation that also invited the municipalities to deepen their cooperation with the federal government in Berlin and to link to each other especially about the information for the implementation of concrete laws (Deutsche Bundesregierung, 2012, pt. 8). The political aim of this program is to make clear the interdependencies of legislation from all relevant levels of the European Union, the German Bundestag, the 16 German federal state parliaments, and the municipalities. The particular board for these discussions is a working group with members of all German administrative levels (Bund-Länder-Kommunen-Arbeitskreis - BLKA). The main obligation of this BLKA is the cooperation concerning the investigation and estimation of compliance costs. In this context the possibility for municipalities to deliver their ex-ante opinion about planned federal legislation is highly significant (Deutsche Bundesregierung, 2013, p. 53). Although this is not a constitutionally regulated process of legislation, the BLKA is the right place to discuss the topic of this thesis. The author requested an invitation, but did not receive a reply. Unfortunately, the author was not able to gain access to this board.

IV.2.1.2 Arbeitsgemeinschaft für wirtschaftliche Verwaltung - AWW

However, another working group exists that is germane to this topic on the federal level of administration in Berlin: The "Arbeitsgemeinschaft für wirtschaftliche Verwaltung e.V. - AWW" (www.awv-net.de). The main political aim of the AWW is the improvement of public and business services by encouraging networking between the public and business sector. The AWW provides a platform to improve

the modernization of public administration and to decrease bureaucracy, and in particular, to help middle-sized businesses in Germany. The AWV was founded in 1926, and is legitimated and financed today by funding of the German federal ministry of economy and technology. Comprised of approximately 220 members and 650 volunteers, the work of the AWV takes place in six functional committees and 26 working groups. Relevant for the topic of this research is committee No 1, which is concerned with public management and modernization. Within this committee is the working group 1.3, which addresses cutting the red tape within the public administration itself (AWV-Arbeitskreis 1.3: Bürokratieentlastung der öffentlichen Verwaltung). The members of this AWV working group 1.3 are primarily recruited from:

- Federal ministries and authorities
- State administrations
- Municipalities
- Municipal member associations
- Business companies
- Consulting firms

IV.2.2 AWV context and members anonymity

As discussed earlier, the author was able to gain access to a working group of the AWV. The next source of data is the short protocol about the presentation that the author held involving the current results of this research project in the “Arbeitsgemeinschaft für wirtschaftliche Verwaltung e.V. - AWV” (www.awv-net.de) on Thursday, 06 June 2013 in the German federal ministry of economy and technology in Berlin. The audience was comprised of 32 professionals from public and business sectors that belonged to the AWV-working group 1.3, which focuses on decreasing bureaucracy in the public administration. The Chairman and moderator of this working group is Prof. Dr. Gunnar Schwarting, director of the municipal lobby association of cities in the federal state of Rhineland-Palatinate.



Figure 39: Screenshot of the AWW working group 1.3, from: www.aw-net.de.

Since 2008, this working group has addressed topics relevant to decreasing bureaucracy in the public administration. The members are employees from all levels of public administration including: federal, state and municipal. Membership also includes researchers and representatives of the business sector. Main focuses discussed in this board are the problems of administrative costs in the political-administrative context, in particular within the public administration itself and costs resulting from the interactions of different levels of public administration. Using discussion, the exchange of business processes and methodological ideas like the SCM or the measurement of compliance costs, the board contributes to the practical aspects of public administration. The selected topics negotiate the organizational restrictions of single organizations and are able to achieve a close look at structures, processes, and legal questions (AWV, 2014).

After the author received the invitation to deliver a presentation about the current results of this research project in the AWW, he announced his interest in a detailed protocol and asked for the possibility of tape recording. Unfortunately, the AWW refused this permission. The primary reason was to preserve the anonymity of the members in the working group. In addition, the members of the AWW feared that the intensity of the discussion would suffer if the contributors were recorded their

names saved digitally, and mentioned in the author's thesis. After a call back with the board's chairman Prof. Dr. Prof. Dr. Gunnar Schwarting, the AWV agreed with the author to adhere to a certain protocol that included the questions and criticism of the members about the author's presentation. The author of the protocol was the AWV consultant responsible for the working group 1.3, Dr. Petra Pfisterer.

IV.2.3 Conducting the presentation

The presentation was held on 06 June 2013 in the conference rooms of the German federal ministry of economy and technology (BMWi). The meeting was popular with over 30 members from the different institutions and associations as described above.



Figure 40: The author's presentation desk in the BMWi, Berlin



Figure 41: Conference papers in the AWV meeting from 6.06.2013

The first speaker was a project manager from the office of bureaucracy decrease within the German federal state chancellery who spoke about the actual projects on the federal level. So the author's presentation about a similar topic from a municipal point of view was a good addition to the topic. The presentation took about half an hour for the 24 prepared charts. The following discussion took nearly one hour. Before the meeting the author discussed the possibilities of technical data collection with the AWV.

As discussed above, the AWV did not allow a tape recording of the meeting. Therefore, the author asked Dr. Petra Pfisterer to do an anonymous protocol focussing on the professional suggestions of the audience and to provide a personal declaration as used with the interview participants. As a result, the data collection of this reflective presentation at the AWV led to a short text protocol written by Dr. Petra Pfisterer who agreed to be cited in this thesis as the author of this protocol.

Date	Thursday, 6.06.2013
Location	German federal ministry of economy and technology
Audience	32 professionals from public and business sector
Volume of presentation	24 charts, 30 minutes
Duration of discussion	One hour
Data collection	One page of written text protocol, 42 lines

Table 37: Attributes of reflective AWV presentation.

IV.2.4 Personal reflection on the presentation

At the end of April 2013, the author received an invitation by Dr. Petra Pfisterer as an AWV project manager, to the next meeting of the AWV working group 1.3. The author accepted the invitation because it was the first occasion to present the ideas of this thesis to a larger audience that could give a professional reflection. To prepare this presentation, the author first developed a comprehensive PowerPoint-presentation about all the aspects of this doctoral topic. The author discussed this presentation with his second supervisor in Berlin before presenting at the AWV. This discussion took place two weeks before the AWV presentation and revealed that several legal problems still needed to be considered in the presentation. Because the municipal member associations on the federal level have an important role in the organizational aspects of the author's thesis, the supervisor proposed to discuss these ideas with the "Deutscher Landkreistag (DLT)" in Berlin, the particular municipal member association for the public district administrations.

The contact person Matthias Wohltmann from the DLT board is responsible for the public financial affairs. Two days before the AWV presentation, the author had a date at the DLT. This discussion was intensive and took two and a half hours. The author found that the DLT agreed with the proposals in this thesis. Additionally, the author received constructive advice for a possible organizational implementation of the SCM in a municipal area. In particular, the representative from the DLT agreed with the author's proposal to define compliance costs and the necessity for an ex-ante measurement of it at an early point of the legislative process. Also, the DLT informed the author of the most recent constitutional court decisions that related to the topic of this thesis. The preparation for the AWV presentation continued until the day before it took place.

The AWV meeting took place in the German federal ministry of economics in Berlin. A project manager from the German chancellor's office in Berlin was included in the agenda of the meeting; this individual spoke about bureaucratic reduction on the federal level. The author's presentation followed and was announced as concerning bureaucratic reduction on the municipal level. After listening to the audience discuss reductions in bureaucracy, the author gained confidence and felt more secure in his topic. The presentation took about half an hour and as it progressed, the author found that the audience became more interested. There was no break for questions in the presentation; the chair of the meeting opened the discussion by asking for questions. There was no immediate reaction; however, the chair began with a question. Following the opening question, the audience became highly involved and asked numerous questions and offered many suggestions. In whole, the discussion took nearly an hour and was on a very high level.

It appeared that the audience found the SCM application on the municipal level a unique concept. The overall reaction of the 30 members present was enthusiastic. A great deal of positive feedback related to the proposal that compliance costs in the meaning of § 2 NKRK must contain not only administrative costs but also the purposes costs of legislation evoked no contradiction. The majority of the discussion centred on the organizational implementation of the SCM in a municipal

area. The only negative feedback was subjective and addressed my political naiveté. The further discussion about my research proposals could only improve the discussion about better legislation in Germany over all. At the end of this agenda point, the chair invited the author to come back to this working group to present the results of the doctoral thesis. It was a great feeling of acceptance in this circle of professionals to get an invitation to present this research project to the next federal congress "Budget & Finance," which takes place annually to discuss new developments in the field of public finance in Germany. In summary, this reflective presentation strengthened the author's conviction that this thesis is important for the further development of bureaucratic reduction in Germany and that his ideas are worth discussing in such a professional circle.

IV.2.5 Protocol author: Dr. Petra Pfisterer

Dr. Petra Pfisterer is an employee of the AWV and the responsible consultant for the AWV working group 1.3 about cutting the red tape within the public administration (see figure 2). In 2009, she submitted her doctoral thesis on the topic of local autonomy in municipal administrations and local governance in the context of European integration processes (Pfisterer, 2009b). She is currently a prominent contributor to research about the problems of bureaucracy in public administration, especially in municipalities. Dr. Pfisterer has attended many conferences and meetings about reducing bureaucracy in Germany and gives countless presentations about these topics all over Germany. So it was not difficult for Dr. Pfisterer to follow the ideas of the author in his current research project about the transferability of the SCM into the municipal sector. After the discussion about the necessary anonymity of the AWV members, Dr. Pfisterer was very polite and willing to write a special protocol about the author's presentation at the AWV to work with it in the data analysis of his thesis. As an employee of the AWV she has to comply with the AWV's intention towards the anonymity of the working group members. Because Dr. Pfisterer only recently completed her thesis, she understands the author's necessity to collect the discussion data of his presentation. The protocol contains two pages with 104 lines of text (appendix A3).

But as a personal reflection, this protocol contains all relevant aspects that the author could remember as part of the discussion after his presentation.

IV.2.6 Coding protocol analysis

As an accepted expert about bureaucracy decrease in Germany it was very easy for Dr. Pfisterer to concentrate the protocol on the main points of discussion. Dr. Pfisterer divided the discussion paper into six different topics. First, these six topics were analyzed about similar and related arguments or questions. The topics are cited in its main sentences literally. The second step is a reflection of this citation and an aggregation of related content. On the one hand, this reflection regards the formal kind of topic as a question or a critic; and on the other hand, with regards to the content itself. It ends with a summarized statement for the later text analysis.

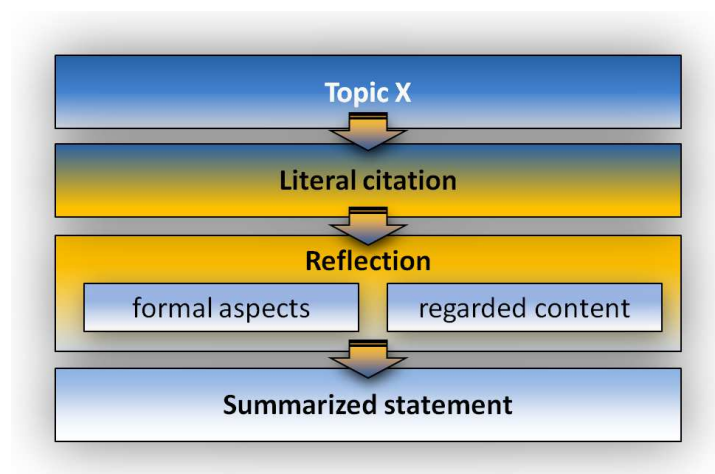


Figure 42: Analysis of AWV presentation protocol (own elaboration).

IV.2.6.1 Validity and volatility of financial data

The first topic is about the validity of financial data, generated by municipalities in the legislative process.

<p>...Angaben zu Kosten zu gering ausfallen...warum können Kommunen nicht reale Zahlen liefern?</p>	<p>I. 53</p>
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Reading this topic literally, it seems to be a question. The asking person is not sure if municipalities are able to give the necessary information and financial data that are necessary for an effective execution of the principle of connectivity. But reading this question “between the lines” the real sense is to criticize the municipalities. They should not call for a better connectivity of legal obligations and financial funding if they are not able to define the necessary financial information. This topic is near to the point three of protocol:

<p>...stabile Finanzierung möglicherweise auch nicht im Interesse der Kommunen..da..häufig mit Volatilität argumentiert wird.</p>	<p>I. 71</p>
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Formally this is not a question, but an assumption that municipalities have no interest in a fixed system of financial appropriations because they often argue for the volatility of necessary funding. It seems to be that these two citations came from AWV members other than from municipal representatives. They are assumptions that from a political point of view, municipalities do not want a systematic consideration of their budgetary necessities. The point three of the protocol seems to be a form of answer to these criticisms.

<p>...im Gesetzgebungsverfahren...fehlt die Zeit, um valide Daten zu erheben</p>	<p>I. 76</p>
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It was a municipal representative who recommended attention to the practical problems of legislative processes. Typically, there is only a brief time period in the process of legislation in which to give a valid statement from a municipal point of view. Even if this is an argumentative exculpation, it was also acknowledged that municipalities do not deliver the necessary financial information. As a summary, this leads to a criticism of municipalities in that they do not contribute the necessary information for a systematic and effective principle of connectivity.

<p>Statement PA1 Municipalities do not contribute necessary information for an effective connectivity.</p>

IV.2.6.2 Constitutional aspects of federalism

The next topic is about the constitutional distribution of responsibilities in German federalism.

...Aufgabe der Länder sei, im Bundesrat...die Interessen der Kommunen zu vertreten. Sollte...nicht eine Kostenermittlung über die Länder erfolgen?	I. 60 I. 64
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This topic regards the constitutional situation in Germany where municipalities are part of the federal states. Formally, it is a question as to which constitutional level of legislation is responsible for the cost estimation in and for municipalities. It implies that only the federal states are responsible for the estimation of the necessary municipal funding. This argumentation is strictly oriented at the legal situation of the German constitution, the GG. But it ignores the discussion that took place during the federal reform of constitution in 2006 (Deutscher Bundestag, 2006a). This reform discussion recognized the constitutional necessity of municipal finance reforms and led to the new Art. 87 I S. 7 GG, which prohibited the transfer of new obligations to municipalities (Hennecke, 2008; see sec. I.4 above). Although this topic is always a very important argument with regard to the German constitution, it does not help solve the unsatisfied financial situations in municipalities.

Statement PA 2

Regarding the constitutional situation only the federal states are responsible to represent municipal interests within the legislative process.

IV.2.6.3 Methodological transferability and comparability

The last topic aims the methodological aspects of the presentation.

...in welchem Umfang...Einschätzungen von Kosten transferierbar seien?	I. 81
Hier wurde...mit einem „Korridor“ von Verwaltungsausgaben argumentiert.	I. 86

This question asks for the transferability of previously collected financial data from one administration to another. It also imparts information regarding negotiations between municipalities and state administrations in the past that defined a kind of financial scope for the administrative execution of legal obligations. This topic focuses on the problem that it is not possible to analyze all administrative processes in every German municipality in order to define the exact necessary funding. Regarding the development of the SCM (see sec. I.4), this topic more or less advocates the SCM application also in the municipal area. Formally, it is a report of experiences from negotiations between municipalities and state administration but in practice it is a recommendation to apply the SCM according to standardized administrative processes.

Point six of the protocol approaches this aspect of transferability because it focuses on the comparability of administrative processes.

...Benchmarkingansatz...Kommunen...Anreiz erhalten, nicht einfach Kosten überwälzt, sondern effiziente Verwaltungsprozesse vorgebracht.	I. 98 I. 101
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This topic is not a question or criticism, but rather a proposal to use the chances of transferable administrative processes not only to define necessary costs, but also to create a benchmarking competition between different municipalities about the most effective administrative process. Several projects exist in Germany that conduct a comparison of selected administrative departments. The most systematic projects are executed by the Kommunale Gemeinschaftsstelle für Verwaltungsmanagement (KGSt) in Cologne. Founded in 1949, the KGSt is sponsored by all German cities, municipalities, and municipal district administrations to develop solutions and proposals for problems in leading, steering, and the organization of local public administrations (www.kgst.de). Because of the constitutional guarantee of self-government in municipalities (Art. 28 II GG), the participation in these benchmarking projects is voluntary. Therefore, this research about the transferability of the SCM is a chance to revitalize the benchmarking discussion about the comparability of local administrative processes.

This could be a good argument to advance the SCM application in the municipal public sector. So the third and last statement of the protocol analysis could be:

Statement PA 3
 SCM application in the context of connectivity must work with standardized processes which should initiate benchmarking comparison between municipalities.

IV.2.7 Protocol statements reflection

Finally, the aggregated statements of the discussion in the AWV working group are reflected alongside the context of this institution and its composition. For an overview, the derived statements are compiled in the following table:

No.	Aggregated protocol statement
PA 1	Municipalities do not contribute necessary information for an effective connectivity.
PA 2	Regarding the constitutional situation only the federal states are responsible to represent municipal interest within the legislative process.
PA 3	SCM application in the context of connectivity must work with standardized processes which should initiate benchmarking comparison between municipalities.

Table 38: Compiled protocol statements.

This compiled table constructs a more critical point of view of the AWV working group 1.3 about the role of municipalities within the system and the principle of connectivity. It asked for the reasons why municipalities do not contribute necessary information, stated the constitutional responsibility of the federal states to represent municipal interests in legislative processes, and proposed a benchmarking comparison between local public administrations. While the anonymity of the members was protected, discussing the constituent elements of the group is fair. This particular group in the AWV had very few municipal representatives. However, after the presentation, many of the attending AWV

members stated the necessity to do further research about the effectiveness of municipal connectivity. The following exercise of this research is to regard these critical aspects and to argue the different opinions

IV.3 Cross-case analysis

Since the introduction of the SCM in Germany, especially since the first edition of the SCM manual in 2005 (FHM), the idea of ex-ante measurements of administrative or compliance costs of legislation or administrative processes was examined in different projects and investigations. As revealed in the literature review (see sec. II.5.4.5), there are 13 appropriate studies about a SCM application in public administrations:

No.	Institution	Project	Year
1	IfM	Cost estimation in selected business branches	2006
2	Hoffian et. al.	Gender equality in employment law	2007
3	Fischbach et. al.	Administrative costs of the new EHUG	2007
4	NRCC	Effects of ELENA to economy, citizens and public administration	2007
5	NW Consult	Selected local administration processes	2008
6	FHM	Municipalities as victims of administrative burdens	2009
7	Walkenstik	Costs of law about restaurants in Thuringia	2009
8	NRCC	Easier to household benefits	2009
9	NRCC	Easier to parents money	2009
10	FHM	Administrative costs of the EU soil protection act	2010
11	NRCC	Easier to education grants	2010
12	NRCC	Immigration process of foreign professionals	2011
13	Bertelsmann	Executive costs in public tax administration	2012

Table 39: Projects about SCM application in public administration (see table 12 and 24)

These completed SCM projects must be analyzed to see if there is any relevant contribution to answer the research questions of this thesis. As described in the methodological chapter (see sec. III.3.3.2), the different studies are compared by a cross case analysis. Based on the description of Rihoux & Lobe (2009, p. 229) the comparative process of such a cross case analysis is undertaken in three steps:

- *Selection and description of cases*: After the selection of cases was done in the systematic literature review, the cross-case analysis must start with the description of these selected studies as a kind of relevance screening. This is the part of actual data analysis of the reports concerning the formal, methodological, and critical analysis. It will conclude with a selection of the relevant studies for this thesis.
- *Coding analysis of the proper cases* is the second part of this cross-case analysis. Like the coding process used in the interview analysis (see sec. III.3.1.4.2), the project's content is analyzed regarding its relevance for each of the three research questions. This data coding leads to an aggregation of similar content by interpretation of data and allows a derivation of short statements.
- *A review of results* of the cross-case analysis by looking at the kind and author of studies will end this part of data analysis.

IV.3.1 Relevance screening of SCM projects

The relevance screening is the actual analysis of whether a particular report contains relevant contributions to the three research questions of this thesis. At this stage of data analysis, the report is analyzed without a comparison with the other case studies. It begins with a short description of its context and underlying concept. After the identification of the target group, the report data is analyzed for its depth and method of investigation. The result for each single case analysis is to point out the relevant content for the research questions.

IV.3.1.1 IfM: Cost estimation in selected business branches (2006)

IV.3.1.1.1 Project description

Published in January 2006, the IfM project is one of the very first research reports in Germany that addressed methods to measure administrative burdens. This occurred only a few months after the new German government was formed in 2005. The IfM project was innovative for the time period and joined in the international discussion about the measurement of administrative burdens as part of a new better legislation policy all over Europe (p. 1). The IfM as an independent organization is sponsored by the German Federal Ministry of Economy and Energy (www.ifm-bonn.org); therefore, it took the economy into focus of its project to measure administrative burdens. The project idea is to measure administrative burdens of 25 selected companies (p. 45) that come from five selected branches (p. 8-16):

- Social insurance
- Tax and custom
- Employment protection and law
- Environment protection and
- Statistics

In every company, the IfM measured the administrative burdens concerning those five obligations by calculating the time period needed to fulfil the administrative obligations. The relevant scale is the needed time (p. 30) and the cost rate per process step (p. 34). The IfM entitled this method the "Stoppuhr-Model" (p. 28). This study of work is known as "Taylorism."

IV.3.1.1.2 Project analysis

The total report has 227 pages and starts with lists of figures, tables, and short overviews (p. V et seq.). After a short introduction (p. 1 et seq.), the report describes the object of investigation, especially the selected branches (p. 7-16) and

the 20 specific selected procedures (p. 17-27). Then a detailed description of the proposed “stopwatch-model” (p. 28-41) and the selected companies (p. 42-47) follow. This “stopwatch-model” is very similar to the SCM as presented by the SCM-Network (2005) in the same year. A definition of needed time and costs of procedures, multiplied by the identified number of procedures within the specific company leads to the total administrative burdens of the company (p. 38, 39).

The largest part of the report is the presentation of all the investigated 20 administrative procedures (p. p. 48-124). The results are presented in detail for every company (p. 125- 176). Unfortunately, the report includes a disclaimer that states that the results are not representative of the business sector in general due to the sample size of the companies investigated and the wide variation in results (p.177). Nevertheless, the report presents consequences for the overall national economy (p. 178-195). Without defining a standardized process, the IFM report uses only the arithmetic average for its estimation of relevance for the national economy (p. 178). Using this average rate, it extrapolates the administrative burdens of each of the five selected branches on a national level. The SCM follows another idea: The validated data material has to be scaled up to national level for each individual segment in the analysis. Generally, this is done by multiplying the standardized time and resource consumption for a normally efficient business in a segment by the population of the segment and by the frequency (SCM-Network, 2005, p. 43). In Germany, the SCM added an additional step if the information obligation results from a law given by one of the 16 German federal states (FHM, 2006, p. 56). In contrast to this SCM approach, the arithmetic average of Taylor’s work study has a very simplistic method of extrapolation and extending the project results to a national level are not realistic.

IV.3.1.1.3 Project relevance

The IfM-project is the first German investigation that presented the “stopwatch-model” as the first systematic method to measure administrative burdens of the business sector. Because the business sector was specific the target group of the

project, it has no relevance for the legal aspects about a possible transfer of the SCM to the municipal area. In addition, it does not contribute to the methodological framework to define the compliance costs of legislation because as the first German project measuring administrative burdens it concentrates only on information obligations or administrative burdens. It does not focus on the purpose expenses of the investigated administrative procedures.

The IfM project is also restricted to present numeracy data for administrative burdens without proposing an organizational implementation of the chosen method in the legislative process. In summary, the value of this IfM project is to advance the discussion in Germany to find a systematic method to measure administrative burdens. However, it is not relevant for this thesis.

IV.3.1.2 Hoffian & Bramann: Gender equality in employment law (2007)

IV.3.1.2.1 Project description

A study conducted by Hoffian and Bramann (2007) examines the effects of the 2006 gender equality in employment law (Allgemeines Gleichbehandlungsgesetz – AGG). The study has two aims. It investigates the effects of the law and whether it fulfils the legal purposes. The study also advocates that German companies endeavour to adhere to their legal obligations as written in the AGG. The main tenor of this report is a review of the legislators' promise in the preamble of the law that states that only companies that are suspected of practicing gender discrimination will be forced to comply (p. 2625). The investigation is a research project of the German University of Dortmund. Andreas Hoffian is professor for business controlling. Annehild Bramann is an external doctorate at his university chair. The chosen method is a double step data collection with a methodological triangulation. The data basis for this research is 27 semi structured expert interviews followed by 501 questionnaires with German companies.

IV.3.1.2.1 Project analysis

The report was originally published in an economically oriented law journal (“Betriebs-Berater”). The article comprises only four and a half pages in the journal. The article introduces the AGG with a description and proposes a review of the parliament’s promise that companies will not impose an extra administrative burden in fulfilling their legal obligations as mandated by the AGG. Following that is a description of the chosen two-step methodology. First, 27 semi-structured interviews are conducted with experts to better understand the legal impacts of the AGG. The interviews should provide the necessary background to create the widely distributed questionnaires that will represent the second step of the research. 501 questionnaires were returned to the researchers and provided an adequate data base for the investigation of legal impacts.

The cost estimations of this study are based on personal costs as defined by Destatis and a special rate of 25 % overhead costs coming from the SCM (FHM 2005, p. 47). The study added another 15 % extra amount to the costs because of other disruptions as calculated in the IfM project (p. 37). To estimate the concrete costs per company the study does not concern administrative procedures but defines the specific obligations of the AGG. These are:

- Strategy planning
- Ombudsman
- Training
- Screenings
- Documentation
- Other obligations

To put these specific obligations into focus, the cost definition is more a compliance cost approach rather than only an administrative costs measurement. The investigation looks more at the material purposes of law than the administrative

burdens. The authors of this AGG project ask for the efforts necessary to fulfil these specific AGG obligations and the results differ with the size of company. The report ends with an exploration on a national level using the data of Destatis about social insured employees in the branch of the investigated companies. It is not possible to do this exploration only by the numbers of branch specific employees because the effort to fulfil the AGG obligations does not rise with the number of employees in a company. Regarding the immense results of 1,73 billion € of cost impacts for the German business sector caused by the AGG; the report concludes with a demand for a systematic impact assessment of laws on a national level. An answer to the other research question for the AGG about the effects of gender equalization in German companies is inconclusive.

IV.3.1.2.1 Project relevance

As with the IfM project, Hoffian and Bramann's 2007 investigation examined administrative burdens of the AGG in the business sector. It is one of the first research projects in Germany that investigated the legal impacts in private companies using a systematic cost measurement. Based on the citations in this report, the authors built their research on the methodological basis of the SCM manual and the IfM report. However, the article does not address the legal aspects of this thesis regarding the SCM application in public administration. With regards to this thesis, the most significant concept in the report is the cost measurement of substantial legal obligations. In contrast to the original concept of administrative cost that addressed only information obligations of business companies, the study of Hoffian and Bramann goes one step further and looks for the real costs. Unfortunately, the investigation is only relevant for the legal obligations of the AGG. Because of the chosen methods, a generalization relevant to the sector of public administration is not possible. Also there is no contribution to the research objective of this thesis to identify the sufficient conditions required for the organizational implementation of the SCM to municipalities. Hoffian and Bramann restrict themselves to applying a systematic cost measurement as part of a

comprehensive impact assessment system, but they do not provide an organizational proposal.

IV.3.1.3 Fischbach & Schmal: Administrative costs of the new EHUG (2007)

IV.3.1.3.1 Project description

The report of Fischbach and Schmal is not scientific research, but was published in an economic journal similar to that of the study of Hoffian and Bramann (“Der Betrieb”). In their 2007 study, Fischbach and Schmal referred expressly to the recently enacted NKRK and the implementation of the NRCC (p. 529). In “Administrative costs of the new EHUG” (2007), Fishbach and Schmal conducted an application study using the pure method of SCM. As an application example they chose the law about the new implemented commercial, cooperative, and business register (Gesetzes über elektronische Handelsregister und Genossenschaftsregister sowie das Unternehmensregister – EHUG) because the EHUG has great importance for the business sector in Germany and its intention itself is to reduce administrative burdens (p. 529). The authors worked as autonomous tax and certified accountants. In addition to presenting another illustration of the SCM application, the authors discussed the criteria necessary to conduct the actual cost measurement in private companies.

IV.3.1.3.2 Project analysis and relevance

As an article in the economic journal “Der Betrieb” contains only five pages. Fishbach and Schmal’s (2007) article begins with general descriptions of the NKRK and the NRCC and a discussion of the appropriate candidate to execute the SCM measurements. The authors maintain that tax professionals and certified accountants hold the necessary expertise to achieve this work. In contrast to the employees of Destatis who typically perform the SCM measurement, the tax and certified accountants are independent from the legislative system (p. 529 et seq.). They also have the necessary expertise to analyze the systems and procedures within the companies (p. 530). Against the background of the author’s profession, it

seems to be the original intention of the authors to define the SCM measurements in companies as a new business area for tax and certified accountants. The following chapter is about the administrative obligations caused by the EHUG. After a short description of the EHUG's content, the authors identified four legal areas with new information obligations of the EHUG (p. 531, 532):

- IT-equipment purchase
- Formal regulations for document transmissions
- Fusions of responsible register offices
- Public announcements

The implementation of the new business register and the disclosure of year-end financial statements are identified without additional administrative burdens in the companies (p. 532). The narrative analysis of these four areas makes clear that the authors obtained no data about the corresponding procedures. The next chapter of the study is only a general description of the different steps of the SCM measurement. In the end there is no concrete information about the administrative burdens of the EHUG. The article uses the new EHUG as an occasion to claim the SCM measurements as a new business field for tax and certified accountants. The study of Fischbach and Schmal has no relevance for the research questions of this thesis.

IV.3.1.4 NRCC: Effects of ELENA (2007)

IV.3.1.4.1 Project description

By order of the Federal Ministry of Economy and Technology, the NRCC analyzed ex-ante the administrative costs of companies, citizens, and public administrations caused by the legal introduction of the ELENA process. ELENA is an acronym for "Elektronischer Entgeltnachweis, "which is defined as the electronic transmission of employees' income data by their employers and the public labour authority to the tax administration. All involved federal ministries of finance, labour, and social affairs and of economy and technology performed different cost estimations of

ELENA using a simple cost utility analysis. Therefore, as an independent authority, the NRCC was ordered to measure the administrative costs of ELENA in comparison to the conventional analogue data transmission process (p. 7). This was the first governmental mandate for the NRCC one year after its implementation in 2006 to give a contribution to legislative decision making by a self-elaborated SCM measurement project.

IV.3.1.4.2 Project analysis and relevance

The ELENA report contains 37 pages of analysis and 33 pages of appendices. It starts with a short summary of results with no methodological advice (p. 2-4). After the topic introduction and analysis objectives (p. 7), there is a brief mention of the SCM as an applied method without any further details about the applied method (p. 8). The report is structured with an initial analysis of the analogue data transmission process to date (p. 9 et. seq.) and a following ELENA process analysis (p. 17 and 27 et seq.). The report ends with a comparison of the measurement results (p. 33 et. seq.) and a closing suggestion to implement the ELENA procedure (p. 35). Regarding the earlier understanding of administration costs as burden only of the business sector it follows a detailed analysis of the three relevant procedural obligations in companies (p. 9-17). Surprisingly, there is no description of the SCM as an applied method. All measurements are derived from a simple multiplication of the needed time per process step as defined by the process analysis with prices coming from other investigations before and described in the appendices. The ELENA report contains no additional analysis of administrative costs in public administrations. It is restricted solely to the change efforts for new IT hardware and software implementation (p. 26 and 32). There is no discussion about legal conditions, type of costs in public administration, or any organizational aspects of cost measurements. The ELENA report may be the first important application of the SCM to address legislative decisions, but it has no relevant contribution to the questions of this thesis. In 2011, the German government cancelled the introduction of ELENA because of different problems about private and economic data protection.

IV.3.1.5 NW Consult: Selected local administration processes (2008)

IV.3.1.5.1 Project description

The report of NW Consult (2008) is one of several projects conducted by the Bertelsmann Stiftung in Gütersloh, in context with the foundation strategy to work with different aspects of modern regulation (www.bertelsmann-stiftung.de). One of these projects was a study to test the SCM application within the municipal area (p. 6). The Bertelsmann Stiftung ordered the Consulting office of NW Consult in Herford to conduct this study. The project aim is to investigate the necessary modifications of the SCM within a municipal framework and to find a solution to decrease bureaucracy in public administration. For the first time, the project established the name “SCM municipal” as a modification of the SCM, which normally targets the business sector (p. 7). To test this proposed “SCM municipal”, NW Consult chose two administrative procedures from the local level of public administration:

- Charging of fees for public child care
- Process of business registration

These two procedures were analyzed in four different German federal states: Bayern, Berlin, Nordrhein-Westfalen, and Sachsen because the execution of laws differs in the federal states. The project of NW Consult is the first study in Germany that considered administrative burdens in municipalities as part of public administration.

IV.3.1.5.2 Project analysis

The 64-page report of NW Consult begins with a description of the political framework two years after the enactment of the NKRK and the implementation of the SCM as part of a systematic impact assessment system in Germany (p. 6). Following this description, the goals of the study are outlined: to address the application of the SCM in a municipal area and to give a contribution to the 2008

political discussion about child-care in Germany (p. 14). This was one reason to choose the procedure of fee charging for public child-care as one of the investigated administrative procedures. Regarding the actual political discussion about child-care in 2008 as a reason to do a SCM research, it does not seem to be suitable for the topic. The third chapter is a description of the SCM methods and the modifications needed to apply the SCM in municipalities. This is also the main innovation of this report.

As opposed to the original description of the SCM as outlined in the first SCM manual of the FHM (2006) and the application manual of the German Government (2006), the NW Consult considers not only the information obligations in the business sector but also in the public administration – especially municipalities – and for the citizens (p. 24). The logical premise for such a holistic consideration of administrative burdens is a complete analysis of the particular administrative procedure.

This led the NW Consult to its statement that the modified SCM – now called SCM municipal – is not only a method to measure administrative costs of all involved individuals and institutions but also a method for administrative process analysis. The primary author of this report, Jochen Zülka, considered this statement as highly significant and reiterated his opinion in an article published one year later (2009). This holistic SCM approach of the NW Consult is a worthwhile concept as it considers all of the involved social players, not only a specific segment of those. As a consequence of this process analysis, NW Consult outlined the importance of creating a standardized administrative procedure. Only the standardization of processes guarantees the elimination of individual or specific characteristics of law execution (p. 61 and 63). But NW Consult does not consider the most important aspect of costs for municipalities: the purpose expenses. Consequently, the NW Consult study analyzes the administrative costs of business, public administration, and citizens but not the compliance costs as mandated by the new § 2 I NKRG after the reform of 2009.

The report continues with the specific analysis of the chosen administrative procedures of charging a fee for public child-care and business registration (p. 34 et seq.). It is notable that the analysis of these two procedures covers only 14 pages (p. 34-48). The discussion about the methodological aspects and the modification of the SCM covers 28 pages (p. 12-30). The absence of a list of involved local authorities is unusual as the SCM modification from a municipal point of view is the main intention of this study. The last chapter of the report is a critical discussion of the process analysis and an explanatory statement of why the SCM must be modified in the proposed way.

IV.3.1.5.3 Project relevance

The majority of the NW Consult report is a methodological statement. It proposes a list of methodological modifications to apply SCM in municipalities. Underlying this is an approach of a holistic process analysis that respects all involved persons and institutions. Unfortunately, the report does not mention the legal aspects of the proposed “SCM municipal,” which seems unusual because the main author Jürgen Zülka is a lawyer. The relevance of this report is based on its methodology because it expanded the analyst’s view from an addressee-oriented SCM application to a more process oriented cost measurement. Because this thesis looks for a methodological framework of compliance costs, this could be a constructive contribution, even if the NW Consult study neglected the purpose expenses. The description about the political and historical context of this study (p. 14) showed that the authors were aware of the necessity of a SCM application in and for municipalities. Based on the acknowledged need for change, it is odd that no organizational proposal exists to implement the new “SCM municipal” into the development of political will and the subsequent legislative process.

IV.3.1.6 FHM: Municipalities as victims of administrative burdens (2009)

IV.3.1.6.1 Project description

The next project that recognized municipalities as a reasonable application field of the SCM was conducted by the FHM, which published the first SCM manual in Germany (2006). Although the NW Consult (2008) report was published one year before this report, the FHM titled its report as “first study about SCM transfer to public administration.” The FHM study must be seen in the context of other political activities that address the possible transfer of the SCM from the business sector to the public administration and municipalities. The initiation for this study comes from a conference of the Konrad-Adenauer-Stiftung (www.kas.de) held in Berlin on the 15 October 2008 under the title: “Municipalities as victims of administrative burdens.” The keynote speaker, Dr. Norbert Röttgen, the parliament secretary of the CDU party in the German Bundestag, recognized that administrative burdens must be decreased in municipalities. As a consequence of this conference, the FHM investigated administrative burdens in municipalities. In contrast to other studies, the FHM analyzed all information obligations in a municipality that come from state and European laws. The selected municipalities for this study were:

- Stadt Baden-Baden (55.000 inhabitants)
- Stadt Freiburg (230.000 inhabitants)
- Stadt Bünde (44.000 inhabitants)
- Kreis Lippe (350.000 inhabitants)

The author of this thesis was involved in the FHM study as responsible project manager of the partner municipality Kreis Lippe. In the end this study was also the initiation for the author to undertake this research.

