

Walking a tightrope. Evaluating the Child and Youth Impact Report in Flanders

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Abstract

In Flanders, a child and youth impact report (JoKER) must accompany all legislative proposals based on an initiative of the Flemish Government, that have a direct impact on the interests of persons under the age of 25. This article presents the results of the first in-depth evaluation carried out of this impact assessment instrument. Based on multiple data collection techniques (including an electronic survey and focus groups), JoKER was critically evaluated as to its scope, quality, process, support and control, effectiveness and impact. The evaluation required maintaining a balance between various perspectives and tensions. A major challenge concerns the tension between mainstreaming JoKER in the more general regulatory impact assessment (RIA), on the one hand, and preserving the specificity of a youth and children's rights perspective, on the other.

Keywords: Children's rights impact assessment; child and youth impact report (JoKER); evaluation; Flanders; Belgium

¹ UNICEF respects the academic freedom of the chair holder. Opinions expressed by the chair holder do not commit UNICEF.

1. Introduction

The last decades have witnessed the emergence and increased use of impact assessments. These assessments have been applied in different domains (such as policy making and development cooperation), by various actors (among which states, international organizations and non-governmental organizations), at different moments (ex ante or ex post) and with a diversity in focus (including environmental, economic, social, and human rights impact assessments). Simultaneously, the implementation of the Convention on the Rights of the Child required the development of instruments to protect and promote children's rights. The interplay between these two strands gave rise to assessments focusing specifically on the impact of policy decisions on children and young people. The Flemish Government (Belgium)² took the lead, by establishing a 'Child Impact Report' (KER) in 1997, which was extended to a 'Child and Youth Impact Report' (JoKER) in 2008. JoKER is an ex ante impact assessment carried out by the Flemish administration with respect to draft decrees (*ontwerpen van decreet*)³ that have a direct impact on the interests of persons under the age of 25. The Flemish Government requested the Children's Rights Knowledge Centre (KeKi) to subject JoKER to an in-depth evaluation. This article presents and reflects on the results of this evaluation.⁴

The scarcity of literature evaluating the process and outcome of child impact assessments has been repeatedly highlighted.⁵ The current contribution may therefore provide useful input to other contexts, where the establishment of child impact assessments is being considered or existing instruments are being evaluated. The OECD Review of Better Regulation also recommended Belgium to '[i]dentify 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'.⁶

² Belgium is a federal state consisting of three communities, one of which is the Flemish community. The latter has inter alia exclusive competence in the field of youth policy, with the exception of criminal justice.

³ In Flanders, a decree is a law in the formal sense. A 'draft decree' is a legislative proposal based on an initiative of the Flemish Government (in contrast to a 'decree proposal', which is initiated by members of the Flemish Parliament).

⁴ More detailed information and figures are available in the research report (in Dutch), see E. Desmet, H. Op de Beeck & W. Vandenhole, *Evaluatie van de kind- en jongereneffectrapportage (JoKER)* (Unpublished report, 2012), available at: http://www.keki.be/documents/2012%20KeKi_onderzoeksrapport%20JoKER.pdf.

⁵ C. Corrigan, 'Child impact statements: protecting children's interests in policy and provision?' *Journal of Children's Services* 2(4) (2007): 30; K. Hanna, I. Hassall & I. Davies, 'Child Impact Reporting' *Social Policy Journal of New Zealand* 29 (2006): 35; Y.P. Krieger & E. Ribar, *Child Rights Impact Assessment of Economic Policies: A Case Study from Bosnia and Herzegovina* (2008) 15, available at: <http://www.childimpact.unicef-irc.org/documents/view/id/113/lang/en>; L. Sylwander, *Child Impact Assessments. Swedish Experience of Child Impact Analyses as a tool for implementing the UN Convention on the Rights of the Child* (Sweden: Ministry of Health and Social Affairs & Ministry of Foreign Affairs, 2001) 15.

⁶ OECD, *Better Regulation in Europe: Belgium 2010* (Paris: OECD, 2010) 115.

After a succinct overview of the legal framework and context, the methodology of the evaluation is explained and critically reflected upon. The results are discussed based on six themes: scope, quality, process, support and control, effectiveness and impact. Then, the most important recommendations that were formulated to the Flemish Government are summarized. The JoKER evaluation walked a tight rope, maintaining the balance between various perspectives and tensions. The article closes with some reflections on this.

2. Legal framework and context

In 1997, the requirement was introduced that every draft decree in Flanders was to be accompanied by a KER ‘insofar as the proposed decision appears directly to impact the interests of the child’.⁷ The concept of ‘child’ was interpreted in line with the CRC, as any person below 18 years of age. The obligation was gradually implemented: only in 2001 did the elaboration of a KER become mandatory for all Flemish policy domains.⁸

In 2005, the Flemish Government introduced the Regulatory Impact Analysis (RIA), being ‘a structured process that assesses the positive and negative effects of policy options. The end result is a document that provides insight in the pros and cons of these policy options.’ RIA pursues three central objectives: higher support for new regulations, enhanced transparency, and improved policy coordination. The RIA manual pays attention to child effects, and provides that the KER is to be integrated in the RIA document.⁹ A Regulatory Management Unit, situated within the Public Governance Department, coordinates and supports the implementation of RIA.

The Decree on conducting a Flemish youth and children’s rights policy of 2008 (‘2008 Decree’) transformed KER into JoKER, thereby extending its personal scope towards all persons under 25 years of age.¹⁰ Whenever a RIA is undertaken, the JoKER is to be integrated into the RIA.¹¹ A methodology was designed, consisting of the RIA template and a specific JoKER manual.¹² The Decree on a renewed

⁷ Article 4, Decree establishing the child impact report and the scrutiny of government policy on its respect for the rights of the child, 15 July 1997.

⁸ Decision of the Flemish Government establishing the obligation to draw up a child impact report for all Flemish competences, 13 July 2001.

⁹ Flemish Government, Regulatory Management Unit, *Guidelines for the creation of a Regulatory Impact Analysis* (Brussels: Flemish Government, 2006) 33.

¹⁰ Decree on conducting a Flemish youth and children’s rights policy, 18 July 2008.

¹¹ Article 1, Decision of the Flemish Government establishing a child and youth impact report, 12 December 2008.

¹² Ministerial decision establishing the methodology of the child and youth impact report, 8 June 2009.

youth and children's rights policy of 20 January 2012 ('2012 Decree'), which entered into force on 1 January 2013, by and large kept the JoKER provision of 2008 unchanged. The current legal provision on JoKER thus reads as follows:

Every draft decree that is submitted to Flemish Parliament, is accompanied by a child and youth impact report, abbreviated JoKER, whenever the proposed decision directly impacts the interests of persons under the age of 25.

The JoKER is a public document that contains at least the following information:

1° a description of the impact of the proposed decision on the situation of the child or young person;

2° a description of the impact on the situation of the child or young person without the proposed decision;

3° alternatives for the proposed decision, in particular a description of measures envisaged to avoid, limit or remedy important negative consequences of the decision for the situation of the child or the young person.

The Flemish Government determines the further rules of elaboration of the report.¹³

It should be stressed that JoKER does not stand in (splendid) isolation, but is one instrument of a broader youth and children's rights policy. Other such instruments include: the Flemish Youth and Children's Rights Policy Plan (integrating the previously separated Flemish Youth Policy Plan and the Flemish Children's Rights Action Plan as of 1 January 2013); the reflection group on youth and children's rights policy, where state officials and civil society actors meet to discuss policy developments relevant to children and young people; and the network of 'focal points for youth and children's rights policy'. Both the 2008 and 2012 Decrees envisage the appointment of such focal points within all branches of the Flemish administration.¹⁴ One of their tasks is assessing the impact of the policy that is prepared or implemented by their department or agency on (the rights of) children and young people. Following the Explanatory Memoranda of both decrees, this task includes 'coordinating the drafting of JoKERs'.

