

# **GUIDELINES FOR THE REGULATION IMPACT ASSESSMENT (RIA)**

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## Introduction

The legislative or non-legislative solutions adopted by the State should address a maximum of economic, environmental, and social issues causing a minimum burden on business and community. Undertaking action of a legislative nature is justified when the adoption of a legal regulation helps to prevent some imperfections of the market, adopt the least costly regulation, and when the net benefits are greater than cost. Thus, an appropriate design of regulatory policy and its effective application as an analytical and programmatic instrument, such as the evaluation of regulation effects, becomes very important.

The legislative activity in Poland is rather intensive. The number of laws adopted each year more than doubled in the years 1998-2004 (respectively, from 98 to 242). The growth of the number of new regulations in the years 2001-2004 can be explained, first of all, by the necessity to implement the Community law into the Polish legal system. The number of newly-adopted laws slightly declined in 2005 but the law-production rate continues to be high: about one act on each work day. Moreover, the Polish law shows high instability which can be judged by the frequency of adopting laws which amend the previous laws (about 50-59%)<sup>1</sup>.

It is, therefore, indispensable to provide the best quality law and to improve the process of its making. A well structured law has a good influence on economic growth and it particularly supports the development of competition and enterprise.

But it often happens that new regulations generate unwanted effects apart from reaching their real goal and it may be very difficult to predict all these potential consequences without using dedicated instruments.

The experience of the United States and European Union member states clearly shows that the Regulatory Impact Assessment (RIA) is one of the best analytical instruments permitting to identify the results of the planned action and to give them a direction that ensures the best quality and efficiency of the law. Clear and consistent principles of decision making and clear criteria on how, when, and in which way this process should be carried out to ensure control over the particular stages of the law-making process, and to obtain the evaluation of the potential effects of activities undertaken by the administration.

The evaluation of the regulation impact is not a new procedure in Poland. Most of described in Guidelines elements are used by administration in every-day work but not always in systematic way. The Guidelines do not change criteria of preparing RIA and do not cause substantial changes of the system.

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<sup>1</sup> Numerical data according to Klaus H. Goetz and Radosław Zubek, *Law-making in Poland. Legislative rules and quality*, May 2005.

The obligation of preparing RIA to draft law was introduced to Ordinance No. 49 of the Council of Ministers, dated March 19, 2002 – Rules of Procedures of Council of Ministers. RIA is part of the process of developing, consulting, agreeing, and examining the proposed normative laws to be adopted by the Council of Ministers. According to §9 the proposing organ, before designing the draft normative act, evaluates the expected consequences of the regulation and the RIA results are part of the substantiation of the normative acts.

Also, the ordinance of the Chairman of the Council of Ministers, dated June 20, 2002, on the *Principles of the legislative technique* (Journal of Laws, No. 100 item 908) stresses the necessity to make an in-depth analysis of the social and economic situation before making the decision to start a legislative process.

According to Law on Council of Ministers, dated on 8 April 1996 Chancelary of President of the Council of Ministers is responsible for co-ordination and preparing assessment of social and economic impacts for proposal that may significant long-term effect.

The scope of RIA is in each case determined with respect to the proportionality principle. In each case the subject and the scale of problem should be taken into consideration. RIA should be prepared not only for Laws but also for regulations, with exception to the budget law.

In-depth RIA will be carried for only a few proposals, e.g. for proposals that may have significant impact on economy, business, competitiveness and may generate high costs or for proposals that are very important for society. It is recommended to make a quality assessment (impact/ no impact) in order to describe the scale of impacts. The decision whether the in-depth analyses are needed will be taken by particular ministry.

The minimum RIA criteria are included in §10 of Rules of Procedures of the Council of Ministers. The synthesis of RIA results should be presented, as a separate part, in a Memorandum to the draft law and should include:

- Identification of affected groups,
- Results of consultations,
- Results of impact analyses on public finance, including state budget and local authorities' budget, labour market, competitiveness, entrepreneurship, regional development,
- Indication of financing sources, especially when there may be significant costs for state budget and for local authorities' budget.

Conducting RIA one should not forget about objectivity principle. RIA should not be influenced only by one group. The rule is fulfilled through economic cost-benefits analyses.

While preparing RIA also transparency principle should be taken into account. Consultation procedure should be carried and its results should be presented. Consultations improve the transparency of the process and assure ownership of taken actions. According to article 7 point 4 of

the Law on Council of Ministers, Ministers implementing government policies are obliged to co-operate with local government, NGO's and sectoral organizations.

The experience and analysis of the RIA functioning in Poland, however, reveal a low level of practice in making comprehensive RIAs with a good analysis quantitatively indicating all the potential costs and benefits.

In order to improve the RIA efficiency guaranteeing a thorough analysis of the costs and benefits resulting from undertaken regulatory measures, it has become necessary to make the principles of the regulation impact analysis more familiar in line with the European Union recommendations and the best practices of its member-states.

The main idea is to do RIA before a draft normative act is designed. RIA is a useful instrument in making political decisions but it will never stand for political decisions themselves. RIA cannot be used as an *ex-post* justification of decision. An assessment of the regulation impact is not a substitute of a justification of any normative act either.

Considering the existing experience in using the RIA system, especially the critical opinions of the business world, the *Guidelines for the regulation impact assessment (RIA)* have been developed.

The below-presented *Guidelines* are a set of indications for making a RIA which are expected to improve the process giving it an adequately high quality and making it a real value added to the decision-making process.

The aim of the present analysis is to present in a brief and simple way, step-by-step, all the particular phases of making the regulation impact analysis. The intention is that the below-presented *Guidelines* should make it easier to clearly define the issues and identify the goals, as well as to make the decision-making process more efficient, provide better justifications to the activities undertaken by the government, and to minimise their potentially adverse consequences.

Our special intention is to draw attention to two key instruments offered by RIA: consultation, defined broadly as getting the opinions and data from stakeholders affected by a given regulation, and the assessment of the environmental impact.

The former is not a new component. The necessity to get opinions from parties interested in having an issue solved is, according to the *Principles of the legislative technique*, one of the mandatory actions preceding the decision to make a draft law. Public opinion surveys offer a whole lot of important information on the functioning of various economy sectors. Consultations, defined not only as social consultation of a proposed law, help to gather data on the potential costs and benefits, as well as to assess the risk brought about by a planned law. Consultation, therefore, helps to predict the unwanted consequences of a regulation and to increase the acceptance level of the introduced

solutions, and this results in reducing the cost of the newly-adopted laws.

Universal in their character, the *Guidelines* do not describe processes defined by the detailed public consultation regulations. But we need to keep in mind that an analysis of the provisions of laws and decrees must be done each time in order to adjust the consultation method to the existing legislation.

A new thing in the RIA system is its expansion by adding the assessment of the environmental costs and benefits. It should be stressed that this innovation actually implements the principle of sustainable development which requires the integration and equal treatment of three pillars: economic, social, and environmental.

A set of questions was designed for the area *environment*, for the other areas, to help with the impact analysis process. However, the environmental impacts of regulation have not been investigated until recently so this area was given a more comprehensive approach than the other areas. To make the environmental impact assessment easier, each question received a descriptive component containing information about the sectors and types of activities that might significantly affect various components of the environment and explaining ways in which these consequences might show up.

The *Guidelines* provide a set of basic RIA principles. They should be applied in accordance with the principle of proportionality, adequacy, and effectiveness set forth in the By-laws of the work of the Council of Ministers.

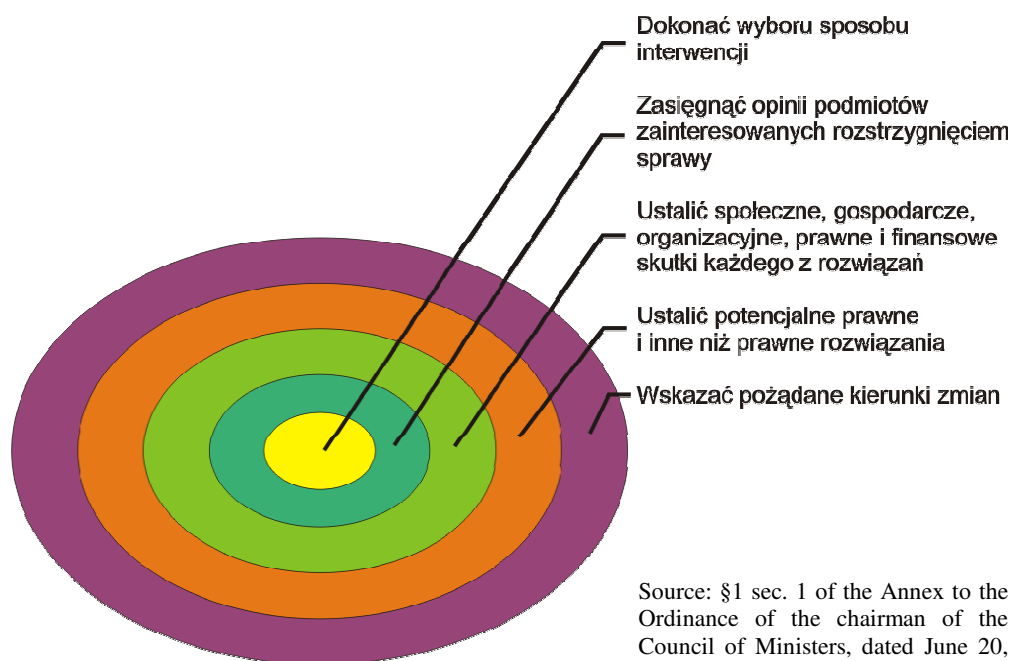
## A. Why regulation impact assessment is important?

*What is regulation impact assessment?*

The regulation impact assessment (RIA) is an instrument permitting to determine the consequences of introducing new regulations. It should be stressed that RIA is done whenever an adopted decision involves a state intervention and it is carried out before a draft law is written. It is not only an assessment of the proposed normative acts. In fact, a RIA may indicate that non-legislative measures are the best solution to a particular social and economic problem. RIA may become an important factor in designing a good-quality law as it helps to provide valid arguments supporting a planned regulation. In particular, RIA may help to avoid the production of redundant laws and reduce the bureaucratic burden on enterprises.

*Actions preceding RIA*

The following should be done before adopting a decision on making a draft law:

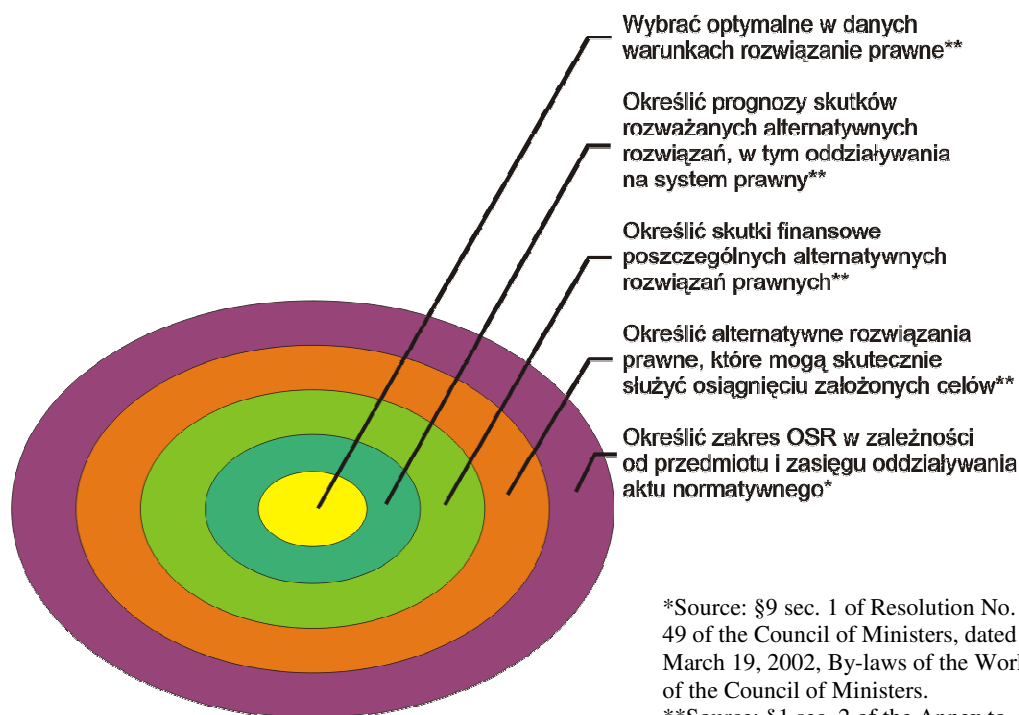


Source: §1 sec. 1 of the Annex to the Ordinance of the chairman of the Council of Ministers, dated June 20, 2002, on the *Principles of Legislative Technique*

Legenda:

1. Select intervention method
2. Get opinion of parties interested in solving the issue
3. Determine the social, economic, organisational, legal, and financial ramifications of each solution
4. Determine the potential legal and non-legal solutions
5. Indicate the desirable directions of change

Whenever a decision is made to design a draft law, the following must be done:



\*Source: §9 sec. 1 of Resolution No. 49 of the Council of Ministers, dated March 19, 2002, By-laws of the Work of the Council of Ministers.  
 \*\*Source: §1 sec. 2 of the Annex to the Ordinance of the Chariman of the Council of Ministers dated March 20, 2002, on the *Principles of Legislative Technique*

Legenda:

1. Select an optimum solution for the existing conditions
2. Define the forecast impact of the pondered alternative solutions, including the effects on the legal system
3. Define the financial consequences of each alternative legal solutions
4. Define alternative legal solutions able to effectively help to achieve the required goals
5. Define RIA scope depending on the subject and scope of the normative act's influence.

