

# **STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY**

## **Belgium**

Situation in 2006



French edition:

*Structure et fonctionnement de la démocratie locale et régionale : Belgique*

**Studies appearing in the series “Structure and operation of local and regional democracy”:**

**1st edition**

1992: *Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland.*

1993: *Czech Republic, Estonia, Hungary, Lithuania, Malta, Turkey, United Kingdom.*

**2nd edition**

The second edition of the files was started in 1996. It will include an individual file for each of the member states of the Council of Europe.

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**3<sup>rd</sup> edition (brochure series)**

The third edition of the files was started in 2004. Files on individual countries are no longer published with an ISBN.

2004: *Czech Republic, Hungary*

2006: *Belgium, Latvia*

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## 1. LEGAL BASIS

### 1.1. Constitutional provisions

As regards the municipalities, the Belgian Constitution provides in Article 4 that “Belgium comprises four linguistic regions: the French language region, the Dutch language, the bilingual region of Brussels-Capital, and the German language region. Every municipality in the kingdom belongs to one of these linguistic regions ...”.

Article 162 states that “The ... communal institutions are regulated by the law”. It also consecrates the principles which according to the law, apply to municipalities; it concerns the direct election of the members of the ... communal councils, the attribution [of competencies] to... communal councils of all [matters] of ... communal interest, without prejudice to the approval of their acts, in the cases and manner, as the law determines, the decentralisation of attributions to ... communal institutions, the openness of the sessions of the ... communal councils within the limits established by the law, the openness of the budgets and the accounts, the intervention of the tutelary authority or the federal legislative power to prevent the violation of the law and the damage of the public interest.

This article also deals with the organisation and exercise of administrative tutelage which may be regulated by the councils of the community or the region and provides that “several communities can agree to associate. However, it cannot be permitted for several ... communal councils to deliberate in common”.

As regards Belgian provinces, Article 5 of the Constitution provides that “the Walloon Region encompasses the following provinces: Walloon Brabant, Hainaut, Liège, Luxembourg and Namur. The Flemish Region encompasses the following provinces: Antwerp, Flemish Brabant, West Flanders, East Flanders and Limbourg”.

It is up to the law, if necessary, to divide the territory into a greater number of provinces. The principles referred to in Article 162 apply also to provinces.

Moreover, according to Articles 1 to 3 of the Constitution, “Belgium is a federal state which is composed of communities and regions”. It encompasses three communities: The French Community, the Flemish and the German and encompasses three regions: the Walloon Region, the Flemish Region and the Brussels-Capital Region.

### 1.2. Main legislative texts

The legislative provisions concerning municipalities derive from the new Municipalities Act (Royal Co-ordinating Decree of 24 June 1988, ratified by the Act of 26 May 1989)<sup>1</sup> and from the Act of 22 December 1986 on intermunicipal associations. In addition, since 1 January 2002 (see below), the regions have had local-authority organisational powers. However, some legislation had already been amended before that date, while other legislation has been amended since then:

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<sup>1</sup> Legislation amended by the ordinary Act of 16 July 1993 to aim at finalising the federal structure of the State.

- *in the Flemish Region*: Decree of 6 July 2001 regulating intermunicipal co-operation, and in particular the Decree of 18 July 2003 organising public sector/private sector co-operation;
- *in the Walloon Region*: Decree of 5 December 1996 on intermunicipal associations;
- *in the Brussels-Capital Region*: the ordinances of 18 July 2002 and 17 July 2003 amended the new Municipalities Act, and the Special Act of 13 July 2001 supplemented Article 279 of the last-mentioned Act on the Region's territory.

As regards the provinces, the basic legislation is the Provinces Act of 30 April 1836<sup>1</sup>. In the Walloon Region, besides this Act there are the two decrees of 12 February 2004 organising the Walloon Provinces, including matters covered by Article 138 of the Constitution.

The legislative provisions relating to the Communities and regions are: the Special Institutional Reform Act of 8 August 1980<sup>1</sup>, the Ordinary Institutional Reform Act of 9 August 1980<sup>1</sup>, the Special Act of 12 January 1989 on the Institutions of Brussels<sup>1</sup>, the Institutional Reforms for the German-speaking Community Act of 31 December 1983<sup>2</sup> and the Special Act of 16 January 1989 on the Financing of the Communities and Regions<sup>1</sup>. Constituting the latest stage in the federalisation of the state, the special acts of 13 July 2001 firstly conferred on the regions, as from 1 January 2002, legislative powers relating to the composition, organisation, responsibilities and functioning of provincial and municipal institutions, as well as to the election of provincial, municipal and intra-municipal organs, and secondly instituted refinancing of the Communities and extended the regions' tax powers.

It should be noted that, in the Walloon Region, a codification of all the legislation relating to the institutional rules of the provinces, municipalities, autonomous provincial and municipal companies, intermunicipal associations, clusters of municipalities, federations of municipalities and intra-municipal local bodies was adopted by the Walloon Government on 22 April 2004 and confirmed by the Walloon Parliament on 27 May 2004.

## **2. STRUCTURE OF LOCAL AND REGIONAL AUTHORITIES**

### **2.1. Statistical data**

Belgium is a federal state consisting of four tiers: State, Communities and Regions, Provinces (considered as intermediate political authorities) and Municipalities.

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<sup>1</sup> Legislation amended by the Special Act of 16 July 1993 to aim at finalising the federal structure of the State.

<sup>2</sup> As amended by the Act mentioned in footnote 1.



### Number, area and population of Belgian local and regional authorities

Belgian local and regional authorities	Total numbers in 1950	Total numbers today	Surface area in ha (2004)			Population (2004)		
			Largest	Smallest	Average	Largest	Smallest	Average
<b>Municipalities</b>	2 669*	589	21 373 (Tournai)	113 (Saint-Josse-ten-Noode)	5 120	455 148 (Antwerp)	87 (Herstappe)	17 651
<b>Provinces</b>	9	10	444 114 (Luxembourg)	109 056 (Brabant Walloon)	246 318	1 668 812 (Antwerp)	254 120 (Luxembourg)	1 039 642
<b>Communities</b>	0**	3	Not applicable***	-	-	Not applicable****	-	-
<b>Regions</b>	0**	3	1 684 400 (Walloon Region)	16 138 (Brussels-Capital Region)	1 017 597	6 016 024 (Flemish Region)	999 899 (Brussels-Capital Region)	3 465 474

\* At 31 December 1949 (Figures for 31 December of the year requested are not available).

\*\* Not applicable at this date.

\*\*\* No precisely defined area.

\*\*\*\* No precisely defined territory; languages censuses were abolished in 1962.

### Grouping of municipalities

Grouping of municipalities by size of population	Number (2004)	Percentage
- 1 000 inhabitants	2	0.34
1 000 - 5 000 inhabitants	86	14.60
5 000 - 10 000 inhabitants	165	28.01
10 000 - 50 000 inhabitants	309	52.46
50 000 - 100 000 inhabitants	19	3.23
100 000 - 500 000 inhabitants	8	1.36
+ 500 000 inhabitants	-	-

## 2.2. Special structures

Of the five conurbations envisaged by Article 1 [1] of the Act of 26 July 1971 establishing the conurbations and federations of municipalities only the Brussels conurbation (composed of the nineteen municipalities of the Brussels-Capital Region) has been created and provided with a separate legal personality. The five federations of outlying municipalities of the Brussels conurbation set up by the same Act (Asse, Hal-Vilvorde, Rhode-Saint-Genèse, Tervuren and Zaventem) were all abolished by the Act of 30 December 1975 which took effect from 1 January 1977.

The present Article 166 of the Constitution confirms the existence of the conurbation to which the capital of the kingdom belongs and entrusts the exercise of its competencies to the organs of the Brussels-Capital Region established by the Special Act of 12 January 1989 on the institutions of Brussels.

The Special Act of 13 July 2001 transferring various functions to the regions and Communities conferred on the three regions, as from 1 January 2002, statutory responsibilities relating to the composition, organisation, jurisdiction and functioning of conurbations and federations of municipalities as well as to election of their bodies, with the exception of municipalities subject to special language arrangements and the municipalities of Comines-Warneton and Fourons.

## 2.3. Changes in territorial boundaries

Article 39 of the Constitution names the body empowered to determine regional boundaries: the Houses of Parliament acting on the basis of a special majority. There can thus be no change in the boundaries of regions without the adoption of a statute by a special majority, which might have the effect of altering Article 2 of the Special Institutional Reform Act of 8 August 1980 and/or the Special Act of 12 January 1989 on the institutions of Brussels.

The communities for their part are not established on the basis of a territorial conception *stricto sensu*. Reference is made to the notion of “membership of a community” as a criterion for incorporation. The territorial basis of the community nevertheless continues to be the corresponding language region. The boundaries of those regions were determined by the acts on the use of languages in administrative business, co-ordinated on 18 July 1966 (cf. Article 2). In accordance with Article 4 [3] of the Constitution, the boundaries of language regions can only be altered by a special act which must set out the procedure and the criteria for making such an alteration.

As regards the boundaries of provinces and municipalities, these can only be changed or rectified by an act (Article 7 of the Constitution).

While a reduction in the number of provinces can only be achieved through an amendment to the Constitution, it follows on the other hand from the requirement set out in Article 5 [2] of the Constitution that an increase in their number can be achieved through legislation (this provision was applied in the case of the splitting of the unitary province of Brabant on 1 January 1995).

**NB:**

- 1) changing or rectifying the boundaries of a province may have the indirect effect of altering the boundaries of language regions. As indicated above, such an alteration could only come about through the passage of a special act.
- 2) “extraprovincialisation”, that is the removal of certain areas from the division into provinces (such is the case of the nineteen municipalities of the administrative district of Brussels-Capital) as envisaged in Article 5 [3] of the Constitution, can only come about through the passage of a special act.

The procedure and the criteria to be applied to an alteration of the boundaries of provinces would be determined by statute.

As for the municipalities, the ordinary procedure (prior to passage of the act) followed for altering their boundaries is fixed as follows:

- concordant opinion by the municipal councils affected;
- technical examination of the file by the Cadastral Survey Department;
- opinion of the provincial council provided for by Article 83 of the Provinces Act.

Articles 272 and 273 of the new Municipalities Act, brought together in Title IX entitled “On setting boundaries” also needs to be taken into account.

The present situation of the municipalities results from the amalgamation of municipalities (1961-1975) which, broadly, took place in two successive stages:

- **the Act of 14 February 1961** (known as the Single Act): relying on the opinion of the Central Council of the Economy, on 4 August 1960 the government tabled a bill authorising the crown to alter the boundaries of municipalities.

The bill did not lead to a separate statute but served as the basis for Chapter IV of Title IV of the Act of 14 February 1961 on economic expansion, social progress and financial recovery. The provisions of this act, while leaving aside the fate of the five conurbations (Brussels, Antwerp, Liège, Ghent and Charleroi), set up a flexible and fast-track procedure allowing the amalgamation of municipalities by royal decree subject to ratification by the Houses of Parliament. This procedure was in force until 1 January 1971. Over the period 1961-1971 the number of municipalities in the kingdom was reduced from 2 663 to 2 359.

However, some municipalities were abolished following ordinary legal procedure.

- **the Act of 23 July 1971**: this act extended the simplified procedure established by the Single Act while at the same time introducing a series of amendments to it: the conurbations ceased to be excluded from its ambit, financial incentives and formal guarantees for staff were introduced, etc.

But use of this procedure to amalgamate municipalities belonging to different language communities continued to be prohibited.

The Minister of the Interior draws up a plan which he refers for opinion to the municipal councils and permanent delegations of the provincial councils through the provincial governors.

On the basis of this consultation the crown puts it into effect through royal decrees debated in the Council of Ministers. The Houses of Parliament subsequently approve these decrees.