IV.3.1.6.2 Project analysis

The 54 pages of the study is a summary of the collected data with added examples of the involved municipalities. The report starts (p. 5) and ends (p. 52) with an appeal to use the SCM as a possible method for bureaucracy decrease. This is more a political statement and an introduction into scientific research. Similar to the NW Consult study, the following chapter concerns better legislation policy in Germany and the implementation of the NRCC and the SCM as suitable methods for the reduction of bureaucracy (p. 11 et seq.). Following that portion of the report is a general description of the SCM (p. 14 et seq.) with a special chapter about the necessary SCM modification in municipalities (p. 17). Regarding the central term of information obligation as a main cause for administrative burdens and the SCM application in municipalities, the FHM report draws a distinction between obligation to fulfil legal duties and other information obligations as reports to other authorities.

This discussion about the SCM modification from a municipal point of view considers the former version of § 2 I NKRK prior to 2009 that proposed the SCM application as a tool to measure information obligations. After reforming this regulation, § 2 I NKRK proposed the measurement of compliance costs. Today this discussion about different kinds of information obligations in municipalities is obsolete. Unfortunately the FHM report does not address compliance costs.

The following chapter contains the methodological description of data collection in the four involved municipalities that use standardized questionnaires. Significant points that come from the analysis of questionnaires are investigated through expert interviews. Although there is no systematic approach in these interviews, the main point of this study is the collection of all information obligations in a municipality. The report contains no complete analysis of the collected data but only summarized results (p. 28 et seq.). Some of the information obligations from the involved municipalities are singled out to illustrate extraordinary examples of unnecessary bureaucracy in municipalities (p. 33, 37, 38, 42). However, the authors

do not explain why they chose the specific examples. For the researcher's purposes, this report lacks the necessary scientific methodology required for this thesis. It is more a political statement than a well-founded scientific research study.

This report also concludes with political statements (p. 46 et. seq.). Within these political arguments this report is the first study in Germany that recognized the SCM application in municipalities as a possible element in the principle of connectivity (p. 47; see sec. 1.3).

IV.3.1.6.3 Project relevance

The main relevance of the FHM study is the SCM application in municipalities. The study portrays municipalities as the victims of bureaucracy, not as the perpetrators of bureaucracy. This is more a political result than a scientific research. However, as relevant to the research question about legal conditions, the FHM report is the first study that combines the methodological SCM application and the constitutional principle of connectivity (art. 28 II GG). The FHM study offers a recommendation regarding the point of the legislative process that the SCM implementation is suitable for municipalities. Regarding the constitutional relationship between the federal administration and legislation (art. 87 I s. 7 GG) and the principle of connectivity (art. 28 II GG), the FHM report shows a method for a municipal SCM implementation into the legislative process. Because the research for this report was conducted before the reform of § 2 I NKRGG, it does not give a contribution to the definition of compliance costs.

IV.3.1.7 Walkenstik-man-alone: Administration costs of Thuringian restaurant act (2009)

IV.3.1.7.1 Project description

The study about administrative costs of the Thuringian restaurant act (ThürGastG) is a bachelors' thesis of Diana Walkenstik-man-alone submitted at the FH Nordhausen, a university of applied sciences in Thuringia. The act mandated that by order of the government of the federal state of Thuringia, the FH Nordhausen

should estimate the intended new law about restaurants in Thuringia (p. 2). This obligation was conducted by the bachelors' thesis of Diana Walkenstik-man-alone. The intention of this thesis was to measure the administrative costs not only for the business sector from an ex-ante point of view as described in the methodological SCM manual of the German government (2006), but also to measure the administrative costs of the public administration caused by the intended Thuringian restaurant act. Therefore, the aim of this study was to measure administrative costs of a specific law and to develop the SCM for an application within public administration (p. 3).

IV.3.1.7.2 Project analysis

The first impression of the thesis is that it is an exhaustive piece of work because the main text (p. 1-89) is supplemented by a huge number of appendices, especially about the statistic data of detailed cost measurements (p. 90 -168). The study starts with description of the SCM based on the manual of German government (p. 3-14). The next chapter discusses the development of the SCM for an application in public administrations (p. 15-28). Like the FHM study about municipal administrative burdens (2009), Walkenstik-man-alone recognized that the business-oriented definition of information obligations differs from that for public administrations (p. 16). Based on the analysis of Kienbaum (2007, p. 21 et. seq.), Walkenstik-man-alone differentiated the information obligations of public administrations depending on whether the addressee is also the (internal) public administration or another (external) partner like politics, economy, or citizens (p. 19). As opposed to the SCM in private companies, the analysis of administrative processes in public administrations must be more detailed because not every information obligation should be considered for the cost measurement (p. 27). If the business sector has to achieve every single information obligation, then this differs from the public administration because addressee of the legal duty is the company or the citizen. Public administrations have to execute the administrative process, but typically they are not the addressee. Walkenstik-man-alone proposed a development of the SCM for public administrations by reducing the 16 standard activities in private

companies as defined in the governmental SCM manual (Deutsche Bundesregierung 2006, p. 9-11) to 10 new standard activities in public administrations (p. 26).

However, this proposal is no longer relevant due to the reform of § 2 I NKRK in 2009 that requires a holistic meaning of compliance costs and no longer considers only information obligations. In the structure of Walkenstik's thesis, the following two chapters are about the cost measurements of the ThürGastG in the economy (p. 34 et seq.) and in public administrations (p. 56 et. seq.). The systematic investigation of administrative costs in public administrations was conducted in two steps (p. 56):

- *Definition of a standardized procedure* by expert interviews in three selected municipalities.
- *Data collection by questionnaires* from all 47 responsible Thuringian municipalities.

The thesis concludes with a summary of the analyzed data with a focus on the cost comparison of the new and old regulations about restaurants in Thuringia and a concrete proposal for the further legislative decisions.

IV.3.1.7.3 Project relevance

The thesis of Diana Walkenstik-man-alone is a comprehensive ex-ante study about administrative costs of the ThürGastG. As an application study, it contains no commentaries about the legal conditions of the SCM application in public administrations, especially in municipalities. Also the thesis contains no explanations of compliance costs because it is based on the former version of § 2 I NKRK that only requires from the SCM a measurement of information obligations. Based on methodology, Walkenstik's thesis is further evidence that the standardization of administrative procedures is an important step to measure costs in public administrations. Walkenstik's thesis is a good example of how the SCM could help to increase the quality of political or legislative decisions. However, the author does not examine the political or organizational implementation of the SCM

in a municipal area because the research objective was to make a proposal for a specific problem and the legislation about the ThürGastG.

IV.3.1.8 NRCC: Easier to household benefits (2009b)

IV.3.1.8.1 Project description

The “Easier to”- projects are a product of the better legislation policy of the German government, founded in the coalition agreement of CDU, CSU and FDP from 2005 (p. 62, 63). The implementation of the NRCC was an important institutional step. The “Easier to-projects” are the first attempt of the new NRCC to bring together the different levels of public administration. There are two essential aims of this investigation. First, the project should identify the administrative burdens of the administrative benefit procedure for the citizens and the public administration itself. Second, it should create a feedback loop from the executing authority on the local level to the German federal administration and legislation that is responsible for the legislative regulation of household benefits in Germany.

The regulation of household benefits is a federal law within the context of social welfare (§§ 68 Nr. 10 SGB I, WoGG). In the constitutional distribution of legislative responsibilities, the Deutsche Bundestag is the law giver responsible for laws regarding social benefits, therefore also for the WoGG (art. 74 I Nr. 7 GG). The local level of public administration is responsible for the execution of the WoGG is (§ 24 I WoGG and the federal executive order laws in every federal state, f.e. § 3 ZustVOWo NRW). Like a business process analysis, this feedback loop should also make recommendations for improving the benefit procedures to simplify the process itself and to conserve funding. According to the two project aims described above, the two target groups for the investigation are the citizens who apply for the household benefit and the executing and supervising public administration. Therefore, there are 20 project partners that can benefit from this project (p. 19).

- Federal level: Chancellors Office, Federal ministry of transport, building and urban development, NRCC and Destatis
- Local level: 12 municipalities
- Federal states: 4 federal states where the local authorities come from

IV.3.1.8.2 Project analysis

The 125-page project report is well structured. It starts with a short presentation of the essential results (p. 9 et seq.). An in-depth description of the applied method to measure the administrative processes in the different authorities follows (p. 21 et seq.). Then every involved municipal administration describes the process of household benefit and its specific procedural elements (p. 5 et seq.). After a qualitative and quantitative comparison (p. 83 et seq.), constructive proposals are established to advance the procedures over all authorities (p. 90 et seq.). The report ends with 42 appendices that include the numbers and data that are important for the process analysis (p. 97 et seq.). The methodological main chapter is the measurement of administrative burdens using the SCM as the leading method. There is no discussion about the chosen method because from a political point of view this project was conducted to prove the SCM as a suitable method to measure administrative burdens (p. 21 et seq.). Corresponding to the general operational mode of the SCM (see sec. II.5.3) this report performs an intensive analysis of the whole benefit procedure from both points of view: the application process of the citizens (p. 32 et seq.) and the administrative process in the authority itself (p. 43 et seq.).

The necessary data was collected by standardized questionnaires. Following the SCM, the data are analyzed in every single step of the process in a systematic way. The results of investigation are presented in quantitative data for the measured time and costs (p. 9, 13, 17 et seq.) and in qualitative data about the personal experiences of citizens and described differences in the involved authorities (p. 11, 14, 16 et seq.). The text is well written and comprehensive.

IV.3.1.8.3 Project relevance

Like the other “easier to” projects the “Easier to household benefit” project is the only investigation that includes the specific results of federal legislation on the municipal level of public administration. It shows that the SCM is a suitable method to measure administrative burdens and its voluntary application in municipalities is possible. It is also the first attempt to create a standardized administrative process based on data from a greater number of different municipalities (p. 31 et seq.). The disadvantage of this project is that only administrative costs are addressed. This means that the “Easier to household benefit” project gives no results about the differences between administrative expenses and purpose expenses of an executed law. It only describes the results of measured administrative costs. Therefore, the report represents a minor contribution for the second research question about the definition of compliance costs (§ 2 I NKRG). The report concludes with the consensual intention of all involved project partners to initiate further dialogue about more simplifications of the benefit procedures. This declaration is well intended; however, there is no proposal for a systematic feedback process between the federal law giver and the municipal executing authorities.

IV.3.1.9 NRCC: Easier to parent`s money (2009a)

IV.3.1.9.1 Project description

The project “Easier to parent’s money” is very similar to the previously described project “Easier to household benefit”. It has the same strategic idea to identify the administrative burdens of the benefit procedure for the citizens and the public administration. Also it should give a feedback loop from the executing authority on the local level to the German federal administration and legislation that is responsible for the legislative regulation of parent’s money in Germany. The regulation of responsibilities is similar to the household benefit. The regulation of parent’s money is a federal law within the context of social welfare (§§ 68 Nr. 15 SGB I, BEEG). In the constitutional distribution of legislative responsibilities, the Deutsche Bundestag is the legislative entity responsible for laws about social

benefits and also for the BEEG (art. 74 I Nr. 7 GG). The local level of public administration is responsible for the execution of the BEEG (§ 12 I BEEG and the federal executive order laws in every federal state, f.e. § 1 ZustVOBEEG NRW). The two target groups are also the same as the other “Easier to” projects: the citizens who apply for parent`s money and the executing and supervising public administration. So there are 16 project partners (p. 14):

- Federal level: Chancellors Office, Federal ministry of family, women and youth, NRCC and Destatis
- Local level: 9 municipalities
- Federal states: 3 federal states where the local authorities come from

IV.3.1.9.2 Project analysis and relevance

There is no necessity to conduct another deep analysis of this project report because its structure and methodology is the same as in the project “Easier to household benefits”. The SCM as a chosen method is conducted in the same way as in the previously mentioned “Easier to” project. Consequently, the relevance of the Easier to parent`s money project is equivalent to that of the previous project. Regarding the collected data, it also proposes a standardized administrative process (p. 22) as the data basis for the later SCM measurements. The same methods led to the same disadvantage: Its application concerns only the administrative burdens but not the compliance costs of a parent`s money procedure. It is notable that the closing description of results (p. 75-79) contains only very concrete proposals to enhance the administrative procedures as typical in a business process analysis. But there is no statement about the further information exchange between the law giving level of federal legislation and the municipal level of executing administration.

IV.3.1.10 FHM: Administrative costs of EU soil protection act (2010)

IV.3.1.10.1 Project description

By order of the German Federal Ministry of Food, Agriculture and Consumerism, the FHM has undertaken a study about the execution costs of a directive about soil protection proposed by the European Commission for the European Parliament and the European Council from 22.09.2006 – KOM (2006) 232. The greatest problem of this study is the absent transformation of the EU-directive into national German regulations (p. 4). Therefore, the FHM had to assess a prognosis about a national legal transformation that is necessary to define the probable administrative consequences and the right addressees of the soil protection directive. The study's aim is to estimate all additional costs caused by the directive KOM (2006) 232 on all levels of public administration in Germany (p. 4). It is the first research in Germany that estimated ex-ante an intended European legislation act like an EU-directive before it became operational.

IV.3.1.10.2 Project analysis

The study contains 70 pages without any appendices. It starts with introductory amendments about the research objective (p. 3), a brief summary of results (p. 4), and specific problems of this study (p. 7). A general explanation about the complex legal relationship and the effects of European and national regulations follows (p. 9). The FHM declares the SCM as a suitable method for this study without a detailed explanation (p. 15). But for the first time the SCM should measure not only administrative costs but also compliance costs of the directive execution. Against the background of the reformed § 2 I NKRG in 2009 and prior to the publication of the Destatis manual about measurement of compliance costs (2012), the FHM had to define the term of compliance costs without assistance from precedents (p. 16).

The FHM defined compliance costs as a summary of personnel costs, material costs, and financial costs. This definition is followed by an analysis of relevant legal (p. 17) and political (p. 22) frameworks to prognosticate a possible national transformation

of the several regulations in the EU-directive. The main chapter of this study is the interpretation of the specific EU-regulation and its predicted transformation into German law (p. 24-49). The last chapter is the cost estimation of the certain EU-regulations for the German federal level of administration (p. 50), the level of the 16 federal states (p. 54), and the German municipalities (p. 60). In contrast to other SCM reports, the FHM does not analyze any administrative procedures but estimates only the workdays necessary for the execution of the several EU-regulations. These estimations of work-days come from expert interviews in several federal states, municipalities, and “other public authorities” (p. 7). Unfortunately there is no possibility to prove or test if these estimates are reasonable or not. One important result is the statement that the German municipalities have to bear the greatest part of 273 million € of all calculated annual costs of 317 million € (p. 70). Even if this result is conditioned by the restricted methodology, it is obvious that the municipalities have to bear the greatest part of execution costs.

IV.3.1.10.3 Project relevance

The main relevance of this study is that it represents the first ex-ante cost estimation in Germany of an EU-directive. Considering the problems about the prognosticated transformation into German law and the methodological restriction of cost estimation, it is a valuable piece of work to qualify the political discussion about EU legislation. There are many legal explanations about the relationship between European and national law. However, none exist that address the legal conditions of SCM in municipalities. In reference to the research objective about the methodological framework of compliance costs, the FHM study is the first to investigate the holistic meaning of execution costs. The publication of the Destatis manual about the measurements of compliance costs (2012) renders the concepts of FHM as approved, but obsolete. Similar to the other SCM application studies, the FHM report does not contain any explanations about the political or organizational implementation of this kind of standardized cost estimation into the legislative process. It was intended to give a contribution to the quality of political discussion about soil protection in Europe. Therefore, the organizational aspects were left out.

IV.3.1.11 NRCC: Easier to education grants (2010)

IV.3.1.11.1 Project description

The project “Easier to education grants” is also similar to the already described two “Easier to projects”. Like the other projects it has the same idea to identify the administrative burdens of the benefit procedure for the students and the public administration. In contrast to the other “Easier to projects,” the responsible public administration is not a municipality, but the authorities of the federal states for the education grants. The regulation of education grants is a federal law within the context of social welfare (§§ 68 Nr. 1 SGB I, BAföG). Like the other investigated laws about social welfare, the Deutsche Bundestag is the legislative entity responsible for this particular law: The BAföG (art. 74 I Nr. 13 GG). Generally, the responsible municipality responsible for the BAföG execution is based on the residence of the applicant (§ 40 I BAföG). But the “Easier to education grant project” focuses only on public benefits for university students. Those responsible for the execution of education grants for university students are the special authorities of the German federal states at the public universities (§ 40 II BAföG). The two target groups are similar to those in the other “Easier to” projects: the students who apply for higher education grants and the executing and supervising public administration in the universities. There are 26 project partners in this process (p. 17):

- Federal level: Chancellors Office, Federal ministry of education and research, NRCC and Destatis
- Federal states: 8 federal states
- Executing authorities: 14 authorities for education grants at the universities

IV.3.1.11.2 Project analysis and relevance

The majority of the structure and methods of this project are identical to the other “Easier to projects.” In particular, the SCM as a chosen method is conducted in the same way like in the other “Easier to projects”. Based on the data from all involved authorities, the project defines the standardized administrative process for the

education grant (p. 27-29). Again, the SCM measurement focuses only on the administrative procedures and does not review the compliance costs involved. This is notable because this “Easier to project” is from 2010 and occurred after the reform of the NKRK from 2009. The primary goal of this reform was to change the relevant § 2 I NKRK. This reform on the responsible ministry mandated measurement of not only the administrative costs, but also the entire compliance costs of a new or reformed law. The reason that the project focuses only on administrative costs must be that the period of investigation occurs during 2009, which predated the NKRK reform in the same year.

In this “Easier to project”, the conclusions at the end of the report are notable. Two special aspects were repeated a number of times and printed in bold letters (p. 145):

- *Faithfull collaboration* between the federal level of administration, the federal states, and the different authorities for educations grants, mixed project groups, agreed project procedures, and respect of legal responsibilities.
- *SCM as benchmarking method* to compare the different kinds of possible legal execution. This project does not only present financial data for administrative procedures and concrete proposals to advance the business process, but also proposes the use the SCM as a systematic method of qualitative process analysis.

In the end, this “Easier to project” about education grants makes no contribution to the research question about legal circumstances for municipalities because municipalities are not involved. In addition, the research question regarding a methodological framework of compliance costs is unanswered because the applied SCM concerns only administrative costs. However, the project outlined the necessity and efficiency of professional exchange about administrative execution of laws. Although this exchange is not described systematically, it speaks to a potential development in the future.

IV.3.1.12 NRCC: Immigration process of foreign professionals (2011)

IV.3.1.12.1 Project description

Within the political discussion in Germany about possible simplifications for the immigration of high potential professionals (BMAS, 2011, p. 31), the NRCC was ordered to analyze the relevant immigration processes and to propose possible improvements. In addition to NRCC, several project partners from different levels of administrations, economy, and research joined the project:

- Federal level: Ministry of Foreign Affairs and several diplomatic representations abroad, federal authority for employment, NRCC and Destatis
- four federal states (Hesse, Saxonia, Baden-Württemberg and Rhineland-Palatinate)
- eight municipal departments managing residential permit for foreigners
- nine companies
- one research institute

The strategic idea was to analyze the demand of the economic sector, to compare the different executions of the immigration process in different federal states and municipal authorities, and to propose a simplified standardized reference process (p. 11). The aim of this study is less the estimation of administrative or compliance costs of processes in public administration and more a business process analysis. The study was conducted by Destatis.

IV.3.1.12.2 Project analysis and relevance

The report is an extensive work with 268 pages. The report begins with a very detailed summary of results (p. 11-22). The report begins with an introduction into the political discussion and the administrative challenge of simplifying the immigration process, which is viewed by German companies as being mired in bureaucracy (23 et. seq.). A detailed description of the project aim, the object of

investigation, and an analysis of relevant laws and regulations follows the introduction (p. 27 et. seq.). The next chapter is a review of methods and data collection (p. 35 et seq.). As understood from prior NRCC projects, the analysis starts with an elaboration of a reference procedure that gives the necessary guidelines for the further data collection. Destatis, the institution conducting the study chose qualitative methods like semi-structured interviews, standardized questionnaires, and additional data analysis of existing sources such as Internet research and visa databases (p. 35). The report does not identify the SCM as the chosen method.

The following chapters are presentations of the collected data regarding the defined reference procedure (p. 41 et. seq.) and the analysis of the different executions of the described legal regulations in different authorities of the involved federal states (p. 63 et. seq.). The SCM is not used for the data collection or the analysis of law execution uses. The process analysis of the involved municipal immigration authorities (p. 73 et. seq.) is a narrative analysis of the collected data by interviews and questionnaires. Consequently, the proposals for improving the German immigration process (p. 189 et. seq.) are qualitative and based on narrative descriptions – not quantitative cost measurements. The main finding of this project is that the immigration process lasts for eight weeks but the work of responsible personnel itself is less than five hours (NRCC, 2012, p. 62). The legal discussions in this report regard the immigration laws but not the legal conditions for an SCM application. Because there is no discussion about costs in the process analysis, this report does not contribute to the research question for methodological frameworks of compliance costs. The proposed advancements at the end of the report concern the immigration process, but not the organizational SCM implementation that is the topic of this thesis.

IV.3.1.13 Bertelsmann Stiftung: Executive costs in public tax administration (2012)

IV.3.1.13.1 Project description

The report of the Bertelsmann Stiftung is the first study published following that of the Destatis manual about the calculation of compliance costs (Destatis, 2011). The Bertelsmann report proposes a fusion of the Destatis manual with an application of this methodological framework in public tax administration. By order of the German federal ministry of finance, the Bertelsmann Stiftung must respect the specifics of the German tax administration. This study should qualify the state tax administrations, especially the higher authorities like ministries, to estimate compliance costs of new legislation specified for their legal responsibilities (p. 4). This is necessary because every involved ministry – and the Ministry of Finance is involved in nearly all new legislation – has to estimate the compliance costs in the meaning of § 2 I NKRG (§ 44 IV GGO). In addition to the federal ministry of finance, the project was conducted by the ministries of finance from different German federal states like Bavaria, Berlin, Northrhine-Westfalia, Rhineland-Palatinate, and Saxonia. No municipal project partners were included in this project because in Germany only the state level is responsible for tax administration regulated in the FVG. So this study is the first – and until now the only – study to investigate compliance costs in a holistic approach and not only for one single administrative procedure.

IV.3.1.13.2 Project analysis

The introduction discusses the project aim and organizational aspects (p. 4, 5) and then provides a short explanation of the compliance cost estimation as outlined in the Destatis manual (p. 6) and the other controlling instruments used in German tax administration (p. 7). Before starting the original cost measurement, the Bertelsmann study stated that these procedures should be implemented as soon as possible within the legislative process (p. 9). This is the first and only statement in all of the analyzed projects that covers the organizational implementation of

systematic cost measurements in legislative decision making. It comes from § 47 I GGO, which demands that the federal ministries send the law proposal as early as possible to the federal states and other relevant lobby associations.

Following the procedural steps for compliance costs measurements in the Destatis manual (Destatis, 2011, p. 28 et seq.), Bertelsmann also structured the measurement of execution costs by four steps:

- Identification of detailed obligations coming from the analyzed law (p. 12)
- Analysis of the administrative processes (p. 13)
- Measurement of compliance costs (p. 14)
- Presentation of compliance costs (p. 16)

The analyzed administrative processes were standardized and reduced by number to the essential and most important processes within a public tax administration (p. 5). It is once more an SCM application that needs a standardization of processes to realize the results of costs. After a description of used IT supplements for the measurements (p. 21 et. seq.), the report closes with some organizational recommendations (p. 25):

- The compliance cost measurements will be *conducted in the established working group* coming from the federal ministry of finance and the ministries of finance of the federal states.
- The cost estimation could be *made before elaboration of a law proposal* or after it. The involvement of the federal states before the elaboration of a law proposal is voluntary for the federal ministry of finance and only possible if there are already concrete obligations which could be measured.

IV.3.1.13.3 Project relevance

Even though this report contains only 29 pages and the project involved no municipalities it provides a number of points relevant to this thesis. Bertelsmann

recognizes the GGO as a relevant legal regulation that must be considered in the systematic cost measurement of law proposals. It is also the only study that gives a concrete contribution to the methodological framework of compliance cost definition if it proves the possible application of the Destatis manual about compliance cost measurements. The study also contains important recommendations about the organizational implementation of a systematic ex-ante cost measurements when it examines the time-based aspects regulated in § 47 I GGO.

IV.3.2 Coding analysis of relevant SCM projects

To begin the coding analysis, a summary should assign the relevant content from the different projects and reports to the three research questions. Within these three question topics, the content from the reports is combined and concentrated when possible. The following table identifies each report and its relevance to a specific research question.

	Author	RQ 1	RQ 2	RQ 3
1	IfM (2006)	-	-	-
2	Hoffian & Bramann (2007)	-	-	-
3	Fischbach & Schmal (2007)	-	-	-
4	NRCC (2007)	-	-	-
5	NW Consult (2008)	-	x	-
6	FHM (2009)	x	-	X
7	Walkenstik (2009)	-	x	-
8	NRCC (2009b)	-	x	-
9	NRCC (2009a)	-	x	-
10	FHM (2010)	-	x	-
11	NRCC (2010)	-	x	x
12	NRCC (2011)	-	-	-
13	Bertelsmann (2012)	x	x	x

Table 40: Project's relevance for the three research questions.

This table shows that only the Bertelsmann study about compliance cost measurement in tax administrations contains contributions to all three research

questions. The reports of IfM (2006), Hoffian and Bramann (2007), Fischbach and Schmal (2007), and the NRCC analysis about the immigration procedures for high educated foreigners are not relevant for this thesis. Only eight studies are left to be part of the following coding analysis structured by the three research questions.

IV.3.2.1 Municipal SCM permissibility

Based on the discussed projects, no study was found that addresses applying the SCM in public administration and the legal conditions of a SCM application on the local level. There is no singular question for the legal permissibility or the accordance with constitutional or legal regulations of SCM application in public administration. This seems to be the first important aspect of this cross-case analysis. However, several reports include statements about the legal conditions for the SCM application.

- *SCM as scale for the principle of connectivity:* It is the investigation of the FHM (2009) that merged the SCM application and the constitutional principle of connectivity for the first time (p. 47 et. seq.). The FHM discusses the necessity of an SCM application intensively with regard to the strict relation of connectivity between municipalities and the federal states (see sec. 1.3) and the prohibition for the federal legislative entity to transfer legal obligations to municipalities directly (Art. 87 I s. 7 GG). The necessity to apply the SCM in the federal legislation process from a municipal point of view is emphasized.
- The main discussion for this thesis is the constitutional question of whether Art. 87 I s. 7 GG prohibits a SCM application for federal legislation and restricts it via the relationship between municipalities and the federal states within the system of connectivity. The FHM stated the necessity of such a municipal SCM application by underscoring the current ineffective system of connectivity (p. 48 et. seq.)

- *Voluntary SCM application in municipalities:* Regarding this relevant question it is noticeable that all projects conduct municipal cost measurements analyzed without considering any legal problems of the SCM application. The NRCC reports about the “easier to-projects” stated that the SCM is a suitable method to measure the necessary effort of administrative procedures in municipal public administration (2009a, p. 13, 2009b, p. 18). This is notable because the focus of these studies regards federal laws about parent’s money and household benefits. Based on legal precedents, the legal consequence must be that voluntary SCM application in municipalities is permitted legally.
- *GGO as relevant regulation:* Looking for legal conditions of a municipal SCM application, the Bertelsmann report about executive cost measurements in public tax administration is the only study that addressed a specific regulation. If Bertelsmann discusses the organizational aspects of the executive cost estimation it explains the relevant step of the federal legislative process regulated in GGO (p. 9.). In the conclusion of the report a possible development of the proposed method, the authors describe two points in the GGO as relevant to the regulation for the executive cost estimation: the development of the governmental legislative proposal (§ 44 I GGO, p. 25) and the potential revision of cost estimation that may be necessitated after the procedural involvement of the German federal states (§ 47 I GGO, p. 26).

IV.3.2.2 Standardization as methodological framework

All of the analyzed reports endeavour to find a methodological approach for a systematic ex-ante cost estimation of legislation as part of a better legislation policy. There is one methodological aspect that is part of every investigation about administrative or executive costs measurement: the standardization of analyzed procedures. This standardization is an essential part of the SCM methods as described in the international SCM manual. Step 12 of the described SCM method is the standardization of results for each analyzed segment to provide a single

estimate for a normally efficient business to complete each administrative activity (SCM-Network, 2005, p. 41). Also the analyzed procedures in public administration need standardization before the cost estimation can begin. Nearly all analyzed reports contain in their methodological descriptions a standardization of administrative processes before starting the calculation of costs.

NW Consult applied the SCM in administrative procedures concerning trade and industrial law and parent's money (p. 21). Also Walkenstik-man-alone defined a standardization of the analyzed administrative restaurant procedures using three expert interviews before collecting data in from each of the 47 Thuringian municipalities (p. 26). The NRCC also involved a number of municipalities to define a standard procedure in its study about parent's money (p. 31), household benefits (p. 22) and education grants (p. 27 et seq.). According to the involved authorities from the federal and state level of tax administration, Bertelsmann considers a standardized process description for their executive cost measurement (p. 5). The FHM did this standardization for their cost estimation about EU-regulation about soil protection on the German national level (p. 15). This led to the conclusion that basis for collecting data for cost measurements in municipalities must be a standardized procedure and not executed individually in each municipality.

IV.3.2.3 Early feedback in federal legislation

None of the analyzed studies include a specific chapter about the organizational aspects of a municipal SCM implementation. However, several statements are suitable to use for this organizational question. In the FHM study about municipalities as victims of administrative burdens, the authors describe why the prohibited transfer of legal obligations by the federal parliament directly to municipalities (art. 87 I s. 7 GG) is not efficient and the SCM could be a suitable method to act towards this inefficiency (p. 47-49). Consequently, the SCM application cannot be restricted to the relationship between municipalities and the federal states but must also be applied in the federal legislative process. The FHM stressed this opinion in its investigation into EU regulation involving soil protection.

This study revealed that municipalities have to bear the greatest part of execution costs of EU regulation (p. 70).

The analysis result of the household benefits and education grants procedures by the NRCC, which is also regulated in federal laws, is that there must be systematic feedback between the federal legislative body and the municipal execution (2009b, p. 99, 2010, p. 145). The Bertelsmann study about cost measurement in state tax administration is the only one that proposes a concrete time for such executive cost estimation: as early as possible in the federal legislative process, either in the governmental law proposal or at the time when the federal states are involved in the legislative process (p. 9 and 25). Bringing these ideas together in an organizational proposal for a municipal SCM implementation should contain aspects of feedback or exchange about costs of legislation between the federal legislative entity and the municipalities at a very early stage of the legislation process.

IV.3.3 Review of SCM project contribution

In reviewing the cross-case analysis, it became apparent that not all studies about cost measurements using the SCM method could provide a suitable contribution to the research questions of this thesis. However, several derived statements emerged as relevant arguments in the following text analysis.

	Statement	Source Studies
CA 1	Municipal SCM application is necessary in the federal legislation because of an ineffective system of connectivity.	FHM, 2009
CA 2	Voluntary SCM application in municipalities is permitted legally	NRCC 2009a, 2009b, 2010
CA 3	Executive cost estimation must take place either in the governmental law proposal already or after the procedural involvement of federal states.	Bertelsmann 2012

CA 4	Databases for SCM cost measurements are standardized procedure, not an individual administrative execution.	NW Consult 2008, Walkenstik 2009, NRCC 2009a, 2009b and 2010, FHM 2010, Bertelsmann 2012.
CA 5	An early feedback exchange in legislative processes between law giver and municipalities is essential for SCM implementation.	FHM 2009, NRCC 2009b, 2010, Bertelsmann 2012.

Table 41: Assembled statements derived from cross case analysis.

Until now the legal aspects of the SCM application have not been analyzed in scientific studies. This is notable because the topics of all studies are administrative procedures based on public laws. Every study uses the SCM method or a more or less modified method of ex-ante cost estimation of administrative processes. So it is surprising that nobody asks for the legal conditions of a SCM application regarding the constitutional guaranteed local autonomy (Art. 28 II GG). This research gap is not as prevalent as related to the pursuit of a methodological framework for the determination of compliance costs. Most of the analyzed investigations were conducted before the publication of the Destatis manual about the calculation of compliance costs based on § 2 I NKRK in June 2011. Consequently, the cost measurements are based on the prior concept of administrative costs as including only information obligations. Even now, the Destatis manual (2011) discusses compliance costs and the necessity to standardize processes before starting this calculation. Also the NRCC report about immigration process of foreign high potential, published in September 2011, defines a “reference process” prior to beginning the calculation of costs (p. 35).

The most difficult question addressed by this thesis involves the sufficient conditions for a municipal SCM implementation because any concept involving an SCM application in legislative procedures necessarily involves the foundation of democratic decision making: the legislative process in the parliament. In a federal

state like Germany, this legislative procedure is so complex that the process of changing a proposal causes a number of ensuing problems. But these complex political interdependences should not prohibit thinking about possible advancements.

IV.4 Linking data and text analysis

If the prior data analysis of the interviews, presentations, and project reports has been able to identify relevant statements from experts and existing investigations; then these statements should be compared with text data from court decisions, literature, and articles. The hermeneutic text analysis of this legal literature, court decisions, and articles is the next part of data analysis of this thesis. The process to integrate the analysis results into the discussion about legal decisions and scientific meanings in either grey or regular literature is a hermeneutic text analysis that regards specific German rules about legal text interpretation (see sec. III.3.4.3).

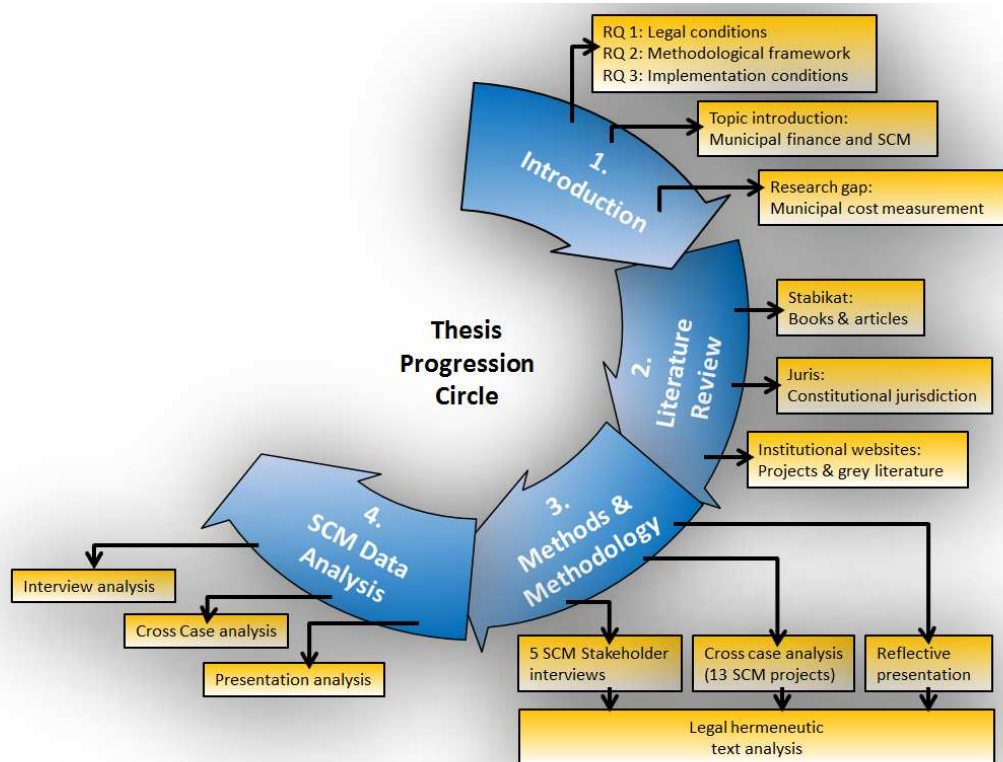


Figure 43: Thesis progression circle after chapter IV.

V. Legal hermeneutic text analysis

Starting with a differentiation by the type of literature and documents used, the following text analysis is structured by the three research questions of this thesis. The text analysis of every research question starts with a formulation of the pre-understanding as a necessary starting point of a hermeneutic circle analysis. This pre-understanding or prejudice about the topic of each research question will be compared with the statements from the former data analysis and explored in conjunction with the jurisdictional decisions and the relevant literature. The author's aim is to construct a concrete proposal and answer for each research question. The following figure shows the chosen structure of the legal hermeneutic text analysis.

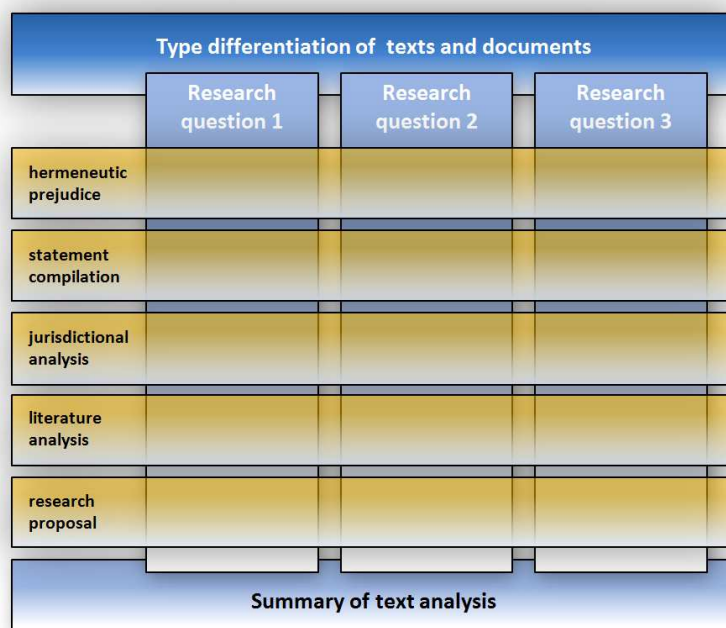


Figure 44: Structure of the legal hermeneutic text analysis (own elaboration).

