OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN POLAND

FROM TRANSITION TO NEW REGULATORY CHALLENGES

GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in Poland. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Poland* published in July 2002. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as electricity and telecommunications, and on the domestic macroeconomic context.

This report was principally prepared by Sue Holmes and Cesar Córdova-Novion in the Public Management Service of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Poland. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary General.

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As with other countries of eastern Europe, Poland has been faced with the challenge of fast-tracking both large-scale deregulation and the creation of new legal instruments and new regulatory systems conducive to good governance and the establishment of new relationships linking citizens, government and the market.

Poland's transition proceeded on five strategic fronts: (1) establishing democracy through transfer of state powers to democratic institutions; (2) creating a free market through implementation of an economic reform programme; (3) devolving the power to govern to municipalities, counties and regions, (4) striving to join the European Union, and (5) reforming the state and rebuilding its administrative and regulatory capacities. This involved dismantling central-planning institutions and laws; the building of new regulatory regimes; and the strengthening and rebuilding of institutions and capacities dormant from the past, to lay the basis for co-operation, power-sharing and decentralisation in a democratic society.

Key regulatory reforms included a massive deregulation and liberalisation, accompanied a few years later with important governance reforms, including the reshaping of the centre of the government and the civil service, large-scale privatisation, and the passage of a new Constitution in 1997 with consequent revisions and clean-up of the 'stock' of laws and regulations. In September 2001, the government approved the implementation of the 1995 *OECD Recommendation on Improving the Quality of Government Regulation*.

Largely based on these initiatives today Poland has a robust platform for a modern regulatory management system. Autonomous and expert institutions such as the Government Legislative Centre and Legislative Council provide constructive guidance and backing for the government. While the Debureaucratisation Task Force has been abolished along with the Economic Committee of the Council Of Ministers, its functions will be performed by the Regulatory Quality Team and thus the advocacy role for further reforms should continue. The 'justification report' attached to draft legal instruments and growing use of public consultation have provided increased accountability and transparency to rule making processes but have not been as comprehensive or rigorous as RIA. Since September 2001, drafts must now also include a RIA, as part of the justification report. Not all costs and benefits are assessed, as the focus is on looking at the impacts on public finances, the labour market, domestic and foreign competitiveness, and regional development. However, this is a good start.

However, Poland still faces important challenges to complete its transformation. Structural and temporary weaknesses in terms of human resources in the public administration reduce the effectiveness of the administration at all levels of government. A still large number of public servants, and in particular at the senior level, have not made the cultural leap to a less interventionist role. The transparency and effectiveness in applying and enforcing the law can still be greatly improved.

Attention needs to shift now to a proper implementation of the regulatory reform agenda over the medium-term. The government's commitment to modernise the regulatory management system has still to be embedded into law. Improving policy coherence and co-ordination across a multi-layered governance system remains an important challenge. Lastly, increasing impact analysis for legislation developed by Parliament and increasing the effectiveness of the judiciary would broaden and hasten the reaping of benefits built on past achievements.

Meeting the challenges of creating a sustainable regulatory management system of high quality will not only permit Poland to gain from EU accession, but also should provide it with a strong institutional basis for more rapid economic and social development.

1. The institutional framework for regulatory reform in Poland

1.1. The Administrative and legal environment in Poland

Regulatory management and reform are central to the economic and social transitions underway in central and Eastern Europe.[1] For such countries, reform not only includes an important deregulatory task, but the creation of new regulatory systems conducive to good governance and the establishment of new relationships linking citizens, the state and the market. It involves the dismantling of central-planning institutions and laws; the building of new regulatory regimes; and the strengthening and rebuilding of institutions and capacities dormant from the past, to lay the basis for co-operation, power-sharing and decentralisation in a democratic society.

Though important challenges remain, Poland's transition is mostly over. The country has now a full constitutional separation of powers. The institutions required for democracy and a market economy are in place. The role of government and its administration has moved from centralised and authoritarian control of economic and social life to democratically-based initiation and implementation of public policy. Progress with structural reforms is well advanced. Today, the private sector generates 70% of Poland's GDP and employs 72% of workers. Poland has a free and lively press. The legal system has been reconstituted based on the framework of a democratic rule of law.

Poland's transition proceeded on five strategic fronts: (1) establishing democracy through transfer of state powers to democratic institutions; (2) creating a free market through implementation of an economic reform programme; (3) decentralising the power to govern to municipalities ("gminas"), counties ("poviats") and regions ("vovoideships"), (4) striving to join the European Union, and (5) reforming the state and rebuilding its administrative and regulatory capacities. Among these fundamental areas, progress has differed significantly. Though no clear sequence is discernible and reformers followed a pragmatic course, two interconnected trends are visible. First, laws regulating the functioning of the economy and the foundation of civic society were adopted in the first half of the 1990s whereas a new constitution and new penal codes along with many other significant laws were adopted in the second half of the decade.[2] Second, progress was easier in re-establishing and creating private sector law than administrative law.

Poland was always closer to an authoritarian than to a totalitarian regime and the traditions of resistance to state socialism and Soviet rule were also much stronger in Poland than in other East Central European countries.[3] This contributed to the rapid establishment of democracy after 1989. Two institutions – the church and the trade union – were key drivers for pushing the democratisation of the State. Today both institutions still play a major role in policy debates, through the role given to them in the Constitution and other legal instruments, as well the power of tradition.

A second strategic area of reform involved establishing a market economy through liberalisation, privatisation and restructuring. Sometimes this meant reinstituting pre-war laws and even laws enacted by the previous regime but never applied before. As in other areas, a pragmatic approach is perceptible. Poland commenced its transition in the weakest economic situation of all Central and East European countries, with inflation at 40% a month and a foreign debt of more than USD 40 billion. In part for these reasons, the government embarked on a "shock therapy" in the earliest 1990s, starting with cutting state subsidies, lifting almost all price controls "overnight" and deregulating the economy.[4] This first round of changes put massive strains on the economy and society in the short run, triggering a reduction in real income by 30% in 1990, reaching an inflation rate of 586% per annum and an explosion of unemployment to 12% in 1991.[5] Poland however delayed large-scale privatisation until 1997.[6] A clear success of reforms in the mid-1990s concerned the financial sector. New financial laws and strong institutions to enforce them led to the emergence of one of the more robust financial systems in the region, which provided the basis

for privatisation and market development. In part due to this financial regulatory framework, during the second half of the 1990s, the country started to enjoy real GDP growth of an average of 5.5% per annum, reduced inflation and increasing living standards, though unemployment reached 15% at the end of 2000, still higher than neighbouring countries (see chapter 1).[7]

Box 1. **Good practices for improving the capacities of national administration to assure high quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels

2. Establish explicit standards for regulatory quality and principles of regulatory decision-making

3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis

2. Systematic public consultation procedures with affected interests

3. Using alternatives to regulation

4. Improving regulatory co-ordination

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(In addition to the strategies listed above)

1. Reviewing and updating existing regulations

2. Reducing red tape and government formalities

Source: OECD (1997), "Regulatory Quality and Public Sector Reform," in The OECD Report on Regulatory Reform: Thematic Studies, Paris.

With enormous long-term consequences for public service provision and regulatory functions, the third and fourth areas of strategic reforms concerned the complete transformation of relationships between levels of governments. As part of the democratisation of the State, Poland started early the first round of devolution of powers to sub-national powers (municipalities) in 1991. Also, starting in 1991 an ambitious fast track course was launched to join the European Union, a process involving the adaptation of Polish legislation to the structure and content of the EU legal framework, as well as a overhaul in terms of implementation, including the education of judicial staff and other state officials to ensure the capacity to do this (see Section 2.3). Poland also joined the OECD (1996), the WTO (1995) and NATO (1999).

The fifth fundamental area was centred on reshaping the functioning of the State and its administration and in particular the use of regulatory instruments. Reshaping administrative law took longer than other broad reforms. The complexity of the endeavour means that reforms are incomplete on

this front and that some time will pass before substantial results will become clearly apparent. However, progress is undeniable. Three crucial reforms concerned the constitutional framework, the working of the administration and the government's rule making capacities.

A culmination of the reform of the state was the enactment of a Constitution in 1997.[8] The new Constitution had two major effects on the legal order. First, it eliminated major inconsistencies in the sources of law by providing for an explicit catalogue of the different legal instruments (see Box 2). Second, it triggered a major review of existing laws and regulations to make them compatible with the new constitutional framework, replacing, redrafting or removing hundreds of statutes (see Sections 2.1 and 4.1).[9]

In 1996, the government launched the State Economic Administration Reform in order to transform the organisation and structure of the Council of Ministers as well as those of line ministers (see Section 1.2). Further laws and initiatives followed to improve efficiency, transparency and accountability across the national public administration.[10]

In parallel with the constitutional reform and the restructuring of the public administration, Poland embarked on improving its regulatory policies through a better management system and new institutions. Sections 2 to 4 report on the initiatives launched so far.

Nevertheless, important issues continue to challenge the legal and regulatory environment shaping Poland's economic and social progresses:

- According to the Legislative Council, in 1992 the legal system suffered from lack of coherence in the use of legal terms and of functional cohesion of laws, excessive dispersion of legal regulations, and deviations from the rules of good legislative technique, so that many regulations were incomprehensible or ambiguous.[11] Moreover, the Council criticised the proliferation of detailed regulations and preferred the enactment of acts (codification, organic law, leading law) instead.

- Second, the legal environment continues to be unstable. Laws are repeatedly amended, reducing the transparency of the legal environment. For example, the General Health Insurance Act which was introduced in 1999, was amended 13 times before the end of 1999 and the Social Insurance System Act of 1999 was amended before it came into force.[12] Also, 'regulatory inflation' has been driven by the EU transposition efforts and the lack of adequate ex ante control mechanisms.

- A third structural weakness of the legal system are the challenges of implementing, enforcing and building the compliance strategies of new regulations. Ambitious overhauls of health care, education, pensions and local government has not achieved the objectives sought due to mistakes and inefficiencies during the implementation phases. Similar deficiencies have impaired substantive early results of the promising creation of a national business registry or the improvements to the tax regime for SMEs.[13] There is also concern about the excessive discretion provided by legal instruments when applying and enforcing them, as well as adjudicating decisions. It tends to create conditions favourable to corruption. This situation is worsened by the slow progress in improving the quality and efficiency of the judicial system.[14]

- Finally, it is difficult to apply consistent standards of legislative quality because Parliament dominates the law creation system. Members' bills represented a large majority of legal initiatives in first years after democracy was established, although since

October 1997 they have initiated about one third of all bills passed by Parliament. They are also strong proponents of amendments of Government bills in the course of legislative work in the *Sejm* (the Lower House).[15] Thus, the efforts put in by the Executive Branch to develop good quality draft laws can be undermined by subsequent changes made by parliamentarians, who can be the object of intense lobbying.

Box 2. **Sources of laws**

Based on a civil law system, and according to the Constitution, the legal system is based on a hierarchy of legal instruments, differentiating "universally binding law" (*i.e.* measures applicable to society) and "internal law" (*i.e.* measures applicable to government). Schematically they can fall in the following categories:

A. "Universally binding law"

(1) *the Constitution* — the supreme law of the land;

(2) *international agreements*, — becoming part of the domestic legal system on ratification and take precedence before the law;[16]

(3) *statutory acts*— are the basic instrument of the universally binding law in Poland issued by Parliament;

(4) *orders* issued by bodies expressly designated in the Constitution, including the President of the Republic, the Council of Ministers, the National Council for Radio and Television, the Prime Minister and Ministers, in order to implement laws within the spheres of competence for which they are responsible;

(5) *local legal enactments* passed by local self-government and territorial organs of government administration binding within the territory of their responsibility; they are passed according to the laws and within the statutory limits.

B. "Internal law"

(6) '*internal normative instruments'*. These 'internal normative instruments' can be *resolutions* of the Council of Ministers, dispositions of the Prime Minister and *dispositions* of minister. The Constitution does not establish an exhaustive catalogue of entities authorised for issuing 'internal normative instruments'. However, these 'internal instruments' shall be issued according to laws (acts of Parliament) and cannot be the legal basis for decisions addressed to citizens, legal entities and other parties.

Number of laws and acts published between the years 1997-2000[17]

Year	total number of laws[18]	total number of acts[19]	total number of pages
1997	189	1 136	5 671
1998	96	1 267	7 492
1999	128	1 322	7 292
2000	159	1 346	7 454

It is also interesting to note the active role of the Parliament in law-making. Out of a total of 753 laws passed from October 1997 to October 2001:[20]

456 were initiated by Government (Council of Ministers)

276 were initiated by Parliament (Seym)

6 were initiated by the President

12 were initiated by the Senate

3 were initiated by Citizens.

Source: OECD and Government of Poland, Poland's Parliament.

1.2. Recent regulatory reform initiatives to improve public administration capacities

More crucial perhaps than for other countries, the quality of the legal framework in transition countries is linked to the efficiency, accountability and transparency of the public sector. To be successful, regulatory reforms must eliminate procedures that no longer work and establish the capacities to review, develop and manage regulation, including the relevant processes, institutions and skills.

Poland has put in place a number of programmes and created the legal framework to achieve these objectives. Important initiatives include:

- Some institutions, such as the Tribunal of State (a Tribunal abolished after World War II) were revived and new bodies, including the Constitutional Tribunal and the Commissioner of Citizens' Rights (the Ombudsman), were created.

- The reform of administrative procedures in 1990, so that administrative decisions are subject to appeal to the Supreme Administrative Court, which replaced an enumeration of case categories eligible for review.

- A major restructuring in 1996 of the centre of government to adjust to increasingly strong local governments; to reduce a large and inefficient bureaucracy; to remove overlap of competencies of ministries; to create horizontal structures in order to facilitate co-operation and resolve differences between members of government;[21] to change its procedures in order to improve the quality of legislation; and to create mechanisms to assist in harmonising Polish laws with those of the European Union. The reform of Centre of Government was achieved through the enactment of the *Law on the Organisation and Rules of Procedure of the Council of Ministers and on the Scope of Competence of Ministers ("Law on Organisation")*. This law standardised the principles for the establishment and functioning of the Chancellery's consultative and advisory bodies, including government standing committees and plenipotentiaries. The law expanded inter-ministerial co-operation outside Cabinet meetings, created the basis for more use of direct inter-departmental and/or inter-ministerial methods of co-operation and strengthened the position of the Prime Minister as the director of governmental activities. It also defined the rights and duties of ministers and delineated principles for representation of government in order to ensure uniformity of statements made on behalf of the government. The *Law on Organisation* also replaced the Council of Ministers' Office by the Chancellery of the Prime Minister and allowed the creation the Ministry of Interior and Administration. It also established the *Committee for European Integration* to manage the programming and co-ordination of Poland's integration with the European Union, including the harmonisation of laws.

