



**UHASSELT**

KNOWLEDGE IN ACTION

## **Faculteit Bedrijfseconomische Wetenschappen**

master in de toegepaste economische  
wetenschappen

### ***Masterthesis***

#### ***A comparison between the European and the Flemish procedures in Impact Assessment***

#### **Lien Vandebrouck**

Scriptie ingediend tot het behalen van de graad van master in de toegepaste economische wetenschappen,  
afstudeerrichting beleidsmanagement

#### **PROMOTOR :**

Prof. dr. dr. Samantha BIELEN

#### **BEGELEIDER :**

Mevrouw Diana-Maria DANCIU



**UHASSELT**

KNOWLEDGE IN ACTION

[www.uhasselt.be](http://www.uhasselt.be)

Universiteit Hasselt  
Campus Hasselt:  
Martelarenlaan 42 | 3500 Hasselt  
Campus Diepenbeek:  
Agoralaan Gebouw D | 3590 Diepenbeek

**2020**  
**2021**



# Faculteit Bedrijfseconomische Wetenschappen

master in de toegepaste economische  
wetenschappen

## ***Masterthesis***

***A comparison between the European and the Flemish procedures in Impact Assessment***

**Lien Vandebrouck**

Scriptie ingediend tot het behalen van de graad van master in de toegepaste economische wetenschappen,  
afstudeerrichting beleidsmanagement

## **PROMOTOR :**

Prof. dr. dr. Samantha BIELEN

## **BEGELEIDER :**

Mevrouw Diana-Maria DANCIU



*This master thesis was written during the COVID-19 crisis in 2020-2021. This global health crisis might have had an impact on the (writing) process, the research activities and the research results that are at the basis of this thesis.*

# Foreword

As part of my master's degree Applied Economics, specialization Policy Management, I have chosen the topic 'A comparison between the European and the Flemish procedures in Impact Assessment' to write my master's thesis about. This thesis deals with a strongly evolving field worldwide which, moreover, is constantly gaining importance due to the increasing concern for regulatory quality. In addition, this theme continues to fascinate due to the various application possibilities.

I would like to thank the people who helped me realize this thesis. In the first place, I am thinking of Prof. Dr. Samantha Bielen and Mrs. Diana Danciu; without their expert advice and support, the realization of this work would not have been possible. In addition, I would also like to thank my immediate family, who have always supported me. Furthermore, several persons have been of service during my information gathering. To them too, I would like to conclude with a word of thanks for their willing cooperation.

## Executive summary

Regulation is pivotal to achieving long-term goals such as economic growth, sustainable development or social welfare. For this reason, governments worldwide have invested considerable time and resources in improving the quality of their regulations. One of the tools used for this purpose is the Regulatory Impact Assessment (RIA). RIA is a method to investigate significant economic, environmental and social impacts of policy initiatives. It provides an empirical basis for policy decisions and thus contributes to regulatory quality. The RIA system of the European Commission and that of the Flemish Government, however, differ considerably. Because of the major added value that RIA contributes to the decision-making process, it is useful to compare both systems and analyze any possible differences. As a result, insights can be gained on which aspects the Flemish system can take over from the European one, or vice versa. This leads to the central research question of the study, namely: **"What lessons can the Flemish Government learn from the European system with regard to Regulatory Impact Assessments, or vice versa?"**. This research question is answered by means of a literature study and an empirical study. The literature study first examines what elements an RIA should contain to be considered of high quality. In addition, the components of both systems are thoroughly examined. Based on the quality criteria that were distinguished and the criticisms that the systems received, the European and Flemish systems could be compared. In the empirical study, the practical application of the RIA systems is examined by means of seven impact analyses. In order to obtain results as recent as possible, the first seven cases that were submitted or published from 2021 onwards, were selected. The subjects of the RIAs were thus chosen at random.

First, the study demonstrates that the European Commission has significantly better intentions than the Flemish Government to develop a high-quality RIA system. The extent to which an RIA system has been developed is reflected based on three basic components, namely (I) procedural standards, (II) methodological guidelines, and (III) control, monitoring and enforcement mechanisms. Firstly, the European Commission has devoted considerable time and resources to the development of an effective and robust system, of which the 'Better Regulation Package' is the prime example. In the "Guidelines" and "Toolbox" of the European Commission, each of the three basic components is elaborated. The Flemish Government, on the other hand, has received a lot of criticism on its old RIA system in the past. As a reaction to this criticism, the Government decided to simply abolish the RIA document instead of improving the RIA system. With this decision, it was stated that the content of the former RIA document should be attached to the explanatory memorandum of the draft decree. The reform was anchored in 'Circular 17 May 2019 on the policy and regulatory processes', which contains guidelines for drafting the explanatory memorandum. However, the new circular does not elaborate on any of the three components regarding impact analysis. There are no procedural standards, methodological guidelines or control, monitoring and enforcement mechanisms, and only substantive guidelines are to be applied 'where relevant'.

Without the intention to extensively elaborate a RIA system, its quality is already negatively affected. As a result of the difference in intentions, the quality criteria show that the RIA system of the European Commission is of better quality than that of the Flemish Government. RIAs at the European

level can be identified as structured and comprehensive with appropriate methods to quantify as many impacts, costs and benefits as possible. In addition, European RIAs are transparent through broad and frequent consultation of stakeholders. In line with the proportionality principle, the broadest possible range of effects is included in the analysis and RIA quality is evaluated and monitored by the Regulatory Scrutiny Board. Even though the RIAs comply largely with the quality components, there is still room for improvement. For example, for many of the Commission's initiatives, a RIA is not systematically prepared and in practice there are often problems with quantifying impacts, costs and benefits. In addition, the RSB as quality supervisor is not fully independent, which attracts criticism from the Member States. At the Flemish level, on the other hand, the decision to include the impact analysis in the explanatory memorandum caused a shift in the quality of the system. The fact that the Flemish Government had no intention of further developing the former ex-ante RIA system makes it practically impossible to carry out a high-quality impact analysis. Both in theory and in practice, Flemish RIAs do not meet the quality criteria. There is no transparency, no consultation, and effects, costs and benefits are not or poorly quantified. Moreover, there is no systematic analysis of the broadest possible range of effects and the impact analyses are not subjected to any independent quality control. Finally, since the reform, the Flemish impact analysis is no longer drawn up ex-ante. The impact analysis only serves to underpin the chosen option and no longer provides an empirical basis during the decision-making process.

The comparison of the European and the Flemish system based on the quality criteria, concludes that the Flemish system has lessons to learn from the European system, and not the other way around. As a result of these findings, this study proposes four recommendations. These recommendations are aimed at the Flemish Government and immediately imply the value of this study. The first recommendation concerns the (re)introduction of a **separate RIA document**. In this way, an open consultation of this RIA document can be organized, and this document can be published separately, which enhances the transparency of the process. A second recommendation concerns the drafting of clear and decisive **guidelines** that can be used when preparing an impact analysis. The guidelines in the circular are insufficient. This will allow all significant impacts to be assessed while considering the proportionality principle, which ensures a more systematic application of impact analysis. These guidelines will also lead to the use of an appropriate methodology, which leads to a greater quantification of effects, costs and benefits. A third recommendation for the Flemish Government concerns the setting up of an **independent impact analysis committee**. Based on the guidelines, as mentioned in the previous recommendation, this committee assesses the quality of the impact analyses and gives its advice. In this way, the quality of the impact analyses can be evaluated and improved objectively and independently. The last recommendation to the Flemish Government is to focus on the **ex-ante** character of the impact analysis. In the current system, the impact analysis serves only to justify why a certain policy option was chosen. If the impact analysis were to be carried out ex-ante, policy options could be assessed transparently and objectively. Only then, impact analysis would provide an empirical basis for policy decisions and contribute to the quality of regulation. This recommendation is closely related to the first one, since an ex-ante impact analysis is only possible based on a separate RIA document that is not prepared at the same time as the draft decree, but in advance.

However, there are several limitations to the research. First, the reform of the Flemish RIA system has only recently been implemented, and as a result, not much literature on the new developments is available yet. Secondly, the empirical study concerns only seven different cases. Therefore, no general conclusions can be drawn from the empirical study but serves to support the results from the literature review. If general conclusions were drawn, the results would consequently not be reliable. Finally, the empirical study examined cases dating from 2021 onwards. Even though the circular entered into force one and a half years ago, it is possible that policymakers are not yet familiar with the new circular and, as a result, ignore the prescribed guidelines.





# Table of contents

FOREWORD.....	2
EXECUTIVE SUMMARY.....	3
TABLE OF CONTENTS.....	7
CHAPTER 1: INTRODUCTION .....	9
<b>1.1 Problem definition.....</b>	<b>12</b>
<b>1.2 Research design.....</b>	<b>13</b>
<b>1.3 Regulatory quality.....</b>	<b>14</b>
CHAPTER 2: LITERATURE STUDY.....	17
<b>2.1 Regulatory Impact Assessment .....</b>	<b>17</b>
2.1.1 Concept of RIA.....	17
2.1.2 RIA quality.....	19
<b>2.2 European IA.....</b>	<b>24</b>
2.2.1 Context.....	24
2.2.2 IA Features.....	25
2.2.3 Procedure .....	28
2.2.4 Methodologies .....	32
2.2.5 Oversight and control .....	36
<b>2.3 Flemish RIA.....</b>	<b>37</b>
2.3.1 Context.....	37
2.3.2 RIA Features.....	38
2.3.3 Procedure .....	42
2.3.4 Methodologies .....	43
2.3.5 Oversight and control .....	45
<b>2.4 Comparing the systems.....</b>	<b>46</b>
2.4.1 Quality of European IA.....	46
2.4.2 Quality of Flemish IA.....	52
2.4.3 Lessons to be learned .....	57
CHAPTER 3: EMPIRICAL STUDY .....	59

<b>3.1 Quality of European IA.....</b>	<b>59</b>
<b>3.2 Quality of Flemish IA.....</b>	<b>60</b>
<b>3.3 Lessons to be learned.....</b>	<b>62</b>
<b>CHAPTER 4: CONCLUSIONS.....</b>	<b>63</b>
<b>BIBLIOGRAPHY.....</b>	<b>66</b>

# Chapter 1: introduction

Regulation is the central bottom line in achieving long-term goals such as economic growth, sustainable development and citizens' health and welfare. It creates the "rules of the game" for citizens, businesses and governments to achieve these long-term goals. Regulation is the public intervention in a market or society. This intervention takes the form of general measures or rules created and imposed by the government, with the aim of controlling or changing institutions or behavior.<sup>1</sup> The term regulation covers a variety of instruments: primary laws, secondary regulations to implement primary laws, subordinate regulations, administrative formalities, acts and standards.<sup>2</sup> Without regulation, economies and societies wouldn't be able to function properly.<sup>3</sup>

In today's capitalist society, clear and defined agreements are necessary for market transactions to take place. The framework within which these agreements must be established, is set out in advance in regulatory acts. Therefore, regulation is an important driver of economic development. Because economic development has become so important in recent decades, regulation is also a very important tool for our political and social societies.<sup>4</sup> The major influence that regulatory measures play in economic, political and social life has resulted in many Western industrialized countries evolving into a so-called "regulatory state" where regulation prevails in almost all public and private sectors.<sup>5</sup>

However, the realization has grown that regulatory acts can also have a negative impact on economic development. Using regulations incorrectly or excessively can have the effect of restricting economic growth. For example, outdated regulation can slow down innovation and limit modern economic activities. In addition, regulation can entail a considerable amount of administrative burden. An accumulation of regulations can cause certain measures to contradict each other, where it becomes unclear which one must be complied with. Finally, competition might be compromised as excessive regulation might reduce the freedom of economic actors.<sup>6</sup>

As mentioned before, regulation has an enormous influence on the everyday life of citizens and companies. It is therefore important that both existing and new regulations are of good quality. In order to measure the quality of regulations, indicators were defined.<sup>7</sup> Performance on these indicators determines the ability of a government to stimulate investment, promote economic growth, reduce systematic risk, support sustainable development, the environment and citizens' health and general, etc.<sup>8</sup> However, technological change and globalization make it a challenging issue for governments

---

<sup>1</sup> Baldwin, R., Cave, M., & Lodge, M. (2010). *The Oxford handbook of regulation*: Oxford university press.

<sup>2</sup> OECD. (2010). *Regulatory Policy and the Road to Sustainable Growth*.

<sup>3</sup> OECD. (2012). *Recommendation of the Council on Regulatory Policy and Governance*.

<sup>4</sup> Voermans, W. (2017). *Legislation and regulation*. Draft for the Handbook of Legislation (eds. H. Xanthaki & U. Karpen).

<sup>5</sup> Majone, G. (1996). *The rise of statutory regulation in Europe*. *Regulating Europe*.

<sup>6</sup> Voermans, W. (2017). *Legislation and regulation*. Draft for the Handbook of Legislation (eds. H. Xanthaki & U. Karpen).

<sup>7</sup> OECD. (2018a). *Measuring Regulatory Performance*; Kaufmann, D., Kraay, A., & Mastruzzi, M. (2007). *Governance Matters: Aggregate and Individual Governance Indicators 1996-2006*.

<sup>8</sup> OECD. (2018a). *Measuring Regulatory Performance*; Voermans, W. (2017). *Legislation and regulation*. Draft for the Handbook of Legislation (eds. H. Xanthaki & U. Karpen).

to decide what and how to regulate, making it more and more difficult for governments to achieve high-quality regulation.<sup>1</sup>

Due to the high importance of regulation, many governments in both developed as developing countries have increasingly invested in regulatory policy to manage and improve their regulatory environments.<sup>2</sup> The European Union is one of these players on the global scene that takes the quality of regulation seriously. Already since the mid-1990s, the European Commission pays attention to “better regulation” as one of its policy goals. Later in 2015, the European Commission therefore launched its “Better Regulation Package” to improve the quality of EU regulation. Through this Better Regulation Package, the European Commission committed to introducing higher standards in the policy-making process through (I) increased transparency and consultation, (II) evidence-based policymaking relying on best available evidence and (III) monitoring existing EU regulations.<sup>3</sup> However, the EU is not the only policy-making power. Since its competences at the supranational level are limited, its member states also formulate their own national and regional policies. Better regulation thus is not only a policy goal at the supranational level, but also at the national and sub-national levels. Just as the European Commission, the Flemish Government for example has taken a whole range of measures to improve its regulatory quality.<sup>4</sup> Good regulation in Flanders must consist of 8 characteristics. These 8 characteristics are (I) necessary and effective, (II) efficient and well-considered, (III) practicable and enforceable, (IV) legitimate, (V) coherent, (VI) simple, clear and accessible, (VII) evidence-based and consulted and (VIII) permanently relevant and up to date. When making new regulation, these characteristics must be considered in the policy-making process.<sup>5</sup>

Regulatory policies of any country contain tools and instruments to increase the quality of the policy-making process. One of these instruments that is used at the European as well as at the Flemish level, is the Regulatory Impact Assessment (later: RIA). RIA is used as an ex-ante evaluation of policy initiatives. Positive and negative effects of proposed/existing regulation or non-regulatory initiatives are being critically assessed through this analysis.<sup>6</sup> In other words: if any regulatory initiative is expected to have significant economic, social or environmental impacts, RIA is carried out. The RIA analyzes whether the new regulation is needed on the one hand, on the other hand it assesses whether it will be effective. It aims to simplify, as well as strengthen the policy-making process by enhancing the empirical basis of political decisions.<sup>7</sup>

The Organization of Economic Co-operation and Development (OECD) considers impact analysis to be one of the most important tools available to governments to improve the quality of regulation. Therefore, the OECD strongly encourages these analyses among its member countries and, moreover, evaluates them.<sup>8</sup> As a result, almost all OECD member states today use some form of

---

<sup>1</sup> OECD. (2018b). *OECD Regulatory Policy Outlook 2018*.

<sup>2</sup> World Bank. (2010). *Regulatory Quality and Competition Policy*.

<sup>3</sup> European Commission. Better regulation: Why and how.

<sup>4</sup> Vlaamse Regering. (2006). *Vlaanderen in actie: Een sociaal-economische impuls voor Vlaanderen*.

<sup>5</sup> Vlaamse Overheid. (2003). *Kenmerken van goede regelgeving*

<sup>6</sup> OECD. (2018b). *OECD Regulatory Policy Outlook 2018*.

<sup>7</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). *Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? Tijdschrift voor wetgeving* (3), 145-159.

<sup>8</sup> OECD. (2018b). *OECD Regulatory Policy Outlook 2018*.

impact assessment for proposed regulatory acts.<sup>1</sup> RIA has become a common tool in the regulatory policy process.<sup>2</sup>

As mentioned before, increasing attention was given to regulatory quality and impact assessment by the European Union, as well as on national and regional level. The European Commission performs a RIA for each initiative at supranational level with a potential significant impact. However, the European Union has limited competences and thus is not the only policy-making power. Member states of the European Union have their own individual policy-making process and will perform separate RIAs for the initiatives at national and sub-national level. The Flemish government and the European Commission thus make separate RIAs on subjects that might be the same, but on different levels, namely supranational and sub-national levels. Although both European and Flemish RIAs analyze the same – whether new regulation is needed and will be effective – the Flemish system differs significantly from the European system. The Flemish RIA system has undergone drastic reforms in recent years, making the European and the Flemish system even more different from each other. Because of the important economic, social and environmental relevance of RIA, analyzing the main trends in RIA's on both the European as the Flemish level is thus very interesting.

This research aims to immediately expose pain points and strengths of both European and Flemish impact assessment systems. Knowing where a system fails or prevails, facilitates to improve the systems and to make it more efficient, which is of crucial importance for the quality of regulation, and thus for economic development and societal well-being on the long term. Already existing literature contains important information about the most efficient as well as criticized elements of European and Flemish RIA's. However, a comparative study that exclusively connects Flanders with Europe, which offers insights on how these two systems could improve each other, is lacking. With recommendations based on theory as well as in practice, I hope this research can contribute to the existing literature to eventually have a clear view of what a – to the extent possible – 'ideal' system of regulatory impact assessment looks like.

---

<sup>1</sup> Voermans, W. (2017). Legislation and regulation. Draft for the Handbook of Legislation (eds. H. Xanthaki & U. Karpen).

<sup>2</sup> Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

## 1.1 Problem definition

Qualitative regulation is one of the most important pivots for any modern government. Both the European Commission (at the supranational level) and Flanders (at the sub-national level) have therefore taken a range of measures to improve this regulatory quality. One of these measures is the Regulatory Impact Assessment (RIA). Impact assessments are carried out on regulatory initiatives that are expected to have significant economic, social or environmental impacts. These have become more and more popular at EU level, especially after the adoption of the 2015 Better Regulation. The RIA system of the European Commission at the supranational level differs considerably from the RIA system of the Flemish government at the sub-national level, which was further strengthened by reforms at the Flemish level. As a result, the comparison of both levels aims to give insight to any improvement for the Flemish system to take over from the European system and/or vice versa. Therefore, the central research question is the following:

**Which lessons can the Flemish Government adopt from the European Level regarding Regulatory Impact Assessments, or vice versa?**

Furthermore, the literature study examines the following sub-questions:

- How does the meaning of good regulation differ between the European Union and Flanders?
- How do the European and Flemish IA systems differ?
- In what areas do European and Flemish IAs differ from an as qualitative considered IAs?

Finally, the empirical study examines the following sub-questions:

- To what extent are European and Flemish IAs carried out according to the prescribed guidelines?
- To what extent can European and Flemish IAs be considered as qualitative IAs in this case?

## 1.2 Research design

The concept of regulatory quality and the interpretation of good regulation of both Europe as Flanders, were described in the introduction. The literature study subsequently provides an extensive theoretical framework of methodologies and procedures in which Regulatory Impact Assessments are situated. Next, the research indicates what exactly a qualitative RIA entails and how the decision-maker can achieve this. Finally, the research will look at the performance of the European and Flemish RIAs within the requirements of the quality criteria. In doing so, a clear comparison of the two systems can be made by listing similarities and differences and identifying gaps in the Flemish system which can be overcome by adopting EU rules, or vice-versa. Impact Assessment systems are assessed based on the three essential elements: (I) process standards supporting the RIA procedure (II) guidelines on tools, methods and criteria and (III) control, monitoring and enforcement mechanisms. All this previous information will be contained in the second chapter.

To go more in-depth, the third chapter will consist of a case study. In this empirical part, the European and Flemish RIA systems will be compared in practice. This case study analyzes a total of seven impact assessments, three at the European level and four at the Flemish level. The aim of this study is to provide an overview of the quality of impact assessments, as recent as possible. As a result, the first three IAs that were published or submitted from 2021 on, are analyzed at both European and Flemish level. The subjects that are covered by the IAs are thus chosen at random. This chapter first clarifies quality of RIAs at both levels, considering the same quality indicators that are used in the literature study. After this clarification, the lessons to be learned for the systems are concluded. The empirical study delves deeper into the European and Flemish systems by analyzing draft IAs and explanatory memoranda. Based on these documents, results on the comprehensiveness, quality and lessons to be learned, can be obtained. Analyzing the impact assessment systems allows us to gain insight into how impact assessment is done practically and whether the guidelines on methodology are applied in practice.