Until now, JoKER is the only specific ex ante impact assessment in Flanders in force, next to the general RIA. The policy memoranda of ministers for 2009-2014, however, announce various (new)

¹³ Article 4, Decree on a renewed youth and children's rights policy, 20 January 2012.

¹⁴ Article 7, 2008 Decree, supra n 10 and Article 5, § 1, 2012 Decree, supra n 13.

specific assessments for policy and legislation: the poverty test, the inclusion test, the Brussels test, the sustainability evaluation and the local authorities test. Although these new ex ante reviews could stimulate policy coordination, there is a risk of overloading the existing decision-making procedures. Therefore, the strategic policy framework ‘High-quality regulations and administrative simplification 2009-2014’ of the Flemish Government proposed the following principles regarding the relation between RIA and specific ex ante reviews:

RIA as a document: full integration

Other ex ante reviews are maximally integrated in the RIA in case of an overlapping scope. ‘...’
The scope of various legislative reviews is thus as uniform as possible.

RIA as a process (method): to be recommended and feasible

Each minister can in principle decide which underlying methodology is used to develop an ex ante review but the integration with the RIA method is recommended. ‘...’

RIA as a procedure (support, advice, control): feasible

In principle each minister can decide in which way the other regulatory or policy reviews are implemented, in addition to incorporation into the RIA document and whether the necessary support and control of compliance will be provided. Yet here too coordination is feasible and recommended.¹⁵

As is elaborated below, the JoKER process and procedure had already been coordinated with RIA. With respect to the scope (related to the first criterion of the strategic policy framework), there was a discrepancy between both, however. On the basis of the strategic policy framework, the Flemish Government reconfirmed RIA as the central assessment instrument for impact assessments of new regulations and policy.

Recently, a Quick Scan Sustainable Development (‘Quick Scan’) is being developed within the Flemish administration. This test aims to identify quickly and early in the decision-making process impacts on

¹⁵ Regulatory Management Unit (Public Governance Department), *Strategic Policy Framework ‘High-quality regulations and administrative simplification 2009-2014’* (Brussels: Public Governance Department, 2011) 22.

the different pillars of sustainable development (social, ecological, economic and institutional). It should allow to determine which ‘specific’ assessments (among which JoKER) can be relevant in the RIA process.

3. Methodology of the evaluation

In order to get a complete picture of JoKER, a multi-method design was developed, in line with the perspective of ‘triangulation’. Five different data collection techniques were used: a literature review, a document analysis, an electronic survey, discussions in focus groups and an expert consultation.¹⁶

First of all, in order to prepare the empirical research, as well as to gain insight in existing knowledge about impact reports, the most relevant national and international legislation and literature was reviewed and compared with JoKER practice. This literature review led to the identification of six main themes that are crucial to evaluate an impact report, and around which the JoKER evaluation was structured: scope, quality, process, support and control, effectiveness and impact.

Secondly, a document analysis was completed. In 2010-2011, a total of nineteen JoKERs were processed, sixteen of which were integrated in a RIA document. The document analysis focused on the *eleven* JoKER documents that were finalized by the end of October 2011 (the start date of this study). It allowed to check the results from the electronic survey and the focus groups – which could be based on perception – against the (more) ‘objective’ reality of the JoKER document.

Third, an electronic survey was disseminated among important JoKER stakeholders. Based on the literature review and the document analysis, a standardized questionnaire was developed, in which every theme was operationalized in clear items. Some examples are: ‘[In the JoKER,] alternatives for the proposed decision are thoroughly mapped out’ (item relating to ‘quality’) or ‘The JoKER manual provided by the Youth Division is useful’ (item relating to ‘support’). Respondents were asked to report to what extent they agreed with these statements (1= do not agree at all, 5= totally agree, the option ‘do not know’ was also included). For every theme, respondents could also add remarks through an open

¹⁶ In the subsequent sections of this article, the specific data collection technique is only mentioned when this is relevant for the analysis; otherwise, there will be no differentiation as regards the source of information.

question format. To assess the six themes, frequency analyses as well as a comparison of the mean and standard deviations were performed on and between the different items.¹⁷

For this survey, a broad sample was selected, consisting of persons belonging to five main groups: civil servants, the minister's personal staff and advisers (*kabinetten*), the children's rights and youth actors, the Strategic Advisory Councils, and the commissions of the Flemish Parliament. The decision to make a broad selection of people, and in this way possibly including individuals who had not been confronted yet with JoKER in their professional activities, was partly based on the consideration not to exclude potentially interesting respondents. 'Too broad' a selection was considered more cautious than 'too narrow' a selection. On the other hand, the study - as is the case with many evaluative research projects¹⁸ - was partly envisaged as an 'action-research', or a research project in which relevant actors are simultaneously sensitized and educated about the topic under study. Nonetheless, the risk inherent in such a broad sample did materialize in this study: of the 179 invited respondents, a total of (only) 48 completely filled out the survey, which comes down to a response rate of 26.81%. Even though most self-report studies cannot realize a response rate higher than 30% to 50%¹⁹, this rather low response rate may thus be due to the fact that individuals with limited knowledge or experience with JoKER may not have been motivated to fill out the survey.

After analysis of the survey results, two discussions with focus groups were organized. The goal of the electronic survey was to gather relevant information in the broad population for whom the JoKER process is, or can be, part of their professional practice. The focus groups, on the other hand, were held to address the six themes more in-depth with a limited number of persons who have a large experience with JoKER. The goal was to receive additional, 'enriching' information, making this qualitative

¹⁷ Although a reliability analysis revealed that the different items formed reliable scales to measure the six themes (the lowest Cronbach α , for 'process', was .745, the highest Cronbach α , for 'effectiveness', was .894), preference was given to analysing the different items separately, due to the exploratory nature of this research as well as the low number of respondents.

¹⁸ P.G. Swanborn, *Evalueren* (Amsterdam: Uitgeverij Boom, 1999).

¹⁹ J. Billiet & A. Carton, 'Dataverzameling: gestandaardiseerde interviews en zelf-in-te-vullen vragenlijsten'. In *Een samenleving onderzocht: methoden van sociaal-wetenschappelijk onderzoek*. ed. J. Billiet & H. Waeye (Antwerp: De Boeck, 2003) 285 et seq. For instance, the youth monitor in Flanders, a broad survey directed at minors and young adults, established a response rate of 47.6% (youth monitor 1) and 46.3% (youth monitor 2). See Jeugdonderzoeksplatform, '*Technisch verslag JOP-monitor 1*' (Unpublished report, 2007), KU Leuven, UGent, Vrije Universiteit Brussel, available at: <http://www.jeugdonderzoeksplatform.be/publicaties/TechnVerslagJOPmonitor1.pdf> and Jeugdonderzoeksplatform, '*Technisch verslag JOP-monitor 2*' (Unpublished report, 2009), KU Leuven, UGent, Vrije Universiteit Brussel, available at: <http://www.jeugdonderzoeksplatform.be/publicaties/TechnischverslagJOP2.pdf>. As Goethals emphasizes that young people are the easiest to reach through self-report studies, an even lower response rate can be expected if case adults were questioned. See J. Goethals, *Inleiding tot het criminologisch onderzoek* (Leuven: Acco, 2001).

methodology complementary to the quantitative electronic survey. More specifically, two small groups, one consisting of civil servants (four participants) and one consisting of children's rights and youth actors (six participants) were invited to discuss JoKER. Striking findings from the electronic survey were presented to the groups, in order to explore possible explanations. In addition, the focus groups allowed for personal experiences and perceptions about JoKER to be documented. Both group interviews, which lasted each about 2.5 hours, were recorded and transcribed. The qualitative analysis of this study – the identification of respondents' attitudes, perceptions and insights regarding the six themes – is based on these transcripts.

