

# Regulatory Impact Assessment

RIA

## Governmental Handbook

In accordance with Government Resolution No. 4027 of December 25, 2011  
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3 Kaplan Street, Hakirya, Jerusalem 91950:  
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## Executive Summary

Optimal regulation is a measured and balanced intervention in the economy, which leads to the implementation of a defined objective and justifies its impact (both direct and indirect) on society and on the economy. **The doctrine of regulatory impact assessment (RIA)** functions as an instrument to assist in making decisions that manifest the highest number of considerations and as a structure to analyze the advantages and disadvantages and the decision that balances them both. The purpose of the doctrine is to create **optimal regulation**.

This handbook is organized into five stages:

### Describing the Status Quo and Defining Policy Goals

**Regulatory intervention** is the regularization of the behavior of individuals or groups through the use of an assortment of instruments. This chapter outlines guidelines for the description of the reasons for the regularization and a framework within which the regulation is designed. These include four components: **the reasons for the regularization**, which may be market failure, regulatory failure, unreasonable risk or distributional goals; an early description of **the area the regulation may potentially impact**, which takes into account population groups, spheres of influence and the amount of damage; mapping **the regulatory arrangement** to ensure that the implemented policy will be consistent and coherent with regulation in other areas. As part of this, **clear targets for regulation** must be defined.

### Risk Management

Risk management details the policy framework for each **separate risk components**. This allows us to determine the most efficient regulatory instrument for each component in turn. In particular, risk management serves as the basis for planning the inspection and enforcement mechanisms while **preserving the balance between providing an effective solution to the risk and the burden of regulatory intervention**.

The impact of regulation is assessed through the use of two main instruments which complement each other:

#### Consultation with interested parties, experts and stakeholder groups

Consultations assist the regulator in **collecting essential knowledge and information** to design optimal regulation, allows the regulator to **identify problems and obstacles** in achieving regulatory targets and **increases the legitimacy** of the alternative chosen. This chapter provides a professional framework and outline for planning and implementing the consultation procedures and discusses the

#### Alternatives - formulation, analysis, comparison and choice

Examining alternatives is a main instrument in assessing regulatory impact. A comparison between alternatives obligates a clarification of the **advantages and disadvantages** of various suggested regulations. The chapter suggests four stages to choose the preferable alternative: **formulating** alternatives, analyzing the **direct** impact, analyzing the **indirect** impact (social and economic) and

challenges which arise therein.

**comparing** the alternatives. This chapter includes general guidelines, suggestions for methodological instruments and "warning signs" for challenges at every stage.

These two instruments provide the basis for the **decision regarding the chosen policy**.

### Implementation, Inspection and Public Reporting About the Recommendations

This chapter deals with the two stages that result from the recommended policy selected: the plan for its implementation and public reporting. After the regulation has been determined, **an implementation plan, measurements for evaluation and inspection and an infrastructure for gathering data** must be determined. Defining the measures for the success of the regulation allows for the development and preservation of knowledge regarding the impact of the different steps of the regulation and ensures that the regulation will advance the goals defined for it at all stages. Using a template for public reporting ensures the **standardization of the necessary transparency and responsibilities** in the process of designing optimal regulation and it services the regulator's internal work processes.

## Introduction

**Regulation:** rules of behavior dictated in the framework of economic or social activity, which can be enforced by an administrative authority authorized by law, including in legislation, secondary legislation, court orders and administrative directives to implement legislation or by secondary legislation<sup>1</sup>

Over the years, countries have learned to treat budgetary expenditures with respect – those expenditures are limited by law and in need of legislative approval. The equation that expanding governmental activity equals increasing taxes is clear to decision makers. On the other hand, regulation incurs many costs that cannot be quantified in terms of the State Budget<sup>2</sup>. Imposing regulation – even when it has an economic and social cost, is not always calculated in that manner. This is equally true when the decision is made not to impose regulation. Such a decision also bears a cost.

This was understood in OECD countries several years ago and most of them established mechanisms and developed theories regarding regulatory impact assessment in order to examine the advantages/disadvantages and increased effectiveness, both for the ruling authority and for the sector being monitored and the public at large. In this framework, the need to examine regulatory decisions vis-à-vis stakeholders who would be affected by the regulation was determined. This process is called Regulatory Impact Assessment.

During the process of Israel's accession to the OECD, Israel committed to work to develop instruments for determining regulation. The Trajtenberg Committee also recognized that the assessment process should include an examination of the social and economic impact, such as the impact on the cost of living and on social gaps. The number of points of view needed to assess regulation in advance obligates an increase in consultations with experts, stakeholders and groups from the public, similar to what has been done in many countries around the world.

This handbook was written in accordance with the recommendation by the Trajtenberg Committee that: "The Government must institutionalize its various regulatory activities and create a regulatory doctrine in Israel... to work towards drafting a regulatory doctrine, and work towards putting it into practice in various ministries and continually supervise its implementation" (page 169 in the Hebrew version). To that end, the Government decided in Resolution No. 4027 of December 25, 2011, to charge the Policy Planning Department in the Prime Minister's Office (today the Department for Governance and Social Affairs) to assist the Ministry of Industry, Trade and Labor (today the Ministry of Economy) in preparing a regulatory doctrine. The Legal Adviser and head of the Regulatory Forum in the Ministry of Economy joined the Department and this document is the result of their joint work.

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<sup>1</sup> See Justice Itzhak Zamir, "Public Inspection of Private Activity," (2005), *Law and Business*, B, 157-167: "The regularization of economic activity through rules determined by law, standards or administrative directives and through inspection by operative authorities" in Hebrew. The issue of defining regulation has been discussed at length in research literature and for the purposes of this handbook, it is not necessary to expand on the subject. A precise definition can be found in the glossary.

<sup>2</sup> In this context, see Lowi, J.T., "American Business, Public Policy, Case Studies, and Political Theory," (1964) *World Politics*, 16, 677-715

## A. Optimal Regulation and RIA Perception

**Optimal regulation**<sup>3</sup>: proportional and balanced intervention in the economy, which leads to the implementation of a defined objective that justifies its impact (direct and indirect) on society and on the economy

Optimal regulation is choosing the manner of governmental intervention best suited for realizing the goal. As such, it rests on four main principles:

- **Clear objective** – Optimal regulation helps implement a defined objective and its success is viewed in this light. Therefore it is also understood that regulation that does not achieve its objective (or that does not have a clear objective) is not optimal regulation.
- **Balance between advantages and disadvantages** – Governmental intervention is done in a manner that balances between the advantages and disadvantages, based on an analysis of the repercussions of regulation.
- **Calculation of the indirect impact** – Many regulations have an impact that deviates from the target groups and their direct goals. The process of formulating optimal regulation adjusts for these impacts (as much as possible) vis-à-vis the regulation's objectives.
- **Effective implementation** – Adjusting the enforcement mechanisms, while strengthening legitimacy and taking into account patterns of compliance which will lead to realizing the regulation's objective in the best manner possible.

In this spirit and further to the Trajtenberg Committee Report, the Government determined that "one of the goals of any public regulator, in addition to any other goal determined in accordance with the law, will be responsibility for consumer welfare, including cost of living; and to advance competition in the field over which the regulator is entrusted; and that when exercising his authority in accordance with the law, these considerations be taken into account while fulfilling his duty of explaining his reasoning in this matter" (Government Resolution No. 4027 dated December 25, 2011).

**Regulatory Impact Assessment doctrine is a tool meant to help produce optimal regulation.** RIA doctrine, which is laid out in this governmental handbook, serves as a tool for decision-makers that expresses the range of considerations, while analyzing the advantages and disadvantages of the alternatives and choosing the optimal alternative. The principles at the base of this doctrine include:

- **Reasoning** – making decisions while taking into account defined goals, based on information and the particulars behind the reasons for the decision;
- **Risk management** – adapting the method of intervention to the components of various types of risk and to the risk range (what risk are we willing to take?);
- **Systemization** – integrating a shared governmental regulatory view while ensuring coordination between regulators;

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<sup>3</sup> Further examples and criteria for optimal regulation can be found in: Baldwin, Robert Martin and Martin Lodge, *Understanding Regulation* (Second Ed., Oxford University Press, Oxford: 2012), pp. 25-39; and the Australian Handbook *Guide to Better Regulation*, pg. 7

- **Ex post facto examination** – to ensure effectiveness, achievement of goals and dealing with the unexpected influences as time passes;
- **Contact with the public** – establishing communication and trust mechanisms between the regulator and the public through consultation, transparency, freedom of information and accountability.

**Clarification:**

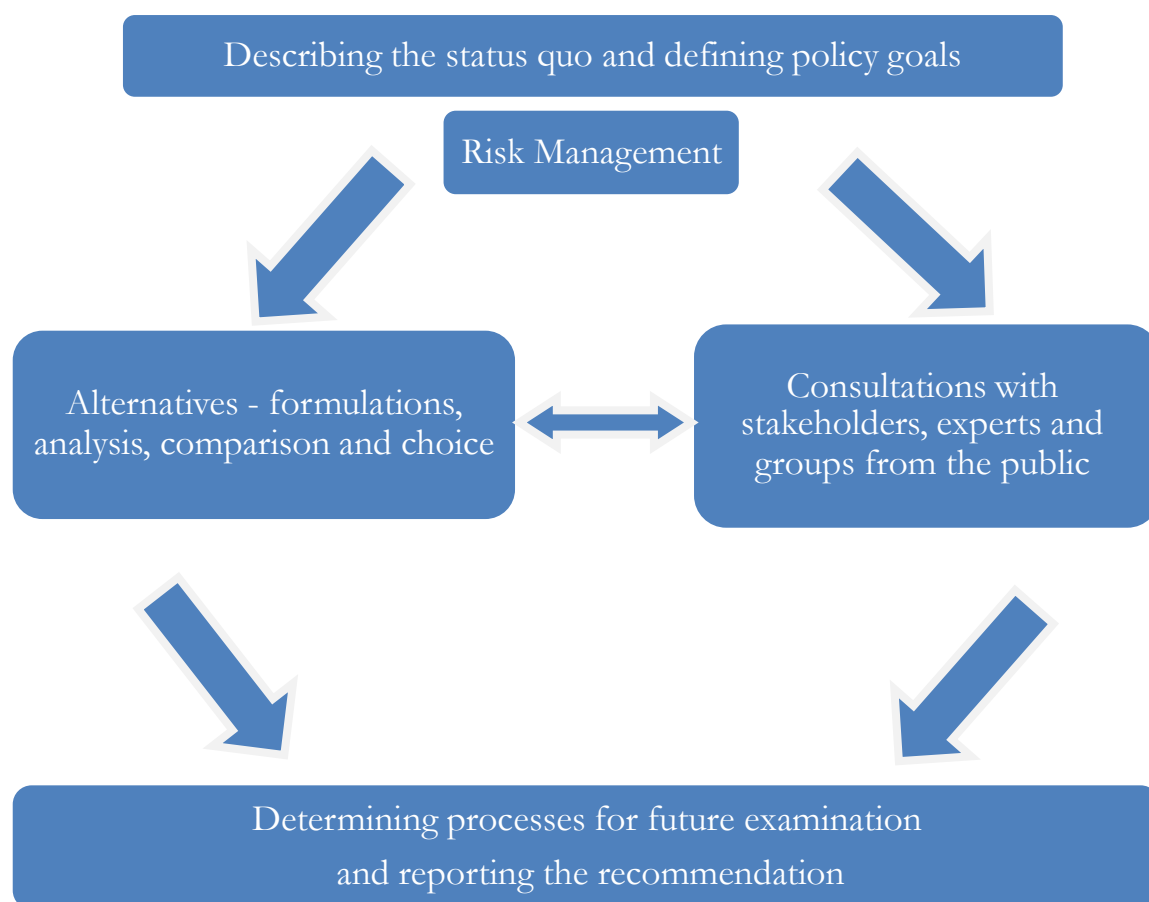
The **Government has no intentions of dictating certain outcomes to the regulator's activity** with this RIA theory. The regulator's expertise in his field is the starting point for his selection and agreement to take the position. The goal of this theory is to create a framework for the regulator's work which will be integrated into his work and ensure optimal regulation.

RIA theory does not replace legal monitoring regarding the nature of the regulatory rules (in accordance with the instructions of the Attorney General) or in place of budgetary review by the Ministry of Finance, but rather adds professional instruments for determining regulatory policy.

It should be emphasized that **it is the regulator's responsibility to decide, given the range of considerations, which evaluation process is needed to design appropriate regulation.** As stated, this handbook outlines a thought framework for the process of designing regulation. As such, the handbook provides tools that assist and in no way should be seen as binding guidelines for the process of determining regulation. The decision regarding the depth of the RIA and to what extent the handbook will be utilized is under the responsibility of the regulator in accordance with circumstances and need.

## B. The Five Stages of the RIA Process<sup>4</sup>

The RIA process can be built **based on five stages**:



The first two stages in the diagram create the infrastructure needed to design the regulation, by describing the status quo, defining targets and managing risks. The two stages in the center of the diagram, which are parallel to one another, are two of the main instruments used in analyzing and evaluating regulation. The use of alternatives is an instrument to analyze the advantages and disadvantages of regulatory possibilities on the agenda, while consultations are the instrument by which the regulator examines himself throughout the entire process vis-à-vis the stakeholder groups.

The separation of these two instruments is schematic for the purposes of this handbook, rather than chronological. The two instruments complement one another and are integrated with each other. Formulating alternatives may assist in focusing consultation

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<sup>4</sup> These stages for designing regulation are associated with the principles of "open government" and, in general, advance the accountability of the Government for its activities (as expressed in Government Resolution No. 4515 of April 1, 2012).

Most of the handbooks around the world have similar foundations. See for example the British or Australian handbooks:

<http://www.bis.gov.uk/policies/bre/principles-of-regulation>

Hampton, Phillip. *Reducing Administrative Burdens: Effective Inspection and Enforcement* (HM Treasury: 2005) ('Hampton Report')

<http://www.fera.defra.gov.uk/aboutUs/betterRegulation/documents/hamptonPrinciples.pdf>

[http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0009/16848/01\\_Better\\_Regulation\\_eGuide\\_October\\_2009.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf)



processes; while on the other hand, consultation mechanisms must be accompanied by an analysis of the alternatives. In general, it is desirable that consultation instruments be utilized throughout all the RIA stages, including when describing the status quo, defining policy targets and determining processes for future examination.

**There is mutual affinity between all of the stages:** For example, policy goals and risk management are indeed determined in the first stage, but they may have to be updated (and it is advisable to do so) as a result of the consultations. In a similar manner, when reporting on the recommendations, conclusions that did not arise during the stage of comparing the alternatives may be brought up and the policy may be updated accordingly. In this sense, **the process of formulating regulation as described in these stages is not necessarily linear, but rather a process in which each stage can affect all that was understood in the earlier stages, until the final policy is shaped.**

**This handbook is written primarily in reference to the design of ex-ante regulation.** However, RIA also requires **ex-post regulation** due to the need to suit regulation to a changing reality and as part of a developing array of additional regulatory rules. Basically the methodology used in ex-post regulatory impact assessment is the same methodology used in ex-ante regulatory impact assessment.

### **C. Determining the measure of investment in the process ("depth" of the RIA)**

#### Considerations for determining the depth of examination

A deep evaluation of the impact of regulation requires many expensive resources ("the problem of optimal stop time"<sup>5</sup>). Therefore, prioritization should be determined **and the depth of the RIA should be defined** as part of every process. In general, it may be determined that the larger the expected impact of the regulation (in terms of target group affected, depth of the impact, resources, etc.), the more important a methodical assessment is. The decision regarding the depth of the RIA can be made at the beginning of the process or after the first stage of describing the status quo and defining the policy targets.

Five criteria can be proposed to assist in making the decision regarding the depth of the examination<sup>6</sup>:

- i. **Describing the problem** – In this context, one can assess: **the scope of the damage**, whether it be monetary damage or non-monetary damage (such as distress and quality of life); whether it adversely affects central values (such as human life, human rights and distributional principles); **the extent of the population harmed; timetables** (if the problem is relevant in the short-term, it demands immediate attention and an in-depth analysis

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<sup>5</sup> When making rational decisions, the regulator must determine when to stop the process of collecting information and learning, and make a decision. To that end, he must compare the cost of continuing the examination and the risk of making a non-optimal decision based on partial information. For example, see: Carpenter, D. P., "Protection without capture: Product approval by a politically responsive, learning regulator", *American Political Science Review*, 98(4) (2004), 613-31.

<sup>6</sup> There are countries that have a central body overseeing the RIA, which has the authority to decide the depth of the RIA in accordance with considerations such as competition and the like. For example, the Australian body provides a series of questions, which help when deciding the required RIA depth.

only in retrospect); and **the complexity** of the problem (a complex problem that exhibits many symptoms or results from a combination of factors may demand deeper and more thorough treatment).

- ii. **The potential impact of regulation** – A potentially large impact can be estimated even before methodological measurement in areas: where the best existing experience of the regulation being examined has shown a significant impact on **the State budget**<sup>7</sup>; or when high **compliance costs** are involved; or they have a large impact on **competition or price levels**.
- iii. **Preliminary arrangements** – As mentioned, RIA applies in all cases in which "rules of behavior are enforced in the framework of economic or social activity", and it does not matter if the source of the rules is primary legislation or "administrative orders or instructions"<sup>8</sup>. Nevertheless, a different RIA depth can be distinguished according to the **length of the arrangement** determined by the regulation, as long as it determines preliminary arrangements. In this sense, the RIA to be conducted in the preliminary arrangement will serve as a basis for the assessment of the impact of each resultant secondary arrangement. At the same time, a broad RIA must be conducted on the secondary arrangements as well if their potential impact is significant.
- iv. Regulation that has the potential to impact **vulnerable sectors or those requiring advancement** – for example, excluded populations, peripheral areas, small businesses. In this sense, such regulation must be given weight both because of its impact on social values (for example, equality and reducing gaps) and because of the underrepresentation of these sectors in the public decision-making process in and of itself.
- v. **Lack of prior relevant experience** and the extent of uncertainty regarding the chances of the regulation's success, as well as the **possible precedent** that may result from the regulation or from especially **complex** regulation (like that involving a number of government ministries).

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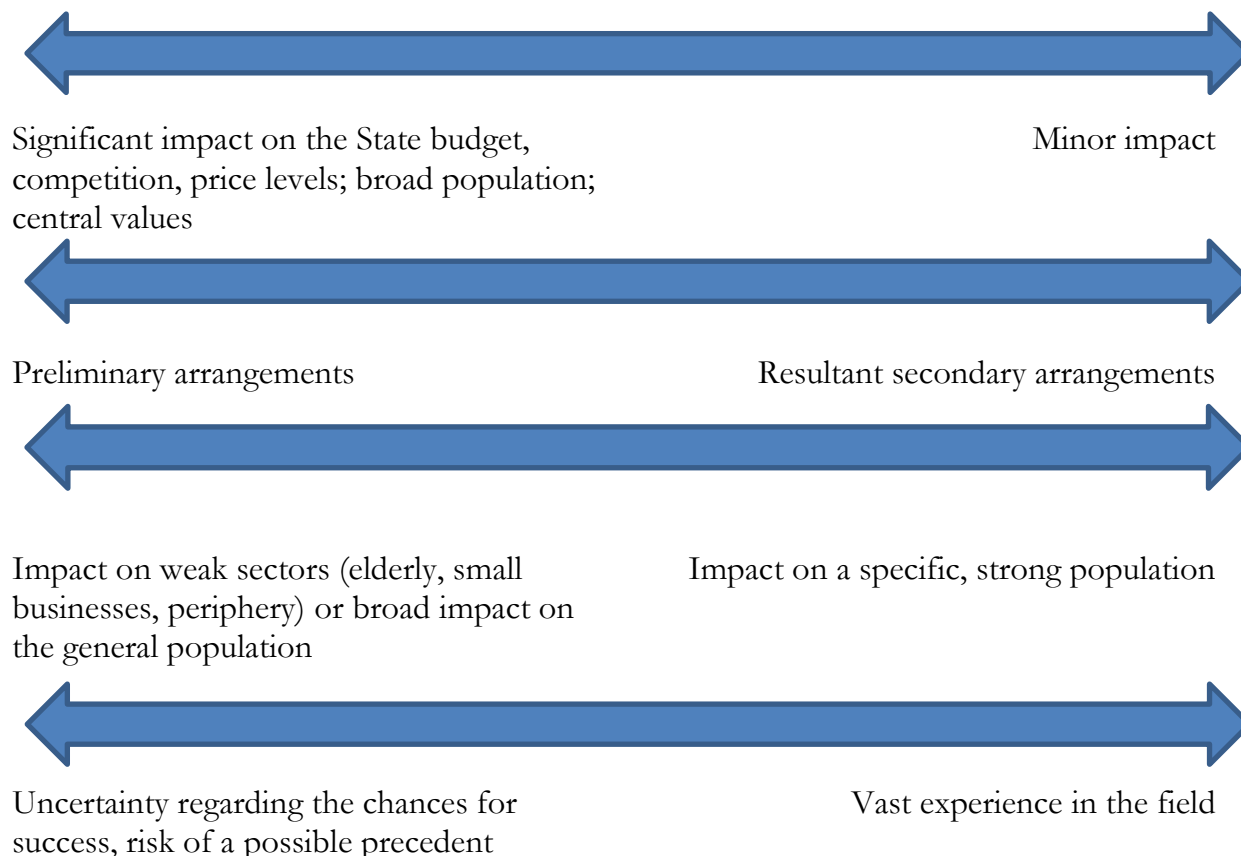
<sup>7</sup> For example, in the United States, any regulatory decision which will cost more than \$100 million of the US budget is defined a significant decision that requires RIA. In Korea, they take into account the extent of the population and in Ireland, the scope of the budget.