- The enactment of the *Civil Service Law* in December 1998, replacing in part the 1982 *Law on State Administration Employees* and the 1996 *Law on Civil Service*. The new law covers central, regional and local government administration and creates the civil service corps;[22] defines the rights and obligations of civil servants; provides for a central office responsible for the management of the civil service; and states transparent and competitive rules for career progression.[23]

Nonetheless, the Polish public administration still faces important challenges dealing with low and uneven levels of remuneration, poor management structures, in particular in terms of financial controls, overstaffing in some areas of the public service, low level of skills and lack of adequate training, and certain abuses and weaknesses. While the country has put in place the Civil Service Law, the changes

necessary to achieve the fundamentals of a dedicated, well-educated, career civil service, transparent remuneration, including controls based on inputs, and minimisation of discretion and political interference in procurement and appointment procedures are taking place slowly.[24] An area of concern relates to the extent to which public servants and private entities may abuse the discretion that exists in applying and enforcing some laws and regulations (for instance, in the case of registering companies).[25] Due in part to the demographic structure of the civil service, a number of public servants, and in particular at the senior level, have not made the cultural leap to a less interventionist government role.

Table 1. **Principal recent public management developments**

1989	• First free Parliamentary elections, beginning of the reform of the State • Reinstatement of the Senate – the upper chamber of Parliament
1990	• Reinstatement of the system of decentralised local government on the level of *gmina* (municipality), first democratic local general elections • Amendment to the Administrative Procedure Code so that administrative decisions are subject to appeal to the Administrative Court • Law on Self-Government Administration Employees • Establishment of the National School of Public Administration to train civil servants • Law against monopolistic practices and establishment of the Antimonopoly Office
1991	• Tax reform, introduction of income tax for all individual tax payers • Essential changes in the State Budget programming, separation of the State budget from the local budgets
1992	• Amendments to the Constitution resulting in the adoption of the *Constitutional Law on the Relationships between the Legislative and Executive Powers and on Local Self-Government*, the so-called "Small Constitution", reinforcement of the presidential power • Establishment of the governmental Commission for Reorganisation of the Public Administration
1993	• Introduction of value-added tax (VAT)
1994	• Adoption of the so-called Pilot Programme of Public Administration Reform • Law on Public Procurement, establishment of the Public Procurement Office • Application for accession to the European Union
1995	• Adoption of the law on the Supreme Administrative Court
1996	• Law on the Organisation and Rules of Procedure of the Council of Ministers and on the Sphere of Competence of Ministers "Law on Organisation" • Law on Civil Service • Law on Privatisation and Commercialisation of State-owned enterprises
1997	• Introduction of mass privatisation, establishment of the Public Enfranchisement Funds • New Constitution ratified by national referendum
1998	• Establishment of the Debureaucratisation Task Force of the Committee on Economy under supervision of' the Deputy Prime Minister • Reform of the State system, adoption of additional levels of territorial local government: *powiats* (counties) and *voivodships* (regions), enacted through three laws: • Law on the regional self-government, • Law on governmental administration in the region, • Law of self-government in counties.
1999	• Government endorsement of ensuring high quality new regulation and eliminating ineffective and redundant laws. • Law of the General Health Insurance • Law of the Social Insurance System • Law of the Civil Service

- Business Activity Law

2000
- Law on Access to Information and on Environmental Impact Assessment
- Law on establishing the Polish Agency for Enterprise Development; to implement the economic development programmes, in particular relating to the support to SMEs, exports, the social and economic cohesion
- Law on the conditions for admissibility and monitoring of public aid for entrepreneurs
- Further articulation of government policy on regulation reform regarding sustainable development, competitiveness and transparency of government.
- Establishment of the Team for Legal Regulations Quality.

2001
- Establishment of the Business Registry System
- New Commercial Company Code
- Government resolution introducing RIA.
- The Rules of Procedure of the CoM and the Law on Organisation were amended to incorporate RIA in the rule-making procedures.
- Requirement for the Government Legislative Centre to co-ordinate RIA preparation for the governmental law-making procedure.

2002
- Law on Freedom of Information

2. Drivers of regulatory reform: national policies and institutions

2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.[26] The 1995 *OECD Council Recommendation on Improving the Quality of Government Regulation* contains a set of best practice principles against which reform polices can be assessed. In Poland, improvement of capacities to produce regulatory quality has been moving toward OECD good practices, though there are gaps to be filled and important areas remain to be implemented and improved further.

Poland's commitment to OECD Principles of regulatory reform was made in June 1999 in the government document: *A Conception of Medium-Term Economic Development of the Country until the Year 2002*, accepted by the Council of Ministers. In particular, the government commits to the tasks of ensuring a high quality of new regulation, eliminating ineffective and redundant laws, adopting international agreements into domestic regulation, and increasing the transparency of public activities were all affirmed in this document.[27]

In September 2000, the Prime Minister further articulated the regulatory reform policy stating that its aim is "to achieve sustainable development, to increase the competitiveness of the country and improve the quality and transparency of government" in a government order.[28] The same order also established an inter-ministerial body, the *Team for Legal Regulations Quality*, as the advisory and consultative body, chaired by the Minister of Economy to drive the policy and in particular to design a strategy to apply both OECD recommendations – as developed in the 1995 and 1997 reports. The Team was given the tasks of:

- Defining the legal scope of the new regulatory policy;

- Preparing a regulation reform programme;

- Designing a regulatory impact analysis system based on OECD standards; and

- Assessing the co-ordination mechanisms of government bodies participating in the regulatory management system.

The September 2000 Resolution also proposed that the Ministry of Economy create within its Economic Strategy Department, a special division to co-ordinate work connected with regulatory reform, including providing support to the Team. In April 2001, the government provided the outline of Poland's full implementation of Regulatory Impact Analysis, to be enforced by the Governmental Legislative Centre (GLC) at the Chancellery of the Prime Minister (see Section 3.3). And in September 2001, a resolution introducing RIA was adopted on 4th September 2001, by the Council of Ministers (CoM). The CoM then adopted a set of rules for the RIA, which went into effect on 5 November 2001. These rules made it obligatory to prepare RIA for new legislation, ie all draft legislation being developed within government. The Rules of Procedure of the CoM and the Law on Organisation were amended to incorporate RIA in the rule-making procedures. According to the amended *Law on Organisation* of 21 December 2001 the Government Legislative Centre is obliged to co-ordinate RIA preparation for the governmental law-making procedure. Also the Government Centre for Strategic Studies (GCSS) may provide an additional quality control function in the form of a second RIA. In particular when draft entails important long term impact on social and economic development, the Prime Minister may entrust preparation of RIA to the GCSS directly.

Proponent bodies must now annex a RIA to the justification report that is attached to all legal drafts sent to the CoM for approval.

The new policy should strengthen the thrust of recent reforms encompassing good practices in terms of improving the quality of new regulations. Most particularly, it should be compatible with and strengthen changes resulting from the 1996 *Law on Organisation* which reformed the general procedures for rule-making and defined the roles and responsibilities of the different actors in the process (see Section 1.2).

In terms of assuring the quality of existing regulation (*i.e.* the 'stock' of laws and regulations in place), Poland has few permanent policies. Poland's policy is to eliminate ineffective and redundant primary legislation but is less explicit about other aspects of quality. Nonetheless, past initiatives and policies have permitted the review, repeal, revision, and redrafting of existing regulation. Included among them are the massive EU transposition effort; a codification of law programme run by the Ministry of Justice; and the Ministry of Economy's policy to reduce regulatory burdens to industry, particularly administrative burdens on small and medium-sized enterprises (SMEs) (see Section 4). The government may also use the competition advocacy of the Office of Competition and Consumer Protection ("OCCP"), internal to the government's regulation-making processes. (See Chapter 3.) Moreover, the vast revisions of laws and subordinated regulations under the discipline of the new Constitution permitted substantial pruning of the legal framework.

In sum, with the implementation of the September 2000 policy, Poland has joined other OECD countries in their efforts to ensure the quality of new and existing laws and subordinate legislation. The December 2001 amendments to the Rules and Procedure of the Council of Ministers and the Law on Organisation define the scope of the new policy. Currently, the RIA system applies to all draft primary legislation presented to Parliament as well as to all subordinated regulation that is required to be published in the Official Gazette. Optionally, RIA may be prepared for the governmental positions on draft acts exclusively prepared by Parliament. However, to date, there are important uncertainties concerning the tools and institutions to be used to implement the policy. First, the policy still needs to specify the quality standards to define when a draft measure has a high or a low level of quality. Second, the focus on

controlling the 'flow' (*i.e.* the creation of new regulation) should not eclipse the function of improving the quality of the 'stock' of regulation. Third, the reviewing institutions need to be strong enough to function as credible gatekeepers and advocates of 'better regulation'. Last, the interrelationships between other reform policies, including competition and devolution should be made more explicit.

2.2. Mechanisms and Institutions to promote reform within the public administration

Reform institutions with explicit responsibilities, authorities and capacities to manage regulatory policies inside the administration are needed to improve the quality of the regulatory environment, keep reform on schedule. As in all OECD countries, Poland emphasises the responsibility of individual ministries for quality regulation within their areas of responsibility. While the 1996 *Law on Organisation* increases the influence of the Prime Minister as the President of the Council of Ministers towards the members of government, it also states that line ministers play a decisive role in the direction of their sectors. The same law establishes a 'legislative organisation unit' in each ministry in charge of drafting proposed measures.[29] The law defines the tasks and powers of each ministry.[30] But it is often difficult for ministries to reform themselves, given countervailing pressures. Maintaining consistency and systematic approaches across the entire administration is thus necessary for reform. Institutions and procedures, as well as rules for regulators are needed to co-ordinate this.

Poland has a centrally controlled rule-making system organised by the Chancellery of the Prime Minister (see below). According to the *Law on Organisation*, the Chancellery provides technical and organisational assistance. Except for clear exceptions and emergencies, the process to prepare a new law or regulation follows the steps described in Box 3. The *Law on Organisation* together with the government resolution *Rules and Procedure of the Council of Ministers* (*"Rules and Procedures")* defines the rule-making process and all inter-ministerial co-ordination related to the Council of Ministers' work needed for approvals of bills and subordinate regulations.[31] In contrast, for lower level regulations which do not need approval by the government (such as internal legal standards or orders), each ministry follows its own internal rules and traditions when developing, assessing and consulting with other governmental bodies or stakeholders. Therefore, the quality assurance mechanisms tend to vary considerably.

Box 3. **Standard procedure for draft laws and secondary legislation**

According to the Law on Organisation and the associated Rules and Procedure,[32] the procedure for government drafting laws and secondary legislation includes the following steps:

1. The proponent body (usually a Ministry[33]) prepares a draft legal instrument, acting in execution of the obligation resulting from the Constitution, a law (act of Parliament), an international agreement or government document. As to drafts of secondary acts, the proponent Minister acts under statutory delegation to act, expressly indicated in a law (act of Parliament). Only if the obligation to act does not stem from the laws, he first notifies to the Prime Minister the intention to act.

2. The proponent body prepares a text and a 'justification report' and sends it to the Government Legislative Centre in order to review the scope of the RIA and the scope of public consultations. The justification report, which since 2002 includes a RIA, needs to address potential impacts of the future measure (see Section 3.3). If the GLC presents comments, the proponent minister is obliged to annex them to the draft measure.

3.	The proponent body sends the draft act and "justification report" to the social partners, to the members of the government, central bodies of government administration, supervised directly by the Prime Minister, the GLC and Committee for European Integration. The proponent body is obliged to send the drafts of considerable importance to the Legislative Council. Depending on its significance and expected social and economic impact, its complexity and urgency, the proponent body may request the opinion of other public administration bodies, voluntary organisations and other entities and institutions concerned. The groups most regularly consulted are the chambers of commerce, trade unions and the church. The proponent ministry can organise inter-ministerial conferences in order to settle differences and discrepancies that appeared during inter-ministerial consultations.
4.	Before the draft is presented to the Council of Ministers the proponent body submits the draft text and 'justification report' to the Standing Team of the Council of Ministers. The drafts concerning harmonisation with EU law are discussed by the Committee for the European Integration. Then the draft is discussed by the Lawyers' Committee, which examines and assesses draft from the legal and editorial point of view.
5.	The Council of Ministers discuss and approves the draft measure. In case of differences between ministries or other bodies, a note explaining them can accompany the draft text and 'justification report' for consideration by the Council of Ministers.
6.	After approval by the Council of Ministers, the Prime Minister sends the bill and 'justification report' to Parliament, in the case of primary legislation, where the Regulations and the Senate Regulations establish the procedures to be followed for its enactment. All laws need to be signed by the President of the Republic, who has an unconditional veto power. Moreover, under certain circumstances he has also a "preventive veto", which means he can present the law, before signing, to the Constitutional Tribunal for the opinion of its compatibility with the Constitution. The President orders publication of the laws in the Journal of Laws. In the case of secondary legislation, the Prime Minister orders to publish the regulation in the official gazette. All normative acts are published in the official journals.

The key central bodies responsible for the overseeing of the regulatory quality are: the Government Legislation Centre, the Government Centre for Strategic Studies, the Legislative Council, the Committee of the Council of Ministers, the Preparatory Team of the Committee for European Integration and the Committee for European Integration. The Ministry of Justice which is responsible for a programme to codify the law and the Competition Authority (OCCP) also play a role. The Chancellery to the CoM assures assistance in procedural matters only. The one standing committee is an internal body of the Council of Ministers, whereas the GLC and Legislative Council are independent advisory bodies to the Prime Minister, whose members are appointed by the Prime Minister.

The ***Government Legislation Centre*** (GLC) is responsible for co-ordinating the legislative activity of the Council of Ministers, the Prime Minister and other governmental administration bodies.[34] It is also the overseer and special legal advisor of the Council of Ministers and ministries on any legal matter. The GLC was removed from the Chancellery in January 2000. The transformation provided more independence (in particular through its own budget) and was designed to insulate it from political pressures. It currently has 50 lawyers in addition to technical support. To implement the RIA system, a new organisational unit in GLC was established, employing – apart from lawyers – professionals possessing qualifications in: public finance, statistics and labour market, innovation policy, pre-accession funds and regional development. The GLC*'s* main functions are:

- Providing a legal opinion on legal drafts prepared by the government;
- Co-ordinating intra-government legislative work, including since January 2002 co-ordinating the preparation of RIAs;

- Preparing government's legal drafts;
- Legally advising the Council of Ministers and the Prime Minister;
- Editing the Official Journal and the Polish Monitor (government legal gazettes);
- Co-operating with the Committee of European Integration in the harmonisation of Polish law with the EU law;
- Preparing the legal standpoints during the procedure before the Constitutional Tribunal, and
- Preparing the Government's opinions on the draft acts prepared by the members of Parliament.

Although each ministry has its own legal experts, a ministry can involve the GLC from the beginning of the law drafting process. The GLC is proactive in identifying areas where it can be involved. It receives all government documents and can attend every session of the government and interministerial advisory teams. Although the advice of the GLC is not binding, the current Prime Minister will not sign a Bill for Parliament without its opinion.

The ***Government Centre for Strategic Studies*** will also play a challenge role for RIA quality. It is an independent advisory body to the Prime Minister. The Centre will provide a second RIA, in particular to regulations with important long-term impacts on social and economic development and also whenever the Prime Minister requests it.

