



**Better Regulation in Europe**

**BELGIUM**





# **Better Regulation in Europe: Belgium 2010**



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ISBN 978-92-64-08706-4 (print)  
ISBN 978-92-64-08785-9 (PDF)

Series: *Better Regulation in Europe*  
ISSN 2079-035X (print)  
ISSN 2079-0368 (online)

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## *Foreword*

The OECD Review of Better Regulation in Belgium is one of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), including trends in their development, and to identify gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, and to find out what has happened in respect of the recommendations made at the time. Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews.

Belgium is part of the second group of countries to be reviewed – the other five are Finland, France, Germany, Spain and Sweden. The reports of the first group of Denmark, the Netherlands, Portugal and the United Kingdom were released in May 2009 and the remaining countries will follow in the second half of 2010. This report was discussed and approved for publication at a meeting of the OECD's Regulatory Policy Committee on 15 April 2010.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.



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## *Abbreviations and Acronyms*

<b>ASA</b>	Agence de simplification administrative or Dienst Administratieve Vereenvoudiging (Administrative Simplification Agency).
<b>ATLAS</b>	Assistance terminologique en ligne pour une administration simplifiée (Online Terminology Assistance for Administrative Simplification).
<b>AVEG</b>	Cel Administratieve Vereenvoudiging en e-Government van het Ministerie van het Brussels Hoofdstedelijk Gewest (Team Administrative Simplification and E-Government of the Ministry of the Capital Region).
<b>BBB</b>	Beter Bestuurlijk Beleid (Flemish Better Governance Policy).
<b>CEI</b>	Comité économique interministériel (Inter-ministerial Economic Committee).
<b>CESRW</b>	Conseil économique et social de la région wallonne (Walloon Region Social and Economic Council).
<b>COCOF</b>	Commission communautaire française (Commission of the French-Speaking Community).
<b>COCOM</b>	Commission communautaire commune (Joint Community Commission).
<b>DAV</b>	Dienst Administratieve Vereenvoudiging (see ASA).
<b>DIV</b>	Databank on vehicles.
<b>DOEB</b>	Duurzame ontwikkelingseffectbeoordeling (see SDIA).
<b>DWM</b>	Dienst Westmatiging (Regulatory Management Unit – Flemish government).
<b>EASI-WAL</b>	Commissariat E-Administration, Simplification (Commissioner for e-Government and Simplification – Walloon government).
<b>EIDDD</b>	Etude d’impact des décisions sur le développement durable (see SDIA).
<b>IEC</b>	Interministeriële Economische Commissie (Inter-ministerial Economic Committee).
<b>ISA</b>	Service Internet et Simplification administrative (Internet and Administrative Simplification Unit – Ministry of the French Community).
<b>FEDICT</b>	SPF Technologie de l’Information et de la Communication or FOD Informatie- en Communicatietechnologie (Public Federal Service for Information and Communication Technology).
<b>FOD</b>	Federale Overheidsdienst (see FPS).
<b>FPS</b>	Service public fédéral or Federale Overheidsdienst (Federal Public Service).
<b>POD</b>	Programmatorische federale overheidsdienst (see PPS).
<b>PPS</b>	Federal Public Planning Service.

<b>SDIA</b>	Etude d'impact des décisions sur le développement durable - Duurzame ontwikkelingseffectbeoordeling (Sustainable Development Impact Assessment).
<b>SERV</b>	Sociaal-Economische Raad van Vlaanderen (Flanders Social and Economic Council).
<b>SPF</b>	Service public fédéral (see FPS).
<b>SPP</b>	Service public fédéral de programmation (see PPS).
<b>VGC</b>	Vlaamse Gemeenschapscommissie (Commission of the Flemish Community).

## Country Profile – Belgium



Sources: CIA Factbook, [www.cia.gov/library/publications/the-world-factbook/geos/be.html](http://www.cia.gov/library/publications/the-world-factbook/geos/be.html) and Portal Belgium.be [www.belgium.be/en/about\\_belgium/government/federale\\_staatsmap/](http://www.belgium.be/en/about_belgium/government/federale_staatsmap/).

## Country Profile – Belgium

<b>The land</b>		
Total Area (1 000km <sup>2</sup> ):	30.5	
Agricultural area (1 000km <sup>2</sup> ):	17.3	
Major regions/cities (thousand inhabitants):	Brussels	1 048
	Antwerp	970
	Liège	597
	Ghent	517
<b>The people</b>		
Population (thousands):	10 667	
Number of inhabitants per km <sup>2</sup> :	349	
Net increase (2007/06):	0.8 %	
Total labour force (thousands):	4 859	
Unemployment rate (% of civilian labour force):	7.9% (2009)	
<b>The economy</b>		
Gross domestic product in USD billion:	386.9	
Per capita (PPP in USD):	36 400	
Exports of goods and services (% of GDP):	85.8	
Imports of goods and services (% of GDP):	84.2	
Monetary unit:	Euro	
<b>The government</b>		
System of executive power:	Parliamentary	
Type of legislature:	Bicameral	
Date of last federal general election:	10 June 2007	
Date of next federal general election:	June 2011	
State structure:	Federal state	
Date of entry into the EU:	Founding member	

*Note:* 2008 unless otherwise stated.

*Sources:* OECD Economic Survey of Belgium 2009, OECD in Figures 2009, OECD Employment Outlook 2009 and OECD Government at a Glance 2009.

## Executive Summary

### Economic context and drivers of Better Regulation

The need to strengthen the economy and its competitiveness is reflected in policies to promote effective regulatory quality and management.<sup>1</sup> The General Policy Statement of the federal Minister for Economy and Administrative Simplification of April 2008<sup>2</sup> specifies the modernisation of regulation as one of the actions to be undertaken to promote the competitiveness of the economy, and defines the elimination and simplification of regulations as strategic objectives. The Flanders, Wallonia, and Brussels governments have also linked Better Regulation to their efforts to sustain economic competitiveness and development. Belgian enterprises have lent their strong support to these objectives. The Federation of Belgian Enterprises has underlined that tackling the volume, as well as the quality of regulations, is an “absolute necessity” for competitiveness.<sup>3</sup>

The pursuit of Better Regulation in Belgium is also linked to the challenge of regulatory inflation. Belgium’s federalisation process of the last few decades has generated considerable institutional and regulatory developments, qualified by many Belgians as inflationary, and now in need of simplification. Political commitment to simplification has been expressed in successive government policy statements. Simplification is also a priority across the regions and communities. In Flanders, the government agreement of 2004 included a chapter on Better Regulation. The new government agreement, concluded in July 2009, notes that administrative simplification and regulatory quality are key instruments for a more efficient government, and this is emphasised again in the most recent policy paper of the Flemish Government on Administrative Affairs.<sup>4</sup> In Wallonia, the government set specific objectives regarding the improvement of regulations in its Regional Policy Statement of June 2005. It spelt out a number of actions which associate administrative simplification and e-Government. Developments in the Brussels-Capital region began later but are gathering momentum, with the launch in October 2009 of a Brussels Plan for Administrative Simplification.

The European Union is another factor in Belgium’s pursuit of Better Regulation. Belgium was a founder member and geographically, it stands at the crossroads of Western Europe, which has important implications for its economic relationships with neighbouring economies and the importance to its economy of developing a single European market. EU initiatives such as the Services directive and the EU’s programme to reduce burdens on businesses have encouraged Belgium to take action, building on its own initiatives.

### Public governance framework for Better Regulation

The Belgian public governance system is characterised by the following features:

- *Autonomous governments.* Belgian governments have complete responsibility and autonomy within their area of competence. The exclusive character of competences

allocated to each authority, which cannot be challenged, sets formal and technical constraints on the extent to which the different authorities can share the development of policy and tools for regulatory management, where this is needed.

- *Autonomous ministries within governments.* Ministries within each government are highly autonomous. This generates challenges for the effective development of shared policy and rule-making tools and processes within governments. This issue is not unique to Belgium.
- *Coalition governments and consensus-based decision making.* The electoral system produces coalition government, and as a consequence, the political framework for policy making is characterised by a search for consensus among coalition parties, acceptance of compromise and institutionalised power sharing.
- *Federalism in a state of evolution, based on an asymmetric division of competences.* Belgium is a relatively “young” federal state, and Belgian federalism continues to evolve. The Belgian institutional framework is made up of regions and communities which do not have exactly the same competences (some other states based on federal principles have a more homogeneous structure).<sup>5</sup> The institutional framework for policy and law making has adapted and continues to adapt to reflect developments.
- *Pragmatism and informality in decision making.* Consensus building within formal and often highly politicised structures, combined with the formal constraints imposed by the strict division of competences, tends to slow and complicate the decision making process. To counter this, a strong tradition of pragmatism and informal dialogue is in place.
- *A number of centralising elements.* The federal state has retained certain powers, and a number of important institutions have a nationwide reach (including the Constitutional Court, the judiciary and the *Court of Cassation*, the Council of State, the *Court of Audit* and the *Inspectorate of Finance*).

Federalisation started in 1970 (Box 0.1). The process and the structures which have emerged are complex, reflecting a deep rooted desire for a negotiated transformation of Belgium from a unitary entity to a federal structure which respects the aspirations of the different communities. Federalisation has raised significant challenges for public sector efficiency and policy coherence. In principle, the devolution of federal responsibilities to regions and communities helps to better tailor public services to the needs and preferences of users. It also enables some benchmarking between jurisdictions, providing an incentive for improving public sector efficiency. In practice (and as tends to be the case in federal states), federalisation and the division of competences has created shared policy responsibilities in areas such as employment, R&D, training, energy and environmental policies.<sup>6</sup>

The Government agreement of March 2008 sets out 6 major challenges for Belgium, one of them being state efficiency: “In Communities and in regions, as much as at the level of the Federal State, citizens are entitled to expect efficient services and modernised administrations from each level of power”.<sup>7</sup> This objective has already been picked up through reforms of the public administrations of each government (notably the federal government’s *Copernicus* reform, and the Flanders government “*Beter Bestuurlijk Beleid*” or Better Governance Policy).



The federalisation process thus raises challenges for effective, efficient and timely policy and rule-making. Better Regulation is especially important in this context, as a means of controlling the bureaucratic effects of federalisation (including regulatory inflation). Officials in the federal state and in the regions and communities are especially conscious of this need. Better Regulation has close potential links with public sector efficiency and reform, which could usefully be exploited further.

### Box 0.1. Belgium's federal structure and the powers of Belgian governments

Belgium is a federal constitutional monarchy. It was a founder member of the European Union. It became a federation in 1993 as the result of a negotiated decentralisation process aimed at consolidating national unity, which started in 1970 with the establishment of three communities. It involved a succession of state reforms the first of which, in 1971, established the three regions. The most recent set of reforms, in 2001, transferred further competences to the regions and communities and addressed a range of funding and taxation issues. It can be said that, nearly 40 years on, the structure has reached a certain level of maturity, although further adjustments are envisaged (and provided for in the constitution, which for example provides for some further competence transfers). Further institutional reforms are currently under discussion, based on the March 2008 Government Agreement.

Belgium comprises the federal state, three regions (Flemish Region, Walloon Region, and Brussels-Capital Region), and three communities (Flemish Community, French speaking Community, and German-speaking Community). There is a further subdivision into 10 provinces (five Flemish, and five Walloon),<sup>8</sup> and 589 municipalities.

Belgian federalism has the following important features:

- *There is no hierarchy.* Its main component authorities (the federal state and the federated entities – the regions and the communities) are on an equal footing. This means that no authority (for example, the federal state) has precedence over another, and no authority can impose requirements (including regulatory requirements) on another. Legislative texts issued by each authority are on an equal footing.
- *Competences are exclusive to the different authorities.* Competences are distributed across the federal state and federated entities with no overlap competences, at least in principle. Each authority has its own legislative and executive powers for its field of competences, and its own parliament and government to exercise these powers. Flanders has, however, opted for combining the parliament and government of both the Flemish Region and the Flemish Community into a single parliament and a single government. Beyond this, there are no shared government or parliamentary structures.
- *The structure is asymmetric.* The three regions do not have exactly the same responsibilities (nor do the three communities). Dividing lines of competences are complex and “lacework” like, the result of negotiations in the federalisation process. The responsibility for a given area generally depends on the subject at stake. Broadly, the regions have powers connected with their territory (for example environment and transport), and the communities have powers more specifically relevant to individuals (for example education and health).
- *Whilst competences are exclusive, a large number of policy areas are shared.* A large number of policy areas are covered by several entities (see Annex A). This is the case, for example, for the economy, the environment, employment, energy policy, which are shared between the federal state and the regions as well as, in some cases, the communities. Different competences relating to these policy areas have been allocated to the federal state and federated entities. For example, in the field of energy, tariffs and national market regulation are with the federal state, whilst energy efficiency is with the regions.

- *There are also a number of centralising elements.* Although significant competences have been devolved to the regions and communities, the federal state has retained some important powers including national defence, justice, aspects of economic policy and finances, and social security. Federal state powers cover everything that has not been expressly devolved to the federated entities. Furthermore, it is ultimately responsible for Belgium’s obligations (including those of the federated entities) in respect of the European Union. The centralising “glue” is also evident in a number of important institutions which have a nationwide reach (including the Constitutional Court which controls conformity of all laws with the constitution *ex post*, the judiciary and the *Court of Cassation*, the Council of State which is the supreme administrative court and advises on all draft laws *ex ante*, the *Court of Audit* and the *Inspectorate of Finance*). The federal state retains control over several state-owned companies, such as Belgian Railways, the Post Office and federal scientific and cultural institutions.
- The *Concertation Committee* is responsible for preventing conflicts of interest between the federal state, the communities and the regions. It consists of the head of each government, and examines all issues requiring co-operation between governments and issues relating to competence sharing.

## Developments in Better Regulation and main findings of this review

### *Strategy and policies for Better Regulation*

*There have been considerable developments and achievements in recent years, driven by a growing awareness across Belgium of the need to address regulatory inflation, administrative simplification and improve regulatory quality.* Belgian governments have launched a large number of initiatives in the area of Better Regulation in recent years, which tackle the reduction of administrative burdens on citizens and businesses, including promotion of e-Government as a tool for simplification, codification and modernisation of existing regulations, and impact assessment.

*Widespread concern in Belgium over regulatory inflation is an important driver of Better Regulation initiatives.* For some time now, Belgian governments have been conscious of the upward trends in production, and the negative effects of this for regulatory quality and the complexity of the regulatory framework. Regulatory inflation is partly the result of the federalisation process, but there are other reasons which are not specific to Belgium. These include a tendency to respond to any issue or crisis with a regulation, and regulations prepared at short notice under “urgency” procedures which are of poor quality and need subsequent revision, as well as the weight of EU origin regulations in the system. Is there adequate awareness of the important contribution of Better Regulation policies in tackling these issues?

*Policies cover a rich mix of projects shared between Belgian governments, and initiatives specific to each government within its area of competence.* Shared initiatives are a particularly striking feature of current projects, underlining the fact that Belgian governments are not always compartmentalised on their own projects. Shared projects are supported by a 2003 co-operation agreement signed by the federal, regional and community governments. Important initiatives in this category (not exhaustive) include the *Kafka* contact point where citizens, businesses and public servants across Belgium can propose ideas for cutting red tape, and the Crossroads Bank for Enterprises.

*Regulatory quality in all its dimensions is rising up the agenda.* In particular, Belgian governments have taken steps to integrate *ex ante* impact assessment in the development of regulations. *Ex ante* impact assessment is a relatively new policy in Belgium, and still a

work in progress. Although steps have been taken to enlarge the scope of impact assessments, for most Belgian governments these are still largely confined in practice to evaluating administrative burdens and environmental impact. A variable geometry is at work, with different governments sometimes adopting different versions of the same processes.

*Important challenges need to be addressed if ex ante impact assessment is to make a real difference.* The simplicity of the *Kafka Test* limits its influence, as it only addresses administrative burdens. The highly ambitious objectives set for the federal Sustainable Development Impact Assessment, combined with significant exemptions, could complicate efforts to make progress. All the different initiatives suffer, to a greater or lesser extent, from a range of problems including timeliness, limited coverage, and weak institutional frameworks. The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Strengthening impact assessments will require strong high-level commitment and further culture change.

*There remains a strong emphasis on administrative simplification, and all Belgian governments are putting considerable efforts into this, with measurable success.* Administrative simplification is a political priority and common denominator across all governments, backed up by successive ministerial policy statements. Each government has defined its own strategy. Policies extend well beyond programmes to reduce burdens in specific regulations, and include a mix of broad long term structural projects as well as short-term projects aimed at “quick win” results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of ICT; tackle (to a greater or lesser extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from an estimated 3.5% of GDP in 2000 to 1.72% of GDP in 2008. These programmes are deserving of continued support.

*Public consultation policy has a number of fundamental strengths but needs further reform.* Belgium’s current institutionalised system of consultation is based on fundamental principles of representative democracy. Public consultation of stakeholders has a number of strengths, is comprehensive in coverage, and is fundamentally adapted to the Belgian situation. The system has the broad support of most stakeholders. It is in the process of development and reform in some domains. Further reforms of the advisory board system are needed in order to address the complexity resulting from a comprehensive and detailed advisory board structure, which would boost transparency. Greater use of more direct forms of consultation with businesses and citizens would also be desirable, where appropriate and as an adjunct to the advisory board system. The strength and visibility of consultation processes and structures would be boosted by establishing consultation guidelines, covering all domains.

*The management of EU aspects of Better Regulation displays both strengths and weaknesses.* The management of EU origin regulations (negotiations and transposition) is well-organised and an area where co-ordination between Belgian governments is especially strong. Belgium has recently reached the 1% deficit target for timely transposition of internal market directives set by the European Commission.<sup>9</sup> Policies for transposition would benefit from a strategic review (a review was launched after the OECD peer review mission). The interface with the EU’s own Better Regulation policies appears to be underexploited. Belgium’s Presidency of the EU in the second half of 2010 should be a good opportunity to influence developments, and put Belgian priorities on the agenda.

*There is a strategic gap: it is hard to distinguish a clear and compelling overall Better Regulation strategy linked to public policy goals.* How do current and planned initiatives come together to support public policy goals? How can the policies of the different governments be brought together in a shared vision, without compromising each government's autonomy? Initiatives for Better Regulation are not explicitly framed within an overarching and visible policy strategy and objectives against which progress can be monitored and communicated, and which links Better Regulation to broader public policy goals. Yet there are powerful underlying drivers at work, including the need to boost competitiveness and support a stronger public administration.

*The range of Better Regulation work and its importance deserves greater visibility.* Belgium's institutional and regulatory environment is complex, which means that special attention needs to be paid, on an ongoing basis, to transparency and visibility of the work carried out to address regulatory management issues. This is important both for internal stakeholders (officials in the administration of each government, given the tradition of substantial ministry autonomy, so that they can buy-in to the process); and external stakeholders (businesses and citizens who need to feel the benefits of Better Regulation, to support the efforts which are being made, and to contribute ideas for further development). How much is known of policies and achievements beyond simplification by those who need to know?

*There is a linked need for visible leadership.* The rapidly shifting political environment means that officials need to be in the front line, as well as their political leaders. How well-known are the Better Regulation units? Greater visibility and transparency would help to spread good practices and successful initiatives across the different governments. The different governments appear to be at different stages in the communication process. Effective communication and clearly visible leadership is especially important for the Administrative Simplification Agency (ASA), given its Belgium wide mission. There is a special need to highlight effectively the major initiatives that have been taken in recent years which involve shared work across Belgian governments, and through this, to highlight the role and importance of the ASA as facilitator. The establishment of shared portals and databases on regulations and related issues (see e-Government below) is a major success of the Belgian Better Regulation experience so far, and these achievements should be widely communicated.

*As in many other OECD countries, ex post evaluation of Better Regulation policies is (with some exceptions) not well-developed.* Strategic ex post evaluations of policies to assess the need for major adjustments (for example, policies for impact assessment) are largely absent, with the notable exception of Flanders where efforts have been made to take stock. Annual progress reports on simplification are not a substitute for a more strategic review of the underlying programmes.

*Strong use is made of e-Government in key areas of Better Regulation, but there are some issues.* E-Government is an integral part of Better Regulation strategy. Generally, strong and effective use is made of e-Government to support a range of Better Regulation policies, including Belgium wide initiatives such as databases on the stock of regulations and specific data banks such as the Crossroads Bank for Enterprises, and the Crossroads Bank of Social Security, the databank on vehicles (DIV), the data bank for VAT, and Tax on the web. Large parts of the administrative simplification programmes make significant use of e-Government. A more strategic vision of the areas and issues where ICT developments need to be shared would be helpful, and with this, a stronger identification of the technical aspects which need a co-operative approach. What further issues could be shared?

## ***Institutional capacities for Better Regulation***

*There has been a steady development of Better Regulation institutional structures across Belgium, linked to a growing awareness of the need to address issues such as regulatory inflation. By EU standards, Belgium has a well-developed set of centrally located structures across the different governments, whose purpose is to drive forward the Better regulation agenda. These structures, which started with the decision in 1998 to establish the federal Administrative Simplification Agency (ASA), reflect a strong awareness that Belgium’s rapid federalisation process and the Belgian federal model require special efforts to secure effective regulatory management. Shared aspects imply that there is considerable scope for governments to learn from each other.*

*In the Belgian context, Better Regulation units play an especially important role in support of Better Regulation and in the search for creative solutions to the issues raised by federalism and its continued evolution. Another shared and very positive feature of the Better Regulation structures that are now in place is that they have become a source of expertise, support, ideas and spread of good practice for overcoming the difficulties of regulatory management in Belgium. The Better Regulation structures use persuasion rather than constraint. This, however leaves them short of sanctions to ensure that Better Regulation good practices and processes are respected. They are “helpful” but not “policemen”.*

*The sustainability of many Better Regulation institutions across the political cycles (and sometimes within them) is an issue, which is not unique to Belgium. There are few easily definable high- level political champions of Better Regulation. An issue of concern is that there is often weak political buy-in for Better Regulation.*

*The difficulties of developing Better Regulation are aggravated by the often strong role of cabinets in rule-making processes. In all governments (federal, regions, communities), ministerial cabinets (referred to as “strategic cells”) are large, contain a mix of both civil servants and political nominees, and are often involved in law drafting (a task usually reserved for civil servants in other countries). A number of stakeholders voiced their concern to the team that this weakened the application of Better Regulation processes such as effective consultation, because the cabinets did not or could not (for example, under political pressure or in an emergency) automatically apply the processes when they drafted laws.*

### ***Federal government***

*The Administrative Simplification Agency (ASA) has an important dual mission, not only to promote simplification with regard to federal regulations, but also to promote regulatory co-operation across the federal, regional and community governments. The ASA’s institutional foundations (1999) are strong and a necessary support for its often delicate – but crucial – mission to promote Better Regulation across all the Belgian governments. The ASA’s mission to frame, encourage and promote Better Regulation across governments is an essential support for Belgium’s Better Regulation needs.*

*Some federal ministries play an important but currently somewhat separate role in regulatory management and the development of Better Regulation of relevance to the whole of Belgium. Key federal ministries in this regard are the Federal Public Service (FPS) for Economy which has engaged a major initiative to upgrade the quality of the economic regulatory framework; the FPS for Sustainable Development which has developed an *ex ante* impact assessment process for sustainable development; and the FPS Justice which maintains a near complete jurisprudence database used by the Belgian courts in their*

analyses and recommendations. FPS Finance has recently launched an important initiative to improve the regulatory framework underpinning the modernisation of financial systems. The modernisation of the social security framework was another key area. The significant autonomy of ministries, however, means that relevant initiatives are not clearly associated with the ASA's work. For example, the project for a sustainable development *ex ante* impact assessment is not yet linked up with ASA initiatives to encourage use of the *ex ante* Kafka Test for administrative burdens.

*A range of other institutions play a Belgium wide role, which could be further exploited.* A number of authorities have Belgium-wide responsibilities which help to counter the centrifugal forces of federalisation, as well as providing a country-wide perspective on regulatory management issues. These include the Council of State, the *Court of Audit*, the *Inspectorate of Finance*, as well as the Constitutional Court and the judiciary as a whole. Are these underused assets in Belgium's regulatory management landscape?

### *Regional and community governments*

*Significant Better Regulation structures have also been set up in other Belgian governments, including the Walloon region's EASI-WAL, the Flemish region's Regulatory Management Unit, and the French community's unit for Internet and Administrative Simplification.* EASI-WAL sits at the centre of the Walloon government, reports to the Minister President, and is charged with implementing the 2005-09 Action Plan for Administrative Simplification, e-Government and readability. Flanders' Regulatory Management Unit sits at the centre of the Flemish government, covering all aspects of Flemish Better Regulation including simplification and Impact Assessment. It has set up and encourages a network of regulatory quality units and contact points across the Flemish administration. The French community's unit for Internet and Administrative Simplification covers projects for administrative simplification and e-Government. These units, however, to a greater or lesser degree, share issues of long-run sustainability and resourcing.

### *Co-operation on shared policy and regulatory issues*

*In the Belgian context, it is important to find effective ways for governments to work together on shared policy issues where competences (and hence rule-making) are split across the different governments.* The institutional structures supporting Belgian federalism generate major challenges for the effective, efficient, and timely development and implementation of coherent policies and regulations which have a country-wide relevance. In particular, some important policy and regulatory issues engage the competences of the different governments.<sup>10</sup>

*Further co-operation on Better Regulation can help to promote policy coherence, in areas where this is needed.* Federalisation has created some overlapping policy responsibilities in important policy areas such as employment, energy and the environment, and policy fragmentation. The Chancellery of the Prime Minister would need to play a pivotal role on the policy front, to get this started. The many formal co-operation agreements for Better Regulation could then be usefully activated to support policy coherence, through the development of regulatory coherence.

*There is already significant co-operation for Better Regulation, using a mix of formal and informal approaches.* Co-operation on Better Regulation is formally anchored in procedures established by law. Co-operation agreements have been successfully established for administrative simplification (fleshed out with concrete projects), as well as on

e-Government and the development of a shared portal for access to regulations. Informal co-operation and networking (between officials) is used extensively to pave the way for decisions and exchange ideas and practices. Too much reliance on informal networks, however, could be inadequate in the long-run as it relies on a network of relationships and goodwill between officials.

### *Role of parliaments*

*The role of the parliaments in the promotion of Better Regulation should not be neglected.* Belgian parliaments are concerned about the need to improve regulatory quality in the rule-making process, and may even be prepared to invest further in the “cleaning” of existing legislative texts. A starting point for further co-operation is already in place with the 2007 law which set up the parliamentary committee responsible for following up on the evaluation of existing laws.

### **Transparency through public consultation and communication**

#### *Public consultation on regulations*

*Belgium’s current institutionalised system of consultation is based on fundamental principles of representative democracy.* The system covers a very wide range of sectors and issues. The Belgian system draws a large part of its strength from high participation rates. Union membership is high (between 60 and 70%), and 80-90% of companies are members of an employer’s federation.<sup>11</sup>

*Belgian governments have a well-established and well-supported practice of consulting external shareholders when preparing new regulations, which is based on institutionalised bodies (“advisory boards”) set up by each government.* Consultation is considered not only by governments but many stakeholders as an essential instrument for reaching consensus and overcoming tensions. Stakeholders are generally consulted through a dense, highly structured and extensive network of advisory boards. The system has the broad support of most stakeholders.

*Belgian governments are deploying or testing a number of new approaches alongside the traditional structures (without abandoning the latter).* Belgian governments have also been developing new forms of consultation, including more open “notice and comment” procedures using the internet to reach out directly to citizens, round tables, and large scale *ad hoc* consultations for difficult issues such as the transposition of complex EU directives. Administrative simplification programmes have encouraged the use of the internet and direct interviews with stakeholders to gather views.

*There have been significant efforts to simplify the advisory board system, particularly in the regions.* The network of advisory boards is traditionally very extensive, comprising around 600 boards at federal level, 23 commissions in Wallonia, and 13 strategic advisory boards together with subsidiary bodies in Flanders (after rationalisation). The regions have taken steps to streamline their systems, reducing the number of bodies and setting common rules, but the structures remain significant and it is not yet clear that the reforms have yet had a positive impact in terms of enhanced transparency and meeting stakeholder needs. The federal government (which has the largest number of boards) has yet to engage a reform of its system.

*Despite these important developments, the overall approach to consultation would benefit from an updated and clearer policy to guide the process and reinstate transparency.* Transparency as a basic principle of consultation has become compromised over time by

the growing size of the advisory board system. Belgian governments have a commitment and a large number of requirements to consult. Stakeholders are generally strong supporters of the advisory board system and they want to improve it. Three related needs can be distinguished (relevant for all the Belgian governments): further reforms of the advisory board system; further development (in parallel, where it is appropriate to integrate them) of new forms of consultation; and a clearly articulated consultation guidance to cover all domains.

*Consultation structures and processes are for the most part intra-governmental.* Although there are some specific advisory bodies that co-ordinate consultation on policies and related regulations across governments, this does not appear to be an established feature of the system. This aspect, however, is of critical importance for policy areas where competences and rule-making powers are split among the different governments but where there may be a shared interest in developing an effective policy and regulatory response (environment, for example).

### *Public communication on regulations*

*Belgian governments have developed numerous initiatives to ensure access to regulatory information, which is guaranteed by legal texts, making strong use of ICT.* Significant and impressive initiatives have been taken, including a range of Belgium wide initiatives. These efforts are essential for the citizens' and enterprises' understanding of regulations given the underlying institutional complexity of Belgium and the use of several languages. Citizens' right of access to administrative information is guaranteed by the constitution and detailed in a 1994 federal law.<sup>12</sup> The federal government has established a portal for accessing all official Belgian websites, including those managed by regional and community authorities, and for providing guidance on administrative procedures to all citizens and enterprises.

### *The development of new regulations*

#### *Procedures for making new regulations*

*At the federal level and in the Walloon Region, the misplaced use of programme laws undermines regulatory quality.* An agreement exists between the federal government and the parliament to limit the use of programme laws to budgetary issues. In principle, only urgent and technical issues can be included in programme laws. The federal government recognises that in practice these laws can be unhelpful to transparency and the general quality of the legislative process.

*Whilst each government has defined its own procedure for making new regulations, there are strong unifying elements.* The Council of State reviews the draft regulations of all governments (legal check), as does the *Inspectorate of Finance* (legal and budget check). This nationwide aspect is backed up *ex post* (after enactment), by the Constitutional Court (for primary regulations) and the *Court of Cassation* (secondary regulations), which may check conformity with the constitution.

*A useful development has been the trend in Flanders and Wallonia to merge legal and broader regulatory quality processes.* The divisions that often exist between the different procedures for reviewing draft regulations on their way to adoption (legal quality checks, constitutional checks, impact assessments etc.) mask the fact that the overall objective is to make an efficient and effective regulation, fit for its purpose. Strategic oversight of these different processes by a single entity is helpful.



*Apart from Flanders, visibility of the forward planning agenda is limited.* In all governments, policy statements and ministerial policy notes, at the beginning of the legislature, outline the upcoming programme of work. The Flemish government has established more specific forward planning and monitoring mechanisms through an online regulatory agenda.

*The efficiency of the scrutiny process can be significantly reduced in a number of ways.* Issues include a tendency for ministerial cabinets to be heavily involved; the scope for some important regulations not to be subject to a sufficiently rigorous process; short deadlines and lack of prioritisation; and insufficient publicity for the Council of State opinions.

- *There is a tendency for ministerial cabinets to be heavily involved.* Shared among governments is a tendency for draft texts to be prepared by the ministerial cabinets. This means that procedures to secure quality can be circumvented as officials are less involved.
- *It is not clear whether all significant regulations are well-covered by the process.* This applies in particular to programme laws, significant secondary regulations, and collective agreements (which are significant in labour regulations). Parliamentary proposals account for about 25% of (federal) laws.
- *Short deadlines and lack of prioritisation limit the extent and efficiency of the ex ante scrutiny system.* This affects two distinct processes. First, the advice of the Inspectorate of Finance is requested on a large number of decisions but there is no prioritisation of cases to define the most important ones. Second, a large number of draft regulations are submitted to the Council of State under the “urgency procedure” which severely limits its capacity to carry out effective checks.

*The Council of State plays a particularly important role in ex ante scrutiny of draft regulations, but its opinions are not widely publicised.* The Council of State is the main body responsible for ensuring legal quality. It must be consulted on all draft laws, decrees and ordinances as well as orders initiated by a Belgian government. The Council of State is currently considering how to give its advice greater publicity.

### ***Ex ante impact assessment of new regulations***

*Belgian governments have taken important steps to integrate ex ante impact assessment in the development of regulations.* Ex ante impact assessment is a relatively new policy in Belgium, and still a “work in progress”. Although steps have been taken to enlarge the scope of impact assessments, these are still, for the most part, confined to evaluating administrative burdens. In 2004, the federal government introduced the *Kafka* Test to detect administrative burdens in new regulations. The governments of the Walloon Region and the French Community have also adopted the *Kafka* Test. Other impact assessment procedures, with a broader scope, have also been established by the Flemish government in 2005 and by the federal government in 2007. A variable geometry is at work, with different governments sometimes adopting different versions of the same processes.

*The federal government’s Kafka Test has proved a good starting point for raising awareness of impact assessment and its potential.* It has forced officials to consider the impact of their proposals on citizens and businesses with respect to administrative burdens. More practically, it has made a real contribution to the reduction in administrative burdens. Factors for success have included a simple structure based on a short questionnaire, and a

gatekeeper role for the Secretariat of the Council of Ministers in the Federal Chancellery, which ensures that tests are included in dossiers sent to the Council of Ministers.

*The experience of the Walloon government and the French Community government with their version of the Kafka Test has also been positive, supported by significant efforts to set a strong operational context for the test.* These governments have taken and adapted the federal government Kafka Test, with a similar objective of building up experience in impact assessment. The Walloon Better Regulation unit *EASI-WAL* sees the Test as an initial step to change mentalities in the administration. *EASI-WAL* has made a significant effort in supporting the Test, with a methodological guide, training courses, and additional criteria for improving the quality of the regulation such as abrogation of obsolete texts.

*The simplicity of the Kafka Test is a strength, but also a limitation, and there are other challenges.* The test only considers administrative burdens, and does so in a very simple way, via a relatively undemanding questionnaire. Quantification of burdens is not explicitly required or encouraged. Another issue is that the *Kafka Test*, which was designed to start at the very beginning of the rule-making process and continue up to presentation to the Council of Ministers, may only be completed just before the meeting of the Council of Ministers. The institutional challenge function prior to the adoption of a regulation in practice is limited compared with many other countries, as the decision has been taken to put the most significant work into checking regulations *ex post*, once they have been adopted, through an *ex post* measurement process for administrative burdens. There is no consultation of stakeholders, and no external publication of the *Kafka Test* (which could add another perspective on the system). The test needs to evolve, become more robust, and consider a larger range of impacts. At the federal level at least, this last point means finding a way of associating the future evolution of the test with the roll-out of the Sustainable Development Impact Assessment (see below).

*The federal government has also launched a Sustainable Development Impact Assessment (SDIA), but this is still at an early stage of implementation. The Sustainable Development Impact Assessment is an ambitious initiative.* It covers economic, social and environmental impacts, evaluates short and long-term effects, and seeks to address the full-range of spatial effects (from impact on the local levels within Belgium to impact in other countries). It sets a two-stage process to allow for an initial screening of regulations through a set of indicators, and for an in-depth analysis of selected regulations. The federal government made it a formal requirement in early 2007 and the FPS for Sustainable Development has produced a range of guidance materials. However, so far the process has been applied in practice only to a limited number of draft regulations.

*The highly ambitious objectives set for the Sustainable Development Impact Assessment, combined with significant exemptions, could complicate efforts to make progress.* The Belgian federal government has identified the important strategic need to develop processes in support of sustainability. There is no clear evidence that the process has yet changed the course of a draft proposal. In essence, the federal government is seeking to establish a process (a form of “super impact assessment”) which is highly sophisticated by international standards, on a culture and administration which has so far only had the modest experience of a limited test for administrative burdens. This is not to question the objective of broadening the scope of impact assessment, but to caution that this needs to be developed in proportion with capacities to cope, and with a much more developed support system.

*Another issue for attention is that the federal government now has two separate institutional anchors for impact assessment.* The Sustainable Development Impact Assessment process is overseen by the FPS for Sustainable Development (one of the

horizontal ministries), and the *Kafka Test* is overseen by the ASA in the Federal Chancellery. There is no formal link between the two processes, apart from the fact that the SDIA is (like the *Kafka Test*) attached to draft proposals going to the Council of Ministers. Both require the co-operation of (highly autonomous) other ministries. It does not make sense to continue, at least over the longer term, with two separate processes.

*Flanders has opted for a different and broader approach to ex ante impact assessment.* The Flemish government has established a “comprehensive” *ex ante* impact assessment with some quantification and consideration of options, together with a quality control system, and a compensation rule for administrative burdens arising from new regulations. The system has “teething problems” typical of what is often encountered in other OECD countries. It is proving difficult to change attitudes and persuade officials (and ministerial cabinets) to take the assessment seriously and carry it out at a sufficiently early stage in the development of regulations (it is often treated more as an *ex post* note of justification for a decision which has already been taken). This initiative will only be effective if efforts to encourage the administration upstream to carry out higher quality and timely impact assessments are sustained over time. The review of RIA completed at the end of 2008 emphasised the need for stronger political support and further guidance to officials.

*All the different initiatives suffer, to a greater or lesser degree, from a range of problems including timeliness, limited coverage and weak institutional frameworks.* Reflecting the often limited reach of general procedures for the development of regulations, many draft regulations are currently exempted from any form of impact assessment. The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Impact assessment is often done late and which means that it risks becoming an *ex post* justification for decisions which have already been reached. This often causes implementation problems downstream and requires revisions to the law in the worst cases. Institutional frameworks are weak and generally unable to challenge poorly implemented assessments. Quantification is limited, although this is a work in progress. Transparency is also weak with often limited efforts to consult with stakeholders and little effort at publication. Strengthening impact assessments will require strong high-level commitment and further culture change.

### *Where to next in the development of Belgian impact assessments?*

*Impact assessment is a relatively new process in the Belgian Better Regulation landscape and needs more time to mature.* The problems with the current systems are typical of the experiences of many other OECD countries, and sharing experiences with European neighbours would be a useful exercise, both for reassurance that Belgium is not alone and also to identify solutions to the practical challenges that could be applied in the Belgian context. Belgian governments should certainly not give up on setting an objective of a more developed impact assessment. They must evolve progressively towards a large range of impacts.

*As a first step, there is a need to fix the various problems which weaken the effectiveness of the current processes.* This includes (see above) the issues of timeliness to ensure that assessments influence final decisions, exemptions to ensure that processes cover all significant regulations, and the need to strengthen the institutional challenge function so that assessments are of high quality. Resource constraints on Better Regulation units also mean that processes need to be as efficient as possible, notably by applying the principle of proportionality (capturing all significant regulations but letting the insignificant ones go, for example through pre-checks).

*The different approaches to impact assessment across Belgian governments are a rich source of experiences which need to be shared.* This has already happened, with the shared deployment of the *Kafka* Test by the federal, Walloon and Brussels-Capital region governments. Sharing experiences also minimises the risk of fragmentation of processes over time, as governments can re-use the successful approaches deployed by their neighbours. The existing general co-operation agreement between the federal government and the federal entities could be a starting point for this, provided that this provides sufficient focus for this important issue.

*Where policy issues are shared or overlap, co-ordinated impact assessments for the underlying regulations would add value to the process.* Impact assessment processes currently reflect the division of competences between governments - they are applied to the regulations flowing from the competences specific to each government. With the exception of the sustainability impact assessment, which is a work in progress, the processes do not seek to take a Belgium wide view.

*Consideration of alternatives to regulation is included in some but not all of the impact assessment mechanisms.* Against the background of significant regulatory inflation, it is in Belgium's interest to ensure that alternatives to regulation are given maximum attention at an early stage in the development of policies.

## ***The management and rationalisation of existing regulations***

### *Simplification of regulations*

*Belgian governments have engaged significant efforts to consolidate or simplify the regulatory stock.* Simplification of the stock of regulations is a key part of Better Regulation programmes. For example, since the early 1980s the legal information technology service of the Justice FPS is responsible for feeding and managing the Belgium wide “*Justel*” database. Belgium legislation includes a number of codes. The Economy SPF has recently launched a major codification project to assess and modernise economic law. Significant efforts have been made in the 1980s to develop a social security code, which have led to major improvements in the legal texts for this sector. Codification, however, seems to take place *ad hoc*, with some difficulties in co-ordination when a chosen sector cuts across different ministries, and without adequate long term vision and backing from the political class.

*The need for more systematic ex post review of regulations generates considerable support, but initiatives appear to be generally slow to get off the ground.* The parliamentary committee for Legislative Monitoring established in 2007 only started work in February 2010. Another area for increased attention is the need to strengthen the assessment of implementation upstream, when regulations are being developed, rather than wait for them to become a problem once adopted. Mechanisms for *ex post* evaluation of new laws, taking account of their broader legal context, would also help the codification projects.

### *Administrative burden reduction for businesses and citizens*

*All Belgian governments have now committed to reducing administrative burdens of regulations and are putting considerable efforts into this, with measurable success.* Policies extend well beyond programmes that reduce burdens in specific regulations, and include a mix of broad long term structural projects as well as short-term projects aimed at “quick win” results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of

ICT; tackle (to a greater or lesser extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from an estimated 3.5% of GDP in 2000 to 1.72% of GDP in 2010.

*Policies range from projects shared between Belgian governments, to initiatives that are specific to each government within its area of competence.* Shared initiatives are a particularly striking feature of current projects, underlining the fact that Belgian governments are not always compartmentalised on their own projects. Shared projects are supported by a 2003 co-operation agreement on administrative simplification signed by the federal, community and regional governments. Important initiatives in this category include the *Kafka* contact point where citizens, businesses and public servants across Belgium can propose ideas for cutting red tape, and the Business Crossroads Bank which is a register of business identification aimed at connecting different databanks of the administrations and thereby allowing re-use of data across administrations. Institutional support is provided by the ASA whose annual action plan covers not only initiatives to reduce burdens in federal regulations, but also long term projects shared with the other Belgian governments.

*Belgian governments have been especially active in the development of programmes to reduce burdens in specific regulations.* Important initiatives have been taken by the federal government, and the Walloon and Flemish governments, to establish and develop administrative burden reduction programmes. Different approaches have been used. The federal government and the Walloon region have taken a selective approach, preferring to test and encourage a gradual evolution. The Flemish region has opted for a more systematic approach. Variants on the SCM methodology are deployed to carry out measurements. At the same time, there is increasing adoption of a user-centric approach to improve the experience of citizens and businesses with the administration. The Brussels Capital Region has been catching up, and in 2008 it launched a pilot for SCM, with a view to creating an SCM procedure. With the “Brussels Plan for Administrative Simplification” launched in October 2009, this will be developed into a full programme, with the objective of a 25% reduction in administrative burdens. From 2010 a selective measurement approach will be launched, the first target being Economy and Employment legislation.

*There is scope for further cross-government sharing of best practice.* The fact that different approaches are being taken can be viewed as an asset, as this provides a laboratory of ideas for moving forward. Steps have already been taken to develop co-operation between the federal level and the regions with regard to measurements, where experiments are underway to find cost efficient approaches. These experiments are of potential interest not only across Belgium but to other European countries (for example, Portugal and Finland have also decided not to adopt a full-blown SCM approach). It is important that databases evolve as far as possible on the same principles, to facilitate best-practice exchange and co-operation. Shared platforms of this kind can be “held in reserve” for the possibility of sharing reduction programmes in policy areas of common interest at some future date.

*Significant efforts have been put into communicating developments and achievements with respect to administrative simplification.* The *Kafka* brand, for example, has been a useful instrument for communication, both within the administration, and to the external public. This is a well-known initiative, which has also gained visibility outside Belgium. This contrasts with the lack of communication on other important Better Regulation policies.

*The federal level has intensified its administrative simplification programme, which has a number of strengths.* The federal programme is developing in stages. The establishment of the Measuring Office in 2007 within the ASA, which has the mandate to capture the changes in administrative burdens caused by the adoption of new or changed regulations in selected areas, was an important staging post in the development of a more systematic policy. It supports a rolling simplification programme which brings together the simplification projects of the different ministries. The *ex post* measurement results highlight the effect on administrative burdens of the regulatory actions of ministries.

