

**Obywatel  
w centrum działań  
e-administracji  
w Unii Europejskiej**

**Citizen-centric  
e-Government  
in the  
European Union**

REDAKCJA / EDITED BY

**Sławomir Dudzik · Inga Kawka · Renata Śliwa**

**Krakow Jean Monnet Research Papers**





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**2**

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RENATA ŚLIWA<sup>1</sup>

## STAKEHOLDER ENGAGEMENT IN GOVERNMENT REGULATORY INITIATIVES

**ABSTRACT:** The chapter aims to present the magnitude of stakeholders' engagement in the nationwide order-making processes. It is claimed herein that stakeholder engagement in rulemaking, including participation of stakeholders in impact assessment systems has a considerable impact on the prosperity of a country. To pursue the aim of the paper on the basis of literature review, it includes a picture of associative feature of society. Then, the data on stakeholder engagement is presented in selected countries. At the end, the stakeholder involvement into rule-making processes scores were compiled with the results of prosperity in analyzed countries.

**KEYWORDS:** economic analysis of regulation, better regulation initiative, regulatory impact assessment, positive vs normative strand of the approach

### ZAANGAŻOWANIE INTERESARIUSZY W RZĄDOWE INICJATYWY REGULACYJNE

**ABSTRAKT:** Rozdział ma na celu przedstawienie rozmiarów zaangażowania interesariuszy w procesy tworzenia ładu w skali całego kraju. Twierdzi się w nim, że zaangażowanie interesariuszy w proces stanowienia prawa, w tym udział interesariuszy w systemach oceny skutków regulacji, ma niemały wpływ na dobrobyt kraju. Realizując cel artykułu na podstawie przeglądu literatury, przedstawiono obraz asocjacyjnej/stowarzyszeniowej cechy społeczeństwa. Następnie zaprezentowano dane dotyczące zaangażowania interesariuszy w wybranych krajach. Na

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<sup>1</sup> 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>.

koniec zestawiono zaangażowanie interesariuszy w procesy tworzenia regulacji z wynikami gospodarczymi w analizowanych krajach.

**SŁOWA KLUCZOWE:** ekonomiczna analiza regulacji, inicjatywa lepszych regulacji, ocena wpływu regulacji, pozytywny a normatywny aspekt podejścia

## 1. Introduction

In view of the significant turbulence of the regulatory ecosystem, but also the concomitant support for democracy as a system of governance, one observes the evolution of “democratic experiments” that, in addition to the traditional electoral process, seek alternative forms of contact between government and citizens (referendums, citizen juries,<sup>2</sup> citizen budgets, public consultations, impact assessments, etc.). The modeling of citizen participation in more direct than traditional liberal democracy (representative democracy) formulation of the rules of the social game or policy for a variety of problems continues and has been going on for several decades with varying results on more nationally focused grounds as well as in more international forums. An example of the former can be seen in the case of Sweden in the 1970s, when cooperation between the government, labor unions, political parties and educational entities resulted first in one-day training courses on issues related to the policy in question (energy), and then in the opening of public authorities to official recommendations from participants in these courses. As a result, the formulated policy of the authorities was substantially based on the submitted recommendations. Seventy thousand people participated in the experiment.<sup>3</sup> Founded on that and many other examples worldwide, OECD and the World Bank have been playing a significant role in demonstrating the role of stakeholders in the process of formulating regulations and policies.

The contents of the chapter are intended to present the magnitude of stakeholders’ engagement in the nationwide order-making processes.

It is claimed herein that stakeholder engagement in rulemaking, including participation of stakeholders in impact assessment systems has a considerable impact on the prosperity of a country. To pursue the aim of the paper on the basis of literature review, it includes a picture of associative feature of society. Then, the data on stakeholder engagement is presented in selected countries. At the end, the stakeholder involvement into rule-making processes scores were compiled with the results of prosperity in analyzed countries.

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<sup>2</sup> A. Giddens, *Trzecia droga. Odnowa socjaldemokracji*, Warszawa 1999, p. 69.

<sup>3</sup> *Ibidem*, p. 70.

## 2. Literature

There is a growing importance of knowledge and experience acquired by associations in the process of self-governing on how to shape their approach and improve their attitude toward how to act on their own, as well as to instruct and judge their representatives and act on their own initiatives.

The administrative remodeling, open “for experimentation and civic enlightenment”<sup>4</sup> is not to be implemented in one-for-all manner but remains especially cautious in respect to diverse time and geographical contexts.

The pluralists’ view of the “spontaneity, the liberty, and the voluntary quality of the private association in contrast with the compulsory, coercive character of the state”<sup>5</sup> sheds light on the participatory approach to regulation, at the same time being indicative for the description of the nature of regulatory mechanisms in society. Society members’ motivation (their structure of incentives) towards more freedom and social security makes them organize against the mechanisms that do not solve their problems ineffectively. It arises, at the same time, as a paradigm toward resolving the imperative of socio-economic problems, ill-solved by the market- and government-driven prescriptions. “The private organizations in their independence, voluntarism, and spontaneous outgrowth” as Emile Durkheim perceived them,<sup>6</sup> express “sociologically natural causes and psychologically desirable effects of the network of occupationally organized associations, and system of government (...) to make them play a much larger role.”<sup>7</sup> John Rogers Commons analyzed the pressure groups as “an indispensable means for the achievement of a just and rational economic order.”<sup>8</sup> The competitiveness of group interests was to be the source of reforms and advancement. Truman and Bentley shared a belief that group pressures determine the final equilibrium position of the social system that is “just and desirable.” What makes this assertion more persuasive is that potential pressure groups which were largely unorganized (such as consumer lobby) fight against the special interests organized groups if the special interests go far out of line. This phenomenon makes the organized and large groups fear that the

<sup>4</sup> V. Ostrom, *The Intellectual Crisis in American Public Administration*, Tuscaloosa 2008, p. 19.

