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Evaluating the Impact of Regulation and Regulatory Policy – Towards Better Entrepreneurial Ecosystem. The Case of Poland

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The relationship between regulatory framework and entrepreneurial activity can be of a three-fold nature: law can foster entrepreneurship, hinder entrepreneurship or be neutral in this respect. One of the tools to underpin the capacity of public policy makers to ensure that regulation achieves its objective is the regulatory impact assessment (RIA). OECD defines RIA as 'a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives'. The objective of this paper is to examine the potential contribution of the regulatory impact analysis to building a more effective entrepreneurial ecosystem by reducing so-called 'government failure', in particular in Polish circumstances. The concern is not for specific legal provisions but the policy-making process, in which RIA is integrated. For this purpose, it reviews the RIA policies and practice in Poland and other OECD countries as well as in the EU. The methods used entail a qualitative document analysis on policy documents, in particular: legislative acts, guidelines and working papers issued by national, OECD and EU authorities, as well as reports and statistics in this field, in particular: the OECD Indicators of Regulatory Policy and Governance (iREG) to make cross-country comparisons and identify challenges in the effective implementation of RIA.

Keywords: regulatory impact assessment, regulatory policy, government failure, entrepreneurship.

Ocena wpływu regulacji i polityki regulacyjnej na rzecz lepszego ekosystemu przedsiębiorczości. Przypadek Polski

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Związek pomiędzy ramami regulacyjnymi a przedsiębiorczością może być trojakiego rodzaju: prawo może wspierać przedsiębiorczość, hamować ją lub być neutralne w tym względzie. Jednym z narzędzi wzmacniających zdolność decydentów publicznych zapewnienia skuteczności prawa jest ocena wpływu (*Regulatory Impact Analysis*, RIA), czyli – według OECD – systemowe podejście do krytycznej oceny pozytywnych i negatywnych efektów proponowanych lub obowiązujących regulacji prawnych oraz wariantów nielegislacyjnych. Celem artykułu jest zbadanie, jak ocena wpływu może przełożyć się na tworzenie lepszego otoczenia prawnego dla przedsiębiorczości poprzez zmniejszenie tzw. zawodności państwa (*government failure*), szczególnie w odniesieniu do Polski. Problem nie dotyczy konkretnych regulacji

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prawnych, ale procesu stanowienia prawa. W tym celu dokonano przeglądu podejść do oceny wpływu stosowanych w Polsce i innych krajach OECD, a także UE. Zastosowane metody obejmują jakościową analizę dokumentów: przepisów prawnych, wytycznych oraz dokumentów programowych – krajowych, OECD oraz unijnych, jak również raportów i danych statystycznych w tym zakresie, min. wskaźników OECD dotyczących polityki regulacyjnej i sprawowania rządów, umożliwiających porównania między państwami oraz identyfikację wyzwań w efektywnej implementacji oceny wpływu regulacji.

Słowa kluczowe: ocena wpływu regulacji, polityka regulacyjna, zawodność państwa, przedsiębiorczość.

JEL: H11, I38, K20, L51, L53

1. Introduction

New lines of inquiry in research on entrepreneurship have emerged as the perception of an entrepreneurship phenomenon has changed. The focus of scholars is not limited to individual entities but is increasingly more on the collective and systemic nature of entrepreneurship (Radosevic, 2010). New enterprises emerge and flourish not only because heroic, talented individuals (entrepreneurs) establish and develop them but also because they are located in a specific environment, 'eco-system', made of private and public actors who nurture them and sustain them. According to Isenberg (2011), the entrepreneurship ecosystem consists of six domains: a conducive culture, enabling policies and leadership, availability of appropriate finance, quality human capital, venture-friendly markets for products, and a range of institutional and infrastructural supports. From this perspective, a regulatory framework is significant (among other factors) for the effective functioning of businesses, while meeting important social and environmental goals. To this end, regulatory framework should be simple, clear, stable and predictable and, importantly, continue to add value as problems evolve or new solutions arrive (European Commission, 2015a). One of the tools to underpin the capacity of public policy makers to ensure that regulation achieves its objective is the regulatory impact analysis (assessment) (RIA). OECD defines RIA as 'a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives' (OECD, 2012, p. 24).