*The policy is delivering concrete results and needs to be supported and sustained, with attention to certain points.* The focus on *ex post* measurement and analysis puts some pressure on ministries to deliver results, but in order to ensure maximum effect, the *ex ante* Kafka Test may need to be reinforced, so that regulations which contain administrative burdens can be the subject of a stronger approach before they are adopted, to minimise the adoption of unnecessary new burdens. Ensuring that the *ex ante* and *ex post* parts of the policy remain firmly and visibly linked up is also important if effective control is to be exerted over burdens in the long-run, linked to the clear establishment of a net target or objective. Public consultation over the issues to be covered and the selection of priority areas could benefit from more direct interaction with businesses, to complement the feedback from the Kafka contact point, and the work of the Steering Committee.

*The Walloon Region has also intensified its administrative simplification programme, which has a number of strengths.* The Walloon government has decided that the first priority is to raise awareness and understanding of objectives (it is necessary to walk before you are able to run). It has made efficient use of experiences and best-practice elsewhere (at the federal level and also at EU level) to build its own approach. Significant efforts are going into the measurement of administrative burdens, using the SCM methodology and other approaches. Progress is measured through quantitative and qualitative criteria defined at the start of the simplification process for each measure. EASI-WAL publishes regular progress reports, which are available on its website. These criteria are then used in progress reports to highlight achievements against plans.

*Nevertheless, a number of issues need to be addressed, as the programme matures.* The programme raises issues similar to those at the federal level. Burden measurement is not clearly linked up with simplification plans, and is not used as a baseline to strengthen current targets for simplification. Little attempt is made to link up the policies to evaluate existing and new regulations (the Kafka Test), which is important if effective control is to be exerted over burdens in the long-run. Third, there is a need for more robust public consultation to capture the views of the widest range of stakeholders possible, not just the views of the administration and selected interviews with business in the measurement process.

*The Flemish government has taken a different and more systematic approach compared with the other governments, which also has a number of strengths.* An initial pilot has now been expanded to cover all policy areas. Baseline measurements have been made for the policy areas, and an action plan must be prepared for each policy area. As well the regulatory management unit established an overall action plan. Regular progress reports are made to the Flemish government and parliament, which indicate the extent to which the reduction target for 2012 has been achieved. Efforts have been made to address the effect of new burdens via a compensation rule.

*The main issue facing the Flemish approach is resources.* Better Regulation is a long-term goal which takes time to achieve, and it is important that resources are adequate to the task. The Regulatory Management Unit has relatively few staff and there is a risk that lack of resources will slow the pace of an ambitious but necessary programme.

*Interesting approaches to measurement and identification of priorities are being deployed in Flanders.* SCM measurements by interviews with a group of stakeholders instead of individual businesses is a potentially cost efficient approach, although its real effectiveness needs to be evaluated (there is the risk that important details are missed and that businesses might be reluctant to express their views freely in a group). The 20/80 rule risks that some important administrative burdens remain invisible. In order to avoid this, or to test the hypothesis, a study could measure all legislation in one of the policy areas.

### *Administrative burden reduction for the administration*

*The issue of administrative burdens affecting officials is particularly important for Belgium given the “inflation” of institutions from the federalisation process.* Reform of the public administration with the objective of improving the efficiency of the state might usefully be more closely associated with Better Regulation. Unnecessary regulatory burdens inside government, for example, excessive paperwork that needs to be handled by officials on the frontline of public services, implies unnecessary costs to the administration. The Flemish government has established initiatives which link Better Regulation with efficient government and the cost of regulation for the government.

### ***Compliance, enforcement, appeals***

*Inspections and enforcement, which are the responsibility of the different governments according to the allocation of competences, do not appear to raise any major issues.* The review was not able to go into depth on this issue, but the system appears to be well established, with the development of co-operation between inspection bodies and the use of risk analysis.

*The appeal structure, by contrast, is a largely Belgium wide system, is equally well-developed, but raised a few issues.* The first concerns duplication of procedures (litigants pursuing administrative appeals simultaneously with judicial review). This may need attention. The information gathered by ombudsmen could be more effectively used, and their work suggests that access to information on regulatory procedures is not as easy as it should be.

### ***The interface between member states and the European Union***

*There is a reasonably robust process and regulatory framework for the management of EU origin regulations.* This area provides an especially strong test of Belgium’s capacities to co-ordinate in areas where this is necessary, and the outcome is encouraging overall. The structures that been put in place include the recent establishment of a network of “euro-co-ordinators” – one per ministry in the federal government and one per region and community – to act as the contact point within their administration, for the cross-government network.

*Timely transposition of EU directives, however, remains an issue.* Belgium has only reached the EU target of 1% transposition deficit very recently. A new working group has been established to increase synergies between the political level (cabinets) and administrative levels. The OECD peer review team heard numerous comments to the effect that this was an area needing a boost. Whilst the euro-co-ordinator network had been an excellent initiative, it probably represents more than one full-time job if important issues are to be addressed (for example, time should be set aside to evaluate infraction dossiers to see what lessons might be learnt).

### ***The interface between the subnational and national levels of government***

*The local government landscape is large but significant in terms of direct interaction with business and citizens.* There are 589 municipalities, most of them small. Local governments are important actors in the areas of social regulation as well as permits and planning, and play a major role in the enforcement of higher-level regulations. Regional governments are a key player, sharing tutelage of provinces and municipalities with the federal government. It was suggested that supervision might be simplified.

*There is a well-established network of consultation between the national and local governments, but some issues need attention.* The national governments (federal, regions and communities) consult local governments in the development of regulations through the advisory councils, in which the provinces and municipalities are represented. The regional governments have established specific bodies to interact with local governments. Nevertheless, local authorities have raised concerns about the burdens imposed by higher levels of government. The OECD peer review team heard specific concerns about unfunded mandates and the administrative burdens generated by higher-level regulations. Some initiatives have been taken to address these concerns, for example, an initiative of the Flemish government to reduce administrative burdens on local governments. Another issue raised was the need to put more effort into sharing databases and data re use between levels of government.

*Local governments have started to participate in Better Regulation initiatives of higher-authorities as well taking some steps of their own.* The Flemish government has called on its municipalities to take part in its administrative simplification policy. Various initiatives have recently been developed by municipalities themselves aimed at making municipalities “simple” and to promote a more dynamic environment for entrepreneurs. The EU services directive is proving a useful lever of change as regards one-stop shops.



## Key Recommendations

<b><i>Better Regulation strategy and policies</i></b>	
Federal government, all governments	
1.1.	Identify and disseminate a shared strategic vision of what Better Regulation is seeking to achieve, both in terms of curbing regulatory inflation, but also for the broader contribution which it can make to economic and other public policy goals. Co-operate on the development of a common communication strategy for shared work and achievements, as well as for overall Better Regulation strategy. Develop a global agreement to sustain a shared approach and shared goals. Confirm and strengthen the commitment to sharing experiences and best practices, and to identifying those areas where it makes sense to work together. Ensure that policies that address the stock of regulations are joined up with policies to address the flow. Flesh out the strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.
Federal government	
1.2.	Reinforce communication and visibility. Define and put in place a communication strategy which highlights the work being carried out, the achievements so far, and which promotes the identity of Better Regulation and its leader(s). If necessary, engage the services of communications experts to determine what approach might work best.
All governments	
1.3.	Co-operate on the development of common communication strategy for shared work and achievements, as well as for overall Better Regulation strategy. The co-operation agreement on administrative simplification between the federal government, regions and communities could be the platform to start this necessary co-ordination.
1.4.	Consider how to ensure that <i>ex post</i> evaluations of major Better Regulation programmes are carried out on a systematic basis, in order to secure an effective feedback loop which can be used to further strengthen the programmes.

<b><i>Institutional capacities for Better Regulation</i></b>	
All governments	
2.1.	Ensure the durability of important Better Regulation institutions and projects. Flesh out the Better Regulation strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.
2.2.	Consider how best to secure more effective links between the administration and political units, for shared “buy-in” on Better Regulation processes.
2.3.	Consider whether any of the structures and processes set up to deal with the management of EU regulations provide any inspiration for the handling of domestic issues.
Federal government	
2.4.	Ensure that the ASA keeps its institutional distinctiveness (location in the Federal Chancellery, autonomous agency, strong link with the stakeholders), which has allowed it to promote, often with great success, Better Regulation initiatives of Belgium-wide relevance. Ensure that its Better Regulation advocacy work continues to receive effective support in line with the enlargement of its missions.
2.5.	Encourage greater co-operation between the ASA and the federal SPFs with regard to those initiatives which appear to be the most promising in support of stronger regulatory quality. For example, consider how <i>ex ante</i> impact assessment processes can be more effectively linked up with the <i>Kafka</i> test.
2.6.	Undertake a review, associating the ASA and the Better Regulation structures of the other Belgian governments, of whether and how any or all of the Belgium wide bodies with a role in regulatory management could be associated more closely to the Better Regulation processes.

<b>Regional and community governments</b>	
2.7.	Ensure that the significant institutional assets for Better Regulation which are now in place are preserved and enhanced. Consider whether resources are adequate to the tasks carried out, and ensure that professional capacities and competences are further enhanced, in order to meet the needs of a maturing Better Regulation agenda in support of more effective public administration and economic competitiveness.
<b>Federal government- Chancellery of the Prime Minister, ASA</b>	
2.8.	Consider the development of a more strategic perspective on policy co-operation, which identifies the issues that may need to be shared (the environment, for example), not least because they involve significant regulation by the different governments. Review and monitor Better Regulation co-operation agreements so that they can play an appropriate supporting role in streamlining the regulatory framework to promote policy coherence across Belgium.
<b>All governments</b>	
2.9.	Continue to promote further co-operation and information exchange on Better Regulation with the parliaments, whilst respecting the division of powers and responsibilities between the executive and the legislature.

### ***Transparency through public consultation and communication***

<b>All governments</b>	
3.1.	Engage further reforms of the advisory board system, to simplify the structure; develop further new forms of consultation, for use where appropriate as a complement to the traditional system; reinforce inter-governmental consultation; and to frame the overall approach, establish consultation guidelines for all domains.

Advisory boards	
3.2.	Evaluate the advisory board system, with a view to (further) rationalisation, and streamlining of the supporting rules. Consider a guillotine system to prune the number of boards when they come to the end of their mandate. Eliminate boards that are not found to be efficient. Establish mandates with a limited timeframe, and systematically review the functioning of the board before renewing the mandate.
3.3.	Ensure that consultation exercises are launched at an early stage in the decision making process, before political commitments have been made, and in time to provide useful feedback to the government as an aid to decision making. Make use of the forward planning mechanisms to secure this.
3.4.	Enforce the rules regarding deadlines where necessary, and check that these provide adequate time for stakeholders to prepare effective responses.
3.5.	Check that all regulations are captured by all the relevant stages of the consultation process (including for example review by the relevant advisory board). Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.
3.6.	Check that the process and the criteria for the establishment and nominations to advisory boards are clear and easily accessible for all those who may wish to put themselves forward.
3.7.	Consider the establishment of a consultation portal (covering all governments) in order to ensure that the work and opinions of the largest advisory boards are published and easily accessible to all interested parties, including the general public.
3.8.	Ensure that systematic feedback is provided on significant stakeholder contributions, including where consultation is non-obligatory. Consider providing more complete feedback on important legislation than is currently provided in the explanatory memorandum to draft bills.

New forms of consultation	
3.9.	Without endangering the traditional advisory board system of consultation, develop a framework for the selected use of new approaches, building on experiments that have already worked well. For example, when would it be useful to consult on the web, perhaps as part of the advisory board process? What issues would benefit from this approach?
Framework consultation guidelines	
3.10.	Develop, agree and publicise an enforceable consultation policy and supporting code of good practice that covers all the key elements set out in the more detailed recommendations above (scope, timing, methods, feedback etc). This could be done by setting up a reflection group made up of the representatives of the Better Regulation units, representative stakeholders, the most important consultations boards, and the Council of State. Consider whether there is a need for further sanctions for non-compliance with consultation rules and procedures.
Inter-governmental consultation	
3.11.	Consider whether there is a need to boost and systematise inter-governmental consultation and shared approaches to public consultation in areas where governments agree on the need for co-ordination.
<b><i>Development of new regulations</i></b>	
<i>Procedures for the development of regulations</i>	
Federal government, Walloon government	
4.1.	Consider action to limit the use of programme laws to their intended purpose. Ensure that these laws are processed transparently.
Governments apart from Flanders	
4.2.	Consider setting up a more visible and regularly updated forward planning process for regulations, to promote transparency.

All governments	
4.3.	Consider how law drafting can be more firmly established as the responsibility of officials in the administration, subject of course to political and ministerial oversight and direction.
4.4.	Ensure that all significant regulations are covered by the same process. Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.
4.5.	Consider preliminary internal reviews by officials in the administration to relieve the load on the formal control bodies. Establish criteria for prioritising cases. For example, in the case of the Inspectorate of Finance, this could be thresholds to identify regulations with the most important budgetary consequences. Consider how use of the urgency procedure can be minimised, in order to allow time for the Council of State and Inspectorate of Finance to carry out effective checks.
All governments, Council of state	
4.6.	Systematically publicise (at least in part) the opinions of the Council of State on its website. Consider also systematically publicising the government's response to Council of State opinions (as happens in some other countries with similar structures such as the Netherlands).
<i>Ex ante impact assessment of new regulations</i>	
All governments	
4.7.	Identify the issues that stand in the way of a more robust impact assessment process, and take steps to deal with these, drawing on international best practice.
4.8.	Ensure that experiences are systematically shared, starting with the 2003 co-operation agreement on administrative simplification.
Federal government	
4.9.	The federal government should re-assess its ambitions in respect of the SDIA test and take stock of how to evolve toward a broader, integrated and realistically achievable approach.

Flanders government	
4.10.	Flanders should stick with its ambition of a broadly based process. It should not be discouraged by the challenges of setting up a full impact assessment process, and decide to confine itself to a more limited version that only covered administrative burdens.
Walloon government	
4.11.	The Walloon government should set itself the objective of moving toward a broader process, beyond administrative burdens.
Brussels Capital Region government	
4.12.	The government of Brussels-Capital Region should formally introduce <i>ex ante</i> impact assessment in the procedures for making new regulations.
All governments	
4.13.	A long term goal which could start to be discussed now between governments is the identification of policy areas where there is a shared interest in the outcome, and hence the need to combine efforts on impact assessment for regulations linked to these policies.
4.14.	Ensure that part of the upgrading of impact assessment processes includes a clear and enforceable commitment to reviewing alternatives to regulation.
<b><i>The management and rationalisation of existing regulations</i></b>	
<i>Simplification of regulations</i>	
All governments	
5.1.	Consider how the important work of codification, carried out for the most part by civil servants, can be drawn to the attention of governments and the political leadership in order to ensure their full backing over the long-run.

Federal government, all governments	
5.2.	Encourage and track the work of the parliamentary committee for Legislative Monitoring, and the work of other parliamentary committees (for example, the Flanders committee). Share the results of this work in the spirit of a global approach. Consider how implementation issues can be captured more effectively and at an earlier stage (for example, providing for review clauses in draft regulations; ensuring that implementation is one of the issues to be covered in <i>ex ante</i> impact assessment; and generally making a stronger link between <i>ex ante</i> RIA and <i>ex post</i> implementation and review).
<i>Administrative burden reduction for business and citizens</i>	
All governments	
5.3.	Strengthen the existing Belgian SCM network to share ideas on the development of methodologies. Ensure that information is exchanged between governments regarding the development of databases, to facilitate exchanges of best practice and co-operation.
Federal government	
5.4.	Confirm a clear net target or objective for burden reduction so that benefits from work on existing regulations is not cancelled out by burdens in new regulations. Consider how the <i>ex ante</i> Kafka Test might be strengthened and continue to ensure that <i>ex ante</i> and <i>ex post</i> parts of the policy are firmly linked up. Consider the further development of direct consultations with businesses, as an adjunct to the input from the <i>Kafka</i> contact point and the ASA Steering Committee.
Walloon government	
5.5.	Strengthen the current targets and criteria for burden reduction so that work on existing regulations is not cancelled out by burdens in new regulations. Make stronger use of the measurement work to inform simplification plans and in support of a clear target or objective. Examine ways of linking up the evaluation of burdens in draft regulations (the <i>Kafka</i> Test) with the policy for existing regulations. Develop and implement a more broadly based public consultation policy which will capture the direct views of stakeholders in a more systematic way.



<b>Flemish government</b>	
5.6.	Consider how the Regulatory Management Unit can be further supported in its work. One idea would be to outsource the measurement process. Consider evaluating the approaches being taken to assess burdens to confirm that no important details are missed.
<i>Administrative burden reduction inside the administration</i>	
<b>All governments</b>	
5.7.	Consider whether it is appropriate and necessary to establish more focused actions to deal with unnecessary burdens inside government.
<b><i>Compliance, enforcement, appeals</i></b>	
<b>All governments</b>	
6.1.	Consider whether there are issues related to the duplication of procedures, and more effective use of the information gathered by ombudsmen, that require attention.
<b><i>The interface between member states and the European Union</i></b>	
7.1.	Establish a strategic review of the framework for transposition of EU directives. Consider whether resources for the euro-co-ordinator network need to be boosted. Consider carrying out a full impact assessment for EU directives as part of the transposition process. Review the role of the Council of State (should they intervene at an earlier stage as regards competences?). Consider how the processes of negotiation and transposition can be brought closer together in practice. Promote the interest of high-level officials and politicians in the management of EU regulations.

*Note:* Large parts of this recommendation – review of transposition, role of the Council of State – were given effect after the OECD peer review team mission.

## Notes

1. After four years of strong growth, the Belgian economy entered a deep recession during the second half of 2008 under the impact of the international crisis. The main challenge ahead is to restore fiscal sustainability and to implement structural reforms to enhance long term growth. However public finances are moving away from sustainability. Part of the solution is to rebalance revenue and spending responsibilities across the federation to ensure fiscal sustainability. The federal government is fiscally squeezed, compared with other Belgian governments. Another systemic fiscal issue is that overlapping spending responsibilities provide few incentives for pursuing spending efficiency (OECD Economic Survey of Belgium, 2009).
2. *Chambre des Représentants de Belgique, Note de Politique Générale du ministre pour l'Économie et la Simplification administrative*, 14 avril 2008. Doc 52 0995/018.
3. Federation of Belgian Enterprises, booklet on Better Regulation, 2008.
4. See Annex E for the full statement.
5. The *jurisprudence* of the Constitutional Court and the Council of State has established that the competences of the regions, as well as the communities, are exercised in relation to a given territory. It is only in the bilingual Brussels Capital region that, in relation to community competences, a personal choice can be made by individuals when the latter do not attach themselves to single community institutions. Given that there is only one nationality, the choice can vary, for the same individual, depending on the issues. This situation is specific to the Brussels Capital region. Only exceptionally do communities exercise competences beyond the territory of the unilingual linguistic region.
6. This has led in a number of cases to diseconomies of scale, resulting in institutional complexity and fragmentation of policies (OECD Economic Survey of Belgium, 2009).
7. Secretariat's translation of an extract from "*Accord du gouvernement conclu entre les négociateurs de CD&V, MR, PS, Open Vld, cdH*", March 2008. Available at: [www.fedweb.belgium.be/fr/binaries/accord\\_gouvernement180308\\_tcm119-14855.pdf](http://www.fedweb.belgium.be/fr/binaries/accord_gouvernement180308_tcm119-14855.pdf).
8. The bilingual Brussels-Capital region is not subdivided into provinces . The regional authorities exercise the competences which would otherwise be devolved to provinces.
9. The EU scoreboard showed Belgium with a transposition deficit above the 1% target in 2009 at the time of the OECD peer review missions. This had come down to 0.8% in March 2010.
10. See OECD 2009 ; also IEA 2005 "the structure may cause problems of regulatory powers – overlap of powers, lack of regulatory coverage of certain segments, lack of the economies of scale – and co-ordination – both the objectives and of enforcement

decisions. This structure may lead to lengthy communication procedures and increase bureaucracy”).

11. Origins of the economic and social concertation which emerged in the 19th century, in the context of an industrialised economy which generated serious social conflict. The Labour conference in 1886 led to the creation of the first organised concertation groups. In the 1930s, the conflicts led to a renewal and deepening of dialogue. The draft agreement on social solidarity (1944) was the fulcrum of the 1948 Act (establishment of the EAC), 1952 (creation of the CNT), and 1968, (organisation of the joint committees). (*Source*: Federal government).
12. A federal law which is duplicated for the regions and communities.



## *Introduction: Conduct of the review*

### **Peer review and country contributions**

The review was conducted by a team consisting of members of the OECD Secretariat, and peer reviewers drawn from the administrations of other European countries with expertise in Better Regulation. The review team for Belgium was:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sofia Hercules, Project Manager, Better Regulation Division, Swedish Agency for Economic and Regional Growth (Tillväxtverket, formerly NUTEK), Sweden.
- Michael Fruhmann, Head of Unit in the Constitutional Service of the Federal Chancellery, Austria.

The current review of Belgium reflects contributions from Belgian governments and discussions held in Brussels and Namur by an OECD review team with Belgian officials and external stakeholders on 26-28 November 2008, 3-5 December 2008, and 18 June 2009. Major initiatives and developments between these missions and clearance of the report for publication in April 2010 are referenced in the report, but have not been evaluated.

The team interviewed representatives of the following organisations:

#### *Federal administrations*

AFSCA  
 ASA  
 Banque Carrefour des Entreprises  
 Bureau fédéral du plan  
 Chancellerie du Premier Ministre, secrétariat du Conseil des ministres  
 Chambre des représentants  
 Collège des médiateurs fédéraux  
 Conseil d'Etat  
 Conseil national du travail (CNT)  
 Cour constitutionnelle  
 Cour de cassation  
 Cour des comptes  
 Fédération royale du notariat belge

Inspection des Finances  
Inspection sociale  
Office des étrangers  
ONSS  
SPF Affaires étrangères  
SPF Développement durable  
SPF Economie  
SPF Emploi  
SPF Finances  
SPF Sécurité sociale, SIRS  
SRCT  
Secrétariat du comité anti fraude – administration fiscale

### *French Community*

Administration générale des personnels de l'enseignement (AGPE)  
Administration générale de l'enseignement et de la recherche scientifique (AGERS)  
Cabinet de Monsieur le Ministre Daerden  
Conseil supérieur de l'audiovisuel  
Secrétariat général  
Direction générale des affaires générales et de l'audit général  
Direction générale de l'enseignement obligatoire  
Direction des affaires juridiques et du contentieux  
Service du Médiateur  
Cellule ISA, Secrétariat général

### *German-speaking Community*

Ministry of German-speaking Community

### *Brussels-Capital Region*

Brussels Regional Parliament  
Ministry of Brussels-Capital Region  
Brussels Regional Informatics Centre  
Agence bruxelloise de l'entreprise

### *Flemish Region*

Agentschap voor Binnenlands Bestuur (Agency for Local Governments)  
Kabinet Minister President (Cabinet of Minister President)  
Cel Wetskwaliteit Onderwijs en vorming (Department of Education, Unit for Regulatory Quality)  
Departement Internationaal Vlaanderen (Department of Foreign Affairs)  
Cel Wetskwaliteit Welzijn, Volksgezondheid en Gezin (Department of Welfare, Public Health and Family, Unit for Regulatory Quality)  
Dienst Westmatiging (DMW) – (Regulatory Management Unit)  
Vlaams Parlement (Flemish Parliament)

Departement Bestuurszaken (Public Governance Department)  
 Sociaal-Economische Raad van Vlaanderen (Social and Economic Council of  
 Flanders)

### *Walloon Region*

Cabinet Demotte  
 Conseil économique et social (Social and Economic Council)  
 Chancellerie et secrétariat du gouvernement wallon (Wallonian Government  
 Chancellery and Secretariat)  
 Comité législatif (Legislative Committee)  
 Easi-Wal  
 Médiateur de la Région wallonne (Wallonian Region Mediator)  
 Parlement wallon (Wallonian Parliament)  
 Service Public Wallonie (SPW)

### *External stakeholders and experts*

Christian Trade Union (ABV – CSC)  
 Federation of Enterprises in Belgium (FEB – VBO)  
*Interuniversitair Centrum voor Wetgeving* (ICW) – Interuniversity centre for  
 Legislation  
 Liberal Trade Union  
 Socialist Trade Union (ABVV – FGTB)  
 Union of Self-Employed Entrepreneurs (UNIZO)  
*Université catholique de Louvain*  
*Université libre de Belgique*  
*Universiteit Antwerpen*

## Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- **Strategy and policies for Better Regulation.** The chapter first considers the drivers of Better Regulation policies and the country’s public governance framework seeks to provide a “helicopter view” of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.
- **Institutional capacities for Better Regulation.** This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.

- **Transparency through consultation and communication.** This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.
- **The development of new regulations.** This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.
- **The management and rationalisation of existing regulations.** This chapter looks at regulatory policies focused on the management of the “stock” of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- **Compliance, enforcement, appeals.** This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- **The interface between member states and the EU.** This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- **The interface between subnational and national levels of government.** This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

## Methodology

The starting point for the reviews is a “project baseline” which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD’s multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.



- The OECD/SIGMA regulatory management reviews in the 12 “new” EU member states carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission’s 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially small to medium-sized enterprises, drawing attention to the need for a reduction in administrative burdens.
- The European Commission’s follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission’s development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD’s recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by Belgium.

The report is also based on material provided by Belgium in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

## **Regulation: what the term means for this project**

The term “regulation” in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).



## Chapter 1

### Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole-of-government” policy to pursue high quality regulation. A key part of the OECD’s 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this exercise and would be inappropriate, the report makes a few comments that may prove helpful for a more in-depth analysis.

## Assessment and recommendations

### *Development of Better Regulation strategy and policies*

*There have been considerable developments and achievements, driven by a growing awareness across Belgium of the need to address regulatory inflation and improve regulatory quality.* Belgian governments have launched a large number of initiatives in the area of Better Regulation in recent years, which tackle the reduction of administrative burdens on citizens and businesses, codification and modernisation of existing regulations (including an important project to codify and modernise economic law), impact assessment (with the *Kafka* Test on administrative burdens), and more recently a “Sustainability Test” at the federal level, as well as the Flanders Impact Assessment.

*Policies cover a rich mix of projects shared between Belgian governments, and initiatives specific to each government within its area of competence.* Shared initiatives are a particularly striking feature of current projects, underlining the fact that Belgian governments are not always compartmentalised on their own projects. Shared projects are supported by a 2003 co-operation agreement signed by the federal, community and regional governments. Important initiatives in this category include the *Kafka* contact point where citizens, businesses and public servants across Belgium can propose ideas for cutting red tape, and projects on single data collection (for example, the penal data register, the Crossroads Bank for Enterprise, the Crossroads Bank for social security, and the *Telemarc* public procurement project). The transposition of EU directives, and consultation on international issues are also important areas of shared work. Institutional support is provided by the ASA whose Annual Action Plan covers not only initiatives to reduce burdens in federal regulations, but also long term projects shared with the other Belgian governments. Beyond the shared initiatives, the federal government, Wallonia and the French community have tended to focus on administrative simplification and the use of e-Government to drive Better Regulation projects. Wallonia also advocates for Better Regulation, with an implicit general objective over time to broaden the scope of its work. Flanders has adopted a programme encompassing broader regulatory quality as well as administrative simplification.

*Regulatory quality in all its dimensions is rising up the agenda.* In particular, Belgian governments have taken steps to integrate *ex ante* impact assessment in the development of regulations. *Ex ante* impact assessment is a relatively new policy in Belgium, and still a work in progress. Although steps have been taken to enlarge the scope of impact assessments, for most Belgian governments these are still largely confined in practice to evaluating administrative burdens. The federal government introduced the *Kafka* Test to measure administrative burdens in 2004, and has broadened its approach since 2007 with the development of a sustainability assessment. The governments of the Walloon Region and the French Community have also adopted the *Kafka* Test. This has proved a good starting point for raising awareness of impact assessment and its potential. The Flemish government stands out as especially active in the development and practical roll out of an *ex ante* impact assessment process with a broad scope, starting in 2005. A variable geometry is at work, with different governments sometimes adopting different versions of the same processes.

*However, important challenges need to be addressed if ex ante impact assessment is to make a real difference.* The simplicity of the *Kafka* Test limits its influence, as it only addresses administrative burdens. The highly ambitious objectives set for the federal Sustainable Development Impact Assessment, combined with significant exemptions, could

complicate efforts to make progress. All the different initiatives suffer, to a greater or lesser extent, from a range of problems including timeliness, limited coverage, and weak institutional frameworks. Reflecting the often limited reach of general procedures for the development of regulations, many draft regulations are currently exempted from any form of impact assessment. The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Impact assessment is often done too late and becomes an *ex post* justification for decisions which have already been reached. This often causes implementation problems downstream and requires revisions to the law in the worst cases. Institutional frameworks are weak and generally unable to challenge poorly implemented assessments. Quantification is limited. Transparency is also weak with often limited efforts to consult with stakeholders and little effort at publication. Strengthening impact assessments will require strong high-level commitment and further culture change. Consideration of alternatives to regulation is included in some but not all of the impact assessment mechanisms, an important issue for Belgium against the background of significant regulatory inflation.

*There remains a strong emphasis on administrative simplification, and all Belgian governments are putting considerable efforts into this, with measurable success.* Administrative simplification is a political priority and common denominator across all governments, backed up by successive ministerial policy statements. Each government has defined its own strategy. Policies extend well beyond programmes to reduce burdens in specific regulations, and include a mix of broad long term structural projects as well as short-term projects aimed at “quick win” results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of ICT; tackle (to a greater or lesser extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from an estimated 3.5% of GDP in 2000 to 1.72% of GDP in 2008.

*Belgium’s current institutionalised system of consultation is based on fundamental principles of representative democracy, but needs some further reform.* The system covers a very wide range of sectors and issues. Belgian governments have a well-established and well-supported practice of consulting external shareholders when preparing new regulations, which is based on institutionalised bodies (“advisory boards”) set up by each government. The system has the broad support of most stakeholders. Belgian governments are also deploying or testing a number of new approaches alongside the traditional structures. Transparency as a basic principle of consultation has, however, become compromised over time by the growing size of the advisory board system. There have been significant efforts to simplify the advisory board system, particularly in the regions. The overall approach to consultation would benefit from an updated and clearer policy to guide the process and reinstate transparency.

*The management of EU aspects of Better Regulation displays both strengths and weaknesses.* The management of EU origin regulations (negotiations and transposition) is well-organised and an area where co-ordination between Belgian governments is especially strong. Belgium, however, by July 2009 still had not reached the 1% deficit target for timely transposition of internal market directives set by the European Commission. Policies for transposition would benefit from a strategic review (a review was launched after the OECD peer review mission). The interface with the EU’s own Better Regulation policies appears to be underexploited. As the federal government has pointed out, Belgium is at the heart of Europe and was a founder member of the EU. It could consider how to play a stronger and more visible role in the development of EU Better Regulation.

Belgium's Presidency of the EU in the second half of 2010 is a good opportunity to influence developments.

*Beyond the specific initiatives, it is hard to distinguish a clear and compelling overall Better Regulation strategy linked to public policy goals.* There is a strong shared appreciation in Belgium of the need to address regulatory inflation and improve regulatory quality. How do current and planned initiatives come together to support this? How can the policies of the different governments be brought together in a shared vision, without compromising each government's autonomy? Initiatives for Better Regulation are not explicitly framed within an overarching and visible policy strategy and objectives against which progress can be monitored and communicated, and which links Better Regulation to broader public policy goals. This weakens the impact of the good work being done, and makes it harder for the very wide range of stakeholders (both within and outside governments) to lend their support. Yet there are powerful potential drivers at work, including the need to boost competitiveness and support a stronger public administration.

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**Recommendation 1.1. (federal government, all governments): Identify and disseminate a shared strategic vision of what Better Regulation is seeking to achieve, both in terms of curbing regulatory inflation but also for the broader contribution which it can make to economic and other public policy goals. Develop a global agreement to sustain a shared approach and shared goals. Confirm and strengthen the commitment to sharing experiences and best practices, and to identifying those areas where it makes sense to work together. Ensure that policies to address the stock of regulations are joined up with policies to address the flow. Flesh out the strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.**

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### ***Communication on Better Regulation strategy and policies***

*Significant efforts have been put into communicating developments and achievements with respect to administrative simplification.* The *Kafka* brand, for example, has been a useful instrument for communication both within the administration and to the external public. This is a well-known initiative, which has also gained visibility outside Belgium. However, it contrasts sharply with the lack of communication on other important Better Regulation policies.

*There is a need at this stage for strong visibility and transparency of the range of work carried out in support of Better Regulation.* Belgium's institutional and regulatory environment is complex, which means that special attention needs to be paid, on an ongoing basis, to transparency and visibility of the work carried out to address regulatory management issues. This is important both for internal stakeholders (officials in the administration of each government, given the tradition of substantial ministry autonomy, so that they can buy-in to the process); and external stakeholders (businesses and citizens who need to feel the benefits of Better Regulation, to support the efforts which are being made, and to contribute ideas for further development). How much is known of policies and achievements beyond simplification by those who need to know?

*There is a linked need for visible leadership.* The rapidly shifting political environment means that officials need to be in the front line, as well as their political leaders. How well-known are the Better Regulation units? Greater visibility and transparency would help

to spread good practices and successful initiatives across the different governments. The different governments appear to be at different stages in the communication process. For example, Wallonia has made considerable efforts to establish *EASI-WAL* as a recognisable brand, as part of its Better Regulation strategy. The issue is, however, relevant to all Belgian governments. The OECD peer review team heard, for example, that the experiences of the German speaking community needed be better known.

*The need for effective communication and clearly visible leadership is especially important for the ASA, given its Belgium wide mission.* There is a special need to highlight effectively the major initiatives that have been taken in recent years which involve shared work across Belgian governments, and through this, to highlight the role and importance of the ASA as facilitator. The establishment of shared portals and databases on regulations and related issues, such as the Crossroads Bank for Enterprises is a major success of the Belgian Better Regulation experience so far, and these achievements should be widely communicated.

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**Recommendation 1.2. (federal government): Reinforce communication and visibility. Define and put in place a communication strategy which highlights the work being carried out, the achievements so far, and which promotes the identity of the Better Regulation unit and its leader(s). If necessary, engage the services of communications experts to determine what approach might work best.**

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**Recommendation 1.3. (all governments): Co-operate on the development of common communication strategy for shared work and achievements, as well as for overall Better Regulation strategy. The co-operation agreement on administrative simplification between the federal government, regions and communities could be the platform to start this necessary co-ordination.**

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### ***Ex post evaluation of Better Regulation strategy and policies***

*As in many other OECD countries, ex post evaluation of Better Regulation policies is (with some exceptions) not well-developed.* Strategic *ex post* evaluations of policies to assess the need for major adjustments (for example policies for impact assessment) are largely absent, with the notable exception of Flanders where efforts have been made to take stock. Annual progress reports on simplification are not a substitute for a more strategic review of the underlying programmes. The *Court of Audit* might be a useful independent evaluator of Better Regulation policies (other audit offices in the EU such as the United Kingdom National Audit Office have developed this role).

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**Recommendation 1.4. (all governments): Consider how to ensure that *ex post* evaluations of major Better Regulation programmes are carried out on a systematic basis, in order to secure an effective feedback loop which can be used to further strengthen the programmes.**

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### ***E-Government in support of Better Regulation***

*Strong use is made of e-Government in some key areas of Better Regulation, but there are some issues.* In some cases (Wallonia, for example) e-Government is an integral part of Better Regulation strategy. Generally, strong and effective use is made of e-Government for a range of Better Regulation policies, including Belgium wide initiatives such as databases on the stock of regulations and the Crossroads Bank for Enterprises, as well as for large parts of the administrative simplification programmes. The Internet is also increasingly used for public consultations, but this could be further developed.<sup>1</sup> An issue to watch is that the digitisation does not mask a failure to simplify the underlying process and to provide a genuinely more effective front office for businesses and citizens. A more strategic vision of the areas and issues where ICT developments need to be shared would be helpful, and with this, a stronger identification of the technical aspects which need a co-operative approach. What issues could be shared? What technical aspects need to be shared?<sup>2</sup>

## **Background**

### ***Main developments in Belgium's Better Regulation agenda***

Belgium has a long-standing history for developing Better Regulation policies. The first initiative for Better Regulation dates back to 1975. At that time, a working group was established to formulate proposals for administrative simplification. This was followed by other initiatives to reduce burdens on businesses. While these actions had limited results, they paved the way for a sharper policy on administrative simplification. The programme law of 1998 on entrepreneurship was a milestone in that respect, as it established a more global and structural approach to simplification, and led to the creation of the Administrative Simplification Agency. The new government that came to power in June 2003 maintained the administrative simplification policy, though it refocused it by defining 12 strategic areas. A major initiative was the launch of the *Kafka* website in December 2003 to serve as a focal point “where citizens, businesses, organisations and civil servants can suggest projects and ideas for cutting red tape”. Over the past few years the federal government has not made any major changes to its policy line, although it has extended the scope of its simplification policy to citizens.

Regions and communities have also developed their own Better Regulation agenda in parallel to – and partly in co-operation with – the federal government.

- The Flemish government initiated its Better Regulation policy in 1999 by announcing a cut in the volume of regulations by 25%. While the target was not detailed, it served as a strong signal that the government wanted to improve the regulatory framework. This policy, formally defined in 2000, mainly addressed administrative simplification and focused on institutional capacities (with the creation of a dedicated unit the following year). With the Flemish government agreement of 2004 that included a chapter on Better Regulation, the scope has extended to embrace a broader view of regulatory quality. Since then the Flemish government has focused on defining policy tools for Better Regulation, which are organised into three pillars: administrative burden reduction, regulatory impact analysis, and the legal quality of regulations including codification. The new government agreement, concluded in July 2009, gives less visibility to Better



Regulation compared to the previous government agreement. However, it mentions administrative simplification and regulatory quality as key instruments for a more efficient government, and the most recent Policy paper of Administrative Affairs gives further weight to administrative burden reduction and impact assessment combined with an efficient and effective government (see Annex E).

- The Walloon government launched policies for simplification in 2002, in parallel with policies for the development of e-Government. These two policies were integrated in 2005 when the two relevant units were merged into *EASI-WAL*, the Commissioner for administrative simplification and e-Government. The 2005 policy statement of the Walloon government provided for actions to improve regulatory quality, mainly by improving the quality of existing regulations and introducing a first aspect of impact assessment when formulating new regulations. The policy for administrative simplification and e-Government is seen as a lever for changing the administrative culture, developing a demand for regulatory quality both within and outside the administration, eventually leading to a broader policy on regulatory quality. It is structured into four pillars: rationalisation of existing laws, institutional reinforcement, evaluation of administrative burdens, and information and guidance to raise awareness.<sup>3</sup>
- The Brussels Capital Region has been catching up. In 2006 it created a unit for administrative simplification and e-Government (*AVEG*) co-operative projects for the reduction of administrative burdens. In 2008, it launched a pilot for SCM, with a view to creating an SCM procedure. With the “Brussels Plan for Administrative Simplification” launched in October 2009, this will be developed into a full programme, with the objective of a 25% reduction in administrative burdens. From 2010 a selective measurement approach will be launched, the first target being the legislation of Economy and Employment.
- The Better Regulation policy of the French Community, which is outlined in a ministerial note of 2005, focuses on administrative simplification along with e-Government, with a view to improving services to citizens and work conditions of civil servants. The implementation of a policy on simplification and e-Government is considered as a lever for changes to the administrative organisation and culture, and increased awareness of regulatory quality within the administration.<sup>4</sup>
- In the German-speaking Community, the approach is rather informal, reflecting the small size of the community. Better Regulation issues are addressed through an inter-departmental group of 8 lawyers. Policies have focused on simplification issues (using the experience of other federated entities and the federal state) and legal regulatory quality (with specific concerns such as German legal terminology in Belgian law).

**Table 1.1. Milestones in the development of Better Regulation policies in Belgium**

1975	The government creates the Working Group on administrative simplification.
1980	Territorial reform: creation of communities and regions.
1982-87	Commission “ <i>Comform</i> ” assesses administrative formalities of federal regulations.
1986	The government releases a report on modernisation of public services.
1987	Creation of modernisation cells in the public administration.
1990	The government creates the Social Security Crossroads Bank.
1991	<ul style="list-style-type: none"> <li>• Law on motivation of public acts.</li> <li>• Law on state accountability.</li> </ul>
1991-93	“ <i>Radioscopie</i> ” project (audit of federal departments).
1993	<ul style="list-style-type: none"> <li>• Project “<i>Auditform</i>” is launched, which aims at halving the number of forms that have to be filled out by small and medium-sized companies.</li> <li>• Charter of public services.</li> </ul>
1996	Law on modernisation of social security.
1998	Programme law of 18 February 1998 on promotion of entrepreneurship establishes the Administrative Simplification Agency (ASA).
1999-2003	The federal government carries out the <i>Copernicus</i> reform.
2000	The Flemish government approves a “general framework for the simplification of regulations, procedures and rules”.
2001	<ul style="list-style-type: none"> <li>• The federal government establishes <i>Fedict</i> (e-Government).</li> <li>• The Flemish government presents the “<i>Beter Bestuurlijk Beleid</i>” (“Better Governance Policy”, otherwise known as BBB).</li> <li>• The Walloon government adopts its e-Government project “Wall-On-line”, following which it launches an Action plan for e-Government for 2002-04 in 2002.</li> </ul>
2002	<ul style="list-style-type: none"> <li>• Flemish Regulatory Management Unit is operational.</li> <li>• The Walloon government launches a policy aimed at improved quality of regulations.</li> </ul>
2003	<ul style="list-style-type: none"> <li>• The new federal government formulates 12 Strategic Works in the area of administrative simplification.</li> </ul>

	<ul style="list-style-type: none"> <li>• The federal government launches the <i>Kafka</i> initiative.</li> <li>• Co-operation agreement on administrative simplification between the federal government and regions and communities.</li> <li>• The Flemish government approves “eight principles of good regulation”.</li> </ul>
2004	The Flemish Government Agreement for 2004-09 includes a specific chapter on Better Regulation.
2005	<ul style="list-style-type: none"> <li>• Creation of Business Crossroads Bank.</li> <li>• The Walloon Region launches the <i>EASI-WAL</i> Action Plan for administrative simplification and e-Government for the 2005-09 period.</li> <li>• Following a policy statement in 2004, which set administrative simplification as a transversal objective among the government policy objectives, the Government of the French Community publishes a Strategy for administrative simplification and e-Government for 2005-10.</li> <li>• The Flemish government introduces the compensation rule and impact assessment (compulsory).</li> </ul>
2006	<ul style="list-style-type: none"> <li>• The Flemish government launches the regulatory agenda and sets up regulatory quality units in different policy areas.</li> <li>• The Brussels Capital Region government launches <i>AVEG</i>, a unit to promote administrative simplification.</li> </ul>
2007	The Flemish government launches a project for the measurement of administrative burdens.
2008	<ul style="list-style-type: none"> <li>• The Flemish government concludes an inter-institutional agreement about RIA with the Parliament, strategic advisory boards and the Social Economic Council of Flanders (SERV).</li> <li>• The Brussels Capital region government launches a pilot for the development of SCM.</li> </ul>

### ***Guiding principles of the current Better Regulation policy agenda***

Simplification is a shared objective. Beyond that, the emphasis and breadth of regulatory policy varies between governments. The General Policy Statement of the federal Minister for Economy and Administrative Simplification of April 2008<sup>5</sup> specifies the modernisation of regulation as one of the actions to be undertaken to promote the competitiveness of the economy, and defines the elimination and simplification of regulations as strategic objectives. It also calls for the pursuit of administrative simplification through a number of “crucial” projects to be undertaken, the measurement of burdens and the application of the *Kafka* test to measure administrative burdens of new regulations. There are however no documents or other evidence, which set out a broad vision of Better Regulation, or provide structured targets at the government level. The National Reform Programme for 2008-10 elaborated by Belgium in the framework of the

Lisbon Strategy classifies initiatives of Belgian governments around four main pillars,<sup>6</sup> but does not specify strategic targets.

