

**REGULATORY MANAGEMENT AND ADMINISTRATIVE SIMPLIFICATION IN  
BELGIUM AND FLANDERS**

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## **Voorwoord van de Kenniscel Wetsmatiging**

Op 25 juli 2000 besliste de Vlaamse regering om de vereenvoudiging en evaluatie van de regelgeving in Vlaanderen voortaan op integrale, systematische en structurele wijze aan te pakken. Dat beleid noemen we reguleringsmanagement.

De voorbije jaren heeft de Kenniscel Wetsmatiging een hele reeks initiatieven genomen om het reguleringsmanagement in Vlaanderen uit te bouwen. Die omvatten zowel concrete projecten als structurele maatregelen. Ze worden vastgelegd door de Vlaamse regering in jaarlijkse actieplannen en voortgangsrapporten reguleringsmanagement.

De komende jaren zal het reguleringsmanagement in Vlaanderen geleidelijk verder worden uitgebouwd. Het is de ambitie van de Kenniscel Wetsmatiging om dat te doen in overeenstemming met de hoogste internationale standaarden en beste praktijken.

Daarom heeft de Kenniscel het initiatief genomen om een strategische doorlichting te laten uitvoeren van het Vlaams reguleringsmanagement zoals het vandaag in de steigers staat. Het federale niveau heeft zich daarbij aangesloten, waardoor de doorlichting betrekking kon hebben op zowel het federale als het Vlaamse bestuursniveau en op de dwarsverbanden tussen beide.

De doorlichting is gebeurd door twee internationaal gerenommeerde experten inzake reguleringsmanagement, met name Scott Jacobs en Cesar Cordova-Novion van Jacobs&Associates. Zij hebben vanuit de OESO het reguleringsmanagement conceptueel geïntroduceerd en ontwikkeld, en hebben de invloedrijke “country reviews of regulatory practices” uitgevoerd in de meeste lidstaten van de OESO.

Voor u ligt het eindverslag van die doorlichting. Het is het resultaat van enerzijds een hele reeks interviews die Jacobs&Associates heeft afgenomen tussen februari 2004 en mei 2004 bij ambtenaren, academici, middenveldorganisaties, doelgroepen, rechters en politici, zowel op federaal als op Vlaams niveau, en anderzijds van de kennis en ervaring van Jacobs& Associates met het reguleringsmanagement in meer dan 60 landen.

Uit de doorlichting blijkt dat Vlaanderen op de juiste weg is. In minder dan vier jaar tijd is Vlaanderen erin geslaagd om voor reguleringsmanagement een beleid en een programma te ontwikkelen dat aansluit bij de meest vooruitstrevende landen. Maar de doorlichting heeft ook zwakke punten blootgelegd. Voor een deel worden die intussen al opgenomen door de Kenniscel Wetsmatiging, maar andere aanbevelingen vergen een breed politiek draagvlak en politieke ondersteuning vooraleer ze geïmplementeerd kunnen worden.

In elk geval is de Kenniscel ervan overtuigd dat dit rapport, op een moment dat een nieuwe legislatuur in aantocht is, een zeer waardevolle bijdrage vormt voor het politiek, ambtelijk en maatschappelijk debat over de verdere uitbouw van het reguleringsmanagement en de verbetering van de kwaliteit van onze regelgeving.

De Kenniscel wenst dan ook, mede in naam van Scott Jacobs en Cesar Cordova-Novion, iedereen die heeft bijgedragen tot dit eindrapport te bedanken voor de waardevolle input en discussies.

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## **REGULATORY MANAGEMENT AND ADMINISTRATIVE SIMPLIFICATION IN BELGIUM AND FLANDERS**

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### ***EXECUTIVE SUMMARY***

The quality of the regulatory and administrative environment for business is becoming even more important as a driver of competitiveness in the European Single Market under the Lisbon Agenda and in integrating global markets. Improving administrative and regulatory environments at federal and regional levels in Belgium and Flanders is moving in the right direction, but has much to accomplish. Comparative rankings from 2000 to 2003 show that Belgium firms confront challenges that are persisting or are even increasing relative to other European countries. More troubling, entrepreneurship remains at a very low level in Belgium, reducing the potential for future growth, although 2003 marked a slight reversal of the declining trend of recent years.

Section I discusses how, in the context of governance reform, Belgium's institutions, processes and tools have been reshaped, opening the way to further reforms to improve the business environment. The concepts and tools of regulatory quality management that were developed for the OECD, and that are now widely used as international benchmarks of good regulatory governance, will be useful guidelines for Belgium and Flanders as reform proceeds.

Section II assesses the efforts of the Federal government to fight against the trends of declining relative quality by simplifying regulation and administrative procedures that impact on citizens and the business sector. Section III analyses Flanders' attempts to go beyond simplification into deeper reforms of its rule-making system to build capacities for regulatory quality. Section IV focuses on a key aspect of good economic governance: public management across levels of governments. Section V recommends further steps for both Belgium and Flanders.

In the past 30 years, Belgium has devoted enormous energy to creating a working federation. This pragmatic enterprise is an example for nation-states looking to resolve the demands of autonomy and self-government. Now that this transformation of the state has been largely achieved, a new wave of reforms is required focused on building governance capacities. As in other parts of Europe, citizens and businesses will continue to demand rigorous social protections such as health, safety and environmental quality, and at the same time an attractive environment for economic growth supported by a more responsive administration and better regulation.

The new phase of reform will require renewed engagement by the political sphere. These reforms will take time. Some will impose transition costs and be opposed by interests who benefit from current practices. Without political engagement, the reforms already launched and yet to come will not produce the concrete benefits that are expected and needed to sustain, broaden and deepen the reforms. Investments in reform will improve governance only if reforms proceed steadily, if more attention is paid to implementation, monitoring and results, and if politicians are able to sustain support in the face of continued opposition.

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### ***Strengths, weaknesses and policy options for consideration by the Federal government***

Belgium's federal government has important strengths supporting its administrative simplification efforts. Since 1998, political consensus on promoting the policy was maintained after each election. This has permitted the development of an adequate institutional framework to drive the reforms, with a Steering Committee at its core. Importantly, the *Agence pour la Simplification Administrative* (ASA) has developed capacities to implement more effective simplification solutions and tools. The credibility of the system is further strengthened by an independent biennial survey on administrative costs facing businesses.

Yet there are structural weaknesses that inhibit progress. The federal policy is still driven by a piecemeal and bottom-up approach dominated by those with the most to lose from simplification. Too much emphasis on the interests of existing businesses reduces the social and economic benefits of pro-market and pro-competition reforms. Institutionally, the division of mandates and work between ASA, FEDICT and, to a certain degree, P&O is unclear, generating wasteful friction and reducing results. Overall, the federal government has only begun to appreciate that its economic goals require more systematic and concerted action to simplify administration and boost regulatory quality. These actions must go beyond simplification into capacities for good decision-making and implementation. The next important front is substantial improvement in the quality of Belgian regulation to achieve public policies in a market-friendly manner.

The comparative situation of the Belgian business climate seems to be about mid-range in Europe today, and this standing has not improved, particularly for SMEs. To accelerate change and to achieve more benefits from the investments in reform being made, this report recommends the federal government to:

- *Redesign institutional arrangements between ASA, FEDICT and P&O to improve coordination and clarify roles;*
- *Set up a joint reform fund for ASA, FEDICT and P&O to support longer term and structural initiatives such as retraining of civil servants, paying for transition costs in implementing back office reforms and boosting quantitative evaluations;*
- *Reform ASA mandates to permit it to function as an oversight and coordination body;*
- *Transform the Kafka Clause into a full-fledged regulatory impact analysis system;*
- *Strengthen ASA's multidisciplinary skills;*
- *Broaden consultation and communication processes to a wider range of social and economic interests.*

### ***Strengths, weaknesses and policy options for consideration for Flanders***

Flanders has moved boldly and quickly in addressing the limitations of an administrative simplification policy. In less than four years, the government has established a policy and a program of regulatory management comparable to those existing in leading countries. This has been achieved thanks to sustained support at the highest level of the Flemish government and a well-formulated policy and institution (KWM), which is able to develop and adopt good practice instruments. A major achievement was enacted by the government of its eight Principles for Good Regulation. Flanders joins other leading countries in setting up clear benchmarks re-defining regulatory quality to match current social and economic needs. In the past two years, the KWM has also developed valuable tools such as the burden measurement tool, the integration of implementation of the regulatory agenda into the performance

evaluations of high officials, the checklist for better forms, the ‘compensation rule’ and the upcoming RIA system.

However, there is more planning than action. The focus now must be on implementation to produce results with substantial market effects. Future progress depends on sustained implementation, enforcement of current policy stances and on enlisting the support of a broader range of interests. Important weaknesses include a rule-making process that is lengthy and yet unable to ensure a high quality legal framework. Public consultation is not working properly, neither as an accountability function of the regulatory process under a rule of law system, nor as a mechanism to investigate potential compliance costs and improve the design of regulation. A mismatch seems to exist between the ambitious agenda and the resources of KWM. KWM seems to alternate between structural reforms with huge political and administrative impacts and ‘quick wins’ to satisfy political constituencies. A fourth weakness relates to the disconnection between the regulatory reform initiatives and the new administrative structures under the BBB project. Last, the new regulatory policy has been unable to consolidate a political constituency for reform, instead relying exclusively on business interests to sustain it.

The report recommends that Flanders:

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

### ***Strengths, weaknesses and policy options for consideration for managing relationships between the levels of government***

Three decades of huge political investment have created a federation with many exemplary features to resolve cultural, linguistic and economic differences without dissolving into microstates. Belgium is now improving its institutions and processes through a new generation of reforms focused on enhancing and simplifying the machinery of government. Upgrading the quality of regulation is part of that larger picture. Regional diversity is already producing significant innovations. For instance, Flanders is trying approaches to measure regulatory burdens that are different than experiments in the two other regions.

But federalization also has costs and risks to the quality of regulatory and administrative practices. Belgium as a whole and as a set of regions is suffering unavoidable costs from the multiplication of

authorities. Different layers of regulatory authorities raise the cost of the regulatory infrastructure and of government as a whole. The need for three parallel regulatory structures means that taxpayers pay for salaries, overheads and other management costs needed to design, pass, enforce and repeal administrative simplification and regulatory policies without the corresponding benefits of regulatory economies of scale.

The report recommends that, to improve the relationship between levels of government, the responsible governments:

- *Continue implementing the December 2003 agreement with an action-oriented agenda and stronger governance structures;*
- *Improve transparency across Belgium by extending consultation requirements and tools;*
- *Explore possibilities to harness regulatory economies of scale by sharing substantive regulatory and administrative powers;*
- *Enhance the federal and regional coordinated approach to preparing draft EU regulation.*

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## **I. THE CHANGING ADMINISTRATIVE AND REGULATORY ENVIRONMENTS IN BELGIUM AND FLANDERS**

1. Since the mid-1970s, in a series of state reforms, Belgium has experienced a profound transformation of its governance structures that continues today. During this historic reform, Belgium was gradually transformed from a unitary into a decentralized federal state. As the federal and regional governments developed their new competences, they launched a series of public administration programs that include administrative simplification and regulatory management initiatives. The public administration, long considered a pillar of the previous regime, was recreated through a constellation of public administrations in the regions, communities and municipalities. Within this context of governance reform, Belgium's institutions, processes and tools have been reshaped and recreated.

2. This report focuses on the efforts to simplify administrative procedures at federal level and increase the quality of regulatory functions in Flanders, the results of reforms, and the agenda for the future to enable these governments to converge with international good practices (see Box 1). Regulatory and administrative quality is crucial for economic performance and government effectiveness in improving the quality of life of citizens. The quality of the regulatory and administrative environment for business is becoming even more important as a driver of competitiveness in the European Single Market, and in global markets.

### **Box 1. Study scope, scale and methods of work**

It is important to note that the investigation dedicated to Flanders differs in scope and scale from the one focusing on the federal government. For Flanders, the research concentrated on regulatory policies and governance; that is, the capacities and systemic relationships existing between the regional government and the other stakeholders to produce and maintain a regulatory environment of high quality. As for the Federal governments, the work centered on ways and means used by the public administration to minimize the burdens of requiring information on businesses and citizens. Accordingly, the subject, the information gathering techniques and field work varied in range as well as in intensity for the two jurisdictions.

3. This report is based on the concepts and tools of regulatory quality management that were developed by the authors for the OECD<sup>2</sup> and that are now widely used as international benchmarks of good regulatory governance. Regulatory quality management is a dynamic process that is integral to the role of government and must be pursued on a permanent basis. The concept of regulatory governance is grounded in the wider theme of democratic governance. That is, the tasks involved in exercising regulatory functions go beyond the design and implementation of instruments, or their co-ordination, and embrace wider issues of democratic governance, such as transparency, accountability, efficiency, adaptability and coherence.<sup>3</sup> These issues are at the heart of the public administration reforms undertaken in Flanders and by the federal government, and hence this report closely examines how public administration reform and regulatory quality management can support each other through better coordination and integration.

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<sup>2</sup> Cesar Cordova-Novion was an analyst and Deputy Director of the OECD Program on Regulatory Reform from 1997-2004. Scott Jacobs was the founder and Head of the OECD Program from 1991 to 2001.

<sup>3</sup> OECD (2002) *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris.



#### A. The federalization process in Belgium

4. Belgium's regulatory and administrative reforms must be understood in the context of the structure of the federal state. Devolution of regulatory powers to subnational authorities had immense impacts on the form and capacities of the public sector. It has required, for example, that major administrative functions of the national government be reinvented, such as combining service delivery and new policy co-ordination functions to guarantee basic conditions of equality for all Belgians. The risk for regulatory and administrative quality was the devolution would increase administrative costs and overlap, and fragment the business environment. This would, in turn, boost business costs and risks, and make it harder for Belgian businesses to grow and stay competitive. The need for administrative efficiency, cost-containment and coordination increased as devolution advanced.

5. Belgium's entire legal and administrative framework has been remolded by its remarkable experience in devolving power. Devolution has taken place through a long sequence of steps and phases that began in 1970 and were followed in subsequent reforms in 1980, 1988, 1993 and 2001. Each reform gave increasing political autonomy to Flanders, Wallonia and Brussels-Capital.<sup>4</sup> Step by step, Belgium was transformed into a federal state (See Box 2).<sup>5</sup> Today, Belgium is divided into three communities and three regions. Each region is further divided into provinces and municipalities. With the decision by Flanders to de facto merge its political institutions for the region and community,<sup>6</sup> Belgium is governed by six governments (one federal government, two regional governments, two community governments and one government for the Flemish region and community).

6. Federal powers, though important, are considered residual. They include unique competencies in foreign affairs, defense, justice, taxation, social security, and police. Many important economic issues are still decided by the federal government such as commercial and competition law, and regulatory regimes governing network industries, except for significant aspects of energy and water supply.

7. A series of 'constitutional bodies' such as the Council of State, the general audit office (*Court des Comptes*), the Inspectorate of Finance and, importantly, the Court of Arbitrage oversee all levels of government.

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<sup>4</sup> This report does not deal with the current situation and efforts of the Wallonia and Brussels Capital region and of the French and German Speaking communities.

<sup>5</sup> The second reform of the state in 1980, created the parliaments and governments of the Flemish and the Walloon Region. The Brussels-Capital Region was granted these institutions only during the third reform of the State in 1988-89.

<sup>6</sup> Flanders region and community are not legally merged: the Flemish community contains parts of the Brussels territory whereas the Flemish region does not.

### **Box 2: Explaining the federalization of Belgium**

Flanders and Wallonia took different approaches to defining their states. Flanders was primarily motivated by strengthening the cultural autonomy for all Dutch-speakers in Belgium, including Dutch-speakers living in Brussels. This endeavor underpins the division of Belgium into three linguistic communities (including the German speaking one) The Walloons, on the other hand, stressed their desire to pursue independent social and economic policies in their region. The cultural aspects were secondary and thus emphasized a division by regions. The compromise between the two views resulted in the creation of two different types of authorities: the three communities and three regions. By merging the Flemish Community with the Flemish Region, the Flemish reduced in practice the number to six authorities: one federal government, two regions, two communities and one government for the Flemish community and region

All these authorities have developed a strong sense of regional and political identity. Each has established its institutions, administration, and legal and regulatory frameworks. Similarly, federalization has provided an opportunity to invent and test different approaches. For instance, the federal government has dedicated important resources to the elaboration of charters and changing public servants' mentalities. In Flanders, the government has been preoccupied in the past few years with reviewing and reforming institutional structures (see Box 8 on the BBB process). Wallonia has strived to bring its administration closer to citizens.

The devolution machinery itself has been perfected as new competencies were devolved.<sup>7</sup> Typically, governments reach a first agreement defining the competencies that remain at the federal level, if any. A second agreement then delineates the transfer of resources (civil servants, building, etc), according to the size of the population of regions and per capita income, though this proportion varies from sector to sector. Last, the transfer is organized as rapidly as possible and as soon as the regions are ready to receive them in legal as well as physical terms.

The institutional building process in Belgium has been described as pragmatic, flexible, supple and adaptable. It has also been remarkably smooth compare with similar experience around the world. This does not mean that the process has been easy. Belgium has dedicated a huge amount of energy to establish a model system.

### ***B. Modernizing the public sector***

8. The second major driver affecting the administrative and regulatory systems is the modernization of the federal and regional public sectors. As in other OECD countries, the Belgium public sector grew significantly over the past 50 years. Public intervention into the economy was multiplied through the seemingly unstoppable growth of regulations and administrative procedures in the post-war years.

9. Since the early 1990s, the different governments have tried to modernize the public administration to make it more responsive and to improve its efficiency through the professionalization of civil servants, organizational restructuring, legal rationalization, and Egovernment (see Table 2). Despite these measures, the cost of government in Belgium increased over the period of devolution. Government consumption in Belgium grew from 20.61 per cent in 1990 to 22.15 per cent in 2002, although this measure does not capture any changes to the quality of governance nor productivity changes in the public sector.

10. Modernization of the administration has also been considerably affected by European convergence, and particularly by the harmonization of Belgium's legal frameworks with European

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<sup>7</sup> The latest power to have been transferred concerns the agricultural sector through the Lambermont Agreement in 2001.

policies in many areas. These trends are important for understanding the evolution of the regulatory and administrative environment.

### **C. Characteristics of Belgian administrations, and the context for reform**

11. Though there are clear cultural differences, important structures and characteristics are shared by most public services in Belgium. The public administration is compartmentalized into strong ministries and departments, reflecting in particular the effects of coalition governments. On the other hand, horizontal oversight bodies and co-ordination mechanisms and institutions usually lack strength. This weakness has often slowed and undermined the implementation of administration-wide reforms. Strong hierarchical relations govern the day-to-day working of the administration. Delegation of power to lower levels is highly controlled, and this situation is intensified by a number of legal and budgetary *ex ante* controls on administrative decision-making.

12. Though in recent years all government have started reforms, the weight and rigidity of ministerial cabinets is often described as a significant obstacle to modernizing the administration.<sup>8</sup> These cabinets, which in the federal government were reformed in 2003 and named “policy preparation cells”, are usually large and relationships with the professional civil service can be uneasy, sometimes feeding an unhealthy atmosphere of suspicion. Their role is crucial nevertheless, as cabinet officials are often the decision makers as well as the rule makers; indeed, very few departments have specialized legal units. A strong political dimension has driven the appointments of high officials, which also reflects a careful equilibrium in staffing (at federal levels, staffing reflects a regional and linguistic balance). In the past few years, modifications and downsizing to the cabinet structure have been launched and in some cases implemented.<sup>9</sup> In that sense, the waxing role of the cabinets should be seen as part of the transition during devolution, and their roles are likely to continue to change, probably decreasing, as new structures mature and decision processes are institutionalized.

13. Other important features of Belgium administrative culture are a highly developed legalism, reliance on precedent, and formalism in actions and procedures, which has made it difficult to move toward policy practices and tools that are results-oriented and responsive to citizens and businesses. Policy-making is more often seen as a process of drafting new laws than a discovery process that compares the pros and cons of various options to find the best solution. This weakness in focusing on results has resulted, for example, in a lack of economic quantification and evaluation when preparing laws and regulations and assessing initiatives.

14. Last, the Belgian political culture is characterized by a search for consensus among coalition parties, informality of procedures, acceptance of the necessity of compromise, and institutionalized power sharing. “The Belgium social model” has been described as having strong corporatist elements in the traditional European sense. Attitudes and institutions tend to reflect powerful social partnership interests, competing and some time diminishing the parliament and encouraging specific interests to significantly influence the design and implementation of regulation and administrative practices. A consequence is that “insiders” such as strong business and trade union interests, who often prefer the status quo to dynamic change, are over-represented, while “outsiders”, such as consumers, innovators, and new market entrants are underrepresented in decision-making. This structural imbalance creates an inherent inertia within

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<sup>8</sup> Some critics have stressed that their members may even represent interest groups that have captured the policy making sphere.

<sup>9</sup> It should be noted, however, that the federalization has been considered one of the reasons explaining the growth of ministerial cabinets in the regions. Because the creation of administrative services required time, some of the devolved functions were in the meantime assigned to the cabinets.

Belgian policy processes that can reduce the quality, flexibility, and responsiveness of regulatory and administrative practices.

#### **D. Challenges ahead**

15. The federalization and modernization of the public sectors at federal and regional levels have produced results. They have increased accountability and transparency of the administration, stimulated new approaches, and reduced the “trust deficit.” Opinion surveys have started to show increased satisfaction of citizens and in some cases of businesses. But the new frameworks have not yet fully realized their promise in improving the quality of administrative procedures and regulations, the general business environment, and the market orientation of the public administration.