V.1 Differentiation of texts and documents

A necessary condition for a qualitative texts and data analysis is an understanding of the kinds and types of data sources that the researcher will use in the research.. Thus, a text analysis must start with a thorough examination of the texts and documents that are the objects of the additional legal text analysis. As outlined

above (see sec. III.3.4.1), 62 literature sources were found in the literature review for this thesis.

- *Project reports:* After the data analysis of the SCM projects and reports, only eight reports were chosen for relevant content and concrete statements regarding the three research questions of this thesis (see sec. IV.3.2). In particular, concerning the legal conditions of a SCM transfer to municipal area only two reports have relevance. The FHM (2009) and Bertelsmann (2012) both discuss legal aspects of a SCM application in local authorities. Seven reports were found to be relevant to the definition of compliance costs of law execution. The organizational or political dimension of the SCM application is discussed in three reports. The common characteristics of all these reports is an analysis of certain administrative processes as pilot projects with possible proposals for abstract rules of applications, mostly for the definition of administrative or compliance costs, and less for legal or political aspects of a SCM application.
- *Scientific articles:* The scientific discussion in relevant magazines and journals is about the financial problems and poverty of German municipalities. For this thesis the author found 20 relevant articles that deal with different aspects of the three research questions. Following the actual jurisdiction, they analyze these court decisions and draw conclusions especially for the legal status of German municipalities and their possible requirements for necessary funding. The legal problem is to define the concrete volume of such municipal requirements regarding the constitutional principle of connectivity and the liquidity and capital resources of the state levels. Most of these amendments to past legislation are published in law journals and other magazines with a regular editorial publication process.

Henneke (2006, 2012, 2012a, 2012b) and Wohltmann (2011) are both managers of the municipal lobby organizations of district administrations and are able to use their own magazine for their publications. Nevertheless their

articles are well investigated and contain deep analysis of legal and economic problems of public finances. Two of the articles were found only online (Kay, 2008; Matai and Savulescu, 2009). These papers appeared on the websites of universities or research institutes. Aside from addressing necessary funding, very few articles explore the organizational implementation of systematic cost estimation within the legislative process in Germany. Obviously most of the authors respect the existing system of the public finance system, especially that the federal states are the right addressee for municipalities to call for necessary funding. This belief continues to govern current research regardless of the impact of municipal financial problems coming from the federal level of legislation in the national parliament of Deutscher Bundestag. Only a few sources review the organizational aspects of this issue.

A short description of a new kind of systematic feedback about legislation in Mecklenburg-West Pomerania appears in a more practically oriented magazine (Kuder, 2013) and includes: a systematic analysis of the different implementations of the principle of connectivity in the different federal states (Wohltmann, 2013) and the article of Wittmann (2010) who proposed a feedback process between law giver and executing administrations.

- *Books:* Eight books were found to have relevance for the research questions of this thesis. The dissertation of Brems (2006) investigated the financial funding of municipalities with special attention to the federal state of Northrhine-Westfalia. Henkels (2010) investigated the “municipalisation” of public state obligations and a possible violation of the constitutional right of municipal autonomy in a very dogmatic way. The books of Hensel, Bizer, Führ & Lange (2010) and Röttgen & Vogel (2010) are conference proceedings that merge the aspects of impact assessment, SCM, and the principle of connectivity by articles of several authors for the first time. The book of Henneke, Pünder and Waldhoff (2006) is a comprehensive and detailed work about nearly every aspect of public finance on local level of public administration and a deep investigation of the topic. Henneke (2012) also

produced a comprehensive monograph about the municipalities within the constitutional framework of public finance systems. Hermes (2006) and Knitter (2008) both wrote dissertations about the financial aspects of an obligation transfer to the local level of public administration by the federal legislation.

- *Court decisions:* Following the constitutional rules in a federal democratic state the legislation is the most important demand for the executive public administration (Art. 20 III GG). Thus, the constitutional legislation holds the most pertinent information regarding the legal questions of this research, especially the legal permissibility of an SCM application on the local level of public administration. Regarding the constitutional principle of connectivity within the relationship between municipalities and the federal states in Germany (see sec. I.3), the constitutional courts in the 16 federal states of Germany are the responsible jurisdiction. After reviewing nine of these constitutional court decisions, only one decision occurred within the time restrictions of this thesis and was determined by the federal administrative court, not from a constitutional court (Bundesverwaltungsgericht - BVerwG). The questions addressed in these court decisions are similar. However, because of the different systems of financial equalization for municipalities in the different federal states, the answers could be different in application.

The questions of how to consider the necessary efforts of municipal obligations within the system of financial equalization and whether it is legally necessary to do ex-ante cost estimation are of primary importance (VerfGH RP 2012, VerfGH MV 2012, VerfGH NRW 2010 and 2011). It must also be decided where the responsibility lies for those changes (ThürVGH 2011, VerfGBdg 2013, HessStGH 2013). It is also a question in these constitutional court procedures of whether the financial resources at the state level limit the possible funding for municipalities (VerfGH NRW 2011, BVerwG 2013), and what the right dimension is for the equalizing financial resources of the federal states.

- Manuals and reports:* Legal jurisdiction and scientific literature are germane to the legal aspects of this thesis. However, there are seven manuals, handbooks, and reports that are relevant for the economic and organizational topics. It was the BRTF report (2005) and the SCM-network (2005) that brought international attention to the SCM as a possible method to reduce administrative burdens and provided a contribution to improve legislative policy. Both descriptive papers give information about the SCM methodology at its inception. The SKM manual of the FHM (2005) supplied a transcription of the SCM network into the German language. It was the manual of the Deutsche Bundesregierung (2006) that described the SCM methods after enacting the NKRK by Deutscher Bundestag in 2006. The Bertelsmann Foundation (2009) published work that contributed to the discussion about systematic cost measurement of German legislation. However, those works mentioned above address “costs of regulation,” which differs from “administrative costs” and is restricted to an accompanying or retrospective impact assessment system (Bertelsmann Stiftung, 2009, p. 11). Each of these manuals provides important information relevant to the methodological aspects of this research.
- Grey literature:* The Fourth International Conference on Grey Literature (GL '99) in Washington, DC, in October 1999 defined grey literature as follows: "That which is produced on all levels of government, academics, business, and industry in print and electronic formats, but which is not controlled by commercial publishers." (www.greylit.org). One of these sources is the unpublished internal report of the German federal ministry of internal affairs about the legal aspects of the “Commission of municipal finance” (2010). This paper includes many opinions and recommendations of the municipal member associations, the federal states, and the federal level of administration in Germany. It is not a scientific analysis, but concerns political discussions about the financial problems of municipality. Although it is the report of a working group that discussed the legislative aspects of financial

problems of municipalities, it includes several political statements about the economic and organizational topics of this thesis. The paper is supplemented by letters from the institutional representatives who formulate the political positions about municipal funding in clear words.

V.2 Categorization of analysis statements

Before starting the text interpretation of court decisions and other text documents the author needed to reflect about the origin and sources of his hermeneutic prejudice. The interpreter must be aware of his or her own prejudice so that the text to be analyzed could present itself in its differences and create the possibility to put the content of the text into a relationship with the interpreter's prejudice (Gadamer, 1965, p. 253, 254). Also for the interpretation of law, it is crucial to start the text interpretation with personal expectations for possible solutions of analyzed problems or conflicts because these expectations govern and limit the possibilities of interpretation (Esser, 1970, p. 136). Such a hermeneutic prejudice could come from personal education or daily experiences (Esser, p. 137), mostly from daily and subjective-biographical experiences of the author or his scientific investigations to date (Mayring, 2002, p. 113). The research design of this thesis about the transferability of the SCM into the public finances of municipalities starts with five interviews with representatives of relevant institutions for the SCM application in the public sector in Germany. The analysis of these interviews resulted in twelve derived statements using the principles of the grounded theory approach (IA's, see sec. IV.1.5). Also the coding protocol analysis of the reflective AWV-presentation was aggregated to three protocol statements (PA's, see sec. IV.2.7). The third data analysis method is a cross-case analysis of appropriate studies about an SCM application in the German public sector to date, which produced five statements in the end (CA's, see sec. IV.3.3). According to the three research questions the derived statements are:

RQ 1	Legal conditions for municipal SCM-transfer
IA 1.1	It is not possible to enforce the SCM application on municipalities.
IA 1.2	The SCM application is a topic of negotiation between the federal state and their municipalities.
IA 1.3	There is no need for further legislation of for an SCM application, but the consideration in the interdepartmental rules for legislation procedure is important.
PA 1	Municipalities do not contribute necessary information for an effective connectivity.
PA 2	Regarding the constitutional situation only the federal states are responsible to represent municipal interest within the legislative process.
CA 1	Municipal SCM application is necessary in the federal legislation because of an ineffective system of connectivity.
CA 2	Voluntary SCM application in municipalities is permitted legally

RQ 2	Methodological framework for municipal compliance cost determination
IA 2.1	Measurement of municipal compliance costs is not possible in every administration, except by standardized and systematic procedures.
IA 2.2	Compliance costs could be measured by model testing in selected municipalities.
IA 2.3	NFC gives comprehensive possibilities for compliance cost estimation.
IA 2.4	If every federal state has different budget systems, there is no comparability in German municipalities concerning compliance costs.
IA 2.5	There is no systematic difference in the compliance costs between the state and municipal administration.
IA 2.6	There is no motivation of municipalities to benchmark their administrative processes.
PA 3	SCM application in the context of connectivity must work with standardized processes which should initiate benchmarking comparison between municipalities.

CA 4	Databases for SCM cost measurements are standardized procedure, not an individual administrative execution.
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RQ 3	Sufficient conditions for SCM-implementation to municipalities
IA 3.1	The central municipal associations are the right addressee for the state administration within the legislation process.
IA 3.2	Institutions like the NRCC in every federal state are too expensive and not necessary.
IA 3.3	A better comparability between municipalities needs more governmental communication and consultation.
CA 3	Executive cost estimation must take place either in the governmental law proposal already or after the procedural involvement of federal states.
CA 5	An early feedback exchange in legislative processes between legislative body and municipalities is essential for SCM implementation.

Table 42: Data statements categorized according to the research questions

As outlined above (see sec. III.3.4.2), the hermeneutic interpretation always follows various types of argumentation that Savigny (1840, p. 212) termed “canones” or Phillips and Brown (1993) described as “moments.” Betti (1967) also defined four “canones” that could guide the hermeneutic process. A commonality of descriptions of qualitative text interpretation are repeated ways of argumentation that begin with a reflected prejudice, or as named by Heidegger (1927), the “point of no way back beyond” and leads to an ontological impact on what Betti called “Verstehen” (understanding). Within the process of interpretation, all cited sources describe a necessary reflection of these arguments, either to the starting prejudice or to the other kinds of arguments. The following figure brings together these kinds of argumentation within a hermeneutic process.

Hermeneutic prejudice				
	formal argumentation	historical argumentation	systematic argumentation	teleological argumentation
Savigny (1840)	grammatical	historical	systematic	teleological
Betti (1967)	hermeneutic autonomy of the object	-	coherence of meaning	adequacy of meaning
Philipps & Brown (1993)	formal	social-historical	-	interpretation-reinterpretation
Interpretation as ontological impact				

Figure 45: Kinds of argumentation with a text interpretation process (own elaboration).

As a preparation for the following hermeneutic text interpretation, the data analysis statements were categorized according to the different kinds of argumentation. Following the wording of Savigny as one of the first lawyers who developed this methodological system of text and law interpretation, the data analysis statements will be categorized into the four “canones”.

V. 2.1 Grammatical and historical arguments

An initial reading of the data analysis statements makes clear that there are no grammatical or historical arguments, which is reasonable, because the derived statements generally come from politically motivated data sources. But grammatical arguments concern the formal definition of terms in regulation. As outlined above, the interviewees were selected because of their professional experiences and their function within a SCM relevant institution (see sec. IV.1.1). None of them looks for the grammatical formulation of the constitution, the NKRG or relevant laws about the legal situation of municipalities in Germany. But the use of words in regulations is important for this study, especially regarding the choice of words in constitutional texts. No historical argumentation exists because the research about cost estimation in public administration has a long history and still

continues; the specific discussion about an SCM application is rather new. But it is not part of this study to describe the history of public cost definition. On the one hand the NKRG as the most important law for SCM application in Germany was enacted in 2006. In addition the regulations about the principle of connectivity were discussed in the latest constitutional reform of German federalism in 2006 (Deutscher Bundestag, 2006a). This is also the reason why the literature review was restricted by the date of the first publication of the international SCM manual in 2005 (see sec. II.3.1). Because of this, an historical argumentation concerning these latest regulations is always a systematic argumentation about the constitutional system of local autonomy as well. This led to the intermediate conclusion that the data analysis statements do not contain grammatical or historical arguments to interpret the texts, documents and sources coming from the systematic literature review.

The statements about legal conditions, methodological frameworks, and conditions for a municipal implementation of the SCM are reflected by systematic arguments or teleological explanations. Following the structure of the three research questions and the two kinds of systematic and teleological canons remaining led to a clear assignment of arguments. The following table shows this assignment of arguments to the research questions.

Research question	RQ 1	RQ 2	RQ 3
Systematic statements	IA 1.1	IA 2.3	IA 3.1
	PA 1	IA 2.4	IA 3.3
	PA 2	IA 2.5	CA 3
	CA 2		CA 5
Teleological statements	IA 1.2	IA 2.1	IA 3.2
	IA 1.3	IA 2.2	
	CA 1	IA 2.6	
		PA 3	
		CA 4	

Table 43: Data analysis statements assigned to Savigny's argumentative canons.

V.2.2 Systematic arguments

The systematic statements concerning the *first research question* about the legal conditions make clear that there is an existing constitutional situation about the SCM application in municipalities. The right addressee for the federal legislative body is the federal state first because they are responsible for representing municipal interests (PA 2). Regarding the constitutional local autonomy (Art. 28 II GG), which contains the autonomy to organize its own authority and financial affairs (see sec. I.2.1), it is not possible to enforce an SCM application upon municipalities. However, it can be applied voluntarily (IA 1.1, CA 2). One critical statement from the presentation protocol analysis addressed the lack of information within the system of connectivity that illustrated the failed interest of municipalities to be compared with each other (PA 1).

Looking for the methodological framework of a systematic compliance cost determination by the *second research question*, the systematic statements have an economic relationship to the different state and municipal budget systems. If the municipal NFC gives new opportunities for a comprehensive determination of compliance costs (IA 2.3) and there are no systematic differences of compliance costs between the state and municipal administrations (IA 2.5), then these opportunities are restricted by the different budget systems in different German federal states (IA 2.4).

The *third research question* for an organizational implementation of the SCM in municipalities must be answered by the integration of the central municipal member associations (IA 3.1) at clearly defined positions during the legislation process (CA 3). For an effective SCM implementation into this legislative procedure, an early exchange between municipalities as executing authorities and the federal law giver is critical (CA 5). Such a systematic consultation process will also allow improved comparisons between municipalities (IA 3.3).

V.2.3 Teleological arguments

Asking for the legal conditions of a municipal SCM transfer by the *first research question*, the most expressive statement is the need for SCM application because of an ineffective principle of connectivity (CA 1). There is no need of further legislation for a SCM application, but it should be considered in the GGO (IA 1.3) as topic of the negotiations about financial equalization between the state and local level of public administration (IA 1.2).

For the methodological framework of compliance cost determination as asked by the *second research question*, it is notable that the standardization of administrative processes is mentioned in a number of teleological statements (IA 2.1, IA 2.2, PA 3 and CA 4). These statements are based on a viewpoint that looks for the outcome of a previously applied SCM application. These statements do not call the SCM application into question, but propose the procedural standardization as the methodological framework for a systematic cost measurement. Additionally, these assertions emphasize standardization as a chance to initiate benchmark processes between municipalities (PA 3) or not (IA 2.6). The teleological arguments in discussing what could be the case in a political and administrative arena often contain a vision of expected or desirable outcomes. Often the application of the SCM needs to appreciate these diverse outcomes regarding the constitutional principles within the dualistic system of financial equalization of municipalities.

If the *third research question* asks for implementation proposals of a municipal SCM, then the statements about organizational aspects must be more systematic than teleological. The critical amendment about the cost of institutions such as the NRCC in every German federal state is the only case that correlates the outcome to the necessary effort (IA 3.2). The categorization of the analysis statements was performed according to the adequate research questions and to their specific kinds of argumentation. The following hermeneutic text interpretation will follow the structure of the three defined research questions.

V.3 Systematic reading of legal texts and data sources

Before starting the analysis of court decisions and legal literature it is appropriate to consider the best way to read these sources. While this thesis pursues answers for the three research questions, the discussion about legal problems must be based on specific legal norms. The municipal system of financial compensation is conducted using concrete laws enacted in the parliament; therefore, many political streams drive it. Such systems have to be in line with the legal system in a constitutional democracy. The basic principles of the German constitution define the German Federal Republic as a democratic and social federal state (Art. 20 I GG). In this democratic state, the legislation must be in line with the constitutional order, the executive power, and jurisdiction and is bound by law and justice (Art. 20 III GG). Coming from this principle of constitutional legality, a concrete administrative decision or action is legal only if:

- there is a legal permission or authorization (condition of law) and
- the concrete administrative decision stands in line with laws and legal regulations respectively and as such the enacted law stands in line with the higher constitution (priority of law).

The municipal system of financial compensation is regulated by the laws of the federal states. According to the mentioned principle of priority of law, laws established for municipal finance must be in accord with the constitutions of the federal states and the GG as the German constitution. Consequently, the administrative decision about concrete financial funding of municipalities according to mentioned principle of the condition of law is only legal if the law about municipal finance itself, which the decision is based on, is in line with the federal constitution. Therefore, the legal discussion about municipal finances is always a discussion about the legality of the enacted law on which it is based. Following the legal methodology of legal text analysis of laws (Zippelius, 2012), every norm must be divided into two sides like a conditional sentence or an “if- and-then-condition”:

- Element of facts or evidence which must be present to apply a norm (“if”)
- Merit and extent of legal consequences described in the norm (“then”)

Following this structure of legal norms, the discussion of legality of the municipal system of financial compensation must be divided into the question of the necessary application of norms and the question for possible legal consequences. This structure of legal application and interpretation as a conditional sentence will be combined with the three research questions of this thesis. The text analysis of court decisions and other sources will be structured by the following aspects:

- What is the message of the investigated source about the principles of constitutional legality – condition of law and priority of law? What is the content about necessary facts or evidence for the application of the discussed norm (“if”)? These questions show certain accordance to the *first research question about legal conditions for municipal SCM-transfer*. According to the priority of law, does the source attend to any contradiction to actual laws legislation to apply SCM within the municipal system of financial compensation?
- The question for possible norm applications (“if”) is also relevant for organizational procedures and responsibilities. Only if a certain constitutional norm is applicable for municipal problems about its financial funding, then the norm is also relevant for the organizational implementation of the SCM. According to the principles of constitutional legality (condition of law and priority of law), any idea about *sufficient conditions for SCM-implementation to municipalities asked in the three research questions* must always be in line with higher laws and constitution.
- If the application of norms about the financial compensation of municipalities is clear (“if”), the next question must address possible consequences (“then”). Is there any message in the court decisions, literature, or other sources that

helps to define the legal consequences according the necessary financial funding of local authorities? This issue correlates with the *second research question about methodological framework for municipal compliance cost determination*. According to the principle of the condition of law, it must be asked for any regulation as a legal legitimation or the compliance cost determination. The principle of the priority of law mandates a search for potential problems in concrete proposals for compliance cost determination, and requires that those proposals align with legal and constitutional norms.

V.4 Research question 1: Legal conditions for municipal SCM-transfer

V.4.1 Hermeneutic prejudice

To date, no legal solution exists for the transfer the SCM method into the municipal application area. A possible conclusion from this is that the application of the SCM is permitted legally and requires no further legislation (IA 1.3, CA2). However; if a successful SCM transfer to municipalities does not require additional legislation, a further definition of legal conditions may still be necessary. The most important condition for this is the principle of local autonomy as stated in art 28 II GG. One of the essential guarantees of local autonomy in Germany is the right of an organization to decide independently about that organization or the processes needed to fulfil the given or self-chosen tasks (see sec. I.2.1). Another specification of constitutional local self-government is financial autonomy, which allows a municipality to raise taxes locally and to decide about the concrete use of public expenditures. Consequently, this includes the autonomy of municipalities to choose suitable methods to measure the efforts needed to fulfil those tasks. The only legal framework to respect is the local financial constitution – the NCF, regulated in the several laws concerning the specific legal situations of municipalities within the system of public administration in the federal states. While municipalities are free to choose their own methods to measure the efforts of specific tasks, this method must conform to the NCF regulations.

Municipalities must decide whether they need a systematic and accepted method to measure their necessary funding. The needs of a municipality must be calculated prior to a request for necessary funding. Understanding the financial consequences of laws and regulations is essential to ensure the quality of legislative decision making. The principle of connectivity (see sec. 1.3) is a legal mandate that assures that the municipalities are equipped with the appropriate resources for their legal tasks as transferred by the state legislation. The constitutional provisions in Germany state that municipalities on the local level of authorities are a part of the public administration of the federal states. Therefore, the discussion about necessary funding for municipalities must be part of the financial negotiations between the federal states and “their” municipalities. Thus, to respect the municipal interests and their financial issues within the legislative process seems to be first of all an obligation of the federal states. In practice, the constitutional principle of connectivity is rather ineffective with regard to the transfer of new legal tasks or the extension of already existing tasks by the federal legislation of the Deutscher Bundestag. Consequently, the legal conditions for an effective SCM application concerning the municipal financial interests must regard the principle of connectivity between the federal states and their municipalities and also the ineffectiveness of this principle concerning legislation coming from the Deutscher Bundestag.

V.4.2 Analysis of jurisdiction and legal literature

From a legal point of view, the SCM application for municipal cost estimation must consider the constitutional framework for the financial funding of administrative districts, cities, and municipalities in Germany as based on the federal constitution (GG) and the federal state constitutions. In particular, this research must investigate whether the SCM application in the dualistic system of municipal finance equalization is in accordance with the rule of law (Art. 20 III GG) and the constitutionally guaranteed local autonomy (Art. 28 II GG).

V.4.2.1 Necessary reservation by law

The first question is, whether any law prohibits municipalities to use the SCM within their financial framework. In the German constitution, there are a number of regulations concerning the financial configuration of municipalities.

	Financial configuration	Constitutional basis
1	Refunding for social benefits of applicants of work	Art. 91e II GG
2	Grants for important municipal investments	Art. 104b I GG
3	Proportional parts of income tax	Art. 106 V GG
4	Proportional parts of purchase tax	Art. 106 Va GG
5	Taxes on real properties	Art. 106 VI s. 1 GG
6	Business taxes	Art. 106 VI s. 1 GG
7	Municipal right to rate taxes on real properties and business taxes	Art. 106 VI s. 2 GG; Art. 28 II s. 3 GG
8	Equalization for special municipal burdens	Art. 106 VIII GG
9	Binding participation at federal taxes	Art. 106 VII s. 1 GG
10	Voluntary participation at taxes of the federal states	Art. 106 VII s. 2 GG
11	Consideration in the state finance equalization	Art. 107 II s. 1 GG
12	Transfer of own tax administration	Art. 108 IV s. 2 GG

Table 44: Constitutional basis of municipal financial configuration.

The constitutional articles listed above contain the municipal involvement within the national German tax revenue, but no methodological regulation for the concrete management of finances on the local level of public administration. The only reservation by law concerning the SCM application is § 2 III NKRK. The NKRK addresses only regulations of the German federal level (§ 4 NKRK), but not the municipalities. The federal states regulate –the financial framework of their municipalities, and those regulations frequently vary. These regulations are first stated in the constitutions of the German federal states as simple laws that outline these constitutional principles and the administrative orders, which contain more detailed regulations (e.g. in Northrhine-Westfalia: Art. 81 ff. LV NRW, GemHVO NRW). There is no regulation that dictates a municipal SCM application like § 2 NKRK for the federal level in the federal state constitutions or in the simple laws and administrative orders that regulate the financial management in municipalities.

No provision of law dictates that German municipalities apply the SCM. However, no higher law stands in contradiction to such a municipal SCM application. If the SCM application in municipalities is legally allowed, then the suitable addressee of such a SCM measurement of municipal obligations remains to be determined. Because of the constitutional prohibition for the National German law giver in Art. 84 I s. 7 GG and 85 I s. 2 GG, implemented by the National reform of German federalism II (Deutscher Bundestag, 2006a), not to transfer new or to extend already existing legal obligations to municipalities, the federal states are the right addressee for municipal calls for adequate financial funding. It is the last and most important responsibility of the federal states to regulate the appropriate funding of their local level of administration. Within the German constitutional system, Art. 30 and 83 GG assign the execution of federal legal and administrative obligations to the federal states that are also responsible for the funding (ThürVGH, 2005, p. 33). The federal states are free to decide if they want to execute legal obligations by public authorities of their own or whether to delegate these obligations to the municipalities. To fulfil these delegated obligations, the constitutional principle of local autonomy gives the municipalities the right to call for an adequate funding.

Federal state	Local autonomy	Delegation of legal obligations	Principle of connectivity
Baden-Württemberg	71 I, II	71 III 1	71 III 2-4
Bavaria	10 I, II; 11 II; 83 I	10 III, 11 III	83 III
Berlin	-	-	-
Brandenburg	97 I 1, II	97 III 1	97 III 2, 3
Bremen	-	-	-
Hamburg	-	-	-
Hesse	137 I, II, III 1	137 IV	137 VI
Mecklenburg-West Pomerania	72 I, II	72 III	72 III
Lower Saxony	57 I, III	57 IV 1	57 IV 2-4
Northrhine-Westfalia	78 I, II	78 III 1	78 III 2-4
Rhineland-Palatinate	49 I, II, III 1	49 IV	49 V
Saarland	117, 118	120 I 1, II	120 I 2, 3
Saxony	82 II, 84 I	85 I	85 II
Saxony-Anhalt	2 III, 87 I, II	87 III 1	87 III 2, 3
Schleswig-Holstein	46 I, II	46 IV	49 II
Thuringia	91 I, II	91 III	93 I 2

Table 45: Constitutional regulations of federal states about local autonomy, delegation of legal obligations and the principle of connectivity (after: Henneke, 2012, p. 309).

This dualistic financial system of municipal funding differentiates between two legal instruments: the regular financial equalization, which is constituted by the federal states year per year (Municipal finance equalization); and the provision stating that the municipalities are entitled for equalization of such burdens caused by a concrete delegation of new legal obligations (Principle of connectivity) (detailed explanation in: ThürVGH, 2005, p. 37 ff.).

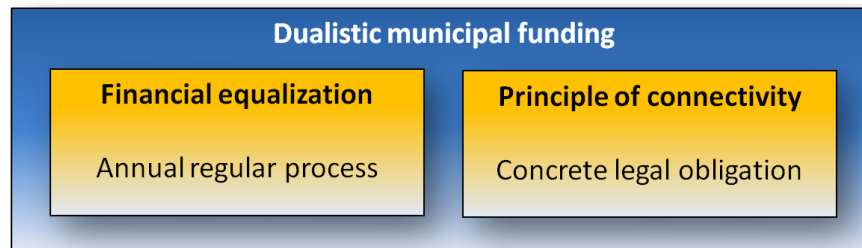


Figure 46: Dualistic system of municipal funding (own elaboration).

V.4.2.2 Municipal guarantees within finance equalization

The first question is how to discuss the SCM application within the system of municipal financial equalization. This municipal financial equalization is founded directly on the German constitution because the municipalities have to participate in the national tax revenue on the federal level (Art. 106a VII s. 1 GG) and the level of the federal states (Art. 106a VII s. 2 GG). This municipal financial equalization is codified and numbered in the municipal finance laws codified annually by the federal states. The amount of this financial funding must regard the constitutional guarantee of local autonomy (Art. 28 II GG) because the municipalities are eligible for appropriate funding to receive the adequate financial ability to fulfil their legal obligations. This is common to all constitutional jurisdictions in the German federal states (VerfGH, NRW 2012). But if municipalities are entitled to a certain minimum dimension of such funding, it is not clear, whether this dimension must regard the financial ability of the federal states or not. This question has not been answered jurisdictionally (BVerwG, 2013), by the federal constitution court (BVerfG, 2010) or the federal administrative court (BVerwG, 2011). On the level of constitutional

courts of the German federal states, several decisions and judgments exist that deal with this problem of the appropriate funding of municipalities within the system of financial equalization.

V.4.2.2.1 Dimension of municipal funding

The constitutional guarantee of appropriate funding for municipalities contains a provision that in addition to fulfilling strictly legal obligations, they may choose to fund a number of voluntary projects and political aims of their own. This is also common sense within the constitutional jurisdiction (ThürVerfGH, 2005). Even if in some federal states this dimension of municipal funding is under restriction of the administrative ability of the federal states themselves (in Bavaria: BayVerfGH, 2007, in Lower Saxony: NdsStGH, 2008, in Northrhine-Westfalia: VGH NRW, 2011) this does not change the necessity to guarantee the municipality's capacity to act politically by the system of finance equalization.

Therefore, the dimension of municipal funding must be enough for the municipalities to fulfil their legal obligations and should allow local projects as expression of an untouchable core of political local autonomy (ThürVerfGH, 2005; LVerfG MV, 2006). A notice of the violation of constitutional law must be asserted if municipalities cannot decide about their local projects because of an inadequate funding by the federal state (VerfGH RP, 2012). Regarding the general equality of administrative tasks on the federal level, the level of the federal states or in municipalities (Art. 106 III s. 4 GG), the federal states have a wider scope of legislation outside this core of local autonomy. But this scope of legislation has to consider the constitutional prohibition of disproportionate measures and the constitutional instruction of a symmetric participation of all administrative levels at the national financial possibilities (Henneke, 2012, p. 47 and 182). Following these jurisdictional guidelines (ThürVGH, 2005) and the commentaries in the literature (Henneke, Pünder, & Waldhoff, 2006, p. 5; Wieland, 2011, p. 229; Henneke, 2012, p. 45) there is a commonly accepted model of a core area/border area-model that determines the relevant factors of municipal funding (Wohltmann, 2011).

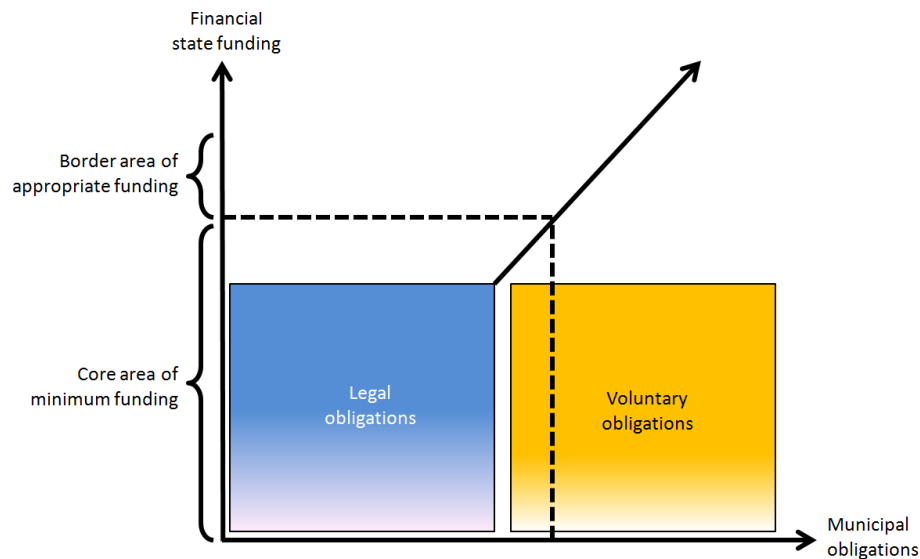


Figure 47: Core area/border area-model of municipal funding (after: Wohltmann 2011, p. 486).

The legal demand of municipalities for an appropriate funding is formed and established by the system of municipal financial equalization (SächsVGH, 2010; VGH NRW, 2012). Therefore, the system of financial equalization has two main purposes: to add the financial possibilities of municipalities to fulfil their legal and voluntary obligations (Fiscal function), and to balance the differences between municipal abilities (Balance function) (for the jurisdiction: VGH RP, 2012; for the literature: Henneke, 2006, p. 500).

V.4.2.2.2 State specific models of municipal financial equalization

The federal states in Germany choose different options to execute these two functions of the system of financial equalization of municipalities within their financial autonomy (Art. 107 GG). Regarding the constitutional guidelines of German federalism, several different models exist to form and concretize the municipal equalization in the federal states (Wohltmann, 2011, p. 488 ff.):

- Seven of the federal states (Baden-Württemberg, Bavaria, Lower Saxony, Northrhine-Westfalia, Saarland and Schleswig-Holstein) use the **“Verbundquoten-Modell,”** which postulates a fixed dimension of finances for

municipalities. This fixed dimension is distributed to the municipalities through a certain percentage (= “Verbundquote”). These distributed finances regard the economic possibilities of the federal state only and disregard municipal necessities (Wohltmann, 2011, p. 489). So there is no systematic analysis of municipal obligations or expenses. Even if the municipal expenses rise, the dimension of distributed finances could be restricted by political decisions. In Hesse, the constitutional court decided that this model is illegal and stands in contradiction to the Hessian constitution (HessStGH, 2013). The court told the Hessian government to develop a new model of municipal equalization that conformed to the needs and necessities of Hessian municipalities.

- In contrast, the “**Bedarfsmodell**” (Thuringia and Saxony-Anhalt) derives the fixed dimension of finances from the municipal necessities regarding the local possibilities of revenues. Consequently, a restriction of the financial dimension for municipalities is legally prohibited only for the consolidation of state household. Within the “Bedarfsmodell,” a restriction is only possible by reduction of municipal obligations or extension of municipal revenues (Wohltmann, 2011, p. 491). The practicability depends on the methodological realization of the municipal cost measurement.
- A mixed model is the “**Verbundquoten-Modell mit Aufgabenanpassungsklausel**” (Brandenburg). In Brandenburg, the constitutional court accepted the fixed finance dimension for municipalities like in the “Verbundquoten-Modell,” but demands a specific report of the government about the systematic distribution of finances between the state and municipal level in Brandenburg every three years (Wohltmann, 2011, p. 493). So the volume of municipal expenditures can be reviewed and adapted to new circumstances only ex-post in this report but not be estimated from an ex-ante point of view.

- The “**Gleichmäßigkeitssatz mit Aufgabenanpassungsklausel**“ (Saxony and Mecklenburg-West Pomerania) model appears to be more equitable. As in the Verbundquoten-Model, the distributed dimension of finances is fixed and oriented only at the economic capacities of the federal state. The development of finances of the federal state coming from the German national level and the municipal finances should be nearly symmetric (Wohltmann, 2011, p. 494). However, the constitutional courts contended that a one-sided orientation to the state finances of this symmetric development is not adequate to the municipal obligations (LVerfG MV, 2006) and does not do justice to the adequate funding of municipalities (VerfG Bdg, 2007).
- The final model is the “**Verstetigungsmodell**,” which is a variation of the Verbundquoten-Model (Rhineland-Palatinate). The fixed finance dimension for municipalities is added to a guaranteed growth factor of one percent per year (Wohltmann, 2011, p. 495). However, in the “Versteigungsmodell” model, the growth is not a result of municipal cost estimation, but comes from a political decision of the state parliament. Another significant factor about the “Verstetigungsmodell” is that the constitutional court in Rhineland-Palatinate decided that it was illegal and demanded that the government develop a new system of municipal equalization regarding the development of legal obligations in local authorities (VerfGH RP, 2012).

Federal state	Models of municipal finance equalization
Brandenburg	Verbundquoten-Modell mit Aufgabenanpassungsklausel
Baden-Württemberg, Bavaria, Hesse (illegal), Lower Saxony, Northrhine-Westfalia, Saarland and Schleswig-Holstein	Verbundquoten-Modell
Mecklenburg-West Pomerania and Saxony	Gleichmäßigkeitssatz mit Aufgabenanpassungsklausel
Rhineland-Palatinate	Verstetigungsmodell
Thüringia and Saxony-Anhalt	Bedarfsmodell

Table 46: Models of municipal finance equalization in German federal states.

V.4.2.2.3 Necessity of realistic cost assessment

To establish a specific system of municipal finance equalization, the legislation in the German federal states has a wide scope of political decision-making (VerfGH RP 2012). This wide scope finds its restrictions in the constitutional order regarding appropriate municipal funding (NdsStGH, 2010; HessStGH, 2013). If the constitution states that adequate funding is the necessary result of the fulfilled obligation, then this obligation is the only condition for the dimension of funding (HessStGH, 2013). Additionally, the constitutionally guaranteed local autonomy (Art. 28 II GG) led to the immediate result that the municipal finance equalization must consider the municipal obligations and cannot look only for the financial state capacities. A legislator can only create a legal system of municipal finance equalization if he or she is aware of the financial necessities in local authorities (Henneke, 2012, p. 7 and 182). This knowledge necessarily requires the comprehensible assessment of demands caused by realistic municipal obligations and therefore, the needed financial funding (ThürVerfGH, 2005, VerfG Bdg, 2007).