The key elements in RIA are:

**1. Problem identification**

The appropriate preparation of the problem analysis is a condition of a good regulation impact assessment and a good selection of an optimum behaviour of a public institution in relation to a given problem or process.

**2. Definition of the regulation goal**

*RIA's key elements*



An appropriate definition of the regulation goal is a condition of selecting the method for its performance verification or measurement, and of selecting the methods for reaching this purpose.

### **3. *Definition of alternative goal-achieving options***

This stage of the regulation impact assessment is dedicated to an analysis of the possibilities to achieve the goals identified during the work on the proposed regulation. RIA then identifies the available solutions and measures their potential efficiency in reaching the planned goals.

### **4. *Consultation***

Getting opinions, information, and data from parties involved in the economic life may significantly improve the quality of the planned solutions, even if the intervention is abandoned. Probing the opinions of public partners offers information on which of the alternative solutions is most preferred by the community, whenever:

- There is more than one available solution,
- It is unclear whether any measures are really needed,
- We are curious to see what is the public opinion on a given issue.

It also helps to strengthen the democratic legitimacy of administrative measures and increase co-accountability for the undertaken action.

### **5. *Option cost and benefits analysis***

RIA allows to make an unbiased comparison of various solutions from the angle of their economic efficiency. Investigating the costs and benefits resulting from the particular options makes it possible to reduce the risk of adopting such regulations which produce little effect for the price of a high financial, social, and economic burden.

### **6. *Implementation plan***

An assessment of how long a given solution will be implemented and what resources will it take is also crucial for the selection of the best available option.

### **7. *Comparing options and recommending the best one***

Having done the cost-benefit analysis for each of the possible solutions, we must compare the results of each of them. This will allow us to recommend the best solution.

A detailed description of all the stages is given further in the text.

According to the Rules of Procedure of the Council of Ministers, a synthetic presentation of RIA results is a standalone part of the justification of a planned regulation and it should contain:

- An indication of subjects affected by the planned regulation,
- The result of consultation held,
- A presentation of the assessment of the regulation impact on public finance, including the central and local budgets, the labour market, internal and external competitiveness of the

economy, including enterprise, regional development, and natural environment,

- An indication of financing sources, especially if the planned regulation involves some burden on the central and local budgets.

Chancelery of President of Council of Ministers is responsible for co-ordination of consultation process to the draft law.

## B. How to prepare a proposed regulation?

### 1. *Problem analysis*

A key component in any thorough assessment of regulation consequences is an analysis of the identified problem which makes a starting point for any further analytical work that will later be put together as comprehensive RIA justifying the selection of the right and most efficient option of reaction to the identified problem. A good preparation of the problem analysis is a condition of a correct evaluation of the regulation impacts. It is also a condition of selecting the best possible form of conduct of the public institution in relation to a given problem or process.

When presenting a problem that requires regulatory action (not necessarily new legislation) we must precisely define its nature and size but also explain the causes (i.e., identify the incentives influencing the subjects involved and the resulting reactions to them).

A correct definition of the problem equals a clear presentation of the reasons behind the proposed solution method and it allows an explanation of the causes of the problems in question: indicating the possible imperfections of the market, government policies, etc.

We must check the sources of information about the problem under study, especially whether it was identified within the administration or it follows out of external information, such as, research reports, opinions of public circles and partners, or whether it involves other external factors.

Problems are often of multi-facial nature and they affect various groups of subject in various ways. In such cases, all the problem's aspects must be carefully investigated and special attention must be paid to the intensifying or opposite interactions between those groups and the incentives affecting them.

Using the presented problem analysis as basis, we must then describe all the factors supporting the adoption of a planned regulation and justifying the intervention of public authorities in a given area.

We must consider whether the necessity to adopt a regulation results from other independent factors, such as, for example, the community law.

*Problem identification*

*Reasons for drafting and adoption of a regulation*

**Tip:** A precise description of the reasons for drafting and adoption of a regulation is a condition of measuring the size of the problem we want to solve with the proposed measures and of the assessment whether the proposed measures are adequate for the problem.

We must describe why the problem cannot be solved without the intervention carried out on the grounds of the proposed regulation and we have to say whether this regulation is going to solve an existing problem or, perhaps, a potential or hypothetical problem.

If the above-described problem is hypothetical, we must assess the probability of its occurrence if the proposed regulation is not in place and we must describe the consequences if it does occur.

When describing the consequences of introducing or not introducing a regulation, we must make the possibly broadest use of the quantitative methods.

Wherever possible, we should describe the time distribution of regulation impacts or their absence.

**Tip:** All the described reasons, particularly those related to the consequences of undertaking public intervention or refraining from one, will be used in the further stages of the regulation impact assessment, especially in the assessment of the regulation's costs and benefits and the assessment of the selected regulatory options.

## 2. *What is the purpose of the proposed regulation?*

The next stage in this process should be the definition of the required effect to be obtained through the adopted regulation (policy).

The definition must be precise and unambiguous. A right definition of the regulation purpose is the condition of determining the method for a verification or measurement of its implementation and for the selection of the goal achieving ways. The SMART<sup>2</sup>, method may be of help in defining these goals. The method is presented in the box below.

The goals should be defined in conformity with the method SMART (specific, measurable, accepted, realistic, time-dependent). A goal defined in this way should be:

- Specific: a specific and precise goal cannot be defined in a way allowing various interpretations.
- Measurable: a goal defined as a past state that can be measured and verified in terms of its implementation degree (a goal defined in this way may be presented using measures or a description combined with a quantified assessment of its implementation degree).
- Accepted: if a goal and action required to achieve it involve influencing the people's behaviours, they must be accepted, appropriately understood, and interpreted by all who are taking part in achieving this goal.
- Realistic: a challenging goal is supposed to reach beyond the existing attainments but it must, at the same time, be feasible.
- Time-dependent: the time by which the main goal and intermediate goals will be achieved must be clearly stated.

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<sup>2</sup> Source: European Commission (2005) Impact assessment guidelines, SEC (2005) 791, Brussels .

*Goals rank*

The goals may also be ranked as the principal, specific, and operating goals:<sup>3</sup>

**Principal goals:** are the goals of the whole regulation (policy) which define its final outcome. An effective policy is one that produces change in the direction defined by the principal goal. The implementation of the principal goals may be measured with similarly high-level indicators.

A principal goal of a regulation (policy) is, e.g., higher employment measured with the changes in the employment rate.

**Specific goals:** are the direct targets of a regulation (policy) which have to be reached to achieve the principal goal.

A specific goal of a regulation (policy) is, e.g., cutting the non-wage cost of labour done by the low-earning persons and it can be measured with the change in the indicators measuring the tax and social insurance premium burden on the wages paid to that group.

**Operating goal:** current targets conditioning the implementation of the specific goals. These usually concern issues under the direct control of subjects implementing a given regulation (policy).

An operating goal is, e.g., increasing a tax-deductible amount and it will be measured by the changes in this particular amount.

*Goal quantification*

We must find the most efficient method to measure the result to be obtained by the new regulation. Here, descriptive qualitative measures should be avoided. Goal implementation measures are the basic methods for the assessment of the efficiency of the proposed regulations. They allow us to check whether and to what extent, the expected goals were actually achieved. Checking to what extent the goals were achieved is indispensable for the next stage of the cost-benefit assessment. The more precise our yardsticks, the greater our ability to measure the regulation impacts.

### 3. *What is the context of the proposed regulation?*

Having done the analysis of the surrounding situation or context of the planned regulation, as well as identification of the social, economic, or environmental problem or process, we go to the next stage of the assessment, that is, the analysis of the existing regulations (policies) related to the issue to be regulated. If such regulations (policies) are in place, we should do the following:

- Indicate parties responsible for the implementation or carrying out the regulations (policies);
- Evaluate the efficiency of the implementation of the existing regulations (policies) and their performance;
- Describe the expected influence of the proposed new regulations on the existing regulations (policies).

<sup>3</sup> Source: definitions—European Commission (2005) Impact assessment guidelines, SEC (2005) 791, Brussels; examples—proprietary work

If it is impossible to indicate any existing regulations (policies) that pertain to the given problem, we should also state this in the final report.

# C. What are the methods for reaching the regulation goals and how to evaluate them?

## 4. How can the regulation’s goals be achieved?

The present stage of the regulation impact assessment deals with the analysis of the possibilities to reach the goals identified at the stage of preparing the proposed regulation. An intervention of public authorities into social or economic processes or the attempt to solve some problems may take various forms. Each form has its advantages and disadvantages translating into their effectiveness and costs. When examining the methods for reaching the regulation’s goal, we need to investigate various solutions leading to the adopted goal. Next, these solutions should be judged from the angle of the risks they involve, their acceptance level, and how easy it is to implement, as well as from the angle of their undesirable side-effects.

Regulatory instruments alternative to legislation:

Alternatives

<p><b>Refraining from regulation</b>—option zero, keeping the <i>status quo</i> unchanged.</p> <p><b>Self-regulation</b>—allowing businesses, public partners, organisations, associations, or non-government organisations to adopt, between themselves, their own policies, especially codes of practice or sectoral agreements.</p> <p><b>Autoregulation</b>—concerns the broad range of behaviours, joint principles and rules, codes of conduct and voluntary agreements defined by business units, public partners, non-government organisations, and any other organised groups, in order to provide basis for regulation, organisation of their activity, autoregulation does not imply a legislative act.</p> <p><b>Co-regulation</b>—a mechanism used by the legislative act to delegate reaching the goals defined by the law-maker to competent parties in a given area (such as, enterprises, public partners, associations or non-government organisations). In the co-regulation process, the law-making authority determines the main aspects of a proposed legislation: its goals, mechanisms, implementation period, implementation controls, and potential sanctions. It also defines to which extent the definition and implementation methods employed for the proposed solutions are related to the decision of the interested parties (this will depend on their experience, among other things). The implementation of the goals defined by the law-maker is done using the means specified by the involved parties whose right to take part in implementing a given legislative issue is recognised by the law-maker.</p> <p><b>Co-regulation</b>—an implementation providing for the initial adoption of any legislation which, as a result, must lead to the involvement of the public actor (which is not necessary in autoregulation). There are two co-regulation methods: from top to bottom, and from bottom to top.</p> <ul style="list-style-type: none"> <li>- <b>Information campaign</b></li> <li>- <b>Financial incentives</b></li> <li>- <b>Fees</b></li> <li>- <b>Mediation</b></li> </ul> <p>- <b>Quality marks</b></p>
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- Recommendations
- Certificates and licences
- Codes of good practice
- Setting standards
- Other

*Selection of  
available options*

The purpose of the regulation was analysed and described at the problem analysis stage. This analysis should show the available ways of reaching the goal. It is recommended to consider at least the following three solution options:

- Giving up any regulations (policies) in a given area, that is, the public authorities refrain from any action in that area, if that area has not been regulated;
- Keeping the old regulations (policies) in place, that is, the public authorities refrain from changing the current way of its functioning in the given area;
- Introducing new regulations (policies) in a given area, to change, replace, or supplement the existing policies and regulations, that is, the public authorities change the intervention manner used in that area, including the possibility of using measures other than legislation to solve the identified problem and reach the selected goal.

It must be investigated whether all the analysed actions will be subject to consultation to get data and opinions from partners involved. If the size and scope of the problem do not require consultation, the decision to skip it must be justified.

In the case of regulations resulting from the implementation of community directives, we must carefully examine the scope of flexibility in selecting the solutions and then study the available solutions. We must also prevent situations where the proposed laws lead to regulation which is stricter than the respective directive requires by, for instance, putting extra administrative burdens on the potential addressees of the regulation involved, unless such a solution is supported by the consultation outcome, the cost analysis, and the regulation cost.

### ***5. What are the weak and strong sides of the particular solutions?***

The assessment of the weak and strong sides of the particular solutions should cover the risk, acceptance level, the ease of implementation and carrying out, and the analysis of the potential (unwanted) consequences of a regulation.

*Risk*

When assessing the regulation risk, we must describe the nature of the risk and the probability of its occurrence. We must not only specify the extra cost but also the possibility of other factors to come in the scene to make difficult or completely prevent reaching the adopted objectives. We must also weigh the risks involved in all the action options



mentioned in section 4. It is important to present the consequences of such risk in the context of threats to the implementation of a policy in question. Experience gained in carrying out similar activities in the past may help to estimate the risk.

**Tip:** Risk is the consequences brought about by the particular solutions which may occur but we want to avoid their occurrence. Risk defined in this way may also consist in the non-occurrence of the expected desirable effects of regulation. A correct estimation of the risk allows not only to evaluate the planned solution but also to take preventive measures permitting to avoid the adverse consequences of regulation, e.g., to develop an early warning system as part of the regulation monitoring system.<sup>4</sup>

Risk analysis is the starting point for work on modifications to the proposal intended to minimize the probability of the occurrence of the unwanted effects.

*Unwanted consequences  
of regulation*

The analysis of all the available solutions must include the reconnaissance of the potential (though unwanted) consequences. This may turn out to be a difficult job but early anticipation of such side-effects allows to reduce problems resulting from the regulation's imperfection down to a minimum and it makes reaching its goal easier. When performing this analysis we must remember that the addressees of the planned regulation will not always behave as the regulation's provisions would require. Here, consultation and talks with various experts, economists, sociologists, and researchers may be very helpful. These will help to answer the question whether the expected results are the only consequences of the new regulation.

If some unwanted side-effects of a regulation have been identified, we must separate the desirable effects from undesirable. Then, if further analysis suggests that the regulation should be adopted despite its causing also adverse consequences, the choice must be justified. In a case like this, we must also consider modification of the proposed regulation with the view to minimizing its negative effects.