The ***Legislative Council*** consists of eminent lawyers, mostly law professors. Since 1973, it has been the most senior legal advisory body to the Prime Minister.[35] The Council also provides inputs for needed reforms. The Legislative Council is empowered to control the legal quality of bills that are remitted to Parliament. It is competent in matters of enactment of law and evaluation of the condition of the law in specific areas. The tasks of the Legislative Council, include:

- Issuing opinions on draft bills initiated by government where they have significant social, economic or legal impact, and the basic secondary legislation drafts, as well as issuing opinions on any draft measure of special significance developed by deputies from the Lower House, the Senate or President of Poland, if the government states a position on these projects;[36]
- Formulating proposals and expressing opinions on the methods and ways of addressing the issues relating to implementation of the Constitution, and especially alignment of legislation with the Constitution;
- Issuing opinions on the draft work programme and timetable for implementation of the government legislative programme, issuing opinions and suggestions on fundamental issues relating to the law enactment process;
- Periodically evaluating the condition of the law in specific areas, taking into account the requirement of adaptation to constitutional requirements and the level of harmonisation of Poland's legislation with the requirements of EU Law.

The Legislative Council acts on its own initiative or upon request of the Prime Minister, chairmen of Permanent Committees of the Council of Ministers, the Head of the Chancellery of the Prime Minister or Secretary of the Council of Ministers.

As an advocate for quality regulation, the Legislative Council prepares evaluation reports periodically, which enable the systematic monitoring of the state of law. The Council has been producing reports analysing important initiatives and reforms, such as: the work of the Codification Commission, the Polish tax legislation (1996), the regulatory framework of the proprietary situation of family members (1996), the publication of laws (1995), the consumer protection legal framework (1995), the legal framework of the agriculture sector (1995). In its monitoring capacity, the Council is currently working on the evaluation of the state of the constitutional law, civilian law, labour law, media, financial and private business law. All opinions and evaluations of the state of the law are published in the quarterly bulletin **"**Przeglad legislacyjny**"** (The Legislative Review). (See www.lex.pl).

While both the GLC and the Legislative Council look at the quality of regulation, their roles are compatible. There are two important differences: one, the GLC gets involved sooner with the drafting of legislation while the Council works on well-developed pieces of legislation, including the Government's position on the drafts prepared by the members of Parliament or the President; and, two, the Council is specialised in the quality of the legal text, while the GLC also tackles the substance. This means the GLC must also indicate the correct legal solutions and rectify the text of the draft act.

From 1997 until recently, the ***Debureaucratisation Task Force,*** placed within the Economic Committee of the Council of Ministers, also provided substantive inputs into regulatory reform in Poland. Its role was to review existing laws that affect businesses in order to abolish barriers to business development and to minimise the risk of corruption, as well as giving opinions on draft acts concerning the economy in regard to transparency of the law. It played a very active role in drawing attention to issues that may improve regulatory outcomes. Along with the Economic Committee, the Taskforce was abolished early2002 and part of the role of the taskforce has been taken over by the Regulatory Quality Team.

Besides the bodies advising the Prime Minister and the Standing Team of the Council of Ministers, a number of ministries and institutions complete the system assuring regulatory quality. The ***Ministry of Justice*** plays a smaller role. The Ministry is in charge of the ongoing codification programme (and its Codification Commission) and of keeping the register of dispositions issued by Ministers, what is called "internal law" in Poland (see Box 2). The Ministry sometimes assists the GLC in evaluating the legality of draft laws and regulations and participates in works of the Team for Legal Regulations Quality.

The competition authority (OCCP) holds a role close to government and has participated directly in the government's major structural and sectoral reform programmes. In particular, it has served on and often led interdepartmental task forces to design and implement major reforms. OCCP's participation in the government decision-making process appears to have worked reasonably well, although its advocacy role has so far been modest. (See Chapter 3)

In the case of Parliament, procedures to enact a law are defined in the Lower House ('Sejm') and Senate Regulations. The Sejm Chancellery runs the Study and Expertise Office to provide advice and information to the PM when preparing draft laws. However, the processes involved in developing amendments and drafts deriving from parliamentarians appear to be more politically focussed and not as exhaustive as the processes used by government, and the quality of parliamentary draft proposals suffers as a result.[37]

2.3. Co-ordination between levels of government

The 1997 OECD Report advises governments to "encourage reform at all levels of government." This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform. In the past decade, devolution from the centre to sub-national governments has occurred on a large scale at the same time that harmonisation with the European Union is taking place. The policies and mechanisms for co-ordination between levels of administration are increasingly important for the development and maintenance of an effective regulatory framework.

National – Local

Poland is a national country with a uniform and integrated legal system where national law has priority over local law and the devolution and transfer of powers has not gone very far. Although the 1997 Constitution contains a general presumption in favour of local governments. It stipulates that 'local self-government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities'.[38] This new trend of devolution contrasts with the communist period, where everything was decided and solved in Warsaw. As one of the first initiatives of the democratic period, the government embarked on a major effort to transfer power and responsibilities to the three levels of government: the 2,489 municipalities (gminas); 380 counties (powiats); and 16 regions (voivodships),[39] starting with the 1990 *Law on Local self-government*, which established the self-governing powers of the municipalities. During the rest of the 1990s, the system was amended gradually. The enactment of the new Constitution and of three major laws in June 1998 created a three-tier territorial division and defined the competencies of public administration bodies.[40] Table A in the annex indicates the broad areas of responsibility of each level of government/administration. Today, about 63% of the tasks formerly in the competence of the central governmental administration were transferred to the self-government.

In parallel to the devolution, a structure of public administration at regional level was developed. The dual system consists of the cohabitation of the regional elected self-governments that have independent legal identities and a regional 'prefect' appointed by the Prime Minister. Constitutionally, national law has primacy over local law and all citizens can require a judicial review of a local law,[41] a fundamental task of the 'prefect' is to ensure that decisions, including legal measures, made by regional self-governments comply with national laws. At national level the Ministry of Interior and Public Administration, through its Department of Monitoring of Public Administration Reform, oversees and monitors the work of the 'prefects' and thus the regulation-making at the different regional tiers.

Some concerns have been expressed about the way regulations are being developed and applied in sub-national areas. In 2000, 13 637 acts were published in the regional legal gazettes (Voivodie Journals).[42] These included local legal enactments passed by local self-government and territorial bodies of government administration to implement legislation within their spheres of responsibility. The Ombudsman has drawn attention to "lack of transparent legal regulations and efficient instruments of supervision of local government authorities" and that "the changes enacted in 1999 brought to light problems caused both by inconsistency of the provisions regulating the powers of different levels of local government and poor co-operation between State administration and local government bodies".[43] The World Bank has also raised questions about the number of governments operating in the same areas, which complicates and reduces transparency in terms of the responsibility of decisions made. For instance, corruption can be linked to excessive discretion and lack of adequate controls in the design and decision

making concerning zoning, licences and permits for economic activity, contracts for construction works, goods and services, property rent controls and tariffs of public services.[44] The government has some way to go to fine-tune the control system and assure that minimum standards for high quality regulation across levels are preserved. A 2001 initiative to adjust the jurisdiction of common courts to the administrative borders of the new regions should improve the co-operation between decentralised units of the central administration and local bodies operating within the territorial structures.[45]

Consistency in national policies across levels of governments is attempted through the vigilance of national authorities. For example, the Competition Authority (OCCP) has intervened at the local level to seek to maintain the quality of competitive markets. Recent cases have focused on exclusive agreement for cable TV services, the creation of local monopoly for waste collection at municipal level, or abuses in funeral service provisions (see chapter 3).[46]

European level

Since 1991, accession to the European Union has been a major goal of Poland. Negotiation with the European Commission and transposition of EU law has driven regulatory reform throughout the country. The ultimate goal is to incorporate the European acquis communautaire (see Box 4) into the Polish legal order through the approximation process.

The National Program of Preparation for the Membership in the European Union (NPPM) is the main document guiding the adoption of the *acquis communautaire*. The NPPM was adopted for the first time on June 23, 1998 and is updated and approved each year by the Council of Ministers. The Plan is published every spring and is presented and discussed in Parliament.[47] In 1999, Parliament developed rules and procedures establishing a similar scrutiny system of their legislative work.[48]

To drive the policy, the government has developed procedures for negotiation and legal transposition processes, under the co-ordination of the Committee for European Integration (CEI) and its Office.[49] The Preparatory Team of the Committee for European Integration (comprising vice-ministers) was also created on 15 January 2002 to consider all draft acts before they are presented to the CEI. The powers of the CEI are extensive.[50] The CEI, which is chaired by the Prime Minister and comprises Ministers, is the peak central government body responsible for programming and co-ordination of policy matters related to the integration of Poland with the EU. The CEI initiates and co-ordinates the adjustment of legal institutions, assesses progress, initiates activities aimed at preparing information and human resources for the integration.[51]

A 1994 Resolution of the Council of Ministers initiated the examination of the compliance of draft acts with EU legislation.[52] Since then, an opinion on compliance with the EU legislation is a necessary part of the explanatory statement of draft legal acts. The Chairman of the CEI delivers opinions on the compliance of draft acts with the European law.[53] The opinions are transmitted, along with the drafts, to the Lower House of Parliament.[54]

The Parliament passed the first acts related to the adjustment of Polish legislation to the legislation of the European Union (submitted by the Government since 1997) in January 2000.[55] Interestingly, the CEI also participates in giving opinions on draft acts submitted by the deputies and the parliament committees, as well as during legislation proceedings in the Lower House, especially during the debates which take place in the Lower House's committees.[56]

The integration of Polish Law involves more than 5 436 EC directives, regulations, decisions and opinions representing more than 39 000 pages of legislative text – with about 3900 now remaining. Of the 29 chapters now opened with Poland during the course of four negotiating rounds since March 1998, 22 out of 29 have so far been provisionally put aside (as at March 2002), meaning that they do not, at this stage, require further negotiation.[57] Negotiations continue for the remaining chapters. Concretely, about 300 Directives have been transposed through 200 laws. The process is accelerating: the number of laws transposing EU directives has increased from 18 in 1997/98; to 46 in 1998/99 and 65 in 1999/2000.[58] Between January 2000 and June 18, 2001, the Parliament adopted 97 draft acts (66 in 2000 and 31 in 2001) related to the adjustment of Polish law to the EU legislation.[59] However, by November 2000 Poland was behind other accession countries in transposing EU Directives related to free movement of goods. (see Chapter 4).

Parliamentary procedures have been changed so that laws drafted to meet EU accession requirements are put on a special fast-track. A triple-agreement between the Chairman of the Lower House, the Chairman of Senate and the Prime Minister on July 10, 2000 have provided the basis for accelerating the adjustment process. As a result of the agreement, a special Commission for European Law was created[60] consisting of 45 deputies representing all political positions in the parliament. During the new term of office the Commission for European Integration and the Commission for European Law were merged into the European Commission, which is responsible for the review of drafts of laws, aimed at the adjustment of the Polish to European Union law. At the same time the Senate created a special Commission of European Legislation.[61] During the new term of office, tasks of this Commission were taken over by the traditional Commission for Foreign Affairs and European Integration.

To speed up the process, the government has been presenting to Parliament, “horizontal” laws which bundle together legislation or amendments to legislation necessary to achieve harmonisation with the *acquis*. To this effect, in April 2000 the Committee for the European Integration adopted a document entitled: "The list of acts whose adopting is necessary in relation to the accession of Poland into the European Union" which contained at first 181 legal acts and subsequently 24 drafts have been added to it. The Council of Ministers, on November 14, 2000 adopted the list of acts to be passed in the year 2001, drawn up on the basis of the analysis of NPPM' 2000. The legislation need not necessarily be related to each other except that they are directly necessary for harmonisation. The European Commission has commented that it remains to be seen how this practice will affect legal transparency.[62]

Since the Copenhagen Summit in 1993, and in addition to transposing the body of EU legislation into their own national law, candidate countries must ensure that it is properly implemented and enforced. Poland has set up administrative structures and trained civil servants and members of the judiciary. The European Commission is in charge of the annual assessment of progress in these areas, made public each November. In November 2000, the Commission concluded that Poland continues to fulfil the Copenhagen political criteria, noting that some action had been taken to reform the judiciary, fight corruption and improve market transactions but that further efforts are needed, including the adoption of necessary legislation (see Section 3.1.4).[63] With regard to the Copenhagen economic criteria, Poland has been assessed as having a functioning market economy which should be able to cope with competitive pressure and market forces within the Union in the near term, provided it continues and completes its present reform efforts, including restructuring of state-owned enterprises, improvements to bankruptcy procedures and the completion of the regulatory and supervisory framework for non-banking financial institutions.[64]

Box 4. **The European *Acquis communautaire***

The Acquis communautaire comprises the entire body of legislation of the European Communities that has accumulated, and been revised, over the last 40 years. It includes:

The founding Treaty of Rome as revised by the Maastricht and Amsterdam Treaties.

The Regulations and Directives passed by the Council of Ministers, most of which concern the single market.

The judgements of the European Court of Justice.

The Acquis has expanded considerably in recent years, and now includes the Common Foreign and Security Policy (CFSP) and justice and home affairs (JHA), as well as the objectives and realisation of political, economic and monetary union.

Since the Copenhagen Summit in 1993, countries wishing to join the European Union must adopt and implement the entire *Acquis* upon accession, though there is some flexibility as to timing. The European Council has ruled out any partial adoption of the *Acquis*, as it is felt that this would raise more problems than it would solve, and would result in a watering down of the *Acquis* itself.

3. Administrative capacities for making new regulation of high quality

Transparency of the regulatory system is essential to establish a stable and accessible regulatory environment that promotes competition, trade and investment, and helps ensure against undue influence by special interests. Transparency also reinforces legitimacy and fairness of regulatory processes.

Transparency is not easy to implement in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; controls on administrative discretion; and implementation and appeals processes that are predictable and consistent. With most of these practices, Poland has made substantial progress over the decade. However, important steps are required to consolidate formal and informal practices as central pillars of an accountable and transparent regulatory policy.

3.1. Administrative transparency and predictability

3.1.1. Transparency of procedures to create new laws and regulations

Transparent and consistent processes for making and implementing legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the formulation of laws. In Poland, Chapter 3 of the Constitution establishes the limits to legislative action and defines the different types of regulatory instruments.

As indicated in Section 2.1, the 1996 *Law on the Organisation* together with its implementing regulations[65] govern the stages of the rule-making process and are publicly available. They regulate the process of preparing legal instruments, distribute the responsibilities of the different bodies involved in the process, and set out other important aspects such as the use of public and expert consultation.

In contrast, the criteria, and guidance that ultimately guide regulatory decision-making (such as a requirement for costs to outweigh benefits) are not explicit. For instance, no document, public or otherwise specifies the criteria used to determine when regulation is needed, nor are the criteria for choosing a particular regulatory option clear.

3.1.2. Transparency as dialogue with affected groups: use of public consultation

Public consultation gives stakeholders the opportunity to have active input in regulatory decisions. It is also a very useful mechanism for regulators to obtain valuable information on potential benefits and costs and on the prospect for successful application and enforcement. Consultation has also been linked to better compliance with new regulations. Important characteristics of consultation processes and programmes for regulation assessment include whether they are systematic and routine; and whether they are open to all major interests. The integration of the consultation procedures into decision making processes so that they actually improve regulatory quality as well as the transparency of the consultation procedures themselves are further crucial dimensions on the issue.