The consideration of these factors within the legislative decision about the municipal finance equalization is legally necessary to guarantee a fair, transparent, and rational system of finance distribution that cannot depend only on political

aspects (ThürVerfGH, 2011; HessStGH, 2013). Consequently, the legislation has to assess the municipal demands to fulfil their legal obligations realistically (LVerfG MV, 2006; NdsStGH, 2010; ThürVerfGH, 2011; VerfGH RP, 2012).

The other opinion of the VerfGH NRW (2011) is that the law giver need only attempt a realistic assessment of municipal demands without defining the concrete necessities of local public administration, which is not compelling. The VerfG NRW conducted a legal examination and found that a violation of the constitution by the Northrhine-Westfalian finance equalization only exists if the legislation overtly exceeds its wide scope of legislative decision-making. In contrast to this opinion, several constitutional courts declared the municipal system of finance equalization as illegal because of the failed assessment of municipal demands (ThürVerfGH, 2005; BayVerfGH, 2007). The restriction of a jurisdictional examination to a low level control of legality is not adequate to the constitutionally guaranteed demand of municipalities for appropriate funding. The legal balance between the wide range of political decision-making and the municipal demand for realistic cost estimation must be decided in a fair and transparent manner, which is the constitutional equalization system. The highly significant VerfGH NRW (2014) stated in its last decision that the dimension of the regular annual funding for municipalities is contradictory to the Northrhine-Westfalian constitution if the law giver does not consider the municipal efforts as realistically as possible. Thus, the necessity for the realistic cost estimation of municipal obligations is not only legally allowed, but also legally instructed.

V.4.2.2.4 SCM as method for realistic assessment of demands

If the realistic assessment of municipal demands is legally instructed, then a suitable method must be found. This is particularly important for the federal states that must develop another system of municipal finance equalization because of constitutional court decisions (ThürVerfGH, 2005; BayVerfGH, 2007) that implemented new methods to calculate municipal demands (HessStGH, 2013). The SCM can potentially be a helpful method to perform these estimations. It has been

determined that no legal basis exists in formal laws that allow or order the SCM application (reservation by law, Art. 20 III GG). However, the SCM application is allowed if there is no contradiction to higher laws (precedence of law, Art. 20 III GG). Within their constitutionally guaranteed local autonomy (Art. 28 II GG), the municipalities have vast financial autonomy (Hofmann, Theisen, & Bätge, 2010, p. 95). This financial autonomy includes the right of municipalities to decide about their own financial management. Legal restrictions of this financial autonomy are the formal laws about municipal household management. By implementation of the NCF, municipalities have to consider the principles of double bookkeeping and have to present an opening balance sheet (e.g. in Northrhine-Westfalia: § 1 I NKFEF NRW). Within the NCF system, all financial transactions and the presentation of properties and debts must be managed by the principles of orderly bookkeeping (PoB) (e.g. in Northrhine-Westfalia: §§ 27, 32 GemHVO NRW). Orderly bookkeeping should give an overview about the municipal financial situation in a rather short time (§ 238 I s. 2 HGB). The municipality must consider the PoB, but they are not defined in an exact way. There is no abstract relevant system of PoBs, but a number of definitions and guidelines from the bookkeeping system that are also used in the public finance management of municipalities. The systematic and transparent way to document the business transactions is very important. The SCM as a systematic method to measure administrative burdens correlates to these PoBs, especially to the principle of accuracy and the prohibition of arbitrariness (§ 239 I HGB). In addition, the SCM conforms to the legal principles of clearness and clarity (§ 238 I, 243 II HGB). Therefore, the local finance autonomy contains the possibility to apply the SCM method to calculate the financial demands within the system of municipal financial equalization.

V.4.2.3 Municipal guarantees by the principle of connectivity

Because of the dualistic structure of municipal finance funding, the discussion about appropriate municipal funding within the regular system of finance equalization is legally independent from the municipal demands for appropriate

refunding because of a concrete new or extended obligation (ThürVerfGH, 2005; ThürVerfGH, 2010).

V.4.2.3.1 Political integration of the principle of connectivity

Underlying the municipal finance equalization, the principle of connectivity is the second part of the German system of municipal financial funding. In contrast to the finance equalization that may vary in the different federal states, the condition of the principle of connectivity is always a new or extended obligation for municipalities that demands a concrete regulation of refunding (Henneke, Pünder, & Waldhoff, 2006, p. 50). There are two variations to form the principle of connectivity: the relative variation, which causes the regulation about refunding without a concrete amount; and the strict principle of connectivity that causes the regulation and the concrete amount to fulfil the new legal obligation (Henneke, Pünder, & Waldhoff, 2006, p. 52). In addition to the constitutional sources of the principle of connectivity (see sec. IV.4.2.1, table 45), a number of federal states have enacted additional laws or create sublegal agreements with the municipal member associations to regulate to process and volume of possible refunding within the principle of connectivity.

Federal state	Additional regulations
Bavaria	BayKonsultVer, 21.05.2004, BayGVBl s. 214
Baden-Württemberg	KonnexAG BW, 6.05.2008, GBl. s. 119
Brandenburg	KonnexEntschl Bdg, LT-Drucksache 2/6179, 15.03.1999
Hesse	HessGemFinAusstG, 7.11.2002, GVBl. I s. 654; as amended on 28.09.2007, GVBl. I s. 638
Mecklenburg-West Pomerania	KonnexErkl MV, 20.03.3002, AmtsBl. MV 2002, s. 314
Northrhine-Westfalia	KonnexAG NRW, 22.06.2004, GV.NRW, s. 360; as amended on 12.05.2009, GV.NRW s. 296
Rhineland-Palatinate	KonnexAG RP, 2.03.2006, GVBl. s. 53
Saxony-Anhalt	KonsultVer SA, MBl. LSA Nr. 45/2007, 17.12.2007, s. 916 ff.
Schleswig-Holstein	KonnexAG SH, 27.04.2012, GVOBl. 2012, s. 450.

Table 47: Additional federal states regulations of the principle of connectivity (see table 2).

V.4.2.3.2 Refunding as result of the principle of connectivity

If the refunding is a legal result of the principle of connectivity, then the legislator has to estimate the expected costs of the new municipal obligation from an ex ante point of view. Then he or she must prove whether or not the municipalities are able to fulfil their new duties within the existing financial framework or whether additional refunding is necessary (Henneke, Pünder, & Waldhoff, 2006, p. 52). This political concept is common in the majority of the federal states, but became strengthened by an increasing critical financial crisis in municipalities over the last several years and the relevant constitutional jurisdiction (VerfG Bdg, 2013). The phrase “appropriate financial refunding” as legal consequence of the principle of connectivity is nearly the same in all German federal state constitutions:

Federal state	Principle of connectivity	Phrase of legal consequence
Baden-Württemberg	Art. 71 III 2-4	appropriate financial refunding
Bavaria	Art. 83 III	appropriate financial refunding
Berlin	-	-
Brandenburg	Art. 97 III 2, 3	appropriate financial refunding
Bremen	-	-
Hamburg	-	-
Hesse	Art. 137 VI	appropriate refunding
Mecklenburg-West Pomerania	Art. 72 III	appropriate financial refunding
Lower Saxony	Art. 57 IV 2-4	appropriate financial refunding
Northrhine-Westfalia	Art. 78 III 2-4	appropriate financial refunding
Rhineland-Palatinate	Art. 49 V	appropriate financial refunding
Saarland	Art. 120 I 2, 3	necessary funding
Saxony	Art. 85 II	appropriate financial refunding
Saxony-Anhalt	Art. 87 III 2, 3	reasonable refunding
Schleswig-Holstein	Art. 49 II	appropriate financial refunding
Thuringia	Art. 93 I 2	reasonable financial refunding

Table 48: Constitutional phases of legal consequences for the principle of connectivity.

The constitutional phrases in most of the federal state constitutions are an “appropriate financial refunding”. The constitution of the federal state of Saarland goes one step further and guarantees “necessary funding.” Only in Saxony-Anhalt, the government must develop appropriate funding. The city states of Berlin, Bremen, and Hamburg do not need such a regulation. The legal consequence of an “appropriate financial refunding” means a complete refunding of all costs caused by the new municipal obligation (VerfGH Bdg, 2013). Also in Thuringia and Saxony-

Anhalt, where the constitutional phrases are only “reasonable refunding”, there is no difference about the volume of a complete refunding within the strict principle of connectivity (ThürVerfGH, 2005). By common jurisdiction, this volume of a complete refunding within the strict principle of connectivity is independent from the financial capacity of the federal state itself (Henneke, Pünder, & Waldhoff, 2006, p. 50). The legislative scope for decision-making to form the strict principle of connectivity is restricted by two relevant aspects:

- The legislative decision about the volume of the “appropriate financial refunding” is only possible if the parliament knows about the estimated costs caused by the new obligation for municipalities and what possibilities of influence exist in local authorities. This constitutional necessity of refunding requires a cost prognosis and this prognosis must regard the local circumstances in municipalities and must be done very carefully and accurately (VerfGH Bdg, 2013).
- Additionally, an over-all decided amount of refunding, which regards the municipal possibilities of cost reductions, is legally allowed only if municipalities have the realistic chance to compensate additional costs by their own efforts (VerfGH Bdg, 2013).

As a result of this review, it must be stated that in nearly all German federal states the jurisdiction demands very accurate cost estimation before the political decision about a new or extended obligation for municipalities. Within the constitutional system, the legal or sublegal regulations about processes and management of municipal refunding cannot be on a lower level of standards than the constitutional principle of connectivity, especially the careful and accurate cost estimation (HessStGH, 2012).

V.4.2.3.3 SCM as method for appropriate financial refunding

As in the system of municipal finance equalization, the legislation has a wide scope of political decision-making to regulate the necessary refunding within the principle of connectivity. With exception of the Northrhine-Westfalian constitution that includes procedural regulations for the cost estimation (Art. 78 III LV NRW), in the other federal state constitutions there is no methodological description to execute the necessary cost estimation. As a result, the federal states are free to choose a method within the constitutional framework. From a legal point of view, there is no relevant difference between the methodological aspects of the necessary cost estimation in the system of municipal finance equalization or the principle of connectivity. In both parts of municipal funding, the legal framework is the legal principle of German constitution (Art. 20 III GG). Neither the federal state constitutions nor the legal or sublegal regulations for the principle of connectivity contain a reservation of law to apply the SCM as method for cost estimations. Because municipalities are free within their guaranteed financial autonomy (Art. 28 II GG) to choose the SCM as method for their cost estimations, the only restriction is the legal principle of constitution (Art. 20 III GG). The SCM as a systematic transparent method of cost measurement correlates to the prohibition of arbitrariness derived from Art. 20 III GG. It also correlates with the legal framework of the municipal NCF that includes the principles of orderly bookkeeping.

V.4.2.4 Proposals for legal development

To make relevant proposals for the necessary developments of the legal conditions for a municipal SCM-transfer, two different situations exist within the dualistic system of municipal funding in Germany:

- The municipal demands for necessary funding, which find its basis in the constitutional principle of local autonomy (Art. 28 II GG), differs in the system of financial equalization and the principle of connectivity.

- There is a difference between the addressees of these municipal demands for necessary funding.

V.4.2.4.1 Additions for municipal financial equalization

Within the system of financial equalization, a clear trend of jurisdiction has emerged that supports a systematic measurement of obligations and costs as necessary before the dimension of finance for the municipalities is fixed by the federal states. The court decisions do not dictate the methodological choice for such measurements, but the SCM as a systematic transparent method of cost measurement in the field of public administration appears to be suitable. Many detailed regulations occur in the NCF that define expenditures and incomes in a municipal area (see sec. IV.4.4.2.2.4); however, there are no similarly detailed regulations on the level of the federal states. The jurisdiction is able to find a decision about “if” the federal state has done a cost measurement before fixing the finance dimension of its municipal equalization (ThürVerfGH, 2005; BayVerfGH, 2007), but it cannot dictate the appropriate method because of the constitutional division of state power (Art. 20 II GG). The legislation is solely responsible for this choice of method within its scope of decision making. Because the fixing of the dimension of financial equalization for municipalities is annually enacted in a formal law, a decision for a certain method for cost measurements must be part of regulations concerning the legislative process itself. On the national level, it is § 44 IV GGO Bund that fixes the obligation for the federal law giver to estimate compliance costs according the NKRK. § 2 III NKRK states that the estimation of administrative costs must be conducted using the SCM. Like this regulation on the national level, it is possible to create similar solutions in the legislative regulations of the federal states to measure municipal compliance costs (Hensel, Bizer, Führ & Lange, 2010, p. 167).

V.4.2.4.2 Standard compliance cost method

However, that may not guarantee that every German single state would apply the SCM as the method to measure municipal compliance cost. So this research asks for the possibility to fix such a unique method by a certain agreement between all German federal states. For such an agreement, the legal system in German offers two possibilities: an administrative agreement on the level of the federal governments and an interstate treaty enacted by the federal parliaments (Kisker, 1971, p. 218). In both cases, such an agreement is contradictory to the German constitutional framework if there is any relevant influence to the constitutional balance between the German national state and the sixteen federal states (Grawert, 1967, p. 177). Both the legal dimension of municipal funding and the finance equalization for federal law execution must be regulated by formal laws. Therefore, an agreement about the unique SCM application for municipal cost estimation in all federal states must be enacted by law and as an interstate treaty. Art. 32 III GG allows the federal states to conclude such an interstate treaty if the content of this treaty is part of the legal and constitutional responsibility of the federal states (Vedder, 1996, p. 133). This means that there are three main prohibitions for the federal states to conclude interstate treaties in Germany (Vedder, 1996, p. 143):

- Prohibition for confederation elements as completion to the federal state of Germany.
- Prohibition for annulations of the state character of the federal states themselves.
- Guarantee for the essential elements of the federal constitution like basic human rights (Art. 1 et seq. GG) and the basic constitutional principles (Art. 28 I GG).

An interstate treaty about unique SCM application to harmonize the municipal cost estimation in all German legislative processes does not contradict these three limitations. Therefore, it would be legally possible to regulate the unique SCM

application by an interstate treaty between the national system of legislation and all federal states in Germany.

V.4.2.4.3 Additions for the principle of connectivity

The legislation is legally bound to find financial equalization within the principle of connectivity that is legally stronger than the system of financial equalization. The reason is that the principle of connectivity always discusses a concrete new or extended administrative obligation. While the strict principle of connectivity is guaranteed in all federal states in Germany, only a few have enacted specific laws for the detailed execution of this principle (see sec. IV.4.4.2.3.1). A procedural description of this execution is in § 3 KonnexAG BW, § 2 KonnexAG RP and in § 3 III KonnexAG NRW. In contrast to this, §§ 1 and 4 HessGemFinAusstG demand a report about municipal finances that must be considered for fixing the financial dimension of municipal funding. Therefore, it seems appropriate to add a regulation like § 44 IV GGO Bund and § 2 NKRK to these executive laws about the principle of connectivity. If the federal states decide to regulate the principle of connectivity in special laws and other sublegal regulations, then the addition of the SCM application in these regulations would be systematic and legal. It also seems to be necessary to enact similar laws and regulations in those federal states that have not found solutions for execution their principle of connectivity yet.

V.4.2.4.4 Obligation transfer of the German Bundestag

Currently, the transfer of legal obligations by the German Bundestag directly to municipalities is constitutionally prohibited by Art. 84 I s. 7 and 85 I s. 2 GG (Knitter, 2008). These regulations were added to the German constitution by the reform of German federalism I (Deutscher Bundestag, 2006a). In this temporal context there was a constitutional discussion about the term of “obligation.” In the sense of all German constitutions, – the GG and all federal constitutions, – “obligation” means all fields of state action: the legislation, public administration, and jurisdiction (Schmidt-Bleibtreu, Hofmann, & Hopfauf, 2011, Art. 30, Nr. 15). Significantly, in

public administration obligation is independent from the kind and circumstances of action or whether the administration acts as sovereign or not. Regarding the historical origin of Art. 84 I s. 7 GG as part of reform of federalism in 2006 and the teleological purpose of this regulation to protect municipalities from costs of federal legislation, the term of obligation is strictly connected with the real execution of law. Therefore, the term “obligation” in Art. 30, 84 I and 104a GG means the real responsibility for the law execution (Schoch, 2007, p. 266). Although it is still necessary to protect municipalities from a national obligation transfer (Röttgen & Vogel, 2010, p. 21 et seq.), the discussion about a constitutional addition of a new principle of connectivity in Art. 28 II and 104a GG (Henneke, Pünder, & Waldhoff, 2006, p. 58) is less significant after the introduction of the constitutional prohibition for the federal state level to transfer new obligations directly to the local level of public administration (Art. 85 I s. 2; 87 I s. 7 GG).

V.4.2.4.4.1 Obligation transfer by federal states legislation

The recent court decision of the VerfGH Brandenburg (2013) is highly significant. This decision describes not only the necessity of municipal cost estimation within the principle of connectivity, but also the constitutional relationship between the “if” decision of the German Bundestag about a new legal obligation and the “how” regulation of the federal states about the administrative transfer to the local level of public administration. Similar to VerfGH NRW (2010), the VerfGH Brandenburg also clarifies that only the “how”-regulation by the federal states is the condition for an application of the principle of connectivity. Prior to the last federalism reform II in 2006, these regulations of the federal states were only declaratory, but now they are the initial point for the principle of connectivity (Henneke, 2012b; Ritgen, 2011). This means that within the principle of connectivity, only the federal states are right addressee for municipalities to call for their necessary funding. Because of the different phrases in their constitutions, in Saarland and Thuringia, the additional burdens by new or extended obligations must be regarded in the system of financial equalization. This leads to the question: How to consider municipal

burdens not only in relation to the federal states but also in relation to the national legislative process of the German Bundestag?

V.4.2.4.4.2 Municipal funding in federal state finance equalization

Art. 107 II s. 1 GG is the constitutional source for the financial equalization between all of the federal states in Germany, the state finance equalization. The GG states that the different financial power of the federal states has to be balanced appropriately. The financial power of the certain federal states contains the necessary funding of the local authorities and municipalities. This makes evident that within the system of state finance equalization, the national legislation must regard the financial power of municipalities. The process of this system of state finance equalization contains four essential steps:

Step	Process
1	First the total German tax income is divided to the two state levels: The national level and the whole federal states with an additional income allocation to municipalities (vertical distribution)
2	Second step is the distribution between all of the federal states (horizontal distribution)
3	Third process level is the income distribution between the federal states with much or less financial power (state finance equalization)
4	In the fourth and last step the least developed federal states get additional allocations (Art. 107 II s. 4 hs. 2 GG).

Table 49: Four steps of the German state financial equalization (Art. 107 II GG).

As illustrated beginning with the third step, this system of state finance equalization has to consider the municipal financial power. Until 2004, the German Bundestag considered the needs of local authorities regarding the half of the municipal tax income rates (Art. 106 V GG), the municipal rate of general sales taxes (Art. 106 Va GG), and their own property and business taxes (Art. 106 VI s. 1 GG) (Schmidt-Bleibtreu, Hofmann, & Hopfauf, 2011, Art. 107, Nr. 8d). Since 2005, the state

finance equalization considered the financial power of municipalities with 64 % and omitted the consideration of different numbers inhabitants in different municipal magnitudes (§ 8 I FAG, 2001). The constitutional jurisdiction regarding this system of state finance equalization allows for the recognition of the financial needs of municipalities in an imprecise round sum, which is inadequate as contrasted with the more precise cost definition within the system of municipal finance equalization or the principle of connectivity (BVerfG, 2007).

V.4.2.4.4.3 Coherence in total equalization systems

These different considerations of financial power and needs of the local level of public administrations on the national level and on the level of the federal states must lead to different results of necessary municipal demands. This difference may be a consequence of the complex equalization system of federal states and municipalities; therefore, it must be accepted as inherent. In a federalist state like Germany, the system of state finance equalization regulated in Art. 107 II GG is necessary because the national level does solely decide about the whole national tax income. It must also consider the needs and demands of the different developed federal states. In such a federalist system, the national state cannot equalize the economic and cultural unity by the allocation of funds by itself but has to consider the different circumstances of the different federal states (Schmidt-Bleibtreu, Hofmann, & Hopfauf, 2011, Art. 107, Nr. 1). In contrary to the state equalization, the reason of municipal finance equalization is to constitutionally guarantee the local autonomy (Art. 28 II GG).

Regarding the most recent constitutional jurisdiction about the necessary estimation of municipal needs in the system of municipal equalization and the principle of connectivity, consequences for the state finance equalization must be considered. In particular, Art. 104a III and IV GG mandate that new laws about public cash benefits are a strict financial responsibility of the national level in Germany. In a constitutional way of understanding, municipalities are administrative parts of the federal states, equipped with a special local autonomy.

Because of this constitutional principle, from a national point of view all municipal obligations and costs are part of obligations and costs of the federal states (Dürig, Herzog, & Scholz, 2011, Art. 104a, Nr. 27). Consequently, the responsibility of federal states as delegated by the German Bundestag could also be in municipal hands. (Schmidt-Bleibtreu, Hofmann & Hopfauf, 2011, Art. 104a, Nr. 18). In the end, Art. 104a GG states an obligation for the national legislation to consider municipal demands within its consideration of necessities of the federal states.

V.4.2.4.4 State oriented cost impact assessment

The necessary consideration of municipal demands is a consequence of Art. 104a IV GG, as implemented by the federalism reform II in 2006. The federal states must agree to such laws of the German Bundestag that cause new or extended cash benefits or similar social benefits and if the federal states – containing municipalities – have to carry the expenses of these new benefits. The reason for the necessary agreement of the federal states is the economic consequence for the budgets of the federal states (Schmidt-Bleibtreu, Hofmann & Hopfauf, 2011, Art. 104a, Nr. 35). Since 2006, Art. 104a IV GG stated a new cost impact assessment for the several federal states. If the German Bundestag enacts a new law as described in Art. 104a GG and if the parliament knows about the municipal responsibility for the execution of this law, then it has to estimate the municipal compliance costs within a state oriented cost impact assessment (Wittmann, 2010). To argue that this is the responsibility of the federal states within the legislative process is insufficient and had been soundly refuted (Röttgen & Vogel, 2010, p. 21 et seq.).

If this representation of municipalities by the federal states were sufficient, there would be no necessity to discuss this point in the political reform of municipal finances. The legislation working group of this reform proposed a certain state oriented documentation of financial consequences by national laws concerning the Art. 104a IV GG, regulated in the GGO Bund (BMI, 2010, p. 9). The federal states must be aware of the financial consequences for their own budgets containing the municipal households. This knowledge allows for a good quality decision making in

the national legislative process. The information of such a state oriented cost impact assessment is also the necessary basis for the legally demanded cost estimation of the federal states within the system of municipal finance equalization or the principle of connectivity (Henneke, 2012b). Since 2011, § 44 III GGO Bund has mandated documentation of financial consequences for the national level and the level of the federal states. This state oriented impact assessment has to contain the municipal cost estimation as well.

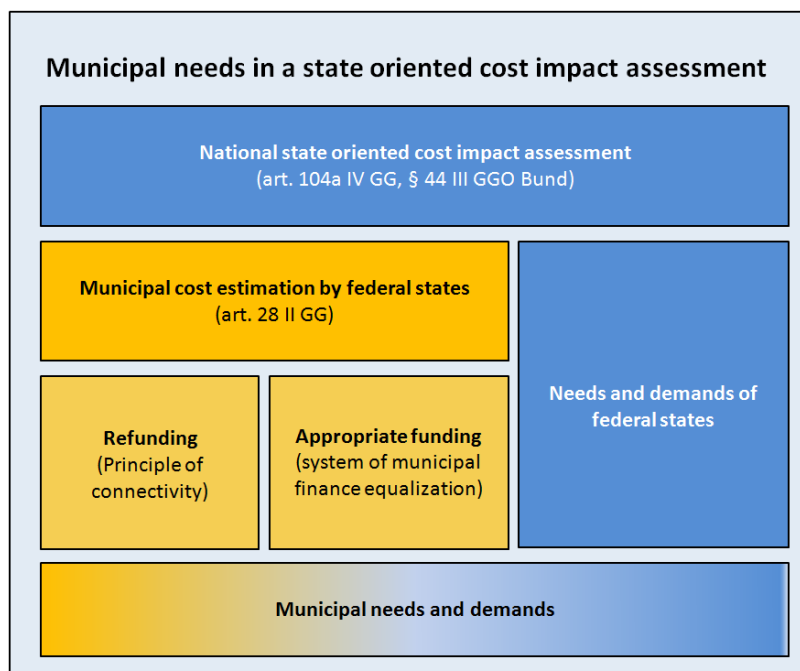


Figure 48: Municipal needs in a state oriented cost impact assessment after § 44 III GGO (own elaboration).

However, in the political discussions about a municipal finance reform the national level, criticism addressed the issue that municipalities do not deliver the necessary information to perform authentic municipal cost estimation (BMI, 2010, p. 11). To develop the necessary information exchange parameters between the national and the municipal level the Federal Ministry of Labour and Social Affairs (BMAS) proposed a pilot project (BMI, 2010, p. 12). Unfortunately, this pilot project has not materialized. Therefore, there are still no methodological guidelines that exist for a municipal cost impact assessment on the national level (Henneke, 2012a, p. 474, 2012b, p. 7).

As proposed in this research, the SCM is the right method to conduct such cost measurements on the national level and on the level of the federal states, because it is necessary to talk about the same dimension of municipal financial needs, regardless of which level of legislation is asking for it. In addition, the NRCC (2014) decided to apply the SCM in its most recent manual about the estimation of municipal compliance costs. Methodologically, this manual is oriented to the Destatis manual (2011) to measure compliance costs in federal authorities and integrates experiences from the “easier-to-projects” of the NRCC (see sec. IV. 3.1.8, IV.3.1.9. and IV. 3.1.11). To date, there has been no application of the new NRCC-manual about municipal compliance cost.

V.4.3 Hermeneutic review of legal conditions

The exploration of the legal conditions of a SCM application in a municipal area is a complex and difficult legal topic. The analysis shows that the principle of connectivity is a relevant framework along with the system of municipal financial equalization. In particular the analysis of the relevant jurisdiction makes clear that the argumentation about municipal funding must be divided into both of these legal constructions in light of the dualistic financial system of municipalities in Germany. However, prejudice about the permissibility of the SCM was confirmed by the text analysis of the actual court decisions and the literature. An important result of the legal text analysis is the statement that a SCM application of municipalities does not contradict a higher law.

More than a pure permissibility, the jurisdiction stated that an ex-ante cost estimation is legally demanded. For this estimation there is no need for specific further legislation because of the constitutional autonomy of municipalities. However, but it might be reasonable to complete existing regulations by a legal addition about the SCM application like the § 2 NKRg on the federal level. Also the prejudice about the necessary consideration of the legal financial framework of municipalities in the NCF was pointed out in the literature. Employing the SCM as a suitable management tool according to the principles of orderly bookkeeping (PoB)

is a new idea. The use of the SCM as a tool for cost estimation could give more legal security within the negotiations of the dualistic financial system between the federal states and the municipalities.

The most difficult legal aspect of municipal financial problems is the prohibited relationship between the federal legislation of Deutscher Bundestag and the municipalities (Art. 84 I s. 7 GG). In particular, opinions that emerged from the interviews and the cross-case analysis that there must be a kind of collaboration or communication between the federal level of legislation and the municipalities as administrative part of the federal states in Germany. The proposal of this text analysis is to expose the necessary municipal funding as part of the demanded state oriented impact assessment (Art. 104a IV GG). This is a recent concept borne from the political discussions about a municipal finance reform in 2010. Therefore, it is consequent on this to measure municipal cost always in the same way: within the dualistic finance system of the federal states and by the state oriented impact assessment on the federal level.

V.5 Research question 2:

Methodological framework for municipal compliance cost determination

V.5.1 Hermeneutic prejudice

The implementation of SCM in Germany began with the enactment of the NKRK in 2006. The law addressed “information obligations” to be measured as criterion for administrative or bureaucratic burdens. The newly implemented NRCC has the legal obligation to watch over the right procedures used by the federal ministries to estimate the administrative burdens of new laws. However, it was quickly recognized that only using the obligation for information is not the right criterion to express bureaucratic burdens. Since the last reform of the NKRK in 2009, the NRCC has the obligation to measure compliance costs of new laws for citizens, the enterprises, and the public administration (§ 1 III NKRK). Based on its legal definition, these compliance costs include calculating the whole time needed and the costs caused by following and observation of federal legislation (§ 2 I NKRK)

including the administrative costs caused by information obligations for federal agencies and authorities (§ 2 II NKRK).

While this definition is clear, there are still open methodological questions for a municipal application to measure compliance costs. There is no statement about the volume of municipal effort to be estimated for new laws. The manual of the German government to estimate compliance costs on the federal level states that compliance costs of the federal states include the compliance costs of municipalities (Destatis 2011, p. 28). The manual describes a very detailed method to estimate the administrative costs needed to execute federal laws. But what about the purposes costs? The manual also states that compliance costs do not include costs described as in article 104a III and IV GG, which means payment or cash benefits for social intentions executed by the public administrations of the federal states including the municipalities (Destatis, 2011, p. 12). From a municipal point of view, the budget of local authorities must include all costs defined by the legal framework of NFC regulations (IA 2.3, IA 2.5). Therefore, this comprehensive understanding of public costs in municipalities must include purposes costs and cannot be restricted to administrative costs as described in the Destatis manual. Particularly, this understanding of compliance costs regarding the legal framework of the NFC must include such purposes costs caused by federal laws that create new or expanded social benefits and payments as executed by public administrations on the local level.

If this municipal understanding of compliance costs includes administrative costs and purposes costs, then there is a need for methodological proposals that address how to estimate such purposes costs. Taking into account the constitutional guaranteed organizational autonomy of local self government in Art. 28 II GG to decide independently about its own organization or administrative processes, there is too much efforts and no possibility to measure the necessary administrative costs in every single German municipality (IA 2.1). In addition to these administrative costs, it is not for the federal legislation to determine the necessary information needed for the right volume of social benefits concerning every single municipal

circumstances. The only way to find a systematic method to estimate compliance costs in municipalities is to work with standardized processes and average criterions (IA 2.1, PA 3, CA 4). First of all, the analysis of the extant SCM projects show that the first step of cost estimation is the definition of standardized processes, which are followed by the concrete cost measurements. Even if those standardized processes are defined, it is not possible to include all German municipalities. But it may be a good proposal to develop such processes by model testing in selected municipalities (IA 2.2). The result of such standardized administrative processes is important because necessary information for the measurement of municipal compliance costs includes purposes costs, but it could also initiate benchmarking processes between municipalities about the most effective way to execute new laws (IA 2.6, PA 3). Therefore, the comprehensive understanding of compliance costs regarding the NFC including administrative and purposes costs, measured in standardized processes by selected municipalities could be an efficient proposal for the methodological framework for a SCM transfer to municipal application.

V.5.2 Analysis of jurisdiction and legal literature

The analysis of the jurisdiction of the constitutional court of the German federal states about the necessary estimation of municipal costs and obligations does not reveal any specific guidelines that address a suitable method to perform this action. This is due to the constitutional principle of legality (Art. 20 III GG) that states the strict binding of public administration to the law and clarifies that the constitution is the only guideline for legislation.

V.5.2.1 Parliament's wide scope of decision making

That there are no solid recommendations for the legislation that address the necessary methods for the municipal cost estimation both within the system of financial equalization and the principle of connectivity. The analysis of relevant jurisdiction shows the regular advice that the legislation has a wide scope of decision making about its methodological choice (ThürVGH, 2005; LVerfMV, 2011;

VerfGH NRW, 2011; ThürVerfGH, 2011; LVerfG SA, 2012; HessStGH, 2013). Within this scope the democratic parliament is legally bound to the constitution only (Art.20 III GG). Therefore, the constitution is the only guideline for any methodological decisions about the necessary municipal cost estimation. Within the system of financial equalization for municipalities, the constitution demands a fair, transparent, and rational system for fixing the right dimension of funding which should not be a political decision only (ThürVerfGH, 2011; HessStGH, 2013). Other court decisions say that there is only a constitutional violation if the chosen method for the municipal cost estimation is obviously wrong, clearly disputable, or in obvious contradiction to the constitutional worth and merits (BayVerfGH, 2007; NdsStGH, 2008; SächsVerfGH, 2010; VerfGH NRW, 2010). These constitutional courts recognize the inconsistency in the argumentation, but they must accept those because of the possibility of later and subsequent improvements (VerfGH NRW, 2010). This leads to the distinct situation that the chosen method for cost estimation is always a legal violation if it is in contradiction to the general constitutional worth and merits (Wieland, 2011, p. 230, VerfGH RP, 2012). But this argumentation, which speaks only to obvious illegality, cannot face the strong constitutional principle of local autonomy in Art. 28 II GG. Otherwise, this leads to increasingly political decision making with regard to municipal funding. However, a political decision about municipal funding without factual elements is not legal or in line with the German constitution (VerfGH NRW, 2011). The chosen method has to be fair, transparent, and must apply primarily to the legally subordinated municipalities themselves (HessStGH, 2013).

It is not a relevant argument that it is impossible to estimate the necessary municipal funding because the courts of justice are not responsible for deciding whether one chosen method is better than another one (Bertrams, 2011). Some court decisions state that no systematic and scientifically accepted methods exist to measure the obligations and costs of local authorities (LVerfG MV, 2006; BayVerfGH, 2007; VerfGH NRW, 2010). Regarding the rising financial problems of municipalities, several recent court decisions stated that the systems of financial equalization in several federal states are illegal because of the non-transparent

method to fix the dimension of municipal funding. Even if this necessary ex-ante cost estimation may be very difficult and complicated, it is not impossible for the legislation (HessStGH, 2013). Logic exists in actual jurisdiction about the necessity of an ex-ante cost estimation before fixing the municipal funding, but there is no successful result about the right method yet.

V.5.2.2 Methodological guidelines for municipal cost estimation

Before it is possible to propose a methodological framework for municipal compliance cost determination, an analysis of currently applied methods is necessary. In a number of federal states there are formal laws, sublegal agreements with the municipal member associations, or other governmental guidelines (see sec IV.4.4.2.3.1, table 44) designed to regulate the process of the strict principle of connectivity (for a detailed overview see: Hensel, Bizer, Führ, & Lange 2010, p. 117 et seq.). This study does a systematic analysis of these regulations regarding the different kinds of costs for the first time. It shows the following structure:

	Process step	Content	Regulation
1	General parameter	Documentation of obligation	§ 3 III Nr. 1 KonnexAG NRW
		Commitment about necessary cost estimation	Nr. II.2 BayKonsultVer Nr. 7 KonnexEntschl Bdg § 3 I KonnexAG BW § 3 I Nr. 1 KonnexAG NRW § 2 I KonnexAG RP § 3 I KonnexAG SH
2	Responsibility	Factual leading Ministry	Nr. II.2.1 BayKonsultVer § 2 II KonnexAG BW Nr. II.2.1 KonnexErkl MV § 5 KonnexAG NRW § 4 I KonnexAG RP § 3 I KonnexAG SH
3	Municipal participation	Information, participation	Nr. II.1.1 u.4 BayKonsultVer Nr. 8 KonnexEntschl Bdg § 2 I KonnexAG BW Nr. II.4 KonnexErkl MV § 1 I u. 7 I KonnexAG NRW § 2 VII KonnexAG RP § 2 I, II KonnexAG SH
4	Cost estimation	Personnel costs	Nr. II.2.1.1 BayKonsultVer § 3 III KonnexAG BW Nr. II.2.1 KonnexErkl MV § 3 III Nr. 3 KonnexAG NRW § 2 I Nr. 2 KonnexAG RP § 3 II KonnexAG SH

		Material costs	Nr. II.2.1.2 BayKonsultVer § 3 IV KonnexAG BW Nr. II.2.1 KonnexErkl MV § 3 III Nr. 4 KonnexAG NRW § 2 I Nr. 3 KonnexAG RP § 3 II KonnexAG SH
		General administrative costs	Nr. II.2.1 KonnexErkl MV § 3 III Nr. 4 KonnexAG NRW § 2 I Nr. 4 KonnexAG RP
		External services costs	Nr. II.2.1 KonnexErkl MV
		Investment costs	Nr. II.2.1.4 BayKonsultVer § 3 V KonnexAG BW Nr. II.2.1 KonnexErkl MV § 3 III Nr. 5 KonnexAG NRW § 2 I Nr. 5 KonnexAG RP § 3 II KonnexAG SH
		Purposes costs	Nr. II.2.1.3 BayKonsultVer § 3 VI KonnexAG BW § 3 III Nr.2 KonnexAG NRW § 2 I Nr. 1 KonnexAG RP § 3 II KonnexAG SH
5	Income estimation	Direct incomes (esp. Taxes, fees and public contributions)	Nr. II.2.2 BayKonsultVer Nr. 5 KonnexEntschl Bdg § 3 IX KonnexAG BW Nr. II.2.2 KonnexErkl MV § 3 IV KonnexAG NRW § 2 II KonnexAG RP § 4 I KonnexAG SH
		Savings and synergies caused by investigated obligation	Nr. II.2.3 BayKonsultVer Nr. 5 KonnexEntschl Bdg § 3 VIII KonnexAG BW Nr. II.2.3 KonnexErkl MV § 3 V KonnexAG NRW § 2 III KonnexAG RP § 4 I KonnexAG SH
6	Refunding	Costs ./ Incomes = refunding	Nr. II.2.4 u. 5 BayKonsultVer § 3 XI KonnexAG BW Nr. II.2.4 KonnexErkl MV § 3 VI KonnexAG NRW § 3 I KonnexAG RP § 4 II KonnexAG SH

Table 50: Systematic regulation analysis to execute the principle of connectivity.

