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**METHODOLOGICAL PROBLEMS
OF THE POLISH SYSTEM OF
REGULATION IMPACT ASSESSMENT**

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Methodological Problems of the Polish System of Regulation Impact Assessment

The aim of the article is to present the main conclusions and methodological questions arising from the functioning of the system of regulation impact assessment in Poland since 2002 and the explanation of changes arising from the new government Regulation Reform programme. We make these remarks against the background of the theory of legislation and the methodological work carried out by the OECD, the European Commission and other countries with respect to the Regulation Impact Assessment (RIA).

The current state of affairs and the assessment of system functioning

The assessment of regulation impact is not a new procedure in Poland. The Polish system was undoubtedly modelled upon the procedure of regulation impact assessment popularized by OECD works. It was introduced in 2002 as a component of the process of elaborating, assessing, consulting and reviewing projects of normative acts by the government. Before the drafting of a project of a normative act the Council of Ministers carries out the assessment of the anticipated regulation impact and the results of the assessment constitute part of the statement of grounds for projects of normative acts. ¹

In Poland the regulation impact assessment covers all government normative acts. It generally does not include private members' bills. There are norms and standards governing RIA. The main source of these norms and standards is the rules of procedure of the Council of Ministers. Some principles stem from international treaties (the EU Accession Treaty) and national acts of parliament, e.g. concerning the *ex ante* review of the compatibility of the submitted projects of normative acts with the European law. Other detailed standards of RIA procedure are stipulated by government regulations, e.g. those concerning the procedure of project review by the government (interministerial consultations as well as the functions and tasks of the Government

Legislation Centre). Also the principles of legislative work underline the necessity of making an assessment of the previous legal solutions in the given area before taking the decision of initiating the legislative process.² The legislative procedure provides for professional and social consultations, whose scope depends on the source of legislative initiative (it may be the government, the Sejm, the Senate, the President or a group of citizens). There are a number of issues, where consultations are mandatory (e.g. within the framework of the Tripartite Commission consisting of the government, employers' organisations and employees' organisations). A similar role is played by numerous provisions concerning e.g. access to public information.

The introduction of the RIA obligation in 2002 inspired big hopes for the improvement of the quality of the new law and its optimization (avoiding excessive regulation), which would lead to cutting the costs of legislation.

The review of the RIA system points, however, to its many shortcomings. The analysis of RIA showed that only one out of five assessments of economically important projects determines their implied costs for the recipients of the assessment, and only one out of ten gives concrete figures. Only one out of three RIAs for draft bills specifies the resulting advantages for the citizens and economic entities, and only one out of ten gives concrete figures.

Only several percent of RIA assessments of economically important projects determines their implied costs due to legal regulation of employment, competitiveness and regional development or contains a regular analysis of costs and benefits of the regulation project. None of the RIAs reviewed analyses alternative regulatory and/or extra regulatory solutions.³

The assessments of regulation impact are made in a too casual way, there is no uniform methodology of cost-benefit analysis and the interpretations of regulations are arbitrary. It is common practice to present a bill without effecting the RIA and the assessments made are often superficial and downright sloppy.⁴

¹ See the Council of Ministers' resolution no. 49 of 18 March 2002. – The rules of procedure of the Council of Ministers, Monitor Polski No. 13, item 221

² See the regulation of the Council of Ministers of 20 June 2002 concerning the principles of drafting the legislation, Dz. U. no. 100, item 908

³ R.Zubek, 2004, 'The analysis of regulation effects in Poland against the background of best international practices', www.sprawnepanstwo.pl

⁴ J.Winczorek, 2005, 'Possible directions of the reform of the drafting of legislation in Poland', mimeo.

These observations lead to the conclusion that the RIA system functioning is faulty and the assessments made do not meet their objectives.

The practical functioning of the RIA system in Poland shows that government institutions have little experience in the preparation of comprehensive RIAs which would include adequate qualitative and quantitative analysis of all relevant costs and benefits.

Legislative agendas and the government meeting agendas are compilations of ministerial presentations. The government lacks 'selective' powers with respect to ministerial projects as well as powers to concentrate the RIAs on the most important projects.⁵

The faulty functioning of RIA is attributed to legislative and institutional causes.

