Chapter 3

Achieving results through whole-of-government evidence-based decision making

This chapter assesses the extent to which Poland's central government could improve its decision-making practices and make use of sound evidence in choosing policy options. It assesses how the government currently uses impact and risk assessment in developing and applying regulation to address a policy issue. The chapter provides an illustrative example of Poland's e-government implementation and provides recommendations that could help nurture more reliable, effective and efficient service provision and service delivery through e-government strategies that focus on maximizing value-for-money and outcomes-based needs of end-users.

Introduction

OECD experience suggests that whole-of-government evidence-based decision making leads to greater effectiveness and efficiencies in achieving strategic outcomes (Box 3.1). Evidence-based policy analysis is not yet systematically informing important policy decisions in the government of Poland – and evidence-based policy advice is not always sought by political decision makers – perhaps due to a perception that it takes too much time and effort to generate this evidence, or due to a lack of confidence in the quality of the evidence once it is produced.

Box 3.1. **OECD experience regarding evidence-based decision making**

Evidence-based policy analysis allows for decisions aimed at implementing and steering strategy to be taken in the country's medium- and long-term interests, based on evidence derived from strategic foresight and environmental scanning that correctly identifies domestic and international short- and long-term challenges and opportunities, on performance assessment that allows for judicious prioritisation of expenditures to achieve the best results with the least resources, and on individual issues being analysed within a broader strategic framework.

Throughout the OECD, good-governance practice suggests that policy should be based on sound evidence derived from rigourous analysis of the available facts on the issue the policy is supposed to address. Governance practices determine how evidence contributes to identifying policy options and how rules are made. This evidence needs to be available at the right time and be seen by the right people. OECD practice suggests that the following major ingredients are needed to obtain and use the "right evidence" (Banks, 2010):

- a sound methodology that allows for proper consideration of the immediate and long-term nature of the issue and of the rationale supporting different options for policy intervention (including doing nothing);
- good data for analysis;
- public access to the data, assumptions and methodologies used to frame the issue and identify options to address it, so that scrutiny can be brought to bear and the analysis replicated independently;
- time to carry out this analysis properly and to consult the general public on its results;
- a capable and skilled public service including people skilled in quantitative methods;
- a "receptive policy-making" environment – that is political leaders who are willing and able to decide on the basis of the evidence presented.

Source: Banks, Gary (2010), "An Economy-wide View: Speeches on Structural Reform", Australian Government Productivity Commission, Canberra.

The Polish central government faces challenges that are common to those faced by countries transitioning away from centralised, command-and-control decision making. These challenges include:

- limited performance assessment capacity;
- resistance in the administration to "doing things differently";
- the results of strategic foresight not being adequately embedded in decision making;

- sometimes weak strategy execution – in any country, citizens can lose confidence in their government if it is not delivering expected results;
- a "disconnect" between policy, financial and human resources considerations in government decision making.

This chapter therefore:

- assesses the degree to which regulation, as a widely-used government decision-making tool, is based on sound evidence;
- presents practical considerations on the implementation of performance-based budgeting (Chapter 4 discusses performance indicators to monitor the territorial implementation of development strategies in the regions);
- assesses decision making on implementing e-government to illustrate the challenges the government is facing more generally in making decisions government-wide based on sound evidence.

Poland could improve its governance practices to make better use of evidence in the choice of policy options and ensure that regulation is only selected when it is the right solution to address a policy issue. Regulation is defined broadly here: the OECD – and this Review – defines "regulation" as the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulating bodies to which governments have delegated regulatory powers (OECD, 2012a). In Poland, governments rely heavily on the use of regulation to implement policy decisions.

The regulatory impact assessment system as a tool to improve decision making

Regulating, along with spending and taxing, is a key tool of government. It is of particularly high importance for implementing government strategies: well-designed legislation tends to help governments achieve policy goals; poorly designed legislation tends to undermine the operation of the economy and impede people's lives. Ill-conceived regulation can stifle innovation and entrepreneurship, reduce welfare and slow growth. Whether legislation is well- or poorly designed depends to a large extent on the quality and use of evidence in the rule-making process.

The government in Poland appears to rely heavily on regulatory instruments to address policy issues. It is therefore important for the Polish government to ensure that its decisions to adopt regulation are based on sound evidence. Poland is making progress in this area, but the government could benefit from further improvements to its decision-making practices. This assertion is based on the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012a). The assessment in this chapter of governance practices for evidence-based policy making in Poland is grounded in these recommendations.

Out of the 12 principles in the *Recommendation*, five are of particular relevance for evidence-based decision making. They focus on the institutional capacity for regulatory policy, *ex ante* and *ex post* analysis of regulations including the consideration of alternatives, risk assessment and the evaluation of regulatory policy programmes and tools. This section assesses the implementation of these five principles in Poland. It also considers findings of previous OECD reviews of regulatory policy and governance in

Poland (2002, 2007, 2011). Namely, it assesses whether the recommendations of the most recent review (OECD, 2011a) to strengthen the regulatory impact assessment (RIA) system by improving quality control, strengthening capacities in the Chancellery and possibilities for public control, and by continuing to train civil servants in techniques to conduct RIAs, have been implemented in Poland.

Institutional capacity to enhance regulatory quality

> "Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality." (OECD, 2012a, Principle 3)

Regulatory institutional capacity is central to delivering regulatory policy effectively and to maximising the quality of regulation. In OECD countries, an important feature of these institutional arrangements is the existence of regulatory oversight bodies, usually located at a focal point within the government administration, with a broad remit to advocate for regulatory quality. The functions of these bodies include assisting regulators in implementing elements of regulatory policy, undertaking quality control in areas such as RIA and administrative simplification and ensuring compliance with and reporting on overall performance in achieving regulatory policy objectives (Jacobzone et al., 2009).

In Poland, responsibility for regulatory policy design and oversight is shared between several Centre of Government (CoG) institutions, mainly the Chancellery (whose head chairs the Programming Committee), the Ministry of Economy and the Government Legislative Centre (GLC – Figure 3.1). Overall, structures for the co-ordination of rule making across ministries seem to be insufficient and there does not seem to be a culture of co-operation between ministries – this was outlined in the OECD Review on *Administrative Simplification in Poland* (2011): "'Silo' ministries usually operate on departmental principles, and horizontal co-ordination is one of the main weaknesses of the public administration system, as in many other post-socialistic countries". In addition, many of the regulatory policy initiatives in Poland including much of the training in regulatory policy are funded by European Structural Funds. There is currently no strategy to sustain them beyond the EU funding period.

The Polish central government ministry leading the formulation of regulatory policy is the Ministry of Economy (MoE), due to the government's focus on providing a better regulatory environment for business. The MoE's Department of Economic Regulation, reporting directly to the Minister of the Economy, and the MoE's Regulatory Reform Unit, are jointly responsible for co-ordinating the preparation of strategic plans respecting regulatory policy. The department advocates for regulatory policy within the ministry and across the government and contributes to introducing a modern framework for government-wide economic regulation. The department also provides the government with comments on draft legislation that potentially affects business activity (OECD, 2011a).

The MoE holds a relatively strong position within the government. Its minister is also a Deputy Prime Minister. Improving the business environment is also considered to be one of the priorities of the current government. Nonetheless, the MoE is still "only" a line ministry and does not have any special co-ordinating powers (this is addressed in Chapter 2). It is therefore currently not possible for the ministry to enforce some of its regulatory policies when faced with resistance from other government institutions. Placing responsibility for regulatory reform in the MoE also shapes the orientation of the

regulatory reform programme, which mainly aims at improving regulations affecting businesses and strengthening economic competitiveness of the country (OECD, 2011a).

Figure 3.1. **Responsibilities for regulatory quality in Poland**

Regulatory Reform Unit, Department of Economic Regulation, **Ministry of Economy**	RIA Unit, Department of Strategic Analysis, **Chancellery**	**Government Legislative Centre (GLC)**
▪ Develops strategic documents in the area of regulatory policy and manages most of the projects ▪ Advocates for regulatory policy ▪ Introduction of a modern framework for economic regulation ▪ Comments on draft bills that have potential impact on businesses	▪ Quality check of individual RIAs on new legislative proposals ▪ Cost-benefit and economic analyses for high-impact proposals (Department of Strategic Analysis)	▪ Co-ordinates the government's legislative activity ▪ Provides legal advice to the government ▪ Prepares government drafts ▪ Advises on Parliament's drafts ▪ Considers the constitutionality and conformity of proposed laws with general principles of law
Jointly developed the Regulatory Test		

While RIA guidelines have been developed by the MoE, a unit in the Chancellery is responsible for checking the quality of individual RIAs. The OECD review in 2011 on administrative simplification found that this unit was "seriously understaffed; with few employees, it can only focus on assessing formal aspects of impact assessments". A positive development is that the unit was moved to the Strategic Analysis Department within the Chancellery in 2011 and given more staff. The unit now has the mandate to check all RIAs on new legislative proposals. Positions within the unit are being gradually filled with staff with expertise in cost-benefit analysis.

In other OECD countries, RIA oversight bodies not only check the quality of individual RIAs but promote their and provide training and methodological guidance government-wide. Such oversight bodies can also play an effective role in monitoring compliance with such requirements as public consultations, which promote transparency in decision making and improve the rigour of the analysis (OECD, 2009). In Poland, the RIA unit in the Polish Chancellery hosted a series of workshops in 2012 on data analysis, economic modelling, cost-benefit valuation and *ex post* evaluation. These workshops will continue during the first half of 2013, and from 2014 onwards an in-depth training programme will be offered alongside existing RIA training. The programme will be specifically targeted at economists and policy analysts in the Polish civil service.

