CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

The Congress Le Congrès
COUNCIL OF EUROPE CONSEIL DE L'EUROPE

43rd SESSION

Report
CG(2022)43-16final
27 October 2022

Original: English

Monitoring of the Application of the European Charter of Local Self-Government in Belgium

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

Rapporteurs:[1] Matthias GYSIN, Switzerland (L, ILDG)
Magnus BERNTSSON, Sweden (R, EPP/CCE)

Summary

This is the 2nd report assessing the implementation in Belgium of the Charter since it was ratified in 2004. In general, the rapporteurs observed general respect for the Charter provisions which have been ratified and conclude overall that the Belgian system of local self-government functions well.

Despite this, they have highlighted several ways in which compliance with the Charter could be improved. For instance, the report notes that there is sometimes insufficient consultation and dialogue between different governance levels. This is particularly acute between the federal and local level and between the government of Brussels-Capital Region and the local authorities. The latter is, in part, due to the absence of an official consultation system. In addition, concerns were raised regarding the uncertain status of provinces, the restrictions on local authorities wishing to recognise and pay their employees and the current system of burgomaster appointment in Flanders which contravenes Article 8.3 of the Charter.

As a result, the report issues a number of recommendations. These include making the principle of local self-government more explicit in the constitution and/or regional legislation and improving consultation processes between different governmental levels by means of a federal bilateral body. Regional authorities are invited to provide greater clarity regarding the status of provinces, hold referenda before municipal amalgamation, and give local authorities greater control over the management of human resources. There are also several specific recommendations addressed to every region and to the German-speaking community.

The report encourages Belgium to ratify the additional protocol to the Charter and Article 9.7, which is currently applied in practice.

1. L: Chamber of Local Authorities / R: Chamber of Regions.
EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

RECOMMENDATION 487(2022)[2]

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that one of the aims of the Congress is "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that "The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government";

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. The Contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government adopted by the Statutory Forum on 7 December 2020;

e. The Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

f. The Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

g. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

h. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

i. The previous Congress recommendation on the monitoring of the European Charter of Local Self-Government in Belgium (Recommendation 366 (2014);

j. The explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Belgium;

2. The Congress points out that:

a. The Kingdom of Belgium joined the Council of Europe on 5 May 1949, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 15 October 1985 and ratified it with reservations on 25 August 2004. The Charter entered into force in the Kingdom of Belgium on 1 December 2004;

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in the Kingdom of Belgium in the light of the Charter. It instructed Mr. Gysin and Mr. Berntsson with the task of preparing and submitting to the Congress a report on monitoring the application of the Charter in Belgium;

c. The monitoring visit took place in two parts: the first part was carried out from 8 to 11 March 2022; the second part from 9 to 12 May 2022. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

2. Debated and adopted by the Congress on 27 October 2022, 3rd Sitting (see Document CG(2022)43-16, explanatory memorandum), co-rapporteurs: Matthias GYSIN, Switzerland (L, ILDG) and Magnus BERNTSSON, Sweden (R, EPP/CCE).

d. The co-rapporteurs wish to thank the Permanent Representation of the Kingdom of Belgium to the Council of Europe and all those whom they met during the visit;

e. The rapporteurs, aware of the specificity of the constitutional structure of Belgium as a federal country, in which there is no longer a national policy on local government, underline that the commitments entered into under the European Charter of Local Self-Government legally bind the Kingdom of Belgium, but it is also and primarily the responsibility of the three regions (Brussels-Capital Region, Flanders and Wallonia), and the German speaking community to ensure the Charter's implementation according to the distribution of competences regarding local government. The recommendations will therefore be addressed to the Kingdom of Belgium as a member State of the Council of Europe, but the implementation thereof will also be a matter for the regions and the German speaking community.

3. The Congress notes with satisfaction that in Belgium:

a. the devolution of the matter of local authorities to the regions has not produced negative results for the local authorities and the regions have enhanced local autonomy;

b. the overall situation of local self-government is assessed in good terms and most ratified provisions of the Charter are respected.

4. The Congress expresses its concerns on the following issues:

a. The little progress achieved in the matter of the appointment of the burgomaster by the regional government in Flanders as well as in the implementation of Congress Recommendations 258 (2008) and 409 (2017). The system of the appointment of burgomaster that is in force in Flanders remains in breach of Article 8.3 of the Charter;

b. the lack of dialogue and consultation between the federal and the local levels on governmental decisions or initiatives that have a direct or indirect impact in the area of local authorities;

c. the lack of an official, structured and systematic consultation process between the government of Brussels-Capital Region and the local authorities;

d. the uncertainty regarding the future of the provinces as the level of provincial responsibility has been reduced (especially in Flanders), their social and institutional relevance is decreasing, and their existence is openly questioned by many;

e. the absence of local referendum with regard to mergers of municipalities, both in Flanders and in Wallonia;

f. the lack of freedom of some local authorities to recognise and pay their employees for high performance, given the rigidity of the relevant regulations.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the Belgian authorities:

a. at the federal and regional levels:

i. to take advantage of the incoming Seventh Reform of the State in order to introduce into the Belgian Constitution the principle of local self-government in a more explicit manner or alternatively, amend the existing regional legislation on local government in order to explicitly introduce the principle of local self-government;

ii. to set up at the federal level a bilateral body composed of representatives of the state and representatives of local authorities, or at least a structural concertation, for an institutional dialogue and consultation on matters that concern the Belgian municipalities, in particular in the area of employment law negotiations for local police officers, firefighters and other local government employees that are paid by municipalities;

iii. to complete the ongoing procedures to ratify the Additional Protocol to the Charter and take necessary steps to ratify Article 9.7 of the Charter, which is applied in practice.

b. overall, at the regional level:

i. to clarify the question of the future of provinces by including a strategic vision on this matter in relevant policies;

ii. to amend the legislation to make local referendums compulsory or adopt the corresponding policy statement to hold local referendums on mergers in the municipalities concerned;

iii. to enlarge the freedom of local authorities in the area of human resources, so that they have more leeway to incentivise their employees and reward high performance.

- *in particular, in Flanders Region:*

  - to amend the current legal process for the appointment of burgomasters, with the aim of abolishing the appointment of burgomasters by the regional executive, so as to establish an automatic appointment by the local council or regulate by law in a clearer and restrictive manner the grounds on which a refusal decision may be adopted by the said government and implement the provisions of Congress Recommendation 258 (2008) and Recommendation 409 (2017).

  - to translate into a circular to be updated, when necessary, the case law of the Council of State in the matter of the right of the French-speaking residents to have access to local official documents in the language they wish for a period of four years after submitting a formal declaration, in the *faciliteitengemeenten.*

- *in the Brussels-Capital Region:*

  - to set up a permanent bilateral body composed of representatives of the regions and representatives of local authorities, for a permanent and stable institutional dialogue and consultation.

- *in Wallonia and the German-speaking Community:*

  - to clarify the allocation of the respective responsibilities of the Walloon Region and those of the German-speaking Community, as regards the municipalities in the territory of the said community.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in the Kingdom of Belgium and the accompanying explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

CONTENTS

1. INTRODUCTION: AIM AND SCOPE OF THE VISIT AND TERMS OF REFERENCE

1. Pursuant to Article 2, paragraph 3, of the Committee of Ministers' Statutory Resolution CM/Res(2015)9 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. The Kingdom of Belgium is a Party to the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter"). Belgium signed the Charter on 15 November 1985 and ratified it on 25 August 2004. The Charter entered into force in the Kingdom of Belgium on 1 December 2004. When ratifying the Charter, Belgium made a declaration according to which the country considered itself bound by most of the articles or article paragraphs of the Charter but did not include some articles or article paragraphs within that declaration. Therefore, it formulated an implicit "reservation" to the following articles or paragraphs of the Charter, which were consequently not ratified, namely:

- Article 3.2 (responsibility of the executive body)
- Article 8.2 (control of local authorities' activities)
- Article 9.2 (local finances)
- Article 9.6 (consultation with local authorities on the redistribution of financial resources)
- Article 9.7 (grants for local authorities)

3. In ratifying the Charter, the Kingdom of Belgium declared that it intended to confine the scope of the Charter to provinces and municipalities, the two main local entities forming the level of local government. The Charter does not apply to the Social Services Centres/Welfare Centres (CPAS/OCMW) in the Region of Brussels- Capital.

4. The Kingdom of Belgium also signed (on 16 November 2009) the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207); however, it has not ratified it yet.

5. In the field of local and regional democracy, the Kingdom of Belgium has signed and ratified a number of Council of Europe international instruments.

- Belgium signed (on 24 September 1980) and ratified (on 6 April 1987) the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106). The convention entered into force on 7 July 1987. Concerning this outline convention, the Kingdom of Belgium first made a declaration excluding the Brussels-Capital Region from its scope of application, but later withdrew that declaration on 30 September 2002. Consequently, that region is at present also covered by the outline convention.

- It signed (on 25 July 1997) and ratified (on 12 June 2009) the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.159, 9 November 1995). That protocol entered into force in Belgium on 13 September 2009.

- Belgium also signed (on 2 March 2001) and ratified (on 12 June 2009) Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169, 5 May 1998); that protocol entered into force in Belgium on 13 September 2009.

- Finally, Belgium signed on 16 November 2009 Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206, 16 November 2009); however, it has not ratified it yet.

6. The Monitoring Committee of the Congress appointed Matthias GYSIN, Rapporteur on Local Democracy (ILDG,[3] Switzerland) and Magnus BERNTSSON, Rapporteur on Regional Democracy (PPE/CCE, Sweden)

3. EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

and instructed them to prepare and submit a report on the application of the European Charter of Local and Regional Self-Government in Belgium to the Congress. The delegation was also assisted by the Congress Secretariat. A two-part visit to Belgium was carried out by the Congress delegation, which was assisted by Professor Angel M. MORENO, Chair of the Group of Independent Experts on the Charter (as an expert). The rapporteurs wish to express their thanks to the expert for his assistance in the preparation of this report.

7. The delegation would also like to thank the Permanent Representation of the Kingdom of Belgium to the Council of Europe, as well as all their interlocutors, for the information they provided during the two parts of the visit. The first leg of the monitoring mission took place in Brussels, Sint-Genesius-Rode and Namur from 8 to 11 March 2022 and was mainly devoted to local democracy. It included a number of meetings with the Belgian Delegation to the Congress, representative associations of local authorities, the Constitutional Court, the Council of State and individual local authorities. The second part of the visit took place between 9 and 12 May 2022 and included a further round of meetings with Belgian institutions and political representatives. The detailed programmes of these visits are also appended to the present report.

8. According to Rule 79 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent in July 2022 to all interlocutors met during the two parts of the visit for comments and possible adjustments or corrections (hereinafter referred to as the "consultation procedure").

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

2.1 Local and regional government system (constitutional and legislative frameworks, reforms)

2.1.1 Constitutional and legislative frameworks

2.1.1.1 Introduction

9. Belgium obtained independence in 1830 and seceded from (at that time) the Northern Netherlands. On 7 February 1831, the national congress adopted a constitution which remains in force, although it has been amended several times. The Kingdom of Belgium is now a federal, constitutional monarchy whose form of government is a parliamentary democracy. The head of state is HM King Philip, the King of the Belgians.

10. For most of its history, Belgium was an unitarian country, but since 1970 several constitutional reforms have radically transformed the territorial structure of the country. Six reforms have taken place so far, the last one in 2014, and another one is expected to take place in 2024. These reforms were mainly driven by the existence of three distinct cultural and linguistic groups and the need to set up a workable and satisfactory arrangement for the cohabitation of those groups: the Dutch-speaking group, the French-speaking group and the German-speaking group. As a result of these reforms, the Kingdom of Belgium is at present one of the most decentralised countries in Europe, endowed with a complex institutional and territorial system. In this respect, Article 1 of the Belgian Constitution states that "Belgium is a federal state composed of Communities and Regions".

11. At present, the kingdom comprises three territorial levels of government:

- the federal level, which is mainly responsible for issues concerning international affairs, defence, taxation and finances, the judicial system, and institutional reforms;

- the regional level, composed of two different types of entities: the regions (*régions* in French, *gewest* in Dutch) and the communities (*communautés* in French, *gemeenschap* in Dutch). These entities are usually referred as the "federated entities";

- the local level, composed of municipalities, provinces and other local entities that may be created by regional legislation (such as the Social Services Centres).

12. This complex structure has required the establishment of several structures of dialogue, consultation and negotiation among the federal government and the federated entities, the most important of which is the "concertation committee" (CODECO). All the three levels are summarily described below.

2.1.1.2 The federal level

13. At federal level, the most important political institutions are the King, the government, the parliament and the judicial power.

14. The King is the head of state and formally exercises several functions in connection with the three essential powers of the state: the executive, legislative and judicial power. Thus, the King discharges the executive powers, and the constitution proclaims that the federal executive power belongs to the King (Article 37 of the constitution). He also intervenes in the legislative process (Articles 44, 45 and 74 of the constitution). Judicial decisions are implemented in the name of the King.

15. The federal government actually exercises the executive powers and competences of the federal state, implements legislation and appoints and dismisses ambassadors. The current federal government is headed by the prime minister, Alexander De Croo. The government, currently supported by a seven-party coalition (usually called the “vivaldi” coalition) is composed of 15 ministries, which are mainly responsible for issues concerning international affairs, defence, taxation and finances, the judicial system, external commerce and institutional reforms. For the purpose of this report, it is noteworthy to underline that, as a rule, the field of local authorities does not belong to the federal government, but to the regions, as this matter has been devolved to those regional entities. Although there is a Ministry of the Interior at the federal level, it is mainly responsible for police issues and has no directorates or services concerning local authorities.

16. The Parliament is composed of the House of Representatives and the Senate. There are 150 MPs in the House of Representatives, elected for a five-year term by general, direct and secret elections (the last general elections were held on 26 May 2019). The House of Representatives discusses and approves the different types of statutes provided for by the Belgian Constitution (ordinary acts, “organic” acts, special acts). For the purpose of this report, the most important are the “special acts”, pieces of legislation that need a special majority in parliament and that define, for instance, the responsibilities of the regions and those of the communities. The House of Representatives also controls the federal government and performs the regular function of a national parliament. The house is organised into two linguistic groups: the French-speaking group and the Dutch-speaking group. Complex rules and arrangements try to organise the work of the house and avoid the pre-eminence of one group over the other.

17. The Senate is composed of 60 senators. The Senate has a minor role in the legislative process and in the control of the federal government. Moreover, the senators are no longer elected directly by the people, following the sixth constitutional reform. The Senate is now composed of 50 members of the parliaments of the communities and those of the regions. They are thus indirectly appointed. In addition, ten senators are co-opted according to the results of the House of Representatives. It is supposed to serve as a forum for discussion and reflection on matters between the federated entities.

18. The judicial power follows the French tradition and is structured around the ordinary or “judicial jurisdiction” and the “administrative jurisdiction”. The former includes the civil, commercial, criminal and labour courts and its highest court is the Court of Cassation. This court acts as a sort of Supreme Court, except for administrative proceedings. The administrative jurisdictions include some specialised administrative courts and the Council of State. For the purpose of this report, it is important to underline that the judicial system has not been devolved and is a federal responsibility.

19. At the head of the judicial system stands the Constitutional Court (formerly the Court of Arbitration), which has exclusive responsibility for checking the constitutionality of the laws, clarifying the allocation of powers among the different entities within Belgium and protecting the fundamental rights embodied in the Belgian constitution.

2.1.1.3 The regional level

20. The subnational level of government in Belgium is probably one of the most complex in Europe, because, contrary to regular practice, there is not one single type of entity (as in Italy, Spain or Austria), but two. In addition, the territorial basis of these entities is peculiar to each type and the territory of the entities may overlap in some cases. Moreover, their political institutions have sometimes absorbed the institutions of others or have established permanent joint bodies, making more difficult a neat differentiation between one and the other. As Belgian constitutional experts point out, the institutional situation in Belgium constitutes a

federalism of variable geometry, whose complexity is the result of compromise, long negotiations and careful balance.[4]

21. An important differentiation should be made between the regions as such and the communities, although both subnational entities form the "regional level" of government for the purpose of this report. To begin with, the Belgian Constitution lays down the following basic principles.

a. Under Article 3 of the constitution, Belgium is comprised of three regions. These are the Flemish Region (*Vlaamse Gewest* in Dutch, or *Vlaanderen*, "Flanders" in short), the Walloon Region (*Région wallone* in French, or "Wallonia" in short) and the Brussels-Capital Region. Each region has a neatly established territorial scope and its own boundaries.

b. Under Article 2, Belgium is comprised of three communities: the Flemish Community, the French Community and the German-speaking Community.

22. Regions are federated entities with responsibilities for the territory, while communities implement powers and competences connected to the delivery of service to citizens. Specific statutes enacted by the federal parliament and known as "special acts", adopted by specific and reinforced majorities, delineate the competences of regions and communities.

23. Each community has a neatly established territorial scope and its own boundaries. To better understand the territorial scope of regions and communities, we should note three important aspects: (a) the Flemish Community and the Flemish Region cover the same territory; (b) the German-speaking Community (situated in the east of the kingdom) is enclosed within the territorial scope of the Walloon Region – consequently, this region includes both the French Community (excluding the Brussels area) and the German-speaking Community; (c) the French Community and the Flemish Community also have responsibilities within the Brussels-Capital Region.

24. Moreover, and under Article 4 of the constitution, "Belgium comprises four linguistic regions: the Dutch-speaking region, the French-speaking region, the bilingual Brussels-Capital Region and the German-speaking region". In contrast to the "regions" (in the narrow sense) and "communities", these linguistic regions or zones do not have an institutionalised or bureaucratic apparatus of their own, which is very important for this report since the constitution provides that "Each municipality of the Kingdom forms part of one of these linguistic regions" (Article 4, second indent). The construct of linguistic regions/zones is relevant for the purpose of determining the "official language" that must be used by regional and local authorities, a notion that is critical and very sensitive in the Belgian political landscape. The official language issue determines which of the three languages spoken in the kingdom must be used in the relations between citizens and the public administration, in judicial practice, in education and for other purposes. The Flemish and Walloon regions and the three communities are strictly monolingual entities, while the Brussels-Capital Region has two official languages: Dutch and French. Regions and communities are considered now in more detail.

