

E-administracja

Skuteczna, odpowiedzialna i otwarta
administracja publiczna
w Unii Europejskiej

REDAKCJA

Sławomir Dudzik · Inga Kawka · Renata Śliwa

Krakow Jean Monnet Research Papers



E-administracja

Krakow Jean Monnet Research Papers

1

E-administracja

**Skuteczna, odpowiedzialna i otwarta
administracja publiczna
w Unii Europejskiej**

REDAKCJA

Sławomir Dudzik · Inga Kawka · Renata Śliwa



Kraków 2022

Sławomir Dudzik 
Uniwersytet Jagielloński, Kraków
✉ s.dudzik@uj.edu.pl

Inga Kawka 
Uniwersytet Jagielloński, Kraków
✉ inga.kawka@uj.edu.pl

Renata Śliwa 
Uniwersytet Pedagogiczny im. KEN, Kraków
✉ renata.sliwa@up.krakow.pl

© Copyright by individual authors, 2022

Recenzja: dr hab. Agata Jurkowska-Gomułka, prof. WSiZ

Opracowanie redakcyjne: Patrycjusz Pilawski, Piotr Art

Projekt okładki: Marta Jaszczuk

ISBN 978-83-8138-673-9
<https://doi.org/10.12797/9788381386739>

Publikacja dofinansowana przez Wydział Prawa i Administracji Uniwersytetu Jagiellońskiego oraz Uniwersytet Pedagogiczny im. Komisji Edukacji Narodowej w Krakowie

With the support of Jean Monnet Activities within ERASMUS+ Programme of the European Union

Projekt współfinansowany w
ramach programu Unii Europejskiej
Erasmus+ 

Wsparcie Komisji Europejskiej dla produkcji tej publikacji nie stanowi poparcia dla treści, które odzwierciedlają jedynie poglądy autorów, a Komisja nie może zostać pociągnięta do odpowiedzialności za jakiegokolwiek wykorzystanie informacji w niej zawartych.

WYDAWNICTWO KSIĘGARNIA AKADEMICKA
ul. św. Anny 6, 31-008 Kraków
tel.: 12 421-13-87; 12 431-27-43
e-mail: publishing@akademicka.pl

Księgarnia internetowa: <https://akademicka.com.pl>

SPIS TREŚCI

Słowo wstępne.....	7
--------------------	---

CZĘŚĆ I

E-ADMINISTRACJA Z PERSPEKTYWY PRAWA EUROPEJSKIEGO

SŁAWOMIR DUDZIK

Podstawy prawne działania e-administracji a ochrona danych osobowych	13
--	----

MAGDALENA FEDOROWICZ

E-administracja nadzorcza na rynku finansowym UE a stabilność finansowa z perspektywy projektów rozporządzeń DORA i MiCA.....	29
---	----

MONIKA NIEDŹWIEDŹ

Dokument w postaci elektronicznej jako dowód w postępowaniu administracyjnym i sądownoadministracyjnym w świetle wytycznych Rady Europy	49
---	----

DAMIAN SZULC

Is the Central Register of Beneficial Owners a Reliable and Independent Source of Information? Different ways of Implementing the 4th and 5th AML Directives in Poland and Germany	69
--	----

CZĘŚĆ II

CYFRYZACJA ADMINISTRACJI JAKO KATALIZATOR TRANSFORMACJI W KIERUNKU

ADMINISTRACJI OTWARTEJ, ODPOWIEDZIALNEJ I ŚWIADCZĄCEJ E-USŁUGI

DLA OBYWATELI

INGA KAWKA

Wdrożenie sieci 5G jako warunek rozwoju europejskich inteligentnych miast.....	91
--	----

ADAM J. JAROSZ

Digitalizacja usług publicznych na przykładzie biletów komunikacji miejskiej	111
--	-----

ALICJA SIKORA

Rozważania o koncepcji e-demokracji w unijnym porządku prawnym	127
--	-----

ALEKSANDRA SOŁTYSIŃSKA

E-procurement and the Principle of Transparency in Public Procurement in the European Union	147
---	-----

RENATA ŚLIWA

Regulatory Impact Assessment –

Retrospect Preview, Purpose, Consequences: Toward e-RIA..... 165

CZĘŚĆ III

AKTUALNE WYZWANIA CYFROWE DLA POLSKIEJ ADMINISTRACJI

MARIUSZ GODLEWSKI

E-administracja w procesie inwestycyjnym. Elektroniczna forma składania wniosków w postępowaniu budowlanym – uwagi na tle ostatnich nowelizacji prawa budowlanego..... 185

TOMASZ GRZYBOWSKI

Granice cyfrowej kontroli podatnika na przykładzie zmian uszczelniających w VAT 203

MAŁGORZATA KOŻUCH

Czy e-postępowanie mediacyjne zwiększa odpowiedzialność administracji?..... 221

ELŻBIETA MAŁECKA

Wybrane aspekty wdrożenia i funkcjonowania e-administracji w Polsce na przykładzie Urzędu Transportu Kolejowego 237

PIOTR RUCZKOWSKI

Elektroniczny tytuł wykonawczy w postępowaniu egzekucyjnym w administracji 255

CZĘŚĆ IV

E-ADMINISTRACJA JAKO CZYNNIK ZWIĘKSZAJĄCY POTENCJAŁ ADMINISTRACJI

PUBLICZNEJ W PAŃSTWACH CZŁONKOWSKICH UE I PAŃSTWACH STOWARZYSZONYCH ORAZ ORGANIZACJACH MIĘDZYNARODOWYCH

ITAI APTER

International and EU E-Norm and Decision Making (E-Governance):
Lessons for Public Administrations for the COVID-19 Era and Beyond..... 269