There is now also a trend to set up "independent watchdogs" composed of experts from outside the government to monitor government compliance with its own RIA policy (OECD, 2012b) (Box 3.2 on the Czech experience).

Box 3.2. **Improving the evidence base for laws: The Regulatory Impact Assessment Board in the Czech Republic**

High-quality evidence is necessary to identify the best policy option for a policy problem. Regulatory oversight bodies can play an important role in checking and improving the quality of regulatory impact assessments conducted in individual ministries.

With its newly established Regulatory Impact Assessment Board (RIAB), the Czech Republic follows an OECD-wide trend to set up "independent watchdogs" (OECD, 2012b). As an independent advisory body of the Legislative Council (GLC), the RIAB has been in charge of quality control for RIA reports since November 2011. RIAB is authorised to issue opinions on RIAs, carry out consultations about RIA principles and provide methodological guidance to ministries for the preparation of RIA reports. In contrast to its predecessor which was mainly composed of government officials, the RIAB is comprised of 15 independent experts appointed by government and mostly stemming from business and academia.

The opinions from RIAB are delivered as part of an overall opinion of the GLC before submission to the government. The government does not have to follow the opinion of the GLC. The analyses by the RIAB go beyond a formal checking of RIA proposals and include a substantial assessment of whether an RIA adheres to official guidelines. The RIAB may propose either to approve or disapprove a suggested RIA. In the latter case, the RIAB will provide an explanation of its decision and guidance on how to improve the RIA for subsequent re-submission to the RIAB.

In addition, the RIAB provides recommendations regarding the scope and depth of impact analyses during the preparation phase of the annual Government Legislative Plan. This analysis forms the basis for the government to determine whether a full or no RIA report is adequate for a proposed policy.

The first legislation cases treated by RIAB in 2012 indicate that is has assumed an important role in the process of developing new legislation. Out of the 49 cases processed, the RIAB has so far recommended re-submission for the vast majority of RIA reports due to omissions and deficiencies. It is too early to assess whether the reform of regulatory oversight in the Czech Republic has improved the quality of RIA. An evaluation is scheduled for mid-2013.

Source : Written communication with a Czech government official, July and August 2012.

In Poland, the other key player in assessing the quality of regulations is the Government Legislative Centre (GLC), the CoG institution that co-ordinates the government's legislative activity, provides legal advice to the government, prepares government draft legislation and advises on Parliament's draft legislation. Its head is also the Secretary of the Council of Ministers. When scrutinising draft primary laws or subordinate regulations or amending existing laws,[1] the GLC considers the constitutionality of proposals, their conformity with general legal principles and the extent to which they are drafted in a clear and coherent manner. The GLC is also responsible for publishing legislation. Indeed, following recent reforms, the GLC is now responsible for drafting about 70% of legislation, in particular paragraph wording based on the substantive policy intent developed by the responsible ministry in the "assumptions" document (OECD, 2011a).

Parliament is not directly involved in regulatory reform efforts of the government. It had its own initiative from 2008 to 2011, the Friendly State Extraordinary Committee (*Komisja Nadzwyczajna Przyjazne Państwo* – KNPP). The committee's tasks included reviewing and analysing provisions in order to identify unclear, incoherent, ineffective,

unnecessary or over-regulating provisions, preparing arguments in favour of amendments to legislation and providing legislative initiatives on the basis of these arguments (Sejm of the Republic of Poland, 2007). Some criticism was raised that the committee bases "too many legislative initiatives not on these formulated by the committee itself but on draft acts submitted to the committee by lobbyists and interest representatives" (OECD, 2011a). The committee was dissolved after the elections in 2011.

At the end of 2011, the government enhanced the role of the "Programming Team" – a group of senior officials chaired by the head of the Chancellery (who is also the Chair of the permanent Committee of the Council of Ministers), and composed of undersecretaries of state from the Ministries of the Economy, Finance and Foreign Affairs, and from the GLC. The Programming Team manages a new "traffic light system" – a tool to manage the flow of new regulatory proposals up to the Council of Ministers for decision. The Programming Team now has the power to ask for a "regulatory test" (Box 3.3) in order to obtain a first assessment early in the decision-making process of the eventual impact of proposed legislation:

- The regulatory test is a short document that officials from the lead ministry complete at the request of the Programming Team.
- The team uses the information to vet a regulatory proposal against the government's overall policy agenda to determine whether its subject is covered by the agenda – if so, it can then be placed on the list of items to be debated at the Council of Ministers.

The regulatory test requires that the regulatory proposal's financial implications be outlined and that the potential costs and benefits to citizens and business be identified. This is in line with international good practice. Less in line with international good practice, however, is that the regulatory test seems to be submitted on its own without additional documentation that would allow for a check of the accuracy of the cost-benefit analysis and explain the assumptions that underlie the calculations. There is no detailed break-down of costs and benefits to private and public actors.

Currently, this new regulatory test co-exists with traditional RIAs. An RIA is mandatory for all new draft laws and subordinate regulations. When prepared properly, RIAs improve the use of evidence in policy making:

- they identify an appropriate response to an identified problem;
- they reduce the incidence of regulatory failure arising from regulating when there is no case for doing so, or failing to regulate when there is a clear need (OECD, 2012a, Principle 4).

However, Poland still faces major challenges in implementing its RIA system – linked to the quality, timing and use of RIAs. Unlike the new regulatory test, the RIA is completed late in the decision-making process – usually after a decision has already been made to proceed with a regulation, rather than to inform whether the regulation should be implemented. Moreover, it appears that many RIAs do not comply systematically with the official government guidelines on preparing RIAs introduced in 2009. This means that an RIA often does not include critical information that would be necessary for making an informed decision. For example, some regulatory impact assessments consist only of the statement "there is no impact". And while the regulatory test is likely to influence the government's decision making because it is prepared before a decision is taken, its Programming Team currently only asks for a regulatory test for just under half of all

regulatory proposals. These proposals are not selected on the basis of a clearly defined threshold in terms of the impact of the proposal. That said, ministries increasingly anticipate questions regarding costs and benefits and submit regulatory tests voluntarily.

Box 3.3. **The Polish regulatory test**

The new Polish regulatory test was introduced in December 2011. It consists of 18 items and questions that officials have to answer in an Excel sheet for legislative proposals.

1. Ministry leaders and ministries co-operating.
2. Document name and date of preparation.
3. What problem is solved?
4. Source (e.g. *Exposé* of the Prime Minister, Decision of Prime Minister, EU law, statutory authorisation, etc.).
5. Does the draft implement EU law or are additional solutions introduced beyond those strictly required by the EU?
6. Recommended solution and the desired effect.
7. Is it possible to solve the problem through non-legislative action? If so, how? If not, why not?
8. Quantified consequences for the public sector in millions of Polish zlotys (positive in plus, negative downward).
9. Quantified social costs and benefits.
10. Other data that emphasise the importance of the project (economic data, such as share of GDP, the impact on the labour market, etc.).
11. Does the project reduce the regulatory burden? In what area?
12. Does the project introduce additional regulatory burdens in relation to the current situation?
13. If the project increases regulatory burdens, please indicate in what other area within its competency the ministry will reduce burdens in exchange (the principle of "one for one").
14. How was this problem solved in other countries, the OECD/EU (best practices)?
15. Schedule (dates to develop the project design, consultation and completion of the transfer document to KSRM (Komitet Stały Rady Ministrów – Standing Committee of the Council of Ministers). Are there factors that determine the time limit to implement the project? If so, what?
16. When will the results of the evaluation of the project be available and what indicators will be used (*ex post* evaluation)?
17. Main contact (working level).
18. Minister/secretary/secretary of state responsible for the project.

Source: Regulatory Test Excel Sheet, submission from the Polish Government (2012).

In order to reap the benefits from RIAs, the government of Poland could consider integrating RIA into the early stages of the policy process for the formulation of new regulatory proposals – possibly by combining the regulatory test and the RIA and making

this new tool part of the submission to the Council of Ministers before it takes its decision. The government could consider:

- Making the regulatory test mandatory for all regulatory proposals before submitting them to the "Programming Team", while improving the quality of RIAs on high-impact proposals significantly. Strengthening its co-ordination mechanisms and oversight necessary to implement regulatory policy and improve the design of policy responses government-wide by strengthening collaboration between the MoE and such CoG institutions as the Chancellery. The co-operation of the Chancellery, the MoE and the Government Legislative Centre in the development of the "regulatory test" is a move in the right direction.
- Strengthening the unit in the Chancellery responsible for RIA oversight so that it has both the mandate and the capacity to assess the quality of all individual regulatory tests and RIAs, and to provide technical assistance on proposals of significant impact. The Chancellery could check the quality of each RIA on a high-impact proposal and conduct its own analysis if necessary. To ensure that the unit actually improves the quality and use of analysis, it will be necessary to have sufficient staff with skills in cost-benefit analysis and in bringing about change across the government towards evidence-based decision making. Poland could also consider setting up an independent watchdog for RIA composed of experts from outside the government.
- Establishing a unit to support the introduction of the regulatory test in each ministry. The government might also consider establishing a long-term strategy for hiring experts and training officials independent of EU funds (Annex C).
- Assigning responsibility to a unit at the centre of government to monitor compliance systematically with requirements to consult the public.

