

# REGULATORY IMPACT ANALYSIS IN FLANDERS AND BELGIUM: POLICY AND TRENDS

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## Abstract

*This paper discusses the experience and unsolved issues after seven years Regulatory Impact Analysis (RIA) in Flanders. In addition, it examines RIA at the Belgian federal level and in the Walloon and Brussels Regions.*

*International benchmark surveys show that the design of the Flemish RIA-system scores well compared to many other jurisdictions. A good design however does not guarantee good quality RIAs or a well performing RIA-system. We previously in 2009 argued that further modifications of the Flemish RIA-system are required to cope with five persisting challenges: How to maximise political commitment to RIA? How to integrate RIA at the heart of the policy making process and avoid formalism? How to allocate responsibilities for RIA? How to raise RIA-quality? How to cope with new and competing demands? We drew upon domestic as well as international experience on what has worked and what not to propose a set of policy recommendations. In this paper, we present an update by looking into the policies and trends of the last 2 years.*

*At the Belgian federal level and in the Walloon and Brussels Regions the systems are very different and less advanced or even absent. RIA at the federal level is composed of two separate tools: the 'Kafkatest' for administrative burdens and Sustainability Impact assessment (SIA). Evidence however shows that SIA is not working properly. Hence, a reconsideration of the SIA-system is imperative. Wallonia and Brussels only run a 'Kafkatest' although there are signs that their governments are considering to introduce RIA in the near future.*

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## 1. EXECUTIVE SUMMARY

In the Flanders region, about 587 RIAs have been produced since 2005, covering all departments. The track record is mixed. On the one hand, the design of the Flemish RIA-system scores well compared to many other jurisdictions. The Flemish government has established a policy and a program of regulatory management comparable to those existing in leading countries and has made noticeable efforts strengthen the RIA-system after its introduction on 1 January 2005. On the other hand, there still are important weaknesses in the Flemish RIA-system, both in design and implementation, resulting in rather poor RIA quality and often little impact on actual policy making. Most policy processes still seem to be done the old fashion way, with RIA as a mandatory add on. As a result, RIA often has become a formal requirement with little or no added value for regulatory decisions. Hence, there is not much enthusiasm to award adequate time and resources to RIA, leading to a vicious circle and a self-fulfilling prophecy that RIA is not worthwhile. Politicians sometimes seem to prefer visible 'quick wins' through administrative burden reduction in stead structural reforms and more sophisticated tools such as RIA.

Implementing RIA turns out to be a long term process since it requires changes to existing decision making habits and procedures. In a previous paper of 2009, we recommended further modifications of the Flemish RIA-system to cope with five persisting challenges: (1) maximize political commitment to RIA; (2) integrate RIA at the heart of the policy making process; (3) adequately allocate responsibilities for RIA; (4) raise RIA-quality; (5) cope with new and competing demands such as administrative burden measurement and sustainable impact assessment (SIA). A review of policies and trends in Flanders in the last 2 years shows that progress is made or well underway on all these challenges. We could therefore be rather optimistic for the future of RIA in Flanders, but the proof of the pudding will be in the eating. Formal policy can be strengthened and more adapted to the realities of policy making in Flanders, but actual RIA practice must follow. Changing the policy culture, improving external scrutiny and extending the community of believers (especially at the highest political and administrative levels) remain hard nuts to crack. The real challenge still is to change attitudes and persuade officials (and ministerial cabinets) to take the assessment seriously and carry it out at a sufficiently early stage in the development of regulations, in a region where regulatory power is very concentrated and hierarchically organized.

At the Belgian federal level and in the Walloon and Brussels Regions, the RIA-systems are very different and much less advanced or implemented than in Flanders, or even absent. RIA at the federal level is composed of two separate tools: the Kafka test for administrative burdens on the one hand and SIA (Sustainability Impact Assessment) on the other. Evidence shows that SIA at the federal level is not working properly. Hence, a reconsideration of the SIA-system is imperative. In Wallonia and Brussels, there is only the Kafka test. Following the recommendations of a recent OECD review, the federal and other regional governments are considering of moving toward a broader ex ante impact assessment process, beyond administrative burdens.

## 2. INTRODUCTION

One of the core instruments in modern regulatory systems is *regulatory impact assessment* (RIA)<sup>1</sup>. RIA is an assessment of the likely effects of a proposed new regulation or regulatory change. It allows decision-makers to examine the implications of regulatory policy options and determine whether they will achieve their objectives more efficiently and effectively than alternative approaches. There is no single generic model of RIA used internationally, but RIAs tend to include at least a clear identification of the problem and the policy objectives, an elaboration of relevant alternative policy options, an examination of impacts (positive and negative) of each option, an appraisal the capacity of government agencies to implement and enforce regulation and the capacity of affected parties to comply, and a structured consultation with stakeholders. It is important to note that RIA is an aid to, not a substitute for, decision-making. RIA is both a process to help the policy-maker fully think through and understand the consequences of possible and actual government interventions, and a tool to enable the government to balance and present the relevant evidence on the positive and negative effects of such interventions. RIA is best understood as a tool for policy learning and a guide to improve the quality of decision-making, while also serving the important values of openness, public involvement and accountability. As recalled already in the Mandelkern report, RIA is often a question of “asking the right thing, at the right time, in the right sequence”<sup>2</sup>.

Institutions and think tanks such as the OECD have been promoting the use of regulatory impact analysis or RIA for a long time<sup>3</sup>. A well-functioning RIA-system has proven to be a useful tool to produce high quality regulation, impacting positively on public service delivery, citizen’s perception, business activities and the country’s performance on economic, social and environmental goals<sup>4</sup>. In the context of the OECD Recommendation on Regulatory Quality and Performance of 28 April 2005, OECD member states have committed themselves to:

- ‘assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment;’
- ‘integrate RIA into the development, review, and revision of significant regulations’;
- ‘support RIA with training programmes and with ex-post evaluation to monitor quality and compliance’; and
- ‘ensure that RIA plays a key role in improving the quality of regulation, and is conducted in a timely, clear and transparent manner’<sup>5</sup>.

When done well, RIA improves the quality of policy advice given to Ministers through promoting increased use of evidence in policy-making and providing more information on the likely implications of regulatory proposals. RIA also contributes to achieving value for money and efficiency by generating more detailed information about the effectiveness of a policy and the cost-effectiveness of its instruments. RIA is moreover a key tool for integrating multiple policy objectives and strengthening interministerial cohesion, reducing duplicative and contradictory policies. As RIA involves a thorough consultation process, it provides an opportunity for those potentially affected by regulations to highlight any unforeseen

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<sup>1</sup> See Radaelli, Claudio M. and Anne C.M. Meuwese (2008) for an analysis of the political economy of impact assessment.

<sup>2</sup> The influential Mandelkern Group was a high-level advisory group formed in December 2000, consisting of regulatory experts from the Member States and the Commission, that was charged by the Ministers for Public Administration from EU with taking an active part in the preparation of a better regulation strategy in the European Union. From the time it was formed, it was known by the name of its Chairman, M. Mandelkern, the French representative and Honorary Section Chairman within the Council of State. It issued its report in November 2001. Their report is considered a milestone in the debate on regulatory reform at the EU level.

<sup>3</sup> OECD (1995).

<sup>4</sup> OECD (2006a), OECD (2008a), Goggin and Launder (2008)...

<sup>5</sup> OECD (2005).

consequences that may not previously have been considered, and it helps to increase compliance with the rules when they are implemented. RIA is also a means of improving the quality of governance. By strengthening transparency and consultation and justification of regulatory decisions, RIA bolsters the credibility of regulatory responses and increases government accountability and public trust in regulatory institutions and policy makers. In dynamic terms, RIA is an essential instrument to change the administrative culture in many countries from a legalistic and passive stance to an evidence-based, proactive and client-oriented attitude.

Today, RIA is widely spread among OECD member states and is increasingly introduced in many other countries<sup>6</sup>. The OECD reports that RIA has become a norm of democratic governance in modern industrialised countries. OECD member countries are continuing to invest heavily in RIA and are reaping greater returns for this investment<sup>7</sup>. The financial crisis and economic downturn have raised awareness of the important role that regulatory quality and regulatory control systems like RIA play in ensuring that regulations introduced are appropriate and effective and that they are being enforced and complied with<sup>8</sup>. At the same time, the OECD recognizes that while the benefits of integrating RIA in the policy decision making process are evident, challenges and problems remain in all countries. The design and later implementation of an RIA system can only be successful when an institutional framework has been carefully defined and built over time and when continuous efforts are made to improve RIA.

On 1 January 2005 the Flanders Region in Belgium joined many other jurisdictions and implemented Regulatory Impact Analysis (RIA) as a key instrument for improving regulatory quality. At the federal level, Sustainability Impact Assessment was introduced in the federal government in Belgium in January 2007, alongside the Kafka-test for administrative burdens that already existed since 2004. This Kafka-test was introduced in Wallonia as well, in January 2007. Belgium and in particular Flanders scores quite well on OECD-criteria for RIA-processes. Based on the information of the 2008 OECD-survey, Belgium together with Germany might have the better RIA-processes in continental Europe. To be clear: the *design* of the Belgian and Flemish RIA-system scores well compared to many other jurisdictions. A good design of the system however does not guarantee good quality RIA's or a well performing RIA-system. As we will discuss in this paper, many challenges remain and further modifications in the RIA-system and in decision-making habits and policy culture are required.

This paper offers an update on the RIA policy and trends in Flanders<sup>9</sup>. It presents an overview of the characteristics, experience, discussions and recent developments in Flanders. We then turn to RIA at the Belgian federal level and the Walloon and Brussels Regions. There the systems are very different and much less advanced or even absent.

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<sup>6</sup> See, for example, Jacobs (2006), Kirkpatrick and Parker (2005).

<sup>7</sup> OECD (2006a).

