EVIDENCE-BASED IMPACT ASSESSMENT: a model for Poland

Joint publication under the direction of Jarosław Górniak
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Introduction

Jarosław Górniak

The law lays down rules which provide the framework for life in society. The shape of the law is the effect of many centuries of civilization, and its efficiency depends on its cohesion with the social order that has been shaped by evolution. Regulations are instruments which realize public policy objectives. Regulatory changes serve to resolve social and economic problems. As with every instrument that is devised in response to a certain change, regulations can, and should, be subjected to praxeological assessment of anticipated and actual efficiency and effectiveness. They can, and should, also be assessed in terms of their accuracy in addressing the problem that needs to be resolved, and their utility weighed in the balance of all the intended and unintended consequences. Finally, they are assessed in terms of their political, social and moral values.

Governance relies on knowledge. For centuries, authorities have tried to identify problems and the conditions necessary for realizing its undertakings with the help of councils and intelligence services. Along with the development of science, increasingly refined research methods and analyses are being used in creating knowledge for the needs of public policy. The knowledge on which policy is based is increasingly associated with knowledge obtained and verified using scientific methods. In order to emphasise the scientific foundation of knowledge used in the decision making process, the term ‘evidence-based policy’ has been coined. The incorporation of knowledge in the public policy process is aided by public policy analysis, which includes regulatory impact analysis, treated as a public policy tool – a tool which is particularly affiliated with the state.
In this book we deal with regulatory impact assessment in the context of public policy analysis and the pursuance of evidence-based policy. The provision of knowledge that improves the quality of public policy involves, among others, evaluating policies, programmes and public projects and performing management controls and performance audits. All of these names conceal a common body of objectives and tools, while at the same time maintaining specific characteristics resulting from their development in different fields of public management.

An important step towards improving the legislative system in Poland has been the introduction to the law-making procedure of the requirement to prepare regulatory impact assessments and, in the case of bills, also a regulatory test at the stage of preparing the guidelines of a regulatory act. The procedure for regulatory impact assessment is being improved, and in preparing assessments, the results of properly conducted analyses are used. However, it needs to be said that many of the reports are of a casual nature.

Regulatory impact assessment is at present – next to ex ante evaluation – a forerunner to the nascent system of public policy analysis. This system is understood as a collection of analytical projects which aim to deliver reliable information as the grounds for decision-making in public policy. In the Polish public administration, the analytical functions are scattered and unsystematic. Every operational programme sets off a tremendous mobilization effort, in which it is necessary to perform diagnostic work, conduct a whole range of consultations and analyses of potential effects, even just to establish the target values for performance indicators.

Evaluation appeared in Polish administrative practice along with structural programmes, and is generally associated with summarizing the outcomes of programme implementation. However, ex ante evaluation was also introduced as an important element in preparing operational programmes. This explains its presence in the Act on the principles of pursuing development policy, which requires an ex ante evaluation to be performed for every adopted programme covered by this regulation. The ex ante evaluation itself, in situations where a good analytical base is lacking, often turns into a substitute – and not always a very good one – which lacks professional policy analysis or support from consulting.
The experiences of evaluation development in Poland provide a natural point of reference for building a system for regulatory impact assessment. In our research project, we decided to examine the functioning of the impact assessment system in Poland and, based on the findings, as well as international experiences, theoretical concepts and critical analyses of evaluation practices, formulate the challenges and the design of an improved system for impact assessment in Poland.

The structure of this publication corresponds to this aim. It begins with a chapter in which regulatory impact assessment is placed in the context of public policy analysis and is related to other methods of providing knowledge on the efficiency of public policy, such as evaluation and performance audits (1). Subsequent chapters present the evolution and current legal framework of the impact assessment system in Poland (2) as well as an assessment of the functioning of this system in light of empirical research (3). The research findings are used to establish a catalogue of challenges faced by the impact assessment system in Poland (4). The next two chapters seek inspiration from the rapidly developing evaluation of public programmes (5) as well as international good practices in the field of impact assessment (6). The book ends with a chapter devoted to the main features of a desirable model for impact assessment in Poland (7). This goes beyond improving operational aspects of the current system, and points to the significance of strategic development of governing Poland and stretching the principles of impact assessment to cover the whole legislative process, including the passage of bills through parliament.

An important supplement to this publication, performing a cognitive function, will be a practical guide and sample analyses. Our aim was to base these practical tools on the solid foundations of theoretical concepts, empirical diagnoses and systematic review of experiences in the field of impact assessment and its relative, evaluation.
Impact assessment (IA), also called Regulatory Impact Assessment (RIA) and Regulatory Impact Analysis (see Kirkpatrick and Parker 2007; EC 2009; HM Treasury 2011), has been firmly inscribed in the canon of activities undertaken by administrations worldwide (OECD 2014). There is no single, commonly accepted definition of IA or even agreement as to the scope of ‘regulations’ which are supposed to be the subject of analysis. This is related in part to the fact that the IA itself and its assumptions have undergone historical changes, in response to the needs and conditions of the public sector – from focusing almost exclusively on the cost of proposed and binding legal acts, to a comprehensive analysis of impacts (costs, benefits, risks) of a given intervention, as well as alternative solutions for a wide range of stakeholders (c.f. Kirkpatrick and Parker 2007).

Although there are cases of direct expansion of IA to include non-legislative intervention (e.g. EC 2009), the dominant subject for IA, as in Poland, are regulations. In this area, IA is designed to support the decision making process by systematically delivering information on the likely (or actual) impacts of different variants of planned (or implemented) regulatory intervention of the state. IA should be performed in the initial stages of programming intervention, allowing decisions to be made concerning an intervention, or lack of it, based on sound evidence.

In different countries IA takes different forms, being an element of a system suited to the local conditions (the characteristics of the Polish system will be described in Chapter 2, and examples of selected international solutions in Chapter 6).
Nevertheless, IA contains certain common elements (c.f. OECD 2004; Kirkpatrick and Parker 2007):

- Analysis of the problem and the expected outcome of intervention (which includes addressing whether, in fact, state intervention is needed and justifiable);
- Presentation of different methods of achieving the desired outcome (which includes considering a no-intervention option as well as non-legislative intervention);
- Analysis of the impacts of different intervention alternatives (cost, benefits, risks, including from the perspective of key stakeholders);
- Broad consultation;
- Presentation of recommended intervention options and their justification;
- Plan of evaluation or ex post analysis on the effects of intervention functioning.

The emphasis on using IA does not necessarily mean promoting a technocratic model of state governance, although where there are weaknesses in the system for creating public policy, there is a risk of certain decision-making functions being taken over by IA (c.f. Górniak and Mazur 2012). A particularly important aspect of IA is its analytical nature. As with other tools which have an analogical function, e.g. the performance audit or evaluation, IA is designed to support the decision-making process, not replace it. It is an integral element of public policy analysis (PPA), or more precisely, evidence-based policy (see Pawson 2006; OECD 2009; Kirkpatrick and Parker 2007), and in order to function smoothly, it requires effective public policy management, reflected, among others, in coherent and widely supported national development strategies and area strategies (c.f. Górniak and Mazur 2012; Zybała 2012).

**Public policy**

In general terms, public policy is understood to mean everything that the public administration performs and does not perform (i.e. actions intentionally withheld)
in order to achieve set objectives (c.f. Dye 1976; Davies, Nutley and Smith 2009). The public policy system does not rely, in spite of the practices sometimes observed, on spontaneous or haphazard activities, but on the ordered and channelled initiatives of the state, based on the public good (c.f. Zybała 2012). It is therefore an area very closely related to strategic management (see Bryson 2004), which is reflected in the understanding of public policy as a “the process by which governments translate their political vision into programmes and actions to deliver ‘outcomes’ – desired changes in the real world.” (SPMT 1999: 2.4).

Following the example of the British Prime Minister’s Strategy Unit (PMSU 2004; see also Ledbury et al. 2006; Zybała 2012), the activities mentioned above – except for withholding public intervention – can be divided into five categories:

1. **Information, education and advice** – passive and active transfer of knowledge to the public, e.g. in the form of publication of statistical data, information and social campaigns, introduction of tools increasing transparency of the state, introduction of labelling on goods and products, advice for business and NGOs.

2. **Direct intervention** – direct provision of public services (as in the police, army, fire service, education system) or contracting these services to private entities (private prisons, security).

3. **Economic instruments** – impact on the economic conditions in which public and private entities operate, e.g. change in tax levels, fees for public services, introducing education vouchers, providing loans, grants and subsidies for specific social groups, environmental fees (e.g. for air pollution), licensing public services.

4. **Regulation and legislation** – regulating public behaviour through legal acts, including regulation of prices and market structure, regulation of production and consumption, introducing standards, legislative obligations and prohibitions, legislation on rights, obligations and representation.

5. **Market solutions** – soft market intervention, including common establishment of business norms, agreements, commissions, consultations, codes of practice, self-regulation.
Achieving the target state planned by the administration often requires using several types of tools. Regulations are certainly one of the key instruments (particularly in systematic and widespread privatization of state property; see Surdej 2011), but they are not the only one, nor are they always desirable. The chosen course of action and its implementation is part of a wider process of public policy management (see Jann and Wegrich 2007; Dye 2013) or public management (see Hausner 2007). This process, although it can be viewed in different ways, is described in its basic and generally accepted form using five stages (see Jann and Wegrich 2007; c.f. Palumbo and Maynard-Moody 1991; Dye 2013):

1. Identifying a given problem as an area requiring intervention (agenda setting).
2. Preparing policy or intervention proposals (policy formulation);
3. Making decisions on adopting a prescribed solution (decision making) (alternatively – obtaining legitimation for adopting prescribed actions [policy legitimation]);
4. Implementing an accepted solution (policy implementation);
5. Evaluating the impacts of intervention and eventual amendments or termination (policy evaluation).

This five-stage model of the public policy process is often extended to include additional stages (e.g. Górnia 2007; PIU 2007; Dye 2013), even including up to 13 elements. Closer analysis of these additional stages reveals that they have a dual character. Firstly, they form additional steps involving the strategic constitution of actions relating to the identification of problem areas, outcomes and criteria for assessing alternatives. Secondly, they underline the necessity of including analytical stages which allow the identification of rational alternatives, assessment of anticipated consequences and monitoring of effects in the course of the intervention’s functioning. This second aspect leads, in practice, to elements of PPA being incorporated into the programming and management of public policy.

This is a consequence of the general trend of shaping effective, evidence-based public policy (see Górnia and Mazur 2011). While, as Jarosław Górnia and Stanisław Mazur (2012) write, formulating a vision and defining strategic objectives
has a very strong political component (in terms of political views, rival ideologies, play of interests and political competition), the means of implementation is increasingly reliant on technocratic elements. The need to base public policy on evidence involves supporting the decision-making process by providing decision makers with reliable and accurate knowledge on a specific problem (its nature and causes), the effects of current intervention (intended and unintended), the conditions determining its causes and effects and the potential consequences of considered options and forecasts. Evidence-based policy assumes that decisions, even those that are political, should be taken when there is complete information on their consequences. Such support is provided by PPA.

Public policy analysis

PPA is a set of projects which provide informational support for decision-making processes in public administration. Górniak and Mazur (2012: 185) define its role thus:

_The functions of public policy analysis are: to diagnose social problems and needs; to devise, with the best available knowledge and using specialist methods and expertise, regulatory, allocation and administrative actions to achieve the diagnosed objectives; to compare these concepts, analyse their potential consequences and match them with political, economic and ethical criteria; to recommend the best option to decision makers; and – finally – to devise a plan for implementing the adopted solution._

The increasing pressure on programming evidence-based public policy means that, at least at the normative level, it is difficult these days to imagine the course of public policy without the inclusion of systematic analytical work. PPA is used at practically every level of public policy-making – from supporting the accurate definition of the problem (its true nature, determining conditions, social impacts, context etc.), followed by identifying different intervention scenarios and assessing their likely outcomes (ex ante), supporting the optimal running of the consultation
process which engages stakeholders in solving the problem, devising tools for implementation, right through to monitoring (on-going) and evaluation (ex post).

There are many studies available which define PPA in slightly different ways (see Dunn 2007; Moran, Rein and Goodin 2006; Parsons 1995; Thissessen and Walker 2013). The ‘eightfold path’ proposed by Eguene Bardach (2012) is particularly popular. This popularity stems mainly from its skilful combination of normative elements with the pragmatism of PPA. The eight steps clearly illustrate the scope of PPA activities:

1. Define the problem;
2. Assemble some evidence;
3. Construct the alternatives;
4. Select the criteria;
5. Project the outcomes;
6. Confront the trade-offs;
7. Decide;
8. Tell your story.

As Bardach emphasizes, neither does the order of these steps have to be kept, nor do all of them have to be performed. The analyst’s work consists of repeatedly returning to each of the stages (an iterative approach). These steps should therefore be treated as a checklist, rather than a rigid procedure. It is essential in this approach to focus on thorough analysis of the problem itself and its various symptoms, to estimate as well as possible the potential impacts of alternative solutions with regard for different criteria or indicators, and to communicate the whole study to the decision-maker, who is treated as a client. It is up to the client – in line with the subjectivity principle of policymakers and their responsibility for the ultimate choice – as to what extent they make use of the analysis, the purpose of which is to deliver the best possible knowledge to enable the right decision to be made.

PPA stresses the need to start the process with an accurate definition of the problem, and not with arguments as to why a particular form of intervention is necessary. Discussion on the choice of solution must be preceded by a decision as to whether
a new or amended intervention is needed at all. This relates to the requirement
to base decisions regarding public policy tools on methodically performed PPA.
It is also important, based on carefully gathered evidence, to strive to ascertain the
mechanisms generating the problem. Understanding the causal relationship facili-
tates the subsequent steps in the analysis and helps to identify effective interven-
tional instruments.

An important suggestion made by PPA specialists is to effectively communi-
cate analysis results and grounds for recommended solutions to decision-makers.
The intention is that decision-makers obtain the best reliable basis for making ev-
idence-based decisions, while retaining the possibility of considering additional
criteria. It is the policymakers who are ultimately responsible for the choice of ac-
tion. In this light it is key to report the variant analysis with a clear and detailed
presentation of the consequences (desirable and undesirable) of each option consid-
ered. This is of particular significance when the benefits of solutions vary according
to the criteria adopted, which requires assigning weightings and comparing them.
The need to clearly establish these selection criteria is a further element which places
emphasis on PPA. In an ideal situation, these criteria result from coherent develop-
ment strategies or area strategies – yet each time they should be verified and refined.

In order for individual PPA activities to be properly conducted, it is necessary to
use accurate and reliable analytical tools. Advances in social sciences have generat-
ed a wide range of options in this field – both IA, performance audits and evaluation
are practical implementations of PPA suggestions. The integrated approach – using
tools and good practices from all three methods – can help improve not only activi-
ties relating to impact analysis but the quality of public policy itself.

**Tools for public policy analysis:**
**impact assessment compared to other solutions**

PPA can be viewed from different perspectives. Three forms of systematized an-
alytical projects – IA, performance audits and evaluation – are the most developed
solutions for diagnosing the impacts of intervention, and often function in paral-
lel. While IA relates to the preparation of legal acts on a national and international
level, and usually places greater emphasis on costs and benefits, the performance audit is more concerned with the public finance perspective. Meanwhile, evaluation of public programmes is the widest concept, encompassing many methodological approaches and various kinds of intervention, both on a micro and macro scale. All three elements, besides using a similar set of methods and research techniques, share a common objective: to assess changes in terms of adopted criteria, including efficiency and effectiveness.

Performance audits

The performance audit can be defined – according to OECD (e.g. 2007), among others – as the systematic, deliberate and organized process for the reliable, objective and independent assessment of planned, implemented and completed public policies, programmes and projects, as well as being a tool for assessing the current performance of public finance sector entities based on criteria of economy, efficiency and effectiveness. This understanding of the performance audit fits with the logic of public resource management, which aims to achieve the best value for money. (OECD 2007: 194).

In conducting a performance audit, a wide range of data collection techniques are used (including one-to-one and group interviews, observations, existing data analysis) as well as data analysis (including risk assessment, trend analysis, consultations with advisors) – each of them is used for increasing the efficiency of actions undertaken in the public finance sector (c.f. Deloitte 2008).

Evaluation

The aim of evaluation is to specify, on the basis of properly gathered and processed data, to what extent a given solution (e.g. public intervention: policy, pro-

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1 Economy is understood as the relationship between the use of resources and the quality of goods or services obtained as a result.

2 Efficiency is understood as the relationship between expenditure and outcome. An improved outcome without increased expenditure or achieving the same outcome with lower expenditure equals a growth in efficiency.

3 Effectiveness refers to the level to which objectives are achieved. This is one of the most difficult assessment measures.

4 It is worth noting that in many countries, units conducting performance audits report directly to parliament.
gramme or project) fulfills the established criteria, and in particular, to what extent it achieves the objectives for which it was intended, and what the relationships are between the expenditure, actions and outcomes of this solution. An important aspect of evaluation is assessment of the utility of the programme, which encompasses the balance of intended and unintended consequences as well as the utilization of specific techniques for formulating assessment, including cost-benefit analysis, cost efficiency, multiple-criteria analysis and benchmarking (Turowski and Zawicki 2007). Evaluation can be carried out in different phases of the public policy cycle:

- In the initial stage, when analysis of adopted solutions is performed to ascertain their potential for achieving effects and correct construction of all elements of the project – ex ante evaluation;
- During implementation, especially in the case of complex projects implemented over a long period, where corrections are possible and expedient – a mid-term evaluation in the course of the programme (on-going);
- After implementation – ex post evaluation; this is evaluation in the strict sense, in the classic public policy cycle (Górniak 2007: 11).

There is striking similarity between the performance audit and evaluation: a similar subject matter (public initiatives such as policies, programmes and projects, and also current operations of public finance sector entities) and many common methodological elements. However, there are also certain differences. The performance audit is performed mainly by special organizational units of the public administration, while evaluation is generally commissioned to external independent entities, although in both cases, external and internal forms are possible. Moreover, evaluation is more diversified in terms of methodology, or even paradigms, while the performance audit is more consistent both in concept and procedure – in this sense the criteria for evaluation are also met by IA.

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More information on this issue can be found in the report of CEAPP (the Centre for Evaluation and Analysis of Public Policies of the Jagiellonian University) 2010.
Integration

IA fulfills the general framework definition of evaluation –OECD (2004), not without reason, terms IA as ‘regulatory policy evaluation’. The distinguishing feature of IA is its focus on a narrow class of public interventions: regulatory changes, and use-specific analytical techniques which are also used in evaluation, including cost-benefit analysis, cost efficiency, multiple-criteria analysis and break-even analysis (OECD 2008).

Both in the literature and practice of evaluation (in its positivist line), IA and performance audits, we can see well-advanced convergence. Apart from methodological similarities, their most important common feature is their aim: to establish whether in fact the change, which generates certain costs, brings about a net benefit which would not exist if the change was not implemented. This involves establishing the causal relationship between interventions and the observed results, which in turn allows the primary objective of PPA to be realized: to support well-informed, evidence-based decision making in public administration.

Summary

As Górniak and Mazur claim (2012: 187), ‘without well-functioning public policy analysis, implementation is blind, and evaluation powerless’. Every effective implementation of public policy is preceded by a clear definition of its aims, analysis of the cause and effect relationships in the areas affected by intervention as well as a rational diagnosis of the possible means of solving the specific social problem.

A good analysis, although a condition for effective intervention, is not sufficient to achieve public policy objectives and – more importantly – should not replace the political process of creating solutions. In order for the effects of evaluation activities performed in preparing intervention, during its implementation and after its implementation to lead to improved quality of law making, IA must be integral to the system of creating evidence-based public policy.
Chapter 1. Impact assessment in the context of public policy

References


Chapter 1. Impact assessment in the context of public policy


Chapter 1. Impact assessment in the context of public policy


Chapter 2.
Legislation and institutional frameworks for the process of impact assessment in Poland

Piotr Prokopowicz, Grzegorz Żmuda, Marianna Król

One of the key elements of understanding the process of Impact Assessment (IA) in Poland is the legal context, as it creates the institutional frameworks within which entities execute evidence-based legislation policy. The main aim of this chapter is to outline the normative and institutional background of public policy IA in Poland. Particular attention will be devoted to discussing the historical context of evidence-based law-making in Poland, describing the regulations governing IA as well as briefly presenting the institutional mechanisms relating to implementing the IA process.

Development of the process for improving the quality of regulations in Poland

According to the key assumptions of legal dogmatics, the legal system – complete and unequivocal – should be based on the rationality principle. ‘Good regulations’, based on recognized social needs and problems and established on the basis of efficacy analyses as well as broad social consultation, are the ideal legislative model which liberal democracies all over the world strive towards. It is an ideal which is

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6 Due to the IA process in Poland being limited to legislative initiatives led by the Council of Ministers, the regulations presented in this chapter mostly concern the Government Legislative Process.
never fully achievable, but which provides a signpost to guide efforts aimed at transforming law understood as ‘an act of will’ into law which is ‘an act of reason’.

The following sub-section presents the historical context of the road which Polish legislation has taken from the beginning of political transformation (1989-1995), through the accession of Poland to OECD (1996-2005) right as far as the adoption and implementation of two key strategic programmes for repairing the methods of creating regulations in Poland (2006-2015).

The years 1989–1995

Before the system transformation in 1989, although laws concerning legislation principles in Poland, including the Rules of procedure of the Council of Ministers of 1983 and 1987, contained elements indicating the need for research into the economic, political and social consequences of laws made, they exhibited characteristics of regulations which were largely superficial (Rogowski and Szpringer 2007). The turn of the 1990s, along with the introduction of new economic and institutional procedures, brought to Poland a much wider spectrum of opportunities in terms of independently building legislation based on evidence.

The Rules of procedure of the Council of Ministers adopted in 1991 was not, however, as revolutionary as might have been expected considering the changes that had taken place in other areas of public life in Poland – other than cosmetic improvements and suggesting the need to identify the financial impacts of laws coming into force and to define sources of funding, very little changed in relation to regulations from the 1980s.

Some important elements of the legal context concerning Regulation Impact Assessment (RIA) appeared on the international arena. On 9 March 1995, the Council of the Organization for Economic Co-operation and Development (OECD), inspired by the introduction of RIA in the United States ((Paczocha and Rogowski 2007), adopted Recommendation C(95)21, in which member states were recommended to undertake the following steps to improve the quality and transparency of legislative work:

1. examine the quality and performance of administrative and political processes for developing, implementing, evaluating and revising regulations in compliance with OECD guidelines;

2. develop administrative systems that support the implementation of good decision-making principles as described in OECD regulations;

3. integrate decision-making principles in order to build an efficient, flexible and transparent legislative system at all levels of administration;

4. pay particular attention to the quality and clarity of regulation which may have an impact on other countries or which affect international trade, investments or other aspects of international relations.

Apart from general guidelines, the OECD document also contained more detailed checklists which could be used to create laws in member states. One of these contained 10 questions, constituting its own Decalogue of ‘good regulations’ (Box 1)

**The OECD’s ten questions for improving the legislative process**

(source: OECD 1995)

**Question No.1: Is the Problem Correctly Defined?**
The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

**Question No. 2: Is Government Action Justified?**
Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

**Question No. 3: Is Regulation the Best Form of Government Action?**
Regulators should carry out, early in the regulatory process, an informed comparison
of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements.

**Question No. 4: Is there a Legal Basis for Regulation?**
Regulatory processes should be structured so that all regulatory decisions rigorously respect the rule of law; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedural requirements.

**Question No. 5: What is the Appropriate Level (or Levels) of Government for this Action?**
Regulators should choose the most appropriate level of government to take action, or, if multiple levels are involved, should design effective systems of coordination between levels of government.

**Question No. 6: Do the Benefits of Regulation Justify the Costs?**
Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in an accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

**Question No. 7: Is the Distribution of Effects across Society Transparent?**
To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

**Question No. 8: Is the Regulation Clear, Consistent, Comprehensible, and Accessible to Users?**
Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.
Question No. 9: Have All Interested Parties had the Opportunity to Present their Views?
Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

Question No. 10: How will Compliance be Achieved?
Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

The adoption of the OECD Council recommendations opened a new chapter in the history of creating ‘good regulations’ in Poland, indicating at the same time the key elements of the IA system – clear definition of the problem, provision of alternative solutions, wide public consultation and basing the decision-making process on accurate and reliable analyses. The opening words of this new chapter were written in 1996, at the moment when Poland joined the OECD.

The years 1996–2005
Membership of the OECD imposed many obligations on Poland regarding the law-making process. The recommendations of the OECD Council described above related to, among others, providing high quality legislation, basing regulations on real social needs, rejecting laws which are unnecessary or which overregulate economic activity and including international obligations into national law (Paczocha and Rogowski 2007). The stimulus given by OECD not only initiated the transformations which took place in the second half of the 1990s, but also led to far-reaching changes which are still making themselves felt 20 years later.

Since the problem of overregulation was most keenly felt in the economic sphere (Rogowski and Szpringer 2007), the Council of Ministers Committee appointed an Economic De-bureaucratization Team, which formulated, among others, a new Rules of Procedure of the Council of Ministers, targeted at creating RIA. These laws came into force in 2001 along with the revised Rules of Procedure.
The *Rules of Procedure of the Council of Ministers* was innovative in many respects – it introduced, among others, the concept of the applicant authority and RIA. The applicant authority became obliged to prepare information on the reasons and needs for taking a legislative initiative, including a description of its social and economic importance and impacts. The need to identify ways of harmonizing Polish and EU law was also specified. Importantly, the *Rules of Procedure* identified, on an operational level (Section 9 Paragraph 2 Sub-paragraph 2a), what is meant by RIA. This was regulation impact assessment on:

- budget revenues and expenditure in the public sector;
- labour market;
- internal and external competitiveness of the economy;
- regional situation and development

The above definition is significant in that the emphasis in the Rules of Procedure on economic analyses rather than other areas of state intervention (social or cultural) can still be seen in Polish law regulating the IA process today.

According to the *Rules of procedure*, RIA should be created before preparing a draft normative act to support the decision-making process. Importantly, in the Rules of Procedure there appears the suggestion that RIA should be performed in accordance with the principles and scope specified by the Council of Ministers, with the co-ordination and support of the Government Legislation Centre. Unfortunately, owing to the political turmoil at the end of the Sejm’s term of office in 2001, the appropriate RIA instructions were not adopted.

In 2002, during the Sejm’s next term of office, a new *Rules of Procedure of the Council of Ministers* was adopted which contained similar statements to that of 2001, stipulating, among others, the scope of analyses concerning the alignment of Polish law with EU law. In Section 10 Paragraph 2 Sub-paragraph 4 it is stated e.g. that these analyses should contain tabular summaries of EU laws, to be implemented by means of an alignment bill and draft regulations of Polish law, as well as a schedule for the enactment of laws and regulations in accordance with the accession strategy and alignment process requirements.
Equally important, the *Rules of Procedure* was expanded and gave greater specifications on the range of information required in the RIA documentation, which should contain:

1. a description of the subject affected by the normative act;
2. the result of consultations conducted, especially where this consultation is required by law;
3. a presentation of the findings of normative act impact assessments, with particular attention to:
   - the public finance sector, including the state budget and the budgets of local governments;
   - the labour market;
   - internal and external competitiveness of the economy;
   - the regional situation and development.
4. A description of sources of funding, especially if the proposal draws on the state budget or the budget of local governments.

In 2002 the *Regulation of the Prime Minister 20 June 2002 concerning ‘Principles of legislative technique’*. This contains key – and applicable to the present day – principles describing the fundamental legislative process in Poland. In Section 1 Paragraph 1 the *Regulation* stipulates that the decision to prepare a bill must be preceded by:

- determining and describing the state of social relations in the area requiring intervention by government bodies and indicating the type of changes required;
- establishing the potential – legal and non-legal – means of influence in order to achieve the aims;
- specifying the anticipated outcomes – social, economic, organizational, legal and financial – for each solution;
- seeking the opinions of interested parties;
- selecting the method of intervention to be used by public authorities.
Although the term ‘regulatory test’ did not appear directly in the Regulation, Section 1 constituted a basis in subsequent years for implementing this tool—now a key element of IA. What is important, the Regulation clearly identified the role of variant analysis at the stage preceding the creation of guidelines of a regulatory act—analysis which today is performed only cursorily or superficially.

In Section 1 Paragraph 2 the Regulation also specifies what should occur after the decision to prepare a bill has been made. At this stage it is necessary to:

- be familiar with the state of the law to date, including the currently binding laws as well as international obligations;
- establish the impact of current regulations in this area;
- determine the aims which are to be achieved through means of the bill;
- devise alternative legal solutions, which may be effective in realizing the established aims;
- forecast the impacts of alternative solutions;
- determine the financial impacts of individual legal solutions and specify the means of covering them;
- select the optimal legal solution for a given set of conditions.

Par. 1 of the Regulation clearly sets out where the difference should lie between an analysis conducted before preparing the guidelines of a regulatory act (RT) and an analysis preceding the creation of a draft regulation (RIA). While the first of these should contain a description of several legal and non-legal solutions to the problem defined by the applicant authority, the second should focus on analysing variants based on legislative intervention. Some of these differences are reflected in the RT and RIA forms introduced a few years later.

