



European
Commission

Exchange of good practices on gender equality

**Gender Impact
Assessment**
Austria, 03-04 June 2014

Comments Paper - Belgium

ISTITUTO
PER LA
RICERCA
SOCIALE



ösb
CONSULTING

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

Justice

This publication is supported by the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013).

This programme is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

For more information see: <http://ec.europa.eu/progress>

Regulatory Impact Assessment in Belgium

Saskia Caroline Irene Ravesloot
Belgian Development Agency

1. Introduction

With the adoption in 2013 of the Regulatory Impact Assessment (RIA) for all new regulation to be submitted to the Council of Ministers¹, Belgium made headway in improving the quality of government regulation through administrative simplification. The Kafka Test since 2004² and the SDIA (Sustainable Development Impact Assessment) since 2007³, the eye-catchers of Belgian's 'Better Policy Process', have been integrated in the broader RIA, while simultaneously integrating the gender and the SME (Small and Medium Enterprises) dimensions.

The Agency for Administrative Simplification (AAS), under the responsibility of the Chancellery of the Prime Minister, coordinates the Belgian federal RIA, a partnership with five other Ministries. The AAS is since 2000 in charge of the impact analysis of administrative complexity of procedures for companies and individuals and limiting the associated costs. The AAS has become responsible for regulation improvement since the law of 15 December 2013 on the RIA. The organising procedures assign the AAS with the following tasks: the helpdesk, the management of the Analysis Committee and the publication of the RIA's. All the information can be found on the following link: <http://www.simplification.be/fr/content/analyse-d-impact>.

The law on the RIA (Law of 15 December 2013) and its Royal Decree (Royal Decree of 21 December 2013) were published in the Belgian law gazette end 2013 (MB 31 December 2013).

1.1. Policy context

The introduction of the RIA has generated an encouraging welcome by the parliament and the stakeholders (federations of enterprises, trade unions, and consultative councils), thanks to its potential to strengthen policy coherence. Successive political statements were formulated recently, as a reaction to the new RIA.

Vice Prime Minister and Minister for Internal Affairs and Equal Opportunities (Christian Democrats) Joëlle Milquet has committed to keep a close eye on the application of the gender section of the RIA. The aim is to take into account – in an early stage of policy making - the effects of the new regulation on women and men.

¹ RIAs are mandatory for new 'projects of law', a legislative initiative emanating from the government. The project of law is presented to the Parliament. Projects of law are joined with a clarification note (exposé des motifs).

² "The Kafka Test aims to capture whether draft regulations will increase or reduce administrative burdens on citizens, businesses and non-profit organisations." See OECD (2010) 'Better Regulation in Europe BELGIUM'.

³ Sustainability Test or the SDIA (Sustainable Development Impact Assessment) "screens the impact of draft regulations in terms of sustainable development." See OECD (2010) 'Better Regulation in Europe BELGIUM'.

Aside from this support, critics point to RIAs' inconveniences. Throughout the preparatory process of the new regulation on the RIA application, members of the Flemish Green Party pointed out the number of exceptions to its application.⁴ It is especially the exception concerning propositions for auto-regulation of the federal state that generated additional criticisms. Exemption of any new regulation on the auto regulation of Public Services could in theory be gender related. Therefore the 'explanation notice' of the law (*exposé des motifs*), records explicitly that the exception for 'auto regulation' does not systematically apply for projects of regulation which can have a gender effect/impact. The Council of State has also confirmed that a gender assessment is relevant for regulation related to or impacting civil servants, expressing implicitly its understanding of the logic behind the gender test.

1.2. Economic and social circumstances

The underlying purpose of the gender section of the Belgian RIA is to contribute to greater equality of women and men and this within the framework of gender mainstreaming. Like Austria and Finland, inequalities in labour participation also persists (42% women against 8,7% men in 2013 work part-time)⁵ and the pay gaps remains at 10%⁶, still calling for policies and procedures to promote gender equality.

Within an environment of an economic and financial crisis, simplification efforts can contribute to efficient and cost reducing governmental processes. The RIA integrates 5 instruments of which 3 new: 1) the Kafka Test, 2) the SDIA, 3) the gender-test, 4) the policy coherence test for development and 5) the SME-test. While this merging was essentially intended to strengthen policy coherence, most likely, it will reduce labour, time and costs, that otherwise would be needed to follow 5 separate procedures. Similar to the Finish 'Gender Impact Assessment in law drafting', a procedural goal of the RIA was to render 'gender' visible through a distinct section within the global impact assessment tool. This permits to monitor the gender sensitiveness of policies and allows to keep gender on the agenda even in economic difficult times.