MIOMIRA P. KOSTIĆ

E-Public Policies and the Issue of Gender Equality..... 287

CHRISTINE MENGÈS-LE PAPE

Migration et e-administration en France..... 305

ONDREJ MITAL

The Impact of Social Media Use on E-communication Between Government
and Public: The Case of Slovakia 315

Indeks osobowy 337

RENATA ŚLIWA¹

REGULATORY IMPACT ASSESSMENT – RETROSPECT PREVIEW, PURPOSE, CONSEQUENCES. TOWARD E-RIA

ABSTRACT: The complexity and dynamism of management of enormous amount of information, analytical methods and human capital resources toward informing regulatory decisions always entails the question whether or not the costs of the regulatory process exceed its benefits. What were the premises to deepen the analysis upon the entanglement of regulatory aims? Are the results straightforward or even predictable within the contingencies? The main research question of the paper boils down to the following: does the regulatory impact assessment as a tool toward agile regulation, and then better regulatory governance, incorporate the potential to stimulate the effectiveness of economic ecosystem?

The paper aims to emphasize the essence of economic analysis of regulation, drawing on the analysis of the secondary data and the case studies (e-RIA in Korea) on implementation of regulatory impact assessment.

KEYWORDS: economic analysis of regulation, better regulation initiative, regulatory impact assessment, e-RIA

**OCENA SKUTKÓW REGULACJI – RETROSPEKTYWNY PODGLĄD, CEL, KONSEKWENCJE.
W KIERUNKU E-RIA**

ABSTRAKT: Złożoność i dynamizm zarządzania ogromną ilością informacji, metod analitycznych, zasobów kapitału ludzkiego w celu informowania o decyzjach regu-

¹ Dr Renata Śliwa, Institute of Law and Economics, Chair of Economics and Economic Policy, Pedagogical University of Cracow; <https://orcid.org/0000-0001-5029-8798>.

lacyjnych zawsze pociąga za sobą pytanie, czy koszty procesu regulacyjnego nie przewyższają korzyści z niego płynących. Jakie były przesłanki do pogłębienia analizy celów regulacyjnych? Czy wyniki są jednoznaczne i przewidywalne w ramach danych uwarunkowań? Główne pytanie badawcze artykułu sprowadza się do następującego pytania: czy ocena skutków regulacji jako narzędzie służące sprawnej regulacji, a następnie lepszemu łaadowi regulacyjnemu, zawiera w sobie potencjał stymulowania efektywności ekosystemu gospodarczego.

Artykuł ma na celu podkreślenie istoty ekonomicznej analizy regulacji, wykorzystując analizę danych wtórnych oraz studia przypadków (e-RIA w Korei) dotyczące wdrażania oceny skutków regulacji.

SŁOWA KLUCZOWE: ekonomiczna analiza regulacji, inicjatywa na rzecz lepszych uregulowań prawnych, ocena skutków regulacji, e-RIA

1. Introduction

The perception of regulation can be learned through the concept of leverage applied by governments to support social well-being. Failure to design regulation appropriately results in the departure from the regulatory objectives. Not only does this render regulations potentially impotent or detrimental to society, but it also raises concerns about trust in governments to help manage societal problems.

Introducing regulatory reforms and maintaining their momentum is critical to achieving measurable results and supporting sustainable and inclusive growth, increasing productivity, and encouraging innovation.

The introduction and strengthening of regulatory reforms by governments are fundamentally intended to contribute to increased investment, productivity, job creation, and greater prosperity. These efforts translate into strengthening the work of regulatory institutions that have already been established, as well as new initiatives (it is important in this process to maintain continuity in the reforms underway), involving not only central government agencies in the reforms but also other institutions, such as advisory groups and independent bodies that are tasked with addressing specific problems and have so far produced satisfactory results. A special role is assigned to prioritizing certain strategically sensitive areas of growth such as freeing the small and medium-sized enterprise (SME) sector from regulatory burdens.

As outlined by OECD, regulation, meant as “laws, formal and informal orders, subordinate rules, administrative formalities, rules issued by non-governmental or

self-regulatory bodies to whom governments have delegated regulatory powers,”² embodies a variety of mechanisms to influence the behavior of enterprises and citizens. Regulation usually encompasses defining rules, standard-setting – information-gathering – behavior modification or rule-setting, monitoring, promoting compliance, steering, sustained and focused controlling. Global environment that is becoming increasingly interconnected, dynamic, and complex has never before called so much for comprehend regulatory assessment.

The current Covid-19 pandemic-driven crisis results in an even more pressing need to rethink the approach of policy makers to regulatory policy and regulatory governance issues toward more holistic and more competitiveness-focused approach.³ Smart investment and innovation, followed by sustainable growth are all supported by rules of law and regulatory governance which stabilize the business environment, enforce the trust of citizens, and diminish the competence and public money leakages in public sphere.

Regulatory impact assessment (RIA) forwards the regulatory policy and governance by unfolding crucial information on the decisions on whether and how to regulate in order to achieve policy goals, and by examining the possible consequences of alternative regulatory options.

The methodological underpinnings of conducting RIAs challenge the epistemic value of the explanation they provide, for example, in modeling attempts called *how-actually explanations* (HAEs) versus *how-possibly explanations* (HPEs)⁴.

Regulatory Impact Assessment (RIA) is generally considered as “a flexible instrument” perceived as a tool and a process⁵ to set standards, gather information, as well as monitor, promote compliance and control. Its main role in the regulatory governance structures is to inform regulators and policymakers on how to make the results of regulation of the most benefits to society.

This paper aims to unfold the idea and operationalization of RIA. The outline of economic analysis of regulation is drawn. The analysis of the secondary data and the case studies (e-RIA in Korea) on implementation of regulatory impact assessment are developed.