16. Though solid achievements have been accomplished in the past few years, overall performance in improving the quality of administrative and regulatory environments is disappointing. The comparative situation of Belgium and the business climate seems to be about the mid-range in Europe today (Norway, Italy and Spain seem to be worse, while the Netherlands, France, and Germany seem to be better), but has not improved, in particular for SMEs. The Global Competitiveness Report ranked Belgium in 2000 as 16<sup>th</sup> in the world in its “Growth Competitiveness ranking,” but by 2003 Belgium had fallen to 27<sup>th</sup>. The same report ranked the Belgium business environment as 12<sup>th</sup> in 2000 and about the same (15<sup>th</sup>) in 2003. The European Commission ranked Belgium last amongst its members in terms of “net creation of firms” (at the same position than Sweden) in 2000.<sup>10</sup> Two years later, it confirmed the diagnosis, reporting that despite the use of the broadest definitions for entry, Belgium and Italy had lowest birth rates, compared to other countries.<sup>11</sup>

17. A crucial reason for this static or even declining relative performance is the high level of regulatory and administrative burdens falling on enterprises and citizens.<sup>12</sup> A biannual survey by the Federal Planning Office estimated that the administrative costs in 2002 represented nearly 9 billion euros or 3.43% of GDP. This figure is very slightly smaller than it was two years ago (3,48% of GDP in 2000), but it is still very significant.<sup>13</sup> In a recent international comparison done by the World Bank, starting up a Belgian business required 56 days, compared to only 11 days in the Netherlands (See Table 1).

**Table 1. Starting a business indicators**

	Number of procedures	Time (days)	Cost (US\$)	Cost (% of income per capita)	Minimum Capital (% of income per capita)
Belgium	7	56	2633	11.3	75.1
Netherlands	7	11	3276	13.7	70.7
Denmark	4	4	0	0	52.3
Ireland	3	12	2473	10.4	0
UK	6	18	264	1	0
USA	5	4	210	0.6	0

<sup>10</sup> The European average of 8.5% of net firm creation was much lower than the 10.2% of the USA, see “Demographie des Entreprises”.

<sup>11</sup> European Commission (2002) *Business Demography in Europe*, Observatory of European SMEs Report No. 5, Brussels.

<sup>12</sup> Secrétariat D’Etat à la Simplification Administrative, *Note de politique générale concernant la simplification administrative*, 26 novembre 2003

<sup>13</sup> Joos, Aurelie and Kegels, Chantal (2004) *Les charges administratives en Belgique pour l’Année 2002*, Bureau Fédéral du Plan. Brussels.

Note: These indicators measure the procedures, time, costs and minimum capital requirements to register a business formally

Source: World Bank (2003) *Doing Business in 2004. Understanding Regulation*. Washington.

18. This situation is confirmed by recent research by Wim Moesen<sup>14</sup> stressing that the complexity and quality of the national regulatory framework - encompassing federal, regional and local level regulation - may have worsened due to a relentless growth of regulations, a worldwide phenomenon called 'regulatory inflation' by the OECD.

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<sup>14</sup> Laurens Cherchye and Wim Moesen (2003). *Institutional Infrastructure and Economic Performance: Levels versus Catching up and Frontier Shifts*. Center for Economic Studies, Leuven. Moesen, Wim (2004), *Leuvense Economische Standpunten* (forthcoming).

## II. FEDERAL GOVERNMENT

### A. Evolution and context of administrative simplification initiatives in the federal government<sup>15</sup>

*In the late 1990s, administrative simplification rises to the top of the political agenda.*

19. Reform of the federal administration has been underway since the 1980s (see Table 2). These initiatives were aimed at boosting managerial and technical skills, improving flexibility in the civil service, changing a procedure-based administrative culture into a performance-based culture, and shifting the focus to objectives in the delivery of public services. However, reflecting the inherent inertia in the Belgian bureaucracy, reform was *ad hoc* and lacked coherence and strategy. Successive governments proceeded with cautious and piecemeal changes that were insufficient to bring about real improvement.

20. The later 1990s saw the beginnings of deeper reform. In 1998, the outgoing government adopted the 1998 *Entrepreneurial Law* to promote entrepreneurship and competitiveness. This law provided for structural changes to the mechanisms that were creating administrative information requirements for citizens and firms. It moved from an item-by-item approach to a more global perspective on the system governing forms and procedures. Importantly, the 1998 law created the Administrative Simplification Agency (ASA), a new federal institution under the prime minister, to reduce red tape drastically.

21. At the end of the 1990s, a series of crisis rocked public trust in state institutions.<sup>16</sup> A new federal government arrived with a new mandate for reform and announced initiatives to tackle the shortcomings of the public administration.

**Table 2: Overview of Federal Modernization Initiatives in Belgium (1975-2003)**

Date	Initiative
1975	Working Group on Administrative Simplification
1985-1988	State Secretary for modernization and computerization of public services added to the Prime Minister
1980	Territorial Reform. Creation of Communities and Regions
1982-1987	Commission 'Comform' to assess federal regulation on its administrative formalities
1985	Creation of the office for organization and management (ABC)
1986	Report on the modernization of the civil service
1986	Creation of the modernization secretariat
1987	Creation of modernizing cells in the federal administration
1989	Appointment of a minister of the Civil Service
1989	Creation of the college of Secretary-general
1991	Law on the motivation of administrative actions
1991	Law on the state accountability
1991-1993	Project 'Radioscopie': Audit of federal departments

<sup>15</sup> For an overview of the major federal initiatives see Van de Walle, Steven, Nick Thijs & Geert Bouckaert (2003) "A Tale of Two Charters. Political crisis, Political Realignment and Administrative Reform in Belgium". Paper presented at the International Symposium on Service Charters and Customer Satisfaction in Public Services, 8-9 December 2003, City University of Hong Kong

<sup>16</sup> Two important crises exposed the malfunctioning of key institutions and public services such as the police, the justice or even the inspection services. The Dutroux-paedophilia crisis, exposing the malfunctioning of the police and the courts, and the 'dioxin' food safety crisis, that indicated the failure of food inspection services and lead to a massive contamination of poultry. Van de Walle, et al (2003)

1993	Project ‘Auditform’ to halve the number of forms that have to be filled out by small and medium sized companies
1993	Charter of the user of public services
1994	Law on the access to information
1995	Creation of the ministry of civil service
1995	Creation of internal audit cells
1995	Appointment of the federal ombudsmen
1997	Introduction by decree of a mandatory “child effect” analysis
1998	Creation of the Administrative Simplification Agency by the Entrepreneurial Law
1998	Satisfaction barometer
1999-2003	Copernicus Plan
2001	Creation of FedICT, the federal Egovernment initiative
2003	Establishment of the Banque Carrefour des Entreprises
2003	Creation of State Secretary for Administrative Simplification
2003	Launching of the Project Kafka.be by the regions, communities and federal governments

Source: Adapted from *Steven Van de Walle, Nick Thijs & Geert Bouckaert (2003) “A Tale of Two Charters. Political Crisis, Political Realignment and Administrative Reform in Belgium”*

### *A clear and well thought federal policy emerged in 1999 – 2003 ...*

22. Broad administrative reform focused on the capacities and machinery of state institutions was pre-eminent in the 1999 Government Agreement, building on the 1998 *Entrepreneurial Law*. Among the axes of reform, the new government pledged to reduce the administrative burden in four years by 25 per cent. Together with the new administrative simplification policy, the government launched an even more ambitious reform called Copernicus that was strongly supported by the Prime Minister and the Minister responsible for civil service reform. The project covered many dimensions of a thorough modernization of the federal civil service (see Box 3).

#### **Box 3: The Copernicus Reform and the Introduction of New Public Management Approaches**

In 1999, the new government launched a major reform initiative to transform the federal public administration using the concepts of New Public Management, which is concerned with the systematic analysis and management of public management policy. Departing from previous *ad hoc* and piecemeal initiatives, the government embarked on a coherent and strategic approach. The initiative had many elements organized around four main axes:

- Restructuring the ministerial architecture. The administration was re-organized around ten vertical and four horizontal departments called *Service Publique Fédéral* (SPF). Each SPF was internally restructured and reformed. The size of ministers’ cabinets was reduced.
- Strengthening the performance of civil servants. Human resources cells were appointed in each SPF. An assessment centre was created to select and appoint for a 6-year mandate top SPF managers. A performance management system for all civil servants was established to encourage merit rather than seniority. Education and training become a priority.
- Establishment of new budget and control systems. The new rules gave ministries/SPF more autonomy in implementing their policies. Each ministry/SPF established its own internal audit controlling the efficiency and effectiveness of its expenditures.
- Improving public communication. Ministries/SPF were encouraged to communicate better and reach out to citizens.

These reforms were not universally welcomed. After the 2003 elections and following a bitter campaign by the media, public labor unions and some politicians, the reforms were stopped. The Copernicus name was dropped and reforms were drastically reoriented and reversed. However, significant components of the reform were maintained, such as the new structure of 'vertical' and 'horizontal' SPFs. As well, the performance measurement system for senior officials was preserved. These reforms should be sufficiently entrenched to permit a first round of independent evaluation in the coming years.

23. More than many other countries, Belgium and its regions invested heavily on Egovernment as a key driver and tool for administrative simplification.<sup>17</sup> As discussed below, this has proven to be an excellent investment, with the potential to deliver more benefits with respect to the quality of the regulatory and administrative environment.

*... which has been sustained but refocused by the current government.*

24. The new government that came to power in June 2003 maintained, though refocused, the administrative simplification policy. Starting in July 2003, it recast the policy around 12 Strategic Works (see Box 4).

25. Egovernment maintained its preeminence in the reform program, due in part to the significant and visible results being achieved. Though the Copernicus project was abruptly abandoned for political reasons, the current government continued and refocused some of its initiatives, such as performance management of the highest civil servants, and work on Business Process Reengineering (BPR) of the 'back offices' of public services. In terms of budgetary allocations, Egovernment and BPR were maintained as high priorities.<sup>18</sup>

## ***B. Drivers, institutions and actors***

26. International good practice, confirmed worldwide, recommends that government adopt broad policies with clear objectives and frameworks for implementation. This has been the case for Belgium's federal government. Starting in 1998, the governments have taken successive steps to develop and refine an explicit administrative simplification policy and to set up an array of institutions to implement and monitor it.<sup>19</sup>

27. Learning from experience, the 2003 government abandoned the quantitative targets, due to the difficulties in calculating the starting point and accurately measuring administrative and regulatory burdens. Taking a different approach, the Prime Minister set concrete performance goals such as permitting a new firm to be set up in only 3 days.<sup>20</sup> The policy now focuses most of its energies on 12 Strategic Works (see Box 4), which mix structural and individual projects. A global simplification plan was developed adding to the 12 Strategic Works a wide range of individual projects. The Plan is based on the action plans of the ministers, and a Secretary of State under the Prime Minister was assigned to coordinate action with the help of the ASA.

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<sup>17</sup> Kegels, Chantal (2003) "Technologies de l'information et de la Communication et pouvoirs publics" in Dekkers, Gijs and Chantal Kegels, eds. Les Technologies de l'information et de la communication en Belgique. Analyse des effets économiques et sociaux, Bureau Fédéral du Plan. Bruxelles.

<sup>18</sup> In 2003 and 2004, Egovernment and BPR enjoyed budgets up to 25 -30 million euros a year.

<sup>19</sup> See also the final report of Denmark Ministry of Business and Economic Affairs, (2003) International Study: Efforts to Reduce Administrative Burdens and Improve Business Regulation [FJERN denne side], August 2003.

<sup>20</sup> "Interview with secretary of state Van Quickenborne" in the last number (March 2004) FORWARD monthly bulletin on the VBO / FEB business federation .



#### Box 4: The 12 Strategic Works of the Federal Government

1. Elimination of the decency and morality certificate
- ~~1.2.~~ Elimination of the conformity certificate
- ~~1.3.~~ Elimination of the unemployed periodic reporting procedure
4. Elimination of driving license stamp duty
- ~~4.5.~~ Extension of the Tax-on-Web and pre filled tax forms
- ~~4.6.~~ Introduction of the single data collection system for citizens
- ~~4.7.~~ Introduction of a single business start up form
- ~~4.8.~~ Elimination of public procurement certification and corroboration notes
- ~~4.9.~~ Reduction of maximum legal archiving period for enterprises and introduction of e-archiving
- ~~4.10.~~ Introduction of a single identification number for enterprises
- ~~4.11.~~ Introduction of a single data collection system for enterprises (Crossroads Bank of Enterprises)
- ~~4.12.~~ Introduction of an ex post evaluation of existing laws

Source: Secrétariat D'Etat à la Simplification Administrative, *Note de politique générale concernant la simplification administrative*, 21 novembre 2003

#### ***ASA: A focused institution to drive the policy***

28. The ASA was created in December 1998 but started operation in June 1999. Its mandate, sustained under the new government, is to:

- initiate, stimulate, and coordinate simplification projects;
- develop tools;
- set up a simplification network;
- organize cooperation with business community, European and international organizations;
- co-ordinate simplification policy on administrative level;
- guide and coordinate legal and simplification aspects of Egovernment;
- report to the Ministerial Task Force.

29. As an agency under the Office of the Prime Minister, ASA has substantial autonomy. The ASA reports to a Secretary of State for Administrative Simplification (see below). After a proposition by the Prime Minister, the government nominates the director and a deputy for a five-year mandate. The ASA enjoys budgetary rules that are more flexible than for a typical service. However, the ASA's flexibility in hiring and firing its 12 staff members is restricted. Its administrators are appointed and seconded by ministers to be in charge of simplification projects. Recently, selected short-term task consultants have been hired to supplement the expertise and capacities of the ASA and a Program Management Office has been set up to help ASA to support its horizontal coordination of the implementation of the global action plan and to help establishing a federal simplification network.

30. The ASA's main power is to propose reforms to the Government Council and to monitor progress through its annual report. It lacks sanctioning powers for ministerial non-performance, and relies instead on persuasion, peer pressure and transparency in the annual report and its close links to the Prime Minister. Progress reports are presented to its Steering Committee and its annual report is sent to Parliament through the Prime Minister. Working through agreements and collaboration with the

administrations and businesses, the ASA focuses on selected interministerial projects, provides possible solutions, and coordinates working groups to achieve consensus.

31. As the overseer of ASA, the **Secretary of State for Administrative Simplification**, created in 2003, is in charge of policy direction.<sup>21</sup> A Policy Preparation Cell of six professional staff and a political secretary supports the Secretary of State. The division of tasks between the ASA and the Secretary of State is blurred, though the general framework is that the Secretary of State provides political accountability and is in charge of the “policy” dimension, while the ASA implements the policy.

32. One of the key assets of the ASA is its public-private **Steering Committee (Comité d’Orientation)**, which meets 5 or 6 times a year. It is formed of 16 members representing the ministries (6), business (6), employees (2), and representatives of the administration (2). The Director of the Policy Preparation Cell of the State Secretary chairs this committee. The Steering Committee has more than a consultative role: it establishes the annual program and accepts the annual report. It is the main channel for businesses complaints and proposals. Through the years, it has gained credibility and support among business groups. In the early years and in parallel with the Steering Committee, the ASA tested alternative public consultation methods, such as panel and focus groups, but later abandoned them due to lack of resources and time.

33. Two inter-ministerial bodies complete the institutional framework. The ASA established a 35-member **network of simplification agents** (one official representative from each public body) to relay the administrative simplification policy to their institutions. The agents are responsible for reporting on the implementation of the simplification proposals put forward by the ASA and by their own department.<sup>22</sup> Every year, ASA has organized several training workshops for the network members on aspects, tools and approaches.<sup>23</sup>

34. A second key element of the institutional architecture is the **Ministerial Task Force**; a body considered by the European Commission as a best practice. The Ministerial Task Force, chaired by the Prime Minister, was created in 2002 in response to the slow implementation of the policy and disappointment with concrete results. Depending on the agenda, the Prime Minister invites relevant ministers and presidents of the SPFs. For its meetings, ASA used to prepare quarterly reports listing progress and problems. The Task Force has not met since the fall of 2003, but the Government Council decided in January 2004 to restore these meetings. In addition to managing the Global Plan and managing priorities, it should continue to work as the last dispute settlement forum before the Government Council.

35. To improve coordination in the government’s reform program, ASA collaborates closely with two other key institutions, FEDICT (the Federal ICT Department) and the P&O (Personnel and Organization):

- In the framework of the Copernicus reform, the government established in 2001 FEDICT to develop and horizontally oversee the federal government Egovernment efforts.<sup>24</sup> FEDICT is one of 14 departments (or ‘Federal Public Services’) created by the Copernicus restructuring. Currently, it has 42 people and a project budget of 30 million euros. It also “owns” a not-for-profit agency providing

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<sup>21</sup> In the previous government, one and then two Commissioners were responsible for the policy, though during the long spells without a nominee, the ASA director reported directly to the Prime Minister.

<sup>22</sup> For complex legal initiatives such as the BCE decrees, ASA has developed a complementary network of legal experts in the departments and universities.

<sup>23</sup> ASA (2003) Rapport Annuel 2001-2002, Bruxelles, pp. 43-46.

<sup>24</sup> FEDICT is one of the four horizontal departments (SPF) servicing the substantive vertical departments (SPF), together with bodies in charge of the federal policies on human resources, budget and finance and controlling and operations.

specialized IT-services to departments. FEDICT enjoys a fair degree of autonomy. Its staff is outside the civil service HRM framework, including recruitment. Its main functions are to manage the Egovernment policy, support and help federal bodies, and monitor progress. It reports to the Prime Minister monthly and to parliament annually. In 2003, the government appointed a State Secretary to oversee FEDICT. The unit is also supported by a 17-person strong Steering Group (PICTS Group), which meets once a month. In this forum, FEDICT staff managers and ICT directors of departments and agencies monitor different aspects, including maintaining the interministerial electronic network, FEDMAN, linking all federal institutions.

- The Federal Public Service for Personnel and Organization (P&O) is the successor of the Ministry for the Civil Service, which was in charge of driving the Copernicus project during the previous government. Today, it is the main unit in charge of coordinating “back office modernization projects” across the whole administration. The 12 professional staff in charge of the Business Process Reengineering (BPR) project are today following up and expanding some Copernicus initiatives, though with less ambition and a tendency to favor smaller projects proposed by services rather than broader horizontal reforms. Since mid-2003, the P&O has worked on 10 BPR projects, most of them proposed by the services.<sup>25</sup> In the coming months, the P&O is also responsible for implementing the first evaluation of senior officials’ mandates established by Copernicus. It also hopes to work in the development of services performance scoreboards.

### *Other institutional partners*

36. As required by a decentralized approach to reform, the administrative simplification policy involves many actors and stakeholders, including the social security organizations, the revenue service office and line departments such as Finance and Economy. The Parliament has had so far a limited role, though one of the 12 Strategic Works for the 2003-2007 program involves setting up a parliamentary committee for evaluation of regulations.

### *Assessment of institutional drivers of the federal simplification policy*

37. A key element of success will be the development of synergies among the main reform institutions: ASA, FEDICT, and P&O. Egovernment and BPR, by transforming the front and back office, present the potential for deep and lasting administrative simplification. On the other hand, administrative simplification with a market focus through the ASA can provide a policy platform beyond technical solutions. Better service delivery under Egovernment solutions will lead to a good business-oriented administrative environment only if the interactions between the two initiatives are clearly understood in advance. For example, Egovernment solutions should be oriented toward the capacities of SMEs rather than big companies. As another example, better capacities in the public sector to handle information can

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<sup>25</sup> The 10 BPR projects are located in the following departments (SPF):

1. Finances (coperfin 1,2,3)
- ~~1~~2. Public health, Food Chain Security and Environment (coperhealth, copermed, afi)
- ~~1~~3. Social Security (copersoc, coperhan)
- ~~1~~4. Budget and Management Control
- ~~1~~5. Mobility and Transport (luchtvaart, mobiliteit)
- ~~1~~6. Internal Affairs (dvz, coperint)
- ~~1~~7. Foreign Affairs, External Commerce and Development Cooperation (coperworld)
- ~~1~~8. Justice (coperjus)
- ~~1~~9. Personnel and Organization
- ~~1~~10. Federal Agency for Food Safety (AFSCA)

increase the burdens on business if departments then increase their information demands. This effect has already been observed in some countries.

38. Belgium must work harder to link the efforts of these three initiatives. Lack of coordination has already resulted in costs in time, duplication (and contradictions) and missed opportunities to improve synergies. In part, this stems from the structural organization. The different departments, (with their respective Secretaries of State in the case of ASA and FEDICT), report on administrative reforms to different members of government: to the Prime Minister for ASA actions and to the Deputy Prime Minister and Minister of Budget for FEDICT actions and to the Ministry of Public Administration for P&O initiatives. This situation is aggravated by the lack of replacements for the technical-level interministerial forums eliminated by Copernicus. As a result, ASA, FEDICT and P&O find it difficult to coordinate, set priorities and resolve disagreements over policies and projects leading to deadlocks in the implementation of large scale administrative simplification projects.

### **C. Approaches to administrative simplification**

39. The key element of the ASA approach has been to increase the quality of monitoring of progress. A series of mechanisms and process have been developed to that end.

#### ***The Annual Administrative Simplification Plan***

40. Since 1999, the Agency has prepared an annual action plan to reduce administrative burdens on businesses. This action plan is prepared by the ASA by merging into a single document the action plans proposed by ministries. After discussion and approval by the Steering Committee, the plan becomes the basis for the quarterly report to the Ministerial Task Force.

41. Until 2002, the Action Plan contained an extensive list of projects that had been finished or started. As these projects were self-selected by ministries, the strategic or substantive gains of simplification were unclear. Experiences in many countries show that, if left to their own wishes, ministries tend to select easier or less important reforms, to over-estimate the benefits of their reforms, and to repackage changes that occur for other reasons. Worse, individual reforms may be irrelevant to the general business environment, since other regulations or procedures not included in the program may offset any reductions. A central innovation of the 2003 program was to build the deliverables around a series of 12 Strategic Works (see Box 4), which is more results-oriented. Under the current scheme, every minister (and public service) must draft a simplification action plan consisting of two parts:

- Part 1 describes the Minister's role in the realization of the 12 Strategic Works.
- Part 2 is a list of individual simplification projects that the Ministry will work out within his or her own sphere of competence (i.e. vertical projects) within a specific time schedule.