The lack of a strong coordinating centre is mentioned as one of the institutional reasons for the faulty functioning of RIA in Poland. The Government Legislation Centre (GLC) does not meet the necessary requirements, as it does not have the necessary powers or resources. The ministries do not have to take its opinions into account.

Imperfections of the legal system constituting the RIA lead to the situation when the law does not enforce in a firm way the conformance of all entities entitled to legislative initiative to the consecutive steps in the RIA procedure – starting with the regulation plan, then applying the RIA methodology, followed by an analysis of alternative solutions, systemic approach, regulation simplification and cost measurement ('one in, one out', 'less is more', 'get connected').⁶

Thus the weakness of RIA leads to the inflation of law and the dominance of sectorial legislation as well as inconsistencies in the legal system. The Polish RIA practices meet the quality criteria of the best practices only to a limited extent.⁷

⁵ In the EU the importance of the given regulation project is measured by the role of the given policy to the Community and by a relatively significant share of secondary legislation. See 'Better regulation' www.strategializbonska.pl

⁶ See RIA Core Requirements and RIA Checklist: 'A Comparative Analysis of Regulatory Impact Assessment in Ten EU-Countries. A Report Prepared for the EU-Directors of Better Regulation Group' (2004), Dublin

⁷ See Zubek R. (2005), 'The RIA and the quality of law in Poland' www.sprawnepanstwo.pl

The reform of the regulation policy in Poland

Numerous shortcomings of the regulation system have led to the creation of the programme of regulation reform for 2006-2010, which includes new guidelines for RIA. The regulation reform programme for 2006-2010 is a comprehensive document, approaching the regulatory policy from the point of view of the requirements of economic development, creation of new jobs and the improvement of enterprise competitiveness. The necessity to optimize the regulatory environment for entrepreneurs is linked to the necessity of improving the quality of regulations and simplifying administrative procedures, with the view to cutting the costs of economic activity and improving competitiveness.

Above all, the reform is meant to change the most burdensome regulations. The binding regulations are scheduled for review, and the outdated or unnecessary provisions will be eliminated.⁸ The objective is to improve the implementation of EU directives. Moreover, a new system of bureaucracy cost measurement is being created with the view to reducing administrative burdens related to various classes of legal provisions. Three regulatory areas will be reviewed in the first place: public aid, environment protection and labour law. The programme is in its pilot phase. The Minister of Economy is responsible for the totality of the reform and he will make the reviews and publish reports documenting the progress of the programme. The origin of the regulation reform programme is not solely the inspiration of the OECD and EU recommendations or the achievements of some countries leading in the field of RIA but also the awareness of the needs of a modern administration and economy, and their acknowledgement by the policy of the state. The regulation reform programme has as its priority – apart from the implementation of the *acquis communautaire* – the achievement of strategic objectives of the Polish economy: high economic growth and high rate of employment.

It can be said then that the objectives of the regulatory reforms have been established, as have its benchmarks inspired by EU recommendations and its key principles (indispensability, proportionality, subsidiarity, transparency and consulting, qualitative

⁸ See Orłowski K. 'One day the law will be better', *Rzeczpospolita* of 30 August 2006

and quantitative analysis of costs and benefits, simplicity, understandability and accessibility of normative acts).

There are, however, many gaps remaining with respect to RIA. Similarly to the present system, the new RIA system is mandatory on the central level only and only with respect to government projects. Local authorities, passing a local law, do not apply the RIA or do it according to their own discretion. There is no differentiation of RIA according to the importance or meaning of the given regulation. The new guidelines should introduce a new simplified and far-reaching RIA, but no decision has been taken so far. It is not clear either, which regulations should be deemed 'important' and submitted to a detailed reviewing mode. No criteria for risk analysis have been worked out. There is no established methodology for the identification of entities which require consultations. The assessment of alternative options, i.e. options which are not compatible with the taken political decision, is not mandatory either. The new RIA methodology includes new elements as well as old ones.

Consultations constitute an example of an element that has been used before (they consisted in asking the entities which will be affected by the regulation for opinions and data) while the environmental impact of a regulation is an example of a new factor taken into account. Such an assessment requires the implementation of the principle of balanced and sustainable development, based on the integration of three pillars: economic, social and environmental. Another new factor is the impact on competitiveness and on the reduction of the costs of economic activity, which is strongly emphasized in the newest RIA methodology of the EU.