Consultation is systematic for some groups, whose right to be regularly consulted is guaranteed by specific laws. For discussing central framework laws or initiatives, the Council of Ministers established in 1994 the Socio-Economic Tripartite Committee. As a corporatist instrument, the committee comprises representatives of trade unions, employers and the Council of Ministers.[66] Sectoral laws also often require that authorities consult with traditional representative bodies. A notable feature is the selectivity of those that are legally required to be consulted. Depending on the subject of a regulation, the chambers of commerce, trade unions and the church are consulted.[67] For more specific laws, for example: teachers, employers' organisations, professional representative bodies (*e.g.* legal advisers and physicians), university student representative bodies receive a draft text. The list of bodies and organisations consulted contains about 80 bodies. The approach of specifying a list of 'consulted bodies' tends to leave out non-specified groups, which cannot express an interest in an issue if they cannot justify the relevance of the new rule.[68] Since 2002, the Freedom of Information Law extended the scope of public consultations. According to the new law, all public authorities are obliged to enable public access to information, unless restricted by other laws, including planned actions of the Legislative and the Executive and about all draft acts.

For instruments without a mandatory consultation requirement, no general overarching obligation exists to require consultation with the public prior enacting a regulation or sending a bill to the Parliament. However, public consultation is increasingly used in the work of the Council of Ministers.[69] At present, according to the principles adopted by the Council of Ministers the proponent body is obliged to enable interested parties to express opinions. The Rules and Procedure (as amended in September 2001) confers on the proponent body the obligation to send a draft act to the GLC before it is sent to inter-ministerial consultation, to enable the review of the scope of RIA and the scope of public consultations. In addition this obligation was enhanced when the Freedom of Information act entered into force, under which the public authorities are obliged to publish draft acts. The Government Legislative Centre (GLC) has been reminding proponent ministries of the obligation to consult when reviewing the notification for a new measure or the first draft of the measure's text and 'justification report'. For wide social issues and important matters of general interest, the government and proponent ministers have organised consultations of major laws, such as the education system reform. The actions undertaken include distributing leaflets, involving the media: television, radio and press.

The documents usually presented to the consulted parties include the draft act and the "justification report". Moreover, the official reasons for accepting or rejecting comments, in general or specifically, to parties that were consulted are required by the *Code of Administrative Procedures* to be presented by the proponent ministries.

Interesting practices to note exists among the laws which require open consultation. In the case of environmental protection and pursuant to a constitutional mandate, authorities have involved actively the citizens in the protection of the environment.[70] For example, the National Environmental Impact Assessment Commission (2000) was established in order to help implement provisions of the *Law on Access to Information and on Environmental Impact Assessment* as a body to give opinion and advice to the Minister of the Environment.[71] However, even in this case, ministries select the non-governmental organisations that have the legal right to be consulted and appoints the members of the commission. It should be expected that similar activities will be at present undertaken by the remaining ministers according to the obligations conferred on them by the Freedom of Information Law.

In a few cases, Poland has started to use 'notice and comments' mechanisms such as are used in other OECD countries and which provides a basic guarantee of transparency.[72] The Ministry of Environment is here too a leader in implementing this crucial transparency safeguard through the publication of some of the drafts of its major legislation in as well as reports, analyses, programmes and official statements the Internet (www.mos.gov.pl). For example, the publication of the draft *Law on Corporate Obligations in the Scope of Managing Certain Types of Waste and on the Product and Deposit Charge*s provided a valuable opportunity to a number of non-governmental organisations to submit critical observations and, as a result, improve the bill. As an important substitute for a general requirement, the Prime Minister presents to Parliament the legislative work programme at the beginning of the Government's office.[73] The government has also started to publish the major drafts acts on the website (see www.kprm.gov.pl).

3.1.3. Transparency in implementation of regulation: Communication

Transparency requires that the administration effectively communicates the existence and content of all regulations to the public and that information is provided to help citizens obey and make use of new laws. Poland has made great efforts in this area, though some improvements may be necessary.

The Constitution and the 2000 *Law on Publication of Normative Laws* require the publication of all legal instruments for them to be enforceable.[74] The Constitution(s), laws, orders issued by the President of the Republic of Poland, Council of Ministers, Prime Minister, Ministers, National Council for Radio and Television as well as some of the statements of the Constitutional Tribunal are published in the Journal of Laws (Dziennik Ustaw). Dispositions of the President of the Republic of Poland, resolutions of the Council of Ministers, dispositions of the Prime Minister, some of the Constitutional Tribunal statements, some of the resolutions of the National Assembly of the Lower House and Senate, some acts of the President of the Republic of Poland and some decisions of the Constitutional Tribunal are published in the Polish Monitor and (Monitor Polski). Local legal enactments are published in the regional gazettes (see Section 2.3). The journals and gazettes are sold at kiosks run by the Chancellery of the Prime Minister and in governmental administration bodies, courts and other official entities. The Journal of Laws and the Polish Monitor are edited by the Government Legislative Centre. Since January 2001, an electronic copy of the Journal of Laws and the Polish Monitor are available on the Internet (see www.gpkprm.gov.pl). The public can also access an Index of Laws where all laws in force and draft laws currently under parliamentary debate can be accessed through the Internet site of the Lower House (www.sejm.gov.pl).

The Ministry of Justice also keeps a register of the third category of legal instruments, known as 'internal normative instruments' (see Box 2), which are for clarification or are of detailed character, enacted by ministries and central bodies. However, the register is not published and is kept using traditional methods – no information technology is involved –.[75] Efforts to improve the readability of the law are noteworthy. Since 1991, the *Resolution of the Council of Ministers on the Principles of Legislative Technique* establishes requirements to encourage the use of precision, clarity and plain language in law

drafting.[76] It also requires that regulators draft the legal texts as precisely and comprehensively as possible and expresses the intentions of the legislator towards those affected. Other important rules of the *Resolution* include avoiding long, complex clauses, specialist terms, foreign terms and neologisms unless there are no adequate terms in the Polish language.

However, scope for improvement clearly exists to make laws and regulations more accessible. Despite efforts by the Ministry of Justice, to codify and consolidate the texts (see Section 4.1), the numerous amendments make the enforceable law unclear and hinder efforts to spread legal information and legal guidance.[77] In response to this problem, the 2000 *Law on Publication of Normative Law*s requires the Lower House of Parliament to publish unified texts of laws. So far no assessment of this initiative is available.

Furthermore, failures in an adequate communication strategy have also been linked to expensive and botched implementations of recent reforms. For example, the simultaneous introduction in 1999 of four fundamental social reforms concerning public health care, social insurance, administration and education provoked backlash against the reforms. Not only the legislation packages introducing the reforms were complex and unclear, but also little time was provided to citizens and business to conform to the rules. The laws were introduced without the required *vacatio legis* and the communication strategy accompanying the introduction of the reforms were not always effective.[78] Similar problems were experienced in 2000 with the introduction of four major laws on the same day creating the single national registry.[79] The creation of a unified and computerised national registry of corporations/entrepreneurs as a backbone of the national registry has also been marred by computer problems, postponing the benefits of this important reform.

Recent progress shows though, that the administration is learning from past mistakes. The Law *on Access to Information and on Environmental Impact Assessment* was passed in 2000 and a unit – the Centre for Environmental Information was established at the Ministry of the Environment in May 2001. The unit shall be carrying out tasks related to the implementation of new relevant provisions as contained in the Law. Similarly, the Ministry of the Environment is planning, in the future, to launch campaigns when new environmental laws enter into force. For example, in order to assist the implementation of the Law *on Corporate Obligations in the Scope of Managing Certain Types of Waste and on the Product and Deposit Charges*, a nation-wide information campaign relating to part of the provisions of this Law has been developed.

3.1.4. Implementation, compliance and enforcement of regulations

Adoption and communication of a law or regulation sets the framework by which policies are achieved. But the framework cannot achieve its intended objective if proper implementation, enforcement and compliance are not established. A mechanism to redress regulatory abuse should also be put in place, not only as a democratic safeguard of a rule-based society, but as a feedback mechanism to improve regulations.

Poland has an array of mechanisms to ensure that the administration is accountable and its enforcement procedures are fair. In terms of judicial review, Poles may exercise their constitutional rights through courts and tribunals: judicial review of administrative decisions through the Supreme Administrative Court, and assessment of the compatibility of the laws with the Constitution and the orders and dispositions with the laws and the Constitution through the Constitutional Court.[80]

According to the Constitution, the Supreme Administrative Court, common courts, administrative courts and military courts implement the administration of justice. The 1960 *Administrative Procedure Code* provides for appeals against an administrative decision to a superior administrative body.[81] After internal appeals have been exhausted, an action may be brought before the Supreme Administrative Court to decide the legality of an administrative action. This Court also makes judgements on the conformity of resolutions of self-government bodies to statutes.

The *Law on Enforcement of Administrative Proceedings* complements the *Administrative Procedure Code* through rules and mechanisms ensuring the fairness of the use of enforcement powers of national, regional and local governments.[82] For instance, this law clarifies the type of enforcement decisions, financial and non-financial, a national or local government can impose on civil parties.

However, long delays in the court system present a major challenge for citizens and businesses. Warsaw has the longest delays. The national average duration of a criminal/correctional procedure is six months, but it is 40 months in the capital. Commercial cases and transactions associated with the land register also have similar patterns.[83] Long delays to obtain routine court decisions in commercial matters, including contract enforcement unfortunately provides an incentive for bribery and corruption.[84] Delays and perception of corruption have pushed citizens to avoid the justice system and take their complaints to the Ombudsman. Since the last assessment by the European Commission, Poland has addressed some of the concerns. In relation to the judiciary and the delays and backlog of cases in the courts:

- The government created new divisions and appointed magistrates in the district courts, to focus on minor offences, fiscal minor offences, trivial offences and trivial fiscal offences and trivial civil matters;

- A law was adopted introducing simplified procedures in civil matters, as well as the National Penal Register was established, managed by the Ministry of Justice (May 2000);

- Registration systems have been set up. While there have been some teething problems, the National Judicial Register became operational at the beginning of 2001. Preparation for the reform of the land register system continues. Training of highly skilled court clerks who work on the land register has started.

- The government has improved the financial situation of the court employees.[85]

- The Ministry of Justice has been organising training programmes for judges and prosecutors for a correct implementation of European Law after the accession of Poland, and

- The Lower House passed a law on organisational structure of common courts (July 2001).

There have been critical reports – in particular from the European Commission – highlighting the extent of corruption in Poland. Partly in response to these criticisms, (although some actions had been taken earlier) the government has taken initiatives to enhance the accountability of the public service.[86] Steps include:

- The enactment in 1997 of the Law on the Limitation of Economic Activity by Persons Fulfilling Public Functions;

- The recent ratification of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime;

- The ratification of the 1997 OECD Convention on Combating Bribery of Foreign Officials in International Business Transaction;[87]

- The Head of the Civil Service appointed in May 2000 a group of five external experts as members to a newly created Commission of Ethics to prepare a Code of Ethics for the Civil Service, among other tasks.

- Law enforcement agencies counteracting crime were provided with higher levels of punishment.

The office of the Ombudsman was created in July 1987 and confirmed in the 1997 Constitution.[88] The Ombudsman (or Commissioner for Civil Rights Protection) is appointed to safeguard the freedoms and the human rights. The Ombudsman plays a central role in reducing corruption and increasing accountability. The Office is highly respected. The Ombudsman is appointed by the Lower House, with the prior consent of the Senate, for 5 years. Highly independent, the Ombudsman's jurisdiction covers all aspects of government and even extends to the courts, the Parliament, and the police. Its investigation powers can even reach areas normally considered private such as private complaints against supermarkets breaking labour laws on the grounds that the inspectors had not being doing their job. The Ombudsman has also played a regulatory advocacy role through its critical annual reports. He can complain against a defective law not only to the relevant ministry but also to the Constitution Court.

Poland still faces important challenges in the transparency of the enforcement and appeal systems. Solutions for the judiciary may need years of training and public investment as well as further improvements to the legal framework. Better accountability, more effective enforcement and higher compliance with regulations may also be improved through greater quality and visibility of annual reports and, in some cases, periodic ex post assessment of the regulators' performance. Although the Constitution guarantees citizens the right to access information on public authorities and persons performing public functions and the *Code of Administrative Proceedings* guarantees the right of citizens to be given explanations of decisions made by public servants, until recently, no specific rule and enforcement mechanism existed to ensure this. Since January 2002, the *Freedom of Information* Act establishes obligations upon the public administration to ensure citizens are given adequate explanations of decisions of the administrative bodies, should boost government accountability and transparency and complement the work of the Ombudsman. Its success will now depend on the quality of the support provided through the implementation institutions and enforcement mechanisms.

3.2. Choice of policy instruments: regulation and alternatives

Many of the benefits from regulatory reform come from the use of a wider range of policy instruments that work more efficiently and effectively than traditional regulatory controls. A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. The range of policy tools and their uses is expanding as experimentation occurs, learning is diffused and understanding of the potential role of markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

In this challenging area of regulatory management, the Ministry of Environment has taken the lead among cabinet members. Over the last 20 years, the Ministry has broadened and diversified the mix of instruments used in environmental policy and has been implementing a broad ranging strategy to ensure alternatives to traditional regulations. Some are worth noting. The Ministry has been signing covenants (agreements) with major polluters – the so-called members of the List of 80 – containing a timetable for the installation of new technologies and new investments to achieve the required standards in the future. Every year the Ministry awards leading clean companies with the Polish Environmental Leader title. The Ministry of the Environment and the National Fund for Environmental Protection and Water Management co-operate with the Bank for Environmental Protection and the Warsaw Stock Exchange to create a new financial mechanism to enhance resources for environmental protection. Interestingly this financial vehicle has been raising capital to finance municipal investment projects through environmental bonds. The Ministry has encouraged the chemical industry to participate in the Responsible Care Programme, which aims to introduce advanced environmental management and environmental certificates, and to implement cleaner and safer technologies.

But even in the field of environmental protection, further progress is needed. Decisions about what instruments and strategies are used is dominated more by EU accession considerations or the lobbying of particular interest groups, than by efficiency or cost-effectiveness considerations. In some cases, the choice of alternative instruments has not resulted in the implementation of the most efficient and effective regulations or non-regulatory alternatives. For example, the Ministry has been reluctant to institute trading of emission permits despite successful pilot studies and requests for permit trading by the power sector. Emission fees have been used but they are more effective in raising revenue than in lowering pollution. Also, taxes are used to some extent to provide pro-ecological incentives but they are not applied consistently to all of the most environmentally harmful commodities, *e.g.* coal.[89]

Some regulatory powers are shared with non-government bodies. In all cases, the bodies are not able to make regulation; instead self-regulation refers either to the management of their own affairs or on occasion the performance of tasks usually reserved for public administration. For example, upon application or agreement of a chamber of commerce, the Council of Ministers may entrust the chamber with the performance of certain tasks reserved in the legal provisions for governmental bodies.[90] The competent governmental bodies provide chambers with the information necessary to execute their statutory tasks. A similar organisation is the Polish Tourist Organisation which co-operates with the governmental administration, territorial self-government and employers associations from the tourism sector.[91] Others include the Workers' Allotments[92] and the Polish Union of Allotment Holders. Yet another example are association powers. One of such associations is the Polish Association of Power Transmission System Operators, which develops and promotes initiatives, attitudes and activities conducive to the functioning of a national power transmission system operator to make rational use of the power grid and power transmission facilities. Self-regulation is not without risks, of course, and the question is whether private regulators can be sufficiently independent.

