

BEST PRACTICES IN REGULATORY IMPACT ANALYSIS: A REVIEW OF THE FLEMISH REGION IN BELGIUM

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Abstract

In this paper, we describe the Flemish RIA-system and assess the quality of the RIAs that have been produced in Flanders since the introduction of RIA on 1 January 2005. The results show that there are some examples of good RIAs, but in general, RIA-quality is poor to very poor. A major cause seems to be that too often RIAs are prepared only after a new regulation has been developed. This means that most RIAs have little or no influence on decision-making.

We compare our results with available RIA-assessments in other countries. One conclusion is that RIA takes time to change decision-making habits and policy cultures. Therefore, the poor record of RIA quality in Flanders is not surprising. RIA has been introduced in Flanders only very recently. Another conclusion is that many other countries face similar difficulties with RIA.

We look for solutions by reviewing international trends and developments in RIA. We recommend that in Flanders priority should be given to measures that (1) promote political leadership for RIA, (2) remove the negative connotation around RIA, (3) introduce a regulatory agenda, (4) reinforce the transparency of the RIA system, (5) better target RIA efforts, (6) strengthen the responsibility of departments and build RIA capacity, (7) promote Flemish RIAs for draft EU-directives and (8) give a more prominent role to Parliament. Several of these recommendations have been taken up in a recent motion that was approved by the Flemish Parliament on 31 January 2007.

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1. INTRODUCTION

1. Regulatory Impact Analysis is a key instrument for improving regulatory quality. It is the tool whose importance in better regulation policies has grown the most over the last five years in the EU-countries¹. Today, RIA is widely spread among OECD member states and is increasingly introduced in many other countries².

2. This is no coincidence. RIA plays a pivotal role in the achievement of good regulation³. There is nearly universal agreement that RIA, when it is done well, improves the cost effectiveness of regulatory decisions, reduces the number of low-quality and unnecessary regulations, improves the transparency of decisions, and enhances consultation and participation of affected groups⁴.

3. The added value of RIA in the regulatory process is threefold: RIA is a method of systematically and consistently examining potential impacts arising from government action. It aims to influence policy makers to adopt the most efficient and effective regulatory options, using evidence-based techniques to justify the best option. Secondly, RIA is a key instrument in the communication between government, businesses and citizens. It aims to increase the transparency of the regulatory process, foster the consultation of stakeholders and improve the justification of regulatory solutions. Thirdly, by requiring policy makers to look beyond the traditional policy boundaries of a department and examine positive and negative effects on other policy areas, RIA is also a tool for policy coherence. It aims to promote a 'whole of the government' approach by braking down vertical silos and promoting horizontal thinking.

4. Institutions and think tanks such as the OECD have been promoting the use of RIA for a long time. As early as 1995, RIA was part of the OECD Recommendations for Improving the Quality of Government Regulation⁵. In the updated OECD Recommendation on Regulatory Quality and Performance of 28 April 2005, the importance of RIA has been stressed even more. In this Recommendation, OECD member states made commitments to:

- 'assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment';
- 'integrate RIA into the development, review, and revision of significant regulations';
- 'support RIA with training programmes and with ex-post evaluation to monitor quality and compliance'; and
- 'ensure that RIA plays a key role in improving the quality of regulation, and is conducted in a timely, clear and transparent manner'⁶.

5. On 1 January 2005 the Flanders Region in Belgium joined many other jurisdictions and implemented a RIA-system. In this paper⁷, we describe and assess the Flemish RIA system. Section 2 gives

¹ Radaelli (2004b).

² See, for example, Jacobs (2006), Kirkpatrick and Parker (2005).

³ See OECD (1995), OECD (2006a).

⁴ Jacobs (2004).

⁵ OECD (1995).

⁶ OECD (2005a).

⁷ A short version of this paper was presented as a room document at the meeting of the OECD-Group on Regulatory Policy of 7-8 December 2006 in Paris. The assessment of the RIA-quality in Flanders has been published by the Social-Economic Council of Flanders on 22 November 2006 (see SERV, 2006a).

a brief review of main steps in the developments of a regulatory management system in Flanders. In section 3, we assess the Flemish RIA-system and the quality of the RIAs that have been produced since 1 January 2005. Section 4 provides an international perspective on RIA to allow for a comparison of the results for Flanders with available RIA-assessments in other countries. In the final section, we offer a set of recommendations to improve the Flemish RIA system.

2. REGULATORY MANAGEMENT IN FLANDERS

2.1. The Flemish Regulatory State

4. From 1830 to 1970, Belgium was a unitary, centralist state with one parliament and one government. Since 1970, in a series of state reforms, the Belgian state is gradually transformed from a unitary into a federal state. In a federal state political decision-making is decentralized. Legislative powers no longer lay with the federal government and federal parliament alone. The regional governments and parliaments in (from north to south) the Flemish Region, the Brussels-Capital Region and the Walloon Region each have the power to make primary and secondary legislation. Regional legislation is *not subordinate* to federal laws, as the Belgian state and the regions have different sets of powers and share the same level of authority.

5. The *regional* parliaments and governments have the exclusive competence over important policy areas such as economic, employment and energy policy, science and research policy, environment and water policy, housing and urban planning, public works and transport, agriculture, health care and education. The powers of the *federal* state have become more and more residuary, although they remain important. They now lay in foreign affairs, defence, justice, (most part of) taxation, social security, police, and other matters for which it has (for the moment) been decided that it is necessary or best that they remain organized at the federal level, e.g. price regulation, competition regulation, certain aspects of energy supply, ...

7. In the '80 and '90s, there was a rapid rise of the Flemish regulatory state. Among the complex reasons for this regulatory expansion, two are particularly important⁸. As in all countries, law-making was itself considered a confirmation of the existence of a genuinely independent nation. Moreover, strong incentives to hasty law-making were linked to the fact that powers remained within the federal government until the region regulated them. A second reason for the expansion of the Flemish regulatory state was linked to the EU legal and regulatory efforts to build the European single market in the 1980s and 1990s. As seen in many other European jurisdictions, the transposition of EU laws was frequently accompanied by "gold plating", adding extra regulatory requirements to the EU regulations and Directives, while blaming the EU for the regulations.

2.2. A brief history of regulatory management in Flanders

6. Compared to most OECD countries, Flanders only recently started to build a regulatory management system (see box 1). At the time some leading countries introduced a regulatory policy in the late '70s and early '80s, Flanders didn't even exist as an important legislative region. It was not until 1980 and especially 1988-1989 that the legal powers of Flanders were substantially expanded as a result of state reform.

8. By the mid 1990s, there was a growing concern and discomfort with the quantity and quality of the enormous amount of regulations that had been created in a relative short period. There was a perception

⁸ Cordova-Novion and Jacobs (2004).

in Flanders that legal quality deteriorated and the regulatory burden increased, eroding competitiveness and reducing the effectiveness of public intervention.

9. In the '90s these problems were tackled by ad hoc working groups and research commissions. The result was incremental improvement⁹. Structural and durable improvements in the quality of regulations were not achieved. The few regulatory quality mechanisms in place were ineffective.

10. Following OECD recommendations on regulatory quality, the Social and Economic Council of Flanders (SERV) published in 1997 and 1998 a series of reports and recommendations for the Flemish government to start a process of regulatory management. After the elections of 1999, these proposals were taken up. A year later, on 25 July 2000, the Flemish government approved a "general framework for the simplification of regulations, procedures and rules" containing 13 actions related to simplification and a plan to develop a central institution with a "mission is to build and implement a regulatory management system". This focus on institutional capacities was a major break from previous policies. The new approach led on the one hand to the adoption of a series of regulatory management action plans (2001, 2002-2003, 2003-2004, 2005), with a lot of ex post projects for administrative simplification and codification of regulations. On the other hand, the government created in 2001 a regulatory management unit at the centre of the government ("Dienst Wetsmatiging" or "Legislative Moderation Unit") to build, promote, support and co-ordinate the regulatory policy. The unit started off in 2002 and is now composed of one head, 6 advisors and 2 administrative employees.

11. Based on the 2001 policy mandate, Flanders developed a policy organized along three tracks in three dimensions. The three tracks were administrative burdens reduction, legal simplification/codification and regulatory impact analysis. A supplementary refinement was established in 2003, when activities were organized under three dimensions: improve the quality and reduce the quantity of existing regulation (management of the stock), reform the process through which new regulation is created (management of the flow) and develop a structural regulatory policy and the accompanying management capacities and institutions (regulate the regulators).

12. A major achievement was the enactment by the government in 2003 of its eight Principles for Good Regulation (see box 2). In 2004, the Unit also developed important tools such as the administrative burden measurement tool (based on the well known standard cost model), the guidance and checklist for better forms, the integration of regulatory objectives and policies into the performance evaluations of high officials, the creation of a temporal focal point where citizens, businesses, non profit organizations and civil servants can suggest projects and ideas for cutting red tape, and the RIA system that started off 1 January 2005.

13. In 2005-2006, the government has taken further steps to strengthen the regulatory policy, such as the implementation of the RIA-system (with manuals, training, quality control...), the introduction of the 'compensation rule' for administrative burdens and the creation of regulatory management units inside each ministry from 2007 onwards.

⁹ These bodies' review methodologies were inconsistent. There were no standardized evaluation techniques or decision criteria established to conduct reviews. The commissions and working groups often had no clear mandate, no budget, and very tight deadlines. Results were, predictably, sparse.

Box 1: Overview of major steps and initiatives in Flemish regulatory policy

Year	Regulatory Policy	Regulatory Instruments	Administrative simplification
Before 1997	<ul style="list-style-type: none"> - Creation of a supportive technical law-drafting and legal advisory unit in the co-ordination department (1990). - pm¹⁰ 	<ul style="list-style-type: none"> - Guidelines for technical law-drafting – Council of State (1960, 1971, 1982, 1998); - Circular on technical law-drafting and procedures – Flemish Ministry (1982, 1995, 1997); 	<ul style="list-style-type: none"> - ‘Commission Comform’ to assess (federal) regulation on its administrative formalities (1975, 1982, 1987); - The Flemish Institute for Small Companies (VIZO) is given the task to advise and organize training on administrative simplification and co-ordination of regulations (1991); - Project ‘Auditform’ to halve the number of forms that have to be filled out by small and medium sized companies (1993); - Creation of a large number of ad hoc commissions and studies to rationalize and simplify regulations in various fields, especially for environmental legislation (1989, 1991, 1993, 1996, ...);
1997-2001	<ul style="list-style-type: none"> - Recommendations and proposals of the Social and Economic Council of Flanders (SERV) to create a system of regulatory management consistent with the highest international (OECD-) standards (1997-1998). - New Governmental Agreement for the legislative period 1999-2004 (1999), with a chapter on regulatory policies. - Approval by the Flemish government of a “general framework for the simplification of regulations, procedures and rules” (2000)¹¹ - Decision of the Flemish government to build a regulatory management system around (1) the reduction of administrative burdens (2) juridical-technical simplifications and (3) regulatory impact analysis; to work with annual follow up plans and regulatory management plans, and to create a central regulatory management unit (2001). 	<ul style="list-style-type: none"> - Introduction by decree of a mandatory child effect analysis (1997); Other forms of impact analysis for regulation were announced by various ministers in the ‘90s, but were never approved by government (e.g. SME-effect analysis, business effect analysis, environmental effect analysis, transport mobility effect analysis, gender analysis, family effect analysis, sustainable development analysis, ...); - Draft Checklist for the ex ante assessment of regulations (2000) 	<ul style="list-style-type: none"> - First Follow up report on regulatory simplification with 149 simplification projects (2000)
2002	<ul style="list-style-type: none"> - The Regulatory Management Unit becomes fully operational - First Regulatory Management Action Plan 2002-2003 		<ul style="list-style-type: none"> - Second follow up report on regulatory simplification 2000-2001 with 149 simplification projects)
2003	<ul style="list-style-type: none"> - Adoption by government of the 8 principles of good regulation - Second Regulatory Management Action Plan 2003-2004 	<ul style="list-style-type: none"> - Publication of guidance on principles of good regulation 	<ul style="list-style-type: none"> - Third follow up report on regulatory management 2002-2003
2004	<ul style="list-style-type: none"> - Formulation by government of a new 	<ul style="list-style-type: none"> - Publication of guidance and 	<ul style="list-style-type: none"> - Co-operation agreement with the

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There was a series of law proposals in the federal and Flemish Parliament on regulatory policy, but they were *never approved* (!): e.g. the proposal for the formation of a national commission for the co-ordination and simplification of regulations (1986), for deregulation (1989), for the evaluation of laws each three years (1991), for the creation of a Council for Regulations (1996), for the creation of a federal service ‘technical law drafting’ (1996), for the creation of a Law Unit in the federal Parliament (1997), for the creation of a unit for law evaluation in the federal Parliament (1998), and for the creation of a procedure for the evaluation of laws (1999).

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It contains 13 important decisions, such as “To strive for a simplification of regulations, procedures and rules in all policy fields; to give priority to administrative simplification (cutting red tape) but to realize as soon as possible a mature ‘regulatory management’, to use the principle that benefits should outweigh costs as an important basis for regulatory review, even when a full and formal cost-benefit analysis is not possible or desirable, To introduce a standardized set of core evaluation principles and methods in order to assure that assessments and evaluations have a common, coherent content, to substantially improve the regulatory process, to create a regulatory management unit as a permanent, independent division in a horizontal ministry”.

	<p>generic target for all leading public servants on deregulation and regulatory management.</p> <ul style="list-style-type: none"> - Fourth follow up report on regulatory management 2003-2004. - Expert review by Jacobs&Associates of the Flemish regulatory policy. - Publication of a memorandum by leading experts and academics, calling for a more rigorous regulatory policy. - New Governmental Agreement for the legislative period 2004-2009, with an chapter on a more rigorous regulatory policy - Parliamentary subcommittee on the quality of legislation was set up 	<p>checklist for better forms (2004)</p> <ul style="list-style-type: none"> - Publication by the services of the Flemish parliament of a manual for writing law proposals (2004). 	<p>federal government and the other regions on administrative simplification</p> <ul style="list-style-type: none"> - Creation of a temporal focal point where citizens, businesses, non profit organizations and civil servants can suggest projects and ideas for cutting red tape
2005	<ul style="list-style-type: none"> - Third Regulatory Management Action Plan (2005) - Dashboard with indicators of regulatory policy online (2005) 	<ul style="list-style-type: none"> - Formal introduction of RIA and the compensation rule for administrative burdens (1/1/2005) - Publication of RIA guidance and RIA manual - Start of basic training course in regulatory policy (2days), RIA-training courses (1/2 day), administrative measurement training (1/2 day), building better forms (1/2 day basic training, followed by 3 day-intensive training). - Revised Guidelines for technical law-drafting - Publication of a manual on negotiation and implementation of European legislation. - First evaluation by the Unit of RIA and the compensation rule for administrative burdens (end 2005) 	<ul style="list-style-type: none"> - Publication of guidance on measurement of administrative burdens - Creation of a temporal focal point where businesses can suggest projects and ideas for cutting red tape
2006	<ul style="list-style-type: none"> - Government decision to create regulatory management units inside each ministry from 2007 onwards 	<ul style="list-style-type: none"> - Modification of the RIA-quality measurements by the Unit 	<ul style="list-style-type: none"> - Creation of a central website of all mandatory forms - Creation of a temporal focal point where non profit organizations can suggest projects and ideas for cutting red tape

Box 2: The eight principles of good regulation

On 7 November 2003, the Flemish government approved the following eight “principles of good regulation”:

1. *Necessity and effectiveness.* Good regulation is regulation that is necessary and effective to reach the desired objective. Government action is necessary and effective and regulation is the best instrument among alternatives.
2. *Efficiency and balance.* Good regulation creates social welfare. It realizes the desired objective at the lowest social cost and minimizes unwanted side effects.
3. *Easy to implement and enforce.* Good regulation assures that it will have effect in real world. It is enforceable and can be implemented.
4. *Respectfulness for the law.* Good regulation respects the demands and boundaries that the law poses. It assures democratic rights.
5. *Coherence.* Good regulation is consistent. There are no overlaps or discrepancies in or between regulations. Regulations are part of a coherent whole.
6. *Simplicity, clarity and accessibility.* Good regulation is easy to understand, concrete and easy accessible for everyone that can be affected by or interested in a regulation.
7. *Investigated and consulted.* Good regulation is carefully prepared. It is based on all relevant scientific and empirical information that is available. Objectives, alternatives, content and effects have been discussed with all affected and interested parties.
8. *Continuously relevant and suitable.* Good regulation assures that the desired objectives keep being realized effectively and efficiently.