The objective of this paper is to examine the potential contribution of the regulatory impact analysis to building a more effective entrepreneurial ecosystem by reducing so-called 'government failure'. For this purpose, it reviews the RIA policies and practice in Poland, other OECD countries and in the EU. The methods used entail a qualitative document analysis on policy documents, in particular: legislative acts, guidelines and working papers issued by national, OECD and EU authorities, as well as an analysis of reports and statistics in this field, in particular: the OECD Indicators of Regulatory Policy and Governance (iREG), to make cross-country comparisons and identify challenges in the effective implementation of RIA.

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The article is divided into three sections. The first presents the concept of regulatory impact analysis, its underlying rationale and elements, in the context of the established theories. The second presents the RIA process in Poland against other OECD countries and the EU, based on the OECD Indicators of Regulatory Policy and Governance (iREG). The third discusses the importance of RIA as a tool for improving the entrepreneurial ecosystem taking into account Polish circumstances and challenges for the regulatory impact assessment system in Poland.

2. The Concept of Regulatory Impact Analysis

The current debate on state intervention in the economy concerns not so much the problem whether the state should intervene in a market but when and in what forms. Thus, the question is more about the scale of state intervention. It is widely agreed that the government should intervene in the case of 'market failure', which is the situation where the market left alone does not lead to effective allocation of resources, or in other words where allocation of resources is not Pareto optimal. Pareto optimality is obtained when it is impossible to make one person better off without making someone else worse off. The sources of market failures are, for instance, imperfect competition which can take a form of a monopoly, the nature of the goods (public goods), externalities or informational asymmetry (Stiglitz and Rosengard, 2015). Secondly, there is one more argument in favour of state intervention – fairness and equality rationale. Hence, market allocations may fail in the sense of their distributive outcomes (Winston, 2006).

However, the existence of 'market failure' itself does not justify government intervention. The government would be able to remedy the problem if it has both appropriate incentives and accurate information. The assumption that political agents are altruistic servants of the public trust and are fully informed hardly ever holds true in practice. As a consequence, the theory of government failure has been constructed that parallels the theory of market failure (Wolf, 1979). In the literature, passive and active government failure can be distinguished (Weimer and Vining, 2004; Keech, Munger and Simon, 2012). The first term denotes the situation where government does not diagnose market failure correctly or the lack of intervention is a result of the active influence of organised interest groups (lobbying) and there is a feasible corrective measure. 'Active government failure', in turn, arises when the government intervenes, but the intervention in fact exacerbates a problem, produces unintended negative results or simply could have been more effective by generating greater net benefits. The same efficiency benchmark as in the case of market failure can be applied (Winston, 2006; Keech and Munger, 2014). The crowding-out effect of public subsidies for research, development and innovation projects granted to enterprises that substitute private investment is an example of government failure, although

there might be a good rationale for state intervention – generally the private rate is too low to induce firms to engage in innovative activities that would be beneficial from a societal standpoint (risks of RDI projects, insufficient appropriability, information asymmetries, etc.). Similarly, the payment of welfare benefits may give rise to moral hazard problems when individuals knowing that the state will provide unemployment benefit may be less inclined to take action to improve their employability. Another example of government failure is excessive bureaucracy imposed to ascertain that decisions are made on the basis of the predetermined (and therefore predictable) criteria to curb abuses of discretionary power. This may in fact lead to the so-called 'long and variable lags' problem.

In this context, it could be argued that there are three fundamental problems any organisation, market or government faces. These are: incentives, information as well as aggregation incoherence or arbitrariness (Keech, Munger and Simon, 2012). This paper builds on the assumption that regulatory impact analysis (RIA), which is a key policy tool that aims to provide decision makers with detailed information about the effects of regulatory measures on the economy, environment and social arrangements, may correct government failures (or using a more specific term – regulatory failures) by enabling more informed decisions by public policy makers.

Together with spending and taxes, regulations are the most prominent tools used by governments to pursue public policy objectives. The problem of the quality of existing regulations was first raised in the early 1970s in the wake of the phenomenon called 'regulatory inflation', where the use of regulations covered an ever-growing range of areas. They seemed to be a convenient and relatively effective way of public intervention. The postulate put forward at that time was to deregulate, in particular, the economic sphere, as too great a quantity of regulation was viewed as a factor impeding economic growth by strangling innovation and entrepreneurship. Over time, actions aimed at removing and reducing state regulations, or simply 'cutting the red tape', took the form of a regulatory reform (1980s). This phase entailed revising regulations and in consequence their elimination or modification in order to improve the effectiveness of law. However, these steps were taken on a largely ad hoc basis. Soon it was realised (1990s) that the regulatory reform is a never ending process, is dynamic and requires a ceaseless effort, as the world changes and the conditions in which to pursue economic activity evolve. Moreover, in some areas the state retreated too fast and too far. In fact, market liberalisation (which is accompanied by deregulation) usually requires not fewer but new regulatory institutions and regimes to foster competitive markets where social policy goals such as environmental protection, consumer rights or workplace standards are not ignored. The question was not so much on what to regulate but how. The term 'regulatory quality management' was coined to stress the continuity of the process of improving the quality of regulatory frame-