Chapter 4 contains the overall conclusions that were obtained in the literature study and the case studies.



### 1.3 Regulatory quality

Regulation has an enormous impact on citizens and society. In fact, well-designed regulation can bring about social, environmental and economic benefits.<sup>1</sup> As such, regulatory quality is the central bottom-line in achieving long-term goals such as stimulating investment, promoting economic growth, reducing systematic risk, supporting sustainable development, the environment and citizens' health and general welfare, etc.<sup>2</sup> In recent decades, governments of developing and developed countries have invested in raising their regulatory quality. To this purpose, they have adopted explicit policies and created separate bodies charged with promoting and coordinating regulatory quality. In Flanders, this task has been assigned to the 'Dienst Wetsmatiging'. On behalf of the European Union on the other hand, the Regulatory Scrutiny Board is charged. All OECD countries had developed and implemented some form of regulatory policy by the end of 2017.<sup>3</sup>

Before developing a regulatory policy to increase regulatory quality, it is important to know what the concept of regulatory quality entails. Regulatory quality is a very broad concept that may be interpreted in many ways by different actors on the one hand (bureaucrats, politicians, entrepreneurs and citizens) or by different disciplines on the other (legal or economic).<sup>4</sup> One of the most widely used definitions of regulatory policy is that of the World Bank. It defines regulatory quality as follows:

*"High quality regulation is that which is **effective** in producing the desired results and **efficient** in achieving intended results at minimum costs. High quality regulation also involves **consultation** with stakeholders and a high level of **transparency** during the policy development and implementation phases."*<sup>5</sup>

Effectiveness refers to the extent to which regulations achieve their policy objectives. Efficiency on the other hand, refers to the relationship between the costs and benefits of regulation. The focal point here is the extent to which the costs caused by the regulation are outweighed by its benefits.<sup>6</sup>

This definition describes regulatory quality only from an economic perspective.<sup>7</sup> For example, it provides no information about the legal quality, conformity or necessity of regulation.<sup>8</sup> Consequently, this incomplete description of regulatory quality gives rise to objections. A more comprehensive description is needed to frame the concept in all its perspectives.<sup>9</sup> This is where the definition of the Organization of Economic Co-operation and Development (OECD) provides an answer. It reads:

---

<sup>1</sup> OECD. (2012). Recommendation of the Council on Regulatory Policy and Governance.

<sup>2</sup> OECD. (2018b). OECD Regulatory Policy Outlook 2018. Voermans, W. (2017). Legislation and regulation. *Draft for the Handbook of Legislation* (eds. H. Xanthaki & U. Karpen).

<sup>3</sup> World Bank. (2010). Regulatory Quality and Competition Policy; OECD. (2018b). OECD Regulatory Policy Outlook 2018.

<sup>4</sup> Bielen, S., Marneffe, W., & Popelier, P. (2015). A Conceptual Framework on the Impact of Regulatory Quality on Litigation. *Theory & Practice of Legislation*, 3(1), 23-43.

<sup>5</sup> World Bank. (2010). Regulatory Quality and Competition Policy.

<sup>6</sup> Van Humbeeck, P. (2006). Maken we goede wetgeving? Benchmarking van Vlaanderen.

<sup>7</sup> Van Humbeeck, P. (2006). Maken we goede wetgeving? Benchmarking van Vlaanderen.

<sup>8</sup> Bielen, S., Marneffe, W., Ooms, A., & Vereeck, L. (2013). De impact van wetgevingskwaliteit op de gerechtelijke achterstand. *Tijdschrift voor wetgeving*, 2013, 302-310

<sup>9</sup> The OECD states in this regard: "The quality of regulatory management systems should be understood as embracing the broader aspects of good governance and not as being limited to the direct promotion of better economic outcomes".

*"Pursuing regulatory quality is about enhancing the performance, cost-effectiveness and legal quality of regulations and administrative formalities. First, the notion of regulatory quality covers processes, i.e. the way regulations are developed and enforced. These processes should be in line with the principles of **consultation, transparency, accountability** and **evidence**. Second, the notion of regulatory quality also covers outcomes, i.e. whether regulations are **effective, efficient, coherent** and **simple**."*<sup>1</sup>

Derived from the previous paragraph, this description of the OECD is more comprehensive than that of the World Bank. In addition to the economic perspective, this one also considers the legal perspective. It also defines more principles for both the regulation itself and the process by which regulation is created. Moreover, the OECD has designed a checklist for governments containing 10 questions to ask when developing and implementing new regulations. The 1995 OECD Reference Checklist for Regulatory Decision-Making provides the first international standard for regulatory quality.<sup>2</sup> It contains the following questions:<sup>3</sup>

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible, and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

Following this OECD framework for regulatory quality, multiple governments have drawn up their own principles and standards with which good regulation must comply, including the European Commission and the Flemish government. To increase the regulatory quality of the European Union and Flanders, the following developed standards must be considered in the policy-making process.

'Better Regulation' is defined by the Commission as an approach to which the EU policies and laws achieve their objectives at minimum cost. Better Regulation guarantees that political decisions in the policy-making process are prepared transparently, with consultation of stakeholders and evidence-based.<sup>4</sup> Better Regulation is based on the principles of necessity, subsidiarity (the EU can only act when it cannot be done by lower level governments), proportionality (EU can only act in a way that does not go beyond what is needed to resolve the problem) and transparency.<sup>5</sup> In 2015, The

---

<sup>1</sup> OECD. (2018). *OECD Regulatory Policy Outlook 2018*.

<sup>2</sup> Ladegaard, P. (2005). *Improving business environments through Regulatory Impact Analysis-Opportunities and challenges for developing countries*. Paper presented at the International Conference on Reforming the Business Environment, Cairo, Egypt.

<sup>3</sup> OECD. (1995). Recommendation of the Council on Improving the Quality of Government Regulation.

<sup>4</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>5</sup> Golberg, E. (2018). "Better Regulation": European Union Style. *Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Associate Working Paper Series, 98.*; European Commission. (2017). Better Regulation Guidelines.

European Commission launched its 'Better Regulation Package'.<sup>1</sup> This package is based on the above commitments and principles. Through planning, evaluation and fitness checks, impact assessments, stakeholder consultations and feedback mechanisms, the Better Regulation Package aims to improve the policy-making process and the outcomes of the process, namely regulation itself.<sup>2</sup> One of the most important tools of regulatory policy is the Regulatory Impact Assessment.<sup>3</sup>

In Flanders, the regulatory quality is described based on of 8 characteristics of good regulations. Good regulation must meet the following characteristics: (I) necessary and effective, (II) efficient and balanced, (III) enforceable, (IV) legitimate, (V) coherent, (VI) simple, clear and accessible, (VII) evidence-based and consulted and (VIII) relevant and up to date.<sup>4</sup> Remarkably, the Flemish government has clearly drawn its inspiration in defining these characteristics, as they are very much in line with the OECD checklist. To achieve this good regulation – meeting the eight previous characteristics - several instruments have been put in place.<sup>5</sup> As with the Better Regulation Program, the Regulatory Impact Assessment is one of the most important of these instruments. In a Regulatory Impact Assessment, the design of the new regulation is tested against the 8 characteristics.<sup>6</sup> An extensive explanation of the RIA will follow in the further course of the research.

---

<sup>1</sup> European Commission. (2015). Better Regulation for Better Results - An EU Agenda. Strasbourg.

<sup>2</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>3</sup> Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

<sup>4</sup> Kenniscel Wetsmatiging. (2003). *Kenmerken van goede regelgeving*.

<sup>5</sup> Dienst Wetsmatiging. (2011). Kwaliteitsbewaking van Regelgeving door middel van Monitoring en Evaluatie.

<sup>6</sup> Dienst Wetsmatiging. (2011). Kwaliteitsbewaking van Regelgeving door middel van Monitoring en Evaluatie.

## Chapter 2: literature study

This chapter attempts to provide the clearest possible theoretical description of the concept of the Regulatory Impact Assessment (RIA) as an important instrument for governments to achieve regulatory quality as described in the Introduction (section 2.1). In the further course of the chapter, the European and the Flemish RIA will be compared based on three different critical elements.

### 2.1 Regulatory Impact Assessment

Regulatory policies of any government contain tools and instruments to increase the quality of the policy-making process. One of the core instruments at both the European and the Flemish level, is the Regulatory Impact Assessment (later: RIA).<sup>1</sup> This section provides an overview of the concept of RIA, and the different perspectives of what might be considered a qualitative RIA.

#### 2.1.1 Concept of RIA

RIA is used as an ex-ante evaluation of policy initiatives. Positive and negative effects of proposed/existing regulation or non-regulatory initiatives are being critically assessed through this analysis.<sup>2</sup> In other words: if any regulatory initiative is expected to have significant economic, social or environmental impacts, a RIA is carried out to analyze these impacts, and to analyze the impacts of other policy initiatives. For this purpose, the impact assessment relies on scientific frameworks and methods, ranging from the Cost-Benefit Analysis (CBA), to the Cost-Effectiveness Analysis (CEA), Multi-Criteria Analysis and the Standard Cost Model as the most common used.<sup>3</sup>

As RIA determines whether a policy option will achieve policy objectives more efficiently and effectively than alternative options<sup>4</sup>, it provides a lot of information for decision-makers what and how to regulate. By enhancing the empirical basis of political decisions, RIA makes a great contribution to the accountability, transparency and consistency of the policy-making process.<sup>5</sup> RIA aims to simplify as well as strengthen the policy-making process, and thus represents an important tool for obtaining more regulatory quality and better regulation.<sup>6</sup> An important addition however, is that RIA does not replace any decision- or policy-making. Instead, RIA serves as a tool available to decision- and policy-makers to make informed decisions.<sup>7</sup>

The Organization of Economic Co-operation and Development (OECD) considers impact analysis to be one of the most important tools available to governments to improve the quality of regulation.

---

<sup>1</sup> Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

<sup>2</sup> OECD. (2018b). *OECD Regulatory Policy Outlook 2018*.

<sup>3</sup> Oermann, M., & Schulz, W. (2019). Assessing Policy III: Regulatory Impact Assessment. In *The Palgrave Handbook of Methods for Media Policy Research* (pp. 575-593): Springer.; OECD. (2020). *Best Practice Principles for Regulatory Policy: Regulatory Impact Assessment*

<sup>4</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>5</sup> OECD. (2005). Regulatory Impact Analysis in OECD Countries: Challenges for Developing Countries.

<sup>6</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving* (3), 145-159.

<sup>7</sup> European Commission. (2017). Better Regulation Guidelines.

Therefore, the OECD strongly encourages these analyses among its member countries and, moreover, evaluates them.<sup>1</sup> As a result, all OECD member states today use some form of impact assessment for proposed regulatory acts.<sup>2</sup> RIA has become a common tool in the regulatory policy process.<sup>3</sup> However, there is no single RIA model that is commonly used internationally.<sup>4</sup> The interpretation and institutionalization of RIA varies from country to country. Some countries make full use of the RIA's potential, while others use this tool merely in a symbolic way.<sup>5</sup> As a result, the quality and the performance of RIA varies over countries.<sup>6</sup> RIAs at the European and Flemish level for example differ significantly. These differences and similarities of RIA models at the European and Flemish level gives rise to the central research question of this study. However, there are recurring elements that a RIA typically includes. For example, in the phases of any RIA procedure, a number of tasks typically must be performed, namely:<sup>7</sup>

- A description of the problem and the objective of the proposal;
- A description of the options (regulatory and non-regulatory) for achieving the objective;
- An assessment of the significant positive and negative impacts, including an assessment of the incidence of the benefits and costs on consumers, business and other interest groups;
- A consultation process with stakeholders and other interested parties;
- A recommended option, with explanation of why it has been selected.

According to Wegrich on the other hand, three essential elements of RIA systems can be distinguished.<sup>8</sup> The first essential element is the RIA procedure, considering all actors involved and their rights and obligations. A framework which is commonly used in most RIA procedures, was described above. To structure this procedure, process standards should be set for the RIA system. The second essential element of a RIA system are the RIA tools, methods and criteria, which are used to evaluate the regulation or proposal. As with the process standards supporting the RIA procedure, the RIA system should consist of guidelines on how to use these tools, methods and criteria. Third are the control, monitoring and enforcement mechanisms of a RIA system. These serve to ensure the effectiveness of the two previous elements. Any RIA system should consist of these three essential elements.<sup>9</sup> Based on these elements, this study compares the RIA system of the European Union with that of Flanders.

---

<sup>1</sup> OECD. (2018b). *OECD Regulatory Policy Outlook 2018.*; OECD. (2012). *Recommendation of the Council on Regulatory Policy and Governance.*

<sup>2</sup> Voermans, W. (2017). Legislation and regulation. *Draft for the Handbook of Legislation* (eds. H. Xanthaki & U. Karpen).

<sup>3</sup> Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

<sup>4</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>5</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>6</sup> Staronova, K. (2010). Regulatory Impact Assessment: Formal Institutionalization and Practice. *Journal of Public Policy*.

<sup>7</sup> Kirkpatrick, C., & Parker, D. (2007). Regulatory Impact Assessment: Towards Better Regulation? . *The CRC Series on Competition. Regulation and Development.*

<sup>8</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

<sup>9</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

## 2.1.2 RIA quality

As mentioned before, the Regulatory Impact Assessment (RIA) is a key policy instrument in the regulatory processes. The quality of the RIA is therefore of great importance to be able to achieve regulatory quality. Despite its diffusion throughout the world since the seventies, the RIA has not yet delivered its expected results.<sup>1</sup> In fact, there is a significant difference between countries in terms of implementation of RIA. Some countries make full use of RIA's potential, while others use the instrument in a merely symbolic way.<sup>2</sup> As a result, the quality and the performance of RIA varies over countries.<sup>3</sup> In this context, different perspectives have been developed on when a RIA can be considered of high quality, and how to achieve this.

As previously mentioned, the OECD takes on an important role in promoting and evaluating RIA systems. For instance, the OECD produced a checklist for policy making in 1995, which was already discussed in section 2.1. This checklist did not consider the institutional and contextual components of policy making.<sup>4</sup> Consequently, in 1997, the OECD developed a summary of key elements that every good RIA framework should contain, with the goal of maximizing the revenue generated from the use of RIAs.<sup>5</sup> In 2020, these Best Practice Principles for Regulatory Impact Assessment were updated through a separate document. These are the following<sup>6</sup>:

1. Commitment and buy-in for RIA;
2. Governance of RIA – having the right set up of system design;
3. Embedding RIA through strengthening capacity and accountability of the administration;
4. Targeted and appropriate RIA methodology;
5. Continuous monitoring, evaluation and improvement of RIA.

These principles are specifically explained by the OECD. In doing so, it emphasizes the key elements for an effective RIA, ranging from political support to a flexible methodology and open communication. However, the best practice framework remains largely abstract. Since the experience and practice of OECD countries differ, OECD does not prescribe strict procedures or methodologies. In addition, the principles are intentionally set up to be very ambitious.<sup>7</sup> Most OECD countries use the RIA in their regulatory policy. However, their experience has shown that it is very difficult to achieve the OECD best practice principles. As a result, most of the OECD best practice elements are not present in countries' impact assessments.<sup>8</sup> In addition, there is a large degree of variation in countries' approaches in implementing RIA. In many countries, the RIA system is still not completely

---

<sup>1</sup> Visaggio, M. (2018). RIA System Evaluation by Means of Composite Indicators. *Journal of Economics and Economic Education Research*, 19(3), 1-19.

<sup>2</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>3</sup> Staronova, K. (2010). Regulatory Impact Assessment: Formal Institutionalization and Practice. *Journal of Public Policy*.

<sup>4</sup> Ladegaard, P. (2005). *Improving business environments through Regulatory Impact Analysis-Opportunities and challenges for developing countries*. Paper presented at the International Conference on Reforming the Business Environment, Cairo, Egypt.

<sup>5</sup> OECD. (1997). Regulatory Impact Analysis (RIA) Inventory.

<sup>6</sup> OECD. (2020). *Best Practice Principles for Regulatory Policy: Regulatory Impact Assessment*.

<sup>7</sup> Oermann, M., & Schulz, W. (2019). Assessing Policy III: Regulatory Impact Assessment. In *The Palgrave Handbook of Methods for Media Policy Research* (pp. 575-593): Springer.

<sup>8</sup> World Bank. (2010). *Regulatory Quality and Competition Policy*.; World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.

operational yet.<sup>1</sup> In its Regulatory Policy Outlook, the OECD assesses the quality of countries' impact assessments. In doing so, it uses the Indicators of Regulatory Policy and Governance Surveys (later: iREG) score. This score assesses (I) the methodology, (II) oversight and quality control, (III) the systematic adoption and (IV) transparency of RIA.<sup>2</sup> These assessment criteria are therefore very similar to the best practice principles it has set over the years.

It is agreed upon experts that implementing a successful RIA system is a very difficult task, administrative as well as technically. The implementation process is administrative as well as technically challenging. The benefits of implementing a RIA system, on the other hand, are significant. Namely, it contributes to the efficiency, accountability and transparency of the decision-making process.<sup>3</sup> To support the implementation of a successful RIA system, the Global Indicators of Regulatory Governance (later: GIRG) project was developed. GIRG is a project of the World Bank's Global Indicators Group that develops datasets and benchmarking products on regulation world wide. Data of the GIRG project cover six aspects of good regulatory practices: (I) transparency, (II) public consultation, (III) impact assessments, (IV) accessing laws and regulations, (V) ex-post review and (VI) challenging regulations.<sup>4</sup>

In the case of impact assessments, GIRG distinguishes four critical elements that contribute to the implementation of a successful RIA. These elements involve what RIA measures, who conducts RIA, how RIA is conducted, and communicating RIA results.<sup>5</sup> The first aspect of impact assessment measured by the GIRG is the scope of impacts covered by RIA. Among the different countries implementing RIA, the measured impacts differ significantly in scope. For example, 95% of the countries using RIA measure the impact of the proposed regulation on the public sector (this may include administrative costs, for example). In contrast, only 59% of countries measure the impact on small- and medium-sized enterprises. The impacts approached by the GIRG are the impacts on the public sector, private sector, benefits from the regulation, international obligations, environment, competition and market openness, SMEs and implementation. In other countries the RIA also covers other aspects, such as the impact on gender equality. A second aspect of impact assessment assessed by the GIRG, is whether there is a specialized government agency tasked with evaluating and monitoring the RIAs that are conducted by ministries or other regulatory agencies. These specialized government agencies provide reliable and neutral advice to regulators on the content of the RIA conducted and therefore contribute to the transparency and effectiveness of RIA analysis. Third, there are elements that are important in how the RIA should be drafted. The GIRG distinguishes two different aspects here. On the one hand, the existence of legal obligations to draft RIAs is essential. On the other hand, the existence of specific guidelines to do so. These elements strengthen the RIA process and maximize the benefits of RIA. The last important aspect assessed by the GIRG in impact assessment is whether the results are communicated to the public. This

---

<sup>1</sup> World Bank. (2010). *Regulatory Quality and Competition Policy*.

<sup>2</sup> OECD. Methodology of the iREG Composite Indicators.

<sup>3</sup> Morrall, J. (2001) *Regulatory Impact Analysis: Efficiency, Accountability, and Transparency.*, Singapore. U.S. Office of Management and Budget, Washington, DC.

<sup>4</sup> World Bank Group. (2018). *Global Indicators of Regulatory Governance*.

<sup>5</sup> World Bank Group. (2017). *Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment*.

contributes to the transparency of the RIA and the accountability of the decision-maker. Communicating the results of RIA can be done through (I) a unified website for all proposed regulations, (II) the website of the relevant ministry or regulatory, (III) public meetings and (IV) targeted outreach to business associations, other stakeholder groups or both.<sup>1</sup> It is remarkable that the elements assessed by the GIRG score are very similar to those assessed by the OECD iREG score.

Almost all countries that use RIA have developed their own guidelines on what an RIA should look like.<sup>2</sup> The Flemish government as well as the European Union have also developed several points that a good RIA should meet. According to the Flemish Dienst Wetsmatiging, a good RIA searches the solution of a societal problem. Also, a good RIA contains a clear reasoning as to why a certain option was chosen. The depth and scope of a good RIA are proportional to the importance of the regulation and its expected effects. Using the best available information, the RIA discusses and weighs the relevant costs and benefits. Finally, a good RIA is prepared in consultation with all interested stakeholders.<sup>3</sup> In addition, the European Union has also drawn up guidelines on impact assessment.<sup>4</sup> A good RIA should set out a clear reasoning of the problem, underlying causes of the problem, the objectives and the policy options to tackle the problem. In addition, all stakeholders should be involved in the preparation of the RIA and should be given the opportunity to provide feedback on RIAs conducted. Also, a RIA should compare policy options using economic, social and environmental impacts. After conducting RIA, the draft report must be presented to the Regulatory Scrutiny Board for quality control checks.<sup>5</sup> In general, according to the European Union, a RIA should be able to answer a number of key questions. These are the following<sup>6</sup>:

1. What is the problem and why is it a problem?
2. Why should the EU act?
3. What should be achieved?
4. What are the various options to achieve the objectives?
5. What are the economic, social and environmental impacts and who will be affected?
6. How do the different options compare (effectiveness, efficiency and coherence)?
7. How will monitoring and subsequent retrospective evaluation be organized?