Finally, the draft report of the JoKER evaluation was presented to a group of experts - academics as well as policy makers - in the field of children's rights and human rights, on the one hand, and impact reports and policy evaluation, on the other. Their comments and suggestions were integrated in the final research report and policy recommendations.

To conclude this section, two limitations regarding the methodology should be highlighted. A first limitation was encountered when analyzing the results of the electronic survey: a large number of the respondents had answered the different statements using the options 'do not know' or 'neither agree, nor disagree'. Although this finding supported the conclusion that knowledge about JoKER amongst important stakeholders is (too) limited (see § 4.D), it also reduced opportunities to get a more detailed view – based on a broad array of opinions – of the six themes evaluated.

A second limitation concerned the focus groups. Because some civil servants had indicated their preference for a meeting where they could voice their concerns 'among themselves', separate focus groups were sampled for civil servants and children's rights and youth actors. The analysis of the interviews revealed, however, these groups to have erroneous opinions about each other's workload, obligations and opinions regarding the JoKER process. As action-research, it might have been more interesting to confront the two groups with each other, thus creating opportunities to inform each other about their JoKER-related activities, and to reach agreements on possible ways forward.

4. Results

The results of the evaluation are discussed thematically, based on the six clusters identified through the literature review (scope, quality, process, support and control, effectiveness and impact). This contribution does not represent all debates that came up during the research, but focuses in particular on those findings that may be relevant for other contexts. The section opens with a review of the process of identification of JoKERS, and concludes with an analysis of JoKER's future.

Both the decision to elaborate a JoKER and the responsibility for the JoKER process lie with the person or agency of the policy domain in which the legislation is drafted. The Youth Division of the internally autonomous agency for Socio-Cultural Work for Youth and Adults has a supervisory function. On the basis of an analysis of the data provided by the Youth Division, it can be estimated that in the years 2010 and 2011, a JoKER document was drafted for about 19% of the draft decrees that were submitted for legislative advice.²⁰ This figure must be put in perspective, however, since there proved to be a general lack of clarity within the Flemish administration about the number of JoKERS. For instance, various RIAs considered the effects of the proposed regulation on children and young people, without being explicitly identified as JoKER. This lack of clarity and accessibility is not conducive for fellow civil servants, who may look for 'good practices' when engaging in a JoKER process. Moreover, the JoKERS can nowhere be consulted 'as such': to know for which draft decrees a JoKER has been undertaken, one has to search all RIA documents. For JoKERS not integrated in a RIA, the lack of transparency is even greater.

A. Scope

A JoKER must be constructed for every draft decree, whenever 'the proposed decision directly impacts on the interests of persons under the age of 25'.²¹ For this evaluation, 'scope' is operationalised in three separate variables: the material scope, the personal scope and the criterion of application.

The material scope arguably constitutes one of the main limitations of JoKER. A JoKER must be elaborated for every 'draft decree', i.e. a decree at the initiative of the Government. A JoKER is thus not required for, among others, regulatory decisions of the Flemish Government and decree proposals

²⁰ The evaluation focuses on the JoKERS undertaken in 2010 and 2011, according to the 'new' methodology using the RIA template. The 5 JoKERS that had been elaborated in 2009 according to the KER methodology were not included in the analysis. The different format of these JoKERS would have unduly complicated the analysis and comparison.

²¹ Article 4, 2012 Decree, *supra* n 13.

(where the initiative is taken by one or several members of Parliament). Currently, the material scope of JoKER differs from that of RIA on two points. First, the RIA is required for draft regulatory decisions too. Second, a JoKER is required for so-called ‘agree decrees’, i.e. decrees agreeing to international or interregional treaties or agreements. No RIA must be drafted for agree decrees.

The UN Committee on the Rights of the Child pleads for a broad scope for impact assessments, by recommending such assessments for ‘any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights’.²² The Flemish Children’s Rights Commissioner has similarly stated that ideally, a JoKER is drafted for ‘every legislative initiative’ that impacts the interests of children and young people.²³ To be in line with these recommendations, a JoKER should be undertaken also for regulatory decisions, proposals of decree and budget decrees. In what follows, the results of the evaluation with respect to the application of JoKER to these three types of instruments are summarized.

The impact of regulatory decisions on the lives of children and young people is often larger and more concrete than that of (more general and vague) decrees. Therefore, all actors agreed that the scope of JoKER should be extended to include regulatory decisions, even though the concern was expressed that the workload for the civil servants should remain feasible. On this aspect, the JoKER and RIA scope could thus be aligned.

From the perspective of children and young people, it does not make much sense that the decision on whether to assess the possible impact of a new decree on children and young people depends on the initiator (i.e. Government or Parliament) of this decree. This opinion was shared by almost three quarters of the survey respondents. Currently, the possibility to circumvent the JoKER obligation by introducing a decree through a member of Parliament, remains. Whereas it is always possible for the Flemish Children’s Rights Commissioner to issue advice on decree proposals, that advice is optional, and it does not necessarily include an impact assessment. There are therefore good reasons for extending the scope of JoKER towards proposals of decree. However, civil servants in particular raised practical challenges (such as the limited administrative capacity of Parliament to make a children’s

²² UN Committee on the Rights of the Child, General Comment No 5: General measures of implementation for the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5, 11 IHRR 10 (2004).

²³ Kinderrechtencommissariaat, *Kindeffectrapportage, advies 2001-2002/3* (Brussels: Kinderrechtencommissariaat, 2001); Kinderrechtencommissariaat, *Voorstel van decreet Vlaams jeugd- en kinderrechtenbeleid, advies nr. 2007-2008/4* (Brussels: Kinderrechtencommissariaat, 2008) 7.

rights impact assessment) and principled objections (such as guaranteeing the ‘liberty’ of parliamentary initiative) against such an extension.

In its 2010 Concluding Observations, the UN Committee on the Rights of the Child urged Belgium to ‘[u]tilize a child-rights approach in the elaboration of the State budget by implementing a tracking system for the allocation and use of resources for children throughout the budget, thus providing visibility for investment in children’.²⁴ Today, neither JoKER nor RIA are required for budget decrees. The children’s rights actors and the experts were in favour of extending the application of JoKER to budget decrees, in order to shed light on the resources allocated to children and young people.²⁵ The civil servants focus group did not see a JoKER feasible though.

Turning to the personal scope, the JoKER process does not only consider minors, but also young people up until the age of 25. Contrary to the general Flemish youth and children’s rights policy, in which ‘youth’ is defined as ‘persons up to and including 30 years, or a part of this group’, the age limit for JoKER is set at 25 years. According to the Explanatory Memorandum of the 2008 decree, this choice is predominantly informed by socio-economic considerations, i.e. most over-25s are already economically independent.

In comparison, in Sweden child impact assessments aim to implement the CRC.²⁶ Young persons older than 18 are not included in the analysis. The child rights impact assessment as proposed by the Scotland’s Commissioner for Children and Young People (SCCYP) aims to analyse the effects of policies ‘on under 18s, as well as under 21s where SCCYP believes young people who have been in care or looked after may be affected’.²⁷ The personal scope of application of JoKER is thus broader than in Sweden (only minors) and Scotland (minors and young people who have been in care up to the age of 21).