² OECD, *OECD Regulatory Policy Outlook 2018*, Paris 2018, p. 250.

³ OECD, *OECD Regulatory Policy Outlook 2015*, Paris 2015.

⁴ T. Grüne-Yanoff, Ph. Verreault-Julien, *How-Possibly Explanations in Economics: Anything Goes?*, “Journal of Economic Methodology” 2021, vol. 28, iss. 1, pp. 114-123.

⁵ P. Davidson, C. Kauffmann, M.-G. de Liedekerke, *How Do Laws and Regulations Affect Competitiveness: The Role for Regulatory Impact Assessment*, OECD Regulatory Policy Working Papers No. 15, Paris 2021.

2. Law and economics, economic analysis of law, and impact assessment – institutional foundation of recent regulatory approaches

The value of economics as a scientific theory has been used to support the prediction of the effects of legal sanctions on behavior (responsiveness of people to laws). By accentuating the notion of efficiency, it underpins the evaluation of rules' effects on such important values as economic effectiveness or income distribution.⁶ The economic analysis of law is to unfold responsiveness of individuals to sanctions, in a similar way as they respond for example to higher prices by consuming less.⁷ Regulation involves burden or benefit to a society. Therefore, cost-benefit analysis represents the response to scarcity phenomena that always implies making trade-offs. Economic analysis of regulation provides us with potential understanding of how regulation can affect social welfare. By analyzing and communicating regulatory decisions, economic investigation seeks to answer the question on whether or not the costs of the regulatory process exceed its benefits.

The incentives conveyed by regulation of pricing, cross- and direct subsidies, entry, and interconnection step to the fore only if appropriate regulatory governance has been implemented.⁸ Regulation as a contracting problem (transaction costs economics) and the connection between institutions and politicians' incentives (positive political economy) emerges. Regulatory power is deemed to have been shifting from state legislative bodies to administrative agencies (when frequent adjustments and reviews are compulsory). For the institutional arrangement to create the regulatory incentive to invest, the pro-investment institutional environment needs to be endogenously equipped with the properly designed delegation to bureaucracy, delegation to the judiciary, and regulatory transparency. The content of the rules needs to be investigated in terms of its impact on efficiency. There are several alternatives offered to work as crucial safeguard institutions, that is, legislative and executive ones (appointing members, implementing law, constituting mutual relations), judicial ones (appointing judges and constituting an internal structure, impartiality), customs, the nature and balance of social interests, administrative capabilities of the nation, a privatization program, development of a stock market, development of private institutional investors (pension funds, insurance companies etc.) or international institutions (e.g. the World Bank providing guarantees for private investors). Frameworks safeguarding the interests that

⁶ R. Cooter, T. Ulen, *Law and Economics*, Book 2, 6th edition, Berkeley 2016, p. 4.

⁷ *Ibidem*, p. 3.

⁸ P.T. Spiller, M. Tommasi, *The Institutions of Regulation: An Application to Public Utilities* [in:] *Handbook of New Institutional Economics*, C. Menard, M. Shirley (eds), Berlin 2008, pp. 515-543.

stem from regulatory processes are about regulatory governance perceived as a framework of regulatory structures and processes designed to achieve and sustain desired regulatory outcomes. The participation of multiple interest groups, preferably with conflicting interests, has proved to limit the power stemming from the information dominance of interest groups (the intensity of participation of actors with different interests). The higher the intensity, the more high-powered the regulation. Regulation as a political process has its constraints as well as challenges in this respect. Opening policymaking and rulemaking processes to the participation of representatives of various interest through public consultation and stakeholder engagement in regulatory impact assessment is deemed to have a potential for an impact.

In the institutional transformation of the UK, changes brought about by deregulatory trends in utilities have contributed to a recognition of the need for greater attention to the need for deeper adjustments in regulation. The focus has been on regulation as an intervention needed only where it is necessary and where its costs do not exceed its benefits.⁹

In this way, RIA became a process tool that laid the foundation for a new approach to regulatory governance underpinned by the promotion of such principles of rule-making as transparency, consistency, proportionality, accountability, targeting and subsidiarity.

RIA is part of the regulatory management system, which also includes stakeholder engagement, regulatory delivery and ex-post evaluation. Building a regulatory system on these pillars provides the regulatory process with systemicity (in the design, enforcement, and evaluation of regulations) and creates a framework for ensuring regulatory effectiveness and efficiency. In its tool and process dimension, the RIA is intended to provide information on how policy objectives can be achieved, while at the same time indicating that there is no better alternative approach.¹⁰

Regulatory impact assessment (RIA) is defined by OECD as “*systematic process of identification and quantification of benefits and costs likely to flow from regulatory and non-regulatory options for a policy under consideration.*”¹¹

⁹ P. Vass, *Regulatory Governance and the Lessons from UK Practice* [in:] *International Handbook on Economic Regulation*, M. Crew, D. Parker (eds), Cheltenham 2006, p. 197.

¹⁰ R. Deighton-Smith, A. Erbacci, C. Kauffmann, *Promoting Inclusive Growth through Better Regulation: The Role of Regulatory Impact Assessment*, OECD Regulatory Policy Working Papers 2, Paris 2016.

¹¹ OECD, *OECD Regulatory Policy Outlook 2018*, Paris 2018, p. 250.