42. The content of the administrative simplification Global Plan will be made available online, organized around templates with task descriptions and deadline as in a scoreboard system. An important challenge will be the harmonization and coordination of Part 2 initiatives presented by different departments. The hiring of additional desk officers at ASA in late Spring 2004, as well as the installation of a Programme Management Office, should improve follow-up and coordination.

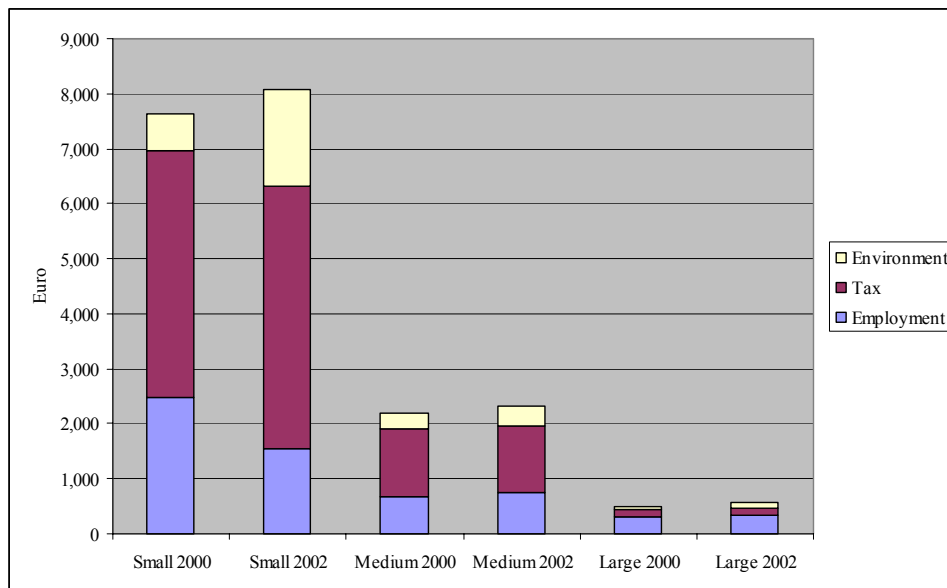
43. It is not yet clear that the current action planning is capable of addressing deep-seated and more painful changes to how the ministries operate. The sustainability of the policy requires a mix of 'quick wins' and deeper structural reforms. Certainly, the 12 Strategic Works provides a more focused road map for long-term and structural objectives (such as unique data collection for citizens and enterprises) and

shorter-term projects that can enhance political and citizens' support. Yet, ASA's limits to its enforcement powers and restraints of advocate mechanisms fall short to find structural solutions, including in the ways the administration thinks and acts. Furthermore, insufficient resources have pushed ASA to design and propose to ministries and agencies such long lasting solutions. At the end, ASA is driven by the need for political and financial support and thus has tended to favor win-win projects which tend to be smaller and more focused on short-term achievements, to the detriment of longer term but more worthy initiatives.

### Evaluating the Program

44. The Belgium federal government systematically evaluates the performance of its policy with a large-scale business survey, a good practice that is unique in Europe. Based on an OECD exercise,<sup>26</sup> the Government Council requested that ASA organize the survey every two years to evaluate progress toward the 25 per cent reduction target; (a target dropped a few years later as the base line could not be estimated). ASA outsourced the survey to the independent Federal Plan Office (Bureau Federal du Plan), which has carried two surveys so far. The latest was published in early 2004 with data from 2002.<sup>27</sup> As indicated above, the survey showed a slight decrease in percentage of GDP. Importantly a significant reduction in the burdens of employment reporting for small firms was noted (see Figure 1). This reduction probably reflects the generalization of the single form/one-stop shop mechanism established under the Crossroads Bank for Social Security (CBSS). To follow up progress, the survey uses the same sample of businesses (replacing those that have disappeared) and a similar questionnaire, monitoring businesses' opinion on new initiatives such as Egovernment ones.

Figure 1. Cost per employee in Euro by policy area and firm's size



Source: Aurelie Joos and Chantal Kegel (2004) *Les Charges Administratives en Belgique pour l'Année 2002*, Bureau Fédéral du Plan. Janvier 2004.

<sup>26</sup> OECD (2002). *Business Views on Redtape. Administrative and Regulatory Burdens on SMEs*, Paris

<sup>27</sup> Joos, Aurelie, Chantal Kegel (2004) *Les Charges Administratives en Belgique pour l'Année 2002*, Bureau Fédéral du Plan, Janvier 2004.

### ***Reliance on positive incentives***

45. In the usual Belgium tradition, these reform policies have relied on consensus building and avoidance of adversarial relations.<sup>28</sup> For instance, during a social security back office reform that established the CBSS (see below), a new ICT system made redundant a specific procedure with forms related to staff dismissals. However, the paper forms were kept because they provided an incentive for dismissed employees to contact their labor unions, keeping them informed and involved, which at the end ensured a less confrontational attitude.

46. Most of the initiatives tend also to stress positive messages, such as the emergence of ‘a new public service’ culture. For instance, despite the difficult budgetary situation, initiatives are presented without budgetary consequences. The initiatives downplay the low productivity of the civil service and the need to fight against fraud. Overall, they are communicated as ways to improve the quality of contacts and the degree of trust between administration and citizens and businesses.

### **D. Main administrative simplification initiatives**

47. The ASA program of work can be organized into four types of projects. The first type concentrates on the operation and coordination of *specific simplification projects*. These projects often originate from the Steering Committee, and focus on resolving specific situations to reduce an identifiable burden. Though ASA performs a quick feasibility scan, no clear criteria underline the selection of these projects, except perhaps that the results might be more visible and thus sustain public support. Since the start of operations, ASA has conducted dozens of these projects, which follow a proven methodology:

1. Regulatory and administrative analysis
- ~~1.2.~~ Discussion with public and private stakeholders
- ~~1.3.~~ Programming of actions to be done and follow up responsibilities
- ~~1.4.~~ Follow up and reporting
- ~~1.5.~~ Communication
- ~~1.6.~~ Evaluation and if needed correction.<sup>29</sup>

48. Such initiatives often trigger a related sequence of reforms. One simplification exposes the possibility for further simplification.<sup>30</sup>

49. Often, these projects have relied on Egovernment tools. For instance, the Ministry of Finance developed different projects to allow taxpayers to lodge an electronic VAT return (INTERVAT project),

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<sup>28</sup> Perhaps the only exception to this approach was the Copernicus reform, where a much harsher approach was used. While Copernicus was strongly opposed, even its critics accept that it made a substantial change to the administrative culture.

<sup>29</sup> ASA (2003), Rapport Annuel 2001-2002, Bruxelles.

<sup>30</sup> For instance, one of the potential impacts of the social security electronic declaration (i.e. DIMONA) was to merge a series of forms containing redundant information requirements. However, managers of the BCSS realized that DIMONA could easily also permit the elimination of personal registries and the information requirement linked to them. This project concluded in 1 January 2003 with the introduction of a more integrated procedure called the electronic multifunctional declaration (DMFA).

and to file several returns simultaneously (project EDIVAT).<sup>31</sup> The Ministry has also progressively made available on the Intranet most of its forms through a project called FINFORM.<sup>32</sup> The Ministry of Economic Affairs has developed a tool to ease the reporting of company accounts through the Internet.

50. A second series of projects followed by ASA are often described as ‘mammoth’ projects. They intend to reform completely, or to “reinvent”, the *administrative infrastructure*. They need the participation of many agencies and require front office, back office reorganizations as well as legal changes. One of the most significant of this type of projects is the Crossroad Bank for Enterprises - *Banque Carrefour des Entreprises* (BCE). The BCE is built on the precedent and success of the Cross Road Bank for Social Security launched a decade earlier (see below). The BCE is an electronic business register system accessible to all administrations where public and common information on enterprises are stocked. The ultimate objective of BCE is that businesses will submit their information only once and will have the right as of 1 January 2005 to refuse supplying information that they have already provided. To set up the BCE, the government introduced a unique identification number for every company. It developed a single database that can be accessed by all departments concerned. It worked to integrate the commercial register and the accreditation of one-stop-shops. The system intends to permit interconnections from the regions and communities. In a longer run, the BCE should become the backbone of a comprehensive business information system. In September 2004, a direct electronic link between the BCE and notaries will be established. In the future, the BCE and the BCSS would be connected to other networks such as the one operated by the tax administration.

51. Since July 2003, the Crossroad Bank for Enterprises (BCE) and more than 10 accredited one-stop shops have been legally in force.<sup>33</sup> Unfortunately until mid January 2004 some organizational and software problems have prevented the on-line connection between the one-stop-shops and the BCE. As well, communication errors and the unfortunate timing of the launch (in holiday season and immediately following federal elections) resulted a failure to sufficiently inform the general public that the new business registry had replaced the old *registre du commerce*. Despite these launching mishaps, the BCE will have a very significant and positive impact in reducing start up time for businesses. Some estimates indicate that Belgium would rise dramatically in the World Bank “Doing Business” ranking, as the time needed to start up a business will be reduced progressively from 56 to 34 days currently and to 3 days as of 1 July 2005 (see Table 1).

52. The ASA is also working on selected structural projects that look beyond simplifying administrative procedures whether reviewing the design of the policy and regulation establishing the procedure (‘uphill’) or the ‘back office’ and the way management implement it (‘downhill’). One of its earliest priorities was the development of a tool for assessing administrative burdens called *Tableau de Bord des Charges Administratives* (TBCA) (see Box 5). The ASA chose to develop an indicator model showing relative weights and estimated changes around a baseline rather than an instrument that tried to measure precise figures in time and euros (such as the approach taken in the Dutch MISTRAL), assuming that the latter would be too time consuming and expensive. The ASA also wanted a ‘pedagogic tool’ that could help orientate, stimulate, and evaluate the simplification process, as well as to encourage a more general debate. As a user-friendly tool, TBCA is meant to be used by departments. Although it is not yet operational, it has been used in some pilot cases. According to ASA, the delays in implementation are due

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<sup>31</sup> Other improvements are that from 1 January 2005, 25 000 enterprises will declare quarterly instead of monthly their VAT, and all firms will be permitted to have only electronic accounting system and avoid paper support.

<sup>32</sup> <http://minfin.fgov.be>

<sup>33</sup> The Minister of SMEs accredits the one-stop-shop according to precise criteria set up in the BCE Law and its royal decrees.

to a lack of resources and broad-based political support.<sup>34</sup> However, the ASA hopes that by the end of 2004, all departments will use it.

53. Working in the problematic of administrative complexity, the new Secretary of State launched in December 2003 together with all regional and community governments a temporary focal point – ***www.kafka.be*** - where citizens, businesses, organization and civil servants can suggest projects and ideas for cutting red tape. This website was open until 31 March 2004. It was composed of a central website and a special telephone number, and was accompanied by a broad communication campaign. Using the responses, the federal and regional counterparts will publish a report and a working program to tackle the most urgent problems.

**BOX 5: the TBCA – Tool for assessment of administrative burdens<sup>35</sup>**

In the *Tableau de Bord des Charges Administratives*, administrative burdens are not measured in terms of the time taken nor in wage costs, but on the basis of an indicative administrative burden index. The model compares different alternatives with the help of index numbers (%), for instance in terms of a percentage increase or decrease in administrative burdens when choosing between different alternatives. The TBCA gives insight into the most burdensome parts of a procedure. In consultation with business organizations, an indicator is calculated for each administrative procedure based to the following elements:

- Nature of the procedure
- Information requirement
- Administrative procedure
- Data and/or certificates to be provided.

Each indicator (or each aspect of an administrative procedure) is in turn subdivided into various options for reform. An index value is assigned to each of these options. In assigning these index values, account is taken of the importance that enterprises and their representatives attach to the various options as well as objectives of the government policy on the realization of the modern information society and the modernization of government. In order to determine the burden index for each formality, the sum of the burden index assigned to each indicator is calculated. In this way a picture is obtained of the burden of the formalities in question and a comparison is possible between the different formalities.

Finally, the number of times a year that the formality has to be completed is assessed. This is multiplied with the sum of the index values by the number of enterprises or citizens who have to complete it. The level of the global index value gives a picture of the administrative burden that is imposed on those subject to the law by the procedure in question.

54. The Kafka focal point final report will be published in May 2004. But already the initiative can be considered a success, in particular as a cooperative effort between regions, communities and the federal government. More than 3800 proposals were gathered. The website had been visited 220,000 times. This initiative could be made permanent, functioning as an electronic ombudsmen. However, experience in the Netherlands indicates that a permanent scheme may have disadvantages too. It cannot substitute for a proper consultation mechanism during the design phase of the procedure or an appeal procedure for all administrative actions. If run permanently, policy makers as well as businesspersons and citizens may lose interest. A crucial part of the next step will thus be to maintain its credibility through real changes coming from the requests and suggestions, and fine tune the tool in a way to avoid becoming banal and predictable. In sum, expectations are high, and so should be the results.

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<sup>34</sup> ASA would require hiring a specific agent in charge of checking and harmonizing the procedures thesaurus and setting up a training program. Departments would also need to dedicate specific resources.

<sup>35</sup> Final report of Denmark Ministry of Business and Economic Affairs, (2003) International Study: Efforts to Reduce Administrative Burdens and Improve Business Regulation, FJERN Denne side, August 2003



55. The ASA has also worked on the “up hill part” of the problem, which focuses on the source of the complexity in the policy, in the regulation or the interaction of these and other policies and regulations. In 1998, the Prime Minister announced that a major Belgian problem was ‘regulatory inflation’ and that his government would develop tools to combat it. Since then, several options have been presented to the Government Council, including a proposal for a Regulatory Impact Assessment (RIA) system in 2000 (See Box 6).<sup>36</sup> However, the Government Council opposed development by the ASA of a RIA program due to worries that RIA would shift the burden of proof from businesses having to prove that regulations imposed high costs to regulators having to prove that regulations had low costs. Indeed, RIA would have shifted the burden of proof to some extent, which is one reason why it is effective in improving regulatory quality. Instead of RIA, the Government Council directed ASA to further develop the TBCA (see Box 5).

#### **Box 6: Why RIA is important**

There is a developing understanding that most governmental actions involve trade-offs between the foreseen benefits of a future regulation and its costs for the administration and for the public and the economy, and in particular for SMEs.

The main vehicle for managing these trade-offs is through the application of regulatory impact analysis (RIA) to regulations. In essence, RIA attempts to clarify the relevant factors for decision-making. It pushes regulators toward making balanced decisions and justifying that a solution (including the decision to do nothing) to specific problems outweighs wider economic costs and distributional impacts. As such, a RIA system is a powerful, evidence-based tool to improve transparency, accountability and efficiency in rule-making processes.

Far from being a technocratic tool that can be simply "added on" to the decision-making system by policy directive, it is a method for transforming the view of what is an appropriate action, indeed, what is the proper role of the State. Experience makes clear that RIA's most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analyzing - questioning, understanding real-world impacts, exploring assumptions. Significant cultural changes are required to make such analysis genuinely a part of increasingly complex decision-making environments.

Since its development in the mid-1970s, 22 OECD countries had adopted RIA into their rulemaking systems by 2001. In June 2001, the European Commission also officially embraced RIA.

Source: OECD (2002) *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. Paris

56. A breakthrough occurred in October 2001, when the *Rules and Procedures of the Government Council* were adapted to include the *Kafka clause*.<sup>37</sup> This clause requires that every new proposal of regulation presented at the Government Council should be accompanied by an evaluation of the impact of the proposal on administrative burdens, indicating if the potential impact on administrative burdens will be positive or negative, and in the later case, how to compensate for the increase.

57. Despite the common sense of this proposal, the Kafka clause has been vindicated, because rudimentary surveys indicate that there is very low compliance by ministers with the substantive part of the clause. A few paragraphs drafted just before the official submission to the Government Council are deemed enough to comply with the Rules and Procedures. No proposal has been stopped or challenged based on the clause information. One of the major weaknesses is that the clause lacked guidance material and specific quality criteria to draft the paragraphs.

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<sup>36</sup> Steve Jacob and Frederic Varone (2002) «L'évaluation des politiques publiques. Six Etudes de cas au niveau Federale.» *Courrier Hebdomadaire du CRISP*, No 1764-1765

<sup>37</sup> The most recent modification concerns article 24 de la Circulaire « Fonctionnement du Conseil des Ministres », Service Public Fédéral, Chancellerie du Premier Ministre. 12 juillet 2003.

58. The Secretary of State for Administrative Simplification will present a reformed proposal in May 2004. The proposal will be named “Kafka test” and will be more targeted and efficient than the current Kafka Clause.

59. In the medium term, Belgium may be overtaken by external events. The skepticism and difficulties, as well as the opposition from politicians and departments, toward development of a full-fledged RIA, may be overcome by a European imperative. The European Commission has already adopted RIA as part of European decision-making within the Single Market, and expects that national governments will follow suit. In Belgium, the mandate of the December 2003 Agreement on Administrative Simplification which specifically calls for an intergovernmental approach to respond to the EU requirements on Better Regulation (see Section III) could be adapted to include a plan of action for RIA.

60. Last, as part of the 12 Strategic Works, the government has promised to develop a Parliamentary committee for the evaluation of the quality of legal measures. The idea is to create a committee integrating all parties’ representatives to review target laws under a set of quality criteria, such as proportionality, effectiveness and transparency. It would be modeled after the French Senate experiment. Last March, the House of Representatives adopted such proposal. If the Senate adopts this bill, 20 years of effort will finally result in the establishment of a full-fledged legal evaluation committee in the federal Parliament.

### ***Other projects***

61. Three other important initiatives complement these efforts. In 1991, the government created the Crossroads Bank of Social Security (CBSS) an electronic network linking more than 200 social security institutions (SSIs) in Belgium. During a decade long and persistent effort, and under the coordination of the CBSS, which today counts more than 70 persons,<sup>38</sup> social security processes and information flows have been thoroughly harmonized and reengineered. Based around a secured web portal, each company has a personal interface at its disposal where documents related to the service (including those sent by the public office) can be stored and consulted. The system has been supplemented with new forms and formalities avoiding duplication of information requirements.<sup>39</sup> The results are impressive: the virtual “back offices” handle millions of electronic transactions daily. The whole social security system uses only 27 simplified forms (50 forms were eliminated) and 24 online forms. Employers do not need to keep a paper registry as they can consult and modify their data through the Social security website.

62. Second, with the help of FEDICT, the government has established a new internet portal called ***Belgium.be***, where relevant information for companies is available and where businesses have access to on line public services. It links to the ASA website which hosts more than 200 different forms. These forms are relevant for both citizens and businesses. However, there have been problems in systematically maintaining the database, resulting in a number of broken links and out-of-date forms. Further plans for the internet portal include the launch of a transactional section, where citizens and firms can complete forms on-line after send them in an automatic way to concerned federal departments. A first application has been completed as part of the so-called “DEUS project” aimed at making all forms necessary for the start-up of a business available under this transactional part of the portal. However, due to the reported problems with the launch of the BCE, the DEUS-application is not yet available online for outside users.

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<sup>38</sup> The CBSS also outsources its electronic operations to a 1000 person strong IT services company.

<sup>39</sup> For instance since 1 January 1999 the “immediate declaration of employment”, called DIMONA, has been compulsory in many economic sectors. With this declaration, employers immediately and automatically notify all the relevant government agencies of the beginning and the end of the labor relationship. In certain sectors, some additional information is however required.

63. Third, the ASA has encouraged the creation of private *one-stop shops* linked to the BCE project. The objective is creation of a single window, where businesspersons will consult and be assisted on one hand, and on the other be responsible for sharing required information with all authorities. Today, the network counts 10 private organizations which together have more than 200 outlets where businesses can complete all administrative obligations connected to the start up of an enterprise.

### III. FLANDERS

#### A. Evolution and context of the regulatory management initiative in Flanders

##### *The rapid rise of the Flemish regulatory state*

64. Flanders has been subject to a series of regulatory waves that rapidly expanded regulatory intervention and controls in the past quarter-century. Among the complex reasons for the regulatory expansion, two are particularly important. As mentioned in Section I, Flanders became a ‘true’ region in 1980 and began to receive progressively many new regulatory competencies in areas such as education, environment and agriculture.<sup>40</sup> As in all countries, law-making was itself considered a confirmation of the existence of a genuinely independent nation. Moreover, strong incentives to hasty law-making were linked to the fact that powers remained within the federation until the region regulated them.

#### **Box 7: Aspects of the Belgium and Flemish legal system<sup>41</sup>**

Belgium and its regions and communities rely on a clear, detailed and specific legal framework organized as follows:

- *The Constitution and Acts of a constitutional character* provide the framework within which general legislation operates. The Constitution defines basic individual rights, relations between the state and the people, and the separation of power among the institutions. Regions so far have not developed their own constitution.
- *Laws*. Laws are issued by the federal parliament. Both the government and members of parliament have the right of initiative. In the case of government, they are known as "draft law", in the case of individual members of parliament as "law proposal".
- *Decrees*. Decrees are "laws" issued by the, regional or community parliaments. Both the government and individual members of parliament have the right of initiative for proposed decrees. In the case of government, they are known as a "draft decree"; in the case of individual members of parliament as "decree proposal". Importantly, decrees are not subordinate to federal laws, as the Belgian state and the regions and communities have different sets of powers but share the same level of authority.
- *Royal Decree and Executive Regulations*. Federal government (called “Royal decrees”) and the regional and community governments issue secondary regulations. They provide further details to implement the laws and decrees.
- *Ministerial regulations*. Individual ministers issue secondary regulations. They can only be used when there is an explicit delegation from government.
- *Circulars*. Circulars are made by individual ministers and are only binding for the administration itself, not for citizens. Circulars can contain guidelines, procedures and rules of conduct, but mostly they are used to explain decrees or regulations in order to avoid interpretation problems.
- *Informal regulation*. In some areas, federal laws or decrees permit the use of codes of conduct, guidelines, standards and certification.
- *Rules*. Some agencies can issue rules, which are normally technical measures (e.g. the regulation agency for electricity and gas).