2.3. Strengths and weaknesses of Flemish Regulatory Management

14. After reviewing the achievements of Flanders and the planned further steps, Cesar Cordova-Novion and Scott Jacobs wrote in 2004: *“Flanders has moved boldly and quickly in addressing the limitations of an administrative simplification policy. In less than four years, the government has established a policy and a program of regulatory management comparable to those existing in leading countries”*¹².

15. The review has also shown, however, that there are still important weaknesses, as might be expected in the difficult area of regulatory governance. The reforms and initiatives in Flanders are relatively recent. They need time to trickle down through the administration and the political world so that citizens and businesses see concrete benefits. Cordova-Novion and Jacobs therefore concluded: *“Flanders is on the right road. No fundamental correction is needed to its compass. What is needed is a multi-year period of consolidation, sustained application, and refinement of the legal and policy reforms already on the table (...) This will require renewed engagement by the political sphere. Without political determination to move forward, the reforms already launched and yet to come will not produce the concrete benefits that are expected and needed to sustain the reforms. Investments in reform will improve governance only if reforms proceed steadily, if more attention is paid to implementation, monitoring and results, and if politicians are able to sustain support in the face of continued opposition.”*

16. The 2004 report by Cordova-Novion and Jacobs recommended Flanders to:

- Promote quality regulation by establishing regulatory units in all departments with regulatory functions;
- Clarify and streamline the rule-making process, particularly to introduce quality control mechanisms earlier, before decisions are made;
- Improve transparency by expanding mandatory public consultation with stakeholders beyond the consultative boards;
- Implement regulatory impact analysis requirements promptly and scale up the required standards rapidly;
- Improve awareness and enforcement of a requirement that departments assess alternative approaches during the policy process;
- Speed up improvement of the regulatory framework by adopting a systematic and comprehensive approach to the review of existing laws and regulations;
- Enhance communication about the regulatory policy, targeting crucial groups to sustain the reforms.

17. About 2,5 years later, the Social-Economic Council of Flanders reviewed the Flemish regulatory management system and its achievements in an international benchmarking exercise¹³. In a substantive report, Flanders is compared to European and OECD-countries on a whole range of regulatory performance indicators. The benchmarking shows that Flemish regulatory management system still fails to produce better regulatory quality and continues to have important gaps in design. The quality of regulation in Flanders is still not very competitive (see table 1) and there are remaining weaknesses in the regulatory system, especially in the transparency of the regulatory process (see box 3).

¹² Cordova-Novion and Jacobs (2004).

¹³ SERV (2007).

Table 1: Results of the benchmarking of Regulatory Quality in Flanders¹⁴

Indicator		Year	Score of Flanders (or Belgium) *				type of the benchmarking		
			-	+/-	+	++	International benchmarking Flanders	International benchmarking Belgium	Benchmarking inside Flanders
Outcome indicators									
Administrative burdens	<i>Synthetic indicator OECD (OECD)</i>	2003	-				(X)	X	
	Starting up a company (Worldbank)	2006		+/-	+			X	
	Licenses (Worldbank)	2006	-				(X)	X	
	Closing down of a company (Worldbank)	2006				++		X	
	Entrepreneurship (European Commission)	2004	-				(X)	X	
	Transport of goods (OECD)	2006	-	+/-	+	++		X	
Compliance costs	Use of 'command and control' (OECD)	2003	-				(X)	X	
Growth in number of new regulations	Number of new decrees and subordinate rules (OECD)	'97-2004	-				X		X
Consistency of regulations	Number, structure, age (SERV)	2006	-						x
Stability of regulation	Number of modifications (SERV)	'90-2006	-						X
Legal quality	Number of legal errors in drafts (Flemish Ministry)	2005	-	+/-					X
Transposition of EU directives	Number of delayed transpositions (Flemish Ministry)	2005-06	-	+/-					X
	Number of infringements (Flemish Ministry)	2005-06	-	+/-					X
Perception of regulatory quality	Survey World Economic Forum	2006	-	+/-				X	
	Survey IMD	2006	-					X	
	Surveys and studies Worldbank	2005	-					X	
	Survey Federal Planning Bureau Belgium	2005	-	+/-				X	
Impact indicators									
Competitiveness/ economic performance	Trust in government (EC-ESS)	2003-04	-				X	X	
	Quality of Institutions (EC-ESS, World Economic Forum)	2004-06	-				X	X	
	Efficiency of government (IMD)	2006	-					X	
	Performance of public administration (ECB)	2000	-					X	

* - bad; +/- moderate; + good; ++ very good

¹⁴

SERV (2007). For the methodology, consult Van Humbeeck (2006c).

Box 3: Results of the benchmarking of Regulatory Management in Flanders¹⁵

Using data from the 2006 OECD Regulatory Quality Indicators Report¹⁶, we compared the design, institutions, processes and instruments of the Flemish regulatory policy with EU and OECD countries. The results are summarized in graph 1.

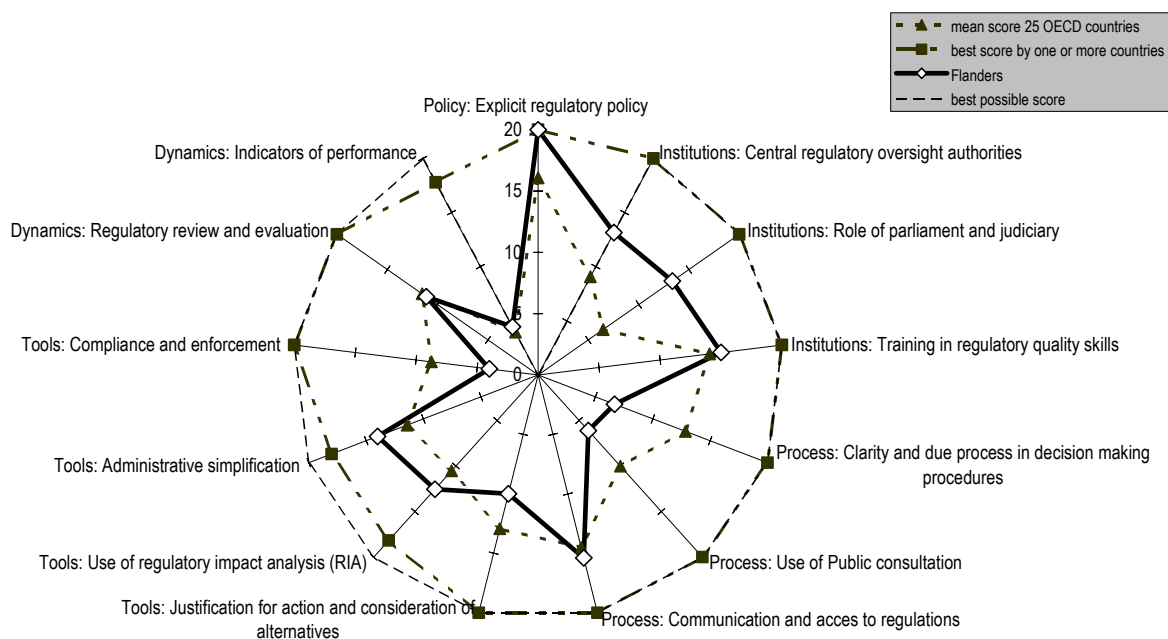
It shows that the Flemish experience offers strengths worth noting, such as a well-formulated policy and institutions (the Unit together with a minister responsible for regulatory policy), that have been able to adopt good practice instruments such as RIA and administrative burdens measurement.

Although the regulatory management unit together with SERV are sponsoring the broader view of regulatory quality, the political discourse is often still much about deregulation (cf. “legislative moderation”) and administrative simplification. As a result, Regulatory Policy seems to alternate between structural reforms with huge political and administrative impacts and ‘quick wins’ to satisfy political constituencies. Among the remaining challenges, compared to international best practices, are:

- strengthening the constituency for reform through more involvement of stakeholders, outside experts and the parliament in the regulatory policy;
- raising capacities inside and outside government (e.g. for regulatory alternatives, RIA and enforcement); and
- improving the transparency of the regulatory process.

The largest gap with international best practices is clearly related to the last point, the regulatory process: in Flanders there is still no regulatory agenda or forward planning process of regulatory activities; intra-governmental consultation and co-ordination are done in an ad hoc and informal way, often at the very end of the rule-making process; consultation comes too late in the process and often depends almost entirely on formal consultative boards, there is no requirement to consult other stakeholders who may be impacted by a proposal, etc.

Graph 1: Relative score of Flanders on 13 indicators of regulatory policy (2005)



¹⁵ SERV (forthcoming). For the methodology, consult Van Humbeeck (2006c).

¹⁶ OECD (2006b), OECD (2005b) and OECD (2005c).

3. ASSESSMENT OF RIA IN FLANDERS

3.1. The Flemish RIA system

18. The Flemish Government decided on 4 June 2004 and 17 December 2004 to introduce regulatory impact analysis in Flanders starting from 1 January 2005. Below, we summarize the main features of the current Flemish RIA system.

RIA Scope

19. RIA is mandatory in Flanders for any regulation that has an effect on citizens, businesses, and non-profit organisations. This includes all draft laws and subordinate regulations, except internal government regulation, budgetary regulation, regulation approving international and interregional conventions and agreements, regulation without substantive impact or of a purely formal nature, decisions of the Flemish Government which do not contain any regulation, and ministerial resolutions.

20. Both the RIA guide and the RIA manual¹⁷ emphasise that a RIA should be proportional. This means that the scope as well as the depth of a RIA must be proportionate with the importance of the regulation and the expected extent of the effects. There is no quantitative threshold.

RIA process

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

22. The RIA guide and the RIA manual further stress that RIA is a team effort. *'The execution of a RIA will seldom be the work of just one person. Regulatory impact analysis is best carried out by the project team which is preparing the regulation. The contact person for regulatory management or the RIA co-ordinator in your department can help you here.'* Both documents also point to the importance of consultation with stakeholders and other departments.

23. In addition, the RIA-procedure (see nr. 25 below) includes support and quality control by the central Regulatory Management Unit. This Unit also has the task of supporting the RIA system by publishing manuals, organising training courses, developing datacollection and data exchange, and encouraging each department to appoint at least one RIA co-ordinator. The responsibility for the content of a RIA in Flanders however lies with the person or agency that prepares the new regulation. The final responsibility lies with the minister who submits the draft regulation to the Flemish Government.

RIA product

24. The RIA process, analysis and consultation must be documented in a RIA product or document. Box 4 summarizes the core elements of a RIA document in Flanders.

¹⁷ Dienst Wetsmatiging (2004a) en 2004b).

Box 4: Core elements in a Flemish RIA

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

RIA procedure

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

Box 5: Formal procedural requirements for RIA

<i>Formal procedural step</i>	<i>Content</i>
RIA advice from the Regulatory Management Unit	The Unit must give an advise on the draft version of the RIA before the regulation is put on the agenda of the Flemish government. The advice is part of the legislative advice which also includes the technical law drafting advice and the plain language advice.
RIA paragraph in the memorandum to the Flemish government	Each memorandum to the Flemish Government which accompanies a draft regulation for approval must include a RIA paragraph. This paragraph contains either a short summary of the RIA which is enclosed in annex, or a statement explaining why a RIA has not been prepared with respect to the scope of the RIA-requirements.
Control by the Chancery	The Chancery checks whether a RIA paragraph is included in the memorandum to the Flemish government. If the memorandum does not contain the required RIA paragraph, the regulation cannot be put on the agenda of the government.
Control by the Unit	The Unit controls the quality of the final RIA prior to the discussion of the draft regulation by the Flemish government ¹⁸ . The minister responsible for regulatory policy is informed of the results of the quality control so that they can be taken into account at the meeting of the Flemish government.
Addition to the regulatory file	Once the RIA has been approved by the Flemish Government, it is part of the regulatory file. This means that the RIA, together with the regulation and the explanatory memorandum, must be handed over to the advisory councils, the state council, parliament etc.

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This ex ante quality assessment was not planned for in the RIA guidance. According to the guidance, the Unit should only control final RIAs ex post and randomly and report annually to the Flemish government and the Flemish Parliament. A more extensive quality control was only provided for 'heavy' RIA's.

3.2. Assessment of the design of the Flemish RIA system

26. The international benchmarking of Flanders (see nr. 17 and box 3 above) learns that the *design* of the Flemish RIA-system scores well compared to many other jurisdictions. This can be attributed to its broad scope, the formal authority of the RIA requirements (laid down in a government circular), the ‘soft’ benefit-cost approach that is used, the large range of effects that in principle has to be investigated, the requirement to quantify effects whenever possible, the availability of RIA guidance and training, and the RIA quality control by the central Unit. The most obvious difference with most advanced RIA-systems is again in the *process*: final RIA’s are not publicly available, results of the RIA quality controls by the central Unit are not made public, ex post reviews of RIA’s are not organized, etc.

3.3. Compliance with the formal RIA procedure

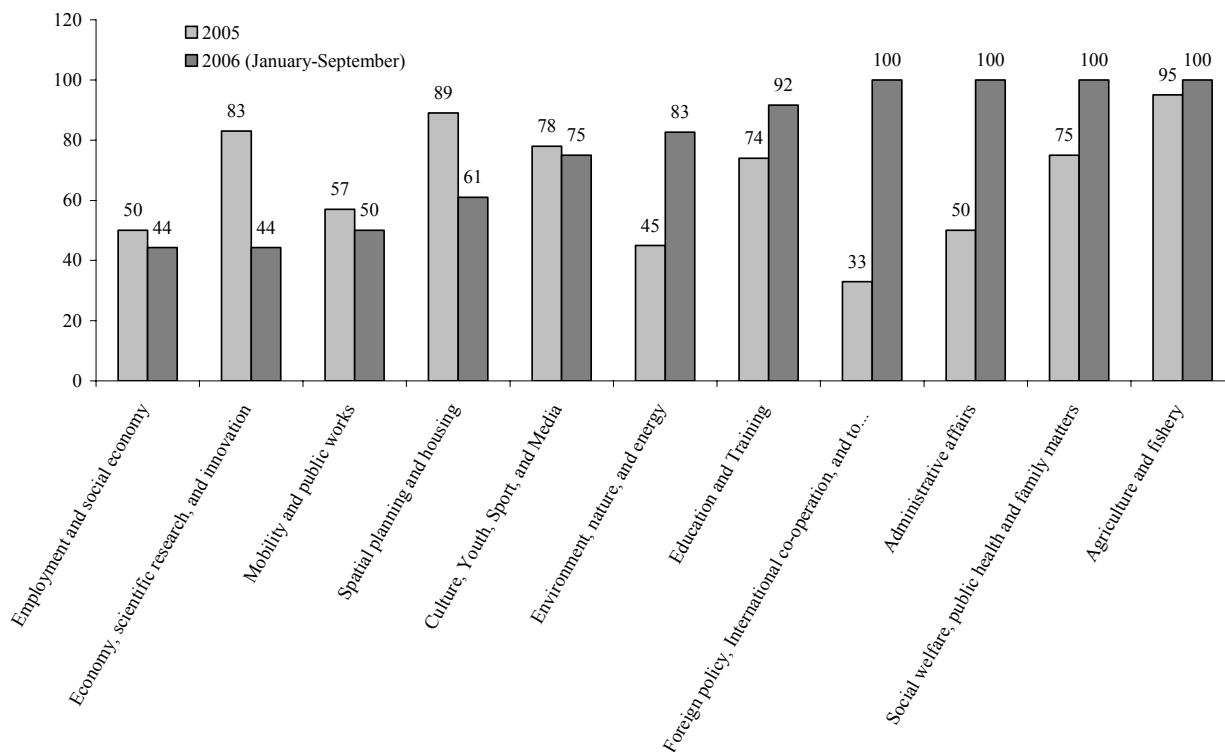
27. The Unit does not publish information on compliance with the mandatory RIA-advice. However, there is an indicator in the publicly available ‘dashboard of regulatory management’¹⁹ on compliance with the legislative advice. In addition to the RIA advice, the legislative advice also includes the plain language advice and the technical law drafting advice. The results are presented in graphs 2 and 3. They show that compliance with the legislative advice is increasing, but is still very low for several policy areas.

28. Compliance with the other steps in the formal RIA procedure are said to be high in most cases: in 2005, according to the Unit, there was a RIA in 9 out of 10 regulations where there had to be a RIA. However, an analysis of the draft regulations that were put forward to the SERV for advice presents a different picture. Between 1 January 2005 and 15 September 2006, SERV received 98 draft regulations. 61 of them should have had a RIA, but only 43 did. So a RIA was lacking for almost 1/3 of the regulations. On the other hand there were 3 regulations for which a RIA had been prepared where this was not mandatory.

