

Quality control of regulations through
monitoring and assessment

Table of contents

1	Executive summary	5
2	Regulatory management in Flanders	7
3	Reference frame for regulatory management in Flanders: eight characteristics of good regulation	11
4	Regulatory Impact Analysis (RIA) as a guideline for regulatory quality	13
	Definition	13
	Application	14
	RIA and the eight characteristics of qualitative regulation	15
	Factors for success	28
	Reform of RIA	29
5	Regulatory impact evaluation (RIE) as to control of regulatory quality	31
	RIE as a concept	31

Within the authorities in Flanders, the Public Governance Department's Regulatory Management Unit endeavours to ensure qualitative regulations: working towards establishing good regulations, simple procedures and less administrative burdens. See <http://www.governance-flanders.be/regulatory-management> for more information



- Executive summary

For several decades improving the quality of legislation has been a priority, on the European as well as on the political agenda of Flanders.

In Flanders **eight characteristics of quality regulations** apply as a reference frame:

Good regulation is:

1. necessary and effective
2. efficient and carefully considered
3. feasible and maintainable
4. legitimate
5. coherent
6. simple, clear and accessible
7. with the necessary support and following consultation
8. permanently relevant

When drafting a new regulation these eight characteristics will be taken into account in the **Regulatory Impact Analysis (RIA)**. Typically and ideally attention for the first seven criteria results in permanently topical and relevant regulations. Naturally this is not a constant; society is continuously evolving and the regulatory cannot correctly estimate all the (prelimiting) variables. The risk of discrepancy between the law in books and the law in action is always real. This study examines how the existing RIA method can best be used in the cyclical process of qualitative regulation.

In 2009/2010 the Regulatory Management Unit conducted the study, 'Kwaliteitsvolle regelgeving door ex post evaluatie van regelgeving' (qualitative regulations through the ex post assessment of regulations). In the frame of this study several methods for regulatory assessment were reviewed and the method for the **Regulatory Impact Evaluation (RIE)** was developed. This study emphasises the complementarity between RIA on the one hand and Regulatory Impact Evaluation (RIE) on the other hand. This complementarity ensures that attention is paid to the preparation of a subse-

quent assessment of regulations at the drafting stage of these regulations. The introduction of the RIE in the regulatory landscape in Flanders allows for a timely identification of gaps in existing regulations. The RIE is a proactive quality control tool designed to ensure that the regulations continuously comply with the eight characteristics of qualitative regulations. Proactive entails that the RIE intervenes before a shortcoming in the regulations will start to visibly escalate.

The introduction of the RIE inevitably means that the existing RIA system will have to be amended. The proactive role of the RIE presupposes the introduction of a continuous monitoring system based on a sector-specific set of SMART indicators within RIA. Monitoring means that regular checks are made to see whether regulations, once effective, meet the desired objectives and/or whether the starting points at the drafting stage of these regulations proved to be correct. Today RIA describes the desired effect of the regulation but so far the operationalisation of the objectives continues to be minimal. The complementarity between RIA and RIE requires that RIA qualifies and/or quantifies objectives in a uniform manner and determines how these objectives will be monitored throughout the lifecycle of regulations. This should facilitate timely changes to regulations. —

- Regulatory
- management
- in
- Flanders



How much economic clout does Flanders have? How competitive are our companies? Do citizens and organisations have confidence in the authorities? The answer to these questions is also determined by a qualitative regulatory climate, in which simplicity and transparency are paramount. Within the authorities in Flanders, the Public Governance Department's Regulatory Management Unit endeavours to ensure qualitative regulations: working towards establishing good regulations, simple procedures and less administrative burdens. Regulations that have not been carefully considered in the broadest sense result in unnecessary administrative burdens thus slowing down economic growth. They also affect legal certainty and trust in the authorities. By contrast an optimum regulatory environment leaves more margin for initiative by citizens, enterprises and organisations.

The Regulatory Management Unit coordinates and supports the development and implementation of structural initiatives and instruments in terms of regulatory management within the authorities in Flanders. In so doing the unit complies with the priorities set in the European programme for **'Better Regulation'**. Better regulation should never be narrowed down to mere deregulation:"

"Improving the quality of regulation requires a multi-faceted strategy with better regulation, re-regulation, simplification and institutional and capacity building. Regulatory reform is not about limiting the state's role, but about 'smart regulation', in other words, about redefining the authorities tools, capacity and role to meet changing social needs. This means that regulatory management has to be incorporated in authorities management, like budgetary policy or personnel policy."¹

¹ Wetgevingsprocedures, -structuren en -instrumenten in Vlaanderen: een evaluatie van 10 jaar wetgevingsbeleid in Vlaanderen. (Regulatory procedures, structures and instruments in Flanders: an assessment of ten years of regulatory policy in Flanders)Background note to the SERV opinion, "Betere regelgeving voor een effectieve en efficiënte overheid en meer welvaart en welzijn (Better regulation for an effective and efficient government and more welfare and wellbeing)", p.9

The Regulatory Management Unit makes available five key tools within the authorities in Flanders and intervenes in three areas.

Five tools within regulatory management

8

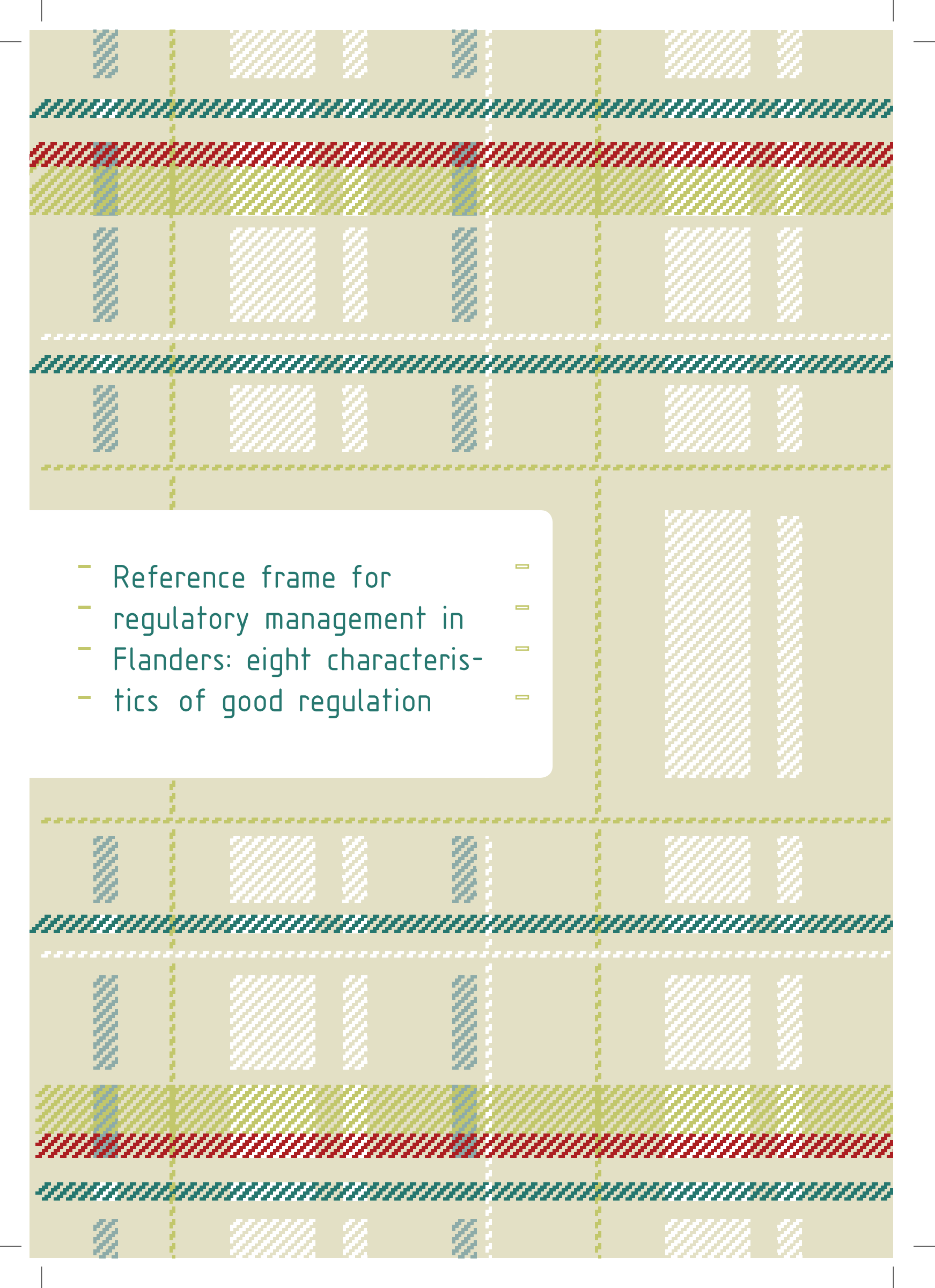
- 1. **Regulatory Impact Analysis (RIA):** RIA analyses targets and the expected positive and negative impact of intended regulation in comparison to alternatives.
- 2. **Regulatory agenda:** the regulatory agenda is a list of planned new regulation or amendments of existing regulation. This list is publicly available. The regulatory agenda guarantees the transparency and planning of regulation.
- 3. **Regulatory Quality Units:** within each policy area of the Flemish authorities the quality of regulation is monitored by the Regulatory Quality Units. The Regulatory Management Unit controls the Regulatory Quality Units.
- 4. **Compensation rule administrative burdens:** The compensation rule monitors whether there is an increase or decrease of the administrative burdens linked to new or changed regulation. The compensation rule provides that any increase in the administrative burdens will have to be subsequently compensated by an equivalent decrease of these burdens within a given policy area.
- 5. **Qualitative forms:** forms play a special role within the process of administrative simplification. Forms are the most tangible and visible kind of administrative burden with which companies have to contend. A quality label is attributed to qualitative forms within the authorities in Flanders. The forms website is a central website containing most of the authorities in Flanders which are available to citizens, companies, non-profit organisations and local authorities.

