

Executive Summary

Economic context and drivers of Better Regulation

The need to strengthen the economy and its competitiveness is reflected in policies to promote effective regulatory quality and management.¹ The General Policy Statement of the federal Minister for Economy and Administrative Simplification of April 2008² specifies the modernisation of regulation as one of the actions to be undertaken to promote the competitiveness of the economy, and defines the elimination and simplification of regulations as strategic objectives. The Flanders, Wallonia, and Brussels governments have also linked Better Regulation to their efforts to sustain economic competitiveness and development. Belgian enterprises have lent their strong support to these objectives. The Federation of Belgian Enterprises has underlined that tackling the volume, as well as the quality of regulations, is an “absolute necessity” for competitiveness.³

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

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

Public governance framework for Better Regulation

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

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

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

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

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

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

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

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

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

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

Belgian federalism has the following important features:

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

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

Developments in Better Regulation and main findings of this review

Strategy and policies for Better Regulation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Institutional capacities for Better Regulation

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

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

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

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

Federal government

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

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

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

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

Regional and community governments

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

Co-operation on shared policy and regulatory issues

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

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

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

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

Role of parliaments

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

Transparency through public consultation and communication

Public consultation on regulations

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

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

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

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

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

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

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

Public communication on regulations

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

The development of new regulations

Procedures for making new regulations

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

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

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

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

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

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

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

Ex ante impact assessment of new regulations

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

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

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

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

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

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

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

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

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

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

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

Where to next in the development of Belgian impact assessments?

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

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

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

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

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

The management and rationalisation of existing regulations

Simplification of regulations

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

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

Administrative burden reduction for businesses and citizens

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrative burden reduction for the administration

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

Compliance, enforcement, appeals

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

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

The interface between member states and the European Union

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

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

The interface between the subnational and national levels of government

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

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

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

Key Recommendations

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

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

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

Transparency through public consultation and communication

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

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

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

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

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

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

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

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

Notes

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

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

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



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