While the amalgamations carried out under the provisions of the Single Act were usually voluntary, those achieved using the above-mentioned Act of 1971 were mostly imposed through a single Royal Decree of 17 September 1975, confirmed by the Act of 30 December 1975, which came into force on 1 January 1977 except as regards Antwerp (amalgamation of eight municipalities postponed for six years).

Following this major reorganisation brought to an end by the Minister of the Interior Mr J Michel, the number of municipalities was reduced to 589.

By the terms of Article 1 of the above-mentioned Act of 23 July 1971, the purpose of amalgamating municipalities was to create adequate units for the local management of public affairs when “considerations of a geographical, economic, social, cultural or financial nature so require”.

The reorganisation of municipalities was mainly guided by the following considerations:

- a concern to rationalise boundaries, notably with a view to adapting them to the demands of the infrastructure;
- a desire for larger units for economic reasons (notably in port areas);
- the concern to group municipalities with too small a population or too small an area so as to secure adequate resources;
- a concern to rationalise administrative activity.

With the procedure described above no longer in force, there is now a pressing need for a decree or an ordinance to alter municipal boundaries.

The Special Act of 13 July 2001 transferring various powers to the regions and Communities conferred on the regions, as from 1 January 2002, statutory responsibilities relating to rectification of the boundaries of provinces and municipalities, with the exception of municipalities subject to special language arrangements and the municipalities of Comines-Warneton and Fourons.

#### **2.4. General units of state administration at local/regional level and their relationship with local/regional authorities**

Not applicable for communities and regions, which are no longer involved in a process of delegation or decentralisation. These political authorities are autonomous *vis-à-vis* the federal state and as such have their own institutions and powers. The regulations that they adopt have the force of law and the federal state exercises no form of oversight over them.

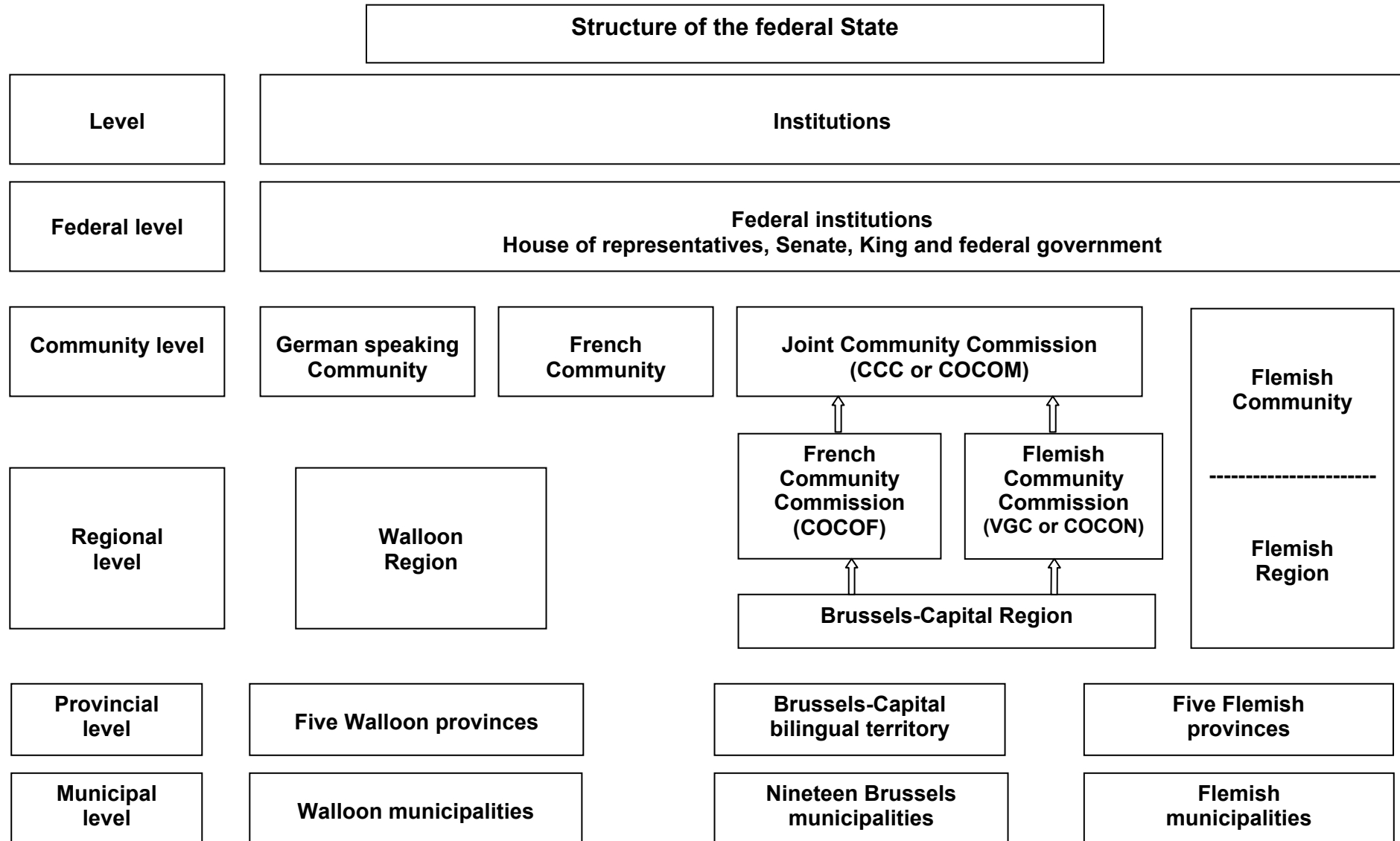
However, some departments of federal, community and regional agencies may introduce measures to delegate or decentralise downwards to local authorities.

The competencies attributed to municipalities (that is competencies which have been delegated to them by the federal state) include notably the following matters: civil status and population register, electoral matters, religious facilities, issuing driving licences, granting of social assistance, etc.

Since the Special Act of 13 July 2001 came into force, institutional legislation relating, firstly, to church councils and other institutions handling temporal aspects of recognised forms of worship (excluding recognition of forms of worship and setting of the pay and pensions of ministers of recognised forms of worship and non-denominational groups, which are still a federal responsibility) and, secondly, to municipal and provincial elections is a matter for the regions.

Similarly, the higher authority has entrusted to the provinces a variety of competencies of general interest such as, for example, the nomination of candidates to various judicial posts, the exercise of jurisdictional measures, the implementation of laws and regulations in the province, etc.

These delegations give the head of local authorities various forms of oversight exercised by the higher authority.



### **3. ORGANS OF EACH CATEGORY OF LOCAL REGIONAL OR COMMUNITY AUTHORITIES**

#### **3.1. Deliberative bodies**

##### *Local level*

The deliberative body of municipalities is the municipal council, which is composed of 7 to 55 councillors (always an uneven number) depending on the size of the municipality's population.

The members of municipal councils are elected by a single ballot from a multi-candidate list (with the possibility of a single candidate in the event of a special election, e.g. to fill a vacancy in the absence of an alternate). Seats are allocated according to a system of full proportional representation combined with the highest mean, generally known as the Imperiali system.

Elections for the complete replacement of the municipal councils (ordinary elections) are held every six years on the second Sunday in October (the next elections will be in 2006 and 2012); the minimum age required to be elected or to have the right to vote is 18. Voting is compulsory.

The institutional reform acts of July 2001 transferred institutional responsibility for municipal elections to the regions.

None of the three regions has so far amended the electoral legislation inherited from the federal state.

##### *Provincial level*

The provinces have a provincial council composed of 47, 56, 65, 75 or 84 elected representatives, depending on the size of the province's population. However, the number of councillors for Liège province will remain fixed at 80 as long as the size of that province's population remains more than 750 000 and less than 1 000 000 (Article 1a [2] of the Provinces Act).

Members of provincial councils are also elected by single ballot from multi-candidate lists (with the possibility of single-candidate lists for a by-election) and voting is compulsory. Seats are allocated according to a proportional-representation system modified by the grouping mechanism.

The ordinary elections to the provincial councils take place on the same day as the elections to the municipal councils.

Provincial elections, however, are no longer held in the 19 municipalities of the Brussels-Capital Region owing to the removal of this area from the division into provinces ("extraprovincialisation").

The minimum age for election and voting is also set at 18.

### *Community level*

The Communities have the following deliberative bodies:

- the Flemish Council<sup>1</sup>, consisting of 124 members, 118 of whom are elected in the Flemish Region. The six other members, who reside in the Brussels-Capital Region, are directly elected by the electors of the Brussels-Capital Region, who will have previously voted on a list for the Flemish-speaking group of the Brussels-Capital Regional Council;
- the Council of the French Community, with 89 members. All members of the Walloon Regional Council are members. Nineteen members are elected by the French-speaking group of the Council of the Brussels-Capital Region from among its members;
- the Council of the German-speaking Community, with 25 members. The German-speaking provincial and regional councillors are present in a consultative capacity.

### *Regional level*

For the regions, a distinction must be drawn between the Walloon Parliament, consisting of 75 members (all elected in the Walloon Region), and the Council of the Brussels-Capital Region, consisting of 89 members, 72 of whom are elected from French-only lists and 17 from Flemish-only lists in the 19 municipalities of the Brussels conurbation.

The following deliberative bodies exclusively concern the Brussels-Capital Region: first, the Assembly of the French Community Commission (COCOF), consisting of all members of the Brussels Regional Council elected from French-only lists. The number of members of this assembly depends on the outcome of the elections (currently, 65 members); second, the Assembly of the Flemish Community Commission (VGC or COCON), consisting of all members of the Brussels Regional Council elected from Flemish-only lists. The number of members of this assembly depends on the outcome of the elections (currently, 10 members); and, third, the Assembly of the Joint Community Commission (CCC or COCOM), consisting of 89 members (the same as those of the Brussels Regional Council).

Elections to the Community councils and regional councils are organised according to the multi-candidate list system and proportional representation for a fixed five-year term (with no possibility of early dissolution). This procedure applies to the election of the Walloon Parliament, the Flemish Council and the councils of the Brussels-Capital Region and German-speaking Community.

Elections for the above parliament and councils are held at the same time as those for the European Parliament. However, the first direct elections for all those councils took place at the same time as the general elections of 21 May 1995. The minimum voting age is 18, while to stand for election the minimum age is 18 for a regional or Community council and 21 for the European Parliament. Voting is compulsory.

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<sup>1</sup> This assembly performs community and regional competences. This possibility also exists for French speakers but they don't yet use it.



### **3.2. Executive bodies**

#### *Local level*

The Corporation of Mayor and Aldermen is the executive body of the municipalities. It consists of a mayor plus 2 to 10 aldermen (this number may be increased by one in municipalities of the Brussels-Capital Region in accordance with Article 279 of the new Municipalities Act – if the two language groups are represented on the corporation).

Since the Special Act of 13 July 2001 came into force on 1 January 2002, the mayor has been appointed by the government of the region concerned from among the representatives elected to the municipal council and, exceptionally, from outside the council's representatives, among electors of the municipality over 25 years of age. A mayor appointed from outside the council has only a consultative role on the council over which he presides; aldermen are elected by the municipal council from among its members (second-degree election).

It should be noted that the disciplinary penalties referred to in Article 82 of the new Municipalities Act concerning mayors will continue to be imposed by the Crown until 31 December 2006.

#### *Provincial level*

Provinces have a permanent delegation of the provincial council; the delegation consists of a governor and six permanent delegates.

The governor is appointed by the regional government, subject to the approval of the Federal Council of Ministers, from outside the provincial council, while the permanent delegation itself is elected by the council from among its members (second-degree election).

Despite the disappearance of the provincial level from the administrative district of Brussels-Capital, the functions of Governor and Vice-Governor are maintained on that territory.

Following the Polycarpe and Lambermont agreements, the Governor of the administrative district of Brussels-Capital is also appointed by the Brussels Regional Government. His appointment and dismissal are subject to the approval of the Council of Ministers of the Federal Government.