<sup>5</sup> F. Coker, *Recent Political Thought*, New York 1934.

<sup>6</sup> É. Durkheim, *Le Suicide. Étude de sociologie*, Paris 1897; É. Durkheim, *The Division of Labor in Society*, Glencoe 1947.

<sup>7</sup> M. H. Elbow, *French Corporative Theory 1789–1948*, New York 1953.

<sup>8</sup> J. Commons, *Economics of Collective Action*, New York 1950; J. Commons, *Institutional Economics: Its Place in Political Economy*, Madison 1959.

potential pressure groups enter the lists, and it keeps the organized interests from making excessive demands.<sup>9</sup>

There is a spectrum of links (transparency and accountability of government activities,<sup>10</sup> lower corruption,<sup>11</sup> less turbulent long-term environment for investors,<sup>12</sup> higher regulatory compliance and trust in government policy<sup>13</sup>) presented in the literature proving that higher level of citizen engagement in rulemaking can be beneficial for the economic advancement.<sup>14</sup> The systemic consultation by citizens on the proposed regulations (their scope, content or impact) are run in most economically flourishing countries<sup>15</sup>. Sen (2014) confirms strong links between the data on the state

<sup>9</sup> M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, 2nd Edition, Cambridge 1971, p. 124.

<sup>10</sup> R. Gisselquist, *Good Governance as a Concept, and Why This Matters for Development Policy*, UNU-WIDER Working Paper, no. 30, Helsinki 2012; A. Fosu, R. Bates, A. Hoeffler, *Institutions, Governance and Economic Development in Africa: An Overview*, "Oxford Journal of African Economies" 2006, vol. 15, pp. 1-9; R. Bates, A. Greif, M. Humphreys, S. Singh, *Institutions and Development*, CID Working Paper, vol. 107, Cambridge 2004.

<sup>11</sup> T. S. Aidt, *Corruption, Institutions, and Economic Development*, "Oxford Review of Economic Policy" 2009, vol. 25, no. 2, pp. 271-291; D. Parker, *Economic Regulation: A Review of Issues*, "Annals of Public and Cooperative Economics" 2002, vol. 73, no. 4, pp. 493-519; United Nations, *Preventing Corruption in Public Administration: Citizen Engagement for Improved Transparency and Accountability. Report of an Expert Group Meeting, June 25-28, New York 2012*.

<sup>12</sup> Y. Diergarten, T. Krieger, *Large-Scale Land Acquisitions, Commitment Problems and International Law*, "Law and Development Review" 2015, vol. 8, no. 1, pp. 217-233; C. Lindstedt, D. Naurin, *Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption*, "International Political Science Review" 2010, vol. 31, no. 3, pp. 301-322; T. S. Aidt, *Corruption...*; D. Shim, T. Eom, *E-Government and Anti-Corruption: Empirical Analysis of International Data*, "International Journal of Public Administration" 2008, vol. 31, no. 3, pp. 298-316.

<sup>13</sup> J. Vallbé, N. Casellas, *What's the Cost of e-Access to Legal Information? A Composite Indicator*, Washington 2014, pp. 20-21; J. Torriti, *(Regulatory) Impact Assessments in the European Union: A Tool for Better Regulation, Less Regulation or Less Bad Regulation?*, "Journal of Risk Research" 2007, vol. 10, no. 2, pp. 239-276; C. Radaelli, *The Open Method of Coordination: A New Governance Architecture for the European Union?*, Report 1, Stockholm 2003; S. A. Fadairo, R. Williams, E. Maggio, *Accountability, Transparency and Citizen Engagement in Government Financial Reporting*, "Journal of Government Financial Management" 2015, vol. 64, no. 1, pp. 40-45; C. Molster et al., *Informing Public Health Policy through Deliberative Public Engagement: Perceived Impact on Participants and Citizen-Government Relations*, "Genetic Testing and Molecular Biomarkers" 2013, vol. 17, no. 9, pp. 713-718.

<sup>14</sup> J. Vallbé, N. Casellas, *What's the Cost of...; J. Torriti, (Regulatory) Impact...*; C. Radaelli, *The Open Method...*; OECD, *Indicators of Regulatory Management Systems: 2009 Report*, Paris 2009, <http://www.oecd.org/gov/regulatory-policy/44294427.pdf>.