In the evaluation, this broad personal scope of JoKER was considered both a strength and a weakness. On the one hand, it was appreciated that attention is paid to young adults (age 18-25) and in this way to the – often complex – transition to adulthood. On the other, there was some concern that this broad

²⁴ UN Committee on the Rights of the Child, Concluding Observations regarding Belgium, 18 June 2010, CRC/C/BEL/CO/3-4, at 4.

²⁵ See also the advice of the Flemish Youth Council: Vlaamse Jeugdraad, *Decreet Vlaams Jeugdbeleid, advies 07/11* (Brussels: Vlaamse Jeugdraad, 2007).

²⁶ Ministry of Health and Social Affairs, *Strategy to strengthen the rights of the child in Sweden* (Västerås: Edita Västra Aros, 2011).

²⁷ Scotland’s Commissioner for Children and Young People, *Children’s Rights Impact Assessment: The SCCYP Model* (Edinburgh: SCCYP, 2006).

scope would detract attention from the needs of minors. However, there was no consensus on a possible change of the personal scope, in either direction. While some respondents, referring to the weaker legal position of minors, argued in favour of a restriction of the scope (again) to under 18s, the children's rights and youth actors focus group did not endorse this proposal. A possible extension of the scope towards young people up to the age of 30 could be justified on the basis of the integration of children's rights policies and youth policies in Flanders, since these policies apply to young persons up to 30. Arguments against an extension of the scope included the considerably different lifeworlds of young adults who approach their thirties (economic independence, marriage, family planning etc.) and the increased workload that an extension would imply for the administration. Overall, there was a shared concern not to create an administrative 'overkill', which would run the risk of turning JoKER into a merely formalistic instrument. The lack of consensus on a possible extension of the personal scope of JoKER is at odds with the high demand for differentiation within the JoKER process, between minors and young adults, on the one hand, and between different age groups, on the other, as will be elaborated below.

Regarding the criterion of application, a JoKER must be undertaken for every draft decree, whenever 'the proposed decision directly impacts the interests of persons under the age of 25'. The JoKER manual provides the following broad interpretation of this criterion: 'For JoKER, a 'direct interest' exists, not only when children and young people are the target group, ... but [also when they are] stakeholders without being the target group of the policy intention'. For instance, children and young people are not the target group of a policy intention to establish an industrial zone close to a residential area, but they may experience negative (health) impacts of this decision.

In the electronic survey, opinions about the clarity of the criterion's formulation in the decree were divided. In the focus groups, especially the words 'direct' and 'interests' were considered not clear and/or not appropriate. The consulted actors concurred with the interpretation of the JoKER manual, stating that a JoKER should be drafted not only when children and young people are the *direct* target group, but also when they (may) experience *indirect* consequences of the policy intention. The formulation in the decree ('directly impacts') may lead to a too narrow interpretation in practice. Moreover, since JoKER concerns an assessment of *possible* effects, it was suggested in the children's rights and youth actors focus group to include this aspect of uncertainty in the formulation (e.g. 'may' impact).

B. Quality

Within the cluster ‘quality’, the following subthemes were identified: impact analysis with respect to children and young people, implementation and monitoring, empirical support, diversity within children and young people, and responsibilities. In the interpretation of the research results, it should be kept in mind that, in cases where the JoKER is formally integrated in the RIA, the general JoKER quality is strongly dependent on the overall RIA quality.

The quality of the impact analysis regarding children and young people was assessed in the first place using the four elements that, following the 2012 Decree, should be included as a minimum in the JoKER. These elements are: the impact of the proposed decision on the situation of the child or young person, the impact on the situation of the child or young person without the proposed decision (the so-called ‘zero option’)²⁸, the impact on the situation of the child or young person of alternative decisions, and measures envisaged to avoid, limit or remedy important negative consequences of the decision for the situation of the child or the young person. The literature study identified two additional aspects that were included in this evaluation: the way in which the improbability of the occurrence of certain effects is mapped, and the extent to which the *rights* of children and young people are considered in the mapping exercise.²⁹

The results of the study show that the impact analysis of the preferred policy option and of the zero option were of a reasonable quality. On the other hand, both the alternative decisions and the measures to prevent negative consequences of the proposed decision for children and young people were less well analysed. Also, the JoKER documents pay very little attention to the probability with which certain effects will occur. Finally, various JoKERs adopt, at least implicitly, a rights-based approach. In many other JoKERs, however, the perspective of the rights of children and young people could have been stronger.

The section ‘elaboration, implementation and monitoring’ of the JoKER/RIA document must address the following elements: how the legal aspects of the chosen option will be technically developed, how

²⁸ The description of ‘the impact on the situation of the child or young person without the proposed decision’ was not required by the decree of 18 July 2008. Although this formally constitutes a new criterion, it can be assumed that a good JoKER also analyses the impact of the zero option – which needs to be described anyway – on the situation of the child or young person.

²⁹ P. Van Humbeeck, ‘Best Practices in Regulatory Impact Analysis: A Review of the Flemish Region in Belgium’ (Working Paper Social Economic Council of Flanders (SERV), 2007); National Audit Office, *Assessing the Impact of Proposed New Policies* (London: The Stationery Office, 2010); Sylwander, *supra* n 5; UNICEF, *Child Rights Toolkit* (Child Rights Impact Assessment Resource Centre – Tool 4, Part I (Draft), 2010).

the chosen option will be implemented and maintained, and how the regulation will be monitored. According to the JoKER manual, at these different levels it must be described how the effects on children and young people will be taken into account, and how children and young people will be informed about the measure taken. The research results indicate that the perspective of children and young people is largely absent in the conceptualization of how the proposed regulation will be technically developed, implemented, maintained and monitored.

The analysis of the empirical support underlying the JoKER documents was carried out on the basis of a general, evaluative proposition and a specific, future-oriented proposition. In general, the analyses with respect to children and young people in the JoKER documents were not found to be based on sufficient empirical support. In fairness, a reasonable balance must be maintained between the JoKER objectives and the resources invested. JoKER should not be a scientific study, but a solid impact assessment.

More specifically, in recent years, the Flemish organization Gezinsbond ('League of Families') has sought to develop a 'child norm'. Such a child norm aims to indicate 'what children need and what they can handle according to their age and development'.³⁰ This exercise was triggered by the observation that in many domains, the 'norms' that are used are based on adult criteria. In a first stage, the Gezinsbond focuses on four domains that are very important for children's life quality, but that seem to be less associated with children: environment and health, food, traffic, and space. In order to take this exercise into account, the following proposition was included in the survey: 'More concrete norms are needed to measure the effects on children and young people, for instance through a child norm'.³¹ The overall finding from the JoKER evaluation is that a child norm can make the impact assessment more concrete and realistic, and so enhance the JoKER's quality. However, the focus should not be narrowed down to those domains in which a child norm is being developed, nor should reaching the child norm become the only standard. In addition, it must be noted that the child norm, as currently conceptualized, focuses on minors, whereas JoKER also applies when the interests of young adults are directly impacted upon. It is not clear whether and how the child norm can be applied to these young adults.

³⁰ Gezinsbond, *Focus op Kindnorm. Uitdagingen voor een betere levenskwaliteit* (Gezinsbond, 2010) 3.

³¹ A staff member of the Gezinsbond, Danielle Van Kalmthout, recently started a doctoral research at Ghent University based on this hypothesis. More information is available in the Flemish research database of the Children's Rights Knowledge Centre: http://www.kekidatabank.be/opac/index.php?lvl=author_see&id=493.

