

# Regulatory Impact Analysis Practice in New Zealand in the Light of Models of Evaluation Use – Inspiration for the Polish Government

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## Abstract

**Purpose:** The paper describes the functioning of the RIA system in New Zealand using the analogy of RIA and the evaluation of public interventions. Presented solutions can provide inspiration for the Polish government in the process of improving the quality and extent of the use of RIA.

**Methodology:** The analysis is based on a review of government documents and literature, as well as individual interviews and correspondence with representatives of the government of NZ.

**Conclusions:** The RIA system in NZ is not error-free and its shortcomings include inter alia the lack of solutions with respect to ex-post analysis and insufficiently rigorous methodological approach. At the same time, a number of solutions can be regarded as good practice, e.g.: regular external quality reviews of RIS, obligation to supplement each RIS with ‘quality assessment’ and a ‘disclosure statement’ outlining their credibility and utility.

**Practical implications:** The presented strengths of the RIA system in NZ may serve as an inspiration for modifying the RIA system in Poland.

**Originality:** The RIA system is presented through the prism of the model of evaluation use, which is a related tool of collecting information about non-regulatory interventions.

**Keywords:** regulatory impact assessment, regulatory impact analysis, use of evaluation, New Zealand

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## Introduction<sup>2</sup>

Regulatory Impact Analysis (RIA) is a process of systematic identifying and evaluating the expected effects of regulatory proposals (OECD, 2008), or – in broader terms – a process of identifying and analysing problems, defining the objectives of public intervention, possible implementation options, analysing the costs and benefits of these options (RM, 2013). RIA is an essential element of a wave of reforms introduced as “better/smart regulation” (Radaelli, 2010), which posits also the simplification of regulations, reduction of administrative burdens, public consultation and openness of the law-making process (Dunlop et al., 2012).

The requirement to prepare RIA was introduced for the first time in the US in the early 1970s, by the administration of President R.M. Nixon (Renda, 2006). The use of RIA procedures was subsequently propagated in other countries. The process was actively promoted by the OECD which in 1995 proposed a 10-point regulation quality checklist, and since then has published a series of manuals, guidelines (e.g. OECD, 2008) and good practices pertaining to RIA (e.g. OECD, 1997). By the beginning of the twenty-first century, RIA practices had been introduced in 20 out of 28 OECD countries (OECD, 2002); currently, they are applied in 29 out of 34 (SGI 2014). In Poland, the requirement to carry out RIA was first included in the Rules of Procedures of the Council of Ministers in 2002 (RM, 2002).

This paper presents solutions adopted in the field of RIA in New Zealand (NZ), which may provide inspiration for the Polish government in the process of developing RIA practice in our country. The example of NZ is interesting and valuable for a number of reasons: it is outside our close context of the European Union, and it concerns public administration highly appreciated for the extensive use of RIA and the quality of the process itself (SGI, 2014). Furthermore, NZ was one of the leaders of reforms aimed at applying the ideas of management, efficiency assessment and evidence based decision-making to the administrative practice (Gruening, 2001, p. 2).

The case of NZ is presented and good practices are identified on the basis of the assumption that the *raison d'être* of RIA is to improve public policies, their effectiveness and appropriateness with respect to the existing problems, challenges and needs of the public and, consequently, to contribute to the social welfare. For this goal to be

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reached, RIA must be applied, i.e. conclusions resulting from analyses must influence the content of regulations.

Through analogy between RIA and evaluation – as both those tools are expected to support decision-making by providing knowledge – RIA solutions applied in NZ are presented from the perspective of the model of evaluation use, i.e. focusing on elements that constitute factors influencing knowledge use in decision-making, developed on the basis of the evaluation theory.

The paper is organized in several parts. The first justifies the use of evaluation as an analogy to RIA and indicates similarities of the two tools. The second part outlines a synthesis of models of evaluation use existing in literature, and presents a model applied in this analysis. The subsequent part contains a description of the RIA use factors in NZ. In the conclusion part, the author focuses on the weaknesses of the presented solutions, which pose a challenge for the government of NZ, as well as strengths that can be used by the Polish government as good practices.