<sup>8</sup> According to the British House of Commons Regulatory Reform Committee for example, the financial crisis has highlighted a number of lessons for the way in which regulation is conducted. One is that there are dangers in relying too much on regulatory ideologies and procedures. "Ultimately it is a truism that good regulation is not about any particular philosophical approach, but about what produces the right outcome. The Better Regulation agenda sets out to achieve desirable regulatory outcomes with minimum adverse impact. It remains a valid project, but there is scope for using the lessons of the crisis to re-energize it with a greater diversity of input, including more accountability to citizens and end users". Among things the Committee recommended that regulators should do, some are closely linked to RIA: (e) seek to anticipate unintended consequences of regulation, (f) develop mechanisms for challenging prevailing wisdom and political pressure, (g) involve representatives of consumers in such challenge...

<sup>9</sup> We refer to two previous papers for a more general discussion of the main steps in the development of a regulatory management system in Flanders and for an assessment of the Flemish RIA-system (Van Humbeeck, 2007a and Van Humbeeck, 2009).

<http://www.enbr.org/public/RIA%20in%20Flanders%20working%20paper%20febr%202007.pdf>; and [http://www.centrumwetgeving.be/download.aspx?c=\\*ICW&n=52794&ct=52375&e=210502](http://www.centrumwetgeving.be/download.aspx?c=*ICW&n=52794&ct=52375&e=210502)).

### 3. FEATURES OF THE FLEMISH RIA SYSTEM

Following international trends and best practice, the Flemish Government decided in 2004 to introduce regulatory impact analysis in Flanders starting from 1 January 2005. Between 2005 and now, several evaluations of the system were performed, and the government and its administration have taken action to modify and strengthen the RIA-system. Below, we summarize the objectives and main features of the Flemish RIA system as it in place today<sup>10</sup>.

#### 3.1. RIA objectives and principles

The overall goal of RIA in Flanders is to improve regulatory quality. More specific, RIA in Flanders has three objectives<sup>11</sup>. RIA aims to

- influence policy makers to adopt the most efficient and effective regulatory options, using evidence-based techniques to justify the best option;
- increase the transparency of the regulatory process, foster the consultation of stakeholders and improve the justification of regulatory solutions;
- promote a ‘whole of the government’ approach by braking down vertical silos and promoting horizontal thinking.

A number of principles were put forward at the outset and today still guide the RIA-system in Flanders. These principles are summarized in box 1. They were derived from OECD experience<sup>12</sup> and highlight in a number of conditions to be fulfilled, such as support from the highest political level, early start in de policy-making process, decentralised execution with centralised oversight, support and quality control etc.

**Box 1: RIA principles (quote from the RIA guide<sup>13</sup>)**

Principles	Conditions
RIA supports, not replaces political judgement and decision making	Find support at the highest political level
RIA has impact, it is not a justification ex post of decisions already made	Start with RIA as early as possible in de policy-making process
RIA is fully integrated; it is not an extra administrative step	Decentralised execution of RIA by the unit that also drafts the regulation
RIA is flexible; it is not a rigid blueprint	<b>Proportionality.</b> Imposition of stricter conditions for RIA with higher anticipated impacts of a regulation
RIA uses an integrated approach, not a narrow perspective	Offer a method for assessing all relevant effects (‘cost-benefit principle)
RIA is a aid to communication; it is not an internal instrument	Link RIA to <b>consultation</b> processes
RIA is part of a system, it does not stand alone	Centralised oversight, <b>support and quality control</b>
RIA is a dynamic issue, it is not a static instrument	RIA can start moderate, to scale up rapidly

#### 3.2. RIA Scope

RIA is mandatory in Flanders for any regulation that has an effect on citizens, businesses, and non-profit organisations<sup>14</sup>. This includes all draft laws (legislative branch) and subordinate regulations (executive branch), except internal government regulation, budgetary regulation, regulation approving international

<sup>10</sup> For information on what preceded the adoption of RIA by the Flemish government and for a detailed discussion of the political economy of how government was persuaded to take this step, as well as for an overview of the modifications that were implemented between 2005 and 2012 we refer to Van Humbeeck (2009).

<sup>11</sup> Dienst Wetsmatiging (2004a).

<sup>12</sup> OECD (1997), OECD (2002).

<sup>13</sup> Dienst Wetsmatiging (2004b).

<sup>14</sup> Dienst Wetsmatiging (2004a).

and interregional conventions and agreements, regulation without substantive impact or of a purely formal nature, decisions of the Flemish Government which do not contain any regulation, and ministerial resolutions (of which there are very few in Flanders).

There is no quantitative threshold or two-stage system of screening/full RIAs as in some other countries or at the federal Belgian level<sup>15</sup>. Instead, both the RIA guide and the RIA manual emphasise that a RIA should be proportional. This means that the scope as well as the depth of a RIA must be proportionate with the importance of the regulation and the expected extent of the effects. Proportionality applies not only to the analysis of costs, benefits and impacts but to the entire RIA process, including the number of options considered, the nature of the consultation process and the treatment of enforcement, compliance and review. Ideally, defining the proportionate level of analysis is not a once-off decision taken at the beginning of the RIA process, but an iterative process which must take account of preliminary results and stakeholder input.

Since 2010, the scope has evolved as a result of evaluations that revealed that the RIA-quality on average was low. The credo is now: less RIAs but better RIAs<sup>16</sup>. RIA resources should be allocated to where they do most good. The aim is to better target RIA efforts and have more selectivity, in both directions: is not worthwhile to perform RIAs for minor regulatory proposals, but more extensive RIAs are necessary for important regulations.

Formally, RIA is still mandatory for any regulation that has an effect on citizens, businesses, and non-profit organisations. But to avoid RIA from being a bureaucratic annex to the decision making, the view is now that RIA is only worthwhile at a time when the proposed regulation is not yet developed and it is still possible for RIA to make a meaningful contribution to the policy development. Therefore, the decision whether or not to perform a RIA now has to be made as soon as possible, and must be made public in the regulatory agenda. This agenda was introduced in 2007 to enhance co-ordination, planning and transparency in the development of new regulations. For each policy field, government each year has to present a regulatory agenda to parliament. The objective is to have an early public notification on planned regulatory initiatives, comparable with the examples of the Unified Regulatory Agenda and the Annual Regulatory Plan in the United States<sup>17</sup>.

### 3.3. RIA process and procedure

RIA is seen first and foremost as a process of analysis and consultation. Therefore, the RIA guidance and manual stress that RIA is most effective in an early stage of the regulatory preparation. *'RIA is not intended to justify political choices already made, but to improve the decision making. Therefore, the RIA process has to start at the beginning of the regulation process, not after the regulation has been written out. Only then does it make sense to carry out an analysis and assessment of different alternatives and can RIA prevent the development of unnecessary new regulation.'*

<sup>15</sup> It seems this was the right choice. In Ireland for example, the initial two-stage system of screening/full RIAs was recently replaced by a system relying on proportionality like the Flemish system. The problem was that only one full RIA had been completed, since screening RIAs was frequently shaped by a desire to prove that the threshold for a full RIA is not met, rather than a proper evaluation of impacts (Goggin and Lauder, 2008). Rather than an arbitrary distinction between different types of RIAs, it was decided to identify possible levels of analysis on a case-by-case basis. Departments in Ireland now have discretion over the depth of analysis considered appropriate for each RIA, having regard to the significance of the measure. Other procedural measures, such as the increased transparency by the early publication of the draft RIA and increased quality control measures, address the need to ensure that the impact analysis is appropriate and proportionate (Department of the Taoiseach, 2009). In Belgium, the SIA-system (see no X) suffers from the same difficulty. Even for the US, influential scholars like Jonathan Wiener (2008) recommend to replace the current dollar thresholds (\$100m) for levels of analytic scrutiny with the better principle of "proportionate level of analysis" as in the EU.

<sup>16</sup> Vlaamse regering (2009b).

<sup>17</sup> SERV (2006b), Van Humbeeck (2007b).

The RIA guide and the RIA manual further stress that RIA is a team effort. *‘The execution of a RIA will seldom be the work of just one person. Regulatory impact analysis is best carried out by the project team which is preparing the regulation. The contact person for regulatory management or the RIA co-ordinator in your department can help you here.’* Both documents also point to the importance of consultation with stakeholders and other departments. The responsibility for the content of a RIA in Flanders however lies with the person or agency that prepares the new regulation. The final responsibility lies with the minister who submits the draft regulation to the Council of Ministers. The RIA-system includes support and quality control by the departmental legislative units or RIA-coordinators and by the central Regulatory Management Unit.

Analytical requirements for RIA were kept simple and flexible to smoothen the introduction of RIA and make compliance easier. However, standards and requirement would raise gradually with experience and skills<sup>18</sup>.

RIA has been integrated into the lawmaking process by a government circular. The formal requirements are: (1) a RIA advice from the central Unit, (2) a mandatory RIA paragraph in the memorandum to the Council of Ministers; (3) a check by the Chancery to make sure that this paragraph is included; (4) the addition of the RIA to the regulatory file. And (5) an ex post quality measurement by the central Unit (see Box 2)

**Box 2: Formal procedural requirements for RIA**

<i>Formal procedural step</i>	<i>Content</i>
RIA advice from the Regulatory Management Unit	The Unit must give an advise on the draft version of the RIA before the regulation is put on the agenda of the Flemish government. The advice is part of the legislative advice which also includes the technical law drafting advice and the plain language advice. The standard deadline for teh advise is 4 working days.
RIA paragraph in the memorandum to the Council of Ministers	Each memorandum to the Council of Ministers which accompanies a draft regulation for approval must include a RIA paragraph as part of the obligatory legislative quality paragraph. It must contain either a short summary of the RIA which is enclosed in annex, or a statement explaining why a RIA has not been prepared.
Control by the Chancery	The Chancery checks whether a RIA paragraph is included in the memorandum to the Council of Ministers. If the memorandum does not contain the required RIA paragraph, the regulation cannot be put on the agenda of the government.
Addition to the regulatory file	Once the RIA has been approved by the Council of Ministers, it is part of the regulatory file. This means that the RIA, together with the regulation and the explanatory memorandum, must be handed over to the advisory councils, the state council, parliament etc.
Ex post quality measurement by the Unit	The Unit checks the quality of the final RIA and reports periodically on the quality of all RIAs <sup>19</sup> .

**3.4. RIA product**

The RIA process, analysis and consultation must be documented in a RIA product or document. Box 3 summarizes the core elements of a RIA document in Flanders.