The *Sejm* needs better evidence to assess new regulatory proposals. In Poland, this could be achieved by attaching up-to-date regulatory tests and RIAs to any legal text sent to Parliament, and by strengthening the capacity of Parliament's Chancellery to evaluate regulatory tests and RIA. The *Sejm* Chancellery could thus play a "challenge function" with respect to the RIAs provided by the executive, and provide separate advice to parliamentarians on the executive's regulatory test and RIAs when warranted. It could also work together with the executive to ensure that information is presented in a way that allows parliamentarians to understand easily the results of an RIA and the assumptions upon which it is based.

Ex ante *evaluation of regulations and consideration of alternatives*

> "Integrate regulatory impact assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach." (OECD, 2012a, Principle 4)

The RIA is both a tool and a decision process for informing political decisions makers on whether and how to regulate to achieve public policy goals. Improving the evidence base for regulation through an *ex ante* (prospective) impact assessment of new regulations is one of the most important regulatory tools available to governments. The aim is to improve the design of regulations by assisting policy makers to identify and consider the

most efficient and effective regulatory approaches, including the non-regulatory alternatives before they take a decision. One method of doing so is by analysing the evidence for the costs and benefits of regulation and of alternative means of achieving policy goals and to identify the approach that is likely to deliver the greatest net benefit to society (OECD, 2012a).

The government of Canada, for example, uses three *ex ante* decision-making tools to ensure that both strategic and transactional decisions are based on key policy and financial evidence: the Memorandum to Cabinet, the Treasury Board Submission, and the Governor-in-Council Submission (Box 3.4). These are documents that present for consideration by ministers the issue to be discussed, the recommended course of action, its rationale, policy, political and contextual considerations that frame the rationale, a proposed implementation plan, factors relating to due diligence (financial implications and accountability issues), a summary of consultations undertaken, a communications plan and a parliamentary plan (if required). The strength of this process lies in seeking the collective view of Cabinet based on rigorous evidence derived from due diligence performed by the civil service working on the issue.

Box 3.4. **Evidence-based decision-making tools: Canadian federal examples**

- A Memorandum to Cabinet (MC) from a minister(s) seeks Cabinet approval to introduce a new, or amend an existing, policy. Its genesis can be the political platform of the government, the Speech from the Throne (the Canadian equivalent to the Polish Prime Minister's *Exposé*), the federal budget or a policy challenge requiring the government to take action. An MC will often be discussed conceptually with stakeholders, drafted by officials, discussed with senior executives in the department, circulated and discussed by departments and agencies, discussed with the sponsoring minister, vetted by central agencies, before being considered by Cabinet. Often a Cabinet committee will discuss the MC before it goes to the full Cabinet. The actual document will lay out *inter alia* the issue to be discussed; a recommended course of action; its rationale, policy and political considerations; an implementation plan; due diligence (financial implications and accountability issues); consultations undertaken; a communications plan and a parliamentary plan (if required).
- A Treasury Board Submission is made by a Minister to the Treasury Board (TB), the Cabinet committee mandated by the Canadian Financial Administration Act to manage the government's spending and operations once an MC has been approved by Cabinet and implementing the decision requires the expenditure of public funds, or in instances where programme terms and conditions are being enhanced or amended, or authority is being sought to spend public funds. Examples include authority to supplement existing or reallocate resources, pay a grant or contribution, carry out a project, enter into a contract or seek exemption from a TB policy where the line minister does not already have the necessary authority. The actual document will detail *inter alia* the subject to be discussed, the nature of the authority being sought, the details of the proposal, the cost and source of funds to implement it, a breakdown of resources required to implement it, a project schedule/rationale, and expected results/outcomes.
- A Governor-in-Council (GIC) Submission to the Treasury Board is used to seek authority to implement a specific regulation under existing legislation, a Cabinet order, to make certain senior appointments, to approve federal Crown corporation corporate plans, federal-provincial agreements, and to approve the transfer of federal assets.

The following table shows the key differences between these three *ex ante* decision-making tools.

Box 3.4. **Evidence-based decision-making tools: Canadian federal examples** (*cont.*)

	Memorandum to Cabinet	Treasury Board (TB) Submission	Governor-in-Council (GIC) Submission
Purpose	To seek approval of a policy or new initiative	To seek approval of elements for a programme's design, delivery and implementation	To seek approval of a specific order in council or specific regulations
Focus	Policy or programme rationale with clear objectives, expected results and outcomes; links to horizontal objectives; relationship between new and existing programmes; options and risks; opportunities for reallocation	Detailed programme design and implementation plan; detailed costing; results measurement and accountability frameworks; opportunities for reallocation	Regulations, orders, appointments, corporate plan approvals, federal-provincial agreements and asset transfers
Resource details	While sponsoring organisations normally provide cost breakdowns to central agencies, the MC often contains only high-level information on total resources required each year	Specific funding details and a clear rationale for what resources will be spent each year	Limited (cost-benefit analysis required for most regulatory submissions)
Target audience	Cabinet ministers	Treasury Board ministers	Ministers of the Treasury Board as Committee of the Privy Council
Key federal organisations involved	Organisation sponsoring the MC, central agencies and other interested federal organisations	Organisation(s) sponsoring the submission (in the case of a Crown corporation, the corporation itself and the portfolio department) and the Treasury Board Secretariat	The federal organisation(s) sponsoring the GIC submission, the Privy Council Office (the Canadian equivalent to the Polish Chancellery of the Prime Minister), the Treasury Board Secretariat and sometimes the Department of Finance

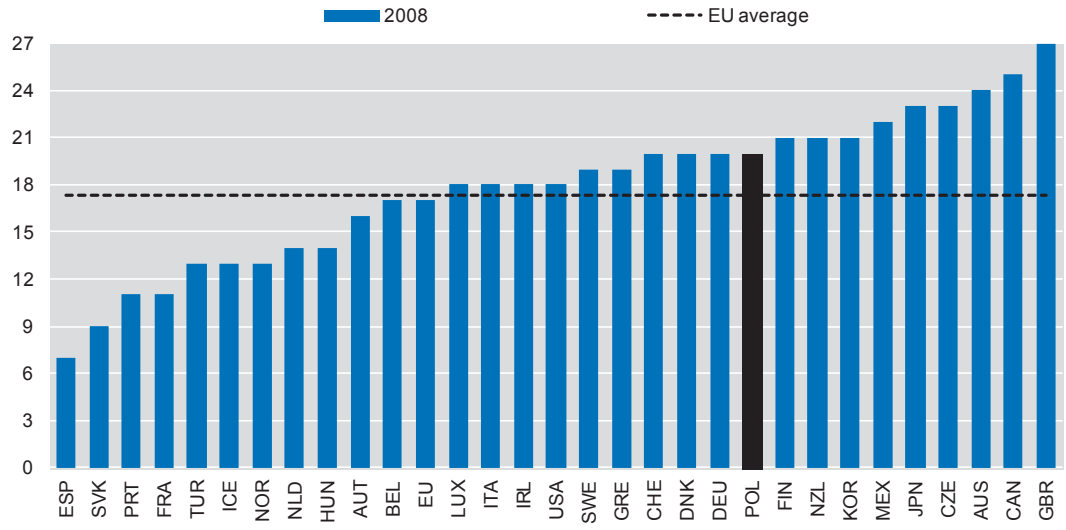
Source: Government of Canada (2012), Treasury Board Secretariat website.

In Poland, RIA implementation was initiated at the end of 2001. Since then, it has been mandatory to carry out impact assessment studies for all governmental bills and regulations (OECD, 2011a). While Poland has some formal requirements in place that are in line with international good practices (Figure 3.2), these do not appear to be widely implemented.

As outlined in the OECD Recommendation, member countries should adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, When regulatory proposals have potentially significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible (OECD, 2012a, Principles 4.1 and 4.4). In Poland, the scope of the impact analysis is not proportionate to the significance of the proposal. This means that the breadth and depth of scope of the analysis are not necessarily related to the proposal's significance or its impact, and resources dedicated to the assessment of high-impact proposals are apparently often insufficient.

Figure 3.2. **Requirements for RIA processes used by central governments (2008)**

RIA 1



Source: OECD Regulatory Management Systems' Indicators Survey 2008, Question 10, *www.oecd.org/regreform/indicators.*

Many OECD countries have adopted a threshold test to ensure that the resources spent on analysis are proportionate to the potential impact of a regulatory proposal (OECD, 2009). They have adopted explicit "filtering" mechanisms which limit the number of regulations that are subject to full RIA requirements and, in some cases, vary the extent of the RIA required to be undertaken according to the defined threshold tests. However, there is considerable divergence between countries as to the nature of the specific filters applied. While several countries specify quantitative thresholds in terms of regulatory costs for the application of RIA requirements, these have typically been supplemented by qualitative thresholds (OECD, 2009). For example:

- The United States defines "major" rules as those that are likely to impose annual costs exceeding USD 100 million or those likely to impose major increases in costs for a specific sector or region, or have significant adverse effects on competition, employment, investment, productivity or innovation (OECD, 1999).
- The United Kingdom decides whether an RIA is required by a combination of both quantitative cost thresholds (when administrative burdens or unfunded policy costs of GBP 5 million or more are imposed on the public sector) and qualitative judgments, such as whether the regulation would impose re-distributive or cost effects on public, private or civil society organisations (HM Government, 2011).
- Australia decides on the basis of a preliminary assessment which includes information on how the proposal will affect compliance costs (Box 3.5) whether a full RIA (Boxes 3.5 and 3.6) is to be carried out.