**Example:** the Family Allowance Act in force since 1.05.2004 introduced an unequal access to two important child benefits available for regular and single-parent families. The solution's effect unwanted by the law-maker was a very high increase of divorces. According to the Justice Ministry, this increase was 123 per cent in 2004 against the 2003 figure and the number of separation cases grew four times. These figures were presented by the Ministry in reply to the Sejm (Parliament) speaker's letter concerning the wave of divorce cases opened at Polish courts. Then, the Constitutional Tribunal found these regulations unconstitutional. The Tribunal pointed out that the "essence of the incriminated regulations encouraged pretending the deterioration of marital bonds between the spouses in order to get financial support," by which they were leading to de-legalisation of marriages.

*Ease of implementing,  
carring out, acceptance*

An important component at the stage of selecting the best available action options is the introduction and application of new regulations. The potential acceptance level has to be considered too. At this stage,

<sup>4</sup> Risk management as a corporate governance requirement, Polish Corporate Governance Forum: [http://www.pfcg.org.pl/article/4654\\_Zarzadzanie\\_ryzykiem\\_jako\\_wymog\\_corporate\\_governance.htm](http://www.pfcg.org.pl/article/4654_Zarzadzanie_ryzykiem_jako_wymog_corporate_governance.htm)

we must make a distinction between more and less accepted solutions, paying special attention to those whose acceptance is relatively high.

A system of consultation with social partners is an important element of studying the acceptance level. Good consultation with public partners allows us to make a thorough assessment of the acceptance of the proposed regulation. (More on the regulation consulting methods in Section D).

## D. How to handle consultation on new regulations?

### 6. *What is the purpose of consultation?*

Consultation is an indispensable part of regulation impact assessment. It may not only be an information source about the anticipated costs and benefits of a regulation, but also a source of opinions on the possible improvement in the planned regulations. Participants in the consultation should include not only the traditional parties to public dialogue (such as, trade unions and employers) but all the stakeholders to whom the planned regulation is addressed and subjects whose interests and rights are affected by the regulation, that is, all those who by virtue of the law act in defence of certain group interests.

In particular, consultation ensures:

- Gathering valuable information about the subjects potentially affected by the regulation (e.g., their number, size, market share),
- Better public information about our plans,
- Better understanding of the problem perception by various groups of interested parties,
- Precise definition of priorities,
- Quick information about emerging problems before they grow to a large scale,
- Increasing the acceptance level of the introduced solutions,
- Preparing public partners for an efficient implementation of the regulation and for taking co-responsibility for them.

The aim of consultation is to reach the possibly broadest audience and become familiar with their opinions to be able to better improve the quality of the planned solutions, even if it leads to dropping the intervention.

Consultation is more than access to information and distribution of the document to a number of selected partners. Consultation is not negotiation either—the final decision remains in the hands of public administration.

Consultation should be held at the possibly earliest stage of the regulation impact assessment. It is advisable to hold them during the work on the problem analysis and identification of the action objectives. The consultation process should also go on at the further stages of the assessment of regulation consequences. RIA in this process allows to structure the dialogue with the interested parties. This dialogue caters information required for the completion of further RIA phases.

Before starting the consultations, we must compile a list of goals to be achieved. When making this list, we should take into consideration the

*Role of  
consultation*

following examples of consultation targets: finding new solutions (brain storm), gathering data on the selected issues, verification of the proposed hypotheses, explanation of selected issues to public opinion, winning or increasing the acceptance and support for the new regulations among the community or the interested circles.

**Tip:** Answering the question about the purpose of consultation allows not only to complete the list of issues for discussion. It also helps to establish which subjects should take part in the consultation.

## 7. *How to handle consultation?*

### *Planning consultation*

It is best to plan consultation at the very beginning of the assessment of regulation consequences when we are just about to select the method for reaching the planned goal. Whenever possible, we should make our best to carry on consultation during the rest of the whole RIA process.

Consultation should be made a part of routine work, not an occasional activity. And we must keep in mind that public consultation is regulated by respective laws. The most important acts in this area are:

- the September 4, 1997, Government Administration Act (Journal of Laws No. 159 item 1548 integrated text);
- the August 8, 1996, Council of Ministers Act (Journal of Laws No. 24 item 199 integrated text);
- the May 23, 1991, Trade Unions Act (Journal of Laws No. 79 item 854, integrated text);
- the May 23, 1991, Employers' Organisations Act (Journal of Laws No. 55 item 235 plus subsequent amendments);
- the July 6, 2001, Act on the Tri-partite Committee for the Social and Economic Matters and on Provincial Public Dialogue Committees (Journal of Laws No. 100, item 1080, plus subsequent amendments);
- the July 7, 2005, Lobbying Act (Journal of Laws No. 169 item 1414).

We should stress here that in its broader sense, consultation of a given regulation should take place not only because of the legal act's imperative. Apart from the traditionally interpreted public consultation we should draw our attention also to opinion surveys which may be a major source of information about the consequences of legal regulations and on their perception among the "regulation consumers."

Whenever necessary, consultation should be divided into stages devoted to discussion of various issues. The structure of consultation should be match the needs of these stages in which the regulation impacts are assessed. This approach ensures control over the discussed matters and taking the maximum benefit of consultation for the RIA.

**Tip:** Preliminary consultation may focus on the perception of a given problem among various groups of interested parties. The next stage may consist in getting opinions on the scope of the possible options. The last stage may focus on obtaining opinions about the preferred option.

If consultation is split into stages, we will have to clearly define the objective of each stage. We should avoid consulting one issue twice or consulting the results of previous consultation.

**Tips:**  
Do not plan consultation for days off and holiday times.  
Obtaining too much information from external sources may increase negligence among the respondents (*consultation fatigue*)  
Consultation should cover all the public partners who are really affected by the issue. If this is impossible, we should not confine ourselves to those public partners who are always available.  
A consulted document should be clear, brief, and broadly available. If this is impossible, consider abstracts or summaries structured as general bullet points.

*Consultation handling*

The selection of a method for handling consultation defined as public opinion study depends on consultation participants, their number, and the available time and resources.

The public opinion polling techniques that can be used to assess regulation impact should comprise (in the order of importance, comprehensiveness, and cost):

- focus groups
- panel discussions
- partly structured interviews
- questionnaire surveys
- notes and comments.

The application of the above-mentioned qualitative opinion polling techniques in assessing the regulation impact allows getting information for the evaluation and for an in-depth analysis of needs of the studied public group, identification and definition of the preliminary terms of the regulation, and identification and quantification of the costs and benefits accompanying the potential regulation.

Carefully designed questionnaires or a well organised work of expert teams are able to provide more precise and easy-to-use data than large-scale general consultation. But the latter are more efficient in informing all the parties involved about the planned regulations.

A precise identification of consultation participants (how many parties are really interested in the given issue) and definition of what is expected of the consultation participants are very important for the consultation outcome.

*Consultation handling standards*

The European Commission<sup>5</sup> developed a set of consultation minimum standards:

- ensuring that each consultation participant is properly informed about the proposed regulation,
- covering all the target groups with consultation,
- perform consultation using mass communication media appropriate for consultation and meeting the participants' expectations,
- ensuring that there is enough time to take part in consultation,
- confirming the reception of feedbacks,
- publication of a report presenting the consultation results and ways in which they will be used in making the regulation impact assessment.

**Tip:** If one of the consultation groups are businessmen, most of them will usually run small and medium-sized enterprises (SME) which often have no opportunity to take an active part in consultation. Knowing that, we should reach as many as possible of this type businessmen.

Like in the previous stages of the work, it is worth to use the help of SME Ombudsman.

## 8. *How to process and use consultation results?*

During the course of consultation and, especially during the analysis of its results, we must verify and evaluate the obtained information. Relying only on opinions from one group which may have dominated the broad public consultation or was the most efficient in delivering professional expert knowledge may potentially distort the consultation result.

*Reporting*

Consultations are closely related to the regulation impact assessment process. If they are divided into stages matching the RIA stages, it is important to process the results and make a report at each consultation stage. Special attention must be paid to changes which are proposed by the planned regulation. It is advisable to publish the summary, among other places, on a Web site of the body performing the consultation.

A consultation recap document must include information about the way of using the data, opinions, and comments obtained through consultation.

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<sup>5</sup> Source: European Commission (2005) Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, COM(2002) 704 final, Brussels

## E. Are not regulation costs higher than benefits?

*RIA's key component*

The estimation of costs and benefits resulting from a regulation is the key component of the regulation impact assessment. We must identify the subjects and areas affected by the planned regulation in a positive and negative way. The next step is to identify the costs and benefits generated by the regulation and to make the required measurements.

Consultations are a very important but not the only information source indispensable in a successful implementation of this RIA stage. They allow to identify groups that will benefit (or will bear costs) from the new regulation, and to get information required in assessing the regulation costs and benefits.

### **General tips**

- Use advice of economists/experts when estimating the costs and benefits.
- The scope of information and analysis included in the cost/benefit estimation should correspond with the potential regulation effects but the analysis must always be objective and complete.
- The analysis guidelines should be clearly worded and tested. We must always present the source and the method of analysis and check whether other sources and research provide similar findings.
- Study the costs and benefits of a regulation in the context of the situation before the planned regulation is introduced.
- The cost/benefit analysis result should be presented in numbers. When this is impossible, provide an in-depth and unbiased qualitative evaluation.

### **Where to find information?**

- Our own knowledge and experience combined with the knowledge and experience of our colleagues at work.
- Information resource gathered and generated during the statutory activities of other public administration bodies.
- Professional literature, periodicals, Internet portals.
- Research workers and consultants working on problems related to the proposed regulation.
- Publications, Web sites, and consultations of the Main Statistical Office's (GUS's) experts should statistical data be needed (<http://www.stat.gov.pl>).

## 9. *Who/what and how will be affected by the new regulation?*

*Subjects*

A thorough analysis of all the regulation options, including the identification of subjects affected by its consequences, is extremely important. The options will not only differ by their method of reaching the goal but also by their different impact on various subjects or their groups.

**Tip:** Identification of subjects covered by the regulation is important for the estimation of regulation costs and benefits because this estimation can be done as part of the consultation with a substantial contribution of these subjects.

We need to define the subjects who will benefit from the regulation and those going to bare costs, whether directly or indirectly.

To prevent overlooking a subject, it is best to use their different classifications. We may have a classification by institutional economy sectors, as used by the GUS statistical authority, we may consider the regulation's impact on business, consumers, NGOs, and individuals belonging to various public groups using different classification criteria (income, age, sex, health, region, occupation) or the impact on the public sector subjects.

**Tip:** One of the classifications used to categorize subjects involved in economic processes is their division into GUS institutional sectors. These sectors are: enterprises, financial and insurance institutions, central and local government bodies, households, non-commercial institutions, and foreign subjects.

When analysing the sector of economic subjects, we investigate the effect of the regulation using the company size parameter as defined in the July 2, 2004 Business Freedom Act:

- **A micro-enterprise** is one that during at least one of the two recent business years: employed less than the (annual) average of 10 workers and generated an annual net turnover on selling goods, products, services, and financial operations not greater than the PLN equivalent of EUR2 million, or the total assets in its balance sheet at the end of one of these years was not higher than the PLN equivalent of EUR2 million.
- **A small enterprise** is one that during at least one of the two recent business years: employed less than the (annual) average of 50 workers and generated an annual net turnover on selling goods, products, services, and financial operations not greater than the PLN equivalent of EUR10 million or the total assets in its balance sheet at the end of one of these years were not higher than the PLN equivalent of EUR10 million.
- **A medium-sized enterprise** is one that during at least one of the two recent business years: employed less than the (annual) average of 250 workers and generated an annual net turnover on selling goods, products, services, and financial operations not greater than the PLN equivalent of EUR50 million or the total assets in its balance sheet at the end of one of these years were not higher than the PLN equivalent of EUR43 million.

It is important to study the distribution effect of a regulation with its uneven distribution of the costs and benefits to find out whether this effect is related to sex, age, occupation, education, geographical localisation, etc. We also need to investigate the compliance of the cost and benefits distribution with the goal of the proposed regulation. As regards the financial costs and benefits, we must remember that these indicators are weighted as the inverse of the income of those affected by the regulation. The nominal low benefits or costs of a regulation may be relatively high for those making lower income.

The analysis of the subjects and the impact exerted on them by regulation also comprises the identification of differences between various regulatory solutions, among them checking whether a change of option will modify the distribution of costs and benefits within one group and between groups.

Special attention should be paid to the analysis of costs and benefits for the enterprises, especially the small and medium-sized ones. If the



analysis reveals that a planned regulation will have a significant impact on enterprises, especially those small and medium-sized, we must then get the opinion from the Polish Agency for Enterprise Development.

Most regulations have stronger impact on SME than on large corporations, even it they seem to give them equal treatment. This is because SME are not so good in adjusting to change (less human and financial resources).