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work. This evolved into regulatory policy which takes, in contrast to quality management, a more pro-active approach towards ensuring high quality law, and most recently the term 'regulatory governance' has been used to indicate that exercising regulatory functions is more than the design and implementation of regulations, or their coordination, but it concerns also issues which are inherent in democratic governance, such as transparency, accountability or stakeholder involvement (OECD, 2002).

The regulatory impact analysis (assessment) is one of the tools to improve regulatory decision-making and practice. Its aim is to enhance the empirical basis of political decisions by ensuring that public policy makers have a good understanding of who will be affected by regulation and how. At the same time, RIA makes the regulatory process more transparent and accountable. It consists in a process of systematically identifying and assessing the expected effects of proposed and existing regulations as well as non-regulatory alternatives. This should lead to the elimination of unnecessary or overcostly interventions as well as quality improvements to the remaining stock of regulation.

Although national practices concerning the design and implementation of RIA vary, some common elements can be distinguished: (1) the identification of the problem that provides the basis for public intervention and defining the desired outcome; (2) presenting different options of public intervention, including regulatory and non-regulatory alternatives, to achieve the desired outcome; (3) identification and quantification of their impacts, including costs, benefits and distributional effects; (4) the development of enforcement and compliance strategies of the public intervention options; (5) the development of mechanisms to monitor and evaluate the success of the public policy proposal; (6) public consultations (OECD, 2008). Even though the formulation of a vision and setting the strategic goals has a strong political component, the way of the implementation of regulations is increasingly based on technocratic elements (Górniak and Mazur, 2012).

3. Regulatory Impact Assessment in Poland Against Other OECD Countries and the EU

A vital role in promoting regulatory impact analysis has been played by the Organisation for Economic Co-operation and Development (OECD), by formulating key regulatory principles (see: the 2012 OECD Recommendation on Regulatory Policy and Governance), and by monitoring countries' regulatory practices. The diffusion of RIA among OECD countries is significant. In the early 1990s, only a small number of them were using RIA and currently nearly all OECD countries have introduced a formal requirement for regulatory impact assessment, which goes beyond a simple budget or fiscal impact. However, national practices vary in methodology and depth of detail of the analysis.

In Poland, regulatory impact assessment has been implemented gradually since 2002. This is when Resolution No 49 of the Council of Ministers: The proceeding rules of the Council of Ministers (M.P. 2002 No 13, item 221) entered into force. It imposed the obligation to provide information on reasons and the need for an adoption of a regulatory initiative put forward, its social and economic impacts, as well as its compliance with the EU legislation (when relevant). The required analysis had to encompass such areas as: (1) budget and public sector revenues and expenditures, (2) labour market, (3) the internal and external competitiveness of the Polish economy and (4) the situation and regional development. In subsequent years, the problem of entrepreneurship and functioning of entrepreneurs has been added to the area concerning the competitiveness of the Polish economy (today, this analysis includes also impact on families, citizens and households). The area of the situation and regional development has been placed in a collective item: 'The other areas' together with environmental impact, impact on demography, state property, IT implementation, health, etc. What is telling is that the emphasis on economic impacts in regulatory impact assessment is still characteristic for the Polish practice (Prokopowicz, Żmuda, and Król, 2015). Moreover, two new complimentary tools have been introduced to the ex ante regulatory impact assessment, so the system of regulatory impact assessment in Poland involves nowadays three processes: (1) Regulatory Test (Test Regulacyjny) – carried out at the initial stage of legislative procedure, concerning the underlying assumptions of a proposed piece of legislation, such as the problem identification, definition of the regulation goal, determination of possible public actions and their effects, which should lead to the selection of an optimal solution; (2) ex ante Regulatory Impact Assessment (Ocena Skutków Regulacji ex ante) – carried out in reference to a specific draft legal act; and (3) ex post Regulatory Impact Assessment (Ocena Skuków Regulacji ex post) – carried out in reference to already binding legislation and potentially resulting in the amendment or repeal of a legal act in question.