The regulations clearly describe a very similar process to estimate the necessary refunding within the principle of connectivity. This leads to the following simplified structure:

Regulations about the principle of connectivity		
	Costs	Personnel costs
		Material costs (including external services)
		General administrative costs
		Investment costs
		Purposes costs
./.	Incomes	Direct incomes
		Indirect savings
=		Municipal refunding

Table 51: Simplified process structure of municipal refunding.

This structure is not necessarily the end of discussion about the definition of costs within the field of municipal cost estimation. Also these results correlate to the guidelines from the literature (Oebbecke, 2011 = Bunzel & Hanke, 2011, p. 73 et seq.) and actual jurisdiction (HessStGH, 2013, ThürVerfGH, 2011), which propose to come to realistic dimensions of municipal financial demands.

- estimate the whole factual costs of a new or extended municipal obligation,
- adjust the unavoidable spikes,
- add a certain amount to guarantee local autonomy and
- subtract the direct incomes and possible savings

Here it is legally permissible to differentiate these legal demands by the size and inhabitants of cities and municipalities (ThürVerfGH, 2011).

V.5.2.3 Amount of municipal compliance costs

If it is clear which types of costs are relevant for municipal compliance costs, now it is necessary to define the amount. The only legal definition for the term of compliance costs is in § 2 NKRK.

V.5.2.3.1 Compliance costs in municipalities

§ 2 NKRK states that compliance costs must contain the whole measurable expenditure of time and all costs caused by national regulations for citizens,

the economy and the public administration. § 2 II NKRK states that administrative costs are part of these compliance costs. Administrative costs are caused by information obligations for natural or juristic corporate persons. After the introduction of the new § 8 NKRK by the last NKRK-reform (NKRK 2011) the German government, German Bundestag, and German Bundesrat are now allowed to commission the Federal Bureau of Statistics (Destatis) to measure the necessary ex-ante costs. To generalize these ex-ante measurements, the German government in cooperation with the NRCC and Destatis developed a manual to measure and document compliance costs on the national level (Destatis, 2011).

By enacting the first draft of NKRK in 2006, the responsible ministries had methodological difficulties with defining the information obligation of public administrations in contrary to regular legal obligations. Because of these methodological problems, a discussion occurred early in the process addressing the possible SCM transfer from the business sector to the sector of public administration (Kienbaum & Bertelsmann Stiftung, 2007, p. 17). Municipalities occupy the lowest level of public administration and are particularly prone to the problem of differentiating the measurable information obligations from the regular legal obligations (FHM 2009, p. 17). But after the last NKRK reform in 2011, this discussion ended because public administration and municipalities are now involved in the measurement of compliance costs (Vorgrimler, Bartsch, & Zipse, 2011). Today, compliance costs must be measured and documented separately for citizens, the economy, and the public administration including municipalities (Destatis, 2011, p. 28, 34 and 40).

V.5.2.3.2 Administrative and purposes costs in municipalities

The Destatis manual (2011, p. 32) differentiates compliance costs only by personnel and material costs that include investment costs and the costs of external services. The Destatis manual on the national level is not as detailed as the regulation of the federal states about the municipal refunding within the principle of connectivity (see sec. IV.4.5.2.2, table 47 and 48). As opposed to the federal regulations the

compliance costs on the national level do not contain the purposes costs that must be documented separately in a legislative draft (Appendix 3 to § 42 I s. 1 GGO Bund). Consequently, the Destatis manual (2011, p. 12 and 28) defines compliance costs without taxes, social insurance contribution, and purposes costs of social benefit laws (Art. 104a III and IV GG). Compliance costs include administrative costs of the national level, the federal states, and the municipalities as defined in Art. 104a V GG. But, it is not clear if compliance costs also contain the more relevant purposes costs. This is important because compliance costs must include these purposes costs because the ex-ante estimation of purposes costs is under supervision of the NRCC by the regulation of the NKRK.

On the national level, purposes costs are documented in a legislative draft under letter D and compliance costs are documented under letter E. Today there is a systematic cost measurement of compliance costs according the Destatis manual under letter E, but not under letter D. Although separate documentation may be necessary because of formal aspects, it is important that both amounts under letter D and E are developed by the same consistent method in order to make a well-founded political decision (Färber, 2011). Even if the exclusion of purposes costs from the term of compliance costs on the national level has any formal reasons, regarding the responsibility of the NRCC it seems to be an only political one.

A grammatical interpretation of the term of compliance costs means that the costs must comply with the legal obligation. From this grammatical point of view, no cause to exclude purposes costs exists because these present the most important funding to fulfil the legal duty. It follows the systematic construction of German public administration that this level of authority that is responsible for the execution of law has the necessary financial strength to do this. According to the constitutional principle of execution causality (Art. 104a I GG), municipalities must receive funding for all of their legal obligations, regardless the type of administrative or purposes costs (ThürVerfGH, 2005). This problem was addressed during the political discussions in 2011 about a possible reform of municipal

finances. The central municipal member associations demanded a clear definition of the term of compliance costs in the new § 2 NKRГ, which clarifies that purposes costs are a necessary part of compliance costs (BМI, 2010, appendix 2).

Unfortunately it is not possible to make a teleological interpretation of the term compliance cost because the explanatory statement by the German Bundestag about the new § 2 NKRГ does not contain any statements addressing this problem (Deutscher Bundestag, 2011, p. 6).

A systematic comparison of necessary municipal funding illustrates that in a coherent system of public finances, the understanding of compliance costs cannot differ between the national level and the definition of necessary refunding defined by constitutional jurisdiction in the several federal states and a state oriented cost impact assessment (see sec. IV.4.2.4.4.3). All phrases in the federal constitutions are consistent regarding the legal consequences of the principle of connectivity into administrative or purposes costs. A grammatical interpretation of these regulations must lead to the consequence that compliance costs must contain the necessary purposes costs. The only factual and reasonable restriction for any financial equalization is the causality between the legal obligation and the caused new effort including the purposes costs (Engels, 2011, p. 295). As a result, the term of compliance costs found in § 2 NKRГ must include both administrative costs and purposes costs.

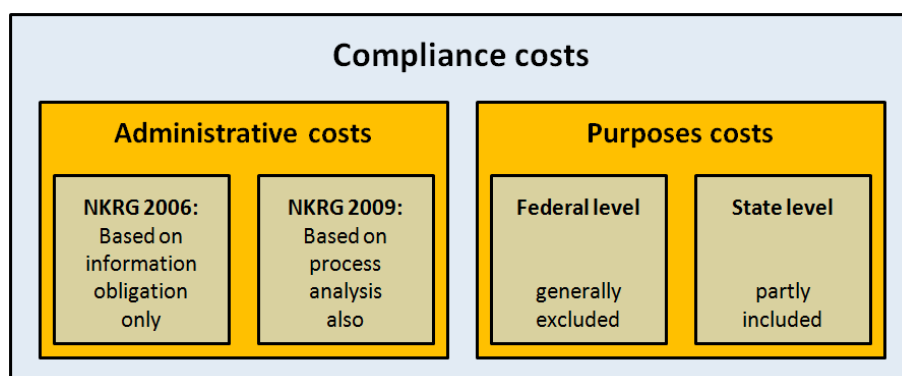


Figure 49: Different definition of compliance cost (own elaboration).

V.5.2.4 The “average economic municipality”

If the jurisdiction discusses the necessary funding for municipalities, then the legislation must consider the “average economic municipality” as the guideline for the right dimension of funding (ThürVerfGH, 2005; VerfGH NRW, 2010; ThürVerfGH, 2011; VerfGBdg, 2013; BVerwG, 2013). To date, the literature has rejected any systematic estimation of municipal costs because of the great diversity of municipalities that is based on their constitutional guarantee of local autonomy (Junkernheinrich, 2007, p. 173). Regarding the latest jurisdiction, this point of view cannot be supported anymore. If the jurisdiction demands a systematic ex-ante cost estimation before the legislation decides about the necessary dimension of municipal funding, this estimation must be based upon a systematic analysis of relevant administrative processes and must follow process standardization (Färber, 2011). It would be onerous for the political decision maker to look in every municipality individually to define the right refunding for every single local authority (Engelken, 2012, p. 58). The legislation might not be able to identify an ideal municipality that executes its obligations in a very effective and economic way (Dieter, 2013), but it can identify such ideal best practices to initiate municipal benchmark processes (Wittmann, 2010; Färber, 2011).

Following the legal possibility to differentiate municipal sizes (ThürVerfGH, 2011), the random sampling of necessary data could be based on the BIK7 sizes of cities, municipalities, and administrative districts (www.bik-gmbh.de) that is regularly applied by Destatis. According to the SCM method, three municipalities per BIK size is enough to generate the representative financial data (FHM, 2005, p. 52). The possible scope of cost estimation of an average economic municipality is indicated by an exact, precise, and error-free acting municipality and also by a local authority with missed opportunities of cost reduction (Oebbecke, 2011). Furthermore, within the public sector cost estimations using average economic institutions are not unknown. The EU-system employs the four “Altmark-Trans-criteria” using an average economic logistic business to find the right dimension of public subsidies (EuGH 2003). Since the introduction of the SCM method, a number of projects

emerged that defined the economic quality and necessary effort of administrative processes (see cross case analysis in sec. IV.3). These projects include a methodological standardization of process data from several public administrations to define an average necessary effort for the analyzed process (NW Consult, 2008, p. 21; NRCC, 2009a, p. 31; NRCC, 2009b, p. 22; NRCC, 2010a, p. 27; FHM, 2010, p. 15; Bertelsmann Stiftung, 2012, p. 5 and 18). Finally, this standardization process corresponds with the literal terms of the federal constitutions that formulate the “appropriate necessary funding” (see sec. V.4.2.3.2, table 48).

V.5.2.5 SCM as method for measuring compliance cost

In addition, standardization as a central step in the SCM method (SCM network 2005, p. 10 and 41) is necessary to extrapolate the random sampled data to the national level (FHM 2005, p. 56). The ability to consider bureaucratic decrease in the field of legislation finds no way to proceed except for the SCM method (Hensel, Bizer, Führ, & Lange, 2010, p. 115). Even if the NKRK 2011 extends the legislative obligation of the NRCC from measuring only administrative costs to compliance costs (Vorgrimler, Bartsch & Zipse, 2011), the SCM is still the appropriate method for cost estimations. Detailed financial data does not generate the needed information alone, but tends to produce too much analysis cost (Böhret & Konzendorf, 2001, p. 189). The identification of relevant number of cases, standardized processes, periodicities, and other cost determinant parameters and their ex-ante quantification by the SCM is the sufficient data base for the necessary cost impact assessment on the national level and its transformation into the laws of the federal states that are directly relevant for municipalities (Färber, 2011).

Therefore, the SCM is not only an impact assessment method relevant for legislation on the national level (§ 44 IV GGO Bund and § 2 NKRK) but is also the suitable method to measure the relevant costs of legal obligations on the local level of public administration (Schwarming, 2011). Like the compliance costs in § 2 NKRK, the necessary municipal refunding also focuses on the same data: the realistic costs to fulfil legal duties (Färber, 2013). Therefore, the SCM is the sufficient method to

measure different types and realistic amounts of municipal costs in a systematic and transparent way within the state oriented cost impact assessment on the national level (§ 44 III GGO Bund). As part of a factual cost impact assessment, the SCM based financial needs of municipalities will be more accepted than the pure political negotiations between the different levels of public administration within the federal German republic (Hensel, Bizer, Führ, & Lange, 2010, p. 79).

V.5.3 Hermeneutic review of methodological framework

The legal prejudices about the methodological framework of compliance cost determination illustrate that the methodological focus of the existing literature is on the national level, especially the publication of the Destatis manual (2011). There are only a few practical projects that investigate the dimensions of compliance costs in municipalities. But the analysis of the actual jurisdiction makes it clear that on the level of the federal states there exist methodological regulations about municipal costs that apply the principle of connectivity. This is the suitable and appropriate starting point for a methodological discussion about the SCM application for municipalities.

Another aspect of the legal prejudice was the conviction that purposes costs must be part of the compliance costs. Initially, this principle appears to contradict the Destatis manual that expressly excludes purposes costs from compliance costs. However, the text analysis of the jurisdiction in this thesis clarifies that this is a result only of political considerations, not a result of factual discussions. The necessary funding of municipalities in the dualistic system of financial equalization and the principle of connectivity contains administrative costs and also purposes costs.

If this definition of compliance costs on the level of the federal states contains purposes costs, the definition of compliance costs on the federal level would have to be consistent with that principle. If the federal states are allowed to estimate municipal costs by standardized processes in an “average economic municipality,”

this must be the suitable methodological framework for municipal cost estimation at the federal level. This is a confirmation of the prejudice that municipal cost estimation is only possible by standardized administrative processes.

V.6 Research question 3: Sufficient conditions for SCM-implementation to municipalities

V.6.1 Hermeneutic prejudice

Assuming that all discussions about legal conditions of a municipal SCM-transfer are clear and the methodological framework to determine compliance cost is suitable, then the third research question about the sufficient conditions for SCM-implementation to municipalities is the most political and difficult one. A proposal to change or to develop the definition of costs of formal laws in pluralistic democracies like Germany is always an intervention into established legislative processes of the parliament and the democratic decision-making. This means that all conditions proposed for an SCM-implementation into German municipalities must regard the constitutional framework of political decision-making and the involved institutions. On the one hand, one important constitutional guideline is the prohibition upon the federal legislation not to delegate new legal obligations to municipalities directly (Art. 84 I s. 7 GG). On the other hand, it must be stated that this prohibition on the German Bundestag not to delegate legal obligations to municipalities directly is weak (Röttgen & Vogel, 2010, p. 211 et seq.).

Therefore, from a municipal point of view, this inadequate operation of the constitutional principle of connectivity needs another kind of communication between the federal legislation and the German municipalities (IA 3.3). Because of the great number of municipalities in Germany, for the federal level of legislation it would be nearly impossible to construct a system that varied for each municipality. But there are central municipal member associations that are still the right addressee for the federal state administration and the Deutscher Bundestag (IA 3.1).

- German association of cities (Deutscher Städtetag - DST) for bigger cities which are not member of higher districts of public administration (www.staedtetag.de)
- German association of cities and municipalities (Deutscher Städte- und Gemeindebund - DStG) for such cities which are member of higher districts of public administration (www.dstgb.de)
- German association of German administrative districts (Deutscher Landkreistag – DLT) for the higher districts of public administration (www.landkreistag.de)

For practical reasons, these central municipal member associations must be involved in the development of sufficient conditions for an SCM-implementation to municipalities. Because of this necessary involvement in the development of standardized administrative processes, there is no way of communication with or consultation of municipalities without those central member associations (IA 3.3). The very early consultation of these central municipal associations in the legislative process could give the necessary information for a systematic estimation of municipal compliance costs and is essential for an efficient municipal SCM implementation (CA 5).

Regarding the time-based aspects of incorporating the cost estimation into the legislative process, this should take place either in the governmental law proposal at the beginning of the legislative process or after the procedural involvement of the federal states as the constitutional representatives of municipal interests (CA 3). If the involvement of the central municipal associations occurs early in the legislative process, this will allow enough time to conduct the concrete estimation of municipal compliance costs. This would eliminate the necessity for institutions like the NRCC in every federal state (IA 3.2). The effort for such a widespread implementation of NRCC or similar institutions in every federal German state would be out of proportion to generate the necessary information for a systematic compliance cost measurement on the local level of public administration. In conclusion, the sufficient conditions for a municipal SCM-implementation must

regard the legal framework of the democratic constitution in Germany and could be derived by a certain enhancement of existing institutions and legislative procedures.

V.6.2 Analysis of jurisdiction and legal literature

Following the analysis of the legal and methodological framework of a permissible SCM transfer into the municipal area, the final question addresses the procedural or political implementation of the SCM on the national level. Art. 76 to 78 and 82 GG are the constitutional foundations for the German legislative process on the national level. Additionally, there are internal rules of procedures of every constitutional German institution involved in the legislative process, the Bundestag, Bundesrat, and the federal government. For each of these rules of procedures there are specific authorizations within the GG: For the Bundestag in Art. 40 I S. 2 GG (GO-BT), for the Bundesrat in Art. 52 III S. 2 GG (GO-BR) and for the federal government in Art. 65 S. 4 GG (GO-BReg). With the GGO, the federal government added another internal rule of procedures to the GO-BReg, which also regulates the interaction of the several ministries within the legislative process. The regulations of the legislative process are divided into two sections: the external legislation and the internal legislation. The external legislation is the process based directly on the constitutional articles (Art. 76 to 78 and 82 GG).

The internal legislation includes the methods of decision making, regulations of transparency, and coordination between the constitutional structures coming from the internal rules of procedures of the highest constitutional bodies in Germany (Schmidt-Bleibtreu, Hofmann & Hopfauf, 2001, GG, Art. 76, Nr. 14a). As described above (see sec. IV.4.2.4.4.4), the SCM method could be suitable for measuring municipal efforts within the legal framework of the state oriented cost impact assessment. Therefore, regulations in the GGO regarding the state oriented cost impact assessment belong to the internal legislation in Germany.

V.6.2.1 Responsibility of the leading ministry

Before requesting a procedural implementation of the SCM, the institutional responsibility must be defined. The basis for this responsibility is the leading ministry that is responsible for the construction of the first draft of a law by order of the federal government (Art. 76 I alt. 2 GG). The preparation of such legal drafts is regulated in detail in the §§ 40 ff. GGO. The terminology differs here: §§ 44 III and VII formulate the “leading ministry” and § 44 V s. 2 GGO speaks about the “functional responsible ministry.” Furthermore, § 44 V GGO describes a certain responsibility to be aware of economic or consumer’s interests within the legislative process. This obligation does not change the basic responsibility of the leading ministry for the state oriented cost impact assessment coming from §§ 44 III and VII GGO.

Another approach to this question could be to transfer this responsibility to the central municipal member associations, because the leading ministry must consult these municipal organizations within the legislative process when municipal interests are affected by the new law (§ 47 I and VII GGO). § 47 II GGO requires an invitation to the central municipal member associations if there is a political hearing in the parliament or one of its committees. But in the end, such obligations to consultations cannot change the procedural responsibility of the leading ministry (Oebbecke, 2011, p. 61). A systematic comparison with the specific regulations about the execution of the principle of connectivity shows that every federal state identifies the responsibility of the leading ministry for the necessary municipal cost estimation (see sec. IV.4.5.2.2, table 47: Nr. II.2.1 BayKonsultVer; § 2 II KonnexAG BW; Nr. II.2.1 KonnexErkl MV; § 5 KonnexAG NRW; § 4 I KonnexAG RP; § 3 I KonnexAG SH).

This illustrates that there is no obligation of the central municipal member associations to make an estimation of municipal duties and costs within the federal legislation process (HessStGH, 2013). This is only the legal duty and obligation of the constitutional organs themselves (Dieter, 2013). If the German government

creates a legislative initiative (Art. 76 I alt. 2 GG) that includes financial consequences for municipalities in Germany, the leading ministry has the constitutional responsibility to estimate the municipal costs within the state oriented cost impact assessment including the necessary consultation of the central municipal member associations (Art. 104a IV GG, §§ 44 III and VII GGO).

V.6.2.2 Municipal consultations

The necessity of municipal cost estimation and the responsibility of the leading ministry are clear. However, no detailed regulations exist addressing the procedure and the interaction of the ministry with the local level of public administration. During the political negotiations about the reform of municipal finances, the federal government, the federal states, and the central municipal member associations agreed to conduct a certain pilot project in the area of responsibility of the Federal Ministry of Labour and Social Affairs (BMI, 2010, p. 37). Unfortunately, at the time of writing, this pilot project has not been conducted.

Nevertheless, the regulations of the federal states about execution of the principle of connectivity contain guidelines for a possible municipal consultation. These regulations form the consultation by specifying municipal rights about the hearing and participation (see sec. IV.4.5.2.2, table 47: Nr. II.1.1 u. 4 BayKonsultVer; Nr. 8 KonnexEntschl Bdg; § 2 I KonnexAG BW; Nr. II.4 KonnexErkl MV; § 1 I u. 7 I KonnexAG NRW; § 2 VII KonnexAG RP; § 2 I, II KonnexAG SH). Within the system of municipal finance equalization, some federal states go one step further and establish special institutions, such as commissions or advisory boards, to participate with the local level of public administration in the legislative process and the political decision to fix the right dimension of municipal finances (Junkernheinrich, Koriath, Lenk, Scheller & Woisin, 2011, p. 496 ff.).

Federal state	Municipal Consultation	Legal basis
Baden-Württemberg	Structure Commission	§ 34 I FAG BW
Bavaria	Top-level negotiations	§§ 18 ff. BayFAG-DV
Brandenburg	Financial advisory board	§ 21 BdgFAG
Hesse	Structure Commission	§ 2 I HessGemFinAusstG
Mecklenburg-West Pomerania	Financial advisory board	§ 30 FAG-MV
Lower Saxony	None	-
Nordrhine-Westfalia	None	-
Rhineland-Palatinate	Municipal board	§ 1 KomRatG RP
Saarland	Financial advisory board	§ 29 SaarIKFAG
Saxony	Financial advisory board	§ 34 SächsFAG
Saxony-Anhalt	Structure Commission	KonsultVer SA
Thüringen	none	-

Table 52: Municipal consultation in the finance equalization system.

Even at the level of the federal states, there are institutional and procedural structures in place to discuss the municipal demand for necessary cost equalization. However, these structures cannot directly improve the necessary interaction between the local authorities and national level of legislation. As a result of the most recent federalism reform, the German constitution prohibits the direct interaction between these two state levels (Art. 84 I s. 7, 85 I s. 2 GG) based on the constitutional point of view that municipalities are part of the public administration of the federal states. In light of this constitutional situation, it seems legitimate that the right addressees for the leading ministry are the central municipal member associations instead of the municipalities themselves (§ 47 I GGO).

Nevertheless, the leading ministry has to conduct the municipal cost estimation for any relevant law drafts with the participation of the municipal level because it needs the necessary financial information. With the exception of the federal states of Baden-Württemberg and Rhineland-Palatinate (§ 3 I KonnexAG BW und § 2 VII KonnexAG RP), no legal basis exists for the state level to demand this financial information from the local authorities. However, it is in the interest of the municipalities that they deliver the relevant financial data because otherwise they have to accept adverse results of cost estimations (Oebbecke, 2011, p. 64). It is also a question of practical conduction to estimate municipal efforts within the fast system of federal legislation, even if the delivery of necessary data must take place at very short notice (Wittmann, 2010, p. 140). After the last NKR reform in 2011, the NRCC also recognized the necessity of a systematic interaction between the

federal legislation and the local authorities and proposed a kind of a voluntary and fast information system (Ludewig, 2012). To date, the constitutional separation between the federal and the local level of public administration, the municipal cost estimation in national legislation takes place only in common projects of the national level, the federal states, and municipalities (Hensel, Bizer, Führ, & Lange, 2010, p. 115). In particular, these projects attested to the necessity of data interaction between the national legislation and the municipal executing authorities (NRCC, 2009b, p. 99 and 2010a, p. 145). The appropriate manner of development is neither bottom-up nor top-down; only a cooperative collaboration between the different levels of state authorities in a federal state with a common aim of bureaucratic decrease is suitable (Pfisterer, 2009, p. 1134; NCRR 2014).

Another legal possibility exists to get the necessary information from the federal states and municipalities; the federal legislation could apply the laws about administrative cooperation (§ 5 VwVfG, Kopp & Ramsauer, 2013). Even if there are different laws about administrative procedures in national authorities and in public administrations of the federal states, the relevant regulations are the same. In addition, Art. 35 I GG allows for administrative cooperation between the federal authorities and the authorities of the federal states. Consequently the federal legislation is able to ask for the necessary municipal information to conduct the legally demanded cost estimation.

V.6.2.3 Point of time for municipal cost estimation

There are no explicit rules governing the timeframe for the leading ministry to estimate the costs of a new law. Regarding the regulations of the federal states about the principle of connectivity, phrases are used such as “early” or “right in time” for the participation of the central municipal member associations (Nr. II.1.1 u. 4 BayKonsultVer; Nr. 8 KonnexEntschl Bdg; § 2 I KonnexAG BW; Nr. II.4 KonnexErkl MV; § 1 I u. 7 I KonnexAG NRW; § 2 VII KonnexAG RP; § 2 I, II KonnexAG SH). The regulation about the legislative process on the national level has only two relevant points addressing time for the municipal participation:

- **Investigation of interests** (§ 41 GGO): If there is a political idea that touches the interests of the federal states or municipalities the responsible ministry has to investigate the federal state and municipal interests before the development of the first law draft.
- **Regular Participation** (§ 47 I and III GGO): The leading ministry has to transmit the law draft as early as possible to the federal states and central municipal member associations if their interests are touched.

Therefore, it is useful to regard municipal interests while the law is still a political idea or a working draft of the ministry (such in Nr. II.1.1 BayKonsultVer). Early intervention regarding municipal interests is reasonable because it allows the ministry to change or adopt its data at a later point of time (Oebbecke, 2011, p. 61). The first investigation of municipal interest or even municipal financial data must take place as early as possible in the first phase of the legislative process even before the leading ministry develops the first official law draft (Bertelsmann Stiftung, 2012, p. 9). Regarding the existing regulations, if the internal legislation in Germany correlates with the investigation of municipal interests before the development of the first law draft, then the process is improved (§ 41 I GGO). The NRCC possesses its own manual (2014, p. 2) about the municipal cost estimation as an addition to the regular participation (§ 47 I GGO). But to effectively regard the municipal information, the participation must take place much earlier.

Only alternatively should the ex-ante cost estimation be caught up with later within the later regular participation (§ 47 I and III GGO) if the municipal cost estimation at the early point of time must be amended. If there is no possibility for an early municipal cost estimation in the legislative process, then a secondary solution would be to measure the necessary municipal costs in a ex-post evaluation of the law and to follow the regular system of municipal financial equalization (see this explicit regulation for Bavaria in Nr. II.2 BayKonsultVer).

V.6.2.4 Proposed legislative process design

As described above, the right addressees for national legislation regarding municipal interests are the central municipal member associations (see section IV.4.6.2.2). Therefore, it is in the interests of these associations to deliver the right and suitable municipal financial data to the leading ministry. Accordingly, in the cooperative approach of political interaction, the leading ministry must conduct the legally demanded state oriented cost impact assessment together with the federal states and the central municipal member associations. Such a cooperative development of municipal cost estimation guarantees political acceptance and is the best way to generate realistic data (Henneke, 2012b, p. 15). To find provisional data at an early point of time in the legislative process, the data collection could come from randomly sampled municipalities (Schwartzing, 2011, p. 242).

It has been argued that the selection of such sampled municipalities by their size is a permissible criterion to generate suitable data about municipal obligations and costs (ThürVerfGH, 2011). The leading ministry is responsible for the selection of the municipalities and the standardization of the relevant administrative processes in collaboration with the central municipal member associations in a voluntary and timely information system as proposed by Ludewig (2012). For an efficient municipal cost estimation in the early phase of the legislative process, the SCM and its development concerning the compliance costs (Vorgrimler, Bartsch, & Zipse, 2011) is considered to be complete. The counting of standardized cases in a defined period of time and its quantification in an ex-ante estimation generates the suitable data base for the transmission of national laws by the federal states and the following execution by the local authorities (Färber, 2011, p. 100 f; Schwartzing, 2011, p. 243).

		Legislative Phase	Action	Responsibility
1.		Discussion draft	Development of political ideas	Parliament/Leading ministry
2.		Investigation of Interests (§ 41 I GGO Bund)		
	2.1		Standardization of municipal administrative processes	Leading ministry/central municipal member associations
	2.2		Selection of municipalities by their size	Leading ministry/central municipal member associations
	2.3		Data collection of municipal obligations and costs	central municipal member associations/selected municipalities
3.		Ex-ante cost impact assessment (Art. 104a IV GG, § 44 III GGO Bund)		Leading ministry
4.		Regular participation (§ 47 I, III GGO Bund)		
	4.1		Mending data collection of municipal obligations and costs	central municipal member associations/selected municipalities
	4.2		Mending ex-ante cost estimation	central municipal member associations/selected municipalities
	4.3		Mending Ex-ante cost impact assessment	Leading ministry
...		First ministerial law draft		Leading ministry
		Governmental law draft		Government
		Parliamentary debate		Deutscher Bundestag
		Enacting		Deutscher Bundestag
		Promulgation		Bundespräsident
5.		Ex-post-cost-evaluation	Within the system of municipal equalization	Federal states

Table 53: Procedural implementation of municipal cost estimation in the national legislative process

V.6.3 Hermeneutic review of SCM implementation

One of the central legal prejudices is that the implementation of the SCM as method for municipal cost estimation cannot change the federal legislative process. It is an appropriate consequence of German federalism that the interests of cities and local authorities are represented by the federal states in the second chamber of the national legislation, the German Bundesrat (Art. 50 GG). The text analysis of relevant literature suggests that this idea may be right for the external regulation of legislation in the German constitution, but there is a possibility for procedural

development in the internal rules of procedures of the highest constitutional structures in Germany.

Another opinion is that direct communication is necessary between the federal legislation and the municipal interests. Regarding the constitutional separation between these two state levels (Art. 84 I s. 7 GG), protagonists still look for such an information exchange. The transfer of the basic ideas coming from the regulations to conduct the principle of connectivity from the level of the federal states to the national level is rather new, and focuses on the responsibility of the leading ministry for the information exchange with the municipal level and addresses an early intervention to initiate this exchange. The important role of the central municipal member associations in this communication was confirmed in the literature analysis. Such a new kind of communication regarding the legal situation of constitutional separation between the federal and the local level of public administration is only possible in a trustful collaboration of the responsible federal ministries, the federal states, and the central municipal member associations. The analysis of the external and internal regulations of German legislation shows the possibility to integrate this necessary information exchange into the already existing process steps. If the implementation of a cooperative interaction is successful, there will be no need for additional institutions like the NRCC on the level of the federal states

V.5 Summary of research analysis

The research and data analysis of this thesis is structured in three main stages: first, the data analysis of interview data, project results, and reflections of my first presentation of this thesis. The data analysis was derived to formulate the second stage: the hermeneutic prejudices for the three research questions of this thesis. These prejudices are the starting point for the most intensive part of this chapter, the hermeneutic text analysis. The interview analysis illustrates that all interviewees recognized the necessity of municipal cost estimation on the federal legislation. However, no solution arose for bringing together the legal problems of

the relationship between municipalities and the federal states and the necessity of municipal consultation in the federal legislative process. Also the cross-case analysis showed the expedience of direct information exchange between the federal legislation and the law executing level of local authorities.

However, this analysis did not contribute to a systematic idea of how to develop this exchange. The main points of the reflection to the first presentation of this topic by a board of professionals included critical amendments not to change the existing legislative process. Therefore, perhaps the most significant discovery made in the text analysis concerns the first research question about the legal conditions for a successful municipal SCM-transfer: that municipal cost estimation is legally permissible and is demanded by the constitution. The text analysis also showed that there is a possibility to regard municipal interests in a state oriented impact assessment within the existing legislative process in addition to their regular representation by the federal states in the German Bundesrat.

The data analysis concerning the second research question about a methodological framework for municipal compliance produced two essential conclusions. The first is the necessity to integrate purposes costs into a legal understanding of the term of compliance costs. The restriction of compliance costs only to the aspects of administrative costs stands in clear contradiction to the jurisdiction about the dualistic finance system of municipalities in Germany. Even if this jurisdiction does not address federal legislation, there is no reasonable argumentation to make a difference in the understanding of municipal compliance costs and compliance costs on the federal level. The data analysis shows the possibility of also using the existing methodological framework for municipal compliance costs on the federal level of legislation. This means the standardization of administrative processes and the cost estimation in "average economic municipalities."

The analysis, especially of interview and project data, shows the important role of the central municipal member associations, but gives no new ideas for the third research question for the sufficient conditions for SCM-implementation into municipalities. In a complex system of democratic federalism, it is difficult to change the existing legislative procedures. Nevertheless, the text analysis revealed new methods for the transfer of existing methodological procedures from the federal states to the level of federal legislation. The internal rules of procedures of the highest constitutional organs create the possibility to integrate these juridical guidelines in the federal states into the federal legislative process. All of the results of the intensive research and data analysis led to specific conclusions to the three research questions of this thesis. The following chapter addresses the formal, methodological, and analytical aspects that have contributed to this research

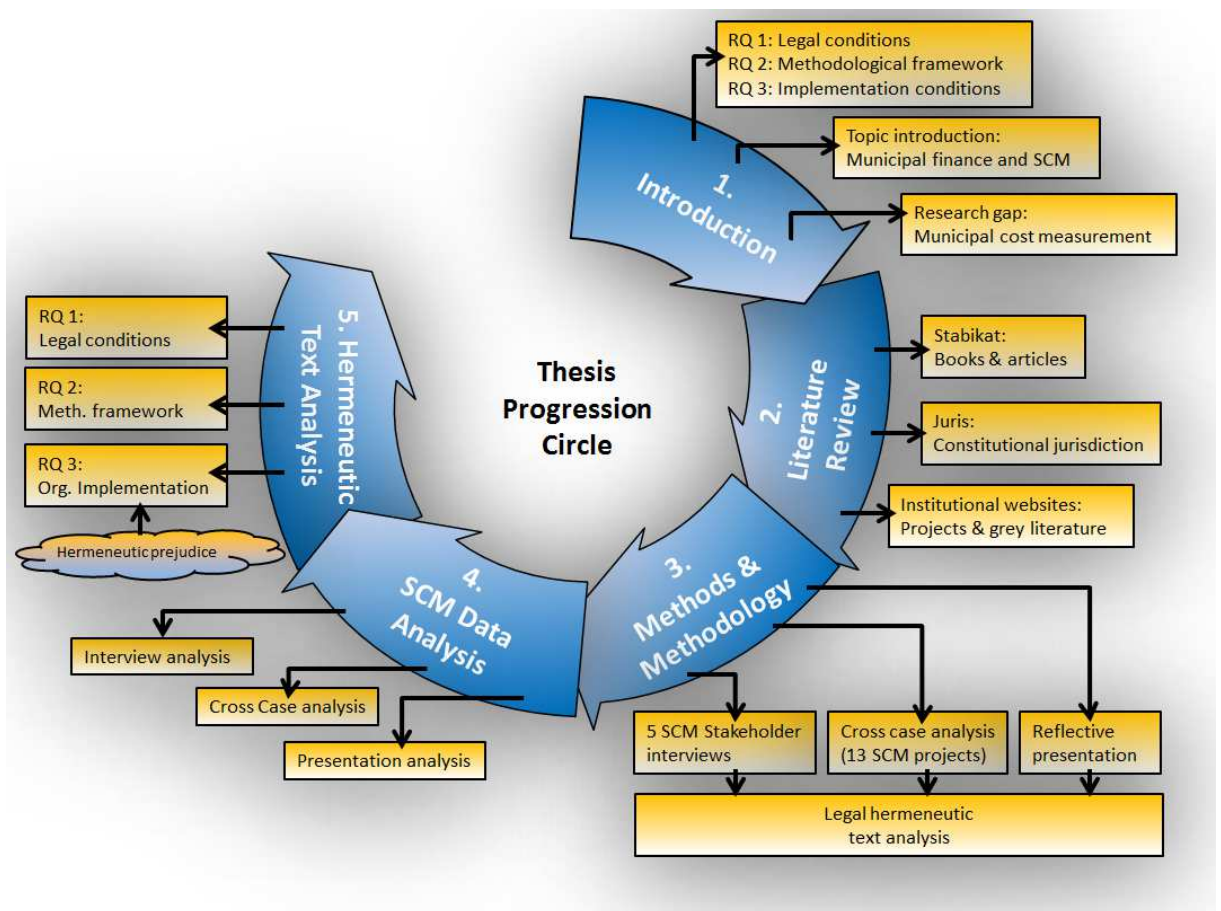


Figure 50: Thesis progression circle – after chapter V (own elaboration).

VI. Conclusions of municipal SCM research

VI.1 Relevance of research

This study was designed to explore the legal conditions for a permissible transfer of the Standard Cost Model (SCM) to municipalities, the methodological framework for municipal compliance cost determination, and the sufficient conditions for an effective implementation of the SCM to municipalities. The following conclusion is structured into three main parts. The first portion is an introduction to the conclusion chapter and the explanation of why it was necessary to write this thesis. The second part will synthesize the research findings of this study according to the three research questions always ending with a concrete answer that also clarifies the “So-what-question” that all readers ask of academic writing. This second part of the conclusion will also make clear the implications of this study concerning the legal, methodological, and political implications and the limitations of those. In the final part of this conclusion, the author will reflect on the introduction of this thesis, and whether the study contributes effectively to the significant problems outlined in the beginning. It ends with a focused integration of the main research findings to the body of knowledge with the area of this study.