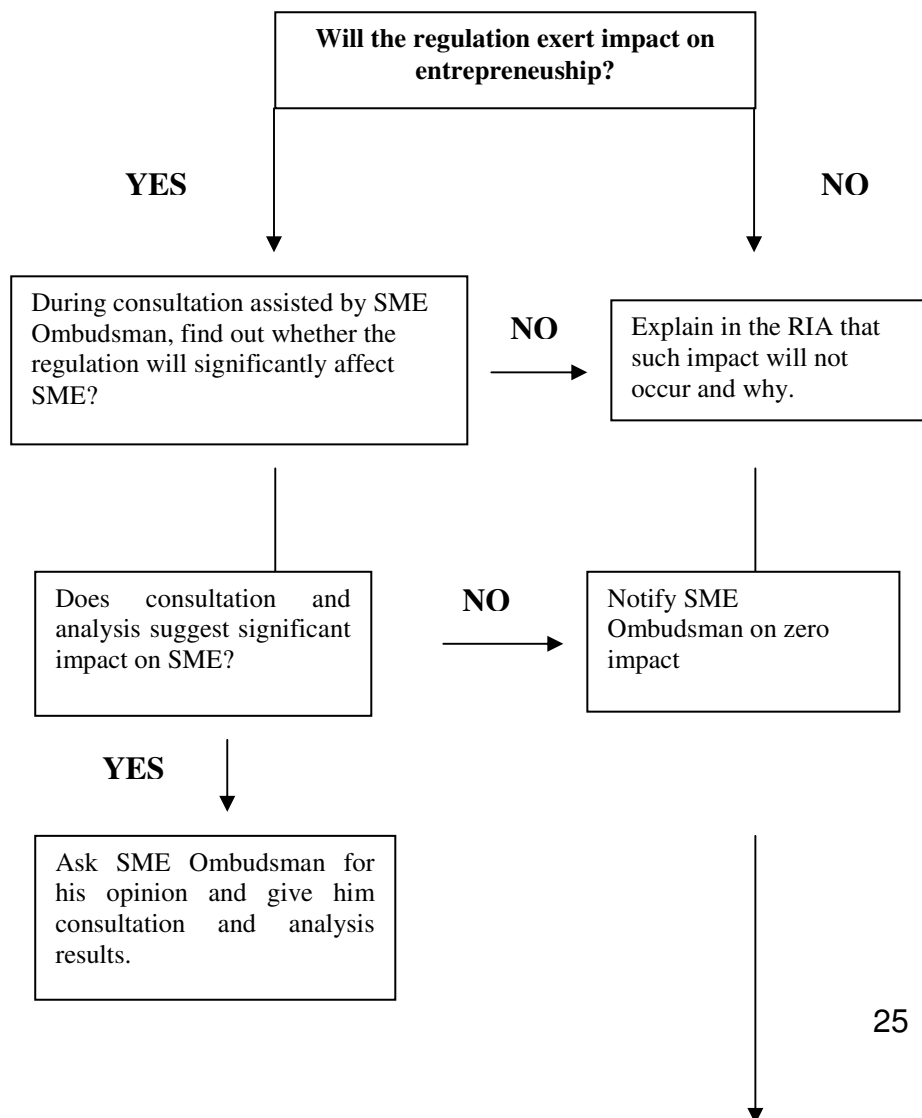
Most Polish companies are in the category of micro-enterprise employing up to 9 workers (95% of all the companies in Poland). The share of small business (10-49 workers) reaches 4% and medium-sized enterprises (50-249 employees)—about 0.8%. Large companies (250 and over employees) make only 0.1%.

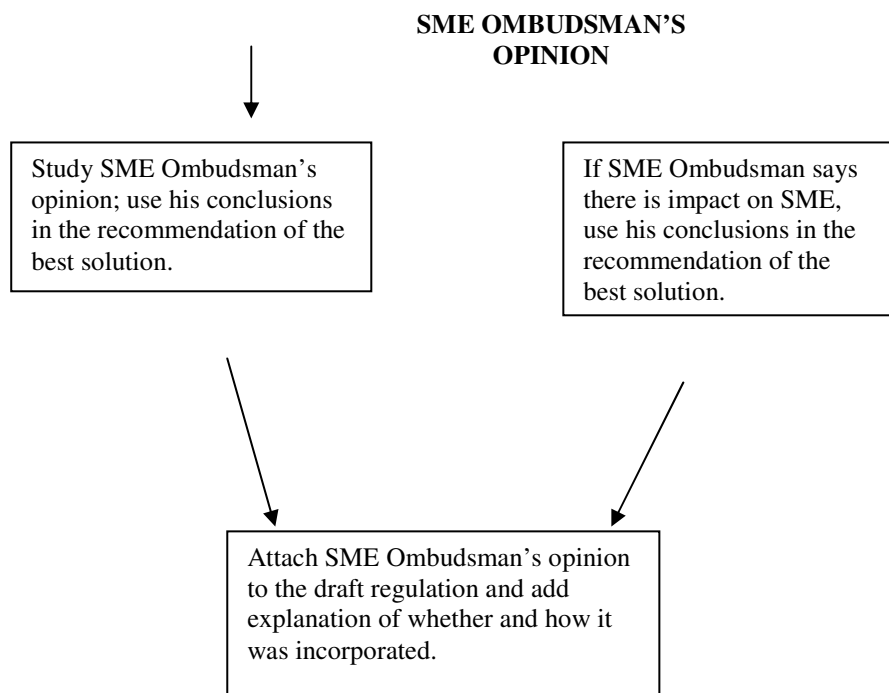
The identification of companies that may be affected by a planned regulation can be done using the below-presented procedure—the most important one for the proposed legislative initiatives.

Here, we ascertain whether the regulation will have an effect on:

- All the enterprises together,
- Individual sectors or sub-sectors (industry, trade, services, transport),
- Enterprises of specified size,
- Enterprises involved in foreign trade or operating on the domestic market.

*Test for the regulation's impact on SME*





*Areas*

Estimating the regulation consequences we must remember the minimum scope for which the impact analysis is done. According to the Rules of Procedures of the Council of Ministers, the mandatory areas subject to the assessment comprise: (1) the public finance sector, including the state budget and budgets of local government bodies, (2) the labour market, (3) competitiveness of the economy and entrepreneurship, in this, the functioning of enterprises, (4) the regional situation and development, and (5) the environment. This list of areas is not closed but the Rules of Procedures just mention these as the particularly important ones from the viewpoint of government policy shaping.

Identifying the regulation impact on various areas one should remember that in the case of the public finance sector's incomes and expenditures we must take into account not only their direct incomes and spending, but also the financial and material consequences involved in the implementation of the new regulations which burden the public sector.

An assessment of the regulation effects on the labour market includes its impact on the process of creating new jobs, unemployment, labour productivity growth, and the quality and mobility of labour force.

Because of diverse and often broad definitions of competitiveness and entrepreneurship the analysis of impact in this area comprises many factors, e.g. the effects of regulation on the enterprises' overhead costs, competition level on the markets, companies' ability to strengthen their competitive advantage (based on human and material capital, technologies, and organisational solutions) to the ability of flexible and

low-cost adjustment to the evolving market conditions, to the efficiency of the functioning of product markets, and to the labour markets.

A description of the impact on regions should include its consequences on the regional living standards and development, especially on the restructuring, its outcome and side-effects in regions suffering structural problems, and also the introduction of solutions prescribed by the European regional assistance programmes.

The assessment of the effect of administrative cost, defined as in the standard cost model, and the assessment of the impact on the environment, are presented in detail in the further sections of this document.

The list given below presents questions that help to make an assessment of the particular areas. The list does not contain all the possible questions and it is not final and should be only used as a guideline by persons doing the RIA. These questions also help to check whether all the potential consequences were addressed in the RIA. Persons carrying out the RIA must also cover those types of impact which are not mandatory or were not included in the lists given in the tables but can still be important for that RIA (e.g., the assessment of a macro-economic impact or the impact on trade as presented in the table).

The questions in the table should not be considered as “yes/no” questions. Answering on question is a first step to assess whether there is any impact. If analysed option has an impact on one of the areas, the scale and character (negative or positive)s of the impact should be estimated. When the results of qualitative analyses indicates thea the impact is significant the in depth analyses should be conducted.

### Assessment of impact on public finance

Impact on:	Key questions
Public finance	<p>What impact is exerted by the given option on the level of public expenditures, in terms of the central budget and local government budgets, direct or long-term expenditures, and including the multiplier effects?</p> <p>Will the new regulation reduce/increase the public sector's functioning cost?</p> <p>Will the proposed option reduce the public sector's efficiency by affecting labour productivity growth in the sector, and if it does, how will this happen?</p> <p>Will the proposed options increase the level of administrative control over public money management and will they change the adherence to the principles of openness and transparency of public finance?</p> <p>Will the proposed regulations affect local government's income and will they allow them to efficiently manage the financial sources at their disposal, and if they do, how will this happen?</p> <p>How will the proposed option guarantee the possibility to evaluate the efficiency of spending public funds?</p> <p>What financial sources would the option use, if selected?</p>

### Assessment of impact on labour market

Impact on:	Key questions
Employment and labour markets	<p>What effects the option exerts on the labour market?</p> <p>What effect the option exerts on enhancing or inhibiting the creation of new (permanent) jobs?</p> <p>Can the option lead to a loss of jobs in a short/long time perspective?</p> <p>Has the option any specific negative or positive (in numbers) consequences on particular occupations, professional groups, or the self-employed persons? What are these consequences?</p> <p>What will the option's effect be on inter-sectoral labour market movements (e.g., creating new jobs in the service sector, at the expense of farming jobs)?</p> <p>What effect can the option have on the labour market's efficiency, especially the efficiency of selected occupational groups of workers?</p> <p>Will the option increase/reduce the flexibility of enterprises, their capability of internal restructuring and improving their labour productivity?</p> <p>How will the labour force's mobility change and, consequently, how will the labour supply to the economy be changed in terms of its geography and quality?</p> <p>How will the option change the job seeking determination and professional activity of the jobless? Will it persuade them to leave the grey area and take legal employment?</p>

<p>Standards and rights related to jobs quality</p>	<p>What effect will the option exert on the access of the workers or job seekers to active labour market instruments, especially training and retraining?          How will it influence the existing labour safety and hygiene standards and on the protection of youth workers?          How will it influence the existing rights and duties of employers or employees?          How can it change the standards of the labour law?          What effect (supportive or inhibiting) will it exert on restructuring, adjusting to the ongoing changes, and introducing technological innovation at workplace?          Will the option affect only the employees or also those who are trying to get a job? Will it be easier for them to get a job?          Will the benefits and costs associated with the option be evenly distributed among various occupational groups?          Will the employees organised in trade unions benefit more than others? Are some other occupational groups going to pay a greater cost?          If the distribution of benefits and costs is not even, is this at the expense of other employees? If it is, how is this happening and how will it affect the implementation of policy goals?          Will the option improve or reduce the workers' skills?</p>
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**Assessment of impact on competitiveness and entrepreneurship**

<b>Impact on:</b>	<b>Key questions</b>
Competitiveness, entrepreneurship, trade, and investment flow, also competition on the Polish market.	<p>How does the option affect the competitive position of Polish companies against their rivals in other countries?</p> <p>Does the option generate trans-border investment flows (including business transfer)? How?</p> <p>How does the option increase the flexibility of the goods and services market and, by this, the competitive pressure?</p> <p>Will the option improve the competitive power of enterprises?</p> <p>How does the option influence the competition policy and functioning of the domestic market? Does it encourage anti-competition behaviours or the emergence of monopolies or other market disturbing factors? How does the option affect the market structure, will it change the number or size of the enterprises?</p> <p>If the option has an impact on the functioning of some market, is any company holding more than 10-20% share in this market? Is there a situation on such market that three largest companies hold more than a 50% share? Does the option affect some enterprises more than others in terms of the cost or benefits it generates?</p> <p>How will the option change the enterprises' ability to adjust to the new market challenges, especially how will it affect the SME?</p> <p>How will the option change the cost of access to new funds?</p> <p>Will the proposed option improve the business environment?</p> <p>How will the option change the price-making freedom, quality, product types, or production localisation?</p>
Operating costs and business process	<p>What financial costs of adjusting (e.g., licence and permit fees) compliance, or general and sectoral operating costs does the option put on enterprises?</p> <p>How will the option change the cost of starting new business? Will these changes also affect the existing companies?</p> <p>What effect will the option have on the overhead costs of the newly-established and existing companies?</p> <p>How will the option affect the new companies' cost of entering the market or access to the main production means (raw-materials, machines, labour, power supply, etc.)?</p> <p>How will the option affect access to financing and the investment cycle?</p> <p>How will it affect introduction and presence of products on the market?</p> <p>Are some products or companies given a different treatment than others in comparable situations? Specify.</p>
Administrative burden on enterprises (defined as reporting obligations under the standard cost	<p>Will the option put new or additional administrative burden on business or will it increase the complexity of administrative procedures?</p> <p>What administrative burdens will be created by the regulatory option?</p>

model)	<p>Will the option introduce new procedures?                  Can the burdens affect some group of companies (SME, specific sectors)?</p>
Innovation and research	<p>Does the option inspire research and development?                  Does it help to introduce and spread new methods, production technologies and products?                  How does it affect the intellectual property rights (patents, trade marks, copyrights, other know-how rights)?                  How does the option affect university and industrial research work?                  How does it support higher resource efficiency?                  How will the option affect the development and implementation of new technologies, ideas, and organisational solutions?</p>

**Assessment of impact on regional development**

Particular regions or sectors	<p>How does the option affect different sectors?                  Will the option have any specific effect on some regions, e.g., on their economic and social development? How?                  Will the geographical distribution of the option's benefits and costs be homogenous?</p> <div data-bbox="683 727 2007 855" style="border: 1px solid black; padding: 5px;"> <p>The concept of geographical distribution is more than just a simple localisation of the regulation-affected area on a map. It also comprises such relations as: rural-urban areas, peripheral areas-central areas, under-developed areas-dynamically developing areas, e.g., the distribution of costs and benefits resulting from a new regulation addressed to urban areas may be even at a region's scale but it does not tell us anything about its effect on the adjacent rural areas.</p> </div> <p>Will some areas benefit from introducing this or another option? Will they lose more than others, e.g., when the economy of areas, local labour markets is restructured?                  Will the option make the less-developed areas develop faster and catch up with those better developed or, perhaps, they will lose their ability to catch up with those better developed?</p>
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**Assessment of macro-economic impact and impact on trade policy**