---

<sup>1</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.

<sup>2</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.

<sup>3</sup> Kenniscel Wetsmatiging. (2004). Wegwijs in Reguleringsimpactanalyse.; Dienst Bestuurszaken. Leidraad voor de Opmaak van een Reguleringsimpactanalyse.; Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>4</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>5</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>6</sup> European Commission. (2017). Better Regulation Guidelines.



In addition to these key questions, the European Union also prescribes a number of key principles with which an RIA must comply. Thus, a good RIA must be comprehensive, proportionate, evidence-based, open to stakeholders' views, unbiased, prepared collectively with relevant Commission services, embedded in the policy cycle, transparent and be of a high quality.<sup>1</sup>

Yet another approach to a robust RIA comes from RegWatchEurope. RegWatchEurope is a network consisting of independent and external advisory bodies from the Netherlands, Finland, Germany, Norway, Sweden, Czech Republic, Denmark and the UK. RegWatchEurope works together as a network to strengthen its own knowledge by exchanging information and best practices and cooperates in its tasks with the OECD Regulatory Policy Committee and with the Regulatory Scrutiny Board of the European Commission.<sup>2</sup> From the experience of the members of RegWatchEurope they have drawn up some aspects that are successful in drawing up a robust RIA. These aspects are (I) a simple and standardized methodology, (II) full transparency and quantification regarding all direct impacts, (III) accessibility to the public, (IV) stakeholders should be consulted at the drafting stage of impact assessments and (V) the principle of proportionality. However, it is stated that these aspects are only successful if independent scrutiny is present.<sup>3</sup>

A final approach to a high-quality RIA comes from Poel, Marneffe and Van Humbeeck. These identify a high-quality RIA based on consultation, transparency and the preparation by a specialized project team. An important criterion of high-quality RIAs that they add, is the early set-up of RIA. In other words: the ex-ante character of the RIA. To improve decision-making, it is crucial that the RIA process is started early in the regulatory process. However, if the RIA is only started after the regulatory draft has already been written, the analysis and assessment of the various policy initiatives will not be meaningful.<sup>4</sup>

Previous theory shows that there is an overall consensus on a 'qualitative' RIA. Yet these approaches raise criticism. For example, the OECD's best practice principles are useful as they provide a good starting point if the RIA system is not yet fully established. To also see these best practice principles as the ending result, however, is a mistake. In fact, the best practices are not sufficient to rely on when creating an efficient RIA process.<sup>5</sup> The reason for this is that best practices and basic principles do not respond to context, and as a result, are context insensitive. The concept of quality does depend on context on the other hand, which means that best practices can only offer vague support in the RIA system. A close analysis of the environment and context in which RIA takes place, is needed. By considering the context of the RIA, its quality will increase consequently.<sup>6</sup>

As mentioned earlier, stakeholder engagement is very important. However, it is possible that each group of stakeholders has a different interpretation of the concept of quality. Five different groups

---

<sup>1</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>2</sup> RegWatchEurope. Retrieved from <https://www.regwatcheurope.eu/>

<sup>3</sup> RegWatchEurope. (2020). *Robust Impact Assessment: Practical Experiences from RegWatchEurope Members*.

<sup>4</sup> Poel, K., Marneffe, W., & Van Humbeeck, P. (2016). De Federale Regelgevingsimpactanalyse: Nood aan Hervormingen? *Tijdschrift voor wetgeving*, 196-216.

<sup>5</sup> Radaelli, C. (2002). The politics of regulatory impact analysis in the OECD countries: best practice and lesson-drawing.; Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

<sup>6</sup> Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

of stakeholders can be distinguished, all of whom interpret the concept of quality differently. These groups can be identified as (I) the experts, (II) bureaucrats, (III) politicians, (IV) businesses, and (V) citizens.<sup>1</sup> The first group of stakeholders are the 'experts', where quality is primarily about efficiency. The second group of stakeholders are the 'bureaucrats'. These stakeholders see quality as the strict following of procedures. For the 'politicians', who form the third group, quality is achieved if the interest groups can be satisfied. For the 'companies', quality equals the realization of profit, and consequently the minimization of costs. The fifth and final group of stakeholders, namely the 'citizens', sees protection against risk as a criterion for quality. In reality, most stakeholders are a mixture of the aforementioned groups. Overall, Radaelli concludes that a "one-size-fits-all" approach to the RIA system cannot work. Radaelli therefore describes seven lessons for improving an RIA system that is more contextualized.<sup>2</sup> In general, it is very important to consider the context of RIA and, when understanding quality, to ask which group of stakeholders the quality applies to.<sup>3</sup>

---

<sup>1</sup> Farrow, S., & Copeland, C. (2003). Evaluating central regulatory institutions. Paper presented to the OECD Expert Meeting on Regulatory Performance: Ex-Post Evaluation of Regulatory Policies. In: OECD. Paris.; Radaelli, C. M. (2004). Getting to grips with quality in the diffusion of regulatory impact assessment in Europe. *Public Money and Management*, 24(5), 271-276.

<sup>2</sup> Radaelli, C. (2004). The diffusion of regulatory impact analysis—Best practice or lesson-drawing? *European Journal of Political Research*, 43(5), 723-747.

<sup>3</sup> Radaelli, C. M. (2004). Getting to grips with quality in the diffusion of regulatory impact assessment in Europe. *Public Money and Management*, 24(5), 271-276.

## 2.2 European IA

### 2.2.1 Context

As early as the mid-1990s, the European Union began to systematically take action to improve regulation. This eventually led to the establishment of the Mandelkern Group, an expert group that reported in 2001 on the principles and methods of good regulation.<sup>1</sup> In the Mandelkern Report, IA was assigned a key role in securing evidence behind policy proposals from the Commission.<sup>2</sup> As a result, the Ministers of Public Administration from various EU member states decided that the impact analysis (later: IA) should not just be a bureaucratic addition to the legislative process. Instead, the IA should be an integral part of the legislative process.<sup>3</sup> This had to be the case at both the European and national levels. Inspired by the Mandelkern report, an action plan for better legislation followed, which prioritized integrated impact analysis.<sup>4</sup> In 2003, a pilot project was launched at the European level, starting with 21 proposals. This pilot project led to a definitive anchoring of the obligation of IA. This obligation applies to all legislative and non-legislative policy initiatives that are likely to have a significant economic, environmental or social impact. The appropriate Directorate General must first check whether an IA is required. If so, the preparation of the IA must be politically validated.<sup>5</sup>

At the European level, impact analysis is much institutionalized already, as it's part of a broad framework which is outlined clearly. Within the European Commission, both the Secretariat General and the Regulatory Scrutiny Board are empowered to assess the quality of IA. The Regulatory Scrutiny Board must first issue a positive advice on the draft report of a policy initiative. Without a positive advice, the European Commission cannot submit an initiative to the European Parliament. However, if the opinion nevertheless was negative, the draft report must be revised, adapted and resubmitted to the Regulatory Scrutiny Board.<sup>6</sup> These advices, like the impact analyses themselves, can be consulted online.<sup>7</sup> In addition to the institutions within the European Commission itself, the European Parliament's Directorate for Impact Analyses also reviews the impact analyses that were attached to draft legislation of the European Commission. Finally, the European Court of Auditors checks the progress of the legislative cycle.<sup>8</sup>

Even though European impact analysis is already highly institutionalized, there are still many problems with the application of IA in practice. European impact analyses have been criticized in the past in terms of the lack of consultation and the lateness of the analyses in the decision-making

---

<sup>1</sup> Golberg, E. (2018). "Better Regulation": European Union Style. *Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Associate Working Paper Series, 98.*

<sup>2</sup> Højlund, S. (2015). Evaluation in the European Commission. *European Journal of Risk Regulation, 6*(1).

<sup>3</sup> Mandelkern Group. (2001). *Mandelkern Group on Better Regulation*, 13 November 2001.

<sup>4</sup> European Commission. (2002a). *Action Plan for Better Regulation*, 5 June 2002.; European Commission. (2002b). *Communication from the Commission on Impact Assessment*, 5 June 2002.

<sup>5</sup> European Commission. (2017). *Better Regulation Guidelines*.

<sup>6</sup> European Commission. (2015b). *Communication on the Regulatory Scrutiny Board: Mission, Tasks and Staff*, 19 May 2015.

<sup>7</sup> European Commission. Register of Commission Documents: *List of Impact Assessments and the Accompanying Opinions of the Regulatory Scrutiny Board*.

<sup>8</sup> OECD. (2018). *OECD Regulatory Policy Outlook 2018*.

process.<sup>1</sup> In response to these criticisms, the European legislator committed to strengthening the IA over the years. It did so by increasing and improving the quality assessments of the IA, eliminating late drafting of the document, and strengthening consultation.<sup>2</sup> The European IA was continuously evaluated and improved. An example is the 'Better Regulation Package' launched by the European Commission in 2015.<sup>3</sup> This package seeks to ensure that political decisions in the policy-making process are prepared transparently, with consultation of stakeholders and evidence-based.<sup>4</sup> Through planning, evaluation and fitness checks, impact assessments, stakeholder consultations and feedback mechanisms, the Better Regulation Package aims to improve the policy-making process and the outcomes of the process, namely regulation itself.<sup>5</sup> One tool launched as part of the Better Regulation Package is the Inception Impact Assessment. This involves a description of the problem first, followed by the various policy options for solving the problem. Thereafter, stakeholders are given four weeks to respond to the draft version of the IA. When the IA is finally completed, all citizens and stakeholders are given the opportunity to provide feedback on the finished version for another eight weeks.<sup>6</sup> As RIA determines whether a policy option will achieve policy objectives more efficiently and effectively than alternative options<sup>7</sup>, it provides a lot of information for decision-makers what and how to regulate. By enhancing the empirical basis of political decisions, RIA makes a great contribution to the accountability, transparency and consistency of the policy-making process.<sup>8</sup> For that reason, this study examines that particular component of Better Regulation.

## 2.2.2 IA Features

### 2.2.2.1 Scope

At the European level, an impact assessment is required for all the policy initiatives of the European Commission which are likely to have significant economic, environmental or social impacts, respecting the principles of subsidiarity and proportionality. This applies to both binding legal instruments (directives, regulations and decisions) and nonbinding legal proposals (white papers, action plans, expenditure programs, negotiating guidelines, international agreements, communications, ...).<sup>9</sup> Even though directives, regulations and decisions are all binding instruments, their effect differs slightly. First, regulations are binding on all member states in their stated form. A directive is also a binding instrument, but the member states are free to choose the form and method for implementing its outcome in their national legislation. Finally, a decision is similar to a regulation, except that it is aimed at certain individuals and not in general. In addition to Commission initiatives,

---

<sup>1</sup> Bauer, S., & Wittholz, K. (2002). Regulatory Impact Analysis (RIA): Developments and Current Practices in the EU Member States, on the EU Level and in Selected Third Countries.; Renda, A. (2006). Impact Assessment in the EU: The State of the Art and the Art of the State.

<sup>2</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>3</sup> European Commission. (2015). Better Regulation for Better Results - An EU Agenda. Strasbourg.

<sup>4</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>5</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>6</sup> European Commission. (2002b). *Communication from the Commission on Impact Assessment, 5 June 2002.*; European Commission. Better regulation: Why and how.

<sup>7</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>8</sup> OECD. (2005). Regulatory Impact Analysis in OECD Countries: Challenges for Developing Countries.

<sup>9</sup> European Commission. (2009). *Impact Assessment Guidelines.*; Cecot, C., Hahn, R., Renda, A., & Schrefler, L. (2008). An evaluation of the quality of impact assessment in the European Union with lessons for the US and the EU. *Regulation & Governance*, 2(4), 405-424.

an IA is also required for the revision or recast of already existing legal acts and implementing measures. The EU therefore has a broad scope of when impact assessment should be carried out. The EU impact assessment system does not apply to national regulations or legislation developed by individual member states.<sup>1</sup> However, an IA should only be performed if it is also useful. A case-by-case assessment must therefore be carried out to decide whether an IA is necessary or not. It is usually decided that an IA is not necessary if there is (I) little or no choice available to the Commission, (II) the effects cannot be clearly identified ex ante, or (III) the effects are only small. Examples of when an IA is not required are administrative decisions, green papers, staff working documents, etc.<sup>2</sup> The criteria of significant economic, environmental and social impacts apply to both macro and micro levels. This means that an IA is not only required for initiatives that have a significant impact on the entire economy or society, but also for initiatives that have a significant impact on a certain economic sector or economic actors, on certain social groups, or on a certain geographical area or environmental domain.<sup>3</sup>

### 2.2.2.2 Subsidiarity and proportionality

The European Union can only act in policy areas for which the Treaties confer competence. If the European Union does not have exclusive competence in the relevant policy area, the principles of subsidiarity and proportionality apply. When EU action does not conform to the principles, this can be used as a reason to challenge the lawfulness of Union action in the courts of the Union. However, the national parliaments of the member states have the role of examining whether the Commission takes account of the principle of subsidiarity.<sup>4</sup> It is therefore important to conduct a proper subsidiarity analysis in which the impact assessment provides both qualitative and quantitative information to support and motivate action at the EU level. Subsidiarity and proportionality should be analyzed for both legislative and non-legislative initiatives.<sup>5</sup>

The principle of subsidiarity seeks to ensure that policies which do not fall within the exclusive competence of the European Union, are decided and developed at the level that is closest to the citizen, and only at the EU level if necessary. If the European Union has exclusive competence over a particular policy area, the subsidiarity principle does not apply. Thus, it must first be checked whether this indeed is the case or not. If the European Union does not have exclusive competence according to Art. 3 TFEU, subsidiarity means that the Union may only act (I) if, and to the extent that, the objective of the action cannot be sufficiently achieved by the Member States (at national, regional or local level) but can rather (II) be better achieved at EU level because of the scale or effects of the proposed action. The principle thus has two distinct aspects that must both be analyzed separately to determine whether EU action is justified or not. First, a 'necessity test' must be

---

<sup>1</sup> European Commission. (2002b). *Communication from the Commission on Impact Assessment, 5 June 2002.*; European Commission. (2009). *Impact Assessment Guidelines.*

<sup>2</sup> European Commission. (2015a). Better Regulation "Toolbox", see Tool #9 on When is an Impact Assessment Necessary?

<sup>3</sup> European Commission. (2015a). Better Regulation "Toolbox", see Tool #9 on When is an Impact Assessment Necessary?

<sup>4</sup> Protocol No 2 TFEU.

<sup>5</sup> Art. 5(1) of the Treaty on the European Union; European Commission. (2009). *Impact Assessment Guidelines.*; European Commission. (2015a). Better Regulation "Toolbox"., See Tool #5 on Legal Basis, Subsidiarity and Proportionality.

performed, asking why the objectives of the proposed action cannot be sufficiently achieved by the Member States. Then there is the 'test of EU Value Added', which examines whether the objectives can be better achieved through action at the supranational level, namely by the European Commission.<sup>1</sup>

The principle of proportionality, on the other hand, means that a proportionate analysis must be done for each initiative, where the depth of the analysis is proportional to the likely effects of the initiative. The content and form of EU action should not go beyond what is necessary to achieve the Treaties' objectives.<sup>2</sup> The level of the analysis' proportionality varies from case to case but depends on some general factors like the political importance of the initiative under consideration, the stage of policy development, the magnitude and complexity of the problem being addressed, the significance of the expected impacts and the risk of negative unexpected consequences.<sup>3</sup> Besides these general factors, the appropriate depth and scope of the analysis is also influenced by the nature of the particular policy initiative. In this respect, the severity of the requirements that the policy instrument would impose on Member States, citizens and businesses is considered. For example, a regulation will directly impose obligations whose impacts will be more certain than, for example, a recommendation. As a result, a regulation requires a more detailed and in-depth impact assessment.<sup>4</sup>

### 2.2.2.3 Actors

The actors involved in the whole IA process are the lead Directorate-General, Secretariat-General, Interservice Group, Regulatory Scrutiny Board, College of Commissioners and the stakeholders during public consultation.<sup>5</sup> The lead DG is the executive body that will conduct the comprehensive assessment. The SG in addition acts as a supporting body on the one hand. In this role, it coordinates the basic support structure for the IA procedures through the strategic planning and programming cycle. On the other hand, the SG acts as a monitoring body that oversees the final quality of the IA conducted.<sup>6</sup> In section 2.2.3 Procedure, this is further elaborated upon.

### 2.2.2.4 Content

It is important that the IA is initiated as early as possible in the policymaking process. How long it takes to prepare an IA, varies from case to case. The IA report presents the final results of the IA process. During the Commission's decision-making process, this IA report is attached to the draft initiative for assistance. It is the responsibility of the independent body Regulatory Scrutiny Board to check the quality of this IA report and the IAs themselves. Given the broad scope of initiatives that require an impact assessment, it is not always easy to determine exactly how an IA should be

---

<sup>1</sup> European Commission. (2002b). *Communication from the Commission on Impact Assessment, 5 June 2002.*; European Commission. (2009). *Impact Assessment Guidelines.*; European Commission. (2015a). Better Regulation "Toolbox"., See Tool #5 on Legal Basis, Subsidiarity and Proportionality.

<sup>2</sup> Art. 5(4) of the Treaty on the European Union; Cecot, C., Hahn, R., Renda, A., & Schrefler, L. (2008). An evaluation of the quality of impact assessment in the European Union with lessons for the US and the EU. *Regulation & Governance*, 2(4), 405-424.; European Commission. (2015a). Better Regulation "Toolbox"., See Tool #5 on Legal Basis, Subsidiarity and Proportionality.

<sup>3</sup> Better Regulation "Toolbox"., See Tool #13 on How to Undertake a Proportionate IA.

<sup>4</sup> Better Regulation "Toolbox"., See Tool #13 on How to Undertake a Proportionate IA.

<sup>5</sup> European Commission. (2009). *Impact Assessment Guidelines.*

<sup>6</sup> Kenniscel Wetsmatiging. RIA-systemen in andere landen.

conducted. This therefore varies from initiative to initiative. However, the European Commission has put together a list of key questions that every impact assessment should be able to answer. These questions are as follows<sup>1</sup>:

1. What is the problem and why is it a problem?
2. Why should the government act?
3. What should be achieved?
4. What are the various options to achieve the objectives?
5. What are the impacts of the different policy options and who will be affected?
6. How do the options compare?
7. How should actual impacts be monitored and evaluated.

IA is a critical element in the development of Commission proposals. The College of Commissioners will always take the IA report into account when making decisions. However, the IA report will never replace decision-making, it only contributes to it. Whether or not to adopt a policy proposal is always a political decision made by the College of Commissioners and the College alone. Because the IA is such an important element in the decision-making process, the Commission has drawn up several key analytical steps when carrying out an IA. These are as follows<sup>2</sup>:

1. Identifying the problem;
2. Define the objectives;
3. Develop main policy options;
4. Analyse the impacts of the options;
5. Compare the options;
6. Outline policy monitoring and evaluation.

These key analytical steps are very similar to the key questions set out by the European Commission, which every IA must be able to answer. The Commission makes a distinction between the key analytical steps and the key procedural steps. In section 2.2.3 Procedure, the latter is discussed in more detail.

## 2.2.3 Procedure

Three essential elements of RIA systems can be distinguished.<sup>3</sup> The first essential element is the RIA procedure, considering all actors involved and their rights and obligations. To structure this procedure, process standards should be set for the RIA system. The second essential element of a RIA system are the RIA tools, methods and criteria, which are used to evaluate the regulation or proposal. As with the process standards supporting the RIA procedure, the RIA system should consist of guidelines on how to use these tools, methods and criteria. Third are the control, monitoring and enforcement mechanisms of a RIA system. These serve to ensure the effectiveness of the two

---

<sup>1</sup> European Commission. (2009). *Impact Assessment Guidelines.*; European Commission. (2017). *Better Regulation Guidelines.*

<sup>2</sup> European Commission. (2009). *Impact Assessment Guidelines.*

<sup>3</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

previous elements. Any RIA system should consist of these three essential elements.<sup>1</sup> This section further explains the first critical element of an RIA system, namely the RIA procedure.

The Directorate General (or several) responsible for the proposal in question also leads the preparation of the IA. The DG determines as early as possible in the process whether an IA is required, and then requests political validation on this matter through the political validation process. If the IA has been politically validated, the lead DG drafts the inception IA. This inception IA describes in detail what the problem is, the subsidiarity issues, the different policy options, and the relevant impacts that each policy option will bring about.<sup>2</sup> The inception IA must be approved by the Secretariat General. After approval, publication by the SG on the Commission's website follows as early as possible. All Inception IAs are published on the European Commission website.<sup>3</sup> In this way, it explains to citizens and external stakeholders what the Commission's intentions are and gives them the opportunity to provide their feedback on the intended initiatives. Stakeholders can give feedback on the inception IA until four weeks after its publication on the Commission's website.<sup>4</sup> Since the inception impact assessment explains why a particular policy initiative is being prepared and what it seeks to achieve, the inception IA provides an important opportunity for the European Commission to get in touch with the public and stakeholders. It allows the Commission to engage with stakeholders and receive their feedback. However, it is important that the inception IA is written in clear non-technical language. This is a condition through which the involvement of stakeholders can be maximized, and more transparency, consultation and evidence-based policymaking can occur.<sup>5</sup> Unless an exception is made<sup>6</sup>, every major policy initiative requiring an impact assessment must be accompanied by an inception IA. After the inception IA has been finalized and published, the drafting of the actual IA can begin. The actual IA is drafted based on analysis of relevant data, expertise and stakeholders' consultation, as well as including feedback from stakeholders on the inception IA.<sup>7</sup> The European Commission has established detailed steps to follow when preparing the subsequent impact analysis. These key procedural steps are shown below, as well as explained in more detail.