The paper was prepared on the basis of analysis of existing data – government documents and literature, as well as primary data, i.e. individual interviews and correspondence. Primary data was, therefore, qualitative. Key respondents were selected on the basis of purposive sampling. They represented: (1) Regulatory Impact Analysis Team (RIAT) – a Treasury unit in charge of organizing, supervising and analysing the RIA process across the government, and therefore having comprehensive knowledge about the quality of RIA, its use, process participants and their potential; (2) Castalia Strategic Advisors a consulting company which, for several years, has prepared cross-sectional analysis of the quality of RIA reports for RIAT. In addition, questions were sent to 30 public service departments – units supporting ministers in their work; 10 of them provided responses. Data obtained in this manner was not analysed quantitatively, but used to confirm and explore the conclusions built on the basis of existing data and primary interviews.

## **RIA and evaluation as related tools of knowledge acquisition**

Analogy between RIA and evaluation, used for the purposes of this study, does not seem to require extensive justification, as it is quite obvious and has already been used by Polish and foreign scholars. For example, one of the parts of Haber and Szałaj's book (2009) containing chapters related to RIA is entitled Evaluation and law making (*Ewaluacja a stanowienie prawa*), and in a paper on RIA in Australia and NZ, Carroll (2014)

refers to it as an example of ex-ante evaluation. For the record, let us list a number of common features of evaluation and RIA proving the similarity of the two instruments.

**Table 1.** Common features of RIA and evaluation

feature	examples of literature references	
	evaluation	RIA
Important element of the idea of evidence-based policy.	Weiss et al. 2008; Sanderson 2002; Pawson 2002	Radaelli 2010; Carroll 2010; Staroňová 2014
Analytical, systematic, (quasi)scientific character.	Rossi et al. 2004; Clarke 1999; Lincoln, Guba 1985	Hertin et al. 2009; Rissi, Sager 2013
Considered a process parallel to the process of policy implementation/ management of public intervention.	Leeuw, Furubo 2008; Rist, Stame 2006; Kupiec 2015	Radaelli 2009; Rissi, Sager 2013
Authors who analyse the use of RIA/ evaluation apply the theory of knowledge use. They employ a similar methodological framework (production and use of knowledge), concepts (e.g. use and non-use), refer to the same types of use (e.g. instrumental, conceptual, political).	Olejniczak et al. 2015, Alkin, Coyle 1988; Weiss et al. 2005; Patton 1997; Shula, Cousins 1997	Hertin et al. 2009; Nilson et al. 2008; Dunlop et al. 2012

Source: author's study.

Drozd (2014) points out to several differences between RIA and evaluation:

- evaluation is focused on funds, RIA – on law making,
- RIAs are prepared closer to politics – they are discussed in the Parliament and in the media,
- time pressure in the process of carrying out RIA,
- RIA is primarily prospective; evaluation is pro- as well as retro-spective.

Most of them however seem to be apparent. Although RIAs are associated with law making, the process of preparing assessments should also encompass analysis of variants of non-regulatory measures (New Zealand Treasury, 2013). RIAs tend to be discussed in the Parliament, but the evaluation of important programmes and policies (in the case of Poland, it is mainly the cohesion policy) is also present in the media. Time pressure is typical not only of RIAs, but also of the evaluation process. The window of opportunity, in which evaluation can influence public intervention decisions,

is very narrow (Olejniczak et al., 2015). This proves an important challenge in the research process and results in frequent errors: evaluation is conducted too early or too late; research time is insufficient (Kupiec, 2014a). Despite the dominant role of ex-ante RIAs, steps are also taken to implement ex-post RIAs (RM, 2013). In the case of evaluation, although the majority of research is conducted on an on-going or ex-post basis, it is worth noting that the only evaluation required by Polish law (Act on the principles of development policy) and EU legal acts (i.e. Regulation No. 1303/2013 of the European Parliament and of the Council) is ex-ante evaluation.