Since *'the child, the minor or the young person does not exist'*, one may wonder whether JoKER takes the diversity within children and young people sufficiently into account. The attention paid to diversity in the JoKER documents was investigated at the three levels prescribed by the JoKER manual: differentiation between minors and young adults; differentiation between various age groups (e.g., babies, toddlers, schoolchildren, teenagers etc.); and diversity in other domains (e.g. gender, poverty, nationality, residence status, disability, religion etc.).

The document analysis only allowed to determine the degree of differentiation effectively made in the JoKER documents. To assess whether this differentiation was sufficient in relation to the subject of the draft decree requires more in-depth research, which was not feasible within the time and resource constraints of the evaluation exercise. In general, although the impact analyses of some JoKER documents differentiate on the basis of age or other areas, there is considerable room for improvement. In the electronic survey, the number of respondents who considered that diversity within domains other than age was *not* sufficiently taken into account was higher (N=18, or 38%) than the number of respondents who found that no appropriate distinction was made between minors and 18-25 years old (N=13, or 27%) or between age groups (N=15, or 31%). Lumping together 'children and young people' in one category risks overlooking possible differences in impact.³² The children's rights and youth actors focus group especially emphasized the need of differentiation between different age groups, even though this increases the workload for the administration.

The last subtheme within the 'quality' cluster, concerns the responsibilities of the various actors involved. Where should the expertise with respect to the JoKER process be situated? The JoKER manual states that JoKER, like RIA, is the responsibility of the project team preparing the law, and in final instance of the minister who presents the draft decree to the Flemish government. Hanna and Mason have noted that if the process of impact assessment 'is intended to embed a child's perspective in government's policy-making processes, officials must be involved. In larger authorities, a specialist unit with the relevant expertise could be developed (or an existing unit tasked) to work in partnership with policy-makers across the authority to conduct the analyses'.³³ In the context of regulatory impact

³² It has also been observed elsewhere that, in efforts to implement the CRC, the rights and concerns of older children ('adolescents') have often not received equal consideration as those of young children. See E. Desmet, 'Implementing the Convention on the Rights of the Child for 'youth': who and how?' *International Journal of Children's Rights* 20(2012) 4.

³³ K. Hanna & N. Mason, *Putting Children at the Center of Policy Development* (2010) 7, available at: <http://www.firstfocus.net/sites/default/files/Child%20Impact%20Assessments.pdf>.

analyses, a growing trend of cooperation with external experts can be observed internationally. An open relationship between these ‘consultants’ and policy makers is essential.³⁴

In the electronic survey, suggestions were made to involve more experts, at various stages in the JoKER process: (i) in the decision on the applicability of the JoKER obligation; (ii) in the drafting of the JoKER; and (iii) in the monitoring of the compliance with the JoKER obligation. The monitoring could be done internally by other officials (for instance, through an impact assessment board) or by external experts. Both scenarios have advantages and disadvantages. The civil servants focus group considered an initiative similar to the Impact Assessment Board of the European Commission not feasible, because there are some fundamental differences between the European and the Flemish regulatory process.³⁵ For instance, whereas within the European Commission, a legislative proposal is assessed through inter-service steering groups by all policy domains, Flanders does not have a similar framework. Involving external experts, on the other hand, entails the risk that the impact analysis becomes an academic exercise or will be ‘too far from reality’. However, an external body could have more authority.

The consulted expert group was not so much in favour of involving external experts, but emphasized the need of strengthening the capacity *within* the administration: civil servants, not (external) experts should be the key actors in the JoKER process. Challenges include that the necessary expertise is seldom concentrated in one person, staff turnover, and the fact that sometimes additional (external and/or scientific) expertise is needed.

C. Process

According to the JoKER manual, the JoKER document is not just a final *product*; it most importantly reflects a *process*: JoKER aims to make policy makers reflect about the possible impact of proposed regulations on children and young people; the outcome document is in a way less important than this reflection process. The following aspects were evaluated in the ‘process’ cluster: launch of the JoKER process; proportionality; efficiency; formal integration in the RIA; consultation; transparency; legal basis; political commitment; and communication.

³⁴ Van Humbeeck, *supra* n 29 at 38.

³⁵ European Commission, *Impact Assessment Guidelines*, SEC (2009) 92.

Both the UN Committee on the Rights of the Child and the JoKER manual emphasize the importance of launching the JoKER process ‘as early as possible’ in the elaboration of new legislation.³⁶ The evaluation’s results indicate, however, that this is seldom the case. In most cases, the JoKER document is drafted hastily at the end of the regulatory process, to formally comply with the obligation. At that moment, there is little or no possibility to influence the policy decisions. Since early 2012, the ‘regulatory agendas’, i.e. publicly accessible lists of planned new legislation or adaptations of existing legislation, indicate whether a JoKER is envisaged. Although being mentioned in the regulatory agendas is not the same as the actual launch of the JoKER process, it is a step in the right direction and should serve as a trigger to launch this process.

According to 18 respondents (38%) of the electronic survey, the depth and scope of JoKER documents are proportional with the importance of the regulation and the expected magnitude of its effects. Eight persons (17%) were of the opinion that the proportionality principle is not respected, the rest of the respondents did not take a stance on this issue. These figures do not tell us *in what sense* the proportionality principle is not respected, i.e. whether the respondents think that the JoKER is done too thoroughly or too superficially. Other inputs of the evaluation, however, in which JoKER was at times described as a ‘hurdle to take’, suggest that the JoKER is sometimes carried out too shallowly, and thus degenerates into a formalistic instrument.

The concept of ‘efficiency’ assesses the relationship between the resources deployed and the outcome. Regarding the general *perception* of the efficiency of the JoKER process, opinions were divided: an equal number of respondents found the JoKER process to be efficient or inefficient. The civil servants had a fairly positive picture of the workload entailed by the JoKER process: about half of them found the workload reasonable, but seven persons (22%) considered the workload too demanding. The document analysis showed substantial differences in the quality and depth of the various JoKER files, which probably reflect a difference in time investment as well. In general, however, no clear conclusions can be drawn on the basis of the inquiry about the efficiency of the JoKER process.

Regarding the formal integration of JoKER in RIA, at the time of evaluation, the situation was as follows. If a RIA was elaborated, the JoKER was formally integrated in the RIA. If no RIA was required, the JoKER was drafted separately, using the RIA template. This choice formally to integrate JoKER in RIA, whenever a RIA is also elaborated, was confirmed by a convincing majority (31

³⁶ UN Committee on the Rights of the Child, *supra* n 22 at 11.

respondents, or 65%) of the respondents of the electronic survey. In the focus groups, a difference in interpretation emerged with respect to the objectives of RIA and JoKER. The children's rights actors perceived the objectives of RIA and JoKER as 'fundamentally different': the RIA was seen mainly as an instrument of deregulation, whereas JoKER was considered to be a 'real impact assessment', aimed at making quality rules for children and young people. This interpretation of the RIA as 'an instrument of deregulation' was contested by the civil servants focus group. According to them, the RIA is neutral, and seeks to make the legislator reflect on the usefulness and added value of new regulation. JoKER by contrast, is less neutral, because the regulation is screened from the perspective of one target group only: children and young people. These differences in interpretation between children's rights actors and civil servants may be illustrative of the challenges that a further – substantial and procedural – alignment between RIA and JoKER may face. They may also indicate that more knowledge on both instruments is needed.