Furthermore, it is obligatory to identify groups affected by a regulation and provide information on conducted public consultations. Assessing the impact on the functioning of entrepreneurs, the 'SME test' is conducted, i.e. it should be considered whether foreseen impact would not hit small and medium-sized entrepreneurs harder, due to the smaller human and financial resources or the limited scale-effect, in comparison to large entrepreneurs. In doing this, the regulatory cost is broken down into: (1) financial cost, which constitutes a direct obligation to transfer a specific amount of money to the state, such as: taxes, stamp duties, administrative fees of different kind imposed on the addressees of a regulation, and (2) cost of implementing a new regulation, which is paid to preserve compliance with a new regulation; however, this is not done in the form of a transaction with the state; this is adjustment cost (e.g. cost of the adaptation of the facilities

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to new law) and cost of information obligations (e.g. cost of reporting) (Guidelines on Conducting Impact Assessment and Public Consultations in the Framework of the Government Legislative In terms of the methods used for impact assessment, the cost-benefit analysis (CBA) is used, which is carried out in reference to each group identified as being affected by a regulation. If some effects are not measurable and it is impossible to express them in monetary terms, the approaches: the willingness to pay (WTP) and the willingness to accept compensation (WTA) are applied for economic valuation. WTP is the maximum amount an individual is willing to pay to buy a good or avoid something undesirable. It is assessed on the basis of the observation of consumer behaviour, or through utilising questionnaires. WTA, in turn, is the minimum monetary amount that an individual is willing to accept to forgo some good, or to cease something negative (on advantages and deficits of CBA method, and ways to deal with them, see: Pearce, Atkinson, and Mourato, 2006).

The analysis of the legal acts, guidelines and templates applied to the regulatory impact assessment in Poland[2] leads to the conclusion that from the formal point of view the process does not differ substantially from international standards, in particular those of the OECD. Regulatory practices of OECD countries (as well as the EU) are assessed in the OECD Regulatory Indicators Survey carried out at an interval of a couple of years. The survey covers three main areas: (1) Regulatory Impact Analysis for new regulations; (2) stakeholder engagement and (3) ex post evaluation of existing regulations. In each three areas, four dimensions are taken into account: the systematic adoption of these tools, the methodology applied, the role of oversight bodies and quality control as well as the transparency of the process.

Based on the 2015 Indicators of Regulatory Policy and Governance, in the area Regulatory Impact Analysis for new regulations, Poland has been placed in the group of countries within an average range, with a score of 1.88 for primary law and 1.71 for secondary law (the highest possible score a country could earn is 4.0 provided that it has fully implemented all the OECD regulatory policy standards, one point for each of the four dimensions mentioned above). The OECD averages are: 2.09 and 1.91 for primary and secondary law, respectively. Figure 1 presents the countries' profiles concerning the composite indicator for RIA for developing primary laws. Primary law means regulations approved by the parliament or the congress (in the Polish case – ustawy), and secondary law – regulations approved by other authorities, such as the head of government, individual ministers or a cabinet (in Poland – rozporządzenia). Due to the fact that in Poland these authorities may issue regulations on the basis of specific authorisation incorporated in primary law (a statute), which should specify the organ appropriate to issue a regulation, the scope of matters to be regulated as well as guidelines concerning the provisions of such an act, regulatory impact assessment for primary law deserves particular interest.