<sup>18</sup> When RIA was introduced in 2005, a difference was made between a ‘light version RIA’ and a ‘heavy RIA’ with more extensive requirements for analysis, quantification, consultation etc. Government decided to introduce only the light version. The introduction of the heavy version RIA was postponed until there was more experience. The heavy RIA however was never introduced, for two reasons. First, ‘heavy’ sound a lot like ‘difficult’, ‘timeconsuming’ and ‘a lot of work’, so nobody asked for it. Secondly, due to the proportionally principle, some light version RIA’s in practice were rather ‘heavy’.

<sup>19</sup> Until 2010, the control was performed prior to the discussion of the draft regulation by the Flemish government. The minister responsible for regulatory policy was informed of the results of the quality control so that they can be taken into account at the meeting of the Council of Ministers. Today, the Unit controls final RIAs ex post and reports periodically to the Flemish government and the Flemish Parliament.



**Box 3: Core elements in a Flemish RIA**

<i>RIA section</i>	<i>Contents</i>
Title	Brief description of the title of the regulation.
Problem definition and objectives	Outline of the reasons for the government intervention, the objective, and the desired effects: What issue/problem is the policy/proposal attempting to resolve? What main objective is the policy/proposal expected to reach?
Options	List of the most relevant options for achieving the desired objective that are being examined further.
Effects	Analysis of the expected advantages and disadvantages (costs and benefits) and other relevant effects of each option.
Implementation, enforcement and monitoring	Clarification of how the chosen option will be developed, executed, enforced, followed up, and revised, together with an estimate of the administrative burdens.
Consultation	List of consultations and their results: Which interested parties were consulted, at what stage of the process, and for what purpose? What were the results of the consultation?
Summary	Summary of the motivation for the chosen regulation: Which option has been selected and why?
Contact information	The name and contact details of the person who is available for more information and questions about the impact analysis or the proposed regulation.

**3.5. RIA system**

RIA is part of and supported by a broader regulatory policy, regulatory institutions and complementary regulatory tools. The system includes among others:

- principles of good regulation that are endorsed by government (2003, renewed endorsement in 2011),
- a central Regulatory management Unit (established in 2003),
- Regulatory Management Units in each department (since 2007),
- RIA quality standards (published in 2004),
- RIA-guidance (issued in 2005, updated in 2007 and 2012),
- RIA-training (one day training in 2004-2005, three days training since 2009),
- RIA-quality control and quarterly reports on the quality of the RIAs and annual reports the performance of the RIA-system (since 2007),
- full text publication of all final RIA's on the internet in a RIA-database (since 2008, improved in 2011).

**4. PERFORMANCE OF THE FLEMISH RIA SYSTEM****4.1. Design**

The overall design of the RIA-system is considered good compared to international examples and standards. Already in 2004, just before the RIA-system was launched, Cesar Cordova-Novion and Scott Jacobs wrote in their review that "*Flanders is on the right road. The government has established a policy and a program of regulatory management comparable to those existing in leading countries. (...) No fundamental correction is needed to its compass. What is needed is a multi-year period of consolidation, sustained application, and refinement of the legal and policy reforms already on the table*"<sup>20</sup>. At the end of 2006, the Social-Economic Council of Flanders confirmed in a substantive benchmarking report that Flanders' regulatory policy offers several strengths, such as the RIA-system<sup>21</sup>. And last but not least: the OECD wrote that the Flemish RIA-system scores well compared to many other jurisdictions<sup>22</sup>. This can be attributed to its broad scope, the formal authority of the RIA requirements (laid down in a government circular), the 'soft' benefit-cost approach that is used, the large range of effects that in principle has to be

<sup>20</sup> Cordova-Novion and Jacobs (2004).

<sup>21</sup> SERV (2007), Van Humbeeck (2006b)

<sup>22</sup> OECD (2009a).

investigated, the requirement to quantify effects whenever possible, the availability of RIA guidance and training, and the RIA quality control by the central Unit etc.

A strong point in the design is the dynamics that were built in through periodical evaluations and modifications of the system. Starting from OECD best practice, the system is gradually getting more tailored to the realities of policy making which is often different to the systematic and rational process that is implicit in most mainstream thinking about policy assessments. Policy formulation is often constrained well before the start of the formal decision-making process, for example by pre-existing political initiatives and policies, by administrative procedures, international and EU legal frameworks and policy commitments. Such a predetermined policy agenda can have a great influence in driving government action in particular areas. This means that the extent to which the need for regulation can be evaluated in RIAs is restricted and performing a RIA may not be an effective use of resources. This ‘problem’ cannot be corrected by RIA alone. But rather than forcing desk officers to follow strict templates, RIA procedures now give ministries the flexibility to adapt the approach to the political and technical requirements of the specific case. In some cases, RIA can and should reflect on a broad set of potential measures, in others it can realistically do little more than fine-tune a proposal on which there is political consensus.

#### 4.2. Formal compliance

Formal compliance with RIA procedures is high. The rules of the Flemish government require that each draft regulation must be accompanied by a RIA at the time of the first approval by the Flemish government (with a few exceptions). The first two years however, this was not always the case. SERV reported that a RIA was missing without appropriate justification in about one third of the 98 draft regulations that were put forward to the SERV for advice<sup>23</sup>. Thanks to stricter enforcement, more interaction between the administrations and the central regulatory management unit, compliance is now close to 100%.

The number of RIA’s performed is high as well: 587 RIAs in 7 years: 157 in 2005, 134 in 2006, 77 in 2007, 96 in 2008, 41 in 2009, 29 in 2010 and 53 in 2011, covering all departments. The relapse in 2009 was due to the elections that year, resulting in very few new regulations issued, and therefore also very few RIAs performed. The relatively low number in 2010 and 2011 compared to the early years of RIA reflects the new credo “less RIAs but better RIAs”.

#### 4.3. RIA-quality and impact on decision making

Various in depth studies of RIA’s all over the world report that there often is a large gap between actual Impact Assessment practice and requirements set out in official ‘best practice’ guidance documents<sup>24</sup>. Flanders is no exception. Assessments by the Regulatory Management Unit and the Social-Economic Council show that RIA-quality is mixed, with some examples of very good RIAs but many RIAs of poor quality<sup>25</sup>. The measurements of the Unit show a moderate quality, and more troublesome almost no real improvement in the quality of the RIAs over time: 63% in 2007, 67% in 2008, 69% in 2009, 65% in 2010 and 67% in 2011. Length varies from a few to more than 100 pages. There are few examples of RIAs that had a significant influence on the decision making process by government<sup>26</sup>. The department of Environment, Nature and Energy (LNE) conducted about 20% of all RIAs, with varying quality, resulting in scores around the Flemish average.

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<sup>23</sup> SERV (2006a).

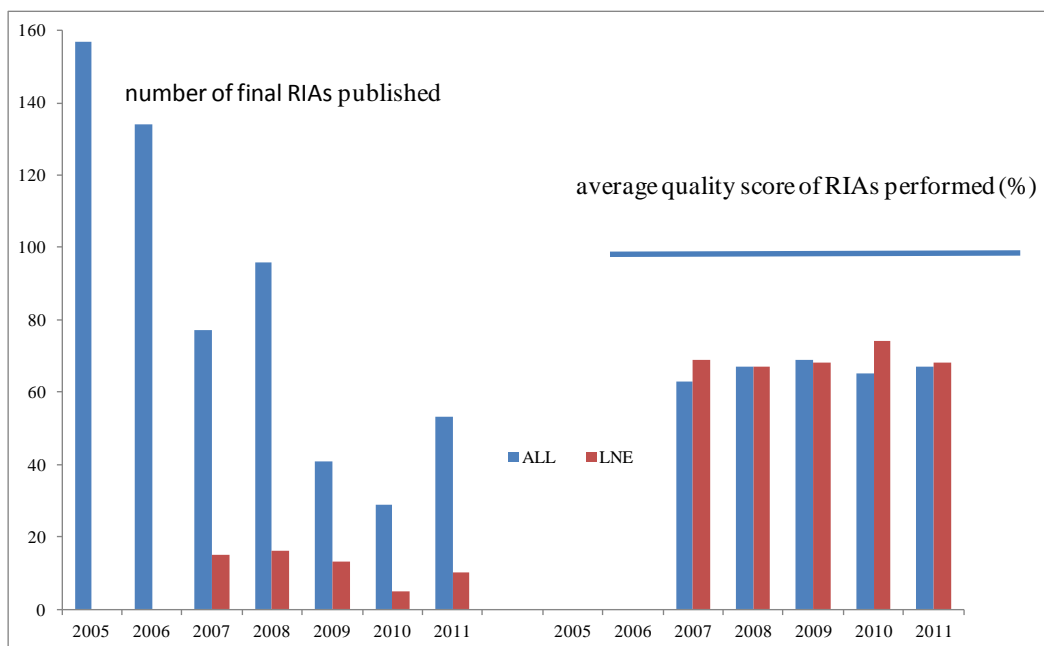
<sup>24</sup> Hertin et al (2007), Jacob et al (2008)...

<sup>25</sup> Dienst Wetsmatiging (2009a) and earlier evaluations.

<sup>26</sup> The central regulatory management unit reports in its last evaluation of the RIA system that it “still has received little signals that RIA was actually used in discussions at the political level, be it government or parliament.”

Department	Number of RIAs performed							Average quality of RIAs				
	2005	2006	2007	2008	2009	2010	2011	2007	2008	2009	2010	2011
Services for the General Government Policy			2	1	1			71%	81%	88%		
Administrative Affairs				2	2	3	3		76%	77%	68%	84%
Finance and Budget												
Foreign Affairs			3	2		1	3	67%	72%		60%	73%
Economy, Science and Innovation			2	6	2	2	3	68%	70%	70%	51%	60%
Education and Training			15	17	3	2	4	63%	68%	73%	62%	70%
Welfare, Public Health and Family			9	23	10	6	11	54%	69%	71%	58%	62%
Culture, Youth, Sport and Media			8	13	1	1	8	61%	62%	68%	68%	71%
Work and Social Economy			7	4	1	1	3	58%	60%	69%	63%	57%
Agriculture and Fisheries			6	4	3	4	1	63%	68%	67%	74%	77%
Environment, Nature and Energy (LNE)			15	16	13	5	10	69%	67%	68%	74%	68%
Mobility and Public Works			3	3	3		3	65%	64%	66%		66%
Town and Country Planning, Housing Policy and Immovable Heritage			7	5	2	4	4	59%	61%	61%	62%	65%
<b>Eindtotaal</b>	<b>157</b>	<b>134</b>	<b>77</b>	<b>96</b>	<b>41</b>	<b>29</b>	<b>53</b>	<b>63%</b>	<b>67%</b>	<b>69%</b>	<b>65%</b>	<b>67%</b>

Source: dienst wetsmatiging. Numbers for 2005 and 2006 are not available per department because of the reorganisation of departments in 2006. Quality scores for 2005 and 2006 are not reported because the scoring system was profoundly changed in 2007 and figures would not be comparable.