Some elements of the RIA procedure and guidelines require further elaboration, e.g. the requirement of another RIA in the case of a 'significant' change of the initial government project during the parliamentary proceedings. It should be underlined that the conducting of a repeated RIA becomes in such a case the duty of the Sejm and should be commissioned by a competent Sejm committee.

The new guidelines require that the regulation impact on economic growth, social cohesion and environment be established but no methodology for relativization or quantification has been provided. The totality of the methodology of measurement and evaluation of the impact on competitiveness and on the activity of small and medium sized enterprises, etc. still requires a lot of effort.

The same can be said about efficiency analysis and forecasts concerning the adherence to the regulation by its addressees as well as monitoring the regulation impact compatibility with the objectives which inspired its adoption. The functionality of issuing more detailed guidelines, e.g. with respect to the consulting process of projects of normative acts, should also be considered.

It turned out that in order to increase the efficiency of RIA it is necessary to make the RIA principles follow the recommendations of the European Commission and the best practices of the member states.⁹ The key rule is to make the RIA before the preparation of a project of a normative act. RIA is a helpful tool at the time of taking political decisions but will not substitute them. The RIA must not be used as an ex-post justification of such decisions. Neither does it substitute the statement of grounds of a project of a legal act. The RIA methodology should ensure high quality and constitute a significant value added to the decision taking process. The RIA system should enable a clear definition of problems and target setting, improve the efficiency of the decision taking process, properly justify the government actions and reduce their potential negative consequences.

Furthermore, plans are made to provide for the simplification of national legal acts, including the elimination of outdated or unnecessary provisions ('rolling programme'), the application of horizontal instead of sectorial regulations where possible, improvement of their coherence, quantification of administrative costs and of provisions 'excessively' implementing EU directives, codification - if possible - of the economic law, the introduction of longer *vacatio legis*, improvement of control standards and a review of controlling institutions.

Some of the easier simplifying actions related to the reduction of burdensome provisions were already taken during the works on the act on the freedom of economic activity of 2 August 2004. At that time other simple solutions were exhausted that limit concessions and permissions. Those that remained are to a large extent determined by European law or international conventions concerning e.g. games of chance and betting or combating the drug problem.

⁹ See guidelines to RIA, The Ministry of Economy, Warsaw, June 2006, p. 3

Another issue is the creation of an efficient mechanism for implementing EU directives, and avoiding additional burdens (*gold-plating*), which are not justified either by national specificity or the objectives of EU directives.

Also ‘double banking’ should be avoided if an issue is regulated by directly applicable European law – taking the form of treaties or regulations – because it does not have to be regulated by national law. Otherwise the whole regulatory picture is blurred. No unclear regulations should be introduced, e.g. combining ‘soft law’ and strict, binding rules.

The reforms introduces ‘horizontal’ consultations with the entrepreneurial circles, with the particular purpose of identifying problems related to excessive regulatory burdens and the implementation of EU directives. It is considered useful to publish guidelines concerning the implementation of directives for the government administration. It would facilitate the choice of the best way to meet the goal of the directive. Apart from ‘horizontal’ consultations, also sectorial consultations are envisaged. All these actions should be synchronised with the progress of works on the introduction of a system of administrative burden measurement. This last issue is likely to be approached by means of adapting to Polish conditions of the Standard Cost Model methodology, used by the Dutch administration.

This methodology can be used to calculate the burdens *ex ante* – for the needs of RIA, as well as *ex post* – as a step in the procedure of simplifying binding normative acts. A pilot project of SCM implementation has been carried out in the road transport sector and in the banking sector. Also the Ministry of Finance has started a pilot programme related to taxing enterprises with VAT. The results show that the SCM methodology can be used effectively in various systems of national law and brings quantitative results forming a credible base for the improvement and simplification of law. It is anticipated that the methodology of measuring administrative burdens will be included into the RIA system.

The focus is on instruments which would prevent the inflation of administrative burdens. In particular, much attention is given to the principle of compensating administrative burdens (introducing new burdens would require reducing the existing ones). This conceptual effort is inspired by the works of the European Commission related to the introduction of the standard net cost methodology.