The regions

25. Each "region" is a federated entity that has its own parliament, its own government and its own public administration. These institutions are regulated by their own laws in respect of some basic federal rules. The regional parliaments produce legislation and control the executive. Regional MPs are elected for a five-year term through direct and secret ballot; regional elections take place the same day as the European Parliament elections, by virtue of federal law. The regional parliaments approve regional legislation, which is known by different names: in Flanders and in the Walloon Region, there are "decrees"; in the Brussels-Capital Region the acts of parliament are called "ordinances". The regional government results from the parliamentary elections and must have the support of the regional parliament. The government is headed by a regional president (Minister-President) and is comprised of regional ministers, who serve a five-year term. The internal organisation of the regional government is entirely regulated by regional laws and regulations.

26. The Belgian regions are quite uneven in terms of size. Two are very large (Flanders, 13 625 km^2, and Wallonia, 16 901 km^2) and the third is very small (the Brussels-Capital Region, only 162 km^2). Nonetheless, the three have far-reaching autonomy and responsibilities. Moreover, there is not a general clause of supremacy of national laws over regional legislation. The regional acts are placed on an equal footing with the federal laws and the regional parliaments are equivalent to the federal parliament. The conflicts between

4. See Marc Uyttendaele: *Institutions fondamentales de la Belgique,* Bruylant, 1997, p. 124.

the respective laws are adjudicated on by the Constitutional Court, not on the basis of normative "hierarchy" but on the principle of competence.

27. An important issue to underline is that the two big regions are unilingual regions (Dutch in Flanders, French in the Walloon Region), however it is worth noting that a few municipalities with facilities are located on the Flemish territory. The Brussels-Capital Region is officially bilingual (Dutch and French). There is also the German-speaking Community, located in the east of the kingdom, in the territory of the Walloon Region.

28. The responsibilities of the regions are not defined in the domestic constitution, but in the applicable "organic" or special acts, which are approved by a reinforced majority in the federal parliament. The functions of the regions concern all issues that have a territorial, land or real estate connection and that feature economic or economy-related aspects. Consequently, regions have responsibility for the economy, employment, research, foreign trade, regional planning, transport, mobility, energy, local authorities, the sports infrastructure, tourism, environmental protection, water, agriculture, rural development and nature conservation.

29. Most of those responsibilities are full and exclusive, although for the discharge of some of them the regions must co-ordinate with the federal level. In addition, and in contrast to what happens in other countries, regions also have an important role in international affairs, such as foreign trade. For instance, regions may conduct international relations in the framework of their regional subjects and competences, and must ratify international treaties signed by Belgium, if the treaty in question relates to regional responsibilities (like the Charter or its additional protocol).

30. In light of the above, it is clear that the regional governments have the greatest responsibility for issues concerning local authorities, both legislative and executive. Consequently, each regional parliament approves the pertinent legislation for the local authorities located in the territory of that region, and each regional government discharges the executive powers connected with local authorities by means of a dedicated ministry or other type of agency or body. For this reason, in Belgium there is no national legislation regulating the legal status, competences, internal organisation, supervision or activities of the local authorities, but three different and separate legislative entities: the legislation in force in the Flemish Region, that in force in the Walloon Region and that applicable in the Brussels-Capital Region (plus that in place for the German-speaking Community; see below). This fragmentation of the domestic legal framework adds a special degree of complexity to the analysis of local democracy in Belgium. Consequently, the basic features of local government will be presented separately for the three regions, where applicable. Common features will be highlighted as necessary.

The communities

31. As in the case of the regions, each of the three communities is also a federated entity with its own parliament, its own government and its own public administration. Communities are types of "regional" (*lato sensu* speaking) entities endowed with an important domain of powers, but the realm of their competences is different from that of the regions. The competences of the communities are not defined by the domestic constitution, but in the applicable special acts. The domains of action of the communities have mainly a personal (instead of a territorial) dimension, relating to the person instead of to the territory or the land. Hence, the communities have responsibilities in the following domains: culture, education (at all levels, from primary schools to university), health, social services, family matters, sport, youth assistance, scientific research, legal advice centres and the like. During the consultation procedure, the Government of Brussels-Capital Region stressed that certain community competences (in the so-called "personalised" matters) are exercised in the Brussels-Capital Region by the community committees: the French Community Committee (COCOF), the Flemish Community Committee (VGC) and the Joint Community Committee (COCOM). COCOF and COCOM have their own governments and parliamentary assemblies. And the three Committees have their own administration. The COCOM has competences in social matters (link with the CPAS at local level).

32. Some remarks should be made about some of these communities. First, it is important to stress that the competences of the government of the Flemish Region have been absorbed by the government of the Flemish Community, and consequently there is one single government for both entities. At the same time, the competences of the Parliament of the Flemish region have also been absorbed by the Parliament of the Flemish Community, and consequently there is one single parliament for both entities. Hence, in Flanders the key political institutions of the community and the region have been amalgamated and the competences are discharged by one single Flemish Government and by one single Flemish Parliament. Formally speaking,

though, the Flemish Region and the Flemish Community still subsist as different and separate political entities.

33. Second, specific mention should be made of the Wallonia-Brussels Federation, which has referred to the French-speaking Community since 2011. However, this terminology is mainly used in institutional communication, publicity, policies and campaigns of that entity. That “federation” discharges powers connected with the French-speaking people living in the Walloon Region and in the Brussels-Capital Region. The MPs of the community’s parliament are not directly elected, but come from the Walloon Parliament or from the French linguistic group of the Parliament of the Brussels-Capital Region.

34. Finally, for the sake of this report, a relevant remark should be made concerning the German-speaking Community (*Deutschsprachige Gemeinschaft*), located in the east of the country (sometimes referred to as “Ostbelgien” in institutional and tourism communication). This community has its own parliament (25 members directly elected by the people every five years) and its own government. This community is somehow “special” in the sense that, by agreement with the Walloon Region, it has had and has discharged important responsibilities in the domain of local authorities since 2013. Thus, this community has competences that are typical for a community and competences that are typical for a region. The community responsibilities include culture and cultural heritage, sports, mass media, young people, training, the use of languages, education and professional training, policies related to the family, health and social affairs, assistance for people with disabilities, young people and the elderly and for the integration of immigrants, and family allowances.

35. In terms of the competences that this community has received by means of transfer from the Walloon Region, we refer to the protection of monuments and historic places, employment, the control and financing of its own municipalities (a total of nine), tourism, town and county planning, housing and energy. The community is therefore responsible for legislation concerning local authorities and for every matter concerning funding for local authorities, local finances and governmental control (*tutelle)*. Consequently, for the nine municipalities included in the German-speaking Community, the community is the governmental interlocutor and the reference level of administration, and not the Walloon Region.

2.1.1.4 The local level

36. The local level of public administration involves two types of entities having a territorial basis: the municipalities and the provinces. Both types of entities are mentioned in the constitution, which provides some rules for their organisation and powers in its Chapter VIII, named “on provincial and municipal institutions” (Articles 162 and following). Moreover, the constitution protects the boundaries of municipalities and provinces (see below). Municipalities and provinces share many common institutional features. During the consultation procedure, the Government of Flanders underlined that the local level of public administration involves basically two types of entities having a territorial basis: the municipalities and the provinces. Both types of entities are mentioned in the Constitution, which provides some rules on their organisation and powers in its Chapter VIII, named “on provincial and municipal institutions” (Articles 162 and following). Moreover, the Constitution protects the boundaries of municipalities and provinces. The sixth state reform amended several articles of the constitution and articles of the special law of 8 August 1980 on institutional reform in order to ensure the full exercise of regional autonomy as regards the provinces. the Government of Flanders added that the changes now allow the Regions to create new provinces, to reduce the number of provinces or to abolish the provinces. The amendments also provide that if the Regions decide to abolish the provinces, they can, if they wish, replace them with so-called "supra-municipal administrations".

The municipalities

37. Municipalities (*commune*s in French, *Gemeente* in Dutch, *Gemeinde* in German) are the first tier of local administration. Currently there are 581 municipalities in the kingdom. This figure is the result of a comprehensive programme of amalgamations, first initiated by the federal state. Between 1964 and 1977 the number of Belgian municipalities fell from 2 359 to 589. Nowadays, 300 municipalities are located in the Flemish Region, 262 in the Walloon Region and 19 in the Brussels-Capital Region.

38. As noted above, each region has the power to enact the legislation applicable to the municipalities located in its territory, a key feature that might potentially provoke a divergent normative picture and important differences among the Belgian municipalities. However, municipalities share some common features, which are described in this report. Municipalities have full administrative and regulatory powers to adopt individual decisions concerning individuals and corporations, and to adopt local regulations of a fiscal or general nature.

Apart from that, the boundaries of the municipalities can only be changed or corrected by virtue of a law (Article 7 of the constitution).

The provinces

39. The provinces are the second tier of local administration in Belgium, between the regions and the municipalities. Historically, they have followed the precedent of the French *départements*[5] and constitute a typical 19th-century subdivision of the territory for the discharge of the functions of the state administration. At present there are 10 provinces. Five are located in the Flemish Region and five are located in the Walloon Region. The very existence of the provinces, their number and name are guaranteed by the constitution, whose Article 5.1 provides that: "The Flemish Region comprises the following provinces: Antwerp, Flemish Brabant, West Flanders, East Flanders and Limburg. The Walloon Region comprises the following provinces: Walloon Brabant, Hainaut, Liege, Luxembourg and Namur".

40. The area of Brussels-Capital is considered as an extra-provincial territory, on the basis of Article 5.2 of the constitution: "A law can exclude certain territories, of which it establishes the boundaries, from division into provinces, bring them directly under the federal executive power and subject them to a specific statute. This law must be passed by a majority as described in Article 4, last paragraph". Consequently, there are no provinces in that region.

41. Following the Fifth Reform of the State (see below), responsibility for the provincial institutions was devolved to the regions. Hence, the regions have the power to regulate the different aspects of the provincial institutions and establish their own peculiar features. In addition, they could even decide to dissolve the existing provinces and replace them with supra-municipal entities (see below).

42. A common feature is that provinces are responsible for regulating and managing the provincial interests, something deriving from the federal constitution. Thus, the province defends the supra-local interests, provides support at the request of other authorities and plays a role in establishing co-operation schemes between local authorities located in the province. Some of the basic rules presented above for the municipalities apply also, *mutatis mutandis*, to provinces. For instance, the provincial elections and the municipal elections take place the same day (the next local elections should take place on 13 October 2024). Since 2006, the local elections have not been organised by the federal state, but by the respective region.

43. The future of the provinces in the federal state is a matter of great debate in Belgium. In reality, this is not a new debate, but a long-standing debate, going back to the 1990s.[6] There is no consensus or majority view on the future of these local authorities. Some political parties would like to abolish them. Some interlocutors the delegation spoke to called into question the very existence of the provinces (for instance, some Flemish representatives stated that the provinces are superfluous and that they wanted to abolish them). They claim that they were created at a time that was radically different to now, and that they have become redundant. Provinces now have very few responsibilities, especially in Flanders, where the regional institutions have withdrawn many of their roles and transferred them to the regions.

44. The principle of provincial self-administration is proclaimed in Article 41 of the constitution ("the interests which are exclusively of a … provincial nature are ruled on by provincial councils, according to the principles laid down by the Constitution"). As in the case of municipalities, the boundaries of the provinces can only be changed or corrected by virtue of a law (Article 7 of the constitution).

2.1.2 Reforms

45. As noted above, Belgium has undergone six constitutional reforms since 1830, which have largely transformed the kingdom. From a unitary country, Belgium has become a federal country (with some functional notes of confederation). This general federalisation of the country has not been accomplished in a political vacuum, since many aspects of the political, economic and cultural life have over time ceased to have a "national" dimension. For instance, currently there are no more major political parties having a "national" scope, but there are instead only "regional" parties; there are no national television or radio channels, but regional channels resulting from the dismantling of the old "national" media corporation (RTB/BRT, established in 1960).

5. A leading Belgian administrative law scholar once wrote that the Belgian provinces "are the prolongation of the French départements" (Mast A., *Précis de Droit administratif belge,* Edits Sientifiques, Brussels, 1966, page 209.
6. *L'avenir des communes et provinces dans la Belgique fédérale*, Bruylant, Brussels, 1997.

46. The federalisation process began in 1970 and saw subsequent reforms of the state in 1980, 1988-1989, 1993, 2001 and 2014. The 1970 reform enshrined the three cultural communities and was the beginning of the process of reforming the state legal system. All of the subsequent reforms deepened the devolution process. Thus, in 1980 the Second State Reform continued the work begun in 1970. This reform gave birth to the fully fledged three communities, presented above.

47. The 1980 reform also gave birth to two regions, the Flemish Region and the Walloon Region. In 1988-1989, the Third State Reform resulted in particular in the creation of the Brussels-Capital Region, and the functions of the communities were enlarged. With the Fourth State Reform (1993) Belgium became a fully fledged federal state in which the communities and the regions set up under the previous reforms acquired all their powers. The 2001 reform transferred further powers to the communities and regions.

48. Finally, the Sixth State Reform (agreed in 2011 and effective in 2014) provided for further substantial state reform. This reform had three aspects: (a) the rearrangement of the electoral constituency of Brussels-Hal-Vilvorde; (b) another transfer of federal powers to the federated entities; (c) a change in the financing of the regions and communities, especially that of Brussels-Capital.

49. A seventh constitutional reform was launched by the federal government in November 2020 and was going through a preliminary stage at the time of conducting this monitoring mission. It is expected that the reform will be agreed by 2024 and put into practice during the following parliamentary term (2024-2029). The issues and topics addressed by this forthcoming reform are not clearly or finally identified, but it is anyway supposed to be an opportunity to streamline the functioning of the federal state. According to the Government Declaration of 1 October 2020, the state reforms aim to "achieve a new state structure from 2024, with a more homogeneous and efficient distribution of competences".

50. The bicameral commission on institutional reforms is a joint parliamentary body in the federal parliament that is in charge of the first steps of state reform. In December 2021, the Senate and the House of Representatives agreed on the prolongation of this commission, which was supposed to work until March 2022. This body was responsible for identifying the basic obstacles and the pros and cons of the present allocation of powers among the federation and the federated entities, among other things. So far, this commission has analysed different structural aspects of the Belgian state: the provision of health services, the fight against climate change, the co-operation between the federal and regional levels, mobility questions and bicameralism. At the same time, it will try to formulate suggestions to improve the current structures. The commission was to present remarks and recommendations, but no proposals as such. In parallel, a wide process of multilevel popular consultation has been launched by the federal government and by other bodies and institutions.

51. None of our interlocutors had a clear picture of which actual reforms were to be accomplished, and apparently there is no clear consensus on "what should be changed" and "what the desired results are". One may hear broad or vague references to the "need to simplify the current institutional structures", in order to avoid overlap among the different governmental layers and entities, while others advocate a further decentralisation in favour of the regions and a consequent weakening of the federal level. Others speak openly of setting up a "confederation" of almost-sovereign regions. However, all of them have underlined their own red lines, concerned with the present "status quo".

52. The present political and constitutional landscape of Belgium is based on a delicate multiscale equilibrium and it is very hard to see, at least for the time being, a clear political majority among the federal level and the federated entities on the precise outcome of this seventh state reform. The issue of financing, and how the reform will amend the current pattern of intergovernmental financing, is a very hot topic.[7] The future of Brussels, in the context of a potential new "regional" arrangement, also triggers heated debates.

2.2 The status of the capital city

53. Brussels has been the capital of Belgium since the time of national independence. In this vein, Article 194 of the constitution provides that "the city of Brussels is the capital of Belgium and the seat of the Federal Government". The city of Brussels (not to be confused with the Brussels-Capital Region) is not only the seat of the leading federal political and judicial institutions, but also the seat of a number of regional and community institutions (such as the Flemish Parliament and the Parliament of the Brussels-Capital Region). One should recall, too, that several municipalities around Brussels city also host federal institutions or bodies.

7. See the remarks made by the President of the Parliament of the Brussels-Capital Region, Mr Madrane, in an interview granted in early May this year: "Pas de nouvelle réforme de l´Etat sans débat sur le financement de Bruxelles", *Le Vif,* edition of 7 May 2022.

54. The city of Brussels is probably the capital that hosts the highest number of governments in the world. It is a quadruple capital: apart from being the national capital, the city of Brussels is also the capital of the French Community and of the Flemish Region, although the city of Brussels is not located in the Flemish linguistic area. Moreover, the city of Brussels is usually regarded as the capital of Europe, since it is the seat of the Commission and the Council, among other EU institutions, such as OLAF, and of NATO.

55. Although the city of Brussels is the long-standing capital of the country, it is not endowed with a special administrative or legal status. In general, legal terms, the city of Brussels is one of the 19 municipalities forming the Brussels-Capital Region and it derives its organisation and powers from the constitution and from the applicable regional or federal legislation, in the same way as all the other municipalities in the country, with no particular distinction.

56. In realistic terms, it is technically and politically difficult to grant a specific status to the city of Brussels alone, because it is surrounded by 18 more municipalities which form a very compact territory and altogether integrate the Brussels-Capital Region. There is no clear spatial discontinuity between the city of Brussels and the surrounding municipalities of Schaerbeek, Ixelles or Sint Josse, for instance. Instead, there is a wide and compact urban continuum. Consequently, one may argue that the specific needs and arrangements of the "metropolitan area" of Brussels (the Brussels agglomeration) have given it a specific status as a fully fledged region, that of Brussels-Capital. The delegation specifically asked the city of Brussels representatives whether they would like to have a special status, like other major capitals of the world (Washington DC or Mexico City, for example). They stated that they did not want such special status, and that this was not a desirable prospect.