3. Trends of Regulatory Impact Assessment development – historical perspective, main functions, reported effects

Even before the presidency of J. Carter (1977-1981), which was a period of development of key regulatory reform practices in the United States,¹² the *Quality of Life Review* modeling process began (presidency of R. Nixon, 1969-1974), later developed by the administration of G. Ford (1974-1977). The first *Quality of Life Review* as an environmental cost-benefit analysis was done only on the impact of regulation on business operations. Under Nixon, agencies were additionally required to develop inflation impact statements for all regulations with significant effects on stimulating price increases in the economy. Regulatory reforms under Carter were meant to give momentum to the economy and, in particular, to combat inflation. Attention was given to managing regulations in such a way as to lighten their burden, make only necessary regulations, and keep them transparent, simple, and thus efficient. Reforms carried out to streamline regulations during Reagan's presidency were the main axis of the strategy to revive the economy, which assumed stimulation of economic activity through regulatory relief for investment and rejection of existing price and wage standards. Deregulation as Reagan's flagship response to the regulatory needs of the economy was based on the work of a team of advisers under the Task Force on Regulatory Reform and Executive Order No. 12291 of February 17, 1981, requiring – among others – that regulatory agencies conduct a benefit-cost analysis of regulations, that is, a regulatory impact analysis, for each project of significant regulation, or one with an impact on the economy of \$100 million or more, as well as centralizing the responsibility for shaping regulations in the administration reporting to the president and thus shifting it from government agencies, Congressional committees and lobbyists. In the mid-1980s, Australia introduced the requirement to conduct RIAs.¹³ In the late 1990s, the United Kingdom introduced a mandatory requirement to conduct an RIA for each new regulatory project from each government department.¹⁴

Drawing on the experience of mainly the United States and the United Kingdom, international organizations such as the Organization for Economic Cooperation and Development (a horizontal program on regulatory reform conducted by the OECD

¹² Proper recognition of the importance of RIAs began in the United States in 1978 with the introduction of inflation impact assessments in the Carter administration (*inflation impact assessment*).

¹³ OECD, *OECD Reviews of Regulatory Reform. Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris 2002.

¹⁴ K. Warwick, F. Naru, *Regulatory Impact Assessment: Incentive Structures in the UK Better Regulation Framework* [in:] *Improving Regulatory Governance: Trends, Practices and the Way Forward*, Korea Development Institute and OECD, Paris 2017, p. 172.

since 1995), and the World Bank (WB) have adopted the task, or even a mission, to popularize best practices, comparative analysis of various solutions introduced around the world. In 1995, a ten-point list of references for regulatory decision-making was adopted.¹⁵ Adjustments involving the identification of important areas of low-quality regulation, advocating for specific regulatory reforms, or removing burdensome regulations, over time, showed the imperative for a more systemic approach to the reforms undertaken in a coordinated effort on many policy fronts simultaneously. This transformation led not only to explicit political support for maturing reform agendas, but also to the adoption of peri-governmental reform policies marked by time discipline, targets, or evaluation mechanisms. A coherent approach to the rule-making process was also being adopted, as well as new policy tools, that is, regulatory impact analyses, consultation mechanisms or regulatory alternatives analyses. As a result, there was a clear increase in the responsibility for particular elements of the regulatory program, which was assigned to particular ministries and government bodies, including units specializing in the management and supervision of regulations, such as the Cabinet Office or independent offices specializing in drafting legal acts.

Currently, most OECD countries supplement their regulatory systems with regulatory impact assessments. At the same time, it is stressed that standards drawn from best practice are often difficult to achieve - in many countries some elements of RIA are not in use.

Of the 186 countries surveyed by the World Bank, 86 conducted RIAs systematically or periodically. The most common assessments were of the expected benefits to be derived from regulations, their impact on the public sector, and the operation of the private sector. The areas of potential impact on international obligations and agreements and on the environment were the least focused on in the RIAs. Fewer than half of the countries use specific criteria to identify regulations subject to impact assessment. Some of them have financial thresholds (e.g. Japan, Bahrain or Malta), others show significant social and economic impacts (e.g. Greece - regulations affecting more than 40% of the country's population or impact on important sectors such as tourism, small and medium enterprises, maritime sector), or impacts on business (e.g. Moldova only carries out impact assessments for regulations containing business-forming standards).

Supplementing regulatory actions with regulatory impact assessments is most common in highly developed countries. Of the 59 highly developed economies,

¹⁵ OECD, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, OECD/GD 95, Paris 1995.

about 24% do not conduct RIAs (Antigua and Barbuda, Argentina, Bahamas, Brunei Darussalam, Kuwait, Oman, Palau, Qatar, San Marino, Saudi Arabia, Seychelles, St. Kitts and Nevis, Trinidad and Tobago, and Uruguay). Of the countries with low national income levels, only 12% conduct some form of RIA. In many countries, RIA is conducted only by individual ministries and is not practiced homogenously across regulatory institutions.¹⁶

The benefits of implementing RIA are categorized by Morrall (2001) into three groups: efficiency (identification of the need for a regulatory initiative, analysis of alternative approaches, examination of the benefits and costs of identified alternatives), accountability and transparency.¹⁷

The consensus on the need for cost and efficiency of regulatory processes has been accompanied by institutional changes manifested in the establishment of bodies overseeing the process of introduction of regulations¹⁸ (in the United Kingdom: Better Regulation Task Force since 1997, Better Regulation Commission until 2008 and now Better Regulation Executive; in the structures of the European Union: from 2006 Impact Assessment Board, then from 2015 Regulatory Scrutiny Board). Of the 86 countries that have introduced RIAs, almost 63% have dedicated the tasks of conducting, reviewing, and commenting on RIAs to specialized government bodies. This is particularly the case where RIAs are conducted across government. Some of these specialized oversight bodies are responsible for identifying regulatory changes that require an impact assessment, but their most common task is to provide guidance to experts conducting RIAs. It is also observed that 31 out of 86 countries conducting RIAs, despite having no legal obligation to conduct RIAs, do them as a good practice¹⁹.