Box 3.5. **Preliminary assessment in Australia**

A preliminary assessment is required to assess whether a regulatory proposal would need a full regulatory impact statements (RIS). To allow the Office of Best Practice Regulation (OBPR) to make this assessment, departments and agencies proposing a regulation will have to provide the following information (a preliminary assessment is available via the OBPR website: *www.finance.gov.au/obpr/proposal/ria-guidance.html*):

1. Brief outline of the key elements of the regulatory proposal

1. The problem that the regulation is attempting to solve, and the government's objective.
2. Any preliminary options that are being considered. And,
3. Information on whether it is a proposal for a new regulation, to amend an existing regulation or to replace sunsetting regulation.

2. Whether the regulatory proposal is likely to impact on business or not-for-profit organisations, either directly or indirectly

1. Regulatory impacts may include:
   - changes to the number or type of products that businesses can offer, such as:
     - banning products or industry practices;
     - changing the way in which products can be offered.
   - impacts on consumer demand for certain products, such as:
     - increasing prices brought about by the regulation's requirements;
     - changing the information available to consumers.
   - impacts on the ability or incentives of businesses to compete in the market, such as:
     - creating either a self-regulatory or co-regulatory regime;
     - changing the requirements for a licence, permit or other authorisation;
     - influencing the price or quantity of goods which are sold;
     - setting standards for product/service quality;
     - changing the price or type of inputs available to businesses.
2. Compliance costs are those costs that businesses face as a result of dealing with the government. Compliance costs may include:
   - requiring the collection and reporting of certain information;
   - keeping abreast of certain requirements and re-training staff;
   - changing operating procedures or purchasing patterns;
   - co-operating with audits or inspections; and
   - engaging lawyers, accountants or other advisors.

3. Timing

3. Key dates, as well as an indicative timeline should both be clearly outlined.

Source: Australian Government (2010a), *Best Practice Regulation Handbook*, Canberra; Australian Government (2010b), "OBPR Preliminary RIA Assessment Form", Canberra, available at: *www.finance.gov.au/obpr/proposal/ria-guidance.html*, accessed 15 July 2012.

Box 3.6. **Full RIA in Australia**

A full RIA should generally contain seven elements, setting out:

1. The problem or issues that give rise to the need for action:
   - present evidence on the magnitude (scale and scope) of the problem, relevant existing regulation and risks;
2. The desired objectives:
   - the RIS should explain the objectives, outcomes, goals or targets of government action.
3. A range of options that may constitute feasible means for achieving the desired objectives:
   - the RIS should identify a range of alternative options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options.
4. An assessment of the impact of a range of feasible options for consumers, business, government and the community:
   - identify the groups in the community likely to be affected by each option and specify significant economic, social and environmental impact on them;
   - assess the costs and benefits of all the options supported by an acceptable level of evidence, where appropriate through a formal cost-benefit analysis, using the *status quo* as a baseline;
   - assess the net impact of each option on the community as a whole, taking into account all costs and benefits;
   - assess the impacts on business and the not-for-profit sector, including distributional issues such as the impact on small business, and quantify the effect of each option on business compliance costs;
   - recognise the effect of the options on individuals and the cumulative burden on business;
   - quantify other significant costs and benefits to an appropriate extent, taking into account the significance of the proposal and its impact on stakeholders;
   - analyse the extent to which each option would reduce the relevant risk if an objective of regulation is to reduce risk, and the costs and benefits involved;
   - document any relevant international standards and, if the proposed regulation differs from them, identify the implications and justify the variations;
   - if the proposed regulation would maintain or establish restrictions on competition, demonstrate that the regulation results in a net benefit and that the government's objective(s) can be achieved only by restricting competition;
   - provide evidence in support of key assumptions and clearly identify any gaps in data.
5. A consultation statement:
   - outline the consultation objective and describe how consultation was conducted and what views were expressed.

Box 3.6. **Full RIA in Australia** (*cont.*)

6. A conclusion and recommended option:
   - The RIS should clearly state the preferred option, why it is preferred, and indicate the costs and benefits of this option.
7. A strategy to implement and review the preferred option:
   - the RIS should provide information on how the preferred option would be implemented, monitored and reviewed.

Source: Australian Government (2010), *Best Practice Regulation Handbook*, Canberra.

Ensuring that resources for impact assessments are used in the most efficient way implies that they are expended proportionally to the significance of the regulation. This is currently not the case in Poland – the scope and quality of RIAs on high-impact proposals is often insufficient. A two-stage system as practiced in many OECD countries could help Poland improve the evidence base for its decisions while using resources more efficiently. Poland could make it mandatory to conduct a regulatory test for all regulatory proposals including subordinate legislation and to attach the test results to all regulatory proposals submitted to the Programming Team, which could use the results of the regulatory test and the advice from the unit in the Chancellery responsible for RIA oversight to determine whether a proposal is likely to have a high impact. For all high-impact proposals, the government could consider making it mandatory for ministries to conduct a full RIA. The assessment could be submitted to the unit in the Chancellery responsible for RIA oversight for a review of its quality and accuracy and be refined if necessary. It could then be submitted to the Programming Team and used for public dialogue with business and citizens to improve the proposal. A full RIA should quantify costs, benefits and risks whenever possible.

Risk assessment as an integral component of RIAs

Regulation is often developed as a measure to respond to a perceived risk. In such cases, the design of regulatory solutions is often based on an assessment of the risk that they are designed to address. Governments tend to have developed systems for applying scientific principles to the estimation of risks (OECD, 2012a). In Poland, guidance on RIA does not include risk assessment nor does the explanation for the "problem definition" in the regulatory test ask officials to provide the results of a risk assessment (Polish Ministry of the Economy, 2009; Polish Government, 2012). Other OECD countries such as Australia or the United Kingdom integrate risk assessment into regulatory impact assessment (Box 3.7).

Risk assessment constitutes a necessary part of an RIA at the stage of problem definition and for defining the rationale for regulating. For all regulations that respond to a perceived risk (e.g. health regulation, environmental regulation, regulation of construction), the government could consider requiring that an assessment of risks form part of the regulatory test and the RIA. The government could develop guidance on methodologies for risk assessment with the key actors within the government that are tasked with managing risk (e.g. environmental or health risks). A module on risk assessment could be included in the training on RIA. For major proposals, external scientists could be asked to review and improve the risk assessments. This would be

consistent with the 2012 OECD *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012a, Principle 9).

Box 3.7. **Risk assessment as part of RIA in Australia**

The Australian government estimates that about half of all new regulations in requirement of an RIA are risk-related. This includes regulation to reduce the incidence of workplace accidents, reduce public health hazards (e.g. food standards), reduce risks from faulty consumer products (e.g. product safety standards), reduce the risk of financial institution failure and reduce the risk of terrorist attacks.

The Australian *Best Practice Regulation Handbook* outlines how the evaluation of regulation aimed at managing risks should be approached in RIAs (Australian Government, 2010). It emphasises that risk analysis should not be seen as a distinct step in the RIA process but be considered throughout each step of the RIA process, in particular at the stage of the problem definition and the analysis of impacts.

The problem section in RIA should contain relevant information on the size of the actual ("objective") risk, its likelihood, nature and what will be the likely risk into the future in the absence of government action. The problem section should also clearly identify who bears the risk and highlight how the risks are currently being addressed.

The impact analysis should clearly spell out how each option will impact on the size and distribution of the risk. For each option being considered, this involves assessing the following questions:

- Will the proposal reduce the size of the risk (e.g. standards, information provision)?
- Will the proposal remove the risk altogether (e.g. banning certain activities/products)?
- Will the proposal transfer risk from one party to another (e.g. mandatory insurance)?

Risks should be quantified as far as possible, including the size and the likelihood of the risk and the impact of the proposed regulation on probable future risk outcomes. The analysis should be informed based on existing sources of relevant evidence about risks or based on specific studies to uncover the size and magnitude of the risk.

Source: Adapted from Australian Government (2010), *Best Practice Regulation Handbook*, Canberra, p. 77-83.

Public access to regulatory impact assessments

Impact assessment processes should be closely linked to general consultation processes for the development of new regulations. Experience suggests that higher quality regulations rely on, for example, the publishing of roadmaps, giving early notice of possible regulatory initiatives, making completed impact assessment work public, and using a consultation stage RIA to engage the public and key stakeholders. The results of the consultations, together with individual contributions, should be made public (including online where appropriate) in order to ensure a high level of transparency and to reduce the risks of "regulatory capture" (OECD, 2012a).

In Poland, while RIAs are published on ministries' websites and on the GLC legislative platform, this tool is not used as a vehicle for information gathering or for the development of options to address the issue. Moreover, sometimes the RIA appears to be of such low quality that it does not provide any useful information to stakeholders. A positive recent development is the pilot of the e-consultation system in the MoE which

foresees consultation open to any member of the public on the regulatory tests and RIAs (see Chapter 5). The pilot is scheduled to start at the beginning of 2013 and is funded by the European Union (EU).