More information about these tools:

<http://www.governance-flanders.be/regulatory-management>

Three fields of action within regulatory management

- 1. The **administrative reduction of burdens** wishes to reduce the information obligations of citizens, companies and other organisations, vis-à-vis the authorities. The administrative burden can be reduced among others by (1) eliminating redundant or inefficient information obligations, (2) introducing alternatives to regulation and (3) optimising information flows, among others by investing in e-government.
- 2. **Legal-technical simplification** means improving the coherence, consistency and structure of legal rules. As a result regulation is not only simplified but this also facilitates a significant reduction of the amplitude of regulation and of administrative burdens. Legal-technical simplification can be realised among others by (1) establishing an inventory or listing all the regulations and articles that are in force, (2) the consolidation or integration of amendments and additions to the original legislation so that a new act of legislation is created, (3) the coordination or merging of regulations that are currently separate but in fact belong together in one act and (4) the codification or more radical merging and restructuring of legislation into one logical package.
- 3. The **Regulatory Impact Analysis** analyses the objectives and the expected positive and negative impact of intended regulation in comparison to the alternatives.

- 
- Reference frame for
 - regulatory management in
 - Flanders: eight characteris-
 - tics of good regulation

Regulatory quality is not a uniform concept which can be directly measured. The concept is usually operationalised in legal literature and in policy in the form of principles of good regulation. Inspired

by foreign examples, Flanders also enshrined eight characteristics of good regulation in a Flemish Government Decree (7 November 2003).

Good regulation is:

Characteristic	Brief description
Necessary and effective	Good regulation is regulation that is necessary and effective to achieve the desired objectives. Government intervention is necessary and effective and regulation is the best tool for this.
Efficient and carefully considered	Good regulation contributes to social welfare and wellbeing. It achieves the desired objective at the lowest possible social cost and reduces unwanted side effects.
Feasible and maintainable	Good regulation entails guarantees that regulation will be complied with. It must be feasible and enforceable.
Legitimate	Good regulation respects the demands and boundaries that law imposes on regulation and complies with democratic concerns.
Coherent	Good regulation does not overlap or is not contradictory when compared with other regulation and is part of a coherent whole.
Simple, clear and accessible	Good regulation is easy to understand, practical and anyone for which such regulation may be important has easy access to it.
With the necessary support and following consultation	Good regulation has been carefully prepared. It is based on all useful scientific and empirical information that may be reasonably available. Extensive administrative, social and political consultations have been organised on its objectives, alternatives, content and effects.
Permanently relevant	Good regulation ensures that the intended objectives are permanently and effectively achieved.

- Regulatory Impact Analysis
- (RIA)
- as a guideline for
- regulatory quality

Definition

RIA is one of the key tools to assure qualitative regulations.

RIA is a structured analysis of the intended objectives and of the expected positive and negative impact of an intended regulation (or policy measure) in comparison with alternatives. RIA enables policy-makers to gain an insight into the consequences of policy options and helps determine whether a given option achieves the objective more efficiently than another policy measure.

Three objectives for the creation of new regulations have become essential following the introduction of RIA:

- 1 better preparation and substantiation of new regulations;
- 2 more transparency;
- 3 more policy coordination.

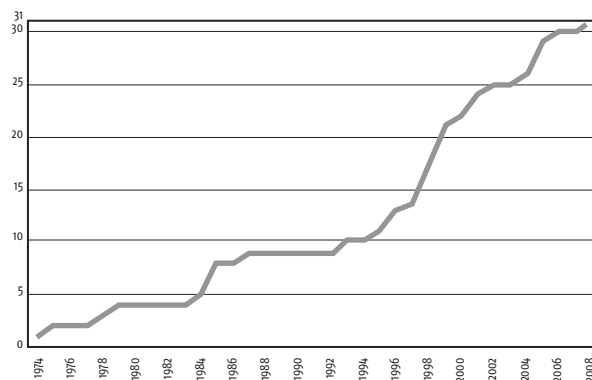
It is important to note from the outset, that RIA is a tool to improve rather than replace decision-making. The political decision takes precedence in the democratic decision-making process. RIA is the tool of choice for making well-considered policy decisions. It provides policy-makers with an insight into the consequences of policy options. It helps them determine which option achieves the objectives more efficiently and more effectively than others.

It is worth noting that RIA is not a Flemish tool. Many countries use it to improve the drafting and consideration process of regulation and large organisations use similar techniques to substantiate important investment decisions.

Flanders has an internationally recognised tool at its disposal to control regulatory quality with the Regulatory Impact Analysis (RIA).

13

Figure 1: Trend of the consolidation of RIA in the OECD Member States⁸



⁸ OECD Regulatory Management Systems Indicators Survey, 2009, OECD, p.62

Application

Since January 1st, 2005, a RIA is obligatory in Flanders for all regulation that has a regulatory effect on citizens, industry or non-profit organisations.

This includes all draft decrees and draft decisions, except for:

- self-regulation of the authorities themselves;
- regulation relating to the budget or taxation (including policy levies and taxation that do fall under RIA obligation);
- regulations for the approval of international and interregional treaties and agreements;
- decrees and decisions with no impact in terms of content, or of a merely formal nature;
- regulation contained in spatial plans;
- decisions of the Government of Flanders or of a Flemish Minister, that do not contain any regulation and ministerial decisions.

When a decree or a decision is made up of several components (e.g., joint decree) a RIA is required for every separate measure.