More generally, the government should spread the efforts in the use of alternatives to regulation to other regulatory areas where benefits are as important as in the environmental protection field. A systematic search for the best instrument to achieve health and safety objectives or to raise standards in agricultural or food safety would improve policy outcomes in a more cost-effective way. As required in other OECD, the RIA should specify that proponent ministries study different options and justify the best alternative chosen.

3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development, review, and reform of regulations." A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*.[93]

The main instrument used by Poland's government to predict future impacts of new regulation is the 'justification report' of the draft act mandated by the *Rules and Procedure* (see Box 3 above).[94] This The *Rules* were enhanced in 1997. Previously, the government had few instruments at its disposal for such a task. The regulation establishes that all draft laws and regulations that are submitted for consideration to the Council of Ministers must have it. The 'justification report' needs to contain:

- A description of the current situation, including the need for regulation and its purpose;
- A description of the differences between the existing and proposed legal situation;
- A description and assessment of the expected effects of the proposed new regulation, concerning in particular impact on budgetary incomes and expenses, labour market, domestic and foreign concurrence of economy, situation and development of regions;
- A description and assessment of expected legal effects of proposed new regulation, including in particular discretionary powers and simplification of existing procedures and internal coherence of the legal system;
- How the proposal would be financed; and
- Information about public consultation or debate on the topic, if any.

Different bodies are in charge of supervising the quality of the 'justification report'. The Secretariat of the Chancellery tends to focus on the procedural aspects (*i.e.* all elements that should be considered are included). The Government Legislative Centre and Legislative Council focus on the legal impact of the proposals. According to the September 2001 amended *Law on Organisation*, the GLC is also responsible for co-ordinating preparation of RIAs, including review of the scope of RIA and the scope of public consultations. The Ministry of the Finance concentrates on the impacts to the budget.[95] The Office to the Committee for European Integration centres on the EU legislation compatibility. The Standing Team of Council of Ministers can raise concerns on the substance and impacts based on the text and the 'justification report'. However, there is no uniform agreed methodology across ministries on how to prepare the reports, generally more training is needed on quantitative techniques, and there are no specific criteria to determine when to accept or reject them.

Moreover, until now, the 'justification reports' have tended to be more legalistic and focused on qualitative assessments, although there are exceptions. A recent counter example, though, is the 'justification report' of the draft *Law on Corporate Obligations in the Scope of Managing Certain Types of Waste and on the Product and Deposit Charges*. For its preparation, the Ministry of Environment conducted a series of simulations to estimate the effects of the law on the operating costs of the economy and households. An extrapolation provided an evaluation of the regulatory costs to certain industrial sectors as well as state administration, local governments, state control bodies and environmental funds.

The September 2000 Resolution also proposed that the Ministry of Economy create within its Economic Strategy Department, a special division to co-ordinate work connected with regulatory reform, including providing support to the Team. In April 2001, the government provided the outline of Poland's full implementation of Regulatory Impact Analysis, to be enforced by the Governmental Legislative Centre (GLC) at the Chancellery of the Prime Minister (see Section 3.3). And in September 2001, a resolution introducing RIA was adopted on 4th September 2001, by the Council of Ministers (CoM). The CoM then adopted a set of rules for the RIA, which went into effect on 5 November 2001. These rules made it obligatory to prepare RIA for new legislation, i.e. all draft legislation being developed within government. The *Rules of Procedure of the Council of Ministers* and the *Law on Organisation* were amended to incorporate RIA in the rule-making procedures. According to the amended *Law on Organisation* of 21 December 2001 the Government Legislative Centre is obliged to co-ordinate RIA preparation for the governmental law-making procedure. Also the Government Centre for Strategic Studies (GCSS) may provide an additional quality control function in the form of a second RIA. In particular when draft entails important long-term impact on social and economic development, the Council of Ministers may entrust preparation of RIA to the GCSS directly.

In September 2000, and as a major element of the new regulatory policy, the government, led by the Ministry of Economy, started to develop a *Regulatory Impact Analysis System* based on OECD Best Practice.[96] According to the RIA principles adopted by the Council of Ministers in November 2001 and the December 2001 amendment to the *Law on Organisation*, RIA accompanies all bills and regulations prepared or issued by the Council of Ministers and ministers, as an integral, but separate component of the 'justification reports'. The RIA is prepared by the proponent ministries and is overseen by the Government Legislative Centre. The Secretary of the Standing Team of Council of Ministers provides a second and last approval before submission to the Council of Ministers. It focuses on the financial impacts to the State budget, the labour market, domestic and foreign competitiveness and regional development. A guide for bodies responsible for preparation of RIA is being elaborated in the Ministry of Economy

In the case of bills presented to the Parliament, the 'justification report' approved by the Council of Ministers is complemented with a second report with the same name containing a very similar list of requirements prepared by Parliament's committees and staffers during and before approval of the law. In addition, a short summary of the main findings in the explanatory statements is added when the draft law is discussed in a plenary session. During the Lower House discussions of each bill, including those from individual Parliamentarians, the Council of Ministers can further propose its opinion and propose amendments. Parliament determines whether the requirements for justification reports for bills have been fulfilled. In practice, the Parliament tends to focus on the harmonisation of national laws; the approximation of national and EU law; the impacts on the State budget and/or on regional and local government budgets. Via the Parliament's Internet site, citizens and interest groups have access to 'justification reports'.[97]

Assessment against best practice

Crucial principles and elements of the OECD 1995 Recommendation are currently in place in Poland. The government's September 2000 commitment to introduce a fully-fledged RIA mechanism brings Poland closer to the practices of leading OECD countries. However, even if approved in the next few months, Poland will need major efforts to implement and enforce RIA. Based on other countries' experiences, it will take even longer for the reform to produce results for the quality of regulations, based on a clear and balanced assessment of the costs and benefits. Such a medium term goal should not inhibit the government in such an essential investment as RIA has proved to be a significant instrument needed for a market-led growth strategy. To smooth and foresee possible obstacles in the implementation of RIA, the following analysis will be based largely on the formal features of the current 'justification reports' as well as some features of the still embryonic RIA.

Maximise political commitment to RIA. Use of RIA should be endorsed at the highest levels of government. Since 1997, a government resolution required a 'justification report' for all measures discussed in the Council of Ministers. A parliamentary rule requires a similar report. Active participation by most of the rule-making authorities, through the *Team for Legal Regulations Quality* in charge of designing the implementation of RIA, should permit wider acceptance and commitment to the tool. An important step to steel the commitment might be to mandate the signature by ministers of each RIA before any instrument is approved by the Council of Ministers. Importantly, the new initiative will require RIA for significant regulations not approved by the Council of Ministers.

Allocate responsibilities for RIA programme elements carefully. To ensure "ownership" by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between ministries and a central quality control unit. As in virtually all countries, in Poland the responsible ministries are the primary drafters of the justification reports. Quality control is mainly exercised by the Government Legislation Centre and the Standing Committee of the Council of Ministers. The September 2000 initiative putting the Government Legislative Centre in charge of assessing the quality of the RIA, provides an appropriate check and balance system, although more than legal expertise to balance the more political input from the ministers will be required. Also the Government Centre for Strategic Studies may provide an additional quality control function in the form of a second RIA. This is a unique function amongst OECD countries and it will be informative to see how it works in practice, in particular the extent to which the two RIA differ.,

Quantification of impacts. Except when evaluating budgetary impacts and some highly technical and exceptional draft measures, the 'justification reports' prepared in Poland are usually limited to qualitative impacts. However, an effective RIA should be based from the beginning on quantitative assessment based on sound methodologies to assure consistency and objectivity. Three areas of potential difficulty might need stronger attention. First, economic capacities need to be built in the Government Legislative Centre before a proper economic assessment can be performed by a traditionally legal entity. Second, RIA should distinguish clearly the budgetary impacts (cost on the government for instance in terms of enforcing the rule) from the impacts on employers, employees and society in large. A closer co-operation with the Ministry of Finance will be required on this aspect. Third, from the outset, RIA should include impacts on consumers and except as may be highlighted in competition impacts, this is not currently anticipated. A strategy to introduce quantitative assessment would be first to concentrate, as the UK did, on compliance costs of businesses. As capacities to prepare and evaluate the RIA increase, a goal for the longer terms, is for the government to progressively raise the standards and shift the focus to establish a full benefit-cost analysis, assessing all impacts: positive and negative.

Develop and implement data collection strategies. The usefulness of RIAs depend on the quality of the data used to evaluate the impact. An impact assessment confined to qualitative analysis would provide fewer incentives for regulators to be accountable for their proposals. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed.[98] An interesting practice that the Polish government could investigate consists in adapting the Danish system of panel tests where randomly selected firms evaluate the potential costs of a proposed regulation.[99]

Train the regulators. Regulators should have the skills to do high quality RIA, including and understanding of the role of RIA in assuring regulatory quality and an understanding of methodological requirements and data collection strategies. Poland intends to publish guidelines to enhance the capacities of regulators to prepare a high quality RIA. However, this will not be enough. Especially in a system highly biased towards legal quality rather than economic costs and benefits. To implement successfully RIA and obtain early results, the government will need to invest in training. Budgetary allotments and mechanisms will need to be approved and designed in order to avoid RIA becoming just another internal formality which decreases the cost-efficiency of the administration.

Target RIA efforts. RIA is a difficult process that is often opposed vehemently by ministries not used to external review or time and resource constraints. The preparation of an adequate RIA is a resource intense task for drafters of regulations. Experience shows that central oversight units can be swamped by a large numbers of RIAs concerning trivial or low impact regulations. On the other hand, ministries will have the tendency to prepare a RIA at the end of the process, completing it as a justification of the measure instead of as a powerful decision-making tool to be used from the beginning. One approach would be to use the justification report as a first stage RIA for all proposals and then identify those requiring a full quantitative cost-benefit analysis. As Poland's project modifies the current procedure of submitting a 'justification reports' for all draft measures, A targeting system should be implemented so that assessment is directed to where it will provide the greatest benefits. In its current form, the proposed mechanism gives the Government Legislative Centre the power to notify, if appropriate, the proponent ministry of the need to deepen the RIA (for instance, through a more extensive cost-benefit analysis) as well as to extend the list of entities to be consulted. Other countries' practices show that such a double stage procedure, though necessary, may not be sufficient. A public and transparent criteria for thresholds triggering a full quantification of compliance costs (for example monetary thresholds concerning the overall costs) should help the different partners to plan ahead. Indeed, too much discretion about what is a 'substantive cost' for the Governmental Legislative Centre might reduce respect for RIA by proponent ministries and raise complaints about unfairness and discrimination.

Integrate RIA with the policy making process. The inter-ministerial consultation followed by the analysis conducted by the Permanent Committee and the Government Legislative Centre of the 'justification reports' are strong processes onto which to build RIA. The existing use of the reports by Parliament's committees strengthens the possibility of RIA becoming a core policy-making instrument towards better governance coherence. Integrating RIA with the policy making process is indeed meant to ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy that meets objectives are a routine part of policy development.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can provide the data necessary to complete RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. If the requirements to consult with interested parties are fully implemented, this will be a major step in ingraining RIA in the Polish regulatory practices, although it should go further to establish notice and comment mechanisms that enable commentators to be self-selecting. Indeed, not only consultation with all affected parties is particularly useful to identify potential impacts, but also tend to increase the quality of RIA as proponent ministries tend to be deter by public exposure of bad quality RIAs. The system will be enhanced when the *Freedom of Information Act* provisions concerning posting all draft measures on the (Internet) Bulletin of Public Information will be implemented.

In sum, the existing 'justification report' mechanism and the *Law on Organisation* provides a good foundation onto which RIA can be adapted and integrated, as currently planned. Special attention should be paid to developing quantification requirements in the medium term, through a rigorous cost-benefit analysis, and wider public consultation mechanisms. A strategic approach to the implementation of RIA should be developed, using both strong enforcement by a central authority and adequate training and guidance for drafters. The planning of the implementation of RIA should be based on a solid analysis of current incentives, positive and negative, existing in the Polish civil service. Moreover, other OECD countries have learned that a periodic revision and improvement of the RIA system should permit improving the system after a few years of learning and experimenting. An accompanying but crucial area for further developments in the use of RIA should consist in adapting it to the Parliament's decision-making process. Given, the important role of Parliament in law creation as well as the huge number of amendments and revisions occurring there, the overall quality of the Polish legal, and thus the regulatory framework, will not be raised and sustained without full participation of the Legislature to the RIA programme.

3.4. Building regulatory institutions

Implementing systems for regulatory scrutiny and review is necessary but not sufficient for a successful programme of regulatory management and reform. Of primary importance is also the development of well-designed regulatory institutions. The key issue is how accountable and independent institutions, which resist capture by interest groups, either public or private, can be established. In Poland, the general assessment is that the new regulatory agencies are achieving a significant amount of independence although this is complicated by the constitutional constraint that they cannot issue new regulations. The role and relationship between the regulators and the competition office differs between regulators. Chapters 3, 5 and 6 of the report provide greater clarification over the respective responsibilities and performance of the regulators in Poland.

Since the early 1990s, Poland has been establishing sectoral regulators, a process accelerated recently in the light of the EU harmonisation programme. The tendency has been to create authorities for each sector or subsector with an assessment in terms of budgetary or human resources impact on the public service. In the case on financial sectors more than eight co-exist.[100] As 'central authorities of the state administration', they are supervised by parent governmental bodies. The Minister of Economy monitors the *Energy Regulatory Authority (*1997). Since October 2001, The Minister of Infrastructure monitors the *Office of Telecommunications Regulation.*

A parent law defines the powers of each one of these regulators. However, according to the Constitution, only ministers, as members of the Council of Ministers, can issue secondary legislation in the form of regulations.[101] This provision is the consequence resulting from the exhaustive and closed catalogue of sources of law adopted by the Constitution.[102] Within this constraint, the Polish regulatory agencies enjoy significant independence in terms of setting budgets (for some of them with an element of self-financing) and staffing policy. In terms of administrative procedures, the decisions of the Energy Regulatory Authority can be appealed to the Anti-monopoly Court in Warsaw. In the case of the Telecommunications Regulatory Authority (TRA), the appeal should be lodged to the Supreme Administrative Court. However, in cases expressly defined by the Law, decisions of the TRA can also be reviewed by the Anti-monopoly Court in Warsaw. Though differences exist among sectors, their primary function consists in issuing licences and advising the government in setting regulated prices. Ministers on the other hand retain the responsibility for overall policy, sectoral development and central issues such as the definition of the universal service in terms of availability and quality. Most of the parent acts establish a consultative committee of consumers and enterprises reporting to the regulator.

