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Embedding impact assessment in policy making. The case of Flanders-Belgium: developments, difficulties and challenges.

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## **Abstract**

This paper presents the policy and implementation developments regarding impact assessment in the Flemish region of Belgium. Impact assessment has been introduced as a European, legal requirement in the environment field and other sector approaches followed. The introduction of regulatory impact assessment was predominantly inspired by the OECD. The implementation of these impact assessment approaches struggles with difficulties and can hardly be considered successful. The current political objectives for more evidence based policies could be understood as signals for future improvements. However at the administrative level, the necessary reforms and actions remain modest given the overarching budgetary constraints as well as the cabinet-driven governance culture.

**Keywords:** impact assessment, evaluation, evidence based policy making

## **Introduction**

Impact assessment (IA) is not a general, legal requirement in the policy making process of the Flemish region (North Belgium) but the policy intentions of the current Flemish Government (2014-2019) include ambitions for more evidence-based policy making. The Government Agreement includes quite a lot of references to evaluations, effects, assessments (text available at: <https://www.vlaanderen.be/nl/publicaties/detail/het-regeerakkoord-van-de-vlaamse-regering-2014-2019>).

Historically, environmental and strategic environmental assessments (EIA/SEA) were the first ex ante evaluation tools to be introduced. Both instruments are mandatory as they are based on European Union directives (and also international legislation) but their transposition and implementation tracks reveal several difficulties, including court cases and burdensome legislative processes, also in Flanders.

Inspired by EU and OECD work- Regulatory Impact Assessment (RIA) was introduced by a Flemish Governmental decision in 2005 but is not a legal requirement. Some kind of children and youth IA exists also and is linked to the RIA approach. During the previous legislature of the Flemish Government (2009-2014) some initiatives regarding additional impact assessment approaches were introduced. They concern different policy issues: poverty, inclusion (equal opportunities), Brussels, local governments and sustainable development.

Improving RIA was one of the objectives of the new regulatory management strategy adopted in 2010. This strategy stipulates that RIA is the central impact assessment instrument. In 2011 an initiative to elaborate a flexible approach to align a Sustainability Impact Assessment (SIA) approach to the RIA practice was agreed between all concerned policy domains of the Flemish government. This initiative was enhanced by the fact that existing impact assessment practices/requirements regarding youth and gender favoured a more clearly embedded SIA. The current RIA manual refers to a SIA matrix or checklist (quick scan). Its application remains however limited. Evaluations of the RIA practice concluded that RIA is yet not firmly established and recent developments are considered as a further decline.

This paper will look with a practitioners view into the institutionalization of impact assessment in Flanders with a particular focus on interactions (administration, experts, stakeholders, politics) and progress. The current situation will be assessed in the light of the latest European policy objectives, strategies and instruments (directives, better regulation policy including IA and evaluation). Evidence based policymaking in a multilevel governance setting creates also complexities as well as opportunities, eg the use of Commission impact assessments. Next to addressing new societal problems, public administrations need at the same time to simplify procedures and processes and address stakeholders' concerns... After introducing some features of Belgian and Flemish governance, the paper presents and analyses different impact

assessments approaches in the context of Flemish regulatory policies and decision making. It addresses and comments the current policy intentions and their challenges.

## **Some features of policy making in the Belgian state and the Flemish region**

### **Devolution**

Since the last but one constitutional reform (adopted in 1994) Belgium is a federal state, made up of three communities (language-related: Flemish-, French- and German-speaking) and three regions (territory-related: Flanders, Wallonia and Brussels-Capital). Within Flanders the community-related and territorial issues have been merged into one regional entity. Consecutive constitutional reforms since 1970 (the last, sixth state reform dates from 2012-2013) have resulted in devolution of competencies. Substantial powers in the cultural, social, economic and environmental spheres have been transferred from the federal level to the regional level. (Deschouwer, K. 'The politics of Belgium' (2<sup>nd</sup> ed.), (2012), Palgrave McMillan, Basingstoke, 59). However as the heart of the federal state is an economic and monetary union it is no surprise that crucial socio-economic issues remained federal competence. Other important policy domains like housing, territorial development and the major part of environmental policy making were devolved to the regions. However issues like protection against ion radiation, transit of waste, protection of the marine environment, and the policy concerning product norms remained within the federal competence.

The statutory provisions of the communities and the regions (decrees in Flanders and Wallonia; ordinances in Brussels) have force of law throughout the territory for which they are intended and are equal to federal laws (no hierarchy). Conflicts of competence between federal laws and decrees are settled before the Constitutional Court. In principle, the federal legislative body is only competent for those matters that have been explicitly allocated to it

by the Constitution. However as a list of federal competencies has not yet been established, the residual competence still remains with the federal legislator. (Pas, W., 'De door de grondwet aan de wet voorbehouden aangelegenheden, vroeger en nu', in: Alen, A. (ed.), 'De vijfde staatshervorming van 2001', (2002), Die Keure, Brugge, 61).

### **Governance features**

The societal evolution and the historical devolution of competencies have resulted in a multi-actor policy approach at different policy levels: municipal, provincial, regional and national (federal). Whilst competencies are in principle exclusively attributed to federal (eg defence, police, justice, customs, labour law, civil law) or federated authorities (eg education, spatial planning, agriculture) in reality a large number of particular policy fields like eg. environment, health, energy or social (security) issues remain shared – but in different degrees – or overlaps exist between more than one policy level. This absence of homogeneous competency packages has impacts at different levels. (OECD, Better Regulation in Europe: Belgium, Paris, 2010, 15). The application of policy instruments in such a framework leads to complex processes and regulatory frameworks for decision making within Belgium. Agreements concerning the internal Belgian burden sharing within the context of the international climate policy are exemplary: negotiations took two years for the first agreement in 2004, (Hecke, K., and T. Zgajewski, 'The Kyoto policy of Belgium', (2008), Egmont Paper 18, Brussels, 8) and even six years for the most recent one (December 2015, just in time for the Paris COP, see: <http://www.klimaat.be/nl-be/klimaatbeleid/belgisch-klimaatbeleid/nationaal-beleid/reductiedoelstelling>).

Given the vast fragmentation of policy making, it is obvious that co-operation between all policy levels is essential for progress. Such co-operation mechanisms between the federal

level and the communities and the regions have been established in the form of Inter-ministerial Conferences and agreements. The Inter-ministerial Conferences have a political nature, are sector-related (e.g. environment or sustainable development) and are held on a regular basis (in principle...) or when an urgent matter has to be addressed. In order to improve co-operation between the different policy levels and to avoid the expected deadlock situations, the constitutional reform also introduced “co-operation agreements”. Such an agreement may formalize and elaborate issues that have been agreed on by an Inter-ministerial Conference. For example a number of climate policy related issues are the subject of such co-operation agreements and the 2015 political climate burden sharing agreement was only in March 2017 translated into a draft co-operation agreement (approved by the federal government, see: <http://fido.belgium.be/nl/nieuws/samenwerkingsakkoord-over-de-verdeling-van-de-belgische-klimaat-en-energiedoelstellingen>). Some agreements may have direct effect, others require an additional approval by the different parliaments (federal and regional). This illustrates that Belgium’s federal government has very limited powers to coordinate policies of the regions and communities. It only has a power of substitution in the case of the condemnation of Belgium by the European Court of Justice for the non-compliance of regional or community legislation with European Union law (Wouters, J., S. Van Kerckhoven and M. Vidal, ‘The dynamics of federalism: Belgium and Switzerland compared’, (2014) Leuven Centre for Global Governance Studies, Working Paper No. 138). There are also a number of situations in which a government mandatorily has to consult with other governments. In most cases co-operation amongst them is voluntarily, and there are over 100 co-operation agreements and a number of permanent structures facilitating this co-operation but their enforcement remains questionable due to the absence of an enforcement mechanism.