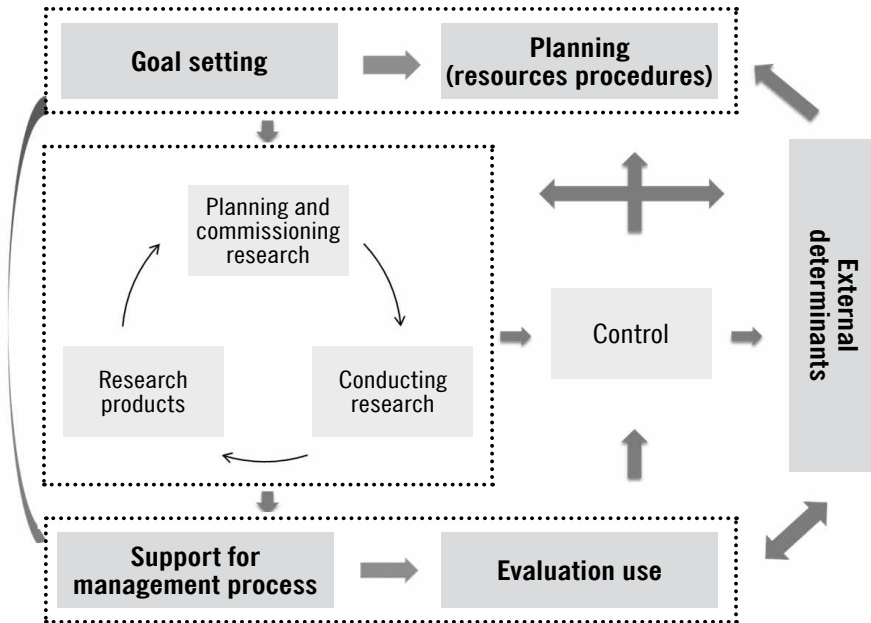
## Model of evaluation use as the basis for analysing RIAs

Scholars have tried to establish whether and how evaluations are used from the very beginning of the evaluation practice (Ledermann, 2011); since the 1980s, it has been a key subject of discussion and research in this area (Alkin and Coyle, 1988). Authors have drawn up numerous classifications of factors determining the use of evaluation (e.g. Patton, 1977; Alkin, 1985; Shulha and Cousins, 1997; Johnson et al., 2009; Owen, 2007; Saunders, 2012). Several have striven to propose models outlining use factors in a systematic manner, evincing relations between them and explaining the mechanism of change in the use of evaluation (e.g. Johnson, 1980; Cousins and Leithwood, 1986; Johnson, 1998; Cousins, 2003; Mark and Henry, 2004).

Thus far, the discussion about the use of evaluation was dominated by theorists and practitioners from the US and, more importantly, focused on the use of a single evaluation study from the perspective of the researcher – the contractor responsible for the quality of research, for engaging recipients and, consequently, for its use. Only recently did scholars understand that the use of evaluation should be analysed from the point of view of the organization (Højlund, 2014), its comprehensive evaluation system (Leeuw and Furubo, 2008) and, as a result, focus not on a single study, but on a stream of research, data and knowledge (Rist and Stame, 2006).

The above assumptions form the basis for the model that will serve in this paper to describe the RIA practice in NZ. It was originally developed for the purposes of the analysis of the implementation and use of evaluation in the management of regional operational programmes in Poland (Kupiec, 2014b). The model presents a logical sequence, interrelations between successive groups of potential factors of use and the actual use of evaluation/RIA. In this sense, the model draws on the studies of Cousins and Leithwood (1993), Johnson (1998). It employs a process approach, i.e. its subsequent modules correspond to the successive steps of the evaluation process/ RIA.

Figure 1. Model of the evaluation/ RIA process



Source: Kupiec (2014b).

This approach has been adapted from Mark and Hanry's models (2004) and, above all, Olejniczak's model (2008). It consists of the following blocks (Figure 1):

- External determinants – contextual factors embedded in the near and far environment in relation to the evaluation process/RIA, including the perception of RIA by those in charge of assessments and decision-makers, the process of making decisions in an organization.
- Goal setting – formal process of defining goals and actual awareness of the purpose that evaluation/RIA are to serve.
- Process planning – creating the right combination of resources (financial, human) and procedures necessary to achieve objectives, i.e. the implementation and use of evaluation/RIA.
- Implementation of evaluation/RIA – all aspects related to the implementation of individual assessments, including: planning (defining the time of implementation, research assumptions), implementation (validity of the analysis and of conclusions), evaluation results (their completeness and credibility). This block also encompasses efforts to build a culture of evaluation/ RIA (changing attitudes towards assessment).