**The years 2006–2015**

The adoption of the Regulatory Reform Programme in 2006 began a new chapter in the history of work on improving the IA process in Poland—a chapter which has continued until today.
The most important document regulating the government legislative process is *Resolution no. 190 of the Council of Ministers on 29 October 2013 – Rules of procedure of the Council of Ministers* (Polish Official Gazette [Monitor Polski], item 979). In addition, the course of the legislative process and IA is determined by the following Acts and regulations (see Government Legislation Centre 2015):

- *Act of 8 August 1996 on the Council of Ministers* (Journal of Laws 2012 item 392);
- *Act of 4 September 1997 on government administration departments* (Journal of Laws 2013 item 743, as amended.);
- *Act of 20 July 2000 on announcing normative acts and other legal acts* (Journal of Laws 2011 no. 197, item 1172, as amended.);
- *Act of 7 July 2005 on lobbying activity in the law-making process* (Journal of Laws, no. 169, item 1414, as amended.);
- *Act of 27 August 2009 on Committee for European Affairs* (Journal of Laws, no. 161, item 1277);
- *Regulation of the Council of Ministers of 23 December 2002 concerning the method of functioning of the national system for notifying about norms and legal acts* (Journal of Laws, no. 239, item 2039, as amended.);
- *Prime Minister’s Order no. 51 of 8 May 2008 concerning the Taskforce for Programming Government Work*;
- *Resolution no. 18 of the Council of Ministers of 2 February 2010 concerning approval of the Rules of Procedure for the Committee for European Affairs* (Polish Official Gazette no. 9, item 79, as amended.);
- *Prime Minister’s Order no. 1 of 5 January 2012 concerning the Council of Ministers Committee for Digitalization* (Polish Official Gazette, item 1);
- *Prime Minister’s Order no. 86 of 28 November 2013 concerning the Permanent Committee of the Council of Ministers* (Polish Official Gazette, item 986).
The regulations listed above do not exhaust the catalogue of documents providing the context for the institutional process of IA in Poland. The following documents also have an indirect impact on the quality of IA and the legislative process:

- Rules of Procedure of the Sejm of the Republic of Poland, 30 July 1992 (appendix to the Notice of the Marshal of the Sejm of the Republic of Poland, 17 January 2012);
- Principles of legislative technique – appendix to the Regulation of the Council of Ministers, 20 June 2002 concerning ‘Principles of Legislative Technique’ (Journal of Laws, no. 100, item 908);
- Government Program ‘Better regulations for 2015’ (addendum to Resolution no. 13 of the Council of Ministers, 22 January 2013);
- RT form, RIA form and ex post RIA form (adopted by the Committee of the Council of Ministers on 12 September 2013);
- Act of 27 August 2009 on public finances;
- Guidelines on performing impact assessment and public consultation under the government legislative process elaborated by the Ministry of Economy in collaboration with the Chancellery of the Prime Minister.

The next sub-sections present the most important – as regards the IA process in Poland – documents regulating the process of creating evidence-based legislation.

**Regulatory reform programmes of 2006 and 2012**

The Regulatory Reform Programme published by the Ministry of Economy in 2006 (Ministry of Economy 2006a) was the first extensive document describing the Government’s approach to regulation policy in the context of internal and external requirements regarding economic and legislative development. The Programme was created on the basis of the guidelines of the National Reform Programme for the years 2005-2008 with the aim of implementing their actions to improve the quality

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of law-making in Poland. In the light of the new *Programme ‘Better Regulation 2015’* (Ministry of Economy 2013a), published in 2013, this document is now out of date.

Under the Programme of 2006, two actions were particularly important in terms of the IA process (then referred to only as RIA):

- **Action no. 4: ‘Optimization of the system for regulatory impact assessment’** anticipated, among others, the elaboration and implementation of Guidelines for regulatory impact assessment, amendments to the Rules of procedure of the Council of Ministers, conducting training in RIA in the government administration, implementation of ex post RIA, analysis of the functioning and effectiveness of the new system as well as creating a central RIA database;

- **Action no. 5: ‘Implementation of a measuring system for administrative costs’** anticipated, among others, preliminary identification of priority legal acts in terms of the administrative costs generated, inclusion of methodology in the RIA system, quantitative analysis of administration costs as well as evaluation of results and the start of baseline measures.

*The Programme for Regulatory Reform* of 2006 was implemented to a large extent – at least on a formal level. Particularly important for the IA process was the adoption in 2006 of the Guidelines for regulatory impact assessment (Ministry of the Economy 2006b), and in 2009, as a direct consequence of the *Programme guidelines, the Principles for consultation conducted during preparation of government documents* (Ministry of the Economy 2009).

The currently applicable *Programme ‘Better Regulation 2015’*, published in 2013, is the most important strategic document outlining and regulating the IA sphere in Poland. The Programme describes actions implanted and planned for implementation by the end of 2015.

This document is a development programme conforming to Article 14 of the *Act of 6 December 2006 on the principles of pursuing development policy*, which implements the ‘Assumptions of the system for managing the development of Poland. The basis for the Programme is the National Development Strategy 2020 (Ministry
of Regional Development 2012) as well as two development strategies: The ‘Efficient State 2020’ Strategy (Ministry of Administration and Digitalization 2013) and the Strategy for Economic Innovation and Efficiency ‘Dynamic Poland 2020’ (Ministry of Economy 2013b).

The main aim of the Programme is deemed by the authors to be ‘provision of the systemic and organizational solutions necessary for creating good law and for later assessing it’. As the document suggests, the aim of actions taken by the Council of Ministers should be to create law based on reliable economic analyses.

The actions indicated by the Programme which are essential for implementing the three main aims – creating transparent law, improving the legal context and improving communication with stakeholders – affect several specific objectives relating to the system of law creation. From the point of view of IA, the most important of these is the second specific objective, that is the development of a system of impact assessment (analysis of socio-economic needs, objectives and impacts of regulation) by, among others, elaborating guidelines for performing this assessment along with principles for conducting social consultation and performing a review of laws currently in force.

As the Programme foresees, IA is one of the most important elements of implementing the programme for improving regulation in Poland. Under the second specific objective (‘I.B. Development of a system for impact assessment’) the Programme points to the following actions which are key for implementation by 2015:

- I.B.1 Elaboration of guidelines for performing IA, including principles of conducting consultation, with a deadline for completion in the II quarter of 2014;
- I.B.2. Creation of a handbook for identifying and measuring regulation costs along with IT tools for, with a deadline for completion in the II quarter of 2015;
- I.B.3. Provision of co-ordination in every Ministry for ensuring IA quality, with a deadline for completion in the III quarter of 2013;

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I.B.4. Implementation of an impact test on the small and medium enterprise sector (SME test as an element of RIA), with a deadline for completion in the IV quarter of 2015;

I.B.5. Implementation of process analyses of information circulation in selected legal Acts of a procedural nature (as an element of RIA) with a deadline for completion in the IV quarter of 2015;

I.B.6. Preparation of recommendations on collaboration between the Polish Government and Parliament with the aim of creating evidence-based law, with a deadline for completion in the IV quarter of 2013;

I.B.7. Performance of an internal IA audit, with a deadline for completion in the II quarter of 2015;

I.B.8. Preparation of standardized ex post RIA forms, with a deadline for completion in the II quarter of 2014;

I.B.9. Preparation of periodic ex post RIA, with a deadline for completion in the IV quarter of 2015;

I.B.10. IA training, with a deadline for completion in the III quarter of 2015;

I.B.11. Completion and improvement of IA electronic platforms, with a deadline for completion in the IV quarter of 2015.

This document is also a very important compendium of knowledge and key definitions for understanding the IA process and the vision of the Council of Ministers regarding the role of IA in the process of creating law in Poland.

IA, according to the description in the Programme, is also linked with the preparation of three documents within the process of law creation. These documents are:

1. **Regulatory test (RT)** – presenting a synthesis of the results of IA at the stage of the draft guidelines of a regulatory act.
2. **Ex ante regulatory impact assessment (ex ante RIA)** – presenting IA results at the stage of drafting a bill;
3. **Ex post regulatory impact assessment (ex post RIA)** – presenting IA results at the stage of law enforcement.
Both the sample forms as well as the ideal format of IA contained in the Programme are described in subsequent sub-sections.

The ‘Better Regulation 2015’ Programme was a milestone on the road to implementing high standards of evidence-based law creation in Poland, at the same time indicating further steps – often undertaken – to improve the quality of law-making. Unfortunately, based on analysis of the Programme content, it can be stated that, in this document, the IA process for regulation in Poland is formulated in terms of financial outcomes, which can ultimately lead – and often does – to the skewing of the process in the direction of economic analyses at the cost of analysing other, equally important areas, which are affected by regulation.

Public Finance Law

From the point of view of IA, a very important law is the Act of 27 August 2009 on public finance, particularly Article 50. This regulation is treated as an extension of Art. 118, Paragraph 3 of the Polish Constitution, which states that ‘applicants, in presenting a bill to the Sejm, shall present the financial impact of its execution’.

According to Art. 50, Paragraph 1 of the Act, any bills and legal Acts adopted by the Council of Ministers, the financial impact of which may be greater expenditure or lower revenues of a public finance department in relation to those resulting from existing laws, should contain in justification:

- A description of the size of these impacts;
- An indication of funding sources;
- An outline of new task objectives and measures determining the degree to which these objectives are achieved.

This is not the only obligation which legislators place on applicant authorities. Pursuant to Paragraph 1a, in the bills adopted by the Council of Ministers, the financial impact of which may be a change in the expenditure of public finance departments in relation to that resulting from existing regulations, the draft gives a maximum limit for this expenditure, expressed as an amount, for a period of 10 fi-
nancial years of the law’s execution, separately for each year, beginning from the first year planned for the law coming into force, and categorized into: state budget, local governments and their departments as well as remaining public sector departments. In the case of bills which anticipate enforcement in a period of less than 10 financial years, the maximum limit for expenditure, mentioned in Paragraph 1a, is given for this period.

In the case of laws which affect the long-term expenditure levels of the public finance sector\(^\text{10}\), the Council of Ministers shall present to the Sejm, three years before the close of the ten-year period, draft amendments to the bill giving the maximum limit of expenditure for public finance departments, expressed as an amount, for the next 10 financial years of the law’s implementation.

Similar regulations apply to laws affecting the levels of revenue or expenditure of local government units – in this case, according to Paragraph 2, the applicant is required to determine the scale of impact of these changes, to indicate sources of funding them and to obtain the opinion of the Joint Commission of Central Government and Local Government.

Moreover, the draft regulations which affect levels of public expenditure for over ten years should contain a description of the corrective mechanisms to be used in cases where the agreed maximum expenditure limit is exceeded or is in danger of being exceeded in a given financial year. These mechanisms should involve:

- Limiting the number of benefits awarded according to funds earmarked for this purpose in the budget act;
- Linking payments to income or estate criteria;

\(^{10}\) The exception is an increase in the following expenditures: 1) servicing of public debt; 2) EU own resources and mandatory contributions paid to international organizations; 3) for implementing financial programmes using funds, referred to in Art. 5, Paragraph 1, Section 1, 2 and 3, including budget expenditures from European funds; 4) payments and servicing of family welfare benefits, child maintenance funds as well as financing social security and pension contributions for persons claiming attendance allowance or special care allowance; 5) social security contributions for persons on parental and maternity leave and for disabled persons; 6) pension scheme contributions for public officials and authorized members of their families as well as remuneration for retired judges and public prosecutors; subsidies for the Social Security Fund, Pension Bridging Scheme and the Pension Scheme of the Farmers’ Social Security Fund for financing pension payments guaranteed by the state.
- Changes in income or estate criteria entitling benefit claims financed from public funds;
- Changes in the costs of performing public tasks for the benefit of citizens.

Additionally, the bill should identify the appropriate body to monitor the use of expenditure limits for performing public tasks by public finance departments, at the same time being responsible for the implementation of the above mentioned mechanisms. These duties cannot be avoided – disregarding them is only possible in the case of Marshal Law, a State of Emergency (or State of Emergency due to natural causes) in the whole Polish territory.

The Act of 27 August 2009 on public finance, although not directly affecting the IA process in Poland, has a powerful influence on it, which will be described in detail in subsequent chapters. The highly restrictive approach to defining the anticipated expenditures from the state budget for individual regulations often leads to underestimating the expected regulation costs, which brings about the opposite effect to that foreseen in the Programme – resignation from the principles of basing legislation on evidence.

Rules of Procedure of the Council of Ministers

The Rules of Procedure of the Council of Ministers (Resolution no. 190 of the Council of Ministers, 29 October 2013) is one of the key elements in implementing the ‘Better Regulations 2015’ Programme, the aim of which is to organize the activity of the Council of Ministers and its members and, in consequence, improve the clarity and quality of the government legislative process.

The Rules of Procedure is one of the most important documents concerning the implementation of the ‘Better Regulations 2015’ Programme. The main aim of the Rules of procedure is to ‘organize laws affecting the functioning of the Council of Ministers and its members, in order to increase the clarity of the government legislative process, which means in practice, to improve the mode of work on governments documents’.

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In the *Rules of Procedure*, applicable from 2014, ‘there is greater emphasis on performing public consultations on draft government documents’, with the anticipation, that this will lead to greater input from ‘citizens and their representatives in the law-making process’\(^\text{12}\).

Besides changes regarding public consultation (these concern, among others, the mandatory and open character of consultations at each stage of legislation), the *Rules of Procedure* introduced numerous improvements in the operations of the Council of Ministers regarding the legislative process including, among others, the principle that if one party submits comments, but does not attend the meeting, it is assumed that the comments are withdrawn. The *Rules of Procedure* also introduced changes in the minimum consultation deadlines for draft assumptions, bills, draft regulations and regulations of the Minister.

However, respecting the process of IA on regulation in Poland, the most important changes relate to standardizing the principles of creating key documents outlining the impacts of regulation (RT and RIA). According to the assumptions of the *Rules of Procedure*, this is meant to increase the transparency, reliability and comparability of documents created within the IA process.

One of the greatest innovations introduced by the *Rules of Procedure*, is the regulatory test itself. Section 102 stipulates that in applying to enter the draft guidelines of a regulatory act on the list of legislative work of the Council of Ministers, the applicant authority should attach an RT presenting assessment findings of anticipated socio-economic impacts, including in particular:

- Identification of the problem to be resolved;
- A definition of the aims and essence of the intervention;
- Information on consultations performed before commencing work on the draft, and on the scope of public consultations and opinions given on the draft, including the obligation to obtain opinions from specified entities as set out under separate regulations.
- Preliminary analyses: economic, financial and social, including an estimation of the regulatory burden;

\(^{12}\) Ibid.
Comparison with solutions adopted in other countries.

Section 28, concerning the scope of RIA prepared as part of the explanatory notes for the bill, sets out the elements of RIA. Besides those elements present in the previous rules of procedure, (definition of entities affected by the act, sources of funding and presentation of impact assessment findings) additional elements are included: ‘information on consultations performed before preparing the draft, and on the scope of public consultation and opinions given on the draft, including the obligation to obtain opinions from specified entities as set out under separate regulations’ as well as ‘identification of sources of data and assumptions used in calculations’. What is interesting here, in comparison to the Rules of procedure of 2002, is that in the impact assessment on competitiveness, the functioning of entrepreneurs has been added, while impact on the regional situation and development has been removed. The same Section specifies in Paragraph 3 and 4, that RIA should also contain information allowing comparison with data contained in RT, and in the case of withdrawing from public consultation – an indication of the reasons for this resignation. The Rules of Procedure also introduces the necessity of creating RIA using the forms published by the Chief of the Prime Minister’s Chancellery on the Chancellery of the Prime Minister page of the Public Information Bulletin.

According to Section 29, the person responsible for co-ordinating the preparation of RIA is the Chief of the Chancellery of the Prime Minister. Importantly, on the request of the Chief of the Chancellery of the Prime Minister, the applicant authority prepares an RIA for a draft government document if it is not a normative act. Although, in reality, this does not occur often, the Chief of the Chancellery can prepare an RIA for a draft government document prepared by a different applicant authority, providing that he/she deems the document to be of high priority or is ordered to do so by the Prime Minister.

RIAs are themselves subject to evaluation. In line with Section 32, referral for agreement, public consultation or opinions on the draft normative act can take place after performing evaluation of RIA by the Chief of the Chancellery by request of the Council of Ministers or its subsidiary bodies, while the draft normative act is sent for RIA evaluation by the applicant authority. According to Paragraph 3, the Chief of
the Chancellery conducts an evaluation of the RIA, particularly in terms of its scope, the breadth of public consultation and opinion, and presents an opinion within 14 days of being provided with the draft. In the case where the Chief fails to present an opinion regarding the RIA within this deadline, the evaluation is taken to be positive. The Chief of the Chancellery can submit comments to the RIA – in this situation, pursuant to Section 33, Paragraph 1, the applicant authority either takes these comments into account or presents its opinion regarding the comments submitted.

The *Rules of Procedure* also foresees the situation where the process of the draft government document bypasses the standard procedures. According to Section 99, alternative procedures may involve, in particular:

1. Entrusting the preparation, management of the agreement process, public consultations or opinion as well as referring the draft government document for consideration, or entrusting some of these activities, to the Chief of the Chancellery of the Prime Minister, the Chairman of the Government Legislation Centre or the appropriate internal body of the Council of Ministers.

2. Defining the specific conditions of preparation, managing the agreement process, public consultations or opinion giving as well as bringing the draft government document to consideration, or some of these activities;

3. Consideration, where the weight or urgency of the matter requires immediate settlement by the Council of Ministers, of a draft government document which fails to meet the requirements set out in the resolution for the given type of government document, or for which not all the activities given in the resolution have been carried out.

4. Shortening the deadline for performing the activities set out in the resolution.

A further innovation introduced by the *Rules of Procedure* is *ex post* RIA, that is, assessment of the functioning of the law. In accordance with Section 152, the appropriate member of the Council of Ministers in matters of regulating the given law prepares an assessment of its functioning if the Council of Ministers or its subsidiary body requests its preparation, or if it results from the RT of the guidelines of a regulatory act adopted by the Council of Ministers or from the RIA of the bill adopted by
the Council of Ministers. In addition, the member of the Council of Ministers can prepare an *ex post* RIA on his/her own initiative. Presenting the draft *ex post* RIA for consultation to the representatives of affected entities is also voluntary.

While it is mandatory to conduct the appropriate socio-economic analyses at the stage of the draft of the normative act, there is no obligation to conduct an *ex post* RIA in the case of legal acts created by the Council of Ministers. This can lead to gaps in knowledge both in terms of the effectiveness of the legal act itself, and of the assumptions made in its creation.

*Ex post* RIA, under Section 154 of the *Rules of Procedure*, is made up of the following elements:

- A description of the entities affected by the law and its subjective scope;
- A concise presentation of the objectives of the law together with an outline of the extent of their realization to date;
- A concise presentation of resources for achieving the objectives set out in point 2, together with an assessment of their functioning;
- A concise comparison of the anticipated socio-economic impacts of the law with those which have actually occurred in reference to the particular groups affected;
- An outline of the problems in the functioning of the law, particularly those reported by affected entities, together with the opinion of a member of the Council of Ministers;
- Conclusions as well as recommendations of the member of the Council of Ministers regarding the eventual necessity of taking corrective action, particularly making amendments to the law.

In accordance with Section 155, a member of the Council of Ministers should present the *ex post* RIA to the Council of Ministers or its subsidiary body. Beforehand, the member of the Council of Ministers brings the *ex post* RIA for consideration by the Permanent Committee of the Council of Ministers. The Council of Ministers or its subsidiary body can, if necessary, call upon the member of the Council of Ministers who prepared the *ex post* RIA to supplement it as indicated.
In summary, the *Rules of Procedure of the Council of Ministers* is the most important document, after the ‘Better Regulations 2015’ programme, concerning the legal background to creating IA of regulations in Poland. The authority of the Council of Ministers regarding IA as described in the *Rules of Procedure* appears very broad (e.g. creation of RIA by the Chief of the Chancellery for drafts from other sources). A separate issue, key to the IA process, is to what extent the Chief of the Chancellery makes use of this authority – research shows this to be not very great.

**Guidelines to regulatory impact assessment and impact assessment from 2006 and 2014**

For the last 8 years, the *Guidelines to the regulatory impact assessment* document adopted by the Council of Ministers in 2006 has served only as a detailed guide to the RIA process described in the earlier adopted guidelines to the Regulatory Reform Programme. The *Guidelines*, which identified key problems of legislation in Poland, provided very detailed frameworks – theoretical, methodological and analytical – for the IA process. They were supposed to provide answers to basic questions on how to identify and evaluate the objectives of a regulation, how to conduct social and public consultation as well as cost-benefit analyses, and how to create a plan for implementing the new regulation.

The *Guidelines* of 2006 is a very mature document, precisely defining the RIA process, describing both the role of the minister, the Chancellery of the Prime Minister and the Government Legislation Centre, the Polish Enterprise Development Agency and the Permanent Committee of the Council of Ministers. At the same time, the *Guidelines* contain appendices which clearly elaborate the content of documents that contribute to the RIA process. A reading of these documents reveals the significant changes which have taken place in the understanding of IA and even in the terminology of government documents in the period 2006-2012 – one of the most important appears to be the complete omission of ex post RIA and the fact that the term ‘IA’ is not used in the 2006 document.

The document: Guidelines for conducting impact assessment and public consultation under the government legislative process (Ministry of Economy 2014)\(^\text{13}\)

\(^{13}\) See Footnote 2
is a key element in realizing the ‘Better regulations 2015’ adopted by the Council of Ministers in January 2013. The Guidelines clearly set out the principles which, under Section 24, Paragraph 3 and Section 36, Paragraph 1 of Resolution no. 190 of the Council of Ministers, 29 October 2013 (the Rules of procedure of the Council of Ministers), should be implemented in analyses of anticipated socio-economic impacts of a law and in social and public consultations of draft regulations and guidelines of a regulatory act.

The document integrating the existing regulation (The 2006 Guidelines to regulatory impact analysis, the 2009 Principles of consultation conducted while preparing government documents, as well as the 2012 Seven principles of consultation, see Ministry for Administration and Digitization [MAiC] 2012), creates one cohesive and compulsory handbook relating to RIA guidelines. The Guidelines are addressed to persons participating in conducting RIA, persons interested in taking part in the legislative process as well as the functioning of the state and the law-making process.

The Guidelines, organized in order of importance (the first section contains an introduction to IA and public consultation as well as basic definitions, the second contains answers to specific questions concerning the consecutive steps to creating an IA, and the third contains appendices), are made up as follows:

- Section 1, explaining the basic assumptions, role and objectives of IA, contains, among others, the following elements:
  - Impact assessment – definitions and place in the legislative process;
  - The role of public consultations in the impact assessment process;
  - Methodology for preparing impact assessment;
- Section II, formulating practical tips for individual guidelines, contains, among others, the following questions:
  - What principles apply during the impact assessment process?
  - How is a public consultation conducted?
  - How are regulatory tests and regulatory impact assessments prepared?
- Section 3, appendices, contains standardized sample documents, which can be used in the process of creating RT, RIA and ex post RIA.
The Guidelines also contain a useful glossary of terms as well as a set of frequently asked questions with answers (e.g. ‘Who performs IA?’, ‘Is IA mandatory?’; ‘Is it possible to be exempted from performing IA?’). In addition, the document contains several elements easing decision-making and using tools in the IA process and social consultations, among others, with regard to the glossary of terms and appendices, sample legislation as well as RT and RIA, definitions of indicators, mathematical formulae and the most frequent mistakes made.

The Guidelines, according to the assumptions of its authors, are intended to ‘help create transparent laws which effectively resolve real problems, thereby achieving one of the objectives of the Better Regulations 2015 Programme’ (Ministry of Economy 2014:2). Meanwhile, use of the Guidelines in daily work of individual resorts ‘will ensure the high quality of impact assessments carried out, thanks to which regulations will be introduced at the lowest possible cost, without imposing unnecessary administrative burdens on citizens and enterprises’ (ibid).

The 2014 Guidelines can be acknowledged as a very practical and transparent document. Its format, based on the best international manuals, allows the user to move step by step through each stage of preparing a well-conducted IA as well as social and public consultations. The contents of the Guidelines indicates both the significant changes that have taken place in our understanding of IA as well as the terminology itself during the period 2006-2012 – one of the most important being the introduction of ex post RIA as well as the wider use of the term IA in place of RIA in comparison to documents from 2006. The introduction of the Guidelines will be a milestone in standardizing IA practices in Poland.

Forms for RT, ex ante RIA, ex post RIA

Based on the OECD and EU recommendations, and in conformance with the Rules of Procedure of the Council of Ministers, IA on regulation begins before preparing the draft guidelines of a regulatory act, allowing for the analysis of assumptions, assessment of potential impacts of the bill and the selection of one optimal solution from among several analysed options. In subsequent steps in the drafting stage, the
chosen variant is subjected to further analyses and assessment. The last stage of IA is to analyse the consequences that the enforced law has brought in reference to the objectives specified by the legislator.

In order to facilitate this process, the Council of Ministers adopted and introduced three forms which clearly present the results of work at each of the above stages. The IA forms are laid out as a table, which allows for more extensive coverage of important analyses and additional fields.

Based on the decisions of the ‘Better Regulations 2015’ Programme, the Council of Minister prepared three sample IA forms:

- RT
- RIA
- ex post RIA.

The changes introduced mainly involve modifications to the existing RT form, completely re-vamping the RIA form and transferring the ex post RIA form, previously used only in the Ministry of Economy, to the Chancellery of the Prime Minister level.

The most important aspect is that the new sample documents ‘contain similar (standard) information sets, which are collected and completed during the whole legislative process (reasons for introducing the solution, aims, impacts, costs and benefits, consultation findings)’ and that ‘in each of these, different information is exhibited which is characteristic for each stage’\(^\text{14}\). This standardization is intended to allow comparison of information, assumptions and outcomes between documents and to increase the transparency of the law-making process.

The content of the forms reflects the challenges of the IA process. Variant analysis – a key element of each process in public policy analysis – is only present at the stage of creating RT. Meanwhile the IA presented in the ex ante RIA form concerns to a large extent the public finance sector and enterprise, and to a lesser degree the social aspect. The education sector is completely omitted, and other areas, such as demography or the natural

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\(^{14}\) http://www.mg.gov.pl/node/19377, reading 05.09.2014.
environment, are acknowledged but only in one point, with one general input field for presenting the corresponding description of impacts. What is interesting, the IA tables of RT and ex ante RIA differ from each other, which can impede mutual comparison. In addition, the ex post RIA form is prepared in a format which is quite different from the RT and ex ante RIA form, which can impede evaluation of the effectiveness of law-making and comparison of the documents at individual stages of the legislative process.

Summary: the ideal government legislative process

On the basis of analyses of applicable documents creating the institutional context for the law-making process, it is possible to create a map of the IA process in Poland.

According to the above mentioned documents, IA begins before elaborating the guidelines of a draft normative act, encompassing identification and analysis of the problem. In further steps, draft guidelines are prepared for the normative act, together with an RT (not always obligatory), of the draft normative act and an ex ante RIA (with certain exceptions as defined in a separate mode of procedure), and after the adoption of the normative act, an ex post RIA. An integral, and by assumption important, element of the IA process are social and public consultations.

In order for the draft guidelines of a regulatory act, bill and draft regulation of the Prime Minister to be entered on the List of legislation and programmes of the Council of Ministers, it must be accepted by the Team for Programming Governmental Work (supported in content and organization by the Department of Programming and Regulatory Impact Assessment of the Chancellery of the Prime Minister) based on the presented findings of the assessment of anticipated socio-economic impacts (RT) as well as an application form for the List. The RT must be attached even in the situation where the draft normative act was not created on the basis of the draft guidelines. An exception is draft regulations of the Prime Minister, which are required to be provided only with an ex ante RIA.

15 In preparing a bill based on the draft guidelines, the applicant authority collaborates with the Government Legislative Centre.

16 A different procedure affects draft regulations of the appropriate Ministers which are not submitted to the Team for Programming Government Work, but are entered into the list of legislative work of the corresponding Minister, and their course formally ends with public consultations and inter-ministerial consultations.
The Team for Programming Governmental Work is the first filter which is intended to block drafts proceeding which do not fulfill the minimum requirements and to improve the quality of RIA by preparing and referring the draft to inter-ministerial consultations, public consultations and opinion. In exceptional circumstances requiring additional justification, it is permissible to withdraw from public consultation; however, in the remaining cases the applicant authority is required to present a consultation report.

After being entered on the List, preparation of the draft guidelines or bill begins (although data from interviews shows that these documents are often prepared in advance, which testifies to, among others, the short time between entry on the List and presentation of the guidelines or bill) as well as consultation, opinion and agreement (according to the mode of work, it is possible to first obtain the opinion of the Prime Minister, and only then refer the project for consultation and agreement). Thus prepared, the guidelines or bill is then verified by the Chancellery of the Prime Minister and then, after being given ‘the green light’, it is passed to the appropriate committee, Permanent Committee of the Council of Ministers and, finally, to the Council of Ministers, where it is handed over to the work of the Sejm.

The legislative process presented here, based on nearly fifteen years evolution of public policy making in Poland, describes the consecutive steps in realizing an ideal evidence-based law, one which does not stand apart from the best international examples (Bardach 2007). Unfortunately, the institutional and organizational reality seldom reflects the legal reality. The confrontation of these two areas and the consequences for the quality of the IA process in Poland will be the subject of analysis in subsequent chapters.
Chapter 2. Legislation and institutional frameworks for the process of impact assessment in Poland

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Chapter 3.
The use of impact assessment in the process of public policy creation in Poland

Grzegorz Żmuda, Piotr Prokopowicz, Weronika Felcis, Marianna Król

In this chapter we present the most important results and conclusions from empirical studies conducted in the second half of 2014 and beginning of 2015 on the conditions for creating and utilizing impact assessment (IA) in Poland\textsuperscript{17}. In the course of the research, sixteen expert in-depth interviews were conducted with representatives of key stakeholder groups in the IA process (former and current policymakers, director generals of ministries, persons engaged in devising the IA system and process in Poland, members of ministerial teams for regulatory impact assessment (RIA), analysts and substantive civil servants).

Analysis was also conducted on the contents of 72 documents resulting from IA, including 19 regulatory tests (RT), 22 RIA on legal acts, 22 RIA on Regulations and seven \textit{ex post} RIA. In addition, the contents of 36 explanatory notes for draft normative acts were analysed as well as the content of 163 written comments submitted by social partners during 36 public consultation proceedings\textsuperscript{18}. The findings presented here are also based on three in-depth case studies on creation and utilization of RT, \textit{ex ante} RIA and \textit{ex post} RIA. The research also included quantitative questionnaire

\textsuperscript{17} The research was conducted under the supervision of Prof. Dr. Hab. Jarosław Górniak by a research team made up of: Dr Piotr Prokopowicz, Dr Grzegorz Żmuda, Weronika Felcis, Marianna Król, Agnieszka Otręba-Szklarczyk and Bartłomiej Baryła.

\textsuperscript{18} All the documents analysed in the research were drawn at random from the database of the Government Legislation Centre (http://legislacja.rcl.gov.pl). They concern legislative processes from 2014 or 2015 conducted by individual ministries and the Chancellery of the Prime Minister using the new RT and RIA forms.
surveys, performed among members of ministerial RIA teams (out of 113 persons who received a questionnaire, 63 responded).