In order to assess the impact of proposed policy decisions as correctly as possible, consultations can be undertaken. To that effect, the JoKER manual provides a list of children's rights and youth organizations that can be consulted, also 'with the aim of directly consulting' (sub) target groups of children and young people. More than half of the survey respondents considered children and young people not to be sufficiently consulted. The consultation of (other) external actors was evaluated somewhat less negatively. The document analysis revealed that in no JoKER, children and young people had been directly consulted; this was done through organizations representing the interests of children and young people. In all the JoKER files, some external actors had been consulted; in four JoKER documents (36%), these actors included youth and children's rights organizations. Both focus groups agreed that in practice, the consultation of children and young people is best done through formal channels, i.e. through their representative organizations (such as the Flemish Youth Council). In this respect, the coordinating role of the Youth Division of the Flemish administration can be strengthened. The Youth Division can only play that coordinating role if it is involved earlier in the JoKER process, so that children's rights and youth actors can be consulted earlier as well. The experts pointed out that consultation should not be limited to organizations in the fields of children's rights and youth. Institutions or organizations working on, for instance, human rights, social policy or impact assessment, can also make valuable contributions to the JoKER process and document. Finally, there appears to be quite some ignorance about whether the outcome of the consultation is taken into

account. JoKER documents rarely indicate *how* the consultation process has influenced a proposed decision, or why some suggestions were not taken into account.

Turning to the issue of transparency, Van Humbeeck has suggested, following the example of other countries, to make draft RIAs public.³⁷ A draft RIA could serve as the basis for consultation, which would enhance the quality of the input. Half of the respondents of the electronic survey agreed with the suggestion to make a draft JoKER(/RIA) public, in order to facilitate input from other actors. Both focus groups disagreed, albeit for different reasons. The children's rights actors – supported in this by the expert roundtable – were concerned that the publication of a draft JoKER(/RIA) would transfer the responsibility to provide input to civil society. The civil servants focus group on the other hand, considered the proposal not feasible because it often concerns internal documents that are still confidential. The latter proposed to instead improve the quality of the substantive explanatory narrative in the regulatory agendas. The new RIA manual describes this explanatory narrative in the regulatory agenda as a 'pre-RIA' or a 'provisional RIA'.

JoKER has a legal basis in a formal law, i.e. in the Decree on a renewed youth and children's rights policy of 20 January 2012. RIA, by contrast, has no legal basis; it is only provided for in the internal regulations of the Flemish government. Whereas twenty respondents (42%) of the electronic survey were in favour of maintaining the JoKER's legal basis in a formal law, nine persons (19%) would not mind a lower legal norm as its basis. The expert roundtable emphasized the importance of the legal basis in a formal law: it symbolizes the importance attached to JoKER and to 'include children and young people' in society. Also, they pointed out that there would be no contradiction between maintaining the basis in a formal law, on the one hand, and regulating the further modalities of JoKER in a lower legal norm, possibly together with those of RIA, on the other.

Regarding political commitment, international experience on regulatory impact assessments shows that 'sustained political support from the highest level' is essential for a well-functioning RIA system.³⁸ In Flanders, however, political commitment to RIA has been 'the major challenge and risk'.³⁹ With respect to children, the UN Committee on the Rights of the Child has emphasized that the process of

³⁷ P. Van Humbeeck, 'Regulatory Impact Analysis in Flanders and Belgium: An Update on the Experiences and Challenges' (Working Paper Social Economic Council of Flanders (SERV), 2009) 37.

³⁸ *Ibid.*, 234.

³⁹ *Ibid.*, 36.

impact assessment needs to be built into government 'at all levels'.⁴⁰ According to Sylwander, the first factor of success for child impact assessments is 'commitment and determination'.⁴¹ Hodgkin also emphasizes the importance of support at the highest political level.⁴² What about the political commitment for JoKER?

The evaluation showed a clear perception of lack of political commitment to JoKER. According to eighteen respondents (38%), the JoKER process does not receive sufficient political support at the highest level; only four persons (8%) are of the opposite opinion. The low response rate in this survey of both cabinet officials and the chairs and administrative secretaries of the Flemish Parliament committees (each 6,25%) may also be indicative for the relatively low support that JoKER enjoys politically. In both focus groups, the lack of political commitment at the highest level was emphasized as a serious drawback. The civil servants focus group added that sufficient political commitment is also needed at the 'middle level', amongst the Heads of Department. Through enhanced political support, the position of the children's rights and youth focal persons could be strengthened. The consulted experts underlined the role of the coordinating Minister of Children's Rights, who could engage with his colleagues on compliance with the JoKER obligation.

The aspect of 'communication' was not included in the initial topic list, but was repeatedly emphasized by survey respondents in their additional comments. Both focus groups also underscored the importance of clear communication with respect to JoKER. Similar to the urge for more political support, the need for a communication strategy is connected to one of the main challenges that came out of the research, namely that JoKER is often perceived as a 'burden' and therefore does not receive adequate attention from civil servants.

D. Support and control

The questions on support during and quality control of the JoKER process were only directed at civil servants and cabinet officials. Three subthemes were identified: support by the Youth Division; the role of the focal points for youth and children's rights policy; and internal quality control of JoKER, through the JoKER opinion.

⁴⁰ UN Committee on the Rights of the Child, supra n 22 at 11.

⁴¹ Sylwander, supra n 5 at 17.

⁴² Hodgkin (1998) cited in Hanna, Hassall & Davies supra n 5 at 36.

The Youth Division is responsible for supporting the JoKER process, for instance by providing a manual and training, as well as for monitoring compliance with the JoKER obligation, through a JoKER opinion (see below). Sylwander identifies ‘education and information’ as an important factor of success for child impact assessments.⁴³ With respect to human rights impact assessments (HRIAs), de Beco similarly states that ‘policy makers should be trained in assessing human rights impact.’⁴⁴ They will have difficulties in carrying out HRIAs, if they are not given proper instructions.’ Whereas the JoKER manual was evaluated as very useful, there was a wide-spread demand for more training and awareness raising with respect to the JoKER process.

The focal points for youth and children’s rights policy within all branches of the Flemish administration are mentioned in only two JoKER documents. This contrasts with the role given to them by decree, which includes the coordination of the drafting of JoKERs (see § 2). Until now, the role of the focal points in the JoKER process has been limited, because of a lack of time, knowledge and recognition. The focal points who participated in the civil servants group confirmed that they are not awarded time to fulfill this function. The experts emphasized the uniqueness of this network of focal points, and explicitly regretted the limited resources and political support available for the fulfillment of these functions.

Concerning quality control, a review in the UK has shown that the prospect of external scrutiny (i.e. by another instance than the drafting one) was the most important motivation for delivering high quality RIAs.⁴⁵ It is thus important that the RIA quality is controlled by an institution that is independent from the department undertaking the RIA process.⁴⁶ The same argument applies to child impact assessments.

In Flanders, the internal quality control of JoKER is done by the Youth Division, in the form of a ‘JoKER opinion’. Before the regulatory file is submitted to the Flemish government or the competent minister, advice must be sought on the RIA and the JoKER. The Regulatory Management Unit issues RIA opinions; the Youth Division adopts, where applicable, JoKER opinions. For legislation that does not require a RIA or JoKER, quality control is limited to examining the motivation why no RIA or JoKER has been drawn up.

⁴³ Sylwander supra n 5 at 17.

⁴⁴ G. de Beco, ‘Human Rights Impact Assessments’, *Netherlands Quarterly of Human Rights*, 27(2) (2009) 139-166.

⁴⁵ National Audit Office, *Delivering High Quality Impact Assessments* (London: The Stationery Office, 2009).

⁴⁶ Van Humbeeck, supra n 37 at 34.