The government could consider doing more to encourage stakeholders to participate in consultations and comment on RIAs, including inviting the general public explicitly to comment early in the regulatory process. Lessons from the pilot project conducted by the MoE on online consultation could lead to the design of a (compulsory) government-wide online system to be used by the whole administration to submit regulatory tests and RIAs for both inter-ministerial and external consultation. This would be consistent with the OECD recommendation to consult on all aspects of an impact assessment analysis (OECD, 2012a, Recommendation 2).

Ex-post *evaluation of regulations and reviews of the stock of regulations*

> "Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives." (OECD, 2012a, Principle 5)

Evaluating policy through *ex post* impact analysis is necessary to ensure that regulations meet their policy objectives, remain up to date and do not impose unnecessary costs on business and citizens or on the government's fiscal framework. In some circumstances, the formal processes of *ex post* impact analysis may inform ongoing policy debate better than *ex ante* analysis. This is likely to be the case, for example, if regulations have been developed under pressure to implement a rapid response. Consideration tends to be given early in the policy cycle to the performance criteria for *ex post* evaluation, including whether the objectives of the regulation are clear, what data will be used to measure performance as well as the allocation of institutional resources. It can be difficult to direct scarce policy resources to review existing regulation; accordingly, it is necessary to systematically programme the review of regulation to ensure that *ex post* evaluation is undertaken. Practical methods include embedding the use of sunset clauses or requirements for mandatory periodic evaluation in rules, scheduled review programmes and standing mechanisms by which the public can make recommendations to modify existing regulation (OECD, 2012a).

In Poland, *ex post* evaluation of regulation is not widespread across the government. The MoE has developed a form for *ex post* evaluation and plans to systematically review regulations and consult on it as part of a pilot on a new e-consultation system in 2013. The regulatory test form contains a question on the date of *ex post* evaluation for a regulatory proposal and the indicators that will be used for the evaluation.

While systematic *ex post* evaluation is only undertaken in a few OECD countries, the majority of OECD countries report having automatic review requirements for primary laws (Box 3.8) in at least some policy areas. Only 12 countries report using sunsetting triggers; these include Austria, Canada, Finland, France, Germany, Iceland, Korea, New Zealand, Switzerland, the United Kingdom and the United States (OECD, 2011c).

Box 3.8. *Ex post* evaluation in OECD countries

In a number of OECD countries regulations are scheduled to be reviewed some years after their enactment. For example, the impact assessment form in the United Kingdom requires officials to commit to a date when they will review the actual costs and benefits of any new proposal, and establish whether the policy has achieved the desired effects. This post-implementation review should typically occur within three years of implementation, depending on the nature of the policy. The review should establish a baseline and include the success criteria against which the effectiveness of the policy will be judged. Departments are also asked to consider the scope for simplification, including revisiting EU directives as part of the EU programme of simplification where relevant. Where appropriate, the impact assessment guidance additionally recommends that opportunities to use sunset clauses should be explored (OECD 2010a).

The Parliamentary Committee for Legislative Monitoring in Belgium is charged with evaluating laws that have been enacted for at least three years. It has to identify possible implementation difficulties (due to complexity, loops, incoherence, vagueness, contradictions) and assess how the law has effectively responded to its initial objective. Requests can be sent by a large number of stakeholders (any administration in charge of implementing law, any authority in charge of law enforcement, any natural or legal person, and deputies and senators). The work of the committee is also to be fed by reports from the Court of Cassation and tribunals on difficulties encountered with laws and from the decisions of the Constitutional Court (OECD, 2010b).

Austria has adopted a new regulatory impact assessment system, which is scheduled to enter into force in 2013. It foresees to compare objectives and expected impacts of regulations and policies with actual outcomes within five years after the adoption. The results of this internal evaluation should subsequently be sent to a unit for "outcome controlling" within the federal Chancellery. After their check for completeness and plausibility of the evaluation, it is then included in the annual report for Parliament (written communication with an Austrian government official, July 2012).

Sources: OECD (2010), *Better Regulation in Europe: United Kingdom* 2010, OECD Publishing, doi: *10.1787/9789264084490-en*; OECD (2010), *Why Is Administrative Simplification So Complicated. Looking Beyond 2010*, Cutting Red Tape, OECD Publishing, doi: *10.1787/9789264089754-en*.

"Poland could improve the quality of its regulation significantly through systematic *ex post* analysis of high-impact regulations drawing on the methods of enhanced RIAs." (OECD, 2012a, Principle 5)

- In order to ensure that reviews take place, the government could consider including review clauses in primary laws and sunsetting clauses in subordinate legislation.
- The government could ensure that the *ex ante* RIA of every high-impact regulation contains a section on the performance criteria for *ex post* evaluation including clear objectives of the regulation, what data will be used to measure performance as well as the allocation of institutional resources for *ex post* review.
- An independent body could conduct reviews of high-impact regulations.
- Poland could consider integrating *ex post* review for high-impact proposals into an e-consultation system, drawing on lessons learnt from the consultation pilot in the Ministry of Economy in 2013.

Evaluation of the regulatory process itself

> Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as regulatory impact assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice. (OECD, 2012a, Principle 6)

OECD countries should review the effectiveness of regulatory procedures inside government to improve the design and delivery of regulation. This is particularly relevant in countries such as Poland where a large gap seems to exist between the formal rules governing the design of regulation and the government's track record in designing regulation in practice. Reviews can help track progress over time, identify good practices to be spread across government, identify problems and bottlenecks, and suggest solutions for improvement. Without evaluation, it is not possible to know how regulatory policy practices are implemented in ministries and how to improve them.

In Poland, performance reporting was introduced internally in 2012 in the Chancellery's Department of Strategic Analysis and work is under way to make it more comprehensive. The department monitors, *inter alia*, the performance of:

- the Programming Team (from March to December 2012 the team asked for clarification on 43% of submissions and rejected 7% of submissions);
- the RIA Unit (in 2012 our recommendations concerned mostly social and economic impacts, because ministries provided generally sufficient information on the impact on the administration);
- the permanent Committee of the Council of Ministers and the informal resubmission mechanism (several draft bills were vetoed in 2012, half of the vetoes were successful).

In a survey of OECD countries in 2012 (forthcoming, preliminary data subject to change), 19 countries reported evaluating how their RIA systems function in practice and 9 countries evaluated the functioning of their consultation systems. Less than one-third of OECD countries report on their RIA system regularly, ranging from annual to three-year reporting periods. For example, since 2008 New Zealand reports annually on how departments meet their responsibility to self-assess the quality of RIS (Box 3.9). Such indicators as the proportion of RIAs that are of sufficient quality help identify implementation gaps systematically and track progress over time.

The Polish government could consider instituting regular government-wide evaluation of the RIA and consultation systems, highlighting progress in different ministries toward implementing government-wide regulatory policy. Reports could contain information on the percentage of draft laws and subordinate regulations which meet clearly defined quality standards. Citizens and businesses could be consulted to understand whether the quality and presentation of results of RIA are appropriate for use by stakeholders and to identify problems with the consultation process. Reports could identify areas for improvement and possible solutions and could be made public. The Chancellery and the MoE could lead discussions on results with different ministries and identify action plans to pursue reforms. This would be consistent with Principle 6 in the OECD *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012a).

Box 3.9. **Evaluation of the RIA system in New Zealand**

Since 2007, the New Zealand Treasury has commissioned three reports (in 2007, 2009 and 2011) to a non-profit consultancy to provide an independent assessment on how departments meet their responsibility of self-assessing the quality of regulatory impact statements (RIS) that are not considered likely to have a significant impact or risk.[1]

Based on a pre-defined set of quality assurance criteria laid out in the New Zealand *RIA Handbook*, the findings from the last assessment in 2011 point to a considerable degree of divergence between the external consultant's and the agencies' own RIA assessments. Only one-third of agency-assessed papers' ratings were consistent with the scores calculated by the consultancy. As dominant factors for their different evaluations they point to analytical shortcomings (among others, a narrow options identification and lack of logical framework) and a lack of consultation. The consultancy also found that their ratings of the quality of RIS matched those of the unit responsible for RIA oversight in New Zealand, the Treasury's Regulatory Impact Analysis Team.

The consultancy provides recommendations for improving the quality of regulatory impact analysis in New Zealand, including:

- agencies should focus on improving their problem definition, on setting clearer objectives and criteria for regulatory proposals, and on identifying options including regulatory and non-regulatory approaches;
- agencies should seek more frequently the views of senior or expert staff at the beginning of the project, not just bringing them in at the end;
- the RIA Team in the Treasury should revise and clarify the *RIA Handbook* and Independent Quality Assurance documents to make them shorter and less prescriptive.

Note: 1. *www.treasury.govt.nz/publications/guidance/regulatory/riareview*.

Source: NZIER (2011), "Regulatory Impact Assessment Evaluation 2010: Final Report to the New Zealand Treasury", NZIER, Wellington, available at: *www.treasury.govt.nz/downloads/pdfs/ria-review-feb11.pdf*, accessed 15 July 2012.

Alternatives to regulation

Policy makers need to know what option is the most effective and efficient approach to meet their policy goals. Information on the impact of a regulatory proposal is not sufficient if policy makers cannot compare it to the impact of alternative options. As outlined in the OECD *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012a), *ex ante* assessments of regulatory proposals therefore tend to include a consideration of alternative ways of addressing the public policy objectives including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no-action option or baseline scenario should always be considered. *Ex ante* assessment tends in most cases to identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.