The review of the regulatory potential in Poland, understood according to the OECD definition as the capability of efficient regulation by means of developing policies and the capability of their implementation by means of high quality regulations is carried out in 2006 within the framework of the SIGMA project. The programme of regulatory reform has been prepared taking into account the OECD and EU recommendations, including the Lisbon Agenda, as well as the experience and best solutions in countries leading in the field of RIA.¹⁰

The programme specifies two basic priorities of systemic and selective character. The second case covers mainly the simplification of regulations, though it should not be reduced to deregulation only. The most attention is given to the improvement of quality, cohesion and transparency of legal solutions. The simplification of law does not put in doubt the primary objectives of individual regulations, e.g. in the field of consumer, environment or employment protection.

Between the theory of legislation and RIA

The theory of law contains a large chapter devoted to the principles of legal policy and drafting of law: one could even claim that there is such a thing as ‘the ABC of a rational legislator’. Yet, the experience points out to the shortcomings of the adopted law and its failure to fulfil the set objectives. The increasing number of legal acts and their quick transition is also observed. The measure devised to counter these symptoms takes the shape of the *better regulation* policy and the application of RIA instruments.

The theory of law indicates that law creation is justified in these areas where it is necessary. It should take place in a subsidiary and proportional way, protecting and balancing the interests of all parties. Regulations should encourage people to behave in a cooperative and economically effective way, reduce transaction costs (if without passing the law these costs remain large), modify the starting (market) negotiating position of the parties (protect the ‘weaker’ party) and take into consideration the consequences of disturbing the market mechanism.

A number of principles exist in this respect both in the field of law and economy, e.g. ‘The government should create law which minimizes transaction costs’ (Coase) or ‘The

¹⁰ See ‘The programme of regulatory reform 2006-2010’, The Ministry of Economy, Warsaw, April 2006

law created should minimize damage ensuing from not carrying out or inadequate carrying out of commitments laid down in the concluded agreements' (Hobbes). It seems that the key choice of legislation may be reduced to the principle: 'Encourage the modification of behaviour (maintaining low transaction costs) or apply a system of compensation (when transaction costs are high).'¹¹

The basic justification for regulation is related to market failure, fulfilment of important public interest (objectively requiring intervention), fulfilment of interests supported by lobbying (subjective interests) and regulation for competition. These justifications must be examined very carefully. Maybe an imperfect market is better in a given case than state intervention.¹²

It should be remembered that regulation is costly. The regulation is difficult to compare with the lack of regulation in terms of costs. Often hypothetical situations are compared, not the really existing ones, often the full balance of costs is not taken into account.¹³

There are various levels of structuring (quantification) of objectives and the problem of weakly (ill) structured objectives exists as well as their pushing out by more precise though not necessarily more important goals. The objective gradation (objectives of higher and lower order, long-term objectives and short term ones) and their interdependence are brought up.

Sometimes there is a conflict between 'just' objectives which are all in the public interest. Sometimes particular interests are presented as public. Objectives can be of

¹¹ In contract relations one should efficiently encourage the parties to fulfil the commitments or to neutralize the advantages resulting from the failure to fulfil them. In tortious relations one should aim at the minimization of the total social loss. One should investigate the possibilities of internalizing external cost by those who generate them and also of limiting other imperfections of the market. See Nowak-Far A. 'The optimization of the creation and implementation of law', materials from the conference entitled: 'Regulation reform in practice. The experiences of the new EU member states', The Ministry of Economy, Warsaw, 9 October 2006

¹² In economics, the so-called theory of growth has neglected analysis of institutions which have a significant impact on competition. In this context one should mention the achievements of institutional economy: the theory of hierarchy and the market, transaction costs, natural monopolies, public goods, external effects, agency theory, free ride, negative selection and moral hazard, market transparency, information asymmetry and limited rationality in decision taking. See Szpringer W. 'Structural adjustment in economy (competition or regulation)', Warsaw, 1994

¹³ Every situation must be examined individually. The most typical situations of market failure are the following: natural monopolies, external effects, public goods, imperfect or asymmetric information, entry barriers, few buyers or sellers (monopolies, oligopolies). There are a number of threats in this respect. See Krueger A.O. 'The Political Economy of Controls: American Sugar' in (1990), 'Public Policy and Economic Development, Essays in Honour of I. Little' (Scott M., Deepak L. Ed.), Oxford, p.170 et seq.

positive character (a state of affairs which should be achieved) or of a negative one (motivated by the possible result of neglect, avoidance of certain states, bans on activities). Objectives can be new (they generally require new regulations) or old (they usually require an amendment of the existing regulations).