The shape of the studies was also largely affected by several previously published studies regarding IA in Poland, including, above all, an expert report on the analytical potential of government administrative staff commissioned by the Chancellery of the Prime Minister (Ledzion and Olejniczak 2014), the report of the Stefan Batory Foundation (Kopińska et al. 2014) and the report of the Helsinki Foundation for Human Rights (Helsińska Fundacja Praw Człowieka HFPC 2014). All these activities were aimed at diagnosing the situation regarding IA in Poland and at identifying the key factors which have both a positive and negative impact on creating public policy based on evidence.

The contents of this chapter are reflections of a critical nature, yet we would like to point out from the very beginning that, despite pointing out many imperfections and limitations, we can also recognise certain successes in building an ever more efficient IA system at the stage of government work. Almost all experts agree that the quality of IA is systematically improving. However there are differences in opinion, mostly negative, regarding the pace of these changes, although in general we can see a positive development trend leading to improved standards of government proposals (c.f. Kopińska et al. 2014; HFPC 2014). A step in the right direction is the introduction of the new Rules of Procedure of the Council of Ministers, including the requirement to conduct RT before entering the guidelines of a normative act to the list of legislative work. There has been a noticeable improvement in the method of conducting public consultations (c.f. Citizens Legislation Forum [Obywatelskie Forum Legislacji OFL] 2014a), in the effectiveness and quality of RIA verification performed by the Chancellery of the Prime Minister and in the support given by the Government Legislation Centre in preparing government bills. Finally, among the positive trends perceived by experts, it is possible to include the positive attitude of director generals and – partly due to intensive training programmes – the increased awareness of the importance of IA and higher expectations concerning the final documents prepared.

These positive aspects are important equally because the time at which the research was conducted was quite specific. In terms of IA, 2014 was a period which saw
the slow crystallisation of changes brought about by, among others, the introduction of the new *Rules of Procedure of the Council of Ministers*, the implementation of new forms for RT, RIA and ex post RIA, and the functioning of RIA teams in individual ministries. This means that, on the one hand, not all the changes introduced recently are yet functioning and firmly lodged in the practices of individual ministries, and on the other hand, a quite clear assessment of trends concerning IA is being formed by the various stakeholders who perceive, besides the positive changes, many dangers and challenges. Most of the positive phenomena mentioned above concerning IA functioning come up against certain barriers and restrictions which will be the subject of our analysis in subsequent sections of this chapter and the book.

**System conditions determining the effectiveness of IA**

While we can talk about the positive trends in the quality of government legislative proposals, the whole process of creating public policy in Poland still leaves much to be desired. Both the *Rules of Procedure of the Council of Ministers as well as the “Better Regulations 2015”* Programme concern only legal acts created by ministries and the Council of Ministers, ignoring laws created by other entities that hold the right of legislative initiative. From the expert interviews conducted and the quantitative surveys it is clear that one of the greatest barriers in the IA system in Poland is the fact that RIA is used in government work alone and not in parliamentary work\(^\text{19}\). The absence of an IA requirement for draft intervention applies both to legislative initiatives of MPs and amendments to government bills submitted. This diagnosis is supported by reports from the Helsinki Foundation for Human Rights (HFPC 2014) and the Stefan Batory Foundation (Kopińska et al. 2014). This situation may have an impact, although it is difficult to see the causal relationship here, on the preparation of legal acts based on evidence.

The incompatibility of government and parliamentary procedures for IA also relates to making amendments to government bills at the parliamentary stage, (and this occurs in the case of 80% of bills). This has two consequences. Firstly, because

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\(^{19}\) There have also been recommendations for using the IA system in local governments.
changes introduced at this stage are not subject to IA and are not accounted for in RIA documents, it is difficult to make an ex post RIA of the legislative act in the form set out in the *Rules of Procedure*. For the purposes of assessing the functioning of the legal act, the ex post RIA form takes as its point of reference the assumptions given in the *ex ante* RIA, and because these may be no longer valid (as they relate to the anticipated outcomes of the act before being amended), they no longer provide the basis for analysing effects. The second consequence is of a psychological nature. As interviews with analysts and substantive civil servants show, the situation is demotivating and lowers belief in the sense and significance of the analyses prepared.

It would seem that, besides the systematic improvement of procedures, tools and building an organizational culture, it is essential to make qualitative changes to the functioning of the whole system. Devising a general framework to enable the efficient and coherent functioning of the IA system, should be the subject of intensive co-operation between government and parliament, based on the conviction that these changes are essential. Our research suggests that, although this conviction is commonly held among representatives of the government administration, there is a lack of confidence that these changes are possible. The barriers mentioned include the lack of political will and fears of a constitutional nature connected with the division of executive and legislative powers. This is reflected in the perception of the IA process as the domain of the government administration, and not the whole system of creating public policy. This interpretation would explain why only 17% of members of ministerial RIA teams who were interviewed considered that the IA system requires fundamental change, despite stating that the possibility of modifying draft laws by parliament without the need to update RIA has a negative impact on the quality of public policy in Poland (see Figure 3.1).

The regulations on IA and their successive ordering and improvement can be counted as one of the most positive aspects of the system in question20 (see Chapter 2). An important step was the introduction, alongside the *Rules of Procedure*, of the requirement to prepare RT for draft guidelines of a regulatory act. This extra filter in the process is aimed at increasing the likelihood of conducting IA right at the initial stage.

20 Members of the ministerial RIA teams are of a similar opinion – 40% consider the legislative quality of RIA is one of the strong points of the system (17% claim that it is a weak point).
of defining intervention, and thereby making it possible to suspend work on drafts which are not sufficiently substantiated. In this context doubts are raised by the method of implementing this solution, and particularly the construction of the RT form, in which the requirement to present a detailed analysis of different solutions variants has been withdrawn\(^{21}\). Currently RT only requires detailed data on recommended solutions as well as brief information on solutions which have been rejected (in response to the question: ‘What other solutions were analysed, including non-legislative solutions? Why were they not applied?’). This means that obligations regarding the range of information contained in RT differ from the requirements laid down in the ‘Better Regulation 2015 Programme’:

*Evidence-based policy […] is the basic principle adopted in conducting impact assessment, which means taking conscious policy decisions based on the widest possible information and considering all important aspects of a given problem (analytical data). The idea of this principle is to ensure that in the decision-making process, all potentially available information is gathered and analysed (Ministry of Economy 2013: 3).*

\(^{21}\) In previous versions of the final RIA report, it was recommended to present detailed analysis results for at least three alternatives.
While the lack of obligation to present detailed information on various solutions does not prevent the gathering and analysis of data, it certainly limits the possibilities for making conscious policy decisions, since the decision-makers and social partners only obtain information on a single recommended solution. The choice of solution is decided by a civil servant or analyst (in the end RT becomes simply the justification for a decision already made), and other participants in the process can only refer to, adopt or reject it. In keeping the current logic of the IA process, a better solution would be to limit the RT form to analysis of the problem (its symptoms and causes) and a detailed presentation of several alternative solutions. This would make it possible, according to some experts, to determine much more accurately the real problem areas requiring intervention, and would also better meet the expectations of social partners who could also make their contribution at the stage of defining the causes of the problem.

In the current IA system there is also an evident contradiction between the shape of the required documents (RT, RIA, ex post RIA) and the explicit doctrine which states the need to retain the principle of proportionality. On one hand, the Guidelines to conducting impact assessment and public consultations under the government legislative process (Ministry of Economy 2014b) specify that the workload and funds designated to preparing IA should be proportional to the area and scale of impact of the draft normative act, and on the other hand, the forms require presentation of exactly the same information and data irrespective of the importance of the issue. Experts taking part in the studies stated that a more flexible form of IA report would be preferable, particularly in the case of secondary legislation interventions as well as interventions adapting Polish law to EU requirements.

The Guidelines mention clarity and transparency as one of the main principles (assuming the requirement of performing and presenting the findings of public consultations, giving sources of information used in analyses as well as keeping a running check on work in progress on a regulation). It would seem that legal solutions which remove the need for public consultations on a bill if there have already been consulta-

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22 A good example of very limited utility of RIA are the assessments of Regulations of the Prime Minister on early elections to local government bodies or executive bodies (e.g. mayor or chief councillor) before the end of their term in office.
tions on the guidelines to a regulatory act, violates this principle. Social partners draw attention to this, emphasizing that between the guidelines and the bill there are often considerable differences (see Citizens Legislation Forum 2014a; 2014b).

The public consultations themselves – although, as social partners quite rightly point out, progress is probably the most visible – also requires change. Apart from the fact that the rules for selecting partners for consultation are not terribly clear, an important problem is the time which they have for submitting comments. The *Rules of Procedure* mentions a timescale of no less than 14 days, while due to the multitude of possible methods of consultation (e-mail invitation, written requests, publication on the Government Legislative Procedure platform, use of an online consultation portal), it is not quite clear from which date the 14 days should be counted (c.f. Citizens Legislation Forum 2014b).

**The organization of IA process in ministries**

An indirect influence on the functioning of the IA system is the organization of IA work in individual ministries. The *Rules of Procedure and Guidelines* indicate the areas of interaction with the Chancellery of the Prime Minister, the duties (e.g. preparation of RT and RIA on approved forms), formulate the recommendations and expectations (e.g. creation of RIA teams) and provide support (in the form of tools and training), but do not impose anything in terms of practical organization of the ministries, which have a good degree of freedom and independence (c.f. Ledzion and Olejniczak 2014). Consequently, there are many scenarios in place which differ even between organizational divisions of the same ministry.

Analysis of expert interviews shows that most frequently, work on IA relies on the individual engagement of civil servants who prepare both RT and RIA documents as well as the explanatory notes and the text of the bill or its guidelines. In the case of more complicated drafts, teams are formed including teams made up of the representatives of various departments, most often involving analytical

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23 The exception is work on the text of a bill which is the result of previously prepared guidelines – in this case the draft normative act is created in the Government Legislation Centre in co-operation with substantive civil servants.
departments. However, there is no firm rule, owing to the considerable diversity, often uncodified, of organizational practices. Despite these differences, the difficulties and organizational challenges that experts have pointed out with regard to IA in Poland are very similar in nature.

The functioning of RIA teams

One of the organizational solutions provided in the ‘Better Regulations 2015’ Programme, is the creation of an RIA team in each ministry, whose task will be to ensure the high quality of IAs prepared, to support the organizational divisions and to co-operate with the Chancellery of the Prime Minister. At the end of 2014, such teams were functioning in 15 ministries, although their actual significance and role in the IA process varied greatly. In places where analytical departments have an important role, the RIA team functioning has led to certain tensions. The competences of the teams often overlap with the tasks (formal or informal) of the analytical departments (and in the case of the Ministry of Economy, also with the Department for Regulatory Improvement). A unique solution has been applied in the Ministry of Justice, where assignment of IA creation to the Department of Strategy and De-regulation derives from the corresponding ministerial Order\(^2\). Greater engagement, involving close co-operation in creating or co-creating IA documents, occurs in:

- The Department of Analysis and Forecasts in the Ministry of Education;
- The Department of Environmental Information in the Ministry of the Environment;
- The Department of Analysis and Public Communication in the Ministry of Administration and Digitization;
- The Department of Analyses in the Ministry of the Treasury.

In the three last departments co-operation is not obligatory, only optional – in each case, however, an RIA consultation or opinion is required. A comparison of the roles of RIA teams and the tasks of analytical divisions (see Figure 3.2) is presented

\(^2\) Order no 125/13/DPK of the Minister of Justice, 13 February 2013 replaced with Order of the Minister of Justice, 21 February 2014 (item 73).
in a report commissioned by the Chancellery of the Prime Minister and prepared by a team supervised by Bartosz Ledzion and Karol Olejniczak (2014).

<table>
<thead>
<tr>
<th>Analytical Departments</th>
<th>Lack</th>
<th>Lack of RIA tasks</th>
<th>Only gives opinion on RIA</th>
<th>Participates in preparation, gives opinion</th>
<th>Participates, prepares independently</th>
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<td>RIA teams</td>
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<tr>
<td>Superficial role</td>
<td>Lack</td>
<td>Ministry of Culture and National Heritage, Ministry of Agriculture and Rural Development</td>
<td>Ministry of the Environment</td>
<td>Ministry of the Environment</td>
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<td>Superficial role</td>
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Figure 3.2. Relationship between the role of analytical departments and the role of RIA teams. Source: Ledzion and Olejniczak 2014: 87

Quantitative studies performed among members of RIA teams show that their main activity is evaluating IA documents in terms of content and formal require-
ments (84% of responses), and to a lesser extent giving opinions on IA documents from other ministries (37%), creation of RT, RIA and/or ex post RIA (33%) as well as dealing with applications for legislative work (11%). It is worth adding that nearly a third of RIA team members who took part in the survey, had never evaluated IA related documents themselves. The structure of RIA teams is very diverse – with teams numbering just a few, to those with a few dozen members (as in the Ministry of Finance). In most cases RIA teams do not function as coherent organizational divisions with their own identity – shown by the fact that the most frequent form of communication is by e-mail (78% of responses), while work meetings are rare (10%).

Some of the experts questioned point out that creating an RIA team is not always seen as justified – some ministries had already created or planned to create divisions performing a similar role (e.g. the Ministry of Economy and the Ministry of Education) – indicating that it would be more effective to place this type of unit in a designated department. One of the reasons for this opinion is the silo structure of ministries (more on this later in the chapter) – team members who have extra duties to perform, find it difficult to reconcile them if they do not have support and understanding from their superiors in their home department. Paradoxically, the most difficult situation is when creating an RIA team is taken very seriously – for example in the Ministry of the Environment, where care is taken to select the best experts from various departments to form the team. This situation causes particular difficulty, since these persons have the greatest workload. The direct consequence is that members of the RIA team often declare that they do not have enough time to prepare reliable opinions on IA (see Figure 3.3).

Some experts claim that the teams also have to deal with certain conflicts of interest – as team members they sometimes have to evaluate RIA which they themselves created in the leading department. The quality assessment of IA documents prepared by the substantive departments is in itself a considerable challenge. In many cases it appears to be treated as a strict formality and focuses merely on what is missing (‘blank spaces in tables’), and not on the essence of the intervention itself, its expediency or proposed shape. Respondents claim that assessment is exceptionally difficult, as it requires enormous knowledge of the given subject area. In terms of assessing the quality of RT or RIA, it is largely necessary to rely on
trust in the people preparing IA since in most cases, as one expert pointed out, the RIA team is not able to spot whether something has been omitted or obscured. In one of the ministries analysed, each RIA is assigned to two randomly chosen team members, irrespective of their experience and knowledge, which goes to show that the assessments are rather a matter of formality. The civil servants themselves admit that they seldom come across an in-depth argument for the solutions which they have proposed. The exception are cases where there are evident errors or omissions.

An additional problem is that RIA team members do not always receive feedback on whether their comments have been in any way taken into consideration, and their chances of blocking a poorly rated proposal which has political support are not very great. This is reflected in the results of quantitative surveys regarding the requirement of acting on the comments of the RIA team – barely half the respondents claim that the comments from the team must be put into practice, and the outcome sent back for a renewed opinion. Most of those surveyed claim that changes can be implemented, but it is not necessary to send them back for reassessment, or that there is no obligation whatsoever to implement changes (see Figure 3.4). In this context, the Team for Programming Government Work is of particular significance, which is valued for its efforts and positive contribution to improving RIA quality. Despite doubts as to the actual extent to which the content of individual documents can be assessed, a proportion of the civil servants surveyed mention the increasingly
more thorough and substantive character of the comments submitted by the Chancellery of the Prime Minister.

Although in terms of staff shortages, representatives of ministries point mainly to a lack of expertise (mainly analytical, see Ledzion and Olejniczak 2014), it is worth looking at other aspects of staff functioning in creating IA. As well as possessing skills, equally important factors are civil servants’ perception of their duties and their motivation\(^ {25} \).

In some experts’ opinions, civil servants lack task orientation for solving specific social and economic problems. They define their role as preparing the necessary documents; this is what they are paid for, not for the effects – or in other words, it is more important to prepare a legal act on road safety than to reduce the number of road accidents. In the opinion of one person surveyed, this thinking is common and pervades the whole IA system. Other experts do not put the matter so categorically, but have perceived a similar phenomenon at least among a proportion of civil servants.

\(^ {25} \) More on the subject of determinants of work standards other than skills: Borman and Motowidlo 1997; Weekley and Ployhart 2005; Schmidt 2002.
Experts draw attention to the relatively weak employer branding of the government administration, which impedes the recruitment of suitable employees. They also mention the lower salaries of the civil service compared to the business sector, and the flawed recruitment and selection policy, which relies on employing mainly lawyers or legislators rather than analysts, economists, sociologists and engineers. As a result, the administration lacks persons with analytical skills (whose main task is to generate and process knowledge from different sources as well as using it in decision-making), and as a result a portion of tasks which are analytical by definition are carried out by civil servants without the appropriate tools. The report provided by Ledzion and Olejniczak shows that among the 4000 civil servants surveyed, only 600 fulfilled the criteria of being an analyst, and at least 20% non-analysts prepare IA.

The above mentioned report states that in placing analysts in ministries, the solution dominates in which they are spread out in several different departments and organizational divisions (from a few to even several dozens, e.g. in the Ministry of Economy – 41 analysts in 15 divisions, in the Ministry of Finance – 53 analysts in 15 divisions, in the Ministry of Health – 43 analysts in 12 divisions. The authors of the report also indicate the tendency, which can testify to a more centralized character of the government administration – in 14 out of 17 ministries separate analytical departments function (nominally), although at closer quarters it is not possible to say whether they all actually are. Apart from conducting analyses and studies, they also quite often deal with preparing strategies and performing other substantive and functional tasks (only seven of these departments have RIA in their remit, similarly to the Chancellery of the Prime Minister. Analytical duties and tasks are also present in other departments, concerning, among others, IA on laws in specific substantive areas.

The findings regarding exchange of knowledge and information is also interesting. The report prepared for the Chancellery of the Prime Minister shows that over 70% of analysts declare that they present and discuss analyses with the management of organizational divisions (departments) and only 24% with the director generals.

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26 Owing to the nature of the cited report, which focused on a selected group of people, we can assume that in reality the percentage of people who do not have analytical skills and prepare IA is much greater.
and ministers. The authors of the report suggest that this may be the consequence of a limited culture of evidence-based decision-making or by the fact that contact between analysts and director generals or ministers occurs through the mediation of departmental directors. As regards co-operation with other analysts, this, as the report shows, is dominated by co-operation with other members of one's own division, to a lesser degree with departmental members, and to a much lesser extent with persons from other departments.

Experts propose increasing the number of training courses in analytical issues and tools and extending them beyond cost-benefit analysis, which, though it has particular significance for IA, should not dominate in training programmes. The importance awarded to cost-benefit analysis is understandable in the sense that the need to determine the financial impacts of a draft law derives directly from the Constitution (Art. 118, paragraph 3) and allows a relatively straightforward comparison of alternative solutions. However, in the opinion of experts, this can lead to the marginalization of other consequences of draft intervention (e.g. in social and cultural spheres).

Generally speaking, in the common opinion of experts in the field, the skills development of persons involved in IA is an important issue, and in this area ministers take additional initiatives irrespective of support from the Chancellery. This type of action relates to the assumptions of the Guidelines (Ministry of Economy 2014b) – in the opinion of experts they are a very good requirement and description of what the process should look like, but do not provide the appropriate instruments for intervention – in other words, the Guidelines say what to do but not how to do it, and in this area civil servants need support. The Guidelines are the main source of knowledge on IA in Poland (over 90% of RIA team members surveyed refer to it). In this light, a big problem is the fact that throughout 2014, in which the new Rules of Procedure and new IA forms were applicable, there lacked a complete and approved new Guidelines document.

Organizational structure and processes

One of the important problems in the functioning of IA in ministries is the lack of clear procedures regarding the method of organizing work. In different ministries and their environs, work on preparing IA proceeds according to completely different

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27 Besides training, other initiatives have appeared. E.g. The Ministry of Culture and National Heritage commissioned their own handbook for preparing RT and RIA.
principles, which generally rest on tradition rather than a rational model. On one hand, this makes procedures flexible, but on the other hand, it can be the source of inefficiency in the system as a whole.

A large influence on the internal organization of processes and work on IA, which the experts surveyed pointed out, is the silo organizational structure and the lack of a process approach. The Council of Ministers is divided into individual ministries, and these are organized into functional ‘silos’ separated vertically – departments and divisions dealing with specific substantive areas. On the one hand, this leads to specialization and greater knowledge of a given area, but on the other hand, it impedes co-ordination of activities, exchange of knowledge and information and introduces rivalry for resources, overlooking the objectives of the organization as a whole.

In the opinion of experts, the effect of this phenomenon is difficulty in forming inter-disciplinary teams (international, interdepartmental and inter-ministerial) – employees of particular divisions concentrate only on their own tasks, and treat cooperation with others as a waste of energy. The presence of interdisciplinary teams involves the risk of an additional workload, as it is not treated by their superiors as coming within the remit of that department (this is also evident in some RIA teams).

In several of the cases described by respondents, after creating a team consisting of representatives from various departments, there was still a strict division of areas of responsibility for shaping the given public policy and IA, and as a result the work did not differ greatly from standard inter-ministerial agreements.

An additional factor influencing the organizational structure of IA in ministries, mentioned by experts, is the method of budgeting, which is not task-oriented. The yearly budgets are connected with the organizational divisions, and not with realizing the objectives of the organization as a whole, thus in the eyes of their superiors, a delegated employee commits their own funds to financing other departments28. Combined with a lack of long-term planning in the character of the budget, this situation prevents optimal use of funds – on the one hand, in the opinion of experts, the administrative costs and support processes grow, and on the other, ordering expert services externally is made difficult.

28 In this context the dual reporting lines of workers – to the director general on one hand, and the minister on the other – is also important.
The organizational structure, which hinders co-operation between organizational divisions indirectly influences the fragmentation and scattering of knowledge and substantive information. As experts claim, it is often the case that initial data necessary for preparing reliable analyses are available in ministries (in the form of databases, research findings or reports) but there is a lack of awareness that they exist, and therefore of the opportunity of using them. Civil servants thus make work for themselves in ‘reinventing the wheel’. This is compounded by the conviction that the biggest problem in preparing IA is a lack of available data, which is not always the case.

The process of creating and utilizing RT and RIA

The preparation and utilization of RT, RIA and ex post RIA is very diversified, as with the organization of the whole IA process in ministries. In order for IA to have a real and positive impact on the shape of public policy, at least two general conditions must be fulfilled:

1. Policymakers must be ready to take decisions based on evidence and this expectation should be clearly communicated to the civil service body;
2. The IA prepared should deliver accurate and reliable information allowing well-informed decision-making;

From the studies performed and the documents analysed, it appears that in many cases neither of these conditions are fulfilled.

The place where decisions are made – the political factor

One of the important problems of IA identified by respondents in qualitative studies is the place where decisions are made. Although we are dealing here with considerable diversity, it relatively often happens that decisions on the shape of an

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29 In this sub-section we will not give the results of ex post RIA analysis, as there is a lack of publicly available documents using the new forms (as of 31.12.2014). The only available ex post RIA (7 altogether) were published in the knowledge database of the Ministry of Economy, and they differ from the new guidelines. It will only be possible to discover the real value of ex post RIA after some time, when legal acts created on the basis of the new Guidelines are evaluated.
act or regulation is made even before any kind of analytical process is conducted (this is not peculiar to Poland, as we will go on to discuss in Chapter 6, which is dedicated to international experience in IA). This is directly linked to a lack of task orientation, and is manifested by the preparation of normative acts in a specific form being commissioned to civil servants. In this situation, an RT or RIA has only superficial significance and is prepared only in order to formally proceed with a given solution. RIA and RT are no longer seen as tools which support the decision-making process and which have a real effect on the course of events. It also creates additional tension between the RIA teams and substantive departments.

When RT or RIA are of a superficial nature, comments submitted by the team are treated as a senseless delay in the process and an additional hindrance to the civil servant responsible for the regulation. This is not an obvious process which accompanies every intervention. Experts (e.g. representatives of the Ministry of Culture and National Heritage, the Ministry of Economy and the Ministry of Education) recall situations in which well-prepared analyses allowed them to ‘defend’ the proposed solution during inter-ministerial and public consultations. Thus it is a question of responsibility and quality of decisions taken by policymakers. The phenomena described have an impact on the dominating opinion among RIA team members of the limited impact of IA on the quality of public policy (see Figure 3.5). This can lower the already not very high motivation for preparing reliable analyses.

In your opinion, what real influence do the prepared documents relating to impact assessment have on the quality of public policy?

- 33% Great influence
- 22% Moderate influence
- 38% Little influence
- 6% Difficult to say

Figure 3.5. Opinions on the influence of IA on the quality of public policy (n=63)
Chapter 3. The use of impact assessment in the process of public policy creation in Poland

The most visible symptom of bending the legislative process is the announcement of government bills as members’ bills. This considerably speeds up the process of adopting a legal act, but it has a negative impact on the work culture of those preparing the intervention. It is easy to recognize this kind of procedure – if only by the fact that members’ proposals are supplied in government RIA documents.

One of the factors affecting the occurrence of this phenomenon is the lack of a clear system for identifying problems to be resolved. This is not about the clarity of the whole process, because this is seldom a cause for concern among experts, but about the unstructured form of diagnosing and formulating problems which require intervention. One of the most important needs in terms of optimizing public policy is the creation of a clear strategy for national development and specific development areas, which has wide political support and which would allow the creation of a coherent regulatory and institutional framework. The lack of this foundation, bearing in mind other factors (including the limited staff supply and lack of task orientation), creates large problems for the functioning of the IA system, which appear in four areas:

1. **Expediting intervention.** Due to the lack of a long-term, clear strategy in various areas of public policy, crises often occur which require a rapid response owing to the political consequences. Such a response often consists in devising and presenting any kind of solution, and the rapidity of announcing it becomes equally, if not more important, than its actual substance. Civil servants are given tasks at very short notice, which leads to endorsement of a badly-designed law (which is still being routinely corrected during the work of the Sejm, or quickly amended before coming into force) or, where public interest is rapidly diminishing, work is extended beyond the initial deadline. While prolonging work in these situations improves the chances of devising better solutions, it limits the ability to plan more time-consuming analyses and studies.

2. **Postponed intervention.** Lack of strategic guidelines can lead to postponed decisions and intervention, especially if they are likely to be unpopular with the public. Work on intervention is then suspended, in order not to
send unsettling signals to voters, and is renewed only when there is no other option (e.g. under threat of penalty for failure to implement an EU directive). In consequence, there is rarely enough time to conduct a reliable analysis of the problem and devise appropriate solutions.

3 Confused roles. The third area discerned by experts, displaying a lack of clear vision and strategic development, are attempts of civil servants at guessing the intentions of policymakers. Instead of concentrating on analyses of the problem area and presenting possible intervention options along with analyses of their possible consequences, ministerial workers actually make policy decisions themselves.

4 Fragmentation of public policies. Experts claim that it is quite common for several normative acts (acts, regulations, amendments etc.) to be prepared in various ministries and organizational divisions which address the same problem. In this situation it is difficult to maintain coherence among the various interventions and in the legal system as a whole. In addition, it increases the number of legislative procedures in progress, which adds to the civil servants’ workload.

The general quality of IAs prepared

A further factor directly linked with the impact of IA on the shape of public policy is the quality of the analyses conducted and the method of reporting them, which condition the possibility of using them in practice. Among the decisive factors influencing the quality of IA documents belong the motivations (referred to as ‘the suitable approach’) and the analytical skills of civil servants (in the fields of economics, statistics and use of statistical programmes as well as econometrics). These last are the objects of considerable interest from those responsible for the shape of IA in Poland, as well as quite intensive intervention, shown by the numerous training courses for civil servants (Ministry of Economy 2014a) as well as researching the analytical potential of staff (Ledzion and Olejniczak 2014). Less attention is devoted

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30 According to the Report on the implementation of the government Programme ‘Better Regulation 2015’ for the period 2012-2013, the number of people trained in IA amounted to over 3000, and the number of man-days training for legislators came to nearly 5000.
to the limitations of the whole process which include shortcomings in identifying and defining problems and in gathering and interpreting data, not to mention the practice of preparing RIA as a tool for sanctioning previously made decisions. In this context, specialist analytical skills appear less important (although still significant) than the above mentioned factors along with the accompanying IA work culture and perceptions of the process as a whole.

While formal aspects of IA documents are quite easily subjected to systematic analyses\(^{31}\), their content is to a certain extent a ‘black box’ (this is confirmed by RIA team members, who often responded to the question regarding the quality of prepared documents ‘Difficult to say’,\(^{32}\) see Figure 3.6). In many cases this quality assessment of a given intervention (as in preparing IA) would require setting up a separate research project. For this reason, expert opinion is used for assessing the quality of IA, and for assessing the contents of IA documents – systematic analysis of the contents of RT, RIA, explanatory notes for bills and the comments submitted by social partners. In both instances the point of reference is the possibility of using the documents in the process of shaping public policies.

**Analysing the content of IA documents**

Under the provisions of the new *Guidelines*, the RT and RIA documents are the main products of IA. They provide a synthesis of the analyses conducted and as such should be a useful tool supporting decision-making in the field of public policy and ensure the clarity of the whole process. According to both the opinion of experts and the findings of content analyses, both these functions are badly impaired.

By comparing the findings of our analyses with information contained in the report from the Stefan Batory Foundation (Kopińska et al. 2014), using similar methodology, we can see that, relative to the period before 2014, there has been progress both in the process of preparing IA (particularly in conducting public consultations) and in reporting findings (e.g. presenting more detailed data on the essence of the

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\(^{31}\) Except for the situation where important process documents are not made available by the public administration or are made available only after a long delay.

\(^{32}\) This result is difficult to interpret clearly – on the one hand it may mean average quality (neither good nor bad), and on the other hand, in light of the difficulties mentioned in quality assessment, it may indicate the inability to give an honest opinion on the subject.
problem as well as the anticipated impact of intervention). On the other hand, we can see that preparation of documents is often of a superficial nature and in this respect not much has changed. One of the most important grounds for this conclusion is that, in the majority of cases, it is still not the practice to report detailed comparative analyses of different solution options. In the opinion of those responsible for RIA quality, if any analyses have been conducted, they are usually reported. Thus it is reasonable to assume that most analyses which would allow a comparison of options are not performed. This is a larger problem with respect to RT than RIA.
The above findings are confirmed by the results of quantitative analyses conducted among RIA team members (see Figure 3.7). The biggest problem concerning IA documentation is considered to be the failure to specify alternative solutions, failure to use norms to measure the degree to which objectives are achieved and inaccurate wording of the problem. Evidently, these are elements which affect the possibility of making evidence-based decisions, yet are not only connected with specialist skills in statistics and methodology.