<p>Macro-economic environment Trade policy</p>	<p>What are the option’s general consequences for the economic and employment growth? How will the option improve the investment conditions and the correct operation of the markets? Does the option have a direct or indirect inflation consequences? Will inflation go up or down? How much? What will be the macro-economic consequences of the proposed policy options, particularly their effects on foreign trade within the European Union (and beyond it) and on foreign investment? How will the Polish trade policy option affect its international obligation, including the WTO obligations?</p>
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**Assessment of impact on social aspects**

<p>Social inclusion and protection of specific groups</p>	<p>How will it affect access to the labour market, getting in/out of this market? How will it affect a specific group of people, companies, towns/villages, more exposed persons, persons most threatened with poverty?</p>
<p>Personal data</p>	<p>Does the regulation breach the adopted constitutional and statutory norms concerning the personal freedom, including the protection of personal data?</p>
<p>Public health, labour safety and hygiene</p>	<p>How will the option affect the health and safety of individuals/population, including their life expectancy, mortality and incidence rates, influence on the social and economic environment (e.g., environment at workplace, income, education, occupation, dietary habits)? How will the option affect the number of work accidents and the resulting injuries? Will the option increase the health hazards posed by harmful substances in the environment? How, and to what extent? How will the option affect public health by changing the level of noise and quality of air, water, and soil in populated areas? How can the option affect public health by changing the energy consumption and by storing the waste? What is the option’s effect on health factors related to lifestyle, such as, tobacco smoking, alcohol, physical exercise? Are there any special effects hitting specific groups (defined by their age, sex, disability, social group, mobility, region, etc.)? What are they?</p>



<p>Access and effect on welfare, health protection, and education systems</p>	<p>Does the option affect the quality, scope, and availability of services provided in the general public interest?                  Will the option affect the trans-border service rendering and co-operation in the near-border strips?                  Does the option affect financing/organisation/access to welfare systems, health protection, and education (in this, occupational training)?                  Does the option influence the general access to education of all levels?</p>
<p>Consumers and households</p>	<p>What is the option's effect on prices paid by consumers for information and consumer protection?                  Does the option have any major consequences on the financial condition of individuals/households in a direct, indirect way and in a longer time perspective? What are they?                  What is the option's effect on the economic protection of families and children?</p>

*Benefits—preliminary notes*

## **10. How to analyse regulation's benefits and costs?**

Benefits resulting from regulation are the main reason of its adoption and, when trying to identify them, we must remember the goal of the regulation or, in other words, the processes to be improved by the regulation or problems it is going to solve. During the analysis of benefits, we must:

- Establish how the proposed regulation will lead to achieving the expected goals,
- Indicate the source of benefits associated with the new regulation,
- Indicate the direct and indirect benefits associated with the proposed regulation,
- Having identified the direct and indirect benefits, estimate their value.

**Tip:** Yardsticks adequate for the description of the issue should be used. If the regulation impact on employment is done, we must state the number of jobs to be created as a result of the new regulation. However, if the regulation is about pollution levels, we must state the expected reduction of contaminants emission levels.

*Costs—preliminary notes*

The costs of regulation comprise all the outlays involved in having the new regulation or policy implemented and paid by individuals or organisations covered by the new regulation. When analysing the costs, we must keep in mind the regulation's goal and all the activities to be carried out by the public and private parties in connection with the new regulation. And we must consider the value of the possibilities that might be lost as a result of the new regulation or policy.

First, the cost analysis and measurement should define the way in which the proposed regulation will lead to reaching the adopted goals. This requires identification of activities to be carried out by parties covered by the regulation.

Subjects implementing the new regulations will have to get familiar with them and this increases training expenditures or even hiring new staff. It may also require buying new equipment, or external consultancy services. Public administration may also need to invest in training and equipment when implementing and carrying out new regulations.

We must never forget about indirect costs which may take various forms, among them, a limited selection on the market or lower innovativeness.

And we must always try to present costs in numbers, e.g., state the number of man/hours required to train the workers or the costs of equipment to be purchased, etc.

If specific numbers are not available to describe the regulation cost, we must state the maximum and minimum cost and the most probable, estimated values. When we make a qualitative analysis, a SWOT analysis may be very helpful.

Results of a cost/benefit analysis based on further sections should be presented as a table. Here is a sample of such a table.

Regulation’s impact on:	Quantitative, qualitative description of positive impacts	Quantitative, qualitative description of negative impacts
Subjects		
Public finance		
Labour market		
Competitiveness and entrepreneurship		
Regional development		
Environment		
Total benefit/cost		

### 11. How to estimate regulation’s administrative cost?

It is good for the analysis to distinguish the administrative cost from the cost of policies. The latter are the costs of reaching the policy goals. Administrative costs<sup>6</sup> are expenditures made by business to fulfil the reporting obligations resulting from the legal regulations adopted by the state.

**Tips:**

The concept of options is not applicable to establishing whether the cost of reporting should be included into administrative costs. Whenever an enterprise pays the cost of delivering information required by the regulations, this is an administrative cost.

In self-regulation, the costs resulting from fulfilling the reporting obligations are not considered as administrative costs.

The idea of quantifying the burdens stems from the Dutch administration experience. When trying to define and measure the administrative costs, we should use the Standard Cost Model (SCM). This model allows us to simplify the regulation’s wording without causing unwanted administrative costs.

**Example:** The SCM implementation pilot-project, carried out by the European Integration Committee’s Office in 2005—which investigated the administrative burden on road transport—showed that the total cost of reporting obligations reached PLN1,080.2 million, that is, nearly 4% of the whole income generated by the Polish road transport sector.

Standard Cost Model

<sup>6</sup>Description of methodology is based on the work: *The Standard Cost Model and administrative burden in the road transport sector*. M. Kałużyńska, M. Gancarz, UKIE. Warszawa 2006.

The Dutch manual *Standard Cost Model. Measuring and reducing administrative burdens for businesses*<sup>7</sup> identifies 17 types of reporting obligations which create administrative cost. These are:

- Reporting/notifications,
- Applications for permits,
- Applications for recognition,
- Carrying out registration/measurements,
- Doing (periodical) tests,
- Making (periodical) reports,
- Carrying out audits,
- Applications for permits or exemptions,
- Current updating of business plans and programmes (contingency plans included),
- Co-operation in audits/inspection/implementation,
- Marking for the benefit of third parties,
- Providing information to third parties,
- Issuing documents,
- Monitoring legislative changes,
- Placing complaints and appeals,
- Complaint handling,
- Registration in the Register.

In order to perform the above-specified obligations, one must carry out a number of administrative activities. The SCM model identifies the following: (1) learning about the necessity to get a specific set of information; (2) obtaining the information; (3) assessment which information—according to the regulation—must be delivered to the public authorities; (4) making the calculations of data to be delivered; (5) preparation of data presentation; (6) checking the data included in the presentation; (7) data corrections; (8) preparation of a description of the data; (9) making the payments, e.g., tax; (10) organisation of internal meetings; (11) organisation of external meetings; (12) inspections by public authorities and the necessity to serve for these inspections; (13) making corrections after detecting errors and irregularities; (14) additional training; (15) copying and distribution of reports, etc.; (16) reporting/delivery of information.<sup>8</sup>

### *Regulation adherence costs*

Administrative burden makes part of the general cost of adherence to legal regulations. Adherence to regulations involves expenditures that can be divided into various categories. It is important to distinguish financial costs from adjustment costs at the stage of identification of the reporting obligations.

Financial costs are a result of the unequivocal and direct obligation to transfer a specific amount of money to the state. These are not related to the state's necessity of getting information, i.e., taxes, stamp duty, administrative fees, fines.

<sup>7</sup> A Polish version of the manual was prepared by the Ministry of Economy

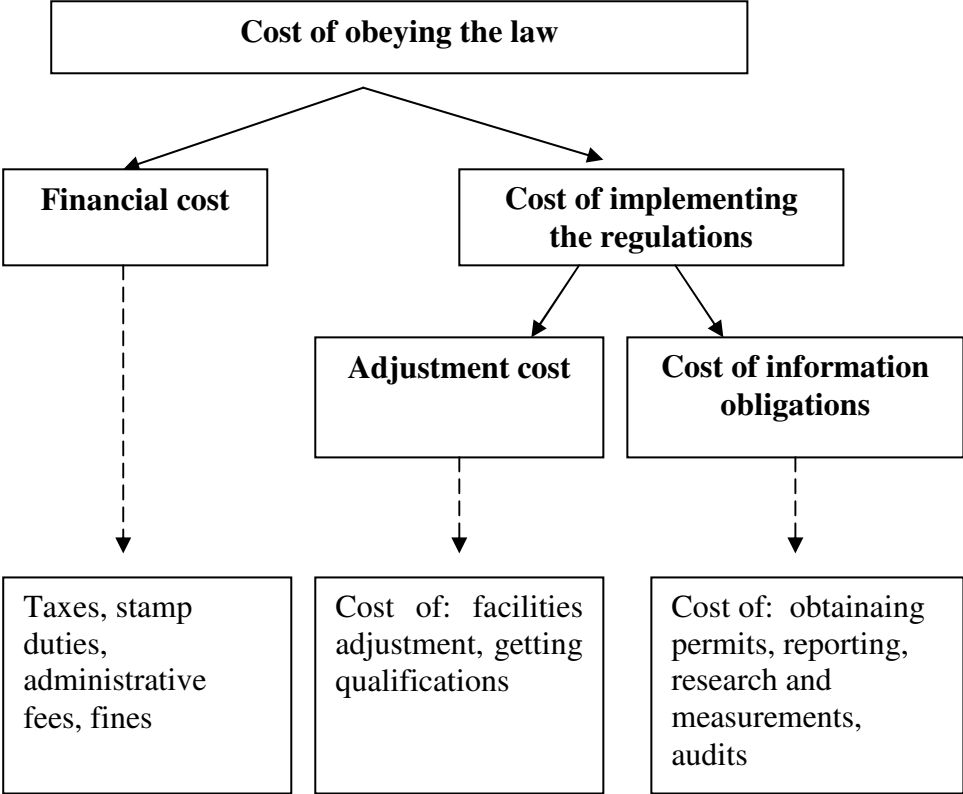
<sup>8</sup> Source: SCM Network (2004) International Standard Cost Model Manual. Measuring and reducing administrative burdens for businesses, <http://www.administrative-burdens.com/>

**Example:** Fees are a price paid to the state for its services or products. This means that administrative fees are not an administrative burden. A fee for a building permit is an example of such administrative fee.

Entrepreneurs pay the adjustment costs to preserve compliance with legal regulations but this is not done through a transaction with the state. These are divided into the adjustment costs paid to fulfil the legal obligations related to the production process and the product, and the cost of formal obligations related to getting permits, reporting, etc.

**Example:** an adjustment (real) cost is the purchase of filters required by environmental protection law.

The graph below shows the cost paid by entrepreneurs to obey the regulations. This graph helps not only in defining the cost of administrative obligations but also in analysing the overall cost of a proposed regulation.



The method for measuring the administrative cost should be adjusted at the earliest phase of legislative work. Thus, when making a RIA, we should consider the following issues:

- Will the option put new or additional administrative burden on enterprises?
- Will the administrative cost put an excessive burden on small and medium-sized companies?

**Tip:** the size of an enterprise has a major effect on how high the regulation cost is. OECD surveys show that companies employing up to 19 workers pay regulation costs per one worker three times higher than companies employing 20 to 49 workers, and over five times higher than those employing 50-500 employees.<sup>9</sup>

- Will the option increase the complexity of administrative procedures?

In order to demonstrate whether the obligation is being cancelled or enhanced, we need to consider:

- How will the group of subjects that have to fulfil this reporting obligation change?
- How will their manner of fulfilling this obligation change?

If it is necessary to provide some information or carry out some other action by the subjects covered by the regulation, we should consider whether the form of this action is not too inconvenient or, perhaps it would do just to supplement the existing procedures by components guaranteeing the provision of such information.

- How will the number of required actions change?

When designing the proposed regulation, we must consider the necessity to undertake—by enterprises or other subjects covered by the regulation—specific actions connected with providing information; is the required information needed by administrative authorities, can it be obtained from other sources? We have to check whether the same or similar information obligation has been prescribed by other legal regulations or perhaps it is not required by other institutions. There may exist registries, data bases, archives containing the information required.

- Will the frequency of fulfilling this obligation change?

We must also analyse and establish when and how often the enterprises and other subjects involved will submit their reports, whether it fits in their internal information production cycle. Both processes, production of data inside the company and its delivery, should be timed to ensure fulfilling the information obligations with the least inconvenience for the company.

It is good to consult the above issues with subjects to be covered by the regulation. Their ideas may turn out the best possible solutions available at the given situation.

If the analysis of all the above-mentioned components suggests the necessity to put some reporting obligations on enterprises, we must ensure the least inconvenient form to this process. If forms to be filled out are to be used, their authors must carefully design them allowing for such aspects, as the time needed to complete a questionnaire, clear wording of the questions, and low questionnaire frequency. If the reporting obligation cannot use questionnaire forms, the least inconvenient form of delivering, processing, and storing information must be designed and computer technologies should be employed.

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<sup>9</sup>Source: OECD, Business Views on Red Tape (OECD, Paris: 2001) page 8

Whenever the administrative cost estimation shows that a policy or regulation proposed will reduce the administrative burden, the fact should be mentioned in the final report. It is important to know that the administrative cost/benefit assessment is part of the cost/benefit analysis of the whole regulation. It may happen that a selected option will generate some administrative costs but still it may be the optimum choice.

**Example:**

**Option 1:**

Administrative cost—10, total cost—13, benefits—20 = net benefit—7

**Option 2:**

Administrative cost—6, total cost—14, benefits—20 = net benefit—6

**Option 3:**

Administrative cost—2, total cost—18, benefits—12 = net benefit—6

## 12. *How to measure environmental impact?*

The assessment of environmental impact is supposed to show which intended and undesired effects the proposed regulation will exert on the natural environment.