The appointment, salary and conditions of service of governors now come under the responsibility of the three regions assisted by both federal and regional personnel.

The governor performs several functions. He has extremely extensive powers to maintain public order. He not only has the power to issue regulations but is also responsible for maintaining law and order in the region and for the safety of persons and property.

With respect to the Federal Government, governors are commissioners with responsibility for co-ordinating and managing the representation of the state, public order, policing, civil security, firearms legislation and disaster management.

However, they are commissioners of their region both *de jure* and *de facto*.

At the level of the Brussels-Capital administrative district, the amendments made to the new Municipalities Act are aimed at taking back the powers that had been conferred on the Governor (apart from those relating to public order, passport control and controls in police zones) and entrusting them either to the Regional Government or to the "jurisdictional college" (*collège juridictionnel*).

In the Walloon Region, with effect from the installation of the next provincial councils in 2006, the permanent delegation will bear the name of "provincial college" and the Governor will have a seat on it as a Walloon Government commissioner and silent observer.

### Community and region level

The Communities and regions have a Community/regional government composed as follows:

- the Government of the Flemish Community/Region has a maximum of 11 members, including the President ;
- the Government of the French Community has four members, including the President ;
- the Government of the German-speaking Community has three members, including the President ;
- the Government of the Walloon Region has a maximum of seven members, including the President ;
- the Government of the Brussels-Capital Region has five members (President, two members of the French-speaking group, two members of the Flemish-speaking group) and, upon a proposal by the Government, three junior ministers at least one of whom must belong to the Flemish-speaking group.

With the exception of the Brussels-Capital Region, all other bodies enjoy inherent autonomy (i.e. the right to organise themselves and, for example, to change the number of members of their executive).

As regards the Communities and regions, Community and regional ministers are elected by their councils; they do not necessarily have to be members of them in order to be elected; presidents take an oath to the Crown, and other ministers and junior ministers take an oath to the regional council or Community that placed them in office.

### **3.3. Head of administration**

The functions performed on behalf of the state by heads of administration are the following.

- In municipalities, as the municipal representative of central government, the mayor (appointed by the regional government) is responsible for enforcing the laws, decrees, ordinances, regulations and orders of the state, regions, Communities, Community commissions, the provincial council and the permanent delegation of the provincial council, unless such enforcement is formally assigned to the corporation of mayors and aldermen or to the municipal council (Article 133 [1] of the new Municipalities Act).

Paragraph 2 of the same article makes him particularly responsible for enforcing public order statutes, orders, ordinances, regulations and decrees. He may, however, on his own responsibility, delegate some or all of his powers to one of the aldermen.

At the same time, the mayor nevertheless remains the highest legal officer of the municipality and is responsible for watching over exclusively municipal interests.

- At provincial level, the government commissioners sitting in provincial councils have the title of "provincial governor". They are appointed by the regional government with the approval of the Federal Council of Ministers (Article 4 [1] and [2] of the Provinces Act).

By Article 124 [1] of the same act, the provincial governor is responsible for enforcing all statutes, orders and acts of general administration, and the decrees of the executives (now governments) of communities and regions, not otherwise countermanded by statute, order, royal decree or the executives.

### 3.4. Division of power and responsibility between the different organs

#### a. *Municipalities*

- **the council:** generally, it disposes of all matters of concern to the municipality and debates any subject put to it by the higher authority to enforce laws and regulations;
- **the corporation:** it exercises everyday management of the municipality. It is essentially a body that implements the decisions made by the council or the higher authority. It does, however, have some inherent powers (e.g. looking after the mentally disturbed and public entertainment);
- **the mayor:** he is the leader of the corporation and has responsibility for maintaining public order. He is responsible for enforcing the decisions of higher tier authorities not specifically assigned to another body. He has wide powers of law enforcement and a power to issue regulations in case of emergency.

#### b. *Police zones*

Following the reshaping of the police as one integrated force with two levels (federal and local) (Act of 7 December 1998), the territory has been divided into police zones corresponding to one or more municipalities. A multi-municipal zone is a group of two or more municipalities.

A police zone is directed by a police board composed of municipal elected representatives appointed from the municipal council(s) and administered by a corporation consisting of the mayor(s) and, in the case of a single municipal zone, of aldermen. The corporation is chaired by the mayor or mayors in rotation.

*c Provinces*

- **The council:** in general, it can consider any matter that it deems to be of exclusively municipal concern and deliberates on any matter submitted to it by the higher authority under the laws and regulations.

Under his powers of provincial concern he appoints provincial employees, draws up the budget and prepares the accounts, he manages public property within the province.

Regarding his powers of local concern he co-ordinates the action of municipalities in road maintenance.

Concerning his powers of general concern he can for example present councillors before the Courts of Appeal and the presidents and vice-presidents of courts of first instance and alter certain territorial boundaries.

- **the permanent delegation** is responsible for day-to-day governance and the enforcement of council decisions. It also has administrative powers of adjudication in certain disputes (taxation, oversight of help provided by the Public Centre for Social Assistance (Centre public d'aide sociale); it is particularly responsible for validating municipal elections.
- **The governor is the representative of the regional government and is appointed by the latter, subject to the approval of the Council of Ministers.** He has public-order functions such as maintaining order, issuing regulations, meeting vital needs, and performing administrative functions. He chairs the permanent delegation, carries out council decisions, directs the administrative services and enforces laws and general regulations. In the Walloon Region, he attends meetings of the (future) provincial college as a silent observer.

**NB:**

By the terms of Article 163 of the Constitution the Brussels-Capital Region exercises all the powers granted to provincial bodies in the area of the bilingual region of Brussels-Capital, except for the powers assigned to the French and Flemish Communities and the Joint Community Commission.

In the administrative district of Brussels-Capital, the functions of governor and vice-governor (both representatives of the federal government) have been maintained despite the extraprovincialisation of this area.

The tasks of the governor are however limited to maintaining order and enforcing all statutes, orders and acts of general administration). As for the vice-governor, he replaces the governor as required and exercises a number of powers in order to ensure respect for the language laws.

Furthermore, the jurisdictional powers of the permanent delegation are exercised in the area of the afore-mentioned administrative district by a special corporation made up of nine members appointed by the Council of the Brussels-Capital Region on the proposal of its government.

d. *Communities and regions*

Councils cannot be dissolved before the expiry of their term set at five years. A possible change of majority or Minister may however occur following a procedure of constructive no confidence. The division of powers and the responsibility of the various bodies remain those that are usually to be found at the level of the state: all this in the framework of matters assigned to them and the inherent autonomy they have been acknowledged to possess.

#### 4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING

The Constitution implicitly forbids decision-making referendums.

The Act of 10 April 1995 completed the new Municipalities Act by inserting in a new Title XV (Articles 318-329) provisions on **municipal popular consultation**. This act was published in the *Moniteur belge* dated 21 April 1995 together with the decree made on the same date bringing it into effect, which sets out the special organisational provisions.

The municipal council may, either on its own initiative or at the request of the municipal electors, decide to organise a popular consultation. An initiative from municipal electors must be supported by:

- 20% of the population in municipalities with a population of under 15 000;
- 3 000 residents in municipalities with a population of 15 000 to 30 000;
- 10% of the population in municipalities with a population of more than 30 000.

Only the municipal electorate (resident in the municipality, over 16 years of age and not deprived of the right to vote) may participate in a popular consultation.

The number and frequency of consultations are also determined by the act, with a minimum of six months between any two consultations and a maximum of six consultations in the lifetime of a parliament.

Furthermore, no popular consultation may be organised during the sixteen months preceding ordinary elections. In addition, no popular consultation can be held during the forty days preceding the direct election of members of the Federal Houses, the community and regional councils and the European Parliament. Finally, on any one subject there can only be one consultation in the life of a municipal council.

Voting is not compulsory. The votes are only counted if at least the following have participated in the consultation:

- 20% of the electors in the municipalities with less than 15 000 inhabitants;
- 3 000 electors in the municipalities with 15 000 to 30 000 inhabitants;
- 10% of the electors in the municipalities with more than 30 000 inhabitants.

The questions must be formulated so that there can be a yes or no response. Questions relating to individuals and questions touching on the accounts, budgets, taxes and municipal remuneration may not be the subject of a consultation. Finally it should be stressed that the result of such a consultation has no binding legal force on the municipal authority.

In addition to the municipal popular consultation, mention should also be made of:

- the acknowledged right of every citizen by Article 28 of the Constitution to petition public authorities;
- the various consultative procedures provided for by legislation on land use, planning and management and environment;

In the Walloon Region, the Decree of 12 February 2004 organising the Walloon Provinces reproduces *in extenso* the provisions of the Provinces Act regarding popular consultations. The decree also creates a right to establish consultative and participatory councils at provincial level.

## **5. STATUS OF LOCAL ELECTED REPRESENTATIVES**

### **5.1. Eligibility for election and length of term of office**

Any person of Belgian nationality, aged 18 years or over, and who is on the population register of the municipality or of a municipality in the province, is eligible and can remain a municipal or provincial councillor candidate.

A candidate must also not have been made ineligible as a result of conviction for a criminal offence, or have been struck of the electoral roll in accordance with Article 6 of the Electoral Code or had their voting rights suspended in accordance with Article 7 of the same code.

Provincial and municipal councillors are elected for a fixed six-year term.

### **5.2. Functions and activities incompatible with a local elected representative's duties**

An elected representative can hold several elective offices simultaneously provided that the provisions regarding compatibilities are adhered to.

The holders of the following offices may not be members of a municipal council:

- provincial governors (and vice-governor and deputy governor);
- permanent deputies (and a member of the jurisdictional college);
- provincial registrars;
- district commissioners;
- soldiers on active duty except for reserve officers who have been recalled and members of the territorial army;
- police commissioners and officers as well as members of the public security force;
- personnel of the water and forests agency except in municipalities which are outside their area of responsibility;
- members of staff of the Public Centres for Social Action (*Centre Public d'Action Sociale* (CPAS)) of the same municipality;

- members of the Language Control Commission;
- members of the Standing National Commission of the Cultural Pact;
- members of the judiciary;
- any individual staff member or other who is in receipt of a remuneration or grant from the municipality, except for volunteer firemen;
- any person who, in a local authority of another European Union Member State, holds an office or performs a function akin to that of a council member, alderman or mayor.
- the regional tax collector in charge of the municipality or the CPAS

Any one who holds one of the following offices cannot be mayor or alderman:

- minister of religion;
- civil servant or clerk in the tax office in the municipalities that are part of his constituency or that come under it, unless exempted by the crown;
- CPAS collector;
- member of the social assistance council;
- member of courts, civil tribunals and magistrates' courts;
- member of the bar, registrar and assistant registrar attached to the courts and civil or commercial tribunals and magistrate's registrar.

In addition, the following may not be members of a provincial council:

- members of the federal Houses of Parliament and regional and community councils;
- provincial governors, vice-governors and deputy governors, provincial registrars and district commissioners;
- justices of the peace, members of courts of first instance and appeal courts as well as members of the bar attached to courts and tribunals;
- state and provincial tax inspectors and accountants;
- town clerks and municipal tax inspectors;
- personnel in local administrations, district offices and municipal administrations.

Members of the permanent delegation may not be:

- members of the judiciary;
- ministers of religion;
- personnel in a state or provincial administration;
- holders of a teaching post remunerated by the community, a province or a municipality, except for teachers at a community university;
- members of a municipal administration or CPAS inspectors.

Being a governor is incompatible with being:

- a member of the judiciary;
- a minister of religion;
- an engineer or works manager in civil engineering and transport industries;
- holder of a teaching post remunerated by the community, provinces and municipalities, except for teachers at a community university;
- mayor, alderman, municipal councillor, town clerk, municipal tax inspector and CPAS inspector;
- barrister or notary;

- public officer coming directly under the governor, the permanent delegation or the provincial council;
- member of the federal Houses of Parliament.