RT Content

The greatest shortcoming in RT is the failure to present detailed data on the anticipated consequences of different intervention or solution options (see Table 3.1). Among the 19 analysed documents, only one – and in a dubious fashion – provided data on the base scenario (the ‘do nothing’ option), three presented non-legislative alternatives and two contained analyses on other options. In this context it is worth paying attention the fact that, as experts stress, RT is limited to situations where there is willingness to apply legislative solutions – if there is not the will to implement new regulations, RT is simply not performed. In addition, point 3 of the form: ‘What other solutions were analysed, including non-legislative solutions? Why were they not used?’ forces a choice to be made between legislative and non-legislative solutions, rather than support their integration. Considering the dominating legal culture in the administration, this choice is much more likely to lead to the use of legislative forms of intervention.

Among civil servants and their superiors, the view seems to be that legal (regulatory) solutions indicate that a given issue is of great importance. In one of the IA analysed in detail, the persons responsible for preparing regulations clearly emphasised that the most desirable solution would be to repeal a given legal act and leave the regulated area in the hands of the general law (The Code of Civil Procedure, Public Procurement Law). It was decided, however, that this would be taken as proof of assigning a given area less significance and, as a result, a law was implemented that was completely non-regulative in character. The conviction that important matters must be secured by legal acts can and does often lead to over-regulation and a reduced role of non-legislative solutions which would be more appropriate to the needs and challenges defined.
In assessing IA documents, how often do the following problems occur?

A. No alternative solutions have been provided
B. There is no measure to gauge the degree to which objectives have been achieved
C. The problem has been worded inaccurately
D. The authors of the documents have not used diverse data sources in their analyses
E. Not all entities affected by the proposals have been identified
F. The effects of the changes coming into force have been presented in the short term
G. Dubious methods have been used for estimating the costs and benefits of the changes coming into force
H. The objectives of the regulations have been incorrectly defined
I. No plans have been made for consultations at the initiation stage of the proposals
J. The costs and benefits of changes coming into force have been presented in the short term
K. Solutions used in other countries derive from a different context to that of Poland

Figure 3.7. The most common problems in IA documents according to RIA team members (n=45)
In almost half of the analysed RT (9), the problem was correctly worded but more seldom were there detailed definitions of proposed solutions (7) and predicted outcomes (1). None of the RT analysed provided risk analyses of recommended solutions, nor did they take into account various determinants of predicted outcomes. Less than half the RT (7) gave detailed descriptions of solutions functioning in other countries. Almost half of the analysed documents contained detailed information on entities affected by the regulation. Major doubts were raised by the method of presenting information regarding the implementation of an envisaged solution – a detailed schedule was provided in only two RT (15 provided an incomplete schedule), no indicators and measures were given to assess whether a particular intervention was successful, nor the risks involved with implementing a regulation. The situation was similar regarding information presented on the planned evaluation of the outcomes of the proposals.

There is scant reference to materials used to allow a precise response to the data presented. This does not mean that the information does not exist, but because it is not revealed, it is not available to social partners. Owing to problems in analysing data on the impact of intervention on particular entities, we will not describe them in detail (in the documents there are no arguments given for a lack of impact, thus it is difficult to say for sure whether we are dealing with a lack of analyses or zero impact). However, we can say that, despite great emphasis in the doctrine on presenting impact analyses in monetary terms, the impacts presented – apart from impacts on the state budget – are of a non-monetary nature. As a rule, the source of data is indicated (11RT).
Table 3.1. A summary of results from RT content analysis (n=19)

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of criterion</th>
<th>“0”</th>
<th>“1”</th>
<th>“2”</th>
<th>NDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What is the problem being solved?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Definition of the problem (is the problem being resolved given?)</td>
<td>1</td>
<td>9</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>2. What is the recommended solution, including the planned intervention tools and the expected outcome?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Definition of the solution (is a proposed solution/s given?)</td>
<td>3</td>
<td>9</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>Definition of the expected outcome/objective (are the expected outcomes/objectives given?)</td>
<td>9</td>
<td>9</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>C</td>
<td>Risk (is the risk associated with the recommended solution given?)</td>
<td>19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>D</td>
<td>Variations in conditions (are the expected outcomes given for different socio-economic development scenarios?)</td>
<td>19</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3. What other solutions have been analysed, including non-legislative solutions?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Base scenario (are results given from analysis of the option where intervention is withheld?)</td>
<td>18</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>Non-legislative alternatives (are results given from analysis of an option using non-legislative solutions?)</td>
<td>16</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>C</td>
<td>Scope of analyses of other solutions (are results given from analyses of solutions which have been rejected?)</td>
<td>17</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

33 Individual criteria for content assessment were devised in such a way as to integrate the expectations contained in the instructions to RT and RIA, the guidelines for preparing RT and RIA, the usefulness for shaping public policy as well as international inspiration (mainly from the National Audit Office: 2001; 2007; 2009; 2012).

34 The value ’0’ indicates the lack of a given element or incorrect method of presentation, ’1’ signifies presentation in a suboptimal way, giving rise to doubt, ’2’ signifies adequate presentation (e.g. 1A: Definition of the problem: 0 – lack of a problem definition/the problem is defined casually; 1 – the problem is defined incompletely/incorrectly/the problem is defined by objectives; 2 – the problem is defined correctly). The exception are items marked with an asterisk (*), which were assessed on a scale: 0 – no, 1 – yes.
Chapter 3. The use of impact assessment in the process of public policy creation in Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of criterion</th>
<th>„0”</th>
<th>„1”</th>
<th>„2”</th>
<th>NDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>If the proposals implement EU law, what are the expected solutions other than those absolutely required by the EU?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Additional solutions (does the intervention foresee solutions other than those required by the EU?)</td>
<td>15</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5.</td>
<td>What problem has been resolved in other countries, in particular in countries which are members of OECD/EU?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Scope of analysis (are results given from analyses of solutions used in other countries?)</td>
<td>7</td>
<td>5</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>6.</td>
<td>Entities affected by the proposals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Identification of entities affected by the regulation (has the whole range of entities affected by the regulation and the way in which they are affected been identified?)</td>
<td>0</td>
<td>9</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>Information on entities affected by the regulation (is adequate up-to-date information given on the entities identified?)</td>
<td>3</td>
<td>8</td>
<td>8</td>
<td>0</td>
</tr>
<tr>
<td>7.</td>
<td>Information on the scope, duration and results summary of consultations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Scope of consultations (were all identified entities invited to the consultation process?)</td>
<td>4</td>
<td>8</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>Duration and method (were the time taken and method of social consultations adequate?)</td>
<td>6</td>
<td>7</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>C</td>
<td>Consultation findings (are the findings from social consultations given?)</td>
<td>13</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>8.</td>
<td>Changes in regulatory burdens (including informational requirements) resulting from the recommended solution</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Analysis of regulatory burdens (are the results given from analysis of regulatory burdens?)</td>
<td>10</td>
<td>8</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>
| 9.  | Results of impact analysis

35 In this section we do not give detailed analysis results on the method of presenting data regarding the impact (monetary, non-monetary and non-quantifiable) on particular entities, as in the documents there are no reasons given for the lack of impact. It is therefore difficult to judge whether we are dealing with a lack of analyses or zero impact.
### Chapter 3. The use of impact assessment in the process of public policy creation in Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of criterion</th>
<th>„0”</th>
<th>„1”</th>
<th>„2”</th>
<th>NDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Grounds for analyses (are the data sources and grounds for analyses given in a way that allows data to be verified?)</td>
<td>6</td>
<td>2</td>
<td>11</td>
<td>0</td>
</tr>
</tbody>
</table>

#### 10. Planned implementation of the provisions of the legal act

| A   | Implementation plan (is a detailed schedule given for implementing the regulation and its instruments?) | 2   | 15  | 2   | 0   |
| B   | Indicators (are indicators and measures given allowing assessment of whether particular actions have been successful?) | 19  | 0   | 0   | 0   |
| C   | Enforcement of regulations (is information given on the possible risks associated with obeying the new law and the method of enforcing it?) | 19  | 0   | 0   | 0   |

#### 11. How and when will evaluation of the effects of the proposals take place, and what gauges will be used?

| A   | Evaluation plan – schedule (is a detailed schedule given for evaluating the effects of intervention?) | 8   | 10  | 1   | 0   |
| B   | Evaluation plan – measures (are the measures given that are used in evaluating the effects of intervention?) | 5   | 12  | 2   | 0   |
| C   | Appropriateness of indicators for regulatory objectives (are the given indicators suited to the regulatory objectives?) | 5   | 10  | 4   | 0   |

#### 12. Appendices (relevant source documents, studies, analyses etc.)

| A   | Comprehensiveness (are the data and relevant documents provided exhaustive, allowing analyses to be reconstructed?) | 15  | 1   | 3   | 0   |
| B   | Use of existing data (are existing data used in the analyses?)* | 16  | -   | 3   | 0   |
| C   | Use of own studies, generated data studies (are own studies and generated data studies used in the analyses?)* | 16  | -   | 3   | 0   |
| D   | Use of commissioned expert reports and studies (are expert reports and studies used in the analyses?)* | 18  | -   | 1   | 0   |
Ex ante RIA content

Analysis of the content of ex ante RIA (48 randomly chosen documents relating to draft laws and regulations) shows similar phenomena to the content of RT (detailed results of this analysis are given in Table 3.2). In terms of presenting the problem to be resolved by the proposed regulation, in 21 RIAs (nearly 44%) the method used did not raise any doubts, and only in five cases (around 10%) did the definition of the problem fail to meet the expected standards. In terms of the recommended solution, a strong point of the RIA is the description of the proposed solution (in 29 RIA no doubts were raised), and the anticipated outcomes/objectives of regulation are fairly well formulated (in five RIA there were no transgressions, in 27 there were certain lapses). However, there is practically no mention of the risks associated with the proposed solutions (43) or different variations in conditions (46). Only 22 RIA provided an analysis of solutions applied in other countries. The majority of RIA (31) contain an extensive list of entities who will be affected by the regulation, but in many of the documents studied there is a lack of detailed information on these entities (9) or the information given raises some doubts (14). With regard to public consultations, most of the RIA analysed take into account the representatives of groups affected by the regulation, although there is a fair amount of missing information on the duration of consultations and comments received.

The data provided on analysis of change in informational requirements are incomplete – too many RIA take it for granted that the new or modified regulation will not introduce changes. In many more cases than in RT, the RIA present the assumptions concerning plans for implementing the regulation (13 RIA raised no concerns, 31 contained certain transgressions), although there lacks information and indicators allowing assessment of the efficiency of recommended methods of implementation and the risks associated with implementing the regulation (both omissions occurred in nearly 40 RIA). Doubts were raised by the information given on the planned evaluation of the functioning of the legal act – only five of the analysed documents contained a detailed evaluation schedule, and in 21 there was none at all. There is fuller coverage of data sources than in RT, although only in barely half can these sources be seen to relate to the logic of the analyses given. From the information obtained on data sources, it appears that the majority are existing data (21), and much less often generated data (8) and expert reports (2).
The section of RIA dealing with analyses of regulatory impact is considerably more convincing than in RT. Civil servants attach particular importance to data relating to the impact on the public finance sector (in over half the RIA studied, this information did not raise any concerns or contained only a few transgressions). In this respect, the Ministry of Finance plays a particular, though not always positive, role. As experts and civil servants claim, representatives of the Ministry almost always analyse those fragments of the IA which concern financial costs and benefits (particularly in terms of the state budget). This puts pressure on civil servants to prepare these elements of the RIA with particular care. However, it can sometimes happen that this leads to abuse of the process – as shown by interviews, the Ministry is capable of blocking almost every initiative that generates extra costs, even if its implementation is obligatory. In consequence, the cost of the proposed intervention is often lowered or not shown at all, even if the analyses conducted indicate quite the contrary. As several of the cases analysed in quality studies show, the exception are situations where well-prepared RT or RIA were able to ‘defend’ the proposed solutions by showing a wide range of impacts, including a positive balance of costs and benefits (not only financial ones).

Table 3.2. Summary of results from ex ante RIA content analysis (n=48)

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of criterion</th>
<th>“0”</th>
<th>“1”</th>
<th>“2”</th>
<th>N/A</th>
<th>NDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What is the problem being solved?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Definition of the problem</td>
<td>5</td>
<td>22</td>
<td>21</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2. What is the recommended solution, including the planned intervention tools and expected outcome?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Definition of the solution</td>
<td>0</td>
<td>19</td>
<td>29</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>B</td>
<td>Definition of the expected outcome/objective</td>
<td>16</td>
<td>27</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>C</td>
<td>Risks</td>
<td>43</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>D</td>
<td>Variations in conditions</td>
<td>46</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

36 See footnotes 17 and 18.
### Chapter 3. The use of impact assessment in the process of public policy creation in Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of criterion²⁶</th>
<th>&quot;0&quot;</th>
<th>&quot;1&quot;</th>
<th>&quot;2&quot;</th>
<th>N/A</th>
<th>NDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>How has the problem been resolved in other countries, in particular in countries which are members of OECD/EU?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Scope of analysis</td>
<td>22</td>
<td>12</td>
<td>10</td>
<td>1</td>
<td>3</td>
</tr>
</tbody>
</table>

### 4. Entities affected by the proposals

| A   | Identification of entities affected by the regulation | 0   | 17  | 31  | 0   | 0   |
| B   | Information on entities affected by the regulation   | 9   | 14  | 25  | 0   | 0   |

### 5. Information on the scope, duration and results summary of consultations

| A   | Scope of consultations | 14  | 10  | 20  | 2   | 2   |
| B   | Duration and method    | 9   | 9   | 11  | 5   | 14  |
| C   | Results from consultations | 19 | 1   | 11  | 7   | 10  |

### 6. Impact on the public finance sector

| A   | Time horizon of analyses (are the results of analysis given for the full time horizon?) | 22  | 0   | 21  | 0   | 5   |
| B   | Sources of funding (are proposed sources of funding given?) | 14  | 9   | 19  | 1   | 5   |
| C   | Grounds for analyses | 14  | 10  | 23  | 0   | 1   |

### 7. Impact on the competitiveness of the economy and enterprise, including enterprise functioning, as well as on families, citizens and households

| A   | Grounds for analysis | 32  | 4   | 10  | 0   | 2   |

### 8. Changes in regulatory burdens (including informational requirements) resulting from the recommended solutions

| A   | Analysis of regulatory burdens | 22  | 13  | 7   | 2   | 4   |
| B   | Additional solutions (does the intervention envisage burdens other than those required by the EU?) | 33  | 6   | 0   | 3   | 6   |

### 9. Planned implementation of the provisions of the legal act

| A   | Implementation plan | 3   | 31  | 13  | 0   | 1   |
| B   | Indicators          | 38  | 3   | 3   | 0   | 4   |
| C   | Enforcement of regulations | 40 | 3   | 4   | 0   | 1   |
Chapter 3. The use of impact assessment in the process of public policy creation in Poland

As a supplement to the analysis of RT and RIA, the contents of the relevant explanatory notes for proposals were studied (36 randomly chosen documents, see Table 3.3). In the course of the analysis, there was often the impression that the explanatory notes were prepared before RT and RIA, and then some of the information it contained was copied into IA documents. Most of the analysed explanatory notes for bills had a fuller content than those prepared for regulations. Compared to RIA, there were more frequent references in descriptive sections to the nature of the problem and (and its causes), the current situation and an exact description of changes planned. Results are poor, however, in the category of variant analysis, which was not included in any of the analysed explanatory notes. The impacts of planned intervention are presented on a similar level to RIA (11 explanatory notes raised no doubts, 11 raised some doubts, 14 raised grave doubts). In 19 explanatory notes a causal model was provided, showing the relationship between the planned solution and the envisaged effects, and in 25 the criteria used in selecting a given intervention were described. However, the explanatory notes completely failed to analyse
the intended and unintended effects of a given act, as well as the risks associated with the intervention (32 documents).

Table 3.3. Summary of the results from content analysis of the explanatory notes for bills (n=36)

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of criterion</th>
<th>„0”</th>
<th>„1”</th>
<th>„2”</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Description of the problem</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Are the reasons for the described problem given?</td>
<td>11</td>
<td>6</td>
<td>19</td>
</tr>
<tr>
<td>B</td>
<td>Are the reasons for the described problem given?</td>
<td>10</td>
<td>3</td>
<td>23</td>
</tr>
<tr>
<td>C</td>
<td>Is the current situation (actual state) given for the area subjected to intervention?</td>
<td>7</td>
<td>4</td>
<td>25</td>
</tr>
<tr>
<td>2. Needs and objective of the intervention</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Are expected outcomes/objectives given for the planned intervention?</td>
<td>10</td>
<td>1</td>
<td>25</td>
</tr>
<tr>
<td>B</td>
<td>Do the expected outcomes of intervention provide an answer to the diagnosed problem/causes of the problem?</td>
<td>10</td>
<td>0</td>
<td>26</td>
</tr>
<tr>
<td>C</td>
<td>Is evidence given justifying the need to implement the proposed regulation?</td>
<td>3</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td>D</td>
<td>Are additional actions (non-legislative) given in the explanatory notes to help achieve the envisaged outcomes/objectives of the intervention?</td>
<td>34</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>3. Recommended solutions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Is a proposed solution/s given?</td>
<td>2</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>B</td>
<td>Are the anticipated impacts (costs and benefits) given for the recommended solutions?</td>
<td>14</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>C</td>
<td>Are the intended and unintended (planned and unplanned) effects of the recommended solution presented separately?</td>
<td>36</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

37 See footnotes 17 and 18.
The content of comments submitted by social partners

Tables 3.4 and 3.5 give the results of analysis of the content of comments submitted by social partners in the course of public consultations (36 legislative processes, including 17 acts and 19 regulations). The study made use of information published in the Government Legislative Procedure database – therefore certain reservations apply. In reference to at least some of the analysed documents, there are grave doubts as to whether the database shows a complete set of materials – this is clearly illustrated, for example, in the entry regarding the draft Regulation of the Minister of Health on the method and mode of financing healthcare services from the state budget, in which two written comments are published, although the invitation to consultation was received by nearly 60 social partners. This problem is also pointed out in the report from Government Legislative Procedure observations (Citizens Legislation Forum 2014a; 2014b) – situations often occur in which comments from social partners are not published or are entered after a considerable delay and without the corresponding consultation report.
The studies carried out clearly show that documents relating to IA are not the subject of in-depth analysis on the part of social partners, or at least this is implied by the number and substance of the comments submitted. Among 163 submissions, only two (1.2%) referred directly to RT or RIA. More commonly, although significantly less often than in the case of comments on the contents of normative acts (93.9%), social partners submit comments regarding analyses conducted (3.7%), the adopted definition of a problem (3.1%), the assumed targets (14.1%) and the effects of regulation (13.5%).

This result undoubtedly testifies to weaknesses in the public consultation process. Based on the interviews and analyses of other reports it is possible to identify a number of causes. One of these may be the rational and instrumental assumption that if a consultation relates to legislative proposals that have already been prepared, submitting comments on documents containing its premises may be pointless. In this situation it is recommended that public consultation is begun earlier, even at the stage of defining the problem (so-called pre-consultation). Another cause can be identified in the inadequate time allocated to public consultation – despite significant improvement, 14 days is still decidedly too little time to thoroughly analyse RIA or RT and submit constructive comments on them.

Some experts, and also to a degree the report of the Stefan Batory Foundation (Kopińska et al. 2014), point out the considerable diversity among social partners themselves – participants of consultations include both strong advocacy groups, who have considerable analytical potential at their disposal, as well as small entities reliant on volunteers. The motivation of participants is equally diverse – they are quite often tied to particular interests which can be most easily achieved by forcing through a certain legislation (in this situation a well-prepared IA could often be a problem). In the end, the reason for a weak public consultation process may lie in the way they are conducted – as a rule the applicant does not formulate any concrete questions or expectations with reference to social partners, and doing so could significantly improve the quality and usefulness of the consultation process.
Table 3.4. Numbers of analysed comment submissions from social partners

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Number of submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Number of analysed submissions sent in by social partners</td>
<td>204</td>
</tr>
<tr>
<td></td>
<td>including:</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Submissions without comments</td>
<td>41</td>
</tr>
<tr>
<td>3</td>
<td>Submissions with comments</td>
<td>163</td>
</tr>
</tbody>
</table>

Table 3.5. Content analysis of comments submitted by social partners (n=163)

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Number of comments (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Area of comments submitted</strong></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Consultation process</td>
<td>7 (4,3%)</td>
</tr>
<tr>
<td>B</td>
<td>The substance of the legal act consulted</td>
<td>153 (93,9%)</td>
</tr>
<tr>
<td>C</td>
<td>The substance of other legal acts (e.g. incompatibility, interactions)</td>
<td>46 (28,2%)</td>
</tr>
<tr>
<td>D</td>
<td>IA documents (RT/RIA)</td>
<td>2 (1,2%)</td>
</tr>
<tr>
<td></td>
<td><strong>Scope of comments submitted</strong></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Adopted definition of the problem</td>
<td>5 (3,1%)</td>
</tr>
<tr>
<td>B</td>
<td>Assumed targets of the regulation</td>
<td>23 (14,1%)</td>
</tr>
<tr>
<td>C</td>
<td>Assumed effects of the regulation</td>
<td>22 (13,5%)</td>
</tr>
<tr>
<td>D</td>
<td>Proposed implementation method</td>
<td>39 (23,9%)</td>
</tr>
<tr>
<td>E</td>
<td>Other non-regulatory forms of intervention</td>
<td>12 (7,4%)</td>
</tr>
<tr>
<td>F</td>
<td>Analyses conducted</td>
<td>6 (3,7%)</td>
</tr>
</tbody>
</table>

Summary

While the legal system and IA process is assessed positively by experts, its actual functioning is widely criticized. This criticism is not always justified – the difference in assessment stems above all from the significant disparities in IA quality not only between various ministries and departments but even within the departments.
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The interviews conducted show that it is a fairly common practice to prepare IA analyses and documents right after preparation of a bill, purely in order to formally conduct the legislative process. In many cases there is a lack of political will to base decisions on evidence, but also (and perhaps owing to this) the IA process itself does not provide good enough support for making decisions. Focusing on shortcomings, it is easy to overlook situations in which policymakers and civil servants are genuinely open to argument and see the sense of their analytical work and creation of evidence-based legislation. This results in very high quality IA processes, resulting in the provision of efficient public interventions. Although these are not exceptional, it appears that they are still very much in the minority.

To summarize the discussion presented in this chapter, we list below several key areas which determine the strengths and weaknesses of the Polish IA system. The results of expert interviews, quantitative studies and analyses of the content of documents show that the strengths and positive trends of IA in Poland include the following:

1. **Regulations on IA at the stage of government work.** The improvement of regulations concerning the government legislative process can be counted among one of the most positive aspects of the whole IA system in Poland. Experts agree that the introduction of the new *Rules of Procedure of the Council of Ministers* in 2014 is an important step in the direction of the best international standards, ordering and fine-tuning the process as well as the expectations of IA prepared for normative acts. A positive aspect is the support offered by the Government Legislation Centre at the bill preparation stage. The idea of standardizing IA forms is well-received, although their present form raises questions due to a lack of flexibility which prevents data presented from being adapted to the specifics of an issue.

2. **The introduction of RT.** Experts positively evaluate the idea of RT and the requirement to prepare it before the entry of the draft guidelines of a regulatory act to the list of legislative work. This solution encourages an early start to work on IA. Some doubts are raised by the RT form, and particularly the lack of a requirement to present detailed IA for different intervention options.
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3 The increasing effectiveness of quality assessments for RT and RIA. Despite the difficulties in assessing the content of IA documents, experts and civil servants have noticed an improvement in the quality of their verification, and increasingly, comments are not only of a formal nature but accurately identify the weaknesses of IA prepared. A positive role in this process is played by the Team for Programming Government Work and the creation of ministerial RIA teams.

4 The improving quality of RT and RIA. In the opinion of almost all experts, and backed up by the analysis of IA documents, the quality of the IA prepared is systematically improving. This is linked to the functioning of the ‘Better Regulation 2015’ Programme – the improvement of Rules of Procedure of the Council of Ministers, the intensive training programme (including training visits), greater awareness of the importance of IA among civil servants and the skills to perform them correctly.

5 Leaders of positive change. A very important role in implementing changes in IA is played by those who are able to animate the whole process with their positive attitude and consistency in working. In this respect mention is often made of the role of those responsible for the shape of IA (both on the part of the Chancellery of the Prime Minister and the Minister of Economy), the director generals, the management of analytical departments as well as certain civil servants.

The list of IA weaknesses is longer and encompasses issues at different levels of generalization. The shortcomings of IA relate in part to the same factors which were mentioned among the positive trends. This stems from the fact that, despite the improvement observed in a given area, the IA within it is still unsatisfactory. As the research shows, the fundamental weaknesses in the IA system in Poland are:

1 The limitation of IA to government work. The factor which has a huge influence on the use of IA in shaping public policy is the fact that its use is limited exclusively to government legislative work. Numerous corrections in the proposed solutions introduced at the stage of parliamentary work lower
Chapter 3. The use of impact assessment in the process of public policy creation in Poland

the profile of IA – both at the stage of preparing interventions and in later assessment of their functioning.

2 Lack of political and social acceptance of long term development strategies. This problem impedes accurate diagnosis of areas which require intervention, and have a negative impact on the coherence of the public policy system. It also increases the likelihood of adopting intervention in times of crisis management, which are typified by fragmentation, short time scales and limited effectiveness. Change in this area would facilitate more premeditated and coherent work which invariably requires a long term analytical process.

3 The attitude of policymakers to IA. IA in Poland continues to lack adequate political support – IA is often treated as a tool to justify previously made decisions, and not as an instrument supporting to the decision-making process. Disregard for IA takes away the motivation to prepare sound analyses, which thus become a pointless exercise. The dominance of the political factor makes the necessity of performing IA a superficial requirement, which is manifested, among others, in the poor agency of ministerial RIA teams in exacting changes in the IA prepared.

4 Limited use for the content of IA documents. The main flaw in the IA documents prepared is the lack of detailed variant analyses which would facilitate well-informed selection from among clearly defined solution alternatives, as well as the lack of risk analysis. There is also much to be desired from the method of presenting information on the essence of the problem being solved, the intended targets of intervention and the method of evaluating its effects. This applies mostly to RT, to a lesser degree RIA and explanatory notes. RTs, possibly owing to their relatively short life span, enjoy the least acceptance among civil servants.

5 The stage at which IA is prepared. Quite often, RT and RIA appear right after drafting the guidelines or bill. While in the case of RIA this does not produce negative consequences, it renders RT almost completely pointless. Although in formal terms, work on the text of the guidelines of a regulatory act can only begin after entering it into the list of legislative work, in many
cases the very short time that elapses between entering on the list and presenting the guidelines of a regulatory act, goes to prove that the order was quite the reverse.

6 **Difficulties in assessing the quality of RT and RIA.** Experts draw attention to the huge problem of evaluating the contents of IA documents. There has been welcome change in this area, although the shortcomings are strongly underlined. Members of RIA teams point out that verification of RT or RIA requires specialist knowledge of the field, which is often lacking. In addition, members of the team must sometimes perform assessment of documents of their own authorship, which presents them with a conflict of interests. Social partners rarely submit comments on the contents of IA during public consultations. In this context it would seem reasonable to consider calling on independent institutions which verify the effects of IA, following the example of the Dutch institution Actal (see Chapter 6).

7 **Lack of flexibility in IA forms.** The standardization of expectations with regard to IA documents is judged by experts to be positive, but the rigidity that goes with this is the subject of criticism. The inability to modify forms makes it difficult to meet the principle of proportionality in IA, referred to in the Guidelines.

8 **Risks in ex post RIA functioning.** Ex post RIA in the form proposed by the *Rules of Procedure* is not yet functioning (on the Government Legislative Procedure website there is no information whatsoever on completed processes, and according to the *Rules of Procedure*, there should be). It will not be possible to say more on this matter until functioning legal acts from 2014 are assessed. However, experts already point out the risk associated with the modifications of legal acts at the stage of parliamentary work without the need for up-dated RIA. Owing to the fact that RIA is the reference point for *ex post* evaluation, this situation can severely restrict the rationality of the process.

9 **Lack of a task-oriented approach.** The lack of a task-oriented approach in combination with internal competition for resources is one of the major barriers to creating interdisciplinary teams (e.g. made up of representatives of
various, divisions, departments or ministries), exchange of knowledge and practices, their integration and common work on solutions in problem areas. Work on public interventions, also due to the silo structure of organization, is carried out in a fragmented fashion and concentrates on regulations as the main instrument for shaping public policy, reducing the efficiency of the whole system.

10 **Shortages of staff and skills.** A constant weak point in the IA system in Poland is the under-developed staff supply, both in terms of the numbers of analysts employed and the expertise which they possess. This is an area for intensive training and workshop activity, and equally, a change in the recruitment policy of ministries, which should make greater efforts to employ workers with knowledge and skills in data analysis, economics and sociology. Despite the relatively large number of educational materials available, there is an evident lack of practical handbooks on preparing IA – the Guidelines prepared by the Ministry of Economy and the Chancellery of the Prime Minister very precisely specify what should be done, but in many instances does not indicate how to achieve this.

11 **Limited resources.** Experts and civil servants draw attention to the lack of access to adequate resources (financial, time, informational), which are necessary for preparing IA. It often happens that, despite limitations, both funds for conducting research or expert reports as well as essential data and information could be released, if the process of IA preparation was planned in good time. The inability to take advantage of suitable resources results not only from objective obstacles, but equally from performing tasks in a ‘reactive’ fashion, depending on current events. The possibility of using information resources is impeded by the lack of a coherent system of knowledge management (gathering, cataloguing, storing and making accessible) and the lack of a systemized, for the time being, method of organizing the IA process in ministries.

12 **Lack of sufficient social pressure for using IA.** A weakness of the Polish system of IA is the inadequate interest in the subject among social partners – in the comments submitted in public consultations it was exceptionally rare
to find reference to RT and RIA. Increased social pressure in this area could lead to decision-makers and civil servants awarding it greater importance. This would require greater engagement from social partners and strengthening of their analytical potential.