Depending on the character of various areas under regulation, various regulations will require various environmental impact assessment levels. An in-depth analysis will be necessary whenever the legislative proposal is going to affect the environment in a significant way.

The environmental impact analysis should start with answering the question: whether the selected option will affect the environment? If it will, we must establish the scope of the analysis and identify questions for which the environmental impact must be measured (impact quantification presented in terms of money). If a money-wise presentation is impossible, we may give per cent values or say how many individuals/households are to be affected by the proposed option. If this is impossible too, we may have to reach for the qualitative evaluation.

When doing the environmental impact assessment, we must:

- Describe how the new regulation will change the greenhouse gases emission level. What reduction/increase of CO<sub>2</sub> emission can be expected?

The main cause of climate change is the growing greenhouse gases level in the atmosphere. These gases include: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrogen monoxide (N<sub>2</sub>O), gases of the groups HFC, PFC and sulfur hexafluoride (SF<sub>6</sub>).

First of all, we must identify economy sectors to be affected by the proposed solution. The most important industrial sectors able to have an impact on the climate are:

*Climate*

- **energy** – burning fossil fuels, energy generation, transport, fuels storage and transport,
- **industrial production** – production of cement, chemical industry, production of ammonia and nitric acid, production of paints and rubber products, iron and steel production, production/application of coolants and air-conditioning agents, fire extinguishers,
- **agriculture** – animal husbandry and farm waste management, using fertilisers,
- **land use changes** – deforestation,
- **waste** – waste and sludge storage.

Changes in the emission levels should be estimated quantitatively, by establishing the effects of the proposed regulation on the emissions, in relation to the effect of the existing solutions. We should consider whether the proposed solution:

- changes the emission in an indirect way, e.g., by increasing energy consumption or transport operations,
- changes the emission levels outside Polish borders,
- has a negative effect on the development of technologies reducing the emission of greenhouse gases (e.g., low-carbon technologies, technologies increasing the efficiency of production processes).

Considering the diversified effect of greenhouse gases on the atmosphere (among other things related to their life cycle and radiation properties) the amount of gas is expressed as a carbon dioxide equivalent. To do this, we multiply the amount (in tonnes) of each gas by the GWP coefficient (100-year global warming factor).

Greenhouse gas	GWP
Carbon dioxide (CO <sub>2</sub> )	1
Methane (CH <sub>4</sub> )	23
Nitrogen monoxide (N <sub>2</sub> O)	296
HFCs	12 000
PFCs	6 500 – 9 200
Sulfur hexafluoride (SF <sub>6</sub> )	22 200

Air

- indicate how the new regulation will change air pollution? What can be the effect of the emission on human health and the environment (e.g., contamination of soil, rivers, size of crops)?

Some substances present in air show mutagenic influence or ability to cumulate. Air pollution may also have an adverse effect on the condition of ecosystems, size of crops, and it may speed up the corrosion of buildings and metals. The most commonplace air pollutants are sulphur compounds (sulfur dioxide and sulfur trioxide, hydrogen sulfide) compounds of fluorine, chlorine, nitrogen, as well as carbon dioxide and carbon monoxide.



We must first of all identify the economy sectors to be affected by the proposed solution. The most important industrial sectors able to have an impact on the climate are:

- **transport** – various branches, selection of transport means, road and rail infrastructure projects, waste management (e.g., change of storage or neutralisation site may involve waste transport over longer distances), lifestyle change (e.g., transporting children to school, shopping centres outside cities, far from densely populated areas, promotion of using city transport), technological solutions (e.g., more ecological engines);
- **energy and industry** – production technologies, waste incineration, heat supplies, production and consumption of energy, e.g., building standards, energy conservation standards, energy saving machines and equipment, fuels consumption structure.

The impact size assessment should include a quantitative estimation to see if the emission level change will be substantial (e.g., an important part of the whole sector's emission or the numbers are big but they make only a small fraction of the emission of a heavily emitting sector) and to see whether the emission is not taking place at sensitive areas (the consequences of most emissions are more inconvenient at areas with low air quality, where the acceptable emission levels are exceeded, and at ecologically sensitive areas, such as, protected areas and those covered with the NATURA 2000 network, and areas with high population density).

#### *Water resources*

- Describe how the new regulation can affect the quality and quantity of available water resources. Will it change the flood risk?

Poland's water resources per capita are much smaller than the European Union's average and, as a result of this, some regions of this country suffer water supply problems. Shortage of high-quality water is the main problem of supplying water to the population today but threats posed by climatic changes to water resources may become more important in future. This means that drought may become vaster and longer and floodings more rapid than they are now.

Surface waters play the main role in supplying water to the economy, they cover 80% of all the demand. Their quality directly affects the quality of sea waters to which they get from ground water and rivers, which are sometimes used as drinking water sources. But ground waters are first of all reserved as good quality drinking water reserves.

Many types of human occupations have a strong impact on water quality. We must find out whether the proposed option will cause the following:

- **spot contamination** – considerable contamination discharge from one localisation (usually effluents from power, chemical, timber, paper, waste recycling industries, municipal sewage and runoff from big urban agglomerations);
- **scattered agricultural contamination** – contaminants from farms and fields (e.g., artificial fertilizers and pesticides, wrong farm waste management);

- **scattered contamination from other sources** – households, small business, construction sites, illegal waste dumps.

**Tips:** Despite having relatively scarce resources, Poland's water shortage is not caused by a simple fact that there is not enough water, but because there is not enough water of good quality in the right place. Droughts may become a major problem of national economy and the whole country in future. Access to water resources may be improved by solutions addressing such things as using water for watering systems, the watering methods, and water consumption in households.

A proposed solutions may, for example, change the risk of flooding if it allows business (such as, construction) in low areas, changes the runoff water routes, or regulates flood management measures.

## Soil

- Describe how, if at all, the new regulation is going to cause soil degradation (e.g., erosion, contamination, salinity), loss of available soil (e.g., soil covered with construction, roads, etc.), or an increase of available soil (e.g., de-contamination, removal of pollutants)?

Soil is, as a rule, a non-renewable resource and it is easily degradable while the process of its formation and regeneration are very slow. Unlike air and water, where pollution concentration declines when dissolved, pollutants in the soil tend to cumulate.

When investigating the impact on soil we should pay special attention to making sure that the new proposal will not create new soil contamination sources. We should indicate the expected contaminants emission levels, describe their sources and types. But this will require finding out how the proposed option will affect the following:

### Soil quality, that is:

- erosion—a wrong use of the land, fields (poor vegetation),
- organic matter content—farming and forestry,
- soil contamination—
- **from local sources** – mining (draining acid mining waters), industry, land filling, waste storage, sewage penetration into soil and further on into waters,
- **from scattered sources** – depositing air contaminants emitted by industry, vehicles, and farming, depositing air contaminants penetrate into the soil carrying acidic substances (e.g., SO<sub>2</sub>,NO<sub>2</sub>), heavy metals (e.g., cadmium, arsenic, lead, and mercury) and a number of organic substances (e.g., dioxines, PCB),
- **farming** – nitrates and heavy metals present in fertilisers and fodders, plant protection agents (pesticides),
- bio-diversity, ecological farming,
- salination—watering, excessive consumption of ground waters at coastal areas,

### Soil availability:

- allowing construction on fertile soils or allowing too dense construction,
- excessive grazing, especially on damp areas, tourism and skiing in sensitive areas,

*Bio-diversity*

- Describe how the new regulation can affect bio-diversity. Will it change the number of species in the area involved or the number of protected species and their habitats?

According to the Nature Protection Act of April 16, 2004, (Journal of Laws 2004, No. 92, item 880) bio-diversity is the diversity of organisms living in ecosystems within one species and among many species, and also the diversity of the ecosystems..

Poland bio-diversity policy is largely shaped by the Community policy, especially two important Directives: the Habitats Directive 92/43/EEC and the Birds Directive 79/409/EEC.

The proposed solution may have an adverse effect on bio-diversity if it causes:

- a direct loss of habitats (e.g., after changing the land use structure, de-forestation, construction),
- deterioration of habitats' quality after contaminating air, soil, and water,
- fragmentation of habitats (e.g., by cutting a road through a habitat),
- adverse effects on system sustaining factors (e.g., change of the water table, especially at marshy areas),
- disturbing human activity, in this, road traffic, airplanes, installations,
- wrong management of the ground surface and sea ecosystems.

A good influence on bio-diversity may be exerted by solutions preventing the above-mentioned activities or lead to the creation of new habitats.

**Tip:** While investigating whether the new proposal will have an impact on this type of areas, we should especially carefully determine its effects on the Natura 2000 network and on other areas of great natural value. The list of all Natura 2000 network areas is given on the Environment Ministry's Web site (<http://natura2000.mos.gov.pl/natura2000>).

*Landscape*

- Describe how, if at all, the regulation will cause changes in the landscape. Will it cause landscape de-fragmentation or change its aesthetic values?

Landscape is the external appearance of the Earth surface resulting from the interaction of the surface shape, surface waters, weather conditions, animals, vegetation, and the action of man.

When investigating the impact of a new solution, we need to find out whether it can:

- lead to changes in the land use and agricultural cultivation (e.g., change of the crops, crop growing for the first time in an area, de-forestation and forestation, draining marshlands),
- lead to residential or industrial building on former farm land,
- spoil the character of local landscape,
- exert adverse effect on national parks, landscape parks, other areas of exceptional landscape values,

## Noise

- Indicate how the new regulation may affect the level of noise and the electro-magnetic field?

Noise is any unwanted, tiring, or harmful sound. We can distinguish the following types of noise, according to its source:

- **traffic noise** (road, rail, air transport),
- **industrial noise** (generated by industrial machinery and equipment, also construction process),
- **residential and home noise** (noise generated by car engines, loud music, car alarm systems, and noise inside the house).

To estimate the effect of an option on the noise level, we must also examine the following:

- **the relative noise intensity** as compared to the usual noise level (background)—noise in a quiet place is more annoying than the same noise by a busy road and we must remember that low noise travels over longer distances,
- **the time of day** – noise in the night is more annoying than during the day,
- **the number of people troubled** by noise.

**Tip:** The acceptable noise levels in the environment are defined by the ordinance of the Minister of Environment dated July 29, 2004, and concerning the acceptable noise levels in the environment (Journal of Laws No. 178, item 1841).

## Waste

- Describe how, if at all, the proposed solution can affect the volume of waste produced and its management.

Waste is any substance or object falling in one of the categories specified in Annex 1 to the April 27, 2001, Waste Act (Journal of Laws 2001, No. 62, item 628 plus subsequent amendments), whose owner disposes of it or is obliged to dispose of.

Waste is produced during the extraction and processing of natural raw-materials, production processes, households, also in connection with consumption: waste wrappings. These waste flows are often strongly diversified in their composition and problems they cause as these range from the emission into waters, soil, air, affect the ground under their recycling, generate costs of their proper neutralisation and cause the loss of raw materials.

**Tips:**

According to Polish and Community law, the following waste management priority rank has been adopted:

- **prevent and minimize** the production of waste,
- **recover**, chiefly through the recycling of waste whose production cannot be prevented,
- **neutralise waste** (apart from storing),
- **storage of waste** whose recycling or neutralisation is impossible, in a way safe for human health and the environment.

**Changes in the waste volumes** may result from changes in the standards of designing new products or withdrawing goods from use, or from introducing new safety standards, product standards, or emission norms.

The **waste management** may be affected by:

- changes in health protection standards or other standards, e.g., medical

- refuse incineration in high temperatures,
- changes in the waste storage or recycling place, the effects of waste transport on the environment and human health,
- incentives to use recycled glass and paper.

*Other components*

An analysis of the regulation impact may also comprise an investigation of:

- the effect of a regulation on the other environment components,
- the effect of a regulation on the protection, access, and possibilities to use environmental resources.

**13. How to measure the costs and benefits?***Quantitative methods*

Whenever possible, the best method is to measure the cost and benefits and then present them as expenditure or revenue to be made by various subjects in connection with the new regulation. A numerical presentation of costs allows a better judgement of various regulation options up to the resignation from introducing a new regulation.

If a regulation produces specific and easy-to-measure effects, we can well estimate the costs knowing the prices of the goods and services involved. But in some situations, data required for such a calculation will be unavailable and we will have to rely on expert organisations who know how to make such estimates using, for instance, econometric methods.

Apart from numerical presentation expressed in money, we can also calculate the change in gas emission, the number of people benefiting from a new employment activation programme, etc.

We can also estimate the cost of work required to study the new regulations, training, and the work time they consume. Such an estimation is possible as soon as we learn how many enterprises/institutions will be affected by the new regulation and how many people will get trained during some period of time. Knowing the salary data, we can then estimate the size of expenditures made by enterprise in connection with the extra work they will have to do to implement the new regulation.

Studies on the best practices available show that the most frequently used quantitative methods are the cost/benefit analysis and the cost-efficiency analysis.

The qualitative assessment of the costs and benefits of regulation is used when the quantitative analysis is impossible. But in that situation it is more difficult to select one option and it happens to be difficult to demonstrate that doing nothing is not the best option.

**Cost/benefit measurement examples**

- Knowing the work time and man/hour price, we can calculate the cost of labour required or saved up;
- When assessing the effects of regulations related to environmental protection, we can estimate the cost of recultivation of some area that will be necessary if a proposed regulation is not adopted;
- To estimate the value of silence and quietness, we can compare the average

property prices close to motorways and airports with the prices of real estate localised in quiet areas (keeping the other parameters comparable);

- The costs caused by the obligation to buy some equipment can be established by multiplying the price of this equipment by the number of units to be bought.