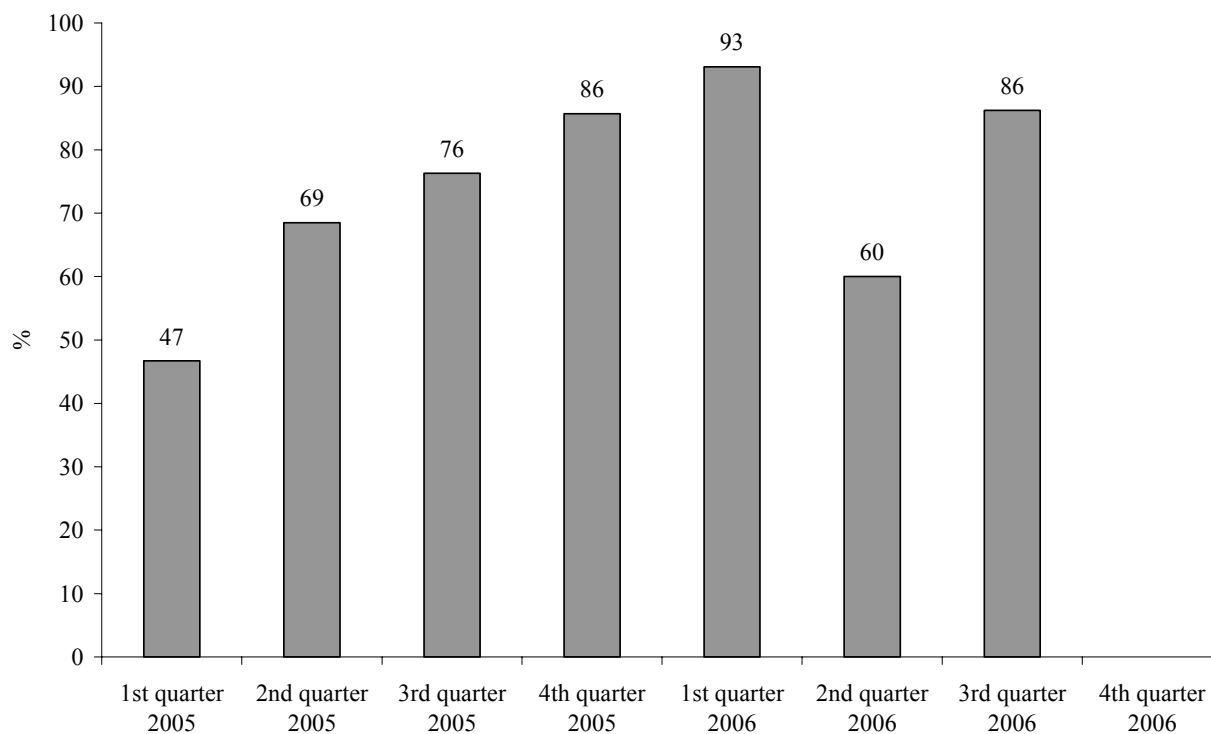
¹⁹

Available on www.wetsmatiging.be

Graph 2: Compliance with the obligatory legislative advice (2005-2006).



Graph 3: Compliance with the obligatory legislative advice (2005-2006).



3.4. RIA quality control by the Regulatory Management Unit

29. Starting from the second quarter of 2005, the central Regulatory Management Unit has scored every *final* RIA. Before 1 April 2006, the assessment was very limited. Four questions were answered:

- (1) Are the reasons and objectives of the government intervention well defined?
- (2) Does the RIA contain at least three options for comparison (zero option, chosen option, and an alternative)?
- (3) Is there a minimal description of anticipated effects?
- (4) Have the administrative burdens been measured?

If the above four questions were answered affirmatively, the RIA scored 5 points; 4 points were given if three criteria were met, and so on. A score of 0 was given if a RIA had not been prepared and the justification was incorrect (see table 2). If a RIA scored insufficiently for two aspects of this marginal quality control (a score of 3), the RIA nevertheless got the label “good”²⁰.

Table 2: RIA scoring method used by the Regulatory Management Unit (1 January 2005 – 30 March 2006)

<i>Score</i>	<i>Intrinsic control</i>
0	RIA is missing
1	Overall Insufficient
2	Insufficient for more than one aspect of the marginal quality control
3	Insufficient for one aspect of the marginal quality control
4	Sufficient
5	Excellent

30. The scoring system attracted criticism because of its limited scope²¹. It is clear that a score of 5 should be the standard score and that any lower score indicates a fundamental flaw. The opposite, that is to say that a score of 5 corresponds to a good RIA, is not correct since important features such as the relevance of the options, the quality of the assessment (have the most relevant effects been considered? has the most appropriate option been chosen?...), and the level of consultation are not considered.

31. The scores for each department from the 2nd quarter of 2005 onwards are shown in table 2. Considering the interpretation that should be given to the scores, the main conclusion is that the quality of many RIAs was very low. Box 6 summarizes the major problems that the regulatory Management Unit identified in the RIAs.

²⁰ See <http://extranet.wetsmatiging.be/> and Flemish government (2005).

²¹ For example, Van Humbeeck (2006a).

Table 1: Number and quality of the completed RIAs for each department (2nd ,3rd, and 4th quarters of 2005, scores attributed by the Regulatory Management Unit)²²

Department	2nd quarter		3rd quarter		4th quarter		Total 2nd 3rd 4th quarters	
	#	S	#	S	#	S	#	S
Services of the Minister-President	0	-	0	-	0	-	0	-
Public Administration affairs	1	3	1	2	1	5	3	3.3
Finance and Budget	1	5	0	-	0	-	1	5
Foreign policy, international co-operation and tourism	1	3	1	3	0	-	2	3
Economic policy, scientific research, and innovation	0	-	2	4	1	4	3	4
Education and Training	27	3.9	7	4.6	9	3.6	43	3.9
Healthcare and welfare	5	3.2	8	3.7	8	4.4	21	3.8
Culture, Youth, Sport and Media	1	5	4	4	2	4.5	7	4.3
Work and social economy	3	4.7	2	4.5	1	3	6	4.3
Agriculture and fishery	5	4.1	6	4.1	1	5	11	4.1
Environment, nature and energy	4	3	4	4	6	3.3	14	3.8
Transport and public works	1	4	4	4	0	-	5	4
Spatial planning and housing	1	4	0	-	7	4.4	8	4.4
Flanders	49	3.6	37	4.1	35	3.9	121	3.9

= number of RIAs; S = average score based on the criteria of table 5 on a scale from 0 to 5.

Box 6: Major quality problems in the Flemish RIAs according to the Regulatory Management Unit (2005)²³

- RIA is often prepared only after the regulation is written and therefore does not have any influence on the content of the proposed regulation.
- There is too little consideration of alternative policy instruments for regulation.
- Empirical underpinning and quantitative assessment of effects is usually limited and weak;
- Little systematic attention is paid to the economic, social, and environmental consequences of the proposed regulation;
- The trade-offs between separate effects of one option and between options are not sufficiently explicit and balanced.
- Administrative burdens are not always measured;
- The part on consultations is too concise;
- There is too little examination as to how the proposed regulation will be applied, enforced and monitored in practice.

32. Responding to the shortcomings of the scoring system, the Unit is using a new set of criteria since 1 April 2006 (see box 7). The system is clearly an improvement in some respects. It allows for a more complete and tailored quality control that takes account of the importance of the proposed regulation. On the other hand, we have some reservations. The most important one is probably that the transparency of the RIA controls has reduced drastically. The results of the RIA controls are no longer published, neither in the aggregate not for the various departments. The publicly available information is nowadays limited to the 'regulatory quality' indicator. But that indicator only shows whether or not the plain language and

²² The average scores of the RIAs are based only on files for which an RIA has been requested i.e. files which have not been given a score of 0. The total for Flanders is calculated at an individual file level. It does not always correspond to the sum of the totals for each policy field because some files have been submitted by two or more policy areas.

²³ Flemish Government (2005).

technical law drafting advice was requested or not, and whether the quality score of the RIA was above or below 50%. This means that information about the exact scores is no longer publicly available. Another remark is that the calculation of the scores seems overly detailed. As a result, major and minor quality features of a RIA are probably not distinguished sufficiently. A last comment is that today, only the quality features that are labelled 'obligatory' in the scoring system are accounted for. This means that important aspects of a RIA such as consultation, monitoring and evaluation are not considered.

Box 7: New criteria and scoring methodology for the RIA quality controls by the Regulatory Management Unit (from 1 April 2006).

<p>1. Problem definition and objectives: maximum 21 points <i>Obligatory: maximum 11 points</i></p> <ul style="list-style-type: none"> • It is clear what the exact problem is. (3/3) • The legal boundaries and freedom to regulate have been accurately described. (2/2) • It is clear what the desired results or expected effects are to tackle the problem. (2/2) • The political boundaries and freedom to regulate have been accurately described. (2/2) • The objectives or desired policy effects have been described without advanced claim on resources. (2/2) <p><i>Optional: maximum 10 points</i></p> <ul style="list-style-type: none"> • The causes of the problem have been described sufficiently. (2/2) • The reasons to regulate are understandable without background knowledge. (2/2) • The probability and risks of the problem are clear. (2/2) • It is clear whether or not this w-has been investigated. (1/1) • It is indicated how one expects the social problem to develop in the future. (1/1) • The objectives are formulated in SMART terms. (2/2) <p>2. Options: maximum 17 points <i>Obligatory: maximum 10 points</i></p> <ul style="list-style-type: none"> • All relevant options have been listed. (4/4) • The options are clear. (3/3) • The description of options is not contaminated with a description of effects. (3/3) <p><i>Optional: maximum 7 points</i></p> <ul style="list-style-type: none"> • The options are ranked according to their level of interference (communication, self-regulation, agreements, market-oriented instruments, and command and control regulation). (2/2) • Combinations of options are considered. (2/2) • Alternative policy levels are taken into account as an extra option or as a sub-option within one particular option. (1/1) • It is indicated why certain options have not been investigated further. (2/2) <p>3. Effects & choice of an option: maximum 47 points <i>Obligatory: maximum 18 points</i></p> <ul style="list-style-type: none"> • All relevant target groups and actors are listed. (4/4) • All the relevant effects for each target group are enlisted. (3/3) • The effects of the zero option is used as a baseline of comparison for the other options. (2/2) • The description of effects is well structured and comprehensive. (2/2) • The other 'sectoral' effects (child effects, effects on municipalities, etc.) have been enlisted. (3/3) • The final choice for an option is well argued. (3/3) <p><i>Optional: maximum 29 points</i></p> <ul style="list-style-type: none"> • The necessary subcategories are listed within the target groups. (2/2) • The characteristics of the target groups are described sufficiently. (3/3) • There is information on how many organisations, persons, (etc.) the target groups consist of. (2/2) • Other possible effects are quantified. (2/2) • Where possible, effects are monetized. (3/3) • Administrative burdens and the administrative, maintenance, and financial cost to the government have been calculated. (2/2) • All uncertainties and hypotheses are indicated. (3/3) • All sources used are quoted and/or the data is empirically well founded. (2/2) • The effects on sustainable development (impact on business and the economy, social cohesion, and the environment) have been analysed. (4/4) • The distributional effects are analysed. (2/2) • The indirect effects are quantified/monetized. (4/4)
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4. Implementation, enforcement, monitoring and evaluation: maximum 27 points*Obligatory: maximum 10 points*

- It is indicated how and when the regulation will be implemented and/or which additional initiatives are necessary for the actual application of the new regulation (executive orders, IT support, guidance, training...). (2/2)
- The administrative burdens (simplifications) are listed. (2/2)
- The administrative burdens (simplifications) are measured. (2/2)
- It is indicated clearly how the proposal will be enforced. (2/2)
- It is indicated clearly how the target groups will be controlled. (2/2)

Optional: maximum 17 points

- It is clearly indicated how the proposal will be communicated. (2/2)
- It is indicated how the chosen option will be developed legally and technically (need circular letters, etc.) (1/1)
- The correct terminology has been used in the area of the administrative burden. (1/1)
- The administrative burdens have been split between the different target groups. (1/1)
- All parameters have been taken into account and shown separately in the area of the administrative burden. (2/2)
- The calculations of the administrative burdens is well founded. (1/1)
- A sum of the annual administrative burdens is reported. (1/1)
- Other options for reducing administrative burdens are listed and it is argued why these have not been chosen (2/2)
- Sufficient attention is given to the feasibility of enforcement (1/1)
- The context with regard to enforcement is taken into account when developing enforcement procedures. (3/3)
- It is stated how the implementation of the regulation will be followed up and/or whether there will be an ex post evaluation. (3/3)

5. Consultation(11/11)*Optional*

- All relevant target groups are consulted in a balanced manner. (3/3)
- The target groups are consulted at an early stage. (2/2)
- The most important comments are listed. (3/3)
- An explanation is given why certain recommendations were not followed when the final decision was made. (3/3)

6. Summary (2/2)*Obligatory*

- The summary reflects the content of the RIA. (2/2)

Total: /125**3.5. Review of RIA quality by the Social-Economic Council**

33. Considering the problems with the RIA control by the Regulatory Management Unit, we carried out a separate analysis of the quality of Flemish RIAs. We investigated all 46 RIAs that were submitted to the Social-Economic Council (SERV) between 1 January 2005 and 15 September 2006 as part of a draft regulation. Other RIAs have been performed in this period, but since the RIAs are not made public, it was not possible to review them. The 46 RIAs can however be considered as the most important RIAs from a social and economic point of view (see table 3).

34. To assess the quality of the RIAs we prepared a short questionnaire, based on the Flemish RIA manual²⁴ and international examples²⁵. The questionnaire covers all core components and main quality aspects of a RIA, but is much shorter than the list of questions that is being used by the Unit. This questionnaire was then filled in by each staff member of the SERV-secretariat who had been involved in the preparation of the councils' advise on the draft regulation. They are experts in their specific policy field (e.g. innovation, employment, energy, environment, education...) and followed an internal RIA training.

²⁴ Dienst Wetsmatiging (2004a).

²⁵ Among others Radaelli (2004b) and Regulatory Policy Institute (2005).

35. Our review of RIA in Flanders is primarily a *content test*, meaning an ex post evaluation of whether RIAs contain the elements specified in the RIA requirements and what the quality is of each of those elements. In addition, the questionnaire also contains some questions that involve the ability of RIAs to facilitate the regulatory process, influence regulatory decisions and produce better regulations. A more in dept analysis of the RIA-process was not possible due to time and resource constraints. Nevertheless, we think the review gives a good *indication* of the overall quality and the main problems of the current Flemish RIAs. Below, we discuss the results of our assessment.

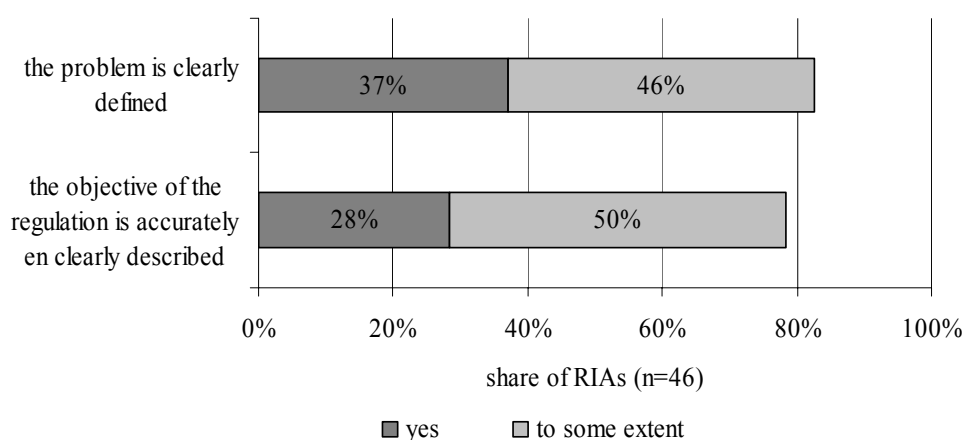
Table 2: Summary of RIAs reviewed (1 January 2005 – 15 September 2006)

Policy area	Submitted RIAs		Missing RIAs		Average length (no of pages)
	#	%	#	%	
Natural resources and energy	12	26%	2	11%	12
Environment and nature	7	15%	2	11%	13
Economics, innovation, and scientific research	7	15%	2	11%	15
Education	5	11%	4	22%	26
Infrastructure and mobility	5	11%	0	0%	7
Culture, sport, youth, media, and tourism	4	9%	3	17%	12
Wellbeing and health	1	2%	1	6%	13
Spatial planning	1	2%	1	6%	7
Finance and budget	1	2%	0	0%	3
Foreign policy	1	2%	0	0%	6
Internal affairs	1	2%	0	0%	17
Administrative matters and institutional affairs	1	2%	1	6%	12
Employment and social economics	0	0%	2	11%	
Agriculture and fishery	0	0%	0	0%	
Housing	0	0%	0	0%	
Total	46	100%	18	100%	13

Problem definition and objectives

36. Quality problems with several Flemish RIAs start already in the first section of a RIA, i.e. the problem definition and statement of the objectives of the regulation. As can be seen from graph 4, the problem was clearly defined in only 37% of the RIAs examined. The objectives of the regulation were accurately and clearly described in 28% of the RIAs. In around 20% of the cases, the problem definition and statement of the objectives of the regulation was considered totally insufficient.