A good basis for ensuring independence consists in the establishment of a transparent appointment system of the executive officer(s) to avoid patronage and undesirable government influence. In Poland, the Prime Minister appoints the heads of the main sectoral regulators. This approach to appointments differs from higher level bodies where the Parliament House and Senate appoint or elect their officials.[103]

A central issue for a proper management of the sectors is the degree of co-operation between the sectoral regulators and the competition authority (OCCP).[104] Without exception, competition law applies to utilities and network sectors, though the regulators participate in the protection of the consumer rights and the prevention of monopolistic practices. There are few formal rules or procedures to govern the relationship between the OCCP and the increasing number of sectoral regulators. Co-ordination is achieved through informal relationships and consultation. Because the authorities are recent, it is difficult to foresee how the relationships will evolve. Some difficulties have occurred in this sector, though.[105] Recent laws clarify the relationship, but overlapping jurisdictions are likely to occur in the future. At some point, a more formal co-ordination process may be necessary.

4. Dynamic change: keeping regulations up-to-date

Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. Most OECD countries have enormous stocks of regulation and administrative formalities that have accumulated over years or decades without adequate review and revision. This Section examines capacities and mechanisms to systematically review and update the quality of national regulations, as well as programmes to reduce administrative burdens by cutting "red-tape".

4.1. Revisions of existing regulations, laws and subordinated regulations

As in all countries, responsible ministries consistently monitor the effectiveness of the laws falling within their competence, supervise the impacts of their initiatives, and evaluate the opinions of interest and professional groups. This monitoring is a regular source of the motivation to amend laws or bring in new ones but it is not systematic. As well as this common mechanism, Poland has engaged in a massive renewal of its existing legal framework through a number of initiatives. Though no specific data exists, the government considers that during the 1990s, a considerable majority of laws and regulations have been replaced.

A first driver has been the effort to transpose European Law (see Section 2.3). Through it, and in particular the transposition of Single Market directives, Poland has been rapidly modernising its product market regulatory framework.

A second initiative has been the constitutional review of the sources of law launched in 1997. Basically, the aim of this singular endeavour was to adjust law in force to the requirements of the 1997 Constitution, and in particular to the exhaustive and closed catalogue of sources of law adopted by this Constitution. As a result, it permitted a drastic reduction in the discretion of the administration to impose rules and requirements to society without clear parliamentarian authorisation as well as to restate the law in a more organised manner.

To carry over this massive endeavour in the two years prescribed by the Constitution (before October 1999) the Council of Ministers designated the Legislative Council to co-ordinate the review process. Periodic progress reports have been submitted to Parliament. The review consisted of a series of tasks such as identifying all the existing laws and regulations; specifying which normative measure should be a primary legislation or a secondary legislation; and amending and enacting them accordingly. In the case of local regulations in force, the Constitution automatically redefined them as local legal measures.[106] By the end of 1999 the Parliament passed or amended more than 30 laws**.** One year later, in December 2000, the Parliament enacted a "conversion law", which covers about 80 laws, which repealed a large collection of laws and subordinate regulations. The list of subordinate acts, which have been revoked as unconstitutional, has been presented by the Council of Ministers in the announcement of 18th December 2001.[107]

A third initiative to improve the quality of the 'stock' of regulation also merits attention. Though its aim and scope seem less important than the constitutional review, its permanent basis make it a modern regulatory policy. In 1997, the government assigned the Ministry of Justice to co-ordinate a codification programme covering various law disciplines such as the preparation in 1997 of a *Criminal Code* merging three Laws; a new *Penal* and *Fiscal Code* in 1999 replacing rules inherited from the previous regime; and a *Commercial Company Code* in January 2001 replacing the 1934 *Commercial Code*.[108] Work is also underway on major amendments to the *Civil Code*, the *Code of Civil Procedure*[109] and *the Family and Guardianship Code*, as well as the preparation of a new *Code for Petty Offences*, and on an *International Commercial Arbitrage Law* and a new *Bankruptcy Law*.

Despite all the efforts to modernise its legal framework in the past few years, Poland still lacks a clear policy to maintain the quality of existing laws. Past endeavours have tended to focus on legal aspects rather than economic ones. Moreover, policymakers have recoiled from using of automatic revision mechanisms or drastic 'sunsetting' measures. As the country stabilises its legal framework, such tools may be instrumental to maintaining an adapted and flexible framework.

4.2. Reform of permits and licences and impacts of administrative burdens

An important focus of Poland's economic policy is the improvement of the environment for SMEs, including the regulatory and administrative framework (see Box 5). As a major initiative, the government passed the *Business Activity Law* in late 1999 reforming thoroughly the legal framework for the functioning of enterprises in Poland.[110] The law – also known as the 'Economic Constitution' – restates and substantiates the fundamental provisions of article 22 of the Constitution's principles of freedom to undertake and conduct business, equal rights of entrepreneurs, fair competition and consumer rights protection, as well as observance of fair practices in trade. It also reaffirms that the only way to limit economic freedom is by way of a law and only if it is in the public interest.

More pragmatically, the law determines a list of areas subject to licensing and regulates general principles of granting licences and permits. Through the law, the number of economic areas of activity subject to licensing was reduced from about 30 to only eight. In 12 areas, permits replaced licences and consequently reduced the amount of discretion available to officials in charge of delivering them. Every business satisfying the statutory conditions may get a permit. The deregulation also included the repeal of controls in 10 areas of business.

Box 5. **SME policy in Poland**[111]

Throughout the communist period, a moderately large craft sector survived. A specific law protected their rights and responsibilities, and included the duty to provide vocational training. So, a fledgling SME sector was already in existence. After 1988, there was a new law on economic activity, and SMEs developed quickly.[112]

- In recent years, SMEs have pushed for a series of initiatives and programmes to improve competitiveness. In 1999, the government approved a programme which aims to improve their capital formation, domestic competitiveness and export performance via technology transfers, vocational training for entrepreneurs, support to their overseas trade activities and an export credit insurance scheme.[113] In the same year, the Business Activity Law confirmed the freedom of entrepreneurial activity and deregulated licences and permits (see main text).[114] In 1999, also tax reform reduced corporate rates gradually from 34% in 1999 to 22 in 2004 and simplified the taxation of small firms.

- In 2000, the government established the Polish Agency for Enterprise Development, which has the task of implementing economic development programmes, in particular through support mechanism for SMEs exports.[115] In the same year, a law clarified the conditions for admissibility and monitoring of public aid for entrepreneurs.[116]

- In 2001, the government is planning further changes in the law system to facilitate the access of SMEs to external financing sources, e.g. through development of a credit guarantee system.

It is too early to assess the performance of all the reforms and programmes mentioned above and in particular if they will permit Poland's SMEs to continue growing, start exporting and surviving increasing external competition. Even so, some areas for work and improvement include:

- Instability of the regulatory system, higher standards, in part due to EU harmonisation, and more efficient enforcement strategies are raising the cumulative regulatory burden as a survey[117] among SME entrepreneurs indicates;

- Specific regulations, such as one which makes it impossible for enterprises to renew fixed-term contracts with the same employee more than two times are constraining SMEs' growth and obstructing the hiring of staff;
- Resisting the pressure of SME lobbies which can press for unneeded and distorting protection with unforeseen consequences; and
- Lack of adequate transparency and excessive discretion in allocating funds and other incentives are distorting competition among all enterprises, including SMEs, and fostering corruption.

5. Conclusions and recommendations for action

5.1. General assessment of current strengths and weaknesses

In twelve years, Poland has moved from a planned economy to a market-led economy in which today about 70% of the GDP is produced by the private sector. Governmental institutions based on democratic principles and the rule of law has replaced an authoritarian regime.

This rapid development has been supported by the building of robust foundations and capacities of a modern regulatory framework. Despite the gaps, weaknesses and scope for further progress, the reforms and regulatory policies clearly have brought Poland into the path of the OECD mainstream. Approximation to Europe's legal standards will continue to drive such trends. In addition to addressing remaining discrepancies, Poland needs, in the near future, to consolidate the changes and persist in implementation of the reforms. This should allow the reforms to be embedded into the governmental, social and cultural fabric. Furthermore, it should provide Poland's citizens and businesses the benefits of a modern regulatory environment conducive to further economic progress.

Poland can offer important lessons to other countries. A pragmatic approach to reform avoided ideologically driven changes, which can often backlash and build distrust inside the political systems and society. A structural revision of the sources of law reduced the administration's regulatory discretion and promoted a constitutional clean-up of the 'stock' of regulations. The light regulation enshrined in the 1999 *Business Activity Law* has provided support to the functioning of the market economy. A strong and independent ombudsman has also proved a clear pillar for transparency and accountability of the government. Other noteworthy strong points include the important 1996 reform of the centre of government, and the adoption in September 2001 of the 1995 OECD *Recommendation on Improving the Quality of Government Regulation*

However, Poland still faces important challenges to complete its transformation:

- Despite programmes to reform the administration and the *Civil Service Law* and notable exceptions, such as the Governmental Legislative Centre, performance is low and the overall quality of **human resources** in the public service needs further development. Budgetary constraints set limits for any easy solution. But it is important that the government continues with its steady progress towards more flexible structures. Performance incentives and mobility could accelerate the changes and consolidate the emergence of a politically neutral, professional and merit-based civil service. Furthermore, the interventionist culture of many administrators still has to change.

- **Transparency** in rulemaking has been in need for improvement. The new mechanisms recently adopted by the *Law on Organisation*, the *Rules and Procedure* of the Council of Ministers and the *Freedom of Information Law* enhance procedures for the participation of all interested citizens in rule-making. However, a strict implementation of these measures and a compliance in spirit as well as in the form will go a long way to cement transparency in Poland rule-making capacities.

- Poland has been better at producing laws than at enforcing and applying them. This is generally the case during an intensive phase of re-inventing the legal framework. But in the medium term, impressions that legislation is 'cosmetic' undermines its legitimacy. Moreover, insufficient attention has been given to ensuring regulations are enforced, compliance-friendly and implemented well. One significant and additional element created by **weakness in the implementation** of laws and regulations relates to the potential for abuse linked to excessive discretion when applying regulations.

- The government is committed to adapting all aspects of the OECD's 1995 Recommendation. Strengthening the **regulatory management system** will not only require the adoption of RIA in the statutes but sustained efforts – including with appropriate budget and staff – in the coming years to implement and enforce it. The low quantitative skills and the dominance of a legal perspective among the drafters are crucial challenges to tackle with consistency and sufficient resources.

- The modernisation of the regulatory management system of **Parliament** in many ways lags the government. As a result, many laws have lower quality than their subordinate regulation. The frequently required revisions and amendments are a cause and a consequence of such weaknesses.

- Likewise, the **Judiciary** needs further overhaul to operate faster and with more sensitivity to the problems of a market economy. The capacity of the Judiciary, which is an issue that must often be confronted by transition economies, is a fundamental link in the overall structure of interlocking institutions that together establish the incentives and pressures for high-quality regulation. The courts must provide a respected and effective infrastructure for dispute settlement. In most OECD countries, the ultimate check on administrative abuses is the potential for review and reversal by the courts under principles of administrative law. Such deterrence should be credible to be effective.

5.2. Policy Options for Consideration

This Section identifies actions that, based on international consensus on good regulatory practices and on concrete experience in OECD countries, are likely to be beneficial to improving regulation in Poland. They are based on the recommendations and policy framework of the 1997 OECD Report to Ministers on Regulatory Reform. Some additional recommendations also address Parliament, though this goes beyond the object of the chapter.

1. Continue to enhance general regulatory quality: strengthen processes and criteria for making regulations with a clear timetable

Despite the number of initiatives to improve regulatory management, the quality of regulations – – can be improved, by enhancing transparency and reducing excessive discretion in their application. This will also reduce costs. The Team for Legal Regulation Quality has improved the basis for rule – making by developing a RIA policy. The implementation of the recommendations of the Team should strengthen the explicit policies applicable to the drafting of new legal instruments. Additional policies such as a stronger commitment to alternatives, increased focus on compliance and further improvements of quality standards (for example a stricter enforcement of the requirement that the benefits of regulation must be higher than the costs) are also needed.

To sustain the policy over time, as well as ensure adequate compliance across the government, the government and parliament may consider establishing the policy in a law rather than in secondary legislation. A clear timetable for the implementation of specific recommendations that will fully embed the new regulation making-processes and criteria should be agreed and made public as soon as possible.

Regulatory quality would also be enhanced if an independent body was mandated to advocate regulatory reform. One option would to require the Government Legislative Centre to play a role similar to that of the UK's Better Regulation Task Force.

2. Strengthen key central institutions to drive regulatory policy

Regulatory oversight should remain at the centre of government as a core management function. Regulatory reform must continue to be strongly promoted, despite the significant work already carried out as there is still much to done. The Government Legislative Centre should act as the central and independent institution to ensure the quality of RIAs and the other regulatory instruments and should be backed by statutory mandate. In particular, the government and Parliament should clearly define its tasks and responsibilities vis-à-vis other central bodies such as the Committee of European Integration, the Legislative Council, and the Ministry of Economy's Team for Legal Regulations Quality. To perform its RIA tasks, the Governmental Legislative Centre would require a multi-year programme to build its capacity to conduct economic analysis and other expertise required for RIA. It would also require adequate resources including for the hiring of non-lawyer specialists. An annual report to Parliament on its achievements and challenges, as well as assessing compliance, with the regulatory assessment policy by line ministries, would further strengthen its accountability and influence.

It is important to ensure that the active regulatory quality advocacy role, currently performed by the Regulatory Quality Team, continues, including advising the Prime Minister on a regular basis. Under the Government's new plan for economic development a similar mandate, as that held by the Team, has been given to one of the associated working groups. It will be important to clarify how this new body will work with the team, or indeed if it will replace it.

Implement Regulatory Impact Analysis for all new regulations: establish a clear and comprehensive implementation plan

RIA can systematically help to ensure the deployment of the most efficient and effective regulations. The justification report, which has so far been required for all primary and secondary legislation has not proved sufficiently rigorous. The government has recognised this and has recently established a RIA system. This excellent initiative will require sustained commitment over time, specialised skills and adequate resources. The government should therefore tackle the challenge of implementing RIA with a careful plan. RIA should be required for all substantive new draft laws and

regulations (*i.e.* draft laws, acts, resolutions, orders, etc.), going beyond the formal definition of primary and secondary legislation. Targeting of those proposals that are expected to have the largest impacts would permit a better management of scarce RIA resources. A simple RIA could be required for all measures during the early stages of decision making. At more advanced stages, and based on the expert opinion of the oversight unit, a thorough RIA could then be required for the most important proposals, perhaps those that could impose costs above a certain threshold.

In the medium term, the government should adopt an explicit benefit/cost test together with more technical implementation strategies (training, data collection techniques, etc.). The analytical rigor of RIA would improve over time as capacities were built inside the ministries, with a corresponding increase in the level of scrutiny of RIA quality.

In both the short and medium term, the RIA process should be fully integrated into the public consultation process, with RIA outcomes made available as key inputs to consulted parties, and the results of consultation fed into refining the RIA and the regulation. As stated in the previous recommendation, the establishment of a permanent body to manage RIA will improve its implementation. Without dedicated enforcement, RIA is not likely to deliver real improvements in the quality of regulations.