<sup>8</sup> It is actually primary legislation anchored in a structural process which allows for public dialogue with many parties, and this is in contrast to administrative orders (even on the level of Directors General Memoranda) which are the exclusive purview of a minister and which at times do not undergo comprehensive examination of the impact even though they may have a significant impact on the economy.

## Criteria for Determining the Depth of the RIA

**Broad RIA**

**Basic RIA**



In this context, it should be reemphasized that basing the process on theoretical and empirical knowledge from around the world (including an RIA conducted by another country) does not replace critical examination and adapting it to the Israeli context. Rather, the automatic adoption, whether full or partial, of regulations from other countries may cumulatively lead to a strict regulatory system that is not necessarily suited to the Israeli context (a phenomenon known as "cherry picking"). Therefore, a rational analysis of the impact in Israel must be conducted.

Some countries<sup>9</sup> have established a "pre-RIA" stage (preliminary impact and risk assessment – PIRA), during which the regulator assesses in a structured manner the potential impact of the regulation and decides whether or not to invest in a full RIA process or make do with the preliminary analysis carried out. On the other hand, other countries, much like the doctrine proposed in this handbook, base their decisions on the regulator's assessment **and leave the final decision to his judgment.**

### The practical expression of the differences between broad RIA and basic RIA

<sup>9</sup> For example, the West Australian government guidelines to conduct a preliminary impact assessment: [http://www.treasury.wa.gov.au/cms/uploadedFiles/Treasury/Economic\\_reform/Regulatory\\_Gatekeeping/ria\\_guidelines\\_july\\_2010.pdf](http://www.treasury.wa.gov.au/cms/uploadedFiles/Treasury/Economic_reform/Regulatory_Gatekeeping/ria_guidelines_july_2010.pdf)

As mentioned, the regulator uses his judgment when planning the RIA process. Nevertheless, **several "rules of thumb" can be pointed out which will assist in defining the scope of the RIA process, in accordance with three central aspects: the extent of information gathering, the depth of the consultation process and the number of alternatives examined.** In a broad RIA process, many resources will be invested in gathering information, consultations will be held with stakeholders on a broad scale and a number of alternatives will be examined. In contrast, when conducting a basic RIA, only a reduced number of alternatives can be examined and consultations are conducted on a limited basis. Chapter 3 will expand on the different levels of consultation with stakeholders, while Chapter 4 deals with examining alternatives.

	Broad RIA	Basic RIA
Extent of information gathering	In-depth research conducted	Basic research conducted
Depth of the consultation process	Broad scope	Narrow scope
Number of alternatives	Significant increase in number of alternatives	In-depth examination of one main alternative out of all the choices

It should be emphasized that despite the broad definition of regulation, not all kinds of regulation require an RIA, even a basic RIA. It is clear that, by its very nature, "mechanical" regulation like routine additions to quotas or price increases in accordance with a standard rate (like linked to the consumer price index or natural growth) does not require RIA. On the other hand, the rules that regularize this activity (rules for updating quotas or prices) do require RIA (basic or broad) accordingly<sup>10</sup>.

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<sup>10</sup> Some countries predefined areas of regulation exempt from the need for an RIA. For example, the West Australian government RIA handbook defined nine such areas, including regulation relating to especially trivial issues (payment updates in accordance with the consumer price index), especially sensitive ones (voting rights, for example) or regulations that are widely discussed in parliamentary committees (unless the committee asked specifically that an RIA be conducted). See: Regulatory Impact Assessment Guidelines for Western Australia, July 2010.

<sup>11</sup> The structure of the final report is based on the format on the British and New Zealand reports. See for example: <http://www.bis.gov.uk/ia>, <http://www.treasury.govt.nz/publications/guidance/regulatory>.

### How to read this handbook:

**This handbook offers uniform governmental language and a shared framework for work.** The decision regarding the extent to which the handbook is used **is left to the regulator's judgment.** Because there are **great differences between regulators,** it is recommended that each regulator develop and choose the instruments suitable for him to examine the impact and that he improve and adapt the handbook to his needs.

**As part of the RIA, its conclusions should be reported (RIA report) at the end of the work process. A reporting template is attached as an appendix to this handbook<sup>11</sup>.**

**The handbook serves as a general guide for the structured process of planning regulation, and the RIA report serves as a model for the reporting required at the end of the process.** At the same time, this handbook is also meant to clarify the various requirements for the RIA report. The handbook outlines the assessment process as it develops from one stage to the next, whereas the structured template describes the final product.

Because the RIA template serves as a main tool for transparency and reporting, using the templates during the work process can assist and ease the documentation at the end of the process.

At the beginning of each chapter, you can find a referral to the relevant sections of the RIA report form (Chapter 5)

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<sup>11</sup> The structure of the final report is based on the format on the British and New Zealand reports. See for example: <http://www.bis.gov.uk/ia>, <http://www.treasury.govt.nz/publications/guidance/regulatory>.

# 1. Describing the Status Quo and Defining Policy Targets

At the end of the RIA process, work products relating to this chapter should be included in Part A of the RIA report

*The basis for analyzing the impact of regulation entails describing the status quo, including identifying the need for regulatory intervention and mapping both possible impacts and the existing regulatory environment. Describing the status quo is the infrastructure for defining the targets.*

## A. The Need for Regulatory Intervention

A certain situation justifies regulatory intervention if it is representative of an adverse outcome or if there are social values the regulations seek to advance<sup>12</sup>. An outcome is adverse if it contravenes the public interest or accepted cultural norms. For example, an increase in workplace accidents resulting in injuries; a sharp increase in consumer prices; harming nature and the environment, etc. In addition, imposing too many regulatory processes on the same body (otherwise known as "bureaucratic burden") may also constitute an adverse outcome. Sometimes the situation justifies it, but frequently it is not the result of planning but rather the result of the uncoordinated actions of regulators<sup>13</sup>.

The Australian RIA Guide identifies four **possible reasons for regulatory intervention**:

1. **Market failure**<sup>14</sup>: Cases in which the allocation of goods and services through market mechanisms leads to an inefficient result. This situation may result from, for example, mistaken information, lack of high-level competition or the existence of external impacts and public goods.
2. **Regulatory failure**<sup>15</sup>: A distortion created as the result of unbalanced governmental interference. For example, when the government sets limits on competition that do not in the public's benefit or when regulation is inefficient.

<sup>12</sup> It is customary to distinguish between regulation intended to resolve market failures (economic regulation) and social regulation that reflects society's values (such as regulation to defend privacy in accordance with the privacy laws that are a result of the need to protect individual rights). See for example, Uri Arbel-Ganz, Regulation – The Supervisory Authority, Position Paper 37 (The Israel Democracy Institute, Jerusalem, 2003) in Hebrew.

With regard to changes to government policy and the economic-political-social environment and its impact on regulatory policy, see: Peltzman, Sam, "Towards a More General Theory of Regulation" *Journal of Law and Economics* 19 (1976), 211-240.

<sup>13</sup> OECD, *Regulatory Impact Analysis, A tool for policy coherence* (2009) 67, citing Australian Government, *Best Practice Regulation Handbook*, OBPR (Office of Best Practice Regulation), Canberra (2007) 58

<sup>14</sup> For a useful survey of market failures and regulatory treatment of them, see the appendix to the Australian handbook, *Guide to Better Regulation*  
[http://www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0009/16848/01\\_Better\\_Regulation\\_eGuide\\_October\\_2009.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf)

See also: Breyer, Stephen, *Regulation and Its Reform*, Harvard University Press, (Cambridge, MA, 1982), Chapter 1; and Baldwin, Robert, Martin Cave and Martin Lodge, *Understanding Regulation 2nd Ed.*, Oxford University Press, (Oxford 2012), pp. 15-25.

<sup>15</sup> Other examples of regulatory failures can be named, including:  
-Problems determining standards (legalism) – overly rigid rules: creating legislation that is too rigid or inflexible, which limit the freedom of action of monitored companies or of regulators. For example, broad laws which apply to too many situations.

3. **Unacceptable risk:** Health or safety hazards, for example, when the person who might be harmed cannot assess the danger he faces or when the party posing the hazard does not bear the cost of the damage done.
4. **Distributional goals:** Ensuring access to individuals or groups that do not have access to services, goods or information (including regulation needed to develop a new market).



An adverse outcome is an indicator of a problem. Sometimes the analysis of a problem can reveal that there is no need for further action on the part of the regulator and that he should let the market create the balances by itself. At times, adverse outcomes already exist and this necessitates a policy that will eliminate the adverse outcome. In other cases, an adverse outcome can be considered a future risk, which necessitates a policy that will reduce the risk or prevent it. Sometimes, **several reasons for regulatory intervention** are connected. For example, regulation regarding the location of cellular antennae includes aspects of social goals (ensuring widespread access to services and at a suitable cost, reference to health issues) and dealing with market failures (unsophisticated competition and the risk of "free riders"<sup>16</sup>).

## B. Mapping possible impacts

After describing the status quo and identifying the problem, we must try to understand what the problem affects and in which manner. To this end, we must **identify the populations and describe the areas affected by the problem ahead of time**. These factors define the seriousness of the problem and assist in risk management (Chapter 2).

### Population groups affected by the problem

The affected population can be business owners, private citizens, organizations or any government body. For the most part, the affected population is not uniform. A distinction should be made, for example, between large businesses and small ones, and

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-Regulatory capture – when regulation is not successful in balancing the interests of the monitored companies with the public interest, and in fact the interests of large, veteran or familiar companies (or those of stakeholders) are prioritized. This situation may be the result of, for example, the fact that regulators draw exclusively from information provided by the companies. For further information, see Footnote 5, as well as: Viscusi, W. Ki., *Fatal Tradeoffs*, (New York: Oxford University Press 1992).

For more information about regulatory failures, see:

Sunstein, Cass, "Paradoxes of the Regulatory State", *University of Chicago Law Review* 57 (1990), 407.

Stigler, George J. *The Citizen and the State: Essays on Regulation*, (Chicago: University of Chicago Press 1975).

<sup>16</sup> Stigler, George J., "Free Riders and Collective Action: An Appendix to Theories of Economic Regulation", *The Bell Journal of Economics and Management Science*, Vol. 5, No. 2, (1974) pp. 359-365



between businesses and third sector organizations, between ordinary citizens and the entire population<sup>17</sup>.

It should be taken into account that the impact can be **direct or indirect**. The direct impact of a regulatory failure (such as the obligation for increased disclosure about products) may increase the costs to businesses. This direct impact in turn indirectly affects consumers because the cost to the business will be passed down to the consumer (in higher prices or by not dealing with the extra information required in an optimal manner)<sup>18</sup>. Obviously there are often those who profit more than others or one group that profits while another loses.

#### Areas affected by the problem

In general, impacts can be divided into two categories: direct impacts and social and economic impacts. The direct impacts include, for example, State budget costs or costs to business owners, delaying and prolonging permit or non-compliance procedures. For the most part, the direct impacts can be limited to a certain sector in a specific context. **Alongside mapping the direct impacts, the broader impacts of the problem on the entire economy and society should also be mapped**, such as an increase in the cost of living, adversely affecting competition in the economy, etc. Specifically, the **intensity of the problem** or the potential damage it poses in every area should be assessed. This analysis will also serve when mapping risks (Chapter 2). All types of impacts will be examined in depth during the analysis of the alternatives (Chapter 4).

#### Example of describing the problem and the existing regulatory environment

The Financial Services Authority in Britain (FSA) identified informative questions to analyze the threshold tests for regulatory intervention, in light of market failures in aspects of corporate governance:

1. What is the relevant market? Whom does it affect?
2. What are the market failures/regulatory failures that currently exist?
3. In the absence of any/new governmental interference, is an improvement in economic welfare expected?
4. Can the market failures be fixed in the short term?

OECD, Applying RIA to Policy Making in the Area of Corporate Governance

<http://www.oecd.org/corporate/corporateaffairs/corporategovernanceprinciples/44264532.pdf>

### **C. Mapping Regulation and Cumulative Impacts<sup>19</sup>**

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<sup>17</sup> For a normative discussion of the place of individuals and populations in designing regulation, see for example: Uri Arbel-Ganz, *Regulation – The Supervisory Authority*, Position Paper 37 (The Israel Democracy Institute, Jerusalem, 2003), pp. 9-13, 35-41 in Hebrew. <http://www.idi.org.il>.

<sup>18</sup> For the indirect effect of asymmetric information and the obligation for disclosure see for example: Ramsay, IDC "Rationales for Intervention in the Consumer Marketplace" (1984) pp. 15-35, I. Ramsay, *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets* (Hart Publishing, Oxford, 2007) 55-59, 64-68.

Akerlof, GA. "The Market for "lemons" - Quality uncertainty and market mechanism" (1970) *The Quarterly Journal of Economics*.

<sup>19</sup> The total regulatory burden in Western countries is generally estimated to be approximately 10%-12% of the GDP. In Israel, where hundreds of regulations apply each year, it can be assumed that the regulatory burden is not less than that. See in this context: OECD, *Regulatory Management Indicators, Israel 2011*, <http://www.oecd.org/gov/regulatorypolicy/47827319.pdf>.



The regulator does not work in a vacuum. It is not rare for a decision made by a regulator in his sphere of responsibility to affect issues in the spheres of responsibility of other regulators. In accordance with the principle of systemization, the Government must be consistent and uniform in its actions from the perspective of the citizen or business owner. To this end, a critical step in designing regulation is therefore mapping the overlapping areas of regulation in various fields. In mapping regulations, existing regulation should be considered and no less important, so should regulations planned by overlapping regulators.

An important goal of mapping is identifying and examining the cumulative impacts of regulations from the point of view of the target groups and not just the impact being examined in the framework of the assessment. Mapping must serve as the basis both for coordinating government policy and for streamlining and synchronizing inspection and enforcement mechanisms.

It is important to examine to what extent existing regulations resolve the problem. It may be that it does not provide an optimal resolution, but in the same measure it may be preferable to have a less than optimal solution rather than impose new regulations that would create additional burdens. In other words, it may be that the advantages of adding regulation to create an optimal resolution do not justify its cost when compared with relying on existing regulation (or amending it).

It may be that existing regulation does not provide a direct resolution; but even so, if the issue as a whole is well-covered by regulation, creating new regulation, even if there is a need from the point of view of the specific problem, adds to the burden, which makes the entire regulatory system overloaded and unjustified. In this case, **the termination of a specific regulation or the merging of different regulations should be examined with the goal of creating a reasonable balance between the advantages and the disadvantages**<sup>20</sup>.

For this mapping, intergovernmental consultations should be held with the relevant regulators. In this context, it should be emphasized that intergovernmental coordination

*The goal of mapping regulation is to examine the cumulative effects of regulation from the perspective of the stakeholder groups*

between different regulators throughout the process of formulating regulation is critical from the perspective of the person being monitored. Therefore, as a rule, intergovernmental consultations should be held before consultations with parties outside the government. It should be remembered that the responsibility for the existence of a uniform policy is that of the relevant regulators.

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It should be further noted that in the OECD index for regulatory burden in 2008, Israel was ranked in the last place among OECD countries. In almost every aspect included in the index, Israel was awarded a negative ranking below the OECD average: Israel was ranked last in the OECD with regard to transparency and regulatory accessibility and in imposing regulatory obstacles to introducing competition into the economy. In addition, according to the index, the bureaucratic burden on businesses in Israel is among the highest in OECD countries.

<sup>20</sup> For an expanded discussion of mapping the various factors at work in the network of regulatory policy ("policy networks"), see: Uri Arbel-Ganz, "Regularization Policy and Inspection in Israel: Regulatory Authorities and Policy Networks", Uriel Reichman and David Nachmias (Editors), *The State of Israel – New Thoughts* (2006), pp. 149-179 in Hebrew.

The objectives of the consultations with the public, which will be expanded upon in the next chapter, are all relevant in terms of the intergovernmental consultations: expanding the foundation of knowledge and information, strengthening trust inside the system, increasing implementation and early discussion of objections. Achieving these objectives is often even more important in the government's work. Therefore, the intergovernmental consultations may be more in-depth.

To this end, and in relation to the intergovernmental consultations, time should be spent on mapping other government offices and bodies that have some relevance to the subject on the agenda and the timing of the consultations should be decided upon. In this context, the question of timing shows even more vigorously the measure of cooperation between the regulators (as detailed in the ranking of consultations presented in Chapter 4). Specifically, it should be taken into account that, with regard to regulations which touch on the spheres of responsibility of other regulators, consultations are, in fact, necessary. In such cases, because these are overlapping spheres of authority, the other regulator has the status of partner and not just one who is consulted.

In the table below, we present the objectives and main characteristics of managing the dialogue with the public during the stage of describing the problem, gathering information and defining policy goals. Despite this being in relation to dialogue with the public, many aspects presented below apply also in reference to managing the intergovernmental dialogue:

<b>Describing the problem, gathering information and defining policy goals</b>			
<b>Main objectives</b>	<b>Advantages</b>	<b>Disadvantages</b>	<b>Sample questions</b>
<ul style="list-style-type: none"> <li>-Information gathering</li> <li>-Precise description of the problem</li> <li>-Validating the starting points</li> <li>-Locating mistaken assumptions</li> <li>- Identifying stakeholder groups affected by and affecting regulation</li> <li>-Locating possible regulation not reliant on command and control regulation (or even a non-intervention alternative)</li> </ul>	<ul style="list-style-type: none"> <li>-Getting feedback at the initial stage of <b>describing the problem</b>, thereby reducing the need for post facto correction</li> <li>-Expanding the basis of knowledge and information for <b>planning</b> the RIA</li> </ul>	<ul style="list-style-type: none"> <li>-Low level of readiness</li> <li>-Preliminary consultations</li> <li>-Requires completions later on</li> </ul>	<ul style="list-style-type: none"> <li>-What are the problem's characteristics, its extent and its costs?</li> <li>-What does the problem impact?</li> <li>-What are the causes of the problem?</li> <li>-Why is government intervention needed for the problem?</li> <li>-What are the goals of the regulation?</li> </ul>

### **Main points to emphasize when conducting dialogue at this stage:**

- A. In any case, the description of the problem as worded by the regulator should be revealed so that specific feedback about it can be given and the description can be validated.
- B. If the intention is to conduct dialogue through a one-time only process, it is better to conduct it at a later stage – when examining the alternatives or when drafting the regulation.
- C. Conducting dialogue at this stage allows the market to organize itself independently and save the regulator from having to develop regulation.
- D. It is important that the questions presented for comment include the primary issues at the root of the regulation. To this end, presenting open questions and allowing room for general comment will expand the chance that the dialogue will raise issues the regulator did not take into account.
- E. **Tools:**
  - **"Public appeal for information":** allows the regulator's base of knowledge and information to be expanded at the beginning of the process.
  - **Consultation meeting** with experts and stakeholders that will deal with describing the problem and defining policy targets.
  - **Online consultations:** presenting the description of the problem and/or a closed/half-open questionnaire that raises dilemmas for which further comment is desired – on a dedicated website for cooperation processes/the office website for the public's feedback.

## **D. Defining Regulatory Targets**

Targets describe the change we aspire to achieve through regulation<sup>21</sup>. **Sometimes the target will only include the objective of the regulation.** For example, the target of regulation in the field of efficiency of the courts may be worded as "relieving the burden on the courts at its higher levels"<sup>22</sup>. **Sometimes complementary aspects can be included when defining the target, such as the main conditions or limitations needed for satisfactorily resolving the problem.** For example, regulatory targets related to money laundering may be worded as "preventing the hostile use of the financial system while reducing the burden on law-abiding businesses"<sup>23</sup>.

In the framework of defining targets, attention must be paid to **fundamental assumptions** as a vital stage for monitoring and dealing with **regulatory failures and**

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<sup>21</sup> This handbook uses the term regulatory targets rather than goals. This is as part of the perspective of governmental planning, according to which goals reflect the broad accomplishments the ministry aspires to in its activities, whereas targets are focused accomplishments which bring the ministry closer to achieving its goals. For further information regarding defining goals and targets, we recommend "The Guide to Government Planning 4.0" (2010), pp. 44-53, in Hebrew, <http://www.pmo.gov.il/IsraelGov/YearPlans/Documents/2010/guide1.pdf>.

<sup>22</sup> Ministry of Justice (UK), *Reforming Civil Jurisdiction Limits*, IA No. MoJ 067 (February 2012).

<sup>23</sup> HM Treasury (UK), *Revising the Money Laundering Regulations 2007* (Consultation, May 2011).

**cognitive biases.** Often hidden assumptions are uncovered which, in retrospect, led to flawed regulations. In this manner, for example, a regulator interested in improving service provided in a market with limited competition rushes to bring additional players into the market without examining and validating the latent assumption that additional players will lead to an improvement of services.

Following are two typical failures when defining targets:

- **Defining a target to lead to a specific regulation** - A target must be broad enough to allow for the examination of all alternatives relevant to resolving the problem. For example, a target should not be worded as "developing a uniform template to open a new bank account".
- **Defining targets in an unclear manner** – Such a definition may make it difficult to describe the criteria for comparing various alternatives. For example, it is difficult to compare alternatives when the target is defined as "encouraging the expansion of the range of opportunities to take part in tourism within Israel". Wording the target as "encouraging domestic tourism" would have been more helpful.



At the same time, **it is important to revalidate the targets throughout the assessment process.** It may be that during the consultations with the public, for example, interests and details that were not taken into account when first defining the regulatory targets and goals may surface.

#### **Interim Summary – Describing the Problem and Defining Targets**

At this stage, we must answer, inter alia, the following questions:

1. What are the main problems described as needing resolution?
2. What additional regulations apply to this area? What does current regulation not address?
3. Which groups are affected by the problems and how?
4. What are the regulatory targets we would like to create? Should the target also include complementary aspects?