Different strategies are at work across the regions and communities. In Flanders the government agreement of 2004 includes a chapter on Better Regulation. The focus is on establishing tools and processes for promoting regulatory quality and administrative simplification, based on a set of eight principles for Better Regulation. In Wallonia the Government has set specific objectives regarding the improvement of regulations in its Regional Policy Statement of June 2005, and spelled out a number of actions which associate administrative simplification and e-Government. The underlying strategy is to extend the scope of the Better Regulation agenda gradually, as the implementation of administrative simplification brings changes to the administrative culture and helps building support to Better Regulation policies. There are regular exchanges of information between the entities involved in Better Regulation in the federal state, regions and communities. The Administrative Simplification Agency (ASA) plays a key role in that respect since one of its official missions is to promote dialogue on administrative simplification between all Belgian governments.

The need for Better Regulation is increasingly acknowledged across Belgium. The implementation of administrative simplification has raised awareness of the need to raise the quality of the regulatory framework, both within and outside the administration. For example, the introduction of the *Kafka* Test for all draft regulations, by which law drafters must assess the administrative burdens of proposals, has helped introduce the notion of impact analysis when making regulations. Business representative organisations and trade unions support initiatives to reduce administrative burdens, but also call for a broader policy on regulatory quality.

### ***Main Better Regulation policies***

The initiatives of Belgian governments can be classified under three main headings: reduction of administrative burdens; simplification of the regulatory stock; and development of *ex ante* impact assessment for the development of new regulations. Consultation processes and the management of EU origin regulations are other important features of the Better Regulation landscape.

#### *Administrative burden reduction*

Policies for the reduction of administrative burdens are pursued by all Belgian governments, which exchange information and methodologies through formal and informal co-ordination and co-operation mechanisms. These policies combine structural and *ad hoc* projects, often include a strong IT component, and associate efforts directed at the stock of existing legislation with efforts directed at the inflow of new regulations.

At the federal level, the *Kafka* Plan has combined simplification projects resulting from a governmental commitment in 2003 to reduce red tape (referred to as the “12 Strategic Works”<sup>7</sup>), and the yearly action plan of the ASA. Projects have included flagship structural projects and quick-win projects aimed at building support for the simplification policy. One of the flagship projects is the Crossroads Bank for Enterprises, which consists in the implementation of a single data collection system for enterprises. This is a form of one-stop shop and data databank, set up in 2003, which aims to connect up the databanks of the different administrations, and to streamline relations between businesses and administrations (see Chapter 5). The annual action plans of the Administrative Simplification Agency consist of more specific initiatives to reduce administrative burdens

(and referred to as the *Kafka* initiative). Regions and communities have also conducted their own policies for the reduction of administrative burdens.

### *Simplification of the regulatory stock*

All Belgian governments have undertaken efforts to tackle the stock of existing regulations, as part of their simplification objective, and there are also some Belgium wide initiatives. For example, since the early 1980s the legal information technology service of the Justice FPS has been responsible for feeding and managing the Belgium wide “*Justel*” database. In the area of economic regulations, the Economy SPF has launched a major codification project as part of a project to assess and modernise economic law.

### *Ex ante impact assessment*

Different initiatives have been undertaken to introduce impact assessment in the development of regulations. The first initiative relates to the simplification policy. To ensure that new regulations do not add complexity when efforts are made to simplify existing regulations, the federal government introduced a requirement to measure burdens when preparing federal regulations, first in 2001, then refined in 2004 (known as the *Kafka* Test). Another initiative was launched by the PFS for Sustainable Development in 2004. This is a “sustainability test”, which consists in assessing the economic, social, environmental consequences of new regulations for current and future generations in the case of major policy decisions. This test was made a requirement for all new regulations going to the Council of Ministers in 2007. Impact assessment is also part of Better Regulation policies of the regions (introduction of a Regulatory Impact Analysis and a compensation rule for administrative burdens of new legislation by the Flemish government in 2005, introduction of the *Kafka* Test by the Walloon government in 2007).

### *Other Better Regulation policies*

The framework for consultation of stakeholders in the development of policies and regulations is a major underlying element of the Better Regulation framework. Belgian governments have a well-established and highly institutionalised practice of consulting external stakeholders, largely based on an extensive network of advisory boards. New approaches using the Internet are starting to make their way alongside the established mechanisms. As yet, there is no overall strategy or guidance to frame these processes.

Management of EU regulations is an important part of the work on Better Regulation. The management of EU origin regulations (negotiations and transposition) is well-organised and an area where co-ordination between Belgian governments is especially strong. Transposition remains an issue.

### *Communication on the Better Regulation agenda*

Most Belgian governments have so far focused on simplification policies for their communication on the Better Regulation agenda. The federal government has used *Kafka* as a brand for its policy. It has created the *Kafka* website. The *Kafka* Book reviews existing measures. The *Kafka* contact point enables all citizens and business to report on issues with administrative burdens. In all governments agencies in charge of simplification have provided regular information on their mission and action through their website.

In Wallonia the government has given a lot of attention to communication on Better Regulation policies. One of its nine key principles for administrative simplification is: “You have simplified something: let it know!” It has accordingly put in place different tools to communicate its Better Regulation policies to both the administration and external stakeholders. Within the administration, this has included the organisation of several workshops, an annual event to present the achievements of the action plan, a dedicated page on the administrative simplification and e-Government plan, as well as an information letter. With respect to external stakeholders, communication has included press releases and radio campaigns as well as specific presentations to the Walloon Region Economic and Social Council. In addition, *EASI-WAL* makes regular presentations of its activities to the Walloon parliament, for members of the Recording Office, members of parliament and political group staffs. In early 2007, it released the second edition of a good practice guide on administrative simplification and e-Government, which presents nearly 40 simplification initiatives in 13 policy areas as well as a selection of future projects in a synthetic format (*Commissariat EASI-WAL, 2007*).

Flanders also pays considerable attention to communication for target groups. The website [www.vlaanderen.be/wetsmatiging](http://www.vlaanderen.be/wetsmatiging) is the central source of information for developments relating to regulatory management and the initiatives of the Regulatory Management Unit. There is also a suggestion form where people can submit a suggestion or complaint. There are plans to align this website with the central website for Flemish legislation which will soon be on line, with more pages in English and French. Each quarter, the most recent developments in regulatory management and the activities of the Regulatory Management Unit are communicated via an electronic newsletter on Regulatory Management. In order to monitor the results, key indicators were selected. A set of ten indicators provides trend information in the field of project achievements (completed projects), the reduction in administrative costs, the quality of RIAs and regulations, and the satisfactory transposition of EU regulations. The Government of Flanders has kept track of these indicators since 2005. Together they provide a picture of developments in different policy areas. The reported key figures are used for the communication of the results to citizens, industry, local government and social organisations, helping to raise awareness, and helping civil servants at management level to steer policy. The quarterly figures for the indicators of regulatory management are published on the website.

The government of Brussels Capital Region has also started to give communication attention. The secretary of Public Affairs will launch a website [geengedoe.be](http://geengedoe.be) (Dutch) and [sanstracas.be](http://sanstracas.be) (French). The goal of this website is to communicate with citizens, companies and public servants about cutting red tape in the Brussels Capital Region. The website is also a platform where everybody can post remarks or make propositions on how to reduce administrative burdens.

### ***Ex post evaluation of Better Regulation strategy and policies***

Belgian governments have quite highly developed systems for monitoring and reporting on progress with simplification initiatives. However, with the exception of the recent evaluation by the Flemish government in 2008 of its Better Regulation processes in preparation for a new government, relatively little attention is paid to strategic evaluation of programmes and policies. The *Court of Audit* (which covers all governments) plays an indirect and *ad hoc* role in evaluating Better Regulation policies. Its performance audits on the sound use of public funds lead it to review *ex post* the implementation of regulations and policies. Its reports often include assessments relating to the quality of laws and their implementation (such as coherence with objectives, adequate tools for implementation).

### *E-Government in support of Better Regulation*

Belgium began to prioritise e-Government at the end of the 1990s, responding to the rapid development of the Internet and the increase in the use of ICT. Key principles for the development of e-Government have covered the unique collection of data (“deliver once, use multiple times”) and the use of reference registers. Further emphasis has primarily been on the technical aspects of e-Government and back-office re-engineering.<sup>8</sup> As in many OECD countries, reducing administrative burdens has been associated with e-Government policies across all governments, and the development of e-Government has helped to promote Better Regulation in the administrations. The OECD peer review team were told that Belgian governments devote considerable efforts responding to challenges regarding privacy legislation, financial costs, technology changes, culture change within the administration. Belgian governments have used e-Government as a tool for transforming the social sector (with the Crossroads Bank for Social Security), in the economic sector, and to improve the regulatory framework for citizens and businesses. This has included efforts to simplify the numbers of forms that exist for services; and to reduce the need to submit data multiple times (for more see Chapter 5).

Another interesting example where e-Government has been combined with administrative simplification is e-Depot (Annex D), which allows a company to be created in three days.

## Notes

1. OECD (2008), *OECD e-Government Studies – Belgium*, Paris, France. Page 190 ff.
2. The OECD emphasised for example the need for increased co-ordinated e-Government strategies and visions and better sharing of good practices among implementers in order to achieve user-centric e-Government implementation and coherent public service delivery. Cf. OECD (2008), *OECD e-Government Studies – Belgium*, Paris, France, *Assessment and Proposals for Action*, page 11 ff.
3. On e-Government leadership in the Walloon Region, cf. OECD (2008), *OECD e-Government Studies – Belgium*, Paris, France. Page 99 ff. See also Table 1.1 on page 48 for an overview of e-Government and public sector modernisation goals in different Belgian governments.
4. See Table 1.1 on page 48 for an overview of e-Government and public sector modernisation goals in different Belgian governments in OECD (2008), *OECD e-Government Studies – Belgium*, Paris, France.
5. *Chambre des Représentants de Belgique, Note de Politique Générale du ministre pour l'Économie et la Simplification administrative, 14 avril 2008*. Doc 52 0995/018.
6. Namely: modernising current regulations, reducing administrative costs, regulating “evidence-based and impact assessment”, correct and prompt transposition of directives.
7. The governmental agreement of 2003 included a paragraph related to cutting red tape, in which the Government committed to carry out at least 12 simplification projects with sustainable and significant impact on citizens and businesses.
8. On the development and challenges of e-Government in Belgium, see OECD (2008), *OECD e-Government Studies – Belgium*, OECD Publishing, Paris.



## *Chapter 2*

### **Institutional capacities for Better Regulation**

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

## Assessment and recommendations

### *General context*

*There has been a steady development of Better Regulation institutional structures across Belgium, linked to a growing awareness of the need to address issues such as regulatory inflation. By EU standards, Belgium has a well-developed set of centrally located structures across the different governments, whose purpose is to drive forward the Better regulation agenda. These structures, which started with the decision in 1998 to establish the federal Administrative Simplification Agency (ASA), reflect a strong awareness that Belgium’s rapid federalisation process and the complexity of the Belgian federal model require special efforts to secure effective regulatory management. Today, Belgian governments have almost, without exception established entities for Better Regulation, with some differences in emphasis and scope. There are significant shared institutional features and processes. These include the decisions to put units at the centre of government with a direct reporting line to the head of government, similar administrative cultures which are based on the use of institutionalised bodies to consult and promote consensus, and similar practical processes for the development of regulations which often include the involvement of ministerial cabinets. These shared aspects imply that there is considerable scope for governments to learn from each other.*

*In the Belgian context, Better Regulation units play an especially important role in support of Better Regulation and in the search for creative solutions to the issues raised by a complex form of federalism. Another shared and very positive feature of the Better Regulation structures that are now in place is that they have become a source of expertise, support, ideas and spread of good practice for overcoming the difficulties of regulatory management in Belgium. More broadly, the efforts of civil servants to promote and develop Better Regulation as part of the public management of the Belgian state are of great importance. To carry out their role, the Better Regulation structures use persuasion rather than constraint. Against the background of very autonomous ministries they have no sanctioning powers. This, however leaves them short of sticks to ensure that Better Regulation good practices and processes are respected. They are “helpful” but not “policemen”.*

*The sustainability of Better Regulation across the political cycles (and sometimes within them) is an issue, which is not unique to Belgium. There are few easily definable high-level political champions of Better Regulation as a result. A shared issue of concern is that there is often weak political buy-in for Better Regulation. One suggestion made to the OECD peer review team was the establishment of standing groups to address specific issues and with a mandate fixed to extend beyond the political cycle.*

*The difficulties of developing Better Regulation are aggravated by the often strong role of cabinets in rule-making processes. In all governments (federal, regions, communities), ministerial cabinets (referred to as “strategic cells”) are large, contain a mix of both civil servants and political nominees, and are often responsible for law drafting (a task usually reserved for civil servants in other countries). There have been attempts to reform and reduce the size of cabinets, without much success so far, from what the OECD peer review team heard. A number of stakeholders voiced their concern to the team that this weakened the application of Better Regulation processes such as effective consultation, because the cabinets did not automatically apply the processes when they drafted laws. One suggestion was to develop partnerships with the cabinets.*

*Belgium's tradition of autonomous ministries also generates challenges for co-ordination on Better Regulation within governments. This issue is not unique to Belgium, but it comes on top of other challenges (notably the need to find acceptable and effective ways of working together across different governments).*

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**Recommendation 2.1. (all governments): Ensure the durability of important Better Regulation institutions and projects. Flesh out the Better Regulation strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.**

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**Recommendation 2.2. (all governments): Consider how best to secure more effective links between the administration and political units, for shared “buy-in” on Better Regulation processes.**

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**Recommendation 2.3. (all governments): Consider whether any of the structures and processes set up to deal with the management of EU regulations provide any inspiration for the handling of domestic issues.**

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### *Federal government*

*At the federal level, the Administrative Simplification Agency (ASA) has an important dual mission, not only to promote simplification with regard to federal regulations, but also to promote regulatory co-operation across the federal, regional and community governments. The ASA's institutional foundations are strong and a necessary support for its often delicate – but crucial – mission to promote Better Regulation across all the Belgian governments. The order which set it up located it in the Federal Chancellery with a direct line to the Prime Minister,<sup>1</sup> but also as an agency (not a unit) with substantial autonomy, which helps it to ride the vicissitudes of the political cycle, and to work on long-term projects involving different administrations. The ASA also has strong links with stakeholders through its public-private steering committee. The ASA's mission to frame, encourage and promote Better Regulation across governments is an essential support for Belgium's Better Regulation needs, and the ASA itself is a key asset which needs to be preserved and developed.*

*Beyond the ASA, some federal ministries play an important, but currently somewhat separate role in regulatory management and the development of Better Regulation of relevance to the whole of Belgium. Key federal ministries in this regard are the FPS for Economy which has engaged a major initiative to upgrade the quality of the economic regulatory framework; the FPS for Sustainable Development which has developed an *ex ante* impact assessment process for sustainable development; and the FPS Justice which maintains a near complete jurisprudence database used by the Belgian courts in their analyses and recommendations. FPS Finance has recently launched an important initiative to improve the regulatory framework underpinning the modernisation of financial systems. The modernisation of the social security framework is another key work in progress. The significant autonomy of ministries means that relevant initiatives are often not clearly associated with the ASA's work. For example, the project for a sustainable development*

*ex ante* impact assessment is not yet linked up with ASA initiatives to encourage use of the *ex ante* Kafka Test for administrative burdens.

A range of other institutions play a Belgium-wide role, which could be further exploited. A number of authorities have Belgium-wide responsibilities and provide centralising “glue” which helps to counter the centrifugal forces of federalisation. These include the Council of State, the *Court of Audit*, the *Inspectorate of Finance*, as well as the Constitutional Court and the judiciary as a whole. The Council of State ensures that competences are allocated appropriately, and follows through to check that the federal structures are functioning effectively. It also provides a country-wide perspective on regulatory management issues. The Council of State carries out an overall control of the legality of all new federal, community and regional regulations. The *Court of Audit*’s mandate extends across all the governments, and its performance audits on the sound use of public funds may lead it to review the implementation of regulations *ex post*. The *Inspectorate of Finance* is a budgetary and financial adviser to all Belgian governments, and its opinion is required on any regulatory project with a budgetary aspect. The Constitutional Court monitors the observance of the constitution by Belgium’s legislative bodies, and may annul primary regulations *ex post*. More generally, the judiciary plays a role in regulatory management through its review of primary regulations for their conformity with the constitution, the fact that it may hear appeals against public bodies, and in particular via the *Court of Cassation* which reports to the parliament on legal and implementation issues. Are these underused assets in Belgium’s regulatory management landscape?

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**Recommendation 2.4. (federal government):** Ensure that the ASA keeps its institutional distinctiveness (location in the Federal Chancellery, autonomous agency, strong link with the stakeholders), which has allowed it to promote, often with great success, Better Regulation initiatives of Belgium-wide relevance. Ensure that its Better Regulation advocacy work continues to receive effective support in line with the enlargement of its missions.

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**Recommendation 2.5. (federal government):** Encourage greater co-operation between the ASA and the federal SPF’s with regard to those initiatives which appear to be the most promising in support of stronger regulatory quality. For example, consider how *ex ante* impact assessment processes can be more effectively linked up with the Kafka test.

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**Recommendation 2.6. (federal government):** Undertake a review, associating the ASA and Better Regulation structures of the other Belgian governments, of whether and how any or all of the Belgium-wide bodies with a role in regulatory management could be associated more closely to the Better Regulation processes.

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### *Regional and community governments*

Significant Better Regulation structures have also been set up in other Belgian governments. These include the Walloon region’s EASI-WAL, the Flemish region’s Regulatory Management Unit, and the French community’s unit for Internet and

Administrative Simplification. *EASI-WAL* sits at the centre of the Walloon government, reports to the Minister President, and is charged with implementing the 2005-09 Action Plan for Administrative Simplification, e-Government and readability. Flanders' Regulatory Management Unit sits at the centre of the Flemish government, covering all aspects of Flemish Better Regulation including simplification and Impact Assessment. It has set up and encourages a network of regulatory quality units and contact points across the Flemish administration. The French community's unit for Internet and Administrative Simplification covers projects for administrative simplification and e-Government. These units, however, to a greater or lesser degree, share issues of long-run sustainability and resourcing. How easily and what kind of shape can they survive a change of government?

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**Recommendation 2.7. (regional and community governments): Ensure that these significant institutional assets are preserved and enhanced. Consider whether resources are adequate to the tasks carried out, and ensure that professional capacities and competences are further enhanced, in order to meet the significant needs of a maturing Better Regulation agenda in support of more effective public administration and economic competitiveness.**

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### *Co-operation on shared policy and regulatory issues*

*In the Belgian context, it is important to find effective ways for governments to work together on shared policy issues where competences (and hence rule-making) are split across the different governments.* The legal and institutional structure supporting Belgian federalism generate major challenges for the effective, efficient, and timely development and implementation of coherent policies and regulations which have a country-wide relevance. In particular, some important policy and regulatory issues engage the competences of the different governments.<sup>2</sup>

*Further co-operation on Better Regulation can help to promote policy coherence, in areas where this is needed.* Federalisation has created overlapping responsibilities in important policy areas such as employment, energy and the environment, and policy fragmentation. The OECD's 2009 Economic Survey of Belgium recommended that policy coherence should be improved, including the harmonisation of regulations in areas where this is critical for a single market, such as electricity. This implies the development of a more targeted and strategic perspective on areas for policy co-operation, to which Better Regulation co-operation initiatives could lend their support. The Chancellery of the Prime Minister would need to play a pivotal role on the policy front, to get this started. The many formal co-operation agreements for Better Regulation could then be usefully activated to support policy coherence, through the development of regulatory coherence to underpin the latter.

*There is already significant co-operation for Better Regulation, using a mix of formal and informal approaches.* Co-operation on Better Regulation is formally anchored in procedures established by law (the Consultation Committee, Inter-ministerial conferences, co-operation agreements). Co-operation agreements have been successfully established for administrative simplification (fleshed out with concrete projects), as well as on e-Government and the development of a shared portal for access to regulations. However, the OECD team heard that formal co-operation mechanisms can be slow and ineffective (partly because of the lack of buy-in from politicians), so informal co-operation and networking (between officials) is used extensively to pave the way for decisions and exchange ideas and practices. Too much reliance on informal networks, however, could be

dangerous in the long-run as it relies on a network of relationships and goodwill between officials.

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**Recommendation 2.8. (federal government – Chancellery of the Prime Minister, and the ASA): Consider the development of a more strategic perspective on policy co-operation, which identifies the issues that may need to be shared (the environment, for example), not least because they involve significant regulation by the different governments. Review and monitor Better Regulation co-operation agreements so that they can play an appropriate supporting role in streamlining the regulatory framework to promote policy coherence across Belgium.**

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### *Role of parliaments*

*The role of the parliaments in the promotion of Better Regulation should not be neglected.* Interviews with the OECD peer review team with Belgian parliaments showed that they are concerned about the need to improve regulatory quality in the rule-making process, and may even be prepared to invest further in the “cleaning” of legislative texts. They are the recipients of important information on Better Regulation in the shape of reports as well as the draft laws which are sent to them by the executives (for example the *Court of Audit* reports to the federal parliament on its performance audits). A starting point for further co-operation is already in place with the 2007 law which sets the legal basis for the evaluation of existing laws. The Flemish government has an inter-institutional agreement about the use of RIA with the Flemish parliament, SERV and strategic advisory bodies.

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**Recommendation 2.9. (all governments): Continue to promote further co-operation and information exchange on Better Regulation with the parliaments, whilst respecting the division of powers and responsibilities between the executive and the legislature.**

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## Background

### *The general public governance context*

The Belgian public governance system is characterised by the following features:

- *Relative complexity of a federal country.* Box 2.1 below gives a perspective on the institutional framework for policy and law making in Belgium. Belgian federalism has an asymmetric division of competences.
- *Autonomous governments.* Belgian governments have complete responsibility and autonomy within their area of competence. There are no shared competences. The strict exclusivity of competences allocated to each authority sets formal and technical constraints on the extent to which the different authorities can share the development of policy and tools for regulatory management, where this is needed. Yet co-operation across governments is important as many policy areas fall within the competences of some or all of the governments. While some key economic policy areas remain at the federal level (including social security and

fiscal policy), other major policy areas are shared (such as energy, transport and the environment).

- *Autonomous ministries within governments.* Ministries within each government are highly autonomous. Administrations are traditionally compartmentalised into strong departments, with strong hierarchical relations and formalism in procedures. This generates challenges for the effective development of shared policy- and rule-making tools and processes within governments. This silo issue is not unique to Belgium, but it is in addition to the silos created by the underlying structure of autonomous governments.
- *Coalition governments and consensus based decision making.* The electoral system leads to coalition government, and as a consequence the political framework for policy-making is characterised by a search for consensus among coalition parties, acceptance of compromise and institutionalised power sharing (Belgian social model of checks and balances). This gives business organisations and trade unions (“social partners”) an important role in the decision-making process. In addition, ministerial cabinets (referred to in Belgium as “strategic cells”) often play a direct role in preparing regulations, compared to other OECD countries.
- *Pragmatism and informality in decision making.* Consensus building within formal and often highly politicised structures, combined with the formal constraints imposed by the strict division of competences, tends to slow and complicate the decision making process. To counter this, a strong tradition of pragmatism and informal dialogue has emerged, aimed at reaching informal and operational agreement on the way forward.
- *A number of centralising elements.* The federal state has retained certain powers, and a number of important institutions have a nationwide reach (including the judiciary, the Constitutional Court, the *Inspectorate of Finance*, the *Court of Audit* and the Council of State). These features play an important role in helping to support coherence in policy and rule-making across the Belgian territory.

### Box 2.1. Institutional framework for policy and law-making in Belgium

Executive and legislative power is divided between the federal state and the federated entities (the three regions and three communities), and is deployed in respect of the competences allocated to each authority. The monarch is the head of state (a largely symbolic role, albeit very important for national unity, and underpinned by some important functions such as the formal designation of the federal Prime Minister). As a consequence bills enacted by each parliament are on an equal footing.

#### The executive

##### *Federal government*

The federal government is headed by the Prime Minister and ministers, nominated by the monarch, and secretaries of state. The number of ministers is limited to 15 and they have no seat in the parliament. Following the election the monarch designates the person to form the government and

negotiate the Federal Coalition Agreement setting out the government's policies, which is approved by all the political parties. The new Prime Minister then presents the Federal Government Policy Statement to the House of Representatives. This is followed by a vote of confidence.

Co-ordination at the political level is done by a Council of Ministers/ Government Council, with the support of (mostly *ad hoc*) inter-cabinet working groups (the Policy-Co-ordination Working Group at the federal level). Some standing bodies are also charged with ensuring co-ordination for some long-term policies. For example, the group on modernisation of social security, which includes representatives of the administration and ministers, has been steering the reform of simplification and modernisation of social security since 1997.

The *Copernicus* Reform of 1999-2003 led to a restructuring of the federal public administration into ten "vertical" Federal Public Services (FPS) dealing with a particular policy area, and four "horizontal" FPS (such as the Chancellery of the Prime Minister). As well, Public Programming Services (PPS) were set up to handle specific issues requiring co-ordination between FPS (such as sustainable development). FPS and PPS have thus replaced the old ministries. FPS and PPS are each supported by a secretariat and a "strategic cell" (a form of enlarged ministerial cabinet or private office). Strategic cells are made up of political appointees (which may include the nomination of civil servants) and play a major role in building consensus on draft regulations, which may include work on drafting.

### ***Regional and community governments***

The governments consist of ministers (as well as secretaries of state in the case of Brussels-Capital Region) elected by the relevant parliament. One of these is designated minister-president. As for the federal state, ministers are supported by an administration and a strategic cell. As for the federal government, following the election, the government agreement is negotiated between the coalition parties and agreed which sets out the government's policies.

- *Flemish public administration.* In 2006 the Flemish government restructured the public administration into 13 policy areas.<sup>3</sup> For each policy area, there are one or more departments and a number of autonomous agencies. Departments support advise the government on policy making. Agencies apply policy through the delivery of services to citizens, businesses and other organisations. They operate with a degree of autonomy defined in their terms of reference.
- *Walloon public administration.* In 2008 the Walloon government re-organised the public administration, which now consists of the Public Service of Wallonia (*Service public de Wallonie*) and a number of public bodies responsible for delivering specific public services or tasks (such as promotion of exports and attraction of foreign investment, support to handicapped people) and public corporations (*e.g.* in the area of public transportation, water management). The Public Service of Wallonia comprises a general secretariat, two cross-cutting directorates (personnel and ICT) and six operational directorates.
- *Brussels-Capital administration.* It consists of a single ministry and 20 regional and para-regional bodies, which are divided into four types. The Ministry of Brussels-Capital comprises a general secretariat and five operational-administrations.
- *French Community administration.* It consists of ministerial services (under a single "Ministry of the French Community) and agencies. The Ministry of the French Community comprises the General Secretariat (with transversal responsibilities) and five general administrations (based on policy areas). Agencies are public interest bodies (*organismes d'intérêt public* or OIP, such as IFC, a training institute), autonomous agencies (*Conseil Supérieur de l'Audiovisuel*, the independent regulator for media) and public corporations (such as RTBF).
- *German-speaking Community administration.* It is structured into four departments, with a total of 200 civil servants.



## **The legislature**

### ***Federal parliament***

The parliament is bicameral, made up of a lower house (House of Representatives) and an upper house (Senate). The House of Representatives has 150 members (deputies), directly elected by popular vote on the basis of proportional representation to serve four-year terms. The Senate has 71 members serving four-year terms (40 directly elected by popular vote and 31 indirectly elected).<sup>4</sup> Twenty one of the senators are elected indirectly par the community parliaments. This underlines the Senate's mission to represent the federated entities (as well as being a chamber of reflection).

The two houses have different competences. The House of Representatives controls the federal government. Deputies also have the right of interpellation which may be concluded by a vote of confidence. Both deputies and senators have the power to initiate legislation. There are three possible procedures for enactment, unicameral (the House is solely responsible), bicameral (the Senate is equally competent), and optional bicameral (the Senate may ask to examine a bill). The Senate has the possibility a second reading for most bills.

Parliamentary committees are largely responsible for preparatory legislative work and for monitoring the government. The House of Representatives has 11 standing committees, temporary committees (to examine a specific bill) and three advisory committees (European affairs, social emancipation, and science and technology). The Senate has a maximum of six standing committees and may set up special committees. Both the House and Senate may set up enquiry committees.

### ***Regional and community parliaments***

Regional and community parliaments are elected for five years (regional elections). They have similar competences, which include: (i) controlling the government (elect members of government, vote the budget, motion of confidence); (ii) initiating decrees (or ordinances in case of Brussels Parliament); and (iii) voting decrees (or ordinances in case of Brussels Parliament). Whether they are known technically as decrees or ordinances, these instruments are, in effect, laws.

- The Flemish Parliament (which represents both the Flemish Region and the Flemish Community) has 124 members, of which 118 are directly elected in the Flemish Region and 6 are directly elected in the Brussels-Capital Region. For decrees relating to regional competences (as opposed to community competences), only members elected in the Flemish Region take part in the vote.
- The Walloon Parliament has 75 members.
- Brussels Parliament has 89 members. It is structured into two groups made up of members elected on the French-speaking and the Dutch-speaking electoral rolls: the French linguistic group (72 members) and the Dutch linguistic group (17 members). Some decisions require an absolute majority, at least in a first vote, within each linguistic group.
- The French Community Parliament has 94 members, who include the 75 Walloon deputies and 19 members elected by the French linguistic group of Brussels-Capital Parliament within its members.
- The German-Speaking Parliament has 25 members elected by German-speaking voters of the Walloon Region.

### The judiciary

The judicial system is based on civil law and originates from the Napoleonic Code. It has a pyramidal structure, with the *Court of Cassation* at the top. There are also administrative jurisdictions, with the administrative litigation sections of the Council of State and of the Constitutional court at their head. These jurisdictions are not, formally speaking, part of the judicial Order.

### Community commissions

In Brussels, three commissions have been established to manage community competences (mainly culture, education and welfare). Given that Brussels-Capital Region is formally bilingual, decrees of the French Community and the Flemish Community relate only to institutions (either private or public), and not to people (Brussels inhabitants cannot be asked to choose to belong to one community to access services). The French Community Commission (*Commission communautaire française* – COCOF) is competent for institutions attached to the French Community. The Flemish Community Commission (*Vlaamse Gemeenschapscommissie* – VGC) is competent for institutions attached to the Flemish Community. The Common Community Commission (COCOM) is competent for institutions that are not exclusively related to the French Community or the Flemish Community (*i.e.* bilingual institutions). Each commission has an assembly composed of members of Brussels Parliament and a college composed of ministers of Brussels-Capital government. Bicultural competences remain with the federal authorities.

- *The Assembly of the French Community Commission (COCOF)*, also called Brussels French-Speaking Parliament, consists of the 72 members of the French linguistic group of Brussels Parliament. The COCOF has legislative power (*i.e.* enacting decrees) in matters related to institutions which depend exclusively on the French Community and transferred by the French Community to the COCOF as part of the 1993 institutional reform. The COCOF issues decrees (acting under its sovereign legislative capacity) and orders (under tutelage of the French Community of Belgium).
- *The Assembly of the Flemish Community Commission (VGC)* consists of the 17 members of the Dutch linguistic group of Brussels Parliament. The VGC has no legislative power.
- *The Joint Assembly of the Common Community Commission (COCOM)* comprises all members of Brussels Parliament. The COCOM has legislative power (*i.e.* enacting ordinances) in community matters related to bilingual institutions and in the area of direct welfare support to citizens.

### *Developments in the general public governance context*

Belgium has, more than most other OECD countries, been the subject of major changes over the last few decades which have radically altered its public governance and institutional landscape. Until 1970 it was a unitary state. Forty years on, it is a highly decentralised federation. Federalisation has taken place through a negotiated process of transition and five institutional reforms. The process started with the establishment of three cultural communities. Belgium's federal nature was formally recognised in 1993 through the constitution, which now begins with the words "Belgium is a federal state which is composed of communities and regions". In 2001, the *Lambermont Agreement* transferred a large number of further competences from the federal state to communities and regions. New developments are under way as institutional reform is part of the Government Agreement of March 2008.

### Box 2.2. Process of federalisation in Belgium

Federalism has been built step by step in an incremental process through five state reforms starting in 1970. The first major revision of the Belgian Constitution defined the existence of the three regions and of the three communities. This was however still rather declamatory and further state reforms in 1980, 1988, and 1989 put this into full practice. With the major change of the Constitution in 1993, Belgium became formally a federal state with three regions and three communities. The institutional reform is still underway.

#### First reform of the state (1970)

The Constitution was amended to create communities and regions. Article 59 bis created three cultural communities and gave them certain autonomy with regard to culture. Article 107 quarter laid the ground for the territorial division of Belgium into regions active in the economic fields. The creation of communities was a response to pursuit of cultural autonomy by Flemish people, while the creation of regions was a response to the pursuit by French speakers – the Walloons – for economic autonomy.

#### Second reform of the state (1980)

A special law from 1980 created the regional institutions of the Flemish Region and the Walloon Region, and gave them a council (or parliament) and government. The cultural communities became known as “communities”, with extended powers focusing on the needs of individuals (health and social matters). They were also given a council and government. The *Court of Arbitration* (later transformed into the Constitutional Court) was founded to settle conflicts between regions and communities. Immediately following these reforms, the government and council of the Flemish Region merged with the government and the council of the Flemish Community. Another important feature of this second phase in 1980 is that the Brussels Region was put “on hold” with regard to its institutions.

#### Third reform of the state (1988-89)

A special law of 1988 gave more powers to communities and regions. The communities were given responsibilities for education while regions were given responsibilities for transport and public works. In 1989 Brussels-Capital Region received its own institutions (parliament and government). As Brussels-Capital Region was established as a bilingual region, three specific bodies were created to handle community competencies in Brussels (COCOF, the French Community Commission; VGC, the Flemish Community Commission; and COCOM, the Joint Community Commission).

#### Fourth reform of the state (1993)

The Constitution was revised and Belgium became a fully-fledged federal state. The first clause of the first article in the Constitution which used to say: “Belgium is divided into provinces” was amended to: “Belgium is a federal state which consists of communities and regions.” The communities and the regions received their full powers, and their parliaments were to be elected directly. As a solidarity measure among French-speakers, the Saint Quentin decrees transferred some tasks from the French Community to the Walloon Region and the French Community Commission (COCOF) in Brussels.

#### Fifth reform of the state (2001)

Two special laws enacted on 13 July 2001, put into force the *Lambermont* Agreement of January 2001 and the Lombard Agreement of April, leading to additional transfers of powers to regions and communities, reform of Brussels-Capital Region’s institutions, and revision of the financing scheme of regions and communities. After the transfer of responsibilities and resources to sub-federal governments in 1989, additional measures were needed to ensure the functioning of sub-federal

institutions and in particular to overcome the structural under - financing of the communities. Financing problems were most pressing for the French-speaking community and various solidarity measures were needed to bail it out.

The *Lambermont* Agreement transferred certain powers to the regions and communities. Powers concerning local authority and provincial law, agriculture, fisheries and foreign trade were regionalised. Development co-operation (with regard to regional and community areas of responsibility), auditing of electoral expenses for elections to the parliament and the supplementary financing of the political parties were transferred to the communities and regions. In addition, the agreement provided for a number of measures relating to the financing of the communities, the extension of the fiscal powers of the regions and an extra budget allocation from the federal government to the Flemish and French-speaking Community Commission.

The *Lombard* Accord amended the way Brussels institutions operate. The six Brussels members of the Flemish Parliament have since become directly elected. The agreement also amended the distribution of seats between the two linguistic groups in Brussels Regional Parliament, and the voting majorities required in each linguistic group of the parliament to adopt main regional ordinances concerning the administrations which they oversee.

A further important set of changes concerns public sector reform. Since the late 1990s, Belgian governments have been carrying out reforms to modernise the public sector as part of an effort to build citizens' trust in government and respond to challenging budgetary constraints. These reforms have shared some objectives: streamlining the organisation of governments, making ministerial departments more accountable, and strengthening the policy making function of the administration (by reducing the size of ministerial cabinets which are traditionally large and strongly involved in the development of policies and drafting of regulations).

- The federal government conducted the *Copernicus* Reform between 1999 and 2003. It re-organised federal ministries into Federal Public Services and Public Programming Services working on cross-cutting social issues). It also reformed human resource and budgetary arrangements (including mandates and audit for top managers), and communication with internal and external stakeholders.
- The Flemish government launched a similar reform, the BBB Reform (*Beter Bestuurlijk Beleid* or Better Governance Policy Reform) in 2000. The government structure was amended to draw a clear distinction between the departments in charge of policy preparation and the agencies in charge of policy implementation, throughout 13 defined policy areas.
- The Walloon government re-organised its administration in August 2008. The Ministry of Equipment and Transport and the Ministry of the Walloon Region were merged into a single body, called the Public Service of Wallonia.
- The French Community government has made significant organisational changes with the introduction of mandates for top officials (Government Order of 1 December 2006) and project-based management (ongoing process).
- The government of Brussels Capital Region has not conducted any general organisational changes, but the developments related to the establishment of its administrative simplification programme allow the sharing of best practices and the development of a global outlook among representatives of all the Brussels public institutions.

From the perspective of Better Regulation, it is not clear that these reforms – which are often ongoing – have yet helped to raise the efficiency and effectiveness of policy and rule-making. The OECD peer review team heard for example that the ministerial cabinets often remain highly involved in the process of rule-making, which may include drafting.

### *Developments in Belgian Better Regulation institutions*

There has been a steady development of Better Regulation institutional infrastructure, starting with the establishment of the Administrative Simplification Agency in 1998, originally focused on administrative simplification for business, but with a mission which now also covers citizens. From the start, the ASA has had a dual purpose, to promote initiatives for simplification at federal level but also to promote cross-government co-operation. Since 2001, Flanders has set up a Regulatory Management Unit to take forward regulatory management as part of its Better Governance Policy, Wallonia has set up the EASI- WAL Commission to implement its Action Plan for administrative simplification and e-Government, and the French Community has also set up a dedicated unit for administrative simplification and e-Government. There has also been a progressive development of networks (and in some cases units) within and across administrations, formal and informal, to liaise with the central units.

**Table 2.1. Milestones in the development of Better Regulation institutions in Belgium**

1998	Programming Law on entrepreneurship establishes the Administrative Simplification Agency (ASA).
2000	The federal government creates a state secretariat for administrative simplification.
2001	<ul style="list-style-type: none"> <li>• The federal government creates <i>FEDICT</i>, a dedicated ministerial department for e-Government.</li> <li>• The Flemish government creates a dedicated unit for Better Regulation: the <i>Dienst Westmatiging</i> (DMW) or Regulatory Management Unit (RMU).</li> <li>• The Walloon government creates the <i>Wall-On-Line</i> unit, in charge of e-Government initiatives.</li> </ul>
2002	The Walloon government sets up the Commissariat à la simplification administrative (Commission for Administrative Simplification).
2005	The Walloon government merges the Wall-On-Line unit and the Commission for Administrative Simplification into the Commissariat E-Administration, Simplification <i>EASI-WAL</i> or Commission for e-Government and Simplification <i>EASI-WAL</i> .
2006	The government of the French Community creates ISA, a dedicated unit for administrative simplification and e-Government within the General Secretariat.
2008	The federal government includes a minister for entrepreneurship and simplification. The Prime Minister remains in overall charge of Better Regulation.

## ***Key institutional players for Better Regulation***

### *Key players in governments*

Unlike some other European countries where the centre of gravity for Better Regulation responsibilities cannot easily be identified, Belgium has successfully established a structure of dedicated Better Regulation units. These structures have, in each case, been placed at or close to the centre of government with (in most cases) a reporting line to the head of the government, which is also a distinguishing feature. In the federal government, they are under the Prime Minister, within the Chancellery of the Prime Minister. In regions and communities (except Brussels-Capital Region and the Flemish government), responsibility for Better Regulation lies with the minister-president (or vice minister-president).<sup>5</sup> In Brussels-Capital Region, it is the responsibility of the Secretary of State for Public Affairs. In the Flemish government, it is the responsibility of the minister in charge of administrative affairs. Table 2.2 below sets out the key information.

### Federal government

The Prime Minister is overall responsible for Better Regulation. The Minister for Entrepreneurship and Administrative Simplification is responsible for administrative simplification and e-Government. Located within the Chancellery of the Prime Minister, the Administrative Simplification Agency (ASA) is the key actor for administrative simplification. This includes broader “Better Regulation” issues at the federal level where these issues are associated with simplification activities (*e.g.* impact assessment on the assessment of administrative burdens).

The main task of the ASA is to propose, stimulate and co-ordinate initiatives to simplify the regulatory framework. Its scope of action, originally focused on businesses, has been extended to citizens. The ASA not only promotes and supports simplification initiatives at the federal level. It also promotes co-operation across federal, community and regional governments, which means that in practice it plays a key nationwide role in encouraging Better Regulation. It is institutionally strong as its missions, location (at the centre of government), and substantial autonomy (it is an agency, not a department of the Chancellery) have been defined in a Royal Order, which helps to protect it from the political cycles and allows it to take the “long view” of developments. The ASA’s powers of initiative and networking capacities are strong features of the way it works in practice.

The Chancellery includes other units which are relevant to Better Regulation, linked to its role of helping the Prime Minister lead and co-ordinate government policy. As well as the ASA, the Chancellery has three core units (the Secretariat of the Council of Ministers, the Co-ordination and Legal Unit, and the External Communication Unit), which also play a role in Better Regulation policies. The Secretariat of the Council of Ministers is responsible for the agenda of the Council of Ministers, and acts as a gate keeper on all draft regulations presented to the Council. The Co-ordination and Legal Unit provides legal expertise to the administration and strategic cells (equivalent of ministerial cabinets) in the preparation of regulations and with respect to issues dealt by the *Concertation Committee* (*overlegcomite / comité de concertation*), which consists of ministers of the federal government and of the governments of the communities and regions (see below). The External Communication Unit co-operates with the ASA on all communication campaigns.

### Box 2.3. The Administrative Simplification Agency (ASA)

The federal government created a dedicated unit for administrative simplification in December 1998 (Royal Order of 23 December 1998). The Administrative Simplification Agency (ASA) started operation in June 1999 with the mission to drive the policy for administrative complexity imposed on businesses. The Order setting it up makes it clear that the ASA's role is to encourage and co-ordinate simplification initiatives across administrations. The ASA's missions may be progressively broadened.

#### Institutional framework

The ASA is an agency in the Chancellery of the Prime Minister. The Order setting it up gives it substantial autonomy. The Prime Minister nominates the director and deputy director. The ASA produces an annual report for the Prime Minister who communicates it to members of government, the House of Representatives and the Senate.

The ASA has no powers to direct or constrain other administrations. It essentially relies on consultation and co-operation with administrations.

#### Tasks

The ASA's tasks are formally defined as:

- making proposals for simplification, stimulating and co-ordinating initiatives, carrying out studies;
- elaborating and implementing a methodology for measuring administrative costs imposed by regulations on businesses and SMEs;
- organising co-operation between the different federal administrations;
- elaborating an administrative impact note (the *Kafka* test); and
- organising dialogue on administrative simplification with all levels of authority, representative partners among self-employed and SMEs as well as with European institutions and international organisations.

The ASA has also taken on the following tasks:

- providing legal guidance and co-ordination for several e-Government projects (whose technical aspects are dealt with by *FEDICT*);
- managing the *Kafka* contact point (which collects suggestions for administrative simplification); and
- establishing a dialogue with administrations over simplification projects for citizens.

The ASA produces an annual Action Plan covering its work on simplification, which is approved by its Steering Committee (see below). Once approved by the Steering Committee, the action plan is sent to the Prime Minister. Each action plan is followed by future planning and an annual report on progress, sent to the federal.

### Public-private Steering Committee

A public-private steering committee was created at the same time as the ASA to drive its work. The Steering Committee drives the action of the ASA, advises and issues opinions. In particular it establishes the annual programme of work (action plan) of the ASA and approves its annual report. More broadly it is a platform for discussion between the government and stakeholders (within and outside the administration) on simplification policy.

The Steering Committee of the ASA, chaired by the Prime Minister (in practice, by a representative of the minister for Entrepreneurship and Administrative simplification, includes 16 members with voting rights (six stand for the political power, two for the administration, six for business organisations, and two for trade unions). The ASA's director and deputy director participate in meetings and have a consultative vote. Members are nominated for five years by each of the stakeholders (who are defined by the royal order which set up the ASA). Their mandate can be extended. In case of a change in government, the governmental-representatives step down and new ministers design their own representatives.