RIA and the eight characteristics of qualitative regulation

The regulatory impact analysis has a **primary objective** and **three secondary objectives**:

1. *Qualitative regulation is:* RIA results in a better substantiation of regulation as a policy option. The thinking process which precedes RIA as a product (RIA template, see below) considers all characteristics of good regulation. In this manner, RIA adds an empirical and rational dimension to the decision-making process.

2. *Substantiation:* RIA is a method for a systematic and consistent examination of all the relevant effects (economic, social, environment, etc.) of policy measures. Its objective is to assist policy-makers in selecting the most efficient and effective policy options, based on facts and figures where possible, meaning in an evidence-based manner. In others words, RIA is a tool to substantiate policy and to underscore the rational, analytical basis of decisions. RIA is a tool to improve decision-making. However, the political decision takes precedence in the democratic decision-making process.
3. *Policy coordination:* RIA encourages policy-makers to consider all the relevant positive and negative impact across the boundaries of the various policy areas. RIA also encourages policy-makers to monitor the influence of national and international regulatory initiatives on one's own regulatory initiative. RIA wishes to promote horizontal thinking within the authorities in Flanders.

4. *Communication:* RIA is also an important tool in the communication between the authorities and stakeholders in the motivation of regulation. RIA aims to improve transparency and consultation processes in regulatory processes. RIA also facilitates the motivation and political accountability for the policy choices that have been made.

Figure 2: Objectives of RIA

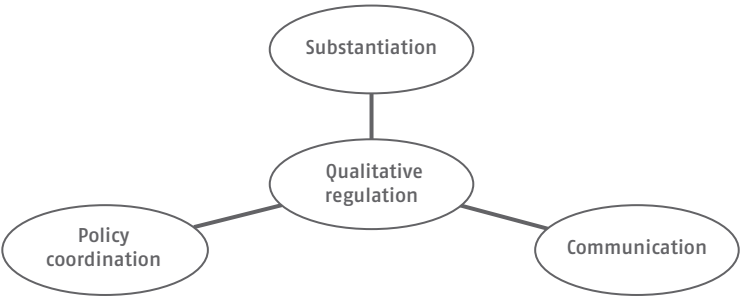
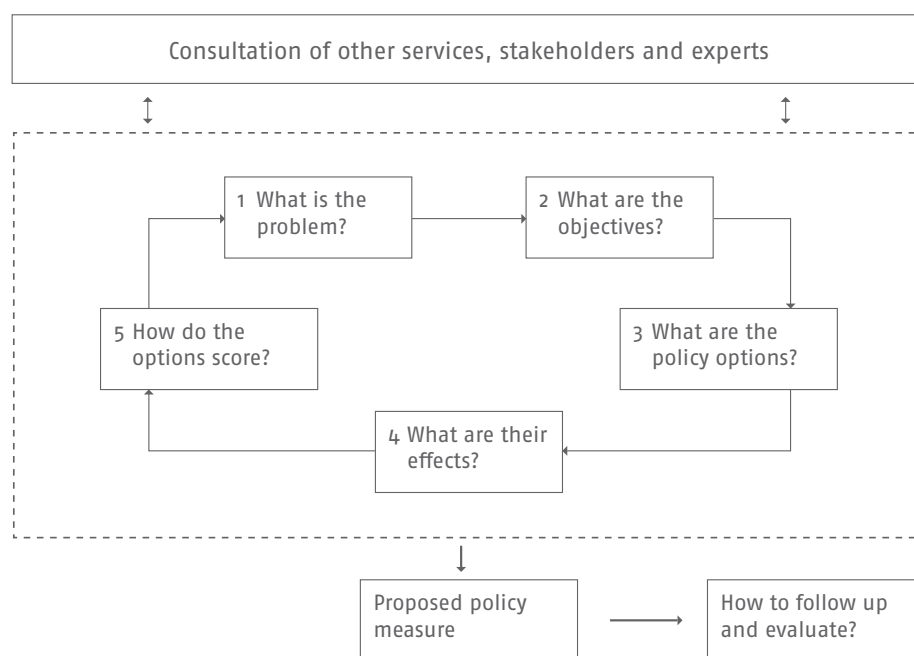


Figure 3: RIA as a thinking process



RIA as a product and process

RIA fulfils the above functions by encouraging the author(s) of regulation to make a number of **specific considerations**. Conducting a RIA amounts to answering the right questions, at the right time,

in the right order – in transparent consultation with all the stakeholders – and to communicating this information to policy-makers and the general public.

1. In which social frame is the regulatory decision taken? What exactly is the problem for which a solution is being sought? What are the various facets of the problem?
2. What exactly is the aim of these regulations? What is the ultimate objective of the regulation, what are the secondary objectives?
3. Are there no alternative solutions to this social problem? Is regulation the most efficient policy instrument?
4. What is the (in)direct impact of this regulation? Which impact may be associated with the alternatives to this regulation? How does this impact relate to the social problem for which a solution is being sought and to the objectives of other regulations?
5. How will the implementation and the enforcement of the regulation be organised? What are the potential threats that may interfere with the initial objective?
6. Which costs are related to the implementation, execution and enforcement of the regulation? Do these costs ultimately outweigh the benefits of this regulation?
7. Which guarantees of transparency have/will be incorporated? Who was/will be consulted? How will the results of the consultation sessions that were conducted be incorporated in subsequent policy phases? How is feedback to stakeholders on the subject of their input organised?
8. Which successive milestones are required to achieve the desired objective? Which indicators need to be monitored to this end? How and when will the assessment be planned?
9. How will the regulation be communicated to the target groups? Which special communication campaigns are required?

A RIA document thus is only final after the **various process stages** have been completed:

a | The problem definition

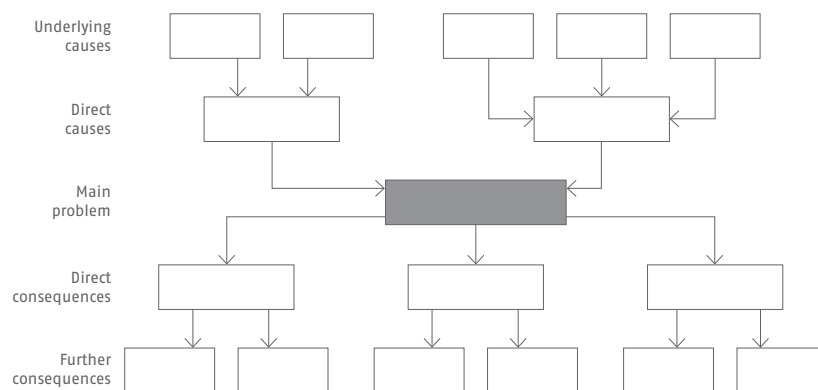
A RIA process starts with a problem definition, with a description and an analysis of the social problem for which a solution is required (*problem description*) and/or the reasons why intervention by the authorities is deemed necessary (*environmental analysis*). This step of the process requires an inventory of the causes of the problem (*problem analysis*). The problem definition constitutes a crucial phase within the RIA process. A detailed and, above all, accurate description of the problem is essential to formulate the most appropriate objective in the next stage and to select the most appropriate policy instrument.

The problem also has to be described in quantifiable terms where possible. Quantitative information makes the information more objective thus reducing the chances of an incorrect assessment of the problem.

If the problem definition has been defined in too cursory a manner there is a danger that the definition only emphasises the symptoms of the problem instead of the actual underlying problem.