Prior to the introduction of the RIA, practitioners noted a certain 'test fatigue'. This provided an additional motive for merging and simplifying the existing and new tests. This 'test fatigue' has also been identified as an important barrier to gender mainstreaming and the application of the gender test (Wuiame 2011).

Respecting new legislation was an additional reason for adopting the RIA. Only a portion of the previous administrative burden reduction initiatives, aimed an impact assessment of new regulations. Their limitations are well documented⁷, which urged the Belgian Government to introduce the new RIA. At the same time the policy makers took the opportunity to include in this new instrument the commitment incorporated in the law on gender mainstreaming (2007). This law⁸ states that a

⁴ Following section 3, art 8, exceptions are possible in case of international treaties and conventions, cooperation protocols between the federal state and one or more communities/regions, propositions with a formal character, issues related to national security and public order, propositions regarding urgent matters or propositions for auto regulation of the federal state.

⁵ EUROSTAT, <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

⁶ Pay gap based on the average gross hourly wages and gross annual wages. See IEWM, The Gender Pay Gap in Belgium Report 2013, p. 6, http://igvm-iefh.belgium.be/nl/binaries/63%20-%20Loonkloofrapport%202013_tcm336-217189.pdf

⁷ OECD (2010) 'Better Regulation in Europe BELGIUM'.

⁸ See art. 3, § 2, http://igvm-iefh.belgium.be/fr/binaries/loigm_tcm337-97350.pdf

'gender test' supports the integration of the gender dimension in all new policies, measures and actions. As such, the 'gender-test', assessing (*ex ante*) the impact of regulation proposals on women and men, fits into the new RIA and (finally) takes into account the multiple requests of the women's movement⁹ and the gender machinery¹⁰.

This process of merging and simplifying could not escape discussions on the preferences for a separate gender tool versus the integration of the gender test into a mainstream instrument. Protagonists for a distinct tool warned about the risk of diluting gender as one of the 21 themes to be assessed. Antagonists on the contrary stressed the importance of reducing the number of tests and the initial purpose of merging the test, namely reducing the administrative burdens of tests on burden reduction.

1.3. Legal and institutional background

The RIA is a preliminary assessment of potential consequences of regulatory projects in the social, economic and environment fields as well as on public authority. The instrument triggers a transversal reflexion on the quality of public policies. Before new regulations are adopted by the Council of Ministers, 21 themes should be checked, 4 of them providing an in depth analysis (by means of a number of questions). The gender section is one of these 4 (referred to as the gender test) and aims to develop -in the mind of the policy maker- a clear idea of the possible effect/impact of the new regulation on the respective situations of women and men.

The gender section requires answers to 5 open questions related to 1) the target group(s) and their sex-differentiation; 2) the possible differences between the situations of women and men; 3) the differences in access to resources and fundamental rights; 4) the identification of positive and negative impacts and 5) the eventual compensation measures. Questions 1 to 3 explicitly call upon sex-disaggregated statistics. The RIA-manual stresses that this exercise should be initiated in an early stage of policy making and not be administered as a checklist just before introduction. The associated documents are the law, the form, the manual, the FAQ, all available on the AAS website¹¹.

The RIA is two-folded.¹² The first part consists of a descriptive form with information on the initiator, the subject, the context and the relevant sources. The second part consists of the impact analysis as such, comprising 21 themes, of which four transversal assessments (gender, SME, administrative burdens and policy coherence regarding development). Each member of government is accountable to provide RIA's on projects of regulations for policy areas covered under its authority.

Each minister can choose to ask for support from the impact assessment helpdesk for advice. When a RIA is completed, the Minister can choose to ask for quality assessment from the impact assessment committee, who operates under the supervision of the AAS. The committee assesses the quality of the conducted RIAs *ex ante* and provides an *ex post* evaluation through an annual report. Their mandate

⁹ Conseil des Femmes Francophones Belges (CFFB), Nederlandstalige Vrouwenraad (NVR) and Council for Equal Opportunities (RvGK).