This research is important and relevant because German municipalities are restrained by two aspects. Municipalities in Germany are equipped with a strong local self-government principle guaranteed in the German constitution (Art. 28 II GG), which gives them a legal possibility to call for their necessary funding to fulfil their administrative duties. The second is the political truth that at the federal level new laws are still enacted with new or additional obligations for municipalities without considering the necessary concomitant resources for local authorities. Following the implementation of the SCM by the NKRK in 2006, a valid method to estimate administrative costs was established for the first time. However, the NKRK addresses only the federal level of legislation. A need still exists to estimate the administrative costs of local authorities that occur as a consequence of federal legislation. This was proved to be the research gap and the motivation to undertake

this study about the legal, methodological, and organizational framework to transfer the SCM application to the local level of public administration.

The main legal problem regarding the German form of federalism is combining the existing system of financial equalization for municipalities as an administrative part of the federal states and the constitutional regulations for the federal legislation of the German Bundestag. Although Destatis (2011) developed a manual on how to measure compliance costs on the federal level of legislation, it has been noted that this methodological framework does not work for the municipalities regarding their financial crises. So it is necessary to do additional legal, methodological, and organizational research about measuring compliance costs in local authorities that address this issue in a constitutional way.

Even in cases where the legal conditions are clear and the methodological proposals are worked out, there is still a need for the organizational implementation of this legally permissible method into the political legislative process. To focus the research according to these conceptual aspects this research answered the following research questions:

RQ 1	What would be the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration?
RQ 2	Can a general methodological framework be proposed for the determination of compliance costs for municipalities?
RQ 3	What are the sufficient conditions required for the implementation of the SCM to municipalities?

VI.2 Implications and limitations of main research findings

The research findings of this thesis are structured by the three research questions. When discussing the research design, all chosen methods are focussed on these three research topics about the legal, methodological, and organizational problems of a suitable SCM transfer into a municipal area.

VI.2.1 Qualitative research design

The critical reflection of the existing legal systems and the development of a proposal of the involved social interactions correlate with the social sciences, which seek to understand human behaviour (Weber, 1947, p. 88). The discussion of legal problems in Germany is mostly a legal text analysis of scientific literature and articles and relevant court decisions. The doctrine of Friedrich Carl von Savigny (1840) is still the leading guide for the interpretation of law in Germany. As a methodological approach for this qualitative text analysis, the author chose the hermeneutic text analysis, because it brings together the legal principles of law interpretation and a systematic approach of text analysis. Following Gadamer (1965, p. 252), each understanding and interpretation of an object – even a legal one – requires a reflection about the prejudice of this object. In the process of law interpretation, prejudice typically arises from previously read and understood texts before examining the question (Esser, 1970, p. 138). In this study the prejudice is developed by the application of different methods of data collection: Stakeholder interviews, reflective presentation and cross case analysis. Following the idea of triangulation, the application of different research methods bring a more complete picture to this starting point of the legal hermeneutic text analysis as the closing part of the research design in this study. Still, very little literature specifically addresses the municipal SCM application. Therefore, the hermeneutic prejudice must come from another understanding. To get a first idea of possible solutions about the research topic of this thesis, the author did in-depth expert interviews with stakeholders of the relevant institutions in Germany dealing with the SCM method in a legislative application. Also, in the literature review, the author found scientific literature and project reports that included relevant material about a municipal SCM application.

Bringing together the interview data analysis of the stakeholder interviews and the cross-case analysis of the extant SCM projects, the methodological triangulation led the author to the necessary hermeneutic prejudice of the following text analysis. A reflective presentation of the research findings during the research process, led the

author to choose these methods and procedures for the qualitative research design:

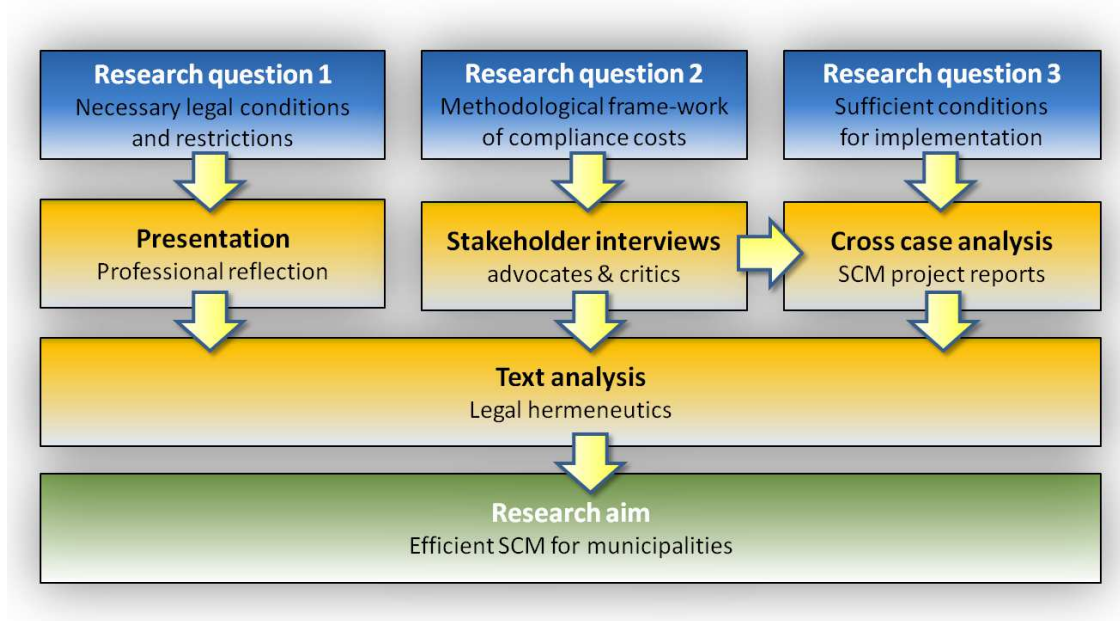


Figure 51: Research design for the SCM-transfer to municipalities (own elaboration).

VI.2.2 Research question 1: Legal research findings

In examining the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration the data analysis shows no need for further legislation. A municipal SCM application to measure compliance costs in local authorities is possible by voluntary application in local authorities (NRCC 2009a, p. 13; 2009b, p. 18) and does not contradict any higher law or constitution. In addition, the legal data analysis also clarifies that the discussion about necessary municipal funding is a part of political negotiations between municipalities and the federal states in a dualistic system of municipal finances. Within this dualistic system of municipal funding, the legal problems must be discussed differently with regard to the regular system of financial equalization (see sec. IV.4.4.2.2) and the principle of connectivity (see sec. IV.4.4.2.3). This dualistic system of complex financial relationships is primarily determined by the decisions of the constitutional courts of the federal states in Germany. As several courts exist, so then does a variety of opinions.

Within the regular system of financial equalization, this thesis subscribes to the most recent trend of the jurisdiction of the majority of constitutional courts that states the legal necessity to be clear about municipal obligations and costs before coming to a decision about the necessary funding for municipalities (VerfG Bdg, 2007; ThürVerfGH, 2011; VerfGH RP, 2012; HessStGH, 2013). The author does not follow the argumentation of the VerfGH NRW (2011, 2014) that the legislation only needs to attempt a more or less realistic assessment of municipal demands without a clear definition of concrete municipal necessities. But if there is a legal obligation for the federal states to assess the necessary funding of municipalities in the system of financial equalization, this duty is even more relevant within the principle of connectivity. And if compliance cost estimation is legally demanded within the regular system of financial equalization, cost estimation is more necessary for the transfer of new obligations according to the principle of connectivity (ThürVerfGH 2005; HessStGH 2012; VfG Bdg 2013).

This thesis analyzed the legal conditions for the financial negotiations between municipalities and federal states and established a new proposal for the relationship between municipalities and the federal level of legislation. This topic is new and is not addressed by binding regulation, jurisdiction, or literature. Regarding the structure of German federalism (Art. 84 I s. 7, 85 I s. 2 GG), the German Bundestag takes the “if-decision” about a new legal obligation and the parliaments of the federal states take the “how-decision” about the administrative responsibility of local authorities. But there are two constitutional articles that speak to necessary municipal funding: The regulation of the federal state finance equalization (Art. 107 II s. 1 GG) and the duty for financial equalization when federal laws about public cash benefits are executed by the federal states (Art. 104a IV GG). In both cases, the federal legislation has to consider the financial needs of federal states and also of municipalities as an administrative part of the federal states. Consequently § 44 III GGO (2011) states that there has to be documentation of financial consequences for the national level and the level of the federal states including their municipalities. This thesis states that the method to measure such compliance costs must be the same on all levels of legislation in Germany to

conduct a coherent system of public finances. This was accomplished by combining the legally demanded cost estimation from the dualistic system of municipal funding in the federal states with the state oriented cost estimation in the federal legislative process.

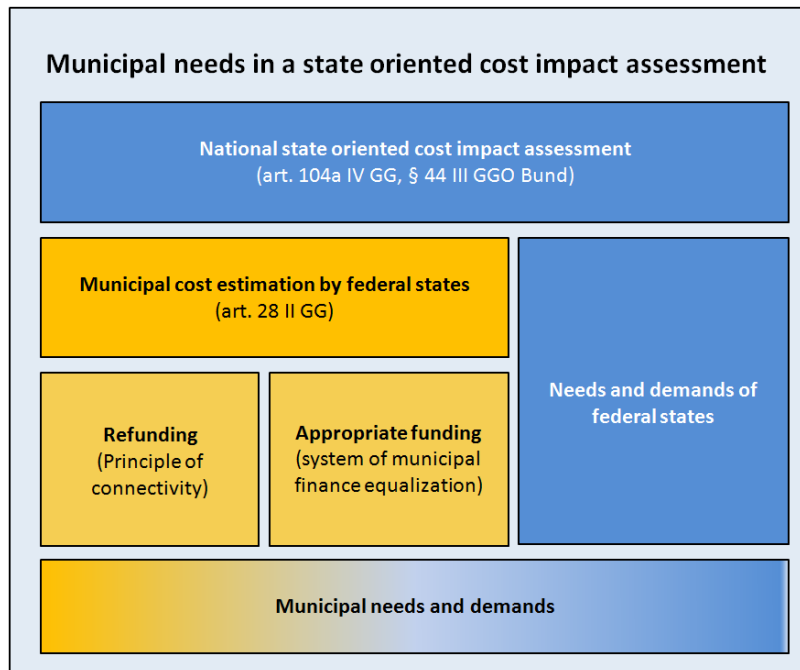


Figure 52: Municipal needs in a state oriented cost impact assessment after § 44 III GGO (own elaborations, see figure 42).

Regarding these research findings about the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration the concrete answer to this research question is:

Research answer 1:

There is no need for further formal legislation to transfer the SCM-method to municipal public administration, but both the federal states in the dualistic system of financial funding and the federal legislation in the state oriented cost impact assessment should commit to the SCM as the suitable method to measure municipal compliance costs.

VI.2.3 Research question 2: Methodological research findings

After the analysis of the legal aspects, this thesis also asks for a general methodological framework for the determination of compliance costs in municipalities. As discussed in the legal text analysis – especially the constitutional court decisions – the legislation in Germany has a wide scope of decision making about its methodological choice to assess municipal demands (ThürVerfGH, 2005; LVerfMV, 2011 VerfGH NRW, 2011, ThürVerfGH, 2011, LVerfG SA, 2012; HessStGH, 2013). A starting point for the regulated methodological description to measure compliance costs is the manual of the Federal Bureau of Statistics in Germany (Destatis 2011). Based on this manual, the NRCC developed a short paper together with the central municipal member associations to estimate municipal compliance costs of federal laws as well (NRCC, 2014).

Both manuals clarify that the chosen methodology is based on the internationally approved SCM, but both manuals address only the federal level of legislation. On the level of the federal states, there are several formal laws, sublegal agreements, or internal governmental rules to measure the necessary municipal needs within the principle of connectivity (see sec. IV.4.4.2.3.1, table 44). These manuals and methodological descriptions give rudimentary methods of calculation, but include no consistent compliance cost determination or detailed procedures of information acquisitions.

From an economic point of view, municipalities could benefit from a definition of the types of costs that are integrated into the term of compliance costs. There is general agreement about the definition of administrative costs like personnel, material, or investment costs as part of compliance costs (Destatis 2011, p. 32; see sec. IV.4.5.2.2, table 47). However, views differ regarding the consideration of purposes costs, for example social benefits as part of the compliance costs. In the manuals of Destatis (2011, p. 12 and 28) and NRCC (2014, p. 5) there is an explicit exclusion of purposes costs. But the legal or sublegal regulations in several federal states about municipal cost estimation within the principle of connectivity do

include purposes costs into the necessary cost measurement. This thesis concludes that from a legal point of view there is no justification to exclude purposes costs from the calculation of compliance costs. Therefore, a determination of compliance costs has to contain both: administrative and purposes costs. If methodological manuals exclude purposes costs from the legally demanded municipal cost estimation, the motivation for this exclusion could only be a political one.

Another unsolved problem for a methodological compliance cost determination is the great diversity of German municipalities because of their constitutionally guaranteed autonomy. For many years, the administrative sciences did not see any chance to conduct a compliance cost determination that would be representative for all local administrations (see sec. I.3.2). Regarding the latest jurisdiction that demands necessary cost estimation in municipal relevant legislation, today, the legislation must consider the “average economic municipality” as a political guideline for the right dimension of municipal funding (ThürVerfGH 2005; VerfGH NRW 2010; ThürVerfGH 2011; Vfg Bdg 2013). In particular, the “Easier to-projects” of the NRCC (2009a, 2009b, 2010a) show the possibility of administrative process standardization as an organizational condition for a representative and average compliance cost determination in municipalities. The identification of case numbers, standardized processes, and other cost determinant parameters by the SCM is the sufficient data base for the legally demanded cost estimation on the national level of legislation and the in the dualistic system of municipal funding in the federal states.

Regarding these research findings about the general methodological framework for the determination of municipal compliance costs, the concrete answer to this research question is:

Research answer 2:

The methodological framework for the determination of municipal compliance costs is the ideal of an “average economic municipality” which is based on the identification of case numbers, standardized administrative processes and other relevant cost determinant parameters. Using this data base the SCM is the appropriate method to measure municipal compliance costs including administrative and purposes costs.

VI.2.4 Research question 3: Organizational research findings

The third and final research question for this thesis demonstrates the sufficient conditions required for the implementation of the SCM to municipalities. The organizational implementation of the SCM into the legislative process with regard to the necessary municipal compliance cost determination must consider the constitutional, legal, and sublegal regulations of the federal legislative process. This federal legislative process is divided into an external process of interaction of the constitutional organs of the German constitution (Art. 77, 78 and 82 GG) and an internal process of decision making, detailed procedures, and institutional involvements regulated in sublegal rules of the constitutional organs (GO-BT; GO-BR; GO-BReg; GGO). According to these regulations, this thesis shows the sufficient conditions for the implementation of the SCM by three organizational aspects: the institutional responsibility, the kind of municipal consultation, and the suitable time of municipal involvement.

The GGO regulation assigns the responsibility for ex-ante cost determination within the legislative process to the “leading ministry” (§ 44 III and VII GGO). According to the topic of the certain federal law, the functional responsible ministry is the leading ministry in the sense of the GGO. Otherwise, this responsibility could be assigned to the central municipal member associations. On the level of the federal states, the responsibility depends on the kind of municipal funding. In the regular system of financial equalization, the ministry of finance is responsible for the

municipal cost estimation because the regular municipal funding is a relevant part of the state household itself. But using the principle of connectivity, it is the functional responsible ministry according to the topic of the concrete law that must do the ex-ante cost estimation (see sec. IV.4.5.2.2, table 47). Consequently, it is always the functional leading ministry and not the central municipal member associations that is responsible for the municipal ex-ante cost estimation.

An analysis of the relationships in the federal states demonstrates that there are different levels of municipal consultation: Several federal states have established institutions with formal municipal involvements; in other states, there are functional discussion boards or no consultation at all (see sec. IV.4.6.2.2, table 49). Regarding the constitutional situation in Germany, no direct consultation between the federal level of legislation and the municipalities exists (Art. 84 I s. 7, 85 I s. 2 GG). As shown by the legal text analysis above, the federal legislation must consider municipal needs in its legally demanded state oriented cost impact assessment. Because it is not possible to involve every single municipality into the process of federal legislation, the right addressees for the responsible leading ministry are the central municipal member associations instead of the single municipalities themselves (§ 47 I GGO).

In addition to the constitutional situation, a voluntary consultation of municipalities is necessary for federal legislation to acquire the necessary financial information. This thesis advocates for the legal possibilities of administrative assistance and cooperation in the implementation of laws about administrative procedures (§§ 3, 4 VwVfG). The first attempt of the NRCC manual for municipal compliance cost estimation (2014) is suitable, but it disregards further proposals about necessary cost determination and detailed calculation procedures as described in this thesis.

The suitable time of municipal involvement is the early investigation of interests (§ 41 GGO). A municipal consultation as an addition to the regular participation (§ 47 I and III GGO) as proposed in the NRCC manual (2014, p. 2) is ineffective because the leading ministry might have to change or adopt its data at a later point of time. The

first investigation of municipal interest or even municipal financial data must take place as early as possible in the first phase of the legislative process before the leading ministry develops the first official law draft (f.e. Nr. II.1.1 BayKonsultVer; Bertelsmann Stiftung 2012, p. 9). Regarding these research findings about the sufficient conditions required for the implementation of the SCM to municipalities, the concrete answer to this research question is:

Research answer 3:

As sufficient conditions required for the implementation of the SCM to municipalities this thesis proposes the functional leading ministry of the certain law project as responsible for the municipal cost estimation. The necessary involvement of municipalities takes place by addressing the central municipal member associations at the time for the first investigation of interests (§ 41 GGO).

VI.2.5 Limitations of research study

Because of the specific German topic of this research, there is a certain limitation of this study as based in the English language. It is more difficult to present an argument about German legal questions in a foreign language. Another regular limitation of legal studies is the appreciation of legal argumentation. It was shown in the legal text analysis (see sec. IV.4.4.2, IV.4.5.2 and IV.4.6.2) that legal argumentation always offers contradictory opinions both in juridical and legal literature. The main findings of this study are based on well-supported proposals, but as a qualitative research there is no absolute truth. Aside from these unavoidable aspects, the two main limitations come from the political aspect of this research: The first is the proposal of this thesis to transfer jurisdiction and argumentation from the level of the federal states in Germany to the national level. The second limitation is the problem of addressing political problems with legal argumentation.

VI.2.5.1 Transfer of jurisdiction

This study includes an intensive legal text analysis, with particular regard to the first research question about the legal conditions for municipal SCM-transfer. It should be noted that the interview analysis does not reveal clear arguments about these legal relationships. Additionally, the cross-case analysis does not bring out legal arguments about the permissibility of the SCM application in a municipal area. The actual publication of the first manual to measure municipal compliance costs of federal laws by the NRCC (2014) shows the viability of the topic of this thesis, but also reveals a lack of research. It is a main legal finding of this study to make the actual jurisdiction about the relationship between municipalities and the federal states applicable to the relationship between municipalities and the federal level of German constitutional institutions. Even if the initial point of constitutional argumentation about this relationship begins with German federal constitution, the jurisdiction contains important legal issues that are useful for the main findings of this study. This study proposes to use these legal arguments and methodological frameworks that come from the jurisdiction of the constitutional courts in the federal states and to transfer them to the national level of legislation, especially about the necessity of a realistic assessment of municipal demands. The future will show if the German federal constitutional institutions will follow these proposals.

VI.2.5.2 Impacts into public finance system

The second main limitation is the relationship of the legally analyzed constitutional structure and the political motivations behind it. The system of municipal finance equalization is an important part of the public financial structure in Germany. Changes to one part of this complex financial system will always bring consequences to the other parts. This study focuses on the financial crisis of German cities and municipalities. But it is not possible for this thesis to regard all political consequences caused by its legal proposals. Even if this study does not touch the basic structure of the municipal financial configuration (see sec. IV.4.4.2.1, table 42), changes in municipal finances always have consequences for

the household of the federal states. The public budgets of the federal states are determined by federal state finance equalization (see sec. IV.4.2.2.2, table 46). In current situation the purposes costs of municipalities are not part of the legally demanded cost estimation. Until today the German government restricts this cost estimation to administrative costs in federal authorities (destatis, 2011, p. 12 and 28). From this federal point of view the consideration of municipal matters is always a part of the federal states. Regarding the constitutional system in Germany, the municipal interests are represented in the legislative process by the federal states. The federal states are involved in this legislative process by the second chamber: The Bundesrat (Art. 50 ff. GG). This constitutional construction is the main obstacle for the SCM application on all levels of German public administration. If the municipal financial needs are already clear in the federal legislation this is at the same time a binding aspect for the later financial negotiations between the federal states and their municipalities about the regular financial equalization. Before this background the federal states were not interested in a municipal cost estimation for federal laws until now. Until today the result is that there is little political will for a systematic SCM application in local authorities. But the situation changes: New jurisdiction demands a municipal cost measurement both in the regular municipal finance equalization and the principle of connectivity (see sec. V.4.2.2 and V.4.2.3). The federal states are the constitutional addressees of this new situation. The future must show if this will lead to new coalitions between the federal states and their municipalities against the national level of legislation.

Even if the political initiative about bureaucracy decrease comes more from the conservative parties (Röttgen & Vogel, 2010, p. 23) it was the great coalition between the conservative parties CDU/CSU and the German social democrats which leads to the important implementation of the NRCC (CDU, CSU & SPD, 2005, p. 62). This political agreement makes clear that fundamental changes in the German system of public finances are possible. But they need a wide political consensus. The financial situation of German municipalities is recognized by all political parties. However given the observation about the lack of political will, stronger arguments for the implementation of appropriate cost estimation need to

be developed. This thesis considers to those arguments. Within these political debates, very few issues are as important as financial debates about the public state budget. In particular, the analysis of the term of compliance costs and purposes costs as a necessary part of it (see sec. V.5.2.3) shows the political influences on these financial discussions. This thesis could give a research contribution to this continuous financial discussion, but its political acceptance is open.

VI.3 Recommendations for future SCM research

As outlined above, the structures about public finances in Germany is a continuous discussion. The topic of this research to use the SCM as method to make municipal crisis more transparent in federal legislation is only one issue in the actual discussion about municipal finances. This study gives a new point of view to the necessary analysis of the difficult legal problems of constitutional collaboration of different state levels in Germany's administrative structures. In addition to the concrete suggestions about the legal, methodological, and organizational questions of a SCM application in municipalities; further research is necessary to examine two significant facets: The first is the necessary information exchange between the different administrative levels in Germany; the second is the derivation of the political consequences from this information.

The "Easier to-projects" of the NRCC (2009a, 2009b, 2010a) had a significant impact on the exchange between the "law giving" federal legislation and the "law executing" local authorities. This impact shows the necessity to do further projects and research to develop and find a suitable modus of collaboration between the federal level of legislation and ministerial administration on one hand, and the local level of public administration on the other hand. Regarding the analyzed legal conditions, these projects could be based on the proposed methodological framework of this thesis for their project design. There is a right direction of actual discussions about municipal impacts of federal legislation, but there is still no

detailed description or manual that is accepted by all state levels in Germany: the federal level, the federalstates, and the municipalities.

Although it is methodologically clear how to generate the relevant data about the necessary municipal funding of a certain enacted law, the effective communication of the results will be a political challenge. Regarding the constitutional independence of each politician in the German parliaments (Art. 38 I GG), the generated data about necessary municipal funding is only one part of the explanatory statements of law. The single political decision about the law is still free and guaranteed constitutionally. But if municipal financial crisis is politically recognized (see sec. I.3.2), then together with other research this thesis gives methodological and organizational proposals on how to handle this problem. Further discussion must show the way to regard the generated data by SCM application in the day-to-day legislative routine.

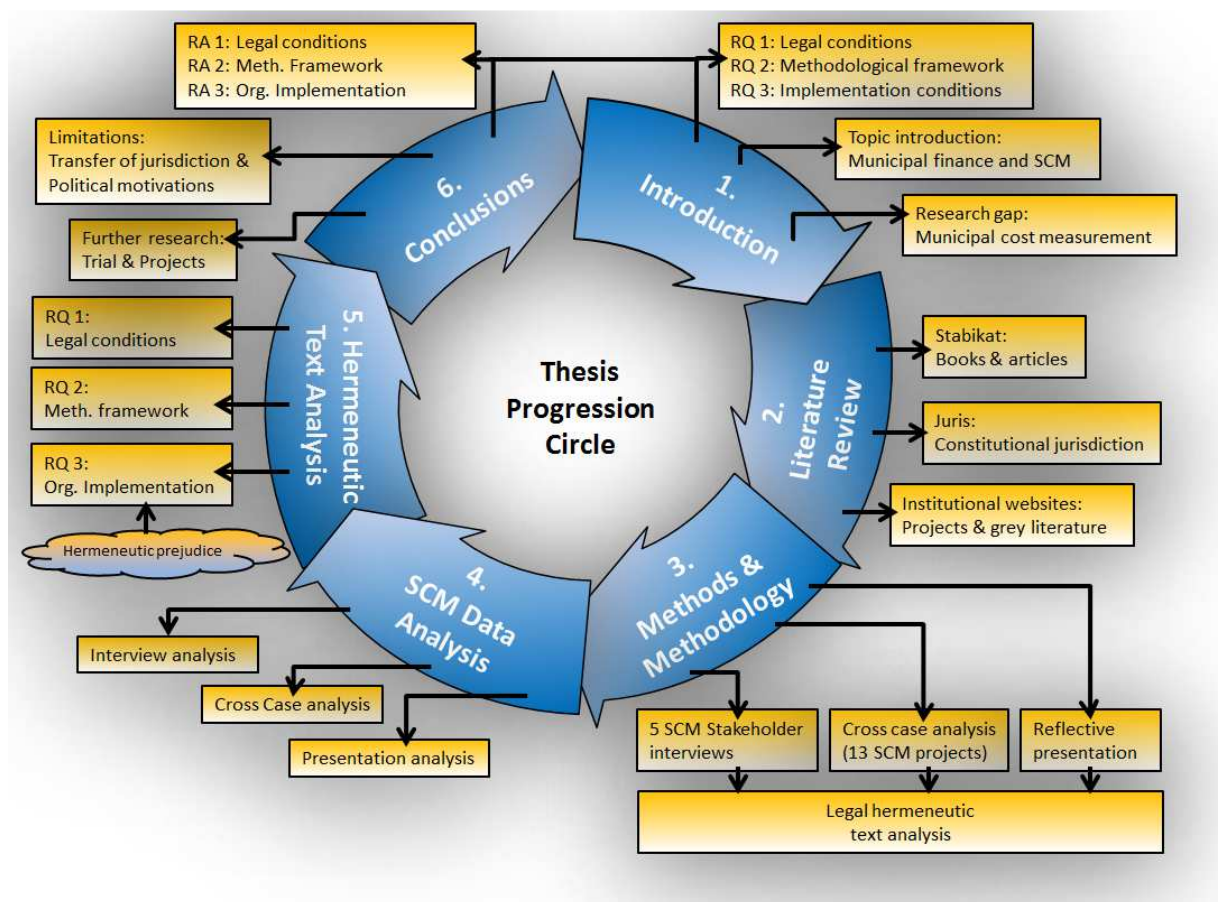


Figure 53: Thesis progression circle – complete (own elaboration)

VI.4 Final remarks

In conclusion, this thesis makes clear that there are the legal, methodological, and organizational conditions and possibilities to use the SCM as a suitable method for necessary changes of the financial situation in German municipalities. This study illustrates the legal permissibility and the legal necessity of a systematic assessment of municipal needs and demands in state legislative processes, especially in federal legislation that mandates the most important financial decisions for municipalities. Regarding the existing procedures in the federal states, the thesis describes in form and content the possible determination of municipal compliance costs and makes concrete proposals on how to collect the necessary data. Finally, this thesis shows that with regard to the complex constitutional situation of federal legislation in Germany; many possibilities exist in the legislative rules of procedures to consider the unique financial municipal needs. As stated emphatically by Wieland (2011):

“The municipal poverty cries for help!”

This thesis proposes a contribution to assist German municipalities in financial crisis.

Appendices

A1 Table of relevant literature and sources

No.	Author	Main Topic	Research Object	Area	Year	Origin
1	Bertelsmann-Stiftung (ed.)	Handbuch zur Messung von Regulierungskosten	Public administration	D	2009	www.bertelsmann-stiftung.de
2	Bertelsmann-Stiftung (ed.)	Vollzugsaufwand in der Steuerverwaltung	Public administration	D	2012	www.bertelsmann-stiftung.de
3	Bertrams, M.	Konnexitätsprinzip und kommunale Finanzhoheit	Municipalities	D	2011	www.stabikat.de
4	Böhret & Konzendorf	Handbuch Gesetzesfolgenabschätzung (GFA)	Citizens, economy, public administration	D	2001	referenced
5	Brems, K.	Aufgabenverlagerung des Landes NRW auf die Kommunen	Municipalities	D	2006	connected
6	Bundesministerium des Inneren (BMI)	Bericht der Arbeitsgruppe „Rechtsetzung“ der Gemeindefinanzkommission	Municipalities	D	2010	referenced
7	Destatis	Leitfaden zur Ermittlung und Darstellung des Erfüllungsaufwands in Regelungsvorhaben der Bundesregierung	Citizens, economy, public administration	D	2011	www.destatis.de
8	Deutsche Bundesregierung	Einführung des SKM-Methodenhandbuchs	Economy, citizens, public administration	D	2006	www.nkr.bund.de
9	Deutsches Institut für Urbanistik (Bunzel & Hanke, ed.)	Das Konnexitätsprinzip richtig angewandt	Municipalities	D	2011	www.dhv-speyer.de
10	Dieter, J.	Ermittlung kommunalen Bedarfs in Hessen	Municipalities	D	2013	www.stabikat.de
11	Dürig, G. et al.	Kommentar zum Grundgesetz	Citizens, economy, public administration	D	2013	connected
12	Engelken, K.	Konnexität im Landesverfassungsrecht	Municipalities	D	2012	connected
13	Engels, A.	Kostenfolgeabschätzung und Evaluation als Elemente verfassungsrechtlicher Konnexitätsprinzipien	Municipalities	D	2011	www.stabikat.de
14	Fachhochschule des Mittelstands (ed.)	Erstes Deutsches SKM-Handbuch	Economy	D	2005	www.fh-mittelstand.de
15	Fachhochschule des Mittelstands (ed.)	Kommunen als Bürokratieopfer	Municipalities	D	2009	www.fh-mittelstand.de
16	Fachhochschule des Mittelstands (ed.)	Gutachten zur Abschätzung der Verwaltungskosten der EU-Bodenrahmenrichtlinie	Public administration	D	2010	www.fh-mittelstand.de
17	Färber, G.	Kann das SKM dem Konnexitätsprinzip zur Wirksamkeit verhelfen	Municipalities	D	2011	www.dhv-speyer.de
18	Färber, G.	Bedarfsermittlung und Finanzausstattung im föderalen Staat	Municipalities	D	2013	referenced
19	Fischbach, D. &	Bürokratiekostenmessu	Public	D	2007	www.stabikat.de

	Schmal, M.	ng am Beispiel des EHUG	administration			
20	Grawert, R.	Verwaltungsabkommen zwischen Bund und Ländern	Public administration	D	1967	emerged
21	Henkel, J.	Die Kommunalisierung von Staatsaufgaben	Municipalities	D	2010	www.stabikat.de
22	Henneke, H.-G., et al.	Recht der Kommunalfinanzen	Municipalities	D	2006	www.stabikat.de
23	Henneke, H.-G.	Föderalismusreform II	Municipalities	D	2008	www.stabikat.de
24	Henneke, H.-G.	Kommunen in der Finanzverfassung des Bundes und der Länder- Entwicklungen	Municipalities	D	2012	www.stabikat.de
25	Henneke, H.-G.	Kommunen in der Finanzverfassung des Bundes und der Länder	Municipalities	D	2012a	www.stabikat.de
26	Henneke, H.-G.	Kommunale Aufgaben, Ausgaben und Einnahmen	Municipalities	D	2012b	www.stabikat.de
27	Henneke, H.-G.	Mindestfinanzbedarf der Kommunen	Municipalities	D	2013	www.stabikat.de
28	Hensel et al. (ed.)	Gesetzesfolgekostenabschätzung in der Anwendung	Municipalities	D	2010	www.stabikat.de
29	Hermes, N.	Maßstab und Grenzen der Aufgabenübertragung auf Gemeinden	Municipalities	D	2006	connected
30	Hoffian & Bramann	Gesetzesfolgekosten des AGG	Economy	D	2007	www.stabikat.de
31	Hofmann, H. et al.	Kommunalrecht in NRW	Municipalities	D	2010	emerged
32	Institut für Mittelstandsforschung (IfM, ed.)	Ermittlung bürokratischer Kostenbelastungen	Economy	D	2006	www.stabikat.de
33	Kienbaum Consultants	SKM in der Verwaltung	Public Administration	D	2007	ISI web
34	Junkernheinrich, M.	Bestimmbarkeit der Aufgabenangemessenheit kommunaler Finanzausstattung	Municipalities	D	2007	www.stabikat.de
35	Kisker, G.	Kooperation im Bundesstaat	Public Administration	D	1971	emerged
36	Kopp, F. & Ramsauer, U.	Kommentar zum Verwaltungsverfahrensgesetz	Public Administration	D	2014	emerged
37	Knitter, Janna	Das Aufgabenübertragungsverbot des Art. 84 GG	Municipalities	D	2008	www.stabikat.de
38	Kuder, U.-M.	Gesetzgebung und Gesetzesvollzug rücken zusammen	Municipalities	D	2013	www.stabikat.de
39	Ludewig, J.	Interview	Public Administration	D	2012	referenced
40	Matej, Ani I. ; Savulescu, Carmen	Enhancing local government by reducing administrative expenditures	Local government	EU	2009	ABI
41	NRCC	Einfacher zum Elterngeld	Municipalities	D	2009	www.nkr.bund.de
42	NRCC	Einfacher zum Wohngeld	Municipalities	D	2009	www.nkr.bund.de
43	NRCC	Einfacher zum Studierenden-BAFöG	Municipalities	D	2010	www.nkr.bund.de
44	NRCC	Auswirkungen des ELENA-Verfahrens auf Wirtschaft, Bürger und Verwaltung	Economy, citizens, public administration	D	2010	www.nkr.bund.de
45	NRCC	Einreiseoptimierung	Citizens, public	D	2011	www.nkr.bund.de

			administration			
46	NRCC	Handreichung zum kommunalen Erfüllungsaufwand	Municipalities	D	2014	www.nkr.bund.de
47	Nord West Consult	SKM kommunal	Municipalities	D	2008	ISI
48	Oebbecke, J.	Kostenermittlung im Konnexitätsprinzip	Municipalities	D	2011	www.stabikat.de
49	Pfisterer, P.	Bürokratieentlastung der öffentlichen Verwaltung.	Municipalities	D	2008	www.stabikat.de
50	Pieroth, B.	Verbot bundesgesetzlicher Aufgabenübertragung an Kommunen	Municipalities	D	2008	referenced
51	Rauber, D.	Kommunaler Finanzausgleich: Gesetzgeber und Gerichte bleiben gefordert	Municipalities	D	2012	www.stabikat.de
52	Ritgen, K.	Aufgabenübertragungsverbot und Konnexitätsprinzip	Municipalities	D	2011	www.stabikat.de
53	Röttgen, N. & Vogel, B. (ed.)	Bürokratiekostenabbau in Kommunen	Municipalities	D	2010	www.stabikat.de
54	Schmidt-Bleibtreu, B. et al.	Kommentar zum Grundgesetz	Citizens, economy, public administration	D	2011	www.stabikat.de
55	Schwarting, G.	"Angemessene" Finanzausstattung der Kommunen	Municipalities	D	2012	www.stabikat.de
56	SCM-Network	International SCM manual	Public administration	D	2005	ABI
57	Schoch, F.	Bundesgesetzlicher Durchgriff auf Kommunen	Municipalities	D	2007	referenced
58	Vedder, C.	Intraföderale Staatsverträge	Public administration	D	1996	emerged
59	Vorgrimler, D. et al.	Vom SKM zur Messung des Erfüllungsaufwands	Public administration	D	2011	www.destatis.de
60	Walkenstik-man-alone, D.	Folgenabschätzung einer Reform des Gaststättenrechts in Thüringen	Public administration	D	2009	ISI
61	Wittmann, J.	Bürokratieabbau und bessere Rechtsetzung	Public administration	D	2010	www.stabikat.de
62	Wieland, J.	Kommunaler Anspruch auf angemessene Finanzausstattung	Municipalities	D	2011	www.stabikat.de
63	Wohlmann, M.	Bemessung und Ausstattung des kommunalen Finanzausgleichs	Municipalities	D	2011	www.stabikat.de

A2 Structured questionnaire for interviewees

Municipal management of administrative burdens – Standard cost model as method of change?