Generally speaking, one can say that the Belgian governance approaches reflect what has been described as follows: *“Governance, it is argued, is increasingly about the co-ordination of the actions of, and interactions between, public and private actors, across multiple layers and structures of governing. Thus the term ‘governance’ is increasingly used to refer to the co-ordination of traditional, formal activities of government alongside other, informal processes that regulate societal development.”* (Baker, S., ‘In Pursuit of Sustainable Development: A Governance Perspective’, (2009) ESEE Working Paper, see: <http://www.esee2009.si/ESEE2009.html>)

In the case of the Belgian governments a particular feature complements these formal and informal processes as stated by the OECD *“(…) the often strong role of cabinets in rule-making processes. In all governments (federal, regions, communities), ministerial cabinets (referred to as “strategic cells”) are large, contain a mix of both civil servants and political nominees, and are often involved in law drafting (a task usually reserved for civil servants in other countries). A number of stakeholders voiced their concern to the team that this weakened the application of Better Regulation processes such as effective consultation, because the cabinets did not or could not (for example, under political pressure or in an emergency) automatically apply the processes when they drafted laws.”* (OECD. Better Regulation in Europe: Belgium. Paris, 2010, 19). However the previous Flemish Government signed in 2009 a charter with the College of high level civil servants of the administration concerning their mutual responsibilities and cooperation, this particular “ministerial cabinet”-feature of the Belgian public governance model remains very strong. *“Ministerial cabinets, which take up a leading role in policy formulation in Belgium, rarely give high priority to policy-analytical practices, such as the appraisal of different policy alternatives.”* (Fobe, E., B. De Peuter, M. Petit Jean and V. Pattyn, ‘Analytical techniques in Belgian policy analysis’, in: Brans, M. and D. Aubin (Eds), ‘Policy

analysis in Belgium', International Library of Policy Analysis, Vol. 10, Policy Press, Bristol, 2017, 51). In February 2017 the number of cabinetards in the Flemish Government was equal to the number under the previous government despite the intention to reduce this number (De Tijd, 10 February 2017).

This raises questions about regulatory policies at the different policy levels. The first policy intentions appeared in 1999 in both the federal Government Agreement (7 July 1999) and the Flemish Government Agreement (8 July 1999). The main focus at both levels concerned the reduction of administrative burdens and the simplification of legislation. However these ambitions were also linked to other instruments on evaluation and participatory approaches in order to address the growing concerns of citizens and societal stakeholders. (Popelier, P. 'Naar een democratisch wetgeving(evaluatie)beleid', in Hubeau B. and M. Elst (Eds), 'Democratie in ademnood? Over legitimiteit, legitimatie en verfijning van de democratie', (2002), Die Keure, Brugge, 363). In 2013 the administrative burden-test became part of a more elaborated and integrated impact assessment approach that includes now four other issues for which separate tests existed: sustainable development, gender equality, policy coordination for development cooperation and SME's. (Law of 15 December 2013 and Royal Decree of 21 December 2013, both published in the Belgian OJ of 31 December 2013, 103694/103704.). However an initial review in 2014 and a more extensive review of 100 federal RIAs later not revealed the low quality of these assessments (Poel K. and W. Marneffe, 'De federale regelgevingsimpactanalyse: een stand van zaken na 6 maanden' (2014), Tijdschrift voor Wetgeving, 185-201). Poel et.al. considered the current federal RIA system is not consistent with the six essential elements of a good impact assessment (Poel, K., W. Marneffe, and P. Van Humbeeck, 'De federale regelgevingsimpactanalyse: nood aan hervormingen?' (2016), Tijdschrift voor Wetgeving, 196-217, 208). RIA has to be integrated within the policy process

in order to be effective but the feasibility of such an integration remains questionable given the governance culture in Belgium. Poel et.al. state that in Belgium the relationship between politics and administration differs from many other countries given the hierarchical relationships of the political-ministerial cabinets versus the administration. (o.c., 2016, 208).

### **Environmental assessments**

The transposition of the European Environmental Impact Assessment Directive (Directive 2011/92/EU which replaced the original Directive from 1985 as amended) and the Strategic Environmental Assessment Directive (Directive 2001/42/EC) in Belgium has resulted in 4 different sets of regulations. The Flemish legislation concerning EIA and SEA has been the subject of a number of changes due to legal and political factors: some judgments by the European Court of Justice (eg cases C-133/94 / C-435/09 / C-257/09), a lot of Belgian court cases (Lavrysen, L, 'Environmental Impact Assessment in Belgium', (2014) EUFJE Conference, Budapest, 2014, 22; also: Cliquet, A. and H. Schoukens, 'Country Report: Belgium: Public Participation and Access to Justice in Large Scale Infrastructure Projects: How Deep is the Gap between Law and Reality?' (2015), IUCN Academy of Environmental Law E-Journal, 136 - 143), changes in EU and international law (eg UNECE Aarhus Convention) as well as regional political ambitions to increase the efficiency of the EIA/SEA-systems and to reduce administrative burdens or the perception about these. (Schoukens, H., N. Moskofidis, and J. De Mulder, 'Handboek Milieueffectrapportagerecht' (2016), Die Keure, Brugge,). But EIA/SEA is not only an administrative tool as this 'information processing'-model for further 'rational' decision making implies that producers (developers, experts, administrations) of these assessments enter political territory as they formulate certain "value" judgments (Verlet, D. and C. Devos, 'Beleidsevaluatie: een inleidende situering', in: Verlet, D. and C. Devos, 'Over

beleidsevaluatie: van theorie naar praktijk en terug', (2008), Studiedienst Vlaamse Regering, SVR-Studie 2008/2, Brussel, 10) about the relevance, effectiveness, efficiency and feasibility of the proposed project, plan or policy initiative. (Van Aeken, K., S. Jacob and F. Varone, 'Beleidsevaluatie: een sturingsinstrument voor het overheidshandelen', (2003), Vlaams Tijdschrift voor Overheidsmanagement, 30). Furthermore the EIA/SEA-reforms through legislative amendments in Flanders have also to be placed in the context of the consecutive, politically driven reforms of the administration. In 1999, the "Better Administrative Policy" (BAP) reorganized the core of the civil service (ministries, agencies and advisory councils) aiming at greater accountability. As from 2009 and as a result of the financial crisis a "Multi-Annual Program on decisive government", (MAP, adopted in 2011) focused on efficiency and effectiveness. Performance management and doing more and better with less, embedded in classical Belgian 'bricolage- culture' dominate the current approaches mixing (post) New Public Management and New Public Governance concepts. (Verlet, D. and G. De Schepper, 'Over efficiëntie en effectiviteit van de Vlaamse overheid: een stand van zaken uit de praktijk: over kiezen en keuzes beminnen', in: Verlet, D. and C. Devos, 'Efficiëntie en effectiviteit van de publieke sector in de weegschaal', (2010), Studiedienst Vlaamse Overheid, SVR-Studie 2010/2, Brussel, 97; see also: De Rynck, F., R. Pauly, B. Verschuere, 'Nieuw Publiek Management in Vlaanderen en de impact op het middenveld', 30 January 2017, available at <https://www.middenveldinnovatie.be/publicaties/spotlightpaper-nieuw-publiek-management-vlaanderen-en-de-impact-op-het-middenveld>). Also in Flanders "managerial accountability", results and effectiveness are part of 'evidence based' decision making and implementation of policies. Monitoring and evaluations should not only improve implementation of policies but are also useful to link policy objectives to the management of administrations and governments. (De Peuter, B, V. Pattyn and M. Brans, 'Risico's op perverse