<sup>15</sup> Y. Diergarten, T. Krieger, *Large-Scale...*; J. Gurin, *Open Governments, Open Data: A New Lever for Transparency, Citizen Engagement, and Economic Growth*, "SAIS Review of International Affairs" 2014, vol. 34, no. 1, pp. 71-82; M. Johns, V. Saltane, *Citizen Engagement in Rulemaking. Evidence on Regulatory Practices in 185 Countries*, Policy Research Working Paper 2016, no. 7840.

administrative capacity and citizen well-being stretched to economic development in terms of income poverty, social inequality.<sup>16</sup>

Developing countries also show significant links between regulatory quality and economic performance with particular emphasis on improvements in governance (enhancement of regulatory institutions in terms of their transparency, openness, responsiveness).<sup>17</sup>

Legitimacy of state apparatus that determines its administrative capacity lies at the heart of information asymmetry between the regulators and the regulated. Non-transparent, little recognized and poorly consulted regulations may lead to “socially sub-optimal outcomes.”<sup>18</sup> It is not without significance how the information on new regulations is published, consulted and managed and integrated within the whole process of creating regulation. The goal is to make the government regulation, policy, law as responsive as possible.<sup>19</sup> In order to achieve the goal not only should one use information and communication technologies (online communication, interactive online platforms, or unified website) but also pay special attention to the capacity and opportunity of citizens to act upon the open information resources.<sup>20</sup> In addition to relatively lower costs of informing and communicating with citizens, government decisions are also more challenged by potentially greater number of citizens than would otherwise participate.<sup>21</sup> Moreover, government accountability is more enforced in terms of policy priorities and democratic values and rules.<sup>22</sup>

<sup>16</sup> K. Sen, *Governance and Development Outcomes in Asia*, ADB Economics Working Paper 384, Manila 2014, <http://www.adb.org/publications/governance-and-development-outcomes-asia>.

<sup>17</sup> H. Jalilian, C. Kirkpatrick, D. Parker, *The Impact of Regulation on Economic Growth in Developing Countries: A Cross-Country Analysis*, “World Development” 2006, vol. 35, no. 1, pp. 87–103; S. Adams, F. Atsu, *Transparency, Regulation and Economic Performance in Africa*, 2005, <http://pages.stern.nyu.edu/~agavazza/Adams.pdf>; J. Denhardt, L. Terry, E. R. Delacruz, L. Andonoska, *Barriers to Citizen Engagement in Developing Countries*, “International Journal of Public Administration” 2009, vol. 32, no. 14, pp. 1268–1288; J. S. Fishkin, *Consulting the Public – Thoughtfully* [in:] *Governance Reform under Real-World Conditions: Citizens, Stakeholders, and Voice*, S. Odugbemi, T. Jacobson (eds.), Washington 2008; P. Collier, *The Bottom Billion: Why The Poorest Countries Are Failing and What Can be Done About It*, New York 2007; with the special emphasis, within the links, on the role of transparency in rulemaking in disposal of public funds, state (natural) resources.

<sup>18</sup> H. Jalilian, C. Kirkpatrick, D. Parker, *The Impact of...*

<sup>19</sup> H. Yu, G. D. Robinson, *The New Ambiguity of ‘Open Government’*, 59 UCLA Law Review Discourse 178 (2012).

<sup>20</sup> C. Lindstedt, D. Naurin, *Transparency...*; F. Schantz, *Fighting Corruption with Social Accountability: A Comparative Analysis of Social Accountability Mechanisms Potential to Reduce Corruption in Public Administration*, “Public Administration and Development” 2013, vol. 33, no. 3, pp. 161–174.

<sup>21</sup> S. A. Fadairo, R. Williams, E. Maggio, *Accountability...*

<sup>22</sup> A. Farazmand, *Sound Governance: Engaging Citizens through Collaborative Organizations*, “Public Organization Review” 2012, vol. 12, pp. 223–241.

More transparent information on government regulations and more consultations have resulted in the next stage of citizen involvement in regulatory processes which is impact assessment. That phase of regulatory participation has comprised more empirical analysis of proposed regulations and opened more public scrutiny of newly prepared regulations. This form of space for stakeholder engagement allows citizens to overview the analysis, its assumptions, methods, samples, and basis of the predictions. Impact assessment and public consultations reinforce each other in the process of improving the effectiveness of regulation.<sup>23</sup>

It is emphasized that a tension arises in the pursuit of more regulatory inclusiveness, that is the short-term, popular government promises versus long-term, institutionally stabilizing economic measures. Moreover, the compliance of the interests of dominant pressure groups (with its power to obstruct the reforms) and those of more dispersed groups (with their right to have a say) poses a challenge to rule makers.<sup>24</sup>

Good quality of the process of designing regulations determines the regulatory environment as well as regulatory outcomes. Government interventions (policy, law, regulation, and any other type of rule) and their likely effects (sometimes unintended consequences) meant as costs in relation to benefit, more negatively impact those who are unorganized, smaller in their power of influence, less informed, hard-to-reach, or marginalized. The rule of law losing its integrity takes on discriminatory characteristics, inhibits trust, and then sustainable development, or ultimately inclusive growth.

Complementing the process of designing regulations with regulatory impact assessment constitutes the source of crucial information for decision makers and those affected by government intervention. For decision makers it is important to learn about alternatives for intervention, about various ways of regulation to achieve public goals, about the arguments to defend political decisions by presenting benefits and costs of interventions. For those regulated it is important to better understand government operations and their everyday impact on human life, to better respond to and have more trust in government policies and regulation design process.

Regulatory impact assessment is a support tool to better create, adopt or change regulation basing on evidence. It helps to provide the instrumentarium to consider all alternative solutions (regulatory, non-regulatory, or none), to compare costs and benefits for different groups of stakeholders, to construct economic, social and environmental analyses of potential impact of the solutions.

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<sup>23</sup> J. F. Morrall III, *Regulatory Impact Analysis: Efficiency, Accountability, and Transparency*, Speech delivered in Singapore, Washington 2001.