57. In any case, the city of Brussels enjoys some specificities, mainly in financial matters. For instance, under the Special Financing Act establishing the financing system for federated entities, the city of Brussels receives an annual special grant (section 64) from the federal government, which currently amounts to 15% of its budget. This allocation is adjusted annually in line with the consumer price index. Brussels also receives specific resources for particular projects or distinctive aspects of the city (such as urban policy, prevention and safety projects or holding European summits).

58. Local taxation in Brussels is comparable to that in the country's other cities, and there are no taxes specific to the city of Brussels. The status of multilevel capital has pros and cons for local finances. On the one hand, and thanks to its status as the "European capital", Brussels has a level of economic activity that is on aggregate higher than in other cities and, with the same level of local taxation, receives more financial resources. This also generates intensive building and urban renewal activity, which means an increase in revenue from property taxes compared to similar big cities. On the other hand, though, the overconcentration of regional, federal, European and international institutions within the city of Brussels has also had a somewhat negative effect on property tax, since the buildings occupied by these various institutions are not subject to real estate tax.

59. The city of Brussels is also confronted with specific problems that are unique or greater than elsewhere because it is the capital. These include the reception of refugees, levels of homelessness or the organisation of so many international summits, for which the city must provide security, logistics and the like. The city of Brussels also has the largest network of schools, universities and hospitals among all Belgian cities. Also, the population grows at a higher rate than other municipalities in the country (partly caused by domestic and international immigration), while the budgets do not grow at the same rate. For all these reasons, the capital receives a special endowment or allocation, mentioned above, that the city can freely administer.

60. City of Brussels representatives reported two basic complaints to the delegation. First, the city of Brussels, like other cities but more acutely, faces the problem of paying the retirement pensions of local government staff who have the legal status of civil servants (*agents statutaires*), a spending commitment that grows every year and which Brussels and most Belgian cities struggle to manage. Second, the federal government negotiates with the trade unions the working conditions and salaries of relevant groups of local employees, such as firemen and policemen. The municipalities are neither involved in the negotiations nor heard, but at the end of the day they must pay the negotiated salaries from their own budgets (these issues will be presented in more detail below).

2.3 Legal status of the European Charter of Local Self-government

61. While Belgium was quick to sign the Charter, in November 1985, it was only ratified by the Belgian federal legislator by means of an act of 24 June 2000. However, this piece of legislation was not published in the Belgian Official Journal until 25 August 2004, after the ratification of the text by the several parliaments existing in Belgium (federal and regional). The reason is that for those international treaties that touch upon matters falling within the domain of responsibility of the regions, the regional parliaments must also express their consent to be bound by them, and it takes time to collect all the required agreements. Consequently, the Charter only came into effect for the Kingdom of Belgium on 1 December 2004.

62. As noted above, Belgium declared to be bound by the majority of the provisions of the Charter but excluded a few articles or paragraphs of articles (Articles 3.2, 8.2, 9.2, 9.6 and 9.7). These are usually regarded as "reservations", although the Charter does not provide explicitly for reservations, in the technical sense of the word.

63. Belgian scholars have explained the reasons for some of these "reservations". Thus:
- the exclusion of Article 3.2 can be explained because Belgium "did not plan at the time of ratification the fact that the executive municipal body must be responsible to the assembly of elected representatives";[8]
- Article 8.2 was allegedly excluded from ratification because article 162 of the Belgian Constitution itself establishes the existence of a control of conformity on the activity of local authorities with the general interest.

64. On the other hand, the application of the Charter is limited to municipalities and provinces. Consequently, the Charter does not apply to other types of local bodies that might be created by regional legislation.

65. Concerning the status of the Charter within the domestic legal order, the binding nature of that instrument derives not only from the Charter itself as an international treaty (the observance of international obligations is mentioned in Article 169 of the constitution) but also from the act of ratification, mentioned above. According to Belgian scholars, the very existence of this statute "does not require any other supplementary legal instrument, so that local authorities are entitled to demand respect for the provisions of the Charter".[9]

66. As a matter of fact, the Charter has been a source of inspiration and was invoked by both the Flemish and Walloon parliaments when adopting their respective legislation on municipalities and provinces. Moreover, the Council of State and the Constitutional Court have referred extensively to the Charter in a number of decisions (see below, the commentary on Article 11 of the Charter).

67. Last but not least, reference should be made to the non-judicial activity of the Council of State in the domain of respect for the Charter. As in France, the Belgian Council of State has an advisory section. In discharging its advisory functions, the Council of State provides legal advice to the state bodies and parliament. In this capacity the Council of State played a role in the drafting of the act of ratification of the Charter and may call the attention of the political branches to a potential breach or violation of the Charter when the state wants to approve a new piece of legislation.

2.4 Previous Congress reports and recommendations

68. The situation of local and regional democracy in Belgium was previously the subject of a monitoring visit in 2003, which resulted in the corresponding report and in Recommendation 131 (2003) and Resolution 156 (2003). A second monitoring of the situation of local and regional democracy in Belgium was carried out in 2014 and resulted in Recommendation 366 (2014).[10] Consequently, this is the third monitoring mission on the implementation of the Charter that has been conducted in Belgium.

69. Apart from this "regular" monitoring mission, the Congress has also conducted a couple of fact-finding missions in the country. A first fact-finding mission to Belgium concerning the refusal of the Flemish regional authorities to appoint three burgomasters was carried out in 2008 and resulted in Recommendation 258 (2008).

8. See Jacques Bouvier, "Local Government in Belgium", in Moreno A. (ed.), "Local government in the member states of the European Union: a comparative legal perspective", INAP, 2012, page 49.
9. Ibid.
10. Local and regional democracy in Belgium, 15 October 2014.

70. A second fact-finding mission, dealing with the same issue, was conducted on 2 and 3 February 2017 in some "communes with facilities" in the Flemish Region around Brussels and resulted in Recommendation 409 (2017) of 19 October 2017. In that recommendation, the Congress asked the Belgian authorities to do away with the system requiring the Flemish Minister of the Interior to make appointments. It also asked the national authorities to review the way in which language laws are applied in "communes with facilities", in order to allow the use of both French and Dutch by municipal councillors in the exercise of their local mandates.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

3.1 Article 2 – Constitutional and legal foundation for local self-government

Article 2
The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

71. Analysis of the respect of this provision should explore the situation at constitutional and statutory level, paying due attention to the decentralised legal system of the country. A careful reading of the federal constitution leads to the conclusion that it does not proclaim or enshrine explicitly the "principle of local self-government", that of "local autonomy" or similar wordings.

72. However, the Belgian Constitution includes succinct provisions on municipalities and provinces, which have been duly interpreted over the years by the Constitutional Court (Articles 41 and 162). Thus, Article 41 states that "the interests which are exclusively of a municipal or provincial nature are ruled on by municipal or provincial councils, according to the principles laid down by the Constitution".

73. Another relevant constitutional provision is Article 162, which provides that "Provincial and municipal institutions are regulated by the law. The law guarantees the application of the following principles: … the attribution to provincial and municipal councils of all that is of provincial and municipal interest, without prejudice to the approval of their acts in the cases and in the manner that the law determines".

74. These two constitutional provisions have been unanimously recognised by Belgian legal scholars and by the highest Belgian courts (the Council of State and Constitutional Court) as enshrining implicitly the principle of local self-government, according to which the local authorities can take up any subject matter that they consider to be in their interest and regulate it as they see fit.[11] This fact has been recognised in a constant manner by the Constitutional Court in several rulings, among which stand Ruling No. 47/2012 of the Constitutional Court of 22 March 2012 and Ruling No. 28/2019 of 14 February 2019.

75. This understanding is also widespread among the main political stakeholders and, especially for this report, among the regional politicians.

76. As for the holders or recipients of such local autonomy, both municipalities and provinces do enjoy this principle. Moreover, in 2014, Article 41.1 of the constitution was amended to allow the abolition of the provinces and to replace them with supra-municipal entities. In the event that they were finally created, those supra-municipal entities would also enjoy the principle of local autonomy.

77. Consequently, there is a general consensus in the spheres of academia, the judiciary and legal practitioners that municipalities and provinces are fully autonomous entities, and this stems directly from constitutional and federal law.

78. Another level of enquiry should analyse the three different sets of legislation on local authorities, existing at regional level, and explore whether the principle of local self-government is appropriately recognised.

- Legislation in the Flemish Region: we should analyse the act (decree) of the Parliament of Flanders of 22 December 2017 on local governance. This regional legislation does not enshrine explicitly the principle of local self-government, although it makes a general reference to Article 41 of the constitution.

11. See Yves Lejeune, *Droit Constitutionnel Belge*, Larcier (ed.), 2010, p. 305.

- Legislation in the Brussels-Capital Region: in this region, the controlling statute is the New Municipalities Act of 24 June 1988 (*Nouvelle Loi Communale*, in French) as amended. As in the case of Flanders, this regional legislation does not proclaim explicitly the principle of local self-government.

- Legislation in the Walloon Region: the Wallonian code of local democracy and decentralisation (*Code de la démocratie locale et de la decentralisation*) of 22 April 2004 applies. As in the case of the other two regional legislations, there is no explicit recognition of the principle.

79. In the light of the above findings it is in our view clear that: (a) the federal constitution does not recognise in an explicit manner (or mention openly) the principle of local self-government, with this word or with another equivalent terminology; (b) legal experts, leading scholars and key politicians believe that the principle of local autonomy is implicitly recognised by the constitution; (c) none of the three statutes on local authorities existing at regional level recognise that principle either; consequently, the principle of local autonomy is not proclaimed by legislation either; (d) the case law of the Constitutional Court and of the Council of State does recognise that the principle is enshrined in Articles 41 and 162 of the federal constitution.

80. Consequently, the rapporteurs believe that Article 2 is respected in Belgium.

3.2 Article 3 – Concept of local self-government

Article 3

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

3.2.1. Article 3.1

81. The understanding that local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population is fully recognised in Belgium. As a matter of fact, among the local political stakeholders, the very understanding of the principle of local self-government consists in that assumption.

82. At this point, one constitutional provision is worth mentioning. According to Article 162, “the law guarantees the application of the following principles: ... the attribution to provincial and municipal councils of all that is of provincial and municipal interest”. As has been seen, the provisions of Article 3.1 of the Charter may be found, with a similar wording to Article 162 of the Belgian Constitution: “the attribution to provincial and municipal councils of all that is of provincial and municipal interest”.

83. On the other hand, Article 41 of the Belgian Constitution states that “the interests which are exclusively of a municipal or provincial nature are ruled on by municipal or provincial councils, according to the principles laid down by the Constitution”, which is another way to proclaim and to recognise the requirements of Article 3.1 of the Charter.

84. Moreover, and as will expanded below, municipalities and (to a lesser extent) provinces enjoy a considerable realm of responsibility, which can undoubtedly be characterised as a “substantial share of public affairs”. According to our interlocutors, the regions have enhanced local autonomy (at least for what concerns the municipalities). Apparently, the regions have granted more powers to the municipalities (for instance in the case of Flanders, in matters of sport and youth policy).

85. The same cannot be said of the provinces. As has been stated above, the institutional and political profile of the provinces is much smaller and less significant than that of the municipalities. Moreover, in recent years there has been a tendency in the two regions having provinces (Flanders and Wallonia) to reduce or to eliminate responsibilities from the provinces. This move has been especially acute in Flanders, where the region, by means of regional legislation, has transferred some of the provincial duties to the region. It is clear that

provinces have somehow faded away in comparison to municipalities in terms of institutional and social relevance, and their very existence is in question.

86. Consequently, the delegation is persuaded that Article 3.1 of the Charter is fully respected in the Kingdom of Belgium.

3.2.2. Article 3.2

87. From the outset, it should be recalled that Article 3.2 was not among the provisions of the Charter ratified by the Kingdom of Belgium. Consequently, this provision is not binding on Belgium. However, and for the sake of completeness, the present legal arrangements pertaining to this provision should be explored here. We will discuss separately the two parts of Article 3.2.

Councils and executive bodies

88. The democratic source and legitimacy of local authority bodies is proclaimed and guaranteed by the Belgian Constitution, according to which "The law guarantees the application of the following principles: ... the direct election of the members of provincial and municipal councils" (Article 162). We should then see this feature in the municipalities and in the provinces.

Local councils and executives – special reference to "burgomasters"

89. As noted above, each region has the power to enact the legislation applicable to the municipalities located in its territory. For this reason, the actual regulation of the local assemblies or councils, and that of the local executives, is a matter that is the exclusive responsibility of the regions. This key feature might potentially provoke a divergent normative picture and important differences among the Belgian municipalities.

90. However, they share some common features.

- All municipalities are autonomous and democratic entities.

- Across the whole country, the key bodies are the municipal council and the mayor (or "burgomaster" – "*bourgmestre*" in French and "*burgemeester*" in Dutch); the local residents elect the members of the council, and the council elects the Burgomaster[12] and the Executive Board. The College of Burgomaster and Eldermen (*Collège des bourgmestre et échevins* in French, *college van burgemeester en schepenen* in Dutch) is the executive board. The number of members of the "executive" depends on the number of inhabitants of the municipality, and their internal by-laws (for instance, in the case of Genk, the executive is formed of eight aldermen plus the burgomaster).

- The municipal council is elected every six years through direct, secret and universal voting, and the number of municipal councillors depends on the population of the municipality; the proportion between the number of councillors and the population of the municipality varies among the regions. For instance, in Flanders, and according to Article 4 of the regional decree on municipal administration, the number of members of the local council (including the mayor and the aldermen) is as follows:

    - There are seven members in the municipalities with fewer than 1 000 inhabitants
    - There are nine members in the municipalities with between 1 000 and 1 999 inhabitants
    - There are 11 members in the municipalities with between 2 000 and 2 999 inhabitants
    - There are 13 members in the municipalities with between 3 000 and 3 999 inhabitants
    - The number of council members grows accordingly, and there are 55 members in the municipalities with more than 300 000 inhabitants.[13] As noted above, both the mayor and the aldermen are natural members of the council.

- Voting is compulsory in local elections. However, new legislation has been passed in Flanders meaning that in future voting in local elections will be voluntary in that region.[14]

12. In Flanders, as from the next election in 2024, the person elected to the municipal council with the highest number of nominal votes and who belongs to the coalition fraction with the most seats in the municipal council, is appointed mayor by the Flemish Government.
13. These figures will change as of 2024 as a result of a 2021 legislative reform.
14. This arrangement will apply for the next local elections, scheduled for 2024.

- The term of the members of the municipal council is six years, as local elections are called every six years (on the same day in the whole country, the second Sunday of October). The last local elections were on 14 October 2018. Local councillors may be re-elected.

- The local council elects the mayor from among its members.[15] The burgomaster is the key political officer of the municipality, runs the different local services and departments and chairs the sessions of the plenary local council. This is common for the three regions. However, the regions differ in what concerns the precise procedure by which a local councillor, elected as mayor by the local council, becomes formally and officially a mayor and can discharge the duties of that position.

91. Traditionally, mayors (once elected by the councils) had to be appointed by the regional competent minister (usually the Interior Minister). Nowadays, there are differences among the regions.

92. In Wallonia, a local councillor is proposed as mayor by a local council (provided he or she is Belgian) and the regional government appoints him or her (Article L 1123-2 of the Code Wallon de la démocratie locale et la décentralisation).[16] Under the law, this seems to be automatic.

93. In the Flemish Region, the system has traditionally been different, in the sense that the local council makes a proposal to the regional minister and the said governmental official has the possibility to scrutinise the personal circumstances of the proposed candidate and, eventually, may refuse his or her appointment if the minister considers that the proposed mayor does not meet the required moral and personal conditions to discharge this position. In this case, the regional government may ask the council to submit a new proposal with a different candidate, and the candidate who was proposed the first time cannot be proposed a second or a third time.[17] Once appointed for a period of six years, the new mayor takes their oath from the provincial governor (Article 59 of the Flemish Decree on Local Authorities).

94. This traditional feature of the Belgian political landscape has been the object of much analysis and criticism from the Congress, which conducted several monitoring and fact-finding missions on the subject (see above, point 2.4). The Congress has consistently recommended the Belgian (Flemish) authorities to do away with the traditional system of appointment by the Flemish Interior Minister.[18]

95. On the occasion of the visit for this report, the delegation was informed that some legal amendments had taken place in this field, which have changed the traditional process. Indeed, some legal amendments approved by the Flemish Parliament in July 2021 will enter into force in autumn 2024, on the occasion of the next local elections (modification of Article 58 of the Flemish Decree on Local Administration of 2017).

96. The burgomaster, at the end of the procedure, must be appointed by the regional government (Article 58), and the proposed mayor takes their oath from the president of the council, not from the regional minister.

97. According to the new law, which is designed to increase local democracy and reinforce the popular vote, the new system will work as follows: 1) voting in the local elections will no longer be compulsory; 2) votes for the list will no longer count for determining which of the candidates will be elected; only the nominative votes will count 3) after the local elections, if a party obtains a clear victory and wins more than half of the seats of local councillors, the candidate who obtained the highest number of personal votes in that electoral list should be proposed by the local council as burgomaster.

98. However, this is extremely unusual in Belgian local elections, due to the high number of parties and the fragmentation of the electorate. Usually, an alliance among several parties is needed to obtain a majority in the local council. Consequently, the usual outcome is the one described in the following points: 4) the most popular party will have the duty to form a local government, that is, the new legislation provides a legal initiative, for 14 days, to the head of the most popular party to seek the formation of a local government, where necessary seeking an alliance with other parties that have obtained positions on the local council; 5) the candidate who receives more “personal” votes in the electoral list of his party and who belongs to the party whose list obtains the highest number of votes should become the burgomaster[19]; 6) the local council elects, from among its members, the candidate to be appointed as burgomaster and addresses the

15. Some regional legislation allows for a council to elect as burgomaster someone who is not a member of the council.
16. In exceptional circumstances, someone who is not a member of the council may become mayor (Article L 1123-2 of the Code Wallon de la démocratie locale et la décentralisation).
17. See Article 58 of the Flemish Decree on Local Administration of 2017.
18. See Recommendation 409 (2017), The functioning of the organs of local democracy in a context of linguistic diversity in the communes “with facilities” around Brussels in the Flemish region.
19. Consequently, the candidates included in the electoral lists that obtain the fewest votes will not become mayor.

corresponding proposal to the Flemish Government, Last but not least, the different parties must inform the electors (before the elections) about what types of coalitions they will form the day after election day. This is supposed to avoid fraud or surprises for the electors.