1. The creation of an Interservice Group (ISG) which will steer the IA process and collectively prepare the IA report. For those initiatives in the Commission's work program (or other important/sensitive initiatives), the ISG will be established and chaired by the Secretariat-General. It is recommended that a member of the lead DG's impact assessment support service participates in the ISG;

the ISG is a group established to improve the quality of the IA report, and thus the quality of the Commission's proposal. Before the draft IA report is submitted to the Regulatory Scrutiny Board for review, the ISG is required to thoroughly review all key elements of the

---

<sup>1</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

<sup>2</sup> European Commission. (2017). *Better Regulation Guidelines*.

<sup>3</sup> <http://ec.europa.eu/info/law/better-regulation/initiatives>

<sup>4</sup> European Commission. (2015b). *Better Regulation for Better Results - An EU Agenda*. Strasbourg; European Commission. (2017). *Better Regulation Guidelines*.

<sup>5</sup> European Commission. (2015a). Better Regulation "Toolbox".

<sup>6</sup> European Commission. (2015a). Better Regulation "Toolbox", See Tool #1 on Principles, procedures and exceptions.

<sup>7</sup> European Commission. (2015a). Better Regulation "Toolbox".



IA report and the proposal. From the moment the initiative is politically validated, the ISG must be assembled. Thereafter, the ISG must be involved in all phases, including preparatory studies, consultation and drafting of the IA report.<sup>1</sup>

2. Following publication of the inception IA on the Commission's website, stakeholders will be able to provide feedback and evidence in relation to the problem, possible policy options and their likely impacts and subsidiarity considerations. This feedback needs to be considered and integrated into the work of the ISG as appropriate;

Stakeholder consultation in the context of IA should cover the key elements that are addressed in the IA. These are the problem definition, subsidiarity and the EU dimension of the problem, the possible policy options and their impacts.<sup>2</sup>

3. The preparation of a consultation strategy by the ISG including a mandatory 12-week internet-based public consultation. The consultation strategy should ensure that stakeholders' views are sought on all key impact assessment questions;

Stakeholder consulting in the policymaking process ensures policy initiatives of higher quality. In fact, consulting is an important tool for gathering evidence-based information. Consultation also contributes to the transparency and legitimacy of the policymaking process. It is therefore important to develop an appropriate consultation strategy. The purpose of a consultation strategy is to obtain the necessary and available information effectively and efficiently for a specific initiative. A consultation strategy is therefore a very important element for any IA and should include the following elements: the consultation scope and objectives, identification of stakeholders, envisaged consultation activities, their timing and language regime. The conclusions of the final IA report must be supported and based on the analysis of the stakeholders' views. If there is a significant difference, this must be clearly justified. Also, in the final IA report an obligatory annex must be included with a summary of the results in consultation with the stakeholders. Stakeholder consultation in the context of IA should cover the key elements addressed in the IA. These are the problem definition, subsidiarity and the EU dimension of the problem, the possible policy options and their impacts.<sup>3</sup>

4. The collection and analysis of all relevant evidence, including data, scientific advice, other expert views, stakeholder input, etc.;

The final IA report must be fully supported by evidence-based information. The final conclusions about the initiative must be based on this as well. If it is not possible to provide

---

<sup>1</sup> European Commission. (2009). *Impact Assessment Guidelines*.; European Commission. (2015a). Better Regulation "Toolbox".

<sup>2</sup> European Commission. (2015a). Better Regulation "Toolbox".; European Commission. (2017). *Better Regulation Guidelines*.

<sup>3</sup> European Commission. (2015a). Better Regulation "Toolbox".; European Commission. (2017). *Better Regulation Guidelines*.

these data, estimates, scientific findings, citations, etc., a clear explanation must be provided.<sup>1</sup>

5. Drafting of the IA report;

The task of an IA is to compare different policy options based on their economic, environmental and social impacts. The information generated by the IA process must be presented in a final IA report. The IA report is prepared by the lead Directorate General and the interservice group. Based on the IA report, the College of Commissioners decides whether to adopt a new political initiative. Because the IA supports the Commission's decision-making, the IA report should be transparent, objective and balanced. The report is also made public and transferred to other institutions. In preparing the IA report, the Commission established some key analytical steps to follow. These are represented in the structure in section 2.2.2.4 Content, and should be followed in preparing the IA report.<sup>2</sup> In addition, annexes to the impact assessment must also be added. These annexes include an explanation of the procedural information, the stakeholder consultation, who is affected by the initiative and in what way, and the analytical methods used in the impact assessment.<sup>3</sup>

6. Submission of the draft IA report to the Regulatory Scrutiny Board (RSB) for quality review, followed by revision to take account of its recommendations for improvement;

The Regulatory Scrutiny Board is an independent body within the European Commission that is responsible for investigating the quality of the IAs performed. The RSB gives one or more opinions on the draft IA report. Only with a positive opinion of the RSB, a particular initiative can be presented to the Commission for decision. In this way, the RSB ensures that policy initiatives consider all available evidence and stakeholders' opinions before decision-makers decide to act. The lead DG is responsible for submitting the draft IA report to the RSB. This must be submitted at least 4 weeks before the RSB meeting, where the draft IA report will be discussed.<sup>4</sup>

7. Subject to a positive opinion by the Board, submission of the IA report to interservice consultation together with the accompanying policy initiative.

Only with a positive opinion of the RSB, a particular initiative can be presented to the Commission for decision. The RSB usually only gives two different opinions. In response to the RSB's opinions, the draft IA report may need to be modified. The final version of the IA report should reflect how the RSB's recommendations were integrated. After this adaptation, the IA report must be subject to formal consultation by the Commission services. This interservice consultation examines how the RSB's recommendations have been incorporated into the IA report, and performs a quality check on how the policy proposal has been

---

<sup>1</sup> European Commission. (2009). *Impact Assessment Guidelines*.

<sup>2</sup> European Commission. (2015a). Better Regulation "Toolbox"., See Tool #12 on Format of the IA report.

<sup>3</sup> European Commission. (2015a). Better Regulation "Toolbox"., See Tool #12 on Format of the IA report.

<sup>4</sup> European Commission. (2015a). Better Regulation "Toolbox".; European Commission. (2015c). *Communication on the Regulatory Scrutiny Board: Mission, Tasks and Staff, 19 May 2015*.; European Commission. (2017). *Better Regulation Guidelines*.

elaborated. However, a positive opinion of the RSB and political agreement must be reached before the interservice consultation can be launched. The interservice consultation must include (I) the initiative, (II) the IA report and (III) the opinion of the RSB. In addition, the IA report will accompany the initiative during the process of its adoption by the Commission. Finally, the final IA report along with the adopted initiative will also be distributed to other institutions and made public. After the interservice consultation, the final texts of the impact assessment report and the executive summary are presented and transferred to the College of Commissioners, who can then start the decision-making.<sup>1</sup>

## 2.2.4 Methodologies

The second essential element of a RIA system are the RIA tools, methods and criteria, which are used to assess and evaluate the regulation or proposal. As with the process standards supporting the RIA procedure, the RIA system should consist of guidelines on how to use these tools, methods and criteria.<sup>2</sup> The European Union provides these guidelines extensively and in detail. In general, it prescribes the steps to be followed, the format of the IA report, when an IA is necessary, the financial programs and instruments involved in an IA, how to conduct a Risk Assessment, how the various identify policy options, etc.<sup>3</sup> In addition to these more general guidelines, the European Commission is also focusing on how the possible policy options can be compared based on their impacts.<sup>4</sup> Finally, the Commission has also provided guidelines covering the rest of the impact assessment process. This includes methodology guidelines on key principles of IA, the conduct of consultation and the establishment of monitoring and evaluation systems.<sup>5</sup> In the next section, the main components supported by the European Commission through directives will be discussed. These were contained in its 'Better Regulation Toolbox'.

### 2.2.4.1 Policy options

First, it is important to identify the different policy options before the most efficient and effective can be put forward based on comparison. It is important that as many realistic alternatives as possible are considered. These are then narrowed down for further analysis and comparison.<sup>6</sup> The European Commission supports the process of identifying the most realistic options by drawing up five steps.<sup>7</sup>

First, there must be a baseline construct from which the impacts of the policy options will be assessed. In most cases, the baseline corresponds to the "no policy change" scenario. Second, a

---

<sup>1</sup> European Commission. (2015a). Better Regulation "Toolbox".; European Commission. (2015c). *Communication on the Regulatory Scrutiny Board: Mission, Tasks and Staff, 19 May 2015.*; European Commission. (2017). *Better Regulation Guidelines.*

<sup>2</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

<sup>3</sup> European Commission. (2015). Better Regulation "Toolbox". See Chapter 2 on How to Carry Out an Impact Assessment.

<sup>4</sup> European Commission. (2015). Better Regulation "Toolbox". See Chapter 3 on Identifying Impacts in IAs, Evaluations and Fitness Checks.

<sup>5</sup> European Commission. (2015a). Better Regulation "Toolbox". See Tool #57 on Analytical Methods to Compare Options or Assess Performance.; European Commission. (2015a). Better Regulation "Toolbox". See Chapter 5, 6 and 7; Oermann, M., & Schulz, W. (2019). Assessing Policy III: Regulatory Impact Assessment. In *The Palgrave Handbook of Methods for Media Policy Research* (pp. 575-593): Springer.

<sup>6</sup> European Commission. (2017). *Better Regulation Guidelines.*

<sup>7</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #17 on How to Identify Policy Options.

wide range of the different alternatives of policy options must be compiled, both in terms of content and tools and instruments. Third, the most viable options must be identified by screening the options. Components as the legal, technical and political feasibility, previous policy choices, coherence with other EU policy objectives, effectiveness and efficiency, proportionality and relevance must be screened to decide about the viability of the options. Fourth, to ensure that the IA will properly inform political decision, the suitability of the set of retained policy options must be double checked. Finally, the key aspects of the retained policy options are described in detail to allow an in-depth analysis of the associated impacts. The IA report must ultimately be able to demonstrate that all relevant options have been considered, also taking into account the views of the stakeholders. Finally, it must also be justified why some options were excluded without a full explanation of the impacts they would have.<sup>1</sup>

#### 2.2.4.2 Impacts

An impact assessment should assess the various impacts of policy options. All relevant advantages and disadvantages of the retained policy options must be weighed against the baseline (the no policy option) to obtain a policy decision with the best balance between costs and benefits. Based on this assessment, the impact should compare the different policy options, regarding their effectiveness (extent to which different options would achieve the objectives), efficiency (benefits versus costs), coherence (coherence of each policy options with the overarching objectives of EU policies), and their compliance with the proportionality principle.<sup>2</sup> The guidelines of the European Commission also provide methods to follow in this regard. Assessing the impacts in the IA process consists of three steps.<sup>3</sup>

First, the effects of the selected policy options must be identified. The most important impacts that are screened are the economic, social and environmental impacts. However, a subdivision can still be made here. The main economic impacts are for example the impacts on the macroeconomic environment, competitiveness, trade and investment flows, conduct of SMEs, regulatory burdens on business, etc. Major social impacts are the impacts on employment, public health, education and training, crime, etc. For the environment, these are the impacts on the climate, the efficient use of resources, biodiversity, animal welfare, etc. It is important that all impacts are taken into account. So, this is a broad collection that includes positive and negative, direct and indirect, intended and unintended, as well as short and long-term impacts.<sup>4</sup> In the second step, those impacts likely to be significant are single out. It is not the intention that all impacts that apply to all stakeholders are further investigated. The most relevant impacts must be selected based on the proportionality analysis. The relevance of the impact within the intervention logic, the absolute magnitude of the expected impacts, the relative size of expected impacts for specific stakeholders and the importance of impacts for Commission horizontal objectives and policies are factors to be considered in the

---

<sup>1</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #17 on How to Identify Policy Options.

<sup>2</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #19 on Identification/Screening of Impacts.; European Commission. (2017). *Better Regulation Guidelines*.

<sup>3</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #19 on Identification/Screening of Impacts.

<sup>4</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #19 on Identification/Screening of Impacts.; European Commission. (2017). *Better Regulation Guidelines*.

selection process of significant impacts.<sup>1</sup> Finally, the last step is to assess the significant impacts quantitatively if possible, if not qualitatively. Various methods are possible for quantifying the impacts. There is no ideal method that can be used for all impacts of the Commission's policy initiatives. It is therefore important to use the most appropriate methodology for each IA. The chosen method must also be justified and described in the IA report. For methodological guidance, the European Commission refers to the Directorate-General for further advice. For the quantification of certain impacts, as well as help to reduce negative impacts in these areas, the European Commission prescribed very clear and detailed methodologies. This is the case for impacts on sectoral competitiveness; research and innovation; SMEs (Small and Medium sized Enterprises); competition; internal market; fraud; external trade and investment; digital economy and society and ICT issues; fundamental rights and human rights; employment; working conditions, income distribution, social protection and inclusion; education and training, culture and youth (ETCY); health, consumers; territorial impacts; developing countries and resource efficiency.<sup>2</sup> Common assessment tools used for the concrete assessment of costs and benefits of impacts, are the Cost-Benefit Analysis (CBA), the Cost-Effectiveness Analysis (CEA), the Multi-Criteria Analysis (MCA) and the Standard Cost Model (SCM). Other methods to estimate costs and benefits are partial equilibrium analysis, multi-market analysis, general equilibrium analysis. If it is not possible or proportional to assess the impacts quantitatively, a qualitative analysis of the impacts must be performed. The results of this qualitative analysis should be evidence-based and rely on available theory. Ultimately, after the quantitative and qualitative analyzes, there must be a clear picture of the extent to which each policy option can achieve the objectives with what costs and benefits. Based on these results, the various policy options can be compared.<sup>3</sup>

#### 2.2.4.3 Principles

Concerning the methodology for rest of the IA process, the Commission's guidelines provided key principles that must be respected for all better regulation activities within the Commission. These principles apply to all Directorate-Generals and all other services that are involved in the preparation, implementation, application or evaluation of EU action and the associated stakeholder consultations. Consequently, an impact assessment must comply with the following principles: comprehensive, proportionate, evidence-based, open to stakeholders' views, unbiased, prepared collectively with relevant Commission services, embedded in the policy cycle, transparent and of high quality. Applying these principles will contribute to the effectiveness, coherence, usefulness, relevance and efficiency of the Commission's activities. In addition, these principles contribute to transparency, participation, learning, accountability and evidence-base of decision-making.<sup>4</sup>

---

<sup>1</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #19 on Identification/Screening of Impacts.; European Commission. (2017). *Better Regulation Guidelines*.

<sup>2</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #19-35

<sup>3</sup> European Commission. (2015). Better Regulation "Toolbox". See Tool #19 on Identification/Screening of Impacts.; European Commission. (2017). *Better Regulation Guidelines*.; European Commission. (2015). Better Regulation "Toolbox". See Chapter 8 on Methods, Models and Costs and Benefits.

<sup>4</sup> European Commission. (2015a). Better Regulation "Toolbox". See Tool #1 on Principles, Procedures & Exception; European Commission. (2017). *Better Regulation Guidelines*.

#### 2.2.4.4 Consultation

The European Commission has also prescribed methodology for conducting consultation. Stakeholder consulting in the policymaking process ensures policy initiatives of higher quality. In fact, consulting is an important tool for gathering evidence-based information. Consultation also contributes to the transparency and legitimacy of the policymaking process. For conducting consultation, three consultation mechanisms have been developed. For legislative initiatives, the 'roadmap' and 'inception impact assessment' are used as consultation mechanisms. The third form of consultation is the consultation on the preparation of non-legislative acts.<sup>1</sup> First, the roadmap is a document to justify the political validation of a Commission initiative. In doing so, the roadmap provides information to stakeholders involving planned consultations, impact assessments, evaluations, and suitability checks. The roadmap is published at an early stage on the Commission's website. A more extensive roadmap is drawn up for initiatives that involve an impact assessment. This was already discussed in detail in section 2.4.3 Procedure. The inception IA is an analysis that gives stakeholders the opportunity to provide feedback, information or opinions. The inception IA serves as an initial description of the problem and its underlying causes, the policy objectives, the policy options and the economic, social and environmental impacts associated with these policy options. Because the inception IA contributes to each step of the IA, it is expected that the information obtained by the inception IA will strongly influence the design of the impact assessment. Finally, the third form of consultation, consultation on the preparation of or non-legislative acts, allows the drafts of delegated and implementing acts to be opened to the public for feedback.<sup>2</sup>

It identifies three distinct phases in preparing and conducting consultations. The first stage is to develop an appropriate consultation strategy. The purpose of the consultation strategy is to gather the necessary and available information for a specific initiative in the most effective and efficient way. The consultation strategy should include the following elements: the consultation scope and objectives, identification of stakeholders, envisaged consultation activities, their timing and language regime. Once the consultation strategy is in place, the different consultation activities can be started. The information obtained from the consultation activities in the context of the consultation strategy should eventually be communicated by the lead DG in the synopsis report.<sup>3</sup>

#### 2.2.4.5 Monitoring and evaluation

Finally, the European Commission provided guidelines on the monitoring and the ex-post evaluation of the EU intervention. Any impact assessment must assess how a policy initiative will be implemented. To ensure that policy implementation is done properly, monitoring is needed. Monitoring involves the systematic and continuous collection of data about the intervention in question to overcome problems in policy implementation. When monitoring EU interventions, the

---

<sup>1</sup> Alemanno, A. (2015). How much better is better regulation? Assessing the impact of the better regulation package on the European Union—A research agenda. *European Journal of Risk Regulation*, 344-356.

<sup>2</sup> European Commission. (2017). *Better Regulation Guidelines*.; Alemanno, A. (2015). How much better is better regulation? Assessing the impact of the better regulation package on the European Union—A research agenda. *European Journal of Risk Regulation*, 344-356.

<sup>3</sup> European Commission. (2017). *Better Regulation Guidelines*.

European Commission is tracking the implementation and application of the EU legislation.<sup>1</sup> The evaluation of the EU intervention, on the other hand, is defined as "an evidence-based judgement of the extent to which an existing intervention is effective, efficient, relevant given the current needs, coherent both internally and with other EU interventions and has achieved EU added value". In other words: evaluation is the assessment of the effectiveness, efficiency, coherence, relevance and EU added value of a single EU intervention. The evaluation examines the causal effect of the EU intervention on the outcomes envisaged and is prepared by the lead DG of the intervention. The quality of major evaluation reports must be checked by the Regulatory Scrutiny Board, which will be explained in the next section.<sup>2</sup>

### 2.2.5 Oversight and control

The third essential element of a IA system are the control, monitoring and enforcement mechanisms of an IA system. These serve to ensure the effectiveness of the two previous critical elements of an IA system, namely the procedure and the methodologies.<sup>3</sup> The lead Directorate-General(s) and the Interservice Group ensure the quality of IA report before it is presented to the Regulatory Scrutiny Board. RSB controls the quality of the report and may recommend additional improvement. With the Regulatory Scrutiny Board, there is an institutionalized actor carrying out control and oversight regarding the results of the analyses. The Regulatory Scrutiny Board is an independent body within the European Commission that is responsible for investigating the quality of all impact assessments, major evaluations and fitness-checks of existing legislation. The Board issues opinions on the draft reports, in line with the relevant guidelines. Any impact assessment must be accompanied by a positive opinion of the Regulatory Scrutiny Board on the draft IA. Only in that case, proposal can be launched into Inter-Service Consultation. In this way, the RSB ensures that policy initiatives consider all available evidence and stakeholders' opinions before decision-makers decide to act. The lead DG is responsible for submitting the draft IA report to the RSB. In particularly challenging impact assessments or other methodological issues, the RSB may offer advice to individual services of the European Commission. This includes advice on the application and interpretation of the relevant guidelines. Outside the Commission, the European Parliament's Directorate for Impact Assessment also serves as oversight body. The Directorate reviews the impact assessments which are attached to the Commission's proposal.<sup>4</sup>

---

<sup>1</sup> European Commission. (2015a). Better Regulation "Toolbox"., #41 on Monitoring arrangements and indicators.; European Commission. (2017). *Better Regulation Guidelines*.

<sup>2</sup> European Commission. (2015a). Better Regulation "Toolbox"., See Chapter 6 on Evaluations and Fitness Checks.; European Commission. (2017). *Better Regulation Guidelines*.