Under three acts of 4 May 1999, European, federal, Community or regional members of parliament or permanent delegates are not allowed to hold more than one paid executive post in addition to their elective office.

The following are regarded as paid executive posts:

1. mayor, alderman and chair of a social-assistance council, whatever the income attaching to it (for members of parliament);
2. any post held on a public or private body as a representative of the state or of a Community, region, province or municipality, where the post confers more power than ordinary membership of the annual general meeting or management board of that body, regardless of the salary attaching to the post;
3. any post held on a public or private body as a representative of the state or of a Community, region, province or municipality, where the gross taxable monthly income from the post is €500 or more. This amount is adapted annually to changes in the consumer-price index.

Another act passed on the same date concerns mayors and aldermen.

The amount of the mayor's or aldermen's salary and of the allowances, salaries and attendance fees received by the mayor or alderman in payment for activities falling outside his office is equal to or less than 1.5 times the amount of the parliamentary allowance received by members of the Chamber of Representatives and Senate.

Calculation of this amount takes into account any allowances, salaries or attendance fees earned from a post, function or public responsibility of a political nature.

In intermunicipal associations in the Walloon Region, a provincial or local elected representative may not hold more than three executive posts.

### **5.3. Financing of local and regional election campaigns**

The Act of 7 July 1994 on limiting and controlling election expenditure incurred for the election of provincial and municipal councils and for the direct election of social assistance councils, is designed to compel candidates in these elections to declare their election expenditure and sets maximum amounts of such expenditure. Many provisions in provincial and municipal electoral statutes have been amended, supplemented or inserted to that end.

Where a candidate fails to comply with the provisions relating to limiting election expenditure, he may, in certain circumstances, be deprived of his mandate.



The Act of 19 May 1994 establishes identical principles for elections to the Walloon Regional Council, the Flemish Council, the Brussels-Capital Regional Council and the Council of the German-speaking Community.

Furthermore, the Act of 10 April 1995 compels candidates to declare the source of the funds used for election purposes.

Article 15 of the Act of 4 July 1989 on limiting and controlling election expenditure for elections to the Federal Houses, and on the financing and open accounting of political parties provides that political parties represented in the two assemblies (House of Representatives and Senate) shall receive funds from the state budget.

Political formations that put up candidates for local and regional elections may therefore benefit indirectly from such economic support from the public authorities.

#### **5.4 Duties and responsibilities of local elected representatives**

Local elected representatives have a general duty of care. This duty is reflected in the prohibition on an elected representative intervening when he himself or his family have a direct or indirect interest in the decision to be taken, depending on the case. The law sought in this way to prevent elected local representatives from using their position to influence such decisions.

No disciplinary sanctions are envisaged against an elected local representative who fails in this duty of care. Apart from any possible sanction by the electorate, he may, however, be liable to criminal prosecution if he falls under Article 245 of the Penal Code, according to which:

“Any public servant or officer, any individual holding an office of public trust, who, either directly, or through individuals or pretended acts, takes or receives any interest whatsoever in the acts, adjudications, undertakings or businesses for whose administration or supervision, at the time of the act, he was, in full or in part, responsible, or who, having the task of arranging payment or carrying out the liquidation of a business, has taken any benefit whatsoever from it, shall be punished by an imprisonment of (...).

The preceding provision shall not be applicable to anyone who could not, by reason of circumstance, promote his interests by his position, and who has acted openly.”

In this respect, a decision by the Court of Cassation provides that “anyone who is entrusted with a responsibility that is provided for by law is a public official or officer” (Cass., 17 October 1892, pas., 354).

Local elected representatives also have a duty of confidentiality in regard to information that comes to their attention in the course of performing their duties (notably in closed-door sessions or on the occasion of exercising their right of oversight). Elected representatives who reveal a professional secret are liable to the sanctions provided for in Article 458 of the Penal Code and may be made civilly responsible for any harm done to third parties by the revelation of certain information.

In performing their duties, they may also learn of information of a private nature. Like any other public authority, they are required to respect the provisions of the law on the protection of private life; if they fail to do so, they lay themselves open to judicial action.

Local elected representatives are also not covered by any immunity: they are responsible for what they do and what they say in the course of performing their duties.

Generally, the first responsibility of elected representatives (whether local or otherwise) is to keep a check on the action of the executive body.

To do this, local elected representatives have the following rights:

- the right to participate in the debates and decisions of the municipal or provincial council;
- the right of convening: at the request of one third of the councillors, the chairman is bound to convene the council on the day and at the time indicated with the draft agenda;
- the right of initiative: the right to propose the inclusion of an item on the agenda provided certain formalities and deadlines are respected (the law only organises the exercise of this right for elected municipal representatives);
- the right to question: the right to put written and/or oral questions to the executive body (same comment as for the previous point);
- the right of examination: the right to see and consult items relating to the administration of the municipality or province. The right of examination naturally includes the right to consult files placed before the council for debate and to visit establishments directly managed by the municipality or province;
- the right to apply to the Council of State for annulment or suspension of any measure damaging to the individual's interests as an elected representative. First they have the right to bring the matter before the supervisory authorities as specified by the act, decree or ordinance.

The Act of 2 May 1995 on the requirement to submit a list of elective offices, posts and occupations and an assets declaration, applies notably to provincial governors, members of permanent delegations, mayors, aldermen and chairmen of CPAS.

Each year, before 1 April, these individuals are required to submit to the Court of Auditors, for publication in the *Moniteur belge*, a written declaration in which they list all the elective offices, management positions or occupations, of whatsoever nature, that they have held during the previous year, both in the public sector and for any legal entity or individual, or any *de facto* body or association, established in Belgium or abroad.

This declaration, which is sworn on the honour of the declarant to be accurate and honest, indicates, for each elective office, post or occupation, whether it is remunerated or not.

Article 3 of the above-mentioned act also requires the same individuals to deposit with the Court of Auditors, within a month of their first taking up a post or appointment, and on their resignation or the expiry of their term of office/post, an assets declaration that lists all claims (such as bank accounts, shares and stocks), all the property and all moveable items of value, such as antiques and works of art.

However, this act can only be put into effect, in accordance with its Article 5, after the passage of a law setting out the rules governing the format, deposit and control of declarations (proposals are currently being examined).

As indicated above, local elected representatives do not enjoy any immunity for acts carried out in the performance of their duties. They are thus liable to prosecution under common law should the case arise.

Disciplinary sanctions under Articles 82 and 83 of the new Municipalities Act (suspension or dismissal for serious misconduct or gross negligence) can be imposed only on mayors and aldermen. In the case of mayors, such sanctions are imposed by the regional government, and in the case of aldermen by the governor, subject to the reasoned assent of the permanent delegation, or by the regional government in Brussels-Capital Region.

Until 31 December 2006, the suspension and dismissal of mayors will be matters for Crown decision.

### **5.5. Resignation**

Municipal councillors, mayors and aldermen who, after receiving two consecutive summons to take the oath, refrain, without due reason, from fulfilling this formality, are regarded as having resigned (resignation as of right as envisaged in Article 81 of the new Municipalities Act).

By the terms of Article 22 of the same act, resignation from the position of councillor and alderman is given in writing to the municipal council. The article further provides that the resignation from the position of mayor is addressed to the regional government and notified to the council. A mayor who wishes to give his resignation as councillor can only offer it to the council after having previously obtained from the regional government acceptance of his resignation as mayor.

As regards the provinces, the resignation of councillors is addressed to the council. But it should be observed that any member of the delegation who absents himself from meetings for more than a month without leave from the delegation is deemed to have resigned (Article 101 of the Provinces Act).

There exists no legal regulation forbidding an elected representative to exercise an activity after the end of his term of office.

### **5.6. Service as a local elected representative**

Those conditions of service depend on the size of the authority. In every municipality in the kingdom, municipal councils must now meet at least ten times a year. Meetings are generally held in the evenings. In large municipalities, however, they may be held during the day as in the case of the provincial councils.

The number of committees assigned the task of preparing the work of the council depends on the size of the municipality or province. However, in the Walloon Region, the provincial council must set up at least a budget and accounts committee.

The workload depends on how much personal effort the elected representative wishes to put in.

For workers in the private sector, reference should be made to the provisions of the Act of 19 July 1976 establishing leave for performing political duties and the Royal Decree of 28 December 1976 on the length and conditions of use of leave granted under that act.

A worker who serves as a municipal councillor (and who is not simultaneously mayor or alderman) has the right to be absent from his work on full pay for half a day a month in municipalities with a population of less than 10 000 and for one day a month in municipalities with a population of 10 000 and over. For aldermen, the length of this leave is one and two days respectively while for mayors it is two and three days.

Where they exist, training programmes are implemented on the initiative of the regions, either unilaterally or in partnership with specialist institutions (universities, training centres or local-authority associations).

Furthermore, no documentation is systematically made available to councillors. It is up to the councillors to inform themselves on how their duties are performed (from the municipality, from the party, from higher authorities, in a library, etc.).

Political leave for workers in the private sector can only be used for tasks that stem directly from the duties for which it is granted.

The municipality must reimburse the employer with an amount corresponding to the gross remuneration plus the employers' contribution for the length of the absence. The municipality may in turn reimburse itself from the attendance allowances due to the councillor up to a maximum of half the amount of the attendance allowance (Royal Decree of 31 May 1977).

In the case of members of staff of the public services, reference must be made to the provisions of the Act of 18 September 1986. This act applies both to permanent and to trainee, temporary and auxiliary members of staff, even those hired on contract, but staff working part-time cannot benefit from its provisions. Members of staff of the Houses of Parliament and the Court of Auditors as well as of educational establishments and psycho-socio-medical centres established, subsidised or recognised by the state are excluded from its purview.

Political leave to perform political or similar duties takes one of the following three forms:

1. either an exemption from duty which has no effect on the administrative and financial position of the staff member;
2. or an optional leave granted at the request of the staff member;
3. or an automatic political leave which the affected member is not free to decline.

For periods covered by the political leave envisaged under items 2 or 3 above, the individual who benefits from it is made temporarily off duty or given a similar status. In such cases no remuneration is earned for those periods. However, they are taken into account in calculating length of service for financial purposes.

An exemption from duty is granted for performing the following political duties:

1. municipal councillor who is neither mayor nor alderman:
  - in a municipality with a population of less than 10 000: half a day per month;
  - in a municipality with a population of 10 001 or over: one day per month.
2. mayor or alderman:
  - in a municipality with a population of less than 10 000: half a day per month;
  - in a municipality with a population of between 10 001 and 30 000: one day per month (and the same for aldermen of a municipality with a population of between 30 001 and 50 000 inhabitants).
3. provincial councillor who is not a member of the permanent delegation: one day per month.

The exemption from duty is taken at the convenience of the individual concerned, a day or a half-day at a time. It can only be deferred from one month to the next when it is granted for performing the duties of a provincial councillor.

Optional political leave may be granted for performing the following political duties:

1. mayor or alderman of a municipality with:
  - a population of less than 10 000: one or two days per month;
  - a population of 10 001-30 000: one, two or three days per month.
2. alderman of a municipality with a population of 30 001-50 000: one, two, or three days per month.

Automatic political leave is provided for performing the following duties:

1. mayor of a municipality:
  - with a population of 20 001-30 000: two days per month;
  - with a population of 30 001-50 000: half of a full-time employment;
  - with a population of more than 50 000: a full time employment.
2. alderman in a municipality:
  - with a population of 20 001-50 000: two days per month;
  - with a population of 50 001-80 000: half of a full time employment;
  - with a population of more than 80 000: full time.
3. member of a permanent delegation: full time.

A staff member who, in order to perform the duties of mayor or alderman, enjoys political leave of a duration that does not exceed or equals half of a full time employment, may, at his own request, obtain part-time or full time political leave respectively.