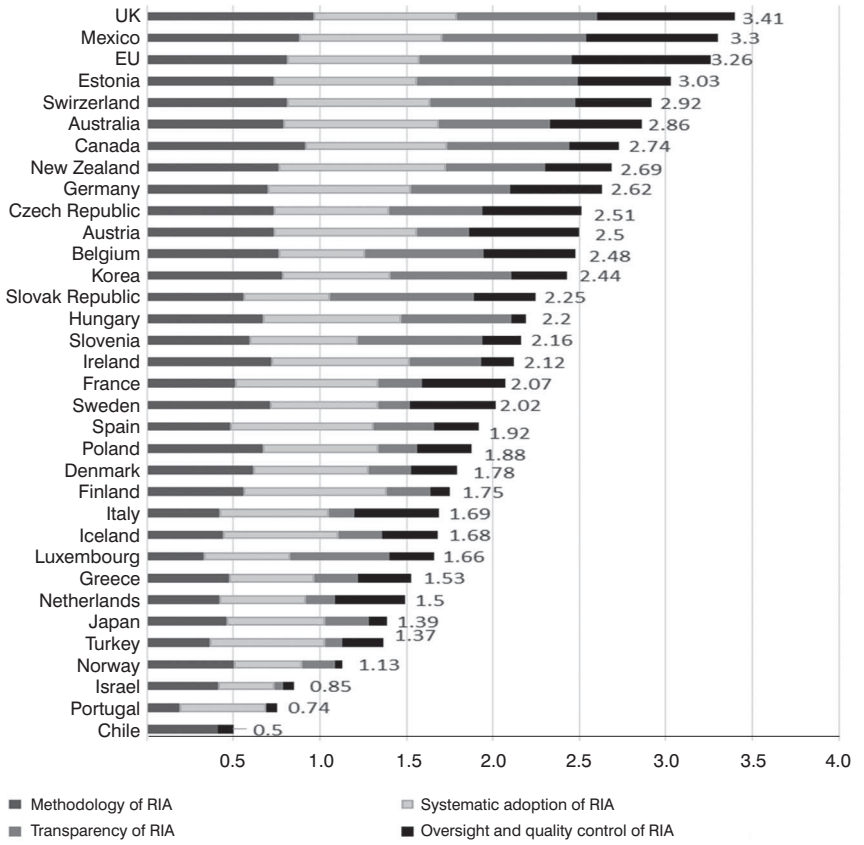

Fig. 1. RIA for developing primary laws. Source: own elaborations based on the 2014 Regulatory Indicators Survey results. Retrieved from: http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

A much wider array of impacts are measured currently by OECD countries within the RIA in comparison to previous years. New areas of assessment are, for instance, impacts on particular social groups, impacts on gender equality, impacts on poverty and other social goals, or – one may say – issues relevant for 'inclusive growth' (Deighton-Smith, Erbacci and Kaufmann, 2016). Nevertheless, economic impacts, such as: impacts on competition and on small business, remain the centre of attention for regulators in OECD countries, along with impacts on environment as well as budget and the public sector. Thus, the Polish practice in this respect does not differ from international trends. Figure 2 presents the types of impacts assessed by OECD countries (without the United States, where all national laws are initiated by the Congress).

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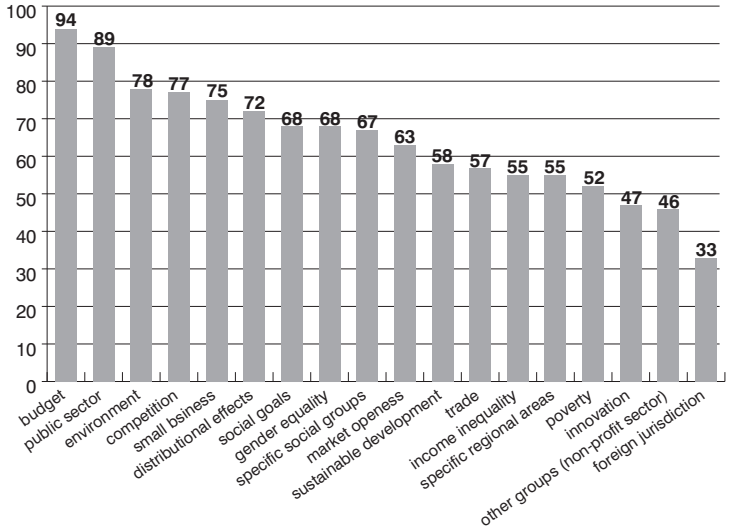

The question was whether regulators in a given country are required to include assessment of the above-mentioned types of impact. The possible answers: never (score 0), for some primary law (score 1), for majority of primary law (score 2) and for all primary law (score 3).

Fig. 2. Types of impacts assessed by OECD countries while developing primary law. Source: own elaborations based on the 2014 Regulatory Indicators Survey results. Retrieved from: http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

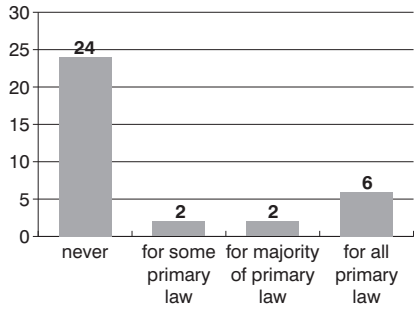

Fig. 3. Formal requirement for regulators to demonstrate that the benefits of a new primary law justify the costs. Source: own elaborations based on the 2014 Regulatory Indicators Survey results. Retrieved from: http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

It is worth noting that although the vast majority of OECD countries identify costs and benefits of a regulatory proposal as part of the RIA process only in few of them there is a formal requirement to demonstrate that the benefits of a new primary law outweigh the costs. Nonetheless, this is a crucial problem of ensuring the efficiency of a regulation. This applies also to Poland.