The discussion presented in this chapter indicates several strengths and positive development trends, but also many weaknesses and organizational barriers which limit the impact of IA on the quality of public policy. In order to strengthen this impact, it is essential to continue developing IA in those areas where success has been achieved, and to refer to the most important problem areas. To find the factors determining the effectiveness of IA, it is necessary to look wider than just through the prism of preparing RT, RIA and *ex post* RIA. An in-depth analysis of the key problems and needs of the IA system in Poland is contained in the next chapter.
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Uchwała nr 49 Rady Ministrów z dn. 19 marca 2002 r. – Regulamin pracy Rady Ministrów (DzU, nr 13, poz. 221, ze zm.). [Rules of Procedure of the Council of Ministers (Journal of Laws no. 13, item 221 as amended)]

Zarządzenie nr 125/13/DPK Ministra Sprawiedliwości z dn. 13 lutego 2013 r. zmienione zarządzeniem Ministra Sprawiedliwości z dnia 21 lutego 2014 (poz. 73). [Order no. 125/13/DPK of the Ministry of Justice, 13 February 2013 replaced by the Order of the Ministry of Justice, 21 February 2014 (item 73)].
Introduction

By confronting the concept of impact assessment (IA), as an important constituent of public policy analysis (PPA), with the results of studies on its use at home and abroad, a whole catalogue of problems appear which the IA system in Poland needs to face. These problems have become the point of reference for formulating challenges as well as a programme of revisions which need to be implemented in Poland (this programme will be discussed in the next chapter).

Before we identify the main problems and challenges, it is worth looking at the merits of what has been achieved in the Polish government administration over recent years in developing the IA system.

Strengths of the regulatory impact assessment system in Poland

A turning point in the IA system development in Poland was the introduction in the Rules of Procedure of the Council of Ministers of a compulsory requirement to prepare IA for bills, and to present the results of a regulatory test before entering the bill into the list of legislative work. Irrespective of the fact that these assessments have different content, different uses, and are often performed perfunctorily, we should treat these changes as a landmark first step towards institutionalizing the
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PPA system in the law making process. Introducing this institutional solution has led to marked growth in awareness of the importance of IA – in the form of regulatory impact assessment (RIA) and regulatory tests (RT) – among civil servants as well as informed public opinion. In this area a positive role was played by, among others, the promotion of IA by the ‘Better Regulation 2015’ Programme. Under this programme, civil servants were given intensive training and ministerial RIA teams were set up. This was warmly welcomed by the director generals of ministries and central offices.

We should also note the improved efficiency of RIA quality control by the Chancellery of the Prime Minister. The devised guidelines are clear and based on good practices (except that there is insufficient emphasis on diagnosing the problem beyond defining regulatory deficit and preparing solution variants), and formulate clear expectations which are sewn into the fabric of RIA and RT forms. The social consultation process is increasingly better run. Non-governmental organizations participate more often and more intensively in monitoring the quality of legislation and the IA itself. All this, along with the engagement of the Government Legislation Centre, promotes improved quality in drafting laws.

The IA system has also been reinforced by the development of an evaluation culture, which appeared along with the projects financed from support funds. Its expansion was linked to use of pre-accession funds, followed by EU structural funds. It is still linked with this area, as development projects in Poland are financed mainly through EU funds. The Act of 6 December 2006 on the principles of pursuing development policies (Journal of Laws [Dziennik Ustaw] no. 227, item 1658) brought in ex ante evaluation as a mandatory element of preparing strategies, development policies and operational programme policies. Moreover, it made it compulsory for institutions to conduct ex post evaluations. Management control in public finance departments by nature also has a strong evaluative component. This all helps to instigate different processes for obtaining knowledge on the effectiveness of implementing public interventions, both ex ante and ex post. IA is one of these processes. The state is, above all, a regulator; its organs make laws and ensure their enforcement. It is logical therefore, that legal acts, which are the means of public policy, should undergo evaluation just as allocation instruments or persuasion campaigns.
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An important means of spreading good standards in IA are the activities of OECD and the models developed in certain countries, especially Anglo-Saxon. These provide an important source of information which can be used to boost Polish efforts to build IA system potential.

The above mentioned strengths allow a good degree of optimism in looking to the future of IA in Poland. However, there is still much to be done. A presentation of the most important challenges faced in the course of developing this system begins with operational problems, which may be overcome thanks to further improving the administration functioning and by creating the appropriate legal, organizational, human resource and financial conditions. In later sections we will deal with more general problems of law-making in Poland. The final part is devoted to discussing the general conditions of governing which to the greatest extent determine the quality and pace of IA development in Poland. The order largely reflects the difficulty of changes which would need to be effected in response to these challenges.

Operational challenges

In the course of their research, the MORE team identified a wide range of problems which prevent the current potential of the IA system from being utilized. They also established courses of action which are deemed essential to improving the system further.

1. The lack of a requirement to present analysis results of individual options considered in the IA process. In the current RT forms there is space for giving options considered. A good practice (used in Great Britain) is to present documentation on variant analyses considered in appendices to the IA report. This improves the quality of the whole IA process and serves to avoid the superficial use of IA to justify decisions made without the proper analyses.

2. The need to introduce standards for defining the problems to be resolved using regulation. Defining problems in the category of regulatory deficits should be avoided, as regulations are only the means of resolving the pro-
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1. Problems. In variant analyses actions which do not require regulation should be considered for resolving the problem.

3. Raising the status of RT, which should focus on in-depth analysis of the problem. PPA stresses how important it is to begin preparations with an accurate analysis of the problem, and not with a justification of why it is necessary to introduce a new regulation. In doing so, defining the problem as a regulatory deficit or defect should be avoided. It is also important to attempt to establish the mechanisms generating the problem on the basis of carefully collected evidence. Understanding the causal relationship helps to accurately identify the instruments, including regulatory ones. Supported by the criteria for evaluating options, RT should provide the authorized persons with a basis for making decisions on the expedience of intervention, the choice of intervention option – regulatory or non-regulatory – as well as entering draft proposals to the list of legislative work. This means a change in the essence of RT: the test should no longer be seen in terms of its involvement in the stage of creating the guidelines of a regulatory act, but should become, in an operative sense, a fundamental stage of PPA. Preparation of RT, which is strongly analytical, can be accompanied by substantive and social consultations, enhancing understanding of the problem and the range of alternative solutions. The PPA system should include selection methods for achieving public policy objectives, but should not deal with choosing the type of regulation or how to implement it. The decision as to whether a new or amended regulation is needed at all should precede discussion on what kind of regulation should be used. This means basing decisions on a blend of public policy tools and methodically conducted PPA, and not only on analysis of regulatory impacts.

4. Too narrow criteria for assessing intervention options. PPA draws attention to an important element which IA does not take into account: the need to establish precise criteria for selecting a solution – evaluation of public policy alternatives. IA focuses primarily on obtaining quantitative results of cost-benefit analysis. Without questioning the significance of this important element, it is worth underlining that in the actual decision making process...
other criteria are taken into account, including constitutional and political principles such as the principle of justice. Well recognized and defined criteria for evaluating intervention options brings IA into the frame of reference of public decision makers.

5 A too superficial approach to planning *ex post* RIA at the *ex ante* RIA stage. Attempts should be made to raise the quality of *ex post* RIA plans (evaluation), clearly present the assessment criteria and the means of measuring the degree to which they are achieved. It is worth using the impact evaluation methodologies, including the so-called counterfactual method, that is, assessment of the actual, causative impact of intervention. *Ex post* RIA is not only a reliable tool for checking the quality of implemented regulations, but also a means of legitimizing state action and its structure.

6 Shortages in staff and expertise. Performing the analyses needed for comprehensive RIA or RT requires well prepared staff. Although in the questionnaire survey over half the respondents rated ministerial potential highly in this respect, in expert interviews this positive assessment was not supported. The problem is deep-rooted and involves a deficit in the content and method of education in Polish universities, especially in terms of conducting complex analyses using quantitative methods. This deficit can be overcome by organizing a suitably profiled staff training programme. This concerns both raising the expertise of employees as well as co-operation between the public administration and the best universities in order to introduce appropriate educational programmes. This requires specifying a competence profile of public policy analysts which could form the basis for planning the right educational outcomes and means of achieving them in universities. Moreover, it is important that trained workers are actually engaged in analytical work, which requires organizational solutions, oriented on building a strong analytical base for decision making processes.

7 Limitations regarding access to data essential for preparing good quality RIA. This problem was highlighted in the responses of those surveyed. During in-depth interviews, the view was expressed that data can be obtained, but the necessary discernment and skills are often lacking in this area.
In fact, both these problems occur in practice in public offices. In RIA, data from administrative sources are needed which have not usually been prepared for analysis and/or are difficult to access by analysts for formal reasons. Data are also needed from public statistical records. In the latter case, there is often the problem that they are outdated or inaccessible in the form necessary for analysis. Finally, in analysing cost and benefits, data are needed for calculating both market goods and non-market goods. Providing a well-organized repository of data useful in RIA and RT, continually extended and improved and easily accessible to analysts, remains a challenge.

The need for textbooks, models and tools to support the performance of RIA. A knowledge base that includes: sample reports, handbooks, instructions and programming, will develop over time. However, it is worth creating, at the initial stage of its development, a framework to turn it into a systematic organizational process. The resources generated in this process would be one of the main instruments of organizational learning.

Facilitating the collaboration of ministries and central offices with key external experts. Legal and organizational solutions should facilitate co-operation with experts and the selection of consultants based on competence criteria. Regular collaboration and designation of funds to this aim would make it possible to set up and maintain academic and non-governmental centres dealing with professional assessment of the consequences and burdens generated by legal acts. It would be worth creating and systematically developing an expert base in specific policy areas, IA methodology and creating legislation.

Providing adequate public funding for analytical and research studies relating to ex ante and ex post RIA, both internal and external. It is also important to provide funds for the on-going improvement of research methodologies.

Continuous improvement of IA standards and disseminating them in ministries and central government offices. Undertaking initiatives for building an IA culture through:

- Building up a collaboration network between analysts and all ministries, which would serve exchange of experience, good practices and internal advice;
• Regular meetings of analysts and persons with a key role in creating and deciding on the shape of regulations;
• Organizing conferences popularizing IA, serving to spread good examples from home and abroad as well as developing new approaches (a good example are the conferences devoted to evaluation organized by the Ministry of Infrastructure and Development and the Polish Enterprise Development Agency);
• Stimulating publications on IA theory, methodology and practices (here too, good examples are provided by the field of evaluation).

12 Introducing principles for presenting RT and RIA findings in the decision-making process. This would raise the profile of IA and the sense of agency and quality of analysts’ work.

13 Combining work on IA with planned, systematic analytical work within specialized analytical divisions in ministries, in order to limit spontaneous actions and ad hoc initiatives.

The issues and challenges presented above can be taken up in the course of improving the IA system. This can occur through implementing the next government programme on improving regulation. It does not require far reaching changes in the legal framework or the law-making system. The effects should be the better quality and usefulness as well as improved status of IA in the decision-making process. However, these changes, although necessary, are not sufficient for improving the quality of legislation, as they do not resolve the problems of the law-making system as a whole.

Problems and challenges in the law making system

The quality of law-making in Poland depends not only on how bills are prepared by the government administration, but also on the activity of other entities invested with the legislative initiative. Moreover, draft legislations which pass through the complex process of work in the commissions of the Sejm (lower house of parliament) and Senate (upper house of parliament), are often subject to considerable modification. This gives rise to a whole range of problems.
Changes introduced to bills during legislative work can result in major modifications to the final shape and consequences of regulations.

Changes introduced at the parliamentary level are not subject to IA. They are not subjected to methodological analysis and often depend on a balance of arguments in the lobbying process or ad hoc calculation of political consequences. As a result, the impact of evidence-based arguments diminishes in favour of arguments based on power and vested interests.

Only government bills undergo mandatory IA. The IA requirement should apply to all bills.

In the process of parliamentary work, responsibility for the final shape of the bill is blurred. Responsibility for the final shape of the bill should be personalized. The process of submitting comments and corrections should take the form of consultations on the bill, the most important and distinguished, but still consultations. The final bill should be presented, after eventual amendment, by the initiating entity, using their legislative initiative. The final bill voted on by the Polish Sejm and Senate should be provided in the RIA report, referring to its final state, after which the bill cannot be subject to further changes, but only to voting.

The lack of IA solutions for bills arising outside the government. RIA for these bills should be prepared outside the government administration. The body responsible for preparing their assessment could be a separate institution or the Supreme Audit Office which would have to develop its potential in this area. An additional competence of such institutions or the Supreme Audit Office should be the external evaluation of government IA in order to improve their quality. Making such entities responsible for IA is an important system challenge.

It is essential to introduce social consultations in the IA process for bills submitted by entities other than the government. Preparing IA for these bills would make way for conducting social consultations according to IA standards.

Limiting overregulation. The expansion of the state and the widening scope of its interference has led to the mass production of rules of law. These rules
are becoming ever more interventional, instrumental and specific. This has led to their fragmentation and, as a consequence, their inflation. Their variability and ambiguity has turned public life into a normative chaos, a sense of uncertainty and insecurity. In these circumstances even the most refined IA system can prove ineffectual.

Taking on the above system challenges is of central significance for raising the quality of the whole legislative process and basing it on evidence. Introducing changes in this area will not be easy owing to the firmly rooted models of functioning in Polish parliamentary life. Without a doubt, a catalyst for transformation would be a well-functioning IA system at government level. It is also important to highlight the contrast between devising and justifying legal acts prepared using the IA apparatus and the effects of mechanisms based on political bids and lobbying, even with the considerable intuition and experience of parliamentary members.

Challenges and problems in the system of government and public policy

IA is an element in the wider process of utilizing knowledge in government processes and in introducing organizational learning mechanisms to public administration. In the studies conducted, we came across the opinion that policymakers are generally little interested in IA results and make decisions without taking analysis results into account. Regardless of how this affects the quality of RT and RIA, it must be acknowledged that – despite progress – public policy based on evidence remains a challenge in Poland. Increasingly, in explanatory notes, we can find reasonable, descriptive diagnoses of a situation and expert opinions on the recommended solutions. Yet the pressure of political agendas, provoked by media campaigns, often leads to opting for shortcuts, in which RIA becomes merely the superficial grounds for previously made decisions.

It seems that the tendency to make shortcuts results largely from a lack of a strategic and co-ordinating centre of government, which would be responsible for setting the objectives of state policies and for the strategic co-ordination of their
implementation. The lack of this system solution has led to public programmes and policies becoming fragmented into ministries, with unsatisfactory programme cohesion and problems with implementation.

On one hand, the demand for knowledge from reliable sources based on scientific methods is limited. This is because the custom of using study findings and analyses in decision making is lacking, funding is limited and because decision-makers are mistrustful of scientific and expert environments, especially in their ability to deliver useful knowledge. On the other hand, there is also a limited supply of useful knowledge from the scientific world. Scientific institutions too rarely deal in creating knowledge that can be used in public policy. The development of such research was aided by EU funds in the last programming period, but it was poorly co-ordinated on a national scale. The quality of many studies commissioned under Public Procurement Law, left much much to be desired. The potential of scientific centres in delivering knowledge based on the latest achievements in research methodology is also limited. Thus investment and change are needed both in the demand for knowledge as well as in its supply.

In Poland there is no good system for commissioning public policy research. This function is performed neither by the grant competitions system for basic research at the National Science Centre, by nature not subject to knowledge utility criteria, nor the technology-oriented National Centre for Research and Development. Commissioning research in line with Public Procurement Law often poses problems, if not in finding contractors guaranteeing high quality work, then in the rigid realization process imposed by contracts based on public procurement. These problems are well known to the public administration and have been raised many times, yet still no headway has been made in attempts to resolve them.

The use of knowledge in the decision-making process is also impeded by the typical procedural culture in public administration which is wary of experimentation and innovation. A certain degree of conservatism in administration can be an advantage, where predictability is a virtue, but in situations of change there is a need for the ability to ‘switch’ to innovation.

A major role in the modernization of the administration, opening it to utilization of knowledge and increasing the importance of IA, is played by political leader-
ship. It is political leaders who set the tone and bring vision to the work of government structures. If they expect sound knowledge as the basis for decision-making, then this knowledge will start to be delivered. If political leaders value strategic governance, then organizational entities will be set up to perform the strategic analyses which are currently lacking. If the leaders are determined to improve the quality of laws, then the profile of IA will be significantly raised.

Today, changes in the public administration are often initiated by enthusiasts of an efficient state. However, in every large organization such as the public administration, it is important for members to be aware of the strategic focus of their activities. This motivates and allows them to make accurate decisions in times of uncertainty. Political leadership relies on knowledge of where it is heading and how to reach this goal. Astute leaders always value knowledge. The dual meaning of ‘intelligence’, which indicates the ability to obtain and utilize knowledge and skills, but also refers to gathering information that is valuable for politicians or the armed forces, well describes the process of government.

Transformations in the culture of governance take a long time. They can be hastened by a growth in levels of expertise, and it is this factor that Poland should focus on. Only then can the rules and mechanisms of managing public affairs be turned into a system in which knowledge is the foundation for rational, economic and socially legitimized public decisions. Without this foundation, management of public affairs will be based solely on political intuition and the calculations of political parties, ignoring reliable evidence. This will not serve the interests of the nation and its citizens.
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5.1. Introduction – why evaluation

The state has intervened in the economy for centuries. Discussion among leading economists has not questioned whether the state should intervene, but rather when and on what scale. It is commonly acknowledged that scope for intervention appears when the economy is inefficient, failing to achieve Pareto optimality. Briefly, this optimality occurs in a situation where it is not possible to improve the situation of a one market entity without worsening the situation of another. Following the example of Joseph E. Stiglitz, we can point to a number of different situations (in economics – market failures) which can lead to this kind of imbalance:

- Lack of competition (formation of monopolies and oligopolies)
- Inability to provide so-called public goods;
- External effects;
- Lack of, or incomplete, markets;
- Informational asymmetry (Stiglitz 2004: 90-99).

State intervention generally takes two basic forms: financial (an example here would be Poland’s use of EU funds under the cohesion policy) as well as regulatory (e.g. legislative acts). Unfortunately, use of intervention by the state does not always resolve the problem. There has even arisen a trend in economics (within public choice theory) analysing government failure itself in an attempt to understand the mechanisms which lead to these situations (see Winston 2006; Wolf 1978). However, there is no need to enter the realms of scientific debate – our daily experiences (or at least what we can gather from media reports) shows that state action is not always effective. This is why it is so important to carefully analyse the outcomes of public intervention (both at the stage of anticipating impact as well as evaluating the actual outcomes of government action).

Owing to the clear need for evaluating the effects of public intervention, public institutions have been made to conduct appropriate analyses in this respect. For the purposes of regulatory intervention, a system of regulatory impact assessment (RIA) was developed, and for financial intervention – evaluation. It is interesting that
both fields, despite clear similarities, have developed in parallel, but quite separately. This is particularly visible in Poland.

Below is a list of important similarities between these processes. Both of them:

1. evaluate state intervention in the socio-economic sphere;
2. consist in generating new knowledge
3. aim to specify the effects of intervention using scientific methods;
4. perform evaluations of state intervention both at the *ex ante* and *ex post* stage;
5. support the planning and implementation of effective public intervention;
6. are performed by persons (civil servants or analysts) who should have the appropriate range of knowledge and expertise;
7. are performed by the same institutions (mostly ministries);
8. deal with the same challenge of appropriately using the results of their work;
9. are susceptible to a lack of impartiality (in evaluating the effects of their own work).

Considering the limited resources which the state has at its disposal, and the need to make most efficient use of them, such stark separation of the two processes seems strange. Interestingly this is not typical only of Poland – it often occurs in other countries too. However, in Poland we have a specific situation where both pro-
cesses, implemented in compliance with EU requirements, have developed at a different pace. The evaluation system (in areas benefiting from EU funds) has changed very dynamically since 2004. By 2009, from a state of germination, it had developed sufficiently (in the appraisal of the European Commission) to act as a model for other EU countries and went on to evolve intensively in subsequent years. At the same time, the regulatory impact assessment (RIA) was in stagnation - only in the last 2-3 years, thanks to changes at the Chancellery of the Prime Minister and the Ministry of Economy, has it begun to gain in significance.

In this context it would seem important to analyse the solutions devised in the system of evaluating cohesion policy and to use those which are effective (avoiding mistakes) in the RIA system.

We have divided our discussion into six areas (referred to in the title somewhat provocatively as ‘inspirations’). In this chapter we analyse, in turn, issues concerning:

1. organization of the system itself;
2. stakeholders in the process;
3. administrative potential;
4. potential of external institutions;
5. methodology for preparing analyses;
6. utilization of knowledge.

In each sub-section we present the general conditions determining the essence of the element in question, describe the existing solutions devised for evaluation of development policy in Poland and formulate conclusions for improving the regulatory IA system. At the end of the chapter we provide a synthesis and summary of our discussion.

5.2. The legal and institutional system of evaluation

The main reason why the IA system can benefit from the experience of the development policy evaluation system in Poland is that both these means of generating knowledge are often created by the same public administration structures. The diagnosis of
Stanisław Mazur in 2010, still rings true: ‘the Polish public administration is an example of a system in which there is excessive data, incomplete information and limited knowledge potential, which could form the basis of rational social and economic decisions as well as government action’ (Mazur 2010:201). Indeed, the Central Statistical Office is constantly developing new databases which, at least in theory, should fuel the building of more rational public policies; we also have hundreds of evaluation studies and a similarly large number of RIA, and yet this information is not combined into a whole which could be managed and used by skilled analysts.

Combining and cross-referencing these types of knowledge within a single knowledge management system could be very beneficial for a number of reasons (see Figure 1). Above all, it can lead to economization in public administration activity, followed by the building of better laws, and thus to more effective public policies. Of course, both elements are linked to government accountability in a democratic system, where paramount values include rational spending as well as the transparency and acceptance of actions carried out by political representatives elected by citizens in free elections. It is worth noting, however, that understanding evaluation and RIA as inter-dependent elements of the same knowledge management system can benefit the institutional system itself, as both these tools can develop the common analytical potential of units.

Sufficient analytical potential has been achieved in the field of evaluation, which in other countries is usually treated as a common field of research– joint training in evaluation and IA is conducted, leading international consulting firms offer both types of analyses, and publications are produced which combine the methodologies of monitoring, evaluation and IA.

The legal and institutional framework is of key significance, since it determines basic knowledge creation – the guidelines, regulations and laws which are then subjected to analyses; it defines their shape and, through designating staff resources and funding, also influences their content. Evaluation is a tool which has already partly become rooted in Polish public policy. This has been achieved in such a short time – less than two decades – thanks to appropriate funding and strategic creation of the system as well as considerable autonomy in formulating a legal and institutional system best adapted to Polish conditions. On one hand, substantial EU funds were
invested in creating the system – not only in developing institutional structures, but also in building administrative potential and strengthening the development of an evaluation culture. On the other hand, the strategic decisions of those responsible for building the system made it possible to design solutions which are unique on the European scale.

Over the last 10 years, the legal and institutional system of evaluation has undergone important changes. Today, it is strongly decentralized, and responsibility for creating evaluations lies largely with regional evaluation units (based in Marshal Offices) as well as evaluation units located in most central government offices. However, this does not imply a lack of co-ordination. Evaluation units must act on the basis of evaluation plans, prepared in advance, which they themselves present to the monitoring committee. The National Evaluation Unit is responsible for the co-ordination and synthesis of evaluation findings, and for collating and utilizing these findings using the appropriate IT tools (the Database of Evaluation Studies and the System for Implementing Conclusions and Recommendations).

The legal system for evaluating cohesion policy in Poland is based on several documents:

- the Regulation of the European Parliament and of the Council (EU) no. 1303/2013 of 17 December 2013;
- Partnership Agreements of the European Commission;
- Guidelines on the evaluation of cohesion policy – the financial perspective 2014-2020 (this document is still at the approval stage)\(^{38}\).

Meanwhile, the entities engaged in the cohesion policy evaluation system are:

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\(^{38}\) All of these documents had their counterpart in the programming period 2007-2013. The authors of this chapter decided to refer to the most current solutions in the cohesion policy evaluation system.
The National Evaluation Unit (*Krajowa Jednostka Ewaluacji* [KJE]), responsible for co-ordinating the system (including creation of the appropriate system documents and guidelines on conducting evaluation and managing the system using horizontal management tools), appointing, servicing and participating in the Steering Committee for the Cohesion Policy Evaluation Process 2014-2020 as well as monitoring the work of evaluation units and implementing the horizontal evaluation process at the level of the Partnership Agreements (PA);

**Institutions managing operational programmes**, in which the appropriate **evaluation units** are responsible for conducting evaluations at the level of the Operational Programmes (OP);
• Institutions on lower levels of OP implementation, to which some of the OP evaluation duties are delegated;

• The Steering Committee for the Cohesion Policy Evaluation Process 2014-2020, which is a forum for co-ordinating the system, run by the National Evaluation Unit and appointed from among the OP evaluation units;

• Steering Groups for OP evaluation – appointed by the OP evaluation units as required;

• Steering Groups for the evaluation of selected areas and thematic issues as well as horizontal analyses on the level of PA – appointed as required by the National Evaluation Unit;

• Committees for monitoring OP implementation, which monitor the implementation of evaluation plans and recommend topics which should be subjected to evaluation, as well as examine study findings;

• The Committee for Co-ordinating the Partnership Agreement, responsible for horizontal issues in the cohesion policy evaluation process 2014-2020;

• Social Partners, who should be included in the evaluation process as well as in the work of the monitoring committee and, above all, in the consultations of evaluation plans.

Besides the National Evaluation Unit, the most important institutions in the system are the OP evaluation units.

In the current programming period, a paramount principle is the functional independence of evaluations performed, which guarantees that the evaluation process is objective and independent of the institutional entities responsible for programming and implementing the given intervention. This is possible in three instances: (see: Guidelines on the evaluation of cohesion policy – the financial perspective 2014-2020: 8-9):

1 When the performance of evaluations is assigned to experts or persons outside the institutions responsible for programming and implementing intervention;
2. When the performance of evaluations is assigned to persons functioning in a given institution, but located in another department to the entity responsible for programming and implementing a given OP or part of it;

3. When evaluation is performed by persons functioning within a department responsible for programming and implementing a given OP or part of it, providing that there is a strict separation and clear description of their duties.

This is an important principle, particularly in the light of our discussion on using inspirations from the evaluation system for the purposes of IA. It ensures the impartiality of the evaluation process for public intervention. It is important that units carrying out research are not under any pressure from the departments responsible for implementing a programme. It is worth re-emphasizing in the context of legal and institutional solutions for the IA system, which currently relies almost entirely on in-house analyses. In addition, the principles defined for implementing IA do not deal with the issue of independent analysis. In practice, IA is assigned to the government workers who are functionally responsible for preparing regulations. This impedes the impartiality of evaluation processes, affects the quality of conclusions based on appropriate evidence and necessitates adequate analytical potential in ministries.

The institutional system of cohesion policy evaluation is decentralized to the regional level. Although this is not an optimal solution for the law-making system, it is worth following its example in terms of its clear division of duties between the central body for co-ordination and management of the system and the ministerial departments. In the IA system, currently undergoing improvement, it still is not clear which institution oversees, monitors, expands and analyses the whole system. The remit for managing the process is divided between the Chancellery of the Prime Minister and the Ministry of Economy. It would seem worth clearly defining the entities (on a departmental level) whose main task would be to build and co-ordinate the system. At the same time, a very important element in the evaluation process is the level of participation and the growing significance of stakeholders, not only at the consultation stage, but also through monitoring committees, whose experience could particularly benefit ministerial RIA teams. A second important body,
as regards possible borrowings, are the evaluation units at ministerial level whose expanded potential (based on methodological training, post-graduate studies and publications) could support analysts dealing with RIA.

A further institutional solution, which could be used in building the institutional system for RIA, is the activity of the national observatory and regional observatories appointed under the National Regional Development Strategy 2010-2020. The role of these centres is to create an analytical-diagnostic system for public policy and to partly consolidate in-coming knowledge from various sources (the results of evaluations together with other studies and analyses, data issuing from various institutional records, data from the Central Statistical Office etc.) The observatories are intended to fuel the process of creating and implementing development policy through delivering data of suitable quality. It seems that they could be an important analytical support for IA – optimizing assessment of functioning laws (ex post RIA), providing diagnostic data for ex ante RIA (especially regarding the impacts of regional regulation) and assist at the variant analysis stage of regulatory tests (RT).

A particularly important principle in the evaluation system, which could be transferred to the IA system, is functional autonomy. The institutional separation of the process of creating an intervention from its evaluation ensures, above all, the impartiality of the RIA process.

5.3. Stakeholders in the evaluation process

Both the execution of public policy and law-making affect a wide spectrum of interested parties, such as: policymakers, high-ranking officials and creators of interventions, public sector managers, beneficiaries and potential beneficiaries of intervention, lobbyists and interest groups, experts and academics, media and public opinion. All these people, communities, institutions, organizations and offices, can influence a given process and are interested in its effectiveness. The influence and activeness of these parties is diverse (Haber 2014), but the more they are engaged in the process, the greater the chances that it will be useful.

Many approaches to evaluation have arisen which rely on input from stakeholders in the evaluation process (participatory evaluation, utilization-focused
evaluation, participatory action research and many others). Naturally, the engagement of multiple parties has its benefits and drawbacks. The latter can be reduced, provided that the process is conducted skillfully (Cullen, Coryn and Rugh 2011). There are plenty of handbooks\(^\text{39}\) and reference books (e.g. Pankaj, Welsh and Ostenso 2011) as well as tools (e.g. MEASURE 2011) to aid this process.

In Poland, the cohesion policy evaluation process has involved numerous partners right from the outset, and over time, in subsequent programming periods, this number has risen. Here, we will focus solely on the most important partners, who include:

- the European Commission;
- the National Evaluation Unit;
- institutional partners;
- the academic community;
- the Polish Evaluation Society;
- stakeholder groups focused on the utilization of results;
- social partners.

The main partner in the evaluation process is the European Commission, which requires Poland, as a beneficiary of EU funding, to evaluate its expenditure. Besides this legal obligation, the European Commission has, from the outset, attempted to support this process through appropriate training (including funding and access to foreign expertise), documents (guidelines, the \textit{Evalsed} handbook\(^\text{40}\)), and methodological assistance (emphasis on using the most rigorous research methods). It is worth remembering that RIA is also an area where the Commission offers numerous tools, methodological handbooks and guides on good practice\(^\text{41}\).