effecten bij beleidsevaluatie? Een vergelijking vanuit mogelijke evaluatiemotieven tegen de achtergrond van de Vlaamse hervormingscontext' in Verlet and Devos, o.c. (2008), 90). The need for evidence bases instigated a proliferation of assessment tools – even within the Flemish environment field eg separate water and nature impact assessments – whilst the efficiency concern stimulated initiatives for more integrated approaches. EIA/SEA were central elements of research and recommendations by several Flemish governmental commissions to improve and mainly accelerate decision making for infrastructure works. As such Flanders copied similar developments in other EU countries (Backes C.W and S. Jansen, 'Quality and speed of administrative decision making proceedings: tension or balance', (2010), Environmental Law Network International 1/2010, 23; also Roller, G., 'Quality and speed of administrative decision making proceedings: tension or balance? The case of Germany', (2014), Environmental Law Network International 2/2014, 51). Improved assessments, information, communication and participation were part of new legislation (Decree on complex infrastructure works, into force since 2015) but this rather path dependence outcome was also criticized for reflecting an instrumental vision on impact assessment and overlooking the need for an improved governance (Van Humbeeck, P., 'Versnelling van investeringsprojecten: wat valt er te leren uit 10 jaar werken aan betere regelgevingsprocessen?' (2010), Vlaams Tijdschrift voor Overheidsmanagement 2010, 76). This "instrumental vision" (optimizing decisions instead of democratizing the process) has been confirmed by research on the implementation of EIA/SEA in particular decision making processes (Brans, M., W. Joris en J. Van Damme, 'De Lange Wapper: een brug te ver? Een analyse van de inspraak in de besluitvorming over de Oosterweelverbinding', (2010), Burger, bestuur & beleid, 2010, 54). A particular but very illustrative Flemish case that now lasts for more than a decade but about which an initial political agreement (between local and regional

authorities and the civil society/NGO's) was reached in March 2017 concerns the so-called Oosterweel-plan, a huge infrastructure plan to address the mobility problems around Antwerp (<https://www.oosterweelverbinding.be/>). The initial plan included a bridge which was rejected after constant pressure built up mainly by NGO-actions using judicial means. The role of EIA/SEA (as well as Cost Benefit Analysis and Social Impact Assessments, which are not legally required, and their developments/use including additional research and alternative proposals by the NGO's) as well as the hidden decision making have been central elements in this case (Van Dyck, M., 'The influence of SEA: the psychology and sociology of political decision making', presentation, IAIA-SEA Conference, Prague, 2005; De Peuter, B., 'Connecting Policy Sectors in evaluation: challenges of evaluating sustainable development', Paper, UKES/EES Conference, London, 4-6 October 2006; also Claeys, M., 'Stilstand. Het Oosterweeldossier', Van Halewyck, Leuven, 2013). In his analysis of this file Van Dooren stated that the participation issue is linked with the institutional/organizational capacities of the administration: strong participation requires strong government(s). He even questioned whether the Flemish administration has not been weakened by introducing and implementing New Public Management concepts (Van Dooren, W., 'Na Oosterweel: participatie onder hoogspanning', (2010), Sampol, 2010, 30).

Under the current Flemish Government further integration between spatial planning and strategic environmental assessment has been adopted, not only as a result of the merger of the two competent administrations but also to improve the legal certainty and robustness of the planning process as not only announced in the 2014 policy note but also confirmed by the responsible minister in the Flemish Parliament (3 February 2016). More than 15 years ago Scrase and Sheate voiced concerns about the integration of assessments as it might lead to oversimplification, a lack of grounding in reality and even misleading evidence of potential for

tradeoffs which includes the risk integration may be merely promoting the prevailing economically driven paradigm. (Scrase, J. and W. Sheate, 'Integration and integrated approaches to assessment: what do they mean for the environment?' (2002), *Journal of Environmental Policy and Planning* 2002, 291. See also Popelier who from a regulatory perspective stated that politicians will be mostly interested in a more rational decision making process as it generates economic interests, in: Popelier, P., 'De wet juridisch bekeken', (2004), *Die Keure*, Brugge, 385). The latter was definitely an element in recent discussions in Flanders about the need to better protect and preserve nature and woods and the sometimes questionable role of certain assessments, evaluations, monitoring and planning. In this context the term "paper protected parks" was applied (Schoukens, H., 'Natuurbehoudsrecht in tijden van deregulering: een stuurloos schip of de laatste strohalm voor de bedreigde biodiversiteit?' (2016), *Oikos*, 77, 2/2016, 22). This regulatory reality could be interpreted as an illustration of what Everett stated: "(...) the policy cycle is not a substitute for the actual making of decisions but an administrative and bureaucratic mechanism for effectively setting in place a process once the difficult decisions have been made. " (Everett, S., 'The Policy Cycle: Democratic Process or Rational Paradigm Revisited?', (2003), *Australian Journal of Public Administration*, 65–70).

### **Regulatory policy and impact assessment**

As Flanders existence as a legislative region is quite recent in historical terms, its regulatory policy is young too compared to EU Member States or OECD countries. So one might have expected that the creation of a new policy and administrative level that also envisaged modernization inspired by New Public Management, could probably entail a fresh regulatory approach. (Brans, M., C De Visscher and D. Vancoppenolle, 'Administrative reform in Belgium:

Maintenance or modernisation?’ (2006), *West European Politics*, 29, 979. See also Dierickx, G., ‘Politicization in Belgian civil service’ in: Peters, B.G. and J. Pierre (Eds), ‘The Politicization of the Civil Service in Comparative Perspective: The Quest for Control’, (2004), Routledge, 198). In the 1980s and especially 1988-1989 as a result of Belgian state reforms, the Flemish regulatory powers increased and resulted in a growing amount of regional legislation, inter alia as evidence for its autonomy. Already in the 1990s, concern and discomfort was augmenting with the quantity and quality of regulations that had been created in that short period. The perception grew that legal quality was deteriorating and regulatory burdens increasing so that the Flemish economy was becoming less competitive and the public policies less effective. Proposals from ad hoc working groups and research commissions did not result in structural and durable improvements. Building on the 1995 Recommendation of the OECD Council on Improving the quality of Government Regulation, the Social and Economic Council of Flanders (SERV) published in 1997 and 1998 a series of reports and recommendations for the Flemish government to start a process of regulatory management. (Van Humbeeck, P., ‘Best practices in regulatory impact analysis: a review of the Flemish Region in Belgium’, (2007), Social Economic Council of Flanders (SERV), Working Paper, February).