99. In this new legal process, we should focus our attention on the intervention of the Flemish Government, which has so far been the most contentious feature of that legislation. In this vein, an analysis of the new Article 58 reveals that the regional government still has a decisive intervention in the process of becoming a burgomaster.

100. It is true that the new law provides that the candidate that obtains the highest number of nominative votes within the most voted list "is appointed as Burgomaster by the Flemish government" (first indent), which seems quite an automatic decision.

101. However, a closer look leads to a different conclusion: after the elections and the effective installation of the members of the council, the candidate who has obtained the highest number of nominative votes in the most voted electoral list will be considered as "designated burgomaster" and will discharge all the functions assigned to a burgomaster (Article 59.1, paragraph 2); before initiating their mandate, the "designated burgomaster" takes an oath from the president of the municipal council, and if the designated mayor is himself or herself the president of the municipal council, he or she takes the oath from the oldest municipal councillor (Article 58.1, paragraph 3). However, immediately after taking this oath, the Flemish Government "takes a decision on the appointment [or not] of mayor after the designated mayor has taken the oath and after having been informed by the municipal council" (Article 58.1, paragraph 4).

102. If he or she is appointed by the regional government, they become an "appointed burgomaster" and must take another oath in that capacity (Article 58.1, paragraph 5). Consequently, the intervention of the Flemish Government is not automatic or a mere formality, because it can appoint (or nor appoint) the "designated burgomaster". Moreover, the new law does not specify the grounds on which the government may decide not to appoint the burgomaster. The delegation was told by leading Flemish politicians that this would only happen in precise and exceptional circumstances (such as when a proposed candidate has a criminal record). However, this interpretation was provided orally by our interlocutors, and the new legal text does not say anything about this.

103. What is more, according to the new wording of the act, a decision by the Flemish Government not to appoint the mayor (or the refusal to take the oath) "has the effect that the person concerned can no longer be appointed mayor during the same legislature". In case of a refusal to appoint the burgomaster, the new law provides that if the Flemish Government decides to refuse the appointment of one mayor "the councillor who, after this councillor in the same group, has obtained the most nominal votes, becomes the designated mayor and is appointed mayor by the Flemish Government". That is, the same procedure must be followed.

104. In light of the foregoing, the delegation received the impression that, indeed, there are changes in the legal status of the candidate to become a burgomaster and a rationalisation of the procedures. However, the rapporteurs are not convinced that there is a significant improvement in the core matter: the need for a local councillor to obtain an "appointment" from the Flemish Government to become a burgomaster. This was the most unsatisfactory feature of the whole "old" legislation, the one that was the subject of different Congress recommendations.

105. Consequently, the rapporteurs are disappointed to see that there has been little improvement in the actual implementation of the Congress resolutions on the matter and that the situation, in basic terms, continues to be the same (concerning the appointment of the burgomaster by the Flemish government). The new legal process seems to leave considerable room for discretion in deciding whether to appoint or not a burgomaster, since the reasons for a refusal are not identified in the law.

106. A special reference to the **six Flemish municipalities** endowed with linguistic "facilities" and located around Brussels will be made below (see section 4.3).

107. The regional legislation of the **Brussels-Capital Region** allows for the most executive appointment of mayors, as no intervention or approval by the regional government is foreseen (Article 13 of the New Municipal Law, *nouvelle loi communale*). This is has been the case since a legislative reform of the regional legislation in 2020. In this region, the delegation was informed, there is a new piece of regional legislation (*ordonnance*) according to which there must be parity between men and women in all the electoral lists of candidates running for local elections (this new law will be effective for the next local elections, due in 2024).

108. Finally, in the **German-speaking Community**, the burgomaster is elected by the council without any other formality or procedure.

109. Each municipality has also a “Board of Mayor and Aldermen”, which is the executive body of the municipality. The aldermen are elected from among the municipal council members. The Board of Mayor and Aldermen is a collegial body which takes decisions with a majority of votes.

The political responsibility of the executive organs vis-à-vis the local council

110. It has been mentioned above that, according to scholars, Belgium had introduced an improper “reservation” to Article 3.2 because at the time of ratification the executive organs of the local authorities were not politically responsible to the local councils, as demanded by the Charter.

111. This assumption is no longer valid in the opinion of the rapporteurs, at least partially. Currently, the regional legislation on local authorities (at least in the Wallonia and Flanders regions) does allow clearly for the political responsibility of the executive organs (burgomaster, board) vis-à-vis the local council.

112. Thus, in the case of **Flemish** legislation, since 2021 the council have been able to propose, discuss and approve a collective “constructive motion of no confidence” (Article 46 of the Flemish decree on local authorities), which is addressed against the “whole” executive, that is, the college of the burgomaster and aldermen. An individual constructive motion of no-confidence can be addressed against one or more aldermen. The motion must be signed by a majority of local councillors.

113. If the municipal council adopts a motion of no confidence, the member or members subject to the motion are dismissed and the candidates presented are declared elected. From the adoption of the collective motion, the councillor referred to in Article 58 of the decree bears the title of "designated mayor" and exercises all the functions entrusted to the mayor. Before accepting his mandate, the designated mayor must take his or her oath. Finally, “the Flemish Government appoints the mayor in accordance with the procedure referred to in Article 58”, which has been described above. So, here again, a formal endorsement by the Flemish Government is required.

114. It must be underlined that the motion of no confidence does not apply in the six municipalities with “facilities” (see section 4.3, below).

115. In the case of the **Walloon Region**, important amendments to the regional code on decentralisation, adopted in 2005 and 2012, have meant important changes in this area. Indeed, the establishment of a mechanism for accountability of the college and its members to the municipal council was one of the major new features of the reform of 8 December 2005.

116. Article L1123-3, al. 3 of the Code on Local Democracy and Decentralisation lays down the principle that the college is responsible to the council. The motion of collective no confidence is regulated by Article L1123-14, paragraph 1: “The council may adopt a motion of no confidence against the college, or against one of its members, as the case may be. This motion is admissible only if it presents a successor to the college, or to one or more of its members, as the case may be”. Because it involves the presentation of one or more successors (in the event of individual mistrust) or of a new team (in the event of collective mistrust), that mistrust is said to be constructive.

117. The mechanism of the motion of no confidence has given rise to numerous reactions, which prompted the Walloon Government to approve additional guidelines for the filing of such a motion, to prevent it from destabilising the collegial institution. This reform was completed on 26 April 2012. Thus, the motion of collective distrust is only admissible if it is tabled by at least half of the councillors of each political group forming an alternative majority. The presentation of a successor to the college constitutes a new majority pact. The motion must be adopted by a majority of council members; its adoption entails the resignation of college, as well as the election of the new college, although they remain in office until their replacement is sworn in. When a motion of collective no confidence has been adopted by the council and an alternative majority has been installed, no new motion of collective no confidence may be tabled before the expiry of a period of one year, and no more than two motions of collective distrust may be voted on during the same municipal legislature.

118. As regards **the provinces,** their basic institutional structure replicates to a certain extent that of the municipalities. Although there might be different features and terminologies according to the region where the provinces are located (either Flanders or Wallonia), they all share the following key provisions.

- All provinces are autonomous and democratic entities.

- The key bodies are the provincial council and the executive organs. The provincial council is democratically elected every six years in direct and secret elections, on the local election day. The number of members of the provincial councils ranges from 47 for provinces of fewer than 250 000 inhabitants, to 84 members for provinces of more than one million inhabitants (for instance, 56 in the province of Hainaut).

- The executive organs are the president of the council, the board or standing committee, and the governor. The council elects a president for a term of six years, who chairs and conducts the businesses of the council. There is also a "board" or "standing committee", elected by the council members among themselves, and which plays the role of senior executive organ. The board is given different names in Flanders and Wallonia. In Flanders, the region has kept the traditional denomination of "standing committee" (*permanent deputation*) while in Wallonia this name has been replaced by that of "provincial college" (*collège provincial*).

119. The permanent deputation executes the resolutions of the provincial council and ensures its day-to-day management. It is chaired by a governor. The governor, however, is not elected but is appointed or dismissed by the King, under the responsibility of the Minister for the Home Department. Traditionally, the governor represented the national government but at present only represents the regional government.

Public participation. Status of ratification of the Additional Protocol to the Charter

120. The last indent of Article 3.2 of the Charter refers to "direct citizen participation". We should first explore the vitality of direct participation at local level, and then assess the status of ratification of the Additional Protocol to the Charter.

121. With regard to "direct citizen participation", all our interlocutors stated that in most Belgian cities and towns there are different ways, techniques and mechanisms to channel the public participation of citizens and to allow their input into the handling of local affairs and decisions. The matters for which citizen participation is most common are the approval of investment plans, urban planning and participatory budgets. In the case of urban planning, there are specific bodies featuring representatives from the public as natural members (such as the advisory commission on physical planning, the *Commission consultative pour l´aménagement du territoire* in French). On the other hand, local representatives acknowledged that the Covid pandemic has had a serious impact on citizen participation, which is now slowly being revived.

122. The different ways and formats of public participation are mainly regulated at regional level. In some regions, there are specific regional rules governing local referendums (like in **Flanders**).[20] In the **Walloon Region**, for instance, citizens also participate frequently in what are known as *programmes communaux de dévelopement rural* – rural development programmes.

123. In the **Brussels-Capital Region** public participation is especially well developed,[21] and the New Municipal Law regulates this feature of local democracy in its Articles 318-328 and Article 89bis relating to citizens' interpellation. Different techniques and possibilities are available to citizens, such as petitions, citizens' suggestions or the participation in deliberative commissions. There are a number of topics where local residents may become involved, such as employment, health, culture, environment, mobility, issues affecting people with disabilities and housing.

124. In the light of the vitality of public participation at local level, the question arises as to why Belgium has not ratified the additional protocol to the Charter.

125. Under the law, Belgium can only ratify an international treaty if there is the agreement of the regional parliaments, if the treaty deals with a matter whose responsibility belongs to the regions (as with the additional protocol).

126. The reason has to do with the institutional organisation of Belgium. In order to ratify the additional protocol, a long, complex and slow procedure must be followed. In essence, all the four sub-state parliaments – the regional parliaments of Flanders, Wallonia, Brussels-Capital and that of the German-speaking Community – must first give their assent. The whole process is coordinated by a federal body, called the Interministerial Conference on Foreign Affairs (CIPE – Conférence Interministérielle de la Politique Etrangère).

20. *Besluit van de Vlaamse Regering houdende vaststelling van de nadere procedureregels voor de organisatie van een provinciale volksraadpleging*, of June 2009.
21. See the website www.democratie.brussels.

127. So, the subject of the ratification of the protocol must be introduced in every regional parliament by the corresponding regional government, and once the appropriate parliament grants its assent, then the corresponding government communicates this assent to the federal authorities, and only when the federal authorities check that all necessary assent has been given can the federal government deposit the instrument of ratification.

128. In general terms, the regions have no problem with the protocol and there is no "hot issue" they wish to avoid.

129. In this vein, **in Flanders** the additional protocol was given assent for ratification, or approved by its parliament, on 15 July 2011.

130. In the case of the **Brussels-Capital Region**, the delegation was pleased to hear the following information: on 22 April 2022, the regional Parliament adopted the Ordinance giving assent to the Additional Protocol to the Charter; on 30 April, shortly before the second part of the visit of the delegation, the regional government ratified the said Ordinance and notified this to the federal government.

131. As concerns the **German-speaking Community**, the additional protocol was ratified in 2021 by the government and then transferred to the parliament. The president of that parliament ensured that the topic will be discussed shortly in parliament and that the assent will certainly be granted.

132. In the case of the **Walloon Region**, though, the "approval" or assent for the protocol seems to be in a standby situation, since the proposal has not been sent yet to the regional parliament. However, nobody seems to know exactly the reason why this has not been made yet; it is probably a matter of political priorities or lack of interest.

133. In light of the foregoing, the rapporteurs believe that there is only partial respect for Article 3.2 of the Charter, since the mechanism of motion of confidence or distrust is not recognised in all local authorities and in all regions.

3.3. Article 4 – Scope of local self-government

Article 4

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

3.3.1. Article 4.1

134. The fact that in Belgium the Charter applies to municipalities and to provinces requires us to conduct a different analysis for both types of authorities. However, both entities share a common feature: the specific powers and competences of the local authorities are not regulated by the constitution itself but by several pieces of legislation, since there is no single piece of legislation "codifying" in a comprehensive manner all local responsibilities.

Municipalities

135. At constitutional level, a very relevant provision is Article 41, according to which “interests which are exclusively of a municipal ... nature are ruled on by municipal … councils”. This constitutional provision lays down the general principle that everything happening within the territory of the municipality, or having a purely local dimension, falls under the remit of the municipalities. In general, and especially at the regional legislative level, this constitutional provision has been interpreted in a rather broad way. For instance, the 2017 Flemish decree on local authorities states in Article 2 that, as a consequence of that constitutional provision and to this end, municipalities “can take all initiatives”.

136. The precise competences of the municipalities must be found in the regional statutes governing their respective local authorities, while other sectoral legislation may also establish domains of competence for local authorities, as in the case of urban and spatial planning, licensing and authorisation of industries, environmental projects and the like.

137. Municipalities enjoy the legal nature of “public law authorities” and they possess a wide array of powers and legal privileges. For instance, they may approve local regulations prescribing rules of social behaviour in the domain of general or “special” administrative police, such as traffic. They have a wide array of adjudicatory powers (licensing); they also have the power to impose fines and sanctions on wrong doers. In addition, they have wide-ranging powers of taxation (see below). All the local representatives met by the delegation stated that they were happy with the actual level of municipal responsibility, which is high, and the delegation received no complaints about the level of responsibility in any part of the country.

138. In the case of **Flanders**, the key legal text is the regional decree on local authorities of 2017. Although this decree regulates in detail the competences of the different internal bodies of the municipal administration, it does not include a full and comprehensive list of competences allocated to municipalities. The law provides that “municipalities and public social assistance centres aim to make a lasting contribution to the well-being of citizens at the local level and ensure, in close proximity to them, a democratic, transparent and effective exercise of their powers ... they aim to contribute to the sustainable development of the municipal domain” (Article 2). Moreover, in accordance with the special law of 8 August 1980 on institutional reforms, as well as Article 46 of the ordinary law of 9 August 1980 on institutional reforms, and in application of the principle of subsidiarity, the municipalities also exercise the powers conferred on them by or by virtue of the law or decree.

139. Municipalities are thus competent for all matters which have not been withdrawn from their ambit of responsibility by higher authorities. Moreover, since the 1970s different sectoral parliamentary acts have explicitly assigned ever greater tasks to municipalities, for example in the fields of spatial planning, gas, water and electricity supply, domestic waste collection and processing, economic expansion, and cultural and social policy. The competences devolved to the regions and communities following the state reforms have been shared with the local authorities.

140. In the case of the **Walloon Region**, Article L 1113-1 of the Walloon code on local democracy and decentralisation of 2004 states that the powers of the municipalities are in particular “to govern the goods and incomes of the commune; to settle and discharge those local expenses which must be paid from common funds; to direct and carry out public works which are the responsibility of the municipality; to administer the establishments which belong to the commune, which are maintained by its funds, or which are particularly intended for the use of its inhabitants”.

141. In light of the above legal context, it possible to say that, in general, municipalities are responsible for the following matters.

- Urban planning and urban growth management; licensing of buildings and construction projects.
- The regulation and control of the transit of vehicles.
- The granting of permits and licences.
- The maintenance and improvement of the local environmental heritage, especially local roads and paths.
- Raising taxes and the capacity to set and collect taxes or duties (on polluting street activities or noisy commercial facilities).
- The protection of the environment, encompassing all sorts of local services, such as the supply of drinking water, depuration of urban waste water, the collection and treatment of waste, the monitoring and improvement of air quality, etc.
- The management of emergencies and fire prevention.
- The cleaning and maintenance of streets, public parks and recreational spaces.

- The construction and operation of all kinds of municipal facilities such as sport and recreational facilities, cultural centres, public car parking, etc.
- The construction and maintenance of green areas, public parks and gardens.
- The execution of police laws and decrees, administrative police regulation on the territory of the municipality and in matters of urgent police orders.

Provinces

142. Mirroring the relevant constitutional provision for municipalities, provinces are responsible for everything within their territory that is of provincial interest. In this vein, Article 41 of the constitution provides that "the interests which are exclusively of a … provincial nature are ruled on by ... provincial councils, according to the principles laid down by the Constitution".

143. The province is the intermediate level of government between the regional and municipal levels; consequently, anything that goes beyond the strict territory of one municipality but does not have a regional impact falls under the domain of action of the provinces, who are responsible for regulating the provincial interests.

144. As noted above, the role, institutional profile and responsibilities of the provinces are currently a matter or regional interest. Consequently, the actual functions of the provinces are established in sectoral legislation or in the legislation of the regions on local authorities (although most of this legislation is devoted to extensively regulating local authorities and makes little reference to the provinces).

145. Traditionally, provinces had extensive powers in many domains, such as education, social and cultural infrastructures, preventive medicine and social policy, environmental protection, highways and waterways, economic development, transport, public works, housing, town and county planning, and licensing of industrial facilities and commercial and agricultural premises.