Additional monitoring committees have been established for complex projects (such as the Crossroads Bank for Enterprises BCE and the transparency committee for the public service information directive).

Some other federal ministries (now called Federal Public Services – FPS – or Public Programming Services – PPS – since the *Copernicus* Reform) play a role in Better Regulation policies, partly through specific initiatives.

- The FPS for Economy, SMEs, Self-Employed and Energy is a major actor for simplification policy in Belgium. As part of its mission to create the conditions for a competitive, sustainable and balanced operation of the Belgian market, it works closely with the ASA to improve the regulatory framework for businesses. It has launched a major initiative for upgrading the quality of the economic regulatory framework (see Chapter 5).
- The PPS for Sustainable Development, which assists other ministerial departments in preparing and implementing policy on sustainable development, has developed an impact assessment test with respect to sustainable development. This test is now part of the formal process for preparing draft regulations (see Chapter 4).
- The FPS for Information and Communication Technologies (*FEDICT*) was established in 2001 to develop and oversee the federal government's initiatives for e-Government. *FEDICT* has a fair degree of autonomy, including for recruitment (staff are outside the standard framework for human resources for civil servants).
- The FPS for Personnel and Organisation (P&O) is in charge of co-ordinating “back office modernisation projects” across the whole administration. P&O works on Business Process Re-engineering project, most of them proposed by the services, and focuses on the efficiency of the processes in administration.
- The FPS Justice currently has a relatively limited role in Better Regulation (mostly relating to the publication of the official journal (*Belgisch Staatsblad / Moniteur belge*), and the maintenance of a near complete jurisprudence database which is used by the courts in their analyses and recommendations on legislation.



- The FPS Finances has recently launched a vast regulatory reform of financial systems. A new service (*Expertise et Support Stratégique*) reports to the president of FPS Finances. This service is responsible for developing a quality regulatory framework based on criteria of legibility, coherence and concision.

### Flemish government

Since the June 2009 elections Better Regulation is under the responsibility of the minister in charge of administrative affairs (responsibility held by the Minister-President of the Flemish Region before the June 2009 regional elections.). As well as the Regulatory Management Unit of the Administrative Affairs policy area the Flemish Chancellery (Services for the General Government Policy area) also plays an important role in Better Regulation through two of its units. The Legal Services Unit provides legal expertise to civil servants and ministerial cabinet members drafting regulations, checks the legal quality of draft regulations, and manages the Flemish regulatory database. The Linguistic Unit promotes plain language by giving opinions on draft regulations and providing guidance (Chapter 3).

As part of its Better Governance Policy (BBB) policy (see Chapter 1), the Flemish government created a permanent and independent unit charged with developing and implementing regulatory management. The *Dienst Wetsmatiging* (DWM) or Regulatory Management Unit (RMU) started up in 2002. The government has set up a separate unit, CORVE, for the implementation of e-Government policies. Like the DMW, it is in the portfolio of the minister in charge of administrative affairs.

The DWM's mission is to support, guide and assess the Flemish better governance policy. This formally includes:

- Supporting the government's policy on regulatory management (in particular preparing the government's decisions relating to regulatory management).
- Co-ordinating regulatory management across the government (between the minister of regulatory management and the government, and between the departments). The DMW manages, advises and reports to the Flemish government and minister on regulatory management initiatives of all departments. To this end it has developed a network of "Units for Regulatory Quality" (see below).
- Building up expertise and providing advice, including through preparation of guidelines, tools and training, participation in simplification and regulatory management projects of departments.
- Ensuring quality control. The DMW is charged with checking that draft regulations comply with the standards of good regulation and evaluating simplification projects. It reports to the minister and formulate its opinion.
- Advocating for Better Regulation. The DMW promotes regulatory quality and administrative simplification within and outside the administration through internal and external communication campaigns.
- Signalling any issues on regulatory management to the government and ministries.

The government has set up units for regulatory quality (*cellen wet kwaliteit*) within each policy area to centralise regulatory capacity and avoid fragmentation in the development of regulations. The Flemish government agreement of 16 May 2007, established two key principles for the creation of these units: they had to be funded without extra budget, and they would be evaluated by 2009. The units have been set up under flexible arrangements (*i.e.* it is possible to set up one or more units per policy area). Within their area of work (department /agency /policy area), units for regulatory quality have to: (i) centralise and build in expertise in regulatory drafting; (ii) develop regulatory management; and (iii) act as contact point for the DMW (thereby replacing the existing network of contact points that had been established).

An evaluation conducted in mid-2008 showed that the creation of these units has promoted co-operation within each policy area for the preparation, implementation and enforcement of regulations, although this is not yet systematic. Co-operation across policy areas is much more difficult, and co-operation between units needs to be developed. The evaluation exercise itself has proved useful in enhancing contacts between the units and the DMW, clarifying the tasks of the units, highlighting good practices and building political support for further development of these units. The OECD peer review team was also told that these units are developing their own agenda for Better Regulation, thereby embedding the development of regulatory management tools (such as impact assessment and administrative simplification) within departments. The capacity of regulatory units strongly depends on the level of support from the minister and senior officials, especially since these units have been created without additional resources. For more on this see Chapter 4.

### Walloon government

Better Regulation is under the responsibility of the Minister-President. The Walloon government set up the *EASI-WAL Commission* in 2005 to implement the 2005-09 Action Plan for Administrative Simplification, e-Government and Readability. The Commission comprises two project-oriented units (administrative simplification, e-Government) and two supporting units (transversal unit, administrative unit).

The government set up a legal expert working group, the Legislative Committee, presided by the *EASI-WAL Commission*, and charged with advising the government on simplification of the regulatory framework such as codification and removal of obsolete regulations (see Chapter 5). The Legislative Committee comprises lawyers from the legal directorate of the Walloon government and other departments as well as experts working outside the administration. It also includes representatives from the Ombudsman Office of administrative services of the Walloon parliament as well as of the French Community.

### Brussels-Capital government

The Secretary of State for Public Affairs and the Port of Brussels has overall responsibility for administrative simplification policies. The government agreement of 2004 provided for the establishment of an administrative simplification unit, but this has not been implemented. Brussels Regional Informatics Centre (*Centre d'informatique pour la région bruxelloise*) plays an indirect role by promoting re-engineering of administrative processes as part of e-Government initiatives.

## French Community government

Better Regulation policies are under the remit of several units of the General Secretariat of the Ministry of the French Community. These are the Legal Unit, the Internet and Administrative Simplification Unit (ISA) and the General Unit for Budgetary and Financial Audit. They are brought together in the administrative simplification task force, which is under direct authority of the General Director for General Affairs and Budgetary and Financial Audit. These units have the support of the ETNIC (*Entreprise des technologies nouvelles de l'information et de la communication*).

ISA, a dedicated unit for administrative simplification and e-Government, works with a network of contact points across the administration. Its work is steered and supervised by the Strategic Committee and the Steering Committee. The Strategic Committee is in charge of defining the government strategy for administrative simplification and e-Government. It comprises representatives from the Ministry of Public Affairs, the General Secretary, other officials from the Ministry of the French Community, public-interest bodies and the *Conseil supérieur de l'audiovisuel* (CSA), the independent media regulator. The Steering Committee is in charge of implementing and monitoring the decisions of the Strategic Committee. It is chaired by the General-Secretary and includes representatives from each minister, the administration, public-interest bodies, CSA, the general directorate in charge of administrative simplification and e-Government, the general directorate in charge of personnel and, as observers, representatives from the *Inspectorate of Finance* and the Audit.

## German-Speaking Community government

The Ministry of the German-Speaking Community has set up the inter-departmental group of lawyers, a working group of eight lawyers, to work on regulatory management.

**Table 2.2. Overview of Better Regulation units and related structures in Belgium**

	Federal state	Flemish Region	Walloon Region	French Community	Brussels Capital Region
<b>Name</b>	ASA	DWM	<i>EASI-WAL</i>	ISA	<i>AVEG</i>
<b>Start of operation</b>	1999	2002	2005 <sup>a</sup>	2005	2005
<b>Statute</b>	Agency	Agency	Agency (“commissariat”)	Administrative unit	Administrative unit
<b>Reporting to</b>	Prime Minister	Minister in charge of Administrative Affairs	Minister-President of WR	General Secretary of the Ministry of the FC	General Secretary of the MRBC
<b>Staff</b>	16 persons	9 persons	22 persons (of which 6 on administrative simplification)	8 persons	4 persons
<b>Scope</b>	Administrative simplification	Administrative simplification and regulatory quality	Administrative simplification and e-Government (includes aspects of regulatory quality through legal simplification)	Administrative simplification and e-Government	Administrative simplification and e-Government

<b>Unit's role in rule-making process<sup>b</sup></b>	<i>Ex post</i> review of <i>Kafka</i> tests	<i>Ex post</i> review of impact assessments	Issues opinion on all draft decrees and orders regarding administrative simplification and readability		Create <i>Kafka</i> test
<b>Programme work defined by</b>	Annual programme of work (approved by Steering Committee and PM)	Based on: Government agreement and policy statement administrative affairs (BR chapter)	Based on: Action Plan for Administrative Simplification and e-Government	Based on: 2005-10 Strategy for Administrative Simplification and e-Government,	Brussels plan to reduce administrative burdens by 25%
<b>Steering / support committee</b>	Steering Committee composed of public officials and external stakeholders (businesses and trade unions)	No steering committee	Legislative Committee composed of lawyers from Walloon administrations and public bodies. Scientific Committee (experts from administration, university, businesses, etc.)	Strategic Committee and Steering Committee composed of representatives from administration and public bodies	Support Committee of representatives of all administrations and public bodies
<b>Role of committee</b>	Establishing annual programme of work of the ASA and approving its annual report; general platform for discussion		Legislative Committee: identifying obsolete regulations, potential codification and developing semantic glossary. Extended to all Better Regulation activities in June 2008. Scientific Committee: providing expertise support	Defining strategic orientations relating to administrative simplification and e-Government; and monitoring implementation	Search for common solutions
<b>Networks across administration</b>	Network of simplification agents	Units for regulatory quality	Members of Legislative Committee and Network of study groups	Network of contacts (one per administration and public body)	one per administration and public body + contacts with federal and regional

Notes a. *EASI-WAL* was established from the merger of the *Commissariat à la simplification administrative* (Administrative Simplification Agency) and Wall-on-Line, in charge of e-Government, both of which were set up in 2002. b. This does not integrate guidance and support material on regulatory drafting.

## *Policy and regulatory co-ordination between Belgian governments*

### Mechanisms for co-ordination

Co-operation and co-ordination in areas of shared interest must take account of the fact that Belgian federalism severely limits the scope for governments to interfere in each others' areas of competence. It is therefore anchored in procedures established by law, but there is also a tradition of informal networking to supplement the formal channels. There are also specific mechanisms for preventing and managing conflict of competences arising between different authorities (Box 2.5). Informal co-operation is used extensively to pave the way for decisions and exchange ideas and practices. Formal co-operation and co-ordination may take place through one or more of the following procedures:

- *The Concertation Committee* (Dutch: *overlegcomite*; French: *Comité de concertation*). This is the key body. It is responsible for preventing conflicts of interest between the federal state, the communities and the regions. It consists of the head of each government (Prime Minister and minister-presidents of each region and community), and is based on the linguistic parity rule. The Consultation Committee examines all issues requiring co-operation between governments and issues relating to competence sharing. The Committee meets once a month and its agenda systematically includes: (i) transposition of EU directives, (ii) work of inter-ministerial conferences (see below), and (iii) co-operation agreements. The Committee also issues opinions on issues relating to division of competences tabled by the Council of State. When the legislative section of the Council of State identifies that competence has been exceeded as part of its scrutiny of draft regulations (see Chapter 4), it calls on the Consultation Committee, which issues an opinion within a 40-day deadline. The Committee then “invites” the relevant government to take action to eliminate it.
- *Inter-ministerial conferences*. These are established by the Consultation Committee to provide a forum for co-operation between federal, community and regional ministers in specific policy areas. They have no binding decision power. There are 16 inter-ministerial conferences covering the different policy areas,<sup>6</sup> including the Inter-ministerial Conference of Foreign Policy (CIPE) for EU co-ordination.
- *Co-operation agreements*. The federal state, communities and regions may conclude “co-operation agreements” for the development of common initiatives, joint exercise of competences and establishment or management of joint institutions. In the field of Better Regulation, the federal government, communities and regions signed a co-operation agreement on administrative simplification in 2003. There are two categories of co-operation agreement, depending on whether the agreement needs to be approved by law, decree and/or ordinance. Co-operation agreements tend to focus on specific projects, with more limited impact in terms of co-operation in the development of policy and strategy. It was pointed out to the OECD peer review team that co-operation agreements are often difficult to implement in practice, and may be in effect ignored at the political level. Taking the co-operation forward then relies on the goodwill and commitment of officials.

### Box 2.4. Managing conflicts of competence

The constitution provides for a specific procedure to suspend the adoption of a legislation which prejudices the interests of a linguistic minority, referred to as “alarm bell” procedure. A motivated motion can be adopted to declare that a draft law (federal level) seriously endangers the relations between communities. It has to be signed by at least three-quarters of the members of a linguistic group of the House of Representatives or of the Senate. In this case, the parliamentary process is stopped, and the motion is sent to the Council of Ministers which has 30 days to give its opinion and reach consensus. The relevant house is then invited to make a decision on the opinion of the Council of Ministers or on the draft regulation. The procedure has been used mostly regarding linguistic issues, more or less frequently over time.

Each executive or legislative power may ask for the organisation of a consultation across entities about a decision taken by a federal, community or regional government or parliament if it considers that this decision, although in conformity with rules regarding distribution of competences, challenges its interests.

In its *ex ante* consultative role, the Council of State identifies any issue of competences between jurisdictions, before adoption of the regulation.

Cases relating to a conflict of competence can be brought for annulment to the Constitutional Court. (which was initially created in 1989 as the Arbitrage Court for solving disputes relating to competences). Over the past years cases relating to competence sharing have accounted for less than 10% of the rulings of the Court. For example, in 2007, the Constitutional Court issued 11 rulings related to sharing of competences between the federal state, communities and regions, out of a total of 163 (*Cour constitutionnelle*, 2007). The following authorities and persons may bring an action for annulment before the Constitutional Court: (i) the Council of Ministers and the governments of the communities and regions; (ii) the presidents of all legislative assemblies, at the request of two-thirds of their members; and (iii) natural or legal persons, both in private law and public law, Belgian as well as foreign nationals. The latter category of persons must declare a justifiable interest.

If a question comes up before a particular tribunal about the correspondence of laws, decrees and ordinances with the rules laying down the division of powers between the federal state, the communities and the regions, the tribunal must address a preliminary question to the Constitutional Court, and the proceedings are suspended pending the answer of the Court.

### Co-ordination on Better Regulation

The transposition of EU directives and simplification have so far been the main areas for co-ordination and co-operation as regards Better Regulation. The Consultation Committee plays a particularly important role in the transposition of EU directives, which in some cases require a co-operation agreement (see Chapter 7). Belgian governments formalised their intention to co-operate on administrative simplification in an agreement of December 2003. This agreement provides for exchange of information and practices, collaboration within international bodies such as the EU and the OECD, co-ordination of simplification projects, co-operation on specific simplification projects (such as the *Kafka* contact point, Crossroads Bank for Enterprises), and the establishment of a consultation committee on administrative simplification. Other co-operation agreements were signed in the field of e-Government in 2001 and 2005 (OECD, 2007).

Beyond these formal processes, governments and officials have co-operated informally to take forward Better Regulation in a number of areas:

- *Access to information.* Governments have co-operated to put in place a number of tools to facilitate access of citizens, business and administration throughout the

institutional structure. Examples include the creation of common portal on legislation, the Crossroads Bank for Enterprises, the publication by the FPS for Economy of the “*Vademecuum of companies*” guidance for business on regulatory requirements (see Chapter 3), and the *aandeslag.be / autravail.be* website, which gives employers and employees information on measures relating to the promotion of employment (including a tool for calculating employment-related benefits).

- *Consultation.* A number of advisory boards include representatives of the different governments. There are also specific advisory bodies to co-ordinate policies across governments. Examples include: *ENOVER / CONCERE (Energieoverleg / Concertation État-régions pour l'énergie)*; a unit for discussions between federal government and regional governments over energy-related matters that have been devolved to regions; and the federal inter-departmental commission for sustainable development.
- *Impact assessment.* The newly established sustainability test for federal regulations includes a spatial dimension (see Chapter 4). This means that the evaluation of economic, social and environmental consequences has to be done – at least theoretically – for the whole of Belgium but also from the perspective of the different levels within Belgium (as well as outside Belgium).
- *Exchange of information* (for example, on implementing EU directives, on measurement of administrative simplification) and common initiatives such as the *Kafka* contact point (see Chapter 5).

### *The legislature and Better Regulation*

Belgian parliaments' association with the development of Better Regulation policies takes place through their involvement in the development of governments' Better Regulation policies, regular reporting of governments on their Better Regulation activities, and their own initiatives. Interviews of the OECD team showed that Belgian parliaments are concerned at the need to improve regulatory quality throughout the rule-making process.

- *Federal parliament.* The House of Representatives has taken different initiatives to improve the quality of laws, such as a requirement to prepare a summary description of the file accompanying the draft regulation and an unofficial consolidation of texts where a bill modifies existing legislation, and the introduction of a legal quality scrutiny on all amendments adopted by parliamentary committees. In 2007 a law provided for the establishment of a parliamentary committee on law monitoring,<sup>7</sup> which will give the parliament a significant role in *ex post* evaluation of laws (Chapter 4).
- *Flemish parliament.* The Flemish Parliament has a parliamentary committee with responsibility for following up of the Flemish government's Better Regulation policy. As part of its supervising task, the committee played a role in the development of the impact assessment and regulatory agenda of the government. In 2007, it sent a reasoned motion to the government on adaptation of the impact assessment system, for example asking for regular reporting on the quality of impact assessments. It is part of the initiative for a Flemish Inter-institutional

Agreement (IIA) on the joint-approach and application of regulatory impact analysis adopted in July 2008 (Chapter 3). In 2008, the Flemish parliament changed its rules of procedure, as a result of which the government has to attach a regulatory agenda to the submitted annual policy papers (Chapter 3). The Flemish parliament has also started to consider Better Regulation policies for its own activities (benchmark with other parliaments, including quality of legislation, current discussion on a memorandum on the role of the parliament in evaluating acts).

- *Walloon parliament.* In 2005, the Walloon Parliament formally approved the government's regional policy statement, thereby subscribing to the commitment to Better Regulation. Better Regulation comes within the competence of the parliamentary Committee for General Affairs, Administrative Simplification, European Funds, Regulation and Accounting. There are regular exchanges between the government and the parliament, in particular through the annual presentation by *EASI-WAL* on Better Regulation policies to members of the parliament and parliamentary staff.

### *The judiciary and Better Regulation*

The judiciary does not have a direct role in the development of Better Regulation policies but plays an important role in regulatory management through three main channels. First, courts and tribunals control the conformity of general, provincial and local orders and rulings with the law and with the constitution (the Constitutional Court controls conformity with the constitution for primary regulations, but has no competence regarding secondary regulations – see below). Second, while administrative courts and the Council of State hear cases against administrative decisions, the judiciary is competent for recourse against a public body as soon as it relates to subjective rights (Chapter 6). Third, the *Court of Cassation* reports to the parliament on legal issues and implementation issues which would require the legislative power to intervene (Chapter 4).

### *Regulatory agencies and Better Regulation*

Mapping the quality of regulatory management of agencies is beyond the scope of this review, but two points can be highlighted. First, as in some other countries, regulatory agencies, which are often newly established bodies with some autonomous management, have often been quicker to adopt good regulatory management principles (for example, use of public consultation and risk management). Second, the establishment of autonomous agencies has sometimes proved to be a useful means of taking issues forward which have a national dimension, and hence overcoming co-ordination problems. For example, the Federal Agency for the Safety of the Food Chain was established in 2000 as a response to a series of food crises in Europe and Belgium, in particular after the dioxin crisis, which revealed co-ordination problems between the different control services of the federal administration.



### Box 2.5. Regulatory agencies

The major federal regulatory agencies are the Competition Authority, the Belgian Institute for Posts and Telecommunications, the Electricity and Gas Regulatory Commission, the Banking, Finance and Insurance Commission, and the Federal Agency for the Safety of the Food Chain. These are autonomous public bodies, except the Competition Authority, which is a directorate inside the FPS Economy with a separate line in the government's budget. They vary in their legal status, powers, lines of accountability and means of redress (administrative courts and judiciary).

There are also regional and community sectoral regulatory agencies. While competition policy is an exclusive competence of the federal state, sectoral regulations can fall under the competence of different entities. For example, the energy sectors (electricity and gas) are regulated by a federal authority and three regional authorities.<sup>8</sup> In the communication sector, the federal state is competent for telecommunications, and communities are competent for content. There is a federal regulator for telecommunications and postal services (IBPT) and two regional regulators for broadcasting activities (*Conseil supérieur de l'audiovisuel* or CSA).

#### *Other important players*

These include four authorities with Belgium-wide responsibilities – the Constitutional Court, the Council of State, the *Court of Audit*, and the *Inspectorate of Finance* – which may be viewed as a form of centralising “glue” to counter the centrifugal forces of federalisation, as well as providing a country-wide perspective on regulatory management issues.

#### Constitutional Court

The Constitutional Court (*Grondwettelijk Hof – Cour constitutionnelle*) is composed of 12 judges, who monitor the observance of the constitution by the legislative authorities of Belgium.<sup>9</sup> It has the power (*ex post*) to annul and suspend laws, decrees and ordinances (but not orders and other secondary regulations issued by governments). There is no appeal. Judges are appointed for life by the King from a list of two candidates proposed alternately by the House of Representatives and the Senate by a majority of at least two-thirds of the members present. Judges are appointed for life by the monarch.

#### Council of State

The constitution (Article 160) establishes one Council of State embracing the whole range of regulations across Belgium. The Council of State (*Raad van State – Conseil d'État*)<sup>10</sup> is at the crossroads of the legislative, executive and judiciary powers, and plays a key role in improving regulatory quality through *ex ante* and *ex post* formal procedures. The Council of State does not officially belong to the judiciary system but falls under the competence of the minister of the Interior. Its 46 judges are magistrates who are appointed for life by the King out of a list of three names nominated by the Council of State itself, according to a number of conditions set by law. The Council members then nominate elect their presidents and presidents of chambers. It also comprises an auditors' office (also consisting of magistrates), a co-ordination office (keeping track of legislation) and a registry office.

The Council of State has a dual function: it is the supreme administrative court and it is the legal adviser of Belgian governments. It is structured into two sections, which correspond to these two competences:

- *Administrative litigation.* The administrative litigation section hears cases against decisions of Belgian governments (federal, regional, communities) as well as decisions of provincial and municipal executives. It examines the conformity of administrative decisions with the rule of law, and is the supreme administrative court, ruling on appeals against decisions of the lower administrative courts. The Council of State can annul subordinate regulations, but not primary regulations (laws, decrees and ordinances) (Chapter 6). It has the power to suspend and annul administrative acts (individual and statutory) that are contrary to the rules in force.
- *Legal advice on draft regulations.* The legislative section formulates opinions on the overall legality of draft regulations. Governments are required to send it all draft regulations before they are approved by the government or sent to the parliament. The opinions of the Council of State are not binding. Acts of a legislative nature are included in the folder accompanying the draft and published on parliamentary websites (Chapter 4).

### *Court of Audit*

The Belgian *Court of Audit* (*Rekenhof, Cour des Comptes*) is institutionally linked to the federal Belgian parliament. Its members are elected by the federal House of Representatives for a six-year renewable term. The *Court of Audit* is independent and carries out most of its activities on its own initiative (and occasionally upon request of parliament). It appoints and dismisses its staff (600 people, two-thirds of whom are auditors or controllers).

The *Court of Audit* is competent in matters related to the federal state, the communities, the regions, the public bodies depending upon them, and the provinces. It is not competent in matters related to municipalities. The Court has several functions:

- It audits government expenditure and revenue of the federal state, the communities, the regions, the public bodies depending upon them, and the provinces. It does not audit municipalities.
- It monitors the sound use of public funds and informs the parliament about the way public services are managed. It carries out audits on the operation of specific units or administrations, processes and public policies. It selects subjects to be audited on three criteria: balanced coverage of its whole scope of competence, risk analysis, and areas of interest of members of parliament.
- It gives an opinion on the budgetary and financial impact of proposals of law submitted by parliament members (as opposed to projects of law initiated by the government), upon request of the parliament. This is often done in the field of taxation and social security.
- The audit process includes a formal contradictory (adversarial) debate with the government and the administration. Audit reports are sent to the relevant

parliament. Upon initiative of the parliament it can be discussed in parliamentary committee with the presence of the minister.

The Court intervenes in the area of Better Regulation, but only indirectly. Its performance audits on the sound use of public funds lead it to review *ex post* the implementation of regulations and policies. Its reports often include assessments relating to the quality of laws and their implementation (such as coherence with objectives, adequate tools for implementation). It can also – but on rare occasions – contribute to regulatory quality in the development of regulations as the parliament may request its opinion on proposals of law initiated by members of parliament.

### *Inspectorate of Finance*

The *Inspectorate of Finance* is a budgetary and financial adviser to all Belgian governments. It plays an important role in the development of regulations as its opinion is required for any project with a budgetary aspect. Inspectors of finance are assigned to work on the issues related to a specific jurisdiction (federal state, communities and regions). The Inspectorate is an inter-federal body and staff are allocated to the different governments under a rotating system.

### Consultative bodies

Belgium has a number of institutionalised consultative bodies which take part in the rule-making process (Chapter 3). A number are “social partnership” forums, including business and employee representatives (referred to as “social partners”, where government proposals are discussed. These bodies also act as a think tank through publication of reports. At the federal level, this takes place mainly through two long-standing advisory boards (National Council of Labour established in 1952, often referred to as “Belgium’s social parliament”, and the Economy Central Council established in 1948). Each federated entity has established its own social and economic council, bringing together social partners.<sup>11</sup> These councils provide advice and recommendations to their regional government on all matters of regional competence and those having an impact on the region’s economic and social life. They include several thematic permanent committees and *ad hoc* committees created for large and specific issues.<sup>12</sup>

### Ombudsmen

The establishment of ombudsmen in Belgium dates back to the 1990s. Each (federal, community and regional) entity (except Brussels-Capital Region) has established its own ombudsman-type institutions. Besides their main mission (*i.e.* helping to solve disputes with administrative authorities), the ombudsmen play a role in identifying regulatory problems and raising awareness of government and parliament of the need to improve regulations through the publication of its annual report. It was pointed out to the OECD team that the recommendations of ombudsmen have been a source of information in the development of programmes for administrative simplification.

## *Resources and training*

### *Federal government*

The ASA has a 12-person staff, including a director, a deputy-director, seven officials and six assistants. Officials are civil servants in secondment from ministerial departments, and work independently from these departments. It has access to funds for consultancy purposes in support of its missions.

The Federal Administration Training Institute, which is part of the FPS for Personnel and Organisation, provides a large number of training programmes, some of which are grouped into the “regulation and dispute” category. The ASA organises training sessions on the *Kafka* Test and the standard cost methodology (see Chapters 4 and 5), as well as workshop and information sessions (for example, on the use of e-Government, European Better Regulation initiatives).

### *Flemish government*

The Regulatory Management Unit – Flemish government (DMW) has a staff of nine persons (one co-ordinator, six policy advisors and two support staff). It also has access to fund for consultancy work. The DMW organises a wide range of training sessions (for example on legal techniques, form design, impact assessment, administrative burdens) and events and workshops in the field of Better Regulation. Following evaluation of training, it launched a tender at the end of 2008. The new orientations is to give increased attention to governance, economics and sociology (besides legal aspects), determine specific needs on the basis of evaluation of the units for regulatory quality and of impact assessments, and target not only government officials but also staff of the parliament and of advisory council. Target groups have been defined based on their involvement in regulatory drafting and policy making.

### *Walloon government*

The Commissioner for e-Government and Simplification – Walloon government (*EASI-WAL*) has a team of 22 persons working on simplification and e-Government. The simplification unit has six officials (one head of unit – “deputy commissioner” – and five experts). The Department of Legal Affairs of the Walloon government has about 20 lawyers who provide assistance to civil servants and members of ministerial cabinets in drafting regulations. Each administration has its own legal department.

The Human Resources Management Department provides various training courses relating to administrative law, preparation of administrative documents, new legislation, legislative technique and administrative simplification procedures. Some of these training are compulsory as part of appointment process as a statutory official. Documents in support of training programmes are available on line.<sup>13</sup> In addition *EASI-WAL* has organised specific training courses on impact assessment (*Kafka* Test) and burden reduction (SCM methodology).<sup>14</sup> It has produced a collection of practical guides on regulation (summarising best practices for Better Regulation), process methodologies, forms (creating and assessing administrative forms), Standard Cost Model, and readability of regulations. It has created a number of handout tools for simplification (such as process for preparing a regulation). Other tools include ATLAS, an online glossary of legal terminology (see Chapter 5).

### *Brussels-Capital Region*

The Brussels Capital Region has a specific team, *AVEG*, for Better Regulations issues, which was combined with the *Kafka* Platform to bring together the units involved in these issues. Altogether there are around 25 persons involved in Better Regulation.

### *French Community of Belgium*

The Internet and Administrative Simplification Unit – Ministry of the French Community (ISA) has a team of ten people, several of which are involved in Better Regulation issues. The legal unit has a staff of four lawyers. The Public School of Administration of the Ministry of the French Community is in charge of the training policy and provides a number of training programmes. Entry in the administration includes training session in the area of regulatory drafting.

### *German-Speaking Community*

The Ministry of the German-speaking Community has set up a working group of eight lawyers (out of a total staff of 240) to work on regulatory quality issues.

## Notes

1. The ASA also currently reports to the minister in charge of administrative simplification.
2. See OECD 2009 ; also IEA 2005 (“the structure may cause problems of regulatory powers -overlap of powers, lack of regulatory coverage of certain segments, lack of the economies of scale - and co-ordination - both the objectives and of enforcement decisions. This structure may lead to lengthy communication procedures and increase bureaucracy”).
3. These 13 policy areas are: Services for the General Government Policy; Public Governance; Foreign Affairs; Finance and Budget; Education and Training; Economy, Science and Innovation; Culture, Youth, Sport and Media; Welfare, Public Health and Family; Agriculture and Fisheries; Work and Social Economy; Mobility and Public Works; Environment, Nature and Energy; Town and Country Planning, Housing Policy and Immovable Heritage.
4. Forty senators are directly elected by popular vote (15 by the French-speaking electoral college and 25 by the Flemish electoral college. Thirty-one are indirectly elected (10 appointed by the Parliament of the French Community, 10 by the Flemish Parliament, one by the German-speaking Parliament, and 10 co-opted by senators).
5. In Flanders Better Regulation has been under the responsibility of the minister in charge of Administrative Affairs. In October 2008, the responsibility was put under the remit Minister-President. In the new government set up after the regional elections of June 2009, this responsibility is under the remit of a Vice Minister-President and minister in charge of Administrative Affairs.
6. The 16 inter-ministerial conferences are the following: institutional reforms; economy and energy; mobility, infrastructure and telecommunications; scientific policy and culture; foreign policy; foreign trade; home affairs; employment, training and social economy; civil service and modernisation of public services; agriculture; health; environment; social integration; urban policy and housing; well-being, sports and families.
7. Law of 25 April 2007 on the establishment of a parliamentary committee in charge of legislative monitoring.
8. The federal regulator for gas and electricity is the Electricity and Gas Regulatory Commission (*Commissie voor de Regulering van de Elektriciteit en het Gas* - *Commission de Régulation de l'Électricité et du Gaz*, or CREG). The regional regulators are: *Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt* (VREG) in Flanders; *Commission wallonne pour l'énergie* (CWAPE) in Wallonia, and *Institut bruxellois pour la gestion de l'environnement* (IBGE) in Brussels-Capital Region.

9. The precursor of the Constitutional Court was the Court of Arbitration, established in 1980, at a time when Belgium was gradually being transformed into a federal state. The Court of Arbitration owed its name to its original mission, which was to act as arbitrator between the different legislatures of the federal state, the communities and the regions by monitoring the conformity of laws, decrees and ordinances with the power-assigning rules in the constitution and the laws on institutional reform. The jurisdiction of the Constitutional Court has been gradually extended to include the review of laws, decrees and ordinances with Title II of the constitution (Articles 8 to 32 on the rights and freedoms of Belgians) and with Articles 170 and 172 (legality and equality of taxes) and 191 (protection of foreign nationals).
10. Established by the law of 23 December 1946.
11. Brussels Social and Economic Council, established in 1988; Flanders Social and Economic Council (SERV), established in 1988 ; Walloon Region Economic and Social Council (CESRW), established in 1985; Economic and Social Council of the French Community, established in 2008 and composed of members of the social and economic councils of the Walloon Region and the Brussels-capital region.
12. The regional economic and social councils also act as a strategic advisory board for several policy areas (Flemish Region) or as secretariat for advisory boards (Walloon Region). See Chapter 3.
13. *<http://formation.mrw.wallonie.be>*.
14. Resources are available at *<http://easi.wallonie.be>*.





## Chapter 3

### Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).<sup>1</sup>

#### Assessment and recommendations

##### *Public consultation on regulations*

###### *General context*

*Belgian governments have a well-established and well-supported practice of consulting external shareholders when preparing new regulations, which is based on institutionalised bodies (“advisory boards”) set up by each government. Consultation is considered, not only by governments, but many stakeholders as an essential instrument for reaching consensus and overcoming tensions. Stakeholders are generally consulted through a dense, highly structured and extensive network of advisory boards, which comprise representatives of target groups related to various policy/regulatory issues. The system has the broad support of most stakeholders. Advantages inherent to the system (when it works at its best) include the fact that consulted stakeholders are targeted in terms of their representativeness*

and expertise, and that they are integrated in an “interactive” discussion with the government.

*Belgium’s consultation policy is dynamic, and governments are deploying or testing a number of new approaches alongside the traditional structures (without abandoning the latter).* There are signs that a new thinking is emerging, especially in the regions. Belgian governments have also been developing new forms of consultation, including more open “notice and comment” procedures using the internet to reach out directly to citizens, round tables, and large scale *ad hoc* consultations for difficult issues such as the transposition of complex EU directives. Administrative simplification programmes have encouraged the use of the internet and direct interviews with stakeholders to gather views. Regulatory agencies such as the food agency have adopted new approaches. The development of *ex ante* impact assessment processes looks promising in terms of adopting new attitudes to consultation including its timeliness (sufficiently ahead of formal decisions to go ahead with a proposal, so that the consultation can inform the decision). The network of Better Regulation units across Belgian governments is an institutional asset for the further development of new approaches.

*There have been significant efforts to simplify the advisory board system, particularly in the regions.* The network of advisory boards is traditionally very extensive, comprising around 250 boards at federal level, 23 commissions in Wallonia, and 13 strategic advisory boards together with subsidiary bodies in Flanders (after rationalisation). The regions have taken steps to streamline their systems, reducing the number of bodies and setting common rules, but the structures remain significant and it is not yet clear that the reforms have yet had a positive impact in terms of enhanced transparency and meeting stakeholder needs. The federal government (which has the largest number of boards) has yet to engage a reform of its system.

*Despite these important developments, the overall approach to consultation would benefit from an updated and clearer policy to guide the process and reinstate transparency.* Transparency as a basic principle of consultation has become compromised over time by the growing size of the advisory board system. Belgian governments have a commitment and a large number of requirements to consult. Stakeholders are generally strong supporters of the advisory board system and they want to improve it. Three related needs can be distinguished (relevant for all the Belgian governments): further reforms of the advisory board system; further development (in parallel, where it is appropriate to integrate them) of new forms of consultation; and a clearly articulated consultation guidance to cover all domains. These issues are examined more closely under the three sections below.

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**Recommendation 3.1. (all governments): Engage further reforms of the advisory board system to simplify the structure; develop further new forms of consultation, for use where appropriate as a complement to the traditional system; and to frame the overall approach, establish consultation guidelines for all domains (these aspects are each covered in more detail below).**

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## Reform of advisory boards

*The advisory board system needs further reform.* The system has developed to secure a comprehensive coverage of issues for which public consultation is needed, but has grown in complexity and lost transparency precisely because of the range and number of consultations undertaken by a very large number of advisory boards. Belgian governments

have a commitment and a large number of requirements to consult. Even some insiders find it a challenge. Stakeholders do not want to change the system, but they want to improve the process. Specific issues that appear to need attention include: complexity, timing of consultation (and link to impact assessment processes), deadlines for responses, the scope of regulations to be covered, conditions of access to the boards, the role of the ministerial cabinets, sanctions for non-observance of the procedures, and feedback to stakeholders.

*The system now lacks transparency (which was not the original intention).* Efforts to rationalise advisory boards have been mainly limited to the regional governments although the need for reform is also part of the debate on regulatory quality at the federal level. The number of advisory boards remains too high, including in some cases “one issue” lobby groups which fragment the strategic messages which governments need to hear. The large number of advisory boards can make it difficult for stakeholders to contribute efficiently to all consultations, as the same organisations can be part of several boards. Advisory groups are also established according to different rules, which reduces the transparency of the system, especially for outsiders (for example, how consultation is carried out, who are the board members).

*The timing of consultation exercises may need attention, an issue that is shared with many other countries.* Governments may consult advisory boards at a very late stage in the drafting process when the political decision to go ahead has already been made. In addition, consultation and *ex ante* impact assessment are not linked.

*Deadlines for advisory boards to respond to consultation exercises may be too short, another issue that is widely shared with other countries.* The OECD peer review team heard from some stakeholders that response times can be short, and that official time limits may be too short to allow organisations to consult their own members.<sup>2</sup>

*The full consultation processes need to cover all regulations.* At the federal level, the government often uses programme-laws as a fast-track procedure for making new regulations, and the OECD peer review team heard that some parts of the consultation processes could be sidestepped as a result. The OECD peer review team were told that laws initiated by parliaments may sometimes be used to circumvent the formal consultation processes which apply to proposals initiated by the executive.

*The conditions of establishment and nomination to advisory boards need to be fully transparent and accessible.* Procedures for establishing advisory boards and nominating their members need to be fully transparent and accessible so that potential outsiders who have not been previously involved may put themselves forward for nomination if they so wish. The organic laws regulating the processes as well as the nominations are systematically published in the Belgian Monitor. This may be enough to ensure that those who have an interest can join in, taking account of the framework laid down for representativeness, social partners etc. However the OECD peer review team considered that a view should be taken on whether enough is done to raise awareness of the procedures.

*The significant role of ministerial cabinets in rule-making undermines the scope for officials to ensure that consultation procedures are observed.* The OECD peer review team heard that drafting is often carried out by the ministerial cabinets, which means that consultation procedures may not be applied. Officials in the administration are given little opportunity to check that procedures have been followed, and to take remedial action.

*Information on the work of most advisory boards is not easily accessible, apart from the largest ones.* There is not much easily accessible information on the work of most advisory boards, apart from the largest ones. The opinions of the advisory boards are supposed to be

public, but are not always easily accessible. Some of the boards, but not all, publish their opinions on their websites. Opinions of different advisory boards on the same issue are not always made available in the same place by the relevant ministry.

*Feedback to stakeholders is not always complete or systematic.* The OECD peer review team heard that little feedback is provided to stakeholders, and few efforts are made to publicise comments. This was a particular criticism of the social partners and parliament. Parliaments noted that governments are not required to justify how they take account of advice given by bodies such as the Council of State and external stakeholders. The explanatory memorandum attached to draft bills is a summary, and it seems that there is a demand for a more complete document.

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**Recommendation 3.2. (all governments): Evaluate the advisory board system, with a view to (further) rationalisation, and streamlining of the supporting rules. Consider a guillotine system to prune the number of boards when they come to the end of their mandate. Eliminate boards that are not found efficient. Establish advisory board mandates with a limited timeframe, and systematically review the functioning of the board before renewing the mandate.**

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**Recommendation 3.3. (all governments): Ensure that consultation exercises are launched at an early stage in the decision making process, before political commitments have been made, and in time to provide useful feedback to the government as an aid to decision making. Make use of the forward planning mechanisms to secure this.**

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**Recommendation 3.4. (all governments): Enforce the rules regarding deadlines where necessary, and check that these provide adequate time for stakeholders to prepare effective responses.**

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**Recommendation 3.5. (all governments): Check that all regulations are captured by all the relevant stages of the consultation process (including for example review by the relevant advisory board). Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.**

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**Recommendation 3.6. (all governments): Check that the process and the criteria for the establishment and nominations to advisory boards are clear and easily accessible for all those who may wish to put themselves forward.**

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**Recommendation 3.7. (all governments): Consider the establishment of a consultation portal (covering all governments) in order to ensure that the work and opinions of the largest advisory boards are published and easily accessible to all interested parties, including the general public.**

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**Recommendation 3.8. (all governments): Ensure that systematic feedback is provided on significant stakeholder contributions, including where consultation is non-obligatory. Consider providing more complete feedback on important legislation than is currently provided in the explanatory memorandum to draft bills.**

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### *Development of new forms of consultation*

*Belgium's current institutionalised system of consultation is based on fundamental principles of representative democracy.* The system covers a very wide range of sectors and issues. The Belgian system draws a large part of its strength from high-participation rates. Union membership is high (between 60 and 70%), and 80-90% of enterprises are members of an employer's federation.

*The system nevertheless raises some challenges for the active and direct involvement of citizens and businesses in the development of new regulations.* Advisory boards are intermediaries between governments and individual businesses and citizens. Business and trade unions ("social partners") play a key role in the boards. Capturing effectively the views of citizens and businesses depends on the capacity of advisory board members to consult their own constituencies. As advisory boards are usually set up with mandates of four to five years, they may not keep pace with developments in the stakeholder community. The system thus implicitly limits inputs from all relevant stakeholders beyond the defined in the texts on the creation of advisory boards. It may thus some "miss" useful inputs, and puts citizens and businesses at arm's length from the administration, by attributing them a passive role (recipients of information about projects for new regulations and the opinions of advisory boards) rather than allowing them a more pro-active engagement in the rule-making process. The development of new forms of consultation could be tested further to establish where it might be useful as a complement to the traditional forms of consultation.

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**Recommendation 3.9. (all governments): Without endangering the traditional advisory board system of consultation, develop a framework for the selected use of new approaches, building on experiments that have already worked well. For example, when would it be useful to consult on the web, perhaps as part of the advisory board process? What issues would benefit from this approach?**

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### *Framework consultation guidelines*

*Belgian governments lack a clearly defined integrated code of good practice and guidance material to lend strength and visibility to consultation where this would add value.* The legal foundations for consultation are robust and go back a long way in Belgium's history. However it would be useful to examine how to improve the rules and extend these to areas which are not yet the subject of specific rules. Setting up a set of universal guidelines may prove a useful way forward, to confirm and define clearly common minimum standards that would apply to all domains, and to provide advice on the new forms of consultation that are emerging. It may also be useful to consider whether the threat of annulment by the Council of State or the Constitutional Court in case of non-

observance of obligatory consultation requirements is a sufficient encouragement to respect the procedures. Are further sanctions needed?

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**Recommendation 3.10. (all governments):** Develop, agree and publicise an enforceable consultation guide and supporting code of good practice that covers all the key elements set out in the more detailed recommendations above (scope, timing, methods, feedback etc). This could be done by setting up a reflection group made up of the representatives of the Better Regulation units, representative stakeholders, the most important consultations boards, and the Council of State. Consider whether there is a need for further sanctions for non-compliance with consultation rules and procedures.

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### *Inter- governmental consultation*

*Consultation structures and processes are for the most part intra-governmental.* Although there are some specific advisory bodies to co-ordinate consultation on policies and related regulations across governments, this does not appear to be an established feature of the system. This aspect, however, is of critical importance for policy areas where competences and rule-making powers are split among the different governments but where there may be a shared interest in developing an effective policy and regulatory response (environment, for example).