Political leave expires at the latest on the last day of the month following that in which the term of office comes to an end. After he has resumed work the staff member cannot combine his remuneration with any benefits that are associated with performing the duties of mayor, alderman or permanent delegate, and that replace a readjustment allowance.

### **5.7. Conditions of service and remuneration of elected representatives**

In the municipalities, mayors and aldermen receive a salary set by the new Municipalities Act by reference to the salary of the town clerk (Articles 19 and 20 of the new Municipalities Act).

An Act of 4 May 1999 has improved the financial and welfare conditions of local representatives.

1. Municipal councillors do not receive a salary but are automatically paid an attendance allowance when they attend meetings of the municipal council and meetings of sections or committees.

The amount of the allowance is fixed by the municipal council but must fall between a minimum and maximum. In addition, the municipality may increase the allowances in certain cases laid down by Royal Order in order to offset the loss of income suffered by the representative, provided the latter makes the request himself.

2. The salary of mayors has been increased and represents a percentage of the maximum step on the salary scale for the town clerk, which varies according to the size of the municipality.
3. The salaries of aldermen are fixed at 60% or 75% of that of the mayor of the municipality, depending on whether the size of the population is 50 000 or less or over 50 000. However, in the Walloon Region, the Act of 4 May 1999 is subject to point 2 of section 5.7 (see above).

The municipal council may also decide to grant attendance allowances to councillors who attend other meetings. Such a decision is subject to approval by the supervisory authority. There is no provision laying down the maximum or minimum sums that may be paid. However, depending on the size of the municipality, the amounts vary from €75 to €300. Attendance allowances can also be paid to councillors who attend preparatory committees.

Salaries and attendance allowances are expenses charged annually to the municipal budget. Other than their salary, mayors and aldermen may not receive any emoluments from the municipality for any reason or in any form.

In the provinces, provincial councillors are paid attendance allowances and, where applicable, a travel allowance in accordance with the provisions of Article 61 of the Provinces Act. Permanent delegates of the provincial council receive a salary the amount of which is set by the provincial council (see Article 105 of the same act).

Tax is payable on the remuneration, in whatever form, received by elected representatives for the performance of their duties.

Only salaries for people without cover are liable to deductions for sickness and invalidity.

Reform of the rules governing elected representatives is planned. The intention is to strengthen the provincial council's democratic control over the permanent delegation. In addition, the question of the welfare conditions of elected representatives who perform no other activity has been put before an ad hoc working party for examination.

### **5.8. Are the sexes fairly represented?**

The Act of 24 May 1994 seeking to promote a balanced distribution of men and women on the lists of candidates for elections, amends both the Provincial Elections Organic Act of 19 October 1921 and the Municipal Elections Act, co-ordinated on 4 August 1932.

On a list of candidates for election, the number of candidates of one sex may now not exceed a quota of two thirds calculated on the total number of seats to be filled at the election.

Where the result thus obtained includes decimals, they are rounded up or ignored depending on whether they are above or below 0.50.

These new provisions only apply in the event of an election for the whole council.

Any list of candidates that does not reflect this distribution between men and women shall be rejected as out of order.

As regards regional elections, an Act of 18 July 2002 provides in Article 2 that "on each list of candidates for election to the regional council the gap between the number of candidates of each sex may not be greater than one. The first two candidates on each of the lists must be of different sexes."

The next municipal elections will be held in 2006. The bodies responsible to amend municipal electoral legislation are currently the regions and it is highly probable that the legislation will be amended so as to provide guarantees at least equivalent to those laid down for regional elections.

## **6. DISTRIBUTION OF POWERS BETWEEN THE VARIOUS CATEGORIES OF LOCAL AND REGIONAL AUTHORITIES**

### **6.1. Principles governing the distribution of powers**

The general principle governing the assignment of power to local authorities is governed by Article 41 of the Constitution which specifies that "interests which are exclusively municipal or provincial are regulated by the municipal or provincial councils in accordance with the principles enshrined in the Constitution". Moreover, Article 162 [2.3] of the Constitution imposes decentralisation of attributions to provincial and municipal institutions.

The vague notions of “interests which are exclusively provincial or municipal” have allowed local authorities to imperceptibly increase the scope and range of their power over the years. However, many local competencies continue to be assigned competencies (that is enshrined in the Constitution or in acts adopted pursuant to it) stemming from the move to decentralisation.

The definition of local powers by reference to the notion of municipal or provincial interest can lead to overlapping powers. In addition, separate authorities may simultaneously have powers for different aspects of a single subject.

As regards the communities and regions, their powers are exclusively assigned powers.

It should be noted that, on this point, the 1993 reform seeking to complete the federal structure of the state introduced a major innovation: the transfer of residual powers to regional and community entities. However, for so long as the exclusively federal competencies have not been limitatively listed in the Constitution, the residual competencies will remain with the federal state (Article 35 of the Constitution).

## **6.2. Distribution of powers between local or regional authorities and the federal state**

In **general administration**, different sectors should be distinguished.

### **Security:**

The federal police come under the federal state (the Minister of the Interior), while the zonal police forces come under the zone boards.

Civil protection is a federal responsibility devolved to the regional and local levels.

Justice and the statistical offices come under the federal state.

Fire fighting and emergency medical assistance were transferred to the Brussels Regional Authority by the Act of 12 July 1989. For the other two regions, these matters are the responsibility of the federal state.

The Federal Authority lays down the rules governing the civil-status register (law-making responsibility). The municipalities apply them.

### **Education:**

The Communities exercise law-making responsibility concerning education and finance education in the Community and grant-aided establishments.

The Communities and the French and Flemish Community Commissions, COCOF and VGC, also act as organising authorities.

Each municipality organises its own education network.



However, the Federal Authority retains three areas of responsibility: setting the start and end of compulsory schooling, minimum criteria for the issue of academic qualifications, and pensions.

As regards the education networks organised by the municipalities, teachers' pay is, subject to certain conditions, borne by the Community under which they come (salary-subsidy system).

### **Health:**

This is a "personalisable" subject within the meaning of the Constitution and comes under the Communities.

Policy on care provision both in and outside care institutions is a Community matter, the responsibility for which, with the exception of university hospitals, has been transferred to COCOF by the French Community in Brussels.

Bilingual institutions (the Iris public-hospital network) come under COCOM.

French-only and Flemish-only institutions come under COCOF or the Flemish Community.

University hospitals come under the Flemish Community or French Community.

The Federal Authority has responsibility, however, for: institutional legislation, financing of the particular establishment when organised under institutional legislation, basic programming rules, basic rules on the financing of infrastructure, including large and expensive medical equipment, national approval rules where these concern the above-mentioned matters, determination of conditions and designation as a university hospital.

### **Social security:**

The Federal Authority has sole responsibility for institutional legislation and the financing of the various branches of social security: health and disability insurance, occupational disease, industrial accidents, unemployment insurance, family allowances and pensions.

### **Social welfare:**

Social assistance is a Community responsibility which, however, the French Community has transferred to the Walloon Region and to COCOF in respect of the Brussels-Capital Region. Also for Brussels, COCOM exercises statutory responsibility for social assistance where institutions have not chosen any language regime (these are the most numerous). It also provides certain financial assistance to persons of low income suffering from serious long-term diseases. The Flemish Community has law-making responsibility for general social assistance to Flemish-speaking institutions. COCOF has statutory responsibility for general social assistance in the case of French-speaking institutions.

Family policy is a Community responsibility and is discharged mainly through the Birth and Childhood Office (*Office de la Naissance et de l'Enfance*).

### **Third-age policy:**

Third-age policy is a Community responsibility. However, in Brussels, the French Community has transferred responsibility to COCOF.

COCOM has statutory responsibility for third-age policy on bilingual institutions, which are the most numerous.

COCOF has statutory responsibility for third-age policy on French-speaking institutions.

The Flemish Community has law-making responsibility for third-age policy regarding Flemish-speaking institutions.

All three finance third-age policy in Brussels.

The Public Centres for Social Action (*Centres Publics d'Action Sociale* (CPAS)) and sometimes the municipalities also finance this policy or are the organising authorities for third-age institutions (rest homes).

### *Exception*

The Federal Authority retains responsibility for the determination, conditions of award and financing of the income-support guarantee for elderly persons (GRAPA).

### **Youth protection:**

The Federal Authority deals with institutional legislation: minors' rights, criminal-law rules on youth-protection offences, youth courts, removal of parental authority and supervision of welfare allowances.

### **Judicial measures on minors:**

The Federal Authority also has law-making responsibility for measures concerning minors who have committed offences and, in Brussels, retains *de facto* statutory responsibility for judicial youth-assistance measures (compulsory-assistance orders).

The Communities are responsible for implementing judicial-assistance measures regarding young people and minors who have committed offences. They legislate on, organise and subsidise institutions concerned with young offenders.

### **Youth assistance (measures not ordered by the courts):**

The Communities adopt institutional legislation and finance youth-assistance actions.

**Housing and town planning:**

Housing policy is the responsibility of the regions. The municipalities take a hand, among other things by requisitioning unhealthy accommodation as part of the management of their housing stock.

The region is responsible for town planning and regional/spatial planning. The Federal Authority co-operates with the Brussels-Capital Region by reason of Brussels's role as the capital.

The municipalities implement regional policy; they issue town-planning and building permits, maintain highways, etc.

**Environment:**

The regions have law-making responsibility for environment and nature-conservation policy. They also take action to implement policy with the support of the municipalities.

*Exceptions*

The Federal Authority retains responsibility for product standards, protection against ionising radiation, transit of waste and trade in non-indigenous species.

**Refuse collection and disposal:**

This is a regional responsibility.

**Sanitation:**

The municipalities are responsible.

**Cemeteries and funeral services:**

The region is responsible for setting standards.

The municipalities are responsible for applying standards and managing cemeteries.

**Culture:**

Culture is a Community matter. The French and Flemish Communities have law-making responsibility in this area and each finances its own cultural policy in Brussels.

In Brussels, the French and Flemish Community Commissions act as organising authority.

The municipalities may play a role as organising authority and part-funder of cultural events.

### *Exceptions*

Federal cultural establishments, i.e. the *Théâtre royal de la Monnaie*, *Orchestre national de Belgique* and the *Palais des Beaux-Arts*, all sited in Brussels, come under the Federal Authority.

### **Sport:**

The French and Flemish Communities have law-making responsibility and provide finance in this area.

The French and Flemish Community Commissions in the Brussels-Capital Region act as the organising authorities. Certain municipalities are also involved.

The French Community has transferred responsibility for subsidising sports facilities to the Walloon Region, and to COCOF as regards Brussels.

COCOF is responsible for subsidising municipal, inter-municipal and private sports facilities. However, subsidies to municipal facilities, which are open to all, are subject to approval by the region.

### **Recognised forms of worship and organised secular facilities:**

- Recognition of forms of worship and secular organisations.
- Payment of the salaries and pensions of ministers of religion and lay moral-assistance staff:

These areas remain a responsibility of the Federal Authority.

- Recognition of local communities (parishes and similar); legislation on and supervision of their asset management: this area is a responsibility of the region.

### *Exception*

Recognition of local lay moral-assistance services and supervision of account-keeping remains a federal responsibility.

- Responsibility for deficits incurred by cathedral councils, Islamic or Orthodox religious institutions or lay moral-assistance establishments (non-denominational): this is a provincial responsibility.
- Responsibility for deficits incurred by church councils or Protestant, Anglican or Jewish religious institutions: this is the municipalities' responsibility .

Relations between the Federal Authority and the regions as regards forms of worship are dealt with in co-operation agreements.

**Transport:**

The region has general responsibility for everything to do with transport: roads, waterways, rules governing highway maintenance, ports etc.

This responsibility includes public-transport companies and taxis (individual transport for monetary reward).

The Federal Authority co-operates with Brussels-Capital Region because of Brussels's role as the capital.