On 25 July 2000, the Flemish government approved a “general framework for the simplification of regulations, procedures and rules”. The regulatory policy was developed along three tracks: administrative burden reduction, legal simplification/codification and regulatory impact analysis. In November 2003 the Flemish government adopted eight Principles for Good Regulation. Good quality regulation meets now (May 2017) the following nine criteria: 1. Necessary and effective; 2. Appropriate and balanced; 3. Implementable and enforceable; 4. Lawful; 5. Consistent; 6. Simple, clear and accessible; 7. Well-founded and well-discussed; 8. Relevant and up-to-date. This list has been supplemented with (9°) the

principle of digital-friendly regulation. These principles serve as guidance for designing, drafting and evaluating regulation. A major driving force for a Flemish Better Regulation policy has been (and still is) the Social Economic Council of Flanders (SERV), the main advisory body to the Flemish government on Flemish socio-economic policy. It represents trade unions and employer associations. (See: <https://www.serv.be/en/serv>). In the course of the years the SERV has formulated a range of advices as well as recommendations based on evaluations regarding all different elements of the EU/OECD Better Regulation work. Eg in 2009 the SERV published an evaluation of ten years Flemish regulatory policy and concluded that Flanders had to cope with five challenges: 1° maximising political support for Better Regulation; 2° placing Better Regulation in the core of the policy process and avoiding formalism; 3° assigning responsibilities for Better Regulation; 4° improving the quality of Better Regulation tools; 5° putting priorities. (See: SERV, 'Wetgevingsprocedures, -structuren en –instrumenten in Vlaanderen: een evaluatie van 10 jaar wetgevingsbeleid in Vlaanderen. Achtergronddocument bij het SERV-advies 'Betere regelgeving voor een effectieve en efficiënte overheid en meer welvaart en welzijn' (2009), Rapport, October, 84; available at:

<https://overheid.vlaanderen.be/sites/default/files/SERV%20rapport%20evaluatie%20wetgevingsbeleid.pdf>

Since 2005, RIA has been a mandatory step in the approval procedure of certain categories of regulations (decrees) at the initiative of the Government of Flanders. (See: <https://overheid.vlaanderen.be/reguleringsimpactanalyse>).

Due to its processes, instruments and institutions, Flanders belonged before 2010 to the better performing countries in the OECD-context. It was largely inspired by the Better Regulation developments regarding simplification and RIA at the EU level and the OECD work in this field. However in 2010 the OECD warned already:

“ (...) The (RIA)-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). This initiative will only be effective if efforts to encourage the administration upstream to carry out higher quality and timely impact assessments are sustained over time. The review of RIA completed at the end of 2008 emphasized the need for stronger political support and further guidance to officials.”.

## **Broadening regulatory impact assessment**

### ***Sustainability IA***

On 18 July 2008, more than ten years after the federal act, the Flemish Government adopted a Decree to enhance Sustainable Development (Decree of 18 July 2008, Official Journal of 27 Augustus 2008. This decree came into force on 6 September 2008). This brief decree (only 8 articles) introduces an approach which obliges each new Flemish government to adopt a sustainable development strategy. This strategy has to be realized through the application of a number of policy principles like participation, co-ordination and inclusive policy making. A major criticism on the contents of the draft decree concerned the lack of instruments to implement the strategy. Up to now no particular executive orders have been adopted to guide its implementation for specific elements of this decree, e.g. consultation of stakeholders. On the occasion of the adoption of this decree, the Flemish Minister President announced the willingness of the Flemish Government for a co-operation agreement with other federated and federal entities on the issue of sustainable development but up to now, no such agreement was agreed.

The joint advice of both the Socio-economic Council and the Environment and Nature Council on the draft decree was quite critical and stated that the draft lacked ambitions and clear objectives. (Advice of 12-13 December 2007, see: <http://www.minaraad.be/adviezen/2007>). Both councils criticized also the proposed rigid planning approach and favoured more process assurances. In particular both councils stressed the need for a real SD policy approach beyond a legal framework. It argued in favour of a systematic use of impact assessments. The advice of the Strategic Advisory Council on International Issues found the draft was too descriptive and was lacking normative provisions. During the discussions in the Flemish Parliament, the green opposition introduced a few – rather modest – amendments, inter alia to introduce a sustainable impact assessment approach, but these proposals were rejected. During the political debate possible linkages (even integration) of a future SIA approach to the existing SEA and Regulatory Impact Assessment (RIA) systems were mentioned (see: Flemish Parliament document, Stuk 1629 (2007-2008), Nr. 3).

In the beginning of 2011 an initiative to elaborate a flexible approach to align a SIA approach to the RIA practice was agreed between all concerned policy domains of the Flemish government. This initiative was enhanced by the fact that some impact assessments practices/requirements regarding youth, gender or poverty favoured a more clearly embedded SIA. The elaboration of the concept was supported by academic experts on SIA (Huge, J., 'Institutionele context van duurzaamheidsbeoordeling: naar een Vlaamse 'impactanalyse', (2009), Steunpunt Duurzame Ontwikkeling, July – Working Paper n°13, [http://www.steunpuntdo.be/papers/Working%20Paper%2013\\_Huge.pdf](http://www.steunpuntdo.be/papers/Working%20Paper%2013_Huge.pdf)). The research outcome became after consultation with civil servants of different administrations and other stakeholders the so- called Quick Scan-approach.

## **Quick Scan**

The Quick Scan is a simple kind of sustainability IA which allows regulators to early identify the major impacts of a proposed initiative on the four dimensions of sustainable development: social, ecological, economic and institutional. These groups of impacts are further specified eg housing, education, innovation. The range of potential affected groups and stakeholders is also specified and includes attention for vulnerable groups (eg minorities, disabled people). The Quick Scan offers a reference framework for further scoping and elaborating the contents of a RIA and it allows for a co-ordinated policy approach in order to prepare evidence based content. Through the Quick Scan specific (sectorial) tests can be applied and used in an efficient and proportionate manner in the RIA. This allows to keep potential administrative burdens of these specific test as minimal as possible. The Quick Scan is an integrated element of the RIA but assessments of its use are not available. (See:

[http://do.vlaanderen.be/sites/default/files/QuickScan\\_handleiding\\_en\\_tabel\\_2013404.pdf](http://do.vlaanderen.be/sites/default/files/QuickScan_handleiding_en_tabel_2013404.pdf)

The Quick Scan approach has also been applied within the context of the preparation of the new Spatial Policy Plan for the region of Flanders as this IA approach could support socio-technical and societal system transitions towards sustainability. This pilot project offered some insights and also – not so extra-ordinary - recommendations concerning the usefulness of IA for transition management:

- IA serves as a forum to construe ‘sustainable development’
- The different functions of IA are useful in different situations, eg to generate information or to structure complexity
- The policy impact of IA is a broad concept
- Participation is central in IA but its impact needs to be assessed critically
- The limits of IA have to be taken into account

- IAs have to be conceptualized and realized in an dynamic way

(Hugé J., T. Waas and T. Block, 'Impactanalyses en duurzaamheidstransities in Vlaanderen. Reflectie & pilootoefening', (2014), Research paper Steunpunt TRADO, Gent, 2014; available at: <https://steunpunttrado.be/documenten/papers/trado-rp10.pdf>)