- Support for management process – all activities aimed at the accumulation of knowledge, its processing, reflection on assessment conclusions and monitoring of their use.
- Evaluation/ RIA use – the desired result of the process, that is the actual impact of RIA results on decisions and the shape of the adopted regulations.
- Process control – an analysis of the process of evaluation/ RIA and its effects; it should provide feedback and enable learning, i.e. suggest modifications of assumptions, goals and implementation methods in order to increase the usefulness and the actual use of evaluation/ RIA.

## Characteristics of the RIA process in New Zealand

### External determinants

NZ introduced the practice of RIA in 1998. It was partly modelled on Australian solutions and on recommendations formulated by OECD (Carroll, 2014, p. 3). Various solutions bearing certain characteristics of RIA had been in force even earlier, since 1988: evaluation of the costs of compliance with requirements and the code of good regulatory practice (Guerin, 2013, p. 13). Alongside the internal pressure of the national private sector, an additional factor that contributed to the creation of the RIA system were external requirements related to the fact that NZ was a member of several Australian ministerial councils and bodies operating within the Council of Australian Governments (COAG), which gradually introduced the obligation to assess the impact of regulations (Carroll, 2014, p. 3).

At present, RIA is one of several components of the system that aims to support rational decisions on the justification of regulations, help formulate regulations, facilitate the process of continuous review and improvement of the regulatory system. These elements apart from RIA are (Productivity Commission, 2014):

- Minister for Regulatory Reforms – coordinates the regulatory system together with the Minister of Finance.
- Planning and scanning of regulations – the obligation to prepare annual plans containing regulations to be introduced or modified by individual departments. These plans are accepted by competent ministers, subsequently passed on to the Minister for Regulatory Reforms and form the basis for discussion about the government's priorities.

- Regulatory stewardship – government officials are expected to supervise regulations in their areas of competence, analyse their effectiveness, update the knowledge about external factors that determine success and formulate improvement proposals.
- Disclosure statements for the new government projects – obligation to submit, along with projects, a statement that would clearly communicate to the Parliament and to the public the purpose of the planned regulation, its expected impact, substantiation and an assessment of its credibility.

The most important determinant affecting the use of RIA is the fact that ministers do not fully accept the RIA regime and are not aware of its impact on the decision-making process. Their standpoint affects attitudes in subordinate agencies and hinders reliable and systematic analysis (Carroll, 2013, p. 7). On the other hand, the respondent representing RIAT argues that although ministers are allowed to disregard the findings of regulatory impact statements (RIS), they do it reluctantly. They treat RIS seriously, as they know that the document is published and it may be of interest to the public and, in particular, to the parliamentary opposition.

### Goal setting

Examination of the purpose and functions of RIA in isolation from other tools used to ensure the rationality of decisions seems somewhat artificial, but a guidance document published by the government (New Zealand Treasury in 2013, p. 4) states that its purpose is to “help achieve a high quality regulatory environment by ensuring that regulatory proposals are subject to careful and robust analysis. RIA is intended to provide assurance that regulations are introduced only where problems cannot be adequately addressed through private sector or non-regulatory arrangements, and regulatory solutions have been demonstrated to be inline with public interest”. RIA is expected to serve two benefits:

- Enhance the evidence base that informs decisions about regulatory proposals,
- Increase the transparency of the process of developing regulations, ensure insights and public participation in the process.

The formal basis for RIA is the cabinet manual – document adopted at the first meeting of the Cabinet (government of NZ), outlining the principles of its operation and requirements for ministers and their offices. This guidance documents states: “all policy proposals submitted to Cabinet that result in government bills (or a government decision to support or adopt a non-government bill) or disallowable instruments must be accompanied



by a regulatory impact statement” (Cabinet Office, 2008, p. 72). According to a representative of RIAT, the RIA practice and the obligation to prepare a regulatory impact statement does stem from any legal provisions in force in NZ – the solution is solely an administrative requirement. Theoretically, the Minister may submit a regulation proposal to the Cabinet, and later to the Parliament without RIS, or contrary to the conclusions of RIS, but in practice this never takes place, as it would be highly likely to met with the opposition’s disapproval. Therefore, what motivates individual ministers to prepare RIA – even if they do not expect any impact on regulations – is not only administrative requirements, but the awareness of political and public expectations.