*Exception:*

The Federal Authority is responsible for legislation on and supervision and public financing of autonomous public enterprises, including the SNCB (*Société nationale des chemins de fer belges*), Belgocontrol (air-traffic control) and the BIAC (Zaventem airport authority).

**Economic policy:**

Economic policy includes economic-expansion policy, innovation policy, restructuring policy and the public industrial initiative.

General responsibility: the region, responsible for:

- general economic policy
- regional aspects of credit policy, including the setting up and management of public credit bodies
- sales and export policy
- natural assets

**Foreign trade:**

The 2001 reform completed regionalisation of foreign trade.

General responsibility: the region

Exception: Federal Authority

The Federal Authority can grant export and capital-investment guarantees.

The Federal Authority is responsible for international organisations: World Trade Organisation (WTO), Organisation for Economic Co-operation and Development (OECD) etc under a co-operation agreement to be concluded.

**General rules of European or federal responsibility:**

The Federal Authority has retained a number of areas of responsibility:

- general rules on public contracts, consumer protection, organisation of the economy and ceilings on aid to businesses for economic expansion (these rules can be amended only with the agreement of the regions);

- financial policy and savings protection, including regulation and supervision of financial institutions and insurance firms and the non-regional aspects of credit policy ;
- price and income policy;
- commercial law and company law;
- conditions governing entry to occupations;
- industrial and intellectual property;
- quotas and licences;
- metrology and standardisation;
- statistical secrecy;
- public enterprises (including Belgocontrol (air-traffic control), BIAC (Zaventem airport authority), *La Poste* (the post office), the *Société fédérale de Participations* (SFP) and the *Société nationale des chemins de fer belges* (SNCB) (railways)).

Financial policy is now decided at European level.

Belgian representation in international organisations is governed by co-operation agreements.

### **Agriculture:**

General responsibility: the region, for farm policy. It deals with product policy, price policy, farm aid, promotion, implementation of European measures etc.

#### *Exception:*

The Federal Authority keeps responsibility for:

- safety of the food chain: quality standards for raw materials, plant products and products of animal origin, together with monitoring them;
- animal health and welfare and monitoring of standards;
- income-replacement measures in early cessation of activity by elderly farmers;
- the Belgian Intervention and Refund Office (*Bureau d'intervention et de restitution*), which deals with distribution of European aid to this sector (however, the regions are represented on it).

Belgian representation at European Union level in this area is governed by a co-operation agreement.

### **Energy:**

The region is responsible for regional aspects of energy policy, in particular distribution and local transport of electricity (networks with voltages of 70 000 or less), public gas distribution and rational energy use.

The Federal Authority is mainly responsible for nuclear energy, the federal electricity equipment plan, major energy-storage infrastructure, energy transport and production and tariffs.

**Tourism:**

Tourism is an area for which the French Community, in the case of Brussels, has transferred responsibility to COCOF.

COCOF has statutory responsibility for tourism as regards the French-speaking institutions.

The Flemish Community has law-making responsibility for tourism as regards Flemish-speaking bodies.

**Remark:**

The City of Brussels acts as organising authority and grants large subsidies.

**6.3. Tasks delegated to local or regional authorities acting as agents of the central authority**

The law has delegated some matters to local authorities with due respect for their autonomy; the municipalities have competencies in matters concerning: civil status register, population, electoral affairs, religious facilities, CPAS, education, administrative and judicial police, control of unemployment, issuing of driving licences, pension requests, etc., whereas the functions of the provinces lie in the nomination of candidates for certain judicial posts, validation of municipal elections, opinion on certain alterations to territorial boundaries, etc.

No competence has been delegated to communities and regions, as they are not political authorities subordinated to the federal state; they are real federated entities with their own autonomy towards the federal state and having, in this respect, their own organs and attributions. Regulations issued by these entities have the same judicial force as those of the federal state.

**7. CO-OPERATION AND OTHER TYPES OF LINKAGE BETWEEN LOCAL/REGIONAL AUTHORITIES****7.1. Institutionalised co-operation**

The legal basis concerning this co-operation emerged from the following provisions:

- Article 162 [4] of the Constitution; Article 6 [1.VIII.1] of the Special Institutional Reform Act of 8 August 1980;
- Intermunicipal Associations Act of 22 December 1986;
- Regional rules, in particular the Decree of the Walloon Parliament of 5 December 1996 and the Decree of the Flemish Parliament of 6 July 2001 on the functioning of intermunicipal associations, their oversight and determination of their jurisdiction.

As regards Brussels-Capital Region, only the Act of 22 December 1986 applies as the Brussels Parliament has not yet legislated on the matter.

### 7.1.1 Nature of consortia or joint authorities

Intermunicipal associations are corporate bodies governed by public law. Whatever their form and their purpose, they have no commercial character (Article 3 of the afore-mentioned Act of 22 December 1986).

The social purpose pursued by the intermunicipal association must be of municipal interest. In this respect, the act or decree specifies that “several municipalities may ... form associations which have clearly defined objects of municipal interest ...”.

Intermunicipal associations are purely voluntary bodies. Consortia may, depending on the case, be single-purpose or multi-purpose.

A distinction must be made between simple intermunicipal associations and mixed intermunicipal associations. The former consist entirely of public sector bodies (public authorities) while the latter include private sector bodies. In whatever proportions the various parties contribute to the composition of the nominal capital, it is required that the municipalities have a majority of votes and hold the chairmanship of management and supervisory bodies.

The activity of the intermunicipal association is specified in its articles of association.

### 7.1.2 Activities of the intermunicipal associations

Intermunicipal associations are active chiefly in the following areas:

- water, gas, electricity and television programme distribution;
- economic development (industrial estates) and social development (recreation);
- land and housing development;
- waste treatment and management;
- crematoria;
- tourism;
- medico-social matters;
- finance in general and for more specific matters (eg energy).

### 7.1.3. Organisation and functioning of intermunicipal associations

Intermunicipal associations may be formed as a public limited company, a co-operative or a non-profit organisation in accordance with the act or decrees. However, as stated above, they are non-trading bodies and their purpose must be of municipal interest and clearly specified in the articles of association. In certain cases, they may also decide not to choose a specific legal form (Flemish decree).

Unless extended, the term is limited to thirty years.

The association must have its registered office in one of the member authorities, in premises owned by the association or a member of a public law body.



Public law bodies which are members of the intermunicipal association incur individual liability only, limited to a specified amount. There is therefore no joint and several liability of members, each being liable only for its own undertakings (capital subscriptions, contributions, loan guarantees).

Any alteration to the articles which entails additional obligations or restricts the rights of member municipalities must be decided by each municipality; there is no obligation, nor any right of veto.

Each intermunicipal association holds a general meeting, and has a board of directors and joint auditors.

Each member council appoints the municipality's representatives to the general meeting from among its councillors, mayor and aldermen. Representatives' step down from the intermunicipal association when the term of office for which they were directly or indirectly elected comes to an end.

Each municipality's voting rights at the general meeting are proportionate to the number of social shares it holds, or they may be weighted according to statutory criteria.

The general meeting appoints the directors. Directorships are reserved for the member municipalities and may be filled only by municipal councillors, mayors or aldermen. One or more employee delegates may also sit on the board of directors.

There are incompatibilities between the different functions. Consideration must be given to the federal acts of 4 May 1999 which limit the number of offices that can be held simultaneously by elected representatives, particularly in intermunicipal associations.

The auditors are jointly responsible for supervising the intermunicipal association's activities. The auditors are appointed by the general meeting. At least one must be a member of the *Institut des réviseurs d'entreprises* (Institute of Company Auditors).

The association's books are kept in accordance with the statutory rules for ordinary business accounting. The annual accounts, reports of the joint auditors and statutory outside auditor, and a detailed report on the activities of the intermunicipal association are sent out each year to all councillors of member municipalities, along with an invitation to the General Assembly, which includes, on its agenda, approval of the intermunicipal association's accounts.

Without prejudice to existing legal provisions, intermunicipal associations are exempt from any taxes payable to the state and from any taxes levied by the provinces, municipalities or any other public law body.

## **7.2. Legislative provisions concerning associations of local authorities at national or regional level and their relations with the central authorities**

The fact that the activities of intermunicipal associations are limited as indicated above to purposes of purely municipal interest explains the lack of such provisions.

The acts of intermunicipal associations which are subject to supervision are set out on page 48 under item 9.2.2.2.C.

The supervisory authority has powers of approval over:

1. the formation of the intermunicipal association, its articles and any schedules thereto;
2. any subsequent amendment to the articles.
3. the legal regulations concerning the status of staff members

In addition to these provisions, any act of the intermunicipal association's bodies which is unlawful or against public or regional interest may be annulled by the supervisory authority.

There are nine intermunicipal associations covering more than one region, and these cannot be regulated by a decree or ordinance of one region only. Ideally, a co-operation agreement on how to conduct administrative supervision of such intermunicipal associations should be signed between the regions concerned.

In the meantime, only the Federal Act of 22 December 1986 applies to them. As regards administrative supervision, a *modus vivendi* has been reached between the regions: the region that has most members of the intermunicipal association takes the lead role. If the number of members is identical in each region, the region which contains the headquarters takes precedence.

The absence of a co-operation agreement (though one has been promised) means that it is not possible to avoid inconsistencies in the decisions which the regions take in supervising the intermunicipal associations.

### **7.3. Co-operation between local/regional authorities in different countries**

Belgium was a signatory to and has ratified the European Outline Convention on Transfrontier Co-operation between Territorial communities or Authorities concluded in Madrid on 21 May 1980 and the Benelux Convention on Transfrontier Co-operation between communities or Authorities done in Brussels on 12 September 1986.

The Benelux Convention enables local authorities in the three countries to co-operate whenever it is in the local communities' interests. Such co-operation may take the form of simple practical arrangements or establishing a public body with its own legal personality or some other form of legal arrangement. A working party is currently drafting the statutory instruments to give effect to the Benelux Convention.

Belgium signed Additional Protocol No. 1 to the Madrid Convention on 25 July 1997 and Additional Protocol No. 2 on 2 March 2004.

Municipal/provincial authorities are free to co-operate, on an individual basis, with their foreign counterparts, subject to agreement of the supervisory authority. There are no other provisions in domestic law apart from those mentioned above. Many Belgian municipalities have concluded informal twinning arrangements with foreign authorities on particular matters. In the Walloon Region, the municipal/provincial authorities may co-operate, on an individual basis, with their foreign counterparts, subject to the approval of the supervisory authority should such co-operation lead to a local authority's acquiring a holding in a private-law or public-law corporation.

It should be mentioned that in Brussels on 16 September 2002 France, the Kingdom of Belgium, the French Community of Belgium, the Walloon Region, the Flemish Community of Belgium and the Flemish Region signed an agreement on cross-border co-operation between territorial authorities and local public bodies. Co-operation may take the form of mere arrangements or setting up a public body with legal personality or some other legal structure.

As regards the communities and regions, Article 167 [3] of the Constitution gives their governments the power to conclude treaties, each in its own sphere, on matters that are within the competence of their councils. The Special Act of 5 May 1993 on the international relations of communities and regions sets out the procedures for concluding treaties whether or not (hybrid treaties) they are within the exclusive competence of the federated units. The communities and regions derive from these provisions the power to co-operate freely with foreign authorities.

## **8. FINANCE**

### **8.1. Taxes**

#### **8.1.1 Own taxes**

##### *a. Municipalities*

Belgian municipalities have extensive fiscal autonomy. Article 170, paragraph 4 of the Constitution consecrates as a principle that “no duty or tax can be set for a municipality, a conurbation or federation of municipalities by anything but a decisions of their respective council”. Therefore, there is no exclusive tax that a municipality is obliged to levy.

In principle, the municipal council freely sets the base and the rate, as well as other elements (exonerations, deductions) of the tax it decides to levy. This concerns, *inter alia*, taxes on issuance of administrative documents, on building permits, on the construction of sewage and water supply systems, on urbanism, etc.