¹⁶ World Bank, *Global Indicators of Regulatory Governance*, World Bank Database, <https://rule-making.worldbank.org/en/key-findings#1> (28.05.2020); J. Lemoine, *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments*, Case Study by World Bank Group; <http://documents1.worldbank.org/curated/en/905611520284525814/Global-Indicators-of-Regulatory-Governance-Worldwide-Practices-of-Regulatory-Impact-Assessments.pdf> (28.05.2020); The Global Indicators of Regulatory Governance database is an initiative of the World Bank Global Indicator Group; a database covering 186 countries, bringing together data on stakeholder responsiveness to regulation (information on existing regulatory frameworks, non-regulatory practices), data collected between October 2017 and May 2018 through a survey questionnaire.

¹⁷ J.F. Morrall, *Regulatory Impact Analysis: Efficiency, Accountability, and Transparency*, U.S. Office of Management and Budget, Washington, DC, 2001.

¹⁸ P. Vass, *Regulatory Governance and the Lessons...*, p. 197.

¹⁹ World Bank, *Global Indicators...*

4. *Better Regulation* in the European Union institutional structures

The European Union has reached relatively high levels of indicators within regulatory impact assessment processes, and stakeholder engagement. Following one of the crucial functions of the law - to overcome the obstacle of so-called common actions, where some of individuals' desires one accomplishes only if one cooperates with others²⁰ - the EU has made efforts to “simplify legislation, avoid overregulation and reduce administrative burdens.” In that vein, the EU eagerly pushes toward building good governance as a common interest indicating its determination through such actions as: implementing Better Regulation Package in 2015, building REFIT Platform represented by the Commission, member states and non-government stakeholders to discuss the modification of EU law, establishing the Regulatory Scrutiny Board (three EC officials and three external experts, chaired by a Commission’s Director General) in order to verify the quality of impact assessments and other evaluations contributing to the value of the EU legislation.²¹

Better Regulation, as it is performed at each stage of decision-making in the EU legislation structures, includes:

1. Setting priorities: the stage of processing before proposing a new law or when evaluating laws already in force; the sets of policy priorities are introduced and the Commission together with the Council and the European Parliament²² agree on top legislative priorities (annual joint declaration²³);
2. Planning: the phase devoted to hearing the opinion of businesses, citizens or public administration (stakeholder groups) on laws and policies in development; the Internet tool is provided to review, share, feedback on any initiative²⁴;
3. Proposing: the step toward translating the ideas delivered by stakeholders into concrete policy options, and then opening them for consultation, and finally proposing the bill;
4. Adopting: the point of the process dedicated to sending the proposal to the European Parliament and to the Council to debate and adopt the law made also

²⁰ J. Stelmach, B. Brożek, W. Załuski, *Dziesięć wykładów o ekonomii prawa*, Warszawa 2007.

²¹ OECD, *Indicators of Regulatory Policy and Governance*, European Union; retrieved from: <http://www.oecd.org/gov/regulatory-policy/indicators-of-regulatory-policy-and-governance-2019-eu.pdf> (28.05.2020).

²² *Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*, OJ L 123, 12.5.2016, pp. 1-14.

²³ *Joint Declaration on the EU’s legislative priorities for 2018-19; Joint Declaration on the EU’s legislative priorities for 2017*.

²⁴ See more: Published Initiatives.

public, to take into account even more comments, to attach provisions and updates (non-essential amendments) through delegating and implementing acts (sustain the openness of the consultation to the public);

5. Applying: the time period meant for reviewing the process and measures of national transposing and tracking infringement procedures by the European Commission;
6. Evaluating: delivering the contribution of public's opinion (possible at every stage of law-making, even for the law in force²⁵); openness to meet citizens' needs at minimum costs (fitness checks, REFIT programme);
7. Improving: the regular collecting of experts' views from businesses, social organizations, civil society representatives, and advising the Commission on how to make the EU legislation more efficient and effective (REFIT platform).

As to the effects on the economy, some rather not spectacular ones have been registered so far within the endeavors to better regulate in the EU. The study of A. Renda for 2003-2005 suggested the wide and important areas of regulatory oversight awaiting to be improved, mainly in terms of quantifying and monetarizing costs and benefits within impact assessments.²⁶ Despite strong overall political commitment to the regulatory impact assessment within EU institutional structures (Better Regulation Agenda) and in the EU Member States, decade-long studies of OECD (2019) showed that the analyzed EU countries were still quite long way ahead. The most serious challenges laid in:

- the reviewing of existing regulation (*ex post* evaluation);
- the quality of RIA, often too poor and with little or no consequences;
- systematic assessment of alternatives to the proposed regulatory options;
- attention paid to the cost to business;
- oversight – the least developed feature of regulatory policy;
- too much focus on making law in terms of adeptness, and not enough in terms of communicating beneficial leveraging to communities.

²⁵ Contribute to law-making.

²⁶ A. Renda, *Impact Assessment in the EU: The State of the Art and the Art of the State*, Brussels 2006.