<sup>3</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

<sup>4</sup> European Commission. (2015a). Better Regulation "Toolbox".; European Commission. (2015c). *Communication on the Regulatory Scrutiny Board: Mission, Tasks and Staff*, 19 May 2015.; European Commission. (2017). *Better Regulation Guidelines*.; OECD. (2018). *OECD Regulatory Policy Outlook 2018*.

## 2.3 Flemish RIA

### 2.3.1 Context

In Flanders, the RIA was implemented in 2005 as a standard procedure for all preliminary drafts of decrees and decisions that have a regulatory impact on citizens, companies or non-profit organizations.<sup>1</sup> This made the Flemish government the first government in Belgium to implement RIA.<sup>2</sup> The RIA document had to explain why a certain regulation was chosen, considering the intended purpose of the regulation and the results of the consultations that took place. Moreover, RIA also had to clarify how the implementation, enforcement, monitoring and subsequent evaluation of the regulation would take place.<sup>3</sup> In addition to RIA, the Flemish Government introduced two separate legislative tests. These are the child and youth impact report (later: JOKER) and poverty test, which must be carried out obligatorily if the new or amended regulations directly affect the interests of people under the age of twenty-five or have a foreseeable effect on people in poverty.<sup>4</sup>

In 2017, the Flemish Government announced its intention to reform RIA.<sup>5</sup> This would be an improvement in the context of a more open and agile government. The reform meant that the obligation to prepare a separate RIA document was removed. The RIA document would be replaced by a stricter application of the explanatory memorandum that must be attached to the draft decree.<sup>6</sup> This reform would ensure that the "RIA is better aligned with the legal assessment of regulatory quality based on the principles of legitimacy, suitability, necessity, proportionality, prudence and justification".<sup>7</sup> This reform was anchored in circular 'Omzendbrief 17 mei 2019 betreffende de beleids- en regelgevingsprocessen'. Since this new circular removes the former,<sup>8</sup> this means an actual removal of the obligation to draw up a separate RIA document.

Before the RIA reforms, impact analysis initially was clearly framed and institutionalized. For instance, the 'Team Wetsmatiging' from the Department of Chancellery and Governance used to be authorized to assess the quality of the RIA according to minimum criteria.<sup>9</sup> However, a quality evaluation of the RIA is not explicitly provided for in the new circular. The circular states that the Department of Chancellery and Governance can give optional advice on "other aspects of qualitative

---

<sup>1</sup> Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregel administratieve lasten, (2014).

<sup>2</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>3</sup> Van Humbeeck, P. (2006). Beter Bestuur in Vlaanderen: boeken we voldoende vooruitgang. *Vlaams Tijdschrift voor Overheidsmanagement*, 11(2), 40-49.

<sup>4</sup> Art. 4 Decreet houdende een vernieuwd jeugd- en kinderrechtenbeleid, (2012).; Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregel administratieve lasten, (2014).

<sup>5</sup> Vlaamse Overheid. (2017). *Witboek open en wendbare overheid*.

<sup>6</sup> Omzendbrief VI. 17 maart 2014 betreffende de Samenwerking met het Vlaamse Parlement, (2014).

<sup>7</sup> Vlaamse Overheid. (2017). *Witboek open en wendbare overheid*.

<sup>8</sup> This is Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregel administratieve lasten, (2014).

<sup>9</sup> Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregel administratieve lasten, (2014).



regulation"<sup>1</sup>, but no definition of these other aspects is given. As a result, it is therefore unclear whether the evaluation of the explanatory memorandum is included.<sup>2</sup>

In practice however, problems with the concrete application of the Flemish RIA often arise, although it has already been extensively institutionalized. The Flemish RIA was frequently criticized both by the OECD and in the literature. The OECD for example stated that the Flemish RIA required a change of mentality and timely preparation.<sup>3</sup> However, the Flemish Government has never taken this criticism into account and therefore never followed up on this negative OECD evaluation. Other literature has also questioned the Flemish RIA quality, due to the often-late drafting of the document, the superficiality of the analysis, the lack of transparency and a lacking interaction between RIA and consultation.<sup>4</sup> This results in a gap remains between the possibilities that the RIA has to offer on the one hand, and the way in which the RIA obligation is complied with in Flanders on the other.<sup>5</sup> Moreover, the RIA itself was never anchored by decree. The RIA was only included in a circular, so it could never be enforced. As a result, the RIA did not get a permanent place in legislative policy and was often drafted late.<sup>6</sup>

## 2.3.2 RIA Features

### 2.3.2.1 Scope

Before the reform, RIA at the Flemish level was mandatory for all regulations that have a regulatory effect on citizens, businesses or non-profit organizations.<sup>7</sup> In principle, these are all preliminary drafts of decrees and drafts of subordinate regulations, except for the self-regulation of the government itself, the regulations on the budget and taxation (with the exception of policy levies and taxes that do fall under the RIA obligation), the regulations for the approval of international and interregional treaties and agreements, the decrees and decisions without substantive impact or of a purely formal nature, the regulations contained in regional plans, the decisions of the Flemish Government or of a Flemish minister that do not involve regulation, and ministerial decisions.<sup>8</sup> In addition, the scope and depth of the RIA should be proportional to the importance of the regulation and the expected extent of the impacts. This applies to the analysis of costs, benefits and impacts; the number of possible options; the nature of the consultation process; the enforcement, compliance and review of the regulation. In short, the proportionality principle applies to the RIA process in all its elements.<sup>9</sup>

---

<sup>1</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>2</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>3</sup> OECD. (2010). Better Regulation in Europe: Belgium. 25.

<sup>4</sup> SERV. (2006). Reguleringsimpactanalyse in Vlaanderen. Evaluatie en Aanbevelingen. 35.

<sup>5</sup> Van Humbeek, P. (2006). Beter Bestuur in Vlaanderen: boeken we voldoende vooruitgang. *Vlaams Tijdschrift voor Overheidsmanagement*, 11(2), 40-49.; Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>6</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>7</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>8</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.; Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>9</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

Since the overall quality of Flemish RIA was low, around 2010 its scope evolved to "less RIAs, but better RIAs".<sup>1</sup> This implies that RIA sources should be spent where they are most useful and lead to the best results, so that RIA efforts are more focused and selective. This reduction in scope is also in line with the proportionality principle. For minor regulatory proposals, it is not worth conducting RIAs. On the other hand, for important regulations that may entail large impacts, extended RIAs are necessary.<sup>2</sup> The explanatory memorandum is required by law to be drawn up for every draft decree.<sup>3</sup> Subordinate regulations, however, are not subject to the legal requirement to prepare an explanatory memorandum, which still significantly narrowed the scope with the removal of the RIA document.

### 2.3.2.2 Actors

The main actors involved in the whole IA process are the Cel Wetskwaliteit, de stakeholders, the Regulatory Management Unit (Dienst Wetsmatiging) and the Council of Ministers. First of all, the 'Cel Wetskwaliteit' of the policy domain is responsible for the draft of regulations and the supporting materials. As a result, the 'Cel Wetskwaliteit' of the department in question is also responsible for drafting the RIA. In addition, stakeholders are consulted on the policy initiative. This includes the advices of various bodies. One opinion which is mandatory in any case, is the opinion of the Council of State. Other opinions include those of the SERV and SAR, Flemish Youth Council, federal government, European Commission, JoKER or RIA opinion. The opinions and the results of the consultation processes must also be included in the regulatory file.<sup>4</sup> The Regulatory Management Unit (Dienst Wetsmatiging) is a separate body which is responsible for checking the quality of the final RIA and periodically reports on the quality of all RIAs.<sup>5</sup> Finally, the draft decree, together with the RIA and the explanatory memorandum, is submitted to the Flemish Government for approval.

With the reform, the obligation to draft the RIA document disappears, so certain actors also lose their active role regarding the RIA. The 'Cel Wetskwaliteit' of the relevant department remains responsible for drafting regulations, but in other words no longer has to draw up a RIA document. On the other hand, it remains responsible for drafting the expanded explanatory memorandum. Previously, the explanatory memorandum was a more lightweight document that, together with the Flemish Government's memorandum, the preliminary draft of the decree and the RIA, was included in the regulatory files. With the removal of the RIA document, the explanatory memorandum must be drafted more extensively, for which the 'Cel Wetskwaliteit' of the Department is still responsible. The circular states that the Department of Chancellery and Governance can give optional advice on "other aspects of qualitative regulation"<sup>6</sup>, but no definition of these other aspects is given. As a result, it is therefore unclear whether the evaluation of the explanatory memorandum is included, and the Regulatory Management Unit loses its function of quality evaluator. The role of the stakeholders and of the Council of Ministers remains the same. The only difference is that the RIA now no longer

---

<sup>1</sup> Vlaamse Regering. (2009). *Beleidsnota Bestuurszaken 2009-2014*.; Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>2</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>3</sup> Art. 3 Gecoördineerde wetten op de Raad van State, 12 januari 1973

<sup>4</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.; Vlaamse Overheid. (2015). *Stroomschema voor Opmaak van Regelgeving*.; Omzendbrief VR 2012/11 betreffende de samenwerking Vlaamse Regering en Vlaams Parlement.

<sup>5</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>6</sup> Omzendbrief Vl. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

requires approval via a RIA advice before the proposed regulation can be put on the Flemish Government's agenda. Section 2.3.3 Procedure discusses this in more detail.

### 2.3.2.3 Content

Prior to the reform, the RIA was identified as a process, a procedure, and as a product. First, the RIA is a process of analysis and consultation. For this reason, an RIA is most useful at an early stage in the preparation of regulations. RIA is not meant to justify political choices but to improve the decision-making process and should therefore start at the beginning of the decision-making process, and not only after a regulatory draft has already been written.<sup>1</sup> RIA is a way of systematically collecting and processing information about a particular societal problem, and about the possible policy options for solving this problem. The contribution that RIA makes to regulatory quality comes from the understanding of the issues and solutions that is gained from conducting a RIA. This perspective emphasizes the importance of RIA as a process to enable better informed decisions.<sup>2</sup> The general RIA process is prescribed in the guidelines through four distinct phases: (I) concept and planning, (II) analysis and editing, (III) approval, and (IV) publication and follow-up.<sup>3</sup> In addition, the RIA is also a procedure. This procedure includes agreements on the content of the RIA report and on the RIA process, on the regulations that are subject to an RIA, on how to integrate the RIA into the decision-making process, on the institutional, legal and procedural design of the RIA and finally on the assurances that are necessary for these agreements to be fulfilled. The RIA procedure has five formal requirements that are represented in the following order: (I) RIA advice from the Regulatory Management Unit (Dienst Wetsmatiging), (II) mandatory RIA paragraph in the memorandum to the Council of Ministers, (III) the Chancery checks whether this paragraph is included, (IV) the addition of the RIA to the regulatory file and (V) an ex-post quality measurement by the Regulatory Management Unit. These are the formal procedural requirements for RIA.<sup>4</sup> Finally, the RIA is also a product, namely the regulatory impact report. This documents the RIA process, analysis and consultation. The RIA report contains the following elements: (I) problem definition and objectives, (II) options, (III) impacts, (IV) implementation, enforcement and monitoring, (V) consultation, (VI) summary and (VII) contact information. The RIA report is a document that is also prepared in conjunction with the proposed rulemaking.<sup>5</sup>

However, this distinction between process, procedure and product was made before the RIA reform. It is because of the reform that the requirement for a separate RIA document has been removed in the new circular. The RIA document is replaced by a better application of the guidelines of the explanatory memorandum in the policy process, which eliminates the demarcation between RIA as process, procedure and product.<sup>6</sup> For the explanatory memorandum as a replacement for the RIA document, the new 2019 circular requires it to contain the following elements. Specifically, the

---

<sup>1</sup> SERV. (2006b). *Reguleringsimpactanalyse in Vlaanderen: Evaluatie en Aanbevelingen*.

<sup>2</sup> Kenniscel Wetsmatiging. (2004). *Wegwijs in Reguleringsimpactanalyse*.

<sup>3</sup> Dienst Bestuurszaken. (2012). *Leidraad voor de Opmaak van een Reguleringsimpactanalyse*.

<sup>4</sup> Van Humbeek, P. (2012). *Regulatory Impact Analysis in Flanders and Belgium: policy and trends*.

<sup>5</sup> Van Humbeek, P. (2012). *Regulatory Impact Analysis in Flanders and Belgium: policy and trends*.; Kenniscel Wetsmatiging. (2004). *Wegwijs in Reguleringsimpactanalyse*.

<sup>6</sup> Vlaamse Overheid. (2017a). *Witboek open en wendbare overheid*.; Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen, (2019).

general memorandum must address the problem definition and contextual analysis, policy measures, impact analysis, and implementation.<sup>1</sup>

The new circular starts with the discussion of the problem definition and the contextual analysis. The legal, socio-economic or social problems at the origin of the draft decree are addressed. If relevant, an appropriate contextual analysis should be included to support the problem definition with quantitative estimates or figures. In addition, a description of why existing measures is not sufficient to solve the problem, including a description of the legal context and the remaining policy space, should be included.<sup>2</sup>

Moreover, the various policy measures included in the draft decree must also be described and justified. These may include, for example, commandments, prohibitions, subsidies, permits, etc. This should provide a detailed description of how these proposed policy measures can respond to the problem definition and the objective they are intended to achieve. The impact analysis is defined in the circular as "an assessment of the expected impact on society and on the functioning of government." Four different subdivisions are made here, namely (I) the social impact, (II) the impact on fundamental rights and the principle of equality, (III) the budgetary impact and (IV) the administrative impact. The discussion of societal impact focuses on the impact of regulation on all relevant target groups. This concerns target groups to which the legal rules apply directly on the one hand, and target groups that are indirectly affected by the legal rules on the other. The impact on the various target groups must be described concretely, namely in terms of obligations, benefits or costs. In discussing the impact on fundamental rights and the principle of equality, the circular has provided separate guidelines. Thus, any significant restriction or limitation on fundamental rights or the principle of equality must be described and justified using the results of the analysis of the problem definition, the policy measure and the impact analysis. In describing the budgetary impact, the financial implications of the draft decree must be clearly argued. In doing so, the budgetary consequences for the current and following fiscal years are described in a transparent manner. Finally, where relevant, the impact on local and provincial authorities and on Brussels is described.<sup>3</sup>

Finally, the implementation of the regulations should also be set out separately in the explanatory memorandum. This includes implementation, enforcement and supervision, monitoring and evaluation, entry into force and transitional provisions.<sup>4</sup>

As mentioned before, RIA systems exist based on three different essential elements. The first essential element that can be distinguished, are the process standards that structure the RIA procedure regarding the actors that are involved, their duties, obligations and right, and the timeframe.

---

<sup>1</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen, (2019).

<sup>2</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen, (2019).

<sup>3</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>4</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

### 2.3.3 Procedure

Before the RIA reform in 2019, the RIA procedure consisted of five formal requirements. These were presented in the following order:<sup>1</sup>

1. RIA advice Regulatory Management Unit (Dienst Wetsmatiging)

Before the regulatory proposal is put on the agenda of the Flemish Government, the Regulatory Management Unit is obliged to give its advice on the draft version of the RIA. This advice is part of the legislative advice. This also includes the technical law drafting advice and the plain language advice. Without the RIA advice, the regulatory proposal cannot be put on the agenda of the Flemish Government.

2. Mandatory RIA paragraph in the memorandum to the Flemish Government

An RIA paragraph must be included in every memorandum to the Flemish Government that accompanies the draft regulation for first principal approval. This paragraph contains either a summary of the RIA that is attached, or the justification why, given the scope of the RIA, no RIA was drawn up for the regulation in question.

3. Control by Department of Chancellery

The Department of Chancellery checks whether the RIA paragraph has indeed been integrated in the memorandum to the Flemish Government. If this is not the case, and the memorandum therefore does not contain a RIA paragraph, the RIA cannot be placed on the agenda of the Flemish Government for approval.

4. Control by Regulatory Management Unit (Dienst Wetsmatiging)

The Regulatory Management Unit checks the quality of the content of the final RIA, as well as any reasons why no RIA was drawn up. The Unit checks this prior to the first discussion of the regulatory file by the Flemish Government. The results obtained by the latter are explained to the Minister responsible for legislation. In this way, the results can be considered at the meeting of the Flemish Government for approval of the regulation proposal.

5. Addition to the regulatory file

Once the RIA has been approved and is put on the agenda of the Flemish Government, the RIA is part of the regulatory file. The RIA must then, together with the regulations and the explanatory memorandum, be submitted to the advisory councils, the Council of State, the Parliament, etc.

6. Ex post quality measurement by the Unit

---

<sup>1</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.; SERV. (2006b). Reguleringimpactanalyse in Vlaanderen: Evaluatie en Aanbevelingen.

Regulatory Management Unit verifies the quality of the final RIA and periodically reports on the quality of all RIAs.

These are the formal procedural requirements for RIA before the reforms.<sup>1</sup> With the reform however, the RIA document was abolished, so the obligation of a RIA paragraph in the memorandum is no longer applicable. For that reason, the new circular no longer provides a formal RIA procedure. However, the circular does not provide for an explicit procedure about the explanatory statement itself either. On the other hand, the circular does provide guidelines regarding the different steps in the Flemish Government's decision-making process. These guidelines relate to the concept phase of a regulatory initiative, the compulsory advisory, agreement and consultation procedures, the agenda-setting, reporting and notification of the decisions of the Flemish Government, and the parliamentary treatment of decrees.<sup>2</sup>

## 2.3.4 Methodologies

### 2.3.4.1 Assessment methods

Before the reform, the Flemish Government provided a clear guidance document regarding the analysis of impacts. It describes a clear working method that includes the elaboration of the zero option, the data collection, the effects analysis, the choice between policy options and the implementation and follow-up. The guide goes into detail, describing for example how to carry out a target group analysis, how to make an inventory of direct effects, indirect effects and behavioral changes, how to divide effects into costs and benefits, costs and benefits per option, how to analyze the distributional effects, etc. It also provides a checklist for each section with questions that, once the RIA has been prepared, should be able to be answered positively.<sup>3</sup>

Since the updated explanatory memorandum, no guidelines on impact assessment methods can be found in the new circular. The circular makes a clear distinction and defines the different types of impact that must be assessed, namely the social impact, the impact on fundamental rights and on the principle of equality, the budgetary impact and the administrative impact. Only regarding the safeguarding of fundamental rights, guidelines are provided on the analyses of legitimacy, appropriateness, necessity and proportionality of regulation. Again, these guidelines are once again rather limited.<sup>4</sup>

### 2.3.4.2 Principles

The stricter application of the guidelines for an explanatory memorandum rather than the separate RIA document would ensure that "RIA is better aligned with the legal assessment of regulatory quality based on the principles of legitimacy, suitability, necessity, proportionality, prudence and

---

<sup>1</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>2</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>3</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>4</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

justification."<sup>1</sup> However, neither the White Paper nor the new circular explain how this reform ensures that impact analysis is more closely aligned with these principles.

The pre-reform RIA already meets these legislative tests. The first step in RIA, namely problem analysis, addresses the necessity of regulation. The effectiveness, enforceability and enforceability of regulations, which is examined in the RIA, is a translation of the proportionality principle. The RIA considers various policy alternatives, which are analyzed. In this way, one can carefully select the most appropriate alternative. In addition, because the RIA transparently depicts the decision-making process and allows for the justification of the chosen alternative, it also complies with the principle of justification.<sup>2</sup>

The circular introduces a new legislative test, namely the fundamental rights test. It is integrated into the explanatory memorandum and examines whether the fundamental rights will be significantly restricted or limited because of the legislation. It then determines the legitimate purpose that the proposed decree seeks to achieve. Based on this purpose, it must be adequately demonstrated that the restriction or limitation of the fundamental right is appropriate, necessary, and proportionate to this purpose. A significant limitation or restriction of the classical or socio-economic fundamental rights must then be justified by means of an ex-ante impact analysis.<sup>3</sup> Here, however, it is crucial that the impact analysis is done in a timely way so that the results can effectively contribute to the fundamental rights test.<sup>4</sup>

#### 2.3.4.3 Consultation

Before the reform, the importance of consultation was already emphasized by the Flemish Government. Consultation plays an important role in almost all parts of the concept and planning phase. All relevant stakeholders should be involved in the organization and planning, the problem analysis, policy options, scoping, validation and the organization of feedback. This applies to the analysis and drafting phase as well. In this phase, consultation occurs mainly in data collection.<sup>5</sup>

In the circular on the RIA reform too, consultation remains an important focus point. In fact, the circular contains guidelines for ensuring that consultation processes take place in a high-quality way in the regulatory processes. For instance, consultation must be transparent and proportional. It is also important to use the right participation method, to consult widely, to give stakeholders enough time and to communicate sufficiently with all target groups. The problem, however, is that the consultation is limited to green papers, concept notes and the draft decree in general. However, an open consultation of the impact analysis within the explanatory memorandum is not applicable. In

---

<sup>1</sup> Vlaamse Overheid. (2017). *Witboek open en wendbare overheid*.