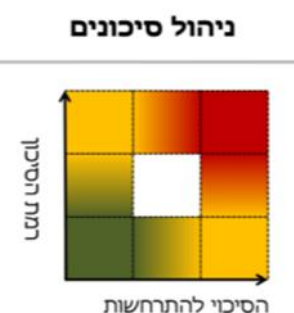
## 2. Risk Management

*Non-optimal regulation creates an excessive burden on the economy and leads to a lack of focus and efficiency in enforcement mechanisms. A risk assessment must be conducted with the goal of distinguishing between acceptable risks and unacceptable risks. Risk management assists in formulating alternatives and planning appropriate inspection and enforcement policy.*

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### A. Principles for the Risk Management Process

The goal of risk management is to coordinate the instruments for intervention to the risk under examination. The basic formula for risk assessment is weighing the **likelihood of compliance** against the **severity of the damage** (severity of the damage includes both the **intensity** of the damage and in what measure it is reversible, and the **extent** of the damage). As part of the process of describing and assessing risks, they should be ranked and a distinction should be made between **unacceptable risks** and **acceptable risks**.



Sometimes the general risk resulting from non-implementation of the regulation can be examined, and at other times **a risk should be analyzed separately** with regard to population groups (sector, size of the business, structure, etc.) or types of damages.

Risk assessment can serve as **the basis for consultation** with stakeholders during the process of designing regulation, as well as the **basis for the regulation itself**<sup>24</sup>. Therefore, when it is clear what the goals of the regulation are and what risks the regulator would like to protect against, the market can organize independently without the regulator needing to impose specific regulation<sup>25</sup>.

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<sup>24</sup> Making the risk assessment process more accessible may serve as a tangible incentive for businesses to comply with the regulation. Moreover, the monitored parties may adopt the assessment methodology as part of their internal incentives (for example, by providing employees bonuses). To this end, the risk assessment process must be clear and transparent, and the methodology used to assess the risk must be clear and uniform in all cases. Hampton, Phillip, *Reducing Administrative Burdens: Effective Inspection and Enforcement* (HM Treasury, 2005) ('Hampton Report') <http://www.fera.defra.gov.uk/aboutUs/betterRegulation/documents/hamptonPrinciples.pdf>.

<sup>25</sup> Attention should be paid to the fact that often risk management belongs completely in the framework of market considerations; for example, in certain issues of safety and determining tariffs accordingly. In such cases, the State's job is not to manage the risks, but rather to determine standards and defend against market failures.

### Example of the risk management process

The British Local Better Regulation Office (LBRO) provides the following example:

A. The local authority may consider whether or not to deal with the issue of dangerous vehicles on the roads in its locality (and how to do it). The preliminary stage is to **map the relevant regulations** on the national level and examine if there is significant non-compliance with these regulations in the area administered by the local authority.

B. During the next stage, the local authority will examine the **severity of the damage with regard to each of the components of the risk**, including the material injury and harm resulting from unsafe driving or the economic damage resulting from purchasing unsafe vehicles. In particular, the authority will describe the place of sale for the unsafe vehicles in order to map the extent of sales of these vehicles in the area administered by the authority.

C. In addition, **the likelihood of compliance** must be defined according to the information regarding the extent of unsafe vehicles owned by residents of the authority or vehicles on the roads in the area administered by the authority. If the rate of unsafe vehicles sold in the area administered by the authority is especially high, the authority will describe the likelihood of compliance with regard to factors involved (sales agents, vehicle licensing institutions).

Local Better Regulation Office, Proposals for Developing a Common Approach to Risk Assessment  
<http://www.lbro.org.uk/resources/docs/risk-assessment-final-proposals.pdf>.

## **B. The Connection between Risk Management and Formulating Regulation**

Mapping risks, as mentioned, is the key to designing regulation in a manner that will provide an optimal resolution to significant risks, especially with regard to ranking risks (from the acceptable risk to the unacceptable risk). In this context, one must guard against an automatic response to two kinds of risks: catastrophic risk with minimal likelihood of occurrence (such as a rare earthquake) and negligible yet common risk<sup>26</sup>.

Risk management can be realized in several different ways:

### **→ Conscious choice to provide a partial solution and not in 100% of the cases.**

Risk management is meant to identify the space in which the regulator is willing to take a risk. Often, the natural tendency is to try and prevent any loophole, or in other words to fully resolve the problem (in the example above, to create a situation on the road that there are no unsafe vehicles). However, in many cases a complete resolution

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<sup>26</sup> The process of risk assessment is susceptible to different kinds of cognitive bias and they should be neutralized. The researcher Shrader-Frechette pointed to the fact that regulators tend more towards going easy on companies and manufacturers and avoid imposing bans on technologies or services. It became clear that regulators feared an overly comprehensive ban (Type I errors) more than they feared overly free license (Type II errors), and in fact they tended to under-assess the risk to the public. See: Shrader-Frechette, K., *Risk and Rationality*, Berkley (1991).



incurs costs to the State that are too high and a burden on businesses and the economy as a whole that is too heavy. The regulator may therefore take into account that there may be unusual cases that regulation cannot address, but in the final calculation of the costs of regulation and the burden it entails, he believes that these irregular cases can remain without a regulatory solution.

#### → Coordinating strategies of regulatory intervention (Chapter 4)

A differentiation between the components of risk allows for the creation of a regulatory mix that combines various regulatory instruments in accordance with the risk level. In particular, various levels of punishment may be ranked in order to create congruence between the severity of the punishment and the intensity of the risk. This allows for a choice between criminal punishment and less severe punishment, such as a fine, a delay in renewing a permit, etc. Ayres and Braithwaite defined a hierarchy (pyramids) for structuring the regulatory configuration in accordance with variables such as the type of hazard and the severity of its outcome. The pyramids detail a list of regulatory instruments, and at its base are the most lenient possibilities. As one moves up the pyramid, the regulatory possibilities increase in their severity and indicate which possibilities, in their view, should be used less.

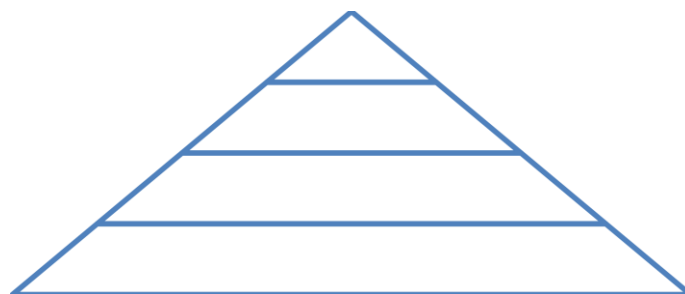
##### Example of hierarchy – regulatory strategies

Comprehensive command and control

Command and control on a case-by-case basis

Self-regulation with enforcement

Self-regulation



#### → Planning the components of effective and focused inspection and enforcement

Inspection and enforcement are complementary mechanisms which lead to the implementation of regulatory intervention strategies: the **inspection** mechanism is meant to **gather information** regarding compliance with the regulation, and the **enforcement** mechanism is meant to **execute** the regulatory instructions in accordance with the information collected<sup>27</sup>. Since the 1990's, the dominant perception (championed most prominently in research by Ayres and Braithwaite) has called to **preserve stricter inspection and enforcement mechanisms for unacceptable risks or more serious ones**. It is commonly assumed that inspection and enforcement steps are inefficient when they focus on factors that present low risk. Therefore, "easier" inspection and enforcement instruments should be used when

<sup>27</sup> For example, the sanitation inspector can be viewed as one who fulfills two functions: as an inspector, he collects information regarding sanitation violations and as an enforcement officer, he imposes fines (executes the regulation) accordingly. See also in this context:

Julie Monk, Reform of Regulatory Enforcement and Inspections in OECD Countries  
<http://www.oecd.org/gov/regulatory-policy/Reform%20of%20inspections%20-%20Web%20-%20Julie%20Monk.pdf>

there are factors that present low risk, such as informing, publishing and warning (see the following box).

The practical expression of calculating the risk level and determining the components of inspection and enforcement touches on a number of aspects:

1. **Accessibility of regulation<sup>27</sup> (distributing information to inspectors)** – Every business must be able to easily locate the regulations that are applicable, what the demands are and how it can improve to better meet those demands. The regulator must make the regulation accessible to parties being monitored in accordance with the risk they pose. The aspiration should be that the most effective efforts of informing and warning will be directed towards businesses that pose a higher risk.
2. **Timing of the inspection (frequency of collecting information)** – This includes submitting reports, conducting inspections, etc. The frequency of inspection must be in accordance with the estimated risk in the sector or category. The most frequent inspections will be of those businesses which pose the greatest risk. In this context, the component of planned inspections (such as submitting annual documents) and reactionary inspections (inspections resulting from the reporting of a violation, for example) can be combined with early approval processes, "real time" inspection or inspection at the end of an incident. For the most part, it is recommended to combine some form of random inspection.
3. **Content from the inspection (information gathered)** – A business or individual should not be required to submit information without a justified reason. Therefore, risk management allows the inspection to be focused on those organizations that pose the most risk. For this reason, inspection must be guided by learning and improvement and businesses must be helped as much as possible to reduce the risk they pose. Thus inspection administered in this manner will lead to a reduction in the demands of inspection.
4. **Enforcement steps (implementing regulation in light of the information collected)** – Regulatory instructions determine the intervention strategy, but they can be implemented in different ways. For example, the rules of football forbid fouls from being committed and grant the referee (the inspector and the enforcer) the right to judge on the pitch. When the referee identifies a foul, he matches the sanctions in the "law" to the situation (verbal warning, yellow card or a red card that translates into removal from the match). Consistent implementation of the punishment policy in accordance with the measure of the risk allows for the development of effective deterrence. In this context as well it is recommended to utilize a hierarchy (pyramid) of enforcement steps so that the lower stages are suited to the main group which poses the lowest risk.

The main component of risk management, alongside the burden on the economy, is the **cost of inspection and enforcement in the State budget<sup>28</sup>**. Therefore it should be **considered when planning budgetary limits** and efficient and effective inspection and enforcement mechanisms should be formulated. The **change in the cost of annual enforcement** (such as: training inspectors, informing the public, involving private experts in inspections) may be added to this. In this context, **the appropriate institutional framework** should be defined – i.e. who is in charge of enforcement and what authority they have.

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<sup>28</sup> The British Anderson Review is dedicated to the subject of accessibility of regulation and the creation of clear guidelines for those being monitored, as a means of creating consistency and transparency in inspection and enforcement. For further recommendations in this area, see: The Anderson Review - The Good Guidance Guide: Taking the uncertainty out of regulation (2009) <http://www.berr.gov.uk/files/file49881.pdf>.

<sup>29</sup> Much has been written on the subject of the cost of enforcement and effective enforcement of regulation. For some of the reports and fundamental recommendations on this matter, see: Better Regulation Task Force, *Principles of Good Regulation* (UK, 2006)

Macrory, Richard B. *Regulatory Justice - Making Sanctions Effective* (London, Cabinet Office, 2006) ('The Macrory Report', <http://www.berr.gov.uk/files/file44593.pdf>

Hampton, Phillip, *Reducing Administrative Burdens: Effective Inspection and Enforcement* (HM Treasury, 2005) ('Hampton Report') <http://www.fera.defra.gov.uk/aboutUs/betterRegulation/documents/hamptonPrinciples.pdf>

Better Regulation Executive, *Statutory Code of Practice for Regulators* (Department of Business, Enterprise and Regulatory Reform: 2007) , <http://www.bis.gov.uk/files/file45019.pdf>



### 3. Dialogue with Stakeholders, Experts and Individuals and Groups from the Public

This chapter matches Section F of the RIA report

*Dialogue with stakeholders, experts and groups from the public is a main instrument in RIA, parallel to and as part of the analysis of alternatives. Dialogue can be conducted at various levels of cooperation throughout the process of formulating regulation, as part of describing the status quo, as a tool for analyzing alternatives or ahead of formulating the final regulation. This chapter presents an outline for conducting the dialogue.*

#### A. Background

Dialogue with stakeholders, experts and the public at large or with individuals and groups in it, is a main component in the planning and assessment of regulatory policy, and in many countries processes to conduct such dialogues have been in existence for years as part of the principles of optimal regulation<sup>30</sup>. These processes are the consequence of the close connection between regulation and the problem it seeks to resolve and the regulation's sphere of activity – the stakeholder group affected by it, as well as the force and manner of the impact. **In essence and at its core, the RIA process is one in which one must "learn about" and in this framework also "speak with" the groups affected by the regulation and those that affect it.**

Conducting such dialogue is also affected by the public's expectations, which currently expects to be consulted with more than in the past, especially in areas in which governmental action has significant ramifications<sup>31</sup>.

It should be mentioned that taking into consideration the issues raised during the process of dialogue with the public does not mean that the authority to make a decision has been passed on to the public, nor does it in any way reduce the regulator's independent judgment. The authority to determine policy, shape the framework for the dialogue and declare an end to the discussion is that of the regulator alone after examining all the information and relevant considerations.

It is important to point out that dialogue as referred to in this chapter is different from the obligation for a hearing<sup>32</sup>, consultations dictated by law<sup>33</sup> or instructions from the Attorney General<sup>34</sup>.

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<sup>30</sup> North American Linkages, *Regulatory Impact Analysis in Regulatory Process, Method, and Co-operation: Lessons for Canada from International Trends*, 2006. <http://www.bibliotheque.assnat.qc.ca/01/mono/2007/04/933268.pdf>

<sup>31</sup> The Committee Report for Socio-Economic Change (The Trajtenberg Report) pp. 54-55 and pp. 263-281 in Hebrew. To expand, the importance of consultations with the public can be seen in the number of Government Resolutions recently passed, such as: "Government Resolution No. 3768 of October 23, 2011 regarding "The National Plan for Green Growth" Articles 3-6; Government Resolution No. 4028 of December 25, 2011 regarding "Strengthening the Government's Ability for Governance, Planning and Implementation" Article 3; Government Resolution No. 5208 of November 4, 2012 regarding "Establishing and Improving the Government's Ability to Formulate and Administer Socio-Economic Strategy" Article 3(E); Government Resolution No. 5255 of December 2, 2012 regarding "Measures of Quality of Life" Article 4(E). Further examples of citizen participation in decision-making processes include the activities of the Inter-Organizational Round Table in the Prime Minister's Office (<http://www.pmo.gov.il/policyplanning/shituf/Pages/roundtable.aspx>), the "Government Online Connection" hub ([www.tz.kirim.gov.il](http://www.tz.kirim.gov.il)) for information about cooperation on legal briefs and the "Shituf" website ([www.shituf.gov.il](http://www.shituf.gov.il)), which advances consultation processes on various subjects on the Government's agenda.

<sup>32</sup> The issue of holding a hearing during the process of promulgating regulations is a matter for legal rulings and professional literature. See for example: High Court of Justice 3/58, Berman v. Minister of the Interior; and Baruch

This chapter does not deal with these obligations, but rather presents tools to implement voluntary processes of dialogue with the public at different levels of cooperation, at such a time as it is the regulator's professional judgment (and not necessarily by virtue of legal obligation) that they should be held in the framework of the regulatory assessment. Nevertheless, these tools can assist the regulator when carrying out a legal obligation, but only when it does not contradict existing instructions.

### Depth of the dialogue (level of cooperation)

The dialogue to which we refer in this chapter is part of the broader context of citizen participation (around the world, it is often referred to in terms such as: citizen/public engagement, participation, consultation), which has been developing in many countries over the past several decades. In the field of citizen participation, generally one refers to various ladders which represent the levels of citizen participation<sup>35</sup>. For our purposes, the dialogue represents a comprehensive system of relations with the public and with various stakeholder groups within the public, as well as with experts, and which is characterized in every context and at every point of time with different characteristics of depth, lengths of time, number of times, etc.

The diagram below demonstrates the main stages on which the dialogue will be based and the framework in which it will operate. In addition, the diagram will demonstrate the relationship between the depth of the dialogue and the depth of study by the regulator, which will also be affected by the level of exposure needed. As a rule, the depth of the dialogue will lead to depth of knowledge and study of factors affecting policy and to the expansion of the basis for the legitimacy of their decisions. However, it also requires the information be accessible and exposed, alternatives must be presented and assessed and it requires time and resources (the depth of the dialogue is determined, inter alia, by the decision regarding the depth of the RIA).

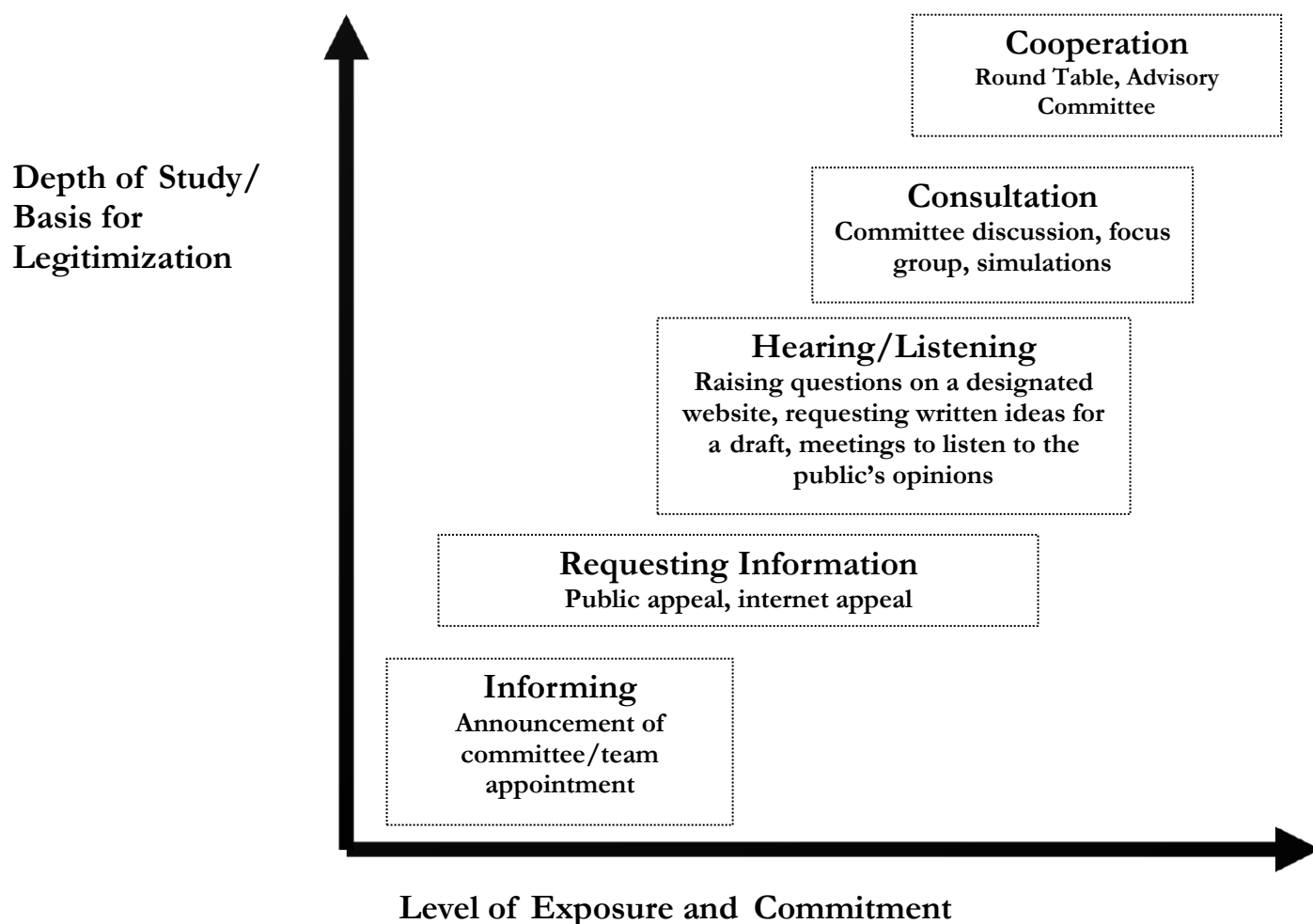
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Bracha "Towards Openness in the Process of Promulgating Regulations?" Shamgar Book - Articles Part A, pp. 127-153 (2003) in Hebrew; and Yitzhak Zamir, Administrative Authorization, Volume B, 1031-1032 (Second Edition, 2011), p. 1147 in Hebrew.

<sup>33</sup> For example, The Law of Equal Rights for People with Disabilities 1998 Article 19(L): "Regulations in accordance with this clause will be promulgated after consultation with the Commissioner and organizations dealing with advancing the rights of people with disabilities..."; The Sports Law 1988, Article 18(B): "The aforementioned regulations will be promulgated after consultation with sports organizations, unless determined in this law that they require another's agreement or consultation with him." As a rule, in the collections of regulations that are published from time to time, which consultations were conducted as a result of various laws is specified. For more information, see for example Collection of Regulations 7264 published on June 30, 2013.

<sup>34</sup> Attorney General's Instruction No. 2.3100, "Secondary Legislation: Regulations and Instructions" updated from November 9, 2003, Chapters 11-13 as well as Attorney General's Instruction No. 1.0001 (551 21A), "Administrative Law: General Principles: The Obligation to Consult by Virtue of Law" of November 1, 1981.

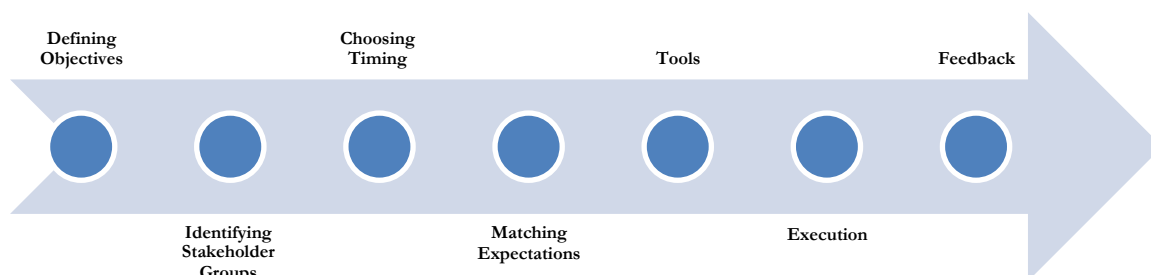
<sup>35</sup> The most famous of these ladders is perhaps Arnstein's. For further information, see: Arnstein, S.R. (1969), "A Ladder of Citizen Participation", Journal of the American Planning Association 35 (4): 216-224.