It is not possible to quantify fully premises and results of regulation (we can talk more of forecasts than planning) or to evaluate certain targets or values, such as clean environment, health or human life.

The regulation impact can be concentrated or dispersed. In the case of cost dispersal and effect concentration, one should analyze particularly thoroughly and carefully the project of a legal act from the perspective of political lobbying (forcing a particular interest – presenting it in the categories of public interest).

One should pay attention to the problem of assessing not just the results (costs and effects) of a particular regulation but also the mechanism of its application, possibility of controlling compliance and enforcing its norms, solving disputes, etc.

What is important is the assessment of the impact of a regulation on the existing regulations -whether one act deprives another one of its meaning or whether it pulls in a diverging direction, whether there are correlations (synergies) between normative acts and which acts should be kept and which derogated. Maybe it is sufficient to use another method of interpretation (functional, target oriented) without the need to adopt a new law?¹⁴

The omnipotence of regulation in the redistribution of GDP for the benefit of the poorer part of society is overestimated (see the problem of usury or consumer bankruptcy). These regulations, if conceptually and legislation-wise ill-conceived, instead of protecting the poor, often turn against them!¹⁵

¹⁴ The role of interpretation is emphasized by the judicial decisions of the European Court of Justice, which had to fill in gaps in regulations or react to constant changes of the Community. One can talk about vertical development of law (judicial decisions concerning relations between the EU and the member states) and also about horizontal development of law (judicial decisions concerning relations between member states). As a matter of fact it is not a 'subsumptional' method but, on the contrary, a far-reaching 'interpretational' method of the use of law, which in reality creates new standards. See Callies Ch. 'Judicial decisions and European law – on judicial law' in (2005), 'The importance of judicial decisions in the system of sources of law (European law and national law)' (Dolnicki B. Red.), Bydgoszcz-Katowice, p.134 et seq. ; see also Galligan D., Matczak M. (2005), 'Strategies of adjudgement. On the exercise of discretionary power by judges of administrative courts in cases related to economic activity and taxation'. The 'Efficient State' Programme , Ernst&Young, Warsaw

¹⁵ Yet, some authors seem to underestimate it. See Kirkpatrick C., Parker D. (2004), „Regulatory Impact Assessment and Regulatory Governance in Developing Countries” Public Administration and Development October, p. 333 et seq.

The complexity and the role of probability in social systems lead to the increasing importance of heuristic and qualitative approaches (the significance of institutional analysis and systemic modes). The combination of empirical studies and holistic visions, ideas and concepts as well as political programmes puts the expert method in the centre of attention of authors dealing with RIA.

RIA can be treated as an instrument of ‘legislatory accountancy’. RIA is a collection of analytical methods, which enable to determine regulatory impact and also to strengthen the role of content wise argumentation in the process of drafting the law.

A question arises whether RIA studies should encompass the totality of law and, if not, then how the priorities should be set. It is no mystery that the purpose oriented function of an act may be watered down by numerous little acts, often of a low order, according to the principle: *lex specialis derogat legi generali*”.

A doubt remains how to measure the synergy effect of many regulations (new as much as the existing ones). The costs and effects do not stem from the regulations only, but also from the procedures governing their use, the possibility of controlling compliance and enforcing the regulation, of settling disputes by the judiciary, etc.

Important difficulties of estimating the costs and effects may derive from the fact that both the costs and effects may be concentrated or dispersed (in the case of dispersed regulation costs, they can be unclearly felt and perceived, which favours promoting group interests – at the cost of all tax payers). Therefore it is important to limit the lobbying or to submit it to transparent rules.