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**Recommendation 3.11. (all governments):** Consider whether there is a need to boost and systematise inter-governmental consultation and shared approaches to public consultation in areas where governments agree on the need for co-ordination.

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### *Public communication on regulations*

*Belgian governments have developed numerous initiatives to ensure access to regulatory information, which is guaranteed by legal texts, making strong use of ICT.* Significant and impressive initiatives have been taken, including a range of Belgium wide initiatives. These efforts are essential for the citizens' and enterprises' understanding of regulations given the underlying institutional complexity of Belgium and the use of several languages. Citizens' right of access to administrative information is guaranteed by the constitution and detailed in a 1994 law. All regulations, issued by the federal state, regions and communities, are published in the Official Journal, which is available on the Internet. In addition regulations are compiled in a website, with unofficial or official consolidated versions and search facilities. All texts are available in French and Dutch (as well as German for regulations concerning the German-speaking community). The federal government has established a portal for accessing all official Belgian websites, including those managed by regional and community authorities, and for providing guidance on administrative procedures to all citizens and enterprises.

## Background

### *Public consultation on regulations*

#### *General context*

Belgian governments have a well-established practice of consulting external shareholders when preparing new regulations, based on institutionalised bodies set up by each government and focused on different categories of stakeholder. Consultation is considered an essential instrument for reaching consensus and overcoming tensions. This is, for example, formalised in the Walloon guide on regulation: “Consultation of users is a non-expensive and efficient solution to contribute to identifying issues, assess the necessity for governmental action and define the best way to act.”<sup>3</sup> The need for consultation of all affected parties is also part of the eight principles for good regulation set by the Flemish government in 2003 (Chapter 1).

Consultation is carried out through an extensive network of advisory boards, including up to 600 boards at the federal level, 23 commissions in Wallonia<sup>4</sup> and 13 key strategic boards in Flanders (with an undefined number of other consultative bodies). Each advisory board is regulated individually to reflect the variety of issues and stakeholders, although the approach is based on a set of “models”. Belgian governments also usually consult external stakeholders informally at an earlier stage in the development of regulations. Other forms of more open consultation are also emerging alongside the traditional approach, for example, in the context of administrative burden reduction programmes (*e.g.* through interviews with stakeholders).

#### *Inter-government consultation*

Consultation structures and processes are for the most part intra-governmental. There are some specific advisory bodies to co-ordinate policies and related regulations across governments. These have been established *ad hoc* and there is no general presumption that a shared system will be in place for policy issues that involve the competences (and hence rule-making) of different governments. Examples of specific initiatives include *ENOVER/CONCERE* (*Energieoverleg or Concertation État-Régions pour l'Énergie/Energieoverleg*) for discussions between federal government and regional governments over energy-related matters that have been devolved to regions, and the federal inter-departmental commission for sustainable development.

#### *Advisory boards*

Specific regulations set up advisory boards and their conditions of work, including rules for the designation of committee members, work scope, consultation process, publicity given to the committee’s recommendations, assessment of results, and procedures for taking account of the recommendations. While missions and specific rules can differ, the organisation of advisory boards at federal, regional or community levels are based on a number of common principles:

- Composition reflects the different types of target stakeholder for policy areas. The regulation creating the board usually sets the number of members for each defined target stakeholder. They are usually proposed by defined institutions and nominated by the government.

- The scope of activity is defined.
- Regulations setting up an advisory board and complementary regulations specify the rules regarding deadlines for giving comments, publicising comments, secretariat capacities, etc. These rules can thus vary across boards.

All advisory boards have a general mission to enlighten administrative and political authorities and associate all relevant stakeholders with the decision-making process. Beyond this, their specific missions may vary. Advisory boards can be asked to provide comments and suggestions in the development of specific new regulations, in the implementation of regulations (*e.g.* issuing advice on delivery of specific authorisations), and in the development of broader policies. These differences can be reflected in their composition. They can take the shape of technical or expert committees, socio-economic committees (reflecting different target groups) and inter-federal co-ordination committees (through the representation of region and community organisations). Some advisory boards combine these three different missions. This is the case of the High-Level Statistical Council, which includes academics, business and trade union representatives, as well as federal, regional, and community agencies.<sup>5</sup>

### *Consultative bodies for social dialogue*

Belgium has specific consultative bodies to promote “social dialogue” between business and employee representatives (“social partners”) and governments on social and economic issues. This is against the background of a high trade union density relative to other OECD countries.<sup>6</sup> At the federal level, the social dialogue takes place through two long-standing advisory boards (National Council of Labour established in 1952, often referred to as “Belgium’s social parliament”, and the Economy Central Council established in 1948). Each federated entity has established its own social and economic council, bringing together social partners.<sup>7</sup> These councils provide advice and recommendations to their regional government on all matters of regional competence and those having an impact on the region’s economic and social life. They include several thematic permanent committees and *ad hoc* committees created for specific issues.

Belgium has developed since 1945 a system of participation in the management of social security by the social partners. These are firstly consulted on projects of the authorities but may also intervene in budget management, the determination of their rights and obligations etc. Finally, they can write their own collective agreements which have force of law within the limits of their scope.

### Rationalisation of consultative bodies

While consultative bodies allow an exchange a views between different stakeholders and the development of consensus positions, the multiplicity of bodies is also frequently seen as an impediment to their efficiency, as well as having a negative impact on the readability of the institutional framework. Interviews conducted by the OECD peer review team showed a strong commitment to institutionalised consultation processes, due to added value brought by confrontation of opinions. At the same time, many interviewees noted important differences between bodies, in terms of efficiency, influence on the decision-making process, as well as the difficulty of ensuring efficient participation as result of the numerous bodies. Efforts to rationalise advisory boards have been mainly limited to the regional governments although the need for reform is also part of the debate on regulatory quality at the federal level.



As part of its administrative reorganisation around 13 policy areas, the Flemish government has established a single strategic advisory board (*strategische adviesraads*) for each of the policy areas. A 2003 decree<sup>8</sup> has set common rules for all strategic advisory boards relating to their mission, independence, funding and accountability. The Social and Economic Council of Flanders acts as a strategic advisory board for several policy areas, in addition to its general mission to promote social dialogue. The reforms have led to a reduction in the number of consultative bodies, with some uncertainty however as to the ultimate outcome, as the establishment of the strategic advisory boards has not eliminated all other bodies. Some consultative committees have been maintained or created, in some cases in relation to a strategic advisory board. The Flemish government has undertaken an evaluation of consultation practices.<sup>9</sup>

The Walloon government has engaged similar streamlining efforts. A 2008 decree sets common rules applicable to a number of consultative bodies such as mandate duration (5 years), quorum, and time allocated for consultation (35 days). As in Flanders, the Economic and Social Council has also been charged to serve as secretariat for other advisory boards. These reforms have harmonised some rules regarding advisory boards, but not all (publication of opinions is not covered, for example).

With respect to the federal level, there have been calls for a reform of consultative bodies. The review of economic regulations undertaken by FPS Economy released in 2008 includes an assessment of consultation practices and recommends that existing commissions dealing with economic regulations should be reviewed and streamlined. It calls for a grouping all consultative bodies relating to economic areas under a single advisory board and detailed rules regarding the organisation and procedures of these commissions (*e.g.* deadlines, composition of boards, possibility for creating specialised sub-groups).

### *Consultation process*

Advisory boards are consulted either before or after the first reading of a text in the Council of Ministers (after in the case of the Walloon government). The results of the consultation process are used in different ways by Belgian governments. At the federal level, the note attached to the text sent to the Council of Ministers must include the opinions of the advisory bodies (summary and full text) and the list of bodies still to be consulted. The government is not, however, required to attach these when it sends the proposal to the federal parliament. In Flanders, the decree related to strategic advisory boards stipulates that the Flemish government “gives a reason and an explanation for its decision on advisory opinions to the strategic advisory board”. The opinion of the strategic advisory board is appended to the draft sent to the Flemish parliament, while the feedback on the opinion is sent only to the strategic advisory council. In Wallonia law drafters are encouraged to report on opinions received during the consultation process in the note to the Walloon government so as to provide feedback to consulted stakeholders.

The largest advisory boards have a website on which they publish their comments. Examples of boards publishing their notice of opinions are the National Council of Labour, the Advisory Committee of Telecommunications, the Economic and Social Council of the Walloon Region. In some cases, government departments also publish the advice of some of the advisory councils. This is the case, for example, of the FPS Economy which publishes the opinions of the Council of Consumption.

The legal section of the Council of State, which is consulted after the meeting of a Belgian government, checks compliance with consultation requirements as part of its legal

check on all regulations proposed by Belgian governments. Failure to comply with consultation requirements is a case for annulment of a secondary regulation by the litigation section of the Council of State. At the federal level the Secretariat of the Council of Ministers plays a gate keeper role upstream as it checks compliance with the requirements for all texts sent to the Council of Ministers. However failure to consult is not a justification for the nullification of legislative acts.

### *Scope of consultation*

Formal requirements regarding consultation of advisory boards mainly apply to primary regulations (laws, decrees and ordinances) and to some secondary regulations. For example, the government of Flanders must consult the strategic advisory board on all draft primary regulations (decrees) as well as secondary regulations of “strategic relevance”. The strategic advisory boards can take the initiative of giving advice on draft decrees initiated by the Flemish parliament or draft secondary regulations issued by the Flemish government. Advisory boards can also be associated with the development of large scale reforms as was the case of the National Council of Labour in the programme for the modernisation of social security.

At the federal level a number of primary regulations are not submitted to advisory boards. These are regulations embedded in “programme laws” often called “catch-all laws”, which include various provisions relating to different policy areas. Programme laws are subject to limited scrutiny (including for internal consultation such as the Council of State). It is widely recognised that programme laws have been used extensively over the years and now contain dozens (even hundreds) of provisions, which should be subject to specific laws, in a large range of policy areas. The abuse of these programme laws, was mentioned repeatedly at meetings held by the OECD team (for more on programme laws, see Chapter 4). Another by-pass, mentioned to the team, is to use the parliamentary procedure for tabling a new regulation to take forward what is really a government initiative. In this case, consultation takes place within hearings organised by the parliamentary committees, and official advisory boards may not be consulted.

### *Development of other forms of consultation*

Belgian governments are developing more open forms of consultation and taking other initiatives to strengthen the process. The 2008 policy notes of federal government ministries include the following action: “The government will emphasise citizens’ participation in the policy making process by promoting new participative methods, particularly citizen panels and online public consultations”.

In the area of administrative simplification, Belgian governments collect suggestions of stakeholders through the *Kafka* contact point on the Internet.<sup>10</sup> Citizens, businesses and public servants can suggest simplification proposals or point out any problems relating to administrative procedures and regulations. The ASA sends suggestion concerning regions and communities to the relevant authorities. Flanders has taken similar initiatives with the campaign “simplifying together” and the use of panel discussions for the baseline measurement. In addition to the general *Kafka* contact point, the ASA has recently used an open form of consultation for the implementation of a specific simplification measure.<sup>11</sup>

The transposition of the EU directive on public participation in the elaboration of some plans and programmes relating to the environment has also led to the organisation of large scale consultations in Belgium. In Wallonia, where conditions for consultation in the environment field are set in a 2007 decree,<sup>12</sup> the most recent consultation in this area related

to the implementation of the water framework directive. In Flanders, the model of the “Round Table” has been used in the automobile sector for consultation on issues. The 2008 Inter-institutional Agreement on RIA (partners are: the Flemish government, the strategic advisory councils, SERV and the Flemish Parliament) should open the way to a broader approach which should also promote timely consultation (before it is too late in the decision process). Flanders is also promoting EU related consultation *via VLEVA*.

### Issues with consultation

While most stakeholders upheld the broad lines of the current system, they raised some important concerns. Box 3.1 reflects the remarks picked up by the OECD peer review team in the course of interviews with a wide range of stakeholders in the federal state and federated entities. It should be noted that even (consulted) stakeholder groups often voiced concerns. It should also be emphasised, however, that most stakeholders upheld the broad lines of the current system (it reflects an “eminent tradition”). They would simply like it to work more effectively.<sup>13</sup>

#### Box 3.1. Issues raised by stakeholders with consultation in practice

*Scope of consultation.* Formal consultation processes stop short of covering all relevant regulations. They are only mandatory for primary legislation (and in some cases “important” secondary regulations—which may not be defined). They do not cover parliamentary initiatives, which are often used to bypass consultation procedures (example mentioned Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora). They do not cover federal programme laws.

*Timing of consultation and deadlines for response.* The OECD peer review team heard from some stakeholders that response times can be short, and that official time limits may be too short to allow organisations to consult their own members.

*Involvement of the ministerial cabinets.* Drafting is often carried out by the ministerial cabinets, which means that consultation procedures may not be applied. Officials in the administration are given little opportunity to check that procedures have been followed, and to take remedial action (“our biggest problem are the cabinets”!). The proportion of drafts prepared by the cabinets can reach 80%.

*Feedback.* Little feedback is provided to stakeholders, and few efforts are made to publicise comments. This was a particular criticism of the social partners and parliament. Parliaments noted that governments are not required to justify how they take account of advice given by bodies such as the Council of State and external stakeholders (for which it was suggested that the answer was a stronger and more complete explanatory memorandum attached to draft bills).

*Stakeholders consulted.* It was noted by some that this was almost exclusively the established advisory board structures. This has two negative consequences. First, the unintended effects of a proposed regulation may not be detected. Second, stakeholders may take matters into their own hands. A specific case was mentioned: an infrastructure project in Antwerp where a reiterated consultation process has been running since 2002 and concerned stakeholders have not been consulted; these stakeholders formed pressure groups and have since held up closure on the project. At the same time, established consultation groups were not always happy either, noting that arbitrary decisions could sometimes be made, notably by the ministerial cabinets, on whom to consult. There was a certain tendency to avoid formal consultation mechanisms as a result, and to use instead informal consultation/lobbying.

*Lack of a consultation policy.* To set out essential requirements, responsibilities, and to offer guidance on issues and tools such as ICT.

### *Public communication on regulations*

Access to administrative data and documents is guaranteed by the constitution, whose Article 32 states: “Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees”. At the federal level, two laws regulate access to administrative documents in more detail both in terms of active publicity (upon own initiative of government agencies) and passive publicity (upon request for information). The law of 11 April 1994 on administrative publicity requires government agencies to respond to a request for information within 30 days of its filing, specifies cases when agencies can reject the request and sets up a Commission for Access to Administrative Documents. A law of 5 August 2006 provides additional requirement in case of request in the field of the environment.

Belgian regulations are accessible through different official publications and websites. All regulations of Belgian governments are published in the *Belgisch Staatsblad – Moniteur belge*, the official journal of the Kingdom, which is managed by the FPS Justice and available on the Internet since 1 June 2007.<sup>14</sup> Regulations enter into force ten days after publication in the official journal, unless otherwise specified. The FPS Justice also manages an online database (*Justel*),<sup>15</sup> which provides access to consolidated versions of regulations as well as references to related parliamentary documents (in French and Dutch). Federal, community and regional institutions have co-operated in the establishment of a portal, the Crossroads Bank for Legislation,<sup>16</sup> which gives access to each institution’s databanks on legislation and case-laws (including WALLEX and *Vlaamse Codex*, the legal databases of the Walloon Region and the Flemish Region). Institutions include federal, community and regional parliaments and governments, community commissions, the Council of State and the *Court of Cassation*. The second stage of development (not started) involves linking the various databanks with each other and providing a single search tool.

Most government agencies also publish information on regulations relating to their field of activity on their websites. Publication is in Dutch, French, German and frequently English at the federal level. Multi-language publication is also often used at regional and community levels. For example, the FPS Economy, SMEs, Self-employed and Energy publishes a guide “*Vade-mecum of companies*” on its website.<sup>17</sup> The guide is mainly intended for start ups and small and medium-sized enterprises, but also contains information useful to private persons. The guide includes information on administrative formalities for setting up a business, taxes, labour and social legislation, state aid and official bodies which provide government support. It includes hyperlinks to relevant regulations and contacts in ministries, agencies and other bodies in charge of the regulation (including at the regional level). The FPS Economy has also published the “A-to-Z Guide on Labour Regulations” on its website.

The directorate for external communication of the FPS Chancellery of the Prime Minister provides support to all government agencies in managing information and communication tools. Jointly with the PPS Staff and Organisation it co-ordinates communication to federal public officials as well as the federal portal.<sup>18</sup> The federal portal is an access gate to all official websites across Belgian authorities (federal state, regions and communities). It also provides guidance on the main administrative requirements relating to citizens and businesses (such as licensing requirements, formalities relating to life events or procedures for obtaining specific welfare support), with access to relevant websites.

Some governments have developed tools to facilitate citizens’ access to the administration. Some interviews highlighted the need to develop such policies to avoid a “technocratic” approach to rule-making, and closer contact with citizens. The Walloon Region has put in place a free phone number, nine local information centres and three

itinerant information centres to provide information and advice to citizens on administrative procedures. The Flemish Region has put in place a Contact point (*Vlaamse Infolijn*) with a website and a free phone number (1700) to provide information and advice to citizens on administrative procedures. Brussels-Capital Region has set up the Brussels Enterprise Agency (BEA) which assists companies in starting up in the region. Two services – one concerning economic subsidies, and the other concerning the promotion of industry and innovation in technological domains – were merged to create the BEA in 2002. The BEA is not a regulatory agency, but provides support to firms by giving them information and in some cases acting as a mediator with the administration.

## Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. This is not entirely the case for the federal level.
3. EASI-WAL (2007), “*Réglementation – Guide de simplification*”, *Collection guides pratiques, 2e édition, Janvier 2007, Commissariat wallon E-Administration et Simplification, Namur*.
4. As listed in Wallonia’s official website: <http://guide.wallonie.be/jsp/guide/pgShowGuide5.jsp?path=RW-aap-ccc>.
5. For more on the Statistical Council, see: [www.statbel.fgov.be/info/council\\_fr.asp](http://www.statbel.fgov.be/info/council_fr.asp).
6. In Belgium trade union density stood at 53% in 2007. This is one of the highest densities among OECD countries with Scandinavian countries, where density reaches 70% (Source: *OECD.stat*).
7. Brussels Social and Economic Council, established in 1988; Flanders Social and Economic Council (SERV), established in 1988; Walloon Region Economic and Social Council (CESRW), established in 1985; and Economic and Social Council of the French Community, established in 2008 and composed of members of the social and economic councils of the Walloon Region and the Brussels-capital region.
8. Decree of 18 July 2003 related to strategic advisory boards, as modified by Decree of 22 December 2006.
9. The Policy Research Centre – Governmental Organisation in Flanders 2007-2011 (a centre funded by the Flemish government) has launched a research project. In a first phase, two strategic advisory bodies have been chosen as a pilot.
10. [www.Kafka.be](http://www.Kafka.be).

11. The consultation was about the simplification of two forms relating to benefits for handicapped people.
12. *Ministère de la Région wallonne, Décret du 31 mai 2007 relatif à la participation du public en matière d'environnement.*
13. “UNIZO does not share the idea that there is a need for a second, all access consultation model, next to the existing consultation model where government representatives and acknowledged social partners interact on existing and future regulation. The development of such a parallel consultation model, that should allow individuals and organisations other than the acknowledged social partners to give input on existing and future regulation, will only complicate and slow down the Belgian regulatory process, which is already imperfect”.
14. *[www.ejustice.just.fgov.be/cgi/welcome.pl](http://www.ejustice.just.fgov.be/cgi/welcome.pl).*
15. *[www.juridat.be/cgi\\_tit/titf.pl](http://www.juridat.be/cgi_tit/titf.pl).*
16. *[www.belgiumlex.be](http://www.belgiumlex.be).*
17. For more, see *[http://mineco.fgov.be/enterprises/vademecum/home\\_fr.htm](http://mineco.fgov.be/enterprises/vademecum/home_fr.htm).*
18. *[www.belgium.be](http://www.belgium.be).*

## Chapter 4

### The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

*Ex ante* impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true-impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

## Assessment and recommendations

### *General context*

*Widespread concern in Belgium over regulatory inflation is an important driver of Better Regulation initiatives.* For some time now, Belgian governments have been conscious of the upward trends in production, and the negative effects of this for regulatory quality and the complexity of the regulatory framework. Regulatory inflation is partly the result of the federalisation process, but there are other reasons which are not specific to Belgium. These include a tendency to respond to any issue or crisis by a regulation, and regulations prepared at short notice under “urgency” procedures which are of poor quality and need subsequent revision, as well as the weight of EU origin regulations in the system. Is there adequate awareness of the important contribution of Better Regulation policies in tackling these issues?

*At the federal level and in the Walloon Region, the regular use of programme laws undermines regulatory quality.* The federal government recognises that in practice these laws (which are adopted twice a year) can be unhelpful to transparency and the general quality of the legislative process. An agreement exists between the federal government and the parliament to limit the use of programme laws to budgetary issues, a provision which is also included in the Chamber regulations (*règlement de la Chambre*). In principle, only urgent and technical issues can be included in programme laws.

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**Recommendation 4.1. (federal government, Walloon government): Consider action to limit the use of programme laws to their intended purpose. Ensure that these laws are processed transparently (see also Chapter 3).**

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### *Procedures for making new regulations*

*Whilst each government has defined its own procedure for making new regulations, there are strong unifying elements.* The Council of State reviews the draft regulations of all governments (legal check), as does the *Inspectorate of Finance* (legal and budget check). This nationwide aspect is backed up *ex post* (after enactment), by the Constitutional Court (for primary regulations) and the *Court of Cassation* (secondary regulations), which may check conformity with the constitution.

*A useful development has been the trend in Flanders and Wallonia to merge legal and broader regulatory quality processes.* The divisions that often exist between the different procedures for reviewing draft regulations on their way to adoption (legal quality checks, constitutional checks, impact assessments etc.) mask the fact that the overall objective is to make an efficient and effective regulation, fit for its purpose. Strategic oversight of these different processes by a single entity is helpful.

*Apart from Flanders, visibility of the forward planning agenda is limited.* In all governments, policy statements and ministerial policy notes, at the beginning of the legislature, outline the upcoming programme of work. The Flemish government has established more specific forward planning and monitoring mechanisms through an online regulatory agenda.



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**Recommendation 4.2. (governments apart from Flanders): Consider setting up a more visible and regularly updated forward planning process for regulations, to promote transparency.**

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*The efficiency of the scrutiny process can be significantly reduced in a number of ways. Issues include a tendency for ministerial cabinets to be heavily involved; the scope for some important regulations not to be subject to a sufficiently rigorous process; short deadlines and lack of prioritisation; and insufficient publicity for the Council of State opinions. These issues are considered more closely below.*

*There is a tendency for ministerial cabinets to be heavily involved. Shared among governments is a tendency for draft texts to be prepared by the ministerial cabinets. This means that procedures to secure quality can be circumvented as officials are less involved.*

*It is not clear whether all significant regulations are well covered by the process. This applies in particular to programme laws, significant secondary regulations, and collective agreements (which are significant in labour regulations). Parliamentary proposals account for about 25% of (federal) laws, but only a few go to the Council of State.*

*Short deadlines and lack of prioritisation limit the extent and efficiency of the scrutiny system. The advice of the Inspectorate of Finance is requested on a large number of decisions but there is no prioritisation of cases to define the most important ones. A large number of draft regulations are submitted to the Council of State under the “urgency procedure” (95%) which severely limits its capacity to carry out effective checks. The OECD peer review team were told that a missing element was “a nice but strong minded policeman” within the administration to act as a preliminary check and gatekeeper before regulations were sent for formal controls to the official bodies.*

*The Council of State plays a particularly important role in ex ante scrutiny of draft regulations, but its opinions are not widely publicised. The Council of State is the main body responsible for ensuring overall control of legality. It must be consulted on all draft laws, decrees and ordinances as well as orders initiated by a Belgian government. The OECD peer review team were told that the government would pay more attention to regulatory quality if the Council of State’s opinions were given greater publicity, beyond their inclusion in the documents attached to a draft law tabled before parliament. The Council of State is currently considering how to give its advice greater publicity.*

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**Recommendation 4.3. (all governments): Consider how law drafting can be more firmly established as the responsibility of officials in the administration, subject of course to political and ministerial oversight and direction.**

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**Recommendation 4.4. (all governments): See also Chapter 3. Ensure that all significant regulations are covered by the same process. Consider, in discussion with parliaments, how and to what extent laws initiated by parliaments can be the subject of equivalent robust procedures.**

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**Recommendation 4.5. (all governments): Consider preliminary internal reviews by officials in the administration to relieve the load on the formal control bodies. Establish criteria for prioritising cases. For example in the case of the Inspectorate of Finance, this could be thresholds to identify regulations with the most important budgetary consequences. Consider how use of the urgency procedure can be minimised, in order to allow time for the Council of State and Inspectorate of Finance to carry out effective checks.**

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**Recommendation 4.6. (all governments, Council of State): Systematically publicise (at least in part) the opinions of the Council of State on its website. Consider also systematically publicising the government's response to Council of State opinions (as happens in some other countries with similar structures such as the Netherlands).**

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### *Ex ante impact assessment of new regulations*

#### *General context*

*Belgian governments have taken important steps to integrate ex ante impact assessment in the development of regulations. Ex ante impact assessment is a relatively new policy in Belgium, and still a work in progress. Although steps have been taken to enlarge the scope of impact assessments, these are still for the most part confined to evaluating administrative burdens. The federal government introduced the *Kafka Test* to measure administrative burdens in 2004. The governments of the Walloon Region and the French Community have also adopted the *Kafka Test*. Other impact assessment procedures, with a broader scope, have also been established by the Flemish government in 2005 and by the federal government in 2007. A variable geometry is at work, with different governments sometimes adopting different versions of the same processes.*

*The federal government's *Kafka Test* has proved a good starting point for raising awareness of impact assessment and its potential. It has forced officials to consider the impact of their proposals on citizens and businesses with respect to administrative burdens. More practically, it has made a real contribution to the reduction in administrative burdens. Factors for success have included a simple structure based on a short questionnaire, and a gatekeeper role for the Secretariat of the Council of Ministers in the Federal Chancellery, which ensures that tests are included in dossiers sent to the Council of Ministers.*

*The experience of the Walloon government and the French Community government with their version of the *Kafka Test* has also been positive, supported by significant efforts to set a strong operational context for the test. These governments have taken and adapted the federal government *Kafka Test*, with a similar objective of building up experience in impact assessment. The Walloon Better Regulation unit *EASI-WAL* sees the Test as an initial step to change mentalities in the administration. *EASI-WAL* has made significant efforts to support the Test, with a methodological guide, training courses, and additional criteria for improving the quality of the regulation such as abrogation of obsolete texts.*

*The simplicity of the *Kafka Test* is a strength, but also a limitation, and there are other challenges. The test only considers administrative burdens, and does so in a very simple way, via a relatively undemanding questionnaire. Quantification of burdens is not explicitly*

required or encouraged. Another issue is that the *Kafka* Test, which was designed to start at the very beginning of the rule-making process and continue up to presentation to the Council of Ministers, may only be completed just before the meeting of the Council of Ministers. The institutional challenge function prior to the adoption of a regulation in practice is limited compared with many other countries, as the decision has been taken to put the most significant work into checking regulations *ex post*, once they have been adopted, through an *ex post* measurement process for administrative burdens. There is no consultation of stakeholders, and no external publication of the *Kafka* Test (which could add another perspective on the system). The test needs to evolve, become more robust, and consider a larger range of impacts. At the federal level at least, this last point means finding a way of associating the future evolution of the test with the roll-out of the Sustainable Development Impact Assessment (see below).

*The federal government has also launched a Sustainable Development Impact Assessment, but this is still at an early stage of implementation.* The Sustainable Development Impact Assessment (SDIA) is an ambitious initiative. It covers economic, social and environmental impacts, evaluates short and long-term effects, and seeks to address the full-range of spatial effects (from impact on the local levels within Belgium to impact in other countries). It sets a two-stage process to allow for an initial screening of regulations through a set of indicators, and for an in-depth analysis of selected regulations. The federal government made it a formal requirement in early 2007 and the FPS for Sustainable Development has produced a range of guidance materials. However, the process has been applied so far in practice only to a limited number of draft regulations.

*The highly ambitious objectives set for the Sustainable Development Impact Assessment, combined with significant exemptions, are likely to stand in the way of progress.* As in many other OECD countries, the Belgian federal government has identified the important strategic need to develop processes in support of sustainability (the German federal government, for example, has also identified this need). However, will this overload the capacity of the system to cope? Will the significant exemptions mean that the assessment is only used in exceptional cases? The results of two years experience so far have been very modest. There is no clear evidence that the process has yet changed the course of a draft proposal. In essence, the federal government is seeking to establish a process (a form of “super impact assessment”) which is highly sophisticated by international standards, on to a culture and administration which has so far only had the modest experience of a limited test for administrative burdens. This is not to question the objective of broadening the scope of impact assessment, but to caution that this needs to be developed in proportion with capacities to cope, and with a much more developed support system.

*Another issue for attention is that the federal government now has two separate institutional anchors for impact assessment.* The Sustainable Development Impact Assessment process is overseen by the FPS for Sustainable Development (one of the horizontal ministries), and the *Kafka* Test is overseen by the ASA in the Federal Chancellery. There is no formal link between the two processes, apart from the fact that the SDIA is (like the *Kafka* Test) attached to draft proposals going to the Council of Ministers. Both require the co-operation of (highly autonomous) other ministries. It does not make sense to continue, at least over the longer term, with two separate processes.

*Meanwhile, Flanders has opted for a different and broader approach to ex ante impact assessment.* The Flemish government has established a “comprehensive” *ex ante* impact assessment with some quantification and consideration of options, together with a quality control system. The system has “teething problems” typical of what is often encountered in

other OECD countries. It is proving difficult to change attitudes and persuade officials (and ministerial cabinets) to take the assessment seriously and carry it out at a sufficiently early stage in the development of regulations (it is often treated more as an *ex post* note of justification for a decision which has already been taken). A very positive recent development is the conclusion of the Inter-Institutional Agreement between the Flemish government, the Flemish Parliament, SERV (social and economic council) and strategic advisory boards, which provides for stronger interaction with consultation and the parliamentary process (including information exchanges and methodological support to promote the more active use of RIA by advisory bodies and parliament members). This initiative, however, will only be effective if efforts to encourage the administration upstream to carry out higher quality and timely impact assessments are sustained over time. Circulating the regular evaluations made of the process is a good starting point. The review of RIA which the DMW completed at the end of 2008 emphasised the need for stronger political support and further guidance to officials. Flanders also has an impact assessment for administrative burdens of new legislation (compensation rule) since 2005. The compensation rule is linked with the impact assessment.

*All the different initiatives suffer, to a greater or lesser degree, from a range of problems including timeliness, limited coverage and weak institutional frameworks.* Reflecting the often limited reach of general procedures for the development of regulations, many draft regulations are currently exempted from any form of impact assessment. The involvement of politicians in rule drafting makes the implementation of impact assessment particularly difficult. Impact assessment is often done too late and becomes an *ex post* justification for decisions which have already been reached. This often causes implementation problems downstream and requires revisions to the law in the worst cases. Institutional frameworks are weak and generally unable to challenge poorly implemented assessments. Quantification is limited, but the ASA and the DMW are working on the development of measurement methodologies. Measurement of administrative burdens is important as they are to a large extent “invisible costs” which are difficult to estimate without quantification. Transparency is also weak with often limited efforts to consult with stakeholders and little effort at publication. Strengthening impact assessments will require strong high-level commitment and further culture change.

#### *Where to next in the development of Belgian impact assessments?*

*Impact assessment is a relatively new process in the Belgian Better Regulation landscape and needs more time to mature.* The problems with the current systems are typical of the experiences of many other OECD countries, and sharing experiences with European neighbours would be a useful exercise, both for reassurance that Belgium is not alone and also to identify solutions to the practical challenges that could be applied in the Belgian context. Belgian governments should certainly not give up on setting an objective of a more developed impact assessment which takes them beyond current arrangements. They must evolve progressively towards a large range of impacts, make the assessments public. All governments need to identify issues that stand in the way of a more robust impact assessment process, and take steps to deal with these, drawing on international best practice.

*As a first step, there is a need to fix the various problems which weaken the effectiveness of the current processes.* This includes (see above) the issues of timeliness to ensure that assessments influence final decisions, exemptions to ensure that processes cover all significant regulations, and the need to strengthen the institutional challenge function so that assessments are of high quality. Resource constraints on Better Regulation units also

mean that processes need to be as efficient as possible, notably by applying the principle of proportionality (capturing all significant regulations but letting the insignificant ones go, for example, through pre-checks).

*The different approaches to impact assessment across Belgian governments are a rich source of experiences which need to be shared.* This has already happened, with the shared deployment of the *Kafka* Test by the federal and Walloon governments. Sharing experiences also minimises the risk of fragmentation of processes over time, as governments can re use the successful approaches deployed by their neighbours. The existing general co-operation agreement between the federal government and the other governments could be a starting point for this, provided that this provides sufficient focus for this important issue.

*Where policy issues are shared or overlap, co-ordinated impact assessments for the underlying regulations would add value to the process.* Impact assessment processes currently reflect the division of competences between governments – they are applied to the regulations flowing from the competences specific to each government. With the exception of the sustainability impact assessment, which is a work in progress, the processes do not seek to take a Belgium wide view.

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**Recommendation 4.7. (all governments):** Identify the issues that stand in the way of a more robust impact assessment process, and take steps to deal with these, drawing on international best practice.

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**Recommendation 4.8. (all governments):** Ensure that experiences are systematically shared, starting with the 2003 co-operation agreement.

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**Recommendation 4.9. (federal government):** The federal government should re-assess its ambitions in respect of the SDIA test and take stock of how to evolve toward a broader, integrated and realistically achievable approach.

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**Recommendation 4.10. (Flanders government):** Flanders should stick with its ambition of a broadly based process. It should not be discouraged by the challenges of setting up a full impact assessment process, and decide to confine itself to a more limited version that only covered administrative burdens.

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**Recommendation 4.11. (Walloon government):** The Walloon government should set itself the objective of moving toward a broader process, beyond administrative burdens.

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**Recommendation 4.12. (Brussels Capital Region government):** The government of Brussels-Capital Region should introduce *ex ante* impact assessment in the procedures for making new regulations.

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**Recommendation 4.13. (all governments):** A long term goal which could start to be discussed now between governments is the identification of policy areas where there is a shared interest in the outcome, and hence the need to combine efforts on impact assessment for regulations linked to these policies.

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### *Alternatives to regulations*

*Consideration of alternatives to regulation is included in some but not all of the impact assessment mechanisms.* Against the background of significant regulatory inflation, it is in Belgium's interest to ensure that alternatives to regulation are given maximum attention at an early stage in the development of policies.

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**Recommendation 4.14.** Ensure that part of the upgrading of impact assessment processes (see above) includes a clear and enforceable commitment to reviewing alternatives to regulation.

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## Background

### *General context*

#### *The structure of regulations in Belgium*

There is no hierarchy between Belgian governments and each government legislates in its area of competence. This means that primary regulations issued by the federal state (called "laws") and primary regulations issued by regions and communities (called "decrees", or "ordinances" in the case of Brussels-capital region) are on an equal footing. Each government has a sub-structure of secondary regulations, also on an equal footing with each other. Collective agreements, which stand below secondary regulations in the hierarchy, are extensively used in the social and labour sector. Primary regulations at the federal level include "programme laws" which contain budget-related provisions relating to various policy areas. The federal government recognises that these laws, which have been adopted twice a year since the 1970s, are unhelpful to transparency and the general quality of the legislative process.<sup>1</sup> There are also "framework laws", similar to what exists in many other EU countries, which set broad requirements regarding a policy area, leaving specifics to be fleshed out in secondary regulations.

#### **Box 4.1. The structure of regulations in Belgium**

##### **Hierarchy of regulations**

The hierarchy of regulations is:

- International regulations including the Treaty of Rome and derived EU legislation.
- Constitution.

- Law, decree and ordinance.
- Royal order and government order.
- Ministerial order.
- Collective agreement.
- Circular.
- Rulings and orders of community commissions (in Brussels) and provincial rulings and orders.
- Municipal rulings and orders.

### **International/supranational regulations and the constitution**

In a decision of 27 May 1971 the *Court of Cassation* stated that international and supranational regulations (which include EU related regulations) have primacy over internal regulation, including the constitution. The constitution is the highest regulation among Belgian regulations.

### **Primary regulations (laws, decrees and ordinances)**

These are issued by the federal state and federated entities and have equal standing. Primary federal regulations are called “laws”. They can be initiated by a minister, a minister and a secretary of state together or by one or several members of the federal parliament (House of Representatives, Senate), and are enacted by the federal parliament. Primary regulations adopted by the parliaments of the communities (Flemish, French and German-speaking) by the parliament of the Flemish Region and the parliament of the Walloon region are called “decrees”. Primary laws adopted by the parliament of the Brussels-capital region are called “ordinances”. Decrees and ordinances are initiated by a member of the government or council of the relevant federated entity.

### **Secondary regulations (orders)**

“Royal orders” and “ministerial orders” are made by the federal government under powers delegated by a law. Royal orders are promulgated by the monarch to implement federal laws, while (federal) ministerial orders are promulgated by a minister to implement a royal order. Similarly (regional and community) “ministerial orders” and “governmental orders” are instruments made by the governments of regions and communities under powers delegated by a decree or ordinance. As for primary regulations, there is no hierarchy between secondary regulations of the federal government and of governments of the federated entities.

### **Collective agreements**

They relate to all social issues which social legislation has delegated to “social partners” (*i.e.* representatives of businesses and trade unions). For example, collective agreements set rules on labour hours (supplementary hours and vacations), minimum wages, bonuses additional to basic salaries. Collective agreements can be concluded at different levels: national or inter-sectoral level (covering all employers and employees), sectoral level (covering only employers and employees in a specific sector), and enterprise level (agreement between an individual employer and its employees). The National Labour Council discusses national or inter-sectoral agreements. The biannual inter-professional agreement is a framework agreement which sets policy objectives for the following two years. These objectives are set through regulations or inter-professional collective agreements. Collective agreements can be given the force of law (*i.e.* become a requirement on all third parties) by a royal

order (which cannot however modify the text). In 2008, 42% of the 2 640 royal decrees published in the official journal related to giving force of law to labour collective agreements (ASA, 2009).

As well, a number of legal arrangements make it a requirement for the Central Council of Economy (*Conseil central de l'économie - CCE*), which brings together representatives of the social partners, to give an opinion on defined socio-economic issues. For example, it has produced reports on product standards and accounting requirements for companies (to cite just two of a wide range of issues covered). The CCE is purely consultative, its advice is not binding, and the final decision is in the hands of the executive and legislative powers.

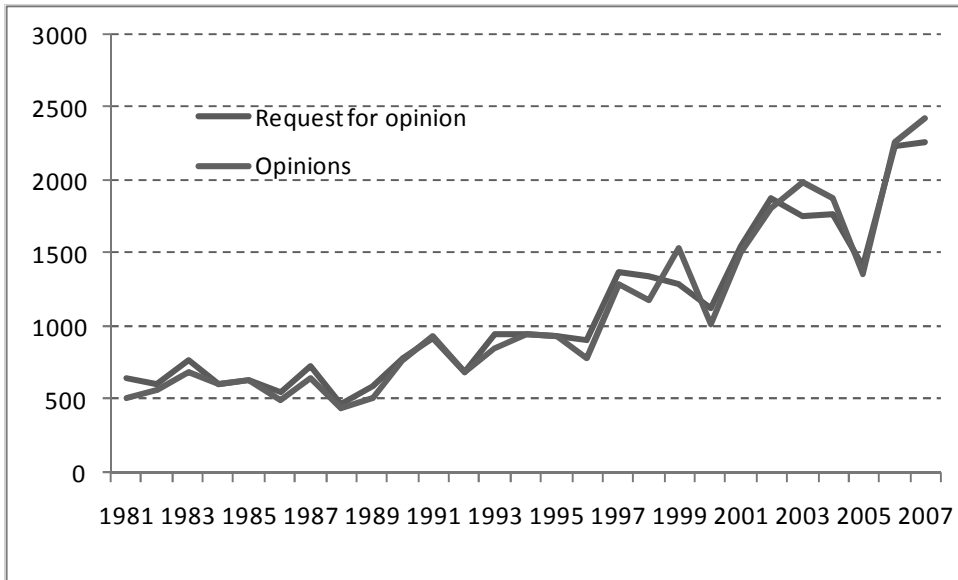
### **Circulars**

Circulars are internal guidance notes made by a federal minister, or the government of a region or community, and which apply only to their respective administration.

### *Trends in the production of new regulations*

There is a strong concern in Belgium over “regulatory inflation”. The growth in the number of regulations can be seen in the number of regulations published every year in the official journal as well as the total number of pages of the journal. Another indicator can be found in the statistics published by the Council of State on the number of request for opinions on draft regulations which it receives every year. They have grown significantly over the past 25 years, especially since the second part of the 1990s (Figure 4.1). Regulatory inflation is partly explained by the federalisation process, which has extended the competences of regions and communities, and generated regulations to give effect to the exercise of these competences. The production of EU regulations is also often considered another explanation. The effect is reinforced by Belgian federalism as many directives need to be implemented by federated entities as well as the federal state. The OECD peer review team also heard from a number of stakeholders of a growing tendency to issue regulations in a rush, in response to a crisis (leading to the need to revise regulations that were prepared too hastily).<sup>2</sup> The ASA however, notes that although the production of regulations is upwards, administrative burdens are coming down, and that important issues may not have much to do with the number of regulations. Harmonisation needs to be tackled, as well as inflation. Companies may be confronted with different regulations across the federated entities, and regulations contain varying definitions of SMEs.



**Figure 4.1. Number of opinions formulated by the legislative section of the Council of State (1980-2007)**

Source: Conseil d'Etat, *Rapport annuel 2006-07*. Available at [www.raadvst-consetat.be](http://www.raadvst-consetat.be).

**Table 4.1. Number of requests for opinions received by the legislative section of the Council of State (2002-08)**

	Federal authorities				Community and regional authorities			
	Laws	Royal orders	Ministerial orders	Total	Decrees Ordinances	Government orders	Ministerial orders	Total
2002-03	136	649	85	870	457	443	0	900
2003-04	155	529	98	782	209	645	0	854
2004-05	178	590	110	878	138	318	19	475
2005-06	224	886	131	1241	306	544	46	896
2006-07	135	1062	148	1345	279	534	45	858
2007-08	89	437	111	637	246	575	76	897

Note: Community and regional governments include: Flemish government, French community, German-speaking community, Walloon region, Brussels-capital region, Common Community Commission, French Community Commission. Opinions on draft laws, decrees and ordinances do not include opinions on proposals initiated by the parliaments and on amendments.

Source: Compiled from statistics published in *Conseil d'État, Rapport annuel 2006-07* (available at [www.raadvst-consetat.be](http://www.raadvst-consetat.be)), and communication from the Council of State to the OECD.

### ***Procedures for making new regulations***

There are strong similarities across governments in the procedures for development of new regulations. The initiative can come either from the parliament or the government. As in some other EU countries, the process is highly decentralised within governments, reflecting strong ministerial autonomy, and the coalition based nature of the political system puts a premium on internal consultation to secure consensus. A feature that is perhaps unique to Belgium is that ministerial cabinets (the political element of governments), rather than line officials play a major role as they often are directly involved in drafting, and associated procedures including consultation and impact assessment.

Whilst each government has defined its own procedure, there are strong unifying elements. The Council of State reviews the draft regulations of all governments (legal check), as does the *Inspectorate of Finance* (budget check). This nationwide aspect is backed up *ex post* (after enactment), by the Constitutional Court (for primary regulations) and the *Court of Cassation* (secondary regulations), which may check conformity with the law.

#### Box 4.2. The law-making process in Belgium

The initiative for federal legislation can come from one or several members of the House of Representatives, one or more members of the Senate, or from the King (in practice his ministers or state secretaries). When initiated by the parliament, they are referred to as “*wetsvoorstel*” or “*proposition de loi*”, while when initiated by the government they are referred to as “*wetsontwerp*” or “*projet de loi*”. All draft laws are prepared both in Dutch and French throughout the process.