146. However, since the regionalisation of the field of local authorities, the actual powers of the provinces depend mostly on the situation and the legislation in each of the two regions where they exist, Flanders and Wallonia, since they can allocate responsibilities to the provinces or withdraw them. According to our interlocutors, the provinces have lost many powers in recent years, especially in Flanders and to a lesser extent in Wallonia.

147. For instance, in Flanders the only responsibilities that the provinces maintain are those that are connected to the management or planning of land or that are related to the territory, like transport. The rest of the traditional provincial responsibilities were transferred to the regions.

148. In light of the above considerations, the rapporteurs believe that Belgium complies with Article 4.1 of the Charter.

3.3.2. Article 4.2

149. As a consequence of the visit and the meetings held with our interlocutors, the delegation also drew the conclusion that local authorities (the municipalities) have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence or assigned to any other authority.

150. This is based on the way Article 41 of the constitution has been usually interpreted and implemented in legislation. Moreover, this understanding is explicitly enshrined in some provisions of the regional laws on local authorities. For instance, the 2017 Flemish decree on local authorities provides that under Article 41 of the constitution, the municipalities are responsible for matters of municipal interest. To this end, they can take all initiatives.

151. In light of the above considerations, the rapporteurs believe that Belgium complies with Article 4.2 of the Charter.

3.3.3. Article 4.3

152. This article of the Charter has commonly been interpreted as embodying the principle of subsidiarity.

153. The principle of subsidiarity is not recognised explicitly in the constitution but is recognised in the case law of the Constitutional Court. Moreover, the principle of subsidiarity has been explicitly enshrined in some regional laws on local authorities. For instance, in the case of the **Flemish** Region, the 2017 regional decree provides that "in application of the principle of subsidiarity, the municipalities also exercise the powers conferred on them by or by virtue of the law or decree".

154. Apart from that, there is a clear pattern of decentralisation from the regional level to the local level, especially so in some areas. Consequently, it is commonly accepted that the principle of subsidiarity exists and that it is effectively implemented.

155. It is understood, for instance, that the principle of subsidiarity "explains" or justifies the transfer of competences from the region or community level to the municipalities. Apart from their constitutional competences, municipalities also have competences which have been entrusted to them, on the basis of the principle of subsidiarity, through or by virtue of the law or the Flemish Parliament Act.

156. In light of the above considerations, the rapporteurs believe that Belgium complies with Article 4.3 of the Charter.

3.3.4. Article 4.4

157. As a rule, the powers given to local authorities are full and exclusive. The Belgian system is based on "exclusive" responsibilities. The "local" responsibilities are clearly those that have been attributed to the municipalities or provinces by an act, decree or regional ordinance, or that municipalities have decided to implement on the basis of Article 41 of the constitution.

158. However, this general principle does not preclude the fact that some responsibilities are implemented or discharged in an "co-operative" manner with the other levels of "higher" public administration, like the regions, communities or even the federal state, since some functions may be complex and may involve different entities or levels of government, or because the scale of the interests at stake so demands.

159. For instance, the communities play a role of "grand collaborator" with the municipalities in all cultural matters (libraries, cultural centres, permanent/continuous education activities, etc). In these matters, municipalities keep frequent contact with the communities. In the French Community, for instance, this co-operation has been manifested in the signing of a collaboration charter (*Charte de collaboration*), which defines the role, duties and obligations of each party.

160. Another example of joint implementation of concurring competences is the domain of spatial planning and economic development. There is a point where municipalities must co-operate with the regions and both levels of government must co-ordinate their responsibilities.

161. Moreover, this co-operation and co-ordination may be embodied in specific formal instruments, which are regulated at regional level. For instance, in the Flemish Region the regional authorities have concluded policy agreements with the municipalities, in the fields of transport, environment, youth work, culture, out-of-school care and urban policy, among others.

162. Another example is the implementation of police laws and regulations, where the municipalities enforce state or regional laws and regulations. Usually, it is for the burgomaster to implement these laws and regulations, although he or she may apply those issued by higher levels of government. In this sense, Article 63 of the 2017 Flemish decree on local authorities provides that the burgomaster, "Apart from his competences in matters of enforcement of police laws, is also responsible for the execution of the laws, decrees and implementing orders of the federal authority, the region or the community, except if the said responsibility is explicitly entrusted to another organ of the municipality".

163. In light of the above considerations, the rapporteurs understand that the requirements of Article 4.4 of the Charter are met.

3.3.5. Article 4.5

164. Under this provision, where powers are delegated to municipalities or to provinces by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions. From the outset, it should be noted that, in practice, this provision applies only to the municipalities, since regions rarely transfer or delegate any responsibilities or powers to the province.

165. The delegation did not hear any specific complaint about respect for this provision in Belgium. However, some local representatives made a related complaint in the sense that, over the years, they have observed that the higher authorities often manage public affairs by legislating a lot and by legislating in detail, depriving the municipalities of the necessary leeway in the implementation of regional and federal policies and the possibility to adapt them to the needs of local realities. In this vein, the association of municipalities of the Walloon Region (UVCW) has consistently demanded to regional authorities that they should approve framework legislation instead of the too-detailed legislation.

166. In light of the above considerations, the rapporteurs believe that Article 4.5 of the Charter is respected.

3.3.6. Article 4.6

167. Article 4.6 deserves careful analysis, focusing on different areas and considering the situation in the three regions (and in the German-speaking Community) and that at federal level. To begin with, we should analyse how the situation works at national level, and then at regional level.

Consultation of local authorities by the federal government

168. It should be underlined that there are no constitutional provisions on this matter and no specific federal laws regulating this issue. Consequently, this aspect of local government is regulated exclusively at regional level.

169. Concerning the consultation of local authorities by the federal government, local representatives made a clear complaint: there is no formal mechanism for consultation of the local authorities by the federal government. Moreover, there is no systematic consultation. According to our local interlocutors, this is a serious shortcoming because it is not infrequent that the federal government takes decisions or initiatives that have a direct or indirect impact in the domain of local authorities, such as the negotiations with the trade unions of police officers and firemen, a question that will be presented in more detail in connection with Article 9.2, below.

Consultation of local authorities by the regions

170. This aspect of local government is regulated exclusively at regional level, by regional laws and regulations.

The situation in the Brussels-Capital Region

171. According to the local representatives met by the delegation, in the Brussels-Capital Region there is no official and structured consultation process between the regional government and the local authorities (municipalities and CPAS). Consultation (which is often just communicating information) is therefore at the discretion of the regional government (on which depends most of the powers that concern the municipalities). This consultation sometimes takes place, but sometimes not, and it seems that it follows an erratic pattern.

172. The local representatives of that region pointed out that there are also other associations or representative instances in the region, such as the Conference of Burgomasters, the Federation of Municipal Secretaries and the Federation of Municipal Tax Collectors. However, the Conference of Burgomasters is not an effective forum for consultation. According to some interlocutors, this body does not work appropriately and should be reformed.

173. This situation is even more strange if one considers that in the regional parliament some members are burgomasters or aldermen. This fact makes it even more important and necessary that the regional government meets with, and consults regularly, the association Brulocalis, the association representing the 19 municipalities in the Brussels-Capital Region.

174. During the consultation procedure, the Government of the Brussels-Capital Region underlined that the 2019-2024 government agreement provides for the creation of a consultation platform between the Region and the municipalities for all matters that may affect municipal interests or strategy.

The situation in the Walloon Region

175. The Walloon Region presents a somehow different picture. According to the representative associations of local authorities (*Union des Villes et Communes de Wallonie*, hereinafter the UVCW, and the Federation of Social Services Centres, the CPAS), these associations have been recognised as forums with a consultative function since the enactment of a regional decree of 15 February 2017. Accordingly, the Walloon Region submits to these associations different legal documents and initiatives for consideration, when such documents and initiatives deal with local authorities, their functioning, their financing or (even more importantly) any topic or matter that is managed by local authorities, from environmental protection to housing and public contracts.

176. These documents include draft regional decrees (pieces of regional legislation), draft decisions from the regional government (*projets d´arrêtés*) and drafts of internal regulations (*circulaires*). When the government submits these documents, it asks for the opinion of the UVCW, which must issue a report. The above-mentioned associations analyse the drafts sent by the government and must deliver a reasoned opinion within 45 days. The UVCW report is obligatory. Consequently, there is a positive institutional mechanism for obligatory consultation of the local authorities, by means of their representative associations, and there is full compliance with Article 4.6 in that region.

177. In the case of legislative proposals (emanating directly from a parliamentary group), this is, in principle, not covered by the arrangements that have been presented above. However, it is frequent that the Walloon Parliament also asks for the opinion of the UVCW and that of the CPAS (especially by means of specific hearings). Although this form of consultation is not systematic, local representatives told the delegation that this practice has multiplied in recent years.

178. In the **French Community** (*Fédération Wallonie-Bruxelles*) there is no similar mechanism to the one presented above.

The situation in the Flemish Region

179. In Flanders, the Association of Flemish Cities (VUVS) is extensively consulted by the regional government, when the said political body plans to approve laws and regulations affecting the local authorities.

180. Regional representatives confirmed that, when drafting new regulations on matters that concern the municipalities, the Flemish Government seeks advice, often formally, from local authorities on the matters that concern them. Although this advice is not mandatory, in practice it is usually part of the decision-making process. For example, when drawing up regulations on local authorities' organisation and functioning, the Association of Flemish Cities and Municipalities (VVSG in Dutch), Excello.net and Flemish Local Financial Directors (VLOFIN) are consulted.

The German-speaking Community

181. The German-speaking Community presents a rather peculiar situation in terms of respect for Article 4.6 of the Charter. Indeed, the community is pretty small in territorial terms and the number of municipalities is very low (Eupen is the capital and the seat of the community institutions, the community parliament and the community government). Consequently, there is an extreme proximity, both “physical” and institutional between the local and the “higher” levels of administration.

182. In practice, the pattern of contact and consultations with the local authorities is very dense and permanent (for instance in the case of urban planning), to the point that local representatives of that community told the delegation that sometimes they feel dismayed by the high number of matters on which the community institutions ask their opinion and the high number of replies or opinions that they must prepare, something that is time-consuming.

183. Thus, municipalities are very frequently consulted by the German-speaking Community on all matters that concern them, directly or indirectly (for instance on community investment plans or the management of crises). This was confirmed by the representatives of the government and the parliament of the said community, who provided some figures. They stated, for instance, that during the Covid pandemic the community institutions organised 63 conferences and that all the mayors were present. The same may be applied to the management of the Ukraine crisis: the government discusses with the local authorities the measures to be taken and the procedures to be adopted.

184. In light of the above, the rapporteurs believe that there is compliance of Article 4.6 in Flanders, the Walloon Region and the German-speaking Community, but that this article is not respected in the Brussels-Capital Region.

3.4. Article 5 – Protection of local authority boundaries

Article 5
Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

185. This article raises the topic of the number (and size) of municipalities in the country, and the different governmental plans or strategies to change a given pattern of territorial distribution. To begin with, according to Article 7 of the Belgian Constitution "the boundaries of the state, the provinces and the municipalities can only be changed or corrected by virtue of a law". From a comparative constitutional law perspective, the Belgian Constitution is one of the few constitutions that addresses this topic explicitly (another is the Spanish Constitution).

186. The number of municipalities has been reduced significantly in Belgium since the 1970s, at a time when local government was still a matter of federal interest. Thus, in 1977 there were 2 359 municipalities, while today there are just 581. Currently, the field of local government is entirely a regional responsibility (with the notable exception of the German-speaking Community), and each region has its own view on the matter, as well as their own priorities.

187. Although it belongs to the region to decide on or to approve the merger of two or more municipalities in its territory, they cannot do the same with the provinces. Provinces cannot be abolished by a decision or a law of the regions, since they are protected by the constitution.

188. In general, the big move towards mergers of municipalities is now finished, but regions still want to encourage local authorities to merge. Of course, their policies are conditioned by their size or the number of their municipalities. For instance, in the German-speaking Community there are only nine municipalities, so there is no need, intention or plan whatsoever to promote the merger of such authorities. In the case of the Brussels-Capital Region there are 19 municipalities, very close to each other within the territory. Consequently, in this region there is also no plan or programme for the mergers of municipalities. Consequently, merging municipalities is still a matter of political attention and only a realistic possibility in the Flemish Region and in the Walloon Region.

189. As concerns **Flanders**, in the late 1970s there were 500 municipalities in Flanders, but in 2014 this number had decreased to just 308. The regional government has been convinced for a long time that further fusions and mergers of municipalities are not only possible but needed. The regional government wants to have fewer municipalities, and larger, stronger and more efficient ones. In this vein, regional government officials pointed out that some municipalities (especially the smaller ones) have problems in delivering high-quality services. Others face difficulties in hiring specialist employees.

190. For these and other reasons, there has been a long-standing programme for the reduction of the number of municipalities and for encouraging the voluntary amalgamation thereof. The figures bear out about the success of that programme, since in 2014 there were 360 municipalities in Flanders, while currently there are only 300. During the consultation procedure, the Government of Flanders stressed that the Flemish Region provides incentives for the amalgamations of municipalities. When municipalities want to merge, the Flemish Government grants an overall subsidy of € 500 per inhabitant, with a maximum of € 50 Million altogether per amalgamation process. The Flemish Government also assumes a part of the debt of the municipalities concerned. Still, this figure does not seem to be satisfactory for the regional government, whose senior officials refer to the high number of municipalities having few inhabitants. This is why the Flemish Government keeps on promoting the voluntary amalgamation among municipalities (they acknowledge that the models to be followed are Denmark and the Netherlands). Apparently, dozens of further amalgamations are in the pipeline. According to our interlocutors, some 15 municipalities have expressed their interest in amalgamating. One of them concerns Antwerp and a nearby municipality.

191. The number, size and territorial pattern for municipalities is also a matter for concern in the **Walloon Region**, and senior governmental officials have stated that municipalities with under 12 000 inhabitants face problems in delivering good-quality local services. The region has tried to alleviate some of their burdens through a comprehensive system of administrative simplification, however the best solution is a programme

of amalgamations. The regional government, then, fosters the voluntary merger of small municipalities, to produce larger territorial units.

192. In particular, there is a regional law (*décret*) that provides incentives for interested municipalities. For instance, when two nearby municipalities want to merge, the regional government grants an overall subsidy of €500 per inhabitant to both merging municipalities (up to a maximum total of €20 million). In addition, the regional government also assumes a part of the debt of the municipalities concerned. However, it seems that very few municipalities have decided to start an amalgamation process and few mergers are expected, at least in the short term.

193. For the sake of Article 5 of the Charter, it is important to underline that in both Flanders and Wallonia the decisions about amalgamations are taken by the local councils of the two participating local authorities. However, no local referendum takes place or is foreseen whatsoever, neither in Flanders nor in Wallonia.

194. In light of the above, the rapporteurs believe that Belgium fully complies with Article 5 of the Charter in the sense that the amalgamations are always accomplished with the assent of the local councils (and, most importantly, on their initiative), which is clearly much more than a simple "consultation". However, there is still margin for improvement, notably by conducting local referendums in the concerned local communities.

3.5. Article 6 – Appropriate administrative structures and resources

Article 6

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

3.5.1. Article 6.1

195. As noted above, the subject matter of local authorities has been completely devolved to the regions, following the different state reforms. This means that this aspect of local government is the full responsibility of the regions and is regulated exclusively by laws and regulations of the three regions (plus the German-speaking Community for its nine municipalities). Consequently, there might be some divergences among the legislative choices made by each region.

196. Beyond this constitutional scenario, all regional legislation on local authorities establishes a framework or basic organisational structure (presented above). Within that context, the several regional laws allow the municipalities to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management. As a rule, these organisational decisions must be adopted by the council.

197. In **Flanders,** the municipal decree of 2017 defines the competences of the council. Among those competences is the power to set up consultation councils and co-operation structures (Article 41.13). Another example is the possibility to create autonomous bodies or authorities within the municipal structure, which are entrusted with the discharge of specific activities. In this vein, Article 231 of the regional decree provides that "an autonomous municipal authority is constituted by decision of the municipal council on the basis of a report drawn up by the college of mayors and aldermen … the municipal council sets the statutes of the autonomous municipal management".

198. However, in the view of the delegation this piece of legislation is extremely long (610 articles) and very detailed. It regulates comprehensively almost all the aspects and features of the life of municipalities and, in reality, leaves little room for manoeuvre or capacity for municipalities to adopt really innovative decisions in the field of organisation.

199. In **Wallonia**, similar rules apply. For instance, the municipal council has the power to approve its internal by-laws and rules of procedures, according to Article L1122-18 of the Walloon code of local democracy and decentralisation, and under Article L1122-34, it may set up, within the council, specific committees with the duty to prepare discussions of the council. Finally, the council may also, under Article L1122-35 thereof, set up advisory councils (such councils are "any assembly of people, whatever their age, charged by the municipal council with rendering an opinion on one or more determined questions").

200. In the **Brussels-Capital Region**, the same organisational power of the municipal council may be identified. Thus, the regional law on local authorities (*Nouvelle loi communale*) provides different examples of that power. For instance, under Article 331, the municipal council may set up "intra-municipal territorial bodies", in municipalities with more than 100 000 inhabitants.

201. In light of the above, the rapporteurs believe that Belgium fully complies with Article 6.1 of the Charter.

3.5.2. Article 6.2

202. First of all, it is helpful to describe briefly the structure of human resources in Belgian local government. This will help better understand the application of Article 6.2 of the Charter, and some features that will be described below, in connection with Article 9.

203. Local authorities have different types of personnel, the most important being "statutory employees" or local civil servants, and regular "workers", hired under a work contract. Both types are recruited according to the applicable administrative regulations which local entities may approve themselves, under the control of the supervisory, higher authority (*autorité de tutelle*, see Article 8).

204. Although the general rule in Belgian public administration is that public employees should be "statutory personnel" (*personnel statutaire*, or "civil servants"), the fact is that because of different reasons local authorities resort more and more frequently to hiring employees under contract, to the point that the general rule has been transformed into the exception. Currently, it can be said that roughly 70% of local government employees are regular contract workers, while only 30% are civil servants. These percentages may fluctuate from region to region. Thus, the Walloon association UVCW also pointed out that in the local governments located in that region, 75% of personnel are contractual employees and only 25% of the employees are civil servants (*personnel statutaire*).