5. Toward better management of RIA procedures – e-RIA as a Korean endeavor to encompass the method of evidence-basing in support of more compatible and quality-enhanced regulation/e-RIA as an interface between government and society

Korea has seen significant progress in shaping its regulatory policy reforms. In the country, *ex-post* evaluation is now mandatory for all regulations issued by the executive, and ministries are required to outline an evaluation plan as part of each RIA. RIA is conducted for all regulations (lower hierarchy law) in Korea and for primary laws initiated by the executive branch. As a result of the search for efficiency in regulatory policy and a higher level of quality of regulation, an electronic RIA system (e-RIA) was introduced in 2015, thereby creating a better source of information for central-level officials preparing cost-benefit analyses of individual regulatory acts. All regulations initiated by the executive are subject to consultations, the transparency of which is constantly improved. The e-Legislation Centre and the Regulatory Information Portal provide interested parties with information on upcoming consultations in good time. Comments submitted through the portals are analyzed by the regulatory authorities and feedback is sent on them. The “Regulatory Reform Sinmungo” petition system is intended to alert the government to unnecessary burdens on businesses and citizens, and the “Cost-in, Cost-out” principle is intended to inform about the stability of the total cost of regulation by having to remove existing costs when new costs are introduced. It should be noted that the impact assessment of regulatory procedures in Korea (especially RIA) refers to about 13% of the primary law initiated by the executive branch, as laws initiated by the parliament are not subject to impact assessment.²⁷

5.1. Overall review of regulatory impact assessment trends in Korea

The milestones of the reform process conducted in Korea since the late 1990s are *Sinmungo*, *Cost-in*, *Cost-out* and the Regulatory Reform Committee (RRC). The necessary institutions, processes and tools to support good regulatory practices have been established.

Sinmungo’s system for alerting the government to unnecessary regulatory burdens on businesses and citizens is conducted online with the ability to submit feedback in English.

²⁷ OCED, *OECD Regulatory Policy Outlook*, Paris 2018. Korea: retrieved from: <https://www.oecd.org/gov/regulatory-policy/korea-country-note-regulatory-policy-2018.pdf> (28.05.2020).

The Cost-in, Cost-out system has been established since 2016 to manage the flow of regulation by balancing the regulatory costs of new regulatory proposals with the removal of existing regulatory burdens (from abandoning regulation to improving the quality of regulation; with particular attention to this trend in relation to investment of emerging industries and relieving regulatory oppression of the small and medium-sized enterprise sector). The system aims to limit the increase in costs generated by new and supplementary regulation by removing or reducing the burden of regulation that generates the same or greater cost.

The RRC is an executive, independent oversight body that assesses the quality of all regulations. The body, with representation from government and the broader public sector (the Prime Minister, six ministers, the chairs of the Fair Trading Commission, the FTC, 17 members from outside government, mostly from academia), is charged with scrutinizing laws and regulations. All regulatory proposals from central administrative agencies are subject to review by the RRC, which is co-chaired by the Prime Minister and a representative from the non-government sector. The orientation of the RRC is mainly towards private sector regulation; there is limited representation of other interested sector stakeholders on the Committee (e.g. local government representatives). Within the RRC, there are two subcommittees (Economic Affairs and Social and Administrative Affairs), which separately manage their respective regulations. The specific role of this reform cell is indicated to be more in coordinating regulatory policy than checking the quality of all regulatory impact analyses.

The reform is stimulated at the ministerial level. Twice a year, ministerial meetings are held on the removal of unnecessary regulatory burdens, especially for enterprises.

Regulatory impact analysis statements were introduced in Korea in 1998. They are prepared by central government agencies and checked by the RRC. An important role in administering the RIA process is played in Korea by the efficiency of the Regulatory Reform Office (RRO), which, with 20 office staff, handles (providing a total review of all drafts) more than 3,500 draft regulations per year from all central government agencies.²⁸ Of these drafts, about 1,000 are sent to the RRC for further review. Since 2014, a Regulatory Information Portal has been in operation, serving as a central platform for developing public access and engagement and transparency in regulatory processes. The agenda as well as a summary of the RRC proceedings are published on the portal.

²⁸ By comparison, in 2016, the UK Regulatory Policy Committee reviewed 318 drafts that had first entered the process path (Regulatory Policy Committee, 2017); the German Normenkontrollrat reviewed 362 draft regulations between July 2015 and July 2016.

The operation of advisory groups and institutions using a wide range of platforms and approaches to encourage stakeholder participation in the regulatory reform process demonstrates the strong orientation of the system towards regulatory change processes stimulated by knowledge gained from complaints/criticism of existing regulations. An example is Sinmungo providing opportunities to express opinions on existing regulations.

Particular importance is attributed to the commitment of all bodies at the highest political level to integrate the system of governance in maintaining the rigor and quality of regulations introduced. In Korea, the lack of a system of scrutiny of introduced regulations at the parliamentary level is pointed to as a significant obstacle to achieving better results from “better regulation” practices at the executive level.

The Regulatory Reform Office (RRO) in the Office for Government Policy Co-ordination (OPC) provides administrative support to the RRC in formulating compact, final decisions on a given project.

Each year, the bureau receives more than 3,500 applications from all central administrative agencies (there is no dedicated regulatory quality review unit attached to parliament in this country). However, since there are only about 20 staff members to review the applications, ensuring a complete review of each application is a challenge for the bureau. Of the proposals reviewed, approximately 1,000 proposals are sent to the RRC for further review. This is a fairly high number compared to similar bodies in other countries. For example, in 2016, the UK Regulatory Policy Committee reviewed 318 first-time applications; between July 2015 and June 2016, the German Normenkontrolrat reviewed 362 regulatory applications. There is no special body within the National Assembly that promotes regulatory quality.