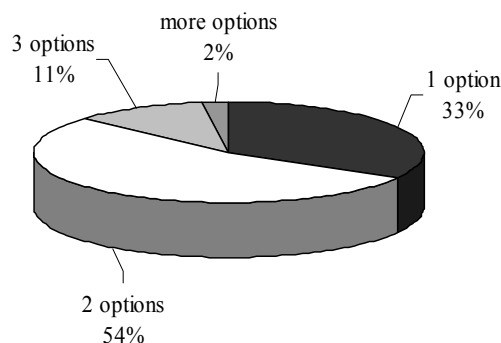
Graph 4: Problem definition and objectives in the RIAs (n=46)



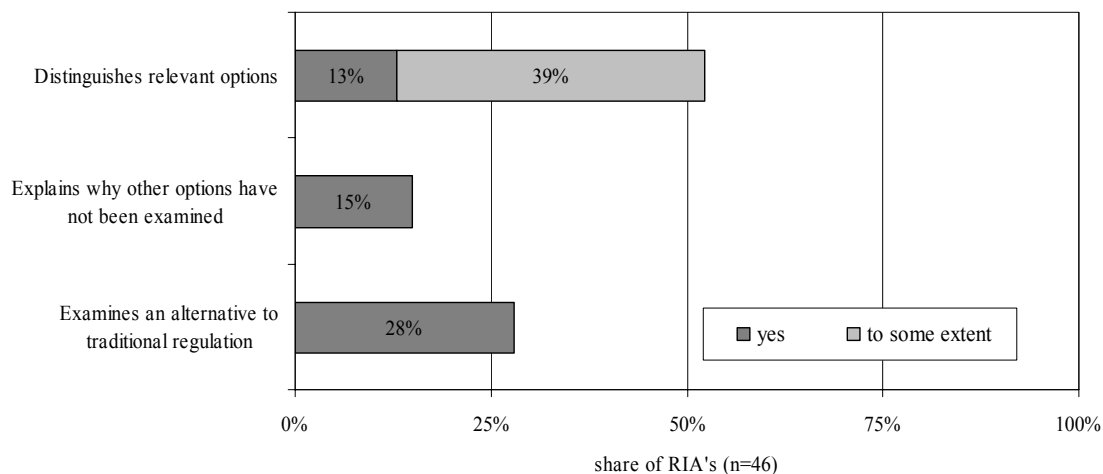
Options

37. Graph 5 shows that 1/3 of the RIAs examine only one option apart from the zero option. This means that in these RIAs there was no consideration of alternatives. About half of the RIAs examine two options apart from the zero option. Six RIAs contain more than two options apart from the zero option. But in only half of the RIAs, the options considered are *relevant* (Graph 6). The most common mistake is that the RIAs do not distinguish any real options, but the legal shape of a particular option. Relevant options in RIA are options that differ with regard to the way they influence actor behaviour (e.g. via limitations of behavioural alternatives or ‘command and control’, via financial stimuli for changing behaviour such as charges or subsidies, via information about alternative behaviour, such as awareness-raising campaigns etc.). The question of how an option is translated into a particular legal form is in the context of RIA a secondary question (e.g. does the solution has to be laid down in a law, a subordinate rule or a circular letter? Is a separate law required or should the regulation be added to an existing law?...). Such questions should not be regarded a valid criterion to distinguish options, but in Flanders they often are.

Graph 5: Number of examined options (apart from the zero option) in the RIAs (n=46)



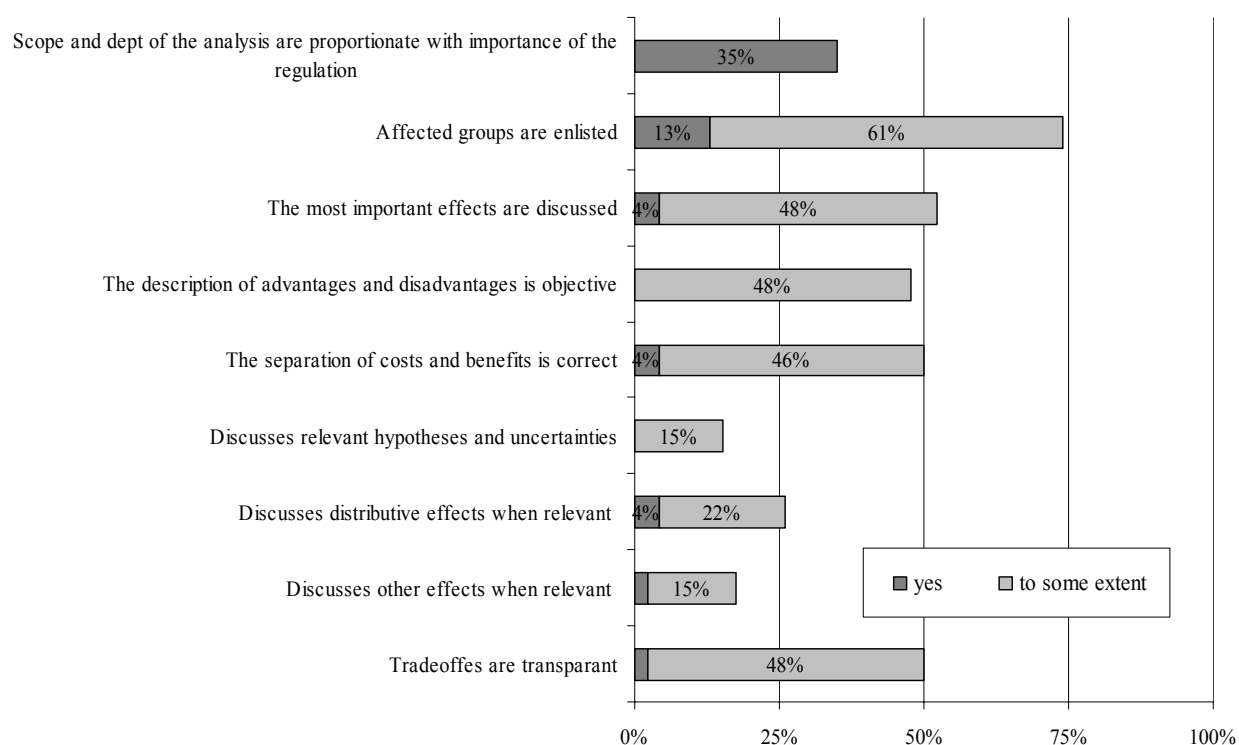
Graph 6: Relevance and nature of the examined options in the RIAs



Assessment of effects

38. The scope and depth of the assessment were considered proportionate with the anticipated importance of the regulation in 35% of the RIAs. In all other cases, it was felt the RIA was not detailed enough. Graph 7 reveals many flaws in the assessment of effects. Only about half of the RIAs – at the most – more or less satisfy important features such as discussion of the most important effects of each option, objective and balanced description of the pros and cons of each option, correct separation of costs and benefits, and transparency of the tradeoffs that have been made. The main hypotheses and uncertainties are discussed in only 17% of the RIAs. In cases where distributive effects were relevant, they were treated in only 26% of the RIAs.

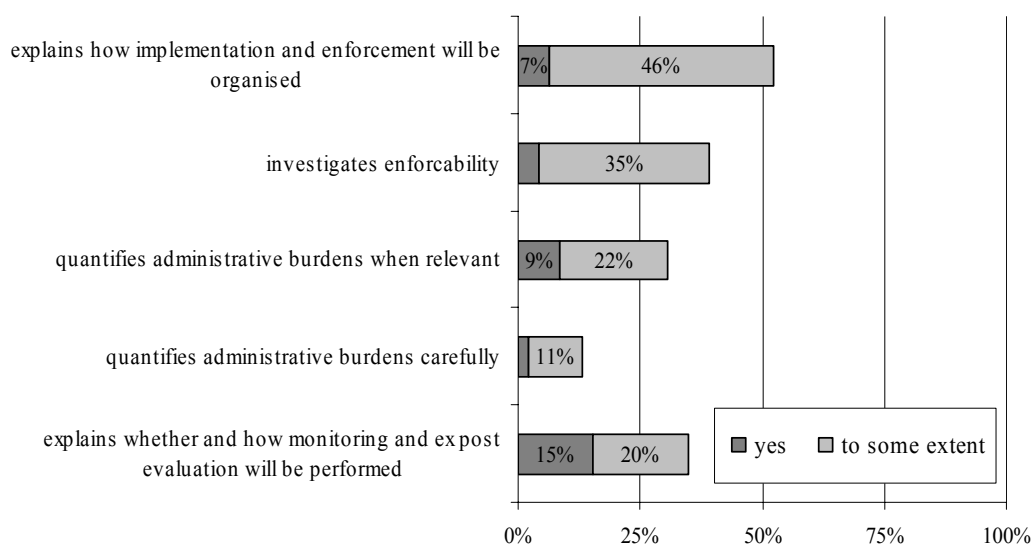
Graph 7: Assessment of effects



Implementation, enforcement and monitoring

39. Consideration in RIAs of implementation issues, enforcement and monitoring remains low. In more than half of the RIAs, the information in this part of a RIA is inadequate or beside the point (graph 8). Although a lot of effort is spent in Flanders on the measurement of administrative burdens of existing as well as new regulation, we only found a quantification of administrative burdens in about 1/3 of the RIAs where administrative burdens were considered relevant. The measurement itself was performed well in only 15% of the RIAs.

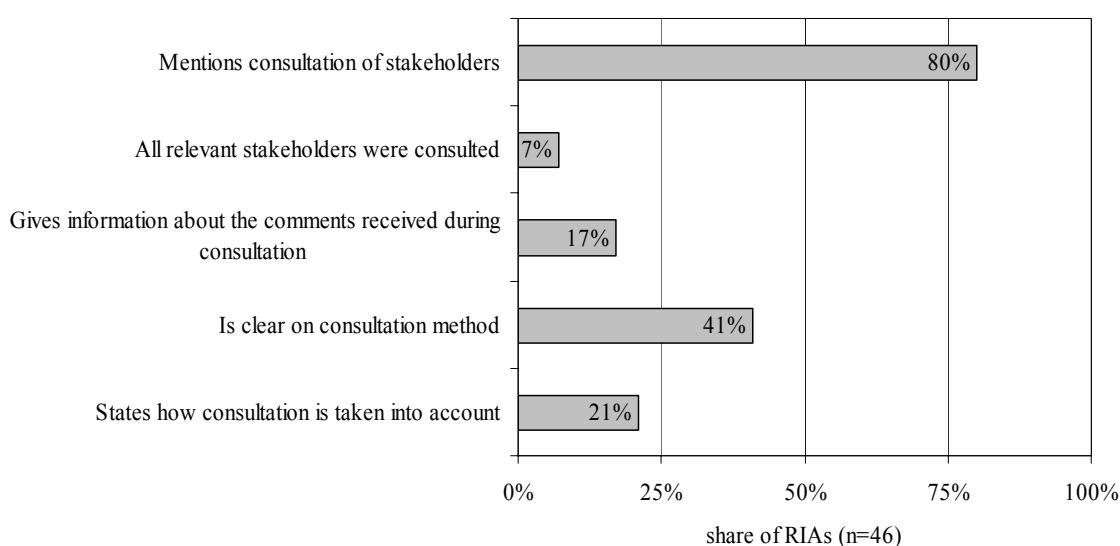
Graph 8: Implementation, enforcement and monitoring



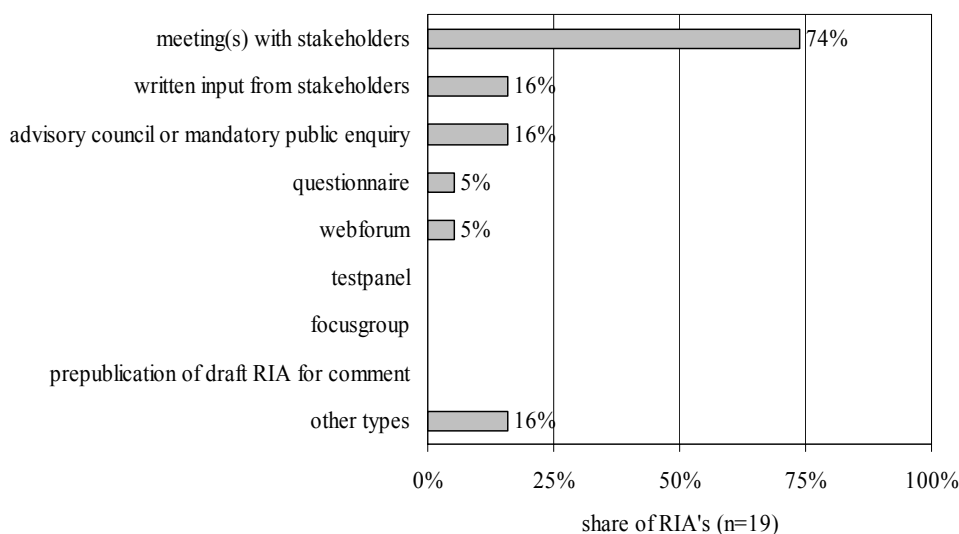
Consultation

40. 80% of the RIAs mention consultation of stakeholders in the corresponding RIA section (graph 9), but only 17% give information on the comments and remarks received during the consultation and only 1 out of 5 RIAs is clear on the extent to which the comments were taken into account. There seems to be a problem with the quality of the consultations as well, since in only 7% of the RIAs all relevant stakeholders (for the subject at hand) were consulted. One reason for this is probably that meetings with stakeholders are the predominant type of consultation that is being reported in the RIAs (graph 10). Open types of consultation are rare. It is for example striking that prepublication of a draft version of the RIA with an opportunity for the public to respond did not occur even once.

Graph 9: Consultation in the RIAs (n=46)



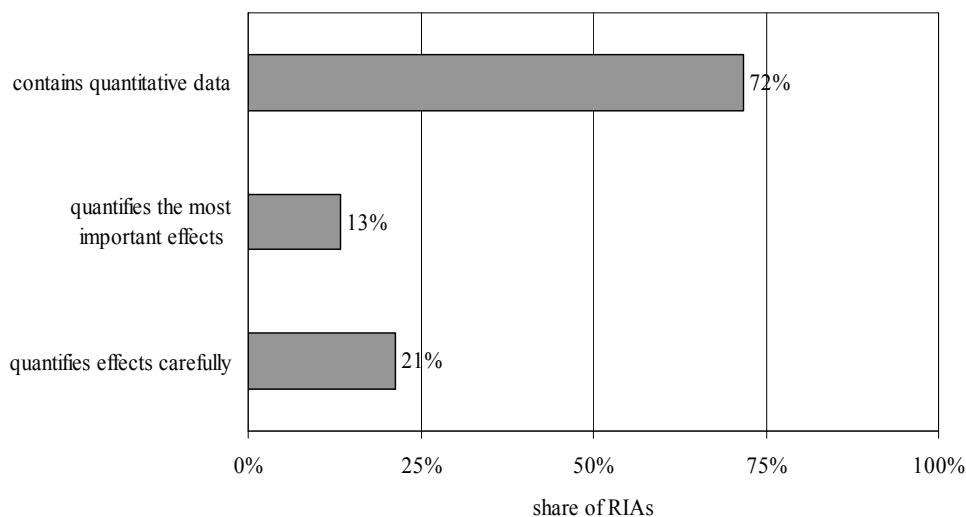
Graph 10: Manner of consultation mentioned in the RIA (n=19)



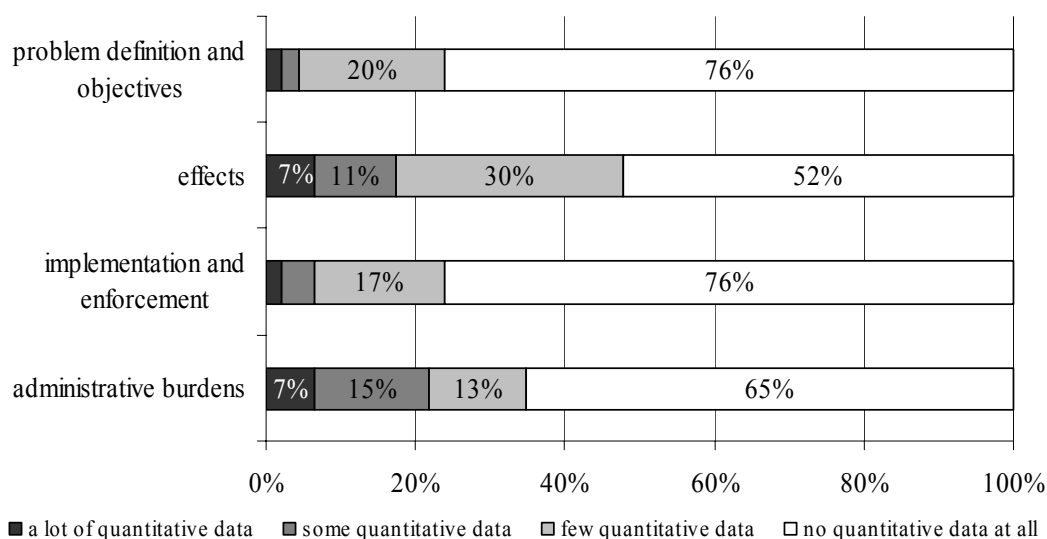
Quantification

41. The extent to which the information in the various sections of a RIA is quantified, is often a good indicator for the depth and quality of the analysis. We found that 72% of the Flemish RIAs contain some quantitative data, but in only 13% of the RIAs the most important effects were quantified. When effects have been quantified, this was done carefully in only 1 out of 5 cases (see graph 11). Figures are most common in the sections dealing with “effects” and “administrative burdens”(graph 12).