These taxes are collected by the local or regional collector.

##### *b. Provinces*

The main provincial taxes are:

- dog licence and bicycle tax;
- moped tax;
- productive energy tax;
- surface water protection tax;
- employee tax;
- tax on hunting and fishing licences;
- tax on motorcycles and boats;

- tax on dangerous, unsanitary or noxious establishments (category 1 and 2);
- tax on water collection.

Since 1 January 1998, provincial taxes have been levied by a provincial collector.

In Flanders, the majority of provinces still have two main taxes:

- the surtax on the withholding tax on income from immovable assets ( *real estate tax*);
- a general provincial tax (payable by families, businesses and professions). Only the Province of Flemish Brabant does not, in addition to the surtax, possess a general provincial tax and levies the taxes listed above or specific duties, e.g. on hunting licences, financial institutions, bank branches, billboards and establishments requiring a permit.

In the Brussels-Capital Region, provincial taxation was taken over by the Region under the Ordinance of 22 December 1994. The Ordinance of 5 June 1997 repealed the energy tax.

### c. *Communities and regions*

The Special Financing Act of 16 January 1989 was amended by the Special Act of 13 July 2001. The latter act grants extended powers to the regions in respect of regional taxes, e.g. gambling and betting tax, tax on automatic entertainment machines, inheritance and capital transfer on death taxes, the tax on income from immovable assets (*précompte immobilier*), the tax on opening fermented-beverage establishments, certain registration fees (conveyancing, mortgages, partitions and related operations, gifts of movable and immovable property), the radio and TV licence, the vehicle-licensing tax and the *Eurovignette* <sup>(1)</sup>. The regions have the power to alter their tax bases and their tax rates and exemptions, although they cannot alter the federal rateable value (which is the basis of assessment of the *précompte immobilier*). They are also empowered to service these taxes. Green taxes no longer form part of regional taxes.

Transfer of certain tax powers to the regions is covered by agreements between the regions. Such an agreement was reached, for example, on 25 April 2002 regarding entry into use of motor vehicles.

The regions also have certain tax-raising powers of their own. They have legislated to introduce a number of regional taxes on matters within their areas of responsibility (e.g. waste-water dumping, household and non-household waste).

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<sup>1</sup> Because the Brussels-Capital Region was no longer on the list of provinces when the former province of Brabant was split in two, certain elements of this taxation were already received directly by it.

In addition, in Brussels-Capital Region, taxation for the Brussels conurbation has been taken over by the Region, i.e. the surtax on the *précompte immobilier* (Ordinance of 22 December 1994), a surtax on income tax (Ordinance of 12 December 1991) and a tax on taxi services (Ordinance of 16 January 1992). The radio/TV tax has been reduced to zero (this has also been done in the Flemish Region).

The Communities also have their own tax-raising powers. These, however, have never been used owing to the difficulties experienced by the Flemish Community and the French Community in exercising them over the territory of the bilingual district of Brussels-Capital.

Community fiscal resources are derived, *inter alia*, from allocation of the following national taxes:

- VAT distributed in proportion to the number of pupils;
- personal income tax distributed according to the location of the yield.

The Communities also receive a grant to compensate for the radio/TV licence (the proceeds from which go to the regions - see above).

#### 8.1.2 Additional taxes

The principal tax receipts of the municipalities come from the following three additional taxes:

- a surtax on the imputed rent income from property (real estate tax);
- local surcharge on personal income tax;
- an additional 10% on the tax on automotive vehicles.

Provinces also collect surtax on imputed rent income from property.

#### 8.1.3 Freedom to fix rate of tax

Local authorities in principle enjoy wide discretion in setting the rate of local taxes. However, the law may impose maximum rates on local authorities. Note must also be taken of the controls that the supervisory authority might be led into imposing.

The regions have power to fix the rate of regional taxes and charges.

#### 8.1.4 Capacity of local and regional authorities to introduce new types of tax

While local and regional authorities are free to levy taxes, this can only be done after a debate in their council. But statute may forbid each of these authorities to tax certain matters. Thus, Article 464 of the Income Tax Code forbids municipalities and provinces from levying a surtax on companies' tax, the tax on corporate bodies and the tax on non-residents.

Under a judgment of the Jurisdiction and Procedure Court, Communities and regions cannot levy taxes on matters that are the subject of a federal tax, except as provided for in the Federal Act.

Furthermore, Article 170 [3.3] of the Constitution provides that statute may abolish entirely or in part the taxes raised by the province; the development of the community and regional taxation is expected to lead eventually to the elimination of tax-raising by provinces, already much reduced.

## **8.2. Grants from higher authorities**

### **8.2.1 Grants allocated by higher authorities**

Grants are either general (with no requirement for them to be applied to a specific purpose) or earmarked (for which the authority is accountable).

The state, communities and regions as well as the provinces may allocate grants to a lower-tier authority (usually municipalities).

Municipalities are financed largely by a share assigned to them by the regions in the Municipalities and Provinces Fund (general grant, allocation or general allocation for municipalities in Brussels-Capital Region).

In the Walloon region, 20% of the Provinces Fund is earmarked for the conclusion of a three-year partnership contract between the province and the region. Receipt of this amount is subject to annual and final evaluations certifying that the contract has been properly performed.

### **8.2.2 Compulsory participation as a precondition to the attribution of grants**

As a general rule, grants may not cover the full amount of the expenditure (with the exception of grants for teachers' salaries). The rule therefore is that the authority receiving the grant will always have to finance a share of the expenditure itself.

As regards equipment grants in particular, decrees often fix the permitted percentage of the investment that can be covered.

### **8.2.3 Regulation on the grant system by law and power of the executive**

Since 1988, the general financing of municipalities and provinces has been wholly a regional competence. Federal legislation may now only act in the machinery of specific grants. It is wholly up to the granting authority to include in its budget the appropriations required for making grants.

The regional governments also have powers expressly allocated to them by the acts or decrees establishing these financing mechanisms. These powers often involve regulating certain technical aspects of the grant process.

### **8.3. Arrangements for financial equalisation**

The main sources of equalisation are:

- the Municipalities and Provinces Fund;

In all cases, the tax potential is used as a criterion for distributing the fund's resources among local authorities:

- Article 48 of the Special Act of 16 January 1989 on the financing of communities and regions established a so-called national solidarity machinery enabling corrective action to be taken in favour of one or more regions where the average amount of personal income tax collected per head of population is below the national average.

In addition, the funding systems (including the equalisation provisions) often rest on fragile language (and hence political) balances. Thus the machinery established is often entrenched by laws requiring a special majority. This being the case, equalisation is sometimes automatic where it is linked to the index or the movement of GNP.

### **8.4. Other sources of income**

Alongside traditional sources of finance, there is a host of other sources of income which it is virtually impossible to list exhaustively.

As examples, such income may be derived from:

- entrance charges to public institutions (museums, swimming-pools, leisure centres, etc.);
- parents' contributions to education costs.

### **8.5. Borrowing**

In Belgium, municipalities can borrow without limitations on term or type of expenditure to be covered. However, loans are essentially reserved for investment expenses. There are no specific regulations on municipal borrowing.

Concerning the Walloon Region, there is provision for local authorities to engage in borrowing, on condition that funds are used to finance capital expenditure, in sections 10 and 48 to 53 of the Royal Decree dated 10 February 1945, which were incorporated into sections 25 to 30 of the Royal Decree dated 2 August 1990. No other regulations exist, but decisions taken by town councils in this area are subject to scrutiny (the authorities may revoke decisions which are against the law or deemed harmful to the public interest). Local authorities are recommended to conduct their finances prudently to ensure "proper" management. The capital market is subject to federal legislation on public contracts.

In the Flemish Region, municipalities can take out a large number of loans, which are used, with a few exceptions (short-term facilities), to finance capital expenditure.

In the Brussels-Capital Region, the 19 municipalities can borrow to finance all types of expenditure. However, borrowing is normally for capital-investment projects. There are no specific rules. The Region performs administrative supervision with the particular aim of seeing that the obligation to balance the budget is complied with. In addition, a public-interest body, the Regional Fund for the Refinancing of Municipal Treasuries (FRBRTC), can either lend funds direct to remedy local financial difficulty under a special agreement between the region, the FRBRTC and the authorities concerned or act as an intermediary between the municipalities and the capital market at the express request of the local authority or authorities concerned.

## **8.6. Financial control**

The autonomy of local authorities is guaranteed by the Constitution. It can only be restricted by an Act. However, the regional authority exercises supervisory control over the budget and accounts of local authorities.

In addition, the financial autonomy of local authorities is heavily dependent on resources (mainly appropriations and grants) from the regional, federal or European authorities.

It requires a special law, or measures pursuant to one, to alter the resources made available to Communities or regions, which creates a form of economic control over their activity. Economic and financial autonomy of the federated entities is an established principle.

Local and regional finances are included in the national accounting statistics compiled by the National Statistical Institute. The Higher (Federal) Finance Council establishes economic and financial ratios which regional and Community authorities are asked to take into account in their economic and financial policy.

# **9. CONTROLS OVER LOCAL/REGIONAL AUTHORITIES**

## **9.1. Authorities responsible for exercising administrative supervision**

Under Article 7[1] of the Special Act of 8 August 1980, as amended by the Special Act of 13 July 2001, the regions are responsible for the organisation and exercise of administrative supervision of local authorities.

This responsibility does not affect the supervisory responsibility of the federal state and the Communities for matters within their particular ambit.



However, under Article 7 [2] of the Special Institutional Reform Act of 8 August 1980, the Federal Authority retains responsibility for:

- organising and exercising ordinary administrative supervision of the municipalities in the German-speaking Region;
- organising (but not exercising) ordinary administrative supervision of Greater Brussels municipalities and the municipalities of Comines-Wareton and Fourons, where special language arrangements apply under the Act of 9 August 1998 (the "linguistic pacification" Act).

The regional government, the permanent delegation or the provincial governor may act, depending on the case, as supervisory bodies (see the regional decrees establishing supervision).

The organisation and exercise of supervision of the German-speaking municipalities were transferred to the Walloon Region by the Special Act of 13 July 2001. By a decree of 27 May 2004, the Walloon Parliament transferred this responsibility to the German-speaking Community as of 1 January 2005.

## **9.2. Forms such control take**

Supervision covers both the legality and the general (or regional) expediency of local-authority decisions (Article 162 [2.6] of the Constitution).

In accordance with Article 162 [2.2] of the Constitution, supervision only applies in cases and according to forms laid down by statute.

Supervision may take the following forms in each region:

### **9.2.1. Brussels-Capital Region**

The Ordinance of 14 May 1998, amended on 18 April 2002, organises administrative supervision of municipalities in Brussels-Capital Region, together with the Order of the Government of Brussels-Capital Region of 16 July 1998.

Certain decisions of the municipal council, the corporation or the mayor must be communicated to the Region for checking. All decisions of the municipal council that do not require to be communicated must be sent in the form of a list with a brief explanation.

Other decisions do not need to be communicated.

General supervision – whether of the suspension or annulment type – applies to all decisions of the municipal authorities that are not subject to approval. It involves review of the legality of municipal decisions and of their accordance with the public interest.

The time limit for suspension or annulment is 40 days from receipt of the decision.

Decisions on the list of brief explanations cease to be liable to suspension or annulment if the government has not objected to them by registered letter with an acknowledgement of receipt within 20 days of receiving the list.

Approval consists in an official finding that the municipal authority's decision does not infringe any legal rule or harm the public interest and is therefore operative.

A decision submitted for approval exists but is inoperative as long as approval has not been granted.