A good tool in this phase is the **problem tree**:

Figure 4: The problem tree



b | Formulating the objective

Then objectives have to be formulated. Naturally these objectives need to directly relate to the problem's causes. The objective has to be formulated in measurable terms. A frequently used tool to make objectives measurable is the **SMART principle**. The objectives are formulated in a Specific, Measurable, Accepted, Realistic and Time-dependent way:

- *Specific*: The objectives have to be clear and not create misunderstandings or be open to interpretation. The more specifically the formulation of the desired objective, the easier it is to gather the required information which will determine the subsequent success of the regulation.
- *Measurable*: an objective describes the desired result that needs to be achieved. The result has to be formulated in measurable (quantitative) terms. This will facilitate a subsequent testing of the result.
- *Acceptable/agreed*: an agreed and accepted objective has the advantage that it benefits from the support of all the stakeholders. If the parties concerned do not endorse the objective meaning there is no support for it then the probability of this objective being realised is limited. The support for an objective thus is an essential condition for its success. Vice versa a good objective can also generate support.

- *Realistic*: an objective may ambitious, but if expectations are too high, then they will be deemed unattainable and thus have a discouraging effect.
- *Time-dependent*: objectives have to be associated with a date or a time frame. This time frame indicates the period within which the results or impact have to be achieved.

A properly formulated objective refers to changes which have to be brought about by a given deadline as a result of carrying out activities among various target groups or in a given policy area. Properly formulated objectives start with "increasing the... reducing the...". Poorly formulated objectives start with "the implementation, the development, the set-up, the application, the realisation of..."

An example of an objective formulated in accordance with the SMART principle: "the reduction of the number of registered crimes in city X to 108 offences per 1,000 inhabitants by 20XX". The objective is *specific* because it applies to city X. It is *quantifiable* because it contains an indicator (the number of registered offences per 1,000 inhabitants in city X) and a target value (108). It is *realistic* because the desired reduction is relatively low. It is *time-dependent* because it indicates by when the objective has to be achieved, namely by 20XX.

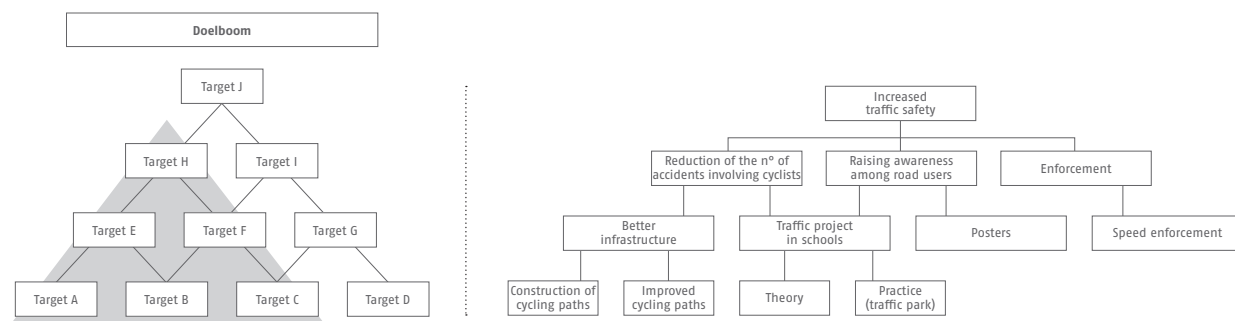
The objectives always have to be formulated as results to be achieved (e.g., reducing the number of smokers in Belgium by 20% by 2017) and not as instruments to be used (e.g., raising tobacco prices in Belgium by 30% by 2017).

It is thus recommended that the objectives be hierarchically organised. The general objectives can be found at the first level; these express the general objective in terms of outcomes or impact.

The second level comprises the specific objectives; these relate to direct, short-term effects. They are the immediate objectives of the implemented policy. The specific objectives have to be achieved first before the general objectives can be achieved. The operational objectives make up the last level and they are expressed in outputs.

The **objective tree** can facilitate this exercise.

Figure 5: The objective tree

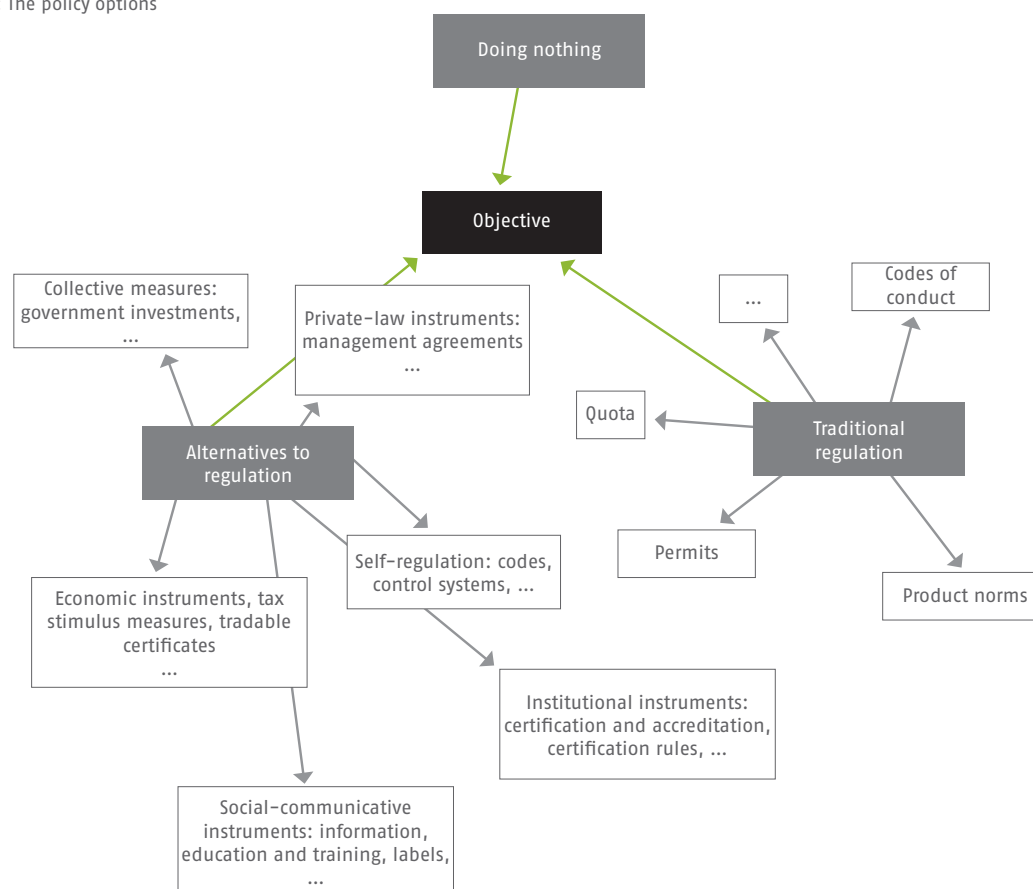


c | Identification of the policy options

A third step consists of the identification of the policy options to achieve the desired objective. When identifying policy options you need to consider all possible options. The **zero option** (maintaining the status quo/doing nothing) always has to be considered. Options are eliminated based on the following criteria: effectiveness,

efficiency and consistency. It is easier to explain to stakeholders in this way why some options have not been withheld. The Regulatory Management Unit recommends that parties drafting regulations always consider an alternative to traditional regulations.