Semistructured questionnaire for interviews with advocated and contradicted stakeholders of the SCM

Preliminary note

It is the aim of this research project to make clear if the SCM is a suitable method to develop the effectiveness of the system of financial transfers from the federal states in Germany to the municipalities. Therefore it is necessary to find a systematic way to measure the compliance costs of municipalities caused by their delegated legal obligations from the federal state of Germany. Such a systematic measurement on local level does not exist until now. A suitable method could be the SCM which is implemented on federal level successfully. A direct transfer of the SCM to municipalities finds its legal limitations in the constitutional principles of federalism (Art. 20 I GG) and the guarantee of local self government (Art. 28 II GG). By doing interview with five stakeholders before a intensive legal text analysis the de facto and legal arguments pro and contra the SCM in municipalities should be investigated. Possible interviewees could be in alphabetical order:

Wolf-Michael Catenhusen

Vice-president of the National Regulatory Control Council (NRCC), Berlin

Prof. Dr. Annette Dreier

Rector of the University of Applied Sciences for the middle sized business (FHM), Bielefeld

Prof. Dr. Gottfried Konzendorf

Extraordinary Professor, German University of Administrative Sciences, Speyer

Günter Tebbe,

Senior Consultant, Bertelsmann-Foundation, Gütersloh

Dr. Daniel Vorgrimler,

Head of division for SCM measurements, Federal office of statistics (Destatis), Wiesbaden

Introduction	Explanation of motivation of research and intentional background
Interview	Research question 1 What would be the legal conditions necessary for the successful transfer of the SCM-method to municipal public administration?
	Subquestion 1.1 Do you think that a municipal application of the SCM is possible within the actual legal framework
	Subquestion 1.2 What problems follow from the different financial budget systems of the federal and the municipal administrative level?
	Subquestion 1.3 What are the legal limitations of the federal states' discretion for dimensioning the allocation of funds for municipalities?
	Research question 2 Can a general methodological framework be proposed for the determination of compliance costs for municipalities?
	Subquestion 2.1 Is there a difference of compliance costs on the federal and the municipal level of administration?
	Subquestion 2.2 Does the New Communal Budget Management (NCB) give new chances to measure compliance costs on municipal level systematically?
	Subquestion 2.3 Is it possible to arrange the guarantee of local self government in German constitution with the necessity of a systematic measurement of compliance costs?
	Research question 3 What are the sufficient conditions required for the implementation of the SCM to municipalities?
	Subquestion 3.1 Is there a political necessity for an institutional implementation of a systematic measurement of compliance costs in municipalities?
	Subquestion 3.2 What could be a functional communication process between municipalities and the federal states about the systematic measurement of compliance costs?
	Subquestion 3.3 What must be the role of the lobby associations for municipalities in such a communication process?
	Question 4 Is there anything else, you could or want to tell about the SCM and its application in municipalities?
Summary	Essential statements to clarify qualitative data and to assign specific arguments

	Unterfrage 1.3 Welche rechtlichen Grenzen gibt es für den Ermessensspielraum der Länder bei der Bemessung der kommunalen Finanzausweisung?	45
	Dazu möchte ich Ihnen gerne ein Beispiel erzählen: Der NKR hat ein Projekt zur Ermittlung des Erfüllungsaufwandes durchgeführt, das sog. "Einfacher-zu-Elterngeld"-Projekt. Dabei hat das Statistische Bundesamt auch Messungen in einzelnen Kommunen durchgeführt, die für die Gewährung von Elterngeld zuständig sind. Eine dieser beteiligten Kommunen hat sich in dem Projekt außer ordentlich engagiert, weil die zuständige Amtsleitung eine Chance gesehen hat, mithilfe der Projektergebnisse eine Revision der Absprachen mit dem Land NRW hinsichtlich der Personalaufwendungen für das Elterngeld hinzubekommen. Es ist tatsächlich gelungen, auf Basis dieses "Einfacher-zu-Projekts" eine Korrektur der Personalbemessung hinzugekommen. Allerdings nur deswegen, weil der NKR als unabhängige Instanz die Projektergebnisse verantwortet hat. Das bedeutet für mich, dass es für Kommunen, die mit dem Land über ihre Finanzausstattung diskutieren möchten, immer wichtig ist, eine unabhängige Instanz einzuschalten. Das ist für die Messung von reinen Informationspflichten mithilfe des SKM sicherlich möglich. Für die umfassendere Messung des Erfüllungsaufwands ist das bestimmt schwieriger. Hier muss man zu Standardisierung kommen. Es ist für die Absprachen der Länder mit ihren Kommunen für den Vollzug von Bundesrecht auf jeden Fall sinnvoll bedarfserhebende Modelle zu machen. Dabei kann das Land in einem ex-ante-Verfahren die Kosten- und Leistungsrechnung des NKF gut nutzen.	50 55 60 65
	Frage 2 Gibt es eine generelle Methode, mit der sich der Erfüllungsaufwand in kommunalen Verwaltungen messen lässt?	70
	Unterfrage 2.1 Sehen Sie einen Unterschied im Erfüllungsaufwand auf Bundes- und kommunaler Ebene?	75
	Für das SKM im engeren Sinne, also die Messung von Informationspflichten, sehe ich hier keinen Unterschied. Will ich aber den Erfüllungsaufwand auf kommunaler Ebene messen, brauche ich Absprachen über die Faktoren des Erfüllungsaufwands. Wir auf Bundesebene haben zwar das strategische Ziel, den Erfüllungsaufwand für Gesetze ganzheitlich zu messen, sind aber methodisch dabei noch nicht so klar wie beim SKM. So wissen wir noch nicht endgültig, wie wir z.B. mit der Kalkulation von Herstellungs- oder Investitionskosten umgehen sollen. D.h. eine Übertragung des Erfüllungsaufwands vom Bund auf die Kommunen ist grundsätzlich möglich, wobei wir uns über die relevanten Kostenfaktoren noch Gedanken machen müssen. Ich glaube aber, dass die Beschreibung des Erfüllungsaufwandes für eine klassische Sachbearbeitung von Verwaltungsverfahren auch auf kommunaler Ebene gehen muss. Schwieriger wird es, wenn es um z.B. Prüfung- oder Kontrollaufgaben in der Umweltverwaltung geht. Hier ist es ja durchaus gewollt, dass die eine Kommune ihre Kontrollen anders gestaltet als eine andere Kommune. D.h. es gibt hier mit Absicht kein standardisiertes Modell. Unter Umständen ist es von den Kommunen auch gar nicht gewollt, die Stellenbedarfe in der Kommunalverwaltung im Vergleich zu prüfen	80 85 90 95

	Unterfrage 2.2 Bietet das NKF eine besondere Chance, den Erfüllungsaufwand systematisch zu ermitteln?	
	Zwar bin ich persönlich kein Experte im kommunalen Finanzwesen und dem NKF, aber durch den doppelten Ansatz spricht doch einiges dafür. Schließlich muss ein detailliertes Kostenmanagement, die Kosten- und Leistungsrechnung den Aufwand genauer und detaillierter in den Blick nehmen.	100
	Unterfrage 2.3 Wie lässt sich die Recht auf kommunale Selbstverwaltung mit dem Bedürfnis nach einer systematischen Messung des Erfüllungsaufwands vereinbaren?	105
	Hier besteht das Problem, dass die Kommunen von oben nicht verpflichtet werden können, eine bestimmte Methode zu nutzen. Man kann sich aber fragen, welche Ebene ein Interesse an einer solchen systematischen Messung hat. Das ist sicherlich der Bund, weil er ja in seiner ex-ante-Betrachtung auch den Erfüllungsaufwand seiner Gesetze bei den Kommunen berücksichtigen muss. Bei den Ländern sehe ich das eher zweifelhaft, weil eine solche Aufwandsmessung in die Beziehungen zwischen den Ländern und den Kommunen eingreift. Ich sehe hier als einzige Möglichkeit nur Absprachen bei neuen Aufgaben zwischen den Ländern und den Kommunen im Kontext des Konnexitätsprinzips. Hier liegt eine systematische Aufwandsmessung im beiderseitigen Interesse der Kommunen und der Länder. Allerdings darf man nicht verkennen, dass die kommunale Selbstverwaltung in den Bundesländern unterschiedlich ausgestaltet ist. Auch die unterschiedlichen Verwaltungsstrukturen der Länder haben natürlich Auswirkungen auf die kommunale Aufwandsmessung. Das bedeutet, dass Bedarfsermittlungen nur kommunalübergreifend möglich sind, und zwar so, dass auf die Situation der Kommunen im jeweiligen Bundesland Rücksicht genommen wird. Die Betrachtung einzelner Kommunen erscheint mir wenig sinnvoll, da es sonst zum Taktieren einzelner Kommunen kommen kann.	110 115 120 125
	Frage 3 Unter welchen Bedingungen lässt sich das SKM in den kommunalen Finanzausgleich implementieren?	130
	Ich glaube, dass sich das SKM in den kommunalen Finanzausgleich implementieren ließe, wenn man diese Methode bei der Umsetzung von Bundesrecht mittelfristig in die Absprachen der Länder mit ihren Kommunen einbauen würde. Ich hielte es für einen guten Vorschlag, so etwas im Rahmen von Pilotanwendungen mit solchen Ländern und Kommunen zu versuchen, die bereit sind, hier mitzuwirken.	135
	Unterfrage 3.1 Welche Vor- oder Nachteile sehen Sie durch die Einsetzung eines „Normenkontrollrates“ auf Länderebene?	140
	Solche institutionellen Lösungen hat man tatsächlich in mehreren Bundesländern diskutiert. Im Saarland z.B. blieb diese Diskussion ohne Ergebnis. In Sachsen ist sie noch nicht beendet. Auf Bundesebene hat sich die Arbeit des NKR gerade in den ex-ante-Betrachtungen bewährt.	145

	Ich bezweifle jedoch, ob sich ein solcher Kraftaufwand für länderspezifische Regulierungen lohnt.	
	Unterfrage 3.2 Wie können sich Kommunen und Länder zu einer systematischen Schätzung des Erfüllungsaufwands verständigen?	150
	Ich glaube, darüber haben wir schon gesprochen. Entscheidend ist hier eine methodische Verständigung. Es bietet sich an, die Methoden des NKR so weit wie möglich zu übernehmen, um nicht das Rad wieder neu zu erfinden. Damals hat es die Übernahme des SKM vom ACTAL aus den Niederlanden dem Bund erlaubt, so schnell mit dem NKR zu starten. Aber auch hier habe ich auf die unterschiedlichen Verwaltungsstrukturen der Länder bereits hingewiesen, die auch zu unterschiedlichen Typen der Aufwandsmessung in den Kommunen führen können.	155
	Unterfrage 3.3 Welche Rolle können die kommunalen Spitzenverbände spielen, wenn man SKM im kommunalen Finanzausgleich anwendete?	160
	Vor dem Hintergrund der großen Anzahl der Kommunen in Deutschland kann die kommunale Aufwandsmessung nicht in jeder einzelnen Stadt oder Gemeinde erfolgen. Vielmehr ist eine kommunenübergreifender Untersuchung notwendig, vielleicht unterschieden nach den unterschiedlichen Typen wie Stadt und Land. Ich kann mir vorstellen, dass vor dem Hintergrund solch großer struktureller Unterschiede auch unterschiedliche Methoden zum Einsatz kommen können. Im Grunde ist dies ein weiteres Argument, auch für die kommunale Aufwandsmessung mit Durchschnittswerten zu arbeiten. Die kommunalen Spitzenverbände müssen eine solche kommunal übergreifende Betrachtung organisieren, sie spielen also eine wichtige Schlüsselrolle.	165 170
	Frage 4 Gibt es sonst noch etwas, was Sie zu einer Anwendung des SKM im kommunalen Bereich für wichtig erachten?	175
	Die Berücksichtigung von kommunalen Aufwendungen zur Umsetzung von Bundesrecht ist eigentlich originäre Aufgabe des Bundesrates. Die Berücksichtigung kommunaler Belange ist also ein wichtiges Element unseres Föderalismus. Trotzdem verkenne ich nicht die damit verbundenen Schwierigkeiten. Nehmen wir z.B. den IT-Bereich. Hier entwickelt jedes Bundesland für sich selbst eigene Lösungen. Sobald ich über die Messung des Erfüllungsaufwandes zu systematischen Vereinheitlichungen komme, sind damit automatisch Relativierungen der Autonomie verbunden. Die damit einhergehenden Leistungsvergleiche sind aber vom Grundgesetz durchaus gewollt. Das bedeutet, dass auch für die Arbeit des NKR länderübergreifende Durchschnittswerte für die Messung des Erfüllungsaufwands nötig sind. Wenn ich aber schon solche Schwierigkeiten habe, zwischen den Ländern eine Verständigung herbeizuführen, erreicht eine solche Systematisierung einen Grad an Abstraktheit, mit dem die Kommunen nichts mehr anfangen können. Deswegen mag es sinnvoll sein, Modelle zur kommunalen Aufwandsmessung in einem Pilotprojekt zu veranstalten. Tendenziell, so mein Eindruck, sind die ostdeutschen Länder für solche Pilotprojekte offener als die Länder im Westen.	180 185 190 194

Zusammenfassung	Schlussbemerkung -	

**A.2.2 Interview mit Prof. Dr. Anne Dreier
Rektorin der Fachhochschule des Mittelstands (FHM), Bielefeld
am Donnerstag, den 31.01.2013 von 11.05 bis 12.10 Uhr**

Einführung	Erläuterungen	Zeile
	Als Rektorin der FHM ist sie über die Arbeit des FHM-Instituts „Nationales Zentrum für Bürokratiekostenabbau (NZBA)“ grundsätzlich informiert. Als Mitglied im Kuratorium des NZBA war sie anwesend, als der Verfasser am 28.11.2012 in der Vertretung des Landes Sachsen-Anhalt in Berlin einen Kurzvortrag über sein Forschungsprojekt gehalten hat. Eine weitere thematische Einführung hält Prof. Dreier deswegen nicht für nötig.	1 5
Interview	Frage 1 Unter welchen gesetzlichen Voraussetzungen ist eine erfolgreiche Übertragung des SKM auf kommunale Verwaltungen möglich?	10
	Unterfrage 1.1 Denken Sie, dass eine Anwendung des SKM im Rahmen des geltenden Rechts möglich ist?	
	Als wirtschaftsorientierte Hochschule steht das Recht bei uns nicht so im Fokus, aber nach meinem Verständnis hat der Bundestag mit dem Gesetz über den Normenkontrollrat die erforderlichen rechtlichen Grundlagen geschaffen. Mit der dort verankerten Methode soll das SKM auch den Aufwand in der Verwaltung messen. Dazu gehören für natürlich auch die Kommunen. Deswegen ist für mich entscheidend, was der Bund mit diesen Ergebnissen macht. Mit welcher Methode er zu diesen Ergebnissen kommt, ist für mich dabei erst einmal zweitrangig.	15 20
	Unterfrage 1.2 Welche Probleme ergeben sich daraus, dass der Bund und die Kommunen mit unterschiedlichem Finanzsystem arbeiten?	
	Ich kann mir vorstellen, dass wegen dieser systematischen Unterschiede eine Übertragung des SKM vom Bund auf die Kommunen 1:1 wohl nicht ohne weiteres möglich sein wird. Aus Sicht einer mittelstandsorientierten Hochschule darf eine Messung des Erfüllungsaufwands in den Kommunen an solchen Unterschieden aber nicht scheitern. Auch als der Bund angefangen hat, die Bürokratiekosten in den Unternehmen zu messen, war es für das Ergebnis egal, dass die Verwaltung eben nicht mit doppelter Buchführung rechnet wie die freie Wirtschaft. Ich könnte mir also vorstellen, dass wir aus Sicht der Kommunen an den Handbüchern noch arbeiten müssen, es im Prinzip aber keine Probleme geben dürfte.	25 30 35
	Unterfrage 1.3 Welche rechtlichen Grenzen gibt es für den Ermessensspielraum der Länder bei der Bemessung der kommunalen Finanzaufweisung?	

	Wie gesagt bin ich selbst keine Juristin und mit diesem Thema beschäftigen sich unsere Studierenden auch nicht in erster Linie. Als Sozialwissenschaftlerin kann ich nur sagen, dass die Grenzen natürlich in den zur Verfügung stehenden Finanzmitteln liegen müssen. Was nicht da ist, kann auch nicht verteilt werden. Natürlich streiten sich alle Beteiligten immer um das, was im Topf ist. Wenn ich dieses Problem aus Perspektive der Wirtschaft betrachte, ist es mir eigentlich egal, welche Behörde meine Steuern erhält, letztlich muss die Dienstleistung der öffentlichen Verwaltung stimmen.	40 45
	Frage 2 Gibt es eine generelle Methode, mit der sich der Erfüllungsaufwand in kommunalen Verwaltungen messen lässt?	50
	Unterfrage 2.1 Sehen Sie einen Unterschied im Erfüllungsaufwand auf Bundes- und kommunaler Ebene?	
	Eigentlich dürfte es da keinen Unterschied geben. Wie ich schon gesagt habe, ist die Methode des SKM nach meinem Verständnis auch für den Erfüllungsaufwand in der öffentlichen Verwaltung und damit den Kommunen anzuwenden. Inhaltlich kann es natürlich ein Unterscheid sein, ob eine Behörde mit ihren Kunden unmittelbaren Kontakt hat, wie es auf der kommunalen Ebene der Fall ist, oder ob sie eher aufsichtliche oder strategische Aufgaben wahrnimmt. Das dürfte vor allem für die Bundesbehörden und -ministerien gelten. Das heißt, dass immer dort, wo die gesetzliche Aufgabe wahrzunehmen ist, tendenziell eher mehr Transferkosten entstehen als dort, wo nur verwaltet wird. Wenn also der Bund ein Gesetz macht, dass auf lokaler Ebene in den Städten und Gemeinden auszuführen ist, werden hier tendenziell auch die höheren Kosten entstehen.	55 60 65
	Unterfrage 2.2 Bietet das NKF eine besondere Chance, den Erfüllungsaufwand systematisch zu ermitteln?	
	Soviel ich weiß, ist das NKF mehr an der doppelten Buchführung orientiert als das Haushaltsrecht des Bundes. Genau weiß ich das aber nicht. Ist aber auch egal, denn wie ich am Beispiel der Doppik in der freien Wirtschaft schon gesagt habe, kann das Buchführungssystem meines Erachtens nicht dafür maßgeblich sein, wie hoch der tatsächliche Erfüllungsaufwand ist. Ob das NKF also eine besondere Chance darstellt, den Erfüllungsaufwand in den Städten und Gemeinden zu messen, wage ich daher zu bezweifeln.	70 75
	Unterfrage 2.3 Wie lässt sich die Recht auf kommunale Selbstverwaltung mit dem Bedürfnis nach einer systematischen Messung des Erfüllungsaufwands vereinbaren?	80
	Die kommunale Selbstverwaltung hat an vielen Stellen ihre Berechtigung, ja ihre Notwendigkeit. Auf der Suche nach einer Lösung für die kommunalen Finanzprobleme müssen die Städte und Gemeinden aber eher zusammenstehen, als sich durch ihr Recht auf Selbstverwaltung auseinander dividieren zu lassen. Ich glaube	85

	deshalb, dass es der grundsätzlichen Weiterentwicklung des SKM im Bereich der Gesetzgebung nicht weiter hilft, wenn jeder nur seine eigene Verwaltung sieht. Schließlich wollen die Kommunen ein dickeres Stück vom staatlichen Finanzkuchen, der insgesamt ja nicht größer wird. Deswegen ist es meines Erachtens nötig, eigene Interessen zurückstellen, um eine Lösung für das große Ganze zu finden. Wenn ich an Messung der Bürokratiekosten in der Wirtschaft denke, war das politische Ziel, über die Belastungen eine politische Diskussion zu initiieren. Dafür reicht natürlich eine Schätzung aus. Das sieht bei den Kommunen und ihrem Konnexitätsanspruch natürlich anders aus, aber vom Prinzip her kommen die Kommunen mit einer einheitlichen Schätzung sicherlich weiter als mit einer haargenauen Kostenermittlung in jeder einzelnen Verwaltung.	90 95
	Frage 3 Unter welchen Bedingungen lässt sich das SKM in den kommunalen Finanzausgleich implementieren?	
	Unterfrage 3.1 Welche Vor- oder Nachteile sehen Sie durch die Einsetzung eines „Normenkontrollrates“ auf Länderebene?	105
	Natürlich kann ich mir vorstellen, dass eine Art kleiner Normenkontrollrat auf Ebene der Länder es leichter macht, den Erfüllungsaufwand in den Kommunen zu ermitteln. Während der NKR auf Bundesebene seine Arbeit bis heute eher an die Wirtschaft adressiert, müssten die Länder schon allein wegen des Konnexitätsprinzips Rücksicht auf die Kommunen nehmen. Allerdings darf man dabei das Kosten-Nutzen-Verhältnis nicht aus den Augen verlieren. Auf Bundesebene haben die dort verabschiedeten Gesetze schon allein wegen ihrer bundesweiten Reichweite wesentlich größere finanzielle Auswirkungen als die Gesetze in den einzelnen Ländern. Als mittelstandsorientiert denkende Hochschule hätte ich daher Bedenken, ob wir mit 16 Länderkontrollräten nicht einen Riesenapparat aufbauen, dessen Effektivität sich jedoch in Grenzen hält.	110 115
	Unterfrage 3.2 Wie können sich Kommunen und Länder zu einer systematischen Schätzung des Erfüllungsaufwands verständigen?	120
	„Verständigung“ ist in diesem Kontext das richtige Wort. Ich glaube, dass sich die Länder mit ihren Kommunen an einen Tisch setzen müssen, um über die Verteilung des bereits erwähnten Kuchens zu sprechen. Für ein solches Miteinander ist es sicherlich hilfreich, wenn sich die Kommunen vorher auf ein gemeinsames miteinander verständigen. Ich möchte an dieser Stelle nochmal betonen, dass sich die vielen Städte und Gemeinden in Deutschland weniger auf ihre Eigenarten, als auf ihre gemeinsamen Strukturen besinnen sollten. Die Lösung, die das SKM für die Ermittlung der Bürokratiekosten in der Wirtschaft gefunden hat, kann dafür meines Erachtens durchaus Pate stehen. Das SKM-Handbuch spricht in diesem Zusammenhang von dem „durchschnittlich effizienten Unternehmen“. Für die Schätzung des kommunalen Erfüllungsaufwands sollten die Beteiligten dementsprechend auf die „durchschnittlich effiziente Kommunalverwaltung“ abzustellen.	125 130 135

	Unterfrage 3.3 Welche Rolle können die kommunalen Spitzenverbände spielen, wenn man SKM im kommunalen Finanzausgleich anwendete?	140
	Die Arbeit der kommunalen Spitzenverbände im normalen Gesetzgebungsverfahren verstehe ich eher reaktiv. Sie werden um ihre Meinung zu einem vorgeschlagenen Gesetz befragt, das sie dann bewerten. Ob ihre Bewertung dann Berücksichtigung findet, obliegt dem politischen Ermessen des Gesetzgebers. Da ich ja dafür plädiere, dass sich die Kommunen bei den Verhandlungen über den nun schon mehrfach zitierten Kuchen vorab verständigen sollten, können die kommunalen Spitzenverbände hier eine aktive moderierende Rolle übernehmen. Wenn wir noch einen Schritt weiter gehen, könnten die Spitzenverbände die so erhobenen Informationen als eine Art Benchmarkingzentrale zusammenstellen und veröffentlichen.	145 150
	Frage 4 Gibt es sonst noch etwas, was Sie zu einer Anwendung des SKM im kommunalen Bereich für wichtig erachten?	
	Ich glaube, dass wir für die Übertragung des SKM auf die kommunale Ebene das sprichwörtliche Rad nicht noch einmal neu erfinden müssen, sondern die Erfahrungen mit dem SKM in der Wirtschaft grundsätzlich übertragen können. Dafür sollten sich die Kommunen auf eine gemeinsame Schätzung ihres Aufwandes verständigen, denn nur wenn sie zusammenstehen, können sie im politischen Prozess ihre Ziele erreichen.	155 160
Zusammenfassung	Schlussbemerkung Prof. Dreier weist noch einmal darauf hin, dass sie als Sozialwissenschaftlerin zu den rechtlichen Fragen natürlich nur wenig sagen könne. Trotzdem hat sie ein großes Interesse am Ergebnis dieser Arbeit, weil damit zugleich das NZBA ein weiteres Ergebnis vorweisen könne. Sie wünscht dem Verfasser deswegen weiterhin viel Erfolg.	165 167

	Kommunen als eine Ebene mit Verfassungsrang im Grundgesetz zu verankern. Dies hätte in der Konsequenz eine dritte Kammer im Gesetzgebungsprozess erforderlich gemacht und ist vor dem Hintergrund des ohnehin schon sehr komplizierten Gesetzgebungsprozesses letztlich abgelehnt worden. Der nächste Schritt liegt nun sicherlich bei den Problemen eines einheitlichen Verwaltungsvollzuges, der in Deutschland nicht einheitlich ist, sein kann und auch nicht sein soll. Für den Bund sind vor allem die kommunalen Spitzenverbände auf Grundlage der GGO die ersten Ansprechpartner. Über die GGO und das NKRK ist meines Erachtens auch die Anwendung des SKM auf kommunaler Ebene abgedeckt.	50 55
	Unterfrage 1.2 Welche Probleme ergeben sich daraus, dass der Bund und die Kommunen mit unterschiedlichem Finanzsystem arbeiten?	
	Im Rahmen der Föderalismusreform ist diskutiert und erkannt worden, dass noch nicht einmal die Finanzsysteme der Bundesländer einheitlich sind. Das Neue Steuerungsmodell mit seinem doppelten Rechnungswesen für die Kommunen hat diese Situation nicht verbessert. Ich selbst habe in einer Untersuchung, die ich als Beamter in der Staatskanzlei des Landes Rheinland-Pfalz vorgenommen habe, festgestellt, dass die Verwaltungsausgaben für bestimmte Aufgaben in vergleichbaren Bundesländern nur schwer miteinander zu vergleichen waren. Bereits die Struktur der Länderhaushalte ist schon anders aufgebaut. Die Unterschiede in den Finanzsystemen des Bundes und der Kommunen wird also durch die heterogene Landschaft in den Haushalten der Länder noch verkompliziert. Der Bund kann in einer Ex-ante-Betrachtung seiner Gesetzesvorhabens ja nur schätzen. Wer aber schätzen muss, kann auf die einzelnen Finanzsysteme in den Bundesländern keine Rücksicht nehmen. Vielleicht braucht er das aber auch gar nicht. Denn schließlich ist das SKM nur eine Schätzmethode. Die Suggestion einer exakten Zahl ist dabei nicht real.	60 65 70 75
	Unterfrage 1.3 Welche rechtlichen Grenzen gibt es für den Ermessenspielraum der Länder bei der Bemessung der kommunalen Finanzzuweisung?	
	Bei solchen Fragen der Gesetzesprärogative bin ich persönlich überfragt. Das ist sicherlich in jedem konkreten Gesetzesvorhaben unterschiedlich. Allerdings gibt es doch in jedem Land eine Konnexitätsregelung, die den kommunalen Aufwand für die Ausführung von Landesgesetzen geregelt. Wahrscheinlich sind die Ergebnisse der kommunalen Finanzzuweisung letztlich Verhandlung Sache.	80 85
	Frage 2 Gibt es eine generelle Methode, mit der sich der Erfüllungsaufwand in kommunalen Verwaltungen messen lässt?	
	Unterfrage 2.1 Sehen Sie einen Unterschied im Erfüllungsaufwand auf Bundes- und kommunaler Ebene?	90

	Zunächst gibt es große bundeseigene Verwaltungen wie z.B. die Bundesagentur für Arbeit, deren Verwaltungsvollzug bundesweit einheitlich geregelt wird. So etwas gibt es in 16 verschiedenen Bundesländern mit ihren über 1000 Kommunen natürlich nicht. So sind Zweige der Sozialverwaltung in einem Bundesland staatlich organisiert und in einem anderen Bundesland kommunal. Modellerhebungen haben deutlich gemacht, dass es hier große Unterschiede bei Verwaltungsaufwand gibt. Ein Beispiel dafür war die Evaluierung des sog. Prostitutionsgesetzes. Auch die "auf einfacher-zu-Projekte" haben solche Unterschiede gezeigt. Der Grund für diese Unterschiede liegt natürlich im deutschen Föderalismus, der den Ländern den Gesetzesvollzug überträgt und dem Bund die Beschränkung auferlegt sich bei Vollzugsvorgaben zurückzuhalten. Das ist auch richtig so, damit die Verwaltung ihren Vollzug an die Gegebenheiten vor Ort anpassen kann. Die Chance eines Benchmarkings, wie es im Art. 91d GG vorgesehen ist, wird noch nicht gelebt und ist wohl auch nicht gewollt. Diese Vergleichsmöglichkeit des Art. 91d GG lässt sich auch als lernendes System betrachtet. Mit dem Argument, der Großteil des Verwaltungsaufwandes würde durch europarechtliche Vorgaben und Gesetze des Bundes verursacht, haben sich die Länder aus den SKM-Modellen herausgezogen.	95 100 105 110
	Unterfrage 2.2 Bietet das NKF eine besondere Chance, den Erfüllungsaufwand systematisch zu ermitteln?	115
	Für die systematische Erfassung des Erfüllungsaufwands lässt sich vielleicht auf die verschiedenen Gesetzesmodelle zurückgreifen, die die Staates für seine Gesetzesfolgenabschätzung entwickelt hat. Diese Gesetzestypen stellen z.B. darauf ab, ob sich die Gesetzeskosten eher progressiv oder degressiv entwickeln. Diese Typologie von Gesetzen müsste sich auch mit der Doppik auf kommunaler Ebene harmonisieren lassen. Eine bessere Kenntnis des Verwaltungsvollzuges vor Ort verknüpft mit diesem legislativen Gruppenmodell von den Staates kann möglicherweise systematischer Ergebnisse erbringen. Hier setzt jedoch auch meine Kritik am SKM an. Die Suggestion der einen exakten Zahl berücksichtigt nicht die verschiedenen Varianten von Gesetzesentwürfen. Im Gegenteil verbaut die Konzentration auf eine Zahl den Blick auf die politischen Varianten und trägt daher nicht immer zu einer besseren Qualität der Gesetzgebung bei. Eine Idee ist vielleicht die Typologie von Gesetzen zu verknüpfen mit der Typologie von Kommunen. So hat es demoskopische Untersuchungen gegeben, die für das Verbraucherverhalten typische Kommunen ausgesucht hat. Vielleicht kann man mit solchen Prototypen von Kommunen auch Modellrechnungen für konkrete Gesetzesvorhaben durchrechnen.	120 125 130
	Unterfrage 2.3 Wie lässt sich die Recht auf kommunale Selbstverwaltung mit dem Bedürfnis nach einer systematischen Messung des Erfüllungsaufwands vereinbaren?	135
	Aus Sicht des Bundes lässt sich schon rein praktisch nicht mit einzelnen Kommunen kommunizieren. Ansprechpartner für den Bund können daher nur die kommunalen Spitzenverbände sein. Wie die kommunale Familie die über ihre Spitzenverbände zu liefernden	140

	Daten ermittelt, muss sie letztlich selbst prüfen. Dieser Grundsatz ist auch in der GGO so angelegt.	
	Frage 3 Unter welchen Bedingungen lässt sich das SKM in den kommunalen Finanzausgleich implementieren?	145
	Ich befürchte, dass auf diese Fragen der politischen Implementierung noch niemand eine Antwort hat. Wenn der Bund den Kommunen nach dem Grundgesetz keine Aufgaben übertragen darauf, ist folgerichtig die Konnexität für den Bund auch nicht anwendbar. Trotzdem kann man den kommunalen Finanzausgleich innerhalb der Länder nicht losgelöst vom Bund-Länder-Finanzausgleich betrachten. Ich befürchte, die kommunale Aufwandsmessung in den Bund-Länder-Finanzausgleich zu integrieren, ist eine Herkules-Aufgabe.	150 155
	Unterfrage 3.1 Welche Vor- oder Nachteile sehen Sie durch die Einsetzung eines „Normenkontrollrates“ auf Länderebene?	
	Der NKR ist aus meiner Sicht als Wahrer einer Methode eingesetzt worden, aber nicht in die eigentlichen Finanzströme integriert. Die Gestaltung solcher Finanzströme obliegt in erster Linie dem BMF. Grundsätzlich haben die Länder im Bundesrat die Möglichkeit, ihre Sicht der Dinge darzustellen und dabei auch die Interessen der Kommunen einzubringen. Die fachlichen Interessen werden dabei von den Fachministerien der Länder vertreten, die mit dem zuständigen Ressort des Bundes in einen Aushandlungsprozess eintreten. Eine unabhängige Institution auf Landesebene, die neben den Fachministerien eigene Berechnungen angestellt, produziert aus meiner Sicht mehr Fragezeichen als Lösungen. Ich halte es auch nicht für tunlich, nicht demokratisch legitimierten Institutionen solche Kompetenzen zu übertragen, die letztlich in demokratische Prozesse gewählter Organe eingreifen. Solche demokratischen Institutionen kann ich abwählen, irgendwie eingesetzte Institutionen auf Verwaltungsebene nicht. Davon sollte man die Finger lassen, weil sie letztlich das Gleichgewicht der Demokratie verändern, und zwar, ohne zu wissen, wo so etwas hinführt.	160 165 170 175
	Unterfrage 3.2 Wie können sich Kommunen und Länder zu einer systematischen Schätzung des Erfüllungsaufwands verständigen?	
	Solche Verständigungsprozesse sind stets sehr unterschiedlich, je nachdem auf welche Konsequenzen man abstellt. Geht es zum einen eher um Fragen der Transparenz, dann wird die Verständigung eher möglich sein, indem man sich auf kommunikative Spielregeln einigt. Geht es zum anderen um Fragen des Bund-Länder-Finanzausgleich oder um Fragen der Konnexität, dann wird die Verständigung schwieriger sein. Besondere kommunale Beiräte können neben den kommunalen Spitzenverbänden dann sinnvoll sein, wenn es um die Einbringung originärer Perspektiven vor Ort geht. Allerdings sind die Abstimmungsprozesse innerhalb der kommunalen Spitzenverbände schon jetzt sehr langwierig und bilden in der Regel nicht die Realität in den einzelnen Kommunen ab. Ob zusätzliche Beiräte für eine	180 185 190

	repräsentative Kommunikation sinnvoll sind, wage ich zu bezweifeln. Aus meiner Sicht wäre es sinnvoller, die kommunalen Spitzenverbände ins Boot zu holen und durch eine Abfrage ausgewählter Adressaten zu ergänzen. Dadurch ließe sich der Erkenntnisprozess verbessern, kann aber letztlich das verflochtene Verfahren nicht ändern.	195
	Unterfrage 3.3 Welche Rolle können die kommunalen Spitzenverbände spielen, wenn man SKM im kommunalen Finanzausgleich anwendete?	
	Die kommunalen Spitzenverbände sind in der GGO bereits besonders hervorgehoben. Sie haben also im Prozess der Gesetzgebung die Rolle eines Vetospielers oder eines Unterstützers. Gerade bei Fragen des Verwaltungsvollzugs ist ihre Rolle besonders wichtig. Wenn die Kosten für die Kommunen aus Ihrer Sicht zu hoch sind, müssen die kommunalen Spitzenverbände dies darstellen. Damit kommen wir wieder in einen Prozess des Aushandelns. Die kommunalen Spitzenverbände haben also eine wichtige Funktion im Geflecht zu den Ländern. Die Mechanismen einer kommunalen Beteiligung bei Gesetzgebungsvorhaben des Bundes sind also bereits angelegt. Wir fand ja schließlich nicht bei Null an, sondern praktizieren mit unserer verflochtenen Politikgestaltung eine besondere Form des Spätpluralismus. Nicht umsonst hat der viel diskutierte Begriff des Reformstaus um das Jahr 2000 zur Föderalismusreform I geführt, die insbesondere zu einer Entflechtung dieser Prozesse zwischen Bund und Ländern führen sollte. Je mehr Spieler in diesem System auftauchen, desto vertrackter wird die ganze Situation. D.h. dass die kommunalen Interessen von den Ländern im Bundesrat und den kommunalen Spitzenverbänden nach der GGO vertreten werden.	200
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	Frage 4 Gibt es sonst noch etwas, was Sie zu einer Anwendung des SKM im kommunalen Bereich für wichtig erachten?	220
	Ich glaube grundsätzlich deutlich gemacht zu haben, dass eine einheitliche Messmethode für die kommunale Ebene sicherlich möglich ist, wenn es um eine reine Transparenzmessung geht. Bei Eingriffen in bestehende Finanzströme wird es sicherlich schwieriger werden. Hier drückt sich meines Erachtens auch die Beantwortungs- und Gesinnungsethik nach Max Weber aus. Ich will es mal so auf den Punkt bringen: Der Schäuble hat die Verantwortung, die anderen haben die Ideen oder die Gesinnung.	225
Zusammenfassung	Schlussbemerkung Prof. Dr. Konzendorf bedankt sich für das schöne Gespräch, in dem auch aus seiner Sicht viele spontane Gedanken entstanden sind.	230 232

2.4 Interview mit Günter Tebbe
Berater der Bertelsmann-Stiftung, Gütersloh
am Donnerstag, den 5.03.2013 von 9.00 bis 10.40 Uhr