205. In addition, the applicable legislation on local authorities requires municipalities to provide for certain specific functions and to fill specific positions. In the provinces, these positions have traditionally been those of the local secretary (of the provincial council) and of accountant-comptroller. In the case of municipalities, these special positions were that of secretary (of the local council) and that of accountant-comptroller. This obligation for local authorities still exists today and, as regards the local civil service, local bodies enjoy more and more freedom to ensure the carrying out of these positions under mandate (especially in the Flemish Region and in Brussels-Capital Region).

206. As concerns the daily management of staff, the responsibilities of local authorities remain very large, as long as they respect the limits imposed by the legislation. Local authorities do freely recruit their staff, manage their careers and can also put an end to their terms of office. In **Flanders**, municipalities and provinces can freely appoint and dismiss their own staff. They have full authority as an employer.

207. The salary scales are determined by a decision of the Government of Flanders (2007) and the local authorities must adhere to this. In addition, every municipality can as an employer provide training and education for its employees.

208. In the recruitment of new employees, the region may impose some criteria or requirements, such as the duty to hire a certain percentage or proportion of people with disabilities (as in the Brussels-Capital Region).

209. Despite this general scope of freedom, the delegation heard some complaints on this matter. Hence, some local leaders complained that they do not have enough freedom to recognise and pay their employees for high performance, given the rigidity of the regulations. They would like to have more leeway to incentivise their employees and reward high performance.

210. Other local representatives pointed out that they have difficulties in hiring local personnel. Sometimes, this is due to the specialist or technical profile of the positions.[22] In other cases, this seems linked to the fact that the applicants must have a good command of different languages in order to work in local government.[23]

211. Finally, the **Walloon** association (UVCW) made the complaint that currently it is becoming increasingly difficult to attract and (above all) to keep talented local government personnel. They also pointed out that,

22. In this vein, the Burgomaster of Genk informed the delegation that they have problems filling some 40-50 positions, which have remained vacant for a long time (out of roughly 1 200 employees).
23. This seems to be the case in Eupen and other municipalities in the German-speaking Community.

under the current regional regulations,[24] local authorities lack the necessary autonomy to establish a system of incentives and awards, to stimulate and reward the high performance of their employees.

212. These weaknesses in the current system were also acknowledged by senior officials in the Flemish Government. They ensured the delegation that they were planning to change the status of local government regulations in order to give more freedom to the municipalities and more capacity to manage their own personnel.

213. In light of the above, the rapporteurs believe that Belgium complies with Article 6.2 of the Charter, although there is room for improvement (see section 5, Conclusions and recommendations).

3.6. Article 7 – Conditions under which responsibilities at local level are exercised

Article 7
1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

3.6.1. Article 7.1

214. Under this provision, the conditions of office of local elected representatives shall provide for free exercise of their functions. The delegation did not hear any specific complaint about respect for this provision in Belgium. The local representatives met by the delegation stated that they were free to exercise their functions and free from political pressure or from undue governmental influence from the regions or communities.

215. The only complaint that was made referred to the fact that the burgomasters are increasingly becoming the target of hate speech on social media; in some parts they see open intolerance, radical expressions or even harassment from the local electors. Apparently, this is discouraging some people from engaging in local political life. In any case, this is a sociological development that falls beyond the parameters of the Charter, although it is an unfortunate trend.

216. In light of the above considerations, the rapporteurs believe that Article 7.1 of the Charter is complied with.

3.6.2. Article 7.2

217. Under this provision, the laws and regulations governing the status and the discharge of duties of local elected representatives should allow for appropriate financial compensation for expenses incurred in the exercise of the office in question, and compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

218. As with many other features of Belgian local government, this matter is not regulated by federal rules, but by regional laws and regulations, and by the by-laws, internal regulations and decisions adopted by the local authorities concerned. As usual, it is pertinent to present the information according to the region in question.

a). In the **Walloon Region**, Article L1122-7 of the Walloon code of local democracy and decentralisation states that local councillors do not receive any salary, but they receive an attendance fee (*jeton de présence*) when they attend municipal council meetings, committee and section meetings. The amount of these attendance fees is set by the municipal council. Currently, this amounts to between a minimum of €37.18 and a maximum amount that is calculated by reference to the amount received by the provincial councillors. It is up the municipality to increase the attendance fees of municipal councillors who benefit from other legal or regulatory salaries, pensions, indemnities or allowances, by an amount compensating for the loss of income suffered by the person concerned. The amount of the attendance fees, increased by the amount compensating for the loss of income, can never exceed the salary of an alderman of a municipality of 50 000 inhabitants.

24. “Circulaire sur la révision des barèmes”.

b. In **Flanders**, similar rules apply in the case of "regular" members of the local council: they do not receive regular remuneration, but only attendance fees. According to the Flemish decree on local authorities, "the municipal council sets the amount of attendance fees and other allowances granted within the framework of the administrative operation of the autonomous municipal management in accordance with, and within the limits of, the conditions for grants established by the Government". Consequently, the members of the local council receive an allowance if they attend the plenary session of the City Council or of any of its committees.[25]

219. The burgomaster and the aldermen, though, receive a salary or remuneration which depends on the number of inhabitants of the municipality. In general, the delegation did not hear specific complaints about the level of remuneration for burgomasters or full-time members of the executive, although, as some local representatives pointed out, it is difficult to live only on the salary of a mayor in municipalities with under 50 000 inhabitants.

220. Another situation concerns that of the members of the different structures for intermunicipal co-operation that have been created by the local authorities (for instance, an intermunicipal authority for the collection and treatment of waste). According to a recent regional legal amendment, the members of the boards of those structures will not in future be paid for their job, something that, according to the Association of Flemish Cities and Municipalities (VUVS in Dutch), has created great unrest among the local representatives. In addition, this change will be to the detriment of the professionalisation of local management.

221. In the **Brussels-Capital Region**, the same general rules apply (see Article 12 of the *Nouvelle loi communale*). In the parliament of this region, the delegation was informed that there was a legal initiative in progress aimed at raising both the remuneration and the daily allowances of the burgomasters. On the sufficiency of the remuneration for mayors, some local representatives pointed out that it is difficult to live only on the salary of a mayor in municipalities of under 50 000 inhabitants, and that most of the members of the local executives do have another part-time job.

222. In light of the above considerations, the delegation believes that Belgium complies with Article 7.2 of the Charter.

3.6.3. Article 7.3

223. In Belgium, the functions and activities that are deemed incompatible with the holding of local elective office area are determined by statute or by fundamental legal principles. For the sake of clarity this matter may benefit from the highlighting of several points.

1) It is in principle possible for a local representative to be at the same time a member of the House of Representatives of the federal parliament, as this condition is not listed among the positions that prevent someone running as an MP, under Article 64 of the constitution.

2) The right to simultaneously be a member of a local authority and a member of a regional parliament or institution is exclusively determined by regional laws and regulations, since, as outlined above, there is no nationwide federal legislation on the status of local elected representatives. In light of this: (a) in **Flanders** it is possible for a local politician to be a burgomaster or alderman and to be a member of the regional parliament; (b) in the Brussels-Capital Region, a new law will make it impossible to hold simultaneously the position of local representative and that of MP in the regional, federal or European parliament; some of the interlocutors deemed this to be an unwelcome development; (c) in the **German-speaking Community**, it is incompatible to be a burgomaster and a member of the community parliament at the same time.

3) In all parts of Belgium, a local councillor may be at the same time a member of a provincial council, but not a member of an executive organ (*collège provincial* or *permanent deputation*).

4) Local representatives reported that there is clear nationwide pattern; there are fewer and fewer mayors (burgomasters) sitting in the national or regional/community parliaments.

25. For instance, in Genk the members of the local council receive an allowance of €230 per day if they attend the plenary session of the City Council.

224. In light of the above, the rapporteurs understand that Article 7.3 of the Charter is fully respected in Belgium.

3.7. Article 8 – Administrative supervision of local authorities' activities

Article 8

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

3.7.1. Article 8.1

225. Underlying an analysis of compliance with Article 8 of the Charter in Belgium is the federal constitution. Indeed, there is a key provision that must be underlined again for the sake of better understanding. This provision is Article 162, which refers to the subject matter addressed by Article 8 at two different points. First, it provides that "Provincial and municipal institutions are regulated by the law. The law guarantees the application of the following principles: ... the attribution to provincial and municipal councils of all that is of provincial and municipal interest, without prejudice to the approval of their acts in the cases and in the manner that the law determines". Second, Article 162 states that "The law guarantees the application of the following principles: ... the intervention of the supervisory authority or of the federal legislative power to prevent the law from being violated or public interests from being harmed".

226. As can be seen, the constitution itself lays down relevant provisions and principles on the control or "administrative supervision" of local authorities. We are not dealing here with the judicial control of their activities (performed by the regular and administrative jurisdictions) but the "administrative" control, that is, the one discharged by the "higher" levels of government, the federal state, the regions or the communities.

227. These two key provisions thus authorise the approval of local authority acts (by a "higher administration") and the intervention of the "supervisory authority"[26] (or the federal legislative power) to implement such control. Traditionally, the "supervisory authority" (*autorité de tutelle*) has been the state but following the devolution of the matter from local authorities to the regions, the "supervisory authorities" for municipalities and provinces are now the regions, and the German-speaking Community for the nine municipalities that are located within that territory.

228. The precise content and the limits of these two provisions of Article 162 of the constitution have been interpreted by the Constitutional Court and by the Council of State. The case law of these two high courts supplements the wording of those provisions. Consequently, Article 162 has to be interpreted and applied in the light of such case law.

229. Beyond that constitutional provision, it is up to the several regional laws on local authorities to regulate the manner, mechanisms and procedures of implementing such control. Article 8.1 of the Charter does not deal with the extent and depth of the types of controls over local authorities, but rather focuses on the formal aspect that such control can only be performed according to the cases, modes and procedures that are enshrined in law.

230. From this perspective, the rapporteurs believe that Article 8.1 of the Charter is respected in Belgium.

26. "Supervisory authority" is an English translation of a historic French term in this domain, "autorité de tutelle".

3.7.2. Article 8.2

General approach

231. From the outset, an important caveat should be made for this provision of the Charter: the Kingdom of Belgium did not include this provision among those "ratified" or accepted at the time of ratification. Therefore, there is an improper reservation on Article 8.2 and it is not binding on Belgium. However, and for the sake of completeness, it should also be analysed in this report.

232. It is well known that, as a rule, Article 8.2 of the Charter only accepts a control of legality upon the activities of and decisions adopted by the local authorities. According to the Explanatory Report to the Charter, "Administrative supervision should normally be confined to the question of the legality of local authority action and not its expediency".[27]

233. The control of legality is of course stipulated in domestic law, even at the constitutional level (see Article 162 above). This control may be an *a priori* control (Article 162, paragraph 2), that is, the local authority needs the approval or *placet* from a higher level of administration (the *autorité de tutelle* or supervisory authority, as a rule the region) before the local authority adopts a given decision, plan or rule. This legality control may be an *ex post* control, which means that after a local authority has adopted any plans, decisions or rules, the *autorité de tutelle* may revise, amend or annul them, on legal grounds, on its own initiative (*ex officio* control) or on the demand of someone else (another governmental body or a concerned individual).

234. This form of supervision is called "common administrative supervision" (or *tutelle ordinaire*, in French) and is implemented by the region.

235. The control of legality is specified by the Charter and this feature of Belgian local government is fully in line with the requirements of the Charter. Furthermore, when a "supervisory authority" exerts administrative control in a way that runs contrary to the wishes of the local authority concerned, it may appeal to the Council of State and it will be for this higher assembly to decide whether the region, in discharging its power of supervision, respected the content and the limits enshrined in the constitution and in the applicable laws and regulations.

236. On the other hand, the local representatives met by the delegation stated that this control is very infrequent; that their decisions, plans and rules are rarely amended or rejected by the regions, and when this happens it is only on legal grounds. In the case of Flanders, the delegation was informed that this administrative supervision only happens when there is a complaint raised by a concerned individual or firm. Ex officio supervision can also still be carried out although, in practice, action is usually taken only after a complaint. And in the case of the Brussels-Capital Region, the delegation was informed that there had been only one case of administrative supervision, in the form of a suspension of a local decision, in the last 10 years).

237. There is another aspect, though, that should be analysed in the Belgian system, that of the control of expediency.

"Specific" administrative supervision concerning delegated tasks

238. The second part of Article 8.2 of the Charter provides that "administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities". This form of control is thus specified by the Charter, and the difference with the previous mode of control is that it refers not to the local authorities' own responsibilities, but to tasks or duties that are "delegated" by other levels of administration. In Belgium, this situation does exist, too, and is usually referred to as "specific" administrative supervision (*tutelle spécifique* in French).

239. Contrary to the "ordinary" or common supervision, this form of supervision may be implemented by the federal state, by the communities or by the regions, depending on the level of government that delegated the responsibilities to the local authorities. This control is strictly limited to controlling how local bodies discharge the powers that have been allocated to them by the said "higher" territorial governments.

240. One local commentator provided some different examples of this type of supervision:

27. See the Explanatory Report to the Charter.

a. Under the law, the regions are the competent bodies in the matter or urban policies and environmental protection. A given region may decide to grant specific competences in this field to the municipalities located in the region. In this capacity, the region may supervise or control how municipal authorities discharge the responsibilities received from the regional government.

b. The communities, which are competent in the field of education, can carry out a certain control on how local governments discharge their competences in this domain, independently from the fact that the communities are the main subsidisers of educational programmes.

c. Finally, the federal authorities may control the manner in which local powers exercise their competences in the field of security, street crime, etc.[28]

Control of expediency or appropriateness

241. As seen above, Article 162 of the Belgian Constitution does not prohibit the control of opportunity over the decisions and activities of local authorities, but clearly recognises it when this control provides for the intervention of the supervisory authority "to prevent the law from being violated or public interests from being harmed". Indeed, it is a well-known feature of the Belgian system of local authorities that it still continues to stipulate the control of expediency and that administrative supervision is aimed at ensuring that the activity of local authorities conforms not only with the law, but also with the general interest. This is a basic principle, enshrined in the constitution since 1831, and this feature explains why Belgium presented a reservation on this aspect of Article 8.2 of the Charter.

242. However, one should not understand that the control of conformity with "the general interest" allows for indiscriminate supervision of pure expediency. On the one hand, this control is in practice very infrequent, and on the other hand the local authorities have the legal means at hand to defend their autonomy by filing an appeal to the administrative jurisdiction, in order to check whether the region has respected the core constitutional elements. In this vein, and as one local scholar has written, "the Council of State has declared that the general interest is an objective concept which cannot be confused with the simple 'good will' of the supervisory authority. For these reasons, when the controlling regional, federal or community authority intervenes on a given local government action or decision, it has to be motivated to make these interventions in a careful and comprehensive manner, according to the criteria of the general interest". [29]

243. In any case, it seems that the administrative *tutelle* over local authorities does not trigger a substantive or particular debate as regards the compatibility between supervision (*tutelle*) and local autonomy in Belgium. In can be said that the principle of supervision over local authorities has hardly evolved since 1831 and is largely accepted in the institutional habits of Belgium.

244. In light of the foregoing considerations, the rapporteurs believe that Belgium does not yet meet the requirements of Article 8.2 of the Charter, although that provision is not binding upon Belgium.

3.7.3. Article 8.3

245. As noted above, the exercise of administrative supervision over local authorities is not an unfettered responsibility. It must respect rules, procedures and principles, some of them having a constitutional relevance (namely, that of local autonomy and that of proportionality).

246. On the other hand, in the context of administrative supervision by the regions, the local authorities have the legal means at hand to defend their autonomy by filing an appeal to the administrative jurisdiction, in order to check whether this control has respected the core constitutional elements. The Council of State controls the respect of this provision and is the body that guarantees that the principle of proportionality is respected. A couple of examples of this function of the Council of State will be provided below, when considering Article 9.

247. However, one final, important remark should be made here in connection with the system of the appointment of burgomaster that is in force in Flanders, and which has been presented in detail above. In its Recommendation 409 (2107), the Congress of Local and Regional Authorities expressed its concern about Flemish legislation, under which the election of a mayor proposed by the local council has to be endorsed by the Flemish Government even when the proposed mayor is member of the local council previously directly elected by the electorate. The Congress went on to say that that form of validation could constitute a

28. Jacques Bouvier, *Local government*, page 62.
29. Ibid.

disproportionate supervision of local authorities by the regional Flemish Government and a breach of the spirit of the Charter's preamble and Article 8.3. Moreover, the Congress recommended that the competent Belgian authorities revoke the system of appointment by the Flemish Interior Minister. As has been discussed above, the legislation was, at the time of this monitoring visit, still the same, and, although a new legal scheme will enter into force in 2024, with the next local elections, the key feature of the law remains the same. The regional government will keep its power to accept or to refuse the appointment of a burgomaster proposed by the council. Hence, on grounds of consistency, the rapporteurs believe that this situation amounts to a violation of Article 8.3 of the Charter.

248. In light of the foregoing considerations, the rapporteurs believe that Belgium does meet the requirements of Article 8.3 of the Charter, but that there is a violation of this provision in Flanders.

3.8. Article 9 – Financial resources

Article 9

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

3.8.1. Article 9.1

249. From the outset, some general remarks should be made before we analyse the matter of local finances in Belgium. First, since the very beginning of the kingdom, local authorities have enjoyed fiscal autonomy. Thus, the Belgian Constitution of 1831 (Article 170.4) effectively confirms that both the provinces and municipalities have proper fiscal powers and that these fiscal powers must be exercised only by the council, either provincial or municipal.