Figure 6: The policy options

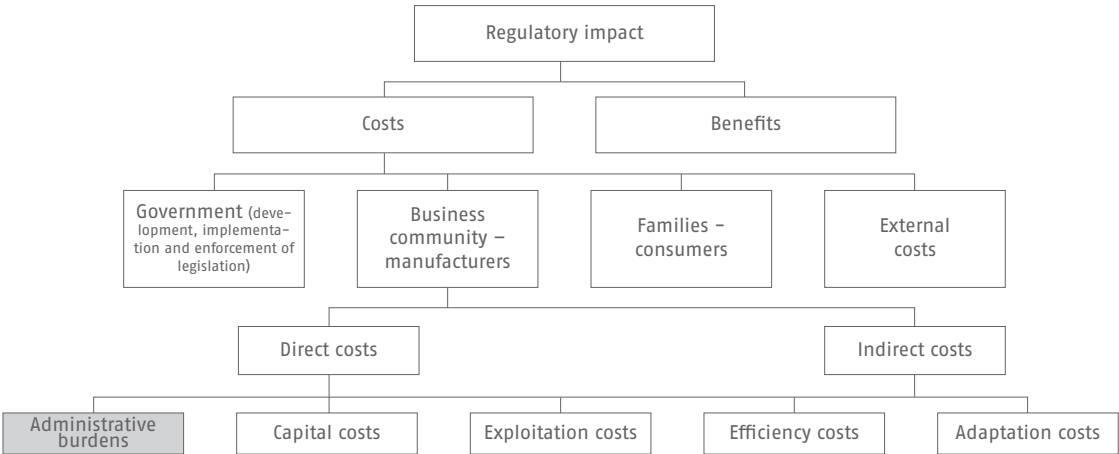


d | The impact analysis

The next step examines the likely economic and/or social impact of the various options linked to a cost/benefit analysis per target group. This analysis covers the indirect and the direct impact. The **direct impact** applies to the stakeholders of the regulation.

The **indirect impact** relates to the other parties concerned. We recommend taking into consideration current and future generations; as a result this step of the process is quite durable.

Figure 7: Costs and benefits of regulation



Qualitative and quantitative data can be gathered to map the costs and benefits. The cost/benefit analysis is the most time-consuming component of the entire RIA process. It is important that the data are represented in a transparent and reproducible fashion. This means that the results

are unequivocal: if the analysis would be carried out again, in the same way, this would give the same result.

Below are some examples of quantitative and qualitative costs and benefits:

Benefits for citizens or consumers	Better access to information, lower prices, safer products, more quality guarantees, better working conditions, etc.
Benefits for companies	Lower production costs, shorter procedures, subsidies, more legal certainty, transparency and predictability, lower prices of raw materials, development of new markets, etc.
Benefits for the authorities	Better harmonised regulation and procedures, receipts from levies, lower monitoring and enforcement charges, fewer administrative formalities, etc.
Benefits for society	Higher educational level, better quality of the environment, more economical use of space and raw materials, safer traffic, increased economic growth, increase of the standard of living, more equitable distribution of income, etc.
Costs for citizens or consumers	Higher prices, smaller variety of goods and services, security decreases, higher health expenses, etc.
Costs for companies	Higher prices of energy and raw materials, investment and operating costs due to adaptations of production processes, levies, costs due to trade barriers, increased complexity of the regulation, new administrative charges, etc.
Costs for the authorities	Investment in infrastructure and training in order to implement the regulation, supplementary staff, costs of the collection of information and data management, increased control and enforcement charges, etc.
Costs for society	An unwelcome redistribution of income or property, obstruction of innovation, lower employment, decreased economic growth, increase of environmental damage, depletion of raw materials, etc.

The impact matrix is an important tool for mapping the impact per target group:

Figure 8: The impact matrix

Theme	No.	Indicator	ST impact ++/+/0/-/--/+/-/?	LT impact ++/+/0/-/--/+/-/?	Spatial impact LOC/URB/EU/Outside EU	Certainty about information +/+/-/-
Economic impact						
	E1	Private Investments				
	E2	Public Investments				
	E3	Innovation, research and development				
	E4	Prices				
	E5	Number of companies				
	E6	Production level of companies				
	E7	Compliance costs				
	E8	Productivity				
	E9	Competition				
	E10	Government receipts				
Social impact						
	S1	Poverty and social inequality				
	S2	Consumer protection				
	S3	Employment volume				
	S4	Availability of qualitative healthcare				
	S5	General health levels				
	S6	Consumption of harmful products				
	S7	Availability of qualitative education				
	S8	General level of education				
	S9	Equal opportunities				
	S10	Access to democratic basic rights				
Environmental impact						
	M1	Air quality				
	M2	Water quality				
	M3	Soil quality				
	M4	Nuisance				
	M5	Energy consumption				
	M6	Water consumption				
	M7	Biodiversity				
	M8	Use of space				
	M9	Water economy				
	M10	Congestion				

e | Consultation

The consultation of stakeholders is necessary for various reasons:

- Consultation is required to gather information (data gathering for a description of the impact)
- The consultation of all relevant parties concerned is a key instrument to improve the quality and the scope of the regulation. Even small modalities such as transition terms, may have important consequences for the target group.

The RIA describes how and with whom consultation procedures were organised as well as the outcome of this consultation. The RIA also

describes to which extent the results were used to arrive at the present regulation. In case of limited or no use the reasons for this are provided and explained.

The involvement of the target groups in an RIA does not infringe on the “primacy of politics”. At the end of the day the democratically elected politicians determine which decisions will ultimately be taken. Consultation therefore is not aimed at replacing the political decision-making process but at facilitating a more informed decision-making process.

25

f | Development, implementation and administrative burdens; enforcement and assessment

It is also worth examining how the regulation will be enforced and implemented. Is a decree required or is subordinate legislation sufficient? Is a comprehensive regulation required or is a general frame sufficient? Is the regulation consistent with existing regulations within the own policy area but also beyond? Has sufficient attention been paid to the provisions for the entry into force of

the regulation, to the transitional provisions? How shall the regulation be communicated to the target groups? Have the administrative procedures in the regulation been organised in an efficient way, in the best possible way? An important question in this stage is also, ‘can and will the target group comply with the regulation?’.

In this stage it is worth considering the 'table of eleven'.

The Table of Eleven: groups of determinants	
Spontaneous compliance	
Level of knowledge of the rules	How familiar is the target group with the rules and does it properly understand them? When the target group is not familiar with or does not understand the rules, its compliance with these rules is based on coincidence. Sanctions are not taken into account.
The costs do not outweigh the benefits	What are the direct costs and benefits (administrative, time, financial, social) related to compliance with the regulation? When these costs outweigh the benefits then the likelihood that the target group will comply with the rules is smaller.
Level of acceptance of the rules	This refers to the target group's level of support for the regulation (both for the objectives and for the strategy). If support is marginal, then the target group will be less inclined to comply with the rules.
The target group's willingness to comply with norms	To what extent does the target group usually respect governmental authority? Depending on the topic, certain target groups can be more or less law-abiding.
Level of informal control	This refers to informal social control (by family, friends, passers-by,...) of the target group to comply with or violate regulations.
The greater the spontaneous inclination towards compliance, the smaller the need for enforcement by the authorities. It is thus important to make maximum use of/stimulate these first five elements. One should only resort to authorities' interventions after each of these factors have been fully 'used'.	
Enforcement factors	
Chance of an informal report	How does the potential offender perceive the chance of a violation coming to light through control measures other than authorities' control (e.g., through complaints)?
Chance of authorities' control	Chance of control: How does the potential offender perceive the chance of a violation coming to light through authorities' monitoring?
Chance that the violation comes to light	This refers to the chance of the violation actually being discovered during an inspection.
Selectivity	This factor relates to the assessment of the potential offender that offenders run a higher risk of being inspected than others.
Chance of a sanction	An offender will be less inclined to follow the rules if there is no sanction when a violation has been discovered.
Level of the sanction	The severity and nature (civil or criminal) of the sanction influences the extent to which the target group complies with the rules.

This phase also considers how the regulation will be **followed up** and **evaluated**. When and how will the policy measure be followed up and evaluated in order to ensure that it remains relevant, effective and efficient? Who will do this? Who will be involved in this process?

Examine which aspects of regulation can be taken into account for the assessment: the degree of realisation of the intended objectives, the cost-

benefit ratio, the distribution effects, the side effects, the practicability, the enforceability, the consistency with other regulation, the subsidiarity, changing circumstances, simplicity, clarity, accessibility, administrative burdens, ...