The main stakeholder in the cohesion policy evaluation process in Poland is the

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\(^{41}\) \url{http://ec.europa.eu/smart-regulation/impact/planned_ia/planned_ia_en.htm}, reading 02.02.2015.
National Evaluation Unit, based in the Ministry of Infrastructure and Development, whose role we mentioned earlier. Without doubt, an important element in the efficiency of evaluation of EU funds in Poland has been the ability to introduce a strategic vision of system development in Poland and to intensively support the building of an evaluation culture during the last 10 years. Over the last decade, the National Evaluation Unit has issued numerous publications – diagnostic, methodological and analytical; it has given training for diverse interest groups; it has managed the website ewaluacja.gov.pl, the Evaluation Research Database and the System for Implementing Conclusions and Recommendations; it has also organized the most prominent evaluation conferences in Central and Eastern Europe. Thanks to this distinct unit, which strategically manages and skillfully co-ordinates the whole process, Poland has, in the space of just a few years, become a partner in creating this process, and is itself setting the trend in conducting evaluation of cohesion policy funding in the EU (it possesses, among others, the most decentralized system of performing evaluation and the most advanced system for implementing recommendations).

A very important partner in the process is the Polish Enterprise Development Agency (Polska Agencja Rozwoju Przedsiębiorczości [PARP]). This is a government agency of the Ministry of Economy maintained by national and EU funds, whose task is to promote enterprise and innovation in small and medium enterprises as well as to support regional development. In the 2007-2013 period, the Polish Enterprise Development Agency used EU funds to perform OP activities. It is a strategic partner for the Ministry of Infrastructure and Development in organizing nationwide evaluation conferences and conducting the most methodologically advanced evaluative studies based on counterfactual methods. It shares its knowledge on conducting research via publications prepared by its evaluation units, to which it invites the most prominent world experts.

In the cohesion policy evaluation process, an essential element is the support of the academic world. Academics not only provide training and post-graduate studies in evaluation (more on this subject in the sub-section on building administrative potential), but they themselves also perform diagnoses, evaluations and realize important projects assessing the whole system. Indeed, they often function on the
borders of both worlds: academic and public, linking them and providing essential theoretical and methodological knowledge of evaluation practices. They also frequently conduct studies themselves.

The Polish Evaluation Society (Polskie Towarzystwo Ewaluacyjne [PTE]) is an organization which brings together both evaluation theorists and practitioners, those commissioning and those performing research, academics and students. The Polish Evaluation Society is autonomous in terms of its programme and financially independent of government institutions. Its objective is to build an evaluation culture, disseminate evaluation in Poland as a democratic and social process, organize and integrate evaluators, and enrich knowledge on evaluation in order to ensure high quality research and evaluation activity. The Polish Evaluation Society runs projects and training courses, shares experience with other societies, institutions and centres, organizes meetings and seminars, and offers consulting and advisory services. In 2008, among a wide range of stakeholders, it set the standards which are now commonly used in evaluation. The main asset of the Polish Evaluation Society is that it is the only organization which integrates so many communities and which brings into the main discourse less attractive, less well-funded types of evaluation than cohesion policy evaluation. In Poland, there is no organization which brings together people dealing with RIA and, considering the diversity of this tool (social impact assessment, environmental impact assessment etc.), such an independent body encompassing the many facets of the IA process and representing Polish experience on the international stage could prove to be an exceptionally valuable form of support.

In the system of cohesion policy evaluation, a body of people also exists – including policymakers, high-ranking officials and creators of intervention as well as public sector managers – for whom utilizing evaluation results is key, but who do not have the opportunity, apart from meetings of monitoring committees and steering groups, to individually analyse the results of such studies, owing to limited time resources.

In the new programming period 2014-2020, a distinct role is played by social stakeholders – non-government organizations or associations which bring together interest groups. Their engagement begins at the stage of consultations for evaluation plans, which should specify the method of co-operation with this category of
stakeholders at each level of administration. Social stakeholders can be members of monitoring committees. A particularly important element of including them in the evaluation process is to give them access to research findings. This allows for better use of findings by think-tanks and NGOs, and thereby raises the role of evaluation as a tool for collecting knowledge that is not only highly specialized, but also accessible to the public, and thanks to this co-operation – better understood.

The above list of stakeholders clearly indicates the multi-dimensional engagement of various groups in the evaluation process at consecutive stages. This helps stakeholders to identify with the evaluation community through the broad exchange of opinions and the acceptance and use of results in evidence-based debate. Such engagement, which goes beyond purely formal social consultation, is also key to the IA system. Only with this kind of engagement will it be possible to take full advantage of the system support tools to build a clear and beneficial law.

5.4. Building administrative potential

The factors and determinants of learning in Polish ministries are described in the project report: Learning Ministries, in which the authors pay particular attention to the role of knowledge accessibility, stimuli, relationships with surroundings and tools for adapting changes (Moźdzeń et al. 2014). With the results of this diagnosis in mind, it is worth emphasizing several practices which could be taken from the evaluation system and used to great effect in the system of IA.

The most important educational support for administrative workers in the field of evaluation is the Evaluation Academy, which has been organized seven times already by EUROREG – University of Warsaw. These are year-long post-graduate studies financed by the Operational Programme for Technical Support (and thus free for its participants), created on commission from the Ministry of Infrastructure and Development. These studies aim to strengthen modern management processes in the Polish public sector through educating public sector workers in the field of effective management, collaboration and utilization of evaluation in managing the development of the country. They provide participants with the latest theoretical, methodological and empirical knowledge in the field of public policy thanks to
collaboration with key European and world researchers and evaluators. Classes are delivered in the form of workshops using the mind-mapping method as well as practical project work. A great merit of the studies is that many ministerial managers and directors have completed them, which directly translates into understanding and utilizing evaluation in delivering public policy.

So far, the most important event in the evaluation calendar is the Evaluation Conference co-organized by the Polish Enterprise Development Agency and the Ministry of Infrastructure and Development which has taken place annually since 2005. From the outset, representatives of the European Commission have always taken part. The prominence of this event is testified by the lectures given by many leading evaluators of world renown. And although the conference programme always corresponds to the particular stage in the EU fund programming period, in terms of methodology – through reference to key scientific reports on a European scale and practical workshops which often accompany the conference – it sets the standards in many areas beyond that of cohesion policy.

Another support for public administration in the cohesion policy evaluation process is the free handbook prepared by a National Evaluation Unit team in 2012 entitled: *Evaluation: a handbook for public administration workers*. Here, the reader can find the theoretical and methodological groundwork of evaluation, as well as practical information on how to commission well-formulated and reliable studies, how to evaluate and select the best offer, and how to utilize the study findings. This material is available on the Internet and is readily used by workers in evaluation units, as the ability to commission and utilize research work requires time and skill. The handbook was written by persons with extensive experience in public administration work, and their knowledge and experience is delivered in a way that is accessible to public servants.

A very important element in building administrative potential is the co-operation of evaluation units in organizing regional conferences, seminars and training courses. Meetings of monitoring committees and steering groups are also organized regionally. Even in a system as extensive as that of cohesion policy evaluation, this

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makes it possible for those engaged in the system to get acquainted, and permits more open relations. This is particularly important as evidence suggests that many analysts working on RIA lack direct contact with staff from other ministries who have similar experience.

As mentioned above, the National Evaluation Unit has created a set of tools for the cohesion policy evaluation system. Similarly to the website of the Government Legislative Centre, the website ewaluacje.gov.pl contains the latest news on the subject, basic information and an extensive archive of system documents and analyses. A particularly valuable tool from the point of view of RIA (especially in the context of assessing the functioning of laws, or ex post RIA) is the Integrated System for Managing Conclusions and Recommendations, which supports the use of conclusions from evaluation. Each recommendation created on the basis of analyses is entered into the system and classified appropriately in terms of priority; the course of its implementation can then be tracked on-line. It is worth stressing that these tools are continually being improved.

In the light of the information presented here on the cohesion policy evaluation system, we can recommend the widest consolidation of the intensively improved IA system with the evaluation system, both in terms of tools and in the centres themselves and their staff. This view is supported by experience from abroad, where for a long time already, IA and evaluation have functioned together in many dimensions.

With regard to IA analysts, it would seem a priority to conduct a greater number of training sessions on subjects such as improving the ability to define a problem, creating indicators for achieving targets, describing the impacts of normative acts on competitiveness and the labour market, and particularly the social impact of changes in the law. All of these elements have already been repeatedly analysed, explained and set out in publications and training courses on evaluation. However, there needs to be greater encouragement of interested persons to participate in evaluation events, to read existing literature, while at the same time preparing new booklets, handbooks and reference books on RIA and adapting the programme of evaluation conferences and studies in methodology for use in law-making. Attention was drawn to the development of methodology in this field in the Operational Programme Knowledge Education Development 2014-2020, and following its
In this new programming period it will be easier to fund such activities.

Meanwhile, for RIA staff teams, co-operation among ministries is important. Here once again, it would be useful to have a description of the above cohesion policy evaluation system. Co-operation between RIA teams and Ministerial evaluation units would be particularly helpful. It is equally important to learn from the experiences of the European Commission – in this respect it is worth considering inviting representatives of the Commission to national events in order to share knowledge as well as to apply IT tools. As we mention earlier, this would be an important stimulus for development in the Polish evaluation system.

5.5. Utilizing the potential of external entities

The majority of evaluation studies in Poland are performed by a wide range of external specialists. Out of nearly one thousand evaluations appearing in the Database of Evaluation Studies carried out in the years 2002-2014, only 3% had an internal character (that is, they were conducted by staff of the institutions planning a given evaluation). The large majority of studies are contracted to external entities, which specialize in the area of evaluation and offer research and advisory services to the public sector. The market has developed in recent years in response to demand, which has grown together with Poland’s large-scale utilization of EU funds.

There are currently over 150 entities on the market with experience in performing evaluation studies. It is worth pointing out that this is not a uniform group. It includes, among others, universities, research institutes, non-government organizations and private firms. Estimates from the Polish Evaluation Society show that in 2011 evaluations, as well as other studies performed for the public sector, were dealt

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44 As of 17 December 2014 r., ibid.

45 Based on the Database of evaluation studies, Ministry of Infrastructure and Development (Bazy badań ewaluacyjnych MiIR), ibid.
with by around 11,000-13,000 people\textsuperscript{46}. A large part of this group consisted of field researchers (interviewers, recruiters, co-ordinators), but there is no doubt that we are currently dealing with a well-developed market for contractors preparing studies for public entities.

Out sourcing evaluation studies to those specialized in the field has three major benefits;

- it objectifies the evaluation process;
- it facilitates access to specialist knowledge;
- it increases the realization potential.

Objectivity is one of the chief principles which co-ordinators of the evaluation process expect to be upheld. Lack of impartiality undermines the sense of any kind of study, analysis or assessment, which is intended to improve the implementation of public policy. A partial guarantee of objectivity in performing the evaluation study is the requirement for transparent reporting of study findings (all evaluation studies must be made public). However, above all, the objectivity of a study is guaranteed by the requirement to engage external entities (excepting a conflict of interests) in the process of analysing and evaluating public policies and programmes (Guidelines…).

Access to specialized knowledge is the second important aspect of contracting evaluation studies to external entities. The evaluation study market has trained and mobilized, besides research firms, an extensive network of experts generally from academic backgrounds. Involving these groups of experts in the research process has made an exceptional and undeniable contribution to the quality of evaluations prepared, and thereby also to the quality of public policy analyses. The skills of persons joining expert teams are checked each time by those commissioning the research. This method makes it possible to select the most suitable experts for a given research issue. The public administration rarely have a team of internal experts at their disposal who are able to provide for all the informational needs arising during the drafting and evaluation of new solutions. Obtaining this knowledge outside their

own institution in the form of external expertise is sometimes the only option.

After all, even if we assume that the Polish public administration possesses sufficiently qualified and experienced staff, there remains the problem of their limited availability. There is not generally a sufficiently large group of people who are able to devote themselves to preparing analyses. It is rare for public departments to possess their own well-developed analytical units. Moreover, public administration bodies have practically no resources to enable them to perform field studies (either quantitative and qualitative). For this reason, again, the performance of research work must be commissioned to entities who specialize in this area.

The system in which the above-mentioned research services are largely contracted out is not, however, without its limitations. Firstly, the performance and utilization of each study takes time. The time devoted to actually performing a study needs to be extended by the time dedicated to finding a contractor. This can be particularly lengthy in the case of procedures undertaken in line with the Act of 29 January 2004 – Public Procurement Law (in the area of evaluation studies this affects the majority of projects). Secondly, research services cost money, and this makes it necessary to find additional funds and resources in the budget to cover these costs. Thirdly, contracting and utilization of studies requires adequate preparation, skills and knowledge – both in a purely technical sense (application of the Act of 29 January 2004 – Public Procurement Law, procedures relating to settlement etc.), as well as methodological (knowledge of research methods).

The process of creating RIA is quite different – here the model of internal analysis dominates. It is rare for RIA to be contracted to external entities. This reason for this situation no doubt lies in the limitations described above. It might be possible, however, to eliminate these problems at least to some extent, if the experience of public administration in public policy evaluation could somehow be used. A valuable resource in terms of experience is also the qualified and mature market of entities performing evaluation studies. The competence of these entities is sufficient to respond to most needs that arise during the preparation of individual RIA studies.

5.6. Applied research methods, techniques
One of the main objectives of evaluation studies is to find out whether public interventions bring the intended effects, and to understand the mechanisms which allow (or prevent) this. The knowledge obtained in this area is intended to promote the continuous improvement of interventions in line with the concept of evidence-based policy.

The tasks assigned to evaluations are reflected in the methodologies used in the studies. The methods and techniques used in evaluation derive mainly from the set of tools developed in the broadly defined social sciences, including economics (Stern 2005). Meanwhile, it is worth noting that many research approaches and methods used nowadays in the social sciences have been developed in response to the same challenges which evaluation itself faces (Rossi et al. 1999). This particularly applies to estimating impact, which involves determining causal relationships. In this context, evaluation attempts to find out to what extent a public action (regulation, programme or project) has led to (or might lead to in the future) resolving a defined socio-economic issue.

The methodology of evaluation studies used for estimating the outcomes of programmes or, in other words, determining the impact of intervention is rooted in the counterfactual approach. This approach attempts to help predict what would happen if the given intervention was not implemented, and what would be the situation of supported entities if in reality they were not aided by the given public programme – would it be the same or worse, and to what degree? And if worse – how much so? Thus the counterfactual situation is sought – a state unobserved in reality, but possible hypothetically (Holland 1986). It is worth noticing that analysts performing RIA face the same problem in attempting to estimate the ‘zero scenario’ for regulation, i.e. the state which would occur if no changes were made to the regulatory environment.

The most classic methodological solution, representing a practical application of the counterfactual approach, is the experimental method, which randomizes groups receiving treatment and control groups. Entities are assigned to one of these
groups purely at random. For this reason, the eventual difference between the two groups – observed after providing assistance to one of them – can be identified as the impact or effect of the given intervention. It should be noted that using the experimental method in the field of public policy is limited. This is due both to the specific features of the experimental method, including the complexity and costs of the research method itself, as well as the ethical issues. Without going into the details of the debate on the validity of using experiments for evaluating the effectiveness of public policy (c.f. Donaldson and Christie 2004), it should be noted that they are the point of reference for other approaches applied in estimating the impacts of evaluated actions (Bryson et al. 2002).

Owing to the limitations of experimental methods, other approaches are intensively being developed in parallel, which on the one hand include some of the useful aspects of the experimental method, and on the other, minimize its undesirable features. These techniques and research methods, sometimes called quasi-experiments, take on the challenge of anticipating unobserved, hypothetical counterfactual states (usually relating to a lack of public support) through using the appropriately defined reference points. These points might be comparison groups chosen using statistical techniques. In contrast to experimental methods, in quasi-experimental techniques the control group is usually chosen ex post, i.e. following the implementation of the given intervention.

Since the 1980s, techniques relating to the statistical selection of control groups have been gaining popularity in this area. These techniques include approaches such as the method of matching groups on the basis of a defined vector of variables (matched samples), among which the technique of propensity score matching, created in 1983 by the statistician Paul R. Rosenbaum and Donald B. Rubin, has become particularly popular. Other methods used include instrumental variables, difference in difference and regression discontinuity design. Methods dedicated to the quantitative estimation of impacts are constantly developing, both in theoretical aspects and in implementation – most of the applied analytical techniques are incorporated into the most popular IT packages for statistical data analysis.

Without going into technical detail on individual methods (more can be found in a guide), it should be noted that estimating impact is an important but not the
only challenge of evaluation studies. Estimating the impact of intervention allows us find out whether a given government action works or not. The answer to this question usually takes the form of a statistical report, indicating the direction, magnitude and significance of a statistically estimated effect. This knowledge, essential for determining the effectiveness of a given action, is not, however, sufficient for a full assessment of the action in question (White 2011). It does not, after all, indicate the cause of effectiveness (or lack of effectiveness) of the analysed intervention. The question thus remains as to why the diagnosed impact occurred or did not occur. The matter is complicated even further if the evaluation is prospective, i.e. when an attempt is made to estimate the effects of actions which are planned for the future. From this point of view, it is key to understand the mechanisms of how the intervention works. This issue is integral to the process of evaluating government actions.

In terms of evaluation studies, every public intervention can be understood as a specific theory of change. Decision-makers and managers of public programmes identify the problem areas requiring intervention in a given area of state functioning. These are most often typical problems relating to the socio-economic situation of citizens (e.g. unemployment) or economic entities (e.g. low competitiveness of enterprises). Regardless of the subject matter, the designed programmes and actions are always, in their own way, a theoretical construction on how a given public intervention will affect the socio-economic reality. For example, decision-makers demonstrate that unemployment can be partly solved by improving the skills of unemployed people, e.g. by sending them on an appropriate training course. Without considering the theoretical basis for this claim, it should be noted that implementing any specific intervention involves the assumption that the given solution will be effective:

- at a given time;
- for a specified target group;
- with available resources;
- in a given economic, institutional and legal environment.

Moreover, it assumes that the set of specific actions creating a given public programme allows target groups (beneficiaries) to obtain the necessary resources
(in the example of unemployment, the resource is knowledge), to enable the diagnosed problem to be resolved. Significantly, the majority of these assumptions are not made explicit. In the process of drafting public policies, it is typically taken for granted that a given government action (event A) is the essential and sufficient means of achieving a certain positive change in the target group (event B). Besides this, it is usually accepted that this change in the assisted group will directly influence the wider socio-economic environment (event C).

An example of this logic is the public support provided to enterprises under EU programmes (e.g. grants from the Operational Programme Innovative Economy –OP IE). In the case of many actions in the framework of OP IE, the grounds for granting public support is the diagnosis of low innovativeness and competitiveness among firms operating in Poland. The low competitiveness of firms limits their development and has a negative influence on other aspects of the nation’s functioning (e.g. unemployment levels). The source of the problem is generally put down to a lack of funds for implementing strategic investments in enterprise – e.g. the purchase of modern machinery and equipment, expansion of R&D centres, performance of research work etc. EU programmes and the support given through them (event A) are supposed to solve the problem by enabling companies to carry out the appropriate investments that will directly influence the level of their innovativeness and competitiveness (event B). Meanwhile, it is expected that by achieving an adequate ‘critical mass’ the effects of EU support will impact not only on its beneficiaries but on the economy as a whole (event C) – e.g. it will lead to a reduction in unemployment and influence the nation’s overall economic growth etc.

Of course, this logic – in terms of intervention programmes – is often over-simplified. In reality, the relationships between events A, B and C are not clearly defined, being co-reliant on many inter-related factors. Public interventions are complex actions, realized in a complicated socio-economic, legal and institutional environment. In order for the scenario ‘A causes B and B causes C’ to actually happen, many assumptions and conditions must be fulfilled. It is usually impossible to find any reference to them in official programme documents. They often remain in the heads of decision-makers and those responsible for creating the programmes (Pawson and
Tilley 1997). For this reason, one of the tasks of evaluators is to reconstruct the logic of the intervention analysed.

By this logic we mean the set of related actions, assumptions and conditions which are critical for achieving the aim or aims of a given undertaking. The assumptions relate to the dependence between elements of the planned intervention and the anticipated effects (e.g. it is assumed that grants for purchasing new machinery and equipment will lead to greater innovativeness in enterprise). Meanwhile, conditions relate to the resources and other factors which allow an adopted assumption to be fulfilled (e.g. one of the critical conditions for investment in innovation is a correctly designed and functioning system for selecting projects). One of the key tasks of evaluation, after reconstructing the logic of the intervention being evaluated, is to verify to what extent these assumptions and conditions have been fulfilled in practice. If any of them were inaccurate, the causal relationship established at the programming stage may not occur in reality.

The theoretical frameworks to the above approach have been developed during the course of over 40 years of work in the area of theory-based evaluation. Evaluations using this approach analyse in detail, and then verify, the mechanisms (theories of change) which, according to public-policy makers, make the actions they design effective. In practice, theory-based evaluation consists of two inseparable and consecutive stages (Leeuw 2012). The first – conceptual – involves articulating the full logic of the intervention. The second – empirical – consists in testing the adopted logic.

The testing stage includes, among others, analysing the impact of an intervention using the above mentioned methods. Both at the stage of reconstructing and of testing the intervention theories, a variety of methods and techniques are used for collecting and analysing data – both qualitative and quantitative. The theory-based approach does not favour any method in particular, but even recommends using mixed approaches (White 2009), in which qualitative methods are supplemented with knowledge from quantitative data analyses, and include both existing data and

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data collected in the field. The key to correctly reconstructing the intervention theory, and then verifying it, is to understand the context for realizing a given action, the environmental and legal conditions, and the various inter-institutional relationships. Such complex knowledge is rarely given directly, and therefore it is necessary to obtain it through supplementary studies and analyses.

The approaches mentioned above can be successfully incorporated into the methodology used in performing RIA. The great majority of laws brought into force are nothing more than solutions which are implemented in order to realize specific public objectives. Applicant authorities, who establish specific regulations, have a view to achieving specific legal impacts. In doing so, they adopt specific assumptions on how the changes will impact on reality, particularly the individual entities and groups affected by the regulation. Experience shows that these assumptions are sometimes mistaken or incorrectly identified. Imperfections in specific regulations can be verified only after the individual laws come into force. It is often necessary to correct these, e.g. through making appropriate amendments to the legal acts.

Finally, recent changes – which incorporate ex post RIA in the IA process – have made it necessary to use methodological approaches which enable measurement of the actual effects of regulation right after they are brought into force. In order to do this, the use of methods which are based on evaluation studies seems unavoidable.

5.7. Using knowledge from research studies

The analyses and research conducted under RIA should feed the process of preparing a given regulation and influence its eventual shape in order to create a well-designed law. But as studies show, the process in which target users make use of this research knowledge is complicated, as knowledge from research competes with information from other sources (Weiss 1979: 427-428). It is therefore essential to create suitable management mechanisms for knowledge collected during RT and RIA, ex ante and ex post. With this in mind, the solutions adopted in the cohesion policy evaluation system offer a valuable source of inspiration.

Moreover, in terms of organizing the process of conducting RT and RIA, it is advisable to draw on the experience of the participatory and developmental evaluation
models (Patton 2008: 137-138, 182-183, 277-282). These are models which focus particularly on the close relationship between the research process and the process of continual change, while at the same time engaging recipients of the studies in the research process. The process of utilizing knowledge from research is influenced by factors such as (Ferry and Olejniczak 2008: 8):

- the profile of the research recipients and the policies being evaluated;
- the adopted research approach (involving or not involving the research users in the evaluation process);
- the quality of the evaluation report;
- the timing of the evaluation study.

Regarding the last point, it is assumed that good timing means conducting the study in a time framework that allows the findings to be used in the decision-making process (Saunders 2014). Additional factors might include the ability of an organization to adapt (ibid.), the context (the degree of attitude polarization, Contrandriopoulos and Brouselle 2012: 70) as well as the cost and benefits of obtaining knowledge (ibid.: 64). These factors should be taken into account in planning the RIA process.

The process of utilizing knowledge gained from evaluation has been institutionalized in the EU cohesion policy implementation system in Poland in the form of the Integrated System for Managing Findings and Recommendations as well as by setting up a public database of evaluation studies. The system was established in response to the need for co-ordinating the process of implementing the recommendations from evaluation. It was also intended to form the basis of drawing strategic conclusions from the evaluation process in order to improve the public interventions planned.

The three main stages of the recommendation management process are:

48 The authors draw attention to the importance of context in the process of utilizing evaluation findings. The greater the polarization of attitudes among potential users of knowledge, the greater likelihood that the knowledge will be utilized.

• agreeing the scope and method of implementing recommendations through consulting those mainly affected;
• implementing the recommendations;
• monitoring the implementation stages.

The system for managing the findings and recommendations along with the evaluation database (in which studies are divided into thematic categories) makes it possible to initiate and conduct evidence-based debate on future interventions and the direction of changes to implemented policies.

In the context of effectively using evaluation in the decision-making process, an inspiring experience from implementing EU cohesion policy in Poland is the process of OP *ex ante* evaluation. This process, in the case of programmes for the 2014-2020 period, has taken on a partly participatory character. The participatory model recommended for the programming period 2014-2020 envisages evaluation running parallel with the programming process. This enables evaluation to be included at an early stage of programming in order to utilize the strategic findings in the process of preparing the programme. This requires close cooperation between evaluators and those responsible for programming, in order to agree and implement changes resulting from the research process in the intervention logic adopted in the programme. Apart from the high utility of the recommendations and their wide usage in practice, participatory evaluation also has the advantage that it promotes the development of evaluative thought (Patton 2008: 172) among participants in the *ex ante* assessment process who co-operate closely with evaluators. As Michael Q. Patton points out, participatory evaluation is a grass roots process, in that the main players are the participants themselves while the evaluator performs the role of an advisor, co-worker, teacher, facilitator (ibid. 172).

It is also worth noting that, in the dynamic conditions of the programming process, in which not only evaluation has an impact, but also external conditions,

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51 This concerns the changing EU context (adoption of regulations and other documents which affect pro-
ex ante evaluation can take on the form of developmental evaluation, accompanying the programming process in adapting to changing circumstances. Moreover, developmental evaluation envisages changes not only in the programme, but also in the wider organizational environment, which influences the programming process (ibid: 184). In this sense, it is particularly useful in organizations which are changing due to new procedures and/or new organizational structures, or in dynamic, open and adapting environments which are flexible and able to respond to changes in their surroundings.

All in all, ex post evaluation conducted under EU cohesion policy is an example of evaluation which provides information on the effects of implemented interventions. In reference to these evaluations, the experience of EU cohesion policy indicates the need to maintain a greater independence of evaluators than in the case of ex ante evaluation. This relates to the role of the evaluator who performs the overall assessment of outcomes after implementation of the programme is completed. The results of ex post evaluation should feed the evidence-based debate with the participation of a wide range of stakeholders in cohesion policies. Shared reflection on the effects of completed interventions should help activate the process of change in subsequent programming periods.

The above experience in EU cohesion policy evaluation points to three possible ways in which good practices from evaluation can be applied in RIA. Firstly, experience from ex ante OP evaluation shows the great usefulness of the participatory evaluation model for the RIA process, which integrates the process of preparing regulations with the process of evaluating them in the form of RT and ex ante RIA. Correct usage of RIA at the stage of creating regulations requires close co-operation between those responsible for preparing legal acts and those conducting RT and ex ante RIA (while maintaining the functional autonomy of both parties). This allows for the effective use of findings from analyses and research, in such a way that they influence the final shape of the regulations. An additional benefit of using the participatory model is that participants in the process are able to learn about the research approach. It is possible that participation in preparing regulations will also

gramming on a national level) as well as changing national conditions (adoption of high priority documents, including the Partnership Agreement, internal and external consultations on programme drafts, the political context).
lead to changes in the organizational environment which will allow more efficient use of findings from research.

Secondly, for effective management of knowledge gained from the RIA process, it is necessary to create a system in which the analyses and studies conducted can be gathered and made available – a model for this could be the Integrated System for Managing Findings and Recommendations and the database accompanying it. Moreover, gathering data in thematic areas (e.g. impact on public finance, competition and entrepreneurship, the labour market, regional development, the environment) allows for deeper and more complex analysis of the impact of regulation on given areas of socio-economic life. We can imagine the combination of such a database with the database of findings from cohesion policy evaluation studies. This would create an information resource that could form the basis of public, evidence-based debate on the impact of public intervention (implemented via both regulations and public programmes) on socio-economic life in Poland.

Thirdly, an element supporting evidence-based debate is ex post IA, which should deliver objective information on the impact and effects of adopted regulations, feeding the process of regulatory change. In order to ensure correct usage of knowledge issuing from ex post regulatory IA, a wide range of stakeholders should be engaged in debate on the findings of ex post RIA and the possible changes that could be made to regulations in order to improve the quality of Polish law.

5.8 Summary

Analysis of the development policy evaluation process in Poland allows us to identify several potentially interesting solutions which could be used to develop the regulatory IA system.

The first important need is to create the appropriate system framework which will not only show what needs to be done, but also how and by whom. Public administration requires a clear remit and concrete institutions responsible for a given task. In the case of evaluation, there has always been one entity responsible for creating the system framework, developing potential and co-ordinating the system (National Evaluation Unit). When it comes to IA, these functions (although in a much narrower field) are
performed by two institutions (the Chancellery of the Prime Minister and the Ministry of Economy). Clearly placing the necessary competences in a single unit (equipped with the corresponding powers and staff) would simplify the system and could help improve the quality of its functioning. It would be clear who is responsible for resolving problems that arise. Moreover, in ministries and central institutions it would seem advisable to place the competences for performing regulatory IA in designated units (modelled on the evaluation units). This would improve the chances of building a lasting and competent structure responsible for this aspect of government work. Disassociating these units from the scope of duty of regulators would also increase the autonomy of the whole process (regulators do not evaluate themselves).

Besides clearly defining the remit of key entities, it is also necessary to consider other stakeholders in the process. In the framework of evaluation the range of stakeholders involved is very wide: the European Commission, representatives of monitoring committees (representing the public community), experts and academics. The Polish Economic Society has also been operating for the last 15 years. In the case of IA, the social dimension is limited to performing obligatory public consultations, and as a result, the process is almost entirely limited to the administration alone. In the short term, this situation is convenient for the administration owing to the lack of community control on its activities and because it minimizes the danger of being criticized for ‘unclear relations’. In the longer term, lack of openness to discussion and closure of RIA in the realms of the administration alone can become the main factor which blinds the whole process.