Graph 11: Extent of quantification in the RIAs (n=46)



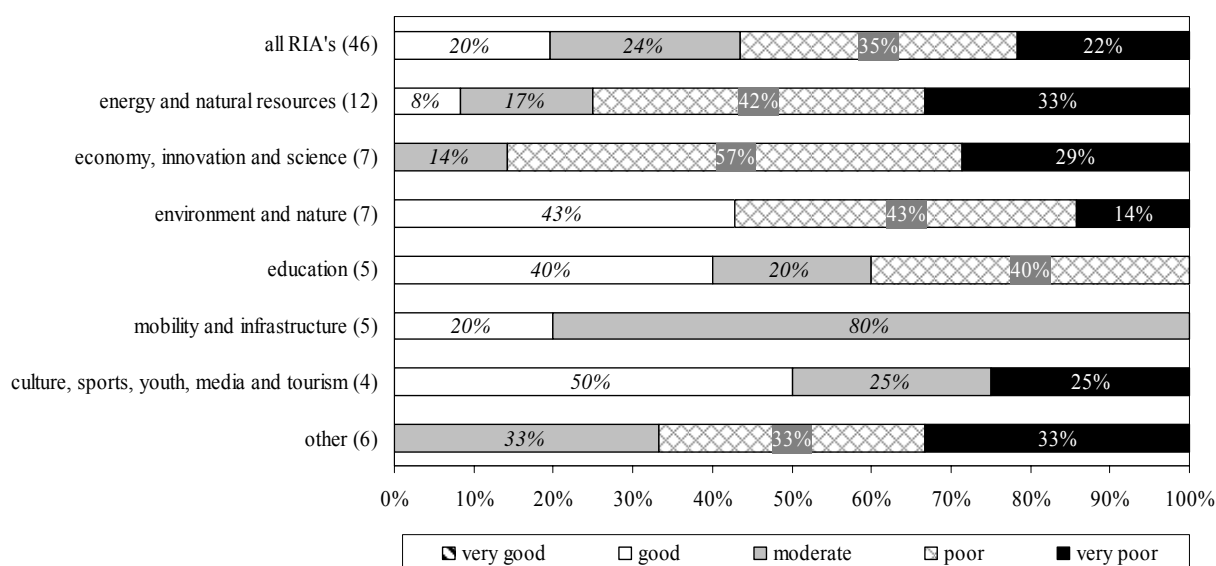
Graph 12: Quantification in the various sections of the RIAs (n=46)



Overall quality of the RIAs

42. For an overall assessment of the quality of the Flemish RIAs, we scored each RIA on a list of 20 criteria, ranging from very good to good, average, poor, and very poor (see box 8). We didn't find any "very good" RIA. 20% came out as being good, 24% was moderate and 57% poor to very poor (Graph 13). On average, RIAs in 'natural resources and energy policy' and 'economic, innovation, and scientific policy' recorded the lowest scores. Over 3/4 of the RIAs in these policy areas scored poorly to very poorly. From our data, we can see no noticeable improvement in the quality of the RIAs over time (1 january 2005 – 15 september 2006).

Graph 13: Overall quality of the RIAs



Box 8: Assessing the overall quality of the RIAs

We assessed the quality of the RIAs by answering 20 questions for each RIA. For each question, we chose between 'agree completely', 'tend to agree', 'tend to disagree', or 'disagree completely'. The answers were converted into scores of 7, 3, 1, and 0 respectively.

The scores were then added up to derive an overall score of the quality of the RIA. The following weights were attributed to the components of the RIA: Problem definition and objectives: 10%; Options: 15%; Effects: 50%; Implementation and enforcement: 10%; Consultation: 15%; Summary: 0%.

Finally, the RIAs were divided into five categories. To do this, a theoretical lower limit was defined.

* Very poor 0 to 20 pts. Lower limit: A RIA for which the answer to all questions was 'disagree completely'.

* Poor 20 to 40 pts. Lower limit: A RIA for which the answer to all questions was 'tend to disagree'.

* Average 40 to 60 pts. Lower limit: A RIA for which half of the answers was 'tend to agree' and the other half 'tend to disagree'.

* Good 60 to 100 pts. Lower limit: A RIA for which the answer to all questions was 'tend to agree'.

* Very good 100 to 140 pts. Lower limit: A RIA for which half of the answers was 'tend to agree' and the other half 'agree completely'.

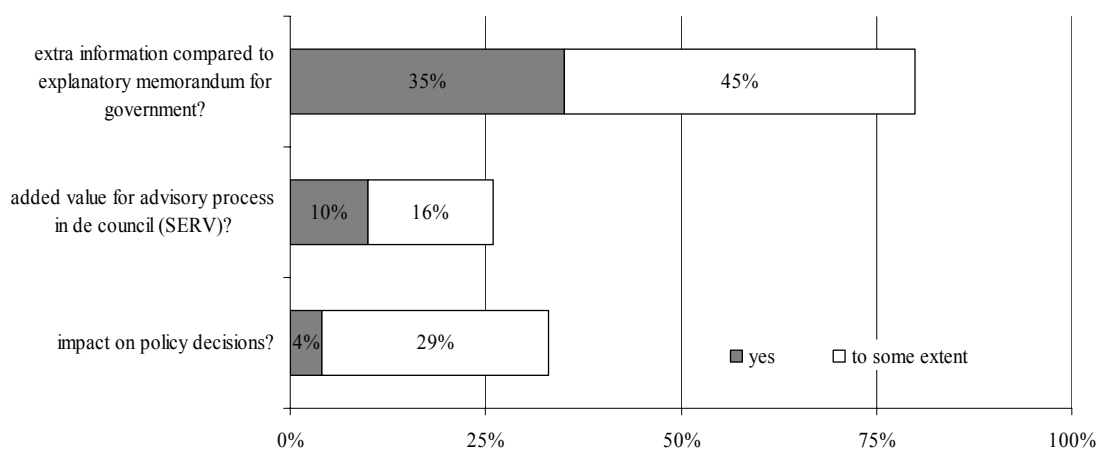
Note that the definition of the lower limit was not actually used to assign a label (for very good to very poor), but only to define the categories. Note also that scores for different questions were added up. This means a negative score for e.g. consultation could be 'compensated' by a good score for e.g. options. This means that the standard was not set too high. The 20 questions were the following:

	agree completely	tend to agree	tend to disagree	disagree completely	Not relevant
The problem is clearly defined	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The objective is accurately and clearly described	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA distinguishes the most relevant options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA states clearly which stakes and stakeholders are affected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA assesses the most important effects of each option	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA is objective and balanced when discussing the pros and cons of each option	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The separation of costs and benefits is correct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The most important effects are quantified	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The quantification is done carefully	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The most important assumptions and uncertainties are discussed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA discusses distributive effects when relevant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA discusses specific effects when relevant (e.g. impact on small entities such as SMEs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA is clear about the tradeoffs that were made	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA describes how the chosen option will be implemented and enforced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA investigates the enforceability of the chosen option	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA quantifies the administrative burdens of the chosen option when relevant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The quantification of the administrative burdens is done carefully.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The RIA mentions how the chosen option will be monitored and followed up	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The most relevant stakeholders have been adequately consulted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The summary of the RIA is clear and corresponds to the analysis in the RIA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

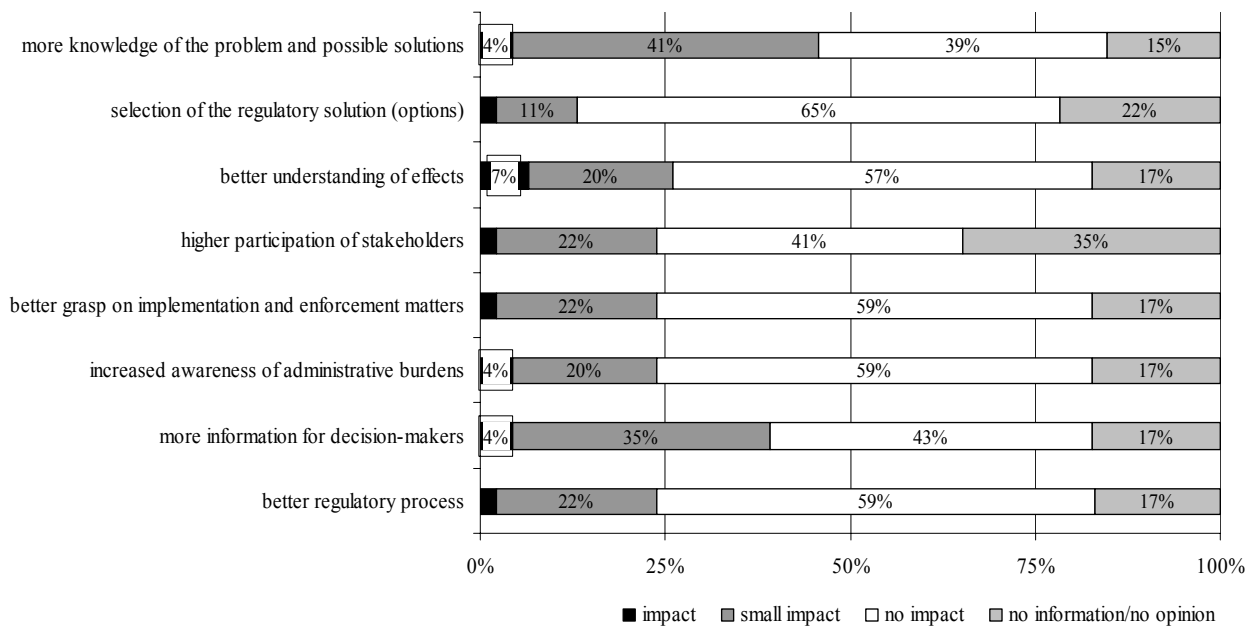
Added value of the RIAs

43. A rough indicator for the added value of the RIAs is the extent to which they contain extra information compared to the explanatory memorandum to the Flemish government. Graph 14 indicates that in only 35% of RIAs this was clearly the case. In the questionnaire for the SERV-secretariat, we also added a few questions that asked more directly about the added value of the RIAs. The estimate of the respondents is that the impact of the RIAs on policy makers is still very limited at present. The main added value in Flanders seems to be that RIAs help policy makers to gain more knowledge about the problem and possible solutions (graph 15). This limited added value does not come as a surprise. The low quality of the RIAs of course limits their usefulness, and starting with RIA only after a decision has been made is not helping either to influence the policy making.

Graph 14: Added value of the RIAs



Graph 15: Impact on the policy process



3.6. Conclusions

44. In Flanders the RIA-procedure is not always complied with. The guidelines of the Flemish government require that each draft regulation must be accompanied by a RIA at the time of the 1st approval by the Flemish government (with a few exceptions). Since the introduction of RIA on 1 January 2005, however, an RIA was missing without appropriate justification in 1/3 of the 98 draft regulations that were put forward to the SERV for advice.

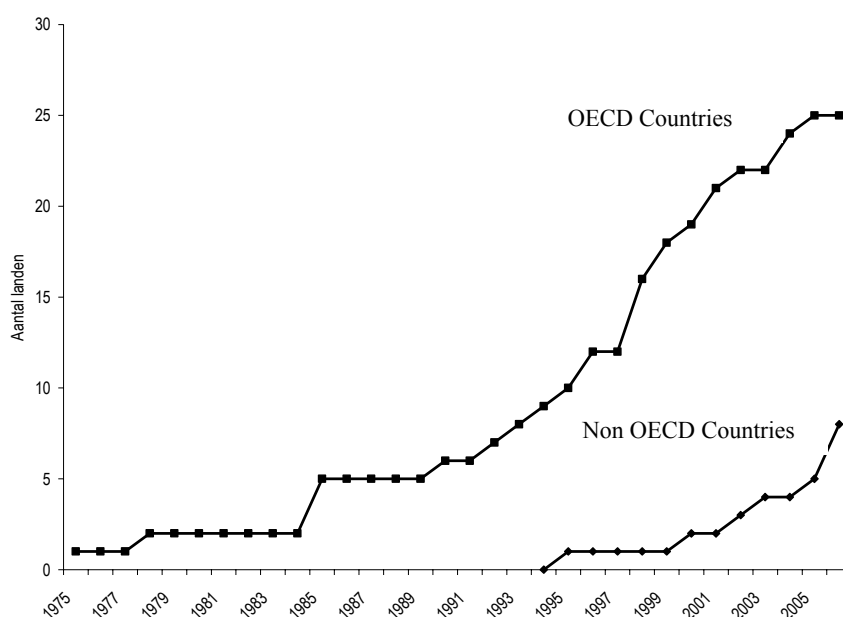
45. Our review of 46 Flemish RIAs shows that there are some examples of good RIAs but that, generally, RIA-quality leaves a lot to be desired. Almost 60% of the RIAs score from poor to very poor. Important weaknesses are a lack of consideration of *relevant* alternative options, inadequate analysis of costs and benefits of options, and few quantitative data in all sections of the RIA. A major cause seems to be the fact that most RIAs are not prepared until the proposed regulation has been written out. This means that the RIAs have little or no influence on the decision making.

4. AN INTERNATIONAL PERSPECTIVE ON RIA

46. Today, RIA is widely spread among OECD-member states and is increasingly introduced in non OECD-countries (graph 16). Many of them review their RIA-performance regularly. As in Flanders, such assessments are often carried out by agencies outside the government or the administration, by audit offices (e.g. in the United States, the United Kingdom, Canada, and Australia), advisory councils and pressure groups (e.g. Board of Swedish Industry and Commerce in Sweden, the Better Regulation Commission and the British Chamber of Commerce in the United Kingdom), and think tanks and scientific institutions (e.g. Resources for the Future and AEI Brookings Institute in the United States, the European Policy Forum, the Regulatory Policy Institute, the College of Europe and other universities, etc.).

47. Even countries that are considered to be RIA-forerunners regularly evaluate and modify their RIA-system. For example, the Productivity Commission in Australia formulated a series of proposals in 2005 to improve the performance of the Australian RIA system. In 2005, Ireland introduced a new RIA system after an initial trial period and an evaluation. In 2006, the Better Regulation Executive in the United Kingdom published a consultation document with a proposal to improve the British RIA system. At the end of 2006, the European Commission outsourced an evaluation of the European IA system to a consortium of consultants. Canada had a benchmarking of the Canadian RIA system carried out in 2006 by Jacobs&Associates. Below, we review some important lessons from RIA assessments in other countries as well as main international trends and developments in RIA.

Graph 16: Number of countries with RIA-system (1975-2006)²⁶



²⁶ Based on Jacobs (2006) and OECD (2006a).

4.1. Lessons from evaluations of RIAs in other countries

48. An examination of the results of RIA-assessments in other countries learns that our conclusions about the quality of Flemish RIAs have to be put in perspective.