### **Planning (resources, procedures)**

A key player in the RIA process is the Regulatory Impact Analysis Team (RIAT) in the The Treasury. RIAT is in charge of supervising and coordinating the RIA system. Its main task consists in drawing up procedures for the implementation of RIA in the form of a handbook (New Zealand Treasury, 2013). Its role is also to advise departments in the process of RIS preparation, i.e. to formulate comments on draft documents. RIAT also prepares quality assurance (QA) for selected RISs concerning key legislation, and provides training for departmental representatives – both those preparing RIS and those responsible for QA. RIAT is supported in its activities by external experts: for instance, it invites academics who provide advice in the field of the RIA system. The main problem of RIAT, at least according to its representatives, is that the entity is understaffed. It employs only three people, which considerably reduces the number of RISs that can be analysed. Given these constraints of time, thorough literature review and reflection on what should be taken into account in the training material presented in agencies, or the organization of the process of ex-post analysis, prove even less feasible.

Due to the quality certification requirement of RIS, structures responsible for the preparation of QA operate in each government department. In some cases, this task is entrusted to the main analyst. Otherwise, panels are formed and composed of people who do not necessarily have outstanding analytical skills and experience, but experienced in policy analysis. They are prepared to conduct QA primarily through training organized by RIAT.

Procedures for the implementation of RIA in NZ are clearly stated in the handbook drawn up by RIAT (New Zealand Treasury, 2013). It regulates the RIA process from the formal point of view as well as provides a useful methodological resource. According to the handbook, the process of ex-ante analysis should be as follows:

1. When a given department takes an initiative in the field of public policy, competent officials determine whether it has any potential regulatory implications, and whether it can lead to the submission of a proposal to the Cabinet. If it is the case, Preliminary Impact and Risk Assessment (PIRA) is prepared.
2. PIRA is discussed with representatives of the Treasury to confirm that no significant impact or risk are likely; then the agency becomes solely responsible for RIA and QA. Otherwise, Regulatory Impact Analysis Team's involvement is required; early engagement is recommended.
3. The Agency implements RIA; in case of initiatives with a potential for significant impact or risk, RIAT is consulted.
4. Complete RIS must be prepared prior to submitting a proposal to the Cabinet. The manager responsible for the analysis prepares and signs the RIS disclosure statement indicating any limitations and gaps in the analysis.
5. The next step is obtaining the QA; it is sometimes prepared by RIAT, but usually by an independent panel within the department.
6. RIS is attached to the bill submitted to the Cabinet, which must refer to it.
7. All RIS are published on the website of the Treasury and the department that has prepared it.
8. Disclosure statement is prepared also for the bill already approved by the Cabinet and forwarded to the Parliament.

The weakness of the adopted procedures is the lack of solutions pertaining to ex-post analysis. The document points out that significant regulatory proposals that have not been subject to RIA should be subject to post-implementation review, but all information on ex-post analysis are boiled down to a single paragraph that states simply that they should be conducted. The fact that the ex-post analysis is only an exception that applies to the few regulations with respect to which, for some reason, RIS has not been prepared, is symptomatic.

### Implementation of the RIA process

Practice does not entirely reflect the principles of the procedures described above. Departments are required to inform RIAT about its intention to carry out an intervention requiring RIS and to prepare it prior to the decision about the implementation of regulations. In reality, however, RIAT is engaged only when the department knows that the minister is planning to adopt a regulation. It is also worth noting that despite the initial assumption that the RIA system covers nearly all regulations, in practice many are not subject to these requirements. In 2008–2011, RIS was carried out only for 62 (33%) out of 186 laws adopted by the Parliament (Carroll, 2014).