Important weaknesses still are:

- little consideration of alternative policy instruments and a lack of consideration of *relevant* alternative options,
- inadequate analysis of costs and benefits of options and insufficient examination of all relevant effects,
- weak and limited empirical underpinning and quantitative assessment of effects, and few quantitative data in all sections of the RIA,

- insufficiently clear and balanced trade-offs between effects of one option and between options; The comparison of options is obscure or methodologically weak;
- efforts to consult with stakeholders are limited, opaque or unbalanced;
- little examination as to how the proposed regulation will be applied, enforced and monitored in practice.

A major cause for the poor RIA-quality according to SERV is the fact that most RIAs were not initiated until after the regulatory process is well underway, often after the preferred alternative has been selected. Often policy processes still are done the old fashion way, with RIA as a mandatory add on. When the RIA process starts too late, this undermines the quality of the RIAs and restricts its influence on the policy making<sup>27</sup>. It also hinders an open RIA-process that allows for timely input from stakeholders. Worse, it puts pressure on the analyst not to deliver bad news about benefits and costs, especially about the preferred alternative, leading to cynicism about the role of RIAs in the regulatory process. The OECD concurs in his recent review of the Better Regulation Policy in Flanders: *“Impact assessment is often done late and which means that it risks becoming an ex post justification for decisions which have already been reached. This often causes implementation problems downstream and requires revisions to the law in the worst cases”*<sup>28</sup>.

Another important reason is a lack of a good understanding of RIA and a lack of skills to prepare good RIAs. Often RIA drafters repeatedly make the same methodological errors. The provision to regulators by regulatory oversight bodies of published methodological guidance, supplemented by formal training and less formal advisory/helpdesk functions, has a major influence on the quality of RIA achieved in practice<sup>29</sup>. This critical importance of training and guidance was understood from the outset, but practice did not evolve with changing demands and training was even neglected for some time. The current RIA-guidance is less than comprehensive in its coverage of methodological issues since it was a deliberate attempt to avoid undue detail and technical complexity and ensure that it would be readily intelligible to generalist policy officers who are often responsible for completing the RIA. But now that RIA is implemented, there is a need for more technical guidance material that is likely to be required by practitioners involved in more sophisticated RIAs. Other countries and regions such as in Australia appear to combine a relatively brief and non-technical RIA guide with one or more supporting documents that provide additional detail and sophistication in their coverage of methodological issues. The one day RIA-training in 2004-2005 stopped in 2006. It was not until September 2009 that a 3-days advanced RIA-training was provided. But some weaknesses remain. RIA-training is not mandatory for RIA practitioners, and many policy officials, directors and policy advisors in the ministerial cabinets didn't yet have had a basic training in the principles and tools of good regulation, including RIA.

A third reason for low RIA-quality is the weak oversight and control. While locating responsibility for performing RIA with the regulators improves “ownership” and integration into decision-making, a central body should to oversee the RIA process and ensure consistency, credibility and monitor compliance. The location and authority of such a unit are important, together with the level of the RIA expertise and the authority as a result of its expertise and the political backing. In Flanders, the RIA-system includes oversight, support and quality control by the central Regulatory Management Unit. One minister is explicitly responsible for regulatory policy. In practice however there are difficulties. Resources and RIA-capacity inside the unit are limited. It started off in 2003 with a staff of 7 people and was located within the services of the Minister-President of Flanders. Since 2005 however, the unit is placed under the minister and the department of public administration with a reduced staff of 5 people, of which only one employee originally started at the unit. Today there is only one member of staff dealing with RIA, not even fulltime. Also, the time limit for the unit to advice is very limited (3 days) and does not allow for any real dialogue with line departments. So there should be a fundamental discussion on how to maintain and strengthen RIA

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<sup>27</sup> Jacob et.al. (2008), OECD (2008), Andres, Richter-Devroe and Rodriguez (2007).

<sup>28</sup> OECD (2010). Better Regulation in Europe: Belgium. Paris, OECD.

<sup>29</sup> OECD (2008a).

quality control giving the constraints<sup>30</sup>. Final RIAs in Flanders today are published on the website of the central regulatory management unit. It is indeed difficult to over-estimate the benefits which stem from publication<sup>31</sup>. The knowledge that a document is to be published in itself acts as an incentive to quality. Ex-post analysis or external scrutiny of published RIAs provides feedback as to their quality and can also suggest ways of finding data for the next revision. But in practice the RIAs are not easy to find and are supplied in a non user friendly format.

Finally, raising and maintaining RIA-quality is not only a matter of oversight and control. On the contrary, as the OECD notices, having such watchdog agencies can make a difference, but they do not obviate the need for departments and agencies to take ownership themselves for the best practice processes embodied in a RIA<sup>32</sup>. An important duty is therefore raising the responsibility of departments themselves for delivering good RIAs and reinforcing the capacity and learning effects to prepare good RIAs. To this end, 22 departmental regulatory management units were established. They i.a. were set up to give practical support and guidance in the RIA processes in the departments. But here as well, resources are often inadequate. The units today moreover often have a rather narrow legal perspective. And last but not least, their strategic and actual influence on policy making is limited.

#### 4.4. Changing the policy culture

From the beginning, it was clear that the implementation of RIA would be a long term process since it required quite radical changes to existing decision making procedures and the prevailing policy culture in Flanders. Cesar Cordova-Novion and Scott Jacobs wrote in their review in 2004 that *“The real problem is not practical, but is cultural. As other jurisdictions experienced, difficulties and opposition will be raised by departments/cabinets accustomed to few constraints on their rule-making powers. Skepticism and passive (or active) opposition will surround the RIA project and the establishment of binding horizontal procedures upon autonomous departments”*<sup>33</sup>. And indeed: the real challenge still is how to integrate RIA at the heart of the policy making process (and in so doing *change* the policy process), in a region where regulatory power is very concentrated and hierarchically organized due to the typical Belgian system of (large) ministerial cabinets (personal staff of a minister, often duplicating or replacing the work in the public administration), where politicians and members of cabinet are concerned of losing their impact on decision-making when finding themselves constrained by the requirement for a RIA, and where there is pressure to reduce unnecessary delays to the decision making process. As a result, from the start on there has been scepticism and passive (or even active) opposition to RIA by ministerial cabinets accustomed to few constraints on their rule-making powers<sup>34</sup>. The OECD therefore concludes in his recent review of the Better Regulation Policy in Flanders that the system has “teething problems”, typical of what is often encountered in other OECD countries: *“It is proving difficult to change attitudes and persuade officials (and ministerial cabinets) to take the assessment seriously and carry it out at a sufficiently early stage in the development of regulations (it is often treated more as an ex post note of justification for a decision which has already been taken). The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Strengthening impact assessments will require strong high-level commitment and further culture change”*.

<sup>30</sup> Wetsmatiging (2009a).

<sup>31</sup> OECD (2008a), Goggin and Launder (2008)...

<sup>32</sup> OECD (2006a).

<sup>33</sup> Cordova-Novion and Jacobs (2004).

<sup>34</sup> In other countries as well, it is being reported that “politicians seem unwilling to rely on evidence for decision-making purposes” (Renda, 2008). Wiener (2006) mentions that “in my experience, both in government and in academia, there is a huge swath of interests who favor less regulation regardless of its benefits, and a huge swath who favor more regulation regardless of its costs. In both cases, the alternative to analysis is sanctimony—supposing one knows the right answer without analyzing the consequences. In between these two potent and vocal campaigns is a narrow slice of those who genuinely want to compare the consequences (benefits and costs) of regulatory choices. It is very difficult for governments to maintain a steady commitment to comparing benefits and costs when great political pressure is brought to bear from one swath or the other.”

Commitment to RIA and cultural change require sustained political support from the highest level. This political commitment to RIA has been a major challenge and risk to RIA in Flanders. The 100 page coalition agreement of the new Flemish government<sup>35</sup> for the period 2009-2014 (July 2009) testifies: there is only one sentence on regulatory quality, announcing a “*reform of regulatory impact analysis (RIA) into a more effective instrument aiming at effective burden reduction and simplification of admission- and licensing procedures*”. Most people read this as an announcement that Flanders was going to delete its RIA system and replace it with an administrative burden test like the Kafkatest on the Belgian federal level. Fortunately, this hasn’t happened. As we pointed out in an earlier paper<sup>36</sup> this would have been a tremendous mistake at a time that other countries and regions are addressing the limitations of an administrative simplification policy and have moved or are moving towards a broader program of regulatory management in accordance with international best practices recommendations by the OECD and others. The OECD was very clear on the subject: “*Flanders should stick with its ambition of a broadly based process. It should not be discouraged by the challenges of setting up a full impact assessment process, and decide to confine itself to a more limited version that only covered administrative burdens.*” There is now an alternative interpretation of the quoted sentence in the coalition agreement, saying that it should be read as an affirmation of the commitment of government to make RIA work. In the policy brief 2009-2014 of the Flemish Minister responsible for Better Regulation (October 2009) reads: “*I want to reform regulatory impact analysis (RIA) into a more effective and pragmatic instrument aiming at high quality regulation*”<sup>37</sup>.