In this phase indicators and measurement methods are established for the aspects that will be monitored and evaluated.

Factors for success

A number of conditions need to be fulfilled to guarantee qualitative regulation through RIA. These conditions can be summarised under the headers **perception and timing**.

Thus drawing up a qualitative RIA requires an investment on behalf of the various stakeholders (administration, cabinets, parliament). It should not be seen as a bureaucratic task, as an additional burden on top of the daily tasks. If the described functions are not borne by the author of the RIA or by his or her supervisors then there is a risk that the final RIA document has no added value at policy level. The stakeholders have to be convinced of the fact that the initial RIA effort will facilitate the subsequent establishment of qualitative regulation, meaning fewer regulatory changes will subsequently have to be made.

Moreover RIA has to be incorporated at a sufficiently early stage in the decision-making process. A qualitative RIA above all has an impact. It is not merely used to justify previous choices. The RIA process has to be started up at the start of the regulatory process and not after the regulation has already been drafted. In fact, the RIA thinking process has to start as soon as the social problem is detected. The thinking process starts even before the policy options are on the table.

The issues of timing and perception often go hand in hand. A belated interest in RIA undermines the credibility of the RIA process leading to a continuous negative perception. This negative attitude in turn ensures that there are few incentives for incorporating the RIA process in the decision-making process in the best possible manner. This leads to the emergence of so-called pro-forma RIAs. There are formalistic RIAs that were purely drawn up because the legislative process requires them to be drawn up.

The principle of proportionality was introduced in RIA as a potential solution to the perception problem. Proportionality within a RIA context means that a thorough analysis needs to be conducted for important regulations. A limited analysis or even no analysis is sufficient for less important regulations because the costs associated with drawing up a RIA will not outweigh the benefits of the analysis. RIA has to be used in dossiers where it has more added value. The principle of proportionality thus wants to ensure that conducting a RIA always entails an effective and efficient use of authorities' resources under all circumstances, and the resources for RIA are thus used for policy measures where they are most useful.

Reform of RIA

On December 17th 2010, the Government of Flanders approved the principle of the 2009–2014 strategic policy framework for qualitative regulation and administrative simplification. This policy framework comprises a reaffirmation of the general principles and courses of action for amending the instruments of Flemish regulatory management. RIA is one of these instruments.

The new strategic policy framework is founded on the assessment results of the existing instruments of Flemish regulatory policy.

The **main courses of action** of the reform are:

- avoiding formalism;
- trying to achieve a more proportionate use of RIA as an instrument;
- greater emphasis on the use of RIA throughout the various stages of the policy process.

- Regulatory impact evaluation (RIE)
- as to control of
- regulatory quality

RIE as a concept

Need for an ex-post assessment of regulation

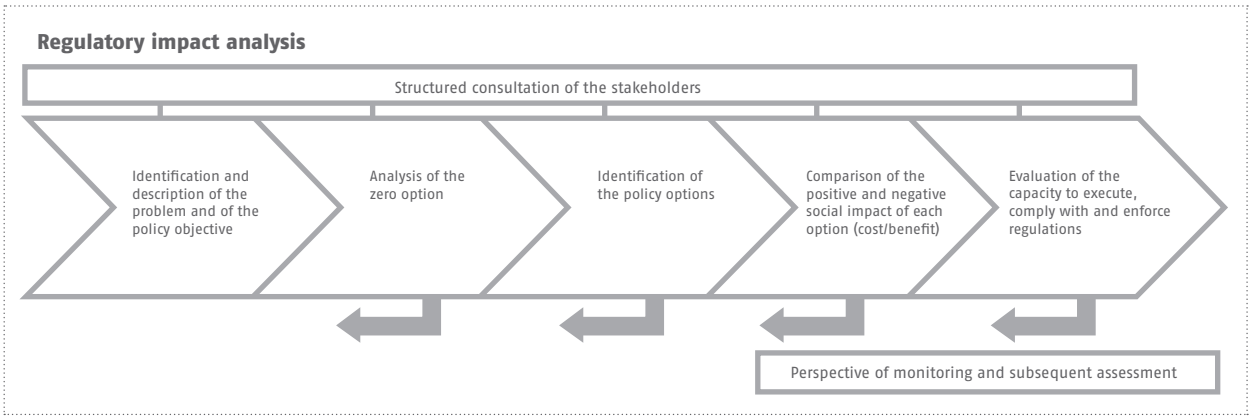
Once the regulation is in force, the legislator naturally needs to continue to monitor it. Permanently topical and relevant regulations can only be achieved if the legislator pays attention to the eight characteristics of good regulations in the RIA. Naturally this is not a constant; society is continuously evolving and the legislator cannot correctly estimate all the preliminary variables. After all RIA always looks ahead and thus is always an ex-ante assessment of the regulatory impact. The risk of discrepancy between the **law in books** and the **law in action** is always real. It is thus a challenge to verify whether the regulation still meets the eight characteristics of regulation over time. Specifically this means that the legislator regularly has to check whether

regulations, once implemented, achieve the desired objectives and whether the starting points that were outlined in the RIA proved to be correct.

The quality of regulation may not be controlled based on incidents, signals from society or on legal judgments. This means there is a problem, which is difficult to correct by the legislator. In some cases it cannot even be corrected at all.

Controlling regulatory quality is a proactive discipline. That is why **Chapter 5** of the RIA template requires the author of the regulation to think about how it will be monitored and assessed.

Figure 9: Monitoring and assessment as a component of RIA



A future assessment can be incorporated in regulations in various ways:

1. *An automatic review clause or 'sunsetting'.*
A term is then set for the regulation or for a number of provisions. An assessment will then have to determine whether the regulation or the provisions are extended. Sunsetting may be recommended specifically for:
 - Regulation that has to control a crisis situation so that not much time is left for preparatory substantiation and consultation.
 - Regulation by way of precaution, which involves a significant degree of scientific uncertainty at the moment of drafting the regulation but for which it is expected that important information will become available in time.
 - Regulation in very dynamic situations, in which for instance technologies change at a rapid pace and regulations rapidly become outdated.
2. *A regulatory assessment article.* This article in the regulatory document imposes an assessment of the regulation within a given term or with a certain frequency.
3. *A reporting article* imposes periodic reporting by the Government of Flanders, a Minister or an administrative entity about certain aspects of the regulation.
4. *Attributing the competence for the assessment* to a given body (e.g., assessment committee, advisory council, ...).

Definition of RIE

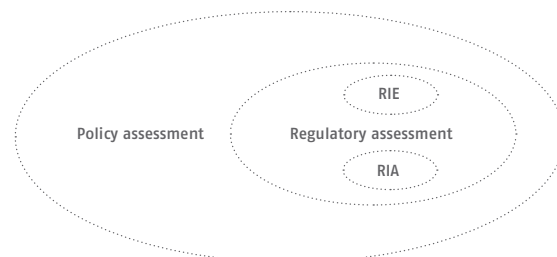
In 2010 the Regulatory Management Unit conducted a study, in cooperation with the Inter-University Centre for Legislation, into the possibilities of a Regulatory Impact Evaluation (RIE) as an ex-post assessment component for RIA.

:: Policy assessment, regulatory assessment, RIE and RIA

The Regulatory Impact Evaluation (RIE) and the Regulatory Impact Analysis (RIA) can be defined as special forms of regulatory assessment, respectively ex post and ex ante. Regulatory assessment then must be seen as a subset of policy assessment tools in view of the fact that regulatory assessment specifically focuses on a given policy instrument, i.e., regulation.

Regulatory assessment can take many forms, but there is always one constant: regulatory assessment assesses whether the regulation generates the desired effects and objective(s). Regulatory assessment can take place ex ante (prior to implementation) or ex post (after implementation).