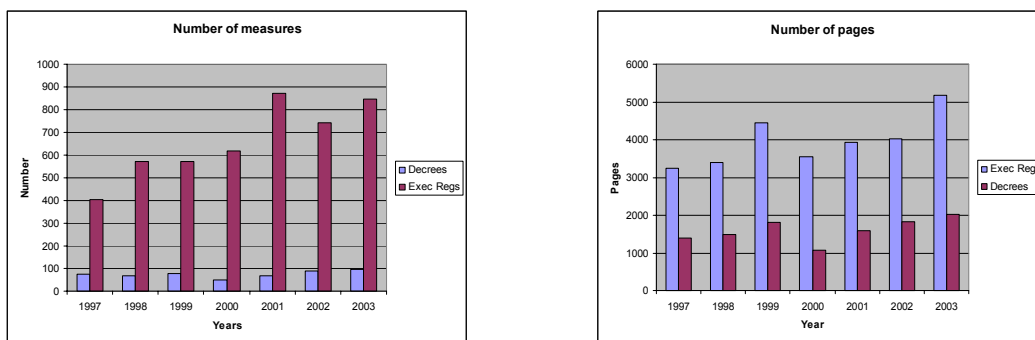
<sup>40</sup> In particular during the period 1988-1989.

<sup>41</sup> This classification of sources of the law is valid for other Belgian regions and authorities too.

65. The second reason for the expansion of the Flemish regulatory state was linked to the EU legal and regulatory efforts to build the European single market in the 1980s and 1990s. As seen in many other European jurisdictions, the transposition of EU laws was frequently accompanied by “gold plating” or “gilding the Brussels lily,” that is, adding extra regulatory requirements to the EU regulations and Directives, while blaming Brussels for the regulation.

66. As a result, the number of Flemish regulations more than doubled from 1997 to 2003 (see Figure 2). Some 70 per cent of current Flemish legislation dates from the 1980s or later. By the mid 1990s, the perception and reality of a “regulatory inflation” problem raised awareness of the importance of disciplines on the number and quality of new regulations. There is a perception in Flanders that legal quality has deteriorated and the regulatory burden has increased, eroding competitiveness and reducing the effectiveness of public intervention. The “jungle of rules” was blamed, reasonably enough, for slowing procedures and business decisions, increasing costs and difficulties in administrative decision-making, creating difficulties in controlling the legality of state action, and encouraging non-compliance.

**Figure 2: Regulatory inflation in Flanders 1997-2003**



Source: Government of Flanders (2004)

***In 1999 Flanders government launched a regulatory management policy***

67. In parallel to what was happening in the federal government and in Wallonia, a newly elected government signed in July 1999 a government agreement announcing a plan “to simplify and streamline regulations, procedures, rules and formalities to create better governance”. The government announced that it would cut the quantity of regulations by 25 per cent over the next five years. A year later, on 25 July 2000, the Flemish government approved a “general framework for the simplification of regulations, procedures and rules” containing 13 actions related to simplification and a plan to develop an institution with a “mission is to build and implement a regulatory management system” following OECD recommendations on regulatory quality.

68. This focus on institutional capacities followed international recommendations, and was a major break from previous policies, which followed incremental approaches based on actions proposed by *ad hoc* working groups and research commissions.<sup>42</sup> This breakthrough was also the result of a series of advice and reports produced by the Social and Economic Council of Flanders (SERV) in 1997 and 1998.

<sup>42</sup> These bodies’ review methodologies were inconsistent. There were no standardized evaluation techniques or decision criteria established to conduct reviews. The commissions and working groups often had no clear mandate, no budget, and very tight deadlines. Results were, predictably, sparse.

69. The policy was built progressively through a process of preparing, discussing and accepting annual action plans and follow-up reports. This permitted to raise awareness and educate the Government Council and other policy makers on the importance of a broader top down regulatory policy and its management. The main stages were:

- First Follow up report on regulatory simplification 2000 with 149 simplification projects (2000);
- Second follow up report on regulatory simplification 2000-2001 with 149 simplification projects (2002);
- First Regulatory Management Action Plan 2002-2003 with 117 simplification projects (2002);
- Third follow up report on regulatory management 2002-2003 (2003), and
- Second Regulatory Management Action Plan 2003-2004 with 91 simplification projects and 36 structural measures (2003).

70. In parallel to the launching of a regulatory policy, the new government unveiled an ambitious BBB program (the Better Governance Policy) to restructure the Flemish administration (see Box 8).

**Box 8: The Flemish BBB (Better Governance Policy) of 2001**

In January 2001, based on extensive study, the Flemish Government embarked on an ambitious project called the "Better governance policy" or BBB in Flemish. The core of the program consists of three major reforms:

- Restructuring the public administration. The Flemish administration will be organized into 13 new and homogeneous ministries. Each minister will head an administration and be in charge of policymaking, law making and evaluation. An array of agencies to be created will be responsible for implementation of the legislation and policies. An inter-ministerial commission will be set up around *ad hoc* and bilateral relations. The ministries will have a significant amount of autonomy in their organization, including staffing policies, but the center of government (the chancellery) will be strengthened. The overall goal is to improve decision-making and make the departments more operational and accountable.
- Restructuring advisory boards and processes. BBB will drastically reduce the number of boards from more than a hundred to 13 (a single board for each ministry). The objective of the reform will be to separate advice and consultation and to refocus these boards to major policy issues rather than discussion on details. Agencies will have the possibility to set up their own consultation bodies for the implementation of measures.
- Strengthening the policy making function within the administration through a reduction of the size of each minister's cabinet from more than 50 in some cases to a very limited staff for general political advice. The aim is to involve the professionals in the departments in the preparation of policies and draft rules to be approved by ministers.

By March 2004, the government had made significant progress in the first pillar. Framework decrees for the future ministries and agencies had been prepared and should be approved by Parliament before the general election in June 2004. The incoming government would be responsible for the appointment of the agency heads. In the second and third pillars, the reforms are encountering difficulties. Traditional social partners are hesitant to review their powers, and are critical about developing new forms of civil society and accepting non-corporatist social partners. As has been experienced at the federal level, the tradition of large ministerial cabinets will be hard to change. There have also been concerns about the financial costs of running so many ministries and agencies. As well, improvement of regulatory functions in ministries has been limited and the proposal to establish regulatory management units in each ministry has not been accepted, leaving the choice to each ministry about how to improve its regulatory capacities.

**B. Drivers of regulatory governance reform in Flanders**

71. International best practice recommends that countries adopt at the political level a broad program of regulatory governance that establishes clear objectives and frameworks for implementation, including clear principles against which the quality of the regulation can be measured (See Box 9).<sup>43</sup>

**Box 9. Good practices for improving the capacities of national administration to assure high quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

- A. BUILDING A REGULATORY MANAGEMENT SYSTEM
  - 1. Adopt regulatory reform policy at the highest political levels
  - 2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
  - 3. Build regulatory management capacities
- B. IMPROVING THE QUALITY OF NEW REGULATIONS
  - 1. Regulatory Impact Analysis
  - 2. Systematic public consultation procedures with affected interests
  - 3. Using alternatives to regulation
  - 4. Improving regulatory co-ordination
- C. UPGRADING THE QUALITY OF EXISTING REGULATIONS  
(In addition to the strategies listed above)
  - 1. Reviewing and updating existing regulations
  - 2. Reducing red tape and government formalities

Source: OECD (1997)

72. By September 2001, and after much discussion, the government published an explicit regulatory policy. Within it, Flanders set up a strategy and institutional structure to carry out the policy. However, it was not until November 2003 that the policy was complemented with the approval by government of the eight “principles of good regulation” the regulatory management unit had proposed (See Box 10).

**Box 10: Setting Principles for Good regulation:**

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

- *Necessity and effectiveness.* Good regulation is regulation that is necessary and effective to reach the desired objective. Government action is necessary and effective and regulation is the best instrument among alternatives.
- *Efficiency and balance.* Good regulation creates social welfare. It realizes the desired objective at the lowest social cost and minimizes unwanted side effects.
- *Easy to implement and enforce.* Good regulation assures that it will have effect in real world. It is enforceable and can be implemented.

<sup>43</sup> OECD (1997). *The OECD Report on Regulatory Reform: Synthesis*, Paris and OECD (1995), *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, OCDE/GD(95)95, Paris.

- *Respectfulness for the law.* Good regulation respects the demands and boundaries that the law poses. It assures democratic rights.
- *Coherence.* Good regulation is consistent. There are no overlaps or discrepancies in or between regulations. Regulations are part of a coherent whole.
- *Simplicity, clarity and accessibility.* Good regulation is easy to understand, concrete and easy accessible for everyone that can be affected by or interested in a regulation.
- *Investigated and consulted.* Good regulation is carefully prepared. It is based on all relevant scientific and empirical information that is available. Objectives, alternatives, content and effects have been discussed with all affected and interested parties.
- *Continuously relevant and suitable.* Good regulation assures that the desired objectives keep being realized effectively and efficiently.

73. Based on the 2001 policy mandate Flanders developed a policy organized along three tracks and in three dimensions. The following are three content tracks:

- **Administrative charges reductions (ALV).** This part of the program encompasses a typical ‘administrative simplification’ initiative. At its core, the government has developed an instrument to measure impacts (see below). The 2001 policy replaced the 1999 goal of 25 per cent (which could not be measured nor attained) by a more realistic objective of reducing administrative costs by 100 million euros before mid-2004. A solid political consensus has supported this component, which has thus been prioritized. However, due to its technical complexity and the desire to achieve progress without major regulatory reforms, progress has been arduous and slow, achieved only due to political pressure for “quick win” solutions.
- **Legal simplification (JTV)** consists mainly of a codification initiative to “eliminate dead wood”. This track focuses on improving access to legislation, weeding out duplicate, excessive and outdated regulations, and re-writing inconsistent regulations. The aim of simplification is to reduce the quantity of regulation and make remaining rules more transparent and uniform. This initiative is undertaken as a purely technical reform, with no changes to the substance of the laws.
- Implementing a **Regulatory Impact Analysis** system based on a cost-benefit principle is the most far-reaching part of the program. It is also considered as the most difficult element, in part because of visible political weariness. The aim is to improve the quality of regulation by carrying out a systematic analysis of effects of existing and proposed regulations on citizens, businesses as well on the administration who (will) apply, implement and maintain them.

74. To reflect further international good practices, a supplementary refinement was established in 2003. Activities were organized under three dimensions:

- Improve the quality and reduce the quantity of existing regulation and administrative formalities (management of the stock)
- Reform the process through which new regulation is created so that new regulation is only brought in when necessary and ensuring that the continuous stream of new regulation conforms to stringent quality criteria (management of the flow)
- Development of a structural regulatory policy and the accompanying management capacities and institutions, to promote the quality of regulations, initiate change and reform, and co-ordinate



activities (regulate the regulators), including changes in organizational structures, the rulemaking process and the creation of administrative, political and public support.

75. Much of these reforms are not yet implemented and/or enforced, though. Until recently, the policy had few incentives and enforcement mechanisms.<sup>44</sup> It mainly relied on a series of notes and circulars approved by government that were presented as good practices to be encouraged by the central unit. The idea was that in due time peer pressures and better guidance would produce cultural change. The only mechanism actually implemented as intended was production of an annual report describing innovative regulatory practices. In January 2004, the government decided to link the performance appraisals and periodical reporting of high officials with results and progress in implementation of the regulatory action plan and regulatory management. This measure is now being applied, and it has considerable promise in both accelerating delivery of the program and improving the quality of monitoring.

76. Surprisingly for a policy aimed at changing decision-making cultures, the regulatory policy has not been well integrated into other administrative reforms. Its connection with the Egovernment policy, administrative restructuring (BBB), and other better governance initiatives has been weak. It has also not become an explicit element of economic policy. Despite the fact that the business sector has been a strong political supporter, the policy has not targeted economic goals such as improving the competitiveness of firms, productivity, innovation, or SME development.

### ***The institutions driving the policy***

77. To support the 2001 policy the government created a dedicated unit: *the Kenniscel Wetsmatiging (KWM)* or “Knowledge Unit for Legislative Moderation”.<sup>45</sup> It started operation in April 2002. Its program is ostensibly divided between projects and structural initiatives, but, as is often the case, political demand has focused the KWM on concrete rather than structural projects. The unit was entrusted with six main tasks:

- Support. The KWM prepares the conclusions and decisions of the Flemish government on regulatory management. It supports the MP and formulates the replies to formal questions of members of parliament regarding aspects of regulatory management.
- Coordination. The KWM manages, advises and reports to the Flemish government and MP on regulatory affairs matters undertaken by all departments. For this it has developed an informal network of civil servants in departments.
- Expertise and advice. The KWM is the government focal point on regulatory affairs. It assembles the available expertise on regulatory management and works together with internal, external, national and international experts. It develops guidelines and training material for departments. KWM staff participates in simplification and regulatory projects of other departments.
- Independent quality control. The KWM checks whether draft regulation complies with the standards of good regulation and the principle of good regulatory management. It evaluates simplification projects, reports to the minister-president and formulates its opinion.

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<sup>44</sup> This is often the case, when there is no law, such as an administrative procedure law, that can be used to impose minimum standards of quality on rule makers and provide rights for high quality regulation to citizens and businesses.

<sup>45</sup> In 2002, the MP changed the name of the unit from Regulatory Management Unit to ‘Knowledge Unit for Legislative Moderation (Kenniscel Wetsmatiging)’.

- Advocacy. The KWM promotes regulatory quality across the administration and non-governmental organizations (i.e. business, citizens, organizations). It organizes internal and external communication campaigns.
- Diagnosis and awareness. As a focal point on regulatory problems, the KWM signals and communicates with the government and ministries about any regulatory problem detected.

78. The KWM is carrying out all of these missions except quality control, which is the strategy that in other countries has been most resisted by the ministries. The main problem is that the KWM has no clear mandate, enforcement powers, and resources to implement this difficult mission. However, on several occasions, ministers have solicited the KWM's opinions on a draft regulation, which have then been incorporated to the official dossier.

79. The head of the KWM reports to the Secretary General of the Department of co-ordination.<sup>46</sup> Its cross-cutting horizontal position has, however, not been easily accepted by services traditionally accustomed to hierarchical and clear authority structures. The unit has seven professional staff including its head.

80. From the beginning, KWM has made important efforts to build support inside and outside government for regulatory management. The Unit has established network of contact persons in each department, each agency and each ministerial cabinet. It has also forged co-operation with various consultative boards, business associations, other organizations, union of municipalities, as well as with federal entities such as ASA. It has relied on an intensive communication strategy through posters, website, articles, etc. In less than two years time, the Unit has become well known inside the public administration and regulatory management.

81. Once a month,<sup>47</sup> KWM organizes a meeting of the **Task Force on Regulatory Management**, the main decision-making board besides the Flemish government itself for implementing the policy. The Task Force monitors existing projects and launches new ones. Its members are the Minister President, the Government Council chief, the Secretary General of the coordination department, and the main General Directors of the DG of Chancellery, in addition to KWM staff.

82. Two units in the Chancellery support departmental legal quality efforts, an important task since most draft regulations are prepared by non-legal experts of ministerial cabinets.<sup>48</sup> The **Legal Services Unit** prepares guidelines for technical law-drafting quality, prepares (in theory, mandatory) an opinion on each draft regulation (primary and secondary) with respect to the technical law-drafting quality, gives *ad hoc* legal advice, manages a general database of all Flemish laws in force (the Vlaamse codex), and is in charge of a legal library (texts from parliament, government, advise councils courts). The **Linguistic Unit** prepares guidelines for plain language drafting, gives (in theory, mandatory) opinions on each draft regulation (primary and secondary) with respect to plain language drafting, and provides *ad hoc* linguistic advice to departments.

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<sup>46</sup> The Secretary of the Flemish government prepares the agenda for governmental meetings, distributes governmental documents, and conducts a formal control of all documents that are presented to government on whether they comply with the written guidelines.

<sup>47</sup> When it began, the Task Force met once a week.

<sup>48</sup> The BBB will reduce the size of the ministerial cabinets. The creation of a specific regulatory unit in each department has not been envisaged in that program. Nevertheless, some administrations have felt the need to integrate a specific regulatory unit in their BBB proposals and implementation plans (e.g. the future environment ministry, the education ministry).

83. A third unit under the Secretary General of the Chancellery was the Egovernment Unit. From 1999 until recently, the Unit ran an ambitious program covering more than 130 projects. Egovernment had a very high profile, and the Unit enjoyed a large budget and significant independence. However, in March 2004 the Unit was merged with the Flanders Infoline. Few links existed between the Egovernment Unit and the KWM.

84. Outside the government, a series of key institutions participate in the rule-making process. Three of them have an active stance on the quality of regulation through their “check and balance” functions. The *Social and Economic Council of Flanders* (SERV) together with other official consultative boards such as the Environmental Advisory Board (MINA) are social partnership forums where government proposals are discussed. In practice, SERV, and to a lesser degree other consultative boards, plays a triple role: it forges consensus through negotiation on governmental proposals, it provides a forum to consult and discuss initiatives and problems, and it acts as a trusted independent think tank, thanks to the well considered reports prepared by its 16 person professional staff .

85. The federal *Council of State* and the *Arbitrage Court* also play crucial roles to improve, through *ex ante* and *ex post* formal procedures, the quality of legal and regulatory drafts. The Council of State’s role in rule-making is similar to that of similar institutions in France, Spain and the Netherlands. Since its creation in 1948, the Council has a dual function. First, it is the Supreme Administrative Court. The Council of State can annul subordinate regulations (but not laws). The Council of State also serves as the “Legislation Advisory body” to Belgium governments. By law, all governments are required to consult the Council on all legal projects (there are few exceptions, such as Member of Parliament and urgency initiatives). However, only 10 per cent of Council of State decisions concern opinions on draft laws and regulations, the rest deals with administrative appeals.

86. In Flanders, the Council of State needs to review all draft laws and regulations before they are sent to parliament or discussed and approved by the Government Council. However, due to excess demands on its resources, the Council targets its appraisals on what it considers significant measures. In practice, many subordinate regulations are not systematically reviewed. For these cases, the only external control is through a possible *ex post* court challenge, including by the Arbitrage Court. This rarely happens.

87. Attentive to the federal division of powers, the Council’s reviews – as an administrative court and as a legal advisor to the government - are based on the principle of judicial self-restraint. This means that most of its work focuses strictly on legal aspects (i.e. constitutional, legal, and increasingly on the quality of the transposition of EU laws), avoiding any comments based on the proportionality principle.<sup>49</sup> Though the Council’s opinions are included in the legal folder accompanying a draft, they are not binding. They do not appear in the national gazette but can be downloaded from the Parliament’s website. Despite its significant moral weight, less than 60 per cent of its advice is followed by the government.<sup>50</sup>

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<sup>49</sup> The Council of State is also meticulous when comparing the three language transposition of the measures transposed by regional and communities authorities.

<sup>50</sup> According to Prof Velaers , only 56 % of the Council of State’s constitutional or institutional advices on bills and proposals of acts of parliament were accepted by governments between 1948-1998. The following percentages correspond to follow-up by governments

Commission communautaire commune:	86%
Communauté germanophone:	77 %
Région de Bruxelles-Capitale:	72 %
Région Wallone:	67 %
Commission communautaire française:	60 %

88. The *Arbitrage Court* exercises crucial *ex post* control on the division of competences. Through its appeals system is open to citizens, the Court has occasionally annulled partially or totally a regulation under proportionality grounds.<sup>51</sup> The Court also has a six-month period to verify if a new law or decree complies with the Constitution.

89. *Ombudsman offices* also play a role in the rule-making process. Because this type of office is at the border between the private and public spheres, it possesses not only the tools but the public trust to identify important regulatory problems and propose improvements. The Flanders Ombudsman Office has played such a role. Its 14 officials are asked by thousands of citizens to help resolve administrative problems. The recommendations published in its annual report are influential among members of parliament.<sup>52</sup> However, Ombudsman actions can only be seen as remedies to individual regulations and administrative practices, rather than systemic reforms to the regulatory system. Moreover, the plethora of Ombudsmen offices that have been established in the past 8 years may reduce their aggregate effectiveness and efficiency.<sup>53</sup>

90. *Parliament* has played a passive role in assuring the quality of the legal framework, though a recent government proposal has called for setting up a Parliamentary subcommittee on the quality of legislation. This would be a positive step. One of the reasons for lack of Parliamentary involvement is that the Parliament has few resources to play a more active role, and has no economic analysis capacities. It has a small unit in charge of reviewing projects of Member of Parliament.<sup>54</sup> This unit reviews the legal form of the proposals and does not discuss their need, impacts, or proportionality. However, its president can, through a complex procedure, ask the opinion of the *Cour des Comptes*. There is also a special protocol between the Parliament and the Flemish Academy of Science, which has never been used, and in 2002 the Parliament set up a small Research Institute (*Institut pour l'examen des aspects technologiques et scientifiques*) for studying scientifically complex issues such as the policy on genetically modified organisms.

91. The lack of Parliamentary administrative and economic review capacities is problematic. The Parliament is the main (and sometimes the sole) recipient of accountability instruments such as reports from “independent and autonomous” agencies. The Flemish Parliament receives nearly 100 “mandatory” reports each year. Unfortunately, these reports are seldom scrutinized by experts and their value is low.

92. Flanders has only one economic regulatory body - the regulatory agency for energy (VREG) - but proposals have been made to set up a regulator for water. Based on the BBB project, the government intends to accelerate the creation of similar institutions. Established in 2001, VREG is in charge of the gas and electricity sectors, following their EU-driven liberalization. It has a fair degree of autonomy. Under the current law, VREG has some rule-making competences, including the development of technical

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Région et Communauté flamande:	51 %
Communauté française:	48 %

From J. Velaers, *De wetgevingsadviesing door de Raad van State in België*, Deventer, W.E.J. Tjeenk Willink, 2000, p. 72-73

<sup>51</sup> Under its mandate to judge according to a “reasonable relation between means and objectives”.