The document analysis showed that in 9 of the 11 final JoKER reports, a formal JoKER opinion had been issued. At least in some of these files, the JoKER opinion played a crucial role in guaranteeing attention for children and young people in the impact assessment. A clear majority of the survey respondents confirmed the importance of the JoKER opinion. Civil servants from both the Youth Division and other departments were in agreement, however, that the JoKER opinion until now has often focused on formal aspects (has a JoKER been drawn up?) rather than on the quality of the impact assessment.

The civil servants focus group referred to the approach of the Department of Education and Training with respect to RIA opinions. There, the RIA opinions are mainly written by someone inside the department, and then checked and sent via the Regulatory Management Unit. This was mentioned as a good practice, because in this way, responsibility for the RIA quality was taken up internally. However, as mentioned above, maintaining some kind of ‘external’ quality control (at least from another department) is also important.

E. Effectiveness

The concept of ‘effectiveness’ refers to the extent to which objectives are reached. The JoKER manual lists the following objectives of JoKER: (i) to ask specific attention for the situation of children and young people when preparing and implementing new legislation; (ii) to protect and guarantee the rights of the child, as they have been elaborated within the Convention on the Rights of the Child; and (iii) to highlight the participation of children and young people in the decision making process. Based on a concept note of the Youth Division regarding the present evaluation, the following objective was added to the evaluation: (iv) to increase support among policy makers (administrative and political) and civil society for a Flemish youth and children’s rights policy.

Considering the first three JoKER objectives, the survey respondents took a moderate stance. For all three objectives, the average response on the proposition that JoKER reaches the concerned objective, was around 3 (on 5). Also, quite some respondents did not pronounce themselves, by answering ‘neither agree, nor disagree’ or ‘do not know’. This may indicate that they had difficulties in assessing the real results of JoKER: they may not be convinced that drawing up a report will change something

in reality. Although the objectives of JoKER were generally positively assessed by the respondents, they believed them to be not (yet) realized enough in practice.

Given the extension from a child impact to a child and youth impact report, the formulation of the second objective with respect to protecting and guaranteeing ‘the rights of the child’ should logically be extended towards ‘the rights of children and young people’. The JoKER manual also appears strongly focused on the rights and principles as guaranteed in the CRC. In the authors’ view, this entails the risk that less or less appropriate attention will be paid to the rights and interests of young adults (18-25 years).

The extent to which JoKER has been successful in creating support for a Flemish youth and children’s rights policy, the fourth objective, was assessed rather negatively. Due to a lack of attention for JoKER at the political level, and because drawing up the JoKER is mostly assigned to those civil servants who already have a commitment to youth and children’s rights, the degree to which JoKER increases support for a Flemish youth and children’s rights policy was considered limited by the survey respondents.

F. Impact

The impact of the JoKER process and document was evaluated at two levels: the impact on the proposed legislation, and the impact after the initial approval in principle of a draft bill by the Flemish government. Regarding the first aspect, the JoKER manual states that ‘analyzing the impact on children and young people of the proposed policy decision can contribute to the quality of the proposed legislation ... in general, and for children and young people in particular’. In the electronic survey, the impact of JoKER was assessed relatively low. The average of the propositions on the contribution of JoKER to legislation of a better quality and on the extent to which the choices in the proposed legislation had been influenced by JoKER, varied between 2,5 and 3 (on 5). The respondents were of the opinion that, in order for JoKER to be able to influence the decisions in the proposed legislation, the JoKER process should be launched earlier, as indicated above.

With respect to the second level of impact, Sylwander emphasizes the importance of evaluating the effects the chosen policy option actually had and how well they coincided with the effects envisaged in

the impact analysis.⁴⁷ Van Humbeeck mentions two advantages of such an ex post evaluation.⁴⁸ First, knowing that the estimated effects will be compared later with the actual effects may lead to better quality assessments. Second, such an evaluation facilitates the identification of systematic methodological errors. The evaluation of the JoKER impact after the initial approval in principle was done based on three propositions: (i) ‘The JoKER is still adapted after the initial approval in principle’; (ii) ‘The JoKER is used afterwards to evaluate (the implementation of) the decree’; (iii) ‘I use the JoKER in my work (e.g., as a source of information)’. With respect to all three propositions, the average of the responses in the electronic survey varied around only 2 (on 5). The standard deviations with respect to the impact propositions were also rather low, indicating a broad consensus regarding these propositions. On the other hand, a considerable part of the respondents did not answer these questions. This low response rate may be due to a number of reasons: (i) they had not worked yet with JoKER themselves; (ii) given their professional background, they could not make a proper assessment; (iii) there was no clear ‘proof’ of the eventual impact of JoKER and/or it was too early to observe long term effects.

Three observations can be added. First, a participant of the civil servants group expressed concern that JoKER could also have a *negative* impact, in the sense of instrumentalising what ought to be a natural, logical reflex – considering the interests of children and young people. This observation relates to the concern that JoKER would degenerate into a merely formalistic instrument. Second, it was noted by the consulted experts that the concept ‘impact’ can be interpreted in a broader way: impact does not always mean a visible improvement of the policy proposition; it can also imply a more general, but less visible, attitude shift that should pervade all policies. Third, the experts also suggested that, in order to increase the impact of JoKER, the link with Parliament, where the decrees are eventually approved, should be strengthened.

G. The future of JoKER

The electronic survey concluded with three general propositions, sketching three different future scenarios for JoKER: (i) JoKER should continue to exist in its current form; (ii) JoKER in its current form should be abolished, and the target group ‘children and young people’ should be included in RIA;

⁴⁷ Sylwander, supra n 5 at 32.

⁴⁸ Van Humbeeck, supra n 29 at 38.

(iii) JoKER should be abolished and RIA should not pay specific attention to children and young people. For each of these scenarios, respondents were asked to report to what extent they agreed. According to 21 respondents (44%), the current form of JoKER should be adapted. There is, in other words, a platform for change. A large majority (31 respondents, or 65%) agreed with the second proposition: ‘JoKER in its current form should be abolished, and the target group ‘children and young people’ should be included in RIA’. The third scenario, according to which JoKER should be abolished, and no particular attention is to be paid in RIA to children and young people, was, however, ostensibly rejected (namely by 41 respondents, or 85%). Given that RIA should map the effects of various policy options on all involved groups, it is neither possible nor desirable to exclude children and young people thereof. The broad support for the second scenario was nuanced in the focus groups and the expert consultation: there, more support was expressed for further fine-tuning with the RIA process, in which the perceived achievements of JoKER – like the generally increased attention for children and young people in society – should be maintained.

5. Recommendations and reflections

The results of the evaluation led to the formulation of recommendations to the various governmental actors involved in the JoKER process.⁴⁹ The evaluation, and especially the formulation of policy recommendations, implied walking a tight rope. At various levels, tensions emerged. Maintaining a balance between these tensions turned out to be a major challenge. This section summarizes the most important recommendation(s) related to each cluster, and identifies and reflects upon some of the tensions that were encountered.

Regarding the scope of JoKER, it was recommended to the Flemish Parliament to investigate the feasibility of extending the scope of JoKER towards decree proposals (for which the initiative is taken by a member of Parliament). To the coordinating Minister on Children’s Rights, it was suggested to extend the scope of JoKER to those regulatory decisions that require the drafting of a RIA. Implementing the latter recommendation would lead to a harmonization of JoKER and RIA scopes, as was also suggested by the strategic policy framework ‘High-quality regulations and administrative

⁴⁹ Kenniscentrum Kinderrechten, *Evaluatie van de kind- en jongereneffectrapportage. Beleidsadvies van het Kenniscentrum Kinderrechten aan de Vlaamse Overheid* (Ghent: Kenniscentrum Kinderrechten, 2012), available at: http://www.keki.be/documents/2012%20KeKi_beleidsadvies%20JoKER.pdf.

simplification 2009-2014'. Considering budget decrees, it was recommended that, in case no JoKER is carried out, a specific budget analysis tool be developed from the perspective of children and young people, to investigate how much resources spent by the Flemish government aim to strengthen the position of children and young people. The criterion of application in the 2012 Decree could be reformulated as follows: 'whenever the proposed decision may have a direct or indirect impact on persons under the age of 25'.