##### Preparation of draft laws initiated by the federal government

- *Internal consultation.* This is the first step, done at an early stage with ministers and secretaries of state directly affected by the project. It is then extended to all partners of the coalition to ensure that there is sufficient consensus to support the project. This dialogue takes place in the framework of the Working Group on Policy Co-ordination. The Working Group produces a report, which is attached to the dossier.
- *Impact assessment.* Done before submission to the Council of Ministers. Preparation of the *Kafka* Test (to estimate administrative burdens) and of the SDIA Test (sustainability).
- *Budgetary check.* Also done before submission to the Council of Ministers. *Finance Inspectorate* approval is required for all draft laws, royal orders and ministerial orders as well as circulars and decisions which are submitted to the Council of Ministers or Minister of Budget. Finance inspectors control the legality of expenses, the availability of credits, compliance of expenses with government decisions as well as the appropriateness and efficiency of proposed expenditure. In case of a negative opinion, the relevant Minister can appeal to the Minister of Budget or the Minister of Public Administration. If they confirm the negative opinion, the last appeal is the Council of Ministers itself.
- *Consultation of stakeholders external to the government* (governments of regions and communities, advisory boards, trade unions, etc.). In many cases this is done after the first reading of the text in the Council of Ministers.
- *Legal check.* Done at the end, after required consultations have been carried out and after debate in the Council of Ministers. The legal section of the Council of State scrutinises draft laws regarding the legal quality of the draft and its compatibility with existing law. It does not make any assessment regarding the political or policy aspects. Its opinion is mandatory for all drafts prepared by the government. Although its opinion is not binding, it is usually taken into account. If the Council formulates important comments, the dossier must be presented again to the Council of Ministers.

The Secretariat of the Council of the Ministers checks that the dossier submitted to the Council of Ministers include the required elements, namely:

- introduction and/or historical status (“*rétroacte*”);
- general presentation of the regulation;

- opinion of relevant internal and/or external consultation bodies;
- opinion of the *Finance Inspectorate*;
- prior agreement of other coalition members and of the Minister of Budget;
- *Kafka Test*;
- SDIA Test (sustainability test);
- report of the relevant working group(s): working group on policy co-ordination and/or *ad hoc* working group;
- text of the proposed regulation; and
- members of the government who initiated the project.

Following approval by the Council of Ministers, the draft is signed by the King and sent to the parliament (usually to the House of Representatives). It is examined in the relevant commission and put up for debate in plenary session. There are three possible procedures: (i) monocameral procedure (House is exclusively competent for a certain number of subjects such as budget of accounts, size of the army); (ii) bicameral procedure (House and Senate are equally competent for “fundamental” legislation such as constitutional revisions, laws on the basic structure of the Belgian state, laws on the organisation of courts, the Council of State and the Constitutional Court); and (iii) optional bicameral procedure (the Senate may ask to examine a bill and senators may propose amendments to the House, but the House has the last word). The Senate has the possibility of a second reading for most bills. For this reason, it is considered to be a “chamber of reflection”.

Laws, decrees and ordinances are promulgated by the King and published in the official journal.

### **Preparation of draft laws initiated by the governments of the federated entities**

Similar procedures have been established in the regional and community governments or council. As for federal laws, the opinion of the Council of State must be requested as the final stage. Draft regulations are submitted to the budget minister, the *Inspectorate of Finance* (prior to first hearing in the government meeting) and to the Council of State (after first hearing)<sup>3</sup> The chancellery acts as a gatekeeper (for formal requirements) to the agenda of the government meetings.

### **Preparation of draft laws initiated by parliaments**

Draft laws can be initiated by one or more members of parliament (House of Representatives, Senate, parliaments of the regions and communities). Drafts are examined by the relevant Commission. The opinion of the Council of State is optional, and can be requested by the President of the relevant assembly. Consultation is mandatory in any of the following cases:

- It is requested by one third of the members of the relevant assembly.
- It is requested by half of the members of a linguistic group (House of Representatives, Senate, Council of Brussels capital region, Assembly of the Common Community Commission).
- It is requested by at least 12 members of the parliamentary commission of consultation (“*commission parlementaire de concertation*”).

### *Forward planning*

Each government issues a policy statement agreed by the coalition parties (which may take the form of a government statement and/or ministerial policy notes) at the beginning of a legislature. These may be published on the government portal and on relevant minister's websites, and form the working basis for government action over the legislative term (four years for the federal government, five years for the other governments). Policy notes are updated annually and published on the ministries' websites. The parliamentary debates on the policy notes are open to the public.

EU regulations and the regulatory agenda of the Flemish government are subject to specific forward planning and monitoring mechanisms. A database on EU regulations collects all proposals and upcoming EU regulations, and keeps track of the transposition process (for more see Chapter 7). The Flemish government introduced a regulatory agenda in 2007. This gives an overview of upcoming projects which require preparation of primary and secondary regulations and their timing, based on the main issues of the annual ministerial policy notes. It also gives an overview of draft regulations approved by the Council of Ministers.<sup>4</sup> It is sent for information to the strategic advisory boards (see Chapter 3). Progress on the federal government programme is monitored mostly at a political level, by the strategic cells of the ministers, the cabinet of the Prime Minister and the cabinet of the Minister of Budget.

### *Administrative procedures (federal level)*

General procedures for making new federal regulations are laid down in several circulars related to the operation of the Council of Ministers. They provide for an early dialogue within government to ensure that there is sufficient consensus among the coalition partners to support the initiative. This dialogue starts with the ministries directly affected and is extended to all government members in the framework of a working group on policy co-ordination.

Key parts of the rule-making process are examination of the draft law or order by the *Inspectorate of Finance*, before hearing in the Council of Ministers, and by the Council of State after the first hearing in the Council of Ministers (last stage of the process). There are also various legal requirements related to the consultation of external stakeholders (see Chapter 3). The Chancellery of the Prime Minister acts as gatekeeper to the Council of Ministers as it checks that procedures have been carried out (including internal and external consultation requirements, impact assessment) before including a draft regulation on the agenda of the meeting of the Council of Ministers. Frequent short deadlines can limit the extent and efficiency of the scrutiny system. Notably, the advice of the *Inspectorate of Finance* is requested on a large number of decisions but there is no prioritisation of cases.

### *Legal quality*

#### Consultation of Council of State

The Council of State is the main body responsible for ensuring overall control of legality. The legislative section of the Council of State must be consulted on all draft laws, decrees and ordinances as well as orders initiated by a Belgian government (except in cases of duly justified urgency). It is usually the last body to be consulted in the development of regulations (following discussion of the text in the Council of Ministers). With respect to regulations initiated by parliament members, the President of the relevant assembly or a

minimum number of Parliament members can request the Council's opinion. The Council's opinion is exclusively legal and technical, and does not seek to comment on the policy/political aspects. It is not binding, nor is the government (or parliament where appropriate) required to respond.

The Council's opinions are initially confidential to the government. It is for the requesting minister to decide to communicate them or not to third parties. The opinions are, however, attached to the file accompanying the draft laws, decrees and ordinances when these are sent to parliament. Regarding regulations adopted by parliament, the Council's opinions are published in the parliamentary documents. Opinions on secondary regulations are published in some cases in the official journal, but are usually not made public. Governments have no obligation to provide a reply to the Council's legal objections. They do it in some cases, but not systematically.

The Council's legislative section always examines the following three points:

- *Conformity with rules of procedures.* It checks that all mandatory procedures have been completed (e.g. discussion in Council of Ministers, consultation of various advisory bodies, opinion of the *Inspectorate of Finance* and agreement of the minister in charge of budget).
- *Conformity with hierarchy of rules and allocation of competences.* It checks that the text is in conformity with supra-national and constitutional legal requirements, and that it has adequate legal foundations (in particular have secondary regulations an adequate legal foundation in the superior regulation?). It also checks that the proposal respects the distribution of competences between the federal authority, communities and regions.
- *Relevant competent authority.* It checks that the text is issued by the relevant competent authority.

In addition to these three mandatory points, the legislative section ensures an overall control of legality of the text. This includes examining the internal coherence of the text (in particular does the text reflect the objectives of the authors). The Council of State also checks that the Dutch and French drafts concur with each other. Short deadlines for delivering the advice often limit the extent of these additional controls.

According to the law, the Council of State has to release its opinion within 5 days, 30 days (urgency procedures) or without any specified delay, depending on the case. The average timeline for the ordinary procedure (no specified delay) is three months. In practice, the deadline can sometimes be extended, with the express authorisation of the authority seeking the opinion. If the advice is not given within the deadline, it can be ignored. In 2007, urgency procedures accounted for 95% of the opinions delivered by the legislative section (80% in 30 days and 15% in 5 days). The Council of State considers that the prevalence of the urgency procedure significantly reduces its capacity to exercise fully its advisory mission.<sup>5</sup> A number of interviewees also raised this concern with the OECD peer review team.

### Other legal quality support

The Council of State also promotes legal quality through action at an earlier stage of the regulatory process. It has published a comprehensive manual on the technical aspects of drafting, which is available on its website and used by all governments (Box 4.3).<sup>6</sup> It can

also provide legal expertise upon request to ministers or the administration. Other bodies may play a role in ensuring legal quality at an early stage. The legal department of the Prime Minister's Office checks the internal coherence of the text and gives legal and technical advice on request. Regional governments have their own legal and linguistic departments, which give opinions on draft regulation and provide *ad hoc* advice to departments. The *Finance Inspectorate's* opinion can also include some legal aspects, which are often picked up by the Council of the State.

#### Box 4.3. Guide to legislative drafting

The Council of State has published a guide on legislative drafting, which is structured into six parts:

- General rules relating to consolidation and correct use of language.
- General rules relating to regulatory drafting: choice of regulation, degree of detail to give to the provisions, form of provisions (independent provisions, modification provisions, and repealing or withdrawal provisions).
- Rules of regulatory drafting, including title, preamble, enacting terms and appendices.
- Rules applicable to specific problems such as treaty approval, transposition of EU directives, legislation by reference, co-ordination and codification.
- Forms and templates.
- Outline of the procedure for consulting the legislative section of the Council of State.

*Source:* Council of State (available at [www.radvst-consetat.be](http://www.radvst-consetat.be)).

#### *Regulatory quality: regional and community initiatives*

Whilst procedures are largely similar to, and often shared with, the federal state, the Flemish and Walloon governments have tended to merge legal quality and broader regulatory quality checks, as part of a recent reinforcement of processes and institutional arrangements for regulatory quality. For example, they each require that draft regulations be sent to their Better Regulation unit (in Flanders the DWM checks the quality of impact assessment while in Wallonia *EASI-WAL* gives an opinion on the quality of the text). The French and German-speaking communities also deploy procedures in support of legal quality, proportionate to their size.

#### Flanders

In 2007, the Flemish government set up units for regulatory quality within each department. The objective was to centralise regulatory capacity within each policy area so as to ensure that regulations were no longer developed in a fragmented matter. The units are seen as “pioneers” or “champions” for the promotion of regulatory quality within each department and across departments. They centralise legal drafting know-how and must co-operate with other policy areas in the development of impact assessments. As of late 2008, there were 22 units within departments, under different arrangements (one unit – one policy area, several units per policy area). In three policy areas a network of contact people has been established in lieu of the units.

In mid-2008, the DWM conducted an evaluation of regulatory quality units. Key conclusions were:

- The units have promoted co-operation within each policy area but co-operation across policy areas is much more difficult. Co-operation between units needs to be developed.
- While internal quality control can be developed within each policy area, central quality control continues to be necessary.
- Preparation of good quality regulations requires a combination of general knowledge on regulatory drafting and specialised expertise, which implies that a project group be set up for each regulatory initiative. The role of the regulatory quality unit needs to be clearly defined in each case (in particular time-table and task-sharing arrangements between the unit, the administration official and the cabinet of the minister).
- Agencies are not sufficiently involved in the process of making regulations which will have an effect on their activity.
- The development of these units has taken place within existing resources, and lack of time and resources has been an issue. This was confirmed in meetings with the OECD peer review team. In some cases the structure of the units has been established, but the units remain “virtual” for lack of explicit allocated resources (they are embedded in the workload of officials).

Interviews of the OECD team confirmed that the units promote the development of Better Regulation within each department, but are still work in progress. Based on the evaluation results, the DWM has suggested a number of proposals to improve the regulatory process and enhance the performance of the units. This includes strengthening political support and clarifying the role of the units so as to reinforce their capacity within the policy area. The DWM has suggested that arrangements be formalised each time a new minister is appointed, to clarify the role of the unit, set up working arrangements for the development of regulations (including the respective role of officials, cabinet staff and the units), and identify regulatory management activities (forms policy, impact assessment and administrative simplification). The DWM has also suggested that agreements on the regulatory process be detailed once the annual policy documents and the related regulatory agenda are approved (in particular to better identify multi-sectoral policies).

### Walloon Region

The Department of Legal Affairs provides legal assistance to administrations and ministerial cabinets. It develops common practices with respect to preparation and drafting of regulations. *EASI-WAL* also promotes legal quality through the opinion it gives on draft decrees and orders (a process established in early 2006). The Walloon government sends all draft decrees and orders adopted in first hearing to *EASI-WAL* to screen the quality of the text (existence of deadlines, supporting documents, consultation with stakeholders, clarity and readability of the text, definition of terms, structure of the text and overlapping regulations). The official or member of the ministerial cabinet systematically includes a response to *EASI-WAL*'s comments in the note sent for second hearing. As of February 2009, *EASI-WAL* had released 250 opinions (*EASI-WAL*, 2009). In addition, *EASI-WAL*

provides some general guidance on drafting, in particular through a 17-page brochure describing 10 “golden principles for the promotion of more readable regulations”.

The Walloon government has also developed an online legal glossary to promote harmonisation of concepts in Walloon regulations. The objective is to reduce legal insecurity for users deriving from the use of a same term with different meanings. The *ATLAS (Assistance terminologique en ligne pour une administration simplifiée* – Online Terminology Assistance for Administrative Simplification) is a semantic glossary of terms, collecting existing and proposed definitions for the use of officials or members of a ministerial cabinet responsible for drafting regulations, and more broadly for a wide user-community. This is a participative tool open to all voluntary contributors, accessible to all from *EASI-WAL*'s website (with contributions validated by *EASI-WAL*).<sup>7</sup> The glossary currently includes over 300 terms.

## Communities

The Ministry of the French Community includes a Directorate of Legal Affairs which ensures legal coherence of regulations, in particular through guidance, support and control on drafting. Each of the five other directorates of the ministry has lawyers providing expertise to drafters. In the Ministry of the German-speaking Community, where the development of regulations is much more informal given the small size of the administration, an inter-departmental group of eight lawyers is responsible for drafting regulations.

### *Regulatory quality: the role of parliaments*

The legal units of parliaments carry out a general quality control on all draft laws as well as amendments, before they are adopted in parliamentary commissions. In addition, in the House of Representatives, if a committee has adopted amendments, it may only vote on the whole of the bill after at least forty-eight hours, starting from the time when a draft of the adopted text including all the adopted amendments is made available. This allows the legal service to suggest to the committee further legal and drafting improvements. When a serious problem is identified, they can recommend that the president of the chamber send it to the Council of State. This is a potentially helpful provision as it means that there is the possibility of Council of State review and advice on parliamentary drafts as well as government drafts.

### *Ex ante impact assessment of new regulations*

#### *Policy on impact assessment*

The introduction of impact assessment procedures in Belgium dates back to the 1998 Federal Programme Law on Entrepreneurship, which stipulated that the impact of new federal regulation should be screened for administrative burdens. The explicit objective was to put in place a tool that would make officials think about the potential effects of regulations on citizens and businesses. Impact assessment is not limited to the federal government as regional and community governments have introduced impact assessment procedures or are considering doing so. With the exception of the process in Flanders, impact assessment remains mostly focused on administrative burdens, although there have been recent efforts to extend its scope beyond the latter (in particular, to cover sustainability impacts). A variable geometry is at work, with different governments sometimes adopting



different versions of the same processes. Impact assessment processes reflect the division of competences between governments. They are applied to the regulations flowing from the competences specific to each government. With the exception of the sustainability impact assessment, which is a work in progress, the processes do not seek to take a Belgium wide view.

With respect to federal regulations, the circular on the operation of the Council of Ministers now requires that all texts presented to the latter include a *Kafka Test* and an “SDIA Test”. The *Kafka Test*, which was made a requirement in 2001 and refined in 2004, screens proposals for their impact on administrative burdens for businesses and citizens. The SDIA Test, which was made a mandatory requirement in 2007, screens the impact of draft regulations in terms of sustainable development. In addition a gender test (impact of regulations on men and women) is under development by the federal Minister for Equality of Chances.

Regional and community governments have made formal commitments to include impact assessment in the development of regulations<sup>8</sup> and put procedures in place. The governments of the Walloon Region<sup>9</sup> and of the French Community have adopted the *Kafka Test*, while Brussels-Capital Region and the German-speaking Community are considering adopting it too. The Flemish government has developed its own regulatory impact analysis tool.

*Kafka Test (federal government, Walloon government, French Community government)*

### General presentation

The *Kafka Test* aims to capture whether draft regulations will increase or reduce administrative burdens on citizens, businesses and non-profit organisations.

The *Kafka Test* was originally conceived as a dynamic process, to help inform the development of regulations at an early stage of drafting, and to be updated to take account of the views of consulted bodies and government working groups. The test has been designed to be easy to fill out by drafters. It is part of the documents that must be joined to the dossier of a draft regulation going to the Council of Ministers (or to the Walloon government). In practice however, the Test is often done at a late stage, just before a proposal goes to the Council of Ministers.

### Institutional framework, guidance and training

At the federal level, officials in charge of drafting regulations are responsible for filling in the *Kafka Test*. These are currently often members of ministerial cabinets. The ASA is responsible for ensuring that the Test is carried out, in collaboration with the Ministry for Enterprise and Simplification which takes political responsibility for the process. The ASA provides ministries with an opinion on the quality of the analysis *ex post*, but not on the underlying policy decision for a new regulation. The Secretariat of the Council of Ministers is responsible for checking that the dossier presented in the Council of Ministers includes the Test (it does not run any other checks, for example on the quality of replies). The ASA is responsible for carrying out *ex post* quantitative and qualitative evaluations of the Test. The ASA has prepared two evaluation reports, which were discussed by its steering committee. The ASA has also provided guidance on *Kafka Test*, through general

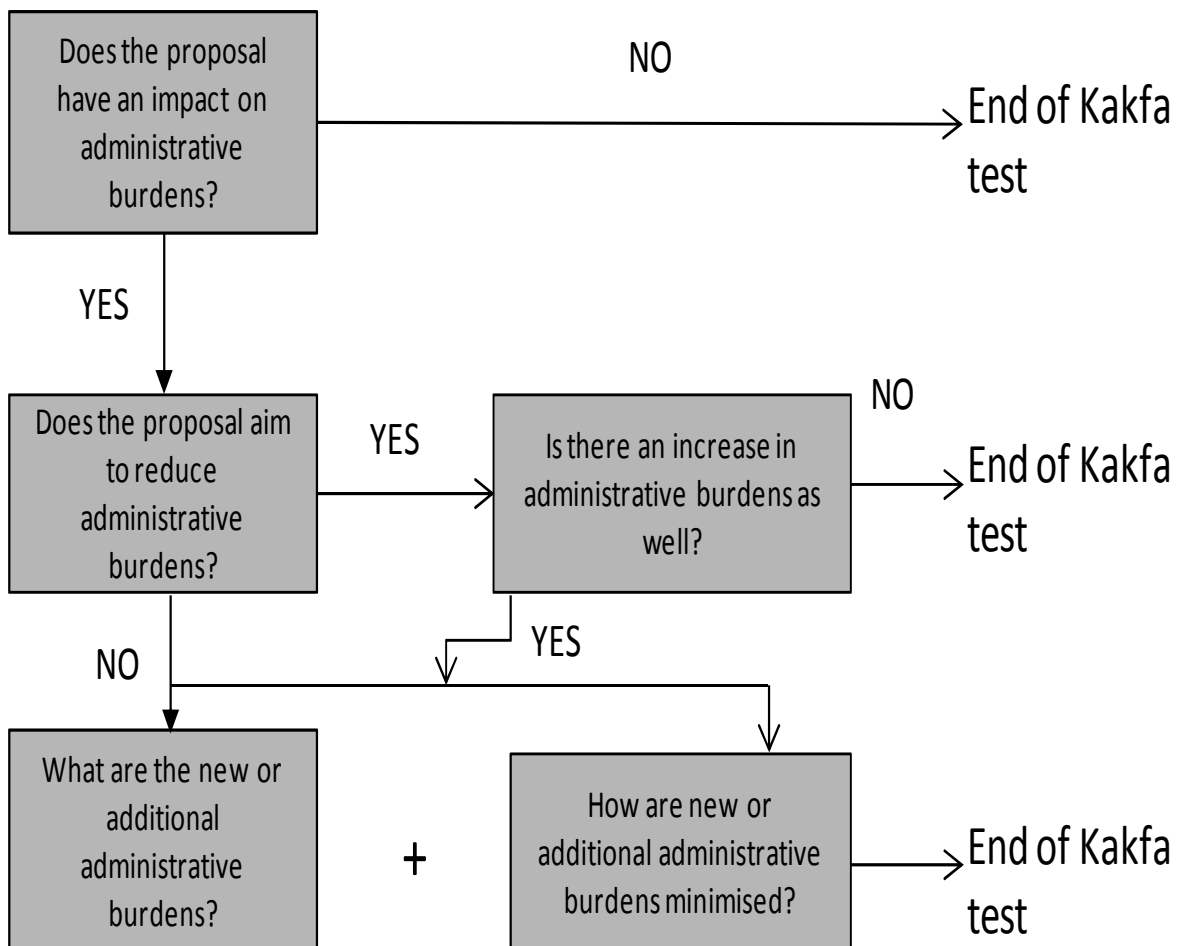
information sessions and tailor-made workshops for ministerial departments, as well as setting up a helpdesk to provide general information and training sessions.

In Wallonia, *EASI-WAL* has put in place tools to support the introduction of the Test. A methodological guide is available on line, and integrated in the step-by-step online application for filling in the test. *EASI-WAL*<sup>10</sup> has also organised training courses for both government officials and members of ministerial cabinets. It has a general responsibility for giving an opinion on all draft decrees and orders regarding administrative simplification, and as part of this it examines the *Kafka* Test and may provide guidance and make suggestions to law drafters. The ASA participated in the introduction of the Test in the Walloon region through co-operation with *EASI-WAL* (organisation of workshops and the helpdesk).

### Methodology and process

The *Kafka* Test is qualitative. It consists of four main questions to check whether a proposal has an impact on administrative burdens and, if relevant, to describe the burden reduction or the new or supplementary burden. Four parameters are used: (i) number of required formalities; (ii) size of the target group affected by the regulation; (iii) time required to fill in the obligations; and (iv) frequency of the requirement (Figure 4.2).

Figure 4.2. Structure of the *Kafka* Test



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

## Public consultation and communication

The process does not specifically provide for public consultation (which takes place through the institutionalised consultative committees). The *Kafka* Test is considered a working document. It is attached to the new draft regulation but is not publicised with the regulation and is not communicated to external stakeholders.

### *SDIA (federal government)*

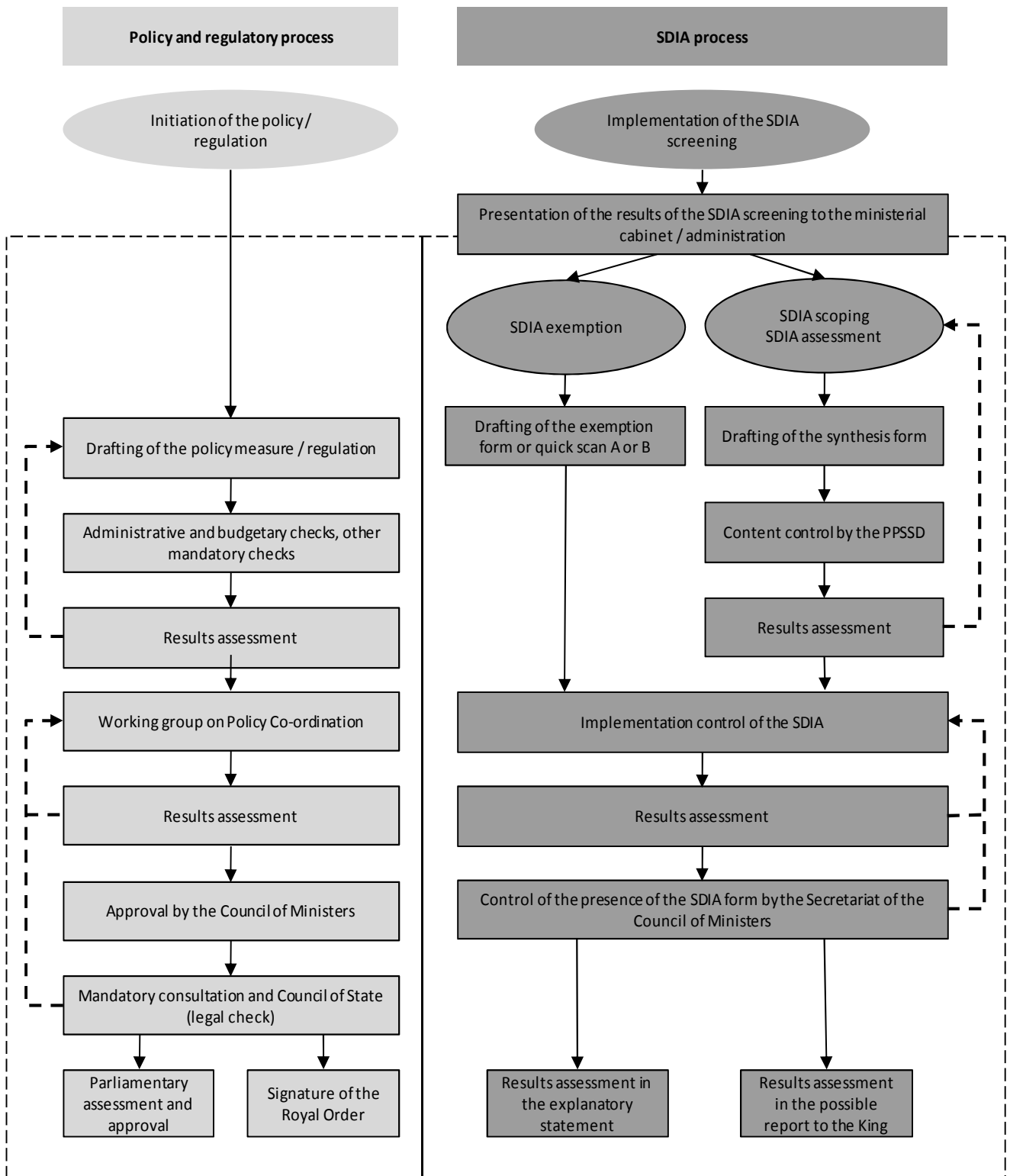
In January 2007, the federal government adopted a proposal of the Secretary of State for Sustainable Development to apply a “sustainability test” for major political decisions put on the agenda of the Council of Ministers (to take effect as of 1 March 2007). The Sustainable Development Impact Assessment (SDIA)<sup>11</sup> was defined in the royal order of 22 September 2004 to be a process for the examination by government departments of the possible social, economic and environmental effects of a proposed policy, before the final decision is taken. The SDIA was originally developed as an instrument for promoting sustainable policy, but the test also aims to promote a broader vision in the development of major regulations, as well as encouraging co-ordination and co-operation across the government (including information exchanges to improve implementation). There are a number of exemptions (in its preparatory work in 2006 the FPS Sustainable Development estimated these at 70% of texts submitted to the Council Ministers).

The SDIA has not yet taken off. It is a formal requirement in the development of federal regulations (integrated in the circular on the operation of the Council of Ministers), but has not yet produced any tangible results. Out of a total of 2002 dossiers sent to the Council of Ministers from early 2007 to the end of April 2007, 546 included SDIA form (28%). However most of these forms (97%) were the exemption form. Only one in-depth SDIA has yet been carried out, and a minority of dossiers are subject to a quick scan.

## Institutional framework, guidance and training

The PPS for Sustainable Development has developed the methodology and a number of tools (forms regarding exemptions, quick scan and screening guidelines). It has organised training for around 100 federal civil servants in spring 2007 when the SDIA procedure was launched.

Figure 4.3. SDIA process



Source: PPS Sustainable Development (EIDDD: manuel de screening).

## Methodology and process

The SDIA aims at evaluating the impact of a proposal on: (i) current and future generations; (ii) Belgium and other countries in the world; and (iii) social, economic, and environmental aspects. The process includes two major steps, screening and scoping:

- The first step (screening) aims at identifying regulations requiring an in-depth analysis, with the underlying assumption that SDIA should be done only when necessary. The law drafter first has to check whether the proposed text belongs to one of the categories for exemption, in which case it has to fill in an exemption form to be submitted with the dossier going to the Council of Ministers. If the measure is not exempted, it has to go through a “quick scan”, which consists in a matrix of 33 indicators. For each indicator, the law drafter has to assess whether the text can have a short-term or long-term effect, and on which scale (from local level to world level). A number of questions in the quick scan form are similar to the *Kafka Test*. (see Annex 3). The results of the quick scan are attached to the dossier sent to the Council of Ministers in a specific form. This form includes the matrix and a list of questions on the rationale for the proposal, the affected target groups, additional information on the matrix, reasons for not doing an in-depth SDIA, and associated measures to limit negative effects or reinforce positive effects.
- The second step (scoping) is the SDIA itself, which is done when the quick scan has shown the relevance of an in-depth analysis (estimated at less than 2% of texts sent to the Council of Ministers). At this stage law drafters can invite experts such as consultants and academics to participate in the elaboration of the SDIA. The analytical work is preceded by a “scoping” exercise which defines the limits of the analysis (relevant criteria, methodology and selection of experts). The in-depth assessment also includes consideration of measures to limit non-desirable effects and reinforce desirable effects.

## *Flemish Regulatory Impact Assessment*

### Impact assessment procedure in Flanders

The Flemish government introduced a Regulatory Impact Analysis (RIA) as a mandatory requirement in the development of regulations on 1 January 2005. The initial requirement covered all new decrees and orders which affect citizens, businesses and non-profit organisations. In 2007, following a first evaluation, the scope was narrowed, through exemptions, in order to carry out “fewer RIAs but better RIAs”. The process includes a compensation rule to control new burdens from the flow of new regulations. Exemptions include self-regulation of the government, regulation with small impact in terms of content, regulation related to budget and taxes and regulations contained in spatial plans. There is no RIA requirement for decrees initiated by a member of the Flemish parliament.

In February 2009, the Flemish Parliament, the government of Flanders, the Flemish Social and Economic Council and the strategic advisory councils signed the “Inter-institutional Agreement” for a joint approach to RIA. This sets out general principles regarding RIA, namely that “the RIA should offer an integrated and balanced picture of the potential social impact of the draft decisions and draft decrees within the current field of

application, invariably in comparison with relevant substantive alternatives. One of the alternatives to examine is taking no legislative initiatives". The agreement emphasises the need to spell out the purposes of the project, identify alternatives, and base the analysis on "accurate, quantitative and as complete as possible" information.

The RIA process is evaluated annually. The most recent DWM evaluation showed the need for a broader approach and stronger political support. DWM recommended that RIA be started at an earlier stage of rule-making (in particular through inclusion of provisional RIAs in the preparation of regulatory agendas), be further developed and updated in the drafting process (after the first substantive agreement), and that its scope be extended to some self-regulation. DWM suggested that each newly appointed minister conclude a formal agreement with relevant administration and regulatory units about the process for preparing regulations, including RIA. DWM's evaluation also concluded on the need to refine quality control criteria (making a distinction between RIA as product, procedure and process) and to provide additional support and guidance (electronic support for preparation, tailor-made training programmes). The government has not yet responded to this evaluation. However, the policy statement issued by the new government following the regional elections of June 2009 mentions RIA as a tool for administrative simplification and regulatory quality, suggesting that it may consider reinforcing the assessment of the impact on administrative burdens.

The Flemish RIA system includes specific impact assessment procedures, including a "local administration check" (to evaluate the impact of new regulations on the governing or financing of local administrations) and an impact assessment on children's rights. There is also an important assessment on the principles of necessity, proportionality and non-discrimination for new regulations and existing regulations in the service sector (not yet compulsory). These assessments are integrated in the main RIA.

### Institutional framework, guidance and training

DWM gives RIA advice before the dossier is on the agenda. After the RIA /dossier is put on the agenda, the DWM checks the quality of RIAs produced every week and assigns a score, based on 20 criteria (relating to reason and purpose, consideration of options, assessments of options, implementation, enforcement and evaluation). The results of the scoring are communicated to the Minister of Regulatory Management, who can use the information in the discussion of the dossier in the government (cabinet) meeting.

The DWM also provides training and guidance. It produced guidelines on RIA in 2005 (and updated them in 2006 and 2008). It works as a helpdesk for civil servants. On several occasions, it has organised half-day introductory training sessions and follow-up training sessions on RIA. Since 2006, about 300 civil servants have taken part in introductory sessions and over 80 in follow-up sessions.

### Methodology and process

The Flemish RIA includes the consideration of options, consultation as well as specified estimate of administrative costs for all target groups (including citizens). The compensation rule aims to control the burdens arising from the flow of new regulations. RIAs are included in the documents sent to the Flemish parliament. In addition, in March 2008 the Flemish government decided to create a RIA database.

## Public consultation and communication

After the first reading by the government, the RIA is published on the Internet together with the draft regulation (as part of the regulatory agenda set for each policy area/ministry).<sup>12</sup> The Inter-institutional Agreement of February 2009 provides for a stronger interaction between impact assessment and public consultation. It specifies that the RIA should feature the result of consultation, and that the SERV (Social and Economic Council of Flanders) and strategic advisory councils should take the RIA into consideration when offering advice on regulatory proposals (with the RIA annexed to the document sent to them for consultation). The agreement also indicates that SERV and strategic advisory councils should, as much as possible, take a pro-active stance based on the regulatory agenda (e.g. identifying alternatives). SERV is also called to apply the RIA methodology in the preparation of consultations.

### *Role of parliaments*

The *Kafka* Test is not attached to draft laws sent to the federal parliament, nor to draft decrees sent to the Walloon Parliament. In Flanders the Inter-institutional Agreement of 2009 aims at strengthening RIA as a support tool for parliament. In this agreement, the government commits to publishing RIAs on its website, reporting to the parliament every six months on the quality of RIAs, and helping parliament with the methodology (e.g. opening its training sessions to staff from the parliament as well as SERV and advisory councils). The agreement also provides for the establishment of a joint technical group to function as a forum for exchanging ideas and best practices. The Flemish RIA is included in the documents attached to draft laws/decrees sent to its parliament.

### *Alternatives to regulation*

Alternatives to regulation exist in the form of conventions or agreements between the state and the industry. For example, in Wallonia, voluntary agreements have been reached in the energy sector (to reduce greenhouse gas emissions and improve energy efficiency). The agreement defines the objectives to be reached, while companies are left to choose the means to reach it. Sectoral implementation reports are published annually. Within the regional competences covenants are often used in the field of environmental conventions between the region and professional bodies.<sup>13</sup>

Consideration of alternatives to regulation is included in some, but not all of the impact assessment mechanisms:

- The SDIA includes the assessment of different options for reaching a policy objective as part of the assessment phase. However, the quick scan (scoping phase) does not include direct mention to search for alternatives (or the zero option).
- The Flemish RIA mentions the search for alternatives (which is re-called in the 2009 Inter-institutional Agreement). At least three options should be considered: the no action option; the chosen option; and an alternative for the chosen option. This requirement is however difficult to implement in practice as very often alternatives considered are not “real” alternatives.
- The *Kafka* Test does not mention alternatives to regulation.

## Notes

1. “Programme laws” (otherwise known as “catch-all laws” because they are laws that combine individual laws on various matters which have no obvious link between them). Typical criticisms include: a lack of transparency that breaches the specific nature of the law by mixing sectors; undermining the quality control of parliament; and undermining the work of parliament as a whole. Results include difficulty in allocating across the different legal domains as well as reduced visibility. This contributes to an underlying lack of awareness of the law (extract from the federal government response to the OECD questionnaire).
2. These issues were pointed out by several interviewees to the OECD team. They were also outlined at a workshop organised by *Easi-wal* in February 2008 entitled: “*Inflation normative: mythe ou réalité?*”. The objective of the workshop was to make specific recommendations to contain regulatory inflation. Twenty suggestions were made by participants (members of ministerial cabinets, officials, lawyers, judges, notaries, academics, business and civil society representatives).
3. According to Article 51 of the special law of 16 January 1989, communities and regions are competent for their own budget and administrative control. This implies that the scrutiny is done by the Inspectorate of Finance within the framework of a regulation specific to each entity, by inspectors with accreditation for the relevant ministry. Rules are however similar.
4. Information in the regulatory agenda includes: identification number or title; description of existing rules that would be modified; any statutory deadline; brief summary of the objective; reference to steps in the preparation process of the RIA and the actual legislation; and contact information.
5. See annual report of the Council of State, available at [www.raadvst-consetat.be](http://www.raadvst-consetat.be).
6. [www.raadvst-consetat.be/?page=technique\\_legislative&lang=fr](http://www.raadvst-consetat.be/?page=technique_legislative&lang=fr).
7. <http://atlas.wallonie.be>.
8. The 2005 Regional Policy Declaration of the Walloon government stipulates: “with a view to eliminating additional paperwork, the principle of declaring administrative burdens – currently in force in the Walloon Region – should be extended to a real impact study regarding administrative simplification to analyse whether new policy measures create unnecessary requirements.” And “An *a priori* evaluation should be carried out on the economic, social and environmental impact of all major public decisions, as is done regarding budgetary impact.” These objectives were translated into the 2005-2009 action plan for administrative simplification, in which the “regulation” part includes the development of impact assessment tools in the area of administrative burdens.
9. The Walloon government introduced a formal requirement to use the *Kafka* Test in May 2007, following a four-month trial period, and modified its circular of 26 August 2004 on the operation of government accordingly. The *Kafka* Test is



mandatory in Wallonia for all draft decrees, orders, circulars presented to the government, and recommended in other cases, when the text creates burdens on citizens and/or the administration. As of February 2009 253 *Kafka* tests had been completed (Commissariat EASI-WAL, 2009).

10. <http://testKafka.wallonie.be>.
11. In Dutch : “*Duurzame ontwikkelingseffectsbeoordelin*”; in French: “*étude d’impact des décisions sur le développement durable*” (EIDDD).
12. See: [www.wetsmatiging.be/kwaliteitsvolle-regelgeving/waar-vind-ik-regelgeving/boordtabel-regelgeving-in-opmaak-en-ria-databank.html](http://www.wetsmatiging.be/kwaliteitsvolle-regelgeving/waar-vind-ik-regelgeving/boordtabel-regelgeving-in-opmaak-en-ria-databank.html).
13. Environmental convention of 24 July 2008 concerning the obligation to take back electrical and electronic waste between the Walloon Region and various professional bodies (published in the official journal on 9 October 2008); environmental convention of 27 June 2007 concerning the obligation to take back used oil between the Walloon Region and various representative bodies (published in the official journal on 22 November 2007).



## Chapter 5

### The management and rationalisation of existing regulation

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, ad hoc reviews of the regulations covering specific sectors, and sunset mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially small to medium-sized enterprises. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example, government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

## Assessment and recommendations

### *Simplification of regulations*

*Belgian governments have engaged significant efforts to consolidate or simplify the regulatory stock.* Simplification of the stock of regulations is a key part of Better Regulation programmes. For example since the early 1980s the legal information technology service of the Justice FPS is responsible for feeding and managing the Belgium wide “Justel” database. Belgium legislation includes a number of codes (e.g. (federal) penal code, Walloon housing code and Flanders’ territorial development code). In the area of economic regulations, the Economy SPF has launched a major codification project to assess and modernise economic law. Significant efforts have been made to develop a social security code, which have led to major improvements in the legal base for this sector. Codification, however, seems to take place *ad hoc*, with some difficulties in co-ordination when a chosen sector cuts across different ministries, and without adequate long-term vision and backing from the political class.

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**Recommendation 5.1. (all governments): Consider how the important work of codification, carried out for the most part by civil servants, can be drawn to the attention of governments and the political leadership in order to ensure their full backing over the long-run.**

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*The need for more systematic ex post review of regulations generates considerable support.* The OECD peer review team heard from many stakeholders that this was a priority area, but that initiatives were generally slow to get off the ground. The parliamentary committee for Legislative Monitoring established in 2007 only started work in February 2010. The OECD peer review team heard that this was a promising initiative which should be encouraged. The team were told that another area for increased attention is the need to strengthen the assessment of implementation upstream, when regulations are being developed, rather than wait for them to become a problem once adopted. Mechanisms for *ex post* evaluation of new laws, taking account of their broader legal context, would also help the codification projects.

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**Recommendation 5.2. (federal government, all governments): Encourage and track the work of the parliamentary committee for Legislative Monitoring, and the work of other parliamentary committees (for example, the Flanders Committee). Share the results of this work in the spirit of a global approach. Consider how implementation issues can be captured more effectively and at an earlier stage (for example, providing for review clauses in draft regulations; ensuring that implementation is one of the issues to covered in *ex ante* impact assessment; and generally making a stronger link between *ex ante* RIA and *ex post* implementation and review).**

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## ***Administrative burden reduction***

### *General context*

*All Belgian governments have now committed to reducing administrative burdens of regulations and are putting considerable efforts into this, with measurable success.* Policies extend well beyond programmes to reduce burdens in specific regulations, and include a mix of broad long-term structural projects as well as short-term projects aimed at “quick win” results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of ICT; tackle (to a greater or lesser extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from an estimated 3.5% of GDP in 2000 to 1.72% of GDP in 2008.

*Policies cover a rich mix of projects shared between Belgian governments, and initiatives specific to each government within its area of competence.* Shared initiatives are a particularly striking feature of current projects, underlining the fact that Belgian governments are not always compartmentalised on their own projects. Shared projects are supported by a 2003 co-operation agreement signed by the federal, community and regional governments. Important initiatives in this category include the *Kafka* contact point where citizens, businesses and public servants across Belgium can propose ideas for cutting red tape, and the Business Crossroads Bank which is a register of business identification aimed at connecting different databanks of the administrations and thereby allowing re-use of data across administrations. Institutional support is provided by the ASA whose annual action plan covers not only initiatives to reduce burdens in federal regulations, but also long-term projects shared with the other Belgian governments.

*Belgian governments have been especially active in the development of programmes to reduce burdens in specific regulations.* Important initiatives have been taken by the federal government, and the Walloon and Flemish governments, to establish and develop administrative burden reduction programmes. Different approaches have been used. The federal government and the Walloon region have taken a selective approach, preferring to test and encourage a gradual evolution. The Flemish region has opted for a more systematic approach. Variants on the SCM methodology are deployed to carry out measurements. At the same time, there is increasing adoption of a user-centric approach to improve the experience of citizens and businesses with the administration. Brussels Capital Region has launched a “Brussels Plan for Administrative Simplification” and is embarking on selective measurement starting with economy and employment.

*There is scope for further cross-government sharing of best practice.* The fact that different approaches are being taken can be viewed as an asset, as this provides a laboratory of ideas for moving forward. Steps have already been taken to develop co-operation between the federal level and the regions with regard to measurements, where experiments are underway to find cost efficient approaches. These experiments are of potential interest not only across Belgium but to other European countries (for example, Portugal and Finland have also decided not to adopt a full-blown SCM approach). It is important that databases evolve as far as possible on the same principles, to facilitate best-practice exchange and co-operation. Shared platforms of this kind can be “held in reserve” for the possibility of sharing reduction programmes in policy areas of common interest at some future date.

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**Recommendation 5.3. (all governments): Strengthen the existing Belgian SCM network to share ideas on the development of methodologies. Ensure that information is exchanged between governments regarding the development of databases, to facilitate exchanges of best practice and co-operation.**

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*Administrative burden reduction programmes for businesses and citizens*

*The federal level has intensified its administrative simplification programme, which has a number of strengths.* The federal programme is developing in stages. The establishment of the Measuring Office in 2007 within the ASA, which has the mandate to capture the changes in administrative burdens caused by the adoption of new or changed regulations in selected areas, was an important staging post in the development of a more systematic policy. It supports a rolling simplification programme which brings together the simplification projects of the different ministries. The *ex post* measurement results highlight the effect on administrative burdens of the regulatory actions of ministries.