<sup>24</sup> A. Fosu, R. Bates, A. Hoeffler, *Institutions...*



### 3. Call for better regulation to make economy more competitive

Even if regulatory participation is at the level of using impact assessment (that is more than just presentation of information or its consultation in a poorly structured manner), there is a varying spectrum of its advancement<sup>25</sup> ranging from simple disclosure and consultation of empirical impact analysis to citizens' responding to newly introduced standards (achieving satisfactory levels of regulatory compliance).

#### *Worldwide trends*

Various forms of engaging stakeholders in rulemaking processes through consultative processes are spread worldwide. The countries of the economically developed world that are equipped with tools to involve stakeholders in the consultative processes benefit severely more than less economically developed countries. High internet penetration rates undoubtedly contribute to that position as the interactions with stakeholders are mainly through specially customized, often ministerial websites.<sup>26</sup> No less important is the advancement of civil society with its attributes of autonomy and voluntariness. Low-income countries with less effective methods of consultative engagement of less numerous stakeholders translates into less obvious economic results, contributing less to better understanding, more transparency or higher responsiveness to public operations (law, policy).

Ministries and regulatory agencies of majority of economies build administrative and ICT infrastructure to channel the request for comments on the propositions of regulation being proceeded (over 74%). The consultations are advanced usually through official websites, public meetings or are targeted to relevant stakeholders. However, even when the consultation take place, they are not adopted in all ministries, and if so, they are not all consulted with the public (both in about a third of those that

<sup>25</sup> OECD, *Improving the Transparency of Regulations* [in:] *Government at a Glance 2011*, Paris; OECD, *Regulatory Policy Outlook 2015*, Paris, <http://www.oecd.org/publications/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm> (12.04.2023); C. Kirkpatrick, D. Parker, *Regulatory Impact Assessment and Regulatory Governance in Developing Countries*, "Public Administration and Development" 2004, vol. 24, pp. 333-344; A.-K. Backlund, *Impact Assessment in the European Commission: A System with Multiple Objectives*, "Environmental Science & Policy" 2009, vol. 12, no. 8, pp. 1077-1087; J. Torriti, *(Regulatory) Impact...*; K. Staroňová, *Regulatory Impact Assessment: Formal Institutionalization and Practice*, "Journal of Public Policy" 2010, vol. 30, pp. 117-136.

<sup>26</sup> High percentage of well over seventy percent of OECD high-income countries as well as sixty percent of Europe and Central Asian countries are seriously engaged in regulatory consultations run through unified websites serving all ministries to post draft regulations and stakeholders to have their say. Less potent forms of stakeholder consultative activity run through public meetings or direct interactions in low-income countries.

request comments on proposed regulations). In nearly 50% of countries proposals of regulations are consulted with stakeholders even though they are not required by law.<sup>27</sup>

Technological development (tools) and (political) opening of opportunities for participation of diverse interest groups in the process of regulation under RIA (as a component of the regulatory system) strengthen the social responsiveness of political action and create law contributing to increasing the possibility of raising the effectiveness of the regulatory system in the state.

There is a continuous trend observed of the governments opening rule-making processes to more public scrutiny and input. Governments in the United States, United Kingdom or Australia since the 2000s have been posting the texts of proposed regulations online for the stakeholders to read and comment on, and then to discuss the areas of concern. Mexico required federal ministries and agencies to publicize all draft regulation on their websites from 2002. Poland launched in 2013 an online platform to proceed with consultations.<sup>28</sup>

Out of the 185 surveyed jurisdictions, 92 conduct impact assessment of proposed regulations.<sup>29</sup> A regulation assessed as being of high quality (based on the fundamentals of the effective rule of law, stimulation of the trust in public institutions, hindering corruption) is deemed to be supporting sustainable growth, investments, innovation, market openness.<sup>30</sup> RIA system constitutes the comprehensive frameworks to work out more effective (designating cost-efficient regulations<sup>31</sup>) and transparent way of assessing public interventions by regulations (law) and policy.<sup>32</sup>

Providing the dynamic and complex structure of the contemporary social economic and environmental processes, regulatory impact assessment does improve legislation-

<sup>27</sup> World Bank's Global Indicators Group, *Global Indicators of Regulatory Governance*, <https://rulemaking.worldbank.org/en/key-findings> (13.09.2022).

<sup>28</sup> M. Johns, V. Saltane, *Citizen Engagement...*

<sup>29</sup> World Bank's Global Indicators Group, *Global Indicators...*

<sup>30</sup> OECD, *Regulatory Policy...*

<sup>31</sup> Example of the European Union proposal of regulation REACH (regulation, evaluation, authorization, restrictions of chemicals) – initial imposition of 10 billion euro costs on the chemicals industry reduced to 2 billion euro through the public discussion of regulatory alternatives, preserving the major benefits of the proposal (cost of RIA of around 1 million euro contributing to the return on investment of 10,000 to one; World Bank Group, *Regulatory Governance in Developing Countries*, Washington 2010).