The problem lies in adapting RIA approach to the traditional policy-making process, under which officials prepare a regulation proposal in response to the minister need and recommendation. With this approach, focus is only on the preferred option, while other options are neglected. In this context, the RIA can be regarded as a superfluous addition to the actual process of preparing regulations and such attitude is common (The Treasury, 2011, p. 8).

Assumptions regarding ex-post analysis, modest as they are, also remain unfulfilled. The requirement of this type of analysis with respect to regulations, which for some reason have not been tested ex-ante, remains – as one of respondents representing RIAT has admitted – a dead letter, because such actions are not taken. RIS should also encompass an outline of a plan of monitoring and evaluating regulations following their implementation, but these provisions (according to RIAT) are usually rather sketchy and often ignored. There are also no formal control tools that could be used to verify whether departments actually conduct any analysis of the effects of implemented regulations. Lack of solutions in this area is considered as one of the main challenges faced by the RIA system in NZ.

The vast majority of RISs are prepared internally by department officials. Less than 5% are drawn up by external experts, or are based on outsourced analyses. RISs are drawn up by public officials responsible for the area concerned by a given initiative (with respect to which regulation is to be introduced). No specialized units responsible for conducting necessary analyses are in place in departments. As pointed out by Carroll (2014), this adversely affects the quality of RIS, as each department draws up several RIS per year; what is more, they are prepared in different units. Therefore, despite many years of experience of NZ administration as a whole, and the multitude of training sessions organized, individual officials cannot become experts in RIA.

An advantage of the RIA process in NZ is its complexity and comprehensiveness. It allows to describe the actual situation, assess the impact of all available options and to choose the most appropriate one. According to the guidelines of RIAT, the following steps within RIA should include: describing the status quo, defining the problem and assessing its scale, defining the purpose, identifying the complete catalogue of viable options, option analysis, public consultation, conclusions and recommendations (selection of options), implementation plan, monitoring and evaluation plan.

The reliability of the implemented RISs and, consequently, the reliability of conclusions are often far from ideal. It has been noted in the analysed RIS from 2012 (Castalia, 2013) that the usual limitations in the description of the status quo and in the definition of

the problem included: the lack of relevant data to assess the scale of the problem and ambiguities in status quo descriptions in cases in which the proposed action is a consecutive element of a complex intervention. At the same time Castalia report pointed use of several interesting methods: anecdotal evidence, international examples (especially when no national data is available), case studies or fictitious examples (when real data cannot be used, e.g. for confidentiality reasons).

Those implementing RIA also face problems with identification of objectives they wish to achieve through the planned intervention. The following has been observed in more than half of analysed RISs: complete lack of objectives, vagueness in the description of goals even if they are subsequently used for the analysis of options, identification of goals and then disregarding them in option analysis, excessively narrow definition of goals which automatically imposes one of the proposed options.

The option analysis was assessed as incomplete in approximately 50% of reviewed RISs; in more than 25%, it was considered unconvincing when it comes to the recommended option (Castalia, 2013). A vast majority of RISs is based on qualitative analysis (usually MCA). Few agencies attempted to quantify the impacts of at least some of the proposed options (according to the collected declarations, the implementation of CBA was limited due to insufficient data). The opinion expressed by a representative of RIAT was similar to the findings outlined in Castalia's report. In his opinion, the majority of RIS are based on qualitative multi-criteria analysis, because it is much easier. Converting costs and benefits into monetary units poses a significant challenge, especially given that benefits are often impossible to quantify.

Castalia's representative noted that the various forms of MCA and CBA in fact cover all approaches adopted in NZ to analysis in the framework of RIS. There are, however, isolated cases of pilot studies or simulations, but they provide only a basis for forecasting/ modelling of the likely effects and interactions, which are then pressed into CBA or MCA. The representative of RIAT pointed to isolated cases of behavioural studies, but noted that they rather concern analyses in the area of non-regulatory activities. CBA and MCA are also, in principle, the only answers to the question about the methods used by representatives of various departments. As exception is the Ministry of Social Development, which also claims to be using an approach called „forward actuarial assessment of welfare liability”. Nevertheless, we can assume that this also is a form of, or contribution to CBA.