<sup>2</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>3</sup> Omzendbrief Vl. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>4</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>5</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

addition, the central consultation portal of the Flemish Government has still not come into effect, so it remains to be seen whether and how the open consultation will take place.<sup>1</sup>

#### 2.3.4.4 Monitoring and evaluation

The guidance for drafting RIA, which dates to before the reform, again sets out very detailed methodologies for implementing, enforcing, monitoring and evaluating the policy measure. The guidance helps not only to check for feasibility and enforceability, but also to reduce the administrative burden involved, ensure compliance, monitor and evaluate the policy measure, etc.<sup>2</sup>

The content of the updated explanatory memorandum should also be completed with sections related to implementation, enforcement, monitoring and evaluation. The circular mentions that the way in which these elements are done, must be described. However, the circular does not contain any concrete guidelines on how the implementation, enforcement, supervision, monitoring and evaluation specifically should be done, which the guidelines regarding the drafting of RIA, did.<sup>3</sup>

#### 2.3.5 Oversight and control

Before the RIA reforms, impact analysis initially was clearly framed and institutionalized. For instance, the 'Dienst Wetsmatiging' from the Department of Chancellery and Governance used to be authorized to assess the quality of the RIA according to minimum criteria.<sup>4</sup> The Regulatory Management Unit (Dienst Wetsmatiging) is a separate body which is responsible for checking the quality of the final RIA and periodically reports on the quality of all RIAs.<sup>5</sup> However, a quality evaluation of the RIA is not explicitly provided for in the new circular. The circular states that the Department of Chancellery and Governance can give optional advice on "other aspects of qualitative regulation"<sup>6</sup>, but no definition of these other aspects is given. As a result, it is therefore unclear whether the evaluation of the explanatory memorandum is included, and the Regulatory Management Unit loses its function of quality evaluator.<sup>7</sup>

---

<sup>1</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>2</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>3</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>4</sup> Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregeling administratieve lasten, (2014).

<sup>5</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>6</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>7</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.



## 2.4 Comparing the systems

This study attempts to make a comparison between the European Impact Assessment system and the Flemish Regulatory Impact Assessment system, in order to draw conclusions about the components that one system should or should not adopt from the other. In other words: which lessons can the Flemish Government take over from the European Commission, and vice / versa? To be able to compare different systems of Regulatory Impact Assessments, there must be certain criteria on which the comparison can be based. In the context of the above research question, both systems are compared based on the quality criteria of an RIA. In section 2.1.2, RIA quality was theoretically discussed in more detail. At that time, however, we still lacked insight into what the European and Flemish RIA systems exactly looked like. However, now that these systems have been further explored in previous sections, the quality criteria discussed in the theory can be effectively applied to the different systems. An answer to the research question can then be formulated based on this application. In this section, the quality of the European Impact Assessment and the Flemish system is assessed based on the various quality criteria that were reflected in the literature. Thereafter, a summarizing section of the lessons for both systems to be learned, follows.

### 2.4.1 Quality of European IA

A first quality criterion that we can distinguish is the completeness of the RIA system. In the previous part of the literature study, a distinction was made between three different components of a RIA system that must be present to be able to speak of an RIA system. These components are (I) procedure standards, (II) methodology guidelines and (III) control, monitoring and enforcement mechanisms.<sup>1</sup> Both the European and the Flemish impact assessment system were therefore studied based on these three components. In terms of these three essential elements of a RIA system, the European Union Commission's Impact Assessment is an example of a very sophisticated and broadly developed one.<sup>2</sup> The European IA system includes developed process standards to structure the procedure. In addition, clear guidelines are prescribed regarding the tools, methods and criteria to be used to evaluate and assess an intervention or proposal. Finally, the IA system of the European Commission also contains the necessary control, monitoring and enforcement mechanisms to ensure the effectiveness of the previously mentioned process standards and methodology guidelines. As a result, we can speak of a comprehensive and complete RIA system. An overview to graphically represent the comprehensiveness of the European system is given below.

---

<sup>1</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

<sup>2</sup> Oermann, M., & Schulz, W. (2019). Assessing Policy III: Regulatory Impact Assessment. In *The Palgrave Handbook of Methods for Media Policy Research* (pp. 575-593): Springer.

	<b>European Union IA system</b>
<b>Scope</b>	<ul style="list-style-type: none"> <li>- Commission initiatives (legislative and non-legislative)</li> <li>- EU legislation</li> </ul>
<b>Actors</b>	<ul style="list-style-type: none"> <li>- Secretariat-General of the Commission (SG)</li> <li>- Regulatory Scrutiny Board (RSB)</li> <li>- Leading Directorate-General (DG)</li> <li>- Interservice Group (ISG)</li> <li>- Stakeholders during public consultation</li> <li>- College of Commissioners</li> </ul>
<b>Procedure</b>	<ul style="list-style-type: none"> <li>- Political validation</li> <li>- Inception Impact Assessment by lead DG and SG. SG publishes Inception IA with 4 weeks for stakeholders to provide feedback.</li> <li>- SG establishes Interservice Group (ISG) which prepares the IA report (+12 weeks of open public consultation is launched)</li> <li>- Lead DG submits the draft IA report to RSB for quality check.</li> <li>- RSB meeting where RSB issues positive or negative opinion (in case of negative opinion: lead DG must resubmit revised IA)</li> <li>- IA report must be subject to formal consultation of Commission services (only possible after positive opinion RSB). IA report accompanies initiative during Commission's process of adoption.</li> <li>- Adoption and follow-up: adopted proposal and IA are published online with 8 weeks for stakeholders to provide feedback.</li> </ul>
<b>Methodology</b>	The European Commission provides guidelines on key principles, assessment methods of policy options and impacts, conduction of consultation, monitoring and evaluation
<b>Control and oversight</b>	Lead DG and ISG ensure quality of IA report before it is presented to RSB. RSB controls the quality of the report and may recommend additional improvement. RSB gives positive or negative opinion.

A second quality criterion on which there is often agreement in the literature is transparency. Transparency refers to the extent to which the processes, assumptions, models and results of RIA are made public to the widest spectrum of stakeholders.<sup>1</sup> It reflects information about the principles of open government. Communicating RIA information can be done through (I) a unified website for all proposed regulations, (II) the website of the relevant ministry or regulatory, (III) public meetings and (IV) targeted outreach to business associations, other stakeholder groups or both.<sup>2</sup> In the case of the European IA system, the results of the impact assessment are indeed communicated to the public through the website of the European Commission.<sup>3</sup> Based on the assessment of the OECD, the EU scores significantly well in terms of transparency, with an average score of 0.955 on 1 for primary laws and subordinate regulation, while the OECD average is half that (0.46).<sup>4</sup>

The European Commission has increased its public consultation platforms and stakeholder input to enhance transparency. These consultations take place on a frequent basis and are of high quality.<sup>5</sup> Studies even show that the European Commission is the most open to stakeholder consultations of all EU institutions.<sup>6</sup> In addition, the variety of stakeholders consulted has also expanded.<sup>7</sup> It can be concluded that the European Commission puts a lot of time and effort into consulting stakeholders. However, there is also criticism to the transparency of the European Commission. The Commission would place too much emphasis on the views of organized interest groups and companies. On the other hand, less emphasis is placed on the opinions of the individuals who are ultimately most affected by the legislation.<sup>8</sup> Moreover, it appears that most inception impact assessments only provide a qualitative description of the impact, without the quantification of, for example, compliance costs. As a result, stakeholders can only respond to these very limited assessments and description of the most important impacts.<sup>9</sup> Finally, public consultations rely on information based on multiple choice questions. However, it is impossible to represent the full intended meaning of a responding stakeholder based on multiple choice questions. This can be detrimental to an effective contribution to the policy-making process, even though public consultation offers a very good opportunity to gather new information.<sup>10</sup>

---

<sup>1</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.; OECD. Methodology of the iREG Composite Indicators.; RegWatchEurope. (2020). *Robust Impact Assessment: Practical Experiences from RegWatchEurope Members*.

<sup>2</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.

<sup>3</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.; European Commission. (2017). *Better Regulation Guidelines*.; European Commission. (2015a). Better Regulation "Toolbox".; World Bank Group. (2018). *Global Indicators of Regulatory Governance*.

<sup>4</sup> OECD. Methodology of the iREG Composite Indicators.; OECD. (2018). *OECD Regulatory Policy Outlook 2018*.; OECD.Stat. (2017). Governance at a Glance: Regulatory Governance. Retrieved from <https://stats.oecd.org/Index.aspx?QueryId=85336>

<sup>5</sup> Alemanno, A. (2015). How much better is better regulation? Assessing the impact of the better regulation package on the European Union—A research agenda. *European Journal of Risk Regulation*, 344-356.

Schout, A., & Schwieter, C. (2018). Two Decades of Better Regulation in the EU Commission - Towards Evidence-Based Policymaking.

<sup>6</sup> Judge, A., & Thomson, R. (2019). The responsiveness of legislative actors to stakeholders' demands in the European Union. *Journal of European Public Policy*, 26(5), 676-695.

<sup>7</sup> Lindgren, K., & Persson, T. (2018). Participatory governance in the European Union. In *Handbook on Participatory Governance*: Edward Elgar Publishing.

<sup>8</sup> Alemanno, A. (2015). How much better is better regulation? Assessing the impact of the better regulation package on the European Union—A research agenda. *European Journal of Risk Regulation*, 344-356.

<sup>9</sup> RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.

<sup>10</sup> Impact Assessment Institute. (2017). A Year and a Half of the Better Regulation Agenda: What Happened?

The methodology used in conducting an impact assessment is a third quality criterion. Methodology looks at methods and tools used for RIA, including the assessment of economic, environmental and social impacts, distributive effects, costs and benefits. In addition, issues of compliance and enforcement, regulatory options, risk assessment and guidance documents for RIA are also included in the criterion.<sup>1</sup> According to RegWatch Europe, an international network of independent and external advisory bodies, a simple and standardized methodology should be applied. This makes it possible to apply impact assessment consistently and to compare its results.<sup>2</sup> The Better Regulations Guidelines state that “all relevant impacts should be assessed qualitatively and quantitatively whenever possible”.<sup>3</sup> In 2020, benefits were quantified by 74% of IAs. The same applies for the period of 2017-2019, so there is no improvement or deterioration. However, there has been a decline in the number of IAs that fully quantify the benefits. In 2020, 23% of IAs quantified the benefits fully and 51% partially. In the period of 2017-2019, 29% of IAs still quantified all benefits, and 45% did so partially.<sup>4</sup> In general, quantifying costs has increased in percentage terms. In 2020, 83% of IAs quantified costs, compared to 81% in the 2017-2019 period. However, the number of partially quantified costs has increased from 47% to 54%.<sup>5</sup> The partial quantification of costs and benefits is a consequence of the fact that quantification remains a challenging task, as quantifying benefits and costs is difficult and resource intensive. Data often must be collected across the EU member states. These Member States differ significantly in areas such as socio-economic contexts or climate conditions as well as the capacity of these Member States to collect this information.<sup>6</sup> As a result, a complete quantification is therefore not always feasible.<sup>7</sup> Finally, however, there appears to be a great lack of quantification of administrative, compliance and enforcement costs. In 2017, 42% of the IAs quantified no administrative costs, 29% did not quantify compliance costs, and 55% of IAs did not quantify enforcement costs.<sup>8</sup> A study by the Impact Assessment Institute also showed that the majority of the IAs examined were seriously deficient in terms of analysis and methodological rigor.<sup>9</sup> The Regulatory Scrutiny Board states several times in its annual reports that the quality of the IA usually improves significantly after the first quality check of the RSB.<sup>10</sup>

Systematic adoption, as the fourth quality criterion, examines whether there are formal requirements for the preparation of RIA and to what extent RIA is performed in practice. In addition, this criterion reflects the extent to which the principle of proportionality is considered. In the case of the European Commission, guidelines have been drawn up, prescribing a standardized taxonomy of costs and benefits of impact assessment on the one hand, with guidance to assess each of these categories of cost and benefits on the other hand.<sup>11</sup> These guidelines require that “for Commission initiatives that

---

<sup>1</sup> OECD. Methodology of the iREG Composite Indicators.; OECD. (2018). *OECD Regulatory Policy Outlook 2018*.; OECD.Stat. (2017). *Governance at a Glance: Regulatory Governance*. Retrieved from <https://stats.oecd.org/Index.aspx?QueryId=85336>

<sup>2</sup> RegWatchEurope. (2020b). *Robust Impact Assessment: Practical Experiences from RegWatchEurope Members*.

<sup>3</sup> European Commission. (2017). *Better Regulation Guidelines*.

<sup>4</sup> Regulatory Scrutiny Board. (2020). *Annual Report 2020*.

<sup>5</sup> Regulatory Scrutiny Board. (2020). *Annual Report 2020*.

<sup>6</sup> Dunlop, C., & Radaelli, C. (2015). *Impact Assessment in the European Union: Lessons from a Research Project*.

<sup>7</sup> Regulatory Scrutiny Board. (2018). *Annual Report 2017*.

<sup>8</sup> Schout, A., & Schwieter, C. (2018). *Two Decades of Better Regulation in the EU Commission - Towards Evidence-Based Policymaking*.

<sup>9</sup> Impact Assessment Institute. (2017). *A Year and a Half of the Better Regulation Agenda: What Happened?*

<sup>10</sup> Regulatory Scrutiny Board. (2017). *Annual Report 2017*.

<sup>11</sup> European Commission. (2015a). *Better Regulation "Toolbox"*.; Renda, A. (2016). *From Impact Assessment to the Policy Cycle: Drawing Lessons from the EU's Better-Regulation Agenda*. *The School of Public Policy*, 9(33).

are likely to have significant economic, environmental or social impacts” and state that “impact assessments should be carried out for both legislative and non-legal initiatives as well as delegated acts and implementing measures”.<sup>1</sup> The Secretariat General decides whether to conduct an IA. In doing so, it considers the likely impacts of the policy proposal, which on the one hand may be significant and justify the roll-out of an IA, or which may be insignificant on the other, making an IA disproportionate. For legislative proposals likely to have significant impacts, the principle of proportionality is a good method to allocate direct resources to these proposals. However, it is the Secretariat General that must decide whether the proposal has significant impacts. This decision cannot be challenged by anyone, not even by the Regulatory Scrutiny Board.<sup>2</sup> From the period from 2017 to 2019, a yearly average of 37% of the Commission's legislative proposals have been submitted without an impact assessment.<sup>3</sup> This lack of impact assessments has implications for several key policy areas that are likely to have very significant impacts, such as the Economic Monetary Union.<sup>4</sup> If the 95% of proposals without IA for COVID-19 related measures carried out in 2020 are added to the calculations, the proportion of legislative proposals that have been submitted without IA, increases to a yearly average of 50%.<sup>5</sup> Finally, in the explanatory memorandum for the proposals without an IA, only a brief summary is given of the Commission's reasoning for not having an IA. However, this summary does not provide in-depth information on the rationale for intervention, nor any underlying assumptions or evidence. As a result, the effects of proposals without an IA are much less transparent compared to proposals accompanied by an IA. It is debatable how well the Commission identifies which policy proposals would have significant impacts and bring about an IA, given that a significant portion of the compliance costs for citizens, businesses and institutions within the EU arise from EU legislation.<sup>6</sup> Based on the literature, it can be concluded that the European Commission invests time and effort in the quality and frequency of ex-ante impact assessments, but that there is still room for improvement.

---

<sup>1</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>2</sup> RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.

<sup>3</sup> Schout, A., & Schwieter, C. (2018). Two Decades of Better Regulation in the EU Commission - Towards Evidence-Based Policymaking.; RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.; Council of the European Union. (2018). Impact Assessment within the Council - 2018 Annual Report.; Council of the European Union. (2019). Impact Assessment within the Council - 2019 Annual Report.; Council of the European Union. (2020). Impact Assessment within the Council - 2020 Annual Report.

<sup>4</sup> Schout, A., & Schwieter, C. (2018). Two Decades of Better Regulation in the EU Commission - Towards Evidence-Based Policymaking.

<sup>5</sup> Schout, A., & Schwieter, C. (2018). Two Decades of Better Regulation in the EU Commission - Towards Evidence-Based Policymaking.; RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.; Council of the European Union. (2018). Impact Assessment within the Council - 2018 Annual Report.; Council of the European Union. (2019). Impact Assessment within the Council - 2019 Annual Report.; Council of the European Union. (2020). Impact Assessment within the Council - 2020 Annual Report.

<sup>6</sup> RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.

A final quality criterion that can be distinguished based on the literature is the oversight and quality control of the impact assessment conducted. For ensuring the legitimacy of the decision-making process, an independent oversight body should be responsible for evaluating and monitoring IAs.<sup>1</sup> In the case of the European Commission, the Regulatory Scrutiny Board is responsible for examining the quality of IAs. The Board consists of four Commission officials and three experts, recruited from outside the European Commission to ensure greater independence for the RSB. All members of the RSB are obliged to act independently and autonomously.<sup>2</sup> This half-and-half division creates tension between some Member States on the one hand (mainly led by Germany and the Netherlands) and the European Commission on the other.<sup>3</sup> Member States want a fully independent regulatory oversight body as they have more confidence in an oversight body that does not consist of Commission officials. The European Commission, on the other hand, believes that the IA quality should remain part of the policy discussion between the Secretariat General, Directorates General and Commissioners. Moreover, monitoring is part of its responsibility to initiate legislation, as was also anchored in the Treaty.<sup>4</sup> The tasks of the RSB are defined in detail based on the scope and procedures of the investigation.<sup>5</sup> For example, the RSB is responsible for the quality evaluation of ex-ante IAs, ex-post evaluations and fitness checks, intervention on implementing and delegated acts, and offering advice.<sup>6</sup> However, there are also gaps in the Regulatory Scrutiny Board's mandate. The fact that the General Secretariat must make the decision whether to prepare an IA, is an example. This means that the RSB cannot make maximum use of its expertise to improve the legislative cycle and the decision-making process.<sup>7</sup> In addition, the RSB struggles with institutional and organizational constraints. Since the RSB consists of only 7 full-time members, it does not have enough resources to review all IAs, evaluations and fitness checks in a timely manner.<sup>8</sup>

---

<sup>1</sup> OECD. Methodology of the iREG Composite Indicators.; OECD. (2018). *OECD Regulatory Policy Outlook 2018*; Radaelli, C. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say. *Journal of Common Market Studies*, 56, 85-95.

<sup>2</sup> European Commission. (2015c). *Communication on the Regulatory Scrutiny Board: Mission, Tasks and Staff*, 19 May 2015.

<sup>3</sup> Radaelli, C. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say. *Journal of Common Market Studies*, 56, 85-95.

<sup>4</sup> Radaelli, C. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say. *Journal of Common Market Studies*, 56, 85-95.

<sup>5</sup> RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.

<sup>6</sup> Radaelli, C. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say. *Journal of Common Market Studies*, 56, 85-95.

<sup>7</sup> RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.

<sup>8</sup> RegWatchEurope. (2020a). Further Development of Regulatory Oversight at EU-Level.

## 2.4.2 Quality of Flemish IA

The completeness of the RIA system was assessed based on the presence of (I) procedure standards, (II) methodology guidelines and (III) control, monitoring and enforcement mechanisms.<sup>1</sup> The European model is a very sophisticated elaboration of an RIA system, as mentioned earlier. However, this is not the case for the Flemish system. Since the RIA reforms, the separate RIA document has been abolished. Instead of this RIA document, the explanatory memorandum should be expanded to include the potentially significant impacts of the policy proposal. However, this new system cannot be compared with the old one. The old RIA system contained procedure standards, methodology guidelines on assessment methods, consultation as well as monitoring and evaluation and control, monitoring and enforcement mechanisms. The literature study shows that the old RIA system was less sophisticated than in the European system, but the system was nevertheless elaborated. The new system of a more extensive explanatory memorandum does not contain any of the required components. The absence of all three components in the new system shows that the expansion of the explanatory memorandum certainly is not a replacement alternative for the old RIA system. Since the reform, the RIA system thus has not become less complete, there is simply no longer a RIA system. An overview of the details of all three components of a RIA system is shown in the table below, for both the old RIA system and the new system of explanatory memorandum.

	<b>Flemish RIA system</b>	<b>Flemish system of explanatory memorandum</b>
<b>Coverage</b>	Preliminary drafts of decree and drafts of subordinate regulations	Draft decrees (no subordinate regulations)
<b>Actors</b>	<ul style="list-style-type: none"> <li>- 'Cel Wetskwaliteit' of the policy domain</li> <li>- Stakeholders (public consultation + advisory bodies)</li> <li>- Dienst Wetsmatiging of the Departement Kanselarij en Bestuurszaken (Regulatory Management Unit of the Department Chancellery and Governance)</li> <li>- Council of Ministers</li> </ul>	<ul style="list-style-type: none"> <li>- 'Cel Wetskwaliteit' of the policy domain</li> <li>- Stakeholders (public consultation + advisory bodies)</li> <li>- Council of Ministers</li> </ul>
<b>Procedure</b>	<ul style="list-style-type: none"> <li>- RIA advice Regulatory Management Unit (Dienst Wetsmatiging)</li> <li>- Mandatory RIA paragraph in the memorandum to the Flemish Government</li> <li>- Control by Department of Chancellery</li> </ul>	Not provided

<sup>1</sup> Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.