250. Second, as with many other aspects of local government in the kingdom, local financing is a regional responsibility, not a federal one (for the nine municipalities located in the German-speaking Community, this responsibility falls on the shoulders of the said community and not on those of the Walloon Region). The state does not bear explicit responsibilities in this domain, although it may take decisions which, in a direct or indirect way, have an impact on local finances, as we will see below.

251. Third, despite some regional differences, there are some common structural patterns and sources of income for local finances which provide a general overall picture. The main sources of income for municipalities are as follows.

1. Transfers granted by the region. This source of income is analysed below, in connection with Article 9.7.

2. Local taxation**.** Three types of local taxation may be identified: local surcharges on state taxes, that is, amounts added on top of some state or regional taxes like the personal income tax and the real estate tax; truly "local" taxes, raised by municipalities themselves and different from those mentioned above; local charges and fees. All these sources are described below, in connection with Article 9.3.

3. Other sources of revenue**.** There are other different sources of income, of varying amounts and importance, that vary from place to place, such as:

   - fines and penalties for minor offences, such as parking violations, as prescribed by the local regulations and approved by the local council; local authorities also get a share of the monies raised from traffic violations imposed by "higher" authorities;
   - private-law revenue, such as that obtained through the sale, renting or leasing of municipal properties, the economic benefits obtained by local companies, the selling of publications or tourism revenue;

   - borrowing and access to the capital markets; this source of income is presented in more detail below, in connection with Article 9.8 of the Charter;

   - other miscellaneous and minor sources, such as donations.

252. It is difficult to identify the respective importance of each of these three sources, because the value of those sources may vary from one region to the other and, in addition, the actual amounts of these sources fluctuate naturally every year (this is especially the case for subsidies on investments). In any case, according to local experts, "it can be said that the municipal tax system remains the essential source of local financing" and represents more than 50% of all municipal revenue in all three regions.[30]

253. One aspect of local autonomy in financial matters is the responsibility of each local authority to ensure a fair and effective control of its expenditures. In the Walloon Region, there are some specific positions within the local authorities that carry out this function, in particular the accountant-comptrollers in the provinces and municipalities. Each municipality has an internal audit service, too. In addition, municipalities may be audited by the regions.

254. In the Flemish Region, the internal financial control in every municipality is ensured by a Financial Director, who releases a "financial statement" every year. The financial statements of the municipalities must be approved by the Flemish Government or the relevant minister. Moreover, there is an independent audit carried out by the Flemish Government by means of an agency on audits (there is a systematic control over the 300 Flemish municipalities). This agency does not check all the expenses or any expense in particular, but rather performs a quality control over the standards applied by the internal audits.

255. In light of the above, the rapporteurs understand that Article 9.1 is respected in Belgium.

3.8.2. Article 9.2

256. It is important to note that Belgium introduced an "improper" reservation to Article 9.6 and that, consequently, this provision is not binding on Belgium. However, and for the sake of completeness, we should analyse the situation concerning this provision.

257. On this matter, all local representatives met by the delegation made the same complaint, which is a serious one. It refers to the costs of the retirement pensions of local civil servants. To better understand the problem, it is worth mentioning that the payment of the retirement pensions for regular workers (in the private and public sectors) and the pensions of state civil servants is carried by the state, by means of the Social Security. Pensions are a federal responsibility, including for those of state officials.

258. As mentioned above, the human resources of local authorities are composed of "regular workers" (employees under a contract) and "civil servants" (*agents statutaires*). Recently the federal government decided that the pensions of local civil servants should be paid by the municipalities for whom they had been working before retirement, while the state would keep on paying the retirement pensions of the "regular" workers from the municipalities.

259. This reform has had very serious consequences for the budgets of local authorities because it represents a very large sum of money. Besides, this is an expense for which the local authorities have not received proportional funding from the state and on which they were not consulted by the federal government at the time of adopting this decision.

30. Ibid., page 59.

260. Apparently, this problem has also been partially fuelled by a practice where, in many municipalities, some local "regular" workers (contractual agents) were promoted or redesignated as "civil servants" at the end of their careers, as a sort of prize or reward. Consequently, when reaching retirement age, their social security contributions were not sufficient to cover the costs of their pensions as a civil servant, and this had to be paid by the municipality.

261. As a result of this measure, local authorities are now facing an unsustainable financial burden for a responsibility that they did not have an opportunity to discuss with the federal government.

262. This problem seems to be especially acute in the Brussels-Capital Region. The delegation was told that in this region this expense amounted to €80 million in 2021. In addition, the financial burden will grow every year for natural reasons, and according to the forecasts of the National Court of Auditors, pension costs will continue to increase faster than the wage bill. In this vein, it is estimated that in 2025 the 19 municipalities will need to pay roughly €100 million in retirement pensions for their civil servants. According to the regional association of local authorities, Brulocalis, the financial impact of this situation will represent a much greater threat to local finances than the consequences of the pandemic.

263. All the local representatives met by the delegation agreed that the system of pensions for local civil servants is unsustainable. At the time of the visit, this was the most important and serious claim made by the local representatives in the field of local finances. Moreover, the regions apparently have not taken into consideration the rise in the costs of the pensions of the local civil servants when they calculate the municipal fund.

264. Local representatives proposed that at least one part of this financial burden should be satisfied by the state or by the regions. However, the response of the regions to this problem has been uneven and is conditioned by their own financial wealth. Apparently, only the Flemish Region has taken an executive move, by deciding to pay half of the cost that the Flemish municipalities will have to pay in the next years. Regional representatives told the delegation that this move will involve a financial commitment of roughly €1.3 billion over the next few years. The delegation was also told that not all the regions seem to have the means to take this decision. For instance, in the Brussels-Capital Region, there is no idea or plan whatsoever to help the municipalities face up to the financial burden of the payment of retirement pensions; it would be too costly, regional representatives acknowledged. During the consultation procedure, the rapporteurs were informed by the Government of Brussels-Capital Region that the region has provided for pension aid in its sectoral agreement 2021-2025 and that it grants the municipalities an amount of 250EUR/year per FTE to finance the legal pension of their statutory employees and the complementary pension of their contractual employees.

265. On the other hand, the local authorities' associations criticised the fact that the principle of budgetary neutrality is further violated by the federal level because it imposes on municipalities duties and tasks for which they do not receive the necessary financial means. The said associations provided several different examples (some of which have been referred to above), including the financing of the police and emergency services.

266. In general, the federal government (in the form of the Interior Ministry) carries out negotiations with the trade unions and workers' associations with regard to the status of civil servants, pensions and salaries. These matters are negotiated at federal level for the whole country. For example, the federal government conducts collective bargaining and negotiates the working conditions and salaries for all police forces with their national unions; however, 80% of police officers are local and work in the municipalities. The same is true for firefighters. Thus, local authorities must pay a salary rise upon which they have not been consulted.

267. In those negotiations, local representatives remarked, those representing local authorities are rarely consulted on the preparation of the negotiations. The paradox is that it is the federal level that negotiates with the unions and may make concessions to the local employees, but at the end of the day it is for the local authorities to pay the salaries and wages of those employees, since those employees work for the local authorities and receive remuneration from them. Consequently, local representatives complained, central government makes concessions for which it does not assume a financial burden and regulates the social and wage structure of regimes that it does not run.

268. The associations complained that this conduct by the federal government triggers a transfer of burdens from the federal level to the local one, something that has been denounced in recent years.[31] In the Walloon

31. See Van Omermeire K. and Flagothier J., "Veille fédérale et régionale, année 2021 et prospective 2022-2024", www.uvcw.be/finances/articles/art-7163.

Region, the UVCW claimed that this state of affairs will have a negative impact on the budgets of the municipalities of roughly €295 million in 2022. In this claim, the local associations are backed by the regional minister.[32]

269. As a consequence, financing the local police forces also constitutes a challenge for many municipalities.

270. At regional level, the principle of budgetary neutrality seems to be more respected. This is the case in the Walloon Region, according to local representatives. In the Flemish Region, according to regional leaders, the "belfry" principle applies, which means that the municipalities have to be compensated each time that the Government of Flanders takes measures or decides upon something that has a financial impact on them. From these facts, the local associations reasonably conclude that Belgian municipalities are allocated tasks and responsibilities for which they are not appropriately funded.

271. In light of the foregoing, the rapporteurs understand that there is a partial violation of Article 9.2 of the Charter, although this provision is not binding on the kingdom.

3.8.3. Article 9.3

272. As noted above, local taxation is an important source of revenue for the Belgian municipalities. There are two types of local taxes: (A) local surcharges on State or regional taxes. In this case, a municipal rate is added to the rate of the state or region. Examples are the personal income tax and the real estate tax; (B) 'self-contained' local taxes, independently determined and elaborated by the local authorities. We should consider both types separately. In addition to these two types of local taxes, local governments also charge fees for specific services to individuals.

Local surcharges on taxes

273. This is by large the most important source of fiscal revenue for local authorities. These taxes are actually 'supplements' to a state or regional tax.

274. The existence of the basic tax is independent of the municipal government. Nor does the municipal authorities shape this type of taxes in any way. The local authorities do not collect these taxes either, as they are collected by the region or the state, who later return the "part of the cake" that corresponds to each municipality. There is, in any case, some leeway in the decisions taken by the local authorities, who are free to determine the actual amount or percentage of the said surcharge. There are two basic local surcharges.

> *The surcharge on the tax on real estate (Onroerende Voorheffing/Précompte immobilier). All property owners must pay an annual tax. The amount of the tax is calculated according to the presumed annual rental value (revenue cadastral/kadastraal inkomen) that is attributed to the property by local authorities. The tax paid varies according to the region and municipality where the property is located. In the Flemish Region, the tax is generally 3.97% of the annual rental income; in the Brussels-Capital Region, it is 2.25%; and in the Walloon Region, it is roughly 1.25%. On top of that, municipal surcharges increase the effective rate to between 18% and 50%, or sometimes more, depending on the municipality where the property is located.*

275. The supplement or surcharge on the real estate tax is by far the most important source of fiscal revenue for the municipalities (in Flanders it accounts for almost 45% of all local fiscal revenue).

> *The municipalities (and the regions, too) may levy surcharges on the national income tax. The municipality is free to decide the actual rate of the surcharge, within minimum and maximum limits. The rates vary from 0% to 8.5%, and the average rate is between 4% and 7% (in Flanders, 7.5%). In general, the revenue from these two surcharges amounts to roughly 85% of all fiscal revenue for the municipalities.*

276. The associations of local authorities made several different complaints about the current system of local "surcharges" or shares in the state or regional taxes. First, that the revenues vary from year to year what makes them unstable. Second, that the "higher" administrations can take decisions of general economic policy such as tax relief or "tax shift" by which they modify the tax rates or decide on fiscal reductions or exemptions. These decisions later have a clear impact on local revenues, since the part of the taxation that corresponds to the local authorities is reduced. However, local authorities have no say in adopting these

32. See the interview with the Walloon Minister for local authorities in the journal *Le Vif* (edition of 3 May 2022): "Il est temps que le federal arrête de degrader les finances locales".

decisions and are not even consulted. Third, they have experienced a significant decrease in revenue as a result of the Covid pandemic and the subsequent crisis.

Genuine or "own" local taxes

277. In Belgium, municipalities enjoy a wide power of taxation. They can raise taxes on any local fact or event, as long as no restrictions are imposed by the higher authorities. The decision to levy a tax, is made by the city council. This is stipulated in the Belgian Constitution, when it says that a charge or tax can only be introduced by the metropolitan districts, federations of municipalities or by the municipalities by a decision of their council". The competence for these taxation decisions belong to the council.

278. Among the most common local taxes levied by municipalities is the tax on second residences. Many municipalities have decided to raise this tax, which affects properties that do not constitute main or permanent residences. As a rule, all people having a second residence (apart from having their own main or permanent residence) must pay an annual tax. The tax paid varies according to the commune and the region, depending on the importance in terms of tourism of the area where the temporary residence is located.

279. In addition, municipalities may levy environmental taxes, such as taxes on refuse collection (direct or indirect tax on the purchase of refuse bags) or on environmentally harmful activities.

280. Municipalities also levy taxes on night shops, or on abandoned buildings. For instance, in the case of the tax on night shops the amount of tax (at least in Flanders) ranges from between €2 000 and €3 000, depending on the surface area taken up by the business.

281. As said, the general power of taxation enjoyed by the municipalities may be regulated or limited by federal or regional laws and regulations. The way in which the regions intervene in municipal fiscal autonomy differs from region to region. For instance, in the Walloon Region there is a catalogue of taxable subjects or events that is approved every year by the regional government (by means of "circular" regulation). According to the regional local association (UVCW), this constitutes a limitation on the fiscal capacity of the municipalities. The region may want to homogenise local taxation on its territory, but it must respect a core content for the local fiscal autonomy.

282. Still in Wallonia, and by virtue of regional legislation, any decision of a local council to levy a specific local tax and adopt a corresponding local regulation needs to be approved by the regional competent body or ministry. In this vein, legislation in Wallonia provides that "the regulations relating to municipal fees and taxes are subject to government approval, with the exception of additional taxes on personal income and additional centimes on property tax". In addition, "the approval of such regulations may be refused for any violation of the law and harm to the general interest" (Article L3131-1 of the Walloon Code of Local Democracy and Decentralisation).

283. The implementation of the inherent fiscal powers of the municipalities (their power to levy taxes on taxable subjects) may sometimes conflict with the economic or fiscal policies of the state or the region. In this context, a state or a region may want to curtail or to curb the tax autonomy of a municipality. This tension is a very good example of the nature and depth of local autonomy in Belgium and has so far produced some very interesting legal developments.

284. Indeed, the Council of State, one of the most important Belgian courts that rules on government measures, has already dealt with this issue several times. During the consultation procedure, the Government of Flanders referred to the decision of the Council of State in a dispute between the Walloon Region and the municipality of Lessines that it considered as a matter of principle. The municipality of Lessines wanted to raise a local tax on nights shops, but the region disagreed on two grounds: first, the region had approved a regional internal regulation (*circulaire*), establishing which taxes the municipalities should or could levy, and the decision of the municipality infringed that regulation; second, the regional tax policy discouraged municipalities from raising additional taxes.

285. The refusal of the region (acting as *autorité de tutelle*) to approve the local tax regulation was challenged by the local authority before the Council of State, invoking, among other grounds, its local autonomy. In its ruling,[33] the Council of State declared that the *circulaire* could not have a regulatory nature and it was not a genuine legal rule. The Council of State started its reasoning recalling that "by virtue of Articles 41 and 162,

33. Council of State, ruling No. 249.447 of 11 January 2021 (XV Chamber), *Ville de Lessines v. Région Wallone.*

paragraph 2, of the constitution, municipal interests are regulated exclusively by the municipal councils, in accordance with the principles established by the constitution".

286. The court went on to say that "the control exercised by the supervisory authorities being an exception to the constitutional principle of local self-government, the powers of the latter must be interpreted restrictively, all the more so when it comes to special approval supervision". Finally, the Council of State declared that "the establishment of a municipal tax is, by virtue of the aforementioned provisions of the constitution, a matter of municipal interest which it is up to the municipal council to regulate, except for the exceptions determined by law, the need for which is demonstrated, and provided that, under the control of the supervisory authority and the competent jurisdictions, the establishment of such a tax does not violate the law or does not harm the general interest".

287. Accordingly, the Council of State annulled the decision of the regional minister to refuse. This ruling is very important because it confirms and reiterates the case law of this highest court in the matter of local autonomy and, more precisely, in the field of local fiscal autonomy.

288. A similar controversy was adjudicated on by the Council of State in its rulings No. 251.180, of 30 June 2021[34] and No. 252.629, of 13 January 2022,[35] as the delegation were informed by Council of State representatives.

Charges and fees

289. Local authorities may collect user fees and charges (*redevances* in French, *retributies* in Dutch) for the use of public property or facilities, or for the provision of certain local services such as the issuance of permits. The number and types of these fees may vary from region to region, and from one municipality to the other. Examples of fees and charges that are applied just about everywhere are fees on the terraces of bars and restaurants, and fees on street traders and on street markets. Moreover, in the Walloon Region there is a fee levied on the use of local roads (*redevance de voirie*), which is payable by the distributors/suppliers of gas and electricity that use local infrastructure such as roads and pathways. The same applies to the Brussels-Capital Region.

290. In light of the foregoing, municipalities' autonomy in terms of taxation is substantial and is protected by the courts of law (including the Council of State). Consequently, Belgium complies with Article 9.3 of the Charter.

3.8.4. Article 9.4

291. Under this provision of the Charter, the financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

292. As regards this article, it should be noted that the system of local financing is sufficiently diversified, as described in this report in connection with the different paragraphs of Article 9.

293. Concerning the buoyancy of the system, it will be described below that the block grants that the regions transfer to the municipalities are updated every year in proportion to the rate of inflation, and that in some regions there is even a "surplus" beyond that ceiling. In addition, there are comprehensive mechanisms for equalisation, as described below (Article 9.5).

294. Moreover, in some regions there are specific schemes to help municipalities whose finances are especially burdened or imbalanced. For instance, in the Walloon Region the municipalities and the Centres for Social Help (CPAS) that face acute financial structural difficulties may ask for financial assistance from the Regional Centre for Assistance to the Municipalities (*Centre regional d'aide aux communes*, CRAC). This assistance is presented in more detail below, too.

295. Finally, the delegation received some complaints about respect for the principles enshrined in these provisions (the burden of the local pension payments or the reduction of revenues owing to fiscal decisions made by the state/regions, for example), but in our view they do not equate to an open violation of this provision, or at least not in the whole country. In this vein, it should be recalled that some local authorities' associations

34. Ibid.
35. Council of State ruling in *La société à responsabilité Saveurs d´Orient v. La Ville de Mouscron* (in this case, a firm filed an appeal against a local taxing regulation, on a local tax on night shops).

(such as in Wallonia) acknowledged that the regional institutions do recognise the principle of budgetary neutrality, which forces the regions to compensate municipalities for the negative financial effects that regional decisions might have on local authorities. This is done in practice, even if this principle has not been recognised yet in the constitution or in the applicable regional legislation.