In addition to the comments on the methods applied, it is worth noting that a typical limitation of RIS is the cursory approach to options other than the preferred one.

Castalia (2013) shows examples, in which other options are rejected without sufficient justification. Their advantages are not taken into account in their assessment, even if the same ones have been outlined in the preferred option. In addition, in many RIS no options other than the preferred one and the status quo are analysed, thereby depriving RIS of the option comparison value, and turning it into a simple communication about the planned action.

Measures implemented by RIAT in order to improve administrative capacity are another element of the RIA process. Organized training applies to both the performance of RIA and the preparation of QA. Importantly, there is no formal obligation to participate in training and individual departments must express their willingness to do so. In the opinion of the representative of RIAT, interest in RIA training among the staff of different departments is very different.

### **Support for knowledge management**

Actors of the RIA system (RIAT and individual departments) undertake a number of measures that resemble the management of conclusions resulting from individual assessments. Since 2009, departments must certify their RISs, indicating any significant gaps and constraints of analysis (Offices of the Ministers of Finance and Regulatory Reform, 2009, p. 13), which may also serve the purposes of reflection on their potential application in the decision-making process. Since 2007, all RISs must be published on the website of the department and on the website of the Treasury (formerly the Ministry of Economic Development (MED)) (Sawyer, 2008, s. 81), which guarantees that they are both disseminated and accumulated.

It is difficult to provide evidence that the conclusions of RIA form the basis for reflection in individual departments and for individual ministers, but it is worth noting that (according to the representative of RIAT), there are cases where during a parliamentary debate, members of the opposition refer to RIS and ask questions regarding its content. This encourages ministers and departments to adopt a serious approach to RIA. As pointed out by Carroll (2014), in 2000–2006, references to RISs during debates in the Parliament were very rare (4 times a year); in 2007–2008, this number rose to 26, in 2009–2012 – to 51, and in 2013, it exceeded 100. Members of the opposition refer to RIS most often, pointing to regulatory limitations specified in the analysis, to limitations of the analysis itself that undermine its credibility, or pointing to the lack of RIS, which is considered as a deficiency of the discussed bill.

## Use of RIA findings

As indicated by the respondent representing RIAT, RIA is carried out by a given government agency (its officials) and the conclusions drawn from it are primarily used as recommendations for the Minister. The Minister presents bills to the Cabinet, along with RISs. RIS is signed by the director of the department; the bill is signed by the minister. RIS is therefore a recommendation of the department addressed to the Minister, while the bill is a recommendation of the Minister addressed to the Cabinet. The Minister does not have to follow recommendations set forth in RIS – in fact, it happens that the Minister recommends to the Cabinet another option instead of the one indicated by RIS. In the same way, the Cabinet (having access to RIS) may, but does not need to, follow the recommendation of the Minister (accept the proposal of the latter as the government's bill), and the parliament is under no obligation to adopt the bill. Throughout the process, the Minister, the Cabinet and the Parliament have access to RIS. This document is also published, and therefore the public can judge whether the administration and politicians take the right decisions in a given case. This is particularly important if we assume that the transparency of the RIA process and, more widely, of law making is one of the strongest incentives to improve its quality (Guerin, 2003, p. 16).

It is very difficult to capture the impact of RIA on decisions taken at the department level, i.e. to identify cases in which the results of the analysis have actually affected decisions taken by officials and led them to recommend to the Minister a different option than originally intended. Representatives of RIAT observing the analyses process and their effects admit, however, that in some situations officials have specific preferences and RIS is used solely to justify a decision that has already been taken. There were also cases where the Minister was a proponent of a certain solution and demanded that the department draw up a RIS that would be consistent with his expectations. In such situations, the analysis does not cover all options that should be compared; objectives and criteria are selected in such a manner so as to best highlight the advantages of the favoured option.

## Control

The RIA process is subject to regular scrutiny. Since 2008, external contractors (originally New Zealand Institute of Economic Research, and later Castalia Strategic Advisors) have carried out annual reviews. The analysis focuses on the quality of individual components of RIS (the status quo and the definition of the problem, objectives, option analysis, implementation, monitoring and evaluation) through the prism of four

aspects, i.e. with the view to establishing whether RIS elements are complete, convincing, clear and concise. Review results form the basis for modifying the RIA handbook and determining the scope of training.