The following are subject to approval:

- organisation chart;
- recruitment and promotion conditions of municipal staff;
- financial regulations, salary scales and allowances of municipal staff;
- pension regulations of municipal staff and the method of financing pensions;
- compulsory resignations and dismissals of municipal staff;
- municipal budget, budgets of municipal businesses and amendments thereto;
- municipal accounts, accounts and revenue and expenditure statements of municipal businesses, and an outgoing local tax collector's final accounts;
- decisions to defray expenses in urgent cases;
- consolidation and rescheduling of the financial costs of borrowings;
- organisation of municipal establishments and services as municipal businesses;
- creation of autonomous municipal businesses;
- the method of awarding and fixing the terms of works, supply and services contracts, except in the case of some less important contracts.

The ordinance also provides for certain automatic measures in the event of the municipality's failure to act (e.g. refusal to enter certain compulsory expenditure items in the budget) and for sending a special commissioner in the event of a municipality's refusal to supply requested information or where it is necessary to ensure that legal obligations have been complied with.

#### 9.2.2. Walloon Region

Supervision is organised by the Decree of 1 April 1999.

##### 1. General annulment supervision:

All decisions, other than those subject to special approval, may be reviewed by the Walloon Government for legality or compliance with the public and regional interest. This is a subsequent review.

##### Appeal:

Any member of the municipal staff who has been the subject of a dismissal or compulsory-resignation decision that has not been annulled by the supervisory authority may appeal to the government.

## 2. Special approval supervision:

Before they can take effect some decisions must receive approval from, as appropriate, the permanent delegation (municipalities), the Walloon Government (provinces and intermunicipal associations) or the governor (police zones).

The matters concerned are:

### A. *Municipalities and provinces*

- a) the budget, the budgets of businesses run by the local authority, budgetary amendments and transfers of expenditure appropriations;
- b) organisation chart and administrative and financial regulations on staff, apart from provisions affecting grant-funded teaching staff and the staff pension scheme;
- c) regulations on taxation;
- d) rescheduling of loans;
- e) loan guarantees;
- f) conversion into a publicly run service, creation of autonomous publicly run services and delegation of management to a public-law or private-law association or company;
- g) acquisition of holdings in a public-law or private-law association or company that may involve expenditure commitments;
- h) the accounts of the municipality and of municipally run businesses.

The first five types of decision are reviewed for legality and conformity with the public and regional interest. The other three are only reviewed from the standpoint of legality.

### B. *Rules specific to control of certain municipal decisions*

Appeals against a decision of the permanent delegation:

Two procedures are laid down:

- a) the governor of the province is required to appeal to the Walloon Government if:
  - the permanent delegation has contravened a law or decree by approving or refusing to approve a decision;
  - the permanent delegation has not ruled on an illegal decision of any of these types;
- b) the municipal council or the corporation of mayor and aldermen whose decision has been refused approval or given only partial approval may appeal to the Walloon Government.

Right of evocation:

For the first three types of decision requiring special approval, the Walloon Government may reserve the right to issue a final ruling, replacing a decision of the permanent delegation by its own.

*C. Intermunicipal associations*

- a) articles of the intermunicipal association and amendments to them;
- b) annual accounts;
- c) composition of the management board, any select bodies and the board of auditors;
- d) general staff provisions;
- e) rescheduling of loans ;
- f) loan guarantees.

*D. Police zones*

- a) regional budget and budgetary amendments;
- b) organisation charts for operational staff and of the administrative and logistic staff of the police zone;
- c) annual zonal accounts.

3. Coercive supervision:

The supervisory authority may appoint, by order, a special commissioner when a local authority fails to supply requested information or data or to take measures required by law, decree, order, regulation or statute or by a final (i.e. unappealable) court decision. The special commissioner is empowered to take all the necessary steps in place of the defaulting authority within the limits of his terms of reference under the order appointing him.

9.2.3 Flemish Region

In Flanders, ordinary administrative supervision of local and regional authorities is governed, firstly, by the Decree of 28 April 1993 regulating administrative supervision of municipalities in the Flemish Region (*Moniteur belge* of 3 August 1993), as amended by the Decree of 15 July 2002, and, secondly, by the Decree of 22 February 1995 regulating administrative supervision of the provinces in the Flemish Region (*Moniteur Belge* of 28 February 1998), as amended by the Decree of 15 July 2002.

The amendments made to these two supervision decrees by the decrees of 15 July 2002 were designed not only to harmonise them but also to simplify administrative supervision of local and regional authorities and make it more flexible.

In the case of the municipalities, approval supervision is retained only for a small number of decisions with substantial financial implications for the authorities – budgets, budgetary amendments, the accounts, setting up autonomous municipal businesses or, at the provincial level, autonomous provincial businesses.

The simplification introduced by the Decree of 15 July 2002 involved, for the municipalities, the abolition of approval supervision in matters of professional staff, debt rescheduling and setting up ordinary municipal businesses. Supervision of autonomous municipal businesses was likewise simplified. With regard to the provinces, simplification involved abolishing approval concerning professional staff, budgets, budgetary amendments and debt rescheduling. The effect of this is that decisions in these matters, like other local-authority decisions, become immediately enforceable although they may still be suspended and/or annulled.

Suspension of the decisions of municipal authorities is a responsibility of the provincial governor. It is for the Flemish minister of internal affairs to rule on possible annulment.

The minister may also suspend or annul decisions of the provincial authorities. The power of annulment possessed by the governor has been abolished for obvious reasons.

The time limits on intervention by the supervisory authority are extremely short: 30 days in the case of direct suspension or annulment and 50 days for an annulment in the event of a municipality or province maintaining a decision that was the subject of a suspension order.

Finally, the two supervision decrees introduce a special complaints procedure. Receipt of the complaint has to be acknowledged within 10 days of receipt, the supervisory authority must ask to see the municipal or provincial decision within 10 days, and the supervisory authority must give reasons for not suspending or annulling the decision.

### **9.3 Remedies for local/regional authorities against improper exercise of administrative controls or unjustified restrictions on their autonomy**

Where supervision is exercised in the first instance by the provincial authorities, the municipalities may apply to the competent regional government for a review of the decision.

However, where supervision is exercised direct or on appeal by the government, a municipality may apply to the Council of State (sitting as an administrative court) for stay and annulment or for immediate annulment if it disagrees with the supervisory authority's decision.

### **9.4 Other forms of supervision**

The courts may incidentally refuse to apply general, provincial or local orders or regulations which they find to be illegal (Constitution, Article 159).

Mention should also be made of supervision of individuals: Articles 82 and 83 of the new Municipalities Act set out the procedure for suspending or dismissing mayors or aldermen for gross misconduct or serious neglect. The disciplinary penalties referred to in Article 82 of the new Municipalities Act concerning mayors will continue to be imposed by the Crown until 31 December 2006.

It is also worth mentioning the special role of the Jurisdiction and Procedure Court (*Cour d'Arbitrage*), which has the power to annul, wholly or partly, any act, decree or ordinance that contravenes rules in, or pursuant to, the Constitution on the scope of state, Community and region responsibilities or infringes Articles 10 (equality of Belgians before laws, decrees or ordinances), 11 (prohibition of discrimination and protection of ideological or philosophical minorities) or 24 (freedom of education and equality of networks) of the Constitution.

Finally, the general rule that sittings of deliberative assemblies are open to the public, together with the verdict of the polls, ensures democratic control of local/regional authorities.

## **10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL/REGIONAL AUTHORITIES**

In a representative democracy, the individual's ultimate remedy lies in the polling booth.

Nevertheless, the Council of State ruling on disputes for compensation or annulment for acting *ultra vires*, represents the ordinary remedy for any individual who feels he has been adversely affected by an administrative act.

Mention should also be made of remedies before the judicial courts and tribunals which, by the terms of Article 144 of the Constitution, remain solely competent for disputes concerning civil rights.

Finally, mention should be made of two mechanisms which allow a degree of protection of individuals against arbitrary measures:

- the right of petition guaranteed by Article 28 of the Constitution.
- resort to an ombudsman where such has been established.
- appeal to the Jurisdiction and Procedure Court if the individual can demonstrate that a measure affects them personally, directly and unfavourably.

## **11. LOCAL/REGIONAL ADMINISTRATIVE PERSONNEL**

### **11.1. Definition of main categories of personnel**

There are two main categories of personnel:

- career personnel (permanent or probationary) subject to conditions of service;
- contract personnel (grant-funded): these may either replace absent career personnel, or replace personnel breaking their career, or perform specific exceptional duties.

Career personnel are ranked hierarchically by levels for all employees of the Belgian Civil Service.

Each of these levels is subdivided into a number of ranks for specified types of post.

These levels and ranks are linked to pay scales.

### **11.2. Authority responsible for administrative and financial rules**

The community governments are totally autonomous in fixing the rules governing the administrative and financial conditions of service of their personnel except for:

- rules relating to pensions;
- general principles dealing with the public sector;
- rules relative to relations with trade unions.

As regard local authorities, within the framework of laws and regulations, the municipal and provincial councils determine the rules applicable to their personnel in administrative and financial matters (cf. Articles 145 and following of the new Municipalities Act and Articles 65 and 71 of the Provinces Act).

However, the regions do have a certain power of initiative. For example:

- in the Walloon Region, the local authorities have been asked since 1994 to introduce new general principles based on professionalisation of the local and provincial public service (training courses with a direct effect on progress up the scale but also in-house training courses aimed at continuous updating of skills);
- in Brussels-Capital Region, successive governments have applied a "Social Charter for Municipal Staff" negotiated with the trade unions and updated regularly. This ensures standard rules on conditions of service and pay.

### **11.3. Relationship, if any, of local/regional conditions of service to those of the national civil service**

For the Communities and regions, reference should be made to the comments in the previous section. It should be noted that the federated entities evolve independently of one another.

As regards local authorities, the broad principles of the conditions of service applicable to their personnel derive from those contained in the conditions of service of the state civil service. However, there is no automatic link between the conditions of service of the state civil service and the provisions applicable to the personnel of local authorities.

However, in implementation of the legal provisions that give it this power, the crown (the federal authority) prescribes rules for police force personnel.

#### **11.4. Authority responsible for recruitment**

Article 149 of the new Municipalities Act gives municipal councils the power to appoint staff whose appointment is not regulated by statute. This power may be delegated to the corporation of mayor and aldermen, except for:

1. medical doctors, surgeons and obstetricians and veterinary doctors to whom it assigns special functions in the interest of the municipality;
2. teachers.

The provincial council appoints all personnel of the provincial administration, with the exception of those whose appointment it delegates to the permanent delegation.

For the communities and regions, each government appoints its own personnel. This personnel is recruited through the permanent secretariat for the recruitment of state personnel.

## **12. REFORMS ENVISAGED OR IN PROGRESS**

<b>Flemish Region</b>	<b>Brussels-Capital Region</b>	<b>Walloon Region</b>
<p>Revision of the new Municipalities Act (Municipal Decree), the Municipal Electoral Act, the Provinces Act and the Provincial Electoral Act.</p> <p>The draft decree on forms of worship has been adopted and the Decree of 16 January 2004 on funerals and burials replaces the previous federal legislation.</p>	<p>Revision of the new Municipalities Act, the imperial decrees (19th century) on forms of worship and the Municipal Electoral Act.</p>	<p>Transfer (draft decree) to the German-speaking Community (from 2005) of powers and responsibilities concerning the organisation and supervision of municipalities and police zones, execution of grant-funded works, and general financing of municipalities, church councils and funerals and burials. (Decree of 27 May 2004 with effect from 1 January 2005.)</p>
<p>The three regions are set to continue using their new powers and responsibilities under the Special Act of 13 July 2001 on the transfer of various powers and responsibilities to the regions and Communities.</p> <p>Reform of the Code on Local democracy by revitalising the management style of municipal and provincial institutions, and by increasing transparency, democracy and efficiency (ensuring the presence of both men and women in local authorities, appointing the mayor by election, establishing a majority pact, ensuring transparency in office and the ethical conduct of elected representatives).</p>		