4. RIA as a Tool for Improving Entrepreneurial Ecosystem. The Case of Poland

In the literature, the existing theories which explain the effects of a regulatory policy in general for economic and social welfare are more of a set of assumptions. They draw heavily on neoclassical economics. It is widely argued that regulation can bring economic, social and environmental benefits and support market transactions, provided that they are well-designed. Otherwise, regulation can have adverse effects on the market and hinder economic growth. The areas where the influence of a regulatory framework on entrepreneurial activity is the most visible are, in particular: (a) administrative burdens for entry and growth of entrepreneurs – they determine the time spent collectively to understand and fulfil all of requirements imposed by public authorities (e.g. new business registration, filling tax forms, understanding which provisions an enterprise is subject to); (b) shaping the quality of manufacturing process by norms and certifications, including environment and sanitary regulations, (c) labour market law, (d) intellectual property regime, or (e) law of contracts in general.

A limited number of studies have been carried out to capture the overall economic effects of regulatory policy and regulations. Crafts (2006) investigated the ways in which regulations affect productivity outcomes. He argues that administrative costs of a regulation can affect productivity, however these traditional analyses of compliance costs 'miss the potentially most important impacts of regulation on productivity which occur through changes in incentives to invest and to innovate' (p. 186). In view of the fact that in some countries RIA is in principle confined to the assessment of administrative burdens and compliance costs for business, the usefulness of RIA has its limitations. It stands to reason that the competition assessment, i.e. estimating the dynamic effects of regulations on competition and markets, is to be expected to be more significant than the accuracy of the estimations of administrative costs (see also: Dunlop and Radelli, 2016).

Jalilian et al. (2007) examined the capacity of a regulatory regime in promoting economic growth in developing countries. Their study explores the role of state regulation using an econometric model of the impact of regulation on growth. They found a strong causal link between regulatory quality (based on the World Bank survey of good governance) and economic performance. Nevertheless, they also argue that along with a technical design of a regulatory instrument there are also other important factors

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that determine effective regulatory regimes, such as, for instance, supporting regulatory institutions. Thus, it is very difficult to assign specific economic effects of the presence or absence of the regulatory impact assessment.

Hahn and Tetlock (2008) claim that economic analyses, such as cost-benefit analysis, are more frequently applied in the US and the EU as a tool for informing regulatory decisions, but their quality falls short of basic standards of economic research. It is very difficult to estimate the effects of regulations in monetary terms, in particular, as it is hard to gauge how enterprises will respond and how technology will involve, or how regulations will affect different segments of the population. Distributional effects, although important, have not been a primary focus of cost-benefit analysis. Nevertheless, the authors found that the relationship between economic analysis and policy decisions is rather tenuous. Therefore, the outcome of a regulatory system should not be assessed only on economic grounds but also in the context of good governance (transparency, fairness and access to regulation).

Parker and Kirkpatrick (2012) point that it is very difficult to provide robust quantitative evidence of a causal relationship between a regulatory policy change and the impact on economic outcomes such as economic growth, since the presence of an economic effect depends on many other factors that interplay with each other. Widely used regression analysis to identify the statistical significance of the regulatory variable and the economic effects should be read with great caution. Moreover, the reliance on highly aggregated data generally limits the usefulness of the results of such analysis for policy making, as they give little or no guidance on which particular areas need to be reformed. Thus, resort to country specific case study evidence in the policy process might be useful in developing regulatory policy measures that are context specific.