### ***Child and youth IA***

Further to the requirement by the Convention on the Rights of the Child to develop instruments to protect and promote children's rights, the Flemish Government introduced in 1997 a 'Child Impact Report' (KER). This approach was extended to a 'Child and Youth Impact Report' (JoKER) in 2008. JoKER is an ex ante impact assessment carried out by the Flemish administration with respect to draft decrees that have a direct impact on the interests of persons under the age of 25. In 2012 JoKER was evaluated as to its scope, quality, process, support and control, effectiveness and impact. The evaluation required maintaining a balance between various perspectives and tensions. Four main tensions have been addressed throughout the research process. The first one concerned the tension between 'mainstreaming' (integrating JoKER in RIA), on the one hand, and preserving the specificity of JoKER, on the other. The risk entailed by a complete integration of JoKER in RIA consists of diminished attention for the particular rights and interests of children and young people. Out of considerations of efficiency and pragmatism, the (formal) integration of JoKER in RIA was suggested by the evaluation. On the other hand, recommendations were formulated to maintain the specificity of a youth and children's rights perspective through, among others, a particular JoKER manual, training etc. A second tension concerned the international leadership of Flanders in the field of child impact assessments, on the one hand, and the novelty of the JoKER process, on the other. Flanders spearheaded the establishment and, more in particular, the evaluation of child impact assessments. A comparative study on the legal implementation

of the Convention on the Rights of the Child also particularly notes the development in Flanders of a system of child and youth impact assessment whilst JoKER in can still be improved. A third tension concerned balancing a comprehensive child impact assessment for all types of policy initiatives, versus pragmatism, i.e. ensuring that JoKER remained feasible for the civil servants concerned and would not degenerate into a mere piece of paper. Finally the JoKER evaluation ran parallel with the RIA reform and the development of the SIA Quick Scan, which were adopted before the results of the evaluation were available and thus limiting both the potential scope of the recommendations and their follow up by the administration. Remarkably the Flemish Government had even adopted a Decree (on 20 January 2012) on a renewed youth and children's rights policy (including a provision requiring a JoKER for particular draft legislation) before the start of the evaluation exercise... (Desmet, E., H. Op De Beeck and W. Vandenhole, 'Walking a tight rope: evaluating the child and youth impact report in Flanders', (2015), *The International Journal of Children's Rights*, 23(1), 78-108). The current use and role of JoKER is quite limited as can be concluded from a reaction by the responsible Minister for Youth in the Flemish Parliament (18 January 2017, available at: <http://docs.vlaamsparlement.be/pfile?id=1243644>). Since October 2015, four draft decrees (eg relating to sports, education) were subject to a JoKER. A checklist for the use of JoKER was made by the Youth administration in 2016. Furthermore the minister signaled that the Council of State did not object to the integration of JoKER in RIA, given the legal basis of JoKER in the 2012 Decree. On the other hand when no RIA is required but according to the 2012 Decree a JoKER is, the latter applies. The current Policy note on Youth (2014-2019) mentions only the ambition to apply JoKER effectively and efficient in order to avoid overregulation... (at 16, text available at:

[http://www.sociaalcultureel.be/jeugd/beleidsdocumenten\\_doc/beleidsnota\\_jeugd2014-](http://www.sociaalcultureel.be/jeugd/beleidsdocumenten_doc/beleidsnota_jeugd2014-)

[2019.pdf](#) ). An analysis of a particular case concerning the RIA and JoKER about a Decree to reform the approach for home education (adopted in 2013), was quite critical (Popelier, P. and W. Marneffe, 'De reguleringsimpactanalyse en de bescherming van grondrechten: een verantwoordelijkheid van wetgever en rechter. Een toepassing op het huisonderwijs', Tijdschrift voor Wetgeving, 2014, 202.)

### ***Poverty test***

The Flemish Poverty Reduction Action Plan for 2010-2014 included the proposal for a “poverty test”, however this test existed already – at least on paper - since the approval of the previous action plan on 12 March 2004. The test was finally introduced in 2013 and its mandatory use was formally approved by the Flemish government in 2014. The Policy note on Welfare (2014-2019) indicates only that it will be used (at 20, text available at: <https://www.vlaanderen.be/nl/publicaties/detail/beleidsnota-2014-2019-welzijn-volksgezondheid-en-gezin> ). The poverty test approach holds three steps: 1° The so-called “SIA-quick scan” will consider the impact of any new measure, 2° In case of possible impacts an in-depth poverty test is required, and 3° the outcome of the test becomes part of the RIA. The poverty test includes also a participatory approach and is applied to all new legislative measures considered to trigger possible detrimental effects on people with low incomes, as far as this measure is subject to RIA. It reflects an inclusive policy approach which should not only assess the impacts on people living in poverty but also avoid creating new risks for poverty. The participatory approach includes the involvement of people and networks with expertise and knowledge concerning poverty issues, as well as the specific poverty attention officers in the administrations. When a proposed measure holds the establishment of additional rights, the poverty test has to check the feasibility of automatically awarding such rights. The concerned Welfare department has produced a guidance document to assist the

application when a poverty test is required. (See: <https://armoede.vlaanderen.be/?q=armoedetoets>). The effective application of the poverty test depends on critical factors such as the capacity of the responsible administration and the timeliness of the start of this assessment. There already examples of its effectiveness eg the expansion of the social correction factor of drinking water tariffs as a result of the test (Van Hootegem, H., H. Linssen, I. Nicaise and A. Van Cauwenberghe, 'Evaluatie en monitoring in armoedebelid', (2016), Vlaams Tijdschrift voor Overheidsmanagement, 43) and the debate that followed after the publication of poverty test figures concerning the impact of the introduction of a new children allowance approach in Flanders (a devolved matter after the latest state reform, see eg: <http://www.kindengezin.be/nieuws-en-actualiteit/2017/20170120-nieuwe-vlaamse-kinderbijslag-doet-armoederisico-dalen.jsp> ; also: <https://www.gezinsbond.be/Gezinspolitiek/Nieuws/Paginas/Armoedetoets-kinderbijslag.aspx>). The new approach would reduce the risk of poverty for certain low income groups. Mainstreaming the poverty test is one of the major objectives of the Flemish Action Plan to fight poverty (VAPA 2015-19). It announces also support for local authorities when they want to implement such a test for their own policy measures. (See: [http://www.evaluatieplatform.be/doc/151217\\_Armoedebelid.pdf](http://www.evaluatieplatform.be/doc/151217_Armoedebelid.pdf)).

### **Current RIA policy and practice**

In practice and particularly since the adoption of the strategic policy framework for smart regulation and administrative simplification in 2010, the Flemish rather ambitious Better Regulation policy has been declining notwithstanding the adoption of several circular letters aiming to better embed RIA and related tools in regulatory practices (see further). One may even wonder if the RIA introduction and its initial development was really desired by policy

makers or just rather symbolic in order to respond to supranational signals. As a result, from the start on there has been scepticism and passive - or sometimes even active - opposition to RIA by ministerial cabinets, given their preference for unconstrained rule-making powers. (Van Humbeeck, P., 'Regulatory Impact Analysis in Flanders and Belgium: policy and trends' (2012), Paper, European Environmental Evaluators Network Forum, 9 - 10 February, HIVA - KU Leuven, Belgium, available at: [http://www.environmentalevaluators.net/wp-content/uploads/2012/04/Conference-paper\\_Peter-Van-Humbeek\\_-RIA-in-Flanders-and-Belgium.pdf](http://www.environmentalevaluators.net/wp-content/uploads/2012/04/Conference-paper_Peter-Van-Humbeek_-RIA-in-Flanders-and-Belgium.pdf)). After an initially high amount of RIA's (587 in 7 years) the numbers dropped to and the RIA database introduced in 2008 has only figures up to 2015 (see: <https://overheid.vlaanderen.be/ria-databank>).

More recently Van Humbeeck stated that the Regulatory Management unit has disappeared from the regulatory policy radar (Van Humbeeck, P., 'Betere regelgeving in Vlaanderen: quo vadis?' (2017), *Tijdschrift voor Wetgeving*, 35). This is correct as the unit's (human) resources have been more or less halved (currently 5) and its duties broadened to more "classical" legislative drafting projects in the course of the past decade. Meetings of the network of regulatory quality units in the Flemish administration are no longer held. The Regulatory Management unit serves only as some kind of basic helpdesk. This development is not that surprising as the Policy Note (2009-2014) of the responsible Flemish Minister for Administrative Affairs was focusing not only on the better implementation of the tools and approaches introduced under the previous Flemish Government but already on reforming (in the sense of downgrading) some too, eg RIA. Simplification and the quality of regulation had to be addressed within a more client-oriented policy making (Policy Note Public Governance 2009-2014, 38), efficiency and effectiveness became the overall priorities as the Flemish

administration was also implementing the MAP reform programme which reduced resources given the budget situation as a result of the economic crisis.