As concerns the JoKER quality, the Youth Division of the Flemish administration was recommended to establish a 'JoKER cell', which would bring together all governmental expertise on JoKER. As a minimum, the JoKER cell would be composed of civil servants of the Youth Division. Ideally, focal points of policy domains in which JoKER processes are often conducted, as well as officials specialized in impact assessments, should be part of the JoKER cell as well. The tasks of such a JoKER cell could include: providing support in the assessment of the applicability of the JoKER obligation as well as throughout the JoKER process, by giving substantial input and referring to actors (civil society or academics) who can be consulted; keeping the JoKER manual and the JoKER website up-to-date; organizing trainings; setting up thematic meetings with the focal points on specific JoKER files and exchanging best practices; and assembling and systematizing expertise about the JoKER process, for instance through the creation of a registration and monitoring system of JoKER files.

Turning to the JoKER process, the Flemish Parliament was advised to maintain the legal basis of JoKER in a formal law. The concrete JoKER modalities can be regulated together with those of RIA and other impact assessments. The coordinating Minister of Children's Rights, the Ministers of the Flemish Government and the Youth Division were recommended to increase the commitment to JoKER at all (political and administrative) levels.⁵⁰ The project teams that are responsible for preparing new legislation were suggested to launch the JoKER process as early as possible, and to increase the quality of the substantive explanatory narrative in the regulatory agendas, using the RIA template. Such a 'pre-JoKER/RIA' can serve as the basis for an earlier and more in-depth consultation. The proportionality principle should be respected 'in a positive way': the larger the potential impacts of the proposed decision on children and young people, the more thoroughly the JoKER process should be. Project teams were also advised to reflect in the JoKER document the outcome of the consultation processes and to explain why certain suggestions were not followed, as well as to provide feedback to

⁵⁰ This could be done, among others, by strengthening the position of the focal points, creating a JoKER cell, and investing in training and awareness raising, as mentioned in the other recommendations.

the consulted actors. Also, a JoKER website should be designed by the Youth Division or the JoKER cell, including, among others: an overview of initiatives in which a JoKER process is envisaged (extract of the regulatory agendas); an overview of existing JoKERS(/RIAs); good practices of JoKER processes and documents; information on the JoKER cell and training; an up-to-date list of the focal points for youth and children's rights policy; and a list of actors that can be consulted during a JoKER process. The Youth Division should also develop a communication strategy using a bottom-up methodology, through which the objectives and added value of JoKER are communicated and awareness is raised.

A final, important conclusion regarding the 'process' cluster, is that too much focus is placed on JoKER as *product*, and too little on JoKER as *process*. This 'bias' is already embedded in the name itself, namely 'child and youth impact *report*'. The process aspect of JoKER must be emphasized more, in the JoKER manual and in particular in trainings.

Considering support and quality control, the ministers of the Flemish government and the leading officials were recommended to strengthen the position of the focal points for youth and children's rights policy, among others by providing sufficient time in the job description of the civil servants concerned to play their role as focal point in an appropriate way. The Youth Division was advised to rework the JoKER manual on certain issues, as well to offer to civil servants at least yearly training sessions on youth and children's rights in general, and on JoKER in particular. In the JoKER opinion, more attention should be paid to the quality of the assessment, rather than to formal issues.

To enhance JoKER's effectiveness, the Youth Division was advised to pay more attention in the JoKER manual to the specific rights of young people, which, for young adults (above the age of 18), are guaranteed in general human rights treaties rather than in the CRC.

To increase the impact of JoKER, the Flemish Parliament was recommended to establish a network of 'focal politicians for youth and children's rights', who should follow-up youth and children's rights policy in general and JoKER in particular. Also, the project team and the Youth Division were advised to pay more attention to the ex post evaluation of JoKER.

Four main tensions were to be addressed throughout the research process. First, there was the tension between 'mainstreaming' (integrating JoKER in RIA), on the one hand, and preserving the specificity of JoKER, on the other. The risk entailed by a complete integration of JoKER in RIA consists of diminished attention for the particular rights and interests of children and young people. Out of

considerations of efficiency and pragmatism, the (formal) integration of JoKER in RIA was suggested by the evaluation. On the other hand, recommendations were formulated to maintain the specificity of a youth and children's rights perspective through, among others, a particular JoKER manual, training, a communication strategy, the establishment of a JoKER cell and the creation of a JoKER website. The tension between mainstreaming or targeting also emerges in other policy fields, and is intertwined with the basic question of how (particular) children's rights relate to (general) human rights.⁵¹

A second tension concerned the international leadership of Flanders in the field of child impact assessments, on the one hand, and the novelty of the JoKER process, on the other. Flanders spearheads the establishment and, more in particular, the evaluation of child impact assessments. For instance, the 2012 Children's Rights Monitor of the Dutch Children's Ombudsperson refers to Flanders as a 'good practice' and recommends the Dutch cabinet to introduce an obligation for a child impact report for legislative proposals. A comparative study on the legal implementation of the Convention on the Rights of the Child also particularly notes the development in Flanders of a system of child and youth impact assessment.⁵² On the other hand, JoKER in its current form is still a 'toddler', as it was 'born' (in fact, re-born) only on 1 January 2009. In this sense, JoKER still suffers from various 'childhood diseases', as the evaluation identified, and there is quite some room to 'grow'.

Third, in formulating our recommendations, a balance was sought between an 'ideal situation', i.e. a comprehensive child impact assessment for all types of policy initiatives, as recommended by the Committee on the Rights of the Child, on the one hand, and pragmatism, i.e. ensuring that JoKER remained feasible for the civil servants concerned and would not degenerate into a mere piece of paper, on the other.

Finally, governmental and policy processes are intrinsically complex and interwoven. In case of the JoKER evaluation, this gave rise to various ambiguities. To start with, some policy decisions had been made shortly before the start of the evaluation exercise. These included the adoption of the 2012 Decree on a renewed youth and children's rights policy and the reconfirmation of RIA as the central assessment instrument. At least in the short term, there was no political space to revise these new

⁵¹ A. Invernizzi & J. Williams, *The Human Rights of Children. From Visions to Implementation* (London: Ashgate, 2011); W. Vandenhoe, 'Het kind en het badwater: de kruisbestuiving van kinderrechten en mensenrechten'. In *Kinderrechten als mensenrechten: een multidisciplinaire verkenning*, ed. W. Vandenhoe (Antwerp: Intersentia, 2007), 25.

⁵² L. Lundy, U. Kilkelly, B. Byrne & J. Kang, *The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries* (London: UNICEF UK and Queen's University Belfast, 2012) 32-35.

policy decisions. Although this is understandable from a good governance perspective, it limited both the potential scope of the recommendations and the possibility of the Flemish administration to follow up on them. Real good governance would imply waiting for the results of the evaluation. Moreover, the JoKER evaluation ran parallel with the RIA reform and the development of the Quick Scan. This raised questions as to whether and how to take the outcome of the latter two processes into account in the formulation of recommendations.

Ultimately, this evaluation revealed that it is worthwhile to study JoKER, in order to explore the possibilities of transferring it in an adapted form to other contexts. A child and youth impact assessment is no magic tool or quick fix, but ideally ensures that the debate on children's rights (and their tensions) continues.

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