#### ***14. How are costs and benefits distributed in time?***

**Tip:** When comparing the current and future costs and benefits, we must remember about the amount we have to deduct from the future capital value in order to obtain its current value. This amount shows the change of money value over time. The rate of the discount to the future capital value is the discount rate.

New regulations create their costs and benefits but these may be different in different time and may change from year to year. Once the costs and benefits have been identified and measured, the next stage is to describe their distribution in various periods.

We can adopt a division into years but other periods can also be used, as we can see in the box below, whenever the costs and benefits are related to the external conditions. When planning the introduction of a regulation and assessing its various options, we should remember that people prefer the benefits to come first and the costs later.

**Example:** Increasing employment protection does not necessarily have to generate costs on the enterprise's side in a time of a good market. But if the market situation goes worse, they will limit the possibilities to cut the costs of, e.g., the wages fund, and they will slow down the adjustment of an enterprise to the deteriorating market situation which, in turn, spoils its financial result.

We can take some period of time, say, a decade, as a starting point for the analysis of a regulation's costs and benefits. If the costs are only related to the purchase of equipment (cash registers) we calculate the costs of its purchase and the expected service time.

An analysis of costs and benefits should be done from the angle of the character of the regulation and processes it governs. For example, when considering a pension system reform, we will have to use a study period much longer than one decade. The costs and benefits resulting from such regulations usually have to be analysed by expert institutions.

It is advisable to present the result of the time-wise cost/benefit analysis as tables, just like the results of the cost/benefit analysis.

## F. How to effectively implement and enforce new regulations?

### 15. *How to implement regulations?*

#### *Implementation*

Each option under consideration must have its own implementation plan. The estimated time and financial expenditures required for their implementation is crucial for the selection of the best option.

Section 5 discusses the weak and strong sides of the options, especially their risk, acceptance level, and the unwanted side-effects of new regulation. With the results of that assessment in hand, we should next investigate the following issues:

- Methods of introducing various regulation or policy options,
- Response of the affected subjects to the introduced regulation,
- Potential costs and effects involved in various methods of introducing new regulation,
- Was consultation part of the debate on regulation introduction method (the debate should involve the parties to be affected and subjects responsible for its introduction),
- Ruling out excessive freedom of interpretation of the planned regulation by the enforcing organs (wordings in the new regulation should be coherent, clear, and unambiguous),
- Defining a catalogue of requirements set for the subjects affected by the regulation, e.g., documentation submitted with licence applications,
- Ensuring flexibility of the regulation introduction manner to ensure adjustment of the implementing institutions (especially important for regulations whose introduction is difficult and time-consuming),
- Compliance of the regulation or policy with the related existing regulations or policies,
- Introducing the regulation as part of the existing system of institutions, including the system of inspections and fines.

We cannot usually assume full compliance of policies and regulations, unless there are clear reasons for it.

When introducing the regulation implementation plan, we should use methods adequate with the existing situation and avoid reaching for too powerful instruments unless necessary.

Implementing a regulation uses the results of risk analysis. If the risk that the regulation is not compliant, corruption-prone factors emerge, or

the regulation's disapproval is low, we should focus on the most sensitive areas and groups.

We must then consider which subjects and institutions may be helpful in introducing the regulation. NGOs, such as, producers' associations or organisations protecting the consumers' rights, may often play a more important role than public institutions.

If an active form of implementing the regulation was chosen, we will probably have to use the help of special institutions responsible for the process. We must then provide a detailed description of procedures and means to be used by these regulation (policy) implementing institutions. It will be necessary also to ensure adequate level of co-ordination of actions performed by such as regulation implementing system.

If one of the proposed options requires appointing a new institution responsible for it, we must justify why the job cannot be done by any of the existing institutions.

### *Penalties*

A system of penalties for failure to obey the new regulations should also be judged as part of the regulation introduction and enforcement plan. The idea of penalty is a deterrent against breaking the regulations.

**Tip:** Adjustment to new regulations needs time. When introducing penalties, we must remember to give the interested subjects enough time to get adjusted to the new regulations and their system of penalties.

It is good to consult the penalty system too. During the consultation, the interested parties should be informed about the considered options of penalty system with their fine scale from minor breaches up to the penalties for major, habitual breaking of the new regulations.

The key to penalty effectiveness is its imminence. Any proposed system of penalties should ensure quick, fair, independent, and inexpensive execution of the penalties.

When designing a system of penalties, we should consult the lawyers and the respective department in the Ministry of Internal Affairs and Administration.

### *Monitoring*

The next stage should focus on planning and building a monitoring system for each option of the proposed policy or regulation. This will allow to have regular assessment of the policy performance, its enforcement according to the regulation's provisions, and the adopted goals.

Section 2 defines the goals and their rank, and it describes the principles of the SMART method. Now, having analysed all its components, we should define the implementation of the regulation's goal again.

We should consider using the available monitoring mechanisms which can often be used to check the performance of a new regulation. And we should clearly identify who is responsible for the monitoring.

Monitoring must be used adequately with the needs. When building the system, we should define the frequency of checks.



When working on a regulation monitoring system, we should plan a system collecting information about the new regulations in order to reduce the potential inconvenience caused by these regulations.

# G. How to compare the costs and benefits, and how to prepare recommendation and new regulation implementation plan?

## 16. How to prepare and justify recommendation?

A comparison of the costs and benefits is a final step in the cost/benefit analysis. A methodologically unambiguous, correct comparison is possible when all the data are presented in the same way (e.g., as money). But in most cases it is impossible to directly compare the costs and benefits.

Since this is so, a comparison of costs and benefits can be done by using the multi-factor analysis which allows us to present the impacts in a quantitative, qualitative, and monetary fashion at various levels of detail.

The main steps here are:

- Define the criteria of comparing the options,
- Aggregate the costs and benefits resulting from the proposed regulation and estimate to what extent the option meets the above criteria,
- Allocate weighs to each criterion, to reflect their importance in the process of choosing the best option,
- Compare the score gained by each of the options.

If data on the costs and benefits are presented as money amounts, they should be given for the annual cycle in a perspective of a decade ahead.

Balance of costs and benefits		
Option	Total (annual) cost	Total (annual) benefit
Option 1. Resignation from intervention		
Option 2. Regulatory intervention		
Option 3. Regulatory intervention		

If the specific character of the regulated issue requires taking a different time perspective or a different cost/benefit presentation cycle, we should accordingly modify the balance table.

Comments on the balance table mentions administrative cost and policy cost. The division of costs should be introduced also because of the subjects and areas. There should also be a distinction made between one-off costs and recurrent costs.

The next step is the selection of a regulation/policy option to recommend. The justification of this selection should refer to the presented data and analysis outcome and it should shortly describe the reasons why other options were discarded.

### ***17. How to make a plan for implementing the recommended regulation?***

This part of the regulation impact assessment is done after the consultation is over and after the selection of the problem solving or process improving method using a new regulation (policy). When designing the detailed plan, we must use the analysis and assessments done according to guidelines discussed in *F. How to effectively implement and enforce new regulations*. The implementation planning stages comprise:

- Definition of the objectives and criteria of successful implementation,
- Designing an implementation schedule: defining the key stages of the process of regulation implementation, and their dates, especially the time the affected subjects will need to get adjusted,
- Identification of subjects responsible for the implementation of the regulation,
- Assessment of the funds required to implement the regulation, estimate the cost of regulation implementation process (e.g., whether people implementing the new regulation must be trained or equipped with new instruments),
- Analysis of the existing regulation performance checking systems, in order to use them in the implementation of a new regulation; wherever possible existing monitoring systems should be used and they should not cause inconvenience or extra costs,
- Planning a risk management process for the regulation implementation time; the role of the risk in freezing the intermediate stages of the implementation process,
- Designing a system of penalties based on information gathered at earlier stages,
- Designing a communication strategy to ensure information flow and the interested parties' commitment to have the regulation introduced,

- Possibly, organisation of an information campaign or training sessions, or a publication of a guidebook for all subjects interested in getting adjusted to the new regulations.

## Annex 1 – Overall RIA checking questions

<i>Preparation of a proposed regulation</i>	<p>Was a problem analysis performed?</p> <p>Was the regulation purpose defined precisely?</p> <p>Were the regulation goal measurement/verification methods provided?</p> <p>Were conditions of adopting the regulations described?</p> <p>Were the reasons for designing and adoption of the regulation described?</p>
<i>Methods for reaching the regulation's goal</i>	<p>Were all the methods for reaching the regulation's goal described?</p> <p>Were the weak and strong sides of each goal reaching methods assessed?</p> <p>Was a regulation-involved risk assessed?</p> <p>Was an option selected and presented for detailed consultation and assessment at further RIA stages?</p>
<i>Consultations</i>	<p>Was the consultations goal defined?</p> <p>Was the consultation process planned?</p> <p>Was consultation held with appropriate subjects?</p> <p>Was consultation held in accordance with the European Union standards?</p> <p>Was public consultation held in accordance with the existing law?</p> <p>Were consultation results taken into consideration in designing the RIA?</p>
<i>Costs and benefits</i>	<p>Was it established who will be affected by the new regulation and how?</p> <p>Was the regulation's effect on public finance estimated?</p> <p>Was its effect on the labour market assessed?</p> <p>Was the impact on competitiveness and entrepreneurship assessed?</p> <p>Was the impact on SME assessed?</p> <p>Was the impact on regional development assessed?</p> <p>Was the impact on natural environment assessed?</p> <p>Was the administrative burden posed by the planned regulation assessed, especially the burden put on the SME?</p> <p>Was the cost/benefit estimation done in a quantitative or qualitative way?</p> <p>Was the time-wise cost/benefit estimation done?</p>
<i>Regulation implementation and enforcement</i>	<p>Was a description of regulation implementation provided?</p> <p>Was a system of penalties for breaking the new regulation described?</p> <p>Were the policy and regulation implementation monitoring methods described?</p>
<i>Preparing recommendation</i>	<p>Was a table of total cost/benefit balance made for all the regulation options?</p> <p>Was one option recommended and its selection justified?</p>

*Implementation of the  
recommended regulation*

Was the rejection of other option justified?

Was an implementation plan provided for the recommended regulation or policy?

## Annex 2 – Questions checking the cost/benefit analysis

<i>Was it studied who and how will be affected by the regulation?</i>	<p>Were those affected by the regulation identified?</p> <p>Was the consultation procedure employed in identifying the impact on subjects?</p> <p>Was the cost/benefit distribution among various subjects assessed?</p> <p>Was it checked to make sure that the distribution of costs and benefits guarantees the priority of citizens' interests over the particular interests of occupational groups and other subjects?</p> <p>Was it checked to make sure that the distribution of costs and benefits is in line with the goal of the proposed regulation?</p> <p>Was the cost/benefit of different subjects estimated?</p>
<i>Was the regulation's effect on public finance estimated?</i>	<p>Was the direct and indirect effect on public expenditures/revenues estimated?</p> <p>Was the regulation's effect on the public sector's functioning cost assessed?</p> <p>Was its effect on the efficiency and quality of public services assessed?</p> <p>Was the effect on administrative control of public resources, openness, and transparency of public finance assessed?</p> <p>Was the regulation's effect on local government's income and distribution of their funds assessed?</p> <p>Was the regulation's effect on the possibility to measure the efficiency of public spending assessed?</p>
<i>Was the effect on the labour market assessed?</i>	<p>Was consultation with employers' and employees' organisations held as part of the regulation's impact on labour market?</p> <p>Was the impact on employers' readiness to offer new jobs assessed?</p> <p>Was the impact on current and potential labour cost assessed?</p> <p>Was the impact on company flexibility, especially its capability of internal restructuring and increasing labour productivity, measured?</p> <p>Was the impact on various occupational groups, especially those risking higher cost, assessed?</p> <p>Was the cost/benefit distribution among various occupational and worker groups analysed?</p> <p>Was the impact on professional training and permanent life-long training assessed?</p> <p>Was the impact on job-seeking determination and employment activity of the unemployed assessed?</p>
<i>Was the impact on competitiveness and entrepreneurship assessed?</i>	<p>Was the impact on the flexibility of the market of goods and services assessed?</p> <p>Was the impact on the ability of enterprises, especially the SMEs, to adjust to new market challenges measured?</p> <p>Was the impact on funds access cost and other business overhead costs assessed?</p>

Was the impact on introducing new technologies, ideas, organisational solutions assessed?

Was the impact on the business environment quality assessed?

Was the impact on market competition assessed? If there is impact on some specific market, was it established whether:

- The regulation will help some company to capture a market share larger than 10-20%?
- There is a risk that three biggest companies will grab more than 50% of the market?
- The regulation affects various companies in various way in terms of their profit and loss?

Was the impact on market structure, exerted through changing the number or size of companies, assessed?

Was the impact on the current costs of newly-established enterprises assessed?

Was the impact on the freedom of price-making, quality, product types or production localisation assessed?

Was the macro-economic impact assessed?

*Was the impact on regional development assessed?*

Was the impact on the geographical distribution of costs and benefits assessed?

Was the impact on regional economies and regional labour markets assessed?

Was the impact on the less developed regions' ability to catch up with those better developed assessed?

*Was the environmental impact assessed?*

Was the impact on greenhouse gases emission assessed?

Was the impact on atmospheric air quality assessed?

Was the impact on water quality assessed?

Was the impact on soils assessed?

Was the impact on bio-diversity assessed?

Was the impact on the landscape assessed?

Was the impact on noise level assessed?

Was the impact on waste management assessed?

*Was the administrative burden posed by the planned regulation assessed?*

Was the administrative cost estimation based on the Standard Cost Model?

Did the administrative cost estimation include the costs of SME?

Was the possibility assessed to reduce the amount of information to be reported by enterprises?