Einführung	Erläuterungen	Zeile
	Herr Tebbe ist als ehemaliger Kämmerer der Stadt Herford und langjähriger Berater der Bertelsmann-Stiftung in Fragen der kommunalen Finanzwirtschaft mit den Strukturen des kommunalen Finanzausgleichs vertraut. Durch seine Arbeit für die Bertelsmann-Stiftung zu Fragen der Regulierungskostenmessung zeigte Herr Tebbe ein schnelles Verständnis für die von mir bearbeitete Forschungsfrage und die kommunale Perspektive auf das SKM. Daher erübrigte sich eine intensive thematische Einführung und ich konnte mich in der Einführung auf die Herleitung meiner Forschungsfragen und eine Erläuterung der grundsätzlichen Struktur des Fragebogens beschränken.	1 5 10
Interview	Frage 1 Unter welchen gesetzlichen Voraussetzungen ist eine erfolgreiche Übertragung des SKM auf kommunale Verwaltungen möglich?	
	Unterfrage 1.1 Denken Sie, dass eine Anwendung des SKM im Rahmen des geltenden Rechts möglich ist?	15
	Sicherlich kann man ohne eine Änderung der Gemeindeordnung oder des GFG die Kommunen nicht zwingen, das SKM anzuwenden, solange keine Sanktionsmöglichkeit besteht. Eine solche Sanktionsmöglichkeit könnten die fiktiven Hebesätze der Kommunalsteuern im GFG sein. Vielleicht ließe sich eine Anwendung auch über die Experimentierklausel der Kommunalverfassung realisieren. Da die Kommunen organisationsrechtlich als Teil der Landesverwaltung gelten, wird wohl entscheidend sein, ob durch eine vorgeschriebene Anwendung des SKM in den Kernbereich der kommunalen Selbstverwaltung eingegriffen wird. Auf der anderen Seite begeben sich die Kommunen durch die Aufnahme hoher Kassenkredite selbst in eine Abhängigkeit, so dass die Frage nach der kommunalverfassungsrechtlichen Möglichkeit, das SKM anzuwenden, eher eine akademische Frage ist.	20 25 30
	Unterfrage 1.2 Welche Probleme ergeben sich daraus, dass der Bund und die Kommunen mit unterschiedlichem Finanzsystem arbeiten?	
	Die Probleme sehe ich weniger bei der Anwendung des SKM, sondern eher im Bund-Länder-Finanzausgleich. Die Erfahrung hat gezeigt, dass bereits die Finanzstatistik der verschiedenen Bundesländer nicht mehr vergleichbar ist. Umso mehr sind die Kommunen bundesweit nicht mehr miteinander vergleichen. Die Bundesländer arbeiten selbst mit unterschiedlichen Rechnungswesen, die einen haben einen doppischen Haushalt (Hessen, Hamburg), die meisten anderen wie zur Zeit NRW nicht. Das gleiche Problem besteht auch auf europäischer Ebene, wo die Finanzkennzahlen der Mitgliedstaaten auch nicht vergleichbar sind. Deswegen gibt es Überlegungen, in ganz Europa IPSAS als gemeinsames öffentliches Finanzsystem	35 40

	<p> einzuführen, wie es z.B. in Österreich schon passiert ist. Doch davor schreckt die Politik aus nachvollziehbaren Gründen zurück, denn die Einführung der Doppik haben bei weitem noch nicht alle Kommunen „verdaut“. Dennoch muss man sehen, dass das Auseinanderfallen der verschiedenen Rechnungssysteme ein großes Problem für die EU ist.</p>	45
	<p>Unterfrage 1.3 Welche rechtlichen Grenzen gibt es für den Ermessensspielraum der Länder bei der Bemessung der kommunalen Finanzausstattung?</p>	50
	<p>Meines Wissens gibt es eine Reihe von Urteilen in den einzelnen Bundesländern, die besagen, dass zumindest einzelne Kommunen nicht hinreichend ausgestattet sind. Der Umfang der Finanzausstattung hängt dabei wesentlich vom Kommunalisierungsgrad der Aufgaben ab. Was in einem Bundesland der Staat selbst macht, ist in den anderen Bundesland auf die Kommunen übertragen. Zwar ist mittlerweile in allen Bundesländern ein mehr oder weniger ausgeprägtes Konnexitätsprinzip verfassungsrechtlich abgesichert. Aber die kostenrelevanten Gesetze kommen oft vom Bund, und dafür ist die Konnexität zumindest bei Altgesetzen (SGB) nicht gewahrt. In NRW haben wir einen relativ hohen Kommunalisierungsgrad, während z.B. im Saarland durch die Größenordnung bedingt das Land viele Aufgaben selbst wahrnimmt. Gerade in Bundesländern mit einem hohen Kommunalisierungsgrad der Aufgaben kann man die Finanzausstattung durchaus kritisch beurteilen. Dabei ist aber auch die innere Verteilung der Finanzmittel zwischen den Kommunen sehr strittig, insbesondere zwischen den ländlichen Bereichen und den städtischen Regionen. Meines Erachtens ist die so genannte "Einwohnerveredelung" im Grunde aber gerechtfertigt. Zur Akzeptanz solcher Regelungen hat gerade der „Stärkungspakt“ für die Kommunen in NRW gezeigt, wie wichtig es ist, belastbare Zahlen für die Aufwände der Kommunen durch staatliche Aufgaben zu bekommen.</p>	55 60 65 70
	<p>Frage 2 Gibt es eine generelle Methode, mit der sich der Erfüllungsaufwand in kommunalen Verwaltungen messen lässt?</p>	75
	<p>Unterfrage 2.1 Sehen Sie einen Unterschied im Erfüllungsaufwand auf Bundes- und kommunaler Ebene?</p>	80
	<p>Ein wesentlicher Unterschied zwischen der Kameralistik und der doppelten Buchführung ist die Berücksichtigung von Rückstellungen und Abschreibung. Wenn ich die Erfüllungsaufwand des Bundes und den in den Kommunen um diese Posten bereinige, müsste der Erfüllungsaufwand vergleichbar sei. Am besten lässt sich ein Unterschied am konkreten Produkt feststellen, ob hier die reinen Produktionskosten berücksichtigt werden oder eben auch Rückstellungen und Abschreibungen. Gerade bei den Rückstellungen wird es hier sicherlich Abweichungen geben. Auf der Aufwandseite ist also zu fragen, ob in den Erfüllungsaufwand auch die Vermögensabschreibungen mit eingerechnet wurden. Auf der Ertragsseite könnte ich mir vorstellen, dass es bei der Auflösung von Sonderposten durchaus Unterschiede gibt. So arbeitet der Bund zwar</p>	85 90

	auch nicht mit einer reinen Kameralistik. Von daher sehe ich darin eher ein bilanzrechtliches Problem als ein Problem des SKM.	95
	Unterfrage 2.2 Bietet das NKF eine besondere Chance, den Erfüllungsaufwand systematisch zu ermitteln?	
	Ja, soz. im Umkehrschluss dessen, was ich gerade gesagt habe. Das NKF berücksichtigt den Wertverzehr des kommunalen Vermögens und die Personalkosten für solche Mitarbeiter, die nicht mehr aktiv sind. So sind z.B. in NRW die steigenden Versorgungsleistungen wegen der demographischen Entwicklung ein großes Problem für die öffentlichen Haushalte. Gerade solche Kosten lassen sich mit dem NKF sauber und exakt definieren. Insofern bildet das NKF alles ab, was den Erfüllungsaufwand ausmacht. Bund, Länder und Kommunen haben zusammen über 2 Billionen € Schulden, und das ohne Versorgungsleistungen. Würde man hier sauber doppisch alle Personalrückstellungen mit einrechnen, dann wären Bund und Länder nach handelsrechtlicher Betrachtungsweise möglicherweise insolvent. Das ist politisch aber so nicht gewollt. Dabei ist das NKF noch nicht einmal so hart wie die Buchführung nach dem HGB. Schwachpunkte gibt es hier vor allen Dingen in der Bewertung des kommunalen Vermögens. Unternehmen bewerten ihre Gebäude – vereinfacht gesagt – nach dem Marktwert. Für eine Rathaus oder Straßen gibt es einen solchen Marktwert aber nicht. Die Abschreibungen sind also insoweit rein fiktiv. Das gilt im Grunde auch für die Darstellung des Vermögens beim Bund und den Ländern.	100
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	Unterfrage 2.3 Wie lässt sich die Recht auf kommunale Selbstverwaltung mit dem Bedürfnis nach einer systematischen Messung des Erfüllungsaufwands vereinbaren?	120
	Rechtlich kann ich das letztlich ohne vertiefende Prüfung nicht beurteilen. Politisch gesehen aber haben die Bürger stets ein starkes Interesse daran, wie ihre Kommunen mit dem öffentlichen Vermögen umgehen. Anders als z.B. in Großbritannien gibt es in Deutschland keine allgemeinen Kennzahlen, um kommunal Dienstleistungen miteinander zu vergleichen. Zwar gibt es einzelne Produkte, z.B. die Ausstellung eines Personalausweises, die zwischen den Kommunen relativ einfach vergleichbar sind. Aber eben nicht alle. Die Herstellung und Unterhaltung eines Kilometers Straße verursacht in Paderborn eben andere Kosten als in Lippe. Allerdings sind Kennzahlenvergleiche auch kein Allheilmittel zur Ermittlung des Erfüllungsaufwands. Nehmen wir als Beispiel die Hilfe zur Erziehung. Die eine Kommune hat viele Bürger mit sprachlichen Defiziten, und eine andere hat gar keinen Aufwand, weil bei ihr keine entsprechenden Bürger wohnen. Kennzahlen können deswegen immer nur ein Grund sein, berechnete Frage zu stellen. Den Erfüllungsaufwand kann man deswegen nicht nur betriebswirtschaftlich sehen, sondern man muss auch immer die Qualität der Leistung im Auge haben. Neben der Frage nach den Kosten muss ich auch immer die Frage stellen, welche Wirkung mit dem Produkt erzielt werden sollen. Ein Beispiel ist die Gaststättenaufsicht: Wenn ich keine Kontrollen durchführe, habe ich wunderbare betriebswirtschaftliche Zahlen, aber keine angestrebte Wirkung. Oder die Frage, was ist ein guter Bebauungsplan? Wenn ich	125
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	als Kennzahlen zugrunde lege, ob er schnell und rechtlich sauber aufgestellt wurde, weiß ich trotzdem erst in zehn Jahren, ob ich die planerischen Ziele erreicht habe. Deswegen war ich als Kämmerer auch immer dafür, nicht nur mit Finanzkennzahlen zu arbeiten, sondern auch stets mit Qualitätskennzahlen. Sie werden in SKM so nicht abgebildet. D.h. eine systematische Vergleichbarkeit des Erfüllungsaufwandes ist mühsam und nur dann sinnvoll, wenn ich auch die Qualitätsseite mit abbilde.	150
	Frage 3 Unter welchen Bedingungen lässt sich das SKM in den kommunalen Finanzausgleich implementieren?	155
	Unterfrage 3.1 Welche Vor- oder Nachteile sehen Sie durch die Einsetzung eines „Normenkontrollrates“ auf Länderebene?	
	Grundsätzlich lässt sich festhalten, dass die verdienstvolle Arbeit des Normenkontrollrats gezeigt hat, was man besser machen kann. Aber die Gesetze, die bereits im Entstehungsprozess verändert werden, kann man nicht im Vorher-Nachher-Vergleich betrachten. Auch auf Länderebene wird es deswegen schwieriger sein, eine eigene erfolgreiche Rolle eines Länder-NKR im laufenden Gesetzgebungsverfahren zu belegen. Mir persönlich wäre es lieber, wenn die Ministerien so arbeiteten, dass ein Normenkontrollrat nicht notwendig ist. Stets aber setzt die Arbeit eines Normenkontrollrates eine politische Unabhängigkeit voraus. Die Mitglieder eines solchen Rates müssen stark und unabhängig sein, so dass sie nicht in die Fänge der jeweiligen Landesregierungen geraten. Für die Effektivität eines solchen Gremiums ist also das politische Gewicht entscheidend. Ich warne aber auch davor, diese Frage ausschließlich betriebswirtschaftlich zu betrachten. Der Gemeinwohlsauftrag der öffentlichen Hand muss hier eine wichtige Rolle spielen.	160 165 170
	Unterfrage 3.2 Wie können sich Kommunen und Länder zu einer systematischen Schätzung des Erfüllungsaufwands verständigen?	175
	Die Bertelsmann-Stiftung hat bei ihrer Untersuchung des Länderfinanzausgleichs festgestellt, dass immer ein Ausgleich notwendig ist zwischen den Veränderungen hinsichtlich der Leistungsfähigkeit der Länder und der Verlässlichkeit der Daten für eine mittelfristige Finanzplanung. Dabei ist nicht jedes Haushaltsjahr gleich, auch Verschiebungen müssen abgebildet werden können. Wie bei den Ländern ist auch bei den Kommunen nicht zu erwarten, dass sie sich untereinander auf einen kommunalen Finanzausgleich einigen. Aktuelles Beispiel dafür ist die kontroverse Diskussion über die so genannte Einwohnerveredelung. Nicht alle Kommunen, die ihre jetzige gute Situation als eigene Leistung darstellen, haben damit immer Recht. D.h. im horizontalen kommunalen Finanzausgleich ist es mit der Solidarität nicht weit her, so dass staatliche Regelungen durch das Land wohl nötig sind. Eine andere Frage ist es, ob man das Mitspracherecht der Kommunen nicht stärken kann. Gerade bei solchen Gesetzen des Bundes, die zu mehr Aufwand bei den Kommunen führen, reicht die bloße Beteiligung der kommunalen Spitzenverbände nicht aus. Besser wäre es, die Arbeit	180 185 190 195

	der Kommunen selbst transparenter zu machen, z.B. durch einheitliche Produkthaushalte. Mir würde es reichen, so etwas auf Landesebene ordentlich zu regeln. So müssen z.B. in Sachsen die Kommunen regelmäßige Finanzkennzahlen an das Land berichten. Hier kommt der staatlichen Kommunalaufsicht automatisch eine stärkere Rolle zu, in dem sie durch laufende Beratung stärkeren Einfluss auf das kommunale Management gewinnt. Dafür ist ein Gerüst aus vergleichbaren Kennzahlen notwendig. Dabei bestehe ich aber die Gefahr einer betriebswirtschaftlichen Überregulierung. Die Beziehungen zwischen der Kommune und den Ländern sind oft durch unzureichende Kommunikation geprägt. Die handelnden Personen auf Bundes-oder Landesebene haben nicht immer eine hinreichende Kenntnis, was in den Kommunen abläuft. Ich plädiere deswegen z.B. für eine höhere Personaldurchlässigkeit zwischen den verschiedenen Verwaltungsebenen. Nur so kommen wir zu einer besseren Kommunikation in der Beziehung zwischen Ländern und Kommunen.	200 205 210
	Unterfrage 3.3 Welche Rolle können die kommunalen Spitzenverbände spielen, wenn man SKM im kommunalen Finanzausgleich anwendete?	
	Wenn die kommunalen Spitzenverbände in den wesentlichen Fragen einer Meinung sind, dann ist schon viel gewonnen. In der Realität besteht latent die Wahrscheinlichkeit, dass Ballungsräume durchsetzungsfähiger sind als der ländliche Raum. Im Finanzbereich sind die kommunalen Spitzenverbände gut aufgestellt. So waren sich z.B. alle Verbände einig, als es um die Stärkung der Gewerbesteuer ging. Für die Kommune insgesamt wäre es daher gut, wenn die kommunalen Spitzenverbände sich noch besser untereinander abstimmen und ihre gemeinsamen Vorstellungen bei Bund einforderten.	215 220
	Frage 4 Gibt es sonst noch etwas, was Sie zu einer Anwendung des SKM im kommunalen Bereich für wichtig erachten?	225
	Meines Erachtens muss das SKM von einer reinen Betrachtung der Berichtskosten weg die zu einem ganzheitlichen Erfüllungsaufwand. Dabei sehe ich bei der Anwendung des SKM die Gefahr, dass der Aufwand zu grob ermittelt wird. Eine höhere Feingliedrigkeit wäre wünschenswert. Wenn nämlich die Kennzahlen zu global sind, werde die Messergebnisse keine Akzeptanz auf der kommunalen Ebene finden. Wir müssen aufpassen, hier nicht Äpfel mit Birnen zu vergleichen. Wo die Vergleichbarkeit von Kommunen endet, muss man dies auch deutlich machen.	230 235
Zusammenfassung	Schlussbemerkung -	

	unabhängig davon unter E. Ich will damit sagen, dass es keinen Unterschied machen kann, mit welchem Finanzsystem diese finanziellen Auswirkungen untersucht werden, da es unterschiedliche Fragestellungen sind. Das bedeutet nicht, dass es sicherlich Unwägbarkeiten durch diese inkompatiblen Rechnungssysteme gibt. Wenn also eine Kommune ihren gesamten Aufwand für die Ausführung eines Gesetzes messen möchte, muss sie natürlich alle finanziellen Auswirkungen betrachten, wie sie im Gesetzesvorblatt unter den Buchstaben D und E dargestellt sind. Dabei gilt es jedoch zu beachten, was mit den Zahlen passiert, die auf diese Weise produziert werden. Die mit dem Gesetz verbundenen Ausgaben unter Buchstabe D werden maßgeblich vom Finanzministerium geprüft und sind für die Aufstellung des Bundeshaushaltes von großer Bedeutung. Der Erfüllungsaufwand dagegen unter E wird von uns hier bei destatis ermittelt. Ich gebe Ihnen ein Beispiel anhand der Personalkosten: Unter D steht der Stellenbedarf, also eine Frage der Personalwirtschaft, die von den Behörden bei den Haushaltsverhandlungen konkret bearbeitet wird. Unter Buchstabe E messen wir den prozessualen Personalaufwand, der aber von den Stellenplanverhandlungen so weit entfernt ist, dass sie nichts mehr miteinander zu tun haben. Dieser Unterschied auf Bundesebene darf aus Sicht der Kommunen für ihren Aufwand jedoch keine Rolle spielen.	45 50 55 60 65
	Unterfrage 1.3 Welche rechtlichen Grenzen gibt es für den Ermessensspielraum der Länder bei der Bemessung der kommunalen Finanzaufweisung?	
	Die Fragen eines Ermessensspielraums für den Gesetzgeber sind für destatis eigentlich kein Thema. Allerdings kann ich mir vorstellen, dass das Prinzip der Konnexität ja schließlich irgendeine Basis braucht. Ich vergleiche die Finanzaufweisungen hier einmal ganz einfach mit einer Gebührenkalkulation, die schließlich auch dem Kostendeckungsprinzip unterliegt. Muss das dann bei der kommunalen Finanzaufweisung nicht auch so sein?	70 75
	Frage 2 Gibt es eine generelle Methode, mit der sich der Erfüllungsaufwand in kommunalen Verwaltungen messen lässt?	
	Unterfrage 2.1 Sehen Sie einen Unterschied im Erfüllungsaufwand auf Bundes- und kommunaler Ebene?	80
	Was sollen das für Gründe sein, um für den Erfüllungsaufwand Unterschiede zwischen Bund und Kommunen zu sehen. Auf der kommunalen Ebene werden viele der gesetzlichen Vorgaben umgesetzt, während die Bundesebene sich oftmals eher abstrakt mit der Materie auseinandersetzt. Aber wenn eine Bundesbehörde ebenfalls operativ arbeitet, kann es für den Erfüllungsaufwand keinen Unterschied geben. Die Erfahrung aus den "Einfacher-zu-Projekten" an denen ja auch Kommunen beteiligt waren, hat gezeigt, dass eine Anpassung der Methode für Kommunen nicht notwendig war. Schließlich haben wir bei diesem "Einfacher-zu-Projekten" die gesamten Verwaltungsprozesse betrachtet, und zwar egal wer	85 90

	Beteiligter war. Und das waren unter anderem schließlich auch die Beteiligten Kommunen. Die Methode zur Aufwandsmessung haben wir deswegen nicht geändert.	
	Unterfrage 2.2 Bietet das NKF eine besondere Chance, den Erfüllungsaufwand systematisch zu ermitteln?	95
	Anm.: In der angeregten Diskussion ging die Beantwortung der beiden Fragen 2.2 und 2.3 ineinander über. Deswegen werden im Folgenden die Antworten gemeinsam dargestellt.	100
	Unterfrage 2.3 Wie lässt sich die Recht auf kommunale Selbstverwaltung mit dem Bedürfnis nach einer systematischen Messung des Erfüllungsaufwands vereinbaren?	
	Ich kenne mich nun dem NKF nicht besonders aus, verstehe darunter aber die Einführung von Grundsätzen der Doppik in die öffentliche Haushaltswirtschaft. Ich kann mir aber vorstellen, dass sich auf kommunaler Ebene wegen des detaillierten Kontenplans die Abgrenzung der Kostenarten leichter vornehmen lässt als auf Bundesebene. Ich glaube jedoch nicht, dass die Unterschiede zwischen den einzelnen Kommunen, die sich aus der kommunalen Selbstverwaltung ergeben, so gravierend sein können. Lassen wir die Kirche doch im Dorf. Auch die Aufwandsmessung in den Unternehmen ließ sich schließlich systematisieren, und zwar egal, ob die einzelne Informationspflicht in dem Kleinstunternehmen vom Geschäftsführer selbst oder Großkonzern vom Lehrling wahrgenommen wird. Bei langfristigen Betrachtungen kann man im öffentlichen Bereich auch der Einfachheit halber auf die Laufbahngruppen abstellen anstatt auf die jeweilige Entgeltgruppe des betroffenen Mitarbeiters. Deswegen soll das SKM ja keine Einzelfälle widerspiegeln, sondern Standardprozesse definieren, in denen sich möglichst alle Beteiligten wiederfinden. Eine Unterscheidung ist für mich eher nach dem Untersuchungsgegenstand sinnvoll. D.h. gibt es bei den Kommunen grundsätzliche Unterschiede, die das Messergebnis für den Aufwand verzerren können. Bei den Unternehmen haben wir z.B. danach unterschieden, ob die Firma ein eigenes Rechnungswesen unterhält oder alle Buchungen vom Steuerberater vorgenommen werden. Auch zwischen den einzelnen Branchen kann es Unterschiede geben. D.h. es kann durchaus sinnvoll sein, auch bei den Kommunen vergleichbare Gruppen zu bilden. Die Kriterien für eine solche Gruppenbildung müssen dann konkrete Wirkungen auf das jeweilige Regelungsvorhaben haben. Wir hier bei destatis machen ebenfalls solche Unterscheidungen für Regionen, ob sie sich z.B. im Binnenland befinden oder im Grenzregionen. Handelt es sich um von der Schifffahrt geprägte Orte, ist eine Hochschule vorhanden oder nicht, oder wie sieht die Siedlung-, Sozial-, oder Wirtschaftsstruktur aus. So bitter das scheint, letztlich wird die Bildung solcher Kriterien immer eine Einzelfallentscheidung beim konkreten Regelungsvorhaben sein. Einen Unterschied zwischen Kommunen und Unternehmen sehe ich doch: Die Unternehmen machen bei solchen Aufwandsmessungen nur dann mit, wenn sie für sich einen konkreten Nutzen erkennen können. Die Kommunen haben oft Vorbehalte, dass Projekte zum Bürokratieabbau mit einem Personalabbau einhergehen. Dieser unterschied hat aber nichts mit dem eigentlichen Messegegenstand zu tun.	105 110 115 120 125 130 135 140

	Frage 3 Unter welchen Bedingungen lässt sich das SKM in den kommunalen Finanzausgleich implementieren?	145
	Unterfrage 3.1 Welche Vor- oder Nachteile sehen Sie durch die Einsetzung eines „Normenkontrollrates“ auf Länderebene?	150
	Soviel ich weiß, wird zur Zeit in Sachsen untersucht, ob dort eine Art Normenkontrollrat eingesetzt werden soll. In den einzelnen Bundesländern gibt es viele Normenprüfstellen, die aber mit dem Normenkontrollrat auf Bundesebene nicht vergleichbar sind. Alle diese Stellen haben meines Wissens nach unterschiedlicher Aufgaben. Insbesondere sollen sie eher die formalen juristischen Rahmenbedingungen eines Gesetzes prüfen, weniger seinen Erfüllungsaufwand. Die Vorteile einer solchen Aufwandsmessung auf Landesebene liegt sicherlich in der strategischen Aufwandskontrolle wie ich sie schon für den Normenkontrollrates beschrieben habe. Ich frage mich jedoch, ob man mit solchen Institutionen auf Landesebene nicht eher mit Kanonen auf Spatzen schießt. Gerade vor dem Hintergrund, dass die Bertelsmann-Stiftung im Jahre 2005 festgestellt hat, dass lediglich 5 % der Gesetze, die die maßgeblichen Bürokratiekosten auslösen, von den Ländern selbst kommen, haben die Länder ihre Aktivitäten in diesem Bereich sehr zurückgefahren.	155 160 165
	Unterfrage 3.2 Wie können sich Kommunen und Länder zu einer systematischen Schätzung des Erfüllungsaufwands verständigen?	
	Grundsätzlich ist es immer gut, als gemeinsame Arbeitsgrundlage auf eine Art Leitfaden zurückgreifen zu können. Dafür ist es auch nicht erforderlich, den Rechtsrahmen zu ändern. Lediglich in Sachsen wird die Aufwandsmessung auf Landesebene gesetzlich geregelt. Ich könnte mir vorstellen, dass auch die Länder die Aufwandsmessung ihrer Gesetze in ihrer Geschäftsordnung regeln, wie es der Bund in der GGO gemacht hat.	170 175
	Unterfrage 3.3 Welche Rolle können die kommunalen Spitzenverbände spielen, wenn man SKM im kommunalen Finanzausgleich anwendete?	
	Natürlich haben die kommunalen Spitzenverbände hier ihre eigenen Interessen. Fraglich ist nur, ob sie für die Einführung von SKM in den Kommunen förderlich oder hinderlich sind. Auf jeden Fall braucht man die kommunalen Spitzenverbände als eine Art Türöffner. Förderlich ist die Einbindung der kommunalen Spitzenverbände sicherlich deswegen, weil es in Ihrem eigenen Interesse liegt, belastbare Zahlen für den kommunalen Finanzausgleich zu erhalten. Hinderlich könnte sich auswirken, dass die Spitzenverbände ein Interesse daran haben, diese Zahlen zu hoch ausfallen zu lassen. Grundsätzlich haben die kommunalen Spitzenverbände nach meiner Auffassung jedoch die Pflicht, so etwas zu fördern. Sie wären für mich auch der erste Ansprechpartner, um sich auf einen grundsätzlichen Leitfaden zu verständigen. Eventuell lassen sich ja auch die Vergleichsringe der KGSt für die Suche nach solchen	180 185 190

	Kommunen nutzbar machen, die bereit sind, hier mitzuarbeiten.	
	Frage 4 Gibt es sonst noch etwas, was Sie zu einer Anwendung des SKM im kommunalen Bereich für wichtig erachten?	195
	Ich glaube, dass es in den Kommunen Vorbehalte geben wird, eine solche systematische Aufwandsmessung zu betreiben, weil sie sich dann einer Vergleichsbetrachtung aussetzen, die nicht unbedingt gewollt ist. Diese Vorbehalte gilt es abzubauen. Trotzdem müssen auch wir hier im Hause immer wieder deutlich machen, dass das SKM keine exakte statistische Methode ist, sondern eine systematische Schätzmethode. Bei allen Schwächen in der SKM-Methode haben wir auf Bundesebene damit schon viel erreicht.	200 205
Zusammenfassung	Schlussbemerkung -	

**A 3 Protokoll des AWW-Arbeitskreises 1.3 von Dr. Petra Pfisterer
Bürokratieabbau in Kommunen – methodische Ansätze
Bundesministerium für Wirtschaft, Berlin, den 6.06.2013**

Protokolltext	Zeile
Herr Wolf-Hegerbekermeier analysierte in seinem Vortrag unter welchen rechtlichen Bedingungen eine erfolgreiche Übertragung des Standardkosten-Modells auf kommunale Verwaltungen möglich ist. Er hinterfragte in einem zweiten Schritt, ob es eine generelle Methode gibt, mit der sich der Erfüllungsaufwand in kommunalen Verwaltungen messen lässt und arbeitete die Bedingungen heraus, mit denen sich das Standardkosten-Modell organisatorisch in den Prozess des kommunalen Finanzausgleichs implementieren ließe. Die Argumentationskette reiche dabei von den rechtlichen Rahmenbedingungen über die wirtschaftliche Messung bis hin zur organisatorischen Implementierung. Als argumentativen Ausgangspunkt ging Herr Wolf-Hegerbekermeier auf die Bedarfsermittlung im Zusammenhang mit dem kommunalen Finanzausgleich ein und stellte dar, dass eine Bedarfsermittlung in Kommunen rechtlich möglich und politisch geboten sei. Im Zusammenhang mit der wirtschaftlichen Aufwandsmessung ging Herr Wolf-Hegerbekermeier insbesondere auf den Erfüllungsaufwand nach § 2 NKRG ein und grenzte hiervon den Ausgabenbegriff des Art. 104a Abs. 1 und 5 GG ab. Differenziert ging er hierbei auf den Begriff der Zweckausgaben ein und argumentierte zugunsten einer Berücksichtigung der Zweckausgaben bei der Ermittlung des Erfüllungsaufwands.	1 5 10 15 20
Hinsichtlich der organisatorischen Implementierung orientierte sich der Referent am legislativen Wirkungskreis und betonte die Wichtigkeit, bereits frühzeitig im Bereich der Aufstellung bzw. der ministeriellen Entwicklungsphase eine kursorische Kostenermittlung mit Stichproben durchzuführen (Interessenermittlung § 41 GGO). Als Instrument bei Nichtberücksichtigung der Hinweise durch die Kostenermittlung sprach sich Herr Wolf-Hegerbekermeier für die Initiierung eines Güteverfahrens analog § 2 KommStEG MV aus, realisiert als Sollregelung in der GGO. In diesem Rahmen solle dann eine Kostenermittlung mit belastbarer Datenbasis erfolgen.	25 30
Für die Phase der formellen Verbändebeteiligung (§ 44 Abs. 3 GGO) stellte Herr Wolf-Hegerbekermeier darüber hinaus das Modell einer Kostenermittlung mit belastbarer Datenbasis vor, welche gleichzeitig einen Beitrag zur späteren ex-post Gesetzesevaluation leisten könne.	35
Zusammenfassend stellte Herr Wolf-Hegerbekermeier heraus, dass die Anwendung des SKM innerhalb des bestehenden Rechtsrahmens für eine Messung des kommunalen Aufwands möglich sei und dass der Erfüllungsaufwand i.S. des NKR Gesetzes auch die Zweckausgaben von Gesetzen umfasse. Unter Beteiligung der Kommunalen Spitzenverbände lasse sich das SKM methodisch in den Gesetzgebungsprozess integrieren.	40
In der anschließenden Diskussion wurden die folgenden Beiträge eingebracht:	45
	54

<p>1. Zur Validität bisher eingebrachter Daten zu Kostenbelastungen:</p> <p>Nachgefragt wurde, ob die bisher in Beteiligungsverfahren eingebrachten Angaben zu Kosten zu gering ausfallen. Falls dies von Kommunen so eingeschätzt werde, warum können Kommunen nicht reale Zahlen zu Belastungen „liefern“?</p>	55
<p>2. Zum Verhältnis Bund – Land – Kommunen</p> <p>Für den Fall, dass kommunale Kosten zu geringe Berücksichtigung erfahren wurde vorgebracht,</p> <ul style="list-style-type: none"> • dass es an dieser Stelle Aufgabe der Länder sei, im Bundesrat darauf hinzuweisen, um die Interessen der Kommunen zu vertreten. Auf die Bedeutung der Länder nach Art. 30 GG sei hinzuweisen. • Warum methodisch eine Anbindung Bund – Kommune gesucht werde, wenn doch eigentlich die Länder Ansprechpartner seien. Sollte dann nicht eine Kostenermittlung über die Länder erfolgen? 	60
<p>3. Zur Bedeutung von Volatilität für die kommunalen Finanzen</p> <p>Deutlich gemacht wurde, dass eine aufgabenbezogene, stabile Finanzierung möglicherweise auch nicht im Interesse der Kommunen sei, da von kommunaler Seite häufig auch mit für Kommunen erforderliche Volatilität argumentiert wird.</p>	65
<p>4. Zeitfenster im Gesetzgebungsverfahren, Anhörungsfristen</p> <p>Es wurde darauf hingewiesen, dass im Gesetzgebungsverfahren derzeit häufig nur sehr enge Zeitfenster bestehen, in Einzelfällen lediglich 48 Stunden. Hier fehlt die Zeit, um mit der erforderlichen Gründlichkeit valide Daten zu erheben.</p>	70
<p>5. Zur dargestellten Methodik</p> <p>Nachgefragt wurde, in welchem Umfang die Einschätzungen zu Kosten beispielsweise von Landkreis zu Landkreis transferierbar seien. Könne hier mit Pauschalierungen gearbeitet werden? Wie könne das für die Praxis handhabbar realisiert werden? Hier wurde auf die Diskussionen im Zusammenhang mit Konnexitätsverhandlungen zwischen Ländern und Kommunen verwiesen, in deren Rahmen auch mit einem „Korridor“ von Verwaltungsausgaben argumentiert werde. Wichtig sei darüber hinaus, die Bürokratiekosten auch in der Implementierungsphase selbst nochmals anzusehen. Aktuelles Beispiel der Kostenermittlung sei derzeit die Grundsteuer, wo eine Auswertung in Kommunen zur Ermittlung der Kosten unterschiedlicher Regelungsvarianten vorgenommen werde. Die Ergebnisse gingen dann in die weitere Diskussion im Gesetzgebungsverfahren ein.</p>	75
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6. Weitergehende Aspekte: Benchmarking, Nationale Prozessbibliothek	
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<p>Im Zusammenhang mit der Diskussion um Standardkosten, Verwaltungsausgaben und Konnexität stelle sich die Frage, ob nicht auch der Benchmarkingansatz integriert werden könne. Sollten die Kommunen nicht einen Anreiz erhalten, dass nicht einfach der Bedarf ermittelt wird, sondern die beste Umsetzungslösung? Auf diese Weise würden nicht einfach Kosten übergewälzt, sondern effiziente Verwaltungsprozesse vorgebracht. Angeregt wurde auch eine Orientierung an der Arbeit der Nationalen Prozessbibliothek und den Möglichkeiten, welche die Prozessdatenbank bietet, um Kosten zu minimieren und Prozesse zu optimieren.</p>	
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A4 List of SCM-projects in German public administration

No.	Institution	Project	Year
1	IfM	Cost estimation in selected business branches	2006
2	Hoffian et. al.	Gender equality in employment law	2007
3	Fischbach et. al.	Administrative costs of the new EHUG	2007
4	NRCC	Effects of ELENA to economy, citizens and public administration	2007
5	NW Consult	Selected local administration processes	2008
6	FHM	Municipalities as victims of administrative burdens	2009
7	Walkenstik	Costs of law about restaurants in Thuringia	2009
8	NRCC	Easier to household benefits	2009
9	NRCC	Easier to parents money	2009
10	FHM	Administrative costs of the EU soil protection act	2010
11	NRCC	Easier to education grants	2010
12	NRCC	Immigration process of foreign professionals	2011
13	Bertelsmann	Executive costs in public tax administration	2012

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A6 List of Jurisdiction (in temporal order)

No.	Court	Date of Judgement	File number	Source of reference
1	EuGH	24.07.2003	C-280/00	NJW 2003, p. 2515
2	ThürVerfGH	21.06.2005	VerfGH 28/03	ThürVBI 2005, p. 228
3	LVerfG MV	11.05.2006	LVerfG 1/05	LKV 2006, p. 461
4	LVerfG Bdg	22.11.2007	VfG Bdg 75/05	DVBI 2008, p. 132
5	BayVGH	28.11.2007	15 VII 05	BayVBI 2008, p. 172
6	BVerfG	20.12.2007	BvR 2433/04	DVBI 2008, p. 173
7	NdsStGH	07.03.2008	StGH 2/05	NdsVBI 2008, p. 152
8	BVerfG	27.01.2010	2 BvR 2185/04	NVwZ 2010, p. 895
9	ThürVerfGH	28.01.2010	VerfGH 52/08	ThürVBI 2010, p. 152
10	SächsVerfGH	29.01.2010	Vf. 25-VIII-09	DÖV 2010, p. 407
11	VerfGH NRW	23.03.2010	VerfGH 21/08	NVwZ-RR 2010, p. 705
12	NdsStGH	04.06.2010	StGH 1/08	NdsVBI 2010, p. 236
13	VerfGH NRW	12.10.2010a	VerfGH 12/09	DVBI 2010, p. 1561
14	LVerfG MV	30.06.2011	LVerfG 10/10	DÖV 2011, p. 778
15	VerfGH NRW	19.07.2011	VerfGH 32/08	DVBI 2011, p. 1155
16	ThürVerfGH	02.11.2011	VerfGH 13/10	ThürVBI 2012, p. 55
17	VerfGH RP	14.02.2012	VerfGH N 3/11	DVBI 2012, p. 432
18	LVerfG MV	23.02.2012	LVerfG 37/10	NVwZ-RR 2012, p. 377
19	VerfGH NRW	08.05.2012	VerfGH 2/11	DVBI 2012, p. 837
20	HessStGH	06.06.2012	P.St. 2292	NVwZ-RR 2012, p. 625
21	LVerfGH SA	09.10.2012	LVG 23/10	DVBI 2012, p. 1494
22	BVerwG	31.01.2013	8 C 1.12	NVwZ 2013, p. 1078
23	VerfGBdg	30.04.2013	VfGBdg 49/11	DVBI 2013, p. 852
24	HessStGH	21.05.2013	P.St. 2361	NVwZ 2013, p. 1151
25	VerfGH NRW	06.05.2014	VerfGH 14/11	DVBI 2014, p. 918