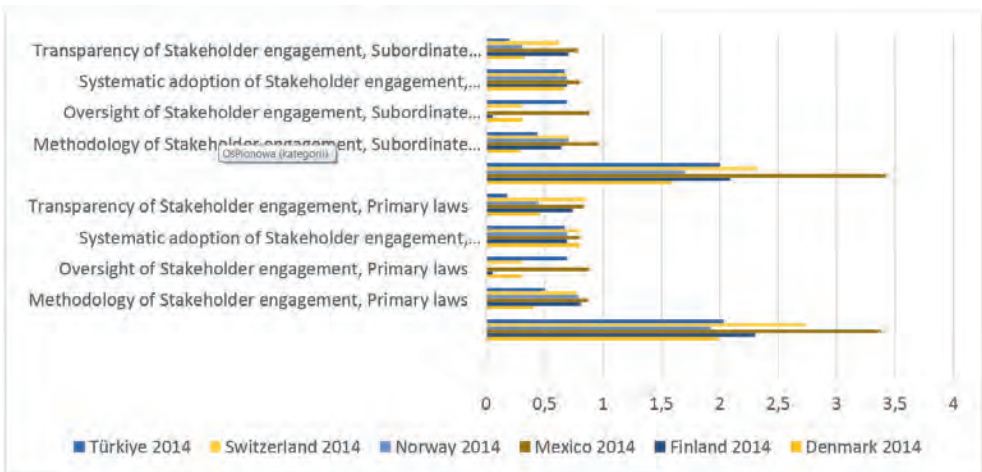
<sup>32</sup> World Bank, *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments*, <https://documents1.worldbank.org/curated/en/905611520284525814/Global-Indicators-of-Regulatory-Governance-Worldwide-Practices-of-Regulatory-Impact-Assessments.pdf> (12.03.2023).



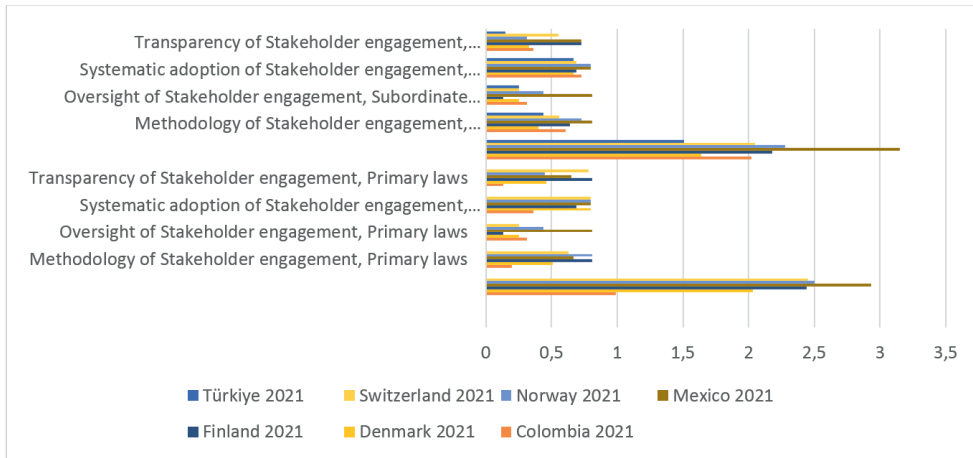
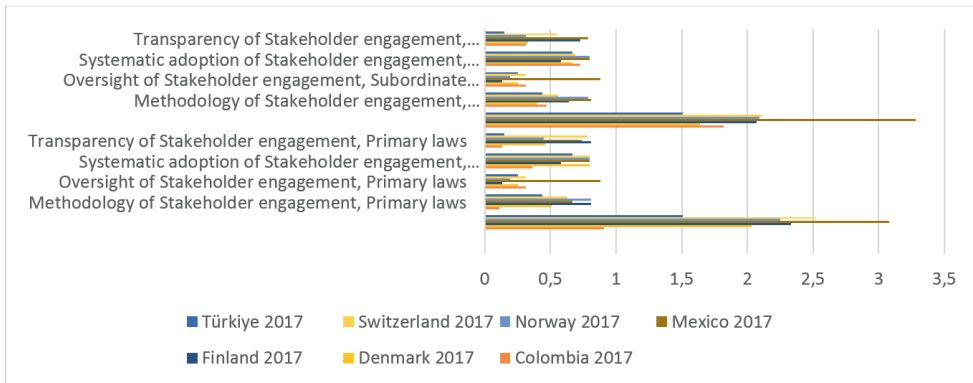
making and stabilizing policy process through the consultations and stakeholder engagement.

The adoption of good regulatory practices in the nationwide process of developing new regulations, such as openness of consultations and acceptance of transparency and feedback mechanisms, focus on the evolving position of stakeholders in designing regulation. The presence of the stakeholders in the regulation making process and its significance are reported through the review of such determinants as the formal requirements for stakeholders engagement, methods used to engage stakeholders (minimum period for consultation, use of interactive tools to communicate, access to instructions for stakeholders), schemes and extent of making the consultation open for a wide spectrum of stakeholders, and taking their opinions into account, as well as mechanisms of monitoring the reliability, evaluation and the public access to its results. The implementation of the practices of cost-benefit assessment of the regulatory propositions (RIA) within primary laws and subordinate regulations is presented for the selected OECD countries as measured for 2014, 2017, and 2021 (Table 1-3). The maximum score for Regulatory Impact Assessment (RIA) as well as for Stakeholder Engagement (as composite scores) is four.<sup>33</sup>

**Chart 1-3.** Stakeholder Engagement, Primary Laws, Subordinate Regulations in selected countries, according to surveys for 2014, 2017, 2021



<sup>33</sup> Indicators encompass information based on responses of government officials in OECD countries.