*The policy is delivering concrete results and needs to be supported and sustained, with attention to certain points.* The focus on *ex post* measurement and analysis puts some pressure on ministries to deliver results, but in order to ensure maximum effect, the *ex ante Kafka Test* may need to be reinforced (see Chapter 4), so that regulations which contain administrative burdens can be the subject of a stronger approach before they are adopted, to minimise the adoption of unnecessary new burdens. Ensuring that the *ex ante* and *ex post* parts of the policy remain firmly and visibly linked up is also important if effective control is to be exerted over burdens in the long-run, linked to the clear establishment of a net target or objective. Public consultation over the issues to be covered and the selection of priority areas could benefit from more direct interaction with businesses, to complement the feedback from the *Kafka* contact point, and the work of the Steering Committee.

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**Recommendation 5.4. (federal government): Confirm a clear net target or objective for burden reduction so that work on existing regulations is not cancelled out by burdens in new regulations. Consider how the *ex ante Kafka Test* might be strengthened and continue to ensure that *ex ante* and *ex post* parts of the policy are firmly linked up. Consider the further development of direct consultations with businesses, as an adjunct to the input from the *Kafka* contact point and the ASA Steering Committee.**

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*The Walloon Region has also intensified its administrative simplification programme, which has a number of strengths.* The Walloon government has decided that the first priority is to raise awareness and understanding of objectives (it is necessary to walk before you are able to run). It has made efficient use of experiences and best-practice elsewhere (at the federal level and also at EU level) to build its own approach. Significant efforts are going into the measurement of administrative burdens, using the SCM methodology and other approaches. Progress is measured through quantitative and qualitative criteria defined at the start of the simplification process for each measure. *EASI-WAL* publishes regular progress reports, which are available on its website. These criteria are then used in progress reports to highlight achievements against plans.

*Nevertheless, a number of issues need to be addressed, as the programme matures.* The programme raises issues similar to those at the federal level. Burden measurement is not clearly linked up with simplification plans, and is not used as a baseline to strengthen current targets for simplification. Little attempt is made to link up the policies to evaluate

existing and new regulations (the *Kafka Test*), which is important if effective control is to be exerted over burdens in the long-run. Third, there is a need for more robust public consultation to capture the views of the widest range of stakeholders possible, not just the views of the administration and selected interviews with business in the measurement process.

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**Recommendation 5.5. (Walloon government): Strengthen the current targets and criteria for burden reduction so that work on existing regulations is not cancelled out by burdens in new regulations. Make stronger use of the measurement work to inform simplification plans and in support of a clear target or objective. Examine ways of linking up the evaluation of burdens in draft regulations (the *Kafka Test*) with the policy for existing regulations. Develop and implement a more broadly based public consultation policy which will capture the direct views of stakeholders in a more systematic way.**

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*The Flemish government has taken a different and more systematic approach compared with the other governments, which also has a number of strengths.* An initial pilot has now been expanded to cover all policy areas. Baseline measurements have been made for the policy areas, and an action plan must be prepared for each policy area. As well, the regulatory management unit will establish an overall action plan. Regular (annual) progress reports are made to the Flemish government and parliament, which indicate the extent to which the reduction target for 2012 has been achieved. Efforts have been made to address the effect of new burdens via a compensation rule.

*The main issue facing the Flemish approach is resources.* Better Regulation is a long-term goal which takes time to achieve, and it is important that resources are adequate to the task. The Regulatory Management Unit has relatively few staff and there is a risk that lack of resources will slow the pace of an ambitious but necessary programme.

*Interesting approaches to measurement and identification of priorities are being deployed in Flanders.* SCM measurements by interviews with a group of stakeholders instead of individual businesses is a potentially cost efficient approach, although its real effectiveness needs to be evaluated (there is the risk that important details are missed and that businesses might be reluctant to express their views freely in a group). The 20/80 rule risks that some important administrative burdens remain invisible. In order to avoid this, or to test the hypothesis, a study could measure all legislation in one of the policy areas.

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**Recommendation 5.6. (Flemish government): Consider how the Regulatory Management Unit can be further supported in its work. One idea would be to outsource the measurement process. Consider evaluating the approaches being taken to assess burdens to confirm that no important details are missed.**

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### *Administrative burden reduction for the administration*

*The issue of administrative burdens affecting officials is particularly important for Belgium given the “inflation” of institutions from the federalisation process.* Some efforts are being made to capture this in simplification programmes, though this is more a by product of the programmes than a policy in its own right. Beyond these programmes, Flanders has set up a specific project with the focus on costs of regulation for government. Reform of the public administration with the objective of improving the efficiency of the

state might usefully be more closely associated with Better Regulation. Unnecessary regulatory burdens inside government, for example, excessive paperwork that needs to be handled by officials on the frontline of public services, implies unnecessary costs to the administration.

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**Recommendation 5.7. (all governments): Consider whether it is appropriate and necessary to establish more focused actions to deal with unnecessary burdens inside government.**

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## Background

### *Simplification of regulations*

Strong concern over regulatory inflation (see Chapter 4) has led Belgian governments to take action to streamline the stock of existing regulations, including removal of obsolete regulations, consolidation, and codification. However, the OECD peer review team heard that codification efforts, in particular, were often difficult to take forward in practice. The preparatory work and impetus generally comes from civil servants, academics, lawyers and other practitioners, but is not strongly picked up by the political class. The huge scope of this work requires a broad supporting long term vision, and strong support of governments. Absence of this support, will make it difficult to achieve significant long term progress.

### *Abrogation of obsolete regulations*

Belgian governments have taken specific initiatives to remove obsolete regulations from the existing stock of regulations with a view to facilitating readability of the regulatory framework. In 2004, the federal parliament adopted a law whose only purpose was to abrogate a number of old regulations. Prior to this law there had been several initiatives to abrogate old regulations, which following lengthy discussions in the parliament had not been brought to a conclusion. The establishment or update of codes also includes the removal of obsolete rules (for example, the ongoing project in the area of economic regulations). As part of its action plan for simplification, the Walloon government has charged the Legislative Committee of its parliament with identifying obsolete texts (either fallen into disuse or replaced by others). This has led the government to repeal a first batch of 156 obsolete texts in April 2008, and a second batch of 42 texts in June 2008, in a wide range of areas (economy and employment, welfare, agriculture, hunting, fisheries and territorial planning). Flanders also abrogated a number of regulations, but there have been no major recent initiatives in the recent period due to lack of resources.

### *Consolidation*

The adoption of regulations that modify a regulation of equal level or inferior level is used by Belgian governments as an opportunity for consolidation. Since the early 1980s the legal information technology service of the Justice FPS is responsible for feeding and managing the “*Justel*” database, which is accessible on the Internet. This legal database includes all titles of regulations published in the official journal since 1945 and all regulations in force, in integral and consolidated versions, coupled with the modified and abrogated texts as well as decisions of the *Court of Cassation* and labour courts.



Consolidation has a legal value only if published in the official journal, which seldom happens (it is then known as “co-ordination”).

### *Codification*

The establishment of codes dates back to the creation of Belgium as an independent state in 1830. A number of codification projects have been undertaken and/or completed in recent years to create new codes or update existing codes.

In 1980, a law initiated by parliament set up a commission in charge of codification, harmonisation and simplification of legislation related to social security. The work was to be carried in the context of a global reform of the legislation. The commission prepared a draft code, which led to significant legislative changes. It also paved the way for a major re-organisation, with the creation of the Crossroads Bank for Social Security (law of 15 January 1990), which interconnects the back-office applications across the many government agencies responsible for providing social security services in Belgium (see Box 5.2).

The SPF for Economy, SMEs, Self-Employed and Energy has launched a major codification project in the area of economic regulations, as part of a project to assess and modernise economic law. A group of high-level experts from the administration and the private sector, assisted by a team of officials, has reviewed economic legislation and, as part of its proposals for modernisation, suggested the establishment of a code of economic regulations. The envisaged code implies a deep reform of economic legislation to replace the existing complex regulatory framework, inherited from successive layers of new regulations or changes to regulations, with a set of clear and coherent rules.

The Walloon government has specifically integrated codification in its 2005-09 action plan for simplification, and has charged the Legislative Committee of the parliament with identifying areas in need of codification. In addition to the existing codes (environmental code, housing code, territorial planning code, public service code, local democracy code, rural code and tourism code), it has undertaken codification in the area of welfare and health.

### *Common commencement dates*

Belgian governments do not (as yet) use common commencement dates for new regulations.

### *Ex post review of regulations*

Procedures for *ex post* review of regulations are still under development. Legislation only rarely provides for *ex post* review. Sunset clauses are not commonly used. At the federal level, one of the “12 Strategic Works” outlined in the policy note of the federal government provided for the introduction of *ex post* evaluation of existing laws. This led to the establishment of the Parliamentary Committee for Legislative Monitoring in 2007. The OECD peer review team heard that this was a promising initiative which should be encouraged.

### Box 5.1. The Parliamentary Committee for Legislative Monitoring

The law of 25 April 2007 established the Parliamentary Committee for Legislative Monitoring (*Parlementair Comité voor de Wetsevaluatie / Comité parlementaire chargé du suivi législatif*). The committee is to be composed of 11 deputies and 11 senators.

The parliamentary committee is charged with evaluating laws that have been enacted for at least three years". It has to identify possible implementation difficulties (due to complexity, loops, incoherence, vagueness, contradictions) and assess how the law has effectively responded to its initial objective.

Requests can be sent by a large number of stakeholders (any administration in charge of implementing law; any authority in charge of law enforcement; any natural or legal person; and deputies and senators). The work of the committee is also to be fed by reports from the *Court of Cassation* and tribunals on difficulties encountered with laws and from the decisions of the Constitutional Court.

Regional governments are also trying to develop *ex post* review mechanisms. The Flemish government agreement stipulates that “a well-organised rule-making process will be established through [...] a thorough regulation evaluation. The concept of sun-setting in decrees will be examined and decrees will be screened on their efficiency, effectiveness and enforceability”. This project is still under study. A parliamentary commission has been set up and has discussed proposals for evaluation of regulations but the parliament has not made decisions yet. The rules of procedures of Brussels-Capital Parliament allow the enlarged bureau of the parliament to ask the government to produce an evaluation report on legislation enacted for the previous five years, but this possibility has never been used.

*Ex post* review is indirectly addressed on an *ad hoc* basis by the *Court of Cassation* and *Court of Audit*. Since 2000, the *Court of Cassation* has included *lege ferenda* (the law which should be applied – *quant à la loi que l'on doit appliquer*) proposals in its annual report. Based on the appeal procedures and decisions carried out in the year, the Court identifies legal difficulties which would require legislative modifications (due to divergences in jurisprudence, implementation difficulties). The *Court of Audit* also sometimes identifies issues relating to the quality of existing regulations (incoherence, inappropriate implementation procedures) as part of its performance audit missions relating to the sound use of public funds.<sup>1</sup>

Some interviewees noted the need to develop an “evaluation culture” in the administration and in the political arena, and associated tools (definition of indicators and collection of data). As well as calls for the introduction of more systematic and robust *ex post* evaluation of regulations, the OECD peer review team heard numerous calls for increased attention to be paid to implementation at the drafting stage (to avoid downstream difficulties due to complexity, loops, incoherence, vagueness or contradictions).<sup>2</sup>

### ***Administrative burden reduction for businesses and citizens***

#### *Early steps*

Administrative burden reduction has been a policy objective across Belgian governments for a number of years. The first initiative goes back 25 years, when a working group was set up to consider the issues. A Commission was created in 1982, with the

particular mandate to consider the issues affecting SMEs and independent workers. A project “*Auditform*” was launched and a charter was later established to promote more efficient public services for the user.

Belgium’s administrative burden reduction policies started in earnest with the federal *Kafka* initiative launched in 1999. The programme, that initially put together projects initiated by federal ministries, became more structured in 2003, when the federal government outlined *12 Strategic Works*. All ministries were requested to draft a simplification action plan to contribute to the *12 Strategic Works*. Ministries also needed to list individual simplification projects within their sphere of competence and within a specific time schedule. These projects were bundled into a rolling simplification plan, approved by the Council of Ministers. The Administrative Simplification Agency (ASA) was charged with monitoring and reporting progress.

### *Current policies for simplification and the reduction of administrative burdens*

All Belgian governments have now committed to reducing administrative burdens of regulations and have launched programmes for administrative simplification. Policies include a mix of broad long term structural projects as well as short-term projects aimed at “quick win” results; target citizens, businesses and non-profit organisations (the programmes do not particularly distinguish between burdens for business and citizens); make strong use of ICT; tackle (to a greater or lesser extent) both the flow and stock of regulations; and integrate efforts to improve transparency and easier access to the administration (portals, websites, etc.). Policies cover a rich mix of projects shared between Belgian governments, and initiatives specific to each government within its area of competence.

Simplification and administration burden reduction policies of Belgian governments are not confined to the “classic” programmes aimed at identifying and reducing burdens in individual regulations. They cover a range of approaches:

- Creation of electronic business registers with the ultimate objective of having enterprises across Belgium submit information only once. Major projects have included the establishment of the Crossroads Bank for Social Security (Box 5.2) and of the Crossroads Bank for Enterprises (Box 5.3). Regions and communities have also taken specific initiatives (such as the Magda platform in Flanders).
- Simplification and dematerialisation of administrative procedures. Flagship projects have included “e-depot” (electronic process of transactions for notary acts when creating a company) and *telemarc* (public tender procedures). All governments have undertaken projects to simplify forms and put them on line (through a dedicated Internet site in the Flemish and Walloon regions). This has often included simplification of the procedure itself but not always. For example while the simplification of procedures relating to an employment subsidy (*prime pour l’emploi*) in Wallonia has involved changes in regulation, the project *Primver* to simplify forms in the education system in the French Community has not addressed the complexity of underlying regulations (although it has led to a better understanding of the regulatory system). Efforts have also been made to improve the quality of newly-established forms (thereby acting not only on the stock but also the flow). The Flemish government has created a quality label for forms, as well as guidance and training, while Wallonia has put in place guidance material and training to help officials.

- Review of specific sectors to reduce and/or eliminate unnecessary administrative burdens. This has been undertaken at federal and regional levels for the road freight sector, and for the agricultural sector.

As regards the specific programmes for reducing burdens in specific regulations, different approaches have been used. The federal government and the Walloon region have taken a selective approach (identifying priorities from consultation with stakeholders and officials). The Flemish region has opted for a more systematic approach. Variants on the SCM methodology are deployed to carry out measurements. At the same time, there is increasing adoption of a user-centric approach to improve the experience of citizens and businesses with the administration. The Brussels Capital Region has been catching up, and in 2008 it launched a pilot for SCM, with a view to creating an SCM procedure. With the “Brussels Plan for Administrative Simplification” launched in October 2009, this will be developed into a full programme, with the objective of a 25% reduction in administrative burdens. From 2010 a selective measurement approach will be launched, the first target being Economy and Employment legislation.

The Crossroads Bank for Social Security (Box 5.2) represents a major co-ordination effort for the reform of the social security system. It engages a wide range of actors, and disseminates the views and proposals that emerge from debate.

#### **Box 5.2. The Crossroads Bank for Social Security**

The social security system in Belgium is complex, involving over 2 000 public sector bodies that deal with collecting contributions, delivering benefits (such as unemployment, holiday pay, health care reimbursement and old age pensions) and determining supplemental benefits. These institutions are spread across all types of governments – federal, community, regional, provincial and municipal.

This large system was suffering from the lack of a well-co-ordinated service delivery and information management process, resulting in significant administrative burden for agencies and users, a low-level of service to users, sub-optimal social protection for citizens, and higher possibilities for fraud.

In 1989, the Belgian government launched a major overhaul of the social security system, combining a re-organisation and integration of back-office processes with user-focused e-services. The goal was to implement one-time data collection from employers and citizens, reduce administrative burdens and allow users to access integrated services from a single point of entry. This was achieved through the creation of a network that links and integrates institutions’ back offices, permitting social security actors to share information and simplify transactions.

A main component of the re-organisation was implementation of a communication model to pool information available throughout the many social security Institutions. All structural information processes related to social security have been assigned to a co-ordinating body, which keeps a directory of which agencies possess what information and routes information requests to the proper source – rather than collecting and storing data itself. It also provides common formats for data and information, to ensure that all queries and responses are compatible and can be handled quickly. This agency is the Crossroads Bank for Social Security (CBSS), created in 1990.

The CBSS helps social security actors offer services effectively and efficiently with minimal administrative burden, improving both processes and relationships among the different actors. CBSS promotes information security and privacy protection among social security institutions, and handles all policy initiatives aimed at improving social security policies and processes. CBSS offers a secure network using unique identification keys for citizens to manage 185 e-services (which have replaced nearly all paper-based information and data exchange).

The CBSS system interconnects the back-office applications across the many government institutions responsible for providing social security services in Belgium, utilising a publicly accessible

and jointly agreed data model to collect, manage and exchange information and data in a standardised format. The CBSS network is based on agreed formats on four levels: technical and organisational standards, authentication process standards, used notions, and instructions. By setting standards and gaining agency buy-in at the earliest stages of the process – and by making one agency responsible for setting and managing standards from the beginning – the CBSS created a system that is seamless and allows for easy information and data re-use.

The CBSS has had a major impact on improving service delivery to both public officials and citizens in Belgium. It has increased efficiency, and reduced costs due to once-only information collection, fewer contacts required for execution of services, task-sharing, reduced administrative burdens, and faster processing of queries and service requests. The overall level of social protection has been improved, with citizens being informed directly of benefits they are entitled to when their situation changes. Because the reference database cross-checks the information collected by different agencies, there is less room for errors in the system. This has increased the level of fraud protection.

*Source: OECD (2008), OECD e-Government Studies – Belgium, OECD Publishing, Paris, pp. 203-209.*

The Crossroads Bank for Enterprises is one of a number of examples of cross government co-operation, which include other projects such as the penal data register, the Crossroads Bank for Enterprise, the Crossroads Bank for social security, and the *Telemarc* public procurement project.

### Box 5.3. The Crossroads Bank for Enterprises

The Crossroads Bank for Enterprises (CBE) is a business register established by a law of 16 January 2003 (“CBE law”). It is managed by the FPS Economy, SMEs, Self-employed and Energy, under operation since 1 July 2003. The register is a databank aimed at identifying businesses and their establishment units. It also aims at ensuring at connecting different databanks of the administrations. A number of connections have been established so far, including the official journal, the National Bank of Belgium (annual accounts), and the employers’ register of the social security national office.

A number of commissions have been established to manage the CBE:

- A co-ordination commission, established within the FPS Economy and presided by a representative of the Prime Minister, is charged with providing opinions on draft royal orders, which aim at adapting existing legislation with the requirements of the CBE law.
- A surveillance committee for the CBE has been set within the Commission for the protection of private life.
- A committee is in charge of monitoring the quality of the data of the CBE and its operation (established in 2006).

Since 1 January 2005, the use of the business number has been mandatory for the relations between businesses with administrative and judicial authorities, as well as for the relations between administrative and judicial authorities. Authorities and administrations which have been authorised to consult CBE data can no longer request businesses to provide them with information already in the CBE. Close to 150 federal, federated and local administrations have been authorised to get access to the CBE so far. The CBE covers all entities with an economic activity in Belgium (public and private, trade and non-trade, individuals and corporate bodies).

The creation of the CBE has led to the elimination of a number of registers that used to be managed separately by different administrations such as the Business Register, the Craftsmen Register, and the National Register of Corporate Bodies.

The CBE law has also provided for the establishment of one-stop shops for businesses. These are private bodies with a statute of non-profit organisation which are given a ministerial authorisation for delivering public services, including:

- registering commercial and handicraft businesses companies in the CBE;
- checking qualifications relating to regulatory requirements for the access to commercial and craftsman professions; and
- delivering authorisations for itinerant trade and stall keeper activities.

The scope of activities of one-stop shops is to extend as the government plans to give them additional as part of transposition of the Services Directive.

A number of projects are underway, including:

- integrating all private enterprises in non-commercial activities (professionals and service providers);
- integrating authorisations and licences delivered to businesses;
- refining the role of CBE as part of transposition of the Services Directive; and
- increasing the use of CBE by administrations at all levels of power.

### *Federal government administrative burden reduction programme*

The work on administrative burdens in federal regulations is made up of a number of interacting elements:

- Evaluation *ex ante* of the burdens contained in proposed new or changed regulations before they are adopted (the *Kafka* Test – see Chapter 4).
- A rolling simplification programme which brings together the simplification projects of the different ministries and which is informed by an *ex post* rolling measurement exercise in selected policy areas, to capture the changes in administrative burdens caused by the adoption of new or changed regulations. The *ex post* measurement results highlight the effect on administrative burdens of the regulatory actions of ministries, from which it is possible to establish the front runners from the others.
- In order to carry out the *ex post* measurement, the federal government established the Measuring Office within the ASA in 2007 (Box 5.4), which uses the SCM methodology for selected areas. The federal government's approach is mindful of the significant resources which full and regularly updated SCM measurements imply, and has therefore opted for this system, whereby measurement is *ex post* and for selected areas.
- The Federal Planning Bureau conducts a biannual survey of enterprises across the whole of Belgium to assess the cost of administrative burdens for businesses, upon request of the ASA. The survey focuses on the three most burdensome sectors: social, environment and fiscal. Regions are consulted in the survey preparation. The figures are used alongside qualitative and other data to draw an overall picture and to assess trends and needs. The survey highlights developments over time, since 2000.<sup>3</sup>

- There is no quantified reduction target (net or other) to be met. However the approach is currently being developed in this direction, and the ASA told the OECD peer review team that it considers the programme fits within the context of the EU's target of a 25% reduction of administrative burdens by 2012.
- Public consultation on the programme is mainly through the ASA's Steering Committee, and the *Kafka* contact point (where any citizen / company can post proposals for simplification). When measuring administrative burdens, interviews with businesses are carried out. The ASA has established a network of 35 simplification agents across the federal administration responsible for monitoring progress on simplification projects in their department. It also prepares an annual progress report on simplification projects which is sent to its Steering Committee and to the Prime Minister.

#### Box 5.4. The ASA Measuring Office

The ASA's Measuring Office comprises six consultants appointed by the ASA, who work in ASA offices. They screen the official journal to detect any new regulations which may result in an increase or decrease in administrative burdens. They make a quick scan estimate of the administrative costs. If the estimated cost is under EUR 5 000, they do not carry out further measurements. They also undertake measurements in areas pointed out by stakeholders through the ASA's Steering Committee or the *Kafka* contact point. Detailed measurement is based on the SCM methodology and consists of identifying information obligations related to the regulation through interviews with three to five businesses (following *ad hoc* selection). Measurement covers obligations imposed by ministries as well as *para-statal* organisations which act upon request of authorities (such as the SABAM in charge of managing authoring rights). Results are grouped in a database and communicated to the relevant FPS upon completion of the measurement. The ASA presents a monthly report on the result of measurement of administrative burdens for each SPF.

The measurement started in 2008 for all burdens deriving from new or modified federal regulations published in the official journal. For 2008 this consisted of 165 regulations. In addition, the ASA has measured the impact of some e-Government initiatives taken in recent years.

The Measurement Office can also undertake measurement in specific sectors upon request of a FPS which wants to assess administrative burdens in specific areas or measure the impact of simplification initiatives. In 2009, a report is to be produced for the FPS Mobility and Transport on the impact of simplification measures undertaken since 2003.

#### *Walloon region administrative burden reduction programme*

As for the federal level, there are two main aspects to the work on administrative burdens in the Walloon region. The first is to evaluate *ex ante* the burdens contained in proposed new or changed regulations before they are adopted (the *Kafka* Test – see Chapter 4). At the same time (as for the federal level), the Walloon region has established a formal action plan (“the 2005-09 action plan for administrative simplification and e-Government”) to address burdens in existing regulations. While the government has not formally set a reduction target, it considers that its policy takes place in the framework of the EU plan to reduce administrative burdens by 25% by 2012. Progress is measured through quantitative and qualitative criteria defined at the start of the simplification process for each measure.

The government is measuring burdens using the SCM methodology for selected issues. To carry out the work, *EASI-WAL* has signed an 18-month contract with two consultants. In 2007, the region undertook two pilot experiments in the field of agriculture (single payment

procedures and agri-environmental measures) and the environment (environmental licence procedure). The government selected procedures which had an impact on a large number of citizens and businesses. It does not intend to carry out a full baseline measurement but plans to extend the use of the SCM methodology to measure burdens in selected regulations that impact a large number of citizens and businesses and/or result in heavy burdens. Measurement is to be carried out both before and after implementation of the regulation. It is also developing the use of “personas” based on surveys to identify user-needs and set simplification priorities.

The process for measuring administrative burdens includes interviews with selected stakeholders. For example, the measurement of administrative burdens generated by the environmental licence included consultation of business representatives (Walloon Business Union and Union of Middle Classes), and final results were communicated to all administrations, drafters of the regulation and consulted stakeholders.

*EASI-WAL* publishes regular progress reports (once or twice a year since 2006), which are available on its website, and has organised an annual presentation to all officials. The criteria defined at the start to measure progress are used in the report, which includes a series of key figures on implementation of the action plan (such as the number of obsolete texts that have been eliminated, number of *Kafka* tests, number of simplified forms and number of downloaded forms). *EASI-WAL* has also published the list of simplification measures by target group on its website, in addition to a guide of good practices (second edition issued in 2007).

### *Flanders region administrative burden reduction programme*

The Flemish government has taken a different approach. The government started by identifying six policy areas for which a reduction target needs to be set (at the end of 2008, the target was set at 20% by 2012 for three of them, with the remaining three still to be set). This has now been expanded to cover all policy areas. Baseline measurements have been made for the policy areas, and an action plan must be prepared for each policy area. As well the regulatory management unit will establish an overall action plan. Simplification projects are decided within each ministry, based on the information collected when measuring burdens. These projects are being followed up by the Regulatory Management Unit, which checks their implementation.

In addition, the Flemish government has introduced a compensation rule to control the flow of new burdens generated by new regulations, which became mandatory in January 2005. It has so far only had limited impact in practice.<sup>4</sup> However, it has raised consciousness of the issues.

Burden measurement is done on the basis of the 20/80 rule. Departments draw up an inventory of all regulations, select the 20% of regulations that cause 80% of total administrative burdens, and map information obligations relating to these regulations. Another option is to consider the 20% of regulations that cause burdens on 80% of the relevant target group (such as schools). The 20/80 option is validated by the ministry and the DWM. A mix of methodologies is used to analyse information obligations and identify priorities for simplification: evaluation by absolute value (total burdens in Euros); average administrative burden per stakeholder; simultaneous analysis if the price and quantity component.<sup>5</sup> Once the measurements are finalised the results are gathered in a database – *SAMBAL*. The work (interviews, report) is done by the DWM, with some support from consultants, and the report is discussed by the regulatory unit of the department. The next step is the development of profiles to draw a picture of the burdens faced by a specific target group. The research leads to the identification of simplification proposals, which



have to be tested for feasibility (consideration of different options) by the relevant administration.

Efforts have also been directed at simplification of licences, linked to the transposition of the EU services directive. Flanders has started an inventory of all its permits and authorisations and compared its approach with other countries. The project is part of the campaign “Flanders in action” and aims to improve Flanders competitive position in the world. Twenty-one proposals were drawn up and will be part of a benchmark exercise and a baseline measurement. Simplification projects will be formulated on basis of the outcome of the benchmark and measurement.

The minister responsible for administrative simplification prepares a progress report on regulatory management and communicates it to the Flemish government and parliament. This aggregates specific progress reports prepared by each policy area, which indicate the extent to which the reduction target for 2012 has been achieved.

### *Brussels Capital Region and the French Community*

Brussels Capital Region and the French Community have not yet set up a structured approach to administrative burden reduction. Measures involving administrative simplification have been strongly linked to e-Government initiatives. There is increasing support in the French Community for the development of an integrated approach to administrative simplification.

### *Shared initiatives for simplification*

An important success story concerns the shared projects that are supported by a 2003 co-operation agreement signed by the federal, community and regional governments to support simplification initiatives (Box 5.5). This led to the establishment of the *Kafka* contact point in December 2003, one of the most visible initiatives. The *Kafka* contact point is a website where citizens, businesses and public servants across the whole of Belgium can formulate projects and ideas for cutting red tape. It has also given rise to other important shared projects: among others, the Crossroads Bank for Enterprises, the *Kafka* contact point, transposition of the EU services directive, and the *Telemarc* project.<sup>6</sup>

The ASA’s annual action plans are an important unifying factor in Belgian simplification as they not only cover its work to address administrative burdens in federal regulations, but also the shared projects that link up with other governments, such as the *Kafka* contact point.

#### **Box 5.5. The 2003 co-operation agreement on administrative simplification**

##### **Objective and scope**

In 2003 the federal state, communities and regions signed a co-operation agreement on administrative simplification,\* covering reduction of administrative burdens and legal simplification. The agreement stipulates that “citizens and companies are entitled to quick, simple and efficient public services whatever the distribution of competences on an institutional level between the parties of the convention”. This includes strengthening consultation between the different powers and reaching a number of practical and structural agreements in the field of administrative simplification (defined as initiatives to facilitate and alleviate administrative burdens imposed by public authorities on citizens and businesses).

The agreement provides for:

- consultation between governments on how they reach their policy objectives for simplification;
- co-ordination “as much as possible” of simplification projects and launch of common initiatives;
- collaboration to projects launched by other governments;
- harmonisation of administrative procedures and establishment of single one-stop shops; and
- co-operation between units in charge of administrative simplification.

### **Consultative Committee on Administrative Simplification**

The agreement led to the establishment of a Consultative Committee on Administrative Simplification, a body made up of political representatives and civil servants for the exchange of ideas and information on Better Regulation policies and for negotiation on the development of common simplification initiatives. It approves the annual work plan under the agreement. A number of working groups have also been established on an *ad hoc* basis for specific projects (e.g. the EU Services Directive and public procurement). The Committee consists of a representative from each government and a delegate from a technical working group set up in the field of e-Government policy.

Co-operation is often based on exchange of information (for example, on form simplification) and consultation (for example, regarding transposition of the EU directive on data re-use). Co-operation is based on voluntary participation, which means that projects are subject to variable geometry.

### **Achievements so far**

The ASA has produced reports on the implementation of the agreement. Achievements have been significant, including flagship initiatives such as the *Kafka* contact point, transposition of the EU services Directive, the *Télémarc* project, and the Crossroads Bank for Enterprises.

- establishment of a single contact point on administrative simplification for all authorities (the *Kafka* contact point);
- creation of the Crossroads Bank for Enterprises;
- exchange of information and experiences in the field of administrative simplification (including impact assessment, burden measurement); and
- establishment of a working group for the transposition of the EU Services Directive.

\* “*Convention de coopération du 10 décembre 2003 entre l’Etat fédéral, les Communautés flamande, française et germanophone, la Région flamande, la Région wallonne, la Région de Bruxelles-Capitale, la Commission communautaire flamande, la Commission communautaire française et la Commission communautaire commune concernant la simplification administrative*”. Available at : [www.simplification.fgov.be/doc/1216040806-3994.pdf](http://www.simplification.fgov.be/doc/1216040806-3994.pdf).

### *Achievements so far*

In 2009, the ASA published its first report on the evaluation of administrative burdens with respect to federal regulations. It showed a decrease in burdens of EUR 93 million during 2008, of which EUR 71 million resulted from changes in legislation and EUR 11 million from e-Government applications (Table 5.1).

**Table 5.1. Changes in administrative burdens resulting from regulatory changes and initiatives in the field of e-Government and e-invoicing**

Target group	Regulation	e-Gov	E-invoicing	Total
Businesses	-76 288 883	-1 268 791	-11 145 052	-88 702 726
Citizens	6 643 233	-5 004 701		1 638 532
Citizens and businesses	-385 479	-4 708 440		-5 093 919
Non-profit organisations	-667 026	0		-667 026
Total	-70 698 115	-10 981 932	-11 145 052	-92 868 331

Source: Agence pour la simplification administrative, *Rapport d'évaluation des charges administratives 2008*.

The biannual surveys of the Federal Planning Bureau indicate that administrative burdens on businesses decreased from EUR 8.6 billion in 2000 (3.5% of GDP) to EUR 7.7 billion in 2006 (1.72% of GDP) (Table 5.2).

**Table 5.2. Trends in total cost of administrative burdens on businesses over the period 2000-06**

	Cost in EUR billion				Cost as % of GDP			
	2000	2002	2004	2006	2000	2002	2004	2006
Enterprises	6.28	6.31	4.91	6.46	2.55	2.41	1.73	2.05
Self-employed	2.29	2.66	2.37	1.22	0.93	1.02	0.84	0.39
Total	8.57	8.97	7.28	7.68	3.48	3.43	2.57	2.44

Source: Federaal Planbureau / Bureau fédéral du Plan.

The shared Belgium wide flagship projects are another important achievement (Box 5.5).

### ***Administrative burden reduction for the administration***

The Flanders Region has launched a pilot project for estimating costs of regulation for government as part of its policy to improve government's efficiency. These burdens are now considered in the RIA.

## Notes

1. Examples include the reports of the Court of Audit on the co-ordination of federal sustainable development policy (June 2005), on the Road Safety Fund (December 2007), and on the first job convention (April 2008).
2. This concern was raised by several stakeholders during interviews with the OECD peer review team.
3. The principal purpose of this survey is to ask companies or contractors throughout Belgium the number of hours they spend on administration in three areas: tax, social issues and the environment. The number of hours is then converted into a numeric cost. The results are broken down by sector, company size, region, etc. This data is thus objective, but qualitative questions are added about regulatory quality and improvement of public services at the different levels of government.
4. According to the compensation rule, any increase in administrative burdens generated by a new regulation (decree and order) must be counterbalanced by an equal reduction of existing administrative burdens. An evaluation was conducted in 2008 which showed serious problems of implementation, with no significant impact in practice. A key difficulty has been the use of unrealistic figures. The Flemish government plans to improve the process is to re-use data gathered in the baseline measurements.
5. The DMW is working on the development of a simulation tool for calculating administrative burdens of new legislation.
6. *Télémarc* is an online application through which public services (subject to public procurement laws) seek information directly from sources (crossroads bank, social security, tax data base, national bank). Companies participating in tender processes are, as a result, exempted from providing this information, which leads to enormous reductions in administrative burdens.

## Chapter 6

### Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes,<sup>1</sup> and the adoption of rules to promote responsiveness, such as “silence is consent”.<sup>2</sup> Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example, scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

#### Assessment and recommendations

*Inspections and enforcement, which are the responsibility of the different governments according to the allocation of competences, do not appear to raise any major issues.* The review was not able to go into depth on this issue, but the system appears to be well established, with the development of co-operation between inspection bodies and the use of risk analysis.

*The appeal structure, by contrast, is a largely Belgium wide system, is equally well-developed, but raised a few issues.* The first concerns duplication of procedures (litigants pursuing administrative appeals simultaneously with judicial review). This may need attention. The information gathered by ombudsmen (who have been associated with the work of ASA) could be more effectively used, and their work suggests that access to information on regulatory procedures is not as easy as it should be.

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**Recommendation 6.1. (all governments): Consider whether there are issues related to duplication of procedures, and more effective use of the information gathered by ombudsmen, that require attention.**

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## Background

### *Compliance and enforcement*

#### *General context*

Inspections and enforcement follow the lines of Belgium’s division of competences between governments. For areas of federal competence, inspections are under the responsibility of units of relevant ministries (such as the Directorate-General Enforcement and Mediation of the FPS Economy), or administrative agencies (AFSCA). The same structure applies to regions and communities with respect to their competences. Compliance and enforcement measures differ from one field to another (such as social and economic areas) and also within a single area.

There is increasing use of a system of administrative penalties, in addition to classical penal sanctions (for example, in the field of social security). In addition to administrative penalties, some regulations provide for “alternative procedures”. For example, the 1991 law on retail sales, consumer information and protection provides for a warning procedure.

Although it was beyond the scope of this review to go into detail, the OECD peer review team heard that risk analysis is quite well established in inspection methodologies. Co-operation on exchange of information between inspection bodies is also being developed. It was suggested to the OECD peer review team that harmonisation of fiscal and social security legislation was important in this context.

#### **Box 6.1. Examples of enforcement bodies**

##### **The Directorate-General Enforcement and Mediation**

The DGEM is in charge of ensuring compliance with economic regulations, which covers around 50 laws and some 300 executory orders. It is also a competent supervisory authority in the field of counterfeiting and piracy besides the Customs and the Federal Police, and is competent in the field of foodstuff labelling (where it has concluded a protocol with the Federal Agency for the Safety of the Food Chain). At the criminal law level, the officials of the DGEM work under the supervision of the Public Prosecutor’s Office but remain within the hierarchy of the SPF for the economy. Market surveillance combines information, prevention, rule safeguarding and alternative resolution of disputes. The policy is to emphasise information, prevention and conciliation rather than repression. This

includes encouraging initiatives that favour recourse to commercial mediation. The methodology for market surveillance is based on risk analysis.

### **The Federal Agency for the Safety of the Food Chain**

The Federal Agency for the Safety of the Food Chain, which was established in 2000, is in charge of compliance in the food sector. The policy is based on close monitoring of compliance rates, use of prevention and information to improve compliance, and risk evaluation. A scientific committee has been formed to support risk evaluation. The frequency of inspection depends on the “potential risk” factor (based on the information of the checklists), and high- risk sectors are more frequently visited by inspectors. The agency has frequent meetings with sector organisations (formal and informal consultation) to prepare regulations and to discuss compliance and enforcement measures. Consumers and operator have a different contact point where they can ask for information or where they file complaints (for consumers concerning the quality of food, for enterprises on the functioning of the agency); information campaigns are set up with sector organisations, newsletters, and press releases. The agency recently created a new service to strengthen its advisory role. This service will, among other things, identify where regulations are still too complex and go around the country to explain procedures and rules to enterprises, farmers, etc.

There is a significant enforcement role at the local level of government. The mandatory missions of provinces and municipalities include responsibilities for implementing and/or enforcing regulations and policies defined by a higher authority. While there are differences across regions, provinces and municipalities play an important role in the implementation of regulations in urban planning (under regional legislation) and the environment (under federal or regional legislation) across Belgium. Provinces are responsible for delivering authorisations for opening a business which present risks or inconveniences to others. Municipalities are responsible for delivering a number of permits and authorisations, for the town development plan and issue planning regulations. The operation of specified establishments is subject to delivery of environmental licences, generally delivered by municipality colleges. The examination of applications is partly done by municipality, and partly by the regional administration. Municipal councils have enforcement powers (with the possibility of issuing fines, suspending a permit or authorisation, closing an establishment).

## ***Appeals***

### ***General context***

In contrast with inspections and enforcement, large parts of the appeal system are Belgium wide. Appeals against administrative decisions by citizens or businesses may first be heard by administrative tribunals. Judicial review through the court system may be pursued simultaneously. Both the administrative and judicial system are under federal competence. The OECD peer review team were told that it would be helpful to have a policy for greater use of ICT and data sharing, not only within Belgium, but across Benelux.

## *Administrative review*

### Administrative tribunals

There are around 30 administrative tribunals in Belgium, which have been established to hear cases against administrative decisions in specific social, judicial and economic areas. The oldest is the permanent deputation of the provincial council, which rules on election-related appeals. A number of these specialised tribunals have been established in response to the slowness of procedures in ordinary courts. Labour tribunals have extensive competences in labour and social security to control decisions taken by regulatory authorities. Similarly specialised tribunals have been established in the field of welfare, housing and foreigners' rights.

The Council of Foreigners Disputes, which was established in 2006 to decide on asylum applications rejected by the General Commissioner for Refugees and Stateless Persons, has become the largest source of cases heard by the Council of State. Other efforts to improve the efficiency of tribunals relate to the transition to electronic files. A project has been launched, but partly failed, which has delayed full computerisation of the judicial system.

### Council of State

The Council of State has the power to suspend and to annul administrative acts (individual and statutory) that are contrary to the law. The administrative legal section of the Council hears cases against decisions of the federal government, regional and community governments as well as decisions of provincial and municipal executives and public bodies. A litigant has to make his claim within 60 days of the publication of the regulation in the official journal, or if it is a decision which affects only a limited number of people, within 60 days of notification. The Council of State is also the supreme jurisdiction for decisions by administrative jurisdictions. In this case, the appeal can rely only on violation of law, and the Council cannot rule on the facts (it is not competent on the substance).

## *Judicial review*

While the law has granted significant powers to administrative bodies and the Council of State in appeals against administrative decisions, judicial courts are competent when the appeal involves subjective rights (*droits subjectifs*). For example, judicial courts are competent for actions for damages against the state for having failed to implement European legislation. Appeals for annulment to the Council of State takes place independently from the procedure with the judicial court, except that an annulment decided by the Council of State has an *erga omnes* effect which is not the case for control done by judicial courts. Judicial courts do not have the capacity to assess the opportunity of an administrative decision. However, tribunal presidents consider that it is within their competence to enjoin the administration to act, or to refrain from acting, when it has illicitly struck a blow at subjective rights. In a few cases judicial tribunals have the possibility to annul directly certain administrative decisions with an *erga omnes* effect.

In addition, the courts control the acts of the administration in a decentralised way as the constitution states that “courts and tribunals will apply general, provincial and local orders and rulings in as much as they are in conformity with the law”. This includes checking conformity of administrative rulings with the constitution and international



instruments, including European legislation. Since the Constitutional Court does not have any power to control the conformity of secondary regulations with the constitution, this power is held by the judiciary which uses it extensively, particularly in the tax area.

In practice many litigants pursue both procedures, *i.e.* judicial and administrative appeals. The OECD peer review team were told that it would be helpful to find a way of avoiding this duplication (for example, that a judicial review procedure should not be allowed if an administrative action were underway). There have been cases of uncertainty as regards the competence of judicial and administrative tribunals. Conflicts of attribution are settled by the *Court of Cassation*. With respect to regulatory authorities, general principles apply (appeal to the Council of State for an annulment *erga omnes*, to judicial tribunals for subjective rights). There are however specific cases. In the field of competition law, the Council of Competition is an administrative jurisdiction whose decision can be appealed against to the Appeal Court of Brussels. Decisions of sectoral regulators can be appealed to the Appeal Court of Brussels, but there are plans to have the Council of Competition become the appeal body.

### *Prevention of disputes*

#### Mediation and arbitration services

A number of extrajudicial systems have been established to provide consumers access to easy, cheap and efficient means of dispute resolution. This includes mediation as well as arbitration services, whose procedure leads to a binding decision on both parties.

There are ombudsmen at all levels of government (federal level, regions and communities). The federal ombudsman was established in 1997. It is independent, appointed by the House of Representatives, with the classical role of an ombudsman. It is a collegial body with a staff of around 40 people. The ombudsman examines complaints lodged by “users” relating to administrative authorities (following a first action). It can also launch investigations upon request of the parliament. For example, in February 2008, the House of Representatives requested an investigation on the operation of closed centres managed by the Foreigners’ Office and the operation of open centres managed by *Fedasil*, the Federal Agency for the Reception of Asylum Seekers. The Ombudsman sends an annual report with recommendations to the parliament (to modify relevant legislation, regulation or administrative practice). It was suggested to the OECD peer review team that more attention could be given to these recommendations. In addition the ombudsmen’s work shows that there is a need for easier means of access to information on regulation and regulatory procedures.

#### Ruling for tax issues

The law of 24 December 2002 established a system of prior decision, called “ruling”, which gives tax payers and potential investors the possibility of asking for a decision on a specific project or situation. The procedure was established to create a new contact point between tax payers and the tax administration, in order to increase legal security but also to prevent disputes in the tax area. The SPF for Finance issues an anticipated decision on a request relating to the implementation of tax regulations within its field of competence. The decision commits the SPF, but not third parties or the courts.

## Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.

## Chapter 7

### The interface between member states and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations<sup>1</sup> have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market and avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU law. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

#### Assessment and recommendations

*There is a reasonably robust process and regulatory framework for the management of EU origin regulations.* This area provides an especially strong test of Belgium’s capacities to co-ordinate in areas where this is necessary, and the outcome is overall encouraging. The structures that have been put in place include the recent establishment of a network of “euro-co-ordinators” – one per ministry in the federal government and one per region and community – to act as contact point within their administration, for the cross-government network.