	<ul style="list-style-type: none"> <li>- Control by Regulatory Management Unit (Dienst Wetsmatiging)</li> <li>- Addition to the regulatory file</li> <li>- Ex post quality measurement by the Unit</li> </ul>	
<b>Methodology</b>	The Flemish Government provides guidelines on the assessment methods, consultation and monitoring and evaluation	Not provided
<b>Control and oversight</b>	'Cel Wetskwaliteit' ensures quality of RIA document before it is presented to Dienst Wetsmatiging. Dienst Wetsmatiging controls the quality of the document and gives RIA advice	Not provided

In terms of transparency of impact assessment, the literature study shows that the Flemish system is lagging behind. Transparency refers to the extent to which the processes, assumptions, models and results of RIA are made public to the widest spectrum of stakeholders.<sup>1</sup> In the case of the European IA system, the results of the impact assessment are indeed communicated to the public through the website of the European Commission.<sup>2</sup> In the Flemish system, on the other hand, the explanatory memorandum *an sich* is no longer opened to the public. However, the explanatory memorandum is part of the draft decree, and is therefore also published together with this draft decree for permission from the Flemish Government and the Flemish Parliament.<sup>3</sup>

The importance of stakeholder consultation is emphasized in both the old RIA system and the new system.<sup>4</sup> In theory, however, there should be an interaction between the RIA and stakeholder consultation. Since the impact analysis, problem definition, objective and policy options have already been detected, the RIA provides on the one hand a framework for consultation. On the other hand, consultation can also provide information for the further implementation of RIA. Research shows, however, that this interaction does not materialize in practice.<sup>5</sup> Since advisory boards rarely referred to RIA, the RIA document was not considered to be of added value. Subsequently, the RIA document was abolished, even though the Flemish legislator had had the opportunity to strengthen the RIA quality for several years. The same study showed that RIA does have a lot of potential to improve the quality of legislation on the one hand and to strengthen the involvement of stakeholders on the other. There is therefore a clear contradiction between the possibilities offered by RIA on the one

<sup>1</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.; OECD. Methodology of the iREG Composite Indicators.; RegWatchEurope. (2020). *Robust Impact Assessment: Practical Experiences from RegWatchEurope Members*.

<sup>2</sup> World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.; European Commission. (2017). *Better Regulation Guidelines*.; European Commission. (2015a). Better Regulation "Toolbox".; World Bank Group. (2018). *Global Indicators of Regulatory Governance*.

<sup>3</sup> Omzendbrief VI. 17 maart 2014 betreffende de Samenwerking met het Vlaamse Parlement, (2014).

<sup>4</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.; Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>5</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.



hand and the way in which RIA was used on the other.<sup>1</sup> The problem with the new system is that the consultation is limited to green papers, concept notes and the draft decree in general. However, an open consultation of the impact analysis within the explanatory memorandum is not applicable. In addition, the central consultation portal of the Flemish Government has still not come into effect, so it remains to be seen whether and how the open consultation takes place.<sup>2</sup> The abolition of the RIA document harmed the transparency of the entire decision-making process. With the new system, an impact assessment must be drawn up afterwards, to justify the chosen option. However, a justification and substantiation of the chosen policy option in the explanatory memorandum is sufficient. A transparent assessment between the various options will therefore no longer be made.

The methodology used in conducting an impact assessment is a third quality criterion. Methodology looks at methods and tools used for RIA, including the assessment of economic, environmental and social impacts, distributive effects, costs and benefits. In addition, issues of compliance and enforcement, regulatory options, risk assessment and guidance documents for RIA are also included in the criterion.<sup>3</sup> According to RegWatch Europe, an international network of independent and external advisory bodies, a simple and standardized methodology should be applied. This makes it possible to apply impact assessment consistently and to compare its results.<sup>4</sup> The circular states that the social impact, impact on fundamental rights and the principle of equality, the budgetary impact and the administrative impact on local and provincial authorities and on Brussels must be mentioned in the impact analysis. This refers to the obligations, benefits or costs of the impacts.<sup>5</sup> However, the circular does not mention a single methodology that describes how this can be done. In addition, no mention is made of environmental impacts. The guidelines of the European Commission state that "For Commission initiatives that are likely to have significant economic, environmental or social impacts, impact assessments should be carried out for both legislative and non-legal initiatives as well as delegated acts and implementing measures".<sup>6</sup> Where the environmental impact in the European system plays a major role, these are not even mentioned in the Flemish circular. Finally, there is no data available on the percentage of impact analyzes that quantify the costs and benefits of impacts. The lack of any methodology in the guidelines for preparing the impact analysis in the explanatory memorandum, predicts that a large part of the quantification of impacts will be missing from the explanatory memorandum.

Systematic adoption examines whether there are formal requirements for the preparation of RIA and to what extent RIA is performed in practice. In addition, this criterion reflects the extent to which the principle of proportionality is considered. In the case of the Flemish Government, the explanatory memorandum is required by law to be drawn up for every draft decree.<sup>7</sup> Subordinate regulations, however, are not subject to the legal requirement to prepare an explanatory memorandum, which

---

<sup>1</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>2</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>3</sup> OECD. Methodology of the iREG Composite Indicators.; OECD. (2018). *OECD Regulatory Policy Outlook 2018.*; OECD.Stat. (2017). Governance at a Glance: Regulatory Governance. Retrieved from <https://stats.oecd.org/Index.aspx?QueryId=85336>

<sup>4</sup> RegWatchEurope. (2020b). *Robust Impact Assessment: Practical Experiences from RegWatchEurope Members.*

<sup>5</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>6</sup> European Commission. (2017). Better Regulation Guidelines.

<sup>7</sup> Art. 3 Gecoördineerde wetten op de Raad van State, 12 januari 1973

still significantly narrowed the scope with the removal of the RIA document. As mentioned before, the social impact, impact on fundamental rights and the principle of equality, the budgetary impact and the administrative impact on local and provincial authorities and on Brussels must be mentioned in the impact analysis. This refers on the obligations, benefits or costs of the impacts.<sup>1</sup> However, the circular does not mention a single methodology that describes how this can be done. Each draft decree is accompanied by an explanatory memorandum, but there is no data available on the percentage of explanatory memorandums that actually contain an impact analysis. The literature also criticizes the Flemish Government, which could have strengthened the use of the guidelines for the drafting of RIA, instead of abolishing the RIA document. In the past, the guidelines were often not fully followed. Even though the different steps were clearly framed and argued in the guideline, often no attention was paid to following these steps. An impact analysis committee that evaluates the RIA quality based on guidelines could have strengthened the effectiveness of the guidelines, as we see, for example, at the European level. Instead, the RIA document was abolished and the guidelines for drawing up this document no longer applied, despite the potential it contained.<sup>2</sup> Since the overall quality of Flemish RIA was low, around 2010 its scope evolved to "less RIAs, but better RIAs".<sup>3</sup> This implies that RIA sources should be spent where they are most useful and lead to the best results, so that RIA efforts are more focused and selective. This reduction in scope is also in line with the proportionality principle. For minor regulatory proposals, it is not worth conducting RIAs. On the other hand, for important regulations that may entail large impacts, extended RIAs are necessary.<sup>4</sup> In the explanatory memorandum, however, only the chosen policy option is motivated and substantiated, whereby the impacts of alternatives are not analyzed. Since the explanatory memorandum does not contain the assessment of the various policy options of proposals, it is therefore not in line with the proportionality principle.<sup>5</sup>

For ensuring the legitimacy of the decision-making process, an independent oversight body should be responsible for evaluating and monitoring IAs.<sup>6</sup> In the case of the European Commission, the Regulatory Scrutiny Board is responsible for examining the quality of IAs. Before the RIA reforms, the 'Dienst Wetsmatiging' from the Department of Chancellery and Governance used to be authorized to assess the quality of the RIA according to minimum criteria.<sup>7</sup> The Regulatory Management Unit (Dienst Wetsmatiging) is a separate body which is responsible for checking the quality of the final RIA and periodically reports on the quality of all RIAs.<sup>8</sup> However, a quality evaluation of the impact assessment is not explicitly provided for in the new circular. The circular states that the Department of Chancellery and Governance can give optional advice on "other aspects of qualitative regulation"<sup>9</sup>,

---

<sup>1</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

<sup>2</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>3</sup> Vlaamse Regering. (2009). *Beleidsnota Bestuurszaken 2009-2014.*; Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>4</sup> Van Humbeek, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.

<sup>5</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>6</sup> OECD. Methodology of the iREG Composite Indicators.; OECD. (2018). *OECD Regulatory Policy Outlook 2018.*; Radaelli, C. (2018). Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say. *Journal of Common Market Studies*, 56, 85-95.

<sup>7</sup> Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregeling administratieve lasten, (2014).

<sup>8</sup> Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringsimpactanalyse.

<sup>9</sup> Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen (2019).

but no definition of these other aspects is given. As a result, it is therefore unclear whether the evaluation of the explanatory memorandum is included. The Regulatory Management Unit therefore loses its function of quality evaluator.<sup>1</sup> UNIZO (Union of Independent Entrepreneurs), among others, also argues for stronger independent supervision.<sup>2</sup> The SERV (the Social and Economic Council of Flanders) has also repeatedly called for an entity or network with greater influence on the existing legislative advice, which in addition to providing assistance, could also supervise the implementation of impact analyses.<sup>3</sup>

Finally, the early set-up of RIA, in other words the ex-ante character of RIA, is an important criterion for the quality of RIA. To improve decision-making, it is crucial that the RIA process is started early in the regulatory process.<sup>4</sup> RIA asks the right questions at the right time, so that this knowledge can contribute to the policy process. It is crucial that the RIA be prepared ex-ante, before the decision for a particular policy option is made and before any draft decree is prepared. Only then, policy options can be compared objectively.<sup>5</sup> Since the abolition of the RIA document however, the impact assessment now is prepared at the same time as the draft decree. The impact assessment only serves as confirmation of the chosen regulation, and therefore does not contribute to the objective comparison of policy options. The abolition of the RIA document therefore harmed the transparency of the entire decision-making process. With the new system, an impact assessment must be drawn up afterwards, to justify the chosen option. A justification and substantiation of the chosen policy option in the explanatory memorandum is sufficient. A transparent assessment between the various options will therefore no longer be made.<sup>6</sup> The SERV also recommends that an ex-ante impact analysis be used to underpin policy choices.<sup>7</sup>

---

<sup>1</sup> Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>2</sup> UNIZO. (2019). Dossier administratieve vereenvoudiging.

<sup>3</sup> SERV. (2019). Advies Bestuurlijke Beleidsnota's 2019-2024.

<sup>4</sup> Poel, K., Marneffe, W., & Van Humbeeck, P. (2016). De Federale Regelgevingsimpactanalyse: Nood aan Hervormingen? *Tijdschrift voor wetgeving*, 196-216.

<sup>5</sup> Steunpunt Bestuurlijke Vernieuwing. (2019). Overheden in Vlaanderen in Beeld 2019.; Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>6</sup> Poel, K., Marneffe, W., & Van Humbeeck, P. (2016). De Federale Regelgevingsimpactanalyse: Nood aan Hervormingen? *Tijdschrift voor wetgeving*, 196-216.; Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving*(3), 145-159.

<sup>7</sup> SERV. (2019). Advies Bestuurlijke Beleidsnota's 2019-2024.

### 2.4.3 Lessons to be learned

It is concluded from the literature study that the EU has good intentions in the elaboration of its IA system. As a result, it is concluded that, based on the quality criteria, the impact assessment system of the European Commission is of good quality, although there is room for improvement. For example, the European Commission has invested a lot of time and effort in the comprehensiveness of its system, transparency through an extensive consultation mechanism, developing methodologies to quantify all costs and benefits as robustly as possible, systematically drafting IA for the widest possible range impacts and considering the principle of proportionality, and finally the (half-half) independent quality oversight by the Regulatory Scrutiny Board. Based on the quality criteria, it can be concluded that the intentions of the European Commission regarding IA are a lot better than those of the Flemish Government however. In response to criticism that it received on, among other things, indecisive guidelines, lack of transparency, the lateness of the RIA and the simplistic analyses, the Government decided to just abolish the RIA document instead of improving the RIA system. The decision to include the impact analysis in the explanatory memorandum has caused a shift in the quality of the system. The fact that the Flemish Government did not intend to further expand the former ex-ante RIA system makes it almost impossible to obtain a good impact analysis in practice. In the context of the research question, it can be concluded that the Flemish Government has lessons to learn from the European level, and not the other way around.

In addition, literature study proved that there is a great interdependence between the various quality criteria. The knock-on effects that the improvement of one quality aspect entails, can therefore be beneficial for governments. For example, the systematic adoption of IA based on formal requirements will allow for a broader scope of impacts to be analyzed and quantified, triggering the need for clearly prescribed methodologies. All of this ultimately leads to more transparency in the impact assessment itself, as well as the transparency of the decision-making process in general. Policy action on particular quality aspects thus has a stimulating effect on the other aspects. This fact could be a motivation for the Flemish government to act.

A first lesson that the Flemish Government can adopt from the European system concerns transparency. The European system uses an inception impact assessment to organize open consultation for all stakeholders online. Once the RSB has given its positive advice on the final IA, it will be published on the Commission's website. A separate document comparable to the inception IA does not exist at the Flemish level, nor is its open consultation (on the one hand the online consultation platform is not yet active, on the other hand the impact analysis in the explanatory memorandum is simply not consulted publicly). As the explanatory memorandum is attached to the draft decree, these are published together when the approval of the Flemish Parliament is requested. There is no separate publication of the impact analysis within the explanatory memorandum. The lesson that the Flemish Government can draw from the European example is the (re)introduction of a **separate document for impact analysis**. In this way, open consultation of this RIA document can be organized, and it can be published separately, which promotes the transparency of the impact analysis.

A second lesson for the Flemish Government concerns the development of guidelines, with proposed procedures and methodologies when drawing up the impact analysis. At the European level, all significant social, economic and environmental impacts must be assessed quantitatively or qualitatively. The scope of impacts as well as the methods to quantify costs and benefits of impacts are described in the Toolbox. In the Flemish circular, however, this is not or hardly the case. Due to the lack of appropriate methodologies, a large part of the impacts will not be quantified, which has significant consequences for the quality and transparency of the impact analysis. In addition, the circular does not mention the environmental impacts or the impacts of subordinate regulations, which only further deteriorates the quality of the impact analysis (important costs and benefits are no longer considered, which harms the proportionality and transparency principle). Specifically, the second lesson concerns the introduction of **clear and effective guidelines** that can be used in the application of impact analysis, including quantification methodologies, and with the addition of environmental impacts and impacts of subordinate regulations. In this way, all significant impacts can be unambiguously assessed, which ensures a more systematic adoption of impact analysis, considering the principle of proportionality.

A third lesson involves the establishment of an independent impact analysis committee or board to monitor and improve the quality of impact analyses, such as the Regulatory Scrutiny Board fulfills this function at European level. Apart from the fact that guidelines for drawing up an impact assessment are already missing in the Flemish system, the quality of the impact assessments is no longer even assessed. As a result, the quality of the impact analysis decreases even further, and its added value is lost. The third lesson for the Flemish Government is therefore to establish an **independent impact analysis committee** that ideally consists of all kinds of experts from different backgrounds (which is also not the case for the RSB). Based on the guidelines, as mentioned in the previous lesson, this committee then assesses the quality of the impact assessments and gives advice. In this way, the quality of impact assessment is monitored and improved in an objective and independent way.

The last lesson concerns the ex-ante preparation of the impact analysis. At the European level, the impact assessment is conducted before the particular policy option is chosen. The IA thus has a supporting and informative function in the decision-making process. At the Flemish level, however, the impact assessment is prepared at the same time as the draft decree. The impact analysis thus only serves as a justification of the chosen policy option. The last lesson for the Flemish Government therefore concerns the importance of **conducting an ex-ante the impact analysis**, so that policy options can be assessed and compared in a transparent and objective way. However, this lesson is closely related to the first, as ex-ante IA is only possible based on a separate document. If the impact analysis continues to be incorporated in the explanatory memorandum, which in turn is drawn up at the same time as the draft decree, ex-ante impact analysis is not possible.

## Chapter 3: Empirical study

The literature study has shown that the quality of an impact assessment depends on several quality criteria. Both the European and the Flemish system were tested against these quality criteria. This showed that the European Commission had better intentions for developing its IA system than the Flemish Government. As a result of these better intentions, the quality criteria showed that the European IAs are of higher quality than the Flemish. Based on the quality of the impact assessments and on the criticisms that both systems received, four different lessons could be drawn for the Flemish government to adopt from the European Commission, with the aim of increasing the quality of its impact assessments. In the literature study, however, only the theoretical part of the impact assessments was tested against the quality criteria, but it is unknown whether these results also apply in practice. What follows is a case study in which European and Flemish impact assessments on the same subjects are tested against the different quality criteria. In this way, conclusions can be drawn, as to whether the lessons proposed for the Flemish Government in the literature study also apply in practice.

This case study analyzes a total of seven impact assessments, three at the European level and four at the Flemish level. The aim of this study is to provide an overview of the quality of impact assessments, as recent as possible. As a result, the first three IAs that were published or submitted this year are analyzed at both European and Flemish level. The subjects of the IAs are thus chosen at random.

### 3.1 Quality of European IA

The first three impact assessments published from 2021 onwards concern (I) trans-European energy infrastructure,<sup>1</sup> (II) matrimonial matters and the matters of parental responsibility, and on international child abduction,<sup>2</sup> and (III) EU-Africa Global Health Partnership.<sup>3</sup>

First, it appears that the IAs are similar in terms of composition. The structure prescribed in the guidelines is followed in all three IAs, making them easily comparable. The IAs are comprehensive and complete. All three of them follow the standard procedure template, and report this under the heading 'procedural information'. In addition, the methodologies used (concerning consultation, quantifying impacts, comparing policy options, etc.) are clearly described. This also applies to the monitoring and evaluation of the impacts.

Second, public consultation was organized in all three impact assessments, of which the results are regularly reported in the IA. In addition, the annexes contain a clear description of what, how and

---

<sup>1</sup> European Commission. (2021c). *Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Regulation (EU) No 347/2013.*

<sup>2</sup> European Commission. (2021b). *Impact Assessment Accompanying the document Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).*

<sup>3</sup> European Commission. (2021a). *Impact Assessment Accompanying the document Proposal for a council regulation establishing the Joint Undertakings under Horizon Europe EU-Africa Global Health Partnership.*

who was consulted. These descriptions prove that consultation takes place on a frequent basis, with a broad spectrum of stakeholders and with openness to the stakeholders' views. This benefits the transparency of the impact assessment.

Third, many different methodologies are used to quantify the impacts, depending on the types of impacts that are very different for these three IAs. In the first IA, significant economic, social and environmental impacts were identified. However, it was impossible to quantify all impacts, costs and benefits, so most impacts were assessed qualitatively. In addition, this IA also considers administrative burden. The RSB issued a negative opinion at first because of multiple substantial shortcomings. The IA was revised and subsequently received a positive opinion from the RSB. In the second IA (concerning matrimonial matters and the matters of parental responsibility, and on international child abduction) economic and social impacts mainly occurred. It was usually not possible to quantify impacts, costs and benefits, so that the assessments of the impacts are based on a qualitative approach. The administrative costs to comply with the regulation are included in the impact assessment. In addition, the RSB gave its positive opinion. In the third IA as well (on the EU-Africa Global Health Partnership), not all impacts could be quantified, but rather a mix between qualitative and quantitative data collection is used. Administrative costs could also be quantified. The RSB gave its positive advice with recommendations on the content and methodologies of the document. All three impact assessments test against the proportionality principle. This revealed the significance of impacts of the policy options. The impact assessments are thus the result of a systematic adoption of the guidelines on proportionality testing.

Finally, the IAs show the important role of the RSB for quality control. The RSB studies the draft IA and provides very detailed advice. It can be deduced from all three IAs that the thorough quality control by the RSB is actually carried out in practice, and that its recommendations benefit the quality of the IAs.

## 3.2 Quality of Flemish IA

The first three draft decrees, including explanatory memorandums, which were submitted for approval from 2021 on, include the following topics: (I) bilateral aviation agreement with the Republic of Côte d'Ivoire,<sup>1</sup> (II) bilateral aviation agreement with the Republic of Benin,<sup>2</sup> and (III) the sustainable management of material cycles and waste.<sup>3</sup> Since the first and second drafts of decree cover the same subject, a fourth is added to the analysis. This concerns the dissolution of the Flemish

---

<sup>1</sup> Vlaams Parlement. (2021b). *Ontwerp van decreet tot instemming met de overeenkomst tussen de regering van het Koninkrijk België en de regering van de Republiek Ivoorkust betreffende het luchtvervoer, ondertekend te Abidjan op 25 oktober 2017.*

<sup>2</sup> Vlaams Parlement. (2021a). *Ontwerp van decreet tot instemming met de overeenkomst tussen de regering van het Koninkrijk België en de regering van de Republiek Benin betreffende het luchtvervoer, ondertekend te Cotonou op 9 januari 2018.*

<sup>3</sup> Vlaams Parlement. (2021d). *Ontwerp van decreet tot wijziging van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid en het decreet van 23 december 2011 betreffende het duurzaam beheer van materiaalcringen en afvalstoffen.*

High Enforcement Council for Spatial Planning and the Environment and the transfer of environmental enforcement tasks.<sup>1</sup>

The analysis shows that in two of the four cases the 'impact assessment' section is simply missing from the explanatory memorandum. This is the case for the draft decrees regarding bilateral aviation agreements. However, with the abolition of the RIA document, the intention was to incorporate the impact analysis in the explanatory memorandum. The lack of the systematic adoption of this section in two of the four cases is therefore problematic. In addition, it appears that of these remaining impact analyses, one of them is only a very short paragraph, which immediately raises questions.