The concept of a ‘superbody’ responsible for RIA is very controversial. It would have authoritative competences with respect to entities possessing legislative initiative (which would be unconstitutional and lead to the transfer of law making competences from competent bodies to the ‘superbody’). The correct thinking should rather go towards situating cells presenting the common point of view - in the sense of public interest - in the structures of the Sejm and the government (such as the committee for legislative proceedings, which used to function in the Sejm but was dissolved later on).¹⁶

RIA cannot retain its extraordinary character forever but as end objective should be fully incorporated in the structures of the state apparatus, with the consideration of the

culture and tradition of the given country (regulatory governance). Many theories on the regulatory competition are at odds with reality and empirical studies have shown excessive simplification of many models.¹⁷

Regulation impact assessment – European and world inspirations

In the European Union the **Better Regulation Action Plan** is treated as an important tool for achieving the objectives of the Lisbon Strategy, and in particular the improvement of the Community competitiveness. It is modelled upon US experience, as well as the experience of other countries (such as Great Britain and Holland). It has been expressed by the new strategy which attempts to order the regulatory environment and directs the 2002 Integrated Impact Assessment (IIA) approach towards competitiveness.¹⁸ The review of the principles applied in these countries indicates that the simplification of regulation should be based on the elimination or consolidation of existing regulations („Less is More”) and the elimination of overlap and lack of coherence. New regulations should be preceded by the review and elimination of the existing ones („*One in, One out*”). It entails the reduction of administrative work and underlines the weight of legal interpretation leading to a new quality of regulation and an increase in its efficiency without weakening, however, the necessary protection of workers, consumers, the environment, etc.¹⁹

The feedback between the regulatory intentions of the Community and the member states („Get Connected”), receives due emphasis and so does the relevance of consulting the social and professional stakeholders (consulting those who should be consulted, in due time and in a proper manner). It is a problem concerning not just

¹⁶ It should be considered whether the edition of legal acts would not rather be entrusted to specialist than to deputies. Politicians' duty would then consist in providing the main idea for the regulation, as it is the case in some other countries.

¹⁷ Radaelli C. M. (2004), 'The Puzzle of Regulatory Competition' *Journal of Public Policy* No. 1, Vol.24, also: 'Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy' (2005), (Epstein R.A., Greve M.S. Ed.), American Enterprise Institute, 'The Structure of Regulatory Competition. Corporations and Public Policies in a Global Economy' (2005), (Murphy D.D. Ed.), Oxford

¹⁸ Communication on Better Regulation oraz Guidelines on Impact Assessment of 2005. See Renda A (2005), 'Impact Assessment in the EU. The State of the Art and the Art of the State' Centre for European Policy Studies, Brussels

¹⁹ www.betterregulation.gov.uk , www.brc.gov.uk

regulations themselves but also the methods of their implementation. The perspective covers all important regulations in three sectors: the private sector, the public sector (including non-governmental organisations) and the social (voluntary) sector.

A lot of importance is attached to the compilation of a possibly full list of costs and benefits of the regulation, to the quantification of all cost and benefit elements which can be quantified (e.g. scorecards, discount rates), to ex ante - and not only ex post - evaluation (as it is important not just to monitor the existing regulations but also to assess them at the project stage together with their premises so as to avoid the adoption of faulty or unnecessary provisions), to consultations with experts in qualitative issues (which are difficult to assess), and finally to alternative cost analysis (the suggested regulation vs. other regulatory possibilities or no regulation at all).

This last instance also implies the examination of possible solutions based on extralegal rules or soft law, as well as co-regulation and self-regulation. It is important to analyse regulation from the perspective of the subsidiarity principle (whether regulation is really necessary in order to achieve the established goal), and also the principle of moderation and proportionality (whether the regulation is an adequate means to achieve the intended goal).

The European Regulatory Impact Assessment Model (RIA) pays a lot of attention to the gradual introduction of the evaluation procedure and to the regulation costs incurred by enterprises, particularly the small and medium-sized ones. The public sector is advised to introduce mechanisms typical for the private sector, to outsource many functions which are performed inefficiently by the state and to concentrate on effectiveness as well as consumer and entrepreneurial satisfaction.

Also American experience is inspirational. It points to the importance of ex ante assessment as well as cost and benefit quantification, the examination of alternative costs and the creation of special regulations concerning the regulation evaluation procedure. It also gives prominence to supervisory bodies of control over the assessment process, which have the authority to reject projects failing to meet various requirements, e.g. the requirement of examination, periodic reviews and presentation of reports showing the condition of the given regulation.