## B. Planning the Dialogue Process

An optimal dialogue process rests on early planning in accordance with the stages detailed above. Specifically, planning the process requires clarification and clear definition of all stages of the regulation assessment, as well as its contribution to the entire process. This occurs as part of mapping the aspects about which the regulator would like to conduct dialogue with the public; mapping sensitive points of interface which may arise during the dialogue; and as part of mapping the stakeholder groups relevant to the dialogue. In the framework of this mapping, difficulties and hazards will be brought up and the expectations from the dialogue can be defined. The dialogue processes can also have negative consequences when it is not conducted properly and therefore attention should be paid to its content. It should be emphasized that accrued experience teaches us that there is special importance to planning the dialogue with the various populations ahead of time in order to derive the predicted objectives from the process and avoid the expected difficulties and hazards.

## C. Stages of the Dialogue Process



### Defining Objectives

Dialogue conducted in the framework of the RIA includes a number of **objectives** and benefits for the regulator<sup>36</sup>:

- Expanding **the early identification of problems and obstacles**<sup>37</sup>;
- Strengthening and **expanding the base of knowledge and information**, points of view, expertise and professionalism **on the basis of which the assessment process will be planned, alternative regulations examined and a decision** between them made;
- **Increasing the legitimacy** of the regulation selected<sup>38</sup> and the likelihood of compliance. In particular, dialogue can assist in organizing the market for those regulations not based on compliance and control.

It may not be necessary to conduct a comprehensive consultation process<sup>39</sup> in every regulatory assessment process, and no one process is like another. The regulator must focus the specific observations and the products he wishes to acquire from the dialogue.

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<sup>36</sup> Beyond the practical value in administering dialogue with the public, over the past several decades theories regarding "participatory democracy" and "deliberative democracy" have been developed, which call for an increase in dialogue between the government and the citizens in a range of areas. These theories are in the background of the consultations the government conducts with various populations about decision-making processes and determining policy. In this context, these processes are also based on recognition that the government does not hold "all the wisdom" and that the "wisdom of the masses" has significant added value and should be taken into account in central decision-making processes. This is especially true with regard to decisions where the population affected by it can be identified and consulted with. For more information on these subjects, see: Alex Goldman-Shaiman and Ronen Gupper, *End Deed with Cooperation at the Beginning: Participatory Democracy in Practice*, 2008 in Hebrew; OECD, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*.

<sup>37</sup> OECD, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*, 2008, pp. 19-21.

<sup>38</sup> OECD, *Focus on Citizens: Public Engagement for Better Policy and Services*, 2009, pp. 22-27.

<sup>39</sup> A basic RIA proceeding for the most part needs only a short and limited consultation process.

It should be mentioned that the objectives detailed above regarding dialogue with the public, as well as the outline presented to conduct it, are also relevant to **intra-organizational dialogue (within a ministry and between ministries)**. As mentioned in the first chapter, many regulations overlap with regulations under the purview of other regulators, and therefore it is recommended to conduct intra-governmental dialogue with the bodies which overlap in the regulation being examined, as much as possible, even before the dialogue with the public.

### Identifying Stakeholder Groups

Relevant stakeholder groups in regulatory assessment were first mapped during the stage of describing the status quo (according to the impact of the problem on the groups). Nevertheless, the dialogue should also include other groups. Normally, three central circles are referred to:

1. **Stakeholders** – Their participation is determined against the background of **their identification as stakeholders** with regard to the regulation under discussion and its direct or indirect impact on them or because of their impact on it (such as: businesses, employer organizations, professional organizations, civilian-social groups, etc.).
2. **Experts** – Their participation is determined against the background of **their relevant expertise** on the subject under discussion (such as: people from academia, independent experts, experts from organizations, former regulators, etc.).
3. **Groups from the public at large** – They will be relevant to regulations that apply to the entire public or to individuals and groups from within it.

Choosing the stakeholder group is at the center of the dialogue process being conducted. In this context, three main challenges must be taken into consideration:

→ **Identifying and diversifying the stakeholders:** Choosing stakeholders with whom to conduct a dialogue affects the system of considerations to which the regulator will be exposed during this process. As he begins to conduct the dialogue with the public, the regulator will naturally be inclined to approach those stakeholders with whom he is more familiar. At the same time, there is a need to expand the circle of dialogue and the regulator's frame of reference, as well as to diversify the opinions and positions to which he is exposed. We suggest integrating groups that are not unionized or organized into the dialogue, those from small and medium organizations, and groups that do not have existing and permanent channels of dialogue with the regulator. It is important that the regulator also integrate into the process organizations representing those who belong to these groups, and given the context, also to consult with the broader public<sup>40</sup>.

It should be kept in mind that at times there are conflicts of interest between stakeholder groups, primarily when one group stands to gain more from the regulation and the other will pay the cost. These conflicts include the potential for pressure, but also for opportunities to create a balanced infrastructure for decision making and to increase the legitimacy of the chosen regulation.

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<sup>40</sup> Experience teaches that often it is through the appeal to the broader public that comprehensive observations are made by former position holders who do not serve in any official capacity in the present or by professionals in research institutes or consultation companies who have a personal stake in the matter.

In addition, correctly building the processes creates good infrastructure for ongoing dialogue between the regulator and a range of stakeholder groups even at a later date, whether it is regarding the regulation under discussion or regarding other regulations to be regularized. It also assists in dealing with the fear of regulatory capture<sup>41</sup>.

→ **Creating trust in the process:** A condition for the dialogue to achieve its objectives is creating trust on the part of the stakeholders with whom the dialogue is conducted regarding the fairness of the process and in their ability to affect the decision. In this manner, they will feel that their participation in the process was appreciated and contributed to better regulation. Matching expectations with them and the feedback they receive regarding their input are tools which provide a solution to this challenge, as detailed below.

→ **Investing resources compared with the dialogue's contribution to the regulatory assessment:** Administering dialogue requires finding a balance between: the investment of time resources (organizational time and length of the process), man power and funds; and the dialogue's contribution to the assessment process and to strengthening the trust of the stakeholders with whom the regulator is conducting the dialogue. In this context, it is important to emphasize that it is not just the regulator who devotes time to the dialogue. The parties participating in the dialogue – stakeholders, experts and the public, who for the most part dedicate their personal time, experiences and expertise – want to know that their investment was not in vain.

Furthermore, managing dialogue also requires proactive action, inter alia through activities to make information more accessible and (physically) reaching stakeholder groups<sup>42</sup>, and this necessitates the allocation of resources.

### Choosing timing

Processes of dialogue can be conducted during each of the stages of the regulatory impact assessment process, and their usefulness at each stage will be different (see the table below). It is proposed that the dialogue processes **be planned** at a relatively early stage, while creating **a balance between the need to formulate regulation in a reasonable period of time and with a reasonable use of resources and the need to conduct an effective process of dialogue**, which also takes into account the **period of time** needed to confer with the stakeholder group<sup>43</sup>. It is important to identify the places where the added value of administering the dialogue will be maximal given a certain context. At the earliest stages, the central objective of dialogue is to enrich the

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<sup>41</sup> For more information, see Appendix A.

<sup>42</sup> Just notifying the public and reaching out to it raises the awareness of certain groups to the matter being regularized in the regulation, and may indirectly lead to advancing processes in the area by parties other than the government.

<sup>43</sup> The guiding principle with regard to timetables must be the balance between the time the regulator has at his disposal for the entire process and the need to provide a satisfactory period of time for the consultants which allows for the topic to be studied, a position to be formulated and an effective response to be prepared.

It has been found that in numerous countries, a minimal period of time was set for cooperation to be conducted, which ranged from six to twelve weeks, in accordance with the characteristics of the dialogue. Of course, when examining the amount of time allocated to the public, such factors as vacation days, periods specifically relevant to the stakeholders (for example, the end of the tax year), etc., should be taken into account. In addition, when the consultations are a one-time only event, we recommend providing a long enough period of time to give all interested parties a chance to respond. For more examples, see: North American Linkages (Footnote 30 in this chapter), pp. 32-42.

Australian Government, Best Practice Regulation Handbook, 2010, pp. 51-52.

information and perspectives available to the regulator<sup>44</sup>. At more advanced stages its objective is to receive comments from the public regarding the main points of the topic under discussion (in other words, to receive feedback regarding a more complete product). In this case, it is important to allow for this feedback at a time when "the regulator's mind is still searching and open", before a decision is made and when there is still a real possibility of making an impact<sup>45</sup>. The timing of the dialogue process will also be tied to the question of whether the dialogue will comprise a one-time consultation or ongoing consultations. If a number of consultation processes are involved, the question will be raised of when they will be administered in the various stages.

The following table illustrates several examples for dialogue and possible tools to be used in accordance with the various stages of dialogue:

Stage in the RIA process Frequency of dialogue	Describing the problem and targets	Defining alternatives and examining them	Final draft	Publishing the final regulation on the regulator's website
<b>Two-stage dialogue: early stage and interim stage</b>	Telephone survey of viewpoints held by a representative sampling of target groups identified as stakeholders	Focus groups: face to face consultation		
<b>One-time consultation</b>			Draft published for comments by the public on a range of websites	
<b>Ongoing process of participatory dialogue</b>	Designated forum on the internet that is part of the entire process – open to the general public or certain	Presenting the interim products for consultation in the forum	Presenting a final draft for the forum's comments	

<sup>44</sup> For example, see the issue of transportation in the Trajtenberg Report. The issue of transportation was added to the committee's discussions following numerous appeals by the public which were received at an early enough stage thereby allowing to expand the scope of the discussions on the subject – see the Trajtenberg Report, Footnote 56 on page 260 in Hebrew. Similarly, the interim recommendations by the Centralization Committee were released for public comment and were changed as a result of the comments received. See the Committee for Increasing Competition in the Economy – Final Report and Completion of the Interim Report, March 2012 in Hebrew.

<sup>45</sup> See also the Attorney General's Instruction No. 2.3100, Footnote 34 above – P 1.13(A).



	groups; posing questions to the forum regarding describing the problem			
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### Matching expectations

Matching expectations with the stakeholders when administering the dialogue regarding its goals and the way in which it will be conducted (scope, methods of implementation, method the regulator intends to use to refer to the products of the dialogue, etc.) is a significant component of the process. Matching expectations at the outset of the dialogue process reduces the possibility of incurring disappointment and frustration and damaging trust and the legitimacy of the dialogue and the regulation. It also strengthens the commitment of both the regulator and the participants in the process. Just the act of planning the matching of expectations improves the regulator's ability to deal with the challenges vis-à-vis the stakeholders described above.

Matching expectations should include **an explanation of the following components** (the explanation can be included in the public appeal, stated in the framework of the consultation meeting, included in a briefing before the survey, etc., in accordance with the tools chosen for conducting the dialogue):

- Stages of the process – with an emphasis on the way the dialogue is to be conducted, the form the feedback to comments will take and the "finality of the discussion" (when the discussion will end and the regulator "gathers himself" in order to formulate a final position);
- What will be done with the information collected – who will receive it, what weight will it have, which stage will it affect;
- Who makes the decisions and who has the final say;
- What are the timetables for the entire process, including the process of conducting dialogue (time to respond, length of the meetings, timing of the meetings, etc.);
- How one can learn of the results of the process: will a letter be sent, an e-mail or will they be published on the website?

For illustrative purposes, the following wording can be used: *"To formulate a policy on the subject of \_\_\_\_\_, we ask that information be provided and weighed by \_\_\_\_\_ in the framework of the planning process for formulating regulation. The team will complete its work on [date] and the results will published on [website]. The final decision will be also be sent to respondents by return email".*

### Tools – tools to administer the dialogue while taking into account the depth of the dialogue

Tools for administering the dialogue are not just a technical matter. The choice of a certain tool reflects a number of early decisions regarding the objective of the dialogue, stakeholders, length of time and resources available for the process.

As a rule, there are online tools and traditional tools that are not online. These tools can be divided according to the depth of the dialogue that they will be used to advance (see the diagram on page 28) or the stakeholders to be consulted. Below we will demonstrate tools according to the designation of the discussion conducted with them:



**Tools that appeal to the public at large:** These tools are useful when one wants: comments on concrete questions (**online or real questionnaires**<sup>46</sup> and **surveys**<sup>47</sup>, which allows the regulator to approach a sampling of stakeholders); a response to a finished product (final draft<sup>48</sup>, legal memoranda<sup>49</sup>, etc.); or when seeking information at the outset of the process (**public appeal** to receive information – a request for information [RFI]<sup>50</sup>). **Social media** tools currently serve as central channels for public and social dialogue and allow for messages to be conveyed, information to be requested and open dialogue conducted (which is not just under the control of the regulator), and with these tools, broad audiences can be reached quickly. They require an investment in time and manpower that should be taken into account beforehand when deciding on their use.

**Tools which allow for ongoing dialogue:** Ongoing dialogue with a fixed group of people will mostly be relevant during broad assessment processes and when there is a desire for in-depth consultation. This dialogue can be conducted in the framework of a round table<sup>51</sup>. In addition, an ongoing dialogue can be conducted with a fixed group of people virtually – through a designated forum, blog or through a designated virtual community. All these can be part of a designated website which consolidates all the relevant information and the various consultation channels.

**Tools that allow for a single meeting or multiple meetings with various groups for dialogue:** Dialogue which only occurs at a single meeting or over multiple meetings is acceptable and common in the framework of **consultation meetings and public hearings** of committees (according to law or not) or of work teams. When scheduling these meetings, we propose paying attention to the depth of the dialogue planned for the meetings: **gathering information** or **expanding information** about written documents that have been received or **discussion** – which combines demonstrating positions, presenting dilemmas and consultation<sup>52</sup>. We also propose that consideration be given to determining a uniform format for comments, and particularly if the proceedings are more formal, which would allow for fairness and equality between the respondents vis-à-vis the manner in which the discussion is conducted<sup>53</sup>.

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<sup>46</sup> The E-Government team is developing tools that support online questionnaires which will assist in summarizing the comments received through them.

<sup>47</sup> In addition to the familiar position surveys, use can be made of **deliberative surveys** which allow to collect the stakeholders' positions at the beginning of the dialogue and afterwards, as well as after information about the subjects to which it refers is provided. Such a survey allows the examination of how this providing of information affected positions.

<sup>48</sup> For example, in the framework of presenting the Trajtenberg Committee Report, the E-Government team created a platform that allowed the public to respond to each clause of the report separately. See: <http://hidavrut.gov.il/>.

<sup>49</sup> In this context, see for example the presentation of legal memoranda to the public for comment at the website of the Government Online Connection hub – <http://www.tazkirim.gov.il/Pages/default.aspx>.

<sup>50</sup> Which is issued as part of a tender proceeding – before formulating the tender or in a general context that is not part of the tender.

<sup>51</sup> A governmental methodology exists for this subject, one anchored in Government Resolution No. 3190 and the policy paper that is attached to it, as well as Regulations, Funds and Economy Instruction No. 16.9.3 – Providing Support Services in Administering Ministerial Round Tables.

<sup>52</sup> In these meetings, we suggest utilizing methods of listening and mirroring – repeating back the things that are said with the purpose of clarifying that these statements were understood. Unlike passive listening, these methods may strengthen the feeling of appreciation among the participants in the consultation.

<sup>53</sup> A short briefing by the Governance and Society Division on this matter can be obtained. A procedure like this was implemented in the framework of the Trajtenberg Committee discussions.

**Focus groups**<sup>54</sup>, the composition of which can be assessed in the framework of analyzing the stakeholder groups, allow dialogue to be conducted on a platform designated to a specific subject. The advantage of this tool is that it allows to be more thorough when clarifying information (which at times is brought up in other channels: survey, written responses, etc.) and when the interaction between the members of the group affects the product resulting from the discussion about it.

Operating a **designated email account** to receive relevant comments, both during ongoing dialogue and with one-time only dialogue to be administered separately from other correspondence is important and helps manage the information accumulated. To the extent that there is interest in controlling the kinds of documents received and their scope, it is proposed that rules be determined or a comment template be designed (word or page limits, etc.) for those who use it to respond.

**Tools meant for use vis-à-vis weak populations:** With stakeholder groups that are part of the weakest populations, the regulator will, for the most part, have to use non-internet tools with an emphasis on face-to-face meetings. For example, the use of the internet as a tool to administer dialogue may limit the possibility of groups who do not have access to the internet to participate. If necessary, a mixture of tools may be assembled to increase the diversity of the participants in the dialogue and their number. Cooperation with the local authority and with civilian-social organizations that have ongoing contact with these stakeholder groups may help in reaching the weaker population and facilitating dialogue with them. These consultations will also require a special investment to make information accessible<sup>55</sup>. Special attention must be paid to the matter of accessibility in consultation meetings with regard to location and time.

### Implementation

Implementing all the stages of dialogue leads to the full realization of all stages of the process detailed above, to see if they match the reality. Optimal preparedness for this stage includes an early analysis of scenarios involving obstacles and mishaps, and preparing backups for them on the technological and administrative levels, specifically when the process only occurs once. On the methodological level, alternatives for action must be prepared for each area of interest (for example, when using tools like a round table or focus groups, a number of alternatives for administering and advancing the discussion should be prepared).

### Feedback

Giving the participants feedback regarding their contribution to the discussion recognizes the value of their time, knowledge and experience. It may also, at the end of the day, contribute to strengthening the feeling of trust and serve as a basis for additional processes which may occur in the future. Feedback also demonstrates the principle of transparency. In this context, the regulator must include his comments regarding key aspects where participation by the public made an impact and contributed to the process, as well as arguments for the main comments that were adopted or rejected, in the RIA report he prepares (or in the framework of the broader reporting that is part of the

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<sup>54</sup> It would be better if the the focus groups would receive support from professional bodies working in the field (the field of organizational consultation, instructing groups, mediation, etc.) when being administered.

<sup>55</sup> Accessibility includes aspects of language, accessibility for people with disabilities, the clarity of the wording and explanations, increased use of visual illustrations (info-graphics), etc.

process)<sup>56</sup>. Feedback can be given during the process or at the end. **If there is no feedback, the value of the dialogue may be adversely affected in the eyes of the participants and hard feelings may develop even if it was conducted in accordance with all the stages or if their comments affected the outcome in practice.**

#### **D. Conclusion of the Process**

The conclusion of the process must take two subjects into account:

##### Transparency, documentation and reporting

The processes to administer dialogue are based on transparency and openness, and are part of the principles of Open Government<sup>57</sup>. In addition, the regulator can document the process and determine a way to organize the accumulated information, including from consultation processes, so that it will be accessible to the public and available as needed. In this context, we propose consolidating the documents relevant to the process in one place, possibly on a website (a designated one or the office website), and making them accessible to the public as much as possible: documents from the consultation processes, comments received as a result of those processes, the RIA form, etc. In addition, when appealing to the public to hear their positions, we propose asking ahead of time for the respondents' permission to publicize their comments. This will allow the comments received from the public to be presented on the website<sup>58</sup>. At the same time, it is important to preserve in this context the likelihood and balance with regard to the ratio of the principles of Open Government and the bureaucratic burden imposed on the regulator to implement them and his ability to conduct effective and professional decision-making processes.

Structured and methodical work throughout the RIA process helps reduce the input needed when gathering information and making it accessible to the public. For example, by documenting documents and comments received throughout the process and using documentation and reporting templates determined ahead of time (for example, templates for mapping comments, etc.).

##### Evaluating the dialogue processes

In order to advance and streamline processes of dialogue and expand the information base on the subject, it is important to evaluate to what extent the goals were met and which lessons can be learned for future reference upon completion of the processes.

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<sup>56</sup> As part of this process, it is recommended that attention be paid to the main positions raised by the participants; main areas of agreement and disagreement; uniquely valuable information raised in the framework of the process; how the final recommendation includes the main comments raised during the consultations in the framework of the dialogue; the manner in which the public, stakeholders and experts who took part in the process or who are interested in it can advance the subject and track its implementation. For more on this subject, see for example **The Committee for Socio-Economic Change Report** (Trajtenberg Committee), pp. 266, 268, 274-275 in Hebrew and Footnote 31 above; Australian Government, pp. 43-44, 51-57, Footnote 41 above.

<sup>57</sup> See: Government Resolution No. 4515 of April 1, 2012, regarding "Joining the International Open Government Partnership and Appointing 'The Israeli Forum for Open Government'". Like other countries, regulators are required to detail the subjects and areas which the regulator is expected to examine in the next work year, and these reports are published and accessible to the public. In Israel in the future, the annual ministerial work plans will also include reference to planned RIA processes.

<sup>58</sup> For example, much like the comments received from the public on a website that consolidated the activity of the Trajtenberg Committee and the Committee Report were presented; see Footnote 31.

Based on the experience that will be accumulated when implementing the processes, knowledge and skills in this area can be developed<sup>59</sup>.

Throughout the handbook, in reference to each stage of the regulatory assessment, tables emphasizing the added values of conducting dialogue processes at that stage have been included.

**Interim Summary – Dialogue Processes with Stakeholders, Experts and Individuals and Groups from the Public**

At this stage we can answer the following questions:

1. What are the main objectives and benefits in conducting dialogue?
2. Which stakeholders, both those making an impact and those being affected, are relevant to conducting a dialogue?
3. What is the right timing to conduct the dialogue so that it has the most added value, and how long and how deep will it be?
4. What tools and methods for administering the dialogue will be used when consulting with the various stakeholders?
5. After the dialogue is held, what new knowledge and information were gathered during the dialogue processes and what affect will they have/how will they be integrated when designing the regulation?