Another issue is the support for RIA from parliament and stakeholders like employers organisations, unions, local governments and advisory councils. Most of them judge that progress has been disappointing, but there is a clear public demand better regulation, modifications of the regulatory process, and better RIAs. In Parliament, the commission responsible for regulatory policy embraced RIA and supported its implementation with a motion on RIA that was approved by the plenary parliament on 31 January 2007<sup>38</sup>. On 20 January 2009, the Flemish government, the Flemish administration, the social partners organized in SERV and other stakeholders signed a treaty (“Pact 2020”) with a vision and objectives for Flanders in 2020, which i.a. calls for “an ambitious program for better regulation” and “measures raise substantially the quality of new regulations and policy decisions”. On 4 February 2009, the Flemish Government, Parliament, the Social-Economic Council and the Strategic Advisory Councils signed an “Interinstitutional Agreement about the joint approach to the Regulation Impact Analysis (IIA\_RIA)”. The agreement does not have any legally binding character but must be regarded as a declaration of intent. The parties confirm the positive contribution RIA can make to the improvement of regulatory quality, the empirical underpinning in the decision-making process, the cooperation between policy areas and the transparency of the policy process.. It also emphasise the key role the RIA plays as an instrument for achieving the “Lisbon Objectives”, “Good Governance” and a balanced and sustainable form of sustainable development. The agreements aims to “enhance the quality and added value of RIAs” by repeating and stressing some basic principles of RIA. The agreement also arranges the co-operation between the institutions on RIA: the active publication of all RIAs and of the biannual report to the Flemish Parliament on RIA quality are confirmed; government agrees to make available to the institutions scientific data underpinning RIA’s and any other information that can explain and clarify a RIA; and government opens its RIA-training for staff

<sup>35</sup> The three political parties involved in the new government (2009) are the same as in the previous one (2004), except one (the liberal party).

<sup>36</sup> Van Humbeeck (2009).

<sup>37</sup> Beleidsnota bestuurszaken 2009-2014, Geert Bourgeois Viceminister-president van de Vlaamse Regering en Vlaams minister van Bestuurszaken, Binnenlands Bestuur, Inburgering, Toerisme en Vlaamse Rand.

<sup>38</sup> A ‘motion’ is a recommendation from parliament to the government with policy measures or options the government should take. A motion does not have a legal binding status, but has a high political status and power. The Government moreover is compelled to report annually on the implementation of a motion. See Motie Nr 1071 (2006-2007). Met redenen omklede motie tot besluit van de op 16 januari 2007 door mevrouw Joke Schauvliege in commissie gehouden interpellatie tot de heer Geert Bourgeois, Vlaams minister van Bestuurszaken, Buitenlands Beleid, Media en Toerisme, over de evaluatie en bijsturingen van de reguleringssimpactanalyse (RIA). [www.vlaamsparlement.be](http://www.vlaamsparlement.be)

from Parliament, SERV and the Strategic Advisory Councils. A Technical Group under the IIA was set up to ensure implementation and exchange RIA-best practices and discuss related issues such as the regulatory agendas, consultations with stakeholders, and monitoring of regulations.

## 5. RECENT DEVELOPMENTS AND TRENDS

From the previous discussion, is it clear that Flanders is still struggling with four persisting challenges: How to maximise political commitment to RIA? How to integrate RIA at the heart of the policy making process and avoid formalism? How to allocate responsibilities for RIA? How to raise RIA-quality? Another challenge is: how to cope with emerging new and competing “sectoral” ex ante tests? The Regulatory Management Unit, the Government and the responsible minister recently issued several policy intentions that are currently being implemented. Below, we discuss some of these policy intentions and trends.

### 5.1. Renewed adoption of a policy for better regulation

To **strengthen political commitment** to RIA, we recommended i.a. that Flanders could:

- Persuade the new elected Flemish government to confirm its commitment to a broad better regulation policy;
- Make strategic use of the upcoming review of the regulatory capacities and tools in the EU-15 countries by the OECD to provoke renewed engagement by the political sphere;
- Make sure that the current uncertainty on the coverage and future direction of RIA is removed;
- Communicate successful RIA-examples better and look for ‘sexier’ indicators to show progress and results.

Government has clearly taken steps to implement these recommendations. To renew its high level support for an ambitious better regulation policy (the last adoption by the Council of Ministers dated back to 2001 and 2003), the Council of Ministers approved a new strategic policy framework “high quality regulations and administrative simplification 2009-2014”<sup>39</sup>. The policy framework builds on the 2010 OECD review and previous evaluations. It confirms the existing principles of better regulation and main instruments of the better regulation policy and announces some modifications, notably in the RIA system, the departmental regulatory management units, the regulatory agenda and the measurement of administrative burdens.

This re-approval of the broad better regulation policy by the Council of Ministers was important to take away the doubt that was risen after the policy agreement of 2009 in which (only) the reduction and simplification of procedures was mentioned. The strategic policy framework is now being implemented, but much remains to be done to realize the necessary change in attitude and cultural change. For example in Ireland, carrying out good quality RIAs has become part of every manager’s goals and objectives, performance evaluation includes RIAs and reporting on RIAs is an item on the agenda for senior management meetings within Departments.

### 5.2. RIA process

To **integrate RIA more at the heart of the policy making process**, we recommended i.a. that Flanders could:

- Introduce a mandatory phasing of each RIA, with a preliminary RIA (limited to problem definition, objectives, options) for internal and external discussion in an early stage and a full RIA in a final stage;

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<sup>39</sup> Vlaamse regering (2010). Strategisch beleidskader Kwaliteitsvolle regelgeving en administratieve vereenvoudiging 2009 – 2014.

- Evaluate the scope of the RIA-system, and link RIA more explicitly to (upgraded) regulatory agendas and to departments' strategic and operational plans;
- Modify its RIAs in subsequent phases of the regulatory procedure to make sure that RIAs reflect as much as possible the current thinking in relation to relevant policy options;
- Adopt an explicit consultation policy with mechanisms to ensure early and effective consultation, and link consultation with RIA.

Here as well, government has taken measures. The Flemish minister responsible for Better Regulation announced in his policy brief 2009-2014 that the RIA-process will be gradually transformed into a two staged process, with a preliminary RIA when drafting the regulatory agenda. The preliminary RIA will be limited to a discussion of the problem definition, objectives and possible options<sup>40</sup>. Regulatory Management Unit has prepared a draft policy note on RIA where a number of proposals to strengthen the RIA system are proposed. The note is currently being debated in the administration and the Council of Ministers. In the draft the Unit proposes to work with a mandatory phasing of each RIA, with a preliminary RIA for internal and external discussion in an early stage and a full RIA in a final stage. Preliminary RIAs would be put forward to parliament together with the regulatory agendas or would be linked to the use of roadmaps and/or green or white papers for important regulatory or policy decisions. The unit also proposes to better align RIA with other documents that have to be prepared during the development of a regulation, such as the explanatory note and the feedback to advisory councils.

On the regulatory agenda, a separate policy note was prepared by the Unit and approved by the Council of Ministers in November 2011<sup>41</sup>. The regulatory agendas are now updated twice a year. They are published on the internet and send over to parliament and the advisory councils. The Regulatory Management Unit prepared a blueprint in which departments are invited to use project planning when preparing new regulations. With respect to RIA, the objective is twofold: allow a transparent discussion on whether or not to perform a RIA process for a specific planned regulation and facilitate RIA to start sooner in the policy making process. RIAs would be required at the moment a draft regulation is being presented to government for first approval and would have to be modified in the subsequent phases of the regulatory procedure (after advice of the advisory councils, advice of the council of state...).

These developments follow the trends in other countries. The UK amended its RIA system in 2008 to introduce a draft RIA to be conducted before a Memorandum seeking permission to regulate goes to Government. Subsequently, an updated version of the RIA must be attached to the Memorandum accompanying the Bill as drafted, when it is brought back to Government for approval. In Ireland, the RIA system was recently modified to embed RIA thinking earlier in the policy development process and in divisional planning via an early draft of the RIA. Before, RIA was much like in Flanders regarded as a document (instead of a process) to be attached to the Memorandum for Government but by that time options often have been narrowed down and choices already made. The purpose of the early draft RIA is not to set in stone options which may turn out to be irrelevant or inappropriate, but to start debate about possible solutions<sup>42</sup>. RIA in Ireland is now also linked with Departments' Annual Plans and Strategic Plans. In Germany as well, there is a two step RIA process with prospective RIAs (future-oriented processes of impact assessments based on regulatory alternatives) and accompanying RIAs (future-oriented processes of impact assessments based on a draft in legal form)<sup>43</sup>. Renda (2009) suggests a similar approach for the European IA.

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<sup>40</sup> Beleidsnota bestuurszaken 2009-2014, Geert Bourgeois Viceminister-president van de Vlaamse Regering en Vlaams minister van Bestuurszaken, Binnenlands Bestuur, Inburgering, Toerisme en Vlaamse Rand.

<sup>41</sup> Naar een Vlaamse Regelgevingsagenda 2.0 en hervorming cellen wet kwaliteit VR/2011/1811/DOC.1140\_1BIS

<sup>42</sup> Department of the Taoiseach (2009a).

<sup>43</sup> More precisely, in Germany, there are three different modules or processes of RIA: prospective RIAs, accompanying RIAs and retrospective RIAs (backward-looking processes based on a statutory regulation already in force). See Lenschow et.al. (2008).



The reform of the RIA and the regulatory agenda should also stimulate policy makers to rearrange and intensify consultation procedures. The Flemish government already committed itself in the IIA-RIA to ensure that consultations are consistent with the EU minimum standards for consulting or equivalent consulting standards, with the RIAs reporting on the impact of the consultation. In addition, the Flemish minister responsible for Better Regulation asked the Regulatory Management Unit to prepare a guidelines for consultation. A draft version of the consultation code is currently being debated in the administration and the Council of Ministers. It is based on international practice and e-government tools, and lays out goals, standard methods and procedures, and contains standardized formats for consultation documents. There are plans for a unique website or ‘single access point’ for publication and consultation on draft regulations and decisions (through extension of the existing database on draft regulations), and for staff training in how to consult and how to use information from consultations. These plans must still be formally approved and implemented, but they can nevertheless be considered an important breakthrough since, compared to international best practices, the largest gaps in the regulatory management system of Flanders are linked to the policy and practice on transparency and consultation. Today, there is no formal consultation policy and there are no mechanisms to ensure a systematic, early and effective stakeholder consultation during policy and regulatory development, either through the existing advisory councils and/or new consultation methods. Early and meaningful consultation before a regulatory decision is taken is however widely recognized as key to the quality of new laws and other regulations.