Korea’s performance in conducting RIAs, stakeholder engagement in regulatory processes and ex-post evaluation of regulations showed a level above the OECD average.²⁹ However, the need and opportunities for realizing the potential of ongoing regulatory practices are continuously pointed out. Introduced since 1998, regulatory impact assessments (RIAs) aim to deepen and highlight alternatives of regulatory approaches to a problem. The multi-stage RIA procedure is a review but also an opportunity to improve the regulation undertaken. This regulatory procedure is performed by the head of the central administrative agency, supported by agencies such as the Small and Medium Business Administration, Fair Trade Commission and Korea Agency for Technology and Standards (KATS), as well as by two regulatory research

²⁹ *OECD Indicators of Regulatory Policy and Governance* (iREG); <https://stats.oecd.org/Index.aspx?QueryId=85336> (20.07.2021).

centers, the Korea Development Institute (KDI) and the Korea Institute of Public Administration (KIPA). All draft RIAs are made public approximately 40 days before they are proposed for legislation. The draft RIAs are reviewed by an internal regulatory reform committee at the respective central government agency, after which the RRC thoroughly reviews them. All regulatory alternatives proposed as part of the RIA analyses (existing, proposed alternative, and deregulation or down-regulation) must be supported by a cost-benefit analysis, and when a regulatory administrative agency selects one of these alternatives, the decision must be made rationally and objectively by comparing the results of the analysis.

The Korean government introduced the *Tailored Regulatory Approach* to SME regulation. This approach aimed to offset the regulatory burden disproportionately affecting SMEs by differentiating regulation according to the size of enterprises. In July 2016, the Prime Minister's Ordinance establishing the legal basis for the *Tailored Regulatory Approach* was introduced. According to the Ordinance, when introducing or strengthening regulations, central administrative agencies shall consider a plan to exempt micro enterprises from the application of regulations for a period of three years only if they deem it necessary. In addition, if uniformly imposing regulations on all businesses is deemed inappropriate or excessive for small businesses, central administrative agencies are also required to consider a plan to ease the regulatory burden on small businesses by exempting them from the application of all or some regulations or by setting a temporary exemption period.

Among the key factors that may enhance the impact of regulatory reform and increase the government's ability to improve the development and application of regulations is the electronification of RIAs (e-RIA).

5.2. The idea and implementation of e-RIA

The preparation and procedure of the RIA analysis was done through online platforms that enabled automatic cost-benefit comparisons. Support in the area of regulatory impact assessment was provided to the government and the bodies responsible for RIA by research institutions, which, with their partial autonomy from the government, are tasked with providing independent analyses on selected regulatory issues.

The next stage of streamlining the procedure for conducting a regulatory impact assessment includes the implementation of e-RIA. Since 2015, the government has made it possible to conduct the regulatory impact assessment procedure on an online platform. The system created for this purpose compares the costs and benefits as-

sociated with each proposed regulatory alternative³⁰ thanks to the system's built-in automation and data accumulation functionality. An important pillar of the RIA process is the online system's support for quantifying the cost-benefit analysis, which is one of the fundamental handicaps of conducting RIAs in other jurisdictions and previously in Korea.

The e-RIA system forces users to provide the necessary information for the RIA document (fields need to be filled in electronically), which prevents omissions or missing data important for the RIA. In addition, the system simultaneously allows the officials preparing the RIA to automatically enter the necessary data from national statistical databases.

The difficulty of preparing the proper RIA is minimized for the officials within the e-RIA system by providing relevant descriptions and examples in the filled-in fields of the RIA document. Completion of all required fields allows the system to automatically generate the RIA document.

RROs, KDI as well as KIPA remain cooperative in streamlining the capacity of central regulatory agencies in using the online system for preparing RIAs and are also encouraged to use expert consultations at research institutes.

The e-RIA is being introduced to improve the quality of regulatory impact assessment while reducing the cost of preparing RIA documentation. The introduction of the e-RIA system has strengthened the potential of central administrative agencies in creating better regulation (better regulation).

The particular innovation of the Internet-based e-RIA system is based on its use of a standard calculation model established for eight types of direct costs in the computerized RIA statement form. Total direct costs are calculated automatically when the user enters the correct numbers for all fields. This informative configuration of the e-RIA system significantly assists in the quantitative comparison of all alternatives considered for the proposed regulation. This system requires measuring and quantifying all costs and benefits associated with each regulatory alternative. Thus, the quantification of all costs and benefits is enabled by the Cost-in, Cost-out (CICO) rule, which is implemented based on the net direct cost of regulation calculated in the RIA³¹.

³⁰ At least three; existing regulation, other - alternative regulation, and no regulation or reduced regulation.

³¹ OECD, *Regulatory Policy in Korea. Towards better regulation, OECD Reviews of Regulatory Reform*, Paris 2017, p. 92.

The e-RIA procedure is estimated to have contributed to the “behavioral change” observed in government officials in policy design and development, but also to the institutionalization of evidence-based policy making.³²

6. Conclusions

The proliferation of information and communication technology and the increase in its use has generally contributed to increasing the efficiency of stakeholder assessment of proposed regulations. The position of the RIA has grown over time to become crucial in terms of instrumentalizing the management of the regulatory process. Particular gravity in the process of regulation has been placed on its expected impact on the economy and society. Implemented and refined, the RIA tool of regulation implementation supported the systemic acquisition of important information and evidence in favor of introducing or abandoning regulations, over time becoming a mandatory element of the regulation implementation process.

The volume and complexity of the information being captured compels further efforts to more fully realize the potential of RIA. Government investments in web portals need to be supplemented with functions for sending feedback to stakeholders in the consultation process, especially about what their participation in improving regulatory proposals was. It is also pointed out that there is still an unsatisfactory level of accountability for consultation results.

Some response to the still sought opportunities to draw more fully on the potential of the RIA system is the experience of the Republic of Korea in reforming its regulatory system. In the context of the adjustments being made in this country, the need to develop a clear regulatory policy strategy, to simplify the regulations and policies that are most burdensome to businesses and citizens, and to foster proactive identification and implementation of regulatory innovations across the central government is emphasized.

The co-responsibility imposed on the private sector in such an approach for regulatory adjustments has yet another function – the integrating of the regulatory system.