The next important need is to create administrative potential in the administration itself. Building a competent team of staff (both in terms of preparing internal analyses within the institutional framework and contracting some or all analyses to outside expertise) requires years of effort. In the field of evaluation, reliable system solutions have already been devised which are now permanent elements of the system (the annual evaluation conference – a 10 year tradition – the Evaluation Academy, which is a free study course for public administration staff – six consecutive editions, and the regular meetings of the Evaluation Team, which is a forum where practitioners can exchange knowledge and experience). Many of these solutions could be used in building a system for regulatory IA.
One of the greatest successes of the evaluation system in Poland has been the creation of a strong supply market (firms and institutions which carry out research commissioned by the administration). In Poland there is a broad market of external entities competing for clients in terms of both the price and quality of services. The expertise of some of these entities is comparable to (and often exceeds) that of foreign firms which provide services for e.g. the European Commission. Bearing in mind the much lower cost of services in Poland, this potential could be taken advantage of in RIA. A further argument in favour of administrations outsourcing some analyses is the constant shortage of administrative staff (particularly teams of analysts) and the possibility of obtaining specialist knowledge in certain areas. Outsourcing some tasks requires a high level of expertise from the contracting party (applying public procurement law for procuring knowledge). This kind of expertise is already possessed by government staff dealing with evaluation.

It is interesting that the field which should be governed by a uniform approach, and thus methodology of research into the impacts of intervention, is currently the most diversified. Regulatory IA is turning into almost exclusively analysing costs and benefits, performed on the basis of simple statistical and analytical work using quantitative data. The IA toolset is systematically expanding, and yet only a small number of approaches are used which have been applied for years in evaluation. It may be particularly valuable to incorporate theory-based approaches to the methods applied in RIA. Analysing a theory of intervention or a given regulation, and then testing it, should be an integral element of preparing RIA. However, use of these approaches means including a wider range of research methods and techniques, both qualitative and quantitative.

In terms of utilizing knowledge from research studies, evaluation provides inspiration in its use of the participatory evaluation model. Participatory evaluation allows close co-operation between public officials responsible for preparing public interventions (in this case regulations) and those responsible for the IA process for this regulation in the socio-economic and institutional sphere (irrespective of whether these are internal or external entities). This co-operation eases the utilization of research conclusions. For effective utilization of knowledge issuing from the studies conducted, it is necessary to provide the appropriate system for informa-
tion exchange, build databases of all analyses conducted under RIA and create the institutional base for running debate on the effects of public intervention based on evidence (study results).

The above considerations point to the many opportunities for using the experience gained from building and managing the evaluation process in Poland in the field of the rapidly developing system of regulatory IA. Most of the solutions presented could have an analogical counterpart in RIA. At this point, however, we should ask whether such solutions follow in the spirit of efficient functioning of public administration. Instead of replicating solutions, would it not be advisable to make one bold decision to combine these processes? The system for assessing regulation could then rely on the competent staff of evaluation units (built up over years with millions of euro from EU funds). This solution would seem to be both the cheapest (it would be enough simply to reinforce the staff and competences of the existing centres), and the most stimulating use of the potential and synergy of both processes. However, the functioning of public institutions in practice shows that making simple and practical, but difficult, decisions can often take many years.
Chapter 5. Inspirations from evaluation – best practices

References


From the outset, the Polish model of impact assessment (IA) has been based on direct and indirect dialogue between national institutions which deal with regulatory reform and international and foreign entities promoting the evidence-based law-making model. This chapter presents the most interesting solutions and good practices relating to the IA process in countries with the greatest and most extensive experience in this field. Each system and operational solution is described and subjected to critical analysis, with particular attention to their potential for use in Poland.

Impact assessment: an introduction to the international context

The beginnings of a systematic approach to legislative impact analysis in the economic environment (mainly relating to inflation) are linked to the policy of the US administration in the mid-1970s, while it is accepted that the first formalized system of regulatory impact assessment (RIA) did not appear there until 1981 (Rogowski and Szpringer 2007).

The introduction of an RIA system in the USA prompted the rapid international expansion of various forms of RIA (Paczocha and Rogowski 2007). Among the first countries implementing regulatory reform policy were Great Britain, Australia and New Zealand. Their success encouraged further OECD countries to introduce reform (Gruening 2001). In the mid-1990s, the IA system was introduced in 12 OECD countries.

In March 1995, OECD adopted Recommendation C(95)21, which recommended member states to adopt a number of specific steps to improve the quality and transparency of their legislative work. As a result of this document being published, the activities of organizations in this field sped up, and by 2000 over two thirds of OECD countries had decided to introduce the recommended procedures, tools and institutions for IA (OECD 2002c). Currently, equally through the political efforts and advocacy of the World Bank, the great majority of OECD countries have implemented RIA – in a similar or adapted form to that recommended by OECD.

Importantly, each member state introducing the IA system, inspired by the solutions utilized in other parts of the world, generally adopted their own specific under-
standing and implementation of the RIA system, adapting it to their own traditions, political culture and current legislative challenges (Malyshev 2015; c.f. Renda 2010; OECD 1997; 2001; 2002b; 2005; 2008; 2010a; 2012; 2014). As a result, the regulations relating to RIA applied worldwide form a specific array of solutions in terms of policies, tools and institutions which can be used to construe the best IA model for a particular political-social systems, including Poland.

International inspirations

This sub-section will briefly outline the IA solutions applied in five countries: the USA, Great Britain, New Zealand, Sweden and the Netherlands. For each country described, the general features of its political-social system will be given, the specific process of public policy making as well as good practices and challenges relating to the functioning of the IA system.

The United States\textsuperscript{52}

The IA system in the United States has an established and stable position – many solutions acknowledged worldwide today as the fundamental elements of the RIA system were devised in the USA. Since the early 1970s until today, the United States has been a testing ground for the most interesting solutions in evidence-based legislation, at the same time maintaining considerable distinctness owing to its specific

\textsuperscript{52} This part is based on the study: \textit{Praktyka Oceny Skutków Regulacji w Stanach Zjednoczonych} (Olejniczak 2015).
political and economic culture (c.f. OECD 1999b; 1999c).

System characteristics

The federal political system of the United States is based on the principle of checks and balances, allowing the mutual control of government bodies. The law-making authority is held by the Congress, which is made up of two chambers: the lower (the House of Representatives) and the upper (the Senate). Executive authority lies with the President, to whom are subordinated departments (the equivalent of ministries), executive agencies as well as commissions which regulate different segments of the market. Owing to the legal culture based on the rule of precedence, a particular role is played in the USA by the judiciary – as many federal acts are sent to court by various interest groups, courts and their verdicts play the role of the ultimate regulator in many key segments of the market and society. This system runs in line with the philosophy of law-making which treats the rights and the freedoms of the individual as paramount values. This leads to what can be defined as a minimal state, that is, one which acts purely to guard law and order and free competition.

The IA system in the United States, based largely on the Presidential Decree no 13563 of 2011, is aimed at providing decision-makers with data proving that the created and implemented regulation brings greater good than harm (Dudley and Brito 2012). Performing RIA is mandatory for all regulations, economic or social, which qualify as having ‘great significance’ (above 100 million USD in costs or benefits). According to the principles applied at the stage of preparing analyses, RIA should consist of the following elements:

1. Identification of the problem or market failure;
2. Identification and analysis of alternative solutions to the problem;
3. Assessment of benefits and costs, with the aim of identifying solutions which maximize net benefits;
4. Analyses of solutions based on scientific evidence and reliable data;
5. Analysis of initial target groups for the regulation;
6. Critical consideration of possible conflicts between the regulation and the
basic rights of the individual (including liberty, dignity and ownership).

Federal institutions responsible for preparing IA mainly use internal expert teams, sometimes resorting to assistance from external consultants and institutions – think tanks. The guidelines published regularly by the Office for Management and Budget (OMB) is also a major form of support. A key element in the system is also the Office for Information and Regulatory Affairs (OIRA), a fifty-person office whose aim is to check the quality of IA analyses, co-ordinate legislative activities and support the president in law-making. No regulation can be created and endorsed without the consultation and approval of OIRA, which concentrates mainly on the economic dimension of regulations. In the legal sphere, a key role of OIRA from the president’s perspective is to build a broad political coalition around certain regulations.

The most often used analytical tools of RIA in the USA is cost-benefit analysis, risk analysis and cost efficiency analysis. Importantly, tools used in the evaluation of public programmes, such as logic models and theory of change, are not commonly used in IA despite their popularity in other areas of public analysis in the USA.

The most important and unique feature internationally of the RIA system in the United States is that it has a real impact on regulations. By creating a real platform for dialogue based on facts, IA engages key political players – decision-makers, interest groups, stakeholders in the regulation – in a rational debate on facts. Even though RIA is not the only – nor the most important – factor influencing the quality of American law, it represents a key element of political reality which is rooted in public debate.

Good practices

Among the good practices of the IA system in the United States we can commend:

- The adoption of a ‘limited confidence’ attitude towards new regulations, which translates into a high demand for justifying the need to introduce a new law;
- The presence of a system of incentives motivating the creation of high quali-
ty RIA, including:

▪ Direct responsibility of the agency piloting the regulation for its shape and the quality of analyses;
▪ A central office controlling the quality of IA – OIRA
▪ Strong external stakeholders who can contest a regulation in court;
▪ Reward initiatives, such as Al Gore’s Reinventing Government, in which agencies receive awards for simplifying procedures.
▪ A high quality information policy, mobilizing a wide range of stakeholders in regulation, including those directly affected by the law;
▪ Continuous development of methodologies for cost-benefit analyses.

Challenges

The challenges faced by the IA system in the United States include:

▪ Limited scope for using *ex post* analyses (this type of assessment is prepared only sporadically and superficially);
▪ Varying standards of IA analysis depending on the department (some departments, because they are engaged in a current policy, create RIA mainly in order to legitimize previously made decisions);
▪ Failure to make use of the potential offered by evaluation methodology in RIA.

Summary

The United States, as the cradle of the reform movement for evidence-based legislation, continues to inspire countries seeking to increase the efficiency of the legislative process. The unique combination of their political culture and advanced analytical techniques mean that the Polish IA system can benefit from many good American practices and communication strategies as well as their experience in building relations with stakeholders.
Great Britain\textsuperscript{53}

Compared to other countries, the United Kingdom has a long reformative tradition in implementing procedures relating to evidence-based public policy. This section will briefly describe the changes which the IA system in Great Britain has undergone to become, in the opinion of many international institutions, a model for other OECD member states (c.f. 2010d; Kirkpatrick and Parker 2007).

System characteristics

The uniqueness of the social-political system in Great Britain is determined by two features. Firstly, the law in Great Britain – a monarchy without a constitution – is largely defined by the rule of precedence. Secondly, while new regulations are the effect of government policy (and above all, individual ministers), it is parliament that is responsible for drafting them. All new legal acts are subject to RIA, which are prepared by ministries (the so-called \textit{central government}).

The beginnings of the IA system in Great Britain go back to 1985 when the government of Margaret Thatcher created the Enterprise and Deregulation Unit, whose task was to draw up an index of burdens which individual regulations impose on British businesses. Sometime later, Compliance Cost Assessments (CCAs) were introduced, which were designed to define the objectives of specific regulations, give the sector affected by a defined law and the costs and benefits of the new law for different social entities.

On 1 January 2013, a further reform was introduced known as the ‘one-in, two-out’ process (\textit{OI-TO process}). In line with the OI-TO principle, every pound shown in IA as a cost to enterprise should translate into two pounds savings for business – in this way the law should strive to reduce and not increase regulations (this idea is very similar to the above-mentioned minimal state model in the USA).

A key entity, and one which is regarded by many international institutions as the reason for the success of the British IA system, is the Better Regulation Executive (BRE) whose tasks include setting internal rules for creating legislation, formulating legislative guidelines and co-operating with government offices in implement-

\textsuperscript{53} This part is based on the study: \textit{Ocena Skutków Regulacji w Wielkiej Brytanii} (Śliwowski 2015).
ing them as well as advisory work in creating regulations. An important element of BRE activities is also communication with internal and external stakeholders in law-making policy. BRE is placed in the structures of the Department for Business, Innovation and Skills, (BIS), mainly because the IAs prepared by BRE mostly concern the impact of regulations on enterprise.

The textbook *Impact Assessment Toolkit* (BIS 2013) identifies consecutive stages in preparing IA documents:

1. Identifying the problem;
2. Defining the expected targets of intervention;
3. Identifying alternative methods of realizing the established objectives;
4. IA of individual options;
5. Estimating the costs and benefits of proposed options and selection of the most beneficial;
6. Analysis of elements connected with implementing the regulation;
7. Planning the evaluation of implemented regulation.

An important element of the British IA system is the semi-independent Regulatory Policy Committee (RPC), operating since 2009. The committee performs an analogous function to that performed in the years 2002-2010 by the National Audit Office (c.f. NAO 2001; 2007; 2009; 2012), i.e. IA quality control. The RPC assesses, using simple metaphor of traffic lights\(^{54}\), the formal aspects of IA documents, including specifying whether a given RIA provides a reliable estimate of the costs of introducing a law, and decides whether a given regulation can proceed to further stages of the legislative process.

A final key aspect of IA in Great Britain, which should be recalled in international comparisons, is that it is not based – as for example in New Zealand – on

\(^{54}\) RPC assesses the quality of documents using a three point scale. Red: serious doubts regarding the quality of the evidence and analyses contained in the RIA. Yellow: the RIA may meet its objective, providing the quality of evidence and analyses is improved. Green: No significant doubts are identified or the doubts concern unimportant elements of the RIA.
any regulation (act, statute), which would oblige government offices to prepare IA. Thus in Great Britain, IA is more a part of the law-making culture than a part of the legal system.

Good Practices

Good practices in the British IA system are:

▪ Personal responsibility for IA – each document is signed by the relevant minister;
▪ The linking of the IA system to the philosophy of creating ‘better regulations’ and responsibility and clarity in administrative activities;
▪ The introduction of independent mechanisms for quality control (IA audit conducted initially by the NAO and currently by the RPC);
▪ The introduction of a matrix organizational structure, which allows co-operation within the framework of task forces between policy makers and analysts;
▪ The establishment of the BRE, which is central to the IA system.

Challenges

The challenges faced by the British IA system include:

▪ A low level of self-control in preparing IA, due to the absence of a regulation requiring RIA;
▪ The relatively low level of conformity to the seven steps for creating IA, contained in the BRE textbook;
▪ A low level of rigour in applying methods and utilizing data in RIA.

Summary

Great Britain is, aptly, the crowning example of practical application of New Public Management postulates, and thus a valuable source of inspiration for countries seeking to improve the IA process.
New Zealand

The solutions adopted in New Zealand are in many respects the reverse of the advanced legal system regulating IA in the United States, while in other respects they are reminiscent of the British system (c.f. The New Zealand Productivity Commission 2014). The cultural context in which RIA developed in New Zealand has led to IA – although not required by law – becoming widely used in the process of shaping public policy.

System characteristics

In New Zealand – a constitutional monarchy based on the Westminster system – law-making authority is held by parliament (the House of Representatives), and the executive authority by the government (the Cabinet), with its ministers and prime minister officially appointed by the Queen, although in reality they are selected by a parliamentary majority. New Zealand is among the leaders of reform in public management, mainly through introducing a system of decision making based on RIA.

Officially, New Zealand introduced its RIA policy in 1998, modelled primarily on Australian solutions as well as OECD recommendations (1995). Responsibility for the functioning of the system lies with the Minister of Regulatory Reform, while the practical reference base is the Cabinet Manual which dictates that ‘all proposals submitted to the Cabinet and which can lead to the adoption of regulations must be accompanied by an RIS (regulatory impact statement)” (Cabinet Office 2008: 72).

Set into the structure of the Ministry of Finance, the Regulatory Impact Analysis Team (RIAT) is the most important body responsible for the supervision and coordination of the RIA system as well as for advising on the creation of IA documents. The RIA guidelines prepared by RIAT (New Zealand Government, The Treasury 2013) set out that IA analyses should be conducted for all – with certain exceptions – political initiatives, which:

- Consider the adoption, modification or repeal of regulations;

55 This part is based on the study: RIA w Nowej Zelandii (Kupiec 2015).
Will result in proposals submitted to the Cabinet for acceptance. Importantly, this is not a legal requirement, just an administrative one, which means that, in theory, the whole legislative process in New Zealand could be prepared without the use of RIA. This situation occurs fairly often, although it is increasingly met with disapprobation and criticism from the opposition, which frequently makes use of RIA outcomes in parliamentary debates.

In New Zealand, according to the guidelines prepared by RIAT, the ex ante analysis process (ex post analyses are not regulated and very seldom implemented) is based on the following steps:

1. Preparation of a Preliminary Impact and Risk Assessment (PIRA), at the moment of identifying the need for a legislative initiative in a department;
2. Analysis of PIRA in the Ministry of Finance – in cases where creating RIA is likely to have a significant impact on the budget, RIAT is engaged; in remaining cases, IA is prepared by the law-making entity;
3. Creation of an RIS (Regulatory Impact Statement) in consultation with RIAT (in the case of high-impact or high-risk legislation);
4. Preparation of the RIS disclosure statement which identifies the limitations of the analyses presented – this document is created and personally signed by the manager responsible for the analysis;
5. Obtaining Quality Assurances (QA) from RIAT or an independent panel within the department;
6. Attachment of RIS to the draft regulation sent to the Cabinet;
7. Publication of RIS on the Ministry of Finance website as well as interested departments;
8. Preparation of a Disclosure Statement for the final government proposals.

As in every case analysed in this chapter, a 100% ideal IA process is unachievable in reality. The greatest problem in New Zealand is that decisions on creating regulatory analyses and engaging RIAT are made only after a department decides to implement a given regulation. This means that among the regulations for which RIAs are prepared (about a third of all regulations), few focus on genuine analysis of alternative solutions.
in terms of legislation. In effect, RIA is often treated as a superfluous addition to policies.

**Good practices**

The good practices present in the New Zealand IA system include:

- The use of RIA results by many stakeholders (mainly in opposition) in parliamentary debate;
- The performance of an annual review of RIA quality;
- The requirement to prepare a Disclosure Statement, which indicates the limitations of the IA analysis;
- The commissioning of individual elements of the analyses to external entities.

**Challenges**

The challenges faced by the IA system in New Zealand include:

- The absence of solutions regarding *ex post* regulatory analysis;
- A low percentage of regulations subjected to RIA;
- The performance of RIA after political decisions on regulation;
- The negative opinion of RIA among recipients of analyses, mainly ministers;
- Shortcomings in terms of methodology and a lack of stringent principles for comparing options;
- Deficiencies in analytical staff dealing with RIA;
- A lack of quantitative data;
- A shortage of time for preparing reliable RIA.

**Summary**

Although New Zealand is a pioneer in implementing RIA solutions, it still faces many challenges which are reminiscent of the situation in Poland (staff deficiencies, little use of analysis results by ministers, little scope for using *ex post* analyses). Despite these, it can provide an interesting source of inspiration in terms of its ‘soft’ approach to using analyses in public and parliamentary debate.
Sweden

The IA system in Sweden is based partly on clear demarcation of the functions in creating and implementing public policy, and partly on a deeply rooted political principle of seeking consensus. It is interesting that in Sweden, one of the main sources of inspiration for the reform of public policy based on evidence was the need to solve the economic problems it faced in the early 1990s. This section will present the historical backdrop to the transformation of the RIA system in Sweden, with particular consideration of the role of stakeholders (c.f. NNR 2007; OECD 2007a; 2007b; 2007c; 2007d; 2007e; 2007f; 2010b).

System characteristics

The social-political system in Sweden is very deeply rooted in the consensus principle. This is reflected in the process of creating public policy, in which a significant role is played by broad social consultations, on the basis of which legislators draft bills. Another key feature of the legislative system in Sweden is the strict demarcation of prerogatives in creating and implementing laws. In Sweden there is a very clear separation of politics and civil administration which means that interference from legislators in executing law or, at earlier stages, in analytical work connected with IA, is very limited.

The most important stimuli for RIA development in Sweden were, and still are, economic factors relating to the competitiveness of Swedish enterprise on the international stage. In the years 1984-1986, in order to simplify the law, an inventory of regulation was performed, driven by the ‘guillotine’ principle, according to which laws that were not registered in the central index were automatically abolished. On the wave of enthusiasm prompted by the reduced regulatory burden, a regulation was passed in 1987 which obliged government agencies and public institutions to analyse the impacts of new regulations. However, it is the reform of the late 1990s, which led to the

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56 This part is based on the study: *Raport o RIA: Szwecja* (Wojnar 2015).
opening of the Swedish market and the lifting of numerous internal market restrictions, that is often linked with the economic recovery in Sweden following the crisis in the early 1990s. Subsequent governments continued this trend – in 2006 the government adopted several reforms which also included IA (Fölster i Kreicbergs 2014).

As in other countries discussed in this chapter, the guidelines to RIA in Sweden are based on a number of steps which should lead to the creation of evidence-based regulation:

1. A definition of the problem to be addressed by the proposed regulation, together with a description of the impacts of not implementing the regulation;
2. A definition of alternative solutions to the problem;
3. Analysis of stakeholders who will be affected by the regulation;
4. Analysis of the consequences, mainly financial, along with a description of alternative solutions;
5. Assessment of the conformity of the proposed regulation with EU law;
6. Analysis of the time frame and the informational requirements involved for effective implementation of the regulation (Erlandsson 2011).

The main entities engaged in the RIA process are government institutions: the Chancellery of the Prime Minister, the Ministry of Enterprise, Energy and Communication, the Ministry of Finance and the Ministry of Justice. The remaining ministries and government agencies have their own internal units dealing with RIA. An important co-ordinating and evaluating function in the RIA process is carried out by the Committee for Better Regulation (Regelrådet), which was set up in 2008 and is responsible for supporting the government and administration in activities aimed at simplifying the law and reducing the burden on businesses.

Good practices

Good practices in the Swedish IA system include:

- A consultation-based legislation process, engaging a wide range of stakeholders in law-making, most of whom are very well prepared analytically;
- Well-developed and standardized instruments for analysing and estimating administrative costs based on a standard cost model calculated using the Malin database and its application for calculating the costs of regulation (Regelräknaren).

Challenges

Important challenges for the IA system in Sweden are:

- The low level of interest in published analyses on the part of stakeholders, the media and politicians;
- The placing of IA analyses at the end of the legislative process (when decisions have already been made), which turns the role of RIA into simply legitimizing adopted solutions;
- A limited range of non-economic analyses (social, cultural etc.) in the IA framework;
- Poor diversity in methodological approaches and, accordingly, a low level use of advanced analytical techniques.

Summary

The IA system in Sweden is a direct reflection of the consensual political culture of this country. This shows how important it is to create an IA system that corresponds to the political-social system of the community in which it has to function, and illustrates the major significance of creating solutions to fit the resources – both social and cultural – which the administration of a given country has at its disposal.

The Netherlands\textsuperscript{57}

The last country whose IA system will be analysed in this chapter is the Netherlands. Drawing on the wealth of experience of its political-social system, the Dutch government has created a unique and relatively complex RIA process (c.f. OECD 1998; 1999a; 1999d; 2010c) which can provide significant inspiration for other Eu-

\textsuperscript{57} This part is based on the study Raport o RIA w Holandii (Ledzion 2015).
European systems. Particular attention should be paid to the activities of the Actal institution (Adviescollege toetsing regeldruk) – an independent and external advisory body which supports the reduction of the regulatory burden and activities aimed at creating better laws.

System characteristics

The Netherlands, as a constitutional monarchy, is a unitary state with three tiers of government (central government, provinces and communes). The central government operates on the basis of coalition agreements which define the policy framework for the four-year election cycle.

The foundation of the Dutch approach to creating public policy is the tradition of seeking a wide political consensus for the most important regulations on a national level. The Dutch political culture is expressed above all in the active search for a common position in the process of social consultation (Olejniczak 2012). A second key aspect in the public policy system in the Netherlands are the attempts to make policy decisions based on evidence – it is partly for this reason that a significant role in the legislative process is played by external research and advisory centres (Study of the Chancellery of the Prime Minister, 2011).

The co-ordination and creation of regulation in the Netherlands engages many institutions, above all, the ministerial committees and regulatory agencies of particular ministries. The process of creating public policy is carried out in the following steps:

1. The identification and internal consultation of the needs and scope of a given public policy in the legal departments of individual ministries;
2. Social consultation and *ex ante* assessment of environmental and economic impacts;
3. Delivery of research findings and recommendations to ministries which use RIA to justify proposed solutions;
4. Delivery of RIA to parliament, where draft regulations along with RIA are discussed in various working groups;
5. Publication of the regulation in the Journal of Laws and Decrees.
Importantly, if at an early stage, a proposed regulation is identified as potentially increasing the administrative burden, it should also be submitted to Actal during the analytical process. Actal is an independent institution which advises on reducing the state administrative burden. Its objective is to identify and analyse potential administrative burdens and make recommendations and reports for the government. Actal suggests whether a regulation should be adopted or rejected – without reservation or conditionally (for example, in the years 2003-2005, reports were prepared for 198 of 730 regulations which were submitted for review).

The winding road through which regulations must pass – from identifying needs to approval by parliament – could suggest that the process of creating public policy in the Netherlands is long and arduous. In fact – the highest quality regulations take as long as five years to produce. At the same time, bills are often amended during consultations, and as a result, public policy is often based on low ranking regulations – government regulations and orders – implemented on all three tiers of government.

Good practices

The good practices that can be commended in the Dutch IA system are:

- The autonomy, driving force and stringency of control units, also within individual ministries;
- The clear orientation in public policy making on limiting the administrative burden;
- The use of Standard Cost Methodology (SCM) oriented at reducing the administrative burden, which in some sense forces hard quantitative date to be used in making policy decisions;
- The establishment of Actal, a special institution which assesses the quality of draft regulations in terms of their reliance on evidence.

Challenges

The Dutch IA system faces several challenges, which include:
The lack of a systematic and consistent approach to *ex post* analysis;
- Limited use of advanced research methods in the RIA process;
- A relatively low level of expertise among administrative staff in using quantitative methods;
- A lack of incentive to prepare RIA for overriding documents of a strategic nature;
- The complexity and the long time needed in completing the process of creating and adopting legislation.

**Summary**

In many respects, the Dutch and Swedish system are alike – based on consensus and an integrated political culture, but at the same time somewhat less refined analytically than the British and American systems. The example of the Netherlands shows the threats and benefits involved in creating a system which – in maintaining a wide range of social consultation – lacks a flexible law-making system on a national level.

**Summary: international inspirations for the Polish system of impact assessment**

The wealth of international experience in the field of policies, tools and institutions related to the IA system can be both a blessing and a curse at the same time. On the one hand, it provides a large number of ready-made practices and applications, and on the other, it can lead to unthinking copying of solutions, without adapting them to specific local conditions: political, economic or cultural. Below we present a synthesis of our international analyses, which may help streamline the Polish IA system:

1. Based on the analysis of the role of the IA system in the process of creating public policy in the United States, Great Britain, New Zealand, Sweden and Holland, it is possible to say that the challenges facing the system are universal and concern:
The relatively low impact of analyses on decision-making;
- The low quality of staff;
- The certain skewing of analyses in an economic direction;
- The limited range of analytical tools.

These problems form a certain continuum, but their ubiquity is clearly evident and suggests a system problem in basing policy decisions on evidence.

2 Of the three elements mentioned by OECD (2002c): policies, tools and institutions, policies have the least significance. All the above described countries possess similar sequential system of creating laws – starting with identifying the problem, through analysis of alternative solutions and their consequences for a wide spectrum of stakeholders, to the final decision and plan for implementing and evaluating the intervention. What distinguishes an effective system from a less effective one is the political culture and the relationship of the IA system with the wider social context (the role of the opposition, the media etc.).

3 In a political culture based on seeking wide consensus the role of IA is significant, although not totally in line with the assumptions of the RIA system. The law in these systems is created on the basis of agreements between many stakeholders, while IA performs the role of legitimizing consensual decisions. From the point of view of legislation quality, a key element appears to be the interest shown by recipients of IA in the study findings. In places where the IA results are utilized in political activities, by the media and the opposition, interest in the analytical studies grows. Unfortunately, it seems that none of the countries discussed above has completely solved this problem.

4 An important factor is the quality of tools used by civil servants. Although it can lead to certain activities being performed automatically, without a great deal of thought in performing them, giving access to high quality analytical tools (e.g. databases, cost calculators, clear demographic analyses) could improve the quality of documents created in the IA process in Poland.

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Introduction

The efficiency of the system for public policy analysis (PPA) depends on the institutional context in which the system operates. Even the best adapted methodological solutions, implemented by the best analysts and based on the highest quality empirical data will not be able to improve the quality of public policy unless they become part of a wider culture of making policy decisions based on evidence.

In this chapter we present the most important recommendations concerning the development of the impact assessment (IA) system in Poland, which are directly related to the whole system of public policy management. The proposed solutions are based, among others, on international experience as well as inspiration from the evaluation system. We have also attempted to take into account the achievements and potential of the current IA system, so that the recommended changes can be best adapted to the specific context and conditions of IA in Poland. We considered it important to define not only the challenges observe in empirical studies, but also their deeper causes. These causes often lie outside the IA system itself, and largely relate to the specific political culture and approach to public policy in Poland.

The recommendations presented in this chapter can be divided into three general areas:
Creating conditions for programming evidence-based public policy (recommendations 1-3);
Creating the appropriate institutional solutions (recommendations 4-6);
Optimizing the IA process (recommendations 7-8).

1. Strategic programming of public policy

One of the key recommendations resulting from the research relates to the wider context of IA functioning and calls for increasing the role of strategy in programming public policy. It should be remembered that both IA and evaluation are only tools supporting the process of creating evidence-based public policy and cannot replace the strategic management of national development (see Figure 7.1).