Although required by the Polish guidelines, it appears that RIAs do not systematically contain an assessment of alternative options to the proposed regulation. The new regulatory test asks officials if it "is possible to solve the problem through non-legislative action". It also requires officials to describe how the same policy problem was solved in

other OECD or EU countries. There is, however, currently no requirement to provide an assessment of alternative options including of the impact of the no action option or baseline scenario.

It is therefore possible that Poland is missing important opportunities to identify the best policy option to address a policy challenge. Alternative options to the proposed regulation may, in fact, reach the same policy goals more effectively and at lower costs for business and citizens, hence stimulating innovation and increasing Poland's competitiveness. Alternatives can include both regulatory and non-regulatory options (Box 3.10). For example, information and education campaigns, labelling requirements or requirements to disclose other information to the market change behaviour through the provision of greater information, allow people to make decisions on the basis of greater information than would otherwise be available, rather than imposing a single solution on all as is often the case with traditional command-and-control regulations. These instruments are often characterised as "soft" because the degree of direct government involvement in decision making or directing behaviour is more limited than with other instruments. However, even with "soft" instruments, the degree of involvement can vary. In some cases, government can require companies to provide greater information to consumers or government can provide the information itself (OECD, 2011b; 2006).

OECD experience shows that governments must lead to overcome bureaucratic inertia, risk aversion and a "regulate first, ask questions later" culture (OECD, 2012a). A policy-making process which supports and encourages the consideration of alternative instruments is essential if governments are to make informed decisions regarding the options available to deal with policy issues. It is important that policy makers be encouraged to carry out, early in the regulatory policy-making process, a thorough consideration of the advantages and disadvantages of the options available. If consideration of alternatives to regulation is left until very late in the policy-making process, they are unlikely to be explored fully and policy makers may have developed a preconceived conclusion in favour of regulation (OECD, 2011b; 2006). Indeed, if all policy options are not explored *ex ante*, other more appropriate options might never end up being considered. Care must be taken when deciding to use light-handed approaches such as self-regulation to ensure that public policy objectives are attained (OECD, 2012a). Self-regulation of professions, for example, requires that professions are organised, committed and capable to put adequate control mechanisms in place.

As outlined in the *Recommendation*, the consideration of a range of alternative approaches to the regulatory proposal helps ensure that the most efficient and effective approaches are used for meeting policy goals. In Poland, consideration of the alternatives of the proposed regulation are required in the RIA guidelines, but are in practice not usually considered. As a first step, the government could consider placing particular emphasis on training staff in the oversight unit in the Chancellery and in the units in each ministry responsible for RIA to identify systematically other policy options, including the "do-nothing" option. Particular attention could be paid in the regulatory test and in the RIAs to the quality of the assessment of alternatives, in particular for high-impact proposals.

Bottom line: Focus on policy making

Not all policy is about regulation and regulation is not always the optimal instrument to address a policy issue. In order to ensure that the best policy option is selected, it is necessary to have embedded practices in government for exploring all policy options. In

Poland, it is not clear what the governance arrangements for the exploration of policy options are. One major issue seems to be the lack of co-ordination between ministries and of consultation with the public early in the process, before a decision on the preferred solution to a policy problem has been taken. Poland might benefit from introducing a more systematic approach for exploring policy options together with stakeholders early in the process, in order to achieve public policy objectives at the lowest possible costs for the state, business and citizens.

Box 3.10. **Regulation: A continuum from explicit government regulation to self-regulation**

Regulation constitutes only one of a wide range of policy instruments that can be used by governments to achieve their public policy objectives. Different instruments have widely varying characteristics and can be more or less suited to resolving a particular policy issue. Regulation can be viewed as part of a "continuum", rather than as distinct categories, with explicit government regulation representing one end of this continuum, and self-regulation at the other extreme.

Explicit government regulation is sometimes known as "black letter law". It attempts to change behaviour by detailing how regulated parties must act under the law, and it generally imposes punitive sanctions (such as fines or even custodial sentences) in instances of non-compliance with these regulations.

Performance-based and management-based regulations are more flexible, less prescriptive forms of regulation. Performance-based regulation is regulation that sets objectives or standards for outcomes and allows the regulated entity some flexibility to determine the means by which they will meet these objectives. Management-based regulation (sometimes called process-based regulation) requires businesses to demonstrate that they are meeting regulatory objectives through the requirement to have in place management processes directed at achieving regulatory outcomes.

Co-regulation typically refers to the situation where an industry or professional body develops the regulatory arrangements (e.g. a code of practice, accreditation or rating schemes) in consultation with a government. While the industry administers its own arrangements, the government provides legislative backing to enable the arrangements to be enforced.

Quasi-regulation refers to the range of rules, instruments and standards whereby governments influence businesses to comply, but which do not form part of explicit government regulation. Governments may assist in developing industry codes of conduct under quasi-regulation (e.g. through official endorsement, representation on monitoring committees, provision of funding), but the government undertakes no enforcement activity.

Self-regulation is generally characterised by the development of voluntary codes of practice or standards by an industry, with the industry solely responsible for enforcement. The government's role under this form of regulation is non-existent, or may be limited to the provision of advisory information.

Source: OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, doi: *10.1787/9789264116573-en*; OECD (2006), "Alternatives to Traditional Regulation", OECD, Paris, available at: *www.oecd.org/gov/regulatory-policy/42245468.pdf,* accessed 29 March 2013.

An approach that models good practice in OECD countries for the exploration of policy options is the use of green and white papers. Green papers help governments, without committing them, to engage with actors within government and with business and citizens to explore together policy options and their likely impact. Such a process reduces

the risk of arriving at policy options too quickly, including the risk of overlooking better options and ignoring negative consequences of proposed policies. Participation of stakeholders in policy making at an early stage also improves the likelihood of compliance by increasing legitimacy of policy responses and may therefore reduce the costs of enforcement. White papers serve to express the policy propositions the government has arrived at.

Key features of green and white papers are described well by Watts (2007):

- A "[g]reen [p]aper is a tentative statement of governmental thinking on the issues raised by some issue of public policy. Such a paper often sets out alternative means of resolving a problem and invites consultation and discussion of the available options. A [g]reen [p]aper is usually used at an early stage in the process of making public policy and may be regarded as a first step in changing the law. There is no commitment to action, but such a document may be followed by a more specific [w]hite [p]aper".
- A white paper "sets out governmental thinking in a policy area and is indicative of the [g]overnment's legislative intentions. Consultation on a [w]hite [p]aper is still possible, hence occasional references to '[w]hite [p]apers with green edges'. However, this stage is a much clearer indication of current thinking than a [g]reen [p]aper".

Australia, Canada, the European Commission (Box 3.11), Ireland, New Zealand, the United Kingdom and the United States all use green papers to engage in a dialogue within government and with the general public about policy challenges and their possible solutions. In Australia, departments and agencies are required to prepare a green paper for regulatory proposals of major significance as the basis for consultation on the policy options. If the green paper leads to a regulatory proposal, the consultation responses can later form the basis of the regulatory impact assessment (OECD, 2010c).

Poland could benefit from a more open debate early in the policy process within the government and with business and citizens to identify correctly the policy challenge that requires attention and discuss possible policy options to address it. A process for early and open discussion would make it more likely to find the most efficient and effective solution for a policy challenge in order to maximise benefits and reduce unnecessary costs for business and citizens. Unintended consequences of policy problems could be identified early and stakeholders could be engaged to create awareness and buy-in for possible solutions. Thus, the government could consider piloting the issuance of a discussion or green paper outlining the objectives for any major policy initiative and possible options to address them. Stakeholders and the general public could be actively invited to comment on the paper and have sufficient time to submit their answers. The government could ensure that the paper is drafted in plain language so that it is understandable by the general public. The government should issue the discussion paper early in the process, before it has identified its preferred policy option. Results of the consultation on the paper could be published. If the green paper results in a regulatory proposal, stakeholder comment on the potential impact of the proposal could inform the subsequent preparation of the regulatory test and the RIA.

Box 3.11. **Consultation on green papers in the European Union**

The European Commission uses green papers to consult with EU organs and stakeholders on major policy proposals. For example, the European Commission issued seven green papers in 2011 (European Commission, 2012a) on stability bonds, agricultural products, professional qualifications, the EU corporate governance framework, online gambling, research and innovation funding, and public procurement.

The Commission publishes its green papers online and actively invites comments from anyone interested in the subject to participate in a consultation process and debate on the basis of the proposal put forward (European Commission, 2012b). There are several examples where consultation processes stimulated by Commission green papers have resulted in considerable stakeholder involvement. For instance, because of the problem of an ageing population in Europe, in 2010 the Commission issued a green paper on European pension systems. Upon release of the green paper (COM(2010)365 final) in July 2010 and a reader-friendly summary for citizens, the Commission invited comments from anyone interested in the topic through a dedicated website and online survey. During the four-month consultation phase, considered as "extremely successful" by the Commission (European Commission, 2011), the Commission received almost 1 700 responses from across the EU, including member country governments, national parliaments, business and trade union organisations, civil society, representatives of the pension industry, the European Parliament, the European Economic Social Committee and the Committee of the Regions (European Commission, 2011). Subsequently, these submissions were summarised in a separate published document with commentaries from the European Commission.