*Timely transposition of EU directives, however, remains an issue.* Belgium has only recently reached the EU target of 1% transposition deficit. A working group has been established to increase synergies between the political level (cabinets) and administrative levels. The OECD peer review team heard numerous comments to the effect that this was an area needing a boost. Whilst the euro-co-ordinator network had been an excellent initiative, it probably represents more than one full-time job if important issues are to be addressed (for example, time should be set aside to evaluate infraction dossiers to see what lessons might be learnt).

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**Recommendation 7.1. (federal government, all governments): Establish a strategic review of the framework for transposition of EU directives. Consider whether resources for the euro-co-ordinator network need to be boosted. Review the role of the Council of State (should they intervene at an earlier stage as regards competences?). Consider how the processes of negotiation and transposition can be brought closer together in practice. Promote the interest of high-level officials and politicians in the management of EU regulations.**

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*Note:* It should be noted that large parts of this recommendation - review of transposition system, role of the Council of State were given effect after the OECD peer review team mission.

## Background

### *General context*

In Belgium, the federal state is not the only authority which may conclude international treaties. The federated entities (communities and regions) have an autonomous right to conclude international treaties and reach international agreements (including and not least with regard to the EU) on issues that are within their competence. When matters for negotiation fall under the responsibility of different Belgian governments (federal state, regions, and/or communities), the representatives of the different governments negotiate on an equal footing. The coherence of Belgium's foreign policy is secured through a range of agreements and formal co-operation processes. These include a requirement to exchange information through the Inter-ministerial Conference on Foreign Policy.<sup>2</sup> A 1994 co-operation agreement between the federal state, regions and communities<sup>3</sup> defines the rules for concluding "mixed" treaties (*i.e.* treaties signed by several Belgian governments). The Federal Public Service for Foreign Affairs plays an important co-ordination role.

The management of EU origin regulations is a particularly important area for co-ordination, as many areas of EU regulation (energy and the environment, for example) cover policy areas where competences are split between the different Belgian governments. As a result the negotiation and transposition of EU directives often involve several Belgian governments. A wide range of structures, formal and informal, political and within the administration, exist to take EU issues forward. Negotiation and transposition form a continuum, with significant links between the two processes. Co-ordination mechanisms (some of which are specific for EU matters) have been established both at political and administrative levels:

- *Political level.* The Concertation Committee, the ministerial councils of the federal level, the regions and the communities ensure political level co-ordination. The *Concertation Committee* (see Chapter 2) is the highest level as it consists of the heads of all Belgian governments. The agenda of its monthly meeting systematically includes the review of EU directives. From the sectoral point of view, several Inter-Ministerial Conferences deal with the transposition of directives in their area of competence. For example, the Inter-ministerial Economic Committee (IEC) may be involved in the transposition of directives (*e.g.* the Services Directive). The IEC consists of the federal Minister of Foreign Affairs and ministers designated by regional and community governments. It has established a

working group on mixed treaties charged with determining the competences of the federal state, communities and regions.

- *Administrative level.* Key players are the FPS for Foreign Affairs, the Permanent Representation to the EU, and a network of “euro-co-ordinators”. The FPS for Foreign Affairs is the general co-ordinator and has set up an inter-federal working group which it chairs, and which meets every two months. It includes representatives of the Permanent Representation to the EU, the euro-co-ordinators, the strategic cell and administrators from the FSP for Foreign Affairs, other departments of the federal government and community/regional governments, the Council of State, the official journal, and the federal parliament.

The OECD peer review team were told that the interest of high-level officials and politicians in the management of EU regulations needed to be encouraged.<sup>4</sup> Not least this would raise pressure for a more effective performance, building on the stock of goodwill that already existed among officials. It was important for Belgium to devote further efforts at reinforcing mechanisms for the negotiation and transposition of EU directives.

There is no specific provision for impact assessments on draft EU directives (either at the negotiation or transposition stage). It was suggested to the OECD peer review team that there should be specific efforts to carry out impact assessment at the transposition stage.

### Negotiating EU directives

The first step at the beginning of the negotiation process is to identify responsibilities of the different governments. This is done by the inter-federal working group headed by the FPS for Foreign Affairs. Co-operation also takes place through sectoral and regional co-ordination mechanisms and informal networks. Flexible approaches are used during negotiation.

### *Transposing EU regulations*

On the administrative level, the FPS for Foreign Affairs is the general co-ordinator, while each Belgian department – either on the federal or on the federated level – is responsible for those elements of the transposition that are within its competence. The allocation of responsibilities agreed at the negotiation stage is confirmed at a meeting of the inter-federal working group. A “pilot authority” is designated to co-ordinate and monitor progress when transposition is shared between entities of the same government, or between different governments. If there is disagreement, the FPS for Foreign Affairs sets up a specific co-ordination process, whereby a pilot authority is appointed to monitor the transposition of the directive.

Directives can be enacted either by government orders and/or parliament acts. Depending on the issues, several parliaments can be involved in the process.

### Key developments

Following the 2000 Action plan for transposition, the Council of Ministers and the *Concertation Committees* set up a more structured process for the transposition of EU directives.<sup>5</sup> This included the development of a network of euro-co-ordinators, and the creation of a databank accessible to all Belgian administrations involved in the transposition of directives.

- *Euro-co-ordinators* have been set up in all Belgian governments (with one euro-co-ordinator per FPS in the federal government and one euro-co-ordinator per region and community). They are responsible for monitoring transposition within their administration and act as contact point both within their administration, for the cross-government network, and more broadly in the EU. In principle they are not involved directly in developing transposition texts (this is done within departments, following the usual procedures for preparing new legislation). This has improved the monitoring process of transposition and helped identifying potential difficulties, for example, with respect to deadlines and sharing of responsibilities across governments.
- *The Eurtransbel* databank includes information on timetable, process, lead authority etc. Reviews by the FPS for Foreign Affairs suggest that the databank is now commonly used and adequately filled in for published directives and for draft directives.

The transposition deficit has been given enhanced attention with the upcoming Belgian Presidency of the EU Council (second half of 2010). Belgium aims to respect the 1% transposition deficit and “zero-tolerance” norms. A strategic review of transposition was mandated by decisions of the federal ministerial councils of May 2008 and September 2008, as well as by a decision of the *Concertation Committee* in February 2009.

The federal government has created a new group to monitor the transposition of directives. A decision of the Council of Ministers of 6 February 2009 set up the Transposition High-Level Working Group to increase synergies between the political and the administrative levels. This body operates at the federal level between meetings of the Councils of Ministers examining transposition, and the meetings of the administrative network of euro-co-ordinators (including the working groups which meet at the administrative level). The Working Group includes members of the policy cells of the ministers concerned and the euro-co-ordinators. It is chaired by a member of the policy cell of the Minister for Foreign Affairs and the State-Secretary for European Affairs. The Working Group meets every two months to monitor the directives that remain to be transposed using a fiches system, to check the competences for the recently published directives and to discuss of any issue that affects the transposition process.

On 6 February 2009, the federal Council of Minister decided that the concerned departments in general have to, within a week of the publication, indicate their competence and, within a month of publication, register in the inter-federal *Eurtransbel* databank the details of the process manager (*the transposer*) and a realistic transposition planning timeframe and to follow up implementation. In that way, possible potential delays could be identified in time. An alert function will be integrated into the *Eurtransbel* databank which will automatically alert when there would be negative discrepancies between the planning and progress to the bodies concerned and to the FPS Foreign Affairs. Until the integration of an automatic alert-system, FPS Foreign Affairs does it manually.

### Role of the Council of State

As part of its general advisory role on all draft legislation, the Council of State examines the draft texts (federal, community and regional) which transpose directives. This includes a check that the formal allocation of competences has been respected, although it does not formulate a formal opinion on competences at the beginning of the transposition process. It was suggested to the OECD peer review team that the Council might usefully intervene at an earlier stage on competences, to avoid problems downstream. The Council

of State is included in the inter-federal network of euro-co-ordinators. The Council's guide on law drafting has a chapter on transposition, which is used as a reference by all Belgian administrations.

### *Monitoring transposition*

The Minister for Foreign Affairs and the State Secretary for European Affairs have a general competence for reporting to the federal Council of Ministers and to the *Concertation Committee* on transposition. The other ministers have individual competences for transposition of the directives in their area of work. Directives to be transposed are put on the agenda of the Council of Ministers, twice every two month and on the agenda of the *Concertation Committee* every month. It is up to the competent federal ministers to report once every two months to the Council of Ministers on the state of affairs concerning the transposition process of individual directives. It is up to the Minister for Foreign Affairs and the State Secretary for European Affairs to report twice every two months to the federal Ministerial Council and once every month to the *Concertation Committee* on the general state of affairs. The Minister for Foreign Affairs and the State Secretary for European Affairs reports to the federal Ministerial Council and the *Concertation Committee* include:

- identification of directives that are difficult to transpose and could result in delays;
- list of published directives with the allocation of responsibilities according to competences (within the federal administration and among federated entities);
- progress in transposition of internal market directives with respect to the European Commission scoreboard;
- use of *Eurtransbel* databank (operational since July 2005); and
- progress in transposition of complex directives that are not related to the internal market and infraction cases.

In addition, regions and communities have set up their own process for monitoring transposition within their competence. The Walloon and Flemish regions have edited their own guidelines for the transposition of EU directives. The Region of Brussels Capital is working in order to edit its own guidelines.

Correlation tables (to check the provisions of directives with national law) are not systematically used (it depends on the responsible government). They tend to remain internal documents within each government as an aid to transposition and are notified to the Commission when a directive specifically requires it.

### *Issues with transposition*

The OECD peer review team heard that there was a “serious need” for further training and awareness raising with regard to transposition. There was a particular issue over the need to raise awareness of deadlines so as to avoid a last minute rush. Consultation (either internal or external) may be carried out too late to have an effective influence on transposition. The team also heard that the EU Services Directive was an important opportunity to leverage change, but the tight deadline set for transposition meant that it was hard to take advantage of this opportunity. Co-operation agreements could be used to greater effect in this regard (as well as for other directives requiring inter-government

co-operation). Transposition of this directive was a particular issue for local governments as it required that they screen all local regulations. This was both an opportunity for a “good clean up” as well as a huge task.

Belgium’s federal structure can generate challenges for transposition, leading to delays. Some directives cover policies and issues that engage the competences of more than one authority. This may complicate the allocation of responsibilities and can take time to sort out. In addition, when different entities are involved in transposition, they all need to complete the process before it can be “closed”, and this may require that draft bills are enacted by each relevant parliament. Another source of delay can stem from collective agreements. Transposition of directives relating to an issue covered by a collective agreement may take time as it requires that the social partners first modify the agreement and then that the agreement be given force of law by a royal order. The OECD peer review team also heard that issues may arise from the fact that negotiation and transposition are often carried out by different people (negotiations are often carried out by the ministerial cabinets; transposition by the administration).

A safeguard mechanism may be triggered once a judgement on infringement has been released, which allows the federal state to take over if transposition has not been carried out by a region or community. This is an exception, albeit so far unused, to the equal footing relationship between the federal state and the federated entities.

The transposition issue is reflected in the EU Internal Market Scoreboard. Belgium has reached its aim. At the end of 2009, it had reduced its transposition deficit rate to 0.9% in terms of Internal Market Directives.<sup>6</sup> This is a considerable improvement over the last decade (at the end of 1997 the transposition deficit reached 8.5%) and represents the best result ever achieved by Belgium.

The OECD review did not raise specific issues of goldplating. It is to be mentioned that the Council of Ministers of 11 February 2004 prohibited goldplating, in order to avoid late transposition. In practice, unless the goldplating causes no late transposition, goldplating is tolerated. Some interviewees pointed out that in many cases governments have little room for manoeuvre (especially for “technical” directives), which reduces the scope for differences between the legal texts used for transposition across the country.

### ***Interface with Better Regulation policies at EU level***

The OECD peer review team were told that the Services Directive raised issues as well as opportunities. It would be helpful if the Commission were to devote some effort at promoting consultation and co-operation between member states on its application. The Directive set unrealistic deadlines for transposition, as it takes time to put the necessary provisions into place, and the lack of time for this could result in a missed opportunity to make real progress in Better Regulation. The different terminologies used in the Directive were a complicating factor. Another more general issue raised was the quality of draft EU regulations, which was qualified as suboptimal, posing issues for transposition downstream. Finally, it was pointed out that the EU required transposition of directives even where these had no practical application whatsoever (the case was cited of coal mines in relation to Brussels Capital Region, which has none; even so, transposition was still required). Belgium’s Presidency of the EU in the second half of 2010 is of course an opportunity to play a stronger role in relation to advancing the EU Better Regulation agenda.



## Notes

1. Not to be confused with the generic use of the term “regulation” for this project.
2. When the federal government considers starting negotiations in view of signing a treaty which is not on an issue within its exclusive competence, it has to inform immediately the Inter-ministerial Conference of Foreign Policy. If communities and regions do not intend to participate in the negotiations, they have to inform the Inter-ministerial Conference. In such cases they have the option of signing or not signing the treaty, but cannot amend the text. Communities and regions can ask the federal government to open negotiations on a given subject through the Inter-ministerial Conference. Mixed treaties are signed by the federal Minister of Foreign Affairs and by the minister designated by the government of the communities and regions involved.
3. Co-operation agreement of 8 March 1994 between the federal state, the communities and the regions relating to modalities for concluding mixed treaties.
4. G. DIERICKX, P. BURSENS, S. HELSEN, *Omzetting, toepassing en toepassingscontrole van het Europees beleid in België. Naar een structurele toepassing van de wijze waarop België zijn Europese verplichtingen nakomt*, Academia Press, 2003, 315 pp.
5. This has been done by a series of decisions: decisions of the Council of Ministers of 11 February 2004 and of 1 October 2004, decision of the Concertation Committee of 9 November 2004, and decisions of the Council of Ministers of 22 July 2008 and 12 September 2008.
6. See Internal Market Scoreboard n°20: [http://ec.europa.eu/internal\\_market/score/index\\_en.htm](http://ec.europa.eu/internal_market/score/index_en.htm).



## Chapter 8

### The interface between subnational and national levels of government

Multilevel regulatory governance - that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Belgium is a federal state with a very specific institutional framework, since the federal level and federated entities are on an equal standing. It is thus inappropriate to refer to regions and communities as “subnational levels” of government. “National” levels of government include the federal government, regions and communities. Subnational levels of government include provinces and municipalities (*communes*). This chapter will consider the interface between “national” levels of government and local levels of government. Relations between federal authorities, communities and regions are considered in Chapter 2.

## Assessment and recommendations

*The local government landscape is large and founded on the principle of balanced powers, but significant in terms of direct interaction with business and citizens.* There are 589 municipalities, 589 welfare public centres (CPAS), most of them small. Local governments are important actors in the areas of civil and social rights, the environment, mobility, and building regulations as well as permits and planning, and play a major role in the enforcement of higher level regulations. Both federal and regional governments are a key player, with provinces and municipalities under their tutelage. It was suggested that supervision might be simplified, and that account should be taken of difference in size between municipalities.

*There is a well established network of consultation between the national and local governments, but some issues need attention.* The national governments (federal, regions and communities) consult local governments in the development of regulations through the advisory councils, in which the provinces and municipalities are represented. The regional governments have established specific bodies to interact with local governments. Nevertheless, local authorities have raised concerns about the burdens imposed by higher levels of government. The OECD peer review team heard specific concerns about unfunded mandates and the administrative burdens generated by higher-level regulations. Some initiatives have been taken to address these concerns, for example, an initiative of the Flemish government to reduce administrative burdens on local governments. Another issue raised was the need to put more effort into sharing databases and data re use between levels of government.

*Local governments have started to participate in Better Regulation initiatives of higher authorities as well taking some steps of their own.* The Flemish government has called on its municipalities to take part in its administrative simplification policy. Various initiatives have recently been developed by municipalities themselves aimed at making municipalities “simple” and to promote a more dynamic environment for entrepreneurs. The EU services directive is proving a useful lever of change as regards one-stop shops.

## Background

### *General context*

#### *Structure of local government in Belgium*

Local governments include ten provinces (five Flemish provinces and five Walloon provinces), and 589 municipalities (“*communes*”). Most municipalities are small (an average size of 18 000 inhabitants, one third of municipalities with less than 10 000 inhabitants, four with more than 150 000 inhabitants). The territory of Brussels-Capital

Region, which covers 19 municipalities, falls outside the scope of the division of the country into provinces.

Provinces and municipalities are autonomous. Municipalities are led by a *burgmaster* (*bourgmestre*) elected by universal suffrage by the inhabitants of the municipality. The *burgmaster* exercises executive power with a college of aldermen. The provinces are led by a governor.

The federal and regional levels have a tutelage power as regards their own competences (as specified in the special law of 8 August 1980), with the exception of the 9 German-speaking municipalities for which the German-Speaking Community is the oversight body. Regions have delegated part of their tutelage over municipalities to provinces (this now forms part of the provinces' mandatory missions). There is some direct tutelage by the federal state and the communities, limited to fields for which the communities and the federal authority have competences. For example, a provincial school will be supervised by the relevant community. The regions cannot impede the federal state and communities from delegating missions to local governments within their areas of competences. The federal state retains a number of competences in this respect.<sup>1</sup>

There are different types of oversight: (i) *ex ante* oversight (advice, approval, authorisation); (ii) *ex post* cancellation and suspension of a decision; and (iii) coercive oversight (where the province or municipality fails to fulfill its legal obligations, after being formally notified, a special commissioner takes automatic measures). The exercise of supervision has gradually become more flexible and simple. In most cases administrative decisions of provinces and municipalities no longer need to be submitted for approval in advance. They are included on a general list which is sent to the supervisory authority (either provincial governor or the competent minister). This authority can afterwards take action against these decisions through suspension or annulment.

The *Lambermont* Agreement and the ensuing Special Law of 13 July 2001, devolved the organisation of provinces and municipalities to the regions. These are now defined in regional decrees or ordinances. Regions are competent for defining the composition, competencies, operation and funding of local governments as well as tutelage and statutes of provincial and local employees. Their competences with respect to municipalities include agglomerations and inter-municipal structures. Regions also have the power to create new municipalities or merge municipalities.

The representation of provinces and municipalities is mostly organised at the regional level. Belgium now has two associations of provinces and three associations of municipalities.

### *Powers and responsibilities of provinces and municipalities*

The local authorities are traditionally services “of proximity to the citizen”. Citizens address themselves to their municipality to declare a birth, death or marriage, for identity documents, for pension benefit requests, and certain benefits such as handicap benefits, police records, building permits etc (this list is not exhaustive).

These fall into two categories:

*Mandatory missions.* Higher authorities (communities, regions and the federal state) delegate a number of strictly defined missions to local governments. Provinces have mandatory missions with respect to security and law order (for example, co-ordination of rescue services case of large-scale catastrophe), and tutelage over municipalities in some areas. The mandatory missions of municipalities include maintaining law and order, birth

and death registries, and municipal roads, organising and co-funding welfare public centres (*Centre public d'action sociale, Centrum voor Maatschappelijk Welsijn*), organisation of primary education: The mayor is responsible for enforcing laws, decrees, royal and government orders, as well as provincial and municipal regulations (see Chapter 6). When the mayor or the alderman (Deputy Mayor) execute the decisions that come from a higher level, they are delegated by the higher authority to do so. For example, the municipality keeps the population register of inhabitants of the town (since 1792). It also issues identification cards under the supervision under the guardianship of the National Register where a central file is kept. All data on citizens is stored in this file which is updated and available to municipalities and to all institutions and to individuals who have authorised access. The issuance of passports is carried out on behalf of the Foreign Affairs office (SPF) and civil status acts are issued on behalf of the Department of Justice.

The mandatory missions of provinces and municipalities include responsibilities for implementing and/or enforcing regulations and policies defined by a higher authority. Higher regional authorities also promote some initiatives at the local level, for example, by co-funding them (such as works in the field of environment, sport infrastructure, after school facilities).

*Optional missions.* Local governments have regulatory powers in areas that are exclusively of provincial /municipal interest. In some of these areas, general conditions are set by the federal, community or regional legislator. In this case, local governments have room to manoeuvre in adapting the local policy (this is, for example, the case in territorial planning). The College of mayor and aldermen (Deputy Mayors) has regulatory powers over building permits, implantation of corporate sites, the roads, the opening hours of convenience stores (night shops), etc. in compliance with federal and regional standards.

Provinces' optional missions mainly relate to education, and social and cultural infrastructure. Municipalities may develop their own initiatives in any area of general interest to the local population (for example, organisation of pre-primary schools, housing, tourism and culture).

### *Funding of provinces and municipalities*

Municipalities, welfare public centres (CPAS), local policy, and provinces are funded by taxes, transfers and subsidies from higher authorities. Developments over the last 30 years show an increase in resources from their own tax and a stagnation of allocations. In Wallonia, local taxes account for about 40% of the revenues of municipalities. A large part of these taxes (around 80%) are additions to the personal income tax and VAT levied by the federal state (shared taxes). The “municipality fund”, a non-affected transfer from the region, accounts for around 20% of the municipality revenues.

### *Co-ordination mechanisms*

Federal authorities, communities and regions consult local governments in the process of making regulations through the established advisory councils (see Chapter 3 on the role of advisory councils). The provincial and municipal associations are represented in a number of these councils (at federal, community and regional levels). At the federal level, the municipalities are consulted on relevant regulatory developments. They may also be invited to the user committees for public services in charge of the management of data banks. Regions have established specific bodies to interact with local governments. The Walloon Region has established the High Council of Cities, Municipalities and Provinces for conducting formal and informal consultation with local governments. It has also set up a

portal dedicated to local powers<sup>2</sup> to facilitate interaction with local governments (the site gives access to a large range of information relating to provinces and communities as well as to different tools, such as forms to obtain regional subsidies). In Flanders, the Ministry for Administrative Affairs has set up an administrative unit in charge of relations with local government, the Agency for Domestic Governance. The main objective of this agency is to ensure coherent implementation of policies such as cities policy, diversity policy and integration policy.<sup>3</sup>

Local authorities have raised concerns about the burdens imposed by higher levels of government. The association of Walloon municipalities has, for example, highlighted the need for the federal authorities, communities and regions to assess and evaluate the financial impact on local governments when making new regulations.<sup>4</sup> In response to similar concerns of Flemish local governments, the Flemish government has started a project to reduce administrative burdens on local governments. The project focuses on information obligations in three areas – cities policy, youth work and mobility. In 2006, the Public Management Institute was requested to develop a test for drawing up profiles of information obligations imposed on local authorities. It conducted a full scan of obligations in the three selected areas, and less detailed quick scan in other areas. The screening was mostly qualitative, with some quantification of a number of obligations. Based on the conclusions of the research, the DWM measured the impact of seven plans of the Flemish government on provinces and municipalities, and identified which of the remaining other 16 plans generated administrative burdens on local governments. It formulated proposals for simplification. This initiative is still work in progress.

### ***Better Regulation policies deployed at local level***

Local governments have taken initiatives for Better Regulations policies, either as result of initiatives of higher authorities to involve them in their administrative simplification policies, or as result of their own initiatives.

In 2006, in the aftermath of local elections, the federal Secretary of State for Administrative Simplification called on the new municipal councils, to turn their municipality into a “simple municipality”. The federal government issued ten tips for a user-friendly and simple municipality. One of these tips suggested the appointment of a *Kafka*-alderman. It was implemented by 56 municipal councils. From time to time, the federal authorities and the municipalities take stock of developments in simplification projects and plans.

Since 2005, the Flemish and Walloon governments have called on municipalities to participate in the administrative simplification policy. The Flemish authorities launched a call for simplification projects in 2005, following a conference entitled “Dialogue for simplification” to start the debate on administrative simplification with municipalities. Twenty-one municipalities submitted a total of 33 projects, eight of which the Flemish government selected for the “simplest municipality” award. The Flemish government issued a second “call for project” in 2007. In parallel to the “calls for project”, the government has provided support to municipalities through publication of guidance material and courses. This has included the publication of a guide for local authorities (four examples of simple regulation and 13 tips for simplification by local authorities) and a guide on form elaboration (based on the experience of the Flemish government).

Flemish provinces, which have not been involved in the call for “simplest municipality”, have taken a common initiative for administrative simplification within the framework of a project call for subsidies from the European Regional Development Fund

(ERDF). The project call aims at the creation of more dynamic entrepreneurship environment, including through improvement of the regulations for starting, expanding and taking over a business. Provinces have submitted a project for “administrative simplification and qualitative regulation at the provincial level”.

## Notes

1. As the head of the commune, the Mayor presides over meetings of the council and the college. He may also attend meetings of the PCSA (Public Committee for Social Assistance). The mayor is responsible for maintaining order, peace and security in his area. The mayor signs all municipal acts. He also acts as a registrar who issues birth, marriage and death certificates and keeps the records. He also acts as registrar, exercising jurisdiction for the establishment of notarial acts of acquisition for public purposes, and has the right to repossess abandoned buildings. The mayor may delegate some of his/her powers.
2. <http://pouvoirslocaux.wallonie.be>.
3. The specific tasks of the Agency includes preparation of administrative regulations concerning municipal and provincial authorities, distribution and management of funds (Municipal Fund, Provincial Fund, Cities Fund), organisation of elections, support to administrative supervision of municipal and provincial authorities, support in implementation of a range of policies involving provinces and/or municipalities (cities policy, diversity, cemeteries and funerals, integration). The Agency for Local Governance is also charged with developing a centre of expertise on municipalities and provinces.
4. See website of the Association of Walloon Municipalities [www.uvcw.be](http://www.uvcw.be). In 2007, the UVCW published a list of financial and administrative burdens imposed on municipalities including recommendations for remedy and remedy measures already taken.



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## Annex A: Competence distribution across Belgian authorities

	Federal authority	Flemish Region	Walloon Region	Brussels-Capital Region	Flemish Community	French Community	German-sp. Community	COCOF	COCOM	VGC	Provinces	Municipalities
Agriculture	✓	✓	✓	✓							✓	
Welfare ( <i>aide aux personnes</i> )	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓
Urban and territorial planning		✓	✓	✓								✓
Cemeteries and funerals		✓	✓	✓			✓					✓
Foreign trade	✓	✓	✓	✓								
Communications	✓	✓	✓	✓								
Development co-operation	✓	✓	✓	✓	✓	✓	✓					
<i>Cultes reconnus et laïcité</i>	✓	✓	✓	✓								
Culture					✓	✓	✓				✓	✓
Defence	✓											
Economy	✓	✓	✓	✓								
Use of languages	✓				✓	✓	✓					
Employment and labour	✓	✓	✓	✓			✓					
Energy	✓	✓	✓	✓								
Education	✓				✓	✓	✓				✓	✓
Environment	✓	✓	✓	✓								
<i>Etat civil</i>	✓											✓
Taxation ( <i>fiscalité</i> )	✓	✓	✓	✓							✓	✓
Professional training	✓		✓		✓	✓		✓				
Handicapped	✓		✓		✓		✓	✓	✓			
Immigration	✓	✓	✓	✓								✓
Immigrant integration	✓		✓		✓		✓	✓				
Youth	✓				✓	✓	✓					
Justice	✓				✓	✓	✓	✓	✓			
Housing			✓	✓								✓
Media		✓		✓	✓	✓	✓					
Nationality	✓											
Family policy			✓		✓	✓	✓	✓	✓		✓	✓
Local powers	✓	✓	✓	✓			✓					
Scientific research	✓	✓	✓	✓	✓	✓	✓					
International relations	✓	✓	✓	✓	✓	✓	✓					
Health	✓		✓		✓	✓	✓	✓				
Security and law order	✓										✓	✓
Social security	✓											
Sports and leisure activities			✓		✓	✓	✓	✓			✓	✓
Tourism		✓	✓				✓	✓			✓	✓
Transport	✓	✓	✓	✓								
Public works		✓	✓	✓								✓
<i>Troisième âge</i>	✓		✓		✓		✓	✓	✓			



## Annex B: *Kafka* Test Template

### **TEST KAFKA**

Membre(s) du Gouvernement compétent(s) :	
Cellule stratégique, SPF, SPP, Agence :	
Domaine :	
Sujet de la réglementation:	
Personne à contacter :	
N° de tél. :	
Adresse e-mail :	
Version (jour/mois/année):	

1. *La proposition a-t-elle un impact sur les charges administratives pour les citoyens, les entreprises et/ou le secteur non marchand ?*

NON, car :

- le groupe cible n'est astreint à aucune charge administrative dans la matière visée par la proposition;

**Le test Kafka peut être terminé ici.**

- le groupe cible est astreint à des charges administratives dans la matière visée par la proposition mais cette proposition n'a aucun impact sur les charges administratives existantes.

**Veillez répondre à la question 3.2.**

OUI, il y a un impact sur les charges administratives.

**Veillez répondre à la question 2.**

2. *La proposition a-t-elle pour objectif ou conséquence de supprimer ou de réduire les charges administratives pour les citoyens, les entreprises et le secteur non marchand ?*

OUI Veillez décrire l'allègement des charges administratives (exemples : voir fil conducteur):

- Outre l'allègement de charges, la proposition ne comporte pas de charges administratives nouvelles ou complémentaires.

**Le test Kafka peut être terminé ici.**

- Outre l'allègement de charges, la proposition comporte des charges administratives nouvelles ou complémentaires.

- NON, la proposition n'a ni pour but ni pour conséquence d'alléger les charges administratives.

**Veillez répondre à la question 3.**

*3.1. Quelles sont les charges administratives nouvelles ou complémentaires impliquées par la proposition ?*

Décrivez les charges administratives nouvelles ou complémentaires à l'aide des rubriques suivantes :

**a. Groupe cible**

Indiquez au(x)quel(s) des trois groupes cibles la proposition a trait.

- Citoyens

description (voir fil conducteur)	
Nombre	

- Entreprises

description du type (voir fil conducteur)	
description du secteur (voir fil conducteur)	
Nombre	

- Non marchand

description (voir fil conducteur)	
Nombre	

**b. Description de la formalité administrative**

Veillez décrire brièvement la ou les formalité(s) ou obligation(s) administrative(s) nouvelles ou complémentaires (exemples : voir fil conducteur).

--

**c. Initiateur de l'accomplissement de la formalité administrative**

- Le groupe cible et/ou des tiers entreprennent eux-mêmes les démarches pour accomplir la formalité administrative.
- L'administration entreprend elle-même les premières démarches pour accomplir la formalité administrative.
- Celui qui prendra l'initiative n'est pas encore identifié dans la proposition.

**Questions ou remarques ? Consultez le fil conducteur ou contactez le service d'assistance du test Kafka : [testkafka@premier.fed.be](mailto:testkafka@premier.fed.be)** 2

Veillez décrire brièvement le processus d’accomplissement des formalités administratives (exemples : voir fil conducteur)

#### d. Périodicité

A quelle fréquence le groupe cible doit-il accomplir la formalité ou l’obligation administrative nouvelle ou complémentaire :

- chaque année
- chaque semestre
- chaque trimestre
- chaque mois
- une seule fois
- autre périodicité, précisez svp :
  
- La périodicité n’est pas encore définie dans la proposition.

#### e. Données demandées

*Des données sont-elles demandées au groupe cible concerné ?*

- Oui, lesquelles? (exemple: voir fil conducteur)

- Non.
- Pas encore défini dans la proposition.

*Des données sont-elles demandées via des bases de données ou réseaux existants ?*

- Oui, lesquelles ? (exemple : voir fil conducteur)

- Non.
- Pas encore défini dans la proposition.

*Un formulaire standard est-il utilisé pour demander les données ?*

- Oui, si disponible joignez-le en annexe au test Kafka.
- Non.
  
- L’utilisation d’un formulaire n’est pas encore prévue dans la proposition.

**Questions ou remarques ? Consultez le fil conducteur ou contactez le service d’assistance du test Kafka : [testkafka@premier.fed.be](mailto:testkafka@premier.fed.be)**

3

**f. Attestations, certificats ou autres pièces nécessaires**

Faut-il transmettre aux pouvoirs publics une attestation, un certificat ou une autre pièce ?

- Oui, liste des attestations requises :

- Non.
- Les attestations requises ne sont pas encore définies par la proposition.

**g. Mode de transfert d'information**

Comment la personne concernée peut-elle/doit-elle effectuer le transfert d'information aux pouvoirs publics (plusieurs réponses possibles) ?

- via internet
- transfert de fichiers
- e-mail
- fax
- téléphone
- lettre ordinaire
- lettre recommandée
- sur place
- autre moyen (lequel/lesquels ?):

- Le mode de transfert d'information n'est pas encore défini dans la proposition.

*3.2. Des mesures autres ont-elles été prises pour limiter les charges administratives pour les personnes concernées ?*

- Oui, décrivez-les (exemples : voir Fil conducteur):

- Non, car :

**Questions ou remarques ? Consultez le fil conducteur ou contactez le service d'assistance du test Kafka : [testkafka@premier.fed.be](mailto:testkafka@premier.fed.be)** 4



## Annex C: SDIA procedure: Form used for SDIA screening

### Identifiant

#### 1. Complétez les données d'identification ci-dessous.

Membre(s) du gouvernement  
compétent(s):  
Cellule politique, SPF, SPP,  
Ministère, Agence:  
Domaine politique:  
Objet de la réglementation ou  
mesure politique:  
Personne de contact:  
Tél. n°:  
Adresse e-mail:  
Version (jour/mois/année):

### La mesure politique proposée

#### 2. Qu'est-ce qui a motivé la mesure politique proposée?

*Indiquez aussi l'importance de la marge de manœuvre disponible permettant d'opérer certains choix politiques.*

#### 3. Quelle est la mesure politique proposée?

*Expliquez aussi les modalités d'exécution de la décision envisagée par les autorités.*

**4. Quels sont les groupes cibles sur lesquels la proposition a un impact. Si un impact touche les entreprises, veuillez préciser le secteur sur lequel se portera l'impact.**

**5. Quels sont les effets directs de la mesure politique proposée pour les groupes-cibles/secteurs?**

## Déroulement du screening EIDDD

6. Cochez les sources sur lesquelles repose l'évaluation des éventuels effets de la mesure politique proposée.

	dans une large mesure	dans une mesure restreinte	pas
Evaluation intuitive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Banques de données	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Etudes et analyses d'incidence antérieures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consultation d'experts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Autres	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Expliquez:</i>			

7. Cochez les instances qui ont collaboré à l'évaluation des éventuels effets de la mesure politique proposée.

*Plusieurs réponses sont possibles.*

- La cellule DD de votre administration
- Autres services de votre administration
- Cellules DD d'autres administrations pertinentes pour la mesure politique
- Autres services d'autres administrations pertinentes pour la mesure politique
- Helpdesk EIDDD
- Bureau fédéral du Plan
- Autorités régionales
- Instances internationales
- Groupes-cibles
- Autres experts

## Evaluation des effets pour le développement durable

### 8. Indiquez les effets économiques, sociaux et environnementaux attendus de la mesure politique proposée

Thème	N°	Indicateur	Impact à CT	Impact à LT	Impact spatial	Certitude de l'information
			++/+/0/-/--/±/?	++/+/0/-/--/±/?	Loc/rég/BE/UE/hors UE	+/-/±/-
<b>Incidences économiques</b>						
Investissements	E1	Investissements privés				
	E2	Investissements publics				
	E3	Innovation, recherche et développement				
Revenu réel/PIB	E4	Prix				
	E5	Nombre d'entreprises				
	E6	Niveau de production des entreprises				
Activité économique	E7	Frais marginaux				
	E8	Productivité				
	E9	Libre-échange				
	E10	Dynamique des PME				
<b>Incidences sociales</b>						
Egalité et participation	S1	Egalité des chances				
Pauvreté et solidarité	S2	Pauvreté et inégalité sociale				
Economie et emploi	S3	Protection des consommateurs				
	S4	Volume d'emploi/chômage				
	S5	Qualité du travail				
Santé et bien-être	S6	qualité des soins de santé				
	S7	Etat de santé général				
Logement	S8	Disponibilité de logement de qualité				
Enseignement	S9	Niveau général de formation				
	S10	Accès aux droits civil, politique et social				
<b>Incidences environnementales</b>						
Qualité de l'environnement	M1	Qualité de l'air				
	M2	Qualité de l'eau				
	M3	Qualité du sol				
	M4	Nuisances				
Matières premières et ressources	M5	Consommation d'énergie				
	M6	Consommation d'eau				
Biodiversité et nature	M7	Biodiversité				
Espace	M8	Utilisation de l'espace				

	M9	Gestion de l'eau				
	M10	Mobilité				
<b>Incidences sur l'autorité</b>						
Pouvoir publique	O1	Recettes de l'autorité				
	O2	Modifications dans les coûts de gestion de l'autorité				
	O3	Consommation publique/PIB				

9. Donnez au besoin des explications complémentaires relatives aux incidences économiques prévues.

10. Donnez au besoin des explications complémentaires relatives aux incidences sociales prévues.

11. Donnez au besoin des explications complémentaires relatives aux incidences environnementales prévues.

12. Donnez, si nécessaire, d'autres éclairissements sur les effets potentiels envers l'autorité.

### **Motivation de l'exemption**

13. Quelles sont les principales considérations permettant de conclure que la mesure politique proposée n'aura pas d'incidences économiques majeures ?

14. Quelles sont les principales considérations permettant de conclure que la mesure politique proposée n'aura pas d'incidences sociales majeures ?

15. Quelles sont les principales considérations permettant de conclure que la mesure politique proposée n'aura pas d'incidences environnementales majeures ?

**16 Quelles sont les principales considérations permettant de conclure que la mesure politique proposée n'aura pas d'effets majeurs sur l'autorité ?**

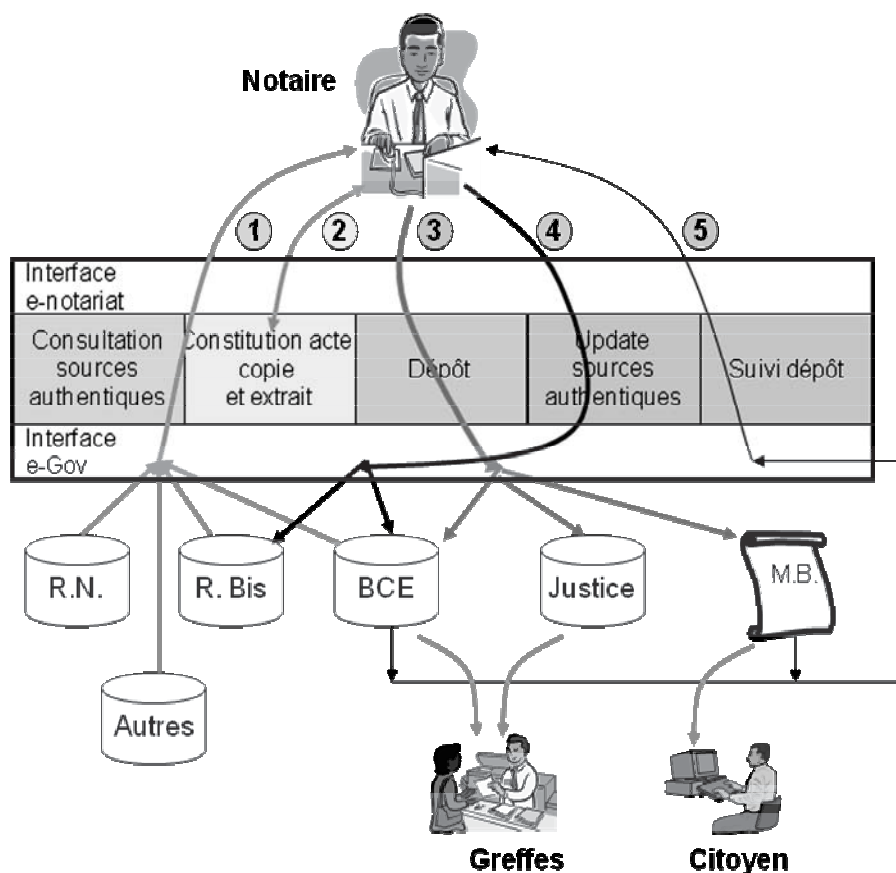
**17. Quelles mesures d'accompagnement sont proposées avec la mesure politique afin de limiter les effets indésirables et de renforcer les effets désirés ?**



## Annex D: E-depot

The “e-depot” system, which allows transactions via a notary to be processed electronically, was implemented in March 2007. The transformation of a paper-based process into an electronic process has reduced the time needed for completing the formalities for registering the creation of a company, from up to 56 days in 2004 to 3 days. Several minutes after the deposit, the notary receives the new company registration number which can then be electronically activated by the starting entrepreneur in any of the ten accredited enterprise offices in the country, and the new company can commence operations.

This initiative was a co-operative effort between the Royal Federation of Belgian Notaries, the Administrative Simplification Agency, *FEDICT* (the federal ICT agency), the Home Office (responsible for the civil register), the Ministry of Economy (in charge of the Belgian Public Crossroads Database of Enterprises) and the Ministry of Justice (responsible for both the Belgian Law Gazette in which company statutes are published and for the clerk of the court).



For more, see [www.simplification.fgov.be/showpage.php?iPageID=3622&sLangCode=FR](http://www.simplification.fgov.be/showpage.php?iPageID=3622&sLangCode=FR)





## **Annex E: Policy statement of the Flemish Government 2009-14 – Administrative Affairs**

Working on a Flemish public administration which combines efficiency and effectiveness with a well-performing and high-quality service is more than ever a priority. This poses a huge challenge for the horizontal policy areas, and most certainly for the administrative affairs policy area.

I intend to shape my policy on the basis of 10 strategic objectives. A number of key concepts serve as connecting threads throughout this policy: efficiency and effectiveness, market economy reflexes, quality work, good governance and value-driven management, co-operation and openness, sustainability, burden reduction, optimal implementation of Flemish competences and an approach which extends beyond policy areas and levels of government.

### ***With ICT and e-Government towards integrated solutions***

Through the ICT and e-Government policy I wish to give the Flemish administration and local authorities the support they need to develop into vigorous organisations. My goal is to offer joint ICT services that guarantee efficiency, high-quality performance, integrated work methods, reliability and sustainability. The development of ICT reference architecture for each of the authorities in Flanders and the use of authentic sources should contribute to substantial burden reductions. This will allow other policy areas and local authorities to better focus on their core tasks.

### ***Towards customer-oriented policy support instruments for administrative simplification, high-quality regulation, and process and information management***

I will continue to focus fully on administrative simplification with a view to actually reducing burdens for citizens, companies, organisations and administrations. Also, when new regulations are drawn up, the impact thereof must be monitored. To this end the regulatory impact assessment (RIA) will be transformed into a more pragmatic and effective instrument and European regulations will be proactively monitored.

Our goal will be to optimise cross-entity processes from the customer's perspective. Appropriate measures in this respect may be to reduce the number of levels of government involved to a maximum of two as well as to create a one-stop shop within the framework of the European Services Directive.

The efficiency of an authority stands or falls with the management and quality of its information. I intend to organise information sources and flows as optimally as possible in order to allow the administration to easily share, gather, understand, consult and publish data.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16  
PRINTED IN FRANCE  
(42 2010 23 1 P) ISBN 978-92-64-08706-4 – No. 57447 2010

## Better Regulation in Europe

# BELGIUM

The importance of effective regulation has never been so clear as it is today, in the wake of the worst economic downturn since the Great Depression. But how exactly can Better Regulation policy improve countries' economic and social welfare prospects, underpin sustained growth and strengthen their resilience? What, in fact, is effective regulation? What should be the shape and direction of Better Regulation policy over the next decade? To respond to these questions, the OECD has launched, in partnership with the European Commission, a major project examining Better Regulation developments in 15 OECD countries in the EU, including Belgium. Each report maps and analyses the core issues which together make up effective regulatory management, laying down a framework of what should be driving regulatory policy and reform in the future.

Issues examined include:

- Strategy and policies for improving regulatory management.
- Institutional capacities for effective regulation and the broader policy making context.
- Transparency and processes for effective public consultation and communication.
- Processes for the development of new regulations, including impact assessment, and for the management of the regulatory stock, including administrative burdens.
- Compliance rates, enforcement policy and appeal processes.
- The multilevel dimension: interface between different levels of government and interface between national processes and those of the EU.

The participating countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

The full text of this book is available on line via this link:

[www.sourceoecd.org/governance/9789264087064](http://www.sourceoecd.org/governance/9789264087064)

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ISSN 2079-035X  
ISBN 978-92-64-08706-4  
42 2010 23 1 P 9