49. Firstly, RIA has been introduced in Flanders only very recently. RIA however sometimes requires quite radical changes to existing decision making procedures and the prevailing policy culture to become effective. RIA is intended to provide a solution to several important shortcomings in the regulatory process.

In particular, RIA aims for:

- a better *foundation* for proposed regulation and consideration of alternatives to traditional regulation at an early stage;
- greater *transparency*, in order to improve the communication between governments and citizens, the opportunities for consultation, and the explanation for regulation;
- more *inter-administrative co-operation*, in order to assure that departments check the positive and negative effects of a new regulation beyond the borders of their own policy area.

The OECD therefore concludes: '*RIA implementation is a long-term process which necessarily requires significant cultural changes to take place throughout the government policy-making apparatus*²⁷'. RIA therefore takes time to get fully implemented and deliver better regulation.

50. Secondly, there are problems with the quality of RIAs in other countries as well. Even in countries where RIA was introduced a long time ago. Box 9 summarizes the results of some RIA evaluations in other countries. The main problems appear to correspond closely with those we found in Flanders²⁸:

- RIA is not started until late in the decision making process;
- As a result RIA has little influence on the policies;
- RIA is not detailed enough for major regulation (and vice versa);
- There is a too little consideration of alternatives for and of regulation;
- Not all relevant effects are examined;
- Effects are insufficiently quantified;
- The comparison of options is obscure or methodologically weak;
- Ex post evaluation and monitoring are insufficiently developed.

²⁷ OECD (2006).

²⁸ In countries with high standards, there is also quite some detailed methodological criticism of, for example, the discount rates, the assumptions with regard to compliance (assume 100% compliance or less?), the calculation of costs and benefits etc. It is clear that Flanders is not yet ready for that level of criticism.

Box 9: Some conclusions from RIA evaluations in other countries²⁹

Country	Year	Source	Findings
Australia	2003	Argy, S., and Johnson, M., Productivity Commission	<ul style="list-style-type: none"> ▪ The standard of analysis in many RIAs, particularly of compliance costs and small business impacts, needs to be improved.... At present RIAs usually contain a relatively brief, and typically qualitative, assessment of the compliance cost burden. ▪ There is a noticeably lower compliance rate for the more important regulatory proposals ...
	2003	Banks, G., Productivity Commission	<ul style="list-style-type: none"> ▪ In many cases RIS are being treated as an 'add-on', essentially prepared after policy decisions have already been made. In those circumstances, the Regulation Impact Statement becomes little more than a rationalisation of predetermined approaches. Its content may end up being adequate, but its role is subverted. ▪ Little time has been allowed for their preparation by bureaucrats or for their practical consideration by Ministers. It is not unusual for the Office of Regulation Review to be contacted by departments about preparing a Regulation Impact Statement only a day or two before the deadline for submitting regulatory proposals to decision-makers. ▪ Identification and consideration of alternative options to the favoured regulation is generally lacking – particularly non-regulatory or self-regulatory options – and there is often little attempt to collect the information necessary to quantify the costs and benefits of options, even as to orders of magnitude.
	2005	Banks, G., Productivity Commission	<ul style="list-style-type: none"> ▪ In 8 years since the present system was introduced, the rate of compliance with the RIS requirements has averaged 74%, being the lowest in the first year and the highest in the most recent years (92%). ▪ In many cases, RIS is prepared too late in the policy development process to be of any real assistance to decision makers. In those circumstances, it effectively becomes little more than an ex post justification for a decision already taken. ▪ RIS tend to lack adequate consideration of alternative options and consultation, both of which are critical to good decision-making. ▪ In 2004, only 20% of tabled RIS involved an attempt at quantifying compliance costs. Another 70% gave some consideration to compliance costs, without seeking to measure them. In the remaining 101% compliance costs were not even considered.
	2006	Deighton-Smith, R.	<ul style="list-style-type: none"> ▪ 14% of regulatory proposals in respect of which RIA were finalized in 2004-05 had been changed substantively during the course of the RIA process. ▪ However, regulatory reform officials reported that the degree of commitment to the RIA process as an inherent part of good regulatory processes was highly variable between policy officials in regulatory agencies and that the long awaited "cultural change" among regulators toward embracing RIA as a fundamental policy tool could not yet be said to have occurred.
Canada	2000	Regulatory Process Management Standards Review (from RAOICS)	<ul style="list-style-type: none"> ▪ Areas where improvements could be made included better prioritizing of regulatory proposals, improved capabilities to assess regulatory and non-regulatory alternatives and in conducting cost-benefit analysis, and more training.
	2004	Smart Regulation Report	<ul style="list-style-type: none"> ▪ Insignificant or low-impact proposals are subject to overly complex process requirements, while more significant proposals receive insufficient analysis. ▪ the Smart Regulation committee "often heard cases of dissatisfaction with consultation. There was concern that consultation occurred too late in the policy development process, that government consultation efforts were not coordinated or that certain stakeholders were at a disadvantage in dealing with the demands of consultation".
European Commission	2004	Lee and Kirkpatrick, University of Manchester	<ul style="list-style-type: none"> ▪ The six IA reports that have been investigated divide equally into three groups: clearly satisfactory, marginally satisfactory/unsatisfactory, and clearly unsatisfactory ▪ Examples of weaknesses are: the range of policy options investigated is relatively low; unbalanced coverage of different types of impacts, methodological weaknesses, deficiencies in the justification of the preferred option, deficiencies in the clarity and objectivity of the findings... ▪ There appears to be some correlation between the quality of the IA and the process by which they were prepared. Examples of weaknesses are: insufficient time available, limitations in de range and type of expertise, lack of transparency in the process, inadequate arrangements for consultation.
	2005	Report from the Commission "Better Lawmaking 2004,"	<ul style="list-style-type: none"> ▪ The Commission increased the number of [RIAs] completed in 2004 (29 against 21 in 2003) as well as their overall quality [but] delivery remained a problem, with fewer impact assessments completed than initially planned. ...there needs to be a more systematic application of the current methodology across Commission services and greater focus on competitiveness issues. ▪ In 2004, the number of consultations increased significantly [but] the Commission still needs to make additional efforts on feedback to respondents and...transparency.
	2005	Better Regulation Task Force, UK	<ul style="list-style-type: none"> ▪ We are aware that the number and quality of RIAs that the Commission has produced is improving. ▪ Although there is increasing awareness that considering alternatives is a vital part of good

²⁹ Based on Jacobs (2006) and other sources, see references in the table.

			<p>policymaking, not enough is known about the range of options available and where they have been used.</p> <ul style="list-style-type: none"> ▪ Some reluctance amongst officials and MEPs to consider flexible, non-legislative options. ▪ Many consultation exercises fail to meet the Commission's minimum standards and compliance is patchy both between and within Directorates General. ▪ The Commission fails to disclose how well it is meeting its own standards for consultation. ▪ Concerns about consultation fatigue have less to do with the quantity of consultation with the quality of consultation. Much of the consultation material that is released to the public is still turgid, poorly focused, and difficult to understand.
	2006	2006 Andrea Renda, Centre for European Policy Studies	<ul style="list-style-type: none"> ▪ Of the 70 extended impact assessments completed before July 2005: only 8.4% of IAs considered self regulation; only 40% quantified at least some cost, 25,3% monetized all or nearly all costs; only 33.7% quantified some benefits, 26.3% monetized some benefits; specific benefits (health, safety) almost ignored; costs and benefits are almost never compared (net benefits in 13.7% of the sample, cost-effectiveness in 8.4%); alternatives are seldom compared (Cost of each alternative compared in 16.8%); methodology is oversimplified (discount rate only in 3 IAs)... ▪ A number of problems have emerged: organizational problems (institutional conflict, exposure to third-party capture), limited consultation, insufficient training of the Commission's employees, etc. ▪ The quality of Extended Impact Assessments performed by the Commission during the first years of implementation of the new IIA model has been consistently and remarkably declining
Sweden	2004	Swedish National Audit Office	<ul style="list-style-type: none"> ▪ Inadequate knowledge about sources of regulatory burdens. ▪ Lack of clarity about roles in checking RIAs. ▪ Low standard of RIA due to a lack of quality control and sanctions; questions in the analysis chart do not give sufficient guidance or are not relevant.
	2005	Board of Swedish Industry and Commerce for Better Regulation (NNR)	<ul style="list-style-type: none"> ▪ In general, compulsory RIAs are still of inferior quality. ▪ There have been improvements for 10 of the 11 quality factors measured. Unfortunately, this is happening from embarrassingly low levels, and mostly for variables that are relatively simple to change. The paramount aspects, such as costs to businesses, are still inadequately clarified. ▪ Total costs are reported in 9% of cases in 2005, against 5% in 2004. The proportion of cases in which the costs of the proposal for an individual company are reported is 17%, 10 percentage points higher than in 2004. Only in a few cases do regulators attempt to elucidate their proposals' concrete effects on the companies concerned... ▪ In only 53% of the RIAs in 2005, alternatives to the proposal are presented (49% in 2004). ▪ Only 48% of RIAs in 2005 reported on how consultation had occurred, up from 35% in 2004.
	2005	Swedish Action Plan to reduce administrative burden for enterprises	<ul style="list-style-type: none"> ▪ Impact assessments have been criticized as often being of low quality, done at too late a stage and even not done at all. ... the Government – which takes a very serious view of this criticism – will consider how the impact assessment method can and should be improved.
Hungary	2006	Kovácsy	<ul style="list-style-type: none"> ▪ There is a lack of real impact assessment activities ▪ 21% of the RIAs that were screened was "objective"; 79% were "advertising RIA's" ▪ 15% was "holistic" in analysing effects, 85% were partial RIA's ▪ Only in 2% of the RIAs there was consideration of alternatives
United Kingdom	2004	Better Regulation Task Force. Annual report.	<ul style="list-style-type: none"> ▪ 9 out of 12 RIAs raised quality issues of concern. ▪ Some RIAs were very difficult to get hold of. ▪ Regulatory Impact Assessments are meant to describe the alternatives that have been considered, but often only one approach is considered. ▪ Despite the UK being placed among the world's leaders in better regulation and even after eight years of intense BRTF activity, the volume, complexity and costs of regulation continued to grow. ▪ We found too few examples of better regulation in principle leading to less costly regulation in practice. ▪ The quality of impact assessments needs to be improved and they need to be used earlier and more strategically to influence decision-making and have credibility with stakeholders.
	2005	Better Regulation Task Force. UK Regulatory Impact Assessments in 2004-05	<ul style="list-style-type: none"> ▪ The 'half full' view would be that tremendous progress has been made...the "half empty" view would be that nothing has substantially changed. New regulations are not seriously challenged, still less aborted, by impact assessments.
	2005	Colin Jacobs, University of Manchester and British Council	<ul style="list-style-type: none"> ▪ RIA has enjoyed remarkable success in the UK. The overall quality of RIAs has also undoubtedly improved in the view of practitioners. Consultation is considered one of the big success areas. RIA has in some cases been extremely valuable in highlighting innovative solutions to regulation. ▪ Five existing quality problems are thought to cover 90 per cent plus of the problem: (1) Unclear Objectives, (2) Lack of evidence to support case, (3) Failure to consider alternatives to regulation (4) weak consideration of monitoring/ Review needs and (5) RIA needs to be

			introduced earlier in the policy cycle.
	2006	UK National Audit Office.	<ul style="list-style-type: none"> ▪ This is our third year of evaluating the quality of RIAs and overall results have been disappointing. RIAs are often done too late, with the wrong mindset and do not cover all policy interventions. RIAs were often seen by officials as a bureaucratic task rather than being integral to the process of policy-making. ▪ The quality of RIAs in this year's sample was mixed. There were examples of good practice, with strong performance in consultation, and improved practices in assessing a range of regulatory options. The weakest area was the consideration of the level of compliance with the proposed regulation. Departments too readily assumed full compliance with insufficient analysis of the implications of non-compliance. Some RIAs included irrelevant detail and were too discursive, which obscured the key information needed to inform decision-making. In many cases, RIAs have not been used to question the need for intervention. The omission of a 'do-nothing' option and the failure to consider non-regulatory options were the most common omissions. There is a need to look beyond the implementation of the regulation. This was too often neglected or given insufficient attention.
	2006	UK National Audit Office. NAO Review of Sustainable Development in RIA	The UK Sustainable Development Strategy highlights the role the RIAs can play in appraising policies against sustainable development principles. Our review of 10 recent RIAs found that most did not handle sustainable development concerns well. Few identified all social or environmental impacts that they might have been expected to cover. Social and environmental impacts were often not analysed in sufficient depth. And the variable presentation of RIAs made it difficult to see if and how sustainable development issues had been considered.
	2006	Better Regulation Executive; RIA consultation document	<ul style="list-style-type: none"> ▪ The fundamental purpose of placing rigorous analysis at the heart of the policy making process is insufficiently recognized; ▪ Critical data and information can be hard to find in long and often discursive Regulatory Impact Assessments. In some cases, it may be missing – in particular quantified costs and benefits; ▪ Arguments and evidence are often inaccessible to the lay reader; ▪ The 65 page Guidance is often seen by policy makers as bureaucratic and hence makes it harder to embed awareness of better regulation; ▪ Regulatory Impact Assessments often duplicate information or data contained in other publications such as consultation documents; ▪ The case for 'no action' being taken is often not made sufficiently well, and the nature of the problem not spelt out as clearly as it could be; ▪ Regulatory Impact Assessments are frequently produced at the end of the policy making process when all the key decisions have been taken, rather than informing the decision making process.
United States	1996	AEI-Brookings Joint Centre for Regulatory Studies	<ul style="list-style-type: none"> ▪ Half of the adopted regulations did not pass a benefit-cost test, even after 15 years of investment in RIA
	1997	Morgenstern et al.	<ul style="list-style-type: none"> ▪ One of the clearest lessons of these case studies is the critical importance of <i>timing</i> to the usefulness of RIAs. Several case study authors mentioned the fact that many RIAs are not initiated until after the regulatory process is well underway, often after the preferred alternative has been selected. ▪ Even in cases where the RIA got off to a late start, however, the authors of all 12 of these case studies believe <i>their</i> RIA did have an effect, although often it was not as influential as it could have been. ▪ According to the authors, all the RIAs led to improvements that decreased costs, and five of the 12 introduced changes that increased benefits, although it is conceded that with multiple influences on the process, it is difficult to ascribe with certainty any specific influences to the RIA. ▪ In addition, RIAs were credited by these authors with other accomplishments. Some RIAs also promoted innovative regulatory alternatives, at least for their time.
	2004	AEI-Brookings Joint Center for Regulatory Studies	<ul style="list-style-type: none"> ▪ A significant percentage of the RIA do not provide some very basic economic information, such as information on net benefits and policy alternatives. For example, over 70% of the analyses failed to provide any quantitative information on net benefits. ▪ There is no clear trend in the quality of cost-benefit analysis across time. ▪ There is a great deal of variation in the quality of individual cost-benefit analyses.
	2006	AEI-Brookings Joint Center for Regulatory Studies	<ul style="list-style-type: none"> ▪ 20% (25 of 124) of the major rules with quantified costs and benefits fails a benefit cost test using best estimates on OMB's numbers ▪ Agencies often do not provide best estimates and ranges of benefits and costs; we are aware of only a few RIA's in which an agency has provided a probability distribution of benefits and costs. ▪ The past year, of the 21 final major rules adopted, 8 (or 38%) did not have quantified and monetised benefits and costs.

51. According to Jacobs (2006), there are two reasons for the low quality of many RIAs in different countries.

- Firstly, standards are increasing. As a result of international benchmarks and sharing of best practices for RIA, standards and expectations are rising all the time and evaluation criteria are being adjusted accordingly. This has also been the case in Flanders, where the Regulatory Management Unit has moved to more detailed assessments with a resulting drop in the recorded quality of RIAs. Indeed, higher standards lead to lower scores for RIAs.
- A second reason is that the increase in the quality of RIAs does not, according to Jacobs, show a straight upward trend in many countries, but is U-shaped. Initially, there were relatively few RIAs completed – with the support of a limited body of RIA experts – so quality was quite high. When RIA becomes more implemented and is carried out by a larger group of civil servants with less expertise, quality drops. This drop can thus be attributed to the ‘mainstreaming’ of RIA in the decision making and regulatory process. Through training, quality control, data collection and adjustments to the RIA system itself, the quality of RIAs today is gradually increasing again.