Although external annual reviews are only carried out on a sample of RIS, all of them are assessed and subject to QA. Assessments are carried out by the employees of a given department (other than the authors of RIS), and in some cases by RIAT. Although internal assessments are on average more positive than the assessments of external consultants, it should be noted that the gap between them is narrowing (NZIER 2011; Castalia, 2012; 2013).

Even though it is impossible to demonstrate the impact of quality control on quality improvement, it should be emphasized that the quality of RIS is steadily growing. In 2007, when the review was carried out for the first time, more than 60% of RISs failed to meet the criteria (NZIER, 2008); this percentage dropped to approx. 25% in 2010 (NZIER, 2011) and to 15% in 2012 (Castalia, 2013).

## Conclusions

The RIA system in New Zealand, although highly respected in terms of its scope and quality (SGI, 2014), is not free from weaknesses, which may adversely affect RIA use, understood as the actual impact of assessments on regulations:

- The lack of ex-post analysis solutions proves a serious shortcoming of the system. A plan of evaluation and monitoring measures is part of RIS, but – as confirmed by the representative of RIAT – these provisions are not formulated in a reliable manner and cannot be expected to form a basis on which to conduct a reliable regulatory impact analysis. These above are, however, no more than speculations, as there are no procedures of control, reporting and accountability.
- A weakness of the current RIS is also the description of the implementation of accepted regulations, implementation strategy, estimation of related costs and identification of risks.
- The representative of RIAT also points to the need for planning and prioritization of initiatives taken by the various departments due to the limited capacity of the Parliament. At present, the pace of work on the regulatory environment is rather randomly.
- Insufficiently rigorous methodologies of comparing options affect the reliability of conclusions. Consequently, it is impossible to estimate the identified problems

and the expected results, allowing for the subjectivity of assessment and selection of the preferred option.

- An interesting issue addressed by a representative of the Ministry of Social Development is the fact that the functions expected from RIA are contradictory. On the one hand, the process is to be transparent, inform the public, and RISs are to be published on a website. This, however, do not motivate document's authors to express free and frank criticism which could make RIS more useful for the purposes of decision-making, but at the same time would provide the opposition with ammunition.

Despite the above-mentioned problems and challenges, the RIA system in New Zealand seems to have many advantages, which can be a source of inspiration for the Polish administration:

- Even though – in practice – not all steps are implemented thoroughly, the system encourages its users to follow the entire analytical process: identify the problem, formulate the goal, select appropriate option that allows reaching of the goal. This year's review of RIS and recommendations formulated on its basis (Castalia, 2014) focus on allowing the RIA process to encourage a rational approach to the selection of the optimum option instead of justifying the option favoured by decision-makers.
- Annual reviews of the quality of RIS on a large sample, regularly conducted by external consultants, are among strengths of the system. Information about the limitations of produced RISs is a prerequisite for improving the system.
- A positive sign is the growing interest in RISs among Members of Parliament. Just as the initial reluctance of the Parliament to use RIA, and lack of pressure on its reliability may explain the low quality of RIS (Carroll, 2014, p. 5), today's growing presence of RIS in parliamentary debates can give hope for a greater utility of RIA and its use by the Cabinet in the decision-making process.
- An advantageous solution is the requirement to prepare an independent QA for each RIS. Although there is no evidence, it can be assumed that it raises the quality and reliability of analyses. It is a certain limitation that such a great number of QA are prepared internally by agencies drawing up RIS. However, convergence of internal QAs and those performed by external experts increases every year.
- The obligation to draw up a "disclosure statement" indicating analysis limitations and their impact on the accuracy of RIS findings also contributes to the rigour of RIS. It has also a positive impact on the transparency of the process of adopting regulations.



- It should also be noted that, although rarely, in certain cases, officials seek for support of external experts in the process of conducting analyses for the purposes of RIS. It may involve commissioning the preparation of an entire document or its parts, e.g. CBA.

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