Source: OECD. Stat, Government at a Glance, <https://stats.oecd.org/Index.aspx?QueryId=85336> (12.04.2023)

Aggregate score for the composite indicator of stakeholder engagement in primary laws and subordinate regulations in 2014 for Mexico was the highest (for subordinate regulations and primary laws 3.15 and 2.93 respectively), then came Switzerland, Finland, Turkey, Denmark and Norway (the rows below the subindices for subordinate regulations and primary laws in Table 1). In 2017, it was Mexico, Switzerland, Finland, Norway, Denmark, Turkey and Colombia (no data available for 2014) for primary laws, and Mexico, Switzerland, Norway, Finland, Colombia, Denmark and Turkey for subordinate regulations. In 2021, these were Mexico, Norway, Switzerland, Finland, Denmark, Colombia for primary laws. And, for subordinate regulations it was Mexico, Norway, Finland, Switzerland, Colombia, Denmark, and Turkey (data

for Turkey in 2021 is unavailable for primary laws due to the changes in the political system running during the latest survey period). Much lower scores for Turkey in 2017 and 2021 surveys are attributed to the decrease in the oversight of stakeholder engagement<sup>34</sup> in primary laws and subordinate regulations which means that the scores of the quality of external control measures, monitoring and evaluations of stakeholder engagement open to public have deteriorated.

Scores received for Mexico reflect one of the highest in the OECD database. They lowered, however, in 2021 with respect to 2014 and 2017, mainly due to the decreased results in methodology of stakeholder engagement in primary laws, and transparency. The jurisdictions with the close results to those of Mexico were the United Kingdom in primary laws, Canada in subordinate regulations, the United States in subordinate regulations, Iceland in 2021 in primary laws, and the European Union with the results above those for Mexico.

Denmark is one of the analyzed countries for which one of lower scores was reported with stable increase in 2017 and 2021 with reference to 2014. The weak results were obtained due to the oversight of stakeholder engagement as being scored as the lowest for that country, then low levels of transparency of stakeholder engagement.

### *Better Regulation initiative of the European Union*

The construction of an institutional infrastructure that strengthens economic competitiveness as part of the political effort to dismantle bureaucratic barriers and unnecessary legal obstacles is reflected in the EU in such major activities as:

- Improving public consultation on the *Have Your Say* portal, combining the opportunity to express opinions on action plans, preliminary impact assessments and filling out a questionnaire (*Call for Evidence*);
- „One in, one out” approach aiming at diminishing the costs of the applying legislation and its consequences especially to small and medium-sized enterprises;
- Freshly introduced regulation burdens are offset by removing equivalent burden within the same area of government intervention.<sup>35</sup>

EU institutional structures (the European Commission mainly<sup>36</sup>) have outperformed the EU Member States in the participation of citizens in facilitating the early

<sup>34</sup> OECD.Stat, [https://stats.oecd.org/OECDStat\\_Metadata/ShowMetadata.ashx?Dataset=GOV&Coords=%5bIND%5d.%5bSA\\_P\\_O%5d&ShowOnWeb=true&Lang=en](https://stats.oecd.org/OECDStat_Metadata/ShowMetadata.ashx?Dataset=GOV&Coords=%5bIND%5d.%5bSA_P_O%5d&ShowOnWeb=true&Lang=en) (29.10.2022).

<sup>35</sup> European Commission, *Better Regulation: Why and How*, [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en) (26.08.2022).

<sup>36</sup> European Commission as an institution responsible for the stage of planning, preparation and presentation of drafts of EU legislation and policies, for the evaluation of legislation and search for

engagement in proceeding regulatory proposals and then at further stages of policy development. Member states have been focused particularly on transposition of the EU directives to national law system, and not so much on the expected socio-economic impact of the regulation. More information and evidence dissemination have been estimated as compulsory to better complement and understand the regulatory design process in the Member States. The stakeholder engagement in Member States is assessed to be often too late and not broad enough in the policy development process to become a real value. The sole investment in online government portals, although praiseworthy, requires to be complemented by the feedback to the participating stakeholders on how they had improved regulatory proposals. Moreover, still, the insufficiently low level of accountability for the results of consultation diminishes the potential of participatory regulation process.<sup>37</sup>

The contribution of the EU RIA system to more efficient use of evidence in the development of regulations happens through 314 impact assessments that have been carried out since 2016 (increase of 138,3% between 2016 and 2021; annual average 52,3 impact assessments) and 80 major evaluations<sup>38</sup>.

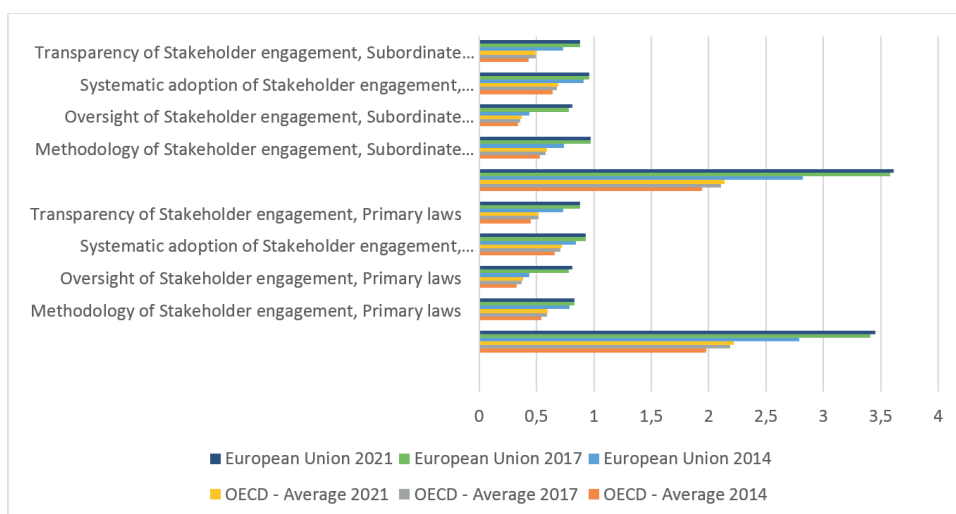
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proposals for its improvement; responsible for the implementation and application of EU legislation in EU member states; the activities of the EC are guided by the Commission Work Program run on the annual basis. It is the EC responsibility when proposing laws to assess and evaluate its impact, to propose improvements when necessary, and to monitor the implementation and application of the law in the member states.