Figure 10: The relation between policy assessment, regulatory assessment, RIE and RIA



Below are a number of examples of regulatory assessment variants.

Regulatory assessment component	Description
JoKER	The child and youth impact report called JoKER assesses the impact of a regulatory initiative (decree) on children and young people. Every time a Minister submits a draft decree to Flemish Parliament which has a direct impact on the interests of the under 25s then this draft act has to be accompanied by a JoKER.
	Assessment criterion: youth welfare
	Evaluandum: regulation
Poverty test	A poverty test checks whether new regulations and services are accessible, easy to understand, user-friendly, legally correct, fair, allow for participation and whether they involve a proper complaints procedure.
	Assessment criterion: social welfare
	Evaluandum: regulation
Administrative burden test	The administrative burden test checks whether the procedures that have been incorporated in the regulation are efficient (necessary) and have been properly organised.
	Assessment criterion: procedural efficiency
	Evaluandum: regulation
Local Government test (Belfort principle)	The Belfort Principle stipulates that ministers who submit decisions to the Government of Flanders must always accurately map the impact of their proposals on the local governments and on the Provinces. The aim is to understand the impact of Flemish decision-making on the organisation of the local governments and the provinces, their personnel, operations and investment policy.
	Assessment criterion: optimal harmonisation of competences and resources
	Evaluandum: regulation
...	...

If the reference frame of a regulatory assessment is made up of the eight characteristics of good regulation as approved by the Government of Flanders then we call this a RIA in an ex ante context and a RIE in an ex post context.

:: RIE versus RIA

The Regulatory Impact Evaluation is the mirror image of the Regulatory Impact Analysis. Whereas RIA analyses the problem and weighs whether regulation is the most efficient policy instrument, RIE checks whether the desired objective(s) have been achieved in practice.

	RIA	RIE
Time frame of the assessment	Ex ante	Ex post
Evaluandum	Regulation	Regulation
Main research question	What is the social problem for which a solution has to be found and is regulation the most appropriate instrument to achieve this objective?	Has the regulation achieved the desired objective(s)?
Output	RIA template	RIE-template

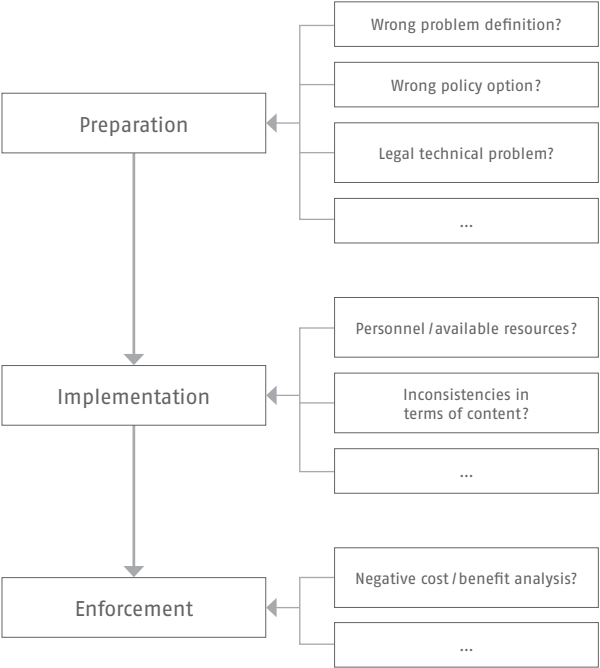
A RIE can have a positive or a negative result.
When conducting a RIE, the aim is mainly to know where exactly things started to go wrong:

- Did we make the wrong policy choice?
- Is this failure due to an inadequate execution or enforcement?
- Was the problem misjudged?

An overview of possible questions:

Question per assessment criterion		
	RIA	RIE
Necessary and effective	What is the social problem? Which objectives can meet this problem? Which policy options are needed to achieve these objectives? What are the potential shortcomings per policy option? Which policy option is most recommended to achieve this objective?	Has the regulatory document contributed to achieving the policy options that were defined?
Efficient and carefully considered	Which effects may possibly interfere? What are the costs and benefits of the various policy options, outlined per target group?	Efficiency of implementation: which resources were effectively spent on implementing and enforcing the regulation and how do they relate to the social impact created by the regulation? What were the estimated resources required to implement and enforce the regulation? Is a potential failure due to a negative analysis or an insufficient initial estimate?
Feasibility and maintainable	How is the regulation implemented? Which enforcement instruments have been provided?	Efficiency of implementation: were there any bottlenecks in terms of internal capacity? Competences of the implementing bodies? Problems of interpretation during the processing of the dossier? The Table of Eleven? ...
Legitimate	Is the regulation lawful? Does it respect the principle of equality? Does it offer legal certainty?	Is the regulation in accordance with higher regulations? To what extent is the regulation treated equally? Do similar dossiers have similar decisions?
Coherent	What are the related regulations (subnational, national, regional, local) and is the regulation externally and internally coherent in terms of its objectives, its implementation, its enforcement, etc.?	Does the regulation generate an impact that is not consistent with the objectives of other regulation and/or policy objectives in terms of implementation, enforcement, or conversely do other regulations interfere with the regulation's objective?
Simple, clear and accessible	How is the regulation communicated? Have the administrative burdens in the regulation been organised in a necessary and efficient manner? Is the language use chosen in function of the target group?	Are there indications that the objectives were not achieved because of poor communication, too much jargon, too much of an administrative burden, ...?
With the necessary support and following consultation	Which (formal and informal) consultation procedures preceded the drafting of the regulation?	Are there reasons for believing that the objective was not achieved because of insufficient support and/or involvement of the stakeholders?

Figure 11: Interfering variables within the regulatory cycle



A RIE can also be interesting when one does achieve the defined policy objectives. When achieving a positive result, it is impossible to assert with certainty that the success can be entirely attributed to the regulation and that there are no other determining factors. Moreover a positive assessment can generate important learning effects for future regulatory processes.

Need for monitoring

As already mentioned, the quality control of regulations is a proactive process. This implies the introduction of a monitoring system in the regulation's lifecycle.

Monitoring is the systematic and continuous or frequent gathering of data based on measurements with indicators. The function of monitoring is to gather descriptive information about parameters that relate to the various aspects of government action. In case of regulation the emphasis is on the application of the regulation, on achieving the norms and impact derived from the objective in function of which the regulation was drawn up.

This need for monitoring ties in with the recommendations in the RIA template in terms of the problem definition and the formulation of the objective. It is crucial that the RIA authors follow these recommendations as much as possible in order to obtain a good RIE.

RIA process phase	Recommendation with a view to monitoring and assessment
Problem definition	The problem definition constitutes a crucial phase in the RIA process. A detailed and, above all, accurate description of the problem is essential to formulate the most appropriate objective in the next stage and to select the most appropriate policy tool. If the problem definition has been defined in too cursory a manner there is a danger that the definition only emphasises the symptoms of the problem instead of the actual underlying problem. → Identification of the various aspects of the problem.
Formulating the objective	Then objectives have to be formulated. Naturally these objectives need to directly relate to the problem's causes. With a view to monitoring the objective the SMART principle is especially critical in this frame. The objectives are formulated in a Specific, Measurable, Accepted, Realistic and Time-dependent way. → Formulating SMART indicators.
Formulating the objective	The objectives always have to be formulated as results to be achieved (e.g. reducing the number of smokers in Belgium by 20% by 2017) and not as instruments to be used (e.g. raising tobacco prices in Belgium by 30% by 2017). → Formulating SMART indicators. It is thus recommended that the objectives be hierarchically organised. The general objectives can be found at the first level; these express the general objective in terms of outcomes or impact. The second level comprises the specific objectives; these relate to direct, short-term effects. These are the immediate objectives of the implemented policy. The specific objectives have to be achieved first before the general objectives can be achieved. The operational objectives make up the last level and they are expressed in outputs. → Formulation of SMART indicators at all levels.
The impact analysis	Qualitative and quantitative data can be gathered to map the costs and benefits. The cost/benefit analysis is the most time-consuming component of the entire RIA process. It is important that the data are represented in a transparent and reproducible fashion. This means that the results are unequivocal: if the analysis would be carried out again, in the same way, this would give the same result. → Formulation of indicators.
Implementation, enforcement and assessment:	When and how will the policy measure be followed up and evaluated in order to ensure that it remains relevant, effective and efficient? Who will do this? Who will be involved in this process? Examine which aspects of regulation can be taken into account for the assessment: the degree of realisation of the intended objectives, the cost-benefit ratio, the distribution effects, the side effects, the practicability, the enforceability, the consistency with other regulation, the subsidiarity, changing circumstances, simplicity, clarity, accessibility, administrative burdens, ... → Establishing indicators and who will conduct the assessment when, based on indicators.