¹⁰ Institute for equality of women and men, IEWM, <http://igvm-iefh.belgium.be>

¹¹ <http://www.simplification.be/fr/content/analyse-d-impact>

¹² Article 2 Arrêté royal portant exécution du titre 2, chapitre 2 de la loi du 15 décembre 2015 portant dispositions diverses concernant la simplification administrative (MB 31.12.2013).

requires them to respect three principles: independence, confidence and transparency.

2. Policy debate

2.1. Related issues

The gender mainstreaming law (12.01.2007)¹³ which previously imposed the Gender Test also introduced regulations regarding gender responsive budgeting. In addition to the new RIA and since the adoption of the law on gender mainstreaming, ministries have the obligation to identify activities and related budgets¹⁴ aimed at promoting equality of women and men. This is done by means of a specific note attached to the general budget (art 2, § 2).

A number of instruments such as awareness raising sessions, trainings, a checklist¹⁵ and a manual¹⁶ and a series of Ministerial Budget Circulars (2009, 2010, and 2011) support this process.

All documents can be found at the link: http://igvm-iefh.belgium.be/fr/domaines_action/gender_mainstreaming/application/gender_budgeting/.

The focus of respecting gender equality is in the first place a responsibility of the Government, the executive power. The link in practice between the gender responsive budgeting process and the RIA could be strengthened on the basis of shared policy objectives. The gender mainstreaming process introduced in 2012 at governmental level foresees a common gender action plan¹⁷, whereas each ministry at the beginning of each government, subscribes to two specific objectives. At the moment this process runs parallel to the processes of gender responsive budgeting and the process of the RIA.

2.2. Future developments

The website of the AAS publishes each new RIA since January 2014 and puts as such into practice one of its principles: transparency. Any audience is free to consult and use the available data¹⁸. My own calculations show that 39 of the 40 new laws published on this website dispose of a completed RIA form. The first question of the

¹³ http://igvm-iefh.belgium.be/fr/domaines_action/gender_mainstreaming/legislation/

¹⁴ The 2010 Budget Circular explicitly refers to gender budgeting, imposing a gender screening of the budget for each target audience, taking into account following categories: 1) credits regarding internal functioning, without any gender dimension, 2) credits related to actions aimed at promoting gender equality of women and men and 3) credits related public policies, which include a gender dimension.

¹⁵ Within the gender responsive budgeting framework at federal level, all budget allocations have to be subdivided in three categories. The last category requires an explanation on the way the gender dimension will be taken into account. The Checklist, prepared by the Institute for Equality of Women and Men, indicates a number of issues to consider.

¹⁶ IEWM (2011) 'Manuel pour la mise en œuvre du gender budgeting au sein de l'administration fédérale', see <http://igvm-iefh.belgium.be>

¹⁷ See http://igvm-iefh.belgium.be/fr/binaries/Plan%20f%C3%A9d%C3%A9ral%20complet%20FR_tcm337-227037.pdf

¹⁸ See <http://www.simplification.be/fr/content/publication-air>

section on equality of women and men reads: 'Which persons are impacted by the new regulation (direct or indirectly) and how are these persons or groups of persons disaggregated by sex?' Seven respondents did not answer this question. Ten out of 33 respondents indicated that there is no impact on women or men at all, while the others indicate that women and men are involved, but that there is no differentiated impact. Some mention that the target groups are a mirror representation of the whole population (retired individuals, employers and employees, writers, artists and scientists,...), without developing this finding any further. Only two RIAs are explicit about the sex-differentiation of target groups. One of them refers to the increase of fathers taking up their right for parental leave (8% in 2002 to 26% in 2012). However this differentiation does not call for compensatory measures.

These examples show that the questions raised encourage the decision makers to reflect on policy effects/impact and to look for and valorise existing data. The database is a huge step forward in supporting the process of gender mainstreaming. It also shows that gender mainstreaming, and here, the RIAs remains essentially a question of political will, which is not necessarily a bad sign when gender machineries stay vigilant, alongside civil society.

2.3. Future developments

Notwithstanding the fact that it is much too early to make a general assessment of the use of the RIAs, or to formulate conclusions on the few new RIAs that exist until now, I can distinguish some challenges. In the absence of any sanction for poor quality RIAs, we risk to obtain assessments of which the added value is below expectations. Such a risk requires observance, not only from the Institute of equality for women and men addressing "recommendations to the public authorities with a view to improving the relevant laws and regulations"¹⁹, but also of women's only structures within the civil society and not in the least from the AAS, whose task it is to dress an annual report after analysis.