<sup>37</sup> OECD, *Better Regulation Practices across the European Union*, Paris 2019.

<sup>38</sup> Those resubmitted after a first negative opinion, the resubmission is optional; European Commission, *Regulatory Scrutiny Board. Annual Report 2021, 2022*, p. 9 (table 1).

**Chart 4.** Stakeholder Engagement, Primary Laws, Subordinate Regulations on average in the EU and OECD countries according to surveys for 2014, 2017, 2021



Source: OECD. Stat, Government at a Glance, <https://stats.oecd.org/Index.aspx?QueryId=85336> (12.04.2023)

According to the scores for three years for which the survey and score analyzes were undertaken, the EU has shown a growing commitment toward involving stakeholders in primary laws and subordinate regulations making. The EU scores were for these years higher than the average for OECD countries, with the highest levels for 2021, exceeding those for Mexico. The sources of the high results are mainly the outcome of systematic adoption of stakeholder engagement in subordinate regulations and primary laws, and transparency of stakeholder engagement for subordinate regulations and primary laws (both higher than those for Mexico).

#### 4. Some insights into citizen engagement in rulemaking in selected countries

Building on the literature presented in the second part of this study, and the data provided within Legatum Prosperity Index 2021 together with the data from Johns, Saltane

(2016)<sup>39</sup>, some conclusive findings have emerged aiming to verify the hypothesis. First, state administrative capacity determines the advancement of stakeholder engagement within regulatory impact assessment system. Second, the quality of regulation has an effect on the responsiveness of citizens to regulations and policy. Third, impact assessment and public consultations reinforce each other in the process of improving the effectiveness of regulation. Fourth, more participation of stakeholders in rulemaking may underpin striving for greater prosperity.

According to the overall Legatum Prosperity Index 2021 with the special emphasis on Civic&Social Participation index and Regulation Quality index such countries as Denmark, Norway, Finland, Switzerland appear to be ranked the highest, and Mexico, Colombia and Turkey<sup>40</sup> to be ranked as much lower.

Denmark, Finland, Norway and Switzerland are countries with the highest scores/ranks of Governance indices and Social Capital indices (Legatum Prosperity Index 2021), respectively 90.95 and 77.24 for Denmark, 91.04 and 74.94 for Finland, 90.89 and 76.66 for Norway, 88.18 and 68.81 for Switzerland.

Mexico, Colombia and Turkey are countries with relatively low scores of Governance and Social Capital indices, respectively 46.16 and 47.27 for Mexico, 49.88 and 50.31 for Colombia, and 37.55 and 44.78 for Turkey.

15% of the Governance index is accounted for Regulatory Quality meant as identification of impediments of regulatory functions of the state toward the development of private sector. The index encloses data on right to information, publicized laws and government data, transparency of government policy, budget transparency, regulatory quality, enforcement of regulations, efficiency of legal framework in challenging regulations, delay in administrative proceedings. And, 20% of the Governance index is reported as Government Effectiveness (quality of public service, of bureaucracy and the competence of officials) containing data on government quality and credibility, prioritization, efficiency of government spending, efficient use of assets, implementation, policy learning, policy coordination). Within Social Capital indices, 20% is considered as being built on Civic and Social Participation data described as participation of people within society in its civic and social dimension (taking into

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<sup>39</sup> M. Johns, V. Saltane, *Citizen Engagement...*; World Bank Group, Development Economics Global Indicators Group 2016.

<sup>40</sup> Countries chosen out of those considered for OECD survey for which the data on stakeholder engagement in RIA is available.

account such indicators as money donated to charity, voter turnout, volunteering, voicing opinion to a public official).<sup>41</sup>

The data derived from The Legatum Prosperity Index compared to the data included in Table 1-3 in part 3 of the paper give rise to some inferences that the countries with the highest scores of the prosperity indices such as Finland, Norway, Switzerland are reported as doing relatively well with stakeholder engagement although their scores are not the highest. The country scored as the highest in terms of prosperity achievements, Denmark, appears as the one with the results relatively low in terms of stakeholder engagements in rulemaking according to OECD data, but not according to World Bank data. And, Mexico, a jurisdiction with one of the highest (although decreasing) scores of stakeholder engagement according to the OECD data receives relatively lower results within Legatum Prosperity Index 2021.