The following **indicators** are important in the regulatory frame:

1. *Input indicators* linked to implementation objectives: these refer to the resources or inputs that are used.
E.g. How much funding was earmarked? How much personnel?
2. *Output indicators* linked to the operational objective: these relate to the desired policy results of the regulation.
E.g. The number of SMEs that uses consultancy vouchers or the number of persons that chooses to follow training.
3. *Outcome indicators* linked to specific objectives: these indicate the immediate consequences of the regulation for the desired target group.
E.g. The degree of satisfaction of the SMEs who made use of the consultancy.
4. *Impact indicators* associated with the general objective: these indicate the consequences of the policy measure which extend beyond the immediate consequences for the desired target group. This among others relates to the medium to long term impact for the desired target group as well as to the groups of stakeholders for whom the measure is not intended and unforeseen impacts.
E.g. Raising SMEs growth (opportunities) or increasing the chances of survival of SMEs; increasing the resilience of jobseekers in the labour market.

5. *Context indicators* linked with indirect objectives: these review the impact on the entire territory, the entire population or part of the population, without distinguishing between the target groups for whom the measure is intended and the others.
E.g. Strengthening the economic fabric with healthier SMEs; reducing unemployment with a more employable workforce.

Monitoring can involve primary or secondary data sources. Secondary data sources are existing sources such as government statistics, data that are gathered in the frame of dossiers. Primary data collection is a new data collection in function of a question about the efficiency of a given regulation. To be efficient, indicators need to comply with the conditions of **the SMART principle** (Specific Measurable, Accepted, Realistic and Time-dependent) among others:

The following conditions contribute to the efficiency of the indicators:

1. *Aggregatable*: the indicators that are collected at various policy levels have to be aggregatable as much as possible to higher levels.
2. *Suitable for periodic and temporary collection*: indicators have to be suitable for periodic and temporary collection and over time they should indicate an evolution.
3. *Controllable*: the source of each indicator should be known and can be controlled for accuracy and reliability.
4. *Standardisation*: it must be clear for each indicator when the result can be labelled as good or bad (standardisation).

Moreover one should always be aware of the intrinsic limitations of indicators. Thus indicators represent an evolution but do reveal the underlying cause of this evolution. Monitoring alone is thus not sufficient for reliable judgments; it always has to be incorporated in an assessment.

The RIE provides for a number of methods offering an interpretation framework for the various indicators for each separate criterion.

Criterion	Methods and techniques
necessary and effective	• Analysis of a break in the trend (with official data from the administration or data from indicators) • Comparison or control group • Process analysis of the continued impact of the regulation • Survey (if no retrospective data are available)
efficient and carefully considered	• Cost-benefit Analysis • Cost effectiveness analysis • Process analysis of the implementation process
feasible and maintainable	• Capacity analysis • Analysis of the management costs and of the administrative burdens • Process analysis of the implementation and enforcement • Ex post application of T11© (possibly through focus groups, group interview, individual interviews or survey)
legitimate	• Document analysis • Process analysis of the handling of dossiers • Judicial review
coherent	• Document analysis • Judicial review
simple, clear and accessible	• Document analysis • Survey of users of the regulation
with the necessary support and following consultation	• Survey of stakeholders
permanently relevant	• Assessment of needs

Moreover, as is the case with RIA, **the proportionality criterion** is a key principle and **the timeliness principle** is also applied. As a consequence the RIE is applied according to this principle and data collection, if possible, starts prior to the implementation of the regulation. In the case of major regulations or of significant unforeseen side-effects of existing regulation a thorough assessment needs to be carried out; for minor regulations a limited assessment is sufficient.

And yet here too the necessary efforts should not be underestimated. The RIE as a process will eventually mean that changing regulations will be easier, when and where necessary, in view of the fact that every aspect of the regulation has been checked during the assessment process. RIE mainly is a framework for a structured report on points for attention and questions which are normally addressed in any good decision-making process on regulations.

What happens after the RIE?

Naturally the consequences of the RIE are related to the outcome of the RIE. Below is an overview of the most plausible results:

Result of the analysis/cause of the need for a changed regulation	Action
Poor enforcement and implementation as a result of defects in the legal provisions	This may lead to a change of the legal provisions (through implementing decisions) on the one hand or of the provisions for sanctions and enforcement in the actual regulation on the other hand.
Unexpected indirect impact (for other groups than the target groups)	This problem can lead to an amendment (e.g. an easing) of the regulation, but may also be solved by additional (mitigating) policy measures (financial compensation, tax exemptions or a better information campaign).
Incorrect estimate of the direct impact (the regulation is less efficient than originally thought) meaning the cost of the regulation is too high in relation to the social benefits	Although here too it is possible to opt for additional (mitigating) policy measures (to be determined by an overarching policy impact analysis) this failure better approximates the <i>raison d'être</i> and core content of the regulation. An amendment of the content of the key articles often may seem opportune in this case.
An incorrect assessment of whether the objective has been achieved as a result of the initial choice in favour of the wrong policy instrument (the regulation is less effective than originally estimated)	It is impossible to mitigate this problem with additional policy measures; often this requires a thorough change of the regulation proper (even, in some cases, a complete abolishment of the regulations and a new policy instrument). Now the extent to which the initial regulation will be amended depends on the extent to which the objective was achieved: the smaller the shortcoming, the less far-reaching the amendment.
Whether or not the objective is achieved may also be due to the fact that the wrong policy objectives have been set, e.g. because they insufficiently solve societal problems or are based on unrealistic expectation patterns about desired behavioural changes	This relates to the core of the <i>raison d'être</i> of the regulation, meaning that the entire essence of the regulation has to be reviewed. But here the following applies: the more the formulation was lacking, the greater the need to question the regulation as a whole. The aim is thus to start from newly formulated policy objectives and subsequently to review how and to which extent the initial regulation can (still) achieve these objectives.
Finally there is the problem of the wrong problem analysis, namely that the social problem in question simply does not exist or has completely different characteristics than originally estimated. In essence every regulation has been developed to solve a problem. In other words, the effective solution of the societal problem constitutes the real societal benefit of the regulation. The added value of the regulation and its <i>raison d'être</i> thus relies on an accurate analysis of the original problem.	This relates to the core of the <i>raison d'être</i> of the regulation, meaning that the entire essence of the regulation has to be reviewed. This will often result in the abolition of the regulation.

**Publisher**

Luc Lathouwers
Secretary General
Public Governance Department
Boudewijnlaan 30, p.o. box 30
1000 Brussels

Contact

Public Governance Department
Regulatory Management Unit
Boudewijnlaan 30, po box 34
1000 Brussels
Tel. 02 553 17 11

wetsmatiging@vlaanderen.be
www.governance-flanders.be

Catalogue Number

D/2011/3241/243

Orders

wetsmatiging@vlaanderen.be

Edition

November 2011