The strategy should provide clear guidelines as to the desired vision of the future, strategic objectives and outcomes to be achieved. The role of public policy is to devise coherent solutions in various fields to enable the strategic vision to be realized (c.f. SPMT 1999). When a strategic perspective is lacking, its functions partly assume supportive processes, such as evaluation and IA, but this situation is far from optimal (c.f. Górcniak and Mazur 2012).
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The identification of clear strategic aims encourages the use of IA and evaluation potential for programming evidence-based public policy by, among others:

- Better identification of problem areas which require intervention;
- Better planning of work and tasks to be performed;
- Orienting analytical work on optimizing the envisaged outcomes;
- Increasing the cohesion of interventions carried out in various areas and preventing their fragmentation;
- Providing tips and guidelines on assessment criteria for various alternative solutions;
- Enabling a clearer and more accurate assessment of the functioning of adopted solutions and the direct and indirect effects which they achieve.
- Reducing the number of instances where interventions are adopted in the course of crisis management;
- Enhancing the political function at initial, strategic stages of the process while simultaneously enhancing the analytical function in the operational stages;
- Ensuring greater clarity in the process and clear lines of accountability for public opinion.

The strategic set up of the whole public policy management process is certainly not an easy task – while assuming that almost all participants in the process agree that it is necessary, a considerable number of them also think that devising a widely acceptable strategy (socially and politically) is simply impossible. This is understandable, as the strategic process concerns fundamental issues which reflect various an often conflicting values, principles and ideologies. However, even in situations of sharp dispute, concerted effort and wide debate on strategic development aims can prove worthwhile, as in the maxim of Dwight D. Eisenhower: ‘plans are nothing, planning is everything’. Strategic planning allows areas to be identified in which it is possible to achieve agreement over and above politics, and in those areas where differences are not reconcilable, it allows the causes to be identified and articulated.
Formulating a vision and setting strategic targets has a strong political element, but is not without technocratic aspects. Quite the contrary, in this process an important role is played by the detailed analysis of stakeholders, the social and international environment, current trends and development scenarios, cause and effect relationships, risks, opportunities and threats. This requires adopting a specific analytical perspective of a different profile to that of IA or evaluation. The strategy should, as in public policy, undergo changes in response to changing conditions and the actual effects of the intervention carried out. Feedback on the effectiveness and efficiency of policies should allow verification of the whole system. In this context it is important that the whole set of activities carried out are cohesive and mutually linked; this will be mentioned in the recommendations on integrating analytical functions in the administration. With respect to the strategic functions themselves, it is essential to restore and enhance a government centre for strategy and coordination, responsible for defining state policy objectives and co-ordinating activities connected with their implementation.

2. Increasing demand for evidence-based policy

One of the main conditions for creating high quality PPA is a conducive social and cultural context. The success of every reform of the regulatory system must be based, on the one hand, on institutions which allow the optimization of the law-making process, and on the other hand, on a system of values which considers social research and evidence as key elements of well-designed public policy. Even the best PPA system is doomed to failure if the recipients of the knowledge generated disregard it in the decision-making process, and if the social environment is not interested in the analysis findings or does not understand them.

In order to raise the quality of legislation and other interventions, knowledge created in the course of PPA should be used in the process of programming public policy. In order to motivate decision-makers to utilize IA outcomes, a system of incentives could be created for utilizing knowledge in the decision making process. Firstly, it is essential to introduce an accountability mechanism for preparation of IA documents. This involves – as in many OECD countries – signing the complet-
ed regulatory impact assessment (RIA) by the directors of departments where the regulations are made, or, if possible, by the relevant minister. Secondly, it is necessary to improve the transparency of the analysis process, which could be achieved by placing all IA related documents, including analyses, on the Government Legislation Process web platform, in a file which allows contents to be copied, as well as all the comments submitted by social partners directly after receiving them.

**One of the tools for increasing IA demand is increasing social pressure on creating evidence-based public policy.** To this aim, it is essential to enhance the role of IA in public debate through developing an RIA culture and raising public awareness (including the media, non-government organizations and businesses, educational institutions and think-tanks) of the role and importance of IA. This could be aided by creating, among others, web portals for monitoring IA documents, encouraging meetings between analysts and stakeholders at the stage of preparing IA documents, organizing conferences on IA and stimulating scientific and awareness raising publications on the subject of IA. It is also important to encourage the media to make use of analytical studies as a tool for better understanding and potentially criticizing legislation – however, for this recommendation to be successful, it is essential to communicate study findings in an easily understood and attractive fashion. **A huge role in this process is played by social partners, who participate in public consultations – as long as they are focused, as has been the case to date, purely on forcing through certain solutions without reference to IA, then the significance of IA in the law-making process will be limited.**

The demand for IA can also be increased by selecting a strong partner for decision-makers that would represent the interests of the PPA sector. This role could be played by a strong departmental unit, although it would be worth appointing a non-governmental organization which would bring together analysts engaged in IA. Additionally, appointing such an institution could assist the long-term development of identity for IA analysts, just as the identity of analysts specializing in public policy evaluation was successively shaped in Poland.

The above mentioned recommendations can lead to the development of a culture of public discourse based on evidence – the essential condition for effective operation of the IA system in Poland.
3. Obligatory impact assessment in all entities with legislative initiative

The negative consequences of failing to use IA for interventions other than government proposals, including amendments to bills of the Council of Ministers, are widely known and discussed. In order to work efficiently, the system for programming evidence-based public policy requires that IA is incorporated into the work of the Sejm and Senate as well as legislative initiatives of the President of the Republic of Poland (c.f. the Helsinki Foundation for Human Rights [Helsińska Fundacja Praw Człowieka] HFPC 2014, Kopińska et al. 2014). It would also be desirable to transfer the best solutions from the central level to the level of local and regional governments. This would require considerable enhancement of the analytical function in political parties and parliamentary clubs as well as development of processes supporting IA performance in the Sejm, the Senate and the Chancellery of the President of the Republic of Poland.

A specific case are the proposals sent to parliament by the Council of Ministers for amendment. Bearing in mind the principle adopted in the Constitution of the Republic of Poland of a three-tier division of government and the legislative function of the Sejm and Senate (Art. 95, Paragraph 1), we propose that amendments to government bills made during parliamentary work should be subject to an IA requirement in one of three alternative ways:

1. An IA is prepared for amendments made at the parliamentary stage by the entities that propose them;
2. The RIA for a given bill is updated by the government before the bill is finally passed, in the case where amendments are made at the parliamentary stage.
3. The zero-one rule is applied – a bill of the Council of Ministers is adopted or rejected in its entirety; at the same time consultation processes are strengthened at the stage of drafting the bill. A bill which is voted out should be sent back for re-drafting, along with comments from the work of the Sejm commission and parliamentary debate.
The last alternative is the most radical in nature, yet it greatly improves the chances of preparing a high quality of proposal with a convincing justification. It would prevent the blurring of responsibility for the final substance of the regulation and increase the clarity of the process for social partners, while enhancing the legislative and control functions of the Polish parliament.

Extending the catalogue of entities using IA requires a change in the public policy environment, and particularly in universities and research units. They must develop their potential for providing graduates with the relevant skills and intellectual capital as well as for supporting the IA process with the adequate methodological toolkit. To a large extent, neither of these functions are currently realized.

Along with extending the institutional scope for using IA, it is essential to emphasise the principle of proportionality and limit the IA requirement exclusively to the most important proposals (even by a large percentage, along with the principle ‘less is more’). The reference guide to IA prepared by the British Department of Business, Innovation and Skills (BIS 2011) points to several key factors which should be taken into account in deciding on the scope of IA:

- The level of social interest and awareness of the area addressed by a given intervention;
- The level of controversy, irreversibility and innovativeness of the intervention;
- The importance of the anticipated impact;
- The level of uncertainty regarding the likely impact;
- The time available for preparing the intervention.

4. Reconstructing the system’s institutional environment

One of the main problems of the IA system in Poland is the lack of an institutional division of control functions as well as advice and training in the administrative structures dealing with PPA, as exists in many OECD countries and in the evaluation system. Grouping the existing institutions into two mutually independent
entities, one of which would deliver support in IA analyses as well as train and develop analytical staff, while the other controlled and monitored the quality of PPA performed, would lead to improved quality of public policies created.

These two independent entities could be organizational units which we conceive as: the Department of PPA development and the PPA monitoring office. Below we give a brief outline of the potential scope of their responsibilities and activities:

- The Department of PPA development (within the Chancellery of the Prime Minister, e.g. based on the existing Department of Programming and Regulatory Impact Assessment):
  - Creating and publishing IA guidelines
  - Creating, publishing and running training programmes in IA;
  - Supporting PPA departments in creating IA;
  - Developing expertise in line with training needs analysis based on job analysis (training, mentoring, coaching, study visits, post-graduate study, supplementary courses);
  - Developing the human resources management system in the IA system (building a competence model, job analysis, job description, improving recruitment and selection system, employer branding for analytical departments).

- The PPA monitoring office (an independent institution):
  - Making current assessments of IA quality combined with the prerogative to block legislation which does not have an IA or with an IA of inferior quality;
  - Regularly assessing IA quality along with publishing quality evaluation reports for IA in Poland;
  - Communicating with the external environment about the quality of IA in Poland.

In addition, a desirable transformation in the institutional environment could be to set up analytical departments in each ministry devoted to PPA (this recommendation is linked with the call for integrating IA with public policy evalua-
tion). The personnel employed in the PPA department, in contrast with those who currently prepare analyses by filling in RT and RIA forms, would concentrate only on analytical tasks. Focusing exclusively on analytical work would bring a whole range of benefits – it would enable the development of analytical expertise in departments, increase the motivation to develop and would free up time which is now sacrificed to performing other tasks.

This far-reaching change in the organizational structure would have to be combined with other actions, among others, care in providing analysts with the necessary resources (equipment, software, access to databases) as well as – where possible – bringing salaries closer to market levels. It is also important to raise the level of analytical expertise based on the example of the evaluation system, i.e. pay greater attention to skills such as: ability to accurately define a problem, create adequate guidelines for realizing set objectives, analyse the impact of a legal act on economic competitiveness, the labour market and other areas.

Moreover, analysts should have access to systematic support from external experts, which would necessitate changes in the principles for employing experts from the market, both in financial terms (fees) and in formal terms (requirements relating to working in the civil service).

5. Integrating analytical functions

The recommendation to integrate analytical functions follows naturally from the call to firmly embed IA (but also evaluation, performance audits and strategic analyses) in the strategic programming of public policy, enhance the role of analysts in their relationship with policymakers and reconstruct the system’s institutional environment. In order to fully utilize the potential for basing public policy on evidence, it is necessary to integrate the diverse analytical functions in strong departmental units within individual ministries and in the Chancellery of the Prime Minister, closely co-operating with the substantive departments. These units could be established using the human resources available in analytical departments, supplementing them with experienced specialists in strategic analyses, management controls as well as performance audits, IA and evaluation.
This solution brings a whole range of benefits:

- It genuinely enhances the position and role of analysts in relations with the representatives of substantive departments and policymakers;
- It helps avoid conflicts of interests and negative psychological processes connected with preparing and assessing IA by the same entities. This has particular significance in seeking alternative solutions to a problem (RT) and performing assessments of the functioning of legal acts (*ex post* RIA);
- It facilitates the transfer of knowledge and skills resulting from various analytical experiences, which are currently scattered among different departments, divisions and teams. This enables the unique experience of preparing strategic analyses, audits, IA and evaluation to be utilized for preparing better quality data, on which decisions can be based.
- It eases the gathering, processing and utilization of knowledge, information and data, including taking full advantage of territorial observatories;
- It increases the effectiveness and cost efficiency of training and educational activities. Expenditure on developing analytical skills will be more effectively used as the person conducting analytical tasks will devote all their time to them instead of performing other additional tasks;
- It facilitates and optimizes the recruitment and selection process as well as the development of staff by helping to ensure that employees are suited to the nature of the work performed (the so-called *person-job fit*, c.f. Kristof-Brown, Zimmerman and Johnson 2005; Lauver and Kristof-Brown 2001; Saks and Ashforth 1997).

The proposed change requires only slight modification of ministerial RIA teams, which – in maintaining their current tasks – should be expanded with representatives of substantive departments and focus to a greater degree on assessing the content of IA.
6. Enhancing communication between those involved in impact assessment

In diagnosing the Polish IA system, problems were identified concerning the placement of the IA unit in the public policy system. One of the major challenges in this respect is the silo structure of ministries. Very often civil servants perform analyses and create reports in isolation, based on easily available data and their own discernment of the situation. In order to avoid this means of operating, it would be expedient to create interdisciplinary task forces dealing with IA as part of the above mentioned call for PPA departments. These task forces should involve the collaboration of public policy makers (substantive workers) with experience in problem areas and the specific nature of a particular solution, as well as public policy analysts who can apply research and analytical methods to provide answers to questions arising in the course of attempts to address a particular problem. In these teams it is also worth employing lawyers, who could transpose analysis findings into legal language.

Creating such an interdisciplinary structure would enable PPA operations to be optimized, particularly as a result of removing redundant steps in communication and would allow different perspectives to be taken into account in the analytical process – civil servants preparing IA do not possess knowledge of every aspect of the problem which the policies address. A final suggestion, but one which is exceptionally difficult to implement, is to include decision-makers in the task force – departmental directors and politicians. On one hand, this could increase the realism of actions taken, but on the other hand, it would expose the work of the task force to greater risk.

Another important requirement is to organize frequent meetings between representatives of the Chancellery of the Prime Minister, the Ministry of Finance and the remaining key ministries. The subject of the meetings would be specifying the expectations of RIA and standardizing the approach to IA. Regular meetings of analysts with the various ministers (e.g. quarterly inter-ministerial mini analytical conferences) would also allow specific problems to be rapidly identified and knowledge to be shared.
7. Optimizing the impact assessment process

Although the majority of the above mentioned recommendations involve system changes, we cannot forget about IA itself. In the common opinion of independent experts and participants in the research conducted by the MORE team, the logic of the IA system in Poland for the most part agrees with the logic of the best systems of OECD member states. It is worth considering, however, what kind of changes could be used to optimize and better adapt the IA system to the specificity of the Polish system for creating public policy.

The main recommendation emerging from the research analysis is to enhance the use of the proportionality principle in PPA in Poland. According to this principle, the legislator should, in making public policies, use the necessary means to achieve a given objective, while at the same time taking care to limit the costs – social, financial and bureaucratic – of the actions taken. This principle should also apply to IA. Today, RIAs are often prepared automatically for government regulations and bills – even when there is little justification for doing so.

More attention should be paid to the means of managing the PPA cycle. Analyses should relate directly to the social problem and not be narrowed down to regulations alone. This recommendation implies, as part of the IA, precisely analysing non-regulatory forms of resolving the social problem and presenting them as appendices to the RT form. PPA is a process and not a project, and understood as such should be part of the strategic planning of public policy in Poland.

An important recommendation concerns the forms used in the IA system. These should be more flexible and adapted to the problem which prompted the regulation – the form brought into use at the beginning of 2015 imposes too rigid a structure for presenting analyses relating to the problem being addressed.

As part of the IA system, we also propose integrating various databases in order to create the grounds for evidence-based debate to fuel IA and the whole process of creating and implementing public intervention (see Figure 7.2). This would appear to be more useful than creating an integrated system of managing findings and recommendations from ex post RIA (modelled on the evaluation system). The wide scope of the system would allow utilization of knowledge from a variety of sources,
equally for making decisions in the IA process. From the point of view of IA, a positive solution known from evaluation, would be to create thematic steering groups that would deal with knowledge management in specific policy areas (e.g. competitiveness and innovation, the labour market, the environment etc.).

An integrated system of knowledge management would also allow more efficient use of findings from the seldom performed ex post RIA. This relates to the next recommendation – to introduce the requirement of performing ex post RIA analyses for all legal acts generating significant financial impact on public entities as well as for amendments to important regulations. Findings from these analyses would support the decision making process and become a strategic element in the public
policy cycle. Utilizing *ex post* RIA analyses would help increase the adaptability of the whole public policy system. It is hard to understand why, during the whole of 2014, not a single *ex post* RIA was published, despite the fact that a good number of bills drafted were amendments to existing laws (this problem is not peculiar to the Polish IA system alone). It is therefore necessary to provide wider information on the role and significance of *ex post* RIA and to commission its preparation, as set out in the *Rules of Procedure of the Council of Ministers*. If this does not bring about the anticipated results, it would be worth rethinking the construction of *ex post* RIA and to introduce a requirement to perform it, at least for amended legal acts (e.g. by extending the *ex post* RIA formula and treating it as the replacement of *ex ante* RIA and RT for amendments or shortening it into the form of an appendix to the *ex ante* RIA and RT.

A further recommendation resulting from the diagnosis of the IA system in Poland, is to place more emphasis on communicating analyses and reports in a clear, comprehensible form which is easy for the general public to interpret and ready for use by the media and the opposition. Accenting the presentation of data in the IA system would increase the clarity of the process and the chances of creating high quality PPA.

The last recommendation in this section is to clarify the position of the Ministry of Finance regarding the costs and benefits of implementing legal acts (Art. 50 of the Act of 27 August 2009 on public finances, Journal of Laws [Dziennik Ustaw] no. 157, item 1240).

8. Adapting impact assessment methodologies to the problem area and emphasising variant analysis

The usefulness of IA (as well as other analytical processes) depends to a good extent on the credibility, reliability and accuracy of the research methods and tools used. In IA, not only in Poland, use of cost-benefit analysis dominates (see Weimer 2009). We recommend organizing analytical approaches in IA with the aim of better matching a chosen method to the knowledge requirements and the characteristics of the problem addressed. This will to broadening the palette of tools used, although this is not an aim in itself – where the most appropriate approach is
cost-benefit analysis, then that is the method that should be used. The value of the cost-benefit approach is that it enables comparison of different alternative solutions. However, where there is a lack of real consideration of alternatives, and in situations where the key selection criteria for intervention are not of an economic nature, the utility of this tool is limited. The issue of methodology is sufficiently large, that we have devoted a separate publication to it, in the form of a practical guide to preparing IA (see Hermann-Pawlowska and Bienias, in print).

One of the most valuable approaches to construing an analytical process is assessing the degree to which the research plan used matches the question for which an answer is being sought (the so-called 'platinum standard', see Sanjeev and Craig 2010). Research plans, understood as a logical framework for collecting and analysing data, can be organized according to the typology proposed by Karol Olejniczak, Tomasz Kupiec and Estelle Raimondo (2014; c.f. Bamberger, Rugh and Mabry 2011; de Vaus 2006; Petticrew and Roberts 2003; Stern et al. 2012):

- Meta-analysis (systematic review);
- Experiment, quasi-experiment;
- Statistical studies (including econometric modelling);
- Games and simulations;
- Theory-based evaluation;
- Case studies;
- Participatory approach;
- Descriptive research plan.

Thanks to an open approach to selecting methodologies, IA can effectively fulfil its role, i.e. in establishing whether the change, which incurs certain costs, will actually bring net benefits which would not exist if the change was not implemented. This makes it necessary to place much greater emphasis on establishing the causal relationship between the intervention and its observed effects. This involves accurately defining the base scenario, which is the point of reference for analysing the functioning of the legal act (the counterfactual approach). Historical conditions and a specific tradition of conducting evaluation studies has brought about greater
methodological diversity. The theory-based evaluation approach (c.f. Leeuw 2012; CEAPP 2010) can be particularly useful in performing IA. It involves articulating the whole logic of an intervention and then testing it. In this approach there are various methods and techniques of collecting and analysing data, often combining quantitative and qualitative methods as well as using existing and generated data (*the mixed methods approach*).

In this context, **the RT implemented in the Polish system should be modelled in such a way as to allow full and precise reporting of the specific consequences of all the intervention alternatives analysed.** Variant analysis should enable well-informed decisions on using a given solution based on a diverse range of criteria pointing to the costs and benefits (not necessarily economic) as well as the associated risks. This is of particular significance for those interventions which give rise to disparate and inconsistent consequences depending on the criteria adopted.

RT has huge – as yet unused – **potential for raising the effectiveness of interventions by using public consultation for better diagnosing the problem (its essence, causes and symptoms), mapping out a wide range of solutions and integrating them in a coherent plan of action.** This effect could be achieved by:

- Limiting RT exclusively to presenting a proposed interpretation of the problem, the desired outcomes and several reasonable intervention alternatives along with their consequences;
- Equipping RT with detailed questions to social partners during social consultations regarding the accuracy of the adopted definition of the problem, the actual utility of the proposed outcomes and the appropriateness of the alternative interventions given.
- Ensuring that comments from social partners regarding alternative interventions are based on evidence.

**Summary**

The recommendations presented in this chapter, relating to the identification of the needs and challenges of the Polish IA system, go far beyond simply stream-
lining the method of performing analyses on the consequences of implementing legal acts. This is prompted by the fact that, despite their fundamental significance for evidence-based public policy, IA and evaluation are still tools, and in this sense are not aims in themselves. In order to achieve their purpose, they require certain conditions to be fulfilled. The interest of international institutions (mainly OECD) in the issue of IA and a certain Zeitgeist involving particular attention to the potential of IA worldwide, has created a very favourable climate, not only for improving IA in the narrow sense, but also the whole system of programming public policies which can lead to achieving public good. We are aware that some of the proposed recommendations are difficult to implement. Owing to the great institutional efforts invested in devising a new Rules of Procedure of the Council of Ministers, Guidelines for conducting IA, creating a new IA form and work of ministerial RIA teams, some recommended changes should be postponed, to prevent their implementation being counter-effective. We are confident, however, that our comments will provide the basis for reflection and inspiration for further improvement of the IA system and, in consequence, lead to more efficient management of public policy in Poland.
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*Uchwała nr 190 Rady Ministrów z dn. 29 października 2013 r. – Regulamin pracy Rady Ministrów (MP, poz. 979).*

Regulatory impact assessment has been effectual in Poland in the government administration. Bearing in mind the relatively short length of time in which this system has been functioning, we must acknowledge that significant progress has been achieved. Regulatory impact assessment is less often seen as a formal requirement, or peculiar ritual, and more frequently as an important tool for improving regulation, through introducing systematic analyses of the anticipated consequences to the process of preparing regulations. Building an efficient system of impact analysis – and even more than this: a system of improving draft regulations through use of analyses – requires a whole range of conditions to be fulfilled. We have travelled a winding road, which has led us, in the final chapter, to the key recommendations for the system of impact assessment in Poland. In essence, these are concerned with building a well-functioning system of public policy analysis, an element of which – and only an element, even if a key one – should be impact assessment.

In conclusion, it is worth specifying the most important goals.

1. On an operational level, it is key to:
   1.1. Ensure genuine variant analyses during regulatory tests, which means choosing **one of several possible** methods of implementing intervention. Variant analyses should be documented and made publicly available. We advocate reducing the number of regulations subjected to impact assessment in favour of conducting more in-depth, better quality assessments.
1.2. Expand the repertoire of approaches to impact assessment with methods that go beyond cost-benefit analyses.
1.3. Improve the skills of analytical staff.
1.4. Develop a collaboration network with the expert environment.
1.5. Initiate a process of educating analysts and developing impact assessment methodologies in universities.

2. On a system level, it is key to:
2.1. Make analytical units organizationally distinct as well as develop them in terms of staff expertise and working conditions.
2.2. Separate the units that provide a strategic base for the government and reinforce the strategic dimension of governing.
2.3. Ensure that bills voted on in parliament in their final state are subjected to impact assessment.

These are only the most important points in a long list of goals. It is worth taking action to achieve them, as this will foster high standards in pursuing public policy. It is not possible to dictate a culture of using analytical knowledge in decision-making. This is something which develops in practice. However, this culture will never be achieved without radical improvement in the quality of analyses. Waiting for decision-makers to announce their need for evidence equates to not allowing cars on the road until the horses get accustomed to them. It is first necessary to prove that useful knowledge can be provided in the impact assessment process.

This publication, as indicated in the Introduction, is mainly intended for cognitive purposes. It gives the framework for practical proposals which will be presented in another publication. We have adopted this order, because it would be difficult to justify these practical proposals without showing the seeds from which they grew. We hope that we have been able to show these seeds in our book.
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(1962), professor of economic sociology at the Jagiellonian University in Krakow, the head of the Center of Evaluation and Analysis of Public Policy (CEAPP) and the dean of the Faculty of Philosophy. Prof. Górniak is an economist (MA at the Krakow University of Economics), sociologist (MA and Ph.D. at the Jagiellonian University in Krakow), specialist in the economic sociology, policy analysis and evaluation and social research methods and statistical data analysis.

He started as a professional market research analyst and methodologist with a special focus on financial services market. He served for more than 15 years as a consultant of SPSS Polska and was a member of Customer Advisory Board of SPSS Inc. (until acquisition of SPSS by IBM). He has trained many analysts in Polish companies and policy agencies. Prof. Górniak has a broad experience in labour market and education policy analysis, research design and strategy development. He initiated and designed the first impact assessment evaluation studies in Poland based on
the propensity score matching (commissioned by the Polish Agency of Enterprise Development).

Prof. Górniak was an international consultant of UNDP (a.o. a member of the evaluation team for the Poverty Strategies Initiative), consultant of the World Bank, and a member the Steering Group of METRIS (Monitoring European Trends in Social Sciences and the Humanities) – a project of DG Research, European Commission. He has contributed to or managed expert projects in the area of policy evaluation and strategic programming at the national and regional level in Poland.

Currently as the research director he leads his CEAPP team in a complex, long-term research project “Human Capital Balance” (in cooperation with the Polish Agency of Enterprise Development). He also evaluates the newly implemented system of evaluation of Polish education system within another research team at the CEAPP. He is also a team leader in the policy project concerning transfer of knowledge from universities to business.

Prof. Górniak has contributed as an invited participant to numerous policy workshops and conferences organized by the DG Regio on evaluation and the DG Enterprise and Innovation on innovation policy. At the national level he is a recognized expert in policy analysis and evaluation as well as strategy development. He is a consultant for policy design, analysis and evaluation at the central and regional municipal level.

He has elaborated expert policy papers for the Ministry of Regional Development, Ministry of Finance, Chancellery of the Prime Minister, Polish Agency of Enterprise Development, Malopolska Regional and the Krakow city municipality.

Katarzyna Hermann-Pawlowska

Dr. Hermann-Pawlowska graduated from the Faculty of Law and Administration at Adam Mickiewicz University of Poznan, from the Interdisciplinary Postgraduate Studies at the College of Europe in Natolin, and from PhD studies at the Warsaw School of Economics. Her PhD is in economics with specialization in public administration and European integration. She is the Strategic Project Director in IDEA for Development Foundation. She is an expert, author, and lecturer in the areas of institutional development, strategic management, Europeanization processes, and multi-level governance. She is a member of the Regional Studies Association.
Marianna Król

Psychologist, PhD candidate and a lecturer in the Psychology Department at the Jagiellonian University, Visiting Student Research Collaborator at the Princeton University, NJ. She co-operates with the Interdisciplinary Center for Organizational Research and Development and the Center for Evaluation and Analysis of Public Policies. Professionally, she is a co-owner, trainer and project manager at 313 Consulting, a consulting company specializing in the development of educational simulation games for business and non-governmental organizations. She specializes in innovative HR practices, Employer Branding and organizational development. She co-authored “Situational Judgment Tests,” a handbook on using SJT in recruitment and assessment practice. Since July 2013 she is a SEAT Dealer Network Recruitment and Selection Coordinator at Volkswagen Group Poland.

Professor Stanisław Mazur

Professor Mazur is the Chair of the Department of Public Economy and Administration at the Cracow University of Economics, editor-in-chief of the Public Governance Quarterly, and a member of the Civil Service Council, Prime Minister’s Office. He has experience in the co-ordination of multidisciplinary research teams, including projects relating to public policy analysis, quality of governance, strategic management, and organizational learning. He is the author or co-author of 150 scientific articles and 120 technical papers.

Piotr Prokopowicz

Dr Prokopowicz is an organizational psychologist, sociologist and consultant, an assistant professor in the Department of Sociology of Economy, Education, and Social Research Methods and a researcher at the Center for Evaluation and Analysis of Public Policies. Professionally, he is a co-owner and partner at 313 Consulting, a consulting company specializing in the development of educational simulation games for business and non-governmental organizations. A Ryoichi Sasakawa Young Leaders Fellowship Fund Fellow, he is also the Head of Strategy Implementation Monitoring at the Jagiellonian University. In his research and consulting, he focuses
on helping organizations in reaching their maximum potential through participation, transparency and evidence-based management.

Rafał Trzciński

Mr Trzciński is analyst, a graduate of the Institute of Sociology of the University of Warsaw. He has more than ten years of experience in conducting evaluation studies, including 2005-2014 period when he worked as a chief specialist in the Evaluation Unit of the Polish Agency for Enterprise Development. He specializes in quantitative research design and data analysis. His areas of expertise include experimental and quasi-experimental design. Author and co-editor of publications and articles in this area. Member of the Polish Evaluation Society.

Grzegorz Żmuda

Dr Żmuda is an organizational psychologist, sociologist and managing director at Interdisciplinary Centre for Organizational Research and Development at the Social Psychology Unit, Institute of Psychology, Jagiellonian University. He is a research associate at the Center for Evaluation and Analysis of Public Policies. Professionally, he is a co-owner and partner at 313 Consulting, a consulting company specializing in the development of educational simulation games for business and non-governmental organizations. He is an expert in organizational development, research and data analysis. He is a member of Strategy Implementation Monitoring Team at the Jagiellonian University. As a manager, he has run over a dozen applied research programs on organizational development, recruitment and selection and human capital transfer.
It would be difficult to overestimate the practical significance of this book. In contrast to previous studies on the topic, it contains different examples of analysis and can serve as a guide on the impact assessment, which gives the recipient an effective tool to improve the law-making process. (…)

Problems presented in the book are analyzed simultaneously on multiple levels - from a more conceptual approach to the technical side of the process of assessment. This creates a great advantage of the book, because it solves significant theoretical problems while simultaneously acting as a practical guide, suitable for many stakeholders - professionals: politicians and civil servants, academics, and social activists who, pursuing their individual goals, should consider conclusions of this study. I do not doubt that the theoretical and practical values of this book will provide its prominent place in the publishing market.

Waldemar Hoff, PhD, Kozminski University

The book presents to a great extent - but not exclusively - cognitive ambitions and values. However, the careful reader will find a number of relevant references to the practice and change. (…)

It touches a new field of knowledge and practice of great importance to the quality of public intervention in Poland. It covers all the available methods and sources of information. The book also contains a number of relevant conclusions and recommendations. I strongly recommend it to all researchers, practitioners (civil servants and politicians), and students interested in the functioning of public administration and public policy matters. The sooner the knowledge contained in this book will be disseminated, the better for all.

Marek Kozak, PhD, EUROREG, University of Warsaw

Publisher's review of the book J.Górniak, (editor), 2015
Evidence-based impact assessment: a model for Poland. Warsaw, Kozminski University