### 5.3. Organization and scrutiny

To better **allocate responsibilities for RIA**, we recommended i.a. that Flanders could:

- Assure high level support and adequate resources for the central regulatory management unit, more in accordance with its broad mandate;
- Find an appropriate watchdog, but refrain from allocating responsibility for scrutiny to the departmental regulatory management units: a body independent of the department carrying out the RIA should be charged with quality control, preferably the central regulatory management unit or an interdepartmental Impact Assessment Board.
- Push departments to strengthen their own processes, build up capability and show primary responsibility for the quality of RIAs, and encourage them by spreading good practice examples and monitoring results through benchmark indicators;

Government government has reaffirmed that line ministries should conduct RIA. They should build teams to work on RIA and provide the resources and interdisciplinary capacities to undertake the RIA. A separate policy note on the role of the departmental regulatory management units was approved by the Council of Ministers in 2011<sup>44</sup>. The policy note reiterates the main goals and principles of the units from the decision of 2006, strengthens their role in the regulatory process (by giving them an important role in regulatory planning when preparing and updating the regulatory agenda) and compels heads of department to report to the Council of Ministers on the position, composition, and tasks of their unit.

The central regulatory management unit got approval for additional personnel, and today has a staff of 8 people. The mandatory RIA advice of the central unit is maintained, with an extension of the time limit from 4 to 12 days and longer for extensive or complex RIAs. The unit moreover committed itself to regularly give more feedback to departments on the average quality of their RIAs. Scrutiny by the central unit however is still underdeveloped. A review of the UK Audit Office<sup>45</sup> found that the most significant factor cited by departments as a motivation for high quality RIAs was the prospect of external scrutiny. The international best practice is that a body independent of the Department or Office carrying out the RIA should be charged with scrutinizing it from a quality perspective (with the aim not to “catch out” poor RIAs, but to discourage their production in the first place), preferably located in the center of government

<sup>44</sup> Naar een Vlaamse Regelgevingsagenda 2.0 en hervorming cellen wetkwaliteit, VR/2011/1811/DOC.1140\_1BIS.

<sup>45</sup> NAO (2008, 2009).

where authorities for inter-ministerial oversight are already established<sup>46</sup>. This means in the case of Flanders that the profile and resources of the existing central regulatory management unit must be seriously strengthened to align it with the key attributes of effective regulatory oversight bodies such as a recognised authority and expertise, political backing and adequate time and resources for scrutiny.

Second best is probably to allocate RIA quality control to an Impact Assessment Board (IAB), established along the lines of the example at the level of the European Commission<sup>47</sup>. Here the Minister responsible for Better Regulation announced that he would investigate whether the central quality control on RIA could be strengthened in analogy with the European IAB. It should be noted however that the European IAB is criticized for working not transparent enough, having too little resources and coming too late in the process. Another problem is that in the case of Flanders, there are not much (no?) examples of comparable arrangements. Anyhow, in such a system, the role for the central unit remains important and could be to periodically review departmental approaches to producing RIAs, with an assessment of a sample of RIAs to develop an understanding of their strengths and weaknesses, tailor guidance and training and disseminate best practice.

#### 5.4. Guidance, training and transparency

To raise RIA-quality, we recommended i.a. that Flanders could:

- Update its RIA-guidance to make it more practical, and complement it with a e-learning tool and with more technical guidance for sophisticated RIAs;
- Continue to assure there is a RIA central help-desk and provide hands on RIA-advice by the departmental units;
- Invest in training, to achieve that all regulatory bodies have a core group trained in RIA and all managers at the level of director and all policy advisors in the ministerial cabinets have had a basic training in the principles and tools of good regulation;
- Set up a network of RIA-practitioners to promote best practice and co-ordinate across departments;
- Encourage the use of early draft RIAs as the basis for consultation;
- Ensure that finalized RIAs are published together with a link to the legislation to which they relate and make published RIAs easier to find by requiring that there are dedicated RIA webpages and actively disseminate RIAs;
- Continue its monitoring and public reporting on the quality of RIAs.

A number of these suggestions were already mentioned earlier in this paper (pre RIA, consultation, scrutiny). In addition, the Flemish government decided in 2011 to publish all (draft) RIAs in the regulatory agendas and to simplify access to final RIAs. A renewed and more practical written RIA-guidance is being prepared and would be published in the coming weeks. The central Unit is also developing additional guidance material, notably for problem analysis, detection of relevant options, analysis and comparison of impacts and consultation (see consultation code). The Unit is also planning to put more focus in RIA on enforceability of regulations, monitoring of implementation and planning of ex post evaluation. One should caution however for the risk of overload. Therefore, the Unit is also planning to reform its RIA-training and invest more in a network of RIA-practitioners to exchange experience, promote best practice and ensure consistent application of the RIA framework, but also to co-ordinate across Departments. The unit also counts on the advisory councils and parliament to play their role in scrutinizing RIA-quality and plans to communicate good practice RIAs and spread good examples.

<sup>46</sup> Jacobs (2007b), Mandelkern Group (2001), OECD (2008)...

<sup>47</sup> This European Board works under the direct authority of the Commission President. Its members are high-level officials from Commission Departments most directly linked with the three aspects of the impact assessment (economic, social and environmental impacts: the Deputy Secretary-General responsible for regulatory matters, with four additional members who are senior officials of DG EcFin, DG Employment, DG Enterprise, and DG Environment). The IAB's rules say that its members must act independently of their home DGs, but it could be worth examining actual IAB decisions to see if conscious or unconscious bias afflicts voting in IAB decisions.

## 5.5. Integration of other ex ante assessment tools

There is an international trend to increasingly expect from RIA-writers that they examine all sorts of specific impacts (on SMEs, gender, poverty, administrative burdens, etc.). This trend is not necessarily a bad thing because it could mean that support for RIA is increasing and a proliferation of all sorts of separate specific tests with separate procedures, data and assumptions can be avoided. However, there is a risk of fragmentation and unbalanced analysis. Use of partial analyses can easily result in fragmentation because the larger integrated framework is not clearly defined or emphasised. “Without the integrating framework, such methods do not rebalance RIA but unbalance RIA”<sup>48</sup>. RIA not only has to compete for resources with new and competing demands from sectoral interests, but is also challenged by other policy communities such as the sustainable impact analysis (SIA) community. Coming from environmental impact assessment, the SIA community indeed developed rather separately from the regulatory policy community, and usually proposes schemes and procedures for SIA that are often very different to existing RIA-schemes. And since RIA developed historically from economic analysis and business impact assessment<sup>49</sup>, the picture of RIA in the SIA-community is that RIA is biased towards industry and against environmental protection, which is in fact an outdated understanding of what RIA today is or is meant to be). As a result, opportunities to link both agendas are sometimes missed.

Flemish regulatory policy decisions from 2001 onwards anticipated on these kind of discussions. The Flemish government in 2001 and 2003 endorsed a regulatory policy along three tracks in which administrative burden reduction and regulatory impact analysis stood equally side by side. Government has furthermore stressed that RIA features or will incorporate any existing or future sector-specific test. The rule has always been that the focus of a RIA should be on comparing the main effects of relevant options via an integral analytical framework, in which quantitative and qualitative ‘measurements’ for relevant economic, social, and environmental effects are analysed simultaneously in an integrated manner<sup>50</sup>. As a result, the ex ante administrative-burdens assessments in Flanders has been integrated into the RIA. The RIA guide and RIA manual moreover clearly indicate that RIA is also intended to contribute to sustainable development, by investigating - whenever relevant and proportionate – the likely social, economic and environmental effects for present as well as future generations<sup>51</sup>.

Despite the intentions to anticipate on the debate, the tension and competition for resources between RIA and sector-specific test is still there. In this respect, it must be recalled that the measurement of administrative burdens and all other specific tests have a much narrower scope than the impact assessment tool. For example, administrative burdens tests do not consider all categories of costs (only burdens generated by information obligations included administrative burdens in pieces of legislation) and do not

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<sup>48</sup> Jacobs (2006).

<sup>49</sup> The UK e.g. first introduced Business Compliance Cost assessments in 1985; by 1998 this had developed into a requirement for cost-benefit type RIA, and in the last few years RIA has been broadened further to integrate issues like Competition Assessment, Small Firms Impact Test, Sustainable Development, Carbon Assessment, Health Impact Assessment, Race Equality, Disability Equality, Gender Equality, Human Rights and Rural Proofing. The European Union’s system has also evolved over time, from a requirement for a Business Impact Assessment on new legislation from 1986, through the development of various sectoral Impact Assessments (health, environment, consumer protection, etc) during the 1990s, to the current system of a general Impact Assessment procedure that covers economic, social and environmental impacts as well as an examination of the principle of subsidiarity, proportionality and the choice of instrument.

<sup>50</sup> The RIA guide and RIA manual therefore explain that “one of the objectives of regulatory impact analysis consists of streamlining the multitude of ‘tests’ for Flemish regulation and integrating them into the RIA. The other tests can be carried out as well, but the result of these tests should be integrated into the RIA. This is, among other things, the case for the impacts on the local governments, the budgetary and personnel impacts for the public service, the child impact assessment and the Poverty Reduction assessment. To sum up, the RIA document therefore contains in an integrated manner the result of the application of all tests”.

<sup>51</sup> “The analysis of the effects also aims at ensuring that the intended regulation has no negative impact on the ability to realize or contributes to a sustainable development. This means that – wherever relevant – you map out the possible social, economic and environmental effects, both for current and future generations”.

consider the benefits associated with those costs. In other words, administrative cost reduction can be highly desirable, but administrative cost reduction pursued narrowly could be counterproductive since it needs to be evaluated in terms of its full social costs and benefits<sup>52</sup>.