Parliament initiates many of its own bills and often extensively amends drafts submitted by the government. A proper RIA mechanism would contribute to the quality of legal instruments passed by Parliament. Consider how RIA can be made part of the Parliamentary law making process. For example, Parliament's RIAs could build on the RIAs accompanying bills proposed by government. An independent joint unit in the Chancelleries of the Parliament could manage the RIA process.

3. Enhance consultation and communication in the rule-making process

The keys to success are to make consultation systematic and routine, and to make it open to all major interests. Consultation in Poland has so far been systematic for some groups (and often enshrined in the law), but this approach tended to leave others out. Recent enactment of the Freedom of Information Law requiring consultation with all potentially interested parties for all new draft laws and regulations is a significant break with the past. Further efforts should now concentrate on enforcement.

Consultation and communication in the regulatory process are essential to transparency. Adoption of a general consultation requirement open to all self-selecting interested parties covering all draft laws and subordinate regulations would promote both the technical values of policy effectiveness and the democratic values of openness and accountability of government. The quality, relevance, and effectiveness of regulation will be much improved. Requiring that all regulatory projects be published together with the regulatory impact analysis (see previous recommendation) could further strengthen the system. Under the umbrella of the Freedom of Information Act, it would be important to ensure that all bodies and regulators organise active consultations with *all* potentially interested parties on new draft laws and regulations.

'Notice and comment' processes based on clear rights of access and response should provide a safety net against capture and abuse. The general model for this instrument, the 1946 Administrative Procedure Act (APA) of the United States, requires that each agency (1) publish a notice of proposed rulemaking in the Federal Register (official bulletin), (2) provide all interested persons – nationals and non-nationals alike – an opportunity to provide written data, views, or arguments on a proposed rule, and (3) publish a notice of final rulemaking at least thirty days before the effective date of the rule.[118]

Active public consultation mechanisms, such as specific advisory groups or ad hoc meetings with interested parties, will continue to be needed as a crucial element for sustaining an efficient, transparent and accountable regulatory management system. To ensure the effectiveness, representativeness and accountability of these groups, standard procedures should be set and enforced across the government.

4. Ensure effective enforcement and compliance with the new openness and accountability standards set up by the Freedom of Information Law

While the Constitution requires civil servants to make public their reasons for a decision, there is no enforcement of this requirement. Openness and accountability of the law and regulation-making process has only recently been reinforced with the new Freedom of Information Act. This will not only improve regulatory quality but also strengthen the democratic foundations of the market economy. Its effective enforcement will be the next important step to entrench accountability across the public administration. Factors to consider include a dedicated institution (such as the Ombudsman), and training and stronger reporting mechanisms (such as an annual public report to Parliament).

5. Reduce administrative discretion: improve transparency and simplify forms and procedures

The transparency and predictability of regulation needs to be improved. The complexity of administrative formalities (*e.g.* obtaining licences, tax issues) needs to be reduced. This will ease the burdens on business. It will also limit the scope for discretionary decisions by officials in implementing regulations, which encourages corruption. A thorough review of administrative procedures and forms of licences and permits, followed by elimination, simplification, or re-engineering to reduce the potential for abuse, could contribute significantly to reduce excessive administrative discretion by eliminating the monopoly of information in the hands of bureaucrats. Mexico's establishment of official registry for all administrative formalities (that is, procedures and forms) is an interesting example that has enhanced transparency for users in terms of the content and form of permissible regulatory actions, and has forced a rationalisation of ministry rules. The registry should be made available through the Internet. A place to start may be a registry for business licences and permits. The third level of legal instruments (called internal normative instruments issued to clarify or provide detail for government bodies) should, at a minimum, be publicly accessible. An analysis should be conducted of their nature and impact and an assessment made as to whether they should be subject to some form of impact analysis. The registry could be used to help eliminate, simplify and rationalise formalities. ***Clarify and develop the framework for independent regulatory agencies***

The institutional framework is already complex, yet regulatory agencies are multiplying, and their respective roles, responsibilities and scope for independent action are not always clear. A policy with clear criteria to consider when establishing a new sectoral regulator should avoid the unchecked and unjustified multiplication of agencies. The creation of new bodies should be justified in terms of potential impacts on the whole institutional architecture, budgetary considerations, the national pool of technical expertise, duplication and conflicts of interest for the existing regulator. A central question concerns ensuring a real independence from the political sphere as well as regulated and other interests. Another issue is the scope of their powers. It is not clear whether the Constitution allows regulatory powers to be devolved from Ministries to regulatory agencies. The current 'independent' status of the existing regulators should be tested in court to determine whether regulatory powers can legally be devolved from ministries to the agencies. If they cannot then other avenues that allow agencies to independently regulate should be pursued. As a counterpoint, consider whether accountability needs to be strengthened at the same time. Care should be taken to enshrine from the outset quality principles in the rule making of the regulators' procedures and practices (*i.e.* RIA, consultation, compliance assessment, etc). Establish a policy with clear criteria for the establishment of new sectoral regulators. Issues to take into account should include: potential impact on the overall institutional architecture, budget, availability of technical expertise, duplication and conflicts of interest with existing regulators. Links with sectoral ministries and the competition office should also be clearly worked out. The recent policy proposal on Governance and Accountability in the Regulatory Process prepared by Ireland could be used as a starting point.[119]

6. Improve implementation of, and compliance with, regulatory quality principles

Implementation of regulations, and the linked issue of regulatory compliance, needs much more attention. Although Poland has a framework of mechanisms to ensure that the administration is accountable and its enforcement procedures are fair, these are not always effective. As much of the system relies on the courts, long delays in the courts undermine it. In any event the approach needs to be much broader than judicial review. The complexity of the policy merits an array of initiatives. The Government Legislative Centre should concentrate attention on monitoring the implementation, enforcement and compliance with regulations.. An annual report to Parliament should summarise the general and specific efforts of ministries and administrative bodies in this regard. Complementary to this, a public inquiry by the Ombudsman and the Supreme Chamber of Control (National auditing office) or an independent commission could explore the degree and trends of regulatory compliance of a dozen key existing regulations. The study should in particular link compliance of the regulations with the implementation and enforcement efforts. Lessons learned from this study should be used to guide future implementation programmes. Lastly, the government should continue a pace with training programmes for regulators and administrators emphasising non-legal managerial and economic skills.

7. Strengthen the regulatory quality of local government

The quality of regulation at local government level is poor. New structures are in place but this has not been followed through with policies to ensure that regulation at this level is of the same quality, at least, as regulation enacted at the centre of government. Given the substantial devolution of powers, this is a major weakness. The government should accompany ex post controls of the courts and competition authority with accountability and transparency measures to be applied before local government regulations are adopted to reduce the risk of harmful regulatory competition, capture by interest groups, and corruption problems in sub-national governments. Regions, counties and local governments should, at minimum, be expected to apply the OECD *Recommendation for Improving the Quality of Government Regulation* and its accompanying checklist. Benchmarking regulatory frameworks, such as the number and quality of business licences, in important municipalities could also provide strong incentives to detect best practices or shame laggards. More transparency could also be introduced into making and applying regulations, at regional and local levels, including clear responsibilities between the levels of government especially when they are operating in the same area. Also, processes are needed to systematically assess the consistency of the regulations across the different levels of government.

APPENDIX

Table A. Division of main regulatory powers across levels of government in Poland

Policy Area	*Gminas* – communes	*powiats* counties	*voivodships* regions	state
Security, Police		*	*	*
Justice				*
Fire Precautions	*	*	*	*
Fire Fighting		*	*	*
Public Order (Civil Protection)	*	*		
Pre-School Education	*			
Primary Education	*			
Secondary Education,		*	*	
Teacher Training			*	
Vocational and Technical Education		*	*	
Higher Education			*	
Adult Education	*	*	*	*
Operation of the Public Health Service Institutions		*		
Hospitals		*	*	*
Public Health Protection	*			
Specialised Health Services			*	
Medical Emergency And Ambulance			*	
Spas and Health Resorts			*	
Social Welfare Services that Extend Beyond *Gmina* Boundaries		*		
Social Assistance	*			
Shelters and Orphanages	*		*	
Old Age Homes			*	
Social Insurance				*
Communal Housing	*			
Town Planning	*		*	*
Building Supervision, Registry And Exchange Of Land		*		
Water Management		*	*	
Prevention and Management of Natural Disasters, Including Flood & Fire Precautions	*	*	*	*
Water Supply (Treatment)	*			
Household Sewage and Waste	*			
Sanitary and Epidemiological Supervision		*		
Communal Cemeteries	*			
Slaughter Houses		*		*
Land Amelioration			*	
Environmental Protection	*	*	*	
Culture	*			
Support Of Cultural Institutions Where Activities Extend Beyond Communal Boundaries		*		
Cultural Institutions/ Preservation Of Cultural Assets			*	
Theatres, Concerts	*	*	*	*
Museums, Art Galleries, Libraries			*	
Parks, Open Spaces	*			
Sport (And Leisure)	*			
Registry Of Religious Worship[2]				*
Highways				*
Modernisation And Upkeep Of *Voivodship* Roads			*	
Road Construction And Maintenance		*		
Gmina Roads, Bridges, Squares, Streets, Traffic Management	*			
Urban Transport, Railways	*	*	*	*

Policy Area	*Gminas* – communes	*powiats* counties	*voivodships* regions	state
Local Public Transport	*			
Ports				*
Airports				*
Gas	*		*	*
Water (Irrigation)	*		*	
Farming, Fishing	*	*		
Electricity	*		*	
Commerce	*	*	*	*
Promotion Of Economic Activities		*		
Counteracting Unemployment		*		
Protection Of Consumer Irghts		*		
Marketplaces And Halls	*			
Maintenance Of County Facilities And Public Utilities		*		
Tourism	*	*	*	*
Territorial Development			*	
Territorial Planning,	*			
Property Administration	*			
Modernisation Of Rural Areas			*	
Municipal Police	*			
Construction Of Schools – Auxiliary Staff	*	*	*	*
Nurseries And Kindergartens	*			
Repair And Maintenance Of Schools	*	*	*	*

Source: SIGMA, Public Management Profiles of Central and Eastern European Countries: Poland, November 1999, pp. 1-23 and updated by the Government of Poland, June 2001.

NOTES

1. See, for example, OECD (2000), *The OECD Reviews of Regulatory Reform, Regulatory Reform in Hungary*, Paris and OECD (2001) *The OECD Reviews of Regulatory Reform, Regulatory Reform in the Czech Republic*, Paris, forthcoming.

2. Graniecki, Maciej, 2000, *Evaluation of the Polish Legislation in the Process of Approximation of Law*, Evaluation of Legislation, Fourth Congress of the European Association of Legislation, Warsaw, June, p. 2.

3. See Agh, Attila (1998) "The Early Comer: Poland" in *Emerging Democracies in East Central Europe and the Balkans*, p. 28.

4. Legislation on liberalisation came into effect on 1 January 1990.

5. Agh, Attila (1998) "The Early Comer: Poland" in *Emerging Democracies in East Central Europe and the Balkans*, pp. 36-37.

6. See Johnson and Shliefer (1999); in *Coase v. the Coasians*, NBER Working Paper 7447, p. 9.

7. OECD (2001), *Economic Surveys: Poland*, April, p. 8.

8. Poland's constitution-making process was protracted because initially it was difficult to achieve consensus on its make-up. After long debates in the Lower House, the first version of the Constitutional Act was adopted on 17 October 1992. It was not a full constitution as it dealt exclusively with the relationship between the legislative and executive branches of power and regulated the system of local governments, but it did not deal with the judiciary nor stipulate the rights and freedoms of citizens. The Lower House decided that this "Little Constitution" would remain in force until a new complete constitution was adopted, which eventuated in 1997.

9. The Constitutional provisions are recognised as repealing directly and immediately the former provisions of ordinary legislation incompatible with the provisions of the new Constitution, if this incompatibility is apparent and the form of constitutional regulation allows introduction of this regulation directly into the legal system to replace the statutory regulation.

10. Poland has experienced a number of waves of change over the last 100 years, affecting its administrative traditions. Independence, regained by Poland in 1918 after 120 years of partition, ie occupation of the Polish territory by Russia, Prussia and Austria meant the state administration had to be created from scratch. The task was made more difficult since it required harmonisation of the legal system in a country where until then three different legal systems had been in force. The process of unification was complete by the 1930s.

11. One important initiative was the adoption of an Act on the State Civil Service (1922), making Poland one of the first European states to adopt a legal act establishing the civil service along with obligations to serve the public interest and to notify superiors about any extra employment which could could yield material gain. This ended when the Civil Service was abolished in 1939, and after 1945, the administration of the state became subordinated to the communist party.

12. Legislative Council, 1999, *Report on the direction of urgent changes in the legal system of the Republic of Poland, Warsaw.*

13. Commissioner for Civil Rights Protection, 1999, *Annual Information*, Republic of Poland, Warsaw, p. 12.

14. Business Centre, 2001, *Regulatory Framework of Poland in 2000*.

15. Reports by the Supreme Audit Chamber, Ministry of Internal Affairs Report (May 1999), scholarly publications, public opinion surveys, numerous press reports and the World Bank, 1999, *Corruption in Poland: Review of Priority Areas and Proposals for Action*, Warsaw Office, (October 11) website: http://www.worldbank.org.pl/html/corruption.html#mediumterm. The European Commission has also stated that: "a serious effort must now be undertaken to deal with corruption comprehensively, since it is recognised as a major problem and a barrier to improving administrative efficiency and is hampering the institution building."; and that there is a "generally negative perception of justice in Poland by the average citizen who is complaining increasingly about the low level of efficiency of the judicial system to the public Ombudsman." European Commission, (2000), *Poland 2000, Poland's Progress towards Accession*, 8 November, pp. 75 and 17, respectively.

16. Graniecki, Maciej (2000), *Evaluation of the Polish Legislation in the Process of Approximation of Law*, Evaluation of Legislation, Fourth Congress of the European Association of Legislation, Warsaw, June, p. 5.

17. *Art. 91.2 of the Constitution.*

18. Published in the Journal of Laws

19. In this context, the term "act" is used as meaning a piece of primary legislation, for example Freedom of Information Act, and the term "law" is used to make reference to a broader term, for example civil law.

20. In this context, the term "act" is used as meaning a piece of primary legislation, for example Freedom of Information Act, and the term "law" is used to make reference to a broader term, for example civil law.

21. The Senate of Poland Chancellery (2001), *Reply of the Senate of Poland Chancellery; to the Questionnaire for the conference in Estonia; Background Information on Law Making* (Text prepared by Dr Wojciech Or•owski, expert of the Senate Information and Documentation Office), Warsaw, April 26.

22. This included co-ordination before going to COM meetings and preparing the background that would help COM resolve outstanding questions.

23. The corps is composed of the staff employed on clerical posts enumerated in the law, *i.e.* in the Prime Minister's chancellery, offices of ministers and chairmen of committees of the Council of Ministers, offices of central governmental administration, offices of Voivods and other offices which are auxiliary for territorial bodies of the governmental administration reporting to ministers or central bodies of governmental administration, the Government Centre for Strategic Studies, headquarters, inspectorates and other organisational entities which constitute auxiliary apparatus for heads of joint services, inspection and guards in *regions* and heads of services, inspections and guards in *poviats*.