There can be a few arguments found to explain the results for Mexico and Denmark:

1. Mexico is reported as a country with relatively low level of Social Capital with the updates from July 2022 reporting on the government in office to be denying public resources to civil society organizations and impeding by the regulations the sector's development;<sup>42</sup>
2. In Governance LP Index 2021 there is also Executive Constraints, Political Accountability, Rule of Law, Government Integrity that hold for the rest of 65% of the LP Index (besides Government Effectiveness and Regulatory Quality that account for 35% of Governance Index); therefore, they could be responsible for the relatively low levels of overall Governance level for Mexico in 2021;
3. Low results in methodology and transparency could confirm that there is some turnaround in the scheme of methodological approach to engaging stakeholders in RIA process. There is a call for "*more independent assessment of RIA implementation and effectiveness*";<sup>43</sup>
4. Denmark as reported by OECD surveys with relatively low results in stakeholder engagement in RIA procedures mainly on the grounds of oversight and transparency is the most prosperous country within Legatum Prosperity Index 2021, leading in Social Capital and Governance areas of performance.

<sup>41</sup> Legatum Institute, *Legatum Prosperity Index: A Tool for Transformation 2021*; <https://www.prosperity.com/rankings>.

<sup>42</sup> International Center for Not-for-Profit Law, *Mexico*, <https://www.icnl.org/resources/civic-freedom-monitor/mexico> (12.03.2023).

<sup>43</sup> *Mexico* [in:] OECD, *Regulatory Policy*..., p. 266, [https://read.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021\\_fe879c9c-en#page1](https://read.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021_fe879c9c-en#page1) (20.10.2022); the National Commission for Better Regulation (CONAMER) is technically and operationally independent but is subordinated to Ministry of Economy hierarchically.



All the above observations boil down to the conclusion that on the grounds of the gathered data, the hypothesis can be only partially positively verified. Especially the cases of Mexico and Denmark show that other determinants of prosperity must have much stronger impact than that of stakeholder engagement within RIA. Moreover, case study method needs to be implied to explore more the conditions of the countries.

## 5. Conclusion

The most pressing problems of contemporary society (competitiveness of economies) resonate more and call for more transparency of regulation processes.

Participatory approach to economic regulation is an endeavor to make the citizens' voice heard within regulatory processes, as well as it is an experiment to ensure that the individual voices are heard more equally.

The participation may be attained with both goals by extending the opportunity to build-in more check-and-balances mechanisms into the pro-competitiveness procedures.

Decentralization made by market as well as political mechanisms may make for a greater participation, but it may lead to localized domination of well-resourced interest at the expense of the disadvantaged. More people can make their voices heard over issues they believe they can influence. But localized participation by itself may increase the number of voices over less important matters, leaving politicians and their professional concomitants deciding "over the general arrangements of society and/or over the authoritative allocation of values in an equitable manner." And, highlighting the market that certainly has its place in the decision-making of individual consumers,<sup>44</sup> the issue that raises concern here is that of the appropriate levels of decision-making institutions that would channel the voices to balance signals from the market for the economy to perform well.

The most important allocational outcomes are "the result of the workings of policy networks joining fragments of all sorts of institutions: firms, trade associations, differing agencies of the central government, hybridizations of public and private bodies." "These networks create a complex division of labor between nominally 'state' and 'market' institutions, and the effectiveness with which institutions works has little to do with their 'state' nor 'market' designation."<sup>45</sup> The manner the "tasks are divided between the state and the market seems on the evidence to matter much less

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<sup>44</sup> *The Market and the State. Studies of Interdependence*, M. Moran, M. Wright (eds.), London 1991, p. 95.

<sup>45</sup> *Ibidem*, p. 242.



than that they are performed properly by one or the other, or best of all, by the two in flexible symbiosis.”<sup>46</sup>

While shaping regulations that affect business and civic communities, the government interacts also with stakeholders (professional associations, civic groups, and business representatives) for them to learn about new regulations and to open the space for their engagement with officials on the content. Moreover, the government assesses the possible impact of new regulation and opens it to public consultations. The ability of stakeholders to challenge regulations and the ability of people to assess the laws and regulations is key issue here. The growing recognition of the importance of stakeholder engagement in rule-making processes is the fundamentals for transparency and accountability in government actions, especially in terms of creation of business environment. Opening policy-making processes to stakeholder input is of crucial importance in respect to cost of compliance, and its check-and-balance property.

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<sup>46</sup> R. Williams, *The Inevitability of Symbiosis: States, Markets and R&D* [in:] *The Market...*, p. 198.

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Książka przedstawia analizę wdrożenia i funkcjonowania e-administracji w Polsce i w Europie ze szczególnym uwzględnieniem wpływu technologii informacyjno-komunikacyjnych na działalność administracji publicznej na rzecz obywateli. Monografia ukazuje również zagrożenia związane z transformacją cyfrową administracji oraz konieczność uwzględnienia centralnego miejsca człowieka w tym procesie.

Monografia adresowana jest do badaczy zajmujących się administracją, prawem administracyjnym i europejskim oraz do praktyków. Mamy nadzieję, że publikacja poszerzy wiedzę na temat cyfryzacji administracji oraz zachęci do dalszych studiów w tej dziedzinie.

The monograph was developed as the second in a series on e-government — *Krakow Jean Monnet Research Papers* — as part of the Jean Monnet Module project, implemented by the Chair of European Law of the Jagiellonian University entitled “E-government — European challenges for public administration in EU Member States and partner countries/eGovEU+.”

The book presents an analysis of the implementation and functioning of e-government in Poland and Europe, with particular emphasis on the impact of information and communication technologies on the activities of public administration done for the benefit of citizens. The monograph also shows the threats related to the digital transformation of administration and the need to acknowledge the central place of a human in this process.

The monograph addresses researchers dealing with administration, administrative and European law, and practitioners. We hope the publication will broaden the knowledge about the digitization of administration and will encourage further studies in this field.



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