The potential usefulness of regulatory impact assessment to improve legal frameworks (also in terms of creating a better entrepreneurial ecosystem) has been acknowledged in Poland, the UE and is extensively explored in the OECD forum. However, more in-depth investigation into the Polish practice suggests that this instrument is underused for a couple of reasons. First of all, performing regulatory impact analysis is a formal requirement in the process of developing a new regulatory proposal by the Council of Ministers. This means that it is not obligatory in the case of legislative proposals made by other entities, i.e. deputies. The current practice in Poland is that legislative proposals put forward by the deputies of the ruling party constitute a significant fraction of all statutes officially processed. This way, a majority of new primary law made in Poland escapes the process of regulatory impact assessment. The figure below presents new primary law adopted in Poland in 2015 disaggregated by the entity that submitted the draft law. In 2015, 137 legislative proposals out of 260 were made by the government, that is 53% of statutes adopted in that year.[3]

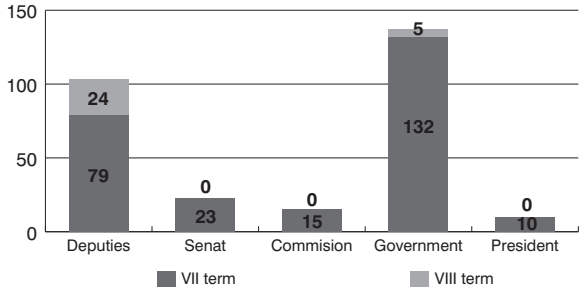

Fig. 4. New primary law adopted in Poland in 2015 by the entity that submitted the draft law. Source: own elaborations based on the data of the Chancellery of the Sejm.

Moreover, when amendments are made to a government legislative proposal at the parliamentary stage, such a modified proposal is not subject to impact assessment any more. Interesting insights into the system of regulatory impact assessment in Poland are provided by the empirical study carried out by J. Górniak (2015) 'The impact assessment based on evidence. The model of utilising the existing analytical and evaluatory evidence in the process of socio-economic impact assessment of the draft regulations'. According to the study, such a situation concerns circa 80% of all legislative proposals. Taking into consideration that such changes might be substantial, this is also a serious problem. Not to mention the fact that ex post impact assessment is difficult to conduct, where the point of reference is the assumptions provided in the ex ante RIA that are no longer valid as they relate to a previous version of a legal act. This also demotivates public officials who are involved in the preparation of the required ex ante assessments (Żmuda, Prokopowicz, Felcis, and Król, 2015).

What also gives cause for concern is the fact that according to the 'Legal Environment Stability Barometer in the Polish economy' by Grant Tornton, Polish law is the most unstable in the whole European Union. In 2015 alone, 2,372 legal acts (primary and secondary) entered into force, giving a total volume of 29,800 pages of typescript. It is calculated that the law applied to the functioning of entrepreneurs constituted one-third of the new law, i.e. 9,847 pages. It can be argued that the scale of legislative excess in Poland is significant, new regulations are adopted hastily and without proper impact analysis.

Another point of consideration, also made by J. Górniak et al. (2015) and echoed in the quarterly reports by the Citizens' Legislative Forum (2015–2016) active within the Stefan Batory Fundation, is a variant analysis. It is required as an element of the regulatory test at the initial stage of the legislative process. This step is, in many cases, performed superficially or is totally abandoned (Prokopowicz, Żmuda, and Król, 2015). There is

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no exhaustive justification why other solutions have been rejected. What is presented to social and economic partners in the public consultations process is the detailed information only on a single recommended option, which certainly hinders conscious policy decisions in terms of meeting citizens' or entrepreneurs' expectations as well as making valuable contribution to defining and solving a given problem (Żmuda et al., 2015; Citizens' Legislative Forum, 2015).

The conditions for sound, evidence-based inference are missing too, as ex post evaluation of existing regulations is not carried out on a systematic basis. However, in that respect, Poland does not differ substantially from the rest of OECD countries. A more common practice among OECD countries is partial evaluation concerning exclusively regulatory burdens (e.g. SME Regulatory Compliance Cost Report, which presents data on the cost of regulatory compliance to small and medium-sized enterprises in Canada, see: Seen, 2013; European Commission, 2015b) and evaluations conducted ad hoc on various topics, depending on the needs in each policy area.