52. A third qualification to the low quality of Flemish RIAs is that RIAs should not only be judged technically or methodologically through the eyes of experts. Especially in the early years of RIA, it is often not the quality of the analyses that is the main factor for success, but the extent to which RIA increases *transparency*. If Flemish RIAs today fall short, this is a finding in and of itself, but the implication is that it is now becoming clearer that the legislation is not well prepared. If one is not able in a RIA to be clear on the objectives of a proposed regulation or explain why a certain regulation is necessary, if one cannot be clear on the possible effects of the regulation, if one cannot write anything about how one will implement or enforce the legislation and whether or not there are sufficient resources, if one has to admit that there was little or no consultation... then it is becoming obvious that a regulation is being proposed for which one does not know whether and how it will work in practice or whether the benefits will outweigh the costs. It is by means of this greater transparency that several countries (e.g. Mexico) have in a second phase managed to create political support for the interventions that are necessary. Flanders, to be sure, is still partly in the first phase.

4.2. Overview of international trends and options for improvement³⁰

53. The criticism of the quality of RIAs has not yet resulted in the RIA system being abandoned in any country. On the contrary, the OECD reports that member states are continuing to invest heavily in RIA and are gradually reaping the returns of their investments: ‘*Today, RIA has become a norm of democratic governance in modern industrialised countries. OECD member countries are continuing to invest heavily in RIA and are reaping greater returns for this investment. However, much remains to be done to cement RIA as an integral part of the policy decision-making process*³¹.’

54. The main international trends and developments in the area of RIA can be summarized in three main points:

1. The installation of RIA at the heart of the policy making;
2. The improvement of the quality of RIAs;
3. The reinforcement of the transparency of the RIA system;

³⁰ The information in this section is based largely on OECD (2006a), Jacobs (2006), and College of Europe/Jacobs and Associates (2006). The other sources are quoted in the reference list.

³¹ OECD (2006a).

Below we explain these trends and developments in more detail. From box 10, it is obvious that there is still a lot of room for Flanders to improve the RIA system in comparison with international trends and developments.

Box 10: International trends and developments in RIA and performance of Flanders

Macro-trend	Developmental recommendations	Performance of Flanders
Installation of RIA at the heart of policy making	Focus on RIA as a process instead of RIA as a method	+/-
	Start with RIA early on by <ul style="list-style-type: none"> ▪ Regulatory planning ▪ IA instead of RIA 	- -
	Use of RIA for ex post evaluation of existing regulation	-
Improvement of the quality of RIAs	Maintaining the right focus (focus on comparison of costs and benefits of options)	-
	Quality control by a central watchdog	+/-
	Strengthening responsibilities through <ul style="list-style-type: none"> ▪ Signing off RIA by a minister or senior official ▪ Incentives for civil servants ▪ Mandatory publication of final RIAs 	- +/- -
	Capacity building through <ul style="list-style-type: none"> ▪ development of RIA expertise within each department ▪ well considered co-operation with experts and consultants ▪ organising peer reviews ▪ organising RIA training courses ▪ improvement in RIA guidance ▪ organising a helpdesk ▪ ex post evaluation of RIAs 	+/- - - + +/- + -
	Networking and peer review by external institutions	+/-
	More targeting or selectivity in scope of RIAs	-
	Data collection	-
Reinforcement of the transparency of the RIA system	Linking RIA and consultation	-
	Public reports on the quality of the completed RIAs	-

+ = largely achieved +/- = partly achieved or in progress; - = not yet achieved.

4.3. Installation of RIA at the heart of the policy making

Focus on RIA as a process instead of RIA as a method

55. Starting with the objectives of RIA, one can notice an important change in recent years. The focus is now more on the value of RIA as a process rather than RIA as a method. Jacobs (2006) points out that at present, RIA is seen less as an analytical method of arriving at precise answers to quantitative questions, and more as a process of:

- asking the right questions in a structured format support a wider and more transparent policy debate;
- systematically and consistently examining selected potential impacts arising from government action or non-action;
- communicating the information to decision-makers and stakeholders.

RIA is in its contemporary use not primarily a technical method for manipulating quantitative information, although RIA does contain important analytical components that require a certain level of expertise. Rather, RIA is an extension of existing good practices in policy preparation and decision-making: '*RIA has evolved from narrow technical methods aimed at cutting costs toward more flexible and sophisticated techniques of problem-solving aimed at fostering a richer and more informed public debate about important public policy issues.*'³² In governance terms, RIA is one of the methods to encourage policy learning and social consensus. It should be regarded as an evidence-based, open and participatory technique to inform the policy debate and strive for better policy decisions and results.

Start with RIA early in the policy process

56. The for Europe influential Mandelkern report of 2001 stressed: '*RIA is an ongoing, evolutionary process that informs the political choice and is not simply the production of a one-off document*'³³. Nevertheless, one of the most stubborn problems in many countries is still the fact that the RIA process starts too late. This undermines the quality of the RIAs and restricts its influence on the policy making. Jacobs (2006) even thinks that '*the timing of RIA may be more important than the methodology employed in determining the quality of the assessment of alternatives.*' Harrington and Morgenstern (2003) write after reviewing several RIAs in the United States: '*One of the clearest lessons of these case studies is the critical importance of timing to the usefulness of RIAs. Several case study authors mentioned the fact that many RIAs are not initiated until after the regulatory process is well underway, often after the preferred alternative has been selected. In this situation an RIA obviously has difficulty being influential. Worse, it puts pressure on the analyst not to deliver bad news about benefits and costs, especially about the preferred alternative, leading to cynicism about the role of RIAs in the regulatory process. Most analysts believe the RIA should begin before the regulatory process begins, in order to develop information useful in decision making*'.

57. To avoid this problem as much as possible, different strategies are being used.

- Some countries use an mandatory *phasing* of each RIA. This means that during the RIA process itself, a preliminary RIA document has to be drawn up, and is being used for internal and external consultation prior to the drafting of the final RIA. This approach is still quite rare (Australia and United Kingdom). The Netherlands and the European Commission have abandoned their phased approach because it sometimes led to superfluous, complex, or time-consuming procedures.
- Starting too late seems to be less a problem in countries with *regulatory planning* activities. Such a regulatory planning process ensures an early public notification of planned regulatory initiatives, at a time when the proposed regulation is not yet developed and it is still possible for RIA to make a meaningful contribution to the policy development.
- Finally, the trend of *moving from RIA to IA* is another strategy to foster early planning and preparation of RIAs. In the United Kingdom for example, the Better Regulation Executive proposed to change the name 'Regulatory Impact Assessment' to 'Impact Assessment' because the former was confusing. The RIA process should start before the choice for regulation has been made, but the name 'Regulatory Impact Analysis' (RIA) suggests that an impact analysis is only necessary once a choice has been made for regulation. The British government finds the longer name inconsistent and counterproductive. The European Commission had already opted for IA instead of RIA for the same reason.

³² Jacobs (2006).

³³ Mandelkern Group on Better Regulation (2001).

Use of RIA for ex post evaluation of existing regulation

58. The RIA framework is useful for the evaluation of both new and existing regulations. Nevertheless, there are few countries which use RIA systematically for ex post evaluations of regulation (only Australia and Canada). This shows that RIA is not yet seen as a core component of each policy process. Likewise, the official RIA policy in many countries says little or nothing about the use of RIA in ex post evaluations. According to the OECD, there is plenty of room to improve the quality of ex post evaluations by using the RIA methodology. However, in most cases, this requires a more centralised approach in comparison with the ad hoc nature of many ex post evaluations.

4.4. Improvement of the quality of RIAs

Maintaining the right methodological focus

59. The focus of a RIA should be on comparing the main effects of relevant options via an integral analytical framework. Jacobs (2006) calls this *soft benefit-cost analysis* in which quantitative and qualitative ‘measurements’ for relevant economic, social, and environmental effects are analysed simultaneously in an integrated manner³⁴. Different authors and governments are warning against another trend that risks to oppose this trend. In particular, one can notice that it is increasingly expected from RIA-writers that they examine all sorts of specific impacts (on SMEs, gender, poverty, administrative burdens, etc.). This trend is not a bad thing because it means that political support for RIA is increasing and a proliferation of all sorts of separate specific tests with separate procedures, data, and hypotheses can be avoided. However, there is a risk of fragmentation and unbalanced analysis: *‘In more and more countries, use of partial analyses has actually resulted in fragmentation ..., because the larger integrated framework is not clearly defined or emphasised. Without the integrating framework, such methods do not rebalance RIA but unbalance RIA.’*³⁵

60. One of the means countries use to avoid the risk of partial analyses is the mandatory use of RIA templates. In the United Kingdom in particular, the government has recently proposed to impose the use of a standardised summary table of one page in each RIA. It is not only intended to make RIAs more user friendly and transparent, but also to maintain the correct methodological focus on costs and benefits and at the same time allow to report other important information. This had already been introduced earlier in the United States³⁶.

Quality control by a central watchdog

61. Quality control is necessary in order to reach and maintain a certain level of quality with the RIAs. As Jacobs (2006) mentions, incentives to conduct good RIA are weak and often perverse in traditional civil services, where no one was ever promoted for deciding NOT to regulate, whereas many people are promoted for regulating badly. Therefore, a best practice is still to entrust a central unit in a horizontal department with the quality control of the RIAs, although this need not be done ex ante for all

³⁴ See also the link between RIA and SIA (Sustainable Development Impact Analysis) E.g. in Dierickx-Visschers et al (2006).

³⁵ Jacobs (2006).

³⁶ Hahn and Litan (2003).

RIAs³⁷. Like with financial controls, the necessity and scope of ex ante controls should be examined carefully³⁸.

62. Experience in other countries shows that the location and authority of such a unit are important, but the real and effective execution of such a ‘challenge’ function is a different matter. That depends on the level of the RIA expertise inside such a unit, and the ‘informal’ authority as a result of its expertise or the political weight given to the controls.

Raising accountability of ministries and departments for delivering RIA quality

63. Quality control by a central watchdog has proved insufficient and not entirely effective: ‘*Having such “watchdog” agencies can make a difference, but they do not obviate the need for departments and agencies to take ownership themselves for the best practice processes embodied in a RIA*’³⁹. An important international trend is therefore raising the responsibility of ministries and departments themselves for delivering good RIAs. This is done in different ways.

- By having ministers or senior officials personally certify that RIAs meet certain minimum standards (e.g. Canada, New Zealand, and the United Kingdom). This is regarded as a good practice because it helps to strengthen the profile of RIA. The OECD writes: ‘*In the early days of RIA, it was common that RIA was considered to be a technocratic discipline suitable for analysts, economists, and other low-level drones, but not sufficiently important to come to the attention of the minister. This meant that ministers were rarely aware of the contents of RIA, and other members of the bureaucracy quickly realized that RIA was a low priority. Making ministers or high-level civil servants personally accountable for the quality of the RIAs in their departments can degenerate into mere formality, but if used properly, can increase ministerial attention to RIA.*’⁴⁰
- By creating ‘regulatory reform units’ at the level of ministries or departments. These units are responsible for the regulatory policy in the department, the provision of more focused and tailored support, and the enhancement of the quality of the RIAs in the department.
- By providing incentives for civil servants and increasing in involvement of section managers in the administration. We can refer to one of the recommendation the National Audit Office in the United made in 2006: ‘*Departments should consider how personal objectives might be used to promote the use of impact assessment and provide stronger accountability for the delivery of RIAs*’.⁴¹
- By mandatory publication of final RIAs in an online databank and a central access point on the Internet (cf. United Kingdom). According to the OECD ‘*publication of RIA documents can constitute a quality*

³⁷ We mention that it was originally the intention in Flanders that the quality of “light RIAs” would only be controlled ex post, aiming primarily at learning and adjusting the RIA system (in stead of adapting the content of the individual RIAs). An ex ante control system aiming at improving of the individual RIAs was planned only for “heavy RIAs” (Dienst Wetsmatiging, 2004b). Due to the abolition of the distinction between the heavy and light RIA, there is now an ex ante control for every RIA.

³⁸ See, for example, C.Jacobs about the situation in the United Kingdom (2005). Reference in this matter can also be made to the international macro-trend in public governance towards more responsiveness and accountability. There is a clear shift from an ex ante controls to ex post. (i.e. the control of the control is done afterwards and not in advance). There is also a shift of control on individual transactions (think of the financial stamp, advice from the IF) to control of management systems. See OECD (2005d).

³⁹ OECD (2006a).

⁴⁰ OECD (2006a).

⁴¹ NAO (2006).

*assurance mechanism Consciousness of the need to defend publicly the RIA is likely to act to encourage regulators to achieve higher analytical standards.*⁴²

- By monitoring and reporting publicly on the quality of the RIAs (see nr. 71 below).

Reinforcing the capacity and learning effects to prepare good RIAs

64. A steady international trend is the reinforcement of the capacity to prepare good RIAs:

- By developing specific RIA expertise within each department, with particular emphasis on analytical techniques and benefit/cost approaches (e.g. the departmental Better Regulation Units in the United Kingdom and Australia);
- By co-operation with experts and consultants. Outsourcing the RIA to external operators has long been regarded as a poor practice because it creates a separation between the RIA and the policy preparation. This quickly becomes an obstacle to the necessary change in the regulatory culture. More recent examples in Australia, amongst others, however show that the key question is in the relationship between the consultant and the policy makers. If the RIA consultants are involved early in the policy process and the relationship is one of dialogue and transfer of information and expertise, there is little difference with the involvement of a departmental RIA cell. In both cases, the result depends on the direct and continuous involvement between the different actors and the extent to which the RIA expertise is transferred and policy makers learn from it themselves. Involving consultants is sometimes actively promoted, especially for more detailed and technically complex RIAs (e.g. Australia and the European Commission).
- By organising peer reviews by experts. There is a tendency to make more use of peer reviews for important regulations, where the technical complexity and scientific and methodological requirements for RIA are often the highest.
- By organising RIA training courses. Organising RIA training courses has long been neglected, but has gained more emphasis in recent years. It usually concerns basic as well as tailored training packages, depending on the advance skills and needs of the RIA authors.
- By improving RIA manuals. Several RIA manuals in countries are many years old. In 2005 and 2006, various countries have however written updated and more detailed and accessible manuals for policy makers. In the new manuals, one can perceive more consideration of the RIA process (starting early, consultation, and ex post evaluation), quantifying effects, and detecting and comparing alternatives.
- By installing a helpdesk that policy makers can contact at short notice with practical questions.
- By ex post evaluation of completed RIAs. Ex post evaluation of RIAs is important for two reasons. On the one hand, knowing that the estimated effects in the RIA will be compared at a later stage with the actual effects in practice can provide a stimulus to produce better RIAs. On the other hand, ex post evaluation helps to discover systematic methodological errors and deal with them in revised or additional RIA manuals and training courses.

Closer involvement of other agencies

65. The creation of a *network* of agencies around an RIA has proved crucial for success. Radaelli (2005) gives the example of Italy, where RIA was introduced under pressure from the OECD by a small group of policy advisers and an enthusiastic minister. However, no one outside this group was actually interested in RIA. The consequence was that the momentum for RIA disappeared and implementation hardly took off at all. A 'RIA network' in the most advanced countries includes, in addition to a central

⁴²

OECD (2006a).

‘watchdog’, both agencies at political and policy level (e.g. inter ministerial task force, commissions within parliament, audit institutions etc.) and agencies from or for stakeholders (advisory councils or boards, think tanks, research agencies etc.). The trend is that these agencies are becoming more proactive, set increasing standards and monitor the quality of RIAs more intensely. This is a good thing. Radaelli (2005) says about it: *‘New policy instruments necessitate a robust network of actors. ... Different actors may have different views on the quality of RIA performed, but the sheer fact that they raise issues, make points, push for higher standards is a fundamental catalyst of policy improvement. ... In this connection, one should look favourably at the development of networks of academics and private sector think-thanks that challenge the government’s numbers.’*⁴³ A minimum condition for the development of such a network is, of course, that RIA documents are easily and publicly available.

Targeting of RIA

66. A central trend is certainly towards more selectivity and focus in the scope of RIA-systems. Selectivity does not mean creating loopholes for RIA. On the contrary, the trend is that light forms of RIA, such as in Flanders, are being applied to more and more regulations. At the same time, the quality requirements and controls in most countries are being raised noticeably for the most important regulations. The best practices suggest that RIA for important regulation would have to include quantified estimates of all major costs and benefits and more options would to be examined. This greater selectivity aims to focus resources for RIA where they can do most good. This means that purely formal criteria to set the scope of RIA must be avoided. For example, some countries where RIA was formerly limited to primary legislation (laws), are revising their policy and, in accordance with best international practice, are stressing the significance of regulations as the main criterion. Modern targeting strategies in other words use primarily estimates of the importance of the proposed regulation, even though other criteria can play a role as well⁴⁴.