The issue of a green paper can, but does not necessarily, lead to the publication of a white paper. A white paper focuses on "translating the conclusions of the preceding debate into practical proposals for Community action in a specific area" (Hofmann et al., 2011) and presents the Commission's conclusions. For example, the EU published in early 2012 a white paper (COM(2012)55 final) on pension systems in Europe, which was based on the preceding green paper and the received submissions from the consultation process as well as 100 meetings with stakeholders (European Commission, 2012c).

Source: European Commission (2011), "Summary of Consultation Responses to the Green Paper 'Towards Adequate, Sustainable and Safe European Pension Systems'", European Union, Brussels; European Commission (2012a), "Green Papers", European Union, Brussels, *http://europa.eu/documentation/official-docs/green-papers/index_en.htm;* European Commission (2012b), "Green Paper: Glossary", European Union, Brussels, *http://europa.eu/legislation_summaries/glossary/green_paper_en.html*; European Commission (2012c) "An Agenda for Adequate, Safe and Sustainable Pensions", White Paper, COM(2012)55final, European Union, Brussels.

In summary, the government could consider the following recommendations to broaden and deepen evidence-based decision making government wide:

- Reform the regulatory impact assessment system using a publicly available, binding roadmap to ensure that all programming proposals submitted to the Council of Ministers for decision coherently articulate the policy, financial, human resources, performance evaluation and long-term contextual considerations needed to maximise evidence-based decisions on whether to proceed with the proposal.
- Consider implementing this roadmap by:
  - integrating impact assessment into the early stages of the policy process for the formulation of new regulatory proposals and improving its quality to

guide decision making as a relevant and accurate tool for the Council of Ministers;

- ensuring that any legal text submitted to the Council of Ministers is accompanied by a regulatory test or impact assessment;
- introducing a formal threshold test to ensure that resources spent on impact analysis are proportionate to the potential impact of the regulatory proposal;
- making it mandatory for ministries to conduct a full RIA for all high-impact proposals early in the process;
- improving the quality of RIAs for these high-impact proposals; this could be achieved by making it compulsory for ministries to submit early in the process an RIA for high-impact proposals meeting the threshold test to the RIA oversight unit, making it compulsory to revise the RIA if it is assessed as unsatisfactory by the RIA oversight unit, providing intensive methodological support for high-impact RIAs to ministries sponsoring the regulation, in particular on the assessment of costs and benefits to citizens and business, and paying particular attention to consultation with the general public for high-impact RIAs;
- strengthening CoG regulatory assessment co-ordination and oversight mechanisms by strengthening collaboration between the Ministry of the Economy and such CoG institutions as the Chancellery. Co-operation between the Chancellery, the MoE and the Government Legislative Centre in the development of the "regulatory test" is a move in the right direction;
- ensuring that the unit in the Chancellery responsible for RIA oversight has both the mandate and the capacity to assess all individual regulatory tests and RIAs, and to provide technical assistance on proposals of significant impact.
- establishing a unit in each ministry to support the introduction of the regulatory test:
  - ❖ the RIA oversight unit in the Chancellery could support training and regular networking of ministry-level staff responsible for regulatory assessment so that ministry-level staff can share experience and break down silos;
  - ❖ the government could establish a long-term strategy for hiring experts and training officials independent of EU funds.
- assigning a CoG unit responsibility to systematically monitor compliance with requirements to consult the public on regulatory proposals;
- ensuring that up-to-date regulatory tests and RIAs are attached to any legal text sent to Parliament and strengthening the capacity of Parliament's Chancellery to evaluate regulatory tests and RIAs. On contentious policy issues, particularly ones with significant financial implications, the *Sejm* Chancellery could thus play a "challenge function" with respect to the assessment of legislative proposals from the executive and provide separate advice to parliamentarians on the executive's regulatory test and RIAs. It should also be able to work with the executive to ensure that information is

presented in a way that allows parliamentarians to understand easily the results of an RIA and the assumptions upon which it is based.

- integrating risk assessment as an integral component of RIAs by developing guidance on methodologies for risk assessment with the key actors within the government that are tasked with managing risk (e.g. environmental or health risks), and by including a module on risk assessment in the RIA training. For major proposals, external scientists could be asked to review and improve risk assessments;
- soliciting input from external stakeholders on regulatory tests and RIAs under a timetable that allows for its meaningful impact. Lessons from the pilot project conducted by the MoE on online consultation could lead to the design of a government-wide online system for submitting regulatory tests and RIAs for both inter-ministerial and external consultation at an early stage of the regulatory proposal;
- instituting systematic *ex post* evaluation of regulations and regular reviews of the stock of regulations to measure their continued relevance, utility, effectiveness and efficiency in the achievement of policy outcomes;
- rendering systematic full *ex ante* consideration of alternatives to regulation, by training staff in the oversight unit in the Chancellery and in the units in each ministry responsible for RIAs to identify systematically other policy options, including the "do-nothing" option. Particular attention should be paid in the regulatory test and in the RIAs to the quality of the assessment of alternatives, in particular for high-impact proposals;
- encouraging ministries to pilot an *ex ante* discussion or green paper on a major policy initiative that:
  - outlines the objectives of a policy and possible options to address them;
  - is based on a solid analysis and modelling, and considers different scenarios and policy options;
  - invites stakeholders and the general public to comment on the paper and have sufficient time to submit their answers;
  - is drafted in plain language so that it is understandable by the general public;
  - is issued early in the process, before the government has identified its preferred policy option;
  - renders public the results of consultations on the paper;
  - if the green paper results in a regulatory proposal, stakeholder comment on the potential impact of the proposal in the green paper could inform the subsequent preparation of the regulatory test and the RIA.

Implementing e-government: An illustration of the decision-making challenges facing Poland

E-government is the use of ICTs, particularly the Internet, to achieve better government for citizens. E-government offers great potential to lever policy making, public sector reforms and improved public service delivery (Annex A). In Poland,

realising this potential seems to be encountering a number of challenges. In many instances, these do not necessarily reflect e-government implementation issues but illustrate broader challenges faced by the central government and the country's public sector; notably the capacity to engage in evidence-based decision making and link programming decisions (in this case regarding e-government implementation) to the achievement of integrated strategic policy outcomes – a capacity that is limited at present and the subject of the next chapter.

OECD countries are increasingly using ICTs to lever government effectiveness and efficiency. E-government development is at its core a proposal to rethink fundamentally the policy making and the public service delivery architecture of government, exploiting the potential of new technologies (OECD, 2009). Rethinking service delivery architecture also implies new ways of defining political purpose across levels of government. The 2012 E-Leader's Meeting in Mexico highlighted that OECD countries currently are considering how to "de-fragment" government to restructure organisations and information flows, to improve government agility to meet ever-changing (and increasing) user needs, and to open up government administration to achieve greater accountability and transparency by putting public sector data at the disposal of the public for their own uses (OECD, 2012c).

In Poland, the overall strategic framework for e-government is articulated in the government's "Poland 2030" long-term strategic vision for the country, and is further outlined in its "Effective State Strategy 2011-2020". Poland is currently revising its specific national e-government strategic plan. The government's previous e-government plan, "The Strategy for the Development of the Information Society in Poland until 2013", was approved in 2008. This strategic plan focused on achieving "a society where citizens and enterprises consciously use the potential of information as economic, social and cultural value, with effective support from a modern and friendly public administration" (Ministry of Interior and Administration, 2008). The strategic plan aimed to "increase the accessibility and effectiveness of public administration services with the use of ICT solutions to reconstruct internal processes in the administration and the delivery of services" (Ministry of the Interior and Administration, 2008).

The Ministry of Administration and Digitisation (MoAD) has revised and expanded this strategic plan, particularly with respect to the public sector's use of ICTs. In April 2012, it launched "State 2.0 – A New Beginning for E-administration". This new policy document includes a critical analysis of the state of e-government in Poland and proposes ongoing revisions to the government's e-government strategy (Ministry of Administration and Digitisation, 2012). In reorienting its policy approach, MoAD examined a large number of key e-government projects and identified a set of cross-cutting challenges affecting the implementation of e-government. These include:

1. "There is no comprehensive, multi-dimensional and long-term approach to digitalization tasks".
2. "The preparation and implementation of IT projects is not fully co-ordinated or institutionally organised at the governmental level".
3. "The current approach has no comprehensive vision of a system user that encompasses all projects".
4. "Project preparation is dominated by a technical and hardware-oriented approach".

5. "The development and implementation of projects is not organised in logical sequences".
6. "Project planning and implementation is not divided into physical and financial stages".
7. "The results achieved by a project, such as the quality of delivered products, may be unsatisfactory if too many projects are scheduled for closure and settlement during the final phase of the current EU budgeting period".
8. "Various institutions develop parallel systems with no regard to compatibility or communication".
9. "There is a lack of solutions that meet the actual needs of users, which change over time".
10. "There are no maintenance cost analyses for implemented projects, networks and systems".
11. "Project stakeholders do not work together closely enough".
12. "The implementation schedules and budgets of many projects fail to allow time for testing, drawing conclusions and making improvements to systems prior to delivery".
13. "Some of the financial decisions related to certain tasks in 2007-2010 were not as transparent as they should have been".