The transformation of the regulatory system from formulating complaints to seeking solutions is supported by the electronization of the regulatory impact assessment system through behavioral changes in officials’ attitudes and naturally shaped processes of evidence-supported policy institutionalization.

³² *Ibidem*, p. 87.

Bibliography

- Cooter R., Ulen T., *Law and Economics*, Book 2, 6th edition, Berkeley 2016.
- Davidson P., Kauffmann C., Liedekerke M.-G. de, *How Do Laws and Regulations Affect Competitiveness: The Role for Regulatory Impact Assessment*, OECD Regulatory Policy Working Papers No. 15, Paris 2021.
- Deighton-Smith R., Erbacci A., Kauffmann C., *Promoting Inclusive Growth through Better Regulation. The Role of Regulatory Impact Assessment*, OECD Regulatory Policy Working Papers 2, Paris 2016, <https://doi.org/10.1787/24140996>.
- EU Commission, *Joint Declaration on the EU's legislative priorities for 2018-19*, 14.12.2017.
- EU Commission, *Joint Declaration on the EU's Legislative Priorities for 2017*, 13.12.2016.
- Grüne-Yanoff T., Verreault-Julien Ph., *How-Possibly Explanations in Economics: Anything Goes?*, "Journal of Economic Methodology" 2021, vol. 28, iss. 1, pp. 114-123, <https://doi.org/10.1080/1350178X.2020.1868779>.
- Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*, Official Journal of the European Union, L 123/1, 12.5.2016.
- Lemoine J., *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments*, Case Study by World Bank Group; <http://documents1.worldbank.org/curated/en/905611520284525814/Global-Indicators-of-Regulatory-Governance-Worldwide-Practices-of-Regulatory-Impact-Assessments.pdf>. Washington, DC.
- Morrall J., *Regulatory Impact Analysis: Efficiency, Accountability, and Transparency*, U.S. Office of Management and Budget, Washington, DC, 2001.
- OECD, *Korea. Country Note*, Regulatory Policy Outlook, Paris 2018.
- OECD, *OECD Indicators of Regulatory Policy and Governance (iREG)*; retrieved from <https://stats.oecd.org/Index.aspx?QueryId=85336> (20.07.2021).
- OECD, *Indicators of Regulatory Policy and Governance*, Europe 2019, European Union; retrieved from: <http://www.oecd.org/gov/regulatory-policy/indicators-of-regulatory-policy-and-governance-2019-eu.pdf> (28.05.2020).
- OECD, *OECD Regulatory Policy Outlook 2015*, Paris 2015.
- OECD, *OECD Regulatory Policy Outlook 2018*, Paris 2018.
- OECD, *OECD Reviews of Regulatory Reform: Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris 2002.
- OECD, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, OECD/GD no. 95, Paris 1995.
- OECD, *Regulatory Policy in Korea: Towards Better Regulation*, *OECD Reviews of Regulatory Reform*, Paris 2017.
- OECD, *Regulatory Policy Outlook 2018*, Paris 2018.
- Renda A., *Impact Assessment in the EU: The State of the Art and the Art of the State*, Brussels 2006.
- Spiller P. T., Tommasi M., *The Institutions of Regulation: An Application to Public Utilities* [in:] *Handbook of New Institutional Economics*, C. Menard, M. Shirley (eds), Berlin 2008, pp. 515-543, https://doi.org/10.1007/978-3-540-69305-5_21.
- Stelmach J., Brożek B., Załuski W., *Dziesięć wykładów o ekonomii prawa*, Warszawa 2007.
- Vass P., *Regulatory Governance and the Lessons from UK Practice* [in:] *International Handbook on Economic Regulation*, M. Crew, D. Parker (eds), Cheltenham 2006.

Warwick K., Naru F., *Regulatory Impact Assessment: Incentive Structures in the UK Better Regulation Framework* [in:] *Improving Regulatory Governance: Trends, Practices and the Way Forward*, Korea Development Institute and OECD, Paris 2017, pp. 171-224, <https://doi.org/10.1787/9789264280366-10-en>.

World Bank, *Global Indicators of Regulatory Governance*, World Bank Database, <https://rule-making.worldbank.org/en/key-findings#1>.

Książka powstała w ramach realizowanego przez Katedrę Prawa Europejskiego Uniwersytetu Jagiellońskiego i koordynowanego przez prof. Sławomira Dudzika i dr hab. Ingę Kawkę projektu Jean Monnet Module pt. „E-administracja – europejskie wyzwania dla administracji publicznej w państwach członkowskich UE i krajach partnerskich/eGovEU+”.

Zebrane w monografii artykuły naukowe dotyczą szerokiego spektrum zagadnień związanych z cyfrową transformacją administracji publicznej w Europie. Pierwsza część książki została poświęcona analizie e-administracji z perspektywy prawa europejskiego. Następnie cyfryzację administracji przedstawiono jako katalizator transformacji administracji otwartej, odpowiedzialnej i świadczącej e-usługi dla obywateli. Książka ukazuje również wpływ digitalizacji na funkcjonowanie polskiej administracji publicznej. Ostatnia część opracowania dotyczy e-administracji jako czynnika zwiększającego potencjał administracji w państwach członkowskich UE i państwach stowarzyszonych oraz na szczeblu międzynarodowym.

Monografia adresowana jest do badaczy zajmujących się administracją, prawem administracyjnym i europejskim, praktyków: sędziów, prokuratorów, urzędników państwowych, adwokatów i radców prawnych oraz studentów i doktorantów prawa, administracji i ekonomii. Mamy nadzieję, że publikacja poszerzy wiedzę na temat cyfryzacji administracji w Polsce i Europie oraz zachęci do dalszych studiów w tej dziedzinie.



<https://akademicka.pl>

ISBN 978-83-8138-673-9



9 788381 386739