67. For EU-countries, moreover, there is a trend to use RIA not only for the transposition of European regulation into national law⁴⁵, but also for the preparation of negotiations with the European Commission and other member states about new European regulation. Ferris (2006) writes: *‘There is no doubt that RIA can bring tangible benefits in terms of identifying the national impacts of EU proposals on a timely basis. In particular, it can highlight impacts that proposals may have on individual Member States that are not identified in the EU Commission’s impact assessment, which focus on aggregate impacts across, rather than within, Member States. On a wider front, RIA provides a mechanism for EU Member States to contribute to the regulatory agenda, which is of growing importance at the level of the European Union’*. In Ireland, for example, government is obliged to apply RIA to draft EU regulation and use the RIA model as the basis for its periodic reporting to parliament on European negotiations: *“In Ireland, it is a requirement that RIAs should be applied to draft EU Directives and significant EU Regulations This requirement arises from the need to gather the information needed to inform Ireland’s negotiating position. Departments are required to take account of the RIA model in compiling information notes for the Joint Parliamentary Sub-Committee on European Scrutiny”*.⁴⁶

⁴³ Colin Jacobs (2005) writes in the same sense: *‘In any case, the value of a range of stakeholders should not be underestimated and is the source of creative tension which at the minimum serves to keep the government on its toes.’*

⁴⁴ In the United States, for example, a heavy RIA is required as certain thresholds are exceeded, but also if it is a question of very innovative proposed regulation or regulation which carries a high risk of inconsistencies with existing regulation.

⁴⁵ Various case studies have shown that European directives allow considerable freedom of implementation and that RIA can be a key instrument in exploring this policy freedom and applying it thoughtfully and considerately. See, for example, IEEP (2005).

⁴⁶ Ferris (2006).

Organising data collection

68. Several countries nowadays are working on improved data collection and data quality requirements. Data collection and data processing are essential for the quality of RIAs. Facts and figures objectify the problem and make tradeoffs more transparent, therefore enhancing the credibility of the conclusions⁴⁷. Moreover there is also the danger that without a data collection policy, RIAs fall prey to 'data capture' by stakeholders.

4.5. Reinforcement of the transparency of the RIA-system

Linking RIA with consultation

69. RIA processes and consultation procedures are increasingly linked. On the one hand, consultation is an essential part of RIA. In many countries, consultation with stakeholders is the most important strategy for quality control and data collection in RIA-processes. On the other hand, RIA is becoming the cornerstone for consultation processes concerning regulation, because a RIA aims to clarify in plain language the reasons, aims, and effects of a proposed regulation (in comparison with alternatives). In many cases, it is a much more suitable basis for discussion with stakeholders and the public than the text of the law itself. For this reason, it is obligatory today in 14 of the 30 OECD countries to publish RIAs with a view to consultation⁴⁸.

70. Public consultation linked with RIA is becoming more open and targeted. More open in the sense that RIA is pushing consultation to occur sooner, more systematically, and more transparently. More targeted in the sense that the type of consultation is linked more to the features and needs of specific groups of stakeholders (cf. test panels in the European Commission, Denmark, United Kingdom, Germany, and the Netherlands and focus groups in Sweden and Australia, for example.). Experience also shows that 'consultation fatigue' has less to do with the number of consultations, but more with the quality. It is therefore important to improve consultation guidelines, make sure that the consultation material that is released to the public is concise and easy to understand, take measures to maximise the response (e.g. through planning, use of electronic tools, sufficient time to respond), and provide feedback (e.g. Canada, United States, United Kingdom, Ireland, and Sweden.)

Public reporting on RIA quality

71. In many countries, monitoring the RIA quality is still considered an internal matter of government. However, RIA quality is just like the quality of the regulations of public interest. Moreover, public reporting on the RIA quality is a means of strengthening the involvement of policy makers in the RIA. This explains the trend towards increased public reporting on RIA quality. The most far-reaching

⁴⁷ In this matter, it is probably worthwhile to say something about the criticism on quantification in RIAs. Jacobs (2006) comments: 'While there are continual concerns about over-monetization of impacts that can be legitimately presented in other metrics, this is a concern that is easily met. Mainstream benefit-cost analysis as used in RIA today in the most rigorous countries is a soft form of BCA, in which quantitative and qualitative metrics are combined and presented systematically. There is no country in which modern BCA insists on the monetization of all benefits and costs, although critics of BCA in RIA usually ignore this fact in favour of an exaggerated and theoretical version of BCA that lends itself to caricature. Even in the United States, which emphasizes quantitative analysis more than most others, the OMB reported in 2005 that "Many...major rules have important non-quantified benefits and costs, which may have been a key factor in an agency's decision to promulgate a rulemaking'.

⁴⁸ OECD (2006c).

reporting is issued in the United States. The quality assessments of individual RIAs are made public by OIRA. However, the approach that is being used most in OECD-countries is the publication of quality assessments in an annual RIA-report. The OECD writes: *'Accountability and reporting should be boosted in most RIA systems. The regular assessment and publication of performance data in relation to RIA compliance would not only increase confidence in the achievement of standards and, therefore, RIAs contribution to regulatory quality, it would also tend to encourage improved performance over time. Performance by regulator should be publicly reported at least annually'*⁴⁹.

Should RIA be established in regulation?

72. An occasional debate is the question of whether RIA would benefit from being established by a formal regulation (law). One might expect a priori that this is the case because the authority of the RIA would be strengthened. However, there is little evidence to support this hypothesis. Very few countries have chosen to establish RIA in regulation. The reason is that it is desirable for a dynamic instrument like RIA to allow for regular adjustment and improvement of the policy. In those circumstances, regulation can seem like a ball and chain. Moreover, there are other instruments that can provide the required political support and enforceability equally well (circular letters, presidential guidelines etc.). It seems therefore that there is consensus that the legal basis on which the RIA-policy rests is of less importance in comparison with many other elements that affect the quality of RIAs.

4.6. Conclusions

73. A comparison of the review of Flemish RIAs with the results of RIA assessments in other countries shows that our conclusions about the low average quality of Flemish RIA's must be qualified. Firstly, RIA has been introduced in Flanders only very recently. However, RIA requires quite a radical change to the existing operating procedure and the prevailing policy culture in Flanders, and therefore needs time and, especially, political leadership. Secondly, there are problems with the quality of RIAs in other countries as well. They correspond closely to the problems that are reported in Flanders. A third qualification is that in the early stages of RIA, RIAs must not only be judged on their quality. The added value of RIA in early years often lies more in raising the awareness of policy makers about the poor quality of regulations and the gaps in the policy and regulatory process.

74. Criticism of the quality of RIAs so far has not led to the RIA system being abandoned in any country at all. On the contrary, the OECD reports that member states are continuing to invest heavily in RIA and are gradually reaping the harvest of their investments. Countries review and adjust their RIA policy regularly to keep up with international trends and developments in RIA, and take measures to:

- install RIA at the heart of the policy making, especially by emphasising the shift from RIA as a method to RIA as a process and by measures to ensure that the RIA-process is started earlier in the policy process;
- improve the quality of RIAs, especially by maintaining the right focus on costs and benefits, quality control, awareness raising, capacity building, networking, better targeting, and data collection.
- reinforcing the transparency of the RIA system, especially by linking RIA and consultations and by active publication of RIAs.

It is clear from the discussion that there is still a large margin for Flanders to improve its RIA system in accordance with these international trends and developments.

⁴⁹ OECD (2006a).

5. RECOMMENDATIONS FOR IMPROVING THE RIA SYSTEM IN FLANDERS

75. It is obvious that measures are needed to reinforce the profile, quality, and policy impact of RIA in Flanders. The analysis of international trends and developments has generated a whole series of ideas and suggestions that seem particularly relevant to Flanders. On the other hand, it is clear that not all measures can be implemented at the same time. A phased approach to link RIA in Flanders with international best practices is likely to be desirable. We believe priority in the short term should be given to measures that:

1. Promote political leadership for RIA;
2. Remove the negative connotation around RIA;
3. Introduce a regulatory agenda;
4. Reinforce the transparency of the RIA system;
5. Better target RIA efforts;
6. Strengthen the responsibility of departments and build RIA capacity;
7. Conduct Flemish RIAs for draft EU-directives;
8. Give a more prominent role to the Flemish Parliament.

5.1. Political leadership for RIA

76. When the OECD drew up a list of key factors for successful RIA systems in 1997, ‘maximise political commitment to RIA’ was the number one: *‘To be successful in changing regulatory decisions in highly-charged political environments, the use of RIA must be supported at the highest political level. It reinforces government commitment to RIA and better quality regulation and can help to overcome opposition and inertia’*⁵⁰. We believe that in Flanders, it is necessary that the political commitment to RIA is confirmed and strengthened. Better regulation and RIA require a radical change to the existing decision making procedures and the prevailing policy culture in Flanders. Cordova-Novion and Jacobs predicted this back in 2004 after a whole series of interviews with Flemish cabinet staff and civil servants: *‘The real problem is not practical, but is cultural. As other jurisdictions experienced, difficulties and opposition will be raised by departments accustomed to few constraints on their rule-making powers. Scepticism and passive (or active) opposition will surround the RIA project and the establishment of binding horizontal procedures upon autonomous departments’*⁵¹. This means that political leadership is urgent to overcome opposition and inertia and implement the recommendations below.

5.2. Removing the negative connotations around RIA

77. In many countries, RIA was seen and used for a long time as an analytical method that was strongly inspired by ideology and geared to cut back the role of the government and regulation and reduce costs for business. As a result, there is sometimes a negative connotation around RIA in Flanders, which can be attributed to and is maintained by the slogan of the regulatory management unit *‘less rules, more simplification’*. Modern opinions on RIA stress the value of RIA as a process rather than an analytical method. It is primarily a method for promoting a broad and transparent policy debate about the objectives and content of important new regulations, via an analytical framework in which quantitative and qualitative ‘measurements’ for economic, social, and environmental effects are analysed simultaneously in an

⁵⁰ OECD (1997).

⁵¹ Cordova-Novion and Jacobs (2004).

integrated manner. We believe there is a need for initiatives and good examples to dispose of this negative connotation around RIA in Flanders and increase public support.

5.3. Introduction of a regulatory agenda

78.. One of the major challenges is to start RIA sooner in the policy making process. A regulatory agenda can be a powerful stimulus to this end. Indeed, regulatory planning through a regulatory agenda provides for early public notification on planned regulatory initiatives at a time when the proposed regulation has not yet been fully developed, leaving more opportunities for RIA to improve decision making. A regulatory agenda was announced in the policy agreement 2004-2009 of the Flemish government, but has not yet been implemented. SERV has therefore prepared in a recent advice a detailed proposal for the introduction of a regulation agenda in Flanders, largely based on the examples of the Unified Regulatory Agenda and the Annual Regulatory Plan in the United States⁵².

5.4. Reinforcement of the transparency of the RIA system

79 Transparency is key to promote the quality of RIAs. It provides ‘name, fame, and shame’, allows for peer reviews, increases the involvement of policy makers, raises responsibility for the proposed regulation, promotes public support, and makes it possible to develop a ‘RIA network’ (a network of agencies at the political and administrative level, parliament, advisory councils, research institutions, organisations of target groups, etc.). We think priorities for Flanders are:

- more openness in the RIA process through publication of draft RIAs and earlier consultation of stakeholders;
- active publication of all final RIAs on a central access point on the Internet;
- public reporting of periodic evaluations of overall RIA quality by the Regulatory Management Unit.

5.5. Targeting RIA efforts

80. When the RIA-system was originally proposed to the Flemish government, a distinction was made between a ‘heavy’ and ‘light’ RIA. But the Flemish government did not approve this distinction (perhaps for good reasons) since RIAs have to be proportional. However, the consequence in practice has been that today every RIA is rather ‘light’. For example, few efforts are made to quantify effects or compare options methodologically more correctly. This also means that there are too few examples of really good RIAs and that too little can be learnt, both within the departments and at the level of the Unit. In the short term, it is necessary for a number of planned future regulations to be selected for a ‘heavy’ RIAs. On the other hand, there have been examples of minor regulatory amendments for which a RIA was not useful. We therefore recommend more selectivity, in both directions: light RIA should be the rule; no RIAs are needed for minor regulatory proposals; and more extensive RIAs than today are necessary for important regulations.

81. We warn against formal criteria that might be used to delineate the scope of RIA. It is not the legal form of the regulation that matters, but its content. In this sense, the question of whether a proposed regulation concerns the implementation of a EU-directive for example should not be a criterion in and of itself. Various case studies show that EU-directives often provide member states with considerable freedom of implementation and that RIA can be a key instrument for dealing with this policy discretion. Greater selectivity should not become a loophole for regulations with important potential effects to escape from the RIA requirements.

⁵²

SERV (2006b)

5.6. Responsibility of the departments and reinforcement of RIA capacity

82. The responsibility for the quality of the regulation and the RIA processes, and therefore also for the quality of the RIAs, lies primarily with the departments themselves. It is therefore necessary to raise the responsiveness of the departments for good RIAs. The establishment of regulatory management units in each department in Flanders (planned this year), can undoubtedly play an important role in raising awareness and developing specific RIA expertise. But there are important assignments on the side of the Central Unit as well. It should:

- offer more differentiated training courses and manuals in addition to the existing basic RIA-manual and RIA-training, in particular on quantification of effects, alternatives of and for regulation, and consultation;
- organise data collection, promote accessibility of data and develop data quality standards;
- further optimise the monitoring of RIA quality.

5.7. Flemish RIAs for European regulation

83. Within the EU, Impact Assessments already play an important role in policy preparations and negotiations. For this reason, within the EU countries, there is a clear trend to supplement European Impact Assessments with own analyses. The European impact assessments focus on the effects on all member states and less on the effect within and between states. Individual member states use their RIAs on proposed European regulation increasingly at the European negotiating table to strengthen their position. We therefore support the provision in the Flemish strategy for the implementation of European regulations that RIAs will also be prepared for draft EU-directives with a potentially important impact on Flanders⁵³. This intention has however not been implemented yet.

5.8. More prominent role for Flemish parliament

84. The interest of Flemish parliament in RIA is clearly rising. A good RIA raises the information and knowledge on the objectives, impact, and advantages and disadvantages of a submitted regulation. This makes the work in parliament much easier. The interest of Parliament can still be increased, both for the treatment of individual regulations and the discussion of European draft regulations (in the different parliamentary commissions), as well as by periodic evaluations and exchanges of views on RIA (in the parliamentary commission for regulatory policy).

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Ministry of the Flemish Community (2005).

6. CONCLUDING REMARKS

85. The RIA-assessment and recommendations presented in this paper, have in the meantime been presented to and discussed in the Flemish parliament on 16 and 30 January 2007⁵⁴. As a result, Parliament on 31 January 2007 approved a *motion on RIA*⁵⁵. In that motion⁵⁶, Parliament:

- Stresses the significance of better regulation for citizens, businesses and society as a whole;
- Supports RIA as a very important tool for better regulation;
- Calls for an improvement of the RIA-system and the quality of the RIAs;
- Asks government to:
 1. safeguard that a better targeting of the RIA-system does not lead to a weakening of the RIA-system, but promotes higher quality RIA's;
 2. introduce RIA for European legislation, in order to get sooner and better informed about the effects for Flanders of planned European legislation;
 3. make sure that all RIAs comply with the standard RIA-format published by the regulatory management unit;
 4. increase the transparency of the RIA-quality by informing Parliament twice per year of the results of the RIA-quality controls by the Regulatory Management Unit;
 5. introduce a regulatory agenda promptly, to promote the use of RIAs early on in the policy process;
 6. strengthen the regulatory capacity within the Flemish administration.

⁵⁴ Interpellatie 50 (2006-2007). Interpellatie van mevrouw Joke Schauvliege tot de heer Geert Bourgeois, Vlaams minister van Bestuurszaken, Buitenlands Beleid, Media en Toerisme, over de evaluatie en bijsturingen van de reguleringsimpactanalyse (RIA). www.vlaamsparlement.be

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⁵⁵ Motie Nr 1071 (2006-2007). Met redenen omklede motie tot besluit van de op 16 januari 2007 door mevrouw Joke Schauvliege in commissie gehouden interpellatie tot de heer Geert Bourgeois, Vlaams minister van Bestuurszaken, Buitenlands Beleid, Media en Toerisme, over de evaluatie en bijsturingen van de reguleringsimpactanalyse (RIA). www.vlaamsparlement.be

⁵⁶ A 'motion' is a recommendation from parliament to the government with policy measures or options the government should take. A motion does not have a legal binding status, but has a high political status and power. The Government moreover is compelled to report annually on the implementation of a motion.

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