A second challenge I perceive relates to the need for a general assessment of the RIA application, even in an early stage of the implementation. This will allow policy makers to improve their inputs and analysis. Recommendations resulting from such an assessment could focus on the use and availability of gender differentiated data, the added value and the quality of the responses and the link between the gender section of the RIA and the other items to be screened. The conclusions and the recommendations could also focus on the improvement of the consideration of the gender dimension in the other sections and the reduction of the 'stand-alone status' of the gender section.

A third challenge that I see for the RIA is to link its purpose with the objectives of the instruments enforcing gender responsive budgeting and the process of gender mainstreaming as a whole. If gender sensitive policy making is linked to processes addressing the impact assessment of government expenses, the potential for improving the gender equality increases. On that basis the gender section of the RIA would not be a checklist to be filled out, but rather an instrument, directed towards policies reducing gender inequalities.

¹⁹ <http://igvm-iefh.belgium.be/en/>

3. Transferability

From the Finnish best practice we learn that achieving qualitative gender impact assessments needs long term practices, learning processes. Their sustainability increases with awareness raising efforts and trainings for all actors involved. Important is to include the top and to provide trainings on a regular basis for all levels. The call for expertise will grow (for training, as well as for analysis) and knowledge among policy makers should be shared.

From the Austrian case we learn that strong legislative fundamentals strengthen the gender impact assessment processes. A pragmatic approach is probably the most effective.

Both cases warn us in a certain way of the possible tension between quantity and quality. Assessing all new regulation, could probably produce a massive amount of information, which risks not being analysed or used. Criteria for selecting relevant laws to be assessed could be an option to consider. It could also increase the quality of the assessment of the remaining new regulations.

Nevertheless, as already mentioned above, an annual report on the practices for the Belgian Federal RIAs, to be published by the AAS, will draw conclusions and recommendations on the new experiences.

A final remark I would like to make is about the definition of gender mainstreaming, we all share. We agree on aiming 'the (re-)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, *by the actors normally involved in policy making.*' (Council of Europe, 1998) Our practices as regards gender impact assessment show that the latter is not enough. We need to involve also other actors not yet familiar with policy making, whether it is a gender expert, a women's organisation, a trade union, a youth committee, a scouts group,, or whether it is an author of the RIA, now becoming a 'researcher' analysing and looking for sex-disaggregated data.

References

ASA (2013) AIR – FAQ Ce qu'il faut savoir pour effectuer une analyse d'impact, http://www.simplification.be/fr/webfm_send/166

ASA (2013) AIR – Manuel pour la réalisation de l'analyse d'impact, http://www.simplification.be/fr/webfm_send/155

De Vos, D. *et al* (2014) Analyse d'impact de la réglementation, http://www.simplification.be/fr/webfm_send/164

IEWM (2013) The Gender Pay Gap in Belgium Report 2013, http://iqvm-iefh.belgium.be/nl/binaries/63%20-%20Gender%20Pay%20Gap%20Report%202013_tcm336-218027.pdf

IEFH Le 'test gender', un instrument visant à intégrer la dimension de genre dans les politiques fédérales, http://iqvm-iefh.belgium.be/fr/domaines_action/gender_mainstreaming/application/de_gendertest/

IEFH Gender budgeting, http://iqvm-iefh.belgium.be/fr/domaines_action/gender_mainstreaming/application/gender_budgeting/

La Chambre.be, Document parlementaire 53K2922, Projet de loi portant des dispositions diverses concernant la simplification administrative. <http://www.lachambre.be/kvvcr/showpage.cfm?section=/flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=53&dossierID=2922>

OECD (2010) Better Regulation in Europe – BELGIUM, http://www.simplification.be/fr/webfm_send/152

OECD (2012) Recommendation of the Council on Regulatory Policy and Governance, http://www.simplification.be/fr/webfm_send/154

Schratzenstaller, M. (2014) Exchange of good practices on gender equality, Gender Impact Assessment, Austria, 03-04 June 2014, Discussion Paper – Austria and Fact sheet, Austria (2014).

Elomäki, A. (2014) Exchange of good practices on gender equality, Gender Impact Assessment, Austria, 03-04 June 2014, Discussion Paper – Finland and Fact sheet, Finland (2014).

Wuiame, N. (2011) Exchange of good practices on gender equality, Implementation of gender mainstreaming Belgium, 17-18 May 2011, Discussion Paper – Belgium.