Hence, the assessment highlighted a lack of co-ordination within a coherent strategic framework, an insufficient focus on the real costs and benefits of e-government, and a lack of key implementation standards and skills. State 2.0 proposes a "turn-around" based on four principles: a user-centred plan based on a freer flow of information; the plan's point of departure being the needs of citizens and business, that is, e-government to achieve service delivery objectives rather than as a means to buy and use technology for its own sake; transparent and effective investments; and technology neutrality, enabling sustainable competition and agile procurement in public markets. The MoAD has conceived an approach on three levels (MoAD, 2012):

- the programme and project level: ensuring a higher level of interoperability and coherence in the development of e-government projects in the short term;
- the government policy level: preparing before the end of 2012 a new "state informatization plan" based on the integrated use of ICTs to support government policy setting and implementation and service delivery, rather than simply to apply technical solutions to specific problems;
- the mid-term strategic level: conceiving an e-government strategic framework along with a new operating programme to implement it over the period 2014-2020.

Coherence in co-ordinating e-government implementation

Poland's central government needs to establish more coherent horizontal and vertical e-government implementation mechanisms, encouraging a whole-of-government e-government implementation and uptake of services. A silo-based tradition, in combination with a pronounced hierarchical culture, is affecting e-government development and implementation. Although some mechanisms have been established

already, there seems to be little communication and co-ordination between ministries, particularly at the more operational levels, since co-ordination on this issue mainly takes place formally at the political level. While important co-ordination measures have been identified, they have yet to come into force. This creates rigidity in e-government implementation that translates into limited inclusion of relevant stakeholders in the efficient and effective implementation of otherwise worthy projects, for example in the justice area. The central-local governance relations also appear inadequate, with key issues and responsibilities not fully corresponding to the challenges of e-government development and implementation in the *voivodships* and local administrations.

Limited sharing of data and information affects not only the government's capacity to develop and implement policies, it also strongly affects the quality of service delivery to citizens and business. For instance, such basic information as the phone numbers of individual public servants is not available internally across ministries, constraining government-wide co-ordination. In order to support more coherent governance and a focus on the full implementation at all levels of government, the central government could consider:

- Building on State 2.0 by further clarifying the e-government agenda, defining the government's vision, rationale and priorities for ICT use, establishing clear mandates and responsibilities across the government and improving the mechanisms of political accountability for e-government progress. Having recently established an e-government project review board through the Standing Committee for the Council of Ministers for Digitalization Issues, its mandate should be clearly defined so that a proper, functional forum for effective co-ordination is operationally in place, and that a proper division of roles across the government as a whole is codified and understood clearly by each committee member. A common basis and direction will facilitate better communication across ministries and enable operational collaborations, which will lead to more efficient and coherent implementation of e-government projects.
- Clarifying the boundaries between central and local service delivery responsibilities and establishing mechanisms to ensure adequate use and re-use of infrastructure components, service solutions and data across the different levels of government. Decentralisation in Poland is still only recent. Although e-government can enable centralisation as well as decentralisation processes, the government needs to distinguish between responsibility for the infrastructure of service delivery, and for the actual delivery of services. Poland needs to clarify the decentralisation of e-government; in other words, the government needs to define what tasks create an added value as a responsibility of the local levels as opposed to the central level. As e-government is concerned, it is not clear if the current legislative framework and the regional contracts are sufficiently effective as central-local policy and co-ordination instruments.
- Ensuring the existence and full implementation of a legal and regulatory framework enabling e-government, both across government and within specific service delivery areas in each ministry. Operational attention to alignment between enabling legislation on e-government, technical solutions in place or to be developed, and administrative processes in government would improve coherence and reap the synergies (and benefit end-users) across service delivery areas of isolated efforts.

The relevance of online service provision and delivery

Reliable service delivery is important to enhance trust in public institutions. However, the Polish central government has yet to establish a mature user focus for delivering services to the public. The existing service delivery channels do not seem to have been coherently developed from the user's point of view: for example the ePUAP (Electronic Platform for Public Services), a government of Poland joint public service delivery platform, does not seem to have caught on with citizens. The sophistication of Polish online services is below the OECD and EU averages. There is only limited integration between the various online service portals and the websites of the associated public authorities, fragmenting the user's experience, although progress is being made. Levels of user uptake similarly fall below EU and OECD averages. This covers not only e-government services but a wider range of information society services such as electronic payments or e-commerce that are still not widely deployed in Poland. On the other hand, the use of online services for business seems widespread – hence good practices in this area might be shared across the government (Annex A).

E-government investment decisions seem biased in favour of purchasing infrastructure and hardware. The significant use of EU Structural Funds for e-government roll-out does not seem to have translated into investments that have effectively and systematically supported its development in Poland. Moreover, although the establishment of a sound communication infrastructure is of the utmost importance, ensuring demand for and use of this infrastructure for the Internet economy or government service delivery using ICTs, for instance, is equally important. Since a higher level of quality and maturity in terms of activities implies greater pressure on the operational expenditures, a stronger focus on value for money is required. In order to nurture more reliable, effective and efficient service provision and service delivery, the government of Poland should therefore consider:

- Providing a connected and coherent e-government service delivery framework. Establishing a prioritised, sequenced approach to defining service delivery channels (and the services to be delivered) may be pivotal to achieve better quality in (and support for) e-government implementation. For instance, increasing confidence in ePUAP – the government's multi-service electronic delivery portal – is necessary to enhance its use; one way forward might be through integrating existing highly transactional services and focusing their delivery on large groups of ICT-skilled users. Progress in enhancing the use of internal information (the e-government's "back-office") should be demonstrated as a concrete benefit to external users (the e-government's "front office") – the more systematic use of basic registers enabling re-use of data by the public is one important example.
- Matching supply and demand, particularly regarding ICT communication infrastructure. For example, it seems networks exist – both internally for the public administration and for citizens and businesses – although they are not always used. Ensuring greater coherence between pricing, service levels and service providers, through a well-conceived market design, for example, and matching communication infrastructure more clearly with the government's service delivery needs and its administrative procedures could contribute to more effective investments and better outcomes for taxpayers and end-users.

- Moving from digitising administration toward a broader government use of ICTs, thus integrating the use of ICTs in all policy areas. A broader use of ICTs by the government in all policy areas should build on consolidating e-government responsibilities as well as on enhancing coherence in service delivery. Some cross-cutting priority areas might, for example, be improving the business environment, and increasing local participation in policy making and service delivery processes. The MoE's consultation portal currently being built should not constitute a one-off initiative but should be watched closely and, if successful, replicated across all government activity based on interaction with citizens and businesses. Closer e-dialogue with constituents and users might lead to more effective policies and reduce administrative red tape and regulatory complexity.

Basing implementation decisions on the value of e-government

Poland has made impressive e-government progress within the last few years. But projects are not always fully implemented; the potential benefits of using ICTs are not clearly identified and accordingly not reaped. The value of projects does not seem to be assessed systematically, neither *ex ante* nor *ex post*. Nor does a clear outcome-based assessment capacity seem to be in place – either to measure the impact of policy making, project implementation or service delivery. This results in a tendency to implement projects without having clearly identified intended outcomes; a reflection of an apparent disconnect between the implementation of ICT projects and the change in administrative processes and public sector reforms pursued by the government. Hence, since the value of the ICT projects seems disconnected from their implementation, specific public authorities – a unit in a local city administration for example – might experience e-government as an additional cost with limited added value for the users, rather than as a clear benefit.

The MoAD recognises these challenges by having presented a sound diagnostic in State 2.0. The report assesses current key projects and indicates a coherent way forward; it highlights the necessity to ensure that the benefits of investments to be made with EU funding over the period 2014-2020 will be fully reaped. Defining an ambitious yet pragmatic action plan and implementing it now seems to be the real challenge ahead. In order to strengthen the realisation of the value of e-government, the government should consider:

- Using ICTs to increase efficiency through the establishment of mechanisms and tools for ensuring more profitable investments in ICTs and the reaping of qualitative and financial benefits. The use of business cases measuring the value and benefits of e-government is essential, but requires building skills and capacity in-house. This implies, for example, ensuring clear responsibilities not only for project implementation, but for establishing an accountability system for the realisation of the benefits of the projects. The role of the State 2.0 Standing Committee as a monitoring group to oversee the implementation of projects based on sound business cases should be defined and exploited.
- Generating better data that can support future work on implementation, for example developed through and supported by a more comprehensive e-government review. It is important that e-government policies, programmes and projects are supported by solid data on key measures such as service delivery maturity, quality, use of services, costs and particularly social and financial benefits, to mention a few. Such data are important at the national level as well as

for the *voivodships* and the *gminas*; good data might further support central-local governance arrangements for e-government implementation. Making such data transparent and available to all relevant stakeholders might further help improve the strategic plan's performance.

- Increasing a focus on the end-user helps design and implement better e-government services and helps improve uptake of online services. Engagement of users might also enhance trust in government institutions through an improved understanding of working conditions and needs. Clear and transparent conditions for engagement would be a prerequisite for genuine public involvement. Increasing user-centrism and simplifying online service delivery might be key elements to improve e-government uptake by citizens.

Note

1. Primary legislation/laws refer to those laws adapted by Parliament; subordinate regulation refers to lower level regulation/legislation issued by the government, by individual ministers or by the Cabinet, i.e. regulations whose definition and application is delegated by law to an executive authority.

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