The Commission aims at preparing a common methodology for the measurement of administrative costs, which would be sufficiently flexible to take into account the specificity of member states, also with respect to data gathering. Some elements of the

model should be, however, defined and standardised, in such a way as to enable comparability, determine the main cost factors to be considered and lead to a uniform reporting form.

Flexibility may be applied with respect to other aspects, e.g. the amount of detail to be included or methods of data gathering. Some member states (France and Spain) had doubts whether it is justified to use common methodology of measuring administrative costs given the different administrative structures and differences in the culture of law-making.

The net costs assessment means that the Commission will have to conduct two measurements of administrative costs: those created by the existing provision and those ensuing from the proposed legislation. The Commission introduced pilot projects in this field, maintained correspondence with member states and on 21 October 2005 published a communique with regard to the common methodology of calculating administrative costs.

The expectations of individual EU member states are not identical. The group of member states which is engaged actively in works under the 'Better regulation' project on the national level is interested in carrying it over to the Community level. The scope of the project is not clear either. The 'Better regulation' solution will gradually cover new areas (e.g. agriculture). At present only selected areas are being developed in more detail, such as the environment protection, where the Commission has been obliged to prepare 7 topic strategies.

The role of high level expert group is far from clear either, its function being advisory to the Committee in issues related to the implementation of the 'Better regulation' project. In particular it tackles problems of simplifying regulation impact assessment, as well as the assessment of the introduction and functioning of regulation quality systems on the basis of regulation quality indexes and peer reviews of the regulation managing capability in member states.²⁰

RIA is a decision making instrument, a method of consistent examination of the impact of regulatory actions and a tool of communicating relevant information to persons and

²⁰ Information about the scope of mandate of this group led to confusion among member states which had expected this mandate to be restricted to advisory role only, without instruments enabling the group to exert influence on the policy at the national level. On the other hand, the Commission wants to have influence on the national strategies of improving the quality of regulation. See Kałużyńska M. 'The "Better Regulation" initiative' in (2005), 'Selected aspects of European competitiveness. The state of the debate'. The Office of the Committee for European Integration, Warsaw, p. 109

bodies responsible for decision making.²¹ RIA is a complement to a well functioning decision making process and will not substitute the political, economic and social assessment made by the government.²²

It should be noted that varying methods are used by regulated entities in OECD countries in order to achieve this objective. Every regulation is the effect of combining these methods. They may differ depending on the national culture, political tradition and the subject matter of the regulation.

Conclusions

The lack of a strong coordinating centre is mentioned as one of the institutional reasons for the faulty functioning of RIA in Poland. The Government Legislation Centre (GLC) does not meet the necessary requirements, as it does not have the necessary powers or resources. The ministries do not have to take its opinions into account.

The lack of methodological guidelines for RIA is also noticeable. Legislative agendas and the government meeting agendas are compilations of ministerial presentations. The government lacks 'selective' powers with respect to ministerial projects as well as powers to concentrate the RIAs on the most important projects. The weakness of RIA leads to the inflation of law and the dominance of sectorial legislation. RIA cannot retain its extraordinary character forever but as end objective should be fully incorporated in the structures of the state apparatus, with the consideration of the culture and tradition of the given country (regulatory governance). However the idea of a 'superbody' enjoying authoritative competences with respect to entities possessing legislative initiative (including the power to select laws) is controversial. The solution would be unconstitutional and lead to the transfer of law making competences from competent bodies to the 'superbody'. The correct thinking should rather go towards situating cells presenting the common point of view - in the sense of public interest - in the structures of the Sejm and the government (such as the committee for legislative

²¹ See the joint initiative of OECD and the EU: Donelan E. 'Better Regulation Practices', materials from the conference entitled 'Regulatory reform in practice. Experience of the new EU member states.' The Ministry of Economy, Warsaw, 9 October 2006

²² See 'Regulatory Impact Analysis: Best Practices in OECD Countries' OECD, Paris, 1997

proceedings, which used to function in the Sejm but was dissolved later on). It might be beneficial for the RIA system functioning in Poland if principles worked out at the Community level were adopted.