24. Poland has experienced a number of waves of change over the last 100 years, affecting its administrative traditions. Independence, regained by Poland in 1918 after 120 years of partition, ie occupation of the Polish territory by Russia, Prussia and Austria meant the state administration had to be created from scratch. The task was made more difficult since it required harmonisation of the legal system in a country where until then three different legal systems had been in force.

25. The World Bank (1999), *Corruption in Poland: Review of Priority Areas and Proposals for Action*, Warsaw Office, October 11, website: http://www.worldbank.org.pl/html/corruption.html#mediumterm

26. The World Bank, 1999, *Corruption in Poland: Review of Priority Areas and Proposals for Action*, Warsaw Office, October 11, Web site: http://www.worldbank.org.pl/html/corruption.html#mediumterm, noting in particular pargraphs 21 and 99.

27. OECD (1997), *The OECD Report on Regulatory Reform*, Paris.

28. Ministry of the Economy, 1999; *A Conception of Medium-Term Economic Development of the Country until the year 2002*, June 15, p.

29. The Ordinance Number 68 of the Prime Minister, dated 25 September 2000.

30. Law Dz.U. 1999, No. 82, item 929.

31. Resolution of the Council of Ministers No. 133.

32. The Government Legislation Centre was established on January 1st 2000, based on the law of August 8th 1996 on the organisation and work procedure of the Council of Ministers and on the scope of competencies of line ministers (Dz.U. No. 106, item 492 with subsequent amendments). The Ordinance of the Prime Minister dated 29 December 1999 granted a statute to the Government Legislation Centre, (the Journal of Laws of 29 December, item 109, point 1 239).

[33] According to normal usage, the term "Minister" should be used to denote that the Minister holds ultimate responsibility for all actions taken by his or her Ministry. This is because in the Polish legal system the Minister is treated s the body. In the Regulation Reform reviews, the terminology reflects who actually conducts the activities, in this case the proponent Ministry.

34. *Regulation 13* adopted in 1997 and subsequently amended in 1998 and 1999, SIGMA, Public Management Profiles of Central and Eastern European Countries: Poland, November 1999, p. 10.

35. According to Article 10(4) of the *Rules of Procedure of the Council of Ministers* (Resolution 13 of the Council of Ministers of 25 February 1997).

36. At present the legal basis for the functioning of the Legislative Council is provided by Art. 14 para. 3 of the law dated 8th August 1996 on the organisation and work procedure of the Council of Ministers and on powers of line ministers and the Ordinance of the Prime Minister dated February 23rd 1998 on the tasks of the Legislative Council and detailed rules of its procedures (Dz.U. No. 25, item 134 with subsequent amendments).

37. During the present term of office, the Legislative Council has issued over a hundred opinions annually, evaluating the prepared legal acts in terms of their compatibility with the Constitution, coherence with the system of the law, implementation of the EU legislation objectives and compatibility with the legislative technique principles.

38. Graniecki, Maciej (2000), *Evaluation of the Polish Legislation in the Process of Approximation of Law*, Evaluation of Legislation, Fourth Congress of the European Association of Legislation, Warsaw, June, p. 13.

39. Article 163 of the Constitution.

40. In 1999, the number of regions was reduced from 49 to 16. This number was chosen by Parliament and resulted after a government proposed that there be 12 regions, where of them would have a strong urban economic and cultural centre, each with a university. In part the choice of 16 roughly resembles the regional structure before 1971 when there were 17 regions.

41. The Law on the Regional Self-government (DZ.U. No. 91, item 576 with subsequent amendments), the Law on Governmental Administration in the Region (DZ.U. No. 91, item 577 with subsequent

amendments), the Law of Self-government in Counties (DZ.U. No. 91, item 578 with subsequent amendments)

42. Article 87, 91-94 of the Constitution.

43. Local laws are published in the official gazettes of the regions. They must be available in all offices of local government administration and increasingly they are available on the internet. No legal act can be binding until published.

44. Commissioner for Civil Rights Protection, 1999, *Annual Information*, Republic of Poland, Warsaw, p. 60.

45. The World Bank, 1999, *Corruption in Poland: Review of Priority Areas and Proposals for Action*, Warsaw Office, October 11, website: http://www.worldbank.org.pl/html/corruption.html#mediumterm.

46. These changes were introduced by a regulation of the Minister of Justice of May 18th 2001.

47. Consumer policy has also been supported by the recently establishment of 200 'consumer advocates' appointed and funded by local governments and who deal with consumer complaints.

48. The 2001 version of NPPM was adopted by the Council of Ministers on June 12, 2001.

49. Graniecki, Maciej, 2000, *Evaluation of the Polish Legislation in the Process of Approximation of Law*, Evaluation of Legislation, Fourth Congress of the European Association of Legislation, Warsaw, June, footnote 4, and p. 9.

50. From 1991 to 1996 a Government Plenipotentiary for European Integration and Foreign Aid at the Office of the Council of Ministers was in charge of the whole dossier. Relevant legal instruments include the *Act on the Committee for European Integration*, 1996 and the Regulation of the Chairman of the Council of Ministers of October 2,1996 on granting the regulations to the Office of the Committee for the European Integration (OJ of 1996, No. 116, item 555).

51. The Act of 8 August 1996 on the Committee for the European Integration (OJ of 1996, No. 106, item 494).

52. All matters concerning civil service are the responsibility of the Chief of the Civil Service.

53. Resolution of the Council of Ministers of 29 May 1994 on additional requirements concerning the procedure to handle governmental draft normative act with respect to the necessity to comply with the European Union legislation (Monitor Polski of 1994, No. 23, item 188).

54. The act on the Committee for the European Integration, Article 2(1) point 2 and Chapter IV of the Council of Ministers' resolution of February 25, 1997 – the order of proceedings of the Council of Ministers, Resolution of the Council of Ministers of February 25, 1997 – the order of proceedings of the Council of Ministers (Monitor Polski of 1997, No. 15, item 144). In the meaning of the Article 14 of the Resolution each normative act and every other legal act is subject to examination as regards the compliance with the law of the European Union.

55. Resolution of the Sejm of the Republic of Poland of March 19, 1999 on the amendment to the Sejm's regulations (Monitor Polski of 1999, No. 11, item 150).

56. Information available from the server of the Sejm: www.sejm.gov.pl

57. Drafting the adjusting acts, the objective of which is to adjust Polish law to the legislation of the European Union, in the Sejm directed to the Commission for European Law, takes place pursuant to the following resolutions adopted by the Committee for European Integration on July 24, 2000: (1) Resolution on the proceedings concerning governmental draft acts adjusting Polish legislation to the legislation of the

European Union; and (2) Resolution on co-ordination and revision of translations of legal acts of the European Union.

58. These are: Free Movement of Goods; Freedom to Provide Services; Economic and Monetary Union; Statistics; Social Policy and Employment; Industrial Policy; Small and Medium-sized Undertakings; Science and Research; Education; Training and Youth; Telecommunications and Information Technologies; Culture and Audiovisual Policy; Consumers and Health Protection; Customs Union; External Relations; Common Foreign and Security Policy; and Financial Control.

59. The Senate of Poland Chancellery, 2001, Reply of the Senate of Poland Chancellery; to the Questionnaire for the conference in Estonia; Background Information on Law Making (Text prepared by dr Wojciech Or•owski, expert of the Senate Information and Documentation Office), Warsaw, April 26.

60. TAIEX data basis, server of the Sejm: www.sejm.gov.pl.

61. Resolution of the Sejm of the Republic of Poland of 13 July 2000 on amendment to the Sejm's regulations (Monitor Polski of 2000, No. 21, item 428).

62. Resolution of the Senate of the Republic of Poland of 4 August 2000 on appointment of the special Committee of the European Legislation.

63. European Commission, (2000), *Poland 2000, Poland's Progress towards Accession*, 8 November, p. 15.

64. European Commission, (2000), *Poland 2000, Poland's Progress towards Accession*, 8 November, p. 21.

65. European Commission, (2000), *Poland 2000, Poland's Progress towards Accession*, 8 November, pp. 30-31.

66. Government Resolution 13 dated February 25th 1997 with subsequent amendments. Rules of Procedure of the Council of Ministers, and the Council of Ministers.

67. SIGMA, *Public Management Profiles of Central and Eastern European Countries: Poland*, November 1999, p. 20.

68. The obligation to consult "social partners" results from the dispositions of the Constitution and other laws. In particular, the obligation to consult trade unions and employers' organisations results explicitly from the Constitution. According to the Constitution, also the religious associations must be consulted in matters, which them concern.

69. SIGMA, *Public Management Profiles of Central and Eastern European Countries: Poland*, November 1999, p. 19

70. There are two major types of non-profit organisations in Poland: foundations and associations. They operate, respectively, under the Law on Foundations of 1984 and the Law on Associations of 1989. The Law on Associations is very liberal, permitting freely the establishment of associations, which have a legal character once registered by the competent courts of law.

71. Article 74(4) of the Constitution.

72. Pursuant to Article 50 of the Act of 9 November 2000.

73. A 'notice and comment' mechanism consists of pre-publishing in the official gazette a draft legal instrument in order to allow to any citizens or business to provide comments and suggestions during a set period of time. After that period of time the proponent minister adjust the draft before sending it to final approval.

74. Art. 154 of the Constitution.

75. Art. 2 of the Law (Dz.U. No. 62, item 718). In an unusual twist on the requirement to be published to be legal, has delayed the enforcement of some important reforms, including the promulgation of international agreements ratified by Poland. Commissioner for Civil Rights Protection, 1999, *Annual Information*, Republic of Poland, Warsaw, p. 14.

76. The basis for keeping of the register is the Prime Minister's Ordinance dated February 28th 1997 (Dz.U. No. 21, item 110) on the rules for registration of normative legal acts issued by governmental administration bodies.

77. The Polish Monitor number 44, item 310 of 16 December 1991 and number 147 dated 5 November 1991.

78. Commissioner for Civil Rights Protection, 1999, *Annual Information*, Republic of Poland, Warsaw, p. 13.

79. Commissioner for Civil Rights Protection, 1999, *Annual Information*, Republic of Poland, Warsaw, p. 12.

80. The *Business Operation Act*; the *National Registry System*; *Small Registry System*; and new *Commercial Company Code.*

81. A second body called the Tribunal of State has jurisdiction to determine responsibilities for breaches of the Constitution and laws by persons holding high State offices.

82. Dz. U. 1980 No. 9, item 26 with subsequent amendments.

83. Dz. U. 1991 No. 36, item 161 with subsequent amendments.

84. European Commission (2000), *Regular Report on Poland: Progress towards Accession*, 8 November, Brussels, p. 17.

85. From April 1st 2001 by the regulation of the President of the Republic of Poland the co-efficients used to calculate salaries of judges have increased by 0.3 at average.

86. European Commission (2000), *Regular Report: Poland's Progress towards Accession*, 8 November, p. 18

87. To implement the OECD and the council of Europe Convention, into the Polish law, the Penal Code was amended to change the Code of Penal Procedure, the Act on Counteracting Unfair Competition, and the Act on Public Contracts and Banking Law, coming into force on February 2, 2001. (Official Journal (Dziennik Ustaw) of 2000, No. 93, item 1027). In 2001, Poland has been subjected to an OECD review regarding the implementation of the 1997 Convention.

88. The Office has a staff of 220. In 2000, it received 50,000 applications. Of these, 40% were considered to have no validity.

89. OECD (2001), Economic Surveys: Poland, April, Chapter 4.

90. The law dated May 30th 1989 on chambers of commerce (Dz.U. No. 35, item 195 with subsequent amendments) (Art. 5 para. 3).

91. Established by the law dated June 25th 1999 (Dz.U. No. 62 item 689 with subsequent amendments.

92. Functioning on the basis of the law dated May 6th 1981 on workers' allotments (unified text: Dz.U. 1996 No. 85, item 390 with subsequent amendments).

93. OECD (1997*a*), Paris.

94. Resolution of the Council of Ministers No. 13 dated February 13 1997 — M.P. No. 15, item 144 with subsequent amendments).

95. Pursuant to Article 118 of the Constitution and Article 31 on the 1998 Public Finances Law (Dz.U. No. 1555, item 1014 with subsequent amendments.

96. Government of Poland, 2001, Proposition of a Regulatory Impact Analysis System, April.

97. Orowski, Wojciech, 2001, *Reply of the Senate of Poland Chancellery; to the Questionnaire for the conference in Estonia; Background Information on Law Making,* text presented at the conference, April 26.

98. For further guidance see Broder, I and Morral, J "Collecting and Using Data for Regulatory Decision-Making" in OECD, 1997b, *op. cit.*

99. OECD, 2000*, Regulatory Reform in Denmark*, *Background Chapter 2*, Paris.

100. The Spokesman of the Insured (1990, 1996), the Polish Communication Insurance Office, the Insurance Guarantee Fund, the National Insurance Supervision Fund, the Bank Guarantee Fund (1990, 2000), the Bank Supervision Commission (1997), the Pension Funds Supervision Office (1997), the Health Insurance Supervision office (1997).

101. Article 92.

102. SIGMA, *Public Management Profiles of Central and Eastern European Countries: Poland*, November 1999, p. 16

103. The Higher level bodies of the State include the National Bank of Poland, the Supreme Chamber of Control, the Commission for Citizens' Rights (*i.e.* the ombudsman), judges of the Constitutional Tribunal and of the Supreme Administrative Tribunal, and the National Council of the Judiciary, amongst others.

104. Chapter 3 presents a general discussion of the issue of co-operation between the OCCP and relevant sectoral regulators.

105. In November 1999, the Antimonopoly court found that the existence of two heat energy production entities in a local market did not mean that there was sufficient competition to release those companies from the obligation to have tariffs accepted by the ERA.

106. Within the meaning of Art. 87 para. 2 of the Constitution.

[107] M.P. No. 47, item 782

108. Dz.U. No. 94, item 1 037.

109. The Civil Code is the basic law about contracts and civil injuries; and the Civil Procedure Code is the guide the courts use in hearing and resolving disputes governed by the substantive rules of the civil code.

110. Dz.U. No. 101, item 1 178 with subsequent amendments.

111. Also see OECD (2001), *Economic Surveys: Poland*, April, chapter III: "Structural Policies for Employment-Friendly and Robust Growth", p. 85.

112. At the end of 2000, over 1.7 million small and medium-sized enterprises existed in Poland. They generate over 50% of GDP.

113. Government of Poland, 1999, *Government Policy guidelines for SMEs until 2002,* Warsaw.

114. Law dated November 19th – 1999, Dz.U. No. 99, item 101.

115. Law dated November 9th 2000 on Dz.U. No. 109, item 1 158.

116. Law dated June 30th 2000 Dz.U. No. 60, item 704.

117. In a 1999 Demoscop survey among SME entrepreneurs, 50% of interviewed managers stated that "it is not possible to conduct profitable business activity while observing all regulations and paying all required taxes and other charges."

118. OECD, 1999, Regulatory Reform in the United States, Paris.

119. OECD, 2001, Regulatory Reform in Ireland, Paris and http://www.irlgov.ie/tec/publications/regulatory.htm.