Was care taken to ensure that the reporting procedures will be as convenient as possible?

*Was the cost and benefit estimation done in a quantitative or qualitative way?*

Were the costs and benefits measured and presented as precise expenditures/incomes to be made by various subjects after introducing the regulation?

Were all the possibilities of quantitative cost/benefit assessment checked?

Was the (potential) qualitative cost/benefit estimation done in an appropriate and objective way?



Did the balance of the quantitative cost/benefit estimation justify an intervention by public authorities and adoption of a new regulation?

*Was the time-wise cost/benefit analysis done?*

Was the time-wise cost/benefit analysis done for each of the potential solutions?

Are the adopted cost estimation periods and the time perspective justified by the nature of the matter governed by the proposed regulation?

## Annex 3 – Cost and benefit measurement methods

### *Versatility of the method*

#### ***Cost/benefit rate analysis***

A cost/benefit study (Polish acronym AKK) is believed to be the most versatile method for the analysis of regulatory solutions. It consists in calculating the overall, total benefit resulting from a specific regulation in relation to the total cost, and in comparing these to the general cost of regulatory action. Whenever these benefits are greater than costs, we should consider the planned legal regulation as justified. The benefits resulting from a regulation are all its desirable consequences (e.g., savings, extra income) and costs—all the unwanted effects (extra expenditures). The versatile nature of AKK consists in the fact that it requires an analysis of all the aspects of a proposed regulation. It will not allow a selective analysis of, for instance, only the benefits and selected costs. But this method must not be the only decision-supporting tool in all situations.

The idea of AKK is that we always have insufficient resources and, therefore, we must spend them in a way ensuring the maximum living quality in the actual conditions. Economic limitations clearly influence decisions on introducing new regulations. There are limits of maximum acceptable spending. And AKK determines these limits.

In some cases, the application of this method will require assuming that all its components must be calculated in terms of their value and quality. Wherever full valuation of the benefits is impossible we must provide the possibly most complete description of the way in which the desired effects will be obtained.

The estimation of regulation cost must also include additional costs, that is, costs paid in connection with the regulation when other goals have to be abandoned to ensure reaching the new regulation's goal. These costs are called the cost of lost possibilities or void costs, that is, costs paid because of dropping some action which must then be carried on by the proposed new regulation. AKK will help us to identify all the cost-paying subjects (enterprises, consumers, employees) in order to make sure that the overall benefit will be larger than all the costs involved.

The costs discussed here also include the cost of legislative work required to develop and implement a new legal regulation. At the level of implementing the whole RIA system, it is worth paying attention to the control (budgeting and management) of the legislation costs. We could, of course, assume that the cost of legislative work is, in its nature, similar to spending money by government and parliamentary agencies as part of their budget plan and forget their detailed investigation (except for the usual budgetary spending audits). But these costs can also be seen as the cost of developing and implementing a managerial project (technical, technological, production, distribution,

etc.) we keep seeing in the traditionally defined profit-making business. This approach will allow us to employ a full range of instruments used by business managers who want to establish the actual level of costs. This would also allow to rationalise the cost management process by introducing the principles of appropriate cost allocation in time and space, e.g., through the separation of the costs of legislative work components (not only the traditionally defined carriers—products and cost-generating spots) which is usually done as part of the activity based costing (ABC) interrelated within the system of overall process cost budgeting (using the partial, framework basic, functional, flexible, and step-wise budgeting techniques). Moreover, when analysing the cost distribution in relation to the scale of the regulation's impact, it would be possible to take the cost paid by the community (or some other, smaller group of subjects to be affected by the regulation) out of the total cost amount and estimate the remaining part of the cost, which is a variable cost that must be paid to gain the expected benefit. Thus, the comparison of the cost size in the assumed extreme number of cases would show which benefits must be reached to make the regulation beneficial. This method, also described as the critical point method, is used by most enterprises and it is simple enough that we could transplant it on the soil of the AKK method to measure the regulation impact.

The impacts (cost and benefit) of introducing a new regulation may be spread over a longer period of time. Moreover, the costs and benefits resulting from such a measure may have a diversified time-related nature. For example, the most important and, often the only, cost of regulation may be paid in the first year of the regulation's life, while its effects may come in later years. We can also imagine an opposite scenario where the benefits are obtained immediately but the costs will be paid later. And though we can also imagine that in the latter example politicians will distance themselves from the costs by changing or cancelling that regulation, the people will anyway pay the cost—deliberately or not—assigned to other regulations as a result of cancelling or modifying the original regulation. Since the distribution of the regulation costs and benefits happens to be long and uneven, the estimation of the measurable, comparable net impact of the regulation from the perspective of the time when it was undertaken, will have to keep the comparability of the deferred cost and benefit values. In other words, the comparison of costs and benefits in the first year of the regulation's life with a similar group of costs and benefits in the subsequent years should include the time factor affecting the yardsticks used to measure the costs and benefits. If money is used as the yardstick, we will have to convert the money's purchasing power in the individual years into a base year—the year when the analysis was done and then taking into account the human inclination to delay the costs and benefits. It is usually assumed—and practical life confirms it—that money earned today is worth more than money earned tomorrow, while the cost paid today is greater than the cost to be paid in future. A method bringing the prospective flows of costs and benefits to current

values is called discounting. A description of this method is given further in this document.

AKK has some limitations too. These include, among other things: limited access to numerical data, limitations of the budgets, documents, studies, time limits put on the surveys. If these factors occur all together, one strengthens the other and has an adverse effect on the outcome of such an analysis. It is advisable to use this method, at first, at a smaller scale, only to measures of the highest public expectation whose implementation really depends on the balance of costs and benefits. We should not use it for solutions that will have to be adopted anyway or have no alternative solutions at all.

This method should be considered as a target method, a goal of a long-time process of gaining experience, at the beginning used only to selected measures mentioned above and to measures which are less complex or involve fewer public ramifications and, more importantly, which are easier to identify (experimental area).

This does not, however, mean that this method should be discarded because it is too complex. This only means that an analysis of the impact of a legal regulation should always obey the cost/benefit principle as the superior rule, while the form of the analysis should rely on the costs and the practical assessment of the possibilities to carry it out.

Considering the diversified time frames of obtaining the benefits and paying the costs (short and long-term perspective) which is often the fact when a single regulation is implemented and a whole legislative process, in which the costs and benefits may be mutually interweaved, in order to measure the overall achievement (effects) of the implemented policy, we can try to take a more balanced approach which addresses both time horizons. This type of methods have been successfully used by large corporations in the recent years. Let us consider the possibility of converting the contemporary management and evaluation techniques used by business into the control and evaluation of the legislative process by their measurement and communication. This is an effect measurement technique known as the balanced scorecard (Polish acronym ZKD). The essence of this technique is that when we control an organisation, we need to conciliate two aspects, current and future, of needs, and short and long-term objectives. Moreover, controlling the activities comprises the financial side of it which is measurable by its quality and value, and the non-financial side which is measurable only in a qualitative way. The surroundings of the measurement and legislation effects works in a similar environment. Hence, we are drawing the attention of potential regulation authors to the possibility of a deeper insight into the assumptions and methodology of this technique, from the angle of its adaptation into the Regulation Impact Analysis.

**Quantitative aspects of measurement.** Analysts are hardly ever able to identify all the important impacts and give them a financial dimension. This is not a formal barrier to the application of this method because qualitative analysis is an important part of the cost/benefit rate analysis

*Key issues of  
implementing  
cost/benefit rate  
analysis*

and this is why the analysis: quantity/value and quantity/quality should often be integrated into one model.

**Impact spread.** A regulation may allocate costs and benefits to various public life sectors. Some subjects may bear its adverse consequences, and other subjects may enjoy the benefits. In economy, the cost paid by one sector may be neutralised by the benefit in a different sector. This is why a right application of AKK may lead to establishing the impact spread whenever it may be important.

**Uncertainty.** Data limitations will certainly reduce the analytical precision. Uncertainty of the effects may be a major problem faced by the decision-maker. This is why the cost/benefit analysis must thoroughly disperse these doubts by using the use of sensitivity analysis and by including its results in the decision-making process. We must always weigh various options, never confining ourselves to only one.

**Knowing the effects.** The cost/benefit method not only puts more requirements to the volume and quality of input data and to the skills of processing the obtained output data.

### ***Cost-effectiveness analysis***

The cost effectiveness analysis is to investigate the relative costs to be paid by the community as a result of the selection of various options leading to the adopted goal, that is, the estimation of the alternative costs of alternative solutions per benefit unit. The decisive criterion here is the minimum cost of the solution per one benefit unit with an adopted general cost-effectiveness rate.

The advantage of this method is that it the cost measurement reflects the relative unit costs of the benefits, both positive and negative effects of the legislative process. The main difference between this method and the method of the cost/benefit analysis is that the former does not need a precise estimation of the costs. The cost-effectiveness yardstick determines the cost per one benefit unit but it does not present the result of these calculations, e.g., the reduced mortality rate or better dietary habits, in money terms. Using this method rules out the necessity of doing the very difficult job to value the category of benefit which must be done when using the cost/benefit analysis method.

The cost-effectiveness analysis is a useful tool in assessing the impact of regulation only when we manage to estimate the base cost-effectiveness factor. An example of this factor is the cost paid for the prevention of a single adverse consequence. Estimating the cost-effectiveness rates for the various options and comparing them with the base yardstick may reveal the level of over-absorptiveness (i.e., the size of expenditures needed to reach the adopted goal) of a pondered regulation and, by this, it may ensure the selection of the best option or help to realize what the real costs of the regulations are and then allow their comparison with the other costs.

## Annex 4 – Ideas about the questionnaire

Below are some tips on how to make the consultation-supporting questionnaire.

- Aim and scope of consultation should be presented in a concise way.
- Ask for identification data to sort out the respondents into appropriate groups and include the personal data protection clause.
- Add instruction wherever necessary.
- Questions should be ordered from general to specific.
- Leave some space for notes and comments at the bottom of the questionnaire.
- Always voice your thanks for filling out the questionnaire form.
- At the end of the questionnaire, ask the respondent for the permission to contact him again to get more information.
- Make the questions as short as possible.
- Avoid double negation.
- It is good to ask a control question, that is, a rephrased question asked in some other place of the questionnaire. Different answers may mean that the respondent did not understand the problem asked about. Do not include both questions in the analysis.
- A question should ask about only one subject, e.g., “Have you tried to get information from public administration but you were not successful in getting comprehensive info? Yes/No.” If the answer is “no,” you will never know whether the respondent did not look for information at all, or he did but did not get any.
- Ask precise questions: avoid hazy phrases, such as, good, sufficient. Instead of asking: “Was access to information sufficient?” you can better ask: “Was information available on the Internet, TV, newspapers?”
- Questions about the past should define the time period. Instead of asking: “how often?” you can better ask “how many times in a month/year?”
- If not all the questions should be asked of all the respondents, insert filter questions, e.g., “If you have not used welfare programmes, go to question 5.”
- Avoid questions suggesting the right answer, e.g., “You do not agree with....?”
- Avoid closed questions. They encourage short answers but the alternative of “yes” or “no” only may lead you to wrong conclusions.
- It is good to obtain answers presenting various degrees of intensity of any phenomenon. Example: “I totally agree/I agree/Undecided/I do not agree/I totally do not agree.” You may also use a scale, e.g., from 1 to 10.
- Avoid graphics as much as you can as this may slow down uploading the questionnaire from the Internet.
- Use the right colours and font type.
- Leave enough space for the answers, especially to open questions, so as the respondent can freely express himself/herself.

# Annex 5 – Structure of RIA final report

The results of the analysis should be presented in a report comprising the following components:

**1. Problem analysis** (brief description of the issue)

**2. Aim, effects, and circumstance** (this part will be helpful in making justification of the selection of legislative solutions)

- Description of the purpose of the proposed regulation (what effects it is going to produce, who will be affected?),
- Background: description of the existing legal framework and justification of the change,
- Risk assessment: brief description of the risk associated with the regulation and the possibilities to quantify it.

**3. Options**

- Brief description of the available intervention options,
- Detailed analysis of the best options (it is recommended to consider at least three options including a resignation from public intervention and intervention other than legislative). For each option, make the analysis of strong and weak points and make a regulation implementation and enforcement plan:
  - Option 1: giving up public intervention (description, assessment),
  - Option 2: non-regulatory intervention (description, assessment, preliminary plan of implementation and enforcement),
  - Option 3: regulatory intervention (description, assessment, preliminary plan of implementation and enforcement).

**4. Consultation**

- Describe how the consultation aim was defined and ho consultation was planned and carried out,
- Say who took part in the consultation and which comments were made in their course,
- Describe the way in which consultation results were used in the assessment of regulation impact.

**5. Cost and benefit**

- Identify subjects to be affected by the regulation,
- Provide a detailed analysis of the costs and benefits resulting from options mentioned in section 3 and presented in a table of costs and benefits for the subjects and areas:

Regulation’s impact on:	<b>Positive impact (quantitative/qualitative description)</b>	<b>Negative impact (quantitative/qualitative description)</b>
Subjects		
Public finance		

Labour market		
Competitiveness and entrepreneurship		
Impact on regional development		
Environmental impact		
Total costs and benefits		

**6. Implementation, enforcement, monitoring**

**7. Recommendation**

- Compare the total cost and benefit of various options mentioned in section 3.
- Justification of the recommended option.

**8. Implementation plan**



# Annex 6 – RIA and the law-making process

Carrying out the Regulation Impact Assessment is an integral part of the process of designing, consulting, agreeing, and comparing the drafted normative acts by the Council of Ministers. Below is a flow chart showing the procedure of developing Government draft laws and normative acts, set up based on the by-laws of the Council of Ministers.