<sup>52</sup> Its annual report contains two types of recommendations for the administration and for the rule makers: the government and parliament. The former constitutes the great majority. They deal mostly with delays in making authorization decisions. Some of its recommendations have translated into legal and regulatory reforms, as many solution require reforms to individual regulations

<sup>53</sup> Belgium has five government Ombudsman Offices (one for each region, one for the French community and one for the federal government), and five or six for specific sectors (telecom, railways, banks, insurance). Lately, municipalities have been setting up their own. A project for a common website has been discussed.

<sup>54</sup> Though 80 % of the initiatives are presented by the government.

standards, while the energy minister only provides advice. However, the Council of State has challenged these powers, insisting that it is the Minister who must sign such decisions. VREG reports annually to the Parliament. Until recently it used to report also to SERV and MINA (the Environmental Advisory Board) which needed to produce annual reports on the agency's performance. However, a recent decree will eliminate this external control, and will not replace it by any comparable performance control mechanism. Currently VREG's performance, including its independence, is being tested by the high energy prices in Belgium (though in Flanders prices are the lowest in the Kingdom) and by complex competition issues handled by the federal Competition Commission. As often the case, the division of competences is clear in theory, but in practice some problems and grey zones have appeared. Presently, an issue concerns the setting of access prices for transmission lines. A proposal to create a forum to help coordinate the management and development of the sector for the four Belgium electricity regulators and in particular with the federal regulator (CREG) was adopted by decree three years ago, but has not been implemented.

### **C. Administrative capacities in Flanders for making new regulations of high quality**

#### *Transparency*

93. Transparency of the regulatory system is essential to establish a credible and accessible regulatory environment that promotes competition, trade, and investment, and helps protect against undue influence by special interests. Transparency reinforces the legitimacy and fairness of regulatory processes. Yet transparency is a multi-faceted concept that is not always easy to establish in practice. It involves a wide range of practices, including standardized processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand, and thus to comply with them.

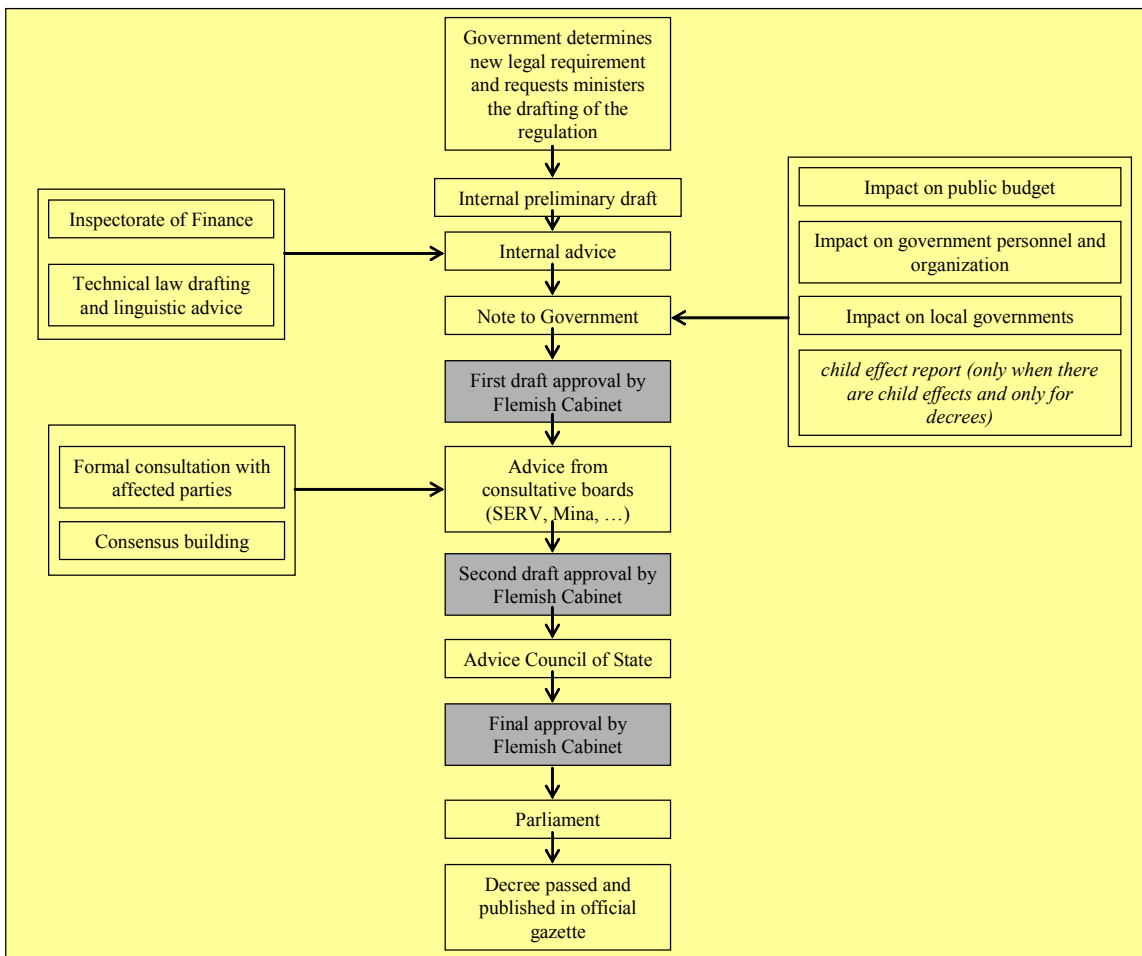
94. Flanders is well aware of the need for, and benefits of an open regulatory process and framework. The process is ruled by two circulars: (1) the *Technical Circular on Law-Drafting*, which contains guidelines for drafting decrees and regulations and a description of the procedure to be followed; and (2) the *Household Rules of the Flemish Government* that contain a detailed description of the characteristics of notes to government that accompany each decree and regulation (apart from the explanatory memorandum) as it is put forward to government.

95. A central dimension of good regulatory governance is the existence of systematic and mandatory 'checks and balances' to rule making powers. The key issue is that self-assessment by the officials in charge of preparing the rules (i.e. line ministries and agencies) is necessary but not sufficient. The appraisal of the quality of a draft regulation needs to be complemented by an objective opinion prepared by one or more institutions distinct from the entity preparing the draft. Moreover, a second and broader opinion is important because sectoral drafters may have great difficulties to be aware of the cumulative impacts of a measure vis-à-vis the whole legal, budgetary and economic framework. Flanders observes this 'golden rule' of regulatory governance where the Council of States and specialized bodies like the Inspectorate of Finance and the Consultative Boards can in theory 'challenge' the quality of a draft (see Figure 3).

96. However, the system is not as efficient and effective as it should be in ensuring the degree of transparency expected in today's open and competitive markets, nor by citizens who increasingly expect to participate in important public policy decisions. First, impacts focus on legality aspects and on governments' costs rather than on regulatees' burdens (with the exception to a very specific assessment on consequence for children). Long-standing practices and gaps hinder openness and participation in the regulation-making processes by the public. Second, the interministerial flow of information does not provide a sufficient basis to assure coherent regulatory interventions. The information produced by the

most important assessments (i.e. Consultative Boards and Council of State) arrive too late during the decision making process. They also arrive at a too high senior and political level: any change at this level will tend to be accepted under a negotiation framework rather than through an open participation and dialogue. At this point, the decision to look for less burdensome alternatives (including the option of not regulating) becomes extremely difficult to make due to the political context of a Government Council meeting. At the end of the day, the third and last reading by the Government Council may tend to add a smaller value to the draft and on the other hand unnecessary extend the law making process.

**Figure 3: Flanders Law-making procedure**



97. Interestingly, Belgium and Flanders do not have administrative procedure laws, which in many countries establish the rights and obligations of regulators and administrators.<sup>55</sup> Among the explanations advanced are gaps in the process of federalization, which followed a sectoral rather than a horizontal approach (i.e. education, environment laws, etc. were developed one by one). No systemic and horizontal-wide functions were developed or transferred until now. Another reason is that regions have only recently had sufficient administrative capacities to recognize the need to harmonize and ensure the quality of the procedures across the whole administration.

<sup>55</sup> Though there have been some attempts to create one. In 1999, the federal government prepared a project based on the Dutch Administrative law. However,

Council of State took four years to produce in 2003 its opinion.

98. On the other hand, Belgium has had since 1995 a *Federal Access to Information Law and Flanders* an access of information decree enacted a few years earlier. Internationally, this law is considered comparatively powerful. However, the law is concurrent at federal and regional levels, making it complex to manage. For instance, authorities' response times vary from matter to matter. This complexity may explain why it has been little used by citizens and businesses, with fewer than 20 requests in Flanders.

99. Though the public can request draft regulations, the government does not publish or post them in the Internet, as some countries have done, as Canada does through its extensive pre-publication requirement, the USA with its 'notice and comments' rules, or Norway.<sup>1</sup>

100. Last, Flanders has not developed a forward legal planning process used in some countries to inform the public about regulatory work planned or in process in the administration. Flanders should consider developing a unified regulatory agenda similar to those existing in leading countries such as the US and the UK (see Box 11).

101. An important transparency step was taken in 2003, when the KWM proposed to create a registry of all draft regulations, with few exceptions. The first phase for this registry would be setting up an internal registry for the government to be used as a planning and co-ordination tool for civil servants. In a second phase, the registry would be made public through the Internet. This is a crucial element in improving legal security and reducing regulatory transactions costs, and should be given a high priority.

#### **Box 11. Publication of future plans to regulate**

Publication of lists of proposed future regulation is a rapidly developing strategy for improving transparency. According to OECD, by 2001, 12 OECD countries had publicly accessible registers of forthcoming primary legislation, while 7 have publicly accessible registers of forthcoming lower-level rules. Publication promotes the democratic value of openness in relation to the regulation-making process. The participation of interested parties in dialogue on proposed regulations is fostered as early as possible in the process, also improving the likely quality of subsequent consultations. For ministries, registers of forward plans to regulate provide a means to review and co-ordinate regulatory policy making in a broader, whole of government context.

There are many ways and means this obligation of accountability and transparency is organized. In the *United States* a detailed and "instrumental" approach is used. Twice a year the Office of Information on Regulatory Affairs at OMB published a *Unified Agenda of Federal Regulatory and Deregulatory Actions*, in the national gazette and on Internet. It is a very comprehensive publication containing outlines of regulatory proposals and plans, covering the entire administration and includes detail on the regulation's priority, its impact on SMEs and on other levels of government and a timetable for action. The Unified Agenda also includes ex post reporting on the status of regulation proposed in previous editions.

*Canada* too takes a similar approach with its annual *Federal Regulatory Plan* reporting on all regulatory actions (except legislation) expected during the next year, and provides summary information on impacts. The Plan is on sale to the public.

In the case of *Norway*, regulatory forward planning is based on the requirements issued in the Prime Minister's Office's *Guidelines on the Preparation of cases for the King in Council* according to which the government "with certain intervals" shall prepare catalogues of planned bills and reports for the Parliament. The Prime Minister's Office co-ordinates forward planning of bills and reports to the Parliament. Twice a year the Office compiles a catalogue of ministries' proposals for bills and reports to be presented to Parliament in its coming session. The proposals are discussed and prioritized by the government. The Prime Minister officially submits the catalogue to the Parliament each year in January and March. The catalogue lists the name of the planned bill or report together with the expected month of submission to the Parliament. The catalogue is publicly available and easy accessible from the government's Web-portal. The government also prepares an internal catalogue with planned propositions and

reports. This catalogue is exempted from public disclosure used exclusively for the government's own planning purposes.

Source: OECD (2002) and OECD (2003) Government Capacities to Assure High quality regulations in Norway, Paris.

102. Another key to transparency and high quality regulation is public consultation through which citizens and businesses have the opportunity to provide active input into regulatory decisions. Belgian values of consensus-building are reflected in strongly institutionalized consultation practices in Flanders. Consultation depends almost entirely on formal consultative boards created over the years in an *ad hoc* fashion by numerous laws. Depending on the subject and its respective law(s), the government requires an opinion of at least one of the 150 existing consultative boards such as the Social and Economic Council of Flanders (SERV), the Environmental Council (MINA) and the Urban Planning Council. Most of their members come from traditional social partner organizations, that is, employers' organizations and labor unions. Depending on governance structure, members can take decisions (such as approving an opinion or a report) unanimously or by majority. In some cases, such as for MINA, minority reports can be attached to the final decision.<sup>56</sup> For all draft decrees, the government is required to consult the SERV, where only social partners sit. The advice of SERV and other consultative boards is not binding. The government has no obligation either to react to the opinion or to explain why it was not accepted. On the other hand, the Council of State may annul a decree if the mandatory consultation was skipped.

103. In theory, consultative boards have one month to respond, but in practice the government urges them to respond in three to ten days (depending on the council), arguing that this consultation can delay considerably the legislation-making process. An important problem is that this type of consultation is carried out at the very end of the rule-making process, after the civil servants have already decided what they want to do. As a result, discussions in the main consultative bodies (i.e. SERV and MINA) tend to be formal negotiations between the main stakeholders with marginal effects to accommodate this or that view. Reflecting the compromises reached, the final drafts in some cases lose coherence, and undermine the performance of the policy.

104. Besides requiring an opinion from the consultative boards, there is no binding requirement in Flanders to consult other stakeholders who may be impacted by a proposal. This is a troubling legal gap. However, more and more departments are using active public consultation approaches. Some of these practices are innovative (see Box 12). Compared to the consultation boards, these newer methods are more flexible, arrive earlier in the preparatory process, and tend to be more effective in improving the design of the regulation and thus implementation and compliance costs. Such changes to consultation processes, which are an alternative to consensus-seeking and restricted structures, also suggest that attitudes are changing about market forces and reflect broader trends toward a more pluralistic Belgian society

105. Without minimum standards of access and transparency, such informal consultation are conducted at the discretion of regulators who decide who will participate, how and when. This is a challenging situation, in which the fairness and credibility of the process can be questioned – by Flemish and international stakeholders - if some groups have more access than others do.

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<sup>56</sup> Some questions have been raised about the duplication of SERV and the Parliament. In particular because SERV governance, as a corporatist body, gives too much weight to the traditional social partners representing the producers side of society (i.e. business and unions) and not enough to the consumer and citizen side of society as well as to outsiders, such as foreign investors.



### **Box 12. Innovative consultation initiatives**

One of the most interesting initiatives in Flanders is the pre-consultation project called Project Stakeholder (project Doelgroepenbeleid) run by the Environmental Department. Since early 2001, a small team has been experimenting on the use of focus groups and self-regulation.

Based on a Dutch initiative, a focus group provides inputs to the management and development of an environmental covenant. The focus group's participants - representing consumers, industry federation, and NGOs - discuss the objectives and targets of the covenant between themselves and with all regulators (including federal ones). They then agree on the covenant's regulations and their enforcement. So far, the two experiments have covered the food and steel sectors. Though there has been some reluctance from traditional 'command and control' regulators, the department has plans to extend the experiment to other covenants, and maybe to all, as in the Netherlands.

Since 2002 and as part of its public governance program, the King Baudoin Foundation has run a project on innovative participative methods. The project aims to initiate and encourage participative methods aimed at involving citizens in debates and decisions. Working on focused issues like "Giving consumers a voice", "Production and consumption of animals in Flanders in the 21st century", "Food on the table: Discussing GMOs", and "Trade and Poverty Forum", the project intends to improve dialogue between the stakeholders and authorities. The program also includes a methodological component as well as disseminating methods for good participative practices.

106. Following the example of the European and Danish Business Test Panels, the Flemish government decided in November 2003 in the context of a high-level business conference to start organizing business test panels in Flanders as well. This is a process in which a cross-section of businesses is asked directly about the expected administrative burdens and costs of proposed legislation. The test panels will be used to assess the new legislation that will affect all types of companies across size and branch. Focus panels will typically consist of a smaller number of companies and will be formed specifically for the bill or the departmental order that is being assessed. The focus panels are used to assess branch specific legislation. The two types of panels will sometimes be complemented by more in-depth, follow-up interviews or round table discussions with a group of companies. Finally, there will be a model enterprise program, to compute and follow up the total administrative burdens from interviews with a limited number of model enterprises. The SERV has been asked to host these initiatives and prepare a proposal to help the government to implement these mechanisms.

107. Some new proposals may clarify and make more efficient the formal consultation process, and would help modernize the Flemish regulatory system in line with international norms. As indicated above, the BBB program intends to reform the consultative boards, reducing their number from more than 150 today to 13, or one for each future ministry. As part of that program, there is also an intent to open their membership beyond social partners to other stakeholders in order to transform them into more credible, strategic, representative and independent advisory bodies. They would be consulted on 'bigger' issues rather than on a myriad of detailed measures that are already close to decision. The legal requirement for the government to consult them would be strengthened, as well as the obligation to respond to the recommendations.

108. The KWM is also planning to improve informal consultation procedures. For instance, it intends to propose the establishment of "white papers" similar to those used by the European Commission to strengthen earlier consultation at the conceptual stage, before a measure is drafted. Another idea is to use the planned, but not yet approved, register of draft regulations (see above) as a "notice and comment" system.

109. Transparency inside the government through intra-governmental consultation and coordination is another important element of an open regulatory system in an era when policy issues cut across bureaucratic and legal boundaries. Internal circulation of draft regulations among Flemish departments is

now done in an *ad hoc* and informal way, often at the very end of the rule-making process. This seems a process aimed more at informing other ministries than at talking with them. Intra-governmental consultation and coordination is rare. To an excessive degree, due to the lack of coordination at the working level, departments and thus the government rely on the Government Council meetings to assure coherence and reduce duplication and contradictions.

110. Another way to coordinate among ministries is to give quality control bodies the mandate to coordinate when they identify interactive policy issues. As noted, in terms of internal *ex ante* controls, the Legal Unit and the Linguistic Unit of the Chancellery should in theory be consulted. These units could be given responsibility for organizing interministerial consultations on important issues

111. Transparency in implementation of regulation is another international norm that is increasingly embedded in international trade agreements. The administration must effectively communicate the existence and content of all regulations to the public. Communication is also essential to achieving effective compliance. Two main axes can be favored: focusing on access to regulations, and focusing on user-friendly understanding of regulation.

112. The official gazette, the Belgium Monitor (BM), run by the federal government, communicates primary and secondary regulations of all regions and communities. It also posts circulars when they affect citizens (e.g. urban planning rules).<sup>57</sup> The BM is not published in paper anymore but can be accessed on a free Internet-base web, with some basic search tools. For Flanders, the Legal Unit of the Chancellery is responsible for maintaining the Flemish Codex, which is a central database with all Flemish regulations.

113. In light of the relentless increase in the quantity of Flemish primary and secondary legislation, the government has through the year launched several codification initiatives in specific policy areas such as environment which started in 1989 but is still unfinished. In 2001, as part of its regulatory management policy on juridical-technical simplification, the MKW together with the different ministries launched 12 major codification projects and 30 minor projects.

114. In parallel with these projects, the government wanted to move in a more radical and systematic way and requested that KWM investigated the possibilities of a “global codification process”. Its final report, finalized in September 2003, proposed the creation of an overall and complete database for all regulatory measures, including formalities and forms. Such a database would put Flanders into the forefront in Europe in terms of easy access to its regulations. Under the coordination of the Chancellery’s Legal Unit, the new system is now being integrated into the Flemish Codex. The next step would be to give legal security to this “intelligent codex” through a legal mechanism. A conference on the option to create a Code of Administrative Procedures Act in Flanders will be organized by the KWM in May 2004.

115. Additional initiatives and projects were recently launched to improve access to the regulatory framework in Belgium and in Flanders, most of them incorporating ICT technologies. The Parliament and the Council of State are planning to launch a “Legal Carrefour” consolidating electronically the text of the primary and secondary legislation into a single database. A private public partnership has been set up provide to all civil servants requesting it, access to the Library of the Flemish Ministry. On a sectoral basis, sectoral databases and websites are now operational that provide access to the regulatory framework, such as the EDULEX for education and EMIS for environment.

116. In terms of user-friendly user texts, the Flemish government has circulated to all departments a circular prepared by the Legal Unit setting technical law drafting standards. The Council of State has also

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<sup>57</sup> The BM also announces appointments and courts decisions.

published guidance on technical law drafting or *legistique*. An additional resource for the law drafter is the training program on technical law drafting initiated by the KWM.

### ***Choice of policy instruments: regulation and alternatives***

117. A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In many countries the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of markets increases. At the same time, administrators, rule-makers and regulators often face risks in using relatively untried tools. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

118. Increasingly, guidelines for regulators in OECD countries require ministries and agencies to consider whether “command and control” regulation is likely to be the most effective policy instrument and whether other options might succeed in achieving policy goals at lower cost. In 2000, 18 out of 28 OECD countries reported that regulators were required to assess alternatives to traditional regulation when preparing new regulation.<sup>58</sup> But the use of regulatory alternatives in OECD countries is, while increasing, still at a relatively low level.

119. The first principle of the *Flemish Code of Good Regulation* refers to this key dimension of quality regulation. A few years before, SERV had already published in 1992 and 1995 an internal guide to help regulators select the most appropriate environmental policy instrument, i.e. choosing among economic instruments, command and control, or covenants. The guides and the Code are not binding, though, and, as in most countries, it has been difficult to encourage regulators to consider alternatives during the rule-making decision process.

120. Specific initiatives by individual ministers and departments are worthy of note. In environmental protection, authorities increasingly employ a wider range of instruments including subsidies and taxes, environmental management plans, and environmental audits. The implementation of the Environment Policy Plan has further encouraged the search for smarter regulatory approaches. The plan emphasizes the need to use “legal, financial or social instruments and information” to achieve environmental policy objectives and states that “the success of environmental policy stands or falls on the mix of instruments chosen”. Alternative policy instruments favored by the environment department are generally seen as mutually supporting elements mixing ‘command and control’, incentives, and trust-based components. Information disclosure is another alternative policy instrument that is used predominantly in relation to environmental issues.