The debate on SIA vs. RIA in Flanders has been spurred by the 2006 Flemish Strategy for Sustainable Development, the introduction in 2007 of a sustainability assessment system at the federal Belgian level and the research program for sustainable development, under which the Policy Research Centre for Sustainable Development is developing a proposal for a sustainable impact analysis framework. In the research project, sustainability assessment is defined as “an ex ante evaluation of a proposal, checking policy proposals on unwanted sustainability impacts and fostering a strong participatory approach to guarantee a balanced ‘weighing’ of interests and opinions”. (...) “Assessing the sustainability of a policy proposal before its implementation provides decision-makers with an overview of the impacts of that particular proposal on the economy, on society and on the environment. (...) The involvement of stakeholders fosters consensus and facilitates the solution of potential conflicts. Ultimately sustainability assessment allows decision-makers to make fully informed decisions, without jeopardizing the freedom of political decision-making”<sup>53</sup>.

From this definition it should be clear that SIA is much like RIA. In other countries as well, research showed that there is significant overlap between the manner in which assessment is prescribed in RIA guidance documents (e.g. in the UK, Germany and Sweden and the European Commission) and the principles of SIA<sup>54</sup>. The basic ambitions of RIA and SIA indeed are similar: (1) systematically and consistently examining potential impacts arising from government action, using evidence-based techniques to justify the best option; (2) increasing the transparency of the policy process, by fostering the consultation and participation of stakeholders; and (3) requiring policy makers to look beyond the traditional boundaries and examine positive and negative effects on other policies. Of course this does not imply that today, in everyday practice, RIA succeeds in its objectives. In some countries the dominant rationale for RIA remains to reduce costs imposed by regulations and several case studies have supported the concern that there can be a bias towards the 'hard' economic facts when RIAs considers direct economic effects while social and environmental impacts are less analyzed<sup>55</sup>. Others report that retrospective analyses of a variety of policies do not bear out the concern that RIA is biased toward overstating costs and understating benefits<sup>56</sup>. Anyhow, the difficult areas of distributional issues, long-term, external and unintended side effects often seem of little importance both in RIA guidelines as well as in practice<sup>57</sup>. However, the picture that RIA is exclusively on competitiveness, that is, on reducing costs to industry, without considering social and environmental benefits, and on less regulation instead of better results should firmly be rejected. The Mandelkern Group Report of 2001 wrote about claims of bias: “Some see RIAs as an excuse to impose a business-focused, deregulatory agenda on policy makers. For a RIA done well, this is absolutely not the case. Rather, RIA simply sets out the information in a clear and concise way to inform—not control—the political decision. This point needs to be stressed, as appropriate and real efforts need to be made to ensure that both benefits and costs are included in the assessment”.

From this discussion, it should be clear that it would be impractical, inefficient or even impossible to have a SIA-system with the same objectives and scope as RIA next to a RIA-system. That doesn't make sense and is a waste of time and resources. And it has to be acknowledged that the different aspects of sustainable development are not relevant for all proposals. One option is therefore to look for measures to

<sup>52</sup> Wiener (2006).

<sup>53</sup> Hugé (2008).

<sup>54</sup> Hertin et.al. (2007).

<sup>55</sup> Jacob et.al. (2008).

<sup>56</sup> E.g. Wiener (2006). *Ex post* evaluations of a growing set of cases (though not yet a representative sample) have found that *both* benefits and costs appear to have been overstated in *ex ante* RIAs.

<sup>57</sup> Hertin et.al. (2007).

integrate sustainable development better in RIA. Previous studies have made useful suggestions on how to promote the use of RIA as a tool to integrate sustainability concerns. These include making sustainable development strategies an explicit reference point of RIA procedures; integrating sustainability checklists into RIA guidelines; increasing involvement of stakeholders, particularly of civil society organizations; promoting a broad range of methodologies that capture environmental and social (particularly distributional) effects; and giving environment and social affairs ministries an active role in RIA procedures<sup>58</sup>. Another option is to reserve SIA for very specific types of policies, as suggested by e.g. Hertin et. al. (2007): “Certain types of problems lend themselves to ISA more than others. ISA is more likely to be taken up in relation to issues which are perceived to be “open”, i.e. where the problem is ‘illstructured’ or ‘wicked’, where there is genuinely open public debate and no obvious policy solutions. These are often associated with the appearance of sudden unforeseen crises that open up windows and pressures for significant policy change, as well as a demand for new sources of knowledge. These lead to reconfigurations in the main alliances and coalitions to create a momentum for change; ISA processes are very well placed to respond to the associated demand for new forms of knowledge, capable of operating at some distance from everyday political decisions to allow stakeholders to ‘let go’ of their short-term interests; subject to democratic scrutiny and be publicly accountable; given a leadership which is trusted and well-known by the key actors; semi-closed to allow stakeholders to “drop their guard” and engage in longer term learning”.

To cope with these **new and competing demands**, we recommended i.a. that Flanders could:

- Confirm its commitment to the broader view of regulatory policy and regulatory quality beyond deregulation and administrative simplification.
- Safeguard that resources for RIA are not crowded out by resources allocated to the measurement of administrative burdens.
- Protect RIA from losing its integrating role by confirming that RIA should incorporate any existing or future sector-specific test (including administrative burdens measurements), and that those sectoral test should not unbalance RIA.
- Stress that the basic ambitions of RIA and SIA are similar and implement common sense measures that can help RIA to contribute better to sustainable development.

The council of Ministers recently confirmed that RIA stays the central ex ante policy assessment tools that should integrate all relevant aspects of a policy proposal<sup>59</sup>. The strategic policy framework “high quality regulations and administrative simplification 2009-2014”<sup>60</sup> pays a lot of attention to the integration and coordination of sectoral test with the RIA system. This is being further developed in the draft policy note on RIA that the Unit has prepared for internal discussion in consultation with the relevant line ministries. On the link with SIA, the policy brief on sustainable development that was published in October 2011 mentions that the intention with SIA is to develop an instrument that is coherent with sectoral test and is embedded in the RIA as the guiding process of impact analysis in the Flemish Government (without unduly burdening the decision-making process). The policy brief also announces the preparation of a quick scan for an impact analysis for sustainable development. “It's going to be a simple, exploratory ex ante policy test that identifies early in the policy process the effects for sustainable development.” It is repeated that the development and implementation will be adjusted to fit into the RIA process, “the guiding instrument for impact analysis of the Flemish Government”<sup>61</sup>.

<sup>58</sup> Jacob et.al. (2008).

<sup>59</sup> Decision of the Council of Ministers of 17 December 2010.

<sup>60</sup> Vlaamse regering (2010). Strategisch beleidskader Kwaliteitsvolle regelgeving en administratieve vereenvoudiging 2009 – 2014.

<sup>61</sup> Beleidsbrief Algemeen Regeringsbeleid. Beleidsprioriteiten 2011-2012. ingediend door de heer Kris Peeters, minister-president van de Vlaamse Regering, Vlaams minister van Economie, Buitenlands Beleid, Landbouw en Plattelandsbeleid. 21 oktober 2011.

## 6. RIA at the Belgian federal level and in the other regions

At the Belgian federal level and in the Walloon and Brussels Regions, the RIA-systems are very different and much less advanced or implemented than in Flanders, or even absent. Hence, we will discuss them more briefly. RIA at the federal level is composed of two separate tools: the Kafka test for administrative burdens on the one hand and SIA (Sustainability Impact assessment) on the other. In Wallonia and Brussels, there is only the Kafka test. There are however signs that governments at federal and regional level are considering introducing RIA in the next few months<sup>62</sup>.

### 6.1. Kafkatest for administrative burdens

The Kafka-test for prevention and reduction of administrative burdens of regulations was introduced at the federal level in October 2004 and in Wallonia in January 2007. Each note to the Council of Ministers that goes with a regulatory proposal has to be accompanied by a “Kafka-test”. Excluded are internal government regulation, budgetary regulation, regulation approving international and interregional conventions and agreements, regulation without substantive impact or of a purely formal nature. The test consists of a four page form with a series of questions linked to the administrative procedures and formalities in the draft regulation. In practice, the Test is mostly done at a late stage, just before a proposal goes to the Council of Ministers. The process does not specifically provide for public consultation (which takes place through the institutionalised consultative committees). The Kafka Test is considered a working document. It is attached to the new draft regulation but is not publicised with the regulation and is not communicated to external stakeholders. The Administrative Simplification Service (DAV) acts as an helpdesk and issues guidance material.

DAV performed an evaluation of the Kafka-system in 2009. The main conclusions were summarized in a response of the Belgian Prime-Minister to a question from a member of the federal parliament<sup>63</sup>. DAV counted 505 Kafka-tests performed in 2006, 401 in 2007, 210 in 2008 and 91 in 2009 (period (1/1/2009-30/4/2009)). Based on a sample of regulations issued in 2008, DAV concluded that “compliance is very high” and that “the Kafka-tests have resulted in significant administrative burden reductions”. Data supporting this conclusion was announced to become available on the DAV-website soon<sup>64</sup>. The Belgian prime minister declared in his answer of 25 May 2009 that the “introduction of the Kafka test has certainly resulted in raising consciousness of regulators that administrative simplification should be a permanent issue”. In a report that was published in July 2009<sup>65</sup>, DAV estimated a reduction in a reduction in administrative burdens in regulations of nearly 71 million euros. A more recent internal evaluation of the Kafka-test by DAV however admitted some weaknesses: the test comes too late and is too isolated from the rest of the policy making process, the impact on the quality of regulations and administrative burdens often is too low, the understanding of the test is poor, and dissemination of the results is too limited (only accessible for government officials via e-Premier).

The Walloon government and the French Community government have taken and adapted the federal government Kafka Test. The process starts with a pre-check to identify the need (or not) for a Kafka Test. In practice the Test is carried out at the same time as the text is sent for opinion to the Inspectorate of Finance, so as the result can be used for discussion at inter-cabinet meetings before the first reading by the government. The Walloon version of the Kafka Test includes additional criteria for improving the quality of the regulation (codification, abrogation of obsolete texts, readability and structure). There have been

<sup>62</sup> We refer to the ongoing OECD review (OECD 2009c) and to the discussions we had at SWEP (Van Humbeeck, 2008). For previous assessments of the situation at the Belgian federal level we refer to i.a. Cordova-Novion and Jacobs (2004) and Popelier (2007) in which several other evaluations are discussed as well.

<sup>63</sup> Parlementaire vraag nr. 031 van 30 april 2009 van de heer Roel Deseyn betreffende testen bij beleidsbeslissingen.