Examples of the regulatory analysis where such a fragmented approach has been taken, centred on single barriers to pursuing economic activity, are the RIAs carried out in reference to the four deregulation acts implemented in years 2011–2015.[4] The idea behind this legislative package was to eliminate unnecessary administrative burdens and to amend the laws that constitute barriers to performing economic activity. This, in turn, required the identification of the most oppressive burdens on entrepreneurs and their measurement. To this end, 482 statutes and regulations in the field of economic law were analysed to identify and classify administrative burdens on entrepreneurs. Then, the 2010 study commissioned by the Ministry of Economy: Measurement of Administrative Burdens in Business Law underpinned regulatory impact assessments for the four deregulation acts.[5] According to the study, estimated costs for entrepreneurs exceeded 6.1% of the GDP, which was much higher than the average 3.6% of the GDP in comparable countries. These four acts aimed at eliminating 300 barriers in more than 100 statutes were to ensure a decline in administrative costs estimated at approx. 0.5% of the GDP. As stated in the ex post regulatory impact analysis of one of them – the act of 16 November 2012 on the reduction of certain administrative burdens in the economy – the said act is congruent and fulfils its aims; however, not all the planned effects in the ex ante analysis were achieved. The so-called 'correction of costs in income taxes' had no significant influence on improving financial liquidity of entrepreneurs and even caused additional impediments in tax settlements. As a consequence, relevant provisions have been repealed.

5. Conclusions

Regulatory framework is an important element of the entrepreneurial ecosystem. Creating favourable legal conditions for entrepreneurship is high on the political agenda in many countries and the EU alike. However, this requires both appropriate incentives (motivation) and accurate information on the part of regulators. Regulatory impact assessment (RIA) is a tool designed to systematically and rigorously identify and evaluate the potential impacts of public actions and thus reduce government failures by enabling more informed decisions by public policy makers. Owing to the fact that special emphasis in the impact analysis is placed on economic impacts of a new regulation, including the functioning of entrepreneurs, with a special consideration for small and medium-sized entrepreneurs (the SME Test), RIA could potentially make a significant contribution to a better entrepreneurial ecosystem. However, this tool is underused in Poland. First of all, this is because performing regulatory impact analysis is a formal requirement in the process of developing a new law by the Council of Ministers and the current practice in Poland is that legislative proposals put forward by deputies of the ruling party constitute a significant fraction of all statutes officially processed. In 2015, it was only 53% of the adopted statutes that were government initiatives (in 2016 thus far the proportion is even worse). Furthermore, when amendments are made to a government legislative proposal at the parliamentary stage, such a modified proposal is also not subject to impact assessment anymore and this concerns circa 80% of all legislative proposals. Due to the fact that such a significant fraction of new primary law made in Poland escapes the process of regulatory impact assessment, it is recommended that RIA should not be exclusively the domain of the government but the whole system of law making.

The next point that should be made is that in Poland ex post evaluation of existing regulations is not carried out on a systematic basis. Thus, the conditions for sound, evidence-based inference is missing. The Citizens' Legislative Forum, in its reports: Observation of the legislative process in practice, frequently points that the scale of a problem addressed in a draft regulation, its root causes and consequences are set out in very general terms. An important reason for it is the lack of reliable data. Therefore, the second recommendation is to strengthen the links between ex ante and ex post impact assessments and thereby close the policy cycle, where ex post evaluation feeds into ex ante assessment of new public action. In this respect, it is worth considering the use of the experience gained by public administration in evaluating financial interventions from the EU funds in the regulatory impact assessment system, in terms of methods used, knowledge and expertise acquired.

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Endnotes

1 See also: the Regulatory Compliance Cost Assessment Guidance (2014) by OECD. Valuable and up-to-date insights on tools applied in Regulatory Impact Analysis, including the Standard Cost Model (SCM), which primarily aims to reduce the administrative burdens for businesses, are provided in 'Handbook of Regulatory Impact Analysis' edited by Dunlop and Radaelli, 2016.

2 Rules on regulatory impact assessment in Poland can be found, in particular, in: Resolution No 190 of the Council of Ministers: The proceeding rules of the Council of Ministers, dated October 29, 2013 (M.P. 2013, item 979), the Guidance on Conducting Impact Assessment and Public Consultations in the Framework of the Government Legislative Process (2014).

3 In 2016, till May 20th the proportion is even worse, only 40 out of 95 draft statutes were submitted as government initiatives, i.e. only 42%.

4 Act of 25 March 2011 on limiting administrative barriers to citizens and entrepreneurs (Journal of Laws No. 106, item 622); Act of 16 September 2011 on reduction of certain obligations of citizens and entrepreneurs (Journal of Laws No. 232, item 1378); Act of 16 November 2012 on the reduction of certain administrative burdens in the economy (Journal of Laws, item 1342); Act of 7 November 2014 on facilitating the economic activities (Journal of Laws, item 1662).

5 See: Measurement of Administrative Burdens in Business Law (2010), Deloitte Business Consulting S.A., commissioned by the Ministry of Economy.

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