121. A key element, shared with the Netherlands is the setting up of covenants, which are voluntary agreements between the authority, the industry and in some cases non-profit organizations. (See Box 12 on innovative consultation approaches). Covenants have been endorsed by the OECD as potentially useful in reducing the costs of achieving high levels of environment protection, but stringent safeguards are needed to ensure transparency, accountability, and compliance with competition principles. Important covenants in Flanders address waste in various industry sectors, and air pollution from refineries and electricity producers.

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<sup>58</sup> OECD (2002) *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. Paris.

### ***Understanding regulatory effects: the use of Regulatory Impact Analysis (RIA)***

122. A powerful trend toward more empirically based regulation is underway in OECD countries (See Box 6). High-quality regulation is increasingly seen as a prerequisite for governments to produce the desired results of a public policy as cost-effectively as possible. The main vehicle for ensuring cost-effectiveness is through the application of regulatory impact analysis (RIA) to draft regulations. In effect, RIA is basically an "evidence-based decision method".

123. In 2000, the Chancellery drafted a checklist for ex ante assessment of regulations. However, the checklist was never promoted or enforced. As a result, Flanders has to date no RIA system, though developing RIA is one of the three axes of work in the 2001 regulatory management policy.<sup>59</sup> This is a significant gap in its good regulation capacities, and it is difficult to see how Flemish regulation can significantly improve without a better understanding of market impacts. Today, the basic document containing information on the impacts of proposed actions is a note attached to the draft text before it is submitted to the Government Council (See Figure 3). This note, mandated by the *Household Rule of the Flemish Government*, requires the drafting of a paragraph addressing the following aspects:

- The impacts on the public budget
- The impacts on government personnel and the administrative organization
- The impacts for local government (provinces and municipalities)

124. No systematic survey of responses has been made and published. However, anecdotal evidence indicates the substantive quality of the paragraphs is very low, that they do not include quantification elements, and that they are drafted at the end of the process.

125. Yet Flanders has learned valuable lessons by applying three other mandatory *ex ante* analysis that the government could use to strengthen the system and transform it into a full-fledged RIA.

- A first ex ante control consists of a traditional budgetary assessment verifying the impact of the measure on the region's treasury. Regulators prepare the assessment and send it to the 12 federal financial inspectors assigned to the Flanders region. The opinion is then attached to the measure's dossier received by the Government Council. The opinions are considered confidential and are not widely distributed nor published, which seems a missed opportunity for accountability. The financial inspectors' analysis concentrates on expenditure projects rather than legal or regulatory projects, and on focus on implementation costs for the administration rather than impacts on business and citizens.
- A second precedent for an *ex ante* review is the Child impact test established in 1997, and which became operational in 2001 for decrees. The Child Commissariat of Flemish parliament monitors the opinions and produces an annual report. There is no evidence, however, that the assessment has resulted in any significant modifications to any proposal.
- Lastly, the ministry of environment promotes the elaboration of environmental impact assessment on some draft policies, following a European obligation to do EIA for certain policies and plans. It is

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<sup>59</sup> In November 2003, the government approved at the high level business conference the implementation of a business impact test (BIT) together with the setting up of test panels. The Economy Department is currently developing a proposal. KWM has promoted the integration of the BIT into the RIA system.

worth noting, the department of environment has made significant efforts to try to quantify the benefits as well as the costs of proposals.

126. In order to consolidate and strengthen the current system and establish a developed RIA, KWM asked a university to assist in preparing a RIA scheme adapted to the Flanders conditions. Its report was finalized in March 2004 and was used by the KWM to prepare a RIA-consultation paper. This paper was published early April 2004 along with a short questionnaire. The basic lines of the proposal are that all draft decrees and executive regulations (with common sense exceptions) will need to be accompanied by a “small” five-page RIA discussing:

1. What issue/problem is the policy/proposal attempting to resolve?

~~1.2.~~ What main objective is the policy/proposal expected to reach?

~~1.3.~~ What are the main policy options available to reach the objective?

~~1.4.~~ What are the impacts – positive and negative – expected from the different options identified?

~~1.5.~~ How will the results and impacts of the proposal be monitored and evaluated after its implementation?

~~1.6.~~ Which interested parties were consulted, at what stage of the process, and for what purpose? What were the results of the consultation?

~~1.7.~~ What is the final policy choice and why? And how is this reflected in the draft proposal and its justification?

127. These elements are reminiscent of the OECD Regulatory Quality Checklist, and seem sensible.

128. To support the RIA, the KWM proposed to establish a regulatory forward planning agenda (described above) listing all future regulation. From this list, the government, with the help of the KWM, will select projects of decrees and executive regulations requiring an in-depth RIA. This in-depth RIA will include alternative analyses, cost-benefit assessment in quantitative and monetary terms. The government will also require every minister to appoint a RIA responsible officer and an intensive training program will be organized along with the preparation of guidance material.

129. The consultant report estimates that Flanders will require at least 10 years to fully implement the system and develop adjunct tools such as clear quality criteria, processes and procedures, challenge function, but ten years seems far too conservative if the program is well designed, resources are allocated, and politicians support it. There is no reason why the quality of analysis cannot be significantly improved in a 2-5 year timeframe.

130. Between March and April 2004, the consultation paper on the RIA system was discussed broadly inside and outside government. The support for the general characteristics of the proposed RIA scheme was overwhelming. There seems universal agreement between civil servants, business leaders and academics that RIA is necessary and will promote the quality of the rulemaking by enhancing empirical based decisions and transparency. A crucial element of the RIA implementation in Flanders - and this is supported by the evidence from the answers on the RIA-consultation paper - will be the design of a firm enforcement thought through a gradual implementation, which should occur after the adoption through a governmental agreement after the elections in June 2004. Still, at the moment, there is no political approval. Currently, this project is being discussed at the level of the Government Council.

131. As for other countries, skepticism and passive (or active) opposition from the administration will surround the KWM RIA project and the establishment of binding horizontal procedures upon autonomous departments. A current objection will be that departments lack capacities to prepare RIAs, including legal expertise. Most of the ‘rule drafters’ in key departments such as environment, transport, and safety, are engineers. The civil service has very few economists.<sup>60</sup> These are important problems, but other governments have faced them as well and overcome them. The real problem is not practical, but is cultural. That, too, is a familiar problem, and one that must be overcome with education and bottom-up implementation that demonstrates to officials how RIA can improve their capacities to deliver concrete benefits to citizens.

132. An important test and window of opportunity to ingrain the new working method will be the linking of the new RIA processes and BBB structures. This may be difficult, as BBB has avoided what it sees as micro-managing the processes and capacities of the future departments.

#### ***D. Dynamic change: keeping regulations up-to-date in Flanders***

133. Regulations that are efficient today may become inefficient tomorrow, due to social, economic, and technological change. Over the years, most countries have accumulated a large stock of regulation and administrative formalities. If not checked or reviewed these can lead to a highly burdensome regulatory system. In that sense, regularly reviewing and updating the “stock” of regulation is considered a good international practice.

134. As in all countries, responsible ministers and departments in Flanders monitor the effectiveness of the laws falling within their competence, supervise the impacts of their initiatives, and evaluate the opinions of interest and professional groups. This monitoring is a regular source of legal amendments and proposals. In Flanders, the devolution process and the EU transposition have also been powerful drives to modernize the legal and regulatory landscape. Often, these efforts have been linked to the codification of devolved laws (see above). However, Flanders has not used consistent and transparent quality benchmarks during these reviews of existing regulation. Other countries have assured greater outcomes of the systematic reviews with the use of clear goals and objective criteria. For instance, Australia reviewed its stock of regulation with the aim of increasing productivity, Norway to eliminate barriers to competition, Canada to improve firms’ innovation.<sup>61</sup>

135. Flemish laws do not incorporate legislated review provisions such as the inclusion of a requirement to review the measure within a certain period or to sunset (annul it if not expressly maintained) on a set schedule.

136. But things are changing. KWM increasingly stresses the need to go beyond administrative simplification initiatives into the underlying regulatory content. With the support of politicians, it is putting more emphasis in its administrative simplification projects on existing regulatory barriers that contribute to undue administrative complexity. For instance, KWM now has an explicit program to review and reduce red tape and government formalities and conduct codification projects. These include reforms to key areas of business licensing as well as paperwork burdens in all ministries. All these projects are part

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<sup>60</sup> A shortage for law drafters seems also to exist as very few legal students are trained in law drafting techniques at university.

<sup>61</sup> For more information on these experiences see, for Australia OECD (1997) and for Canada and Norway OECD (2002) and OECD (2003) Background reports on government capacities to assure high quality regulation, in the respective OECD Reviews on Regulatory Reform, Pairs. All these reports are available at [www.oecd.org/regreform.com/](http://www.oecd.org/regreform.com/)

of the annual regulatory management plan and are coordinated and followed up by the KWM, which reports to the Government Council and Parliament.

137. Last, it is worth noting that the elaboration and prioritization of the annual programs included efforts to review the stock of regulations. In 2001, the KWM organized a comprehensive survey of problems in existing regulations among ministers, departments, consultative boards, the Ombudsmen Office and selected NGOs.<sup>62</sup> A number of projects were requested to ministers. Based on this registry and after bilateral meetings with departments and consultative boards, KWM elaborated the work program, with specific action plans for each minister, presented and approved by the Government Council.

### ***Administrative simplification initiatives***

138. From 2000 to 2003, the Flemish government has launched around 124 administrative simplification projects out of 204 projects to improve the business environment. In the past 12 months, KWM has worked on 16 major administrative projects that, according to estimates, have saved businesses 40 million Euros per annum. The unit believes that before the end of May, total savings in administrative burdens of the 49 projects in the action plan 2003-2004 will exceed €100 million, as targeted in 2001. For instance, KWM coordinated a major project to merge the building and environmental permits (See Box 13).

#### **Box 13. Some administrative simplification results in Flanders**

In 2004, under the coordination of KWM, the government merged and simplified environmental and building permits. The idea is that a business located at a spot where the urban planning rules are less important can apply for a permit at the environmental administration instead of having to apply for two different permits at two administrations. This should lead to more certainty for companies, and for a significant timesaving.

Another major project undertaken by the environment department is the replacement of *ex ante* environmental licenses with general rules for most SMEs. This significantly reduces burdens for start-up firms. Similar initiatives to simplify the systems of licensing and permitting in sectors such as culture and welfare, agriculture, and taxation have been initiated in the past months.

139. Efforts to measure the impacts of administrative simplification efforts are advancing in Flanders. Since 2001, Flanders has invested in developing an administrative burden measurement model that can be applied through the whole lifecycle of administrative procedures from design to enforcement. The flagship project is an instrument inspired by the Dutch model MISTRAL, which follows three stages:

- Administrative procedures and information requirements are carefully analyzed. During this stage, all “data transfers” between a business and the authority (e.g. a document, a telephone call, and inspection, etc.) are isolated and defined.
- The time spent involved in each “data transfer” (including preparing for the action), the function level of the person performing it (related to professional qualification and hourly wage-rate), and the frequency of the action are then determined;
- The data are compiled by the computer to produce cost estimates.

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<sup>62</sup> The SERV and the Flemish Education Council were the only two boards who submitted proposals. One explanation is that during the time of the survey, most boards were overwhelmed government’s requests.

140. The two first steps are based on a multi-stage process of intensive consultation and discussion—individually and in focus groups—with experts from firms, accountants, employers and enforcing authorities.

141. The MISTRAL system has been adapted to Flemish circumstances. First, the Flemish instrument is designed to be used in a decentralized way. KWM will provide departmental regulators with an Excel-based package, guidance, and 3 hours training. Second, the instrument covers burdens to citizens in addition to those imposed on businesses. Third, it has a specific “quick scan” module to investigate the type and size of impacts of a procedure or a form comparing the ‘after’ with the ‘before’ situation and ‘major’ and ‘minor’ simplification. The measuring tools will be targeted for larger simplification reforms and regulatory proposals. As well, the model intends to develop “factual” data in terms of time and euros, unlike other models relying on more qualitative estimates, such as the one developed by the federal government. It should also yield valuable information on the administrative burdens encountered by businesses: what does the burden mean to an actor; how many actions does an actor need to take to fulfill this burden. KWM hopes that this information will provide regulators with a ‘data bank’ of proposals to improve other existing regulations by also future ones.

142. In 2002, the KWM implemented the model in five pilot projects. The government is using this tool in 16 different projects before the end of 2004. It will be important to follow up the decentralized implementation of this instrument. Particular issues will include monitoring to ensure that the same definitions and standards are maintained across departments. KWM should also try to prevent strategic manipulation by departments that may try to minimize artificially the impacts. Last, the success of the tool will be related to assuring adequate compliance and integration into decision-making procedures.

143. Another interesting tool developed by KWM and the Legal Unit of the Chancellery in 2003 is the guidance and the checklist to prepare better forms.

144. A third type of instrument that is closely linked to the measurement instrument and that should strengthen political awareness and commitment is the ambitious “Compensation rule”. The objective of the rule is to require that all departments planning to create a new regulation (primary or secondary) compensate for the new administrative burdens with at least an equal reduction in existing administrative burdens. The rule is based on a similar initiative launched in the Netherlands. It is also reminiscent of the “zero inflation” approach to regulatory costs attempted by the United States in the 1970s (the US effort failed utterly). The rule accepted by the Government Council in February 2004 is to be implemented in phases. By April 2004, two ministers had volunteered to implement the rule for their policy field (housing and economy). From January 2005 on, the compensation rule will become mandatory for all policy fields.

145. The second part contains a checklist that draws attention to administrative burdens (e.g. not asking the same information twice) and how these can be minimized. The second part also includes the recommendation to incorporate in each form a administrative burden paragraph with an estimate of the average time it takes to fill out the form and the possibility to comment on that estimate or other aspects. In the US, such a paragraph is mandatory under the Paper Work Reduction Act.

146. In early 2004, the checklist was disseminated widely both internally within the public administration and externally to local governments, libraries and universities. It has been well received. Some authorities have ordered dozens of extra copies. It should be noted that the first intention of KWM was to make the checklist mandatory for all new forms. However, the usual opposition to new disciplines and quality techniques kept it optional. As a result, the KWM is planning to develop a quality label for new or improved forms. This label will show that the form was created according to the rules of the checklist.



147. Details of the measurement aspects have not been developed yet. One of the solutions is to use the measurement instrument discussed above. The KWM believes that by accepting this rule, politicians will give a strong signal about their commitment to reduce administrative burdens.

148. Linkages between administrative simplification and Egovernment also seem important.<sup>63</sup> As the Federal government, Flanders has invested heavily on Egovernment solutions to reduce administrative burdens. Significant successes have included the implementation of the electronic signature and the initiative to transform many existing one-stop shops into virtual help centers. However, the most important results have been achieved through projects combining administrative simplification actions and Egovernment means. For instance, the Flemish Employment Office has recently set up a totally electronic training voucher system.

149. Such results could be intensified if departments work more closely on their 'back office' functions and improve their overall performance through internal but also external assessment. An opportunity will be the recent strengthening of the team of the Internal Audit Unit and its recently launched management audit program organized in 12 fields, of which one is regulatory management. This holds the potential to introduce Business Process Reengineering methods.<sup>64</sup>

#### ***IV. CO-ORDINATION BETWEEN GOVERNMENTS***

##### ***A. Challenges of regulatory management in a federal State***

150. The previous sections show two of the most important benefits of federation. Devolution has reduced the gap between regulators and regulatees, improving accountability and transparency of the regulatory framework. Federalization has also created the opportunity for regions to experiment with different policies, approaches and instruments that, if successful, can be adapted or adopted by other governments. However, the increasing number of authorities and rule makers throughout Belgium has also brought costs and challenges for an efficient and unified regulatory framework based on common principles of transparency, efficiency, accountability, and market competition.

151. In the past few years, the regulatory complexity of the system has become more visible. At one end, citizens are starting to wonder if the system may have become too costly to administer and operate.<sup>65</sup> Much more vocal business groups are increasingly concerned about overlaps, inconsistencies, and opacity of the business environment. According to the State Secretary of Administrative Simplification, the costs and complexity of dealing with many levels is one of the most important criticisms from businesspersons.<sup>66</sup> Real divergence exists in some key areas across Belgium including in sectors such as the energy where EU directives play a major role.

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<sup>63</sup> Egovernment Flemish initiatives were not reported in the review questionnaire and were not discussed during the mission.

<sup>64</sup> The Internal Unit was established in 2001 under the Minister President and counts with 13 auditors mirroring the future departments.

<sup>65</sup> Complaints range from the costs of having different election dates to the budgetary expenses of maintaining four or five levels of bureaucracies, including communities.

<sup>66</sup> See "Interview with secretary of state Van Quickenborne" in *Forward Magazine* (March 2004).

152. Certainly some costs are transitional and should naturally decline over time. The fact that devolution focused on sectoral aspects means that regions will require time to develop horizontal capacities and techniques to compensate for those quality functions that remained at the centre. Moreover, a learning curve for rule makers and implementers has been steep as the transfers were abrupt and little capacity existed beforehand.

153. Simply waiting for things to get better is not a good strategy, though, because many of the burdens are structural and require deeper reforms to correct. Though most economic regulations affecting startup, expansion and closure of businesses remain at the federal level (e.g. registration, taxation, social security, competition and bankruptcy), businesses are also subject to many social and environmental aspects regulated by regions, provinces and municipalities. Little consideration has been given to improving the quality of social regulations, although estimates from the United States indicate that, in that country, social regulations impose costs 3-4 times higher than do economic regulations and that administrative regulations have a disproportionate impact on SMEs. In the end, the economy of the whole of Belgium is affected by the quality of regulatory and administrative action at all levels of government. Indeed, a key reason for the complexity of regulatory frameworks is the increasing interconnection of economic, social, environmental elements of a modern nation.

154. Modernizing regulatory capacities is even more important as Belgium evolves towards a services-based society and focuses on ‘second generation’ reforms in services such as education and health. Enabling entrepreneurs to provide services in health, education and security will bring new services and productivity.<sup>67</sup> But this trend creates regulatory challenges at each governmental level. For instance, the regulation of child health in Belgium is shared between regional and federal departments and agencies. At least five authorities interact when regulating public security.

155. Adjustment may mean that some areas should be re-regulated from higher levels, as the network industry experience shows. In Canada, the federal government has regained control of the telecommunications sector. The North American electricity blackout of the summer 2003, also points toward the need for multi-level coordination in setting up a regulatory framework that ensures a seamless and sustainable network. As well, the sophistication of managing flexible but fragile regulatory arrangements means that highly paid expertise may be too costly for a single jurisdiction or too difficult for a smaller pool of national professionals.

## **B. Managing regulatory powers across levels of government**

156. In theory, the organization and thus the relationships between levels of government should be clear. In practice, the legal and administrative landscape in Belgium is complicated and has required the development of practical innovation and a fair amount of pragmatism and flexibility. As most federal countries are doing, Belgium adjusts to existing and new challenges by interpreting the Constitutions and specially the 1988-1989 amendments defining the distribution of competences. Since then, however, coordination has meant a constant balancing act between maintaining the autonomy needed to generate new ideas and approaches suited to the regions and culture, and at the same time assure coherence and equity of public intervention. The subject is so vast that it has become a field organized under the concept of “federal cooperation”. Schematically, two basic relationships between the federal center and the regions are recognized: the first is built on cooperation between levels (positive incentives), while the second relies mostly on controls (negative incentives). The first relationship reflects weak federal centers, such as

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<sup>67</sup> Based on the economic and technological gains achieved in the past decade by the liberalization of ‘private’ products and services, the potential similar gains of the liberalization of ‘sheltered’ services accounting for nearly 45 % of GDP in OECD countries would certainly be immense.

those in Canada and Australia, while the second reflects strong federal centers, such as the United States. Both are used in Belgium.

157. The first type of cooperation mechanism mainly involves the executive powers of the regions and the federal government. An important element of its success is to build and sustain mutual trust through exchange of information and discussions.<sup>68</sup> For this, governments rely on many mechanisms, some sanctioned by law, such as mutual representation in decision-making bodies, consensus building (i.e. “concertation”) committees and interministerial conferences (see below). This type of approach is used to coordinate policy-making on key economic sectors. It is in this type of forum that day-to-day coordination on key aspects of Belgium is dealt with. This is the case of the *Commission Economique Interministerielle* (CEI), the central forum where the regions and the federal government meet regularly to coordinate important economic issues.

158. These mechanisms often depend on informal approaches that have been developed between administrations of the four governments and three communities. Though there are demands to formalize these relationships, the informality of the system permits a more flexible and pragmatic way to resolve conflicts. On the other hand, the life of these mechanisms may be short. Changes at political levels can make relationships and coordination difficult, as is currently the case in the energy sector.

159. A second category of coordination is the cooperation agreements sanctioned by the Constitutions since 1984. They are increasingly used. Their formality often means a more durable and enforceable relationship, though technically a protocol signed by the governments need to be approved by the respective parliaments to produce legal effects.

160. A typical agreement is the agreement implementing the EU Seveso Directive on technological accidents. This agreement was needed as competencies are shared between the federal level (safety in the work place, nuclear energy, civil protection) and environmental matters at regional level. Other examples are agreements on the maritime environment, climate, or environment impact assessment for activities with across borders effects. In some cases, as for the Seveso one, the agreement has established a follow up commission, organizing in particular the inspections of the industrial sites.

161. A similar agreement was signed in March 2002 to foster Egovernment initiatives in Belgium.<sup>69</sup> This agreement has in particular framed key background elements such as the obligation to signal the source, interpretational mechanisms, semantic harmonization and respect of privacy. Undoubtedly, this agreement has contributed to the notable (and potential) development of Egovernment initiatives to manage the relations between governments and citizens and business in a seamless way, such as the Crossroad Bank for Social Security and Cross Bank for Enterprises.