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<sup>59</sup> Queensland Government, *Regulatory Assessment Statement System Guidelines*. Volume 2.1, 2010 (available at the Queensland Treasury and Trade internet website - <http://www.treasury.qld.gov.au/>).

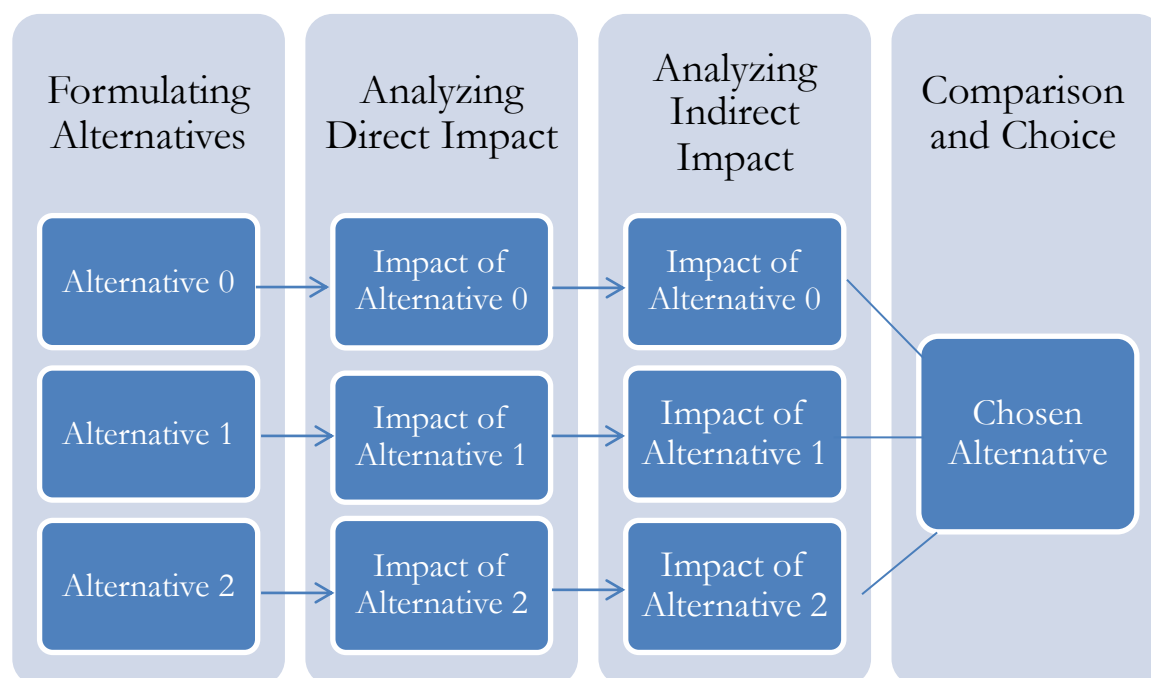
## 4. Assessing Regulation through Alternatives: Formulating and Analyzing Impact and Comparison

This chapter matches Sections B-D of the RIA report template

*Alternatives are a primary instrument for assessing regulation, alongside consultations. This chapter lays out the four stages for assessing regulation through alternatives: formulating alternatives, analyzing direct impact, analyzing indirect impact and choosing the preferred alternative through methodical comparison.*

After the problem has been described, policy targets defined and risks mapped, regulatory assessment can focus on pinpointing the best alternative among all the options. This instrument is comprised of four stages:

1. **Formulating several relevant alternatives** – utilizing the "regulatory tool box" and in reference to the problem, the objectives and managing the risks;
2. **Analyzing the direct impact of each alternative** – through quantitative/qualitative analysis, and based on a structured and clear methodology;
3. **Analyzing the indirect impact of each alternative** – in reference to the social and economic impacts;
4. **Choosing the best alternative** – based on a methodical comparison between the alternatives and their impacts, and in light of the problem described, policy targets defined and risks mapped.



Throughout this chapter, we will present general instructions, suggestions for methodological tools and "warning signs" for possible challenges. Moreover, it will be emphasized how describing the problem and defining policy goals in **Chapter 1**, the risk management outlined in **Chapter 2** and the dialogue mechanisms described in **Chapter 3** are manifested.

### A. First Stage: Building Alternatives – Using the "Regulatory Tool Box"

Examining alternatives is a primary instrument for RIA. Comparing alternatives requires a clarification of the **advantages and disadvantages** of various proposed regulations and helps us choose the optimal alternative.

**What is an alternative?** An alternative is a possible policy for a specific intervention in the economy or society which combines regulatory tools, sanctions (as necessary) and the inspection and enforcement perspective. In order to allow for the optimal regulation to be chosen, the alternatives must be different in one or more of the three components<sup>60</sup>. Each alternative will refer to the following topics:

→ **Regulatory tool:** Regulators have at their disposal a long list of means to direct the market with the goal of bringing about certain behaviors in actors (citizens or organizations). There is a hierarchy of tools to direct behavior which ranges from forced regulation ("command and control") to self-regulation (for details about the regulatory tool box, see Appendix A).

In many cases when building new regulation, there is a natural tendency to prefer the regulatory tool of "command and control" in the regulator's sphere of authority. This tool has many advantages, but also not insignificant disadvantages (first and foremost the burden it imposes and the enforcement methods it requires)<sup>61</sup>. There are many alternatives to this approach, as behavior can be directed (and at times even more effectively) without direct coercion. Examples:

- Through **providing incentives** and tools to help the government encourage behavior indirectly (through taxation, grants, subsidies, support, buying services, sponsorships, different kinds of cooperation, etc.).
- Often the market develops mechanisms of **self-regulation**, such as: internal enforcement, quality assurance and voluntary standards. Self-regulation may lead to a satisfactory result and make the need for a forced system of regulation and strict inspection redundant<sup>62</sup>.
- Tools which create **conditions for structural competition** (which are distinguished from monitoring behavior) and which prevent certain behaviors ahead of time and reduce the need for direct intervention and long-term follow-up<sup>63</sup>.

Addendum A includes more in-depth details of the different tools at a regulator's disposal, and we recommend reading it when formulating alternatives.

→ **Sanctions:** Different levels of severity of punishment and force of impinging on an individual's freedoms can be differentiated. As a rule, punishment is generally viewed

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<sup>60</sup> Of course there is no point in dealing with alternatives that from the outset no one is interested in or alternatives that are unlikely to be implemented (due to an unbridgeable gap in resources). However, an a priori disqualification of an alternative must be properly explained. Alternatives necessitating coordination between regulators can also be examined in this context.

<sup>61</sup> See the comprehensive discussion of advantages and disadvantages of the "command and control" tool in Appendix A, page 70.

<sup>62</sup> For example, large food manufacturers have an internal system of quality assurance and they rely on laboratories authorized by the recognized authorization bodies. The fear of damage being caused to their reputation and losing clients and the fear of being sued for damages or class action lawsuits for large sums in the case of mishaps have a greater impact than the fear of governmental penalties.

<sup>63</sup> With regard to the conditions for structural competition, see page 72.

as a means to change harmful behavior, cancel profits from non-compliance and deter future non-compliance. Therefore, it must be adapted to the motives of the offender and the nature of the damage, as well as to the steps taken to gather information and guide behavior, as aforementioned.

Sanctions do not necessitate a direct monetary penalty. Often, damage to one's image may be more effective than monetary damage. As criminal prosecution is the most severe sanction, it should be only used when appropriate. Proper planning of the severity of governmental punishment, when combined with other sanctions, allows for the formulation of even more efficient regulatory mechanisms. For example, the threat of especially severe sanctions may complement a non-invasive inspection mechanism and support it as long as risk management allows for it (see also **Chapter 2** in this context).

→ **Inspection:** Inspection is conducted through mechanisms for gathering information (either information obligation or an inspector in the field) which allows the regulator to judge the measure of compliance for a given regulation and enforce accordingly. Information obligation imposes a significant burden on those being inspected (business owner). Therefore, the information required, the frequency of its provision and the reporting mechanisms should be taken into account, with the goal of making reporting easier without compromising its goals.

The very existence of a reporting mechanism may in practice affect the behavior of the various actors. Businesses that know that their activity is transparent (to the regulator or to their customers) may adapt their behavior independently. Methods of inspection can be examined without the need for active gathering of information, through the obligation of transparency (see also **Chapter 2** above).

The point of origin for building alternatives is **the existing regulatory situation**, and all alternatives are examined in relation to it. Maintaining the status quo is referred to as "Alternative 0".



### Streamlining and Improving the Effectiveness of Inspection and Enforcement

Building an enforcement mechanism encompasses an entire world of content that exceeds the limits of this handbook. Therefore, it deserves special emphasis when building an alternative.

International experience teaches us that attention should be paid to the manner in which **the stakeholder groups understand the risk resulting from non-compliance**. The threat of severe punishment will not succeed in ensuring compliance if, for example, the rules themselves are complex and unclear, or if the stakeholder group believes that punishment will be applied selectively. Therefore, **clear and accessible regulation assists in increasing compliance**, and will also lead to more effective regulation.

Many studies found, for example, that when **the use of the tool of inspection and enforcement was perceived as superfluous or unfair**, compliance as a whole was compromised. On the other hand, when there are no **guidelines for inspection** or proper prioritization for enforcement activities, resources supporting enforcement are not properly utilized as far as the regulator is concerned, and business owners are burdened with more hardship. Therefore, we highly recommend relying on **risk management** (Chapter 2).

In this context, it should be pointed out that as long as regulation is intended to prevent a certain action, the effectiveness of the regulation is measured by comparing the product of the sanction included in the regulation with the possibility of enforcement (less the chances of being punished). Only when the benefit of breaking the law is lower than the outcome of this formula can one say that the regulation achieves its goal.

Analysis of reforms in OECD countries of inspection and enforcement indicated the tremendous potential in **coordinating inspection activities (conducting inspections, submitting forms) between the various authorities** that are active vis-à-vis those parties. For example, the various inspection activities relating to rules for traffic safety, work safety, manufacturing in accordance with official standards and tax payments can be coordinated. In the same measure, the use of advanced computer systems and sharing information between organizations can also streamline the effectiveness of the regulation and at the same time lower its costs.

Following are a number of principles that are at the heart of many reforms around the world to streamline and improve effectiveness of regulatory inspection and enforcement:

- **Reducing the amount of time** invested in meeting the requirements of regulation
- **Reducing contact** with the authorities, such as computerizing processes or utilizing self-inspection
- **Thinking that differentiates** between stakeholder groups (for example, according to the relative risk to the sector, or a history of compliance at the level of a specific business)
- **Unifying procedures** between regulations or between various obligations of reporting (sharing information, coordinating inspection between authorities)
- **Clarity** of information and accessibility

For further information regarding assessing the effectiveness of the regulatory enforcement system, see the Dutch "Table of Eleven" (<http://www.it11.nl/it11>), which is also available at the address:

[http://www.sam.gov.lv/images/modules/items/PDF/item\\_618\\_NL\\_The\\_table\\_of\\_Eleven.pdf](http://www.sam.gov.lv/images/modules/items/PDF/item_618_NL_The_table_of_Eleven.pdf).

See also the outcome of the international workshop for inspection and enforcement held in Jerusalem in November 2012:

<http://www.oecd.org/gov/regulatorypolicy/regulatoryenforcementandinspections.htm>.



## B. Second Stage: Estimating the Direct Impacts of Each Alternative

After having defined clear and different alternatives, we can begin to assess their direct impact. Direct impact refers to the problem being dealt with through the regulation and its targets, as defined in the stage of describing the status quo. Therefore, the estimation of the impacts should refer to the following, *inter alia*:

- **The regulation's objective** – including the manner in which the problem on the agenda is dealt with and meeting the regulatory targets (as described in Chapter 1) and the measure of suitability of the policy to manage risks (as described in Chapter 2);
- **Implementation of the regulation** – the impact of implementation on the government and the monitored stakeholders. In addition, **direct expenditure** from the State budget should be stated (primarily enforcement cost), **as well as the burden imposed on those being inspected** (business owners, organizations or citizens) in monetary or non-monetary terms, such as delay and prolonging of procedures; as should the regulation's **consistency** when compared with other regulatory steps. In addition, **the direct benefit** should be taken into account, and here too attention should be paid to benefits that are not qualitative. The effectiveness of the implementation should also be estimated with regard to **the measure of non-compliance** that can be expected.

An information-based decision-making process relies on precise data as much as possible. Therefore, to some extent there exists a **built-in preference for quantitative data**. Setting a quantitative value, even if it is not exact, assists in illustrating the cost and the benefit. As such, an effort to quantify encourages the use of an ordered methodological process that can be repeated and compared, and the validity of its conclusions can be examined. Nevertheless, experience from around the world teaches us that at times **it is extremely difficult and even impossible to present the range of considerations in quantitative terms**<sup>64</sup>. Moreover, it is usually easier to present a quantitative analysis of the disadvantages (in terms of direct monetary cost, for example using the SCM methodology detailed below) compared to a parallel analysis of the advantages.

Regulation is meant to protect the public interest, and is often fundamentally not quantitative (for example, defending the value of human life) or refers to a future hazard (for example, in considerations regarding environmental protection and the use of resources). This situation may create a bias and encourage an attitude to deregulate rather than aspire to optimal regulation.

In this handbook, therefore, we have adopted a **language of advantages and disadvantages** rather than cost versus benefit. Using this framework, we can choose to use quantitative tools (which usually are expressed in monetary terms) or qualitative tools to assess the advantages and disadvantages of an alternative.

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<sup>64</sup> In this context, see the American OMB guidelines for RIA: "Regulatory Impact Analysis: A Primer" [http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf).

The ideal empirical analysis is one that analyzes behaviors in practice (revealed preference)<sup>65</sup>. Thus, for example, we can predict (quite accurately) the impact of adding new annual reporting requirements based on empirical information that exists regarding the behavior of actors in the market during similar events in the past (dealing with existing reporting requirements). However, in many cases there is not enough data regarding an actor's actual behavior to predict the costs and benefits based on revealed preference. This is especially true with regard to goods, services or values that are not traded in markets today (for example, a product or precedential event) or that cannot be traded at all (such as advancing a cultural value).

Even if a quantitative analysis of costs and benefits cannot be presented, often we can **estimate the scope of the impact in quantitative terms**. For example, if we cannot estimate the value of defending an individual's dignity, we can estimate the number of civilians who will benefit from such defense as a result of the proposed regulation. In addition, a range of **specific methodologies to estimate impact** have been developed throughout the world in the absence of an ability to base the analysis on revealed preference. **We will demonstrate a number of methodologies from Israel and abroad** to assess the impact in specific fields.

It should be emphasized that in some cases, existing empirical knowledge does not indicate an established methodology to assess the regulatory impact<sup>66</sup>. In these cases, the choice of one methodology over another creates a preference for a certain policy, and in any case also invites pressure on the regulator. It should be remembered that **the assumption that a bias-free and completely objective methodology exists is not realistic** (see for example, the criticism of the methodologies below).

**The regulator himself bears the responsibility to describe the correct methodological framework to analyze the impact of the regulation and to recognize its limitations.** Because of the aforementioned difficulties **the presentation must be transparent** so that there can be an informed discussion and ex post facto inspection. With any method of analysis (quantitative or qualitative), the postulation, its main impact and the causal ties on which the analysis is based should be clarified. **The instrument of consultation** may be especially effective in a discussion about qualitative advantages and disadvantages.

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<sup>65</sup> Estimation of the cost using the value of goods or services (or other factors which demonstrate them) is based on real behavior in the markets, by estimating the sum an individual would be willing to pay (or receive as compensation) versus the situation after regulation is imposed.

<sup>66</sup> A famous example in this context is the lacuna of cost-benefit analyses of regulation in the financial markets, which was raised for discussion in the courts in America. Economists began dealing with the difficulties that arose in this field only recently: Posner, Eric and Weyl, E. Glen, *Benefit-Cost Analysis for Financial Regulation*, American Economic Review, Vol. 103, No. 3, 2013. Available at SSRN: <http://ssrn.com/abstract=2188990>.

### **Integrated Analysis, Quantitative and Qualitative – An Example from Regulation Regarding Reporting and Investigating Accidents in the Fishing Industry**

The British Ministry of Transportation in 2012 examined possibilities for increasing safety in marine transportation by ensuring high standards in accident investigations and by drawing conclusions related to the fishing industry, while imposing a minimal burden on businesses.

The Ministry concretely examined the alternative of accepting European regulation in areas where it was stricter than British regulation and maintaining British standards in other areas. The alternative was found to have the following impact:

- **On the disadvantage side** – Most of the cost of adopting the standards was expected to be absorbed by the Marine Accident Investigation Branch (MAIB). The largest cost was related to developing an updated database in accordance with the requirement (transition cost). As a result, the rate of investigating marine accidents would be slightly affected. In consultation with the economists from the Sea Fish Industry Authority, it was agreed that the adoption of standards would not adversely affect the productivity of the industry, and that if a safety investigation was launched, in any case the vessel would not be active. Filling out the forms recommended in the regulation took between 7 and 15 minutes and the cost for an hour of freelance work in sea fishing was £7.74 and in river fishing, £15.53. The cost of an accident investigation was estimated at £30,000 on average. The total cost was estimated to be between £0.13-0.15 million in the transition year and between £0.33 and 1.32 million after the transition.
- **On advantage side** – In consultation with representatives of the unions and the fishing industry authorities, the postulation that MIAB activity would have a positive impact on marine transportation safety was verified. In this sense, the majority of the benefits resulting from the regulation were not monetary, but rather qualitative – in light of the improvement of tools to prevent marine accidents.

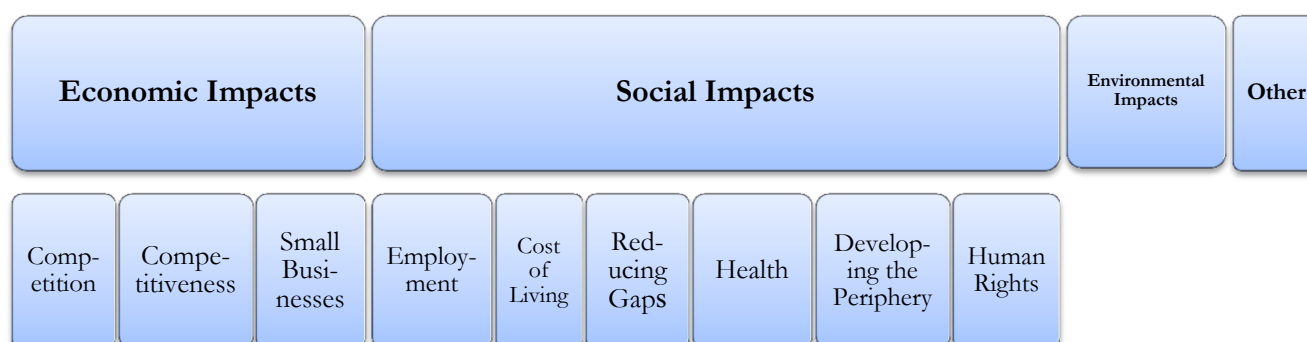
**This example shows the integration of an analysis of disadvantages in quantitative terms and an analysis of advantages that is carried out in qualitative terms.**

### **C. Third Stage: Estimating the Indirect Impacts of Each Alternative**

The distinction between direct and indirect impacts of regulation is meant to direct the regulators to pay attention and dedicate resources to an analysis of the indirect impacts and not only be satisfied with an analysis of the direct impacts. This is part of the systemization principle that stands as the basis for understanding the RIA, and is in accordance with Government Resolution No. 4027 (of December 25, 2011).

The framework of analyzing the indirect impacts often requires an in-depth examination of a number of fundamental social and economic components with regard to **economic impacts** (competition, competitiveness, small businesses and consumer welfare<sup>67</sup>), **social impacts** (employment, cost of living, reducing gaps, human rights, developing the peripheral areas and health) and **environmental impacts**.

### Examples for an Index of Indirect Impacts<sup>68</sup>



This catalog is only a suggestion. Each regulator can choose how to describe and present the social and economic impacts indirectly resulting from the regulation he is examining and add fields in accordance with his experience and understanding. In particular, it should be mentioned that the division of impacts into different issues is not clear-cut. Economic issues are often clearly social as well, and environmental issues also, in many cases, have significant economic and social effects as well.

An analysis of social impacts is obvious when the goal of the regulation being examined is social/distributive (as mentioned in the Introduction). However, **every regulation may encourage or contradict additional trends that diverge from the area of the problem that the regulation is meant to resolve** and indirectly impact social and economic indices. Therefore, when examining regulation that may indirectly impact society, the environment and the economy, **the regulator must decide how he will deal with the impacts** in these areas.

**The person conducting the RIA decides which indirect impacts are possibilities**, much like when mapping possible impacts during the first stage<sup>69</sup>. If the regulator sees that the alternative on the agenda has social or economic impacts in certain areas, **he can**

<sup>67</sup> See the government resolution regarding "Encouraging the Activity of Small and Medium Businesses in Israel" (No. 3409 of July 3, 2011).

<sup>68</sup> For examples of an additional index, see, for example, pp. 16-18 of the British handbook: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31608/11-1112-impact-assessment-toolkit.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31608/11-1112-impact-assessment-toolkit.pdf).

<sup>69</sup> To this end, the above list of possible indirect impacts can be used as a kind of checklist. Alternately, the description of the indirect impacts can be based on the analysis of the problem (as is done in stage one).

and should utilize the government ministries specializing in those areas, so that each regulator will be the center of knowledge for others<sup>70</sup>.