<sup>64</sup> <http://www.verenvoudiging.be>

<sup>65</sup> DAV, 2009.

efforts in supporting the Test, with a methodological guide and training courses. In the Brussels-Capital Region and the German-speaking Community there is no Ex ante impact assessment, not even for administrative burdens. A recent internal evaluation of the Kafka-test in Wallonia revealed the same problems as were reported at federal level: here also, the test comes too late in the policy making process, the impact on the quality of regulations is very limited, and transparency of the results is poor (only accessible for government officials).

## 6.2. Sustainability Impact Assessment

Sustainability Impact Assessment was introduced by law in the federal government in Belgium in January 2007. It intends to “analyse the impact of proposed policy measures on the economy, social welfare and the environment, for present and future generations, in Belgium and the rest of the world”. It was to a large extent inspired by the Flemish RIA-system, however with some notable differences. Box 4 explains the basics of the federal SIA-system. SIA sets a two-stage process to allow for an initial screening of regulations through a set of indicators, and for an in-depth analysis of selected regulations. The SIA helpdesk (PODDO) has produced a range of guidance materials.

### Box 4: Basics of the federal SIA-system

SIA objectives	Article 4 of the Royal Decree of 22 September 2004 defines SIA as “the full range of methods that are utilized to study the possible social, economic and environmental effects of a proposed policy of one of the governmental services concerned, before taking a final decision in the relevant case.”
SIA scope	Each note to the federal government that goes with a policy proposal has to be accompanied by a SIA form. Excluded are internal government regulation, budgetary regulation, regulation approving international and interregional conventions and agreements, regulation without substantive impact or of a purely formal nature measures that have already been subject to an assessment, that are urgent, that relate to national security and safety.
SIA process and procedure	There are 3 different SIA forms, one of which has to be presented to government, depending on the outcome of the SIA procedure: there is an ‘exemption form’ (to be filled out when the policy falls outside the scope of SIA), a quick scan form (in case there are no major impacts) and a summary form (that gives a summary of SIA-report, in case there are major impacts). The SIA procedure itself differs between a screening phase, a scoping phase and the SIA itself (see figure X and X below).
SIA product	The SIA “product” can be either a quick scan (scoping phase) or a SIA-report (after the screening phase). The SIA-quick scan looks like an impactmatrix in which 33 indicators have to be checked and qualitatively answered (10 economic indicators, 10 social, 10 environmental, 3 government, with differentiation between effects in the short / long term and local / global effects). The requirements for the content of a full SIA-report look very much like a standard RIA, although the focus can differ (e.g. longer timeframes, inclusion of global effects...): <ul style="list-style-type: none"> <li>• Problem definition</li> <li>• Policy objective</li> <li>• Policy options</li> <li>• Analysis of effects of policy options</li> <li>• Consultation</li> <li>• Conclusions and recommendations</li> </ul>
SIA-system	SIA is the responsibility of the policy makers and legislators within the departments and agencies. At the end of the process the minister or secretary of state who presents the policy measure for approval to the Cabinet is responsible for the correct application and content of the SIA. To assist SIA-practitioners, a SIA-manual has been drafted <sup>66</sup> and SIA-training has been provided (in 2007). In addition, a system for support ‘on the job’ has been established: there is assistance by the sustainable development cells of each administration, the sustainable development cells of other administrations, the SIA helpdesk (inside PODDO, the federal service for sustainable development), the Federal Planning Bureau (for data) and external offices (for the assessment of specific impacts).

PODDO has done an evaluation in 2009 of the SIA-system in a response to a question from a member of the federal parliament<sup>67</sup>. PODDO counted 246 SIA-forms completed in 2007, 221 in 2008 and 97 in 2009 (period between 1/1/2009 and 30/4/2009). They however turned out to be mostly exemption forms and –

<sup>66</sup> <http://www.poddo.be/NL/instrumenten/doeb/goto.php?id=c8ffe9a587b126f152ed3d89a146b445&type=docs>

<sup>67</sup> Parlementaire vraag nr. 031 van 30 april 2009 van de heer Roel Deseyn betreffende testen bij beleidsbeslissingen.

tragically – only *one* full SIA (on nuclear power) (see box 5)<sup>68</sup>. It looks like the Belgian system suffers from the same weakness as the RIA-system in Ireland experienced: screening SIAs that are shaped by a desire to prove that the threshold for a full SIA is not met, rather than to do a proper evaluation of impacts. The Belgian prime minister declared in his answer of 25 May 2009 to a member of parliament who asked about the added value of SIA that the “*introduction of the SIA test has certainly resulted in raising consciousness of regulators that sustainable development should be a permanent issue*”.

**Box 5: shares of exemption forms, quick scans and full SIA's (2007-2009)**

	Government			
	Verhofstadt II	Verhofstadt III	Leterme	Van Rompuy
	mar 2007- dec 2007	dec 2007-mar 2008	mar 2008-dec2008	dec2008-apr 2009
exemptions	97,7%	96,6%	92,0%	86,8%
quick scans	2,1%	3,4%	8,0%	13,2%
full SIA	0,2% (1)	0,0%	0,0%	0,0%

PODDO until now proposed only minor modifications to the SIA-system, in particular the abolishment of the exemption form. As a result, a motivation for the exemption in note to the government itself nowadays is sufficient. As we wrote in previous papers, we however believe a more thorough reconsideration of the SIA-system is imperative<sup>69</sup>. The federal government could use the international and Flemish RIA-experience and learn from it to build a system that suits the Belgian federal context better than the current SIA (innovate, not imitate). A well-functioning RIA-system at the Belgian federal level and in the other regions is urgent considering the quality of many regulations and the fact that high quality regulation at a certain level of government today in Belgium may easily being compromised by poor regulatory policies and practices at other levels, impacting negatively on public service delivery, citizen's perception, business activities and performance on economic, social and environmental goals<sup>70</sup>.

### 6.3. OECD-evaluation of RIA at the Belgian federal level and in the other regions

In 2010, the OECD performed a review of in Belgium in the context of the better regulation in Europe project. The report concludes that at the federal level, there is a strategic gap: there is no clear and compelling overall better regulation strategy, and no visible forward planning agenda like in Flanders and many other countries. On RIA the OECD acknowledges that the Belgian government has taken important steps to integrate ex ante impact assessment in the development of regulations, but it regrets that the scope still are for the most part, confined to evaluating administrative burdens.

For the OECD, the federal government's Kafka Test however can be a good starting point for raising awareness of impact assessment and its potential. The OECD mentions some methodological weaknesses and recommends to do the ex ante testing earlier in the policy making process, to allow for consultation of stakeholders, and to assure external publication of the results of the Kafka Test. The most important message is that the test needs to evolve and consider a larger range of impacts. Here the OECD recommends to link the future evolution of the Kafka test with the roll-out of the SIA-system.

On the SIA-system the OECD observes that so far the process has been applied in practice only to a limited number of draft regulations and that there is no clear evidence that it has yet produced any tangible results or changed the course of a draft proposal. The OECD warns that the highly ambitious objectives set for the Sustainable Development Impact Assessment, combined with significant exemptions, could complicate efforts to make progress. “In essence”, the OECD writes, “*the federal government is seeking to establish a process (a form of super impact assessment) which is highly sophisticated by international standards, on a culture and administration which has so far only had the modest experience of a limited test for*

<sup>68</sup> Goggin and Lauder (2008).

<sup>69</sup> See e.g. Van Humbeeck (2009)

<sup>70</sup> On the issue of Multi-level governance issues in regulatory policy, see e.g. OECD (2008d).



*administrative burdens. This is not to question the objective of broadening the scope of impact assessment, but to caution that this needs to be developed in proportion with capacities to cope, and with a much more developed support system. The federal government should re-assess its ambitions in respect of SIA and take stock of how to evolve toward a broader, integrated and realistically achievable approach”.*

Another issue for attention according to the OECD is that the federal government now has two separate institutional anchors for impact assessment. The Sustainable Development Impact Assessment process is overseen by the PODDO (one of the horizontal ministries), and the Kafka Test is overseen by the ASA in the Federal Chancellery. There is no formal link between the two processes. The OECD therefore writes: *“It does not make sense to continue, at least over the longer term, with two separate processes”.*

The OECD recommended that the Walloon government should set itself the objective of moving toward a broader ex ante impact assessment process, beyond administrative burdens. The government of Brussels-Capital Region should formally introduce ex ante impact assessment in the procedures for making new regulations.

#### **6.4. Recent developments**

DAV has prepared a working document discussing the transformation of the Kafka test into RIA or AIR (Analyse d’impact de la réglementation). However, since it took until 6 December 2011 to establish a new federal government after the elections of 13 June 2010, nothing could be decided on the future of RIA at the federal level. At the end of 2011 and the beginning of 2012 the new minister for administrative simplification and the new minister for sustainable development each presented their policy note to parliament. The policy note on sustainable development announces an evaluation of the SIA-system<sup>71</sup>. The policy note on administrative simplification announces that DAV will propose concrete measures to implement the ambitions of the European action program on better regulation and administrative simplification and the recommendations of the OECD review on Better Regulation, and more specific “the strengthening of the impact assessments, that should be applied as wide as possible, and soon enough in the rule making procedures”<sup>72</sup>. Also in the other regions there are signs that governments are considering introducing RIA in the next few months<sup>73</sup>.

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<sup>71</sup> Vanackere, Steven. Minister van Financiën en Duurzame Ontwikkeling, belast met Ambtenarenzaken. Algemene Beleidsnota Duurzame Ontwikkeling. Belgische kamer van volksvertegenwoordigers, Doc 53 1964/ (2011/2012), 9 januari 2012.

<sup>72</sup> Chastel, Oliver. Minister van Begroting en Administratieve Vereenvoudiging. Algemene Beleidsnota Administratieve vereenvoudiging. Belgische kamer van volksvertegenwoordigers, DOC 53 1964/024, 29 december 2011.

<sup>73</sup> We refer to the implementation of the OECD-recommendations and to the discussions we had at SWEP. For previous assessments of the situation at the Belgian federal level we refer to i.a. Cordova-Novion and Jacobs (2004) and Popelier (2007) in which several other evaluations are discussed as well.

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