Under the current Flemish Government regulatory management is the responsibility of the Minister-president. At the level of the administration the Regulatory Management unit has moved to the Chancellery and Public Governance department which aims to become a Centre of Government inspired by this OECD-concept. The RIA practice still exists but its limited implementation raises questions. Good RIAs are exceptional and their effectiveness has been described as “ritual rain dances”. (Van Humbeek, P., o.c. (2017), 36) .This observation about RIA has to be placed against the broader background of the current Flemish regulatory (management) policy. According to Van Humbeek this policy needs to a new impetus and re-orientation focusing on better evidence-based decision making, more and better consultations and a greater transparency of policy and legislative processes. Whilst the first two have been addressed in the latest mentioned Policy Notes (2014-2019, see below), the latter remains the most difficult one, as it is linked to the existing governance culture with hardly any difference between the federal and Flemish level. Already in 2010, the OESCD gave a clear message about its concern regarding the (too) strong role of cabinets in rule-making processes including law drafting, which appears in all governments (federal, regions, communities) and involved in law drafting (a task usually reserved for civil servants in other countries). (OECD, Better Regulation in Europe: Belgium. 2010, Paris, OECD, 19).

However not all stakeholders seem to consider this as a major concern as this issue was not incorporated in the recommendations of a study commissioned by the Belgian Federation of Enterprises to improve the quality of legislation. (Idea Consult, ‘De kwaliteit van de regelgeving in België: knelpunt of hefboom voor competitiviteit?’, VBO, Brussel, 2015, available at: <http://www.vbo-feb.be/publicaties/de-kwaliteit-van-de-regelgeving-in-belgie->

[knelpunt-of-hefboom-voor-competitiviteit/](#)). The report was based on a benchmarking exercise (including Member States Denmark, Netherlands, United Kingdom, France and Germany) and called inter alia for a better RIA-approach, more regulatory coherence between the Belgian policy levels and also a more integrated regulatory policy.

### **Towards more evidence based policies?**

Mainly to implement the basic line of the current Flemish Government (trust, connect, progress) the concerned Policy Notes on Public Governance and General Government Policies say that stakeholders and citizens should be more consulted when regulatory initiatives are prepared. (Beleidsnota Bestuurszaken 2014-2019, 32 and Beleidsnota Algemeen Regeringsbeleid 2014-2019, 14-16, available at: <https://www.vlaanderen.be/nl/publicaties/>). The existing focus on simplification and burden reduction is to be continued and the newer policy intentions concern consultation, digitalization and evaluation. These topics were further developed as elements of a Green Paper on Governance, published in October 2016 and subject of public consultations. afterwards, (see: <https://www.vlaanderen.be/nl/publicaties/detail/groenboek-bestuur>). The outcomes of the consultations should lead to a White Paper and more detailed proposals, but the policy evolution is currently (May 2017) unpredictable.

### ***Improvements?***

The Flemish policy objectives concerning a systematic evaluation of policies in order to get a better view on the effects of Flemish policies and correct these when necessary are definitely in line with the EU's Better Regulation Agenda however without referring to it. RIA is mentioned in this context. The effective implementation of systematic evaluations would certainly be an improvement compared to the even recent past. Research by De Peuter Bart

and Pattyn, revealed no particular development towards more evidence-based policies in Flanders but during the legislature 2009-2014 there was more attention for evaluation justification given the administrative reform context. This reform has (formally) established the tool of policy evaluation (eg departments became responsible for evaluation) but its application varies widely within the Flemish administration according to these authors. (De Peuter B. and V. Pattyn, 'Waarom evalueren beleidsmakers? Een longitudinale analyse van motieven voor beleidsevaluatie in Vlaamse ministeriële beleidsnota's', (2016), Bestuurskunde, 25, 32-45). So the situation seems to have been improved somehow compared to the observations in a previous research by Varone et.al.: "Both in Flanders (Dutch-speaking) and in the bilingual Brussels Region, evaluations are ordered unsystematically and outside any institutional framework regulating the practice. " (Varone, F., S. Jacob and L. De Winter, 'Polity, Politics and Policy Evaluation in Belgium' (2005), Evaluation, 253). These authors considered the existence of strong 'ministerial cabinets', as a major influence on the limited development of policy evaluation. (at 261).

But the picture is not that negative too as the absence of very centralized better regulation approaches and monitoring (Molenveld, A. and K Verhoest, 'Coördinatie-arrangementen in internationaal perspectief: een blik vanuit de Vlaamse en buitenlandse overheidsorganisaties', (2014) SBOV-KU Leuven Instituut voor de Overheid) - or even a more general coordinated regulatory policy (SERV, o.c., 2009, see also Popelier, P., o.c. (2002), 369, who stated that Belgium governments don't have a structured regulatory policy) - hide somehow the view on implementation efforts in different sector policy domains, as far as these efforts go beyond legalism and formalism. (See reports from the Policy Research Centre - Governmental Organization - Decisive Governance, eg Vandoninck, J., M. Brans, E. Wayenberg and E. Fobé, 'Ex ante beleidsevaluatie voor beleidsinstrumentenkeuze Conclusies en pistes voor

optimalisatie', SBOV-KU Leuven Instituut voor de Overheid, 2015; see also the thematic issue on policy evaluation published by the Flemish Journal for Public Management and in particular: Desmedt, E., V. Pattyn and P. Van Humbeeck, 'Beleidsevaluatie vandaag: een voorzichtige balans', Vlaams Tijdschrift voor Overheidsmanagement, (2016), 63. This issue contains a number stocktaking contributions, collected within the framework of the Flemish Evaluation Platform, see: <http://www.evaluatieplatform.be/eng/index.htm>).

### ***Need for more institutionalization?***

As institutionalized requirements remain important to generate legitimate, lasting and useful evaluation and regulatory outputs. (Van Humbeeck, P., 'Maken we goede wetgeving? Benchmarking van Vlaanderen. Achtergronddocument bij de analyse gepubliceerd in SERA 2007', (2006), Sociaal-Economische Raad van Vlaanderen, Oktober 2006, 29), one may question the current situation in Flanders. Rather recent institutional developments considered to be helpful to support the application of Better Regulation tools are inter alia the Circular Letters adopted in 2014. (Available at: <https://overheid.vlaanderen.be/omzendbrieven-wetsmatiging>).

Circular Letter 2014/4 on legislative techniques indicates the different responsibilities concerning the quality control of RIA. These responsibilities differ as the Regulatory Management unit advises on RIA, the application of the compensation rule and the impact on local authorities. In case of the application of the Youth and Children impact assessment, the Youth administration has to give its advice and when a Poverty test is required, the Welfare and Society administration has to deliver an opinion. Circular Letter 2014/13 concerns the regulatory agenda and RIA (Omzendbrief VR 2014/13: Regelgevingsagenda, reguleringsimpactanalyse en compensatieregel administratieve lasten). This Circular Letter stipulates the procedure and contents of each tool. The regulatory agenda is an annex to each

Policy Note (published by each Minister after the start of a new government) and each Policy Letter (annually by each Minister indicating more detailed policy objectives). Circular Letter 2014/11 regulates the cooperation between the Flemish administration and the Flemish Parliament. This document indicates the incorporation of the RIA in the legislative file more precisely as an element of the explanatory memorandum of the concerned piece of legislation (decree). This development should trigger more attention for RIA including an improved quality as it is no longer a separate, so called additional document, but a fully integrated - evidence contributing - part of the legislative file as discussed and approved by the legislators. Once again, it remains to be seen if this – rather formal – change will raise the necessary efforts and attention.