#### D. Detailed Methodologies for Impact (Direct and Indirect) Analysis in Specific Fields

##### Cost Benefit Analysis (CBA)

This common method details the costs and benefits of regulation for every relevant actor in monetary (or quantitative) terms and compares them. This method's calculation includes a number of basic components:

- It is recommended to try and estimate the **costs and benefits of regulation from the perspective of the individual or business directly affected by it**. In this context, recommended variables for an analysis of the individual's or business's perspective may be direct monetary costs (out of pocket expenses) for payments to the State (like fees and taxes), payments for other services (like the cost of legal advice) and changes in fixed costs (like insurance). These variables can be weighed **using simulation tools** to gauge the regulatory impact on the individual directly affected by it.
- **There must be a distinction between costs during the transitional period and the average annual cost during the routine period after the transitional period.** For example, a move to remove polluting vehicles from the road may be very expensive in its preliminary stages, as vehicles will be removed from the road. As enforcement (and vehicle technology) becomes more sophisticated, the budgetary costs may be lower in the future. The distinction between a transitional period and the routine period that follows it is true both with regard to the the individual being monitored and the regulator (activities related to getting organized and ongoing operation of the enforcement system). When calculating the current value of costs and future benefits, the policy impacts should be examined under the assumption that the capitalization rate ("interest") is greater than zero<sup>71</sup>.
- **There must be a distinction between costs to the entire economy and costs directly derived from the State budget.** It is customary to assume that calculating costs to the State budget is simpler when compared with an analysis of the impact on the entire economy. This situation may introduce biases, and therefore there is methodological value in separating the costs to the State budget and costs to the entire economy. It is clear that **in the framework of the cost-benefit analysis for the entire economy, a distinction can be made between the impacts on various populations.**

Advantages and disadvantages of this method: This method allows for the negative and positive aspects of the policy to be reflected and compared. It serves as a strong basis for an analysis of impacts between costs and benefits in terms of timing (in cases in which, for example, a preliminary investment is required, but the benefit is included at a later time). The main disadvantage of this method is the absence of an ability to include impacts that do not have a quantitative or clear monetary measure<sup>72</sup>, primarily because decision-makers tend to grant a higher weight to qualitative measures. Therefore, with regard to distributive impacts, an analysis complementary to the analysis conducted in this manner must be carried out. In many cases, this method can be used as one component of the regulatory impact analysis, when the quantitative and monetary impacts demonstrated in this approach are presented alongside impacts described in more qualitative terms, and which are examined by one of the methods described below.

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<sup>70</sup> In Britain, for example, the methodology for regulatory impact assessment of subjects such as public health or greenhouse gas emissions was developed by the relevant government ministries, such as the Ministry of Health or the Ministry for the Environment, Food and Rural Affairs. For further examples, see: [http://www.hm-treasury.gov.uk/data\\_greenbook\\_supguidance.htm](http://www.hm-treasury.gov.uk/data_greenbook_supguidance.htm).

In the Israeli context, the example of **The Handbook for Integrating a Social-Community Attaché in Planning and Construction Processes** should be mentioned. It was formulated by an inter-sectorial team headed by the Community Employment Services Administration in the Ministry of Welfare (pp. 39-52 in Hebrew). See also Footnote 79 below.

In many countries, regulators regularly distribute their RIA methodologies in a simple and accessible manner to benefit other regulators, and they have a designated address to ease coordination as needed. See, for example, the training system for regulatory impact assessment on health established by the New Zealand Health Ministry: <http://www.health.govt.nz/our-work/health-impact-assessment>.

### Cost Effectiveness Analysis – CEA<sup>73</sup>

The benefit of a certain regulation can be assessed using an estimate **of the cost of an outcome unit** (CEA). For example, the Ministry of Transportation is working to remove older vehicles from the road and examines two alternatives: the first is to remove 500 vehicles and the second alternative is to remove 3,000. In this case, the cost per outcome unit would be the cost of removing one vehicle from the road. Therefore let us assume that in the first alternative, the cost effectiveness would be NIS 2,000 (and NIS 1 million total), and in the second alternative, the cost is NIS 5,000 (and NIS 15 million total). In this case, the Ministry of Transportation may choose the first alternative, even though fewer cars are removed in total due to considerations of a lower cost per outcome unit.

Advantages and disadvantages of the method: This method is especially suitable **when a measurable outcome unit can be defined** for the regulation. On the other hand, the method does not take into account the cumulative benefits from the total number of outcome units, and alternatively it obligates an early assumption of identical benefit for different outcome units (in other words, there is no difference between kinds of vehicles in the two alternatives).

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<sup>71</sup> Determining a capitalization rate of zero means awarding "equal value" to NIS 1 million today and NIS 1 million ten years from now. This is not only because of considerations such as inflation and cost of living, but also in light of "preference for the present", alternative possibilities for investment in the present. For example, one should remember the principle that "tax deferred is tax saved". Determining a capitalization rate of zero may lead to an overestimation of the regulatory impact on generations to come. Moreover, there is often room to examine the sensitivity of future impacts of the regulation to changes in the capitalization rate. This point is being emphasized in light of the American experience in implementing the cost-benefit method. Therefore, the American OMB guidelines recommend examining the costs and benefits both in the case of low interest (between 1% and 3%) and in the case of higher interest rates (between 3% and 7%).

[http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf).

<sup>72</sup> For the possibility of the risk of bias following the use of the CBA method, see for example: Heinzerling, L. and F. Ackerman, *Pricing the Priceless: Cost-Benefit Analysis and Environmental Protection* (Georgetown University:2002), <http://www.ase.tufts.edu/gdae/publications/C-B%20pamphlet%20final.pdf>

Cole, Daniel H., "Law, Politics, and Cost-Benefit Analysis" (2012). *Faculty Publications*. Paper 772. <http://www.repository.law.indiana.edu/facpub/772>.

<sup>73</sup> Based, inter alia, on the Impact Assessment Guidelines handbook by the European Union (January 2009): [http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/iag\\_2009\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/iag_2009_en.pdf).



### Examples for Impact Assessment of Competitiveness<sup>74</sup>

The British Office of Fair Trade developed a list of questions which may assist in deciding if a certain proposed policy will impact competitiveness:

- Does the policy **limit the number of players or kinds of players** in the market? (For example, does the policy award exclusive rights to a supplier or create a closed system of licenses or procurement plans?)
- Does the policy **indirectly limit the number of players or kinds of players** in the market? (For example, does the policy increase the costs for small suppliers joining the market when compared with the costs of the existing large suppliers?)
- Does the policy **limit the ability of players to compete?** (For example, does the policy reduce the channels that may serve the players or limit their activity to a specific geographic area?)
- Will the policy **adversely affect the incentives for the players to engage in lively competition?** (For example, does the policy encourage or allow for coordination and transfer of information regarding prices, costs, sales or output between players?)

Advantages and disadvantages of the method: This method allows for a general assessment of the way an alternative affects competitiveness in the field. By using this method, even when there is no significant empirical basis, an accurate prediction can be made as to whether the alternative will encourage or harm competitiveness. However, the method focuses on assessing the impact of the alternative on the entrance and exit of players from the market and does not allow for an assessment of impacts on the level of prices. In this sense, the method creates a sweeping bias towards increasing competition between players, even though in certain cases, strong competition may create other market failures or exacerbate them. The advantage of such a tool is that it includes a series of built-in questions that serve the regulator when conducting an encompassing comparison between different regulations and a retroactive examination. A similar series of questions may also be developed on additional subjects.

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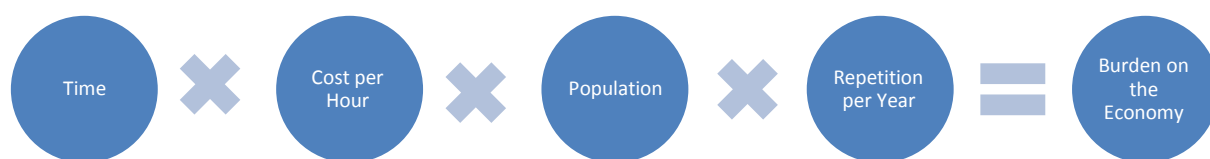
<sup>74</sup> For further information, see: [http://www.oft.gov.uk/shared\\_oftr/reports/comp\\_policy/Quick-Guide1-4.pdf](http://www.oft.gov.uk/shared_oftr/reports/comp_policy/Quick-Guide1-4.pdf). In Israel, the Antitrust Authority serves as the body which assists in impact assessments of competitiveness.



### Example of a Standard Cost Measure (SCM) Model for Calculating the Bureaucratic Burden

One of the concerns regarding new regulation is the disproportional burden on citizens and businesses because of compliance costs. Compliance costs may be direct expenses to meet standards required by the regulation (for example, purchasing bulletproof vests). Even so, it is customary throughout the world to measure the costs involved in information obligations separately. The SCM model is the accepted instrument for estimating the direct **administrative burden** on businesses, i.e. the costs needed to meet the reporting requirements (information obligation – IO) resulting from the regulation<sup>75</sup>.

The basic SCM model estimates the administrative burden created by the process by using a simple product: the time and money that each business owner invests in order to meet the regulation's requirements, multiplied by the number of businesses completing the process per year and the number of times each of them completes it per year. At its most basic, the general model<sup>76</sup> of calculating the administrative burden is presented as follows:



**Calculating the administrative burden in the existing situation and in every proposed alternative allows for an estimation of the benefits to changing the policy.** For example, changing the process for establishing a new company and reducing the amount of time needed to open a file at the VAT office, the tax authority and the National Insurance Institute may reduce the administrative burden and save the economy NIS 9 million per year in the future:

<sup>75</sup> **The administrative burden** is a component of the bureaucratic burden created by regulation. It is focused on administrative activities that are required by regulation on the part of citizens or business owners, and includes preparing reports (filling out forms, photocopying documents, etc.) and filing them, passing inspections and waiting for the regulator's work. The main component of the administrative burden is expressed in monetary terms. At the same time, the "irritating burden" should also be mentioned. It is an abstention from doing certain activities because of fear of debts which may be incurred. See for example:

[http://epp.eurostat.ec.europa.eu/portal/page/portal/conferences/documents/94th\\_dgins\\_conference/I%205%20NL%20REV%20-%20THE%20DUTCH%20APPROACH.PDF](http://epp.eurostat.ec.europa.eu/portal/page/portal/conferences/documents/94th_dgins_conference/I%205%20NL%20REV%20-%20THE%20DUTCH%20APPROACH.PDF).

<sup>76</sup> More detailed models to coordinate between regulatory calculation, bureaucratic processes and various stakeholder groups have been developed around the world. See for example:

<http://www.oecd.org/regreform/regulatorypolicy/34227698.pdf>.

#### Before the improvement

- establishing a company took about 29 hours
- average cost per file - NIS 6,700
- One-time only submission
- Approx. 12,600 requests per year

#### After the improvement

- establishing a company takes about 24 hours
- cost per request is NIS 6,000 (including fees)

**Total cost to the economy: NIS 85 million per year**

**Total cost to the economy: NIS 76 million per year**

**10% savings - approx. NIS 9 million**

Advantages and disadvantages of the method<sup>77</sup>: This method allows for a simple and clear assessment of the administrative burden on the business sector. The result of the calculation received in this manner allows for a clear and easy comparison between administrative costs of different alternative regulations. However, the main disadvantage of this method is the narrow perspective it provides on regulatory impacts. First, this method does not take into account additional components of burden like the length of time the process lasts (in terms of delaying activity), the likelihood of non-compliance and the like. In addition, this method relies on the standardization of the values of activities and ignores the difference in costs of similar activities between various businesses (according to the size of the business, its efficiency, etc.). In addition, the use of this method depends on obtaining detailed and reliable information, and therefore it requires extensive documentation and data processing. Even if there is complete data, the limited sample size only allows for a general assessment – like checking the direction of the wind with one's finger – of the cost of regulation, and therefore it should be remembered that this is not a clear empirical statistical estimate.

<sup>77</sup> For additional challenges involved in the SCM method and dealing with them, see also: Weigel, Wolfgang, The Standard Cost Model - A Critical Appraisal (September 17, 2008). 25th Annual Conference of the European Association of Law and Economics, 2008. <http://ssrn.com/abstract=1295861>  
The Scottish Government – Using the Standard Cost Model to Measure Administrative Burden: a Pilot Using Scotland's Environmental and Rural Services (SEARS) as a Case Study, 2010, <http://www.scotland.gov.uk/Resource/Doc/317867/0101245.pdf>.



### Example of Impact Analysis on Small- and Medium-Sized Enterprises – The European Union SME Test<sup>79</sup>

The potential impacts of regulation may change according to the size of the business, and therefore some people distinguish between the impact on tiny-, small- and medium-sized enterprises and large corporations, and analyze them both qualitatively and quantitatively. At the center of the analysis is the impact the regulation has on the ability of small- and medium-sized enterprises to compete in their business environments. The concern is that **small- and medium-sized enterprises will disproportionately experience the costs of the regulation**, particularly monetary costs, substantive costs (adjusting a product or service to meet the standards in the regulation) and administrative costs (resulting from the requirement to supply information to the authorities, for example).

The first stage of impact analysis on small- to medium-sized enterprises is based on a **preliminary description of the business population** which may be affected by the regulation. As part of it, the **impact of regulation on small- and medium-sized businesses must be presented in comparison with its impact on large corporations**, for example, by calculating the cost per employee in each of the cases, or a calculation of the relative portion of the costs as part of the annual revenue or general expenses of businesses of various sizes. In addition, the EU recommends considering the following components:

- Damage to competitiveness because of external variables, such as the availability of funds, access to resources or skills, etc.;
- Possible impact on the behavior of competitors, suppliers or clients in the market;
- Possible impact on obstacles to entry into the market, on competition and market structure, and specifically on the ability of new small- to medium-sized enterprises to join the market;
- Possible impact on innovation, both in the technological and other spheres (organization and method, marketing, etc.);
- Possible benefit of each alternative for businesses, including reference to reducing the burden, improving productivity at work, larger investment in research or the ability to compete in the market.

Advantages and disadvantages of the method: Using this method, one can examine if the alternative under discussion allows **to coordinate the impacts in proportion with the size of the enterprise** and its ability to compete in the market. As part of this process, a number of possibilities can be examined, including fully or partially excluding enterprises under a certain size from the regulation; monetary support to support the costs of the exclusion (as much as possible, given existing arrangements), simpler information obligations; or marketing and training efforts focused on the population of small- to medium-sized enterprises. On the other hand, it should be remembered that this method emphasizes the relative impact on small enterprises disconnected from the regulatory targets and the way they are to be realized. Therefore, this analysis must be placed **inside the broader framework of policy targets and risk management**.

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<sup>79</sup> Based on the European Union handbook for calculating the impact of regulation on small- to medium-sized enterprises (SME tests)  
[http://ec.europa.eu/enterprise/policies/sme/small-business-act/sme-test/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/small-business-act/sme-test/index_en.htm).

### Examples of Methods to Quantify Impact in Environmental and Health Contexts

One of the solutions for estimating environmental and health impacts, which are not regularly traded in the market in quantifiable and monetary terms, is using an estimate based on other variables. This estimate can be based on self-reporting by citizens, such as in a survey, or by analyzing their preferences based on their behavior in similar situations<sup>80</sup>. Behavior analysis is considered more established (as it examines what individuals do rather than what they say); however, it is difficult to implement in a broad range of cases. In these cases, self-reporting (survey) is in fact the only tool to estimate the costs and benefits. Below are a number of examples for methods to quantify environmental and health impacts and a preliminary analysis of the advantages and disadvantages of each method<sup>81</sup>:

	Method	Suitability	Challenges
Self-Reporting	<b>Contingent assessment</b> – estimating the population's preference based on a survey	<b>Flexible</b> , suitable in almost any context	Planning the survey is complicated; the number of deviations can be limited by carefully constructing the survey.
	<b>Travel expenses</b> – an estimate of the (minimal) value of the resource based on the cost and travel time citizens are willing to invest to get the resource	Suitable for <b>physical sites</b> that people actively visit (beaches, nature preserves, memorial monuments)	Can be affected by mistakes in measurement, especially if they include alternative costs of time; it is difficult to identify alternative sites; answering questions regarding a hypothetical trip should be based on research regarding the function of and demand for the site.
Behavioral Analysis	<b>Hedonistic pricing</b> – an estimate of environmental preferences as reflected by market prices for products it affects (like the increase in housing costs near parks)	Suitable for <b>changes to the environment and urban space</b> that can affect the housing market or salaries	Assumes that the individuals are completely aware of the risks in the environment, the urban space and the work. The estimate should be based on a suitable number of transactions, specifically transactions that are different enough regarding the quality of the environmental, urban or professional conditions. In any event, there is difficulty in isolating the impact on housing costs or salary.

<sup>80</sup> It is often useful to distinguish between "use value" (the benefit of using a given resource – such as moving to a city with better air quality) and "non-use value" (benefit of leaving the resource as it is – like protecting wildlife in faraway wildlife preserves) as the basis for an estimate of the advantages and disadvantages.

<sup>81</sup> Based on: [http://www.ivm.vu.nl/en/Images/CBA0\\_tcm53-161536.pdf](http://www.ivm.vu.nl/en/Images/CBA0_tcm53-161536.pdf). Additional and more detailed methods to assess environmental impacts can be found in the EU handbook: <http://ec.europa.eu/environment/cia/cia-guidelines/g-scoping-full-text.pdf>.

**Cost of career change and self-defense** – the price citizens pay on the personal level to deal with the results of the policy

Suitable for **impacts on health or material damages** from which one can defend oneself

Only possible if there is documentation of actions taken by citizens to reduce their risk. In some cases, there is additional difficulty in estimating the quantitative or monetary value of self-defense actions (like staying home when there is air pollution). Moreover, it does not fully reflect the distress included in the illness itself

**Cost of illness** – expenses of morbidity caused by the policy

Suitable for **impacts on health**

Relatively easy to implement, but does not fully reflect the value of additional distress caused by the illness

## E. Comparing Alternatives and Choosing

After the expected impacts of implementing each alternative are analyzed, we can finally compare the alternatives and choose the best one. The comparison should reflect the following:

- **Achieving the regulation's objective** – The comparison will demonstrate how each alternative meets the regulation's objectives. The starting point for this are the steps conducted in the first stage (see Chapter 1): describing the problem, defining regulatory targets and mapping the risks.
- **The direct impact of the regulation.**
- **The indirect impact of the regulation** – social and economic impact
- **Implementation and enforcement** – The comparison between the alternatives must reflect aspects related to the implementation and enforcement of the regulation. It is not necessarily preferable to choose the most comprehensive and sweeping regulation, especially if its implementation includes very high costs.

### Methods of comparison using multi-criteria analysis<sup>82</sup>

The goal of this method is to rank the criteria (qualitative, quantitative or monetary) to be analyzed for each alternative and compare them. Following are the basic stages in these methods of analysis:

<sup>82</sup> Based inter alia on the EU Impact Assessment Guidelines (January 2009): [http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/iag\\_2009\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/iag_2009_en.pdf).

For more details regarding the various methods used in this approach and its advantages and disadvantages, see for example the handbook from the British Department for Communities and Local Government dedicated to the subject: Department for Communities and Local Government, "Multi-criteria Analysis: a manual" (2009) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7612/1132618.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7612/1132618.pdf).



- **Defining the criteria** for comparison between alternatives, including those based on the regulatory targets under examination<sup>83</sup>, government targets, the main impact of each alternative<sup>84</sup> and possibilities for implementation. A comprehensive detailing of the criterion should be aspired to rather than unifying them under a few general titles<sup>85</sup>.
- Each alternative receives **a score for each criterion**, which reflects the relative place of each alternative vis-à-vis the other alternatives on the agenda, and specifically in comparison with the status quo ("Alternative 0"). The score can be **a number** (from a uniform scale defined by the regulator), it can be **encoded** (positive/neutral/negative, for example) or it can be **a verbal description**. A verbal description allows for more complexity and higher quality content, while using a number or encoding makes summarizing the scores and providing a "weighted score" easier for each alternative.
- **A relative weight for each criterion** is defined in a manner that will demonstrate its importance in the decision about the regulation. This weight can be based on the regulator's expertise and experience, on the insights gained during the consultation process, on dialogue with the decision makers or for technical or other considerations.
- **The weighted score** of each alternative is calculated by summarizing the score of each alternative in accordance with the weight it was assigned (or an approximate calculation if the score includes non-number components), and **each alternative is ranked** on the basis of the weighted score.
- Finally, **a robustness examination** can be conducted regarding the ranking of the alternatives for changes in score or weight, or in cases in which **the base assumptions do not fully exist**. Therefore, we will aspire to examine the robustness of the analysis in an easier scenario and in a more severe scenario while emphasizing the advantages and disadvantages of each alternative in the most likely scenario.

Advantages and disadvantages of the method: This method recognizes that the impact of regulation cannot be limited to one sphere, and allows for dealing with data from a range of sources and of differing levels of certainty and accuracy. In addition, this method allows for the clear presentation of the main impacts of the regulation and particularly where there is a trade-off between different consequences (without giving a precise weight to each consequence). For example, a clear expression of the distributive impacts of the regulation can be made. On the other hand, the use of this method provides an opening for subjectivity, specifically with assigning relative importance to each variable. Therefore, the use of this system may not properly reflect the impacts of regulation in the long-term.

The detailed table below presents the characteristics of dialogue with the public at two stages: during the first stage – the dialogue conducted during the stage of assessing the alternatives – in order to support their analysis (and before a decision is made between them) and during the second stage – during the presentation of the chosen alternatives:

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<sup>83</sup> It is desirable to utilize the targets and goals defined for resolving the problem as a basic and necessary component for assessing the advantage and disadvantage of each alternative. It is recommended to try and assess the impact of each alternative on the measure of the result correlating to these targets and goals.

<sup>84</sup> The RIA process essentially deals with finding the right balance between meeting regulatory targets and reducing costs and other negative impacts. Therefore, alongside the main goals and targets, one should also include a comparison using an analysis of the direct impact (cost/benefit), as well as predicted impacts of the regulation in broader contexts, like that on a population not directly connected to the problem.