First, the circular clarified that the problem definition and environmental analysis, policy measures, impact analysis and implementation must be addressed in the general explanation, insofar as relevant. This structure is followed in only in one of the four cases. However, there is no justification in the explanatory memorandum explaining why these aspects are not relevant. The direct consequence of the differing structures is that the explanatory notes are difficult, if not impossible, to compare. In addition, each explanatory memorandum contains the procedure that was followed in drawing up the draft decree. Methodological information about investigating the impacts is lacking, however. In two of the cases, the implementation of the decree is described, but only in three short sentences. It can therefore be concluded that the Flemish explanatory memorandums are not complete and not comprehensive. The vague description of the circular to introduce certain sections "if relevant" therefore leaves a lot of freedom to draw up the memorandum at will.

Public consultation was not organized for any of the draft decrees. However, advice was sought from relevant councils in all cases. None of the draft decrees quantify or monetize impacts, costs or benefits, but provide a short qualitative assessment of the impacts (in two out of four cases). Also, no distinction is made between social impacts, impacts or fundamental rights and on the principle of equality, budgetary impact, and administrative impact on local and provincial governments and Brussels, as that distinction is made in the circular. Administrative and compliance costs are analyzed neither quantitatively nor qualitatively.

None of the memoranda refer to a proportionality test. However, the very limited explanatory memorandum could be devoted to the small impact of the policy measure. If this would be the case, the defective assessments could be justified. However, there has been no testing of proportionality, or at least no mention of this, which means that the deficient draft decrees can't be justified. Finally, the literature study already demonstrated the need for an independent control body, which is also confirmed by these deficient analyses.

---

<sup>1</sup> Vlaams Parlement. (2021c). *Ontwerp van decreet tot wijziging van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid en de Vlaamse Codex Ruimtelijke Ordening, wat betreft de opheffing van de Vlaamse Hoge Handhavingsraad voor Ruimte en Milieu en de overheveling van taken inzake omgevingshandhaving.*



### 3.3 Lessons to be learned

The results already proved by the literature study are confirmed by the empirical study. Where the European impact assessments correspond to the quality standards, this is not the case at the Flemish level. The lack of a separate IA document of which the quality is assessed by an independent body based on prescribed guidelines, leads to a low quality of the Flemish impact analyses. The European IAs were structured and comprehensive in practice, with motivation of appropriate methodologies to quantify as many impacts, costs and benefits as possible, with transparency through broad and frequent stakeholder consultation, systematic adoption through guidelines and proportionality testing, and quality control by the RSB. The opposite is true for the Flemish system.

The lessons for the Flemish Government that emerged from the results of the literature study appear to be extremely necessary, which is confirmed by the case studies. Introducing a separate document for ex-ante impact assessments, which is conducted based on clear and effective guidelines and evaluated and improved by an independent impact assessment committee, will lead to a dignified system with impact assessments of better quality.

## Chapter 4: conclusions

Regulation has a major impact on citizens, businesses and broader institutions. In fact, qualitative regulation can deliver significant social, economic and environmental benefits in the long term, namely stimulating investment, promoting economic growth, reducing systematic risk, supporting sustainable development, the environment and citizens' health and general welfare, etc. Many governments, including the European Union and the Flemish Government, have therefore put considerable effort into a regulatory policy aimed at increasing the quality of their regulation. For example, the European Commission launched its 'Better Regulation Package' in 2015. 'Better Regulation' is defined by the Commission as an approach to which the EU policies and laws achieve their objectives at minimum cost. Better regulation guarantees that political decisions in the policy-making process are prepared transparently, with consultation of stakeholders and evidence-based. Better Regulation is based on the principles of necessity, subsidiarity, proportionality and transparency. However, the Flemish Government has its own interpretation of regulatory quality and defines it in a different way. In Flanders, regulatory quality is defined based on 8 characteristics: necessary and effective, efficient and balanced, enforceable, legitimate, coherent, simple, clear and accessible, evidence-based and consulted and relevant and up to date. One of the most important tools to achieve regulatory quality is the Regulatory Impact Assessment: an ex-ante evaluation of policy initiatives leads to the empirical basis of decisions that are strengthened. From theoretical and practical research, RIA systems at European and Flemish level appear to differ considerably.

A first conclusion concerns the intentions to develop a high-quality RIA system of the European Commission on the one hand, and those of the Flemish Government on the other. The European Commission has devoted a great deal of time and resources to a thorough elaboration of its system. Its Better Regulation Package is the prime example of this. The elaboration of the system is reflected based on the three basic components that ideally comprise a RIA system, namely procedure standards, methodology guidelines and control, monitoring and enforcement mechanisms. The Guidelines and Toolbox provide a thorough description of how each of these components should be implemented in practice. However, the intentions of the European Commission are considerably better than those of the Flemish Government. This latter received a lot of criticism to its old RIA system in the past, concerning the indecisive guidelines, the lack of transparency, lateness of the assessment and the simplistic analyses. In response to the criticism that the Flemish Government received, it decided to simply abolish the RIA document instead of improving the system. However, with the abolition of the separate document, it was stated that the impact analysis had to be part of the explanatory memorandum of the draft decree. The former RIA guidelines were also replaced by a circular letter, which concerns guidelines for drawing up the explanatory memorandum. In practice, several problems arise. Firstly, the guidelines for drafting the explanatory memorandum are considerably smaller than the RIA guidelines of the old system (which, however, have already been criticized for their indecisiveness). There are no procedural standards, methodological guidelines as well as control, monitoring and enforcement mechanisms and only substantive guidelines should be applied 'if relevant'. Since the new guidelines are even vaguer than the previous ones, the drafter of the explanatory memorandum therefore also has more freedom in its interpretation, which does not

benefit the quality. In addition, the impact assessment is not conducted systematically due to the limited and vague guidelines. If the impact analysis is added to the memorandum, it only contains a very brief exposition of the impacts. This once again shows the flawed intentions of the Flemish Government to make it a success.

A second conclusion is that without the intention to develop a RIA system in detail, it is obvious that the quality of the system will also be negatively affected. As a result of the good intentions of the European Commission, it has been proved based on quality criteria that its impact assessments are of good quality. For example, the European Commission has invested a lot of time and effort in the transparency of IAs through an extensive consultation mechanism, developing methodologies to quantify all impacts, costs and benefits as robustly as possible, drafting IA for the widest possible range of impacts and considering the principle of proportionality, and finally the (half-half) independent quality oversight by the Regulatory Scrutiny Board. Despite the fact that the quality components are met, it appears that there is still room for improvement. For example, a large proportion of the Commission's initiatives are still not subject to an impact assessment. In addition, far from all impacts, costs and benefits are quantified. Finally, as an independent supervisory body, the RSB is not completely independent however, which also entails a lot of criticism from the Member States. At the Flemish level, on the other hand, the decision to include the impact analysis in the explanatory memorandum has caused a shift in the quality of the system. The fact that the Flemish Government did not intend to further expand the former ex-ante RIA system makes it almost impossible to conduct a qualitative impact analysis in practice. Both in theory and in practice, Flemish RIAs are far from meeting the quality criteria. Transparency is lacking, consultation does not take place and impacts, costs and benefits are not quantified. In addition, a systematic analysis of the widest possible range of impacts does not take place, and the impact analyzes are in no way subject to independent quality control. Finally, the Flemish impact analysis is no longer drawn up ex ante since the reform. The impact analysis only serves as a justification for the chosen option and no longer provides an empirical basis during the decision-making process.

Based on the theoretical and practical comparison of the European and the Flemish system based on the quality criteria, it can be concluded that the Flemish system has lessons to learn from the European system, and not the other way around. The first lesson concerns the (re)introduction of a separate document for impact analysis. In this way, open consultation of this RIA document can be organized, and it can be published separately, which promotes the transparency of the impact analysis. A second lesson concerns the introduction of clear and effective guidelines that can be used in the application of impact analysis. In this way, all significant impacts can be unambiguously assessed, which ensures a more systematic adoption of impact analysis, considering the principle of proportionality. These guidelines will also mean that an appropriate methodology is used in the impact assessment, which leads to more quantification of impacts, costs and benefits. A third lesson for the Flemish Government is to establish an independent impact analysis committee that ideally consists of all kinds of experts from different backgrounds. Based on the guidelines, as mentioned in the previous lesson, this committee then assesses the quality of the impact assessments and gives advice. In this way, the quality of impact assessment is monitored and improved in an objective and independent way. The last lesson for the Flemish Government therefore concerns the importance of

conducting an ex-ante the impact analysis. Instead of merely justifying why a particular policy option was chosen, policy options can be assessed in this way in a transparent and objective way. However, this lesson is closely related to the first, as ex-ante IA is only possible based on a separate document. If the impact analysis continues to be incorporated in the explanatory memorandum, which in turn is drawn up at the same time as the draft decree, ex-ante impact analysis is not possible. Finally, this also indicates the great interaction between the various quality criteria. The knock-on effects that the improvement of one quality aspect details, can therefore be beneficial for governments. Policy action on particular quality aspects thus has a stimulating effect which improves the other aspects.

## Bibliography

- Alemanno, A. (2015). How much better is better regulation? Assessing the impact of the better regulation package on the European Union—A research agenda. *European Journal of Risk Regulation*, 344-356.
- Bauer, S., & Wittholz, K. (2002). Regulatory Impact Analysis (RIA): Developments and Current Practices in the EU Member States, on the EU Level and in Selected Third Countries.
- Bielen, S., Marneffe, W., Ooms, A., & Vereeck, L. (2013). De Impact van Wetgevingskwaliteit op de Gerechtelijke Achterstand. *Tijdschrift voor wetgeving*, 2013, 302-310.
- Bielen, S., Marneffe, W., & Popelier, P. (2015). A Conceptual Framework on the Impact of Regulatory Quality on Litigation. *Theory & Practice of Legislation*, 3(1), 23-43. doi:10.1080/20508840.2015.1041703
- Cecot, C., Hahn, R., Renda, A., & Schrefler, L. (2008). An evaluation of the quality of impact assessment in the European Union with lessons for the US and the EU. *Regulation & Governance*, 2(4), 405-424.
- Dienst Bestuurszaken. (2012). Leidraad voor de Opmaak van een Reguleringimpactanalyse.
- Dienst Wetsmatiging. (2011). Kwaliteitsbewaking van Regelgeving door middel van Monitoring en Evaluatie.
- Dunlop, C., & Radaelli, C. (2015). Impact Assessment in the European Union: Lessons from a Research Project.
- European Commission. Better regulation: Why and how. Retrieved from <https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how>
- European Commission. *Register of Commission Documents: List of Impact Assessments and the Accompanying Opinions of the Regulatory Scrutiny Board*. Retrieved from: <https://ec.europa.eu/transparency/regdoc/?fuseaction=ia&year=2017&serviceId=&s=Chercher>
- European Commission. (2002a). *Action Plan for Better Regulation, 5 June 2002*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l10108&from=NL>
- European Commission. (2002b). *Communication from the Commission on Impact Assessment, 5 June 2002*.
- European Commission. (2009). *Impact Assessment Guidelines*.
- European Commission. (2015a). Better Regulation "Toolbox".
- European Commission. (2015b). *Better Regulation for Better Results - An EU Agenda*. Strasbourg
- European Commission. (2015c). *Communication on the Regulatory Scrutiny Board: Mission, Tasks and Staff, 19 May 2015*.
- European Commission. (2017). *Better Regulation Guidelines*.
- European Commission. (2021a). *Impact Assessment Accompanying the document Proposal for a council regulation establishing the Joint Undertakings under Horizon Europe EU-Africa Global Health Partnership*.
- European Commission. (2021b). *Impact Assessment Accompanying the document Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in*

*matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).*

European Commission. (2021c). *Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Regulation (EU) No 347/2013.*

Farrow, S., & Copeland, C. (2003). Evaluating central regulatory institutions. Paper presented to the OECD Expert Meeting on Regulatory Performance: Ex-Post Evaluation of Regulatory Policies. In: OECD. Paris.

Golberg, E. (2018). "Better Regulation": European Union Style. *Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Associate Working Paper Series, 98.*

Højlund, S. (2015). Evaluation in the European Commission. *European Journal of Risk Regulation, 6(1).*

Impact Assessment Institute. (2017). A Year and a Half of the Better Regulation Agenda: What Happened?

Judge, A., & Thomson, R. (2019). The responsiveness of legislative actors to stakeholders' demands in the European Union. *Journal of European Public Policy, 26(5), 676-695.*

Kenniscel Wetsmatiging. RIA-systemen in andere landen.

Kenniscel Wetsmatiging. (2003). *Kenmerken van goede regelgeving.*

Kenniscel Wetsmatiging. (2004). Wegwijs in Reguleringsimpactanalyse.

Kirkpatrick, C., & Parker, D. (2007). Regulatory Impact Assessment: Towards Better Regulation? . *The CRC Series on Competition. Regulation and Development.*

Ladegaard, P. (2005). *Improving business environments through Regulatory Impact Analysis- Opportunities and challenges for developing countries.* Paper presented at the International Conference on Reforming the Business Environment, Cairo, Egypt.

Lindgren, K., & Persson, T. (2018). Participatory governance in the European Union. In *Handbook on Participatory Governance*: Edward Elgar Publishing.

Majone, G. (1996). The rise of statutory regulation in Europe. *Regulating Europe, 47.*

Mandelkern Group. (2001). *Mandelkern Group on Better Regulation, 13 November 2001.*

Martens, L., Marneffe, W., & Popelier, P. (2019). Hervorming van de Vlaamse RIA: wordt het kind met het badwater weggegooid? *Tijdschrift voor wetgeving(3), 145-159.*

Morrall, J. (2001) *Regulatory Impact Analysis: Efficiency, Accountability, and Transparency.*, Singapore. U.S. Office of Management and Budget, Washington, DC.

OECD. Methodology of the iREG Composite Indicators.

OECD. (1997). Regulatory Impact Analysis (RIA) Inventory.

OECD. (2005). Regulatory Impact Analysis in OECD Countries: Challenges for Developing Countries.

OECD. (2010a). Better Regulation in Europe: Belgium. 25.

OECD. (2010b). *Regulatory Policy and the Road to Sustainable Growth* Retrieved from <https://www.oecd.org/regreform/policyconference/46270065.pdf>

- OECD. (2012). *Recommendation of the Council on Regulatory Policy and Governance*. Retrieved from <https://www.oecd-ilibrary.org/content/publication/9789264209022-en>
- OECD. (2018a). *Measuring Regulatory Performance*. Retrieved from <http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm>
- OECD. (2018b). *OECD Regulatory Policy Outlook 2018*. Retrieved from <https://www.oecd-ilibrary.org/content/publication/9789264303072-en>
- OECD. (2020). *Best Practice Principles for Regulatory Policy: Regulatory Impact Assessment*. Retrieved from
- OECD.Stat. (2017). *Governance at a Glance: Regulatory Governance*. Retrieved from <https://stats.oecd.org/Index.aspx?QueryId=85336>
- Oermann, M., & Schulz, W. (2019). *Assessing Policy III: Regulatory Impact Assessment*. In *The Palgrave Handbook of Methods for Media Policy Research* (pp. 575-593): Springer.
- Omzendbrief VI. 17 maart 2014 betreffende de Samenwerking met het Vlaamse Parlement, (2014).
- Omzendbrief VI. 17 mei 2019 betreffende de beleids- en regelgevingsprocessen, (2019).
- Omzendbrief VR 2014/3 betreffende de regelgevingsagenda, reguleringsimpactanalyse en compensatieregel administratieve lasten, (2014).
- Poel, K., Marneffe, W., & Van Humbeeck, P. (2016). *De Federale Regelgevingsimpactanalyse: Nood aan Hervormingen? Tijdschrift voor wetgeving*, 196-216.
- Radaelli, C. (2002). *The politics of regulatory impact analysis in the OECD countries: best practice and lesson-drawing*.
- Radaelli, C. (2004). *The diffusion of regulatory impact analysis—Best practice or lesson-drawing? European Journal of Political Research*, 43(5), 723-747.
- Radaelli, C. (2018). *Halfway Through the Better Regulation Strategy of the Juncker Commission: What Does the Evidence Say. Journal of Common Market Studies*, 56, 85-95.
- Radaelli, C. M. (2004). *Getting to grips with quality in the diffusion of regulatory impact assessment in Europe. Public Money and Management*, 24(5), 271-276.
- Regulatory Scrutiny Board. (2017). *Annual Report 2017*.
- Regulatory Scrutiny Board. (2020). *Annual Report 2020*.
- RegWatchEurope. Retrieved from <https://www.regwatcheurope.eu/>
- RegWatchEurope. (2020a). *Further Development of Regulatory Oversight at EU-Level*.
- RegWatchEurope. (2020b). *Robust Impact Assessment: Practical Experiences from RegWatchEurope Members*.
- Renda, A. (2006). *Impact Assessment in the EU: The State of the Art and the Art of the State*.
- Renda, A. (2016). *From Impact Assessment to the Policy Cycle: Drawing Lessons from the EU's Better-Regulation Agenda. The School of Public Policy*, 9(33).
- Schout, A., & Schwieter, C. (2017). *Two Decades of Better Regulation in the EU Commission - Towards Evidence-Based Policymaking*.
- SERV. (2006a). *Reguleringsimpactanalyse in Vlaanderen. Evaluatie en Aanbevelingen*. . 35.

- SERV. (2006b). Reguleringsimpactanalyse in Vlaanderen: Evaluatie en Aanbevelingen.
- SERV. (2019). Advies Bestuurlijke Beleidsnota's 2019-2024.
- Staronova, K. (2010). Regulatory Impact Assessment: Formal Institutionalization and Practice. *Journal of Public Policy*.
- Steunpunt Bestuurlijke Vernieuwing. (2019). Overheden in Vlaanderen in Beeld 2019.
- UNIZO. (2019). Dossier administratieve vereenvoudiging.
- Van Humbeeck, P. (2006). Beter Bestuur in Vlaanderen: boeken we voldoende vooruitgang. *Vlaams Tijdschrift voor Overheidsmanagement*, 11(2), 40-49.
- Van Humbeeck, P. (2006). Maken we goede wetgeving? Benchmarking van Vlaanderen.
- Van Humbeeck, P. (2012). Regulatory Impact Analysis in Flanders and Belgium: policy and trends.
- Visaggio, M. (2018). Ria System Evaluation by Means of Composite Indicators. *Journal of Economics and Economic Education Research*, 19(3), 1-19.
- Vlaams Parlement. (2021a). *Ontwerp van decreet tot instemming met de overeenkomst tussen de regering van het Koninkrijk België en de regering van de Republiek Benin betreffende het luchtvervoer, ondertekend te Cotonou op 9 januari 2018.*
- Vlaams Parlement. (2021b). *Ontwerp van decreet tot instemming met de overeenkomst tussen de regering van het Koninkrijk België en de regering van de Republiek Ivoorkust betreffende het luchtvervoer, ondertekend te Abidjan op 25 oktober 2017.*
- Vlaams Parlement. (2021c). *Ontwerp van decreet tot wijziging van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid en de Vlaamse Codex Ruimtelijke Ordening, wat betreft de opheffing van de Vlaamse Hoge Handhavingsraad voor Ruimte en Milieu en de overheveling van taken inzake omgevingshandhaving.*
- Vlaams Parlement. (2021d). *Ontwerp van decreet tot wijziging van het decreet van 5 april 1995 houdende algemene bepalingen inzake milieubeleid en het decreet van 23 december 2011 betreffende het duurzaam beheer van materiaalstromen en afvalstoffen.*
- Vlaamse Overheid. (2015). *Stroomschema voor Opmaak van Regelgeving.*
- Vlaamse Overheid. (2017a). Witboek Open en Wendbare Overheid.
- Vlaamse Overheid. (2017b). *Witboek open en wendbare overheid.* Retrieved from <https://www.vlaanderen.be/publicaties/witboek-open-en-wendbare-overheid>
- Vlaamse Regering. (2006). Vlaanderen in actie: Een sociaal-economische impuls voor Vlaanderen.
- Vlaamse Regering. (2009). *Beleidsnota Bestuurszaken 2009-2014.*
- Voermans, W. (2017). Legislation and regulation. *Draft for the Handbook of Legislation* (eds. H. Xanthaki & U. Karpen).
- Wegrich, K. (2011). 29 Regulatory impact assessment: ambition, design and politics. *Handbook on the Politics of Regulation*, 397.
- World Bank. (2010). *Regulatory Quality and Competition Policy*
- World Bank Group. (2017). Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessment.
- World Bank Group. (2018). *Global Indicators of Regulatory Governance.*