A review of the policy evaluation approaches in 2015 was considered as a necessary baseline action in order to identify further needs and measures. The outcome of a survey within the Flemish administration revealed a number of current issues. Policy evaluations are not systematically done but rather on an ad hoc basis. They are important as a dialogue enhancing instrument. However there is rather sufficient expertise and manpower available in the administration to implement evaluations, the lack of evaluations reveals that “capacity” means more than “human resources”. However mainly ex post evaluations are produced within the Flemish administration and these evaluations are not done due to legal requirements but they are executed within the policy preparation or implementation stages and are mainly focused on the realization of policy objectives. So when done during the policy preparation phase, some kind of ex ante value could be attributed to such evaluations but obviously in a very modest way... Quality assurance is major point of attention and not surprising given the very diverse but predominantly not so positive quality assessments of other Flemish impact assessment approaches (EIA/SEA/RIA). Finally this review raised also the

question “how to proceed?” (Verlet, D., J. Lemaître and A. Carton, ‘Beleidsevaluatie binnen de Vlaamse overheid. Een overzicht van de resultaten uit de bevraging van de leidinggevenden’, VEP Workshop 17 December 2015, presentation available at: [http://www.evaluatieplatform.be/doc/151217\\_Dries.pdf](http://www.evaluatieplatform.be/doc/151217_Dries.pdf)). In their review and prudent assessment of Flemish evaluation practices, Desmedt et. al. (o.c., 2016, 63) signalled a number of issues that certainly needed further work. Institutionalisation could be further enhanced by eg improving co-ordination and co-operation and other challenges concern inter alia: increasing capacity as well as safeguarding continuity of existing capacity, overcoming difficulties when engaging stakeholders, and improving the use of evaluations. It is no surprise that also these authors turned finally to the political level and reflected about the need to reach more politicians and their “cabinetards” in order to stir their interest for evaluations and impact assessments.

### **Europe inspires?**

The already mentioned ambition of the current Flemish Government for more evaluations reflects one of the major elements of the EU’s Better Regulation Agenda presented by the Commission on 19 May 2015. “(...) The Commission commits to taking political responsibility for applying Better Regulation principles and processes in its work and calls on the other EU institutions and the Member States to do likewise.” (COM(2015) 215 final, Better Regulation for Better results - An EU agenda, 4: Available at: [http://ec.europa.eu/info/law/law-making-process/Better-Regulation-why-and-how\\_en](http://ec.europa.eu/info/law/law-making-process/Better-Regulation-why-and-how_en)).

Furthermore the Commission’s Better Regulation Agenda included a proposal for a new Interinstitutional Agreement (IIA) on Better Law-Making to the Parliament and Council. The proposal contained a number of relevant topics for Member States’ regulatory policies,

including impact assessment; continuous monitoring of the performance of EU Regulation and more thorough evaluations. This Interinstitutional Agreement was formally adopted on 16 April 2016. ( OJ L 123/1, 12 May 2016.). This European inspiration is not so new but got not always the right attention as recommendations from earlier and more recent “Europeanization” studies of Belgium and Flanders (Baetens, M. and P. Bursens, ‘De Europeanisering van de bestuurlijke cultuur. Europese opinies, expertise en aandacht van Vlaamse ambtenaren en politici’: in Steunpunt Bestuurlijke Organisatie Vlaanderen, Vlaanderen en/in Europa: omgaan met de Unie en vergelijkend leren - Jaarboek 2004 (2005), Die Keure, 223; also Baetens, M. and P. Bursens, ‘De Europeanisering van de bestuurlijke structuur en cultuur in Vlaanderen en België’, (2005), Report KU Leuven, 129; I. De Coninck, ‘De omzetting van Europese regelgeving’ deel I (2015), Rapport Steunpunt Bestuurlijke Organisatie, KU Leuven) were not really addressed.

But a policy note of the previous Flemish Government (Beleidsnota Bestuurszaken 2009-2014, 38, available at: <http://docs.vlaamsparlement.be/docs/stukken/2009-2010/g184-1.pdf>) announced the introduction of an impact assessment approach on new EU proposals. This idea was not further developed later on until it was recycled under the present Flemish Government. After re-launching the idea in 2015, the Flemish Government adopted additional documents that pay attention to EU Better Regulation elements such as impact assessments, consultation, etc. (Policy Letter 2016-2017 and also a "Vision on the future of the European Union" which has to be considered as the general framework for assessing EU policy proposals. It includes a general position concerning Better Regulation issues and stipulates also in which policy areas EU legislation provides added value for Flanders, available at: <http://www.vlaanderen.be/int/en/vision-eu>).

In the course of 2017-2017 a pilot project explored the feasibility of an initial impact assessment approach on new Commission proposals obviously focusing on Flemish interests and competencies. The subject of this pilot was the Commission proposal to revise the so called Blue Card directive which aims to improve the EU's ability to attract and retain highly skilled workers. In Belgium the regions became competent to regulate labour migration as linked to their labour market competency. This project aimed to identify major elements to expand the existing very minimal follow-up approach mainly inspired by the Dutch BNC-fiche-approach. The project revealed a number of shortcomings such as limited capacity, co-operation and interest, both within administrations and politically. The recommendations from this pilot included suggestions for improvements through inter alia more data collection, more thorough and earlier analysis, improving capacity and multidisciplinary work, enhanced co-ordination within the Flemish administration and co-operation with academia and external experts, more consultation. It is hardly surprising that these recommendations are also in line with the above mentioned observations concerning Flemish evaluation practices.

Early impact assessments on Commission proposals are also important for future positions in Council Working Party meetings discussing a particular proposal. Whenever a Commission proposal concerns regional competencies, regions are directly involved in developing and agreeing on a Belgian position, usually during meetings at the Foreign Affairs ministry (DGE meeting). Furthermore the IIA indicates that impact assessments could be required in the case of 'substantial amendments' tabled by the European Parliament or by the Council during discussions. So the EU trend is undeniably towards more evidence based discussions and negotiations, but Belgium has always been rather reluctant about this particular element of the Better Regulation Agenda, even for internal use. An academic recommendation – in 2003 - to start with a kind of federal impact assessment about new EU proposals remained shelved

(Dierickx, G., P. Bursens and S. Helsen, 'Omzetting, toepassing en toepassingscontrole van het Europees Beleid in België. Naar een structurele toepassing van de wijze waarop België zijn Europese verplichtingen nakomt', (2003), Federaal wetenschapsbeleid - Academia Press, 280).