<sup>85</sup> The criteria which include negative and positive impacts may create a bias and hurt the transparency of the decision-making process. For example, a score of zero or lower should not be given if in fact there is a combination of positive and negative impacts which cancel each other out.



<b><u>Dialogue with the public at the stage of formulation, analysis and comparison of alternatives</u></b>			
<b>Main objectives</b>	<b>Advantages</b>	<b>Disadvantages</b>	<b>Sample questions</b>
-expanding the range of considerations being weighed  -expanding the base of knowledge and expertise for the decision  -validation of the advantages/disadvantages and a risk assessment  -matching alternatives to the needs and difficulties of the stakeholder groups  -advancing future cooperation	-the heart of the RIA process: this is where the importance of conducting shared dialogue during this stage stems from  -high level of enthusiasm and familiarity on the part of the regulator  -before the decision is made and the process is ended  -value of tangible dialogue – impact on critical artery and timing	-beginning the dialogue administration process for the first time at this stage may uncover gaps which could have been uncovered at an earlier stage  -exposing the regulator's planned action at this stage may place him at the mercy of pressures	-feedback about fundamental assumptions helps in an analysis of advantages and disadvantages  -the main characteristics and emphases that should be considered in relation to each alternative  -examining the social and economic impacts of different alternatives
<b><u>Main Emphases When Administering Dialogue at this Stage:</u></b>  A. The benefit of conducting dialogue at this stage is great, as the regulator already knows what direction he is tending towards, and the public can provide tangible value to prioritizing the alternatives. Therefore, when resources are limited, this is the main stage when it is most appropriate to conduct this process.  B. <b>Tools:</b> At this stage, it is appropriate to use tools for dialogue which allow both sides to exchange ideas, positions and information. These tools may include: <ul style="list-style-type: none"> <li>• Inviting experts and stakeholders to the discussion/hearing</li> <li>• Focus groups</li> <li>• Round tables</li> <li>• Online consultation tools, such as: forums, internet round tables, initiating discussions on social media websites, etc.</li> </ul>			

<b>Draft for public comments –</b> (dialogue at this stage relates to the detailed draft that presents the chosen alternative and the reasons for its selection)			
<b>Main objectives</b>	<b>Advantages</b>	<b>Disadvantages</b>	<b>Sample questions</b>
<ul style="list-style-type: none"> <li>-feedback on the draft that was formulated</li> <li>-recognizing the obstacles and complexities ahead of implementation</li> <li>-feedback for those who were consulted (as long as early consultations were conducted)</li> </ul>	<ul style="list-style-type: none"> <li>-the public can respond to the whole product</li> <li>-closing the circle vis-à-vis the stakeholder group that was consulted, as long as they were consulted beforehand</li> <li>-strengthening the legitimacy of the process and its results (especially if the draft includes reference to the comments received)</li> <li>-building a basis for continued cooperation</li> </ul>	<ul style="list-style-type: none"> <li>-almost the final stage in designing the regulation</li> <li>-may incite antagonism because of the fear of a lack of willingness</li> <li>-gaps may be uncovered about the basic facts of the assessment that weren't identified previously</li> <li>-the measure of the regulator's depth and readiness during the process is high, and if there is a gap vis-à-vis those consulted, there is concern that he will feel that they have nothing to add to the process</li> </ul>	<ul style="list-style-type: none"> <li>-presentation of the final product as it was formulated for comments</li> <li>-leading questions regarding the comparison between alternatives, risk assessment, the congruence between the chosen alternative and the policy targets, the chances of implementation, etc.</li> </ul>

### **Main Emphases When Administering Dialogue at this Stage:**

- A. The draft RIA template or the draft of the regulation (instruction, memorandum, regulation, etc.) can be uploaded to the regulator's website and it can also be published on other websites related to the field (including extra-governmental) or on websites designated for consultation processes.
- B. It is important, in the framework of administering the dialogue at this stage, alongside the resulting decisions, to state the considerations which lead to those decisions.
- C. It is important to define the time for administering the dialogue in accordance with the deadline by which the regulator would like to complete the process and in light of the scope of the consultations he is conducting and the complexity of the regulation.
- D. It is recommended to make the draft accessible in a manner which would allow for comments from the broader public to be received (often regulation is not accessible and therefore it necessitates coordination with those being consulted), and the relevant documents which influenced the formulation of the draft should be submitted.
- E. It is important that expectations be matched with the stakeholder groups participating

in the process with regard to the assessment of their comments – specifically because of the later stage and the fear that may arise that the dialogue is being held for appearance's sake alone.

**F. Tools:**

- Receiving comments regarding the draft by return email (in a format that limits the extent of comments or one that has no limits)
- Questionnaires, including online questionnaires.
- A draft that includes fields for comments alongside its clauses (which allow for specific responses according to clause) – online or physically
- Meetings between the regulator and the respondents to be conducted in accordance with clear and transparent criteria that relate to the identity of the individuals chosen to participate out of all the respondents, with the goal of expanding the discussion while referring to what they wrote and conducting consultations about their comments.

### Summary of the advantages/disadvantages of each alternative in light of the criteria – example for multi-criteria analysis

In order to make the comparison between alternatives easier, a summary table can be designed that presents how each alternative meets the criterion determined. This way we can see what alternative is most beneficial with the lowest cost.

Following are two examples which demonstrate a possible list of criteria in accordance with targets and specific alternatives:

<b>Alternative</b> <b>Criterion</b>	<b>Alternative 0 – maintaining the status quo</b>	<b>Alternative 1 – increasing awareness without obligation</b>	<b>Alternative 2 – obligatory risk management processes (self- regulation)</b>	<b>Alternative 3 – obligatory severe safety procedures</b>
<b>Achieving target no. 1 – reducing the number of injuries in adventure sport activities</b>				
<b>Achieving target no. 2 – maintaining the character of the existing adventure sport industry</b>				
<b>Cost to the State budget</b>				
<b>Total burden on businesses</b>				
<b>Perceived burden ("irritating burden")</b>				
<b>Effectiveness of enforcement</b>				
<b>Direct impact on tourism</b>				

<b>Alternative</b> <b>Criterion</b>	<b>Alternative 0 – private schools determine for themselves the number of students per year</b>	<b>Alternative 1 – an administrative team from the private school defines once and for all the number of students</b>	<b>Alternative 2 – the number of students at the private schools is determined by the Ministry of Education</b>
<b>Achieving target no. 1 – ensuring the appropriate size for the school according to unique properties</b>			
<b>Achieving target no. 2 – ensuring equal access to education</b>			
<b>Achieving target no. 3 – defending public schools</b>			
<b>Total burden on businesses</b>			
<b>Fiscal risk to the State budget</b>			
<b>Other impacts on competition</b>			
<b>Other social impacts</b>			

Examples based on: Ministry of Business, Innovation and Employment of New Zealand, *Management of Drugs and Alcohol in the Adventure Tourism Sector* (November 2012)

Ministry of Education of New Zealand, *Developing and Implementing a New Zealand Model of Charter Schools* (August 2012)

## 5. Implementation, Monitoring and Public Reporting of Recommendations

This chapter matches Section E of the RIA report template

### A. Implementation Plan

The **implementation mechanism** must articulate the alternative chosen and the manner in which **responsibilities and authorities are to be divided in order to implement the policy**. This should also include reference to the implementation bodies which will be entrusted with executing the chosen policy, as well as the bodies in charge of monitoring the implementation of the plan. Therefore, attention should be paid to the relations and patterns of cooperation and the reporting between the different bodies and units.

Even before the regulation is implemented, **measures for its success** must be determined. It is recommended that these measures be quantitative, such as reducing costs by a certain percentage, shortening the amount of time needed, quantitatively reducing the number of work accidents, encouraging competition, new businesses joining the field, etc.<sup>86</sup> Quantitative measures allow for verification of the regulation's success and helps when examining the need for future changes. **In cases in which the success of the policy cannot be measured in quantitative terms**, the policy must be drafted clearly and the desired result should be worded in a manner which will allow for comparison and future examination. If the desired result cannot be worded in a measurable manner, at least "**red lights**" should be determined – measures whose realization points to failed regulation.

Stages of organization and implementation mechanisms



Determining measures for the regulation's success



Inspection system for future assessment of regulatory impact



In this context, distinction should be made between measures for the regulation's success (which are primarily **consequential measures**) and measures to examine the efficiency of enforcement (measured primarily through **output measures**). The main challenge is to find the connection between the efficiency of enforcing the regulation and to what extent enforcement actually contributes to the regulation's success or failure<sup>87</sup>.

At the stage of formulating the regulation, we must determine two central characteristics of the **inspection system**:

→ **The information essential to conducting regulatory assessment in the future** – The kind of information relevant to assessing the regulation's success must be clarified. Even if we do not currently have the essential information, we must describe it in the present so that we can direct information gathering efforts in the future.

<sup>86</sup> For an extensive discussion of the importance and complexity of determining measures for policy see **The Government Planning Handbook 4.0** (2010), pp. 56-83 in Hebrew: <http://www.pmo.gov.il/IsraelGov/YearPlans/Documents/2010/guide1.pdf>.

<sup>87</sup> The Macrory Report insisted on the importance of focusing on consequential measures and not just output in order to develop and preserve the knowledge about the impact of different regulatory steps and ensuring that the regulation advances the goals defined for it. See: Macrory, Richard B. *Regulatory Justice - Making Sanctions Effective*, (London, Cabinet Office, 2006); ("The Macrory Report"), pp. 90-91. <http://www.berr.gov.uk/files/file44593.pdf>.

→ **Infrastructure for gathering information** – It should be made clear how the essential information will be gathered. In this context, building the infrastructure **as part of the implementation mechanism for the regulation** should also be considered. For example, the regulator can take the responsibility upon himself to administer a computerized system for managing files which allow for analysis of information in a manner necessary for assessing the success of the regulation and improving it in the future. Another possibility is to get feedback from the public – whether at his initiative (feedback forms, surveys) or based on public discussion.

In this context, the possibility of conducting a dialogue process with the relevant stakeholders during the implementation of the regulation and the assessment of its results should also be considered in order to learn about its impacts in practice and to gather the information needed to update it.

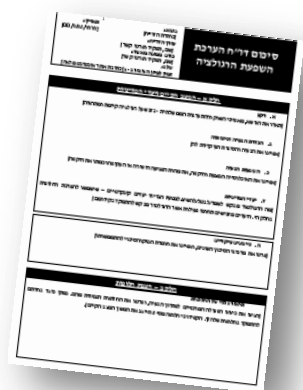
Finally, **whether or not an examination of the impacts of regulation and the effectiveness of enforcement is to be undertaken and when** should be clarified<sup>88</sup>. Defining a specific date for reexamination may assist in focusing efforts and defending against the risks of cognitive biases and regulatory failures.

## B. Public Reporting Templates

The RIA work process and its results must be reported to the public. The use of a public reporting template ensures **standardization of the required transparency and responsibilities**. Moreover, it **also services the internal work process** of the regulator when shaping policy:

- Firstly, it serves as **a tool to assist in consolidating material documenting the work process**, thereby assisting in preserving the information. Moreover, because the template serves as a main tool for transparency, using a template throughout the process may save time and resources when organizing material before publication;
- Secondly, it serves as **a tool for self-inspection**, for fixing and updating the proposed policy – by distributing the thinking process in an explicit and structured manner, regulatory failures and cognitive bias can be recognized and dealt with before it is too late.

The RIA template is the manifestation of the summary of the regulatory assessment process. Therefore, the regulatory authority has the possibility of **editing/publishing in parallel an appendix that expands the discussion on certain aspects which appear in the RIA report**, at its discretion. Together with the report, the written material will be **available for public scrutiny** as much as possible (under the limits of commercial secrets or any other relevant consideration)<sup>89</sup>.



<sup>88</sup> This effectiveness can be measured in terms of efficiency of the enforcement mechanism or in terms of its success in dealing with the problem and achieving the regulation's objective.

<sup>89</sup> For other sources that should be referred to, see: Ferris Tom, (2006) *Good RIA Practices in Selected EU States and RIA Policy Co-ordination and Monitoring Aspects*, Conference: Regulatory Impact Assessment, organized by SIGMA, Ankara 19-21 April cited in OECD, *Building an Institutional Framework for Regulatory Impact Analysis (RIA) Guidance for Policy Makers Version 1.1* (OECD, Paris, 2008), p. 46.



The basic template contains four different kinds of pages:

Page in the RIA report template	Section on the RIA report template	Stage in the process
<b>Opening page – first stages of the regulatory impact assessment process</b>	Part A – Status Quo and Policy Targets	Stage 1-2
	Part B – Formulating Alternatives	Stage 4
<b>Pages relating to analysis of alternatives – these pages should be filled out separately for each alternative being examined</b>	Part C – Analysis of Alternatives	Stage 4
<b>Page relating to policy recommendations – comparison of alternatives, recommended policy and description of the implementation and inspection mechanisms</b>	Part D – Comparing Alternatives and Choosing	Stage 4
	Part E – Implementation and Inspection	Stage 5
<b>Page describing the work process – dialogue process and methodological issues</b>	Part F – Dialogue with Stakeholders, Experts and Groups from the Public	Stage 3
	Part G – Methodology and Process of Preparing the Report	

The reporting template includes detailed instructions for filling out each section. The

instructions are provided in brackets. The reporting should match these instructions.

#### **Part B – Presenting Alternatives**

##### **General Description of the Alternative**

[Present the primary directions for action to resolve the problem and detail the alternatives derived from them. Explain how you chose to focus on the following alternatives. Make sure that Alternative 0 represents continuing the status quo.

## Summary of the Regulatory Impact Assessment Report

**Subject:**

[Title of the Report]

**Editor of the Report:**

[Name, Title, Contact Information]

**Managerial Approval**

[Name, Title, Contact Information]

**Stage:**

**Available for Public Study at:** [full  
website address]

**Date:**

[DD/MM/YYYY]

### Part A – Status Quo and Policy Targets

**A. Background**

[Describe the subject, market characteristics and governmental intervention – with an emphasis on existing and future regulation]

**B. Describing the Problem and Its Causes**

[Describe the problem and the main causes for it]

**C. Impacts of the Problem**

[Describe the population affected and its scope, the nature of the direct or indirect damage and quantify the extent]

**D. Policy Targets**

[What is the regulator seeking to preserve/eliminate/achieve/prevent? Define concrete targets, which will be used when assessing alternatives in Part E. The targets emphasize spheres of activity which the regulator would like to focus on advancing]

**E. Main Risks**

[Detail the various risk components, and describe the severity of the damage and chances it will be realized]

### Part B – Presenting Alternatives

**General Description of the Alternative**

[Present the primary directions for action to resolve the problem and detail the alternatives derived from them. Explain how you chose to focus on the following alternatives. Make sure that Alternative 0 represents continuing the status quo.]

**Part C – Analyzing Alternatives****Alternative 0 – Continuing the Status Quo**

[Briefly detail the alternative, based on the description in Part B]

**A. Direct Impact of the Alternative****Advantages**

[Describe the main impacts expected upon implementation of this alternative, with reference to the stakeholder groups affected by it. You should also reference impacts that cannot be quantified in monetary terms. Take care to reference targets defined for resolving the problem. Also mention impacts during the transition period, if any. As far as there is uncertainty regarding the expected impacts, you should aspire to list a range of low-likely-high]

**Disadvantages**

[Describe the main impacts expected upon implementation of this alternative, with reference to the stakeholder groups affected by it. You should also reference impacts that cannot be quantified in monetary terms. Take care to reference targets defined for resolving the problem. Also mention impacts during the transition period, if any. As far as there is uncertainty regarding the expected impacts, you should aspire to list a range of low-likely-high]

**Annual total (benefit less financial cost):****In the State budget – [Range]****As burden to the economy – [Range]****B. Indirect Impact**

In what way does the alternative affect:

**Economic impacts** (like on competition and competitiveness, small businesses)

[Briefly present the main impacts of this alternative on the field – up to 50 words]

**Social impacts** (like on employment, cost of living, child rights, consumer welfare, reducing gaps, developing the periphery, health)

[Briefly present the main impacts of this alternative on the field – up to 50 words]

**Environmental impacts**

[Briefly present the main impacts of this alternative on the field – up to 50 words]

### **Part C – Analyzing Alternatives**

#### **Alternative 1 – [Name of the Alternative]**

[Briefly detail the alternative, based on the description in Part B]

#### **A. Direct Impact of the Alternative**

##### **Advantages**

[Describe the main impacts expected upon implementation of this alternative, with reference to the stakeholder groups affected by it. You should also reference impacts that cannot be quantified in monetary terms. Take care to reference targets defined for resolving the problem. Also mention impacts during the transition period, if any. As far as there is uncertainty regarding the expected impacts, you should aspire to list a range of low-likely-high]

##### **Disadvantages**

[Describe the main impacts expected upon implementation of this alternative, with reference to the stakeholder groups affected by it. You should also reference impacts that cannot be quantified in monetary terms. Take care to reference targets defined for resolving the problem. Also mention impacts during the transition period, if any. As far as there is uncertainty regarding the expected impacts, you should aspire to list a range of low-likely-high]

##### **Annual total (benefit less financial cost):**

**In the State budget – [Range]**

**As burden to the economy – [Range]**

#### **B. Indirect Impact**

In what way does the alternative affect:

**Economic impacts** (like on competition and competitiveness, small businesses)

[Briefly present the main impacts of this alternative on the field – up to 50 words]

**Social impacts** (like on employment, cost of living, child rights, consumer welfare, reducing gaps, developing the periphery, health)

[Briefly present the main impacts of this alternative on the field – up to 50 words]

**Environmental impacts**

[Briefly present the main impacts of this alternative on the field – up to 50 words]

### **Part C – Analyzing Alternatives**

#### **Alternative 2 – [Name of the Alternative]**

[Briefly detail the alternative, based on the description in Part B]

#### **A. Direct Impact of the Alternative**

##### **Advantages**

[Describe the main impacts expected upon implementation of this alternative, with reference to the stakeholder groups affected by it. You should also reference impacts that cannot be quantified in monetary terms. Take care to reference targets defined for resolving the problem. Also mention impacts during the transition period, if any. As far as there is uncertainty regarding the expected impacts, you should aspire to list a range of low-likely-high]

##### **Disadvantages**

[Describe the main impacts expected upon implementation of this alternative, with reference to the stakeholder groups affected by it. You should also reference impacts that cannot be quantified in monetary terms. Take care to reference targets defined for resolving the problem. Also mention impacts during the transition period, if any. As far as there is uncertainty regarding the expected impacts, you should aspire to list a range of low-likely-high]

**Annual total (benefit less financial cost):**

**In the State budget – [Range]**

**As burden to the economy – [Range]**

#### **B. Indirect Impact**

In what way does the alternative affect:

**Economic impacts** (like on competition and competitiveness, small businesses)

[Briefly present the main impacts of this alternative on the field – up to 50 words]

**Social impacts** (like on employment, cost of living, child rights, consumer welfare, reducing gaps, developing the periphery, health)

[Briefly present the main impacts of this alternative on the field – up to 50 words]

**Environmental impacts**

[Briefly present the main impacts of this alternative on the field – up to 50 words]

### **Part D – Comparing Alternatives and Recommending Policy**

#### **A. Summary of the Advantages/Disadvantages of the Alternatives and the Comparison Between Them:**

[Determine criteria for examining the regulation derived from the regulatory targets, the main impacts of the regulation, the social and economic impacts and the possibilities for implementation. Compare the alternatives in light of the criteria and present your conclusions]

#### **B. Recommended Alternative**

[Based on the explanations above, present the recommended alternative]

### **Part E – Implementation and Inspection**

#### **A. Implementation Plan**

[Describe which bodies are involved in implementing the policy and the responsibilities of each body, stages of organization, schedule and milestones, costs and resources]

#### **B. Measures for the Success of the Regulation**

[Describe the measures for the success of the regulation and the measures for the effectiveness of enforcement]

#### **C. Mechanisms to Gather Information for Assessment and Inspection**

[Describe the information essential for assessment and inspection, the manner in which it is gathered and the bodies responsible for gathering it]

## **Part F – Consultation with Stakeholders, Experts and Groups from the Public**

### **A. Description of the Consultation Process**

[Describe the intra- and extra-governmental consultation process. Take care to reference the goals of the consultation, the stakeholders who took part, the processes/tools used, the timing and length of the consultations]

### **B. Results of the Consultation**

[Describe the main issues that arose during the process of sharing; primary gaps identified, obstacles and objections expected and how to deal with them. Specifically, please reference consultation processes with stakeholder groups that may be affected by the regulation in the future]

## **Part G – Methodology and the Process for Preparing the Report**

### **A. Methodology**

[Describe the methodologies used in the examination, what was examined and what was decided upon not to examine, define the 'depth' of the assessment, the constraints of the process and the gaps in knowledge, the process used for analysis and when formulating the recommendations]

### **B. Main Assumptions When Calculating**

[Detail the specific assumptions that stand at the base of the analysis of the advantages and disadvantages of the alternatives]

### **C. Open Questions**

[Specify topics that were not dealt with and questions that should be examined in the future as part of the process of developing regulatory knowledge on the subject]

### **D. Sources and Material**

[Reference the main written sources used during the learning process – official documents (like legislation), main studies, comparison to international experience, position papers, opinions and other documents used in the framework of the consultation processes]

## **Appendix A – Strategies for Regulatory Intervention**

In this appendix, we will survey several primary strategies the State can exercise at increasingly developed levels of intervention, as well as the main risks involved in each



strategy<sup>90</sup>. Given the different circumstances and risks, a combination of several strategies may be considered.