162. Another example is the December 2003 agreement for administrative simplification between the federal government, the regions and communities. Realizing that citizens and enterprises are entitled to fast, simple and efficient service from the government, independent of the manner in which Belgium’s federal structure has divided competences, the federal Secretary of State took the initiative to propose a coordinated approach to address certain key issues of better regulation jointly. While the agreement primarily engaged the parties to cooperate to implement the Kafka.be project, it also provided for a

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<sup>68</sup> A principle enshrined in the constitution as Federal Loyalty.

<sup>69</sup> Accord de coopération du 23 mars 2001 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 construction et l’exploitation d’une e-plate-forme commune.

broader framework for future cooperation in other areas of administrative simplification (such as the business start-up requirements) and established a formal Consultative Committee on Administrative Simplification. Also to be remarked is that Article 5 of the agreement announces that a common methodology for the different governments will be developed to respond to the “EU Better Regulation Requirements”.<sup>70</sup> This agreement however is of a less formal nature. It is based on a voluntary cooperation between the federal state and the regions and communities and did not have to be approved by the parliaments.

163. A third type of relationship is interregional in nature and excludes the federal government. For instance, the packaging waste agreement has set up a specific interregional office to implement the agreement. These formalized institutions, called Federal Offices (*Office fédéraux*) are a type of consortia owned by the regions in equal shares to achieve a goal or realized specific activities. Their governance arrangements reflect this. A typical example of this type of body is the Office Federal for External Trade

163. Besides fostering cooperation, the constitution has nevertheless maintained important mechanisms which either *ex ante* or *ex post* reduce discrepancies and conflicts between the governments. The pragmatic federalization process of Belgium has thus maintained, evolved and created key bodies, not linked to the federal government, playing a central control role over all authorities. Three of them are worth noting with respect to the regulatory and administrative management processes. As discussed in Section III, the Council of State is in charge of *ex ante* legal analysis of draft laws and decrees. In terms of administrative simplification, the Council is also the supreme administrative and thus an essential element in checking administrative abuses. The *Inspecteurs de Finance* also play an *ex ante* check and balance role, though as discussed above, their impact in terms of regulatory management and administrative simplification has been much smaller than the Council of State’s one. Last, the *Court des Comptes* has expanded its typical accounting and auditing powers to include substantive powers. It should thus tend to increase its involvement in controlling the quality of the regulation and administrative simplification solutions proposed by federal and regional governments.

164. The Court of Arbitration is in another category and its importance for the smooth relationship of the governments is capital. In theory, the division of competences between the federal government and regions means that no legal hierarchy exists between their measures. A federal law has the same power than a regional decree. Though their spheres of competence are generally well defined, one parliament or government might stray onto another’s domain, overstepping the bounds of its own particular authority. The Court of Arbitration is thus charged to resolve complaints and disputes about the competences of the federal state vis-à-vis those of the regions and communities. In such cases the Court of Arbitration can nullify totally (very rarely) or partially (related to 20 per cent of the appeals) a parliamentary law or decree. Since 1988, a powerful new mechanism for citizens complaints was established (though it has very seldom been used), and in 2003, the Court was also charged with assessing compatibility of laws with human and freedom rights defined in the Constitution.

### **C. Managing the relationship with Europe and with lower level authorities**

165. As for other European member states, the relationship between the federal government, the regions and the European institutions has increased in intensity and quality. According to some estimates, European level laws, mostly related to the Single Market and environmental protection, are responsible for 50 to 70 per cent of the current regulatory framework and thus have a significant impact on the quality of the regulation, although the efficiency of implementation remains at the national and local level. The

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<sup>70</sup> “Simplification et amélioration de l’environnement réglementaire”, approuvé par le Conseil européen du 10 juin 2002, et des communications de la Commission européenne

quality of the institutions, processes and tools maintaining these relationships help determine the benefits and costs to citizens and businesses. Indeed, even under the same framework of EU laws, EU Member states perform quite differently economically and socially.

166. Two basic types of engagements can be perceived. In the case of European issues with federal and regional implications, the coordination is made by the federal foreign affairs department, in consultation with regions. However, in the case of purely regional competencies such as most of the environmental policy, negotiation positions are taken through interregional decision-making councils headed by one of the region, rotating every six months. Exceptionally the federal government intervenes in these arrangements.

167. In terms of procedures, the current system can be summarized in three phases:<sup>71</sup>

- Pre-decision negotiations involve preparing a Belgian position for the approval of an EU piece of legislation. This is done through a long administrative procedure starting from the Belgian Permanent Representation and arriving to the concerned federal or regional services after various hierarchical steps. In practice, though, an informal network has supplemented the official procedure. During this phase, the Belgian position is established. Though there are legal requirements, parliaments are infrequently informed and rarely involved.<sup>72</sup> As well, stakeholders are not involved when preparing the Belgian and Flemish positions creating risk of failures, low compliance or high regulatory costs.<sup>73</sup> For some specific sectors, an inter-governmental body has been set up, such as the Coordination Committee for International Environmental Affairs, to discuss matter and determine the Belgian position. When a general agreement cannot be reached between governments, the Belgian delegation abstains, which according to EU practices is considered a negative opinion.
- During the negotiating phase at the European level, the federal and regional governments follow flexible approaches according to the discussion needs and competencies. They range from very informal representation to a formal arrangement. For instance in June 2003 the three regions signed a specific protocol to organize the discussion and establish a rolling system where all regions represent Belgium for six months during all environmental negotiations.
- In theory, during the transposition phase each government acts on its own. However, due to considerable delay in transposing some directives and with some infringement cases brought to the European Court of Justice, the governments have recently made important efforts coordinated by the federal government. The monitoring system, however, has tended to rely on formal verification of the publication of the transposition in the Belgium Monitor and linguistic control, rather than on substantive controls of quality.

168. To improve these crucial processes, governments have invested in specific tools and on training. For instance, the Flemish Foreign Affairs department has developed in 2002-2003 a monitoring data bank to monitor progress during the three phases discussed above. The system is similar to the federal one and

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<sup>71</sup> For more details see the following website: [www.eu2001.be](http://www.eu2001.be)

<sup>72</sup> Participation of parliament follows the procedure known as “92 quarter” of a special Law of 8 August 1980 modified in May 1993.

<sup>73</sup> Consultation, transparency and accountability for opinions during European and UN negotiations are even lower than for national and regional draft laws and regulations. This failures become even clearer after transposition of some important measures such as the Kyoto protocol, Göteborg protocol, which probably will result in higher costs for the Belgian economy than for other European countries.

there are plans to link them in the future. The department has also been active training civil servants from the region on EU processes and legal issues. Interestingly, an explicit justification for the December 2003 agreement on administrative simplification is to improve globally the coordination of the governments with the European level.

169. The relationship and coordination between regions, provinces and municipalities is much more diverse and less structured. In effect, some of the core laws that still frame the system were enacted in 1825. In general, a loose coordination is organized by regional services (i.e. 'internal ministries'). Regions have set up forums such as the Flemish Local Government Council, which meets frequently to discuss the day-to-day issues. On some occasions, these forums discuss regulatory or administrative simplification issues. However, most of the relationships are based on bilateral relationships between a regional department and municipalities.

170. Local governments on the other hand have developed powerful associations to represent them, such as the *Vereniging van Vlaamse Steden en Gemeenten* (VVSG) and the *Union des Villes et Communes de Wallonie* (UVCW).

## ***V. SUMMARY AND RECOMMENDATIONS***

### ***A. General conclusions and recommendations for action and priority issues for the Federal Government and Flanders***

171. In 1999, Belgian citizens demanded action to improve their public administration. Since then, the Federal and Flanders governments have responded with numerous reforms, programs and initiatives such as the Copernicus and administrative simplification initiatives at federal level, and the BBB and regulatory management policy initiatives in Flanders. Importantly, governments backed those initiatives with resources and the creation of a flurry of new public institutions, such as ASA, FEDICT and KWM. They introduced new public management processes and procedures, and embraced Egovernment as a means of reducing administrative and regulatory burdens.

172. However, the environment for business still does not reflect significant improvement. Have these efforts in fact been worth the investment? The brief answer is “not yet” due mostly to timidity in design and poor follow-through and implementation, but the reforms are now more consistent with international good practices. Investments could pay off substantially if reform efforts proceed steadily, if more attention is paid to implementation and results, and if politicians are able to sustain support in the face of continued opposition from conservative bureaucracies at all levels.

173. Have the reforms helped Belgium converge with international good practices in regulatory and administrative practices? There is no doubt that the answer is yes, but Belgium and Flanders are still moving slowly, and falling further behind the frontrunners who are doing more to upgrade their regulatory systems, such as the United Kingdom, the Netherlands, Denmark, and Ireland. In the use of RIA, in modernizing public consultation, in adopting regulatory quality principles, in setting up independent reviews of quality – Belgium is behind the frontrunners in all of these areas.

174. What kind of benchmarks should be used for such an evaluation? This report focused on assessing these initiatives, institutions, and tools in terms of their impacts on transparency, accountability and efficiency.<sup>74</sup>

175. Assessing the results of the past few years’ efforts is fraught with difficulties. The time between launching the policies and this review is too short to evaluate outputs and outcomes. In addition, there was no clear objective starting point that can be used for comparison. Belgium lacked (and still lacks) explicit quantitative and evidence based instruments to evaluate progress and success.

176. An increasing number of positive signs can be discerned, though. As indicated in Section II, the Federal Plan Office’s latest survey seems to indicate that the decades-long trend of increasing administrative burdens may have been stopped, although this will be small comfort to businesses who had hoped for significant reductions. It will be necessary to repeat the business survey a third and fourth time before this positive result can be confirmed. More importantly, the Federal and Flanders governments can show significant intermediate achievements. Clear improvements have been made in the openness and

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<sup>74</sup> Other assessment methods can be used, for instance, evaluating if policies have been “effective” in achieving policy goals, or “efficient” in achieving goals at minimum costs. Many politicians will accept that an effective policy is a success and that costs should not be larger than necessary to achieve the results.

transparency of the administrative and regulatory frameworks, in particular due to the explosion of Egovernment initiatives.<sup>75</sup>

177. It is possible that these reforms signal a wider cultural change in the public administration. The political class and the public administration are becoming aware of the costs of complexity and burdens of regulation and more knowledgeable about ways to reduce them. A change in mentalities is perceptible on issues such as the benefits of moving from *ex ante* controls to *ex post* evaluations. In all jurisdictions, decision-makers are realizing that successful administrative simplification goes beyond procedures, and encompasses institutional capacities and back office and regulatory structures. More reluctantly, politicians are even recognizing that focusing on ‘quick wins’ damages long term achievements. Furthermore, a common thread in the three jurisdictions is the rise of an evaluation and measurement reflex to policy making. Moving beyond innumerable *ex ante* legal controls and shifting further than meticulous *ex post* checks of compliance, governments and administrations are noting the importance of evidence-based assessments of results. These trends, with the development of innovative measurement instruments and quantitative databases, are supported by a growing supply of private and public institutions engaged in evaluation.

178. The focus on regulatory quality in current Belgian regulatory reform policy is more likely than the previous deregulation policy of the 1980s to find sustained support in a population with strong demands for social protections such as health, safety and environmental quality, as well as social equity. Political support is an important benefit that should enable further broadening and deepening of reform efforts at a relatively rapid pace.

179. However, the jury is still out in terms of overall efficiency of the administrative simplification policy, that is, the outcome of so many efforts. Results do not seem very impressive on an international comparison scale, measured variously by business perceptions, by measures of administrative efficiency, or by the fact that Belgium’s institutions are still hesitant to adopt common-sense reforms that are already broadly accepted worldwide, such as regulatory impact analysis and even more regulatory transparency. Many reforms have been technocratic in nature, without the sustained political support needed for real change in the methods of decision-making in the public sector. Indeed, politicians have not defined any clear vision for administrative or regulatory reform redefining the use and limits of regulation as policy instruments and the type of relationships that should govern the market and the administration. Perhaps due to the energies required by building a federal state, Belgium’s political class seems exhausted by initiatives, which partly explains why so many initiatives have been launched and then abandoned without explanation. This may explain why the business sector is still sceptical.

180. Despite administrative simplification, Belgium is not increasing its competitiveness. Indeed, Belgium might become less competitive in future as it loses the advantages of its fortunate geographic location in the middle of Europe. With the accession to the European Union of new eastern countries, the centre of gravity will shift away from Belgium. This will add to the universal trend in a new globalized economy where comparative advantages are less linked to geography. Belgium’s geographic advantages, which have compensated somewhat for the lower quality and cost of its institutions, are diminishing.<sup>76</sup>

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<sup>75</sup> In its latest exercise, Cap Gemini Ernst & Young ranked Belgium as the second top grower over 2 years in terms of Egov online sophistication of public services. See Cap Gemini Ernst & Young’s (2003). Online Availability of Public Services: Web based Survey on Electronic Public Services. Report of the Fourth Measurement, October 2003, prepared for the European Commission DG Information Society

<sup>76</sup> See Moesen, Wim (2004). In *Leuvense Economische Standpunten* (forthcoming).



181. This poses a danger to competitiveness that perhaps Belgium's governments have not fully grasped. Indeed, the administrative simplification and regulatory reform policies reviewed in this report do not explicitly target an improvement in the productivity of the administration or in private firms.<sup>77</sup>

**B. Assessment of strengths, weaknesses, and results of administrative simplification programs in the Belgian federal government, and policy options for consideration**

182. There is little doubt, as already suggested by the lack of improvement in Belgium's international rankings, that the results of federal initiatives do not yet show a good return on the investments in reform. In its latest annual report, the ASA concluded after a frank appraisal that "very few of the numerous initiatives launched, had been concluded positively." The ASA asked "why, despite so much efforts in serious preparation, under an evident consensus driven environment, the number of finished projects could be counted with the fingers of the two hands".<sup>78</sup> In the same document, the ASA advances nine possible reasons. Among them are: a lack of political support, departmentalization of the administration, deficiencies in coordination mechanisms, and patent distrust and lack of mutual understanding between institutions.

183. As indicated previously, such an assessment, while accurate in many respects, is too early to be a final judgment. While there are clear deficiencies in concept and implementation, the federal government is only starting to reap the fruits of the efforts since 1998. Social security simplification is now a reality, and the BCE, though not fully operational yet, will create one of the most advanced systems in Europe once it is fully deployed. Some initiatives, such as the elimination of burdensome copies, are saving time and money and helping the administration to shift resources to tasks that are more beneficial to citizens.

184. These results are even more important because two third of business regulations are federal in origin and have a large impact on entrepreneurship culture in the country (though not in terms of overall regulatory burdens dependent of an impressive stratification of local and regional social, environmental and other type of regulations). The impact of federal administrative procedures ripples through all regions. Notwithstanding progress at the regional level, substantial success in Belgium as a whole requires progress at the federal level.

***Strengths***

185. Belgium has important strengths supporting its administrative simplification efforts:

- First, since 1998, political consensus on promoting the policy has been maintained in general by three federal governments, although attention to the policy has cycled up and down. Sustained support has overcome some of the policy inertia inherent in the Belgium system, and has translated into the creation and maintenance of permanent institutions to promote the agenda.
- Second, Belgium has today an adequate institutional framework to continue building its administrative simplification policy. The Steering Committee, the network of agents, and the Secretary of State are not only working but are trusted and publicly appreciated. The ASA staff has garnered in the past five years experience and an institutional memory.

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<sup>77</sup> Notwithstanding that ASA at the federal level focuses on businesses, its policy targets costs and burdens of firms rather than pro-market mechanisms that would improve overall efficiency and productivity.

<sup>78</sup> ASA (2003) *Rapport Annuel 2001-2002*, Bruxelles, p. 22.

- The Steering Committee in particular seems to be the central anchor for progress and a crucial driver to maintain the administrative simplification policy at the centre of government. It is indeed a strong advocate for reform supporting ASA in continuously pushing for improvements and raising the degree of responsibility and accountability across the administration.
- Importantly, the ASA has developed capacities to implement more complex administrative simplification solutions, approaches and tools. Their multidisciplinary approach of projects, including e-gov, communication, evaluation, regulation and organisation makes it possible to go beyond pure administrative simplification and to provoke more structural effects. Development of more integrated solutions is made possible by a critical mass of ‘reform leaders’ in charge of sister institutions such as FEDICT, P&O, BCE and BCSS.
- Last, the federal policy is unique in relying on an independent biennial business survey to monitor its progress. This strengthens accountability and transparency of the initiative.

### *Weaknesses*

186. Yet despite these strengths, genuine success – defined as a material improvement in the quality of Belgium’s regulatory and administrative environment for business - requires a more comprehensive and tougher strategy. Weaknesses in the current strategy are apparent and require action. It is not clear that federal Belgium has the will to correct them, since the needed reforms in the current stage of the modernization will be opposed by powerful interests and will change deep-seated traditions of the public administration.

187. First, the federal policy is still driven by a piecemeal and bottom-up approach dominated by those with the most to lose from simplification. This strategy, accentuated by the current government, responds to the legitimate political desire for “quick wins” with minimal conflict. And it has produced some results. However, with the limited resources available, ASA has not been able to develop a longer-term strategy to correct systemic blockages to quality, to implement key tools such as the measurement of impacts, to effectively advocate for further reforms to the administration and its ‘back offices’, to improve coordination with other levels of government, and to take regulatory actions to prevent administrative complexity creeping in the first place. In other words, the system itself is still broken in Belgium, and there is no doctor to cure it.

188. A second limitation to boosting the impact of the program on economic performance is the heavy emphasis on the interests of existing businesses. Certainly, Belgium requires healthy firms to create jobs and wealth. In addition, the policy needs the support of the business constituency. However, pro-business reforms are not equivalent to pro-market reforms. Administrative barriers that create barriers to entry and so protect specific interests merit higher priority in order to open sectors to competition, investment, productivity and innovation. Moreover, reliance on a single constituency masks the need to develop other constituencies, particularly consumers and entrepreneurs, that can support deeper reforms. Healthy pro-market reforms should thus have the interest of consumers as well as producers.

189. As ASA recognized, institutional arrangements and coordination of reform bodies must be improved to increase synergies that boost results. The division of mandates and work between ASA, FEDICT and to a certain degree P&O is unclear, creating unneeded frictions and in some cases disappointment, as occurred in the launching of BCE. The collapse of Copernicus with its cohesive and systematic approach may have further balkanized the administration.

190. Last, the federal government has only started to appreciate that its economic goals require more systematic and concerted action, beyond simplification, to boost regulatory quality. The next important

front is general improvement in the quality of existing and future regulation. The drive to continue to simplify the administration is now limited by the existence of low quality regulations framing the governance and the relationships between the market and the state.

### ***Policy options for consideration***

191. This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in other countries, will improve federal government initiatives. These recommendations should be read together with those included in Subsection D focusing on the relationships between levels of government. It should also be noted that a deeper analysis of policy and regulatory decision-making at federal level may be required to integrate these recommendations into a broader governance perspective involving other key actors such as Parliament, the constitutional institutions (Council of State, Court des Comptes, Inspection des finances, Ombudsman) and the judiciary branch.

192. Redesign the institutional arrangements between ASA, FEDICT and P&O. Coordination and systematization can be improved by a general review of the mandates of these key reform institutions and in particular between ASA and FEDICT. Positioned near the center of government, ASA should strengthen its focus on strategic and coordination tasks (see recommendation below); FEDICT should maintain its leadership in technical projects and front office development and P&O continue reengineering processes in key services.

193. Further elaboration may focus on reviewing the structural arrangements of administrative structure where these bodies are embedded. An option would be to centralize and merge under a single minister these three horizontal functions, plus perhaps the budgetary ministry. In order to keep synergies, the merged entity could report to the Prime Minister, as it is the case in the USA (i.e. the federal Office of Management and Budget) or in France (i.e. the newly established *Commissariat a la Reforme de L'Etat*). A less difficult solution might be the creation of a high-level task force reporting to the Government Council, similar to the MDW Committee that operated in the 1990s in the Netherlands. Through periodic meetings, facilitated by a “neutral” ad hoc secretariat, the Task Force would include the ministers and deputies of the horizontal bodies (i.e. ASA, Fedict, P&O, Budget). Its main tasks would be to develop and maintain a longer-term approach, to resolve inconsistencies, and to allocate priorities, responsibilities and reform funds (see recommendation below).

194. Set up a joint reform fund for ASA, FEDICT and P&O to support long term and structural initiatives. Similar to the fund existing to support scientific research in Belgium or administrative modernization in Ireland, the federal government could create a special fund, perhaps managed by the task force mentioned above, to support reforms. Such actions should have an interdepartmental nature with a longer pay off. These resources will cover aspects such as retraining of civil servants, paying for transition costs in implementing back office reforms and boosting quantitative evaluations across the administration. The allocation of the funds will follow a transparent bidding process from departments and a selection of initiatives based on strict criteria such as market impacts and interdepartmental cooperation.

195. Reform ASA mandates. ASA has become more and more involved in the operation of specific horizontal administrative simplification projects. This ‘hands on’ focus may reflect a growing confidence at the political level in ASA competence. However, this ‘item-by-item’ concentration reduces ASA’s time and resources that could be dedicated to developing strategic approaches to deep seated problems, to challenge the creation of complexity by new regulation or to the advocacy of valuable reforms not supported by a particular interest group. Its mandate should thus reflect the three main functions of an oversight and coordination body:

- To assure compliance by all ministries and agencies of the annual program and prepare an annual public report.
- To challenge ministries when proposing new measures and to advocate further reforms based on existing procedures (e.g. the follow up of the 12 Strategic Works) or new ones (e.g. ex ante controls on public consultation of draft measures and RIAs).
- To train and guide other departments and agencies, and continue promoting administrative simplification not only among the business community but also for consumers.