Also Flanders has not always been too eager to follow EU developments. In 2009 the Social and Economic Council of Flanders suggested to use the political support for the EU's Better Regulation Agenda and the intention for a Flemish IA about EU proposals as a catalyst for a more serious Flemish RIA practice (SERV, o.c. (2009), at 90). This was also endorsed by the Interuniversity Centre for Legislation in its Memorandum for Better Regulation (2009, see: SERV, 'Externe reacties op het ontwerpadvies "Betere regelgeving voor een effectieve en efficiënte overheid en meer welvaart en welzijn"', (2010), Rapport, 69) and this Centre suggested inter alia to make better use of the Commission's Impact Assessments. But as indicated above, this remained without any impact, on the contrary. However considered as a rather principle EU and Commission supporter (Van Hecke, S., and P. Bursens, 'How to study the (Belgian) EU Presidency? A Framework for Analysis for the Research Network 2010 Belgian EU Presidency' (2010), Paper for Politicologen-etmaal, Leuven, 27-28 May 2010 available at: <https://soc.kuleuven.be/web/files/11/72/W04-108.pdf> ), the official Belgian position towards the impact assessment element has always been rather skeptical. The dominating internal political-administrative culture with its cabinet-traditions at the federal level as well as at the regional levels (Hondeghe, A., C. De Visscher, M. Petit Jean, S. Ruebens, 'Belgium', in : Van Wart, M. A. Hondeghe, E. Schwella, P. Suino (Eds), 'Leadership and Culture: Comparative Models of Top Civil Servant Training', (2015), Palgrave, 137) allowing for embedded policy preparations, can hardly be dismissed as a major underlying driver for this vision as reflected in the following observation: " (...) it is likely that these additional impact assessments would burden the political process of law-making and eventually slow it down. Normally designed as

tools of support for the legislative process, they should not overload or even substitute for the political character of the EU legislative mechanism. Moreover, impact assessments could be stripped of their necessity. The use of impact assessments by the Council could be used by some Member States as a tool for blocking or 'indefinitely' postponing a proposal.” (Willermain, F. and A. Cioriciu, ‘The Better Regulation Package : Creating better regulations, but for what kind of EU politics?’, (2015), European Policy Brief, N° 39, Egmont Institute-Royal Institute for International Relations, available at:

<http://www.egmontinstitute.be/wp-content/uploads/2015/10/Better-Regulation-package1.pdf>). This Belgian “opinion based” position has only changed somehow recently (inter alia due to the Flemish position) on the occasion of the necessary decision by Coreper (April 2017) to launch a procedure to initiate a pilot project for impact assessments in the Council. Belgium risked to end as one of the last Mohicans...

### **Some final comments and outlook**

The Flemish institutional landscape (administrations, agencies, legislation, administrative provisions and procedures, etc) clearly incorporates impact assessment requirements, approaches and opportunities. Supranational developments and in some cases even obligations have inspired or instructed Flemish politicians – also pressed by societal stakeholders and advisory or academic institutions - to develop and implement regional IA practices. So on paper Flanders is no laggard in the field of “regulatory science” (Strassheim, H. and P. Kettunen, ‘When does evidence-based policy turn into policy-based evidence? Configurations, contexts and mechanisms, Evidence and Policy, 2014, Vol. 10, N° 2, 267). The “compliance pictures” however offer very varying views and hardly a steady progress, eg the environment field (Crabbé, A., and M. Van Steerteghem, ‘Verleden, heden en toekomst van

milieubeleidsevaluatie in Vlaanderen', (2016), Vlaams Tijdschrift voor Overheidsmanagement, 17-24). Challenges such as avoiding formalism and ticking boxes as the outcome of institutionalization require attention but should not justify refraining from other efforts to improve the current practices. However such efforts are announced, their implementation is squeezed by various factors: trimmed budgets, efficiency concerns, administrative silos etc..

The already mentioned Green Paper on public governance held some promising signals for future improvements. It is currently further developed in a draft White Paper and certain objectives and elements could even become part of a decree on public governance as announced in the Policy Note 2014-2019. A major strand of this draft White Paper deals with evidence based policies to enhance accountability and knowledge building. This policy intention is also included in the Policy Letter 2016-2017 announcing a coordinated evaluation agenda (Beleidsbrief Algemeen Regeringsbeleid 2016-2017, 21 oktober 2016, 30; Available at: <http://docs.vlaamsparlement.be/docs/stukken/2016-2017/g930-1.pdf> ). This Policy Letter refers also in general terms to the EU's Better Regulation Agenda. But the future track of this Green/White paper process is unclear at this moment and also expectations about the final outcome should be modest. How far and how much this outcome will take into account or reflect what has been commented on the Green Paper, remains to be seen. Eg the Social and Economic Council of Flanders stated that the Green Paper missed important proposals for necessary cultural changes to reform the relationships between politics (cabinets) and the administration, to improve cooperation, to increase transparency, as well as evidence-based policies and better regulation (SERV, Advies Groenboek bestuur, Brussel, 19 december 2016, 11). This criticism could also be understood as referring to a lack of ambition to implement the governance objectives of the Flemish Vision 2050 Strategy. This horizontal long term sustainability strategy is inspired by transition management principles: focusing on system

innovation, taking into account a long-term perspective, involving stakeholders in the transition process and “regulatory” learning through experiments and innovative initiatives. The transition approach requires also a culture shift within and by the authorities, ministers as well as administrations (at 90, text available at: <https://www.vlaanderen.be/nl/publicaties/detail/vision-2050>). In its opinion on the Green Paper the Flemish Advisory Council on Nature and Environment linked its governance observations to this Strategy. This opinion mentioned not only opportunities for synergy between both which is rather obvious from a coherence perspective, but it also referred to possible critical regulatory issues, eg the balance between collective versus individual fundamental (constitutional) rights (MINARAad, Advies inzake het Groenboek Bestuur, 15 December 2016, 10; available at: <https://www.minaraad.be/.../bestuurskwaliteit/groenboek-bestuur> ). This Advisory Council even found that the preparation process of the Green Paper could have been more transparent...

So the particular “ministerial cabinet”-feature of the Belgian and Flemish public governance model – including its spin offs through political nominations of top civil servants, initially national but replicated by the communities and regions (Hondeghem, A., o.c., 2015, 138) remains undoubtedly the major “cultural” threat or obstacle for improvements. It has been suggested that ministers and “cabinetards” have to work less operational and should allow for more space for the administration, civil society, citizens, stakeholders and academia to provide for solutions which fulfill the policy objectives and criteria (Van Humbeeck, P., o.c., 2017, 40; The umbrella-NGO of the Flemish civil society stakeholders “Verenigde Verenigingen” published in 2011 an interesting collection of interviews with key figures on the public governance culture and its need for reforms: ‘It’s the culture stupid, Sporen naar een andere beleidscultuur’, 2011, Brussel). Observations, suggestions and recommendations of

the same tenor by academic researchers are available (eg Vancoppenolle, D., 'Beleidswerk door ambtenaren en kabinetsmedewerkers: feiten achter de stereotypes. Een verkenning in de Vlaamse overheid', Vanden Broele, Brugge, 2009, 292; also: Vandoninck, J., M. Brans, E. Wayenberg and E. Fobé, 'Ex ante beleidsevaluatie voor beleidsinstrumentenkeuze Conclusies en pistes voor optimalisatie', SBOV-KU Leuven Instituut voor de Overheid, 2015, 91.). None of them fundamentally questions this "cultural system", as their scientific analyses (based on inter alia interviews with civil servants, cabinetards, stakeholders, etc.) mainly produce suggestions for incremental improvements. This approach feeds simultaneously the presumption that future Flemish "regulatory science" developments might remain culturally embedded on a traditional politico-administrative path, preferably continuing consensual decision making built on policy-based evidence ... If this path really directs Flanders towards further necessary and desired innovations – referring inter alia to past experiences (eg Verhoest, K., B. Verschuere, G. Bouckaert, 'Pressure, Legitimacy, and Innovative Behaviour by Public Organizations', Governance 20(3), · July 2007, 469 - 497) – time will tell!