### Command and Control

At its core, this strategy creates an impact on the monitored party by determining uniform standards, alongside the threat of imposing different kinds of sanctions (criminal, administrative, monetary fines, etc.). The force of law serves as an instrument prohibiting certain kinds of activity, a positive requirement for certain kinds of behavior or imposes entry conditions for a certain sector. The advantages of the command and control strategy include, first and foremost, the possibility of **immediately implementing certain standards in a uniform manner**. Therefore, it is clear to those being inspected what is required of them and what the cost of non-compliance may be. In political terms, the regulator is perceived as demonstrating a clear position: he indicates that a certain action is unacceptable, distances dangerous players from the relevant areas and determines punishments for those who violate the directive.

The regulator's natural tendency is to use this strategy, especially given its simplicity (prohibition on the one hand and punishment on the other), but also because it allows the regulator to fully exercise his authority and responsibility to control and direct the market. However, these explanations may actually be an obstacle to optimal regulation. In certain cases, a sweeping ban is an excessive step when taking into account the risk involved in the problem, and therefore poses a heavy regulatory burden on the person being inspected.

In the same manner, the mechanisms for command and control tend to become mired in **legalism** that leads to overregulation, severe and complex regulation or the imposition of sanctions that are too harsh. Legalism may result from limited information about the market, political pressures for a comprehensive response or short timetables (an attempt

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<sup>90</sup> Baldwin, Robert Martin Cave and Martin Lodge, *Understanding Regulation* (2<sup>nd</sup> Ed., OUP, Oxford: 2012), pp. 105-136.

to "strike at the iron while it's still hot"). It should be emphasized that the concern about legalism is due to the fact that it indicates **excessive use of regulatory authority** in a manner that does not suit the needs of society and the economy.

In addition, the command and control strategy necessarily requires a strong relationship between the regulator and those being monitored for inspection and enforcement. Relationships that are too close may lead to regulatory capture – advancing the interests of the monitored parties to the detriment of the larger public's interest. There are many reasons for regulatory capture, including the development of economic dependency between the large parties being inspected or on the basis of information provided by exiting players.

Clarity of requirements and standards in the mechanisms of command and control help (mostly the larger bodies) identify legal loopholes and thereby adversely affect achieving the regulation's objective. That is why determining standards has vital importance in this strategy, as does the manner they may affect the market in the future. With regard to impact on competition, for example, attention should be paid to uniformly determining standards as it may make it too easy for some of those being monitored and harm others who will find it difficult to meet the requirements. Another concern is that the standards determined, even if they are suitable today, will be too rigid and therefore will soon become irrelevant because of new technological developments, for example. Finally, using the command and control strategy significantly depends on **enforcement capability**. An unsuitable enforcement strategy may lead to "creative compliance" (when the intention of the law is not realized but the law itself is not broken) and to the weakening of the regulator's role as a deterrent<sup>91</sup>.

## **Incentives**

When using this strategy, the party being inspected (a polluting factory, for example) can be encouraged to behave in a manner benefiting the public's interest by imposing positive or negative taxation or by granting incentives and subsidies from the public till without the government imposing a prohibition or sanctions on certain behavior. The advantages of the system can be attributed to **the restriction of the regulator's discretion** (when compared with mechanisms for command and control) and a reduction of government intervention in the economy. In any event, this method involves a lighter bureaucratic burden and thus there is less concern for the risk of "regulatory capture", because there is no need for ongoing dialogue between the inspector and the parties being inspected.

Nevertheless, many of the problems inherent in the command and control strategy are also relevant to different incentives strategies. There is also a **risk of over-complexity** with the incentive method when determining rules and a level of finesse by parties to receive the incentive without achieving the objective. Furthermore, and unlike the prevailing assumption, **the rational behavior of the party being monitored** (on which the incentive approach is based) does not always pass the test of reality. Incentives may not influence irresponsible players even though they are the main stakeholders for the regulation. Delays in response time may be another difficulty: when there is a need to prevent an action immediately (for example, stopping pollution in a river), an incentive strategy may prove to be ineffective.

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<sup>91</sup> Sunstein, Cass: "Paradoxes of the Regulatory State", (1990) 57 *University of Chicago Law Review* 407.

The main difficulty involved in incentives is **predicting the impact of providing any incentives "in the field"**. How can the exact tax burden be determined that will convince a factory from stopping polluting activities? Even if we assume that the players being monitored are acting in a rational manner, the impact of incentives on reporting or on the objective of each player will be different. The attempt to design incentives to lead to the desired result may instead lead to stricter demands for information from the players being monitored – like in the strategy of command and control. Developing incentives using a system of incremental adjustments (using trial and error) may help in dealing with small risks, but may be disastrous when trying to immediately prevent large risks.

Politically, the transition from a strategy of command and control to a strategy of incentives may be popular among the players being monitored, but may arouse public resistance to actively subsidizing bodies which create the problem (and with regard to taxation, by rolling the costs onto the tax payers). In addition, an incentive-based strategy may be found to be less flexible than one of command and control, and therefore may also be less effective.

### **Harnessing the Market – Rules of Competition, Structured Separations, Franchising, Contracts and Trading Licenses**

**The rules of competition** are considered useful cross-sector tools which allow for more comfortable preconditions to entering the market when compared with strategies that impose detailed and demanding requirements. They can be used to control anti-competitive or unfair behavior in the market, such as predatory pricing (determining prices that are too low in order to chase off competitors) and to ensure an appropriate supply of services to the public. The rules of competition create much more flexibility for the sector while maintaining a relatively lower enforcement burden for direct administration of the market by the inspecting authority.

The rules of competition related to **structural separations** (like the separation of the provident funds from the mutual funds) may prove to be more stable and sustainable than other regulatory strategies. The use of structural conditions helps isolate in advance the problematic factor, without having to deal with specific questions created, for example, because of abuse of a monopolistic position. Rather than the regulator entering the picture and complicating the relationships between the players in an ad hoc market (often too late), creating structural conditions allows for controlling competition in the market in advance by preventing the creation of a market force beforehand<sup>92</sup>.

Nevertheless, experience around the world indicates several disadvantages to using the rules of competition, mostly because of their generality. In many cases, specific arrangements are needed, such as access of players to the network (natural monopoly/essential resource), at which point the rules of competition are insufficient and require intervention regarding conditions for contracts, providing access and even margin squeeze. The rules of competition do not always provide a resolution for specific

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<sup>92</sup> For more details regarding considerations in favor of structural separations as an instrument for shaping competition in the market, see the public statement by the Antitrust Authority regarding "Instructions for Solutions to Mergers Which Raise Reasonable Concern for Significant Harm to Competition": <http://www.antitrust.gov.il/images/docs/2-11.pdf>

arrangements, which creates a need for a decision from the courts. This occurs too in cases when the inspecting authority could have implemented a more efficient solution. The courts may prove to demonstrate a lack of professional expertise when dealing with problems in the field, or at least to be slower in developing the necessary tools for directing the market. As a result, the rules may develop more slowly and without centralized planning, thereby leaving central issues without an effective resolution.

**Franchising** is a control strategy that can be used in sectors that are monopolistic in nature by exchanging competition in the market for competition for the market. Usually it is assumed that if the players submit competition offers to receive a protected right to serve a certain market for a defined period of time and under clear conditions, consumers will profit from the provision of services by an operator not subject to pressure from competition but which in many ways operates under the influence of competition.

Governmental authorities can make use of State expenditures to achieve the desired goals. Use can be made of **government contracts** to benefit regulatory goals even when the contract is wholly economic (for example, a sweeping demand for fair pay in every government contract with suppliers). Furthermore, in certain sectors in which there is significant dependence on public funding, there exists a basis for developing mechanisms of self-regulation.

**Tradable licenses** are another instrument of controlling entry into the market and behavior in the market itself. For the most part, the inspecting agency issues a number of permits which allow a certain action (such as pollution emissions at a fixed rate). After the initial distribution, the permits can be traded freely, and in that manner a certain company can sell its permits and use the receipts to finance the reduction of its own pollution emissions, for example. The initial distribution can be done by public auction or arbitrarily, in accordance with the public interest.

The advantages attributed to the system of tradable licenses point to the possibility of efficient allocation of permits to players who most need them (who are willing to pay more for them). In this system, the players being monitored are less restricted in comparison with command and control methods, while the regulator's discretion is left restricted and subject to market forces that will be created. Nevertheless, the method of tradable licenses also requires an efficient enforcement mechanism in order to prevent activities prohibited without a license. Moreover, the time required to achieve balance in trade in the market of licenses may prove to be too long to be effective in certain areas. Trading licenses also does not provide the resources needed to compensate those harmed and may create political hardship if the issuance is presented as providing "a license to pollute". Of course, in order to allow for the development of an efficient market to trade licenses, a large number of buyers and sellers must have access to the right information.

### **The Duty of Disclosure**

This strategy does not allow for intervention in production or supply of products, but rather focuses on the prohibition of publicizing certain misleading information or the obligation for proper disclosure. Providing information can be done by the different suppliers or by the supervisory government body.

The main disadvantage of this strategy is its reliance on the recipients of the information (consumers/citizens), who may interpret it wrongly or use it in a manner that is unexpected (like consumers who prefer purchasing a product at a lower price despite the safety risk it poses, for example). In addition, the costs of presenting the information and processing it may be high. In certain cases, it would be more efficient, from the consumer's point of view, to rely on the regulator's discretion rather than process the information themselves. **The higher the risk, the more policy-makers tend not to make do with informing the consumers and prefer strategies of command and control.** There is a need to define standards appropriate for the duty of disclosure in order to ascertain if the information provided will be presented in an effective manner (for example, some people wondered if the phrase "smoking is harmful to your health" was indeed effective enough).

The main advantage to using a strategy of duty of disclosure is clear in cases in which the consequences of non-compliance are not disastrous, the relevant information can be provided at a reasonable cost, the quality of the information provided can easily be monitored, those receiving the information can effectively assess the risk and they can be trusted to consider their steps as a result. In addition, there is evidence that a combination of duty of disclosure with a more direct strategy of control strengthens the incentive to comply.

### **"Nudge" Solutions**

The State can intervene in decisions made by the market in more sophisticated ways, such as by shaping a decision-making environment that will increase the chance of choosing the desired result. Such solutions can assist by preventing from the start the conditions which allow for a problem to be created, like for example planning roads in a manner that will make it difficult to speed. Nudge solutions **shape the decision-making environment in order to encourage the desired decision**, mostly based on tools from the field of behavioral sciences. It was found, for example, that defining all citizens as organ donors by default – in other words, including them in the donor database unless they specifically object – contributes significantly to increasing interest in donating organs. A change in the decision-making environment (redefining the default), rather than changing the incentives provided, encouraged the desired behavior (more donors in the database). In fact, the authorities are manipulating the decision-making process, but leave the responsibility in the hands of the monitored parties.

The criticism of such solutions relates, first of all, to the risk in limiting the monitored party's freedom of choice, even if theoretically "soft" steps are taken to influence their decision making. Secondly, it is claimed that the nature of such solutions are contaminated by a basic lack of transparency as decision making is shaped without the monitored party being aware of the process and being able to criticize it. The process also depends on a profound understanding of the characteristics of behavior and the different monitored populations' preferences. In particular, with regard to the behavior of businesses, there is difficulty in defining the aggregate activity of numerous decision makers as rational behavior that can be manipulated. Finally, it should be remembered that nudge solutions are not appropriate in cases of regulation for urgent problems which involve high risk.

### **Anchoring Rights**

Describing a certain right may lead to behavioral change in monitored parties: for example, anchoring clear water rights in a formal manner may deter polluters **who may fear that compensation will be demanded of them**, if they are sued by the injured parties. The incentive to change behavior is based on deterrence resulting from the risk of having to make monetary payments.

Nevertheless, anchoring rights may prove to be inefficient with regard to the aspect of deterrence if the monitored party is not sensitive to the monetary risks or is susceptible to irrational behavior. When discussing inspection of rare behavior, the risk of the monitored party having to pay compensation is lower, and so too is the deterrence factor at the basis of the regulation. Finally, insurance policies may provide some defense from compensation payments, thereby adversely affecting the effectiveness of deterrence.

### **Self-Regulation and Joint Regulation**

Regulation can be implemented by the State (as described above) or by a range of other organizations, such as professional bodies, trade organizations, interest groups, business partners, consumers or corporations. The State's role in such cases focuses mainly on shaping "the rules of the game" for regulation that these organizations implement, at various levels of inspection.

**Self-regulation** takes place when a group of companies or individuals demonstrates control over its members and their behavior. In Israel, there are a range of professional unions of different occupations (and even different sports) that exhibit characteristics of self-regulation. Self-regulation can utilize the expertise of the bodies, which monitor themselves, and save the State budget from inspection and enforcement costs. On the other hand, it is difficult to implement self-regulation when there is no extra-governmental organization that enjoys total legitimacy to legislate and enforce internal regulations. In order to deal with these cases, the government can grant an organization statutory status or declare the adoption of standards without obligating itself to enforcing them. Nevertheless, some people criticize self-regulation mechanisms because of a lack of accountability which may characterize them, and because of the difficulty in ensuring fair proceedings in their framework.

Compared with self-regulation, in **joint regulation** (or enforced self-regulation), the government plays a central role in inspecting the efficiency of the regulatory work and self-enforcement. This approach aspires to provide the monitored parties with the incentives needed to determine for themselves detailed rules of behavior, and it is therefore considered more efficient both in terms of resources used for enforcement and in terms of the results of regulation. Nevertheless, its greatest challenge is to convince the monitored bodies to see the world as the regulator sees it. The rules of behavior the monitored body determines for itself may be different (and even opposite) from those the regulator envisions.

### **Conclusion – Strengths and Weaknesses of Regulatory Strategies**

Strategy	Example	Strengths	Weaknesses
<b>Command and Control</b>	Work hygiene	Supported by law	Interferes in the administration of monitored bodies

	and safety	<p>Determines uniform standards of behavior</p> <p>Filters entry into the market</p> <p>Prohibits behaviors immediately</p> <p>Perceived as particularly protective</p>	<p>Overly close relations may lead to "regulatory capture"</p> <p>Risk of overly complicated laws</p> <p>Strict requirements for providing information and expensive implementation and enforcement</p> <p>Determining standards is complicated</p> <p>Anti-competitiveness effect</p> <p>May also adversely affect desired activities</p>
<b>Incentives</b>	Green taxation	<p>Limits regulator's discretion</p> <p>Low implementation costs</p> <p>Limited intervention in administration</p> <p>Economic pressure to reduce damaging behaviors</p>	<p>Necessitates legislation/determining regulations</p> <p>Difficulty when responding to irrational or negligent behavior</p> <p>Difficulty in predicting behavior resulting from a certain incentive</p> <p>Delay in response "in the field"</p>
Strategy	Example	Strengths	Weaknesses
<b>Harnessing the Market</b>			
<b>A. Rules of Competition</b>	Restrictive agreements	<p>Can be implemented in many sectors at the same time</p> <p>Low level of intervention</p> <p>Flexibility for the company</p>	<p>Uncertainty and costs in business transactions</p> <p>Statutes of competition not always sufficient</p> <p>Need to determine specific and binding rules for courts to resolve specific problems</p>
<b>B. Franchising</b>	Television broadcasts, buses	<p>Low cost of enforcement</p> <p>Relatively few restrictions</p>	<p>Difficulty in gathering evidence about behavior</p> <p>Need to precisely describe the service</p>



		<p>The managers (not clerks) respond to developments in the market</p> <p>Exchanging competition "in the market" for competition "for the market"</p>	<p>Tension between detailed definitions and innovation and flexibility</p> <p>Uncertainty may roll the prices onto the consumer</p> <p>Need a sophisticated market for competition on franchises</p>
<b>C. Regulation Through Contracts</b>	Combines control with provision of services	<p>Punishment by fines or by not renewing the contract</p> <p>Easier to implement than the licensing method</p>	<p>Risk of confusion in roles between the inspector and the supplier</p> <p>Low level of accountability and transparency</p> <p>Limited legal inspection</p>
Strategy	Example	Strengths	Weaknesses
<b>D. Tradable Licenses</b>	Permits for limited pollution	<p>Permission to pollute given to those who benefit the most from it</p> <p>Incentive to reduce damage to zero</p> <p>Significant freedom for management</p> <p>Low costs of regulation</p>	<p>There is a need for an inspection and enforcement system</p> <p>Slow response time to developments</p> <p>Difficulty in completely preventing damage or to compensate those damaged</p> <p>Necessitates a sophisticated market for trading licenses</p> <p>May create obstacles to entering the market</p>
<b>Duty of Disclosure</b>	Ingredients on food products	<p>Low measure of intervention</p> <p>Allows for the decision to be in the</p>	<p>More information does not prevent erroneous decisions</p> <p>Risk of too much information or inaccessible information</p>

		<p>hands of the consumer</p> <p>Low risk of "regulatory capture"</p> <p>Useful in sectors with low risk</p>	<p>Need for inspecting the quality of the information</p>
<b>Anchoring Rights</b>	The right to clean air	<p>Low costs for the State</p> <p>Very limited intervention</p>	<p>Does not prevent behaviors resulting from irrational sources</p> <p>Enforcement requires that the victims have knowledge and resources</p> <p>Deterrence hurt by the complexity of information and market characteristics (size, insurance)</p>
Strategy	Example	Strengths	Weaknesses
<b>Self-Regulation and Joint Regulation</b>	Travel agents' union	<p>Efficiency in the results of regulation</p> <p>Flexibility in implementation</p> <p>Savings on inspection and enforcement resources</p> <p>Minimal intervention by the State</p>	<p>Only relevant for markets that organize themselves independently</p> <p>Difficulties with accountability and inspection of fair proceedings</p> <p>Is known to be subject to "creative" interpretation of the regulator's intention</p>

## Appendix B – Glossary

<b>Administrative burden</b>	The burden resulting from the need to comply with the requirements for reporting (information obligation) involved in regulation, both in terms of work hours and in terms of out of pocket expenses. The standard cost model (SCM) is the most common model for calculating the administrative burden, which assists in locating requirements that burden the economy and helps streamline processes.
<b>Affected population</b>	The individuals, groups and companies affected by the problem or the regulation, directly or indirectly.
<b>Alternative</b>	Possible policy for specific intervention in the economy or society, which joins regulatory instruments, sanctions (as needed) and inspections and enforcement. A policy of non-intervention is a possible alternative.
<b>Bureaucratic burden</b>	Burden resulting from the need to comply with regulation. The administrative burden is a type of bureaucratic burden.
<b>Command and control mechanisms</b>	Influencing the monitored party by determining uniform standards that are backed up with the threat of administrative and criminal sanctions.
<b>Depth of the assessment (RIA depth)</b>	The measure of complexity of the regulatory impact assessment process resulting from the characteristics of the problem and the strength of the solutions being examined to resolve it.
<b>Duty of disclosure</b>	Obligation to present the public with information about certain characteristics.
<b>Economic impacts</b>	Impacts on aspects relating to the market, such as: growth, competition and competitiveness
<b>Enforcement</b>	Implementation of the regulatory instructions (implementation of sanctions), in accordance with information gathered (in accordance with inspection)
<b>Government intervention</b>	Exerting the authority of law to shape the behavior of individuals or groups. The government has at its disposal a range of instruments for such intervention, starting with command and control through market incentives.
<b>Incentives</b>	Indirect governmental intervention that encourages behaviors by influencing the relative cost of such behavior (for example, green taxation or subsidizing the purchase of refrigerators).

<b>Information obligation</b>	Obligation to provide governmental authorities with information about certain characteristics.
<b>Inspection</b>	An information gathering mechanism regarding the way the regulation is being implemented, which helps ensure compliance. The use of sanctions – enforcement – is a product of inspections. Inspection is different from information obligations, which are part of the regulatory obligations of the monitored party, while inspection is carried out by the regulator.
<b>Market failure</b>	Situation in which assets allocated through market mechanisms leads to an inefficient result.
<b>Non-Compliance</b>	<p>A situation in which the target audience does not follow the regulator's instructions to the letter.</p> <p>Distinction should be made between non-compliance and a situation in which the target group follows the instructions precisely, but the result is not in keeping with the regulator's intentions ("creative compliance").</p>
<b>Nudge</b>	Strategy to directly influence behavior by shaping the decision-making environment.
<b>Optimal regulation</b>	Proportional and balanced intervention in the economy, which leads to the implementation of a defined objective that justifies its impact (direct and indirect) on society and on the economy.
<b>Regulation</b>	<p>Rules of behavior enforced in the framework of economic or social activity, which are enforced by an administrative authority authorized by law, including legislation, secondary legislation, court orders and administrative directives to implement legislation or secondary legislation.</p> <p>For the most part, distinction is made between financial regulation (banks, insurance), infrastructure (communications, transportation), economic (restrictive agreements, consumer protection) and social (safety, worker's rights). The principles outlined in this handbook are appropriate in all fields.</p>
<b>Regulator</b>	An administrative authority authorized to enforce the regulative rules. In certain cases, the administrative authority is even authorized to determine regulative rules.

<b>Regulatory capture</b>	When a regulator is biased towards the interest of the monitored party at the expense of the broader public interest. This includes a bias resulting from exclusive reliance on information provided by monitored parties.
<b>Regulatory failure</b>	A situation in which regulation that does not realize the goal for which it was created. Non-effective regulation does not create a change in behavior.
<b>Self-regulation</b>	Regulation implemented by a body on itself in accordance with the goals determined by the regulator.
<b>Social impacts</b>	Impacts on aspects relating to citizen's daily life, such as: equality, social gaps and other central values in society.
<b>Stakeholders</b>	Individuals or groups affected by the regulation or who can affect it.
<b>Targets</b>	Interim achievements which bring us closer to realizing our goal. The regulator uses targets to realize the goal. A target must be concrete, measurable, and attainable.
<b>Type I error</b>	A common bias in the regulator's decision making, which in conditions of uncertainty grant too much weight to avoiding mistakes. For example, preventing an efficient merging between companies.
<b>Type II error</b>	Approving an action that in retrospect proves to be damaging, such as approving a merger for monopolies that adversely affects competition in the economy.