196. Transform the Kafka Clause into a full-fledged RIA system. Special attention should be given to strengthening the “up hill” mandates of the agency. As other countries have learned, major costs and burdens can be reduced by improving the quality of laws and regulations. The most common tool for this has been requiring regulators to develop regulations with the use of Regulatory Impact Analysis, and assuring that the quality of the RIA is properly checked by a third party. The federal government has an incipient RIA system. But this experiment – the Kafka Clause - has not worked because incentives systems have not been developed: either negative incentives (for non-compliance) or positive (i.e. training, funds). The revision of ASA mandates would be an opportunity to provide challenge powers to ASA. ASA should be able to post in the Internet the ministries’ submission together with its own comments about the quality of the *Kafka Clauses*. ASA should be required to make public once a year as in Australia, the overall compliance, in form and spirit, by ministries and regulators to document improvements and deteriorations of rule-makers efforts. Moreover, strengthening this regulatory role will help Belgium to comply with the EU Better Regulation Agenda (see recommendation Subsection D).

197. Strengthen ASA capacities. If ASA moves away from an item-by-item approach towards an evaluation, monitoring, and ‘check and balance’ role, it will need new legal and economic skills. This will also assure greater success in implementing and delivering results from the Kafka Clause. The current reform of ASA bylaws should provide an opportunity to assure in practice its nominal independence providing it with more flexibility to its recruitment and dismissal powers. Such a reform would also help to broaden skills to spearhead a more evidence-based policy making approach across ministries (for instance, including economist).

198. Broaden consultation and communication processes beyond the traditional social partners. The Steering Committee is a key asset of the program, but as other countries’ experience shows, representatives from the production side of the economy (employers and employees) will not support simplification efforts if complexity protects them from competition from new entrants. If they can, they will accept such barriers to entry and simply pass costs on to consumers. In order to avoid such insider/outsider problems, the government should use public consultation and communication to involve a wider range of stakeholders. First, membership in the Steering Committee should include consumer representatives and representatives of emerging industries and new investors not well represented by current business organizations. The Steering Committee should also include a representative of the competition authority to ensure that barriers to entry receive the appropriate level of attention. Other consultation strategies that should be considered include a systematic consultation process for individual administrative simplification projects, conducting consultation earlier in the reform process, and proactive means of reaching out to less well-organized groups. In parallel, the government should enhance its communication efforts to explain why, on one hand, a modern government requires increasing amounts of information from citizens and businesses, and on the other, why some simplification efforts require considerable time to permeate the administrative structures and cultures. The communication initiative should differentiate the content according to the selected target (e.g. the general public, the administration, politicians and the opinion leaders).

### **C. Assessment of strengths, weaknesses, and results of regulatory management policy in Flanders, and policy options for consideration**

199. Flanders has moved boldly and quickly in addressing the ‘up hill’ limitation of an administrative simplification policy. In less than four years, the government has established a policy and a program of regulatory management comparable to those existing in leading countries. This review has shown, however, that there is more planning than action, and there is distance to travel to produce results that have substantial market effects. Hence, future progress depends on enlisting the support of new actors and interests.

200. The reforms and initiatives are relatively recent. There are still gaps and weaknesses in their design, as might be expected in this difficult area. The quality of regulation in Flanders is still not very competitive, and its administration procedures not sufficiently simple, as the business sector and international measures continue to indicate.<sup>79</sup> More important, most of the high quality tools such as the measurement instruments, the codification initiative, and RIA have not been implemented. It is easier to devise policies and tools than to implement and sustain them through the many years required to produce real results in the regulatory environment.

201. Flanders is on the right road. No fundamental correction is needed to its compass. What is needed is a multi-year period of consolidation, sustained application, and refinement of the legal and policy reforms already on the table. This will permit legal and policy reforms to trickle down through the administration so that citizens and businesses see concrete benefits. Moreover, the successful fusion of the regulatory policy reforms with the ambitious BBB program should accelerate changes and modify the culture of how the administration and the government work.

#### ***Strengths***

202. The Flemish experience offers strengths worth noting. Regulatory governance reform has received sustained support at the highest level of the Flemish government, a factor that has been of key importance in empowering the bodies within the administration charged with coordinating, monitoring and promoting difficult reforms. Other key strengths include a well-formulated policy and institution (KWM), which has been able to adopt, adapt and develop good practice instruments.

203. Importantly, the policy has added to the piecemeal, bottom-up approach a strategic understanding and vision, even though during an electoral season, the KWM has been in the past few months greatly absorbed by finalizing individual projects. A major achievement was enactment by the government of the eight Principles for Good Regulation. Flanders joins other leading countries in setting up clear benchmarks re-defining regulatory quality to match current social and economic needs.

204. The past 24 months work by the KWM is impressive, too. The oversight body has been given well-formulated roles and high quality staff and has been active in pursuing reforms. The KWM has been able to develop important tools such as the burden measurement tool, the integration of performance evaluations of high officials and successes in implementing the regulatory agenda, the checklist for better forms, the ‘compensation rule’ and the upcoming RIA system. Its intensive activity has been one reason for the credibility and good reputation of the KWM.

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<sup>79</sup> See for instance, Nine Points Action Plan to Create Jobs presented by VOKA in September 2003.

205. Last, a general awareness and “critical mass” of reforms has developed in important departments such as education and environment. This learning curve should help sustain the ideas, policy and tools, and thus the diffusion of a good regulatory governance culture across the whole administration.

### ***Weaknesses***

206. However, five important challenges and weaknesses, compared to other jurisdictions, confront the government in its efforts to build a high quality regulatory environment. First effective checks and balances on the exercise of regulatory powers in the administration are still weak. Indeed many lengthy *ex ante* checks and disciplines (that is, those performed by somebody distinct from the proposing institution) have difficulties in controlling and improving the substantive quality of draft measures. The Legal Unit and Linguistic Unit of the Chancellery, the Government Council, the interministerial working groups, the Inspectors of Finance, the Child Abuses Parliamentary Ombudsman, the Consultative Boards (in particular the SERV), the State Council or in the cases of laws the Parliament itself play a role in the rule-making process. However, all these checks concentrate on legality or technical drafting or impacts on the government’s resources rather on policy substance and impacts. And when they do, as is the case for the consultative boards, they come too late in the rulemaking process. At the end of the day, these controls are ineffective in preventing regulations from imposing needless costs or being designed in suboptimal ways or even reducing market performance. They might even add unnecessary delays to the rule-making process. The situation for lower level subordinate regulations, such as circulars, forms or even ‘grey regulation’ is even worse, as they are practically uncontrolled.

207. Second, public consultation is not working properly, either as a central function of the regulatory process under a rule of law system, or as a mechanism to investigate potential compliance costs and thus adjust the design of the regulation. Currently, the only formal requirement to consult is with the consensus-building consultative boards (informal and opaque consultation tend resemble more lobbying than open access to regulatees). However, these bodies defend the producer-oriented ‘insider’ interests (that is, interests often looking to protect the status quo) rather than ‘outsider’ interests more supportive of change, competition, and innovation. The discussions in these bodies are also often politically charged: participants tend to defend their traditional institutional positions and attempt to avoid any prejudicial precedent. Moreover, consultation with these bodies is too late in the process for real improvement. In some case, the end result of the complex compromises and revisions is at the cost of overall coherence and quality of the draft without revisiting its need or impact. If the BBB project improves the system by reducing the number of consultative boards, there is a question of how to make informal consultation more effective and transparent.

208. This report also found weakness in the institutions driving the reform. A mismatch seems to exist between the ambitious agenda and the resources of KWM. KWM seems to alternate between structural reforms with huge political and administrative impacts and ‘quick wins’ to satisfy political constituencies. More problematic, the drive behind most proposals is focused correctly on improving regulatory governance. However, these same initiatives seem disconnected from economic goals such as productivity, innovation and job creation by the Flemish economy. As noted, studies have shown that regulatory burdens are increasingly originated by ‘non-economic’ regulations such an environmental, consumer, social protection ones.<sup>80</sup> As most of them apply to the whole economy and are more easily

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<sup>80</sup> ***Economic regulations*** intervene directly in market decisions such as pricing, competition, market entry, or exit. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and use of efficiency-promoting regulation, and by improving regulatory frameworks for market functioning and prudential oversight.

transferred to consumers, they operate in a dynamic way rather than static one and tend to erode through time the economic signals necessary for a well performing and innovative economy.

209. A fourth weakness relates to a troubling disconnect between the regulatory reform initiatives and the new administrative structures under the BBB project. Regulatory management could be a horizontal tool for managing and coordinating the use of the regulatory instrument across the new 13 ministries. However, capacities for managing this function at the center and at the ministry level have been disregarded so far when designing the new framework. Furthermore, transmission of reforms to provinces and municipalities has not started yet.

210. The system has so far not been able to consolidate a political constituency for reform built around business interests. But as discussed above, business naturally will push for changes until their objectives (i.e. reducing operational costs for existing business) are achieved. The quality of regulation has on the other hand a common good dimension that goes beyond the interests of current businesses and encompasses a sustainable economy good for future entrepreneurs, existing and new jobs, consumers and the environment. The regulatory policy should thus emphasize economic openness, competition, innovation, and entrepreneurship.

### ***Policy options for consideration***

211. This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in other countries, are likely to be particularly beneficial to improving Flemish government initiatives. These recommendations should be read together with those included in Subsection E focusing on the relationships between levels of government.

212. Promote quality regulation by establishing regulatory units in all departments with regulatory functions to be created through the BBB process. In most departments, drafting of rules and regulations is by cabinet members with the support of substantive services and occasionally with the help of legal and linguistic units in the Chancellery. This is not an optimum solution to assure legal quality or to ensure that the substantive impacts of the measure meet minimum standards. In the current situation, the responsible persons often have little training and experience. Flanders should join many other countries that have developed departmental capacities for smart rule-making. These capacities should go beyond purely legal expertise and include economic and analytical skills needed to produce evidence-based analysis.

213. One of the tasks of the departmental regulatory units would be to prepare high quality RIAs and to assure proper consultation with potential regulatees. These decentralized units could also operate as the main participants of an inter-ministerial network moving the regulatory agenda across the administration. A template for this type of unit could be the efforts of the education or the environment department. An opportunity for such a structural proposal is provided by the implementation of the BBB program. Indeed, setting up this kind of unit could be justified in terms of enhancing the BBB program with coherence and horizontal disciplines.

214. Clarify and streamline the rule making process. Currently the most important ‘check and balance’ controls are made too late in the process after the key regulatory design decisions have already been made. This reduces the potential benefits from a collective effort, raises the danger of duplication of some functions (such as the legality control), and rigidifies the search for alternatives and consensus. Postponing discussions and dialogue also tends to promote adversarial responses and lengthening the process on building consensus. As is the case for Canada, the rule making process could be strengthened and modernized organizing it around the progressive preparation of a RIA through internal (i.e. interministerial) and external consultations. For this endeavor, the *Circular on Technical Law-drafting* and the *Household Rules of the Flemish Government* would need to be reviewed.

215. Improve transparency by expanding mandatory public consultation with stakeholders beyond the consultative boards. The basic and often only form of consultation in Flanders is through the consultative boards representing social partners and other organized interest groups. Yet, as noted, such interests can bias results. An important improvement would be to consult earlier with a wider range of stakeholders. To assure the quality and credibility of the consultation, the government should develop clear guidelines and minimum standards. For example, the consulted parties should have direct access to a summary of the technical documents justifying the proposal. All stakeholders should have a right to be consulted. They should also have sufficient time to read and circulate the documents. Moreover, the department promoting the draft should be required to prepare written and public replies to the comments expressed by consulted parties.

216. Other steps to improve the efficiency and effectiveness of consultation processes merit consideration. First, the government should make a priority to test and implement rapidly the new target-oriented methods like the Business Impact Panels and focus groups. Second, the government should adopt and enforce the requirement for ‘notice and comment’ of draft laws and regulation. Other countries’ experiences show that this mechanism can complement other procedures as a safeguard against possible abuses. The effectiveness of the notice and comment requirements could be further enhanced with the provision of better information, based on the publication of the future RIA together with the measure. Thirdly, the government should establish a forward planning mechanism to help stakeholder, the administration and the politicians to prepare themselves and assure efficient consultation and examination.

217. Implement RIA requirements promptly and scale up the required standards rapidly. Flanders is joining other advanced jurisdictions in establishing a RIA system. As other jurisdictions experienced, difficulties and opposition will be raised by departments accustomed to few constraints on their rule-making powers. The government and the KWM should be ready to counter this resistance. It is advisable to launch and enforce RIA requirements as soon as possible, but to avoid unrealistic expectations and to ease the transition, the RIA system should begin with lower standards that can be raised gradually as learning proceeds. KWM should accompany the new RIA disciplines with training and advice and if possible positive incentives (e.g. public recognition of best practices, favorable treatment or even priority access to resources to high performers in the form of training and special grants).

218. In the short to medium term, RIAs should be systematically published during the consultation process for each regulation. RIA can be a powerful tool especially if integrated into a notice and comment procedure described in the previous recommendation. Such a system could also help increase transparency and accountability across the administration, and strengthen inter-ministerial information flows and cohesion.

219. Improve awareness and assure enforcement of a requirement for departments to assess alternatives during the policy making-process. Based on the Eight Principles of Good Regulation, Flanders should establish a requirement obligating those who draft legal instruments to consider alternatives as part of the policy development process. This obligation could be embedded into the RIA. The KWM should ensure that this obligation is addressed in quality and form, and support it with further guiding material and training courses.

220. Speed up improvement of the regulatory framework by adopting a systematic and comprehensive approach to the review of existing laws and regulations. More attention should be placed on systematic review and upgrading of regulation through, for example, a rolling review process based a few but clear criteria, such as improving productivity and innovation of the economy or maximizing social welfare. Such a top down approach would complement a bottom up approach build on business complaints and ministries self assessed proposals. The Australian competition principles review, which includes positive incentives such as special grants for reformers, provides an interesting model. The effectiveness and speed of more comprehensive sectoral plans based on all policy measures needed for results, including



regulations but also other forms of intervention such as subsidies, procurement policies, and tax policies has been demonstrated in other countries. The “reinvention” of sectoral regimes—based in part on international benchmarks—allows reformers to consider policy linkages and related measures needed to make reform effective, to package related reforms into a coherent program, and to reassure market entrants that reform is credible and predictable. The revision should be entrusted to a special independent commission or ad hoc task force of a few sets of experts working for 12 to 18 months. The KWM, with additional resources, could serve as its secretariat in order to be more cost effective and to build an institutional memory of the reforms.

221. Enhance communication about the regulatory policy, targeting crucial groups to sustain the reforms. KWM has made considerable communication efforts since its establishment. Posters, brochures and guidelines are systematically distributed across the administration, including at provincial and municipal levels. These efforts are important and have already produced results in terms of awareness and culture change. However, this broad communication has not reached key decision makers and opinion leaders. The program seems vulnerable to a change of priorities of the next government or a change of interest by the private sector if results are not achieved as quickly as expected. It is important for KWM to reach out and build a broad constituency to sustain the efforts during the next 5 to 10 years required for a real change in the regulatory framework. A more nuanced advocacy with key stakeholders would be a place from where to start. For instance, KWM could differentiate and target the dialogue and its messages according to the different audiences: the general public, the opinion leaders in academia and in the media, civil servants and senior policy makers, small and large enterprises, etc.

222. The government could add to its communication efforts a focused campaign targeting opinion leaders and explaining the long-term benefits in competitiveness and economic growth of high quality regulatory governance. Such efforts may reduce short-sighted demands for fast returns.

**D. Assessment of coordination and relationships between Belgium and Flanders, and policy options for consideration**

223. Three decades of huge political investment have created a federation with many exemplary features to resolve cultural, linguistic and economic differences without dissolving into microstates. Belgium is now turning to improving its institutions and processes. The new generation of reforms focuses on enhancing and simplifying the machinery of government. Upgrading the quality of regulation is part of that larger picture. This report has documented that despite weaknesses, gaps, and resistance, the new focus is starting to show results and if pursued, should yield progressively larger benefits. One of the most important results is the multiplication of approaches that can be considered. With devolution, regions have started to research, test and develop new approaches and tools. In the long run, this experimentation increases the general knowledge and should permit the detection of best practices.

224. The regional impetus is already producing a significant number of innovations. For instance, Flanders is trying different approaches, each with its own instruments, to measure regulatory burdens from what is experimented by the two other regions. A federal setting has permitted regions to go further and faster on some aspects.

225. This laboratory of approaches is a valuable resource for reform. Local initiatives, if they work well, can become national and even international best practices. For instance, in the late 1940s some Swiss Cantons developed what can be considered one of the first *ex ante* checklists on the quality of regulation. A few years later, German Landers adopted and adapted the checklist, which was then later generalized to the federal government as the famous ‘blue list’. This list made a significant contribution to the development of the 1995 OECD Recommendation on Improving the Quality of Government Regulation – a unique international standard agreed by 30 advanced countries.

226. The Belgian federation is reaching a ‘sharing and comparing’ stage. Experimentation has the potential to trigger a ‘virtuous’ circle where good practices are circulated, compared, improved and adapted by others, according to the local needs and the main purpose of a devolution and subsidiarity: to keep as far as possible powers at the lowest level.

227. But federalization has costs and risks, too, for the quality of regulatory and administrative practices. As indicated previously, Belgium as a whole and as a set of regions is (and will) inevitably suffer costs due to the multiplication of authorities. As the business sector continues to claim, different layers of regulatory authorities raise the cost of the regulatory infrastructure and of government as a whole. The need for three parallel regulatory structures means that taxpayers will need to pay for salaries, overheads and other management costs needed to design, pass, enforce and repeal administrative simplification and regulatory policies without the corresponding benefits of regulatory economies of scale. And these costs are real, despite the fact that important business regulations are kept at federal level and that EU legislation is pushing toward harmonization.

228. Certainly as the regions gain confidence and nurture trust between themselves, new cooperation mechanism will appear and reduce such costs of federalism. The agreements on E-government and on administrative simplification are clear signs of this. Moreover, the flexibility of these agreements augurs well for further cooperation and sharing of resources

### ***Policy options for consideration***

229. This section identifies actions that are likely to be beneficial in improving cooperation on regulatory and administrative reform among the Federal, Flanders governments and the other Belgian authorities. The uniqueness of the system and complexity of relationships between levels of government in Belgium make it difficult to compare with other jurisdictions’ practices.

230. Continue implementing the December 2003 agreement with an action oriented agenda and stronger governance. The federal, regional and communities governments should build on the Agreement and scale up its activities. Current initiatives should be concluded, made permanent, and enhanced (i.e. Kakfa.be and the implementation of the *Banque Carrefour des Entreprises*). Announced areas for cooperation should rapidly be engaged, such as the Belgian response to the European Better Regulation Agenda. In addition, new activities could be integrated to the Agreement’s remit such as a seamless connection and harmonization of high quality formalities using for instance the experience of Flanders (see next recommendation). However, the success of the agreement will require political support and resources. In the short run, a system of revolving chairs could be organized: each government would preside for 4-6 months the group in order to monitor progress and best practices, and present options of new activities. In the medium term and in particular connected to commitments under the Better Regulation Agenda, a more structured organization and governance would be needed. This could be done through the setting up of small secretariat jointly owned by all government, which would produce an annual public report to ensure transparency and accountability.

231. Improve transparency across Belgium by extending consultation requirements and tools. A common challenge to a devolution process is the danger that powerful insiders closer to the regulators could more easily capture the regulatory management system. This can happen in many ways: for instance from undue influence of local ‘notables’ protecting the status quo to the development of ‘not in my neighborhood’ stance reducing general benefits. Adoption of clearer transparency requirements will not only reduce the costs of opacity and possibility of capture, but also increase the technical values of policy effectiveness and the democratic values of openness and accountability of government. As part of the 2003 December Agreement and harnessing the power of E-government tools, governments could collectively launch a long-term initiative to increase access to the regulatory framework. A general

consultation requirement covering all substantive new laws and lower level rules would help to protect against this capture. This collective undertaking could further involve developing ‘notice and comment’ processes providing for a publication of all draft measures in a single website to the development of a harmonized central registry of formalities, forms and regulations. The system could also be strengthened by supporting the different *ex ante* impact tools currently being developed by the three governments, (i.e. the kafka clause and the Flemish regulatory impact analysis). Danish Brønnøysund registers involving primary, secondary, formalities and other registries might be a source for inspiration.

232. Explore possibilities to harness regulatory economies of scale. Besides the 2003 Agreement, which focuses mainly on regulatory management and information exchanges, Belgium has areas where the benefits of regulating together may be superior to the aggregate benefits of regulating regionally (or the costs of regulating regionally). In these regulatory areas, regions may need to pull together and share substantive regulatory and administrative powers. These unifying efforts should not be seen as a re-centralization as many options can be designed. Pooling together could be ‘a geometric variable’, that is involving one, two or three regions with or without the participation of the federal government. Two directions are promising. First, and as some federations have learned a joint regulation could be prepared and implemented by a public entity owned totally by regions. An example could be the case of the US Federal Reserve Board in charge of regulating the US monetary policy, which is ‘owned’ by regional and state boards. A Belgian precedent of this type of consortia was the creation of the office for packaging waste in charge of the packaging waste management system. A second option to reduce regulatory overhead costs would be to look at the possibility for harmonization and mutual recognition between different regulatory regimes in the regions. For instance, a school licensed in a region could provide educational services in another region. Australia has developed many forms of regulatory cooperation to establish its internal market, and a study of these could be instructive for Belgium.

233. Enhance the federal and regional coordinated approach to preparing draft EU regulation. All authorities in Belgium have interest to strengthen their participation in the EU rule making process, which now drives between 50 to 70 % of their legal framework. So far, separately or jointly they have yet to be able to ensure adequate representation in the negotiation phase of the EU directives. There is a strong case to strengthen collaboration between all jurisdictions (through the December agreement discussed above for instance). These efforts should be complemented by an initiative to ensure that affected stakeholders are informed as early as possible of the future measures. Planned improvements of the consultation procedures, as discussed in the case of Flanders, should also provide better estimates of expected economic and other impacts of EU regulations, as well as information about the envisaged implementation of the regulation.