296. In light of the above, the rapporteurs believe that Belgium complies with Article 9.4 of the Charter.

3.8.5. Article 9.5

297. Fiscal equalisation among local authorities, in the sense of Article 9.5 of the Charter, is not unknown in the Belgian system. As usual, this is ensured and managed by the regions themselves, and not by the state. Consequently, financial equalisation instruments have been set up and are implemented in the three regions.

298. Thus, in the Brussels-Capital Region there is a specific fund known as *dotation aux communes*, through which the region tries to compensate for and redistribute financial means among the poorer municipalities. This equalisation mechanism is distributed among the municipalities based on multiple criteria, for instance the number of kindergartens, the unemployment rate or the population density. According to some senior regional representatives, the current system uses too many criteria and is too complex. They informed the delegation that they are working towards a simplification of the current system and the strengthening of the fiscal equalisation system.

299. In the case of the **Flemish Region**, there is a specific fund, a fund endowed with €3.8 billion, which is specifically used to accomplish fiscal equalisation among the Flemish municipalities. The monies from this fund are allocated among the several municipalities on the basis of a dozen technical criteria. As a result, the poorer and rural municipalities get more money than the others.

300. In the **Walloon Region,** there is a specific equalisation grant, called the *dotation péréquation fiscale* in French. This allocation introduces a certain solidarity within the general regional fund by allowing further grant allocations to municipalities with low tax-raising potential.[36] This endowment is broken down into two slots or instalments, one of 22% and linked to the local surcharge on income tax and the other of 8%, linked to the surcharge on real estate tax. This additional fund redistributes monies among the municipalities whose tax potential is lower than the overall tax potential of the region for a given financial year. The extent to which each municipality has access to this part of the additional fund is established according to a formula which considers several criteria. As for the equalisation portion that relates to the real estate tax, it is distributed among the municipalities whose tax-raising potential is lower than the average tax potential of the region for a financial year. The specific amount that is granted to each municipality is also established according to a formula that uses several criteria.

301. Still in this region, there is an additional regional endowment that is intended for the municipalities and that has an equalisation aim. The population density endowment (*dotation "densité de population"*) aims to offset the expenses incurred by certain municipalities due to their low population density, for example for the maintenance of a larger road network. This allocation is only accessible to municipalities whose population density is lower than the population density of the Walloon Region (calculated on the basis of the number of inhabitants per square kilometre and of the basis of the area in hectares of the municipality). The share that each municipality receives is determined according to a formula using several criteria.

302. Finally, in the **German-speaking Community**, the small number of municipalities and the proximity of the "higher" administration allows the community to directly correct the fiscal imbalances among the nine municipalities present in the territory.

303. In light of the foregoing, the rapporteurs believe that Belgium complies with Article 9.5 of the Charter.

3.8.6. Article 9.6

304. From the outset, it should be recalled that Belgium introduced an "improper" reservation, too, to Article 9.6 and that, consequently, this provision is not binding on Belgium. However, and for the sake of completeness, we should also analyse the situation concerning this provision.

36. See Articles L1332-11 and following of the Walloon code on local democracy and decentralisation.

305. There is a general recognition that this provision of the Charter is not respected in Belgium and that there are no plans or initiatives to change the situation. In general, local authorities are not consulted in an appropriate manner on the way in which redistributed resources are to be allocated to them. This understanding was made very clear during the different meetings held by the delegation. This was the situation at the time of ratifying the Charter, so Article 9.6 could not be ratified by Belgium. Unfortunately, the situation is still more or less the same.

306. Local representatives complained that there are frequent examples of the federal level discussing or adopting decisions and laws on matters that directly or indirectly concern the finances of local authorities, but local authorities are not consulted. These cases have been presented above.

307. Apart from the issue of the negotiation of the salaries of several governmental employees who work at local level and are paid by the local authorities (described above), local representatives pointed out that when the government introduces a tax reform (for instance, a tax relief or tax reduction programme) this ultimately ends up by having a significant impact on the finances of local authorities, since an important part of their revenue consists of surcharges on state taxes, such as the real estate tax. Not only are local authorities not consulted, they do not receive compensation for such cuts.

308. Consequently, the rapporteurs understand that Belgium does not meet the requirements of Article 9.6 of the Charter, although this provision is not binding on the country.

3.8.7. Article 9.7

309. From the outset, it should be recalled that Belgium also introduced an "improper" reservation to Article 9.7 and that, consequently, this provision is not binding on Belgium. However, and for the sake of completeness, we should analyse the situation concerning this provision.

Block transfers

310. In Belgium, the most important grant for municipalities is a main block transfer, granted by the corresponding region. As noted above, the financing of the local authorities is a regional responsibility. This means that the regions are responsible for most matters concerning local finances and they are also responsible for ensuring that local authorities' finances are sufficient, that they are proportional to the tasks and competences allocated to local authorities and that they are sufficiently diverse and buoyant.

311. The number, type and features of the transfers that the regions grant to their local authorities depend on each region, there is no federal law on this issue. In general, each region has a main "local fund", which is a block grant that is distributed and transferred every year from the budget of the region to the budgets of the several local authorities present in its territory. Regional representatives met by the delegation assured it that local authorities are free to spend these monies as they want, although they usually apply this revenue to cover their operational expenses. The municipalities' funds are instrumental to stabilising the local finances and ensuring local autonomy.

312. The amount of this main fund is updated and increased every year according to inflation. In addition to the general update, a region may decide to add a certain percentage in the form of a "bonus" or improvement.

313. In the **Flemish Region**, regional representatives pointed out that the municipal fund has an amount of roughly €3 billion and has been increased every year by 3.5%, in most years well above inflation rates. Apart from the "main" fund, the Flemish Government has created new general allocations, including an allocation distributed based on the accountability contributions that local governments must pay to honour pension costs (from €130 million in 2020 to €367 million in 2026); and an allocation distributed based on the number of hectares of open space known to the municipalities (from €63 million in 2021 to €127 million in 2025).

314. Regional government representatives stated that the financial contributions by the region to the municipalities will amount to roughly €20 billion in the 2019-2024 government period (compared to €15 billion in the previous 2014-2019 period, according to their figures).

315. In the Brussels-Capital Region**,** the general regional financing amounts to roughly 27% of the total income of the municipalities. Local representatives claimed that the regional local fund was increased in 2017 by 12% and since then has been indexed annually by 2%.

316. In the case of the **Walloon Region**, the basic regional allocation (known as *Fonds des communes*) is a major source of income for the 253 municipalities located in the region.[37] In 2021, the overall amount of this fund was roughly €1.3 billion. In general, this grant represents roughly 25% of all municipal regular revenues. The overall amount of this fund is updated every year according to inflation, plus 1% (it is "indexed"), and this latter aspect is highly appreciated by the local association. In addition, the Walloon Region further includes in the regional fund an overall amount of roughly €11.2 million. This amount is connected to the traditional tax that the local authorities could in the past raise on mobile telephone antennae (which was abolished in 2014). Consequently, with this additional amount the regional government is somehow compensating the local authorities for the loss of that income.

317. Still in this region, there is a separate and specific fund, allocated to the German-speaking municipalities (*Fonds des communes germanophones*). In 2021, this fund had an endowment of roughly €22.7 million.

318. A general complaint made by local representatives is that the actual amount that a given municipality may receive as part of the regional fund at the end of the year is not always the amount calculated by the local authority at the beginning of the year, because the region may sometimes grant the sum equivalent to 11 months, and at other times for 13 months.

319. In addition to the main grant, each region may have different smaller, sector-based funds. For instance, until 2014 in the Flemish Region there were at one time up to eight different funds (*sectoral funds*), which today have been merged into one single local fund (although there is still a "rural" fund).

320. The structure of local finances is more or less the same in the three regions. For instance, for Flemish local authorities, roughly 40% of their revenue comes from fiscal revenue and 60% comes from non-fiscal revenue, mainly the funds and grants allocated by the regions.

Subsidies

321. Local authorities may also receive "subsidies", which are allocated by the "higher" administrations (the state, regions or communities). Certainly, other levels of government may take the initiative to finance directly, in certain circumstances, investment works that local powers will take advantage of and will manage in the future.

322. Unlike with the block grants, municipalities may spend as they wish (as long as the expenses correspond with the regular local budget) and subsidies are allocated to specific purposes, which usually involve an investment in the local community (for instance construction projects or the maintenance and improvement of local roads and streets). However, this is not an absolute rule, since the region may decide to set up a subsidy to help the municipalities finance exceptional operational expenses linked to situations of crisis.

323. This type of subsidising may be ensured by each of the various levels of power (federal, state, regions, communities) according to their respective responsibilities and powers. Subsidies are usually granted by the regions, although in practice they can come from other administrations, depending on the project in question. For instance, the French Community may subsidise the construction of a library in a municipality located in the Walloon Region or in the Brussels-Capital Region and the German-speaking Community may do the same thing in one of the nine German-speaking municipalities.

324. The state may also subsidise local initiatives. A good example of this form of financing is represented by certain federal funds invested in the municipalities of the Brussels-Capital Region to support the role of the country's capital region.

325. A notable case is that of the nine municipalities located in the German-speaking Community: they may ask for subsidies from the Walloon Region or from the German-speaking Community. For instance, this latter community has a specific fund for the construction and improvement of schools. Sometimes, the construction of a given project needs subsidies from both the Walloon Region and that of the German-speaking Community – that would be the case for a bike lane, for example, because this project falls within the realm of responsibility of both governments: roads (Walloon Region) and mobility (German-speaking Community).

326. The regions' financial assistance to the municipalities may also take the form of subsidies in cases of emergencies. For instance, following the flooding that took place in the country in September 2021, the

37. For more detail, see www.uvcw.be/focus/finances/art-2414.

German-speaking Community assisted the nine municipalities with a budgetary appropriation of €30 million for flood relief assistance. In Flanders, the regional government has created various ad hoc grants for local governments to help offset the additional costs caused by the coronavirus crisis and the Ukraine crisis.

327. Another potentially relevant source of subsidies may come from the different EU structural funds, granted in the context of EU regional policy.

328. When it comes to analysing Article 9.7, the delegation did not hear in general significant complaints. It seems that the municipalities may spend with significant freedom the monies that they receive from the regional block grants.

329. Consequently, the rapporteurs believe that Belgium does meet the requirements of Article 9.7 of the Charter, although this provision is not binding on the country.

3.8.8. Article 9.8

330. Municipalities may have access to borrowing as an extra source of revenue where the amounts from the regional grants and their own revenues are insufficient. In particular, investments in local infrastructure may be financed by borrowing. The golden rule is that all these operations must be decided by the local council, either at municipal or provincial level.

331. Municipalities may go the private sector or ask for credit from a public or quasi-governmental organisation. For instance, in the Walloon Region there is a specific public authority, called the Centre for Assistance to the Municipalities (CRAC). Municipalities or provinces facing a structural deficit can obtain an extraordinary long-term aid credit via the CRAC account under certain conditions. Depending on the type of aid, the terms and conditions of the credit may differ.

332. Regional legislation sets the different criteria, conditions and eventual limitations that the local borrowing operations may reach, and the types of local authorities and bodies that may have recourse to borrowing (for instance in the Walloon Region the possibility to have recourse to borrowing is also recognised for the authorities and bodies created for the intermunicipal co-operation[38]).

333. The regional governments keep a close eye on the debt of local authorities and on their borrowing operations, ensuring that they respect the regional laws and regulations on the matter. Regional legislation may provide that the borrowing decision of the municipality be subject to the approval of the regional ministry when the operation goes beyond certain legal limits.

334. The regions may also establish specific financial mechanisms for assisting the municipalities with special needs in order to fulfil their duties and obligations, involving eventually the possibility of borrowing. For instance, in late 2021 the Walloon Region approved a specific plan, called the “Oxygen Plan”. From the year 2022, and in order to balance their budget, the municipalities will be able to borrow for five years to cope with the increase in expenses caused by the cost of pensions or funding the police and emergency services. The region, via the CRAC, bears the payment of interest as well as, for certain municipalities, 15% of the amount borrowed. The municipalities will therefore go into debt in order to finance staff pensions and to fund the police and emergency services as well as the social integration income (RIS). It is considered that these expenses are all for structural reasons, and they are only expected to increase over time.

335. Apart from this general picture, the delegation did not hear any complaint from local representatives or from their associations about this source of income for municipalities.

336. In the light of the above considerations, the rapporteurs understand that Belgium complies with Article 9.8 of the Charter.

38. Article L1215-4 of the Walloon code on decentralisation.

3.9. Article 10 – Local authorities' right to associate

Article 10
1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each state.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other states.

3.9.1. Article 10.1

337. Belgian local authorities are entitled to co-operate and to form consortia and other types of collective structures and bodies with other Belgian local authorities (and sometimes with local authorities located abroad; see below). Thus, Belgian municipalities may establish associations or partnerships among themselves in order to carry out tasks of common interest and to discharge common local services. Intermunicipal co-operation takes place mainly in the fields of economic and technical infrastructure, municipal services, social services, transport, civil protection, cultural services, water supply and depuration, gas supply, waste management and economic development.

338. According to local representatives, intermunicipal co-operation is extremely developed across the whole of Belgium and there are hundreds of structures for co-operation. This co-operation takes place mainly among the municipalities belonging to the same region. Some common rules may be identified in this matter.

339. This aspect of local government is also regulated exclusively at regional level and, consequently, in the different regional laws and regulations. Consequently, each region may have a different policy of encouraging or channelling intermunicipal co-operation.

340. For instance, **in Flanders** regional leaders have identified that there are many structures for intermunicipal co-operation (roughly 190 partnerships), but that this co-operation does not follow a rational pattern (functional or territorial). The regional government approved in 2021 a new decree on intermunicipal co-operation. The decree has created different "districts" or "regions for co-operation" (fifteen in total) and the municipalities are encouraged to co-operate with other entities placed in the same geographical area. With this initiative, the regional government wants to "intensify" intermunicipal co-operation, avoid territorial dispersion and strengthen intermunicipal co-operation.

341. In the Brussels-Capital Region, the peculiar territorial pattern of the region (with 19 municipalities packed into a relatively small area of 161 km^2) makes intermunicipal co-operation unavoidable, for instance in the field of management of sewage systems. As regards the police forces they have been merged in the municipalities. Currently, there are six police zones or areas and these areas are run by councils representing the municipalities concerned. Sporting and other facilities are another common area of co-operation as a result of the close proximity of the population, with participating municipalities seeking to pool expenses.

342. In **Wallonia**, government representatives told the delegation that they were preparing regional legislation to reform intermunicipal co-operation and that their model is the French *intercommunalité.* In the future, it will be possible to create in this region *communautés de communes*, which is the most complex form of intermunicipal co-operation in France. Meanwhile, they are putting in place pilot projects, for instance for the reception of refugees.

343. The different types of intermunicipal co-operation and their associated processes vary according to the degree and ambition of the co-operation. The loosest form of co-operation is the one that takes place in an informal way. But participating municipalities may want stronger or more stable co-operation, which is usually manifested in a "partnership agreement". Finally, two or more municipalities may decide to set up a permanent separate structure, body or authority, with its own legal personality, managing organs, internal organisation, and the like.

344. For instance, **in Flanders** there are "interlocal associations", which represent the least formal form of intermunicipal co-operation and which have no legal personality. There are also "project associations", which are established to realise a clearly defined (small-scale) project of intermunicipal interest; they have legal personality. And, finally, there are "service associations" and "commissioned associations". These

partnerships involve the strongest and most stable form of co-operation. They are common in areas such as water or energy distribution and waste collection.

345. Regional legislation provides for questions such as: the remuneration and wages of the local (municipal) representatives sitting on the managing boards of the structures for co-operation; the possibility for the said structures to have recourse to borrowing; the possibility to hold simultaneously two or more positions in different structures of co-operation.

346. In view of above considerations, the rapporteurs believe that Belgium fully complies with Article 10.1 of the Charter.

3.9.2. Article 10.2

347. In Belgium, local authorities are certainly entitled to belong to associations for the protection and promotion of their common interests. As in other fields of local government, this dimension must be analysed strictly at regional level. In contrast to what happens in most countries, in Belgium there is no national association of municipalities or of provinces. Conversely, in all three regions there is one major (or only) association of municipalities (and eventually provinces). Usually, they have the legal nature of a non-profit organisation.

348. These associations have a strict regional scope: in the Flemish Region, the local association is the Association of Flemish Cities and Municipalities (Vereniging van Vlaamse Steden en Gemeenten, VVSG).[39] This association brings together all of the 300 municipalities now present in Flanders. Therefore, it is the only such association operating at the regional level.

349. In the Brussels-Capital Region, the association is Brulocalis,[40] while in the Walloon Region the association is the Union des Villes et Communes Wallonnes (UVCW).[41] In the German-speaking Community, though, there is no representative association of local authorities. However, the small number of authorities allows for direct communication between the municipalities and the community's institutions.

350. Concerning the provinces, in 1973 the existing provinces decided to create an association to promote their common interests: the Association of the Belgian Provinces was born. In 1991, the Flemish provinces and the Flemish members of the Council of the Province "Brabant" created their own association: the Flemish Association of Provinces.[42]

351. The missions of the regional associations of local authorities are equivalent in the three regions. They seek to protect the rights and the interests of all the affiliated municipalities or provinces; to lobby for municipalities and provinces and to represent them at the regional and federal level; to deliver reports and consultations, whenever they are consulted by the regions on any matter concerning the local authorities; to provide them with consultancy, training for municipal staff and technical support and assistance. The associations are usually funded through membership fees.

352. The general freedom enjoyed by Belgian local authorities to form or to join the regional representative associations is complemented by their capacity to join international associations. As a consequence, these associations may participate in international institutions and organisations related to their field of operation as founding members or members, upon decision of the municipal or provincial council.

353. Thus, Belgian associations work actively within international associations of local authorities, for instance in the Council of European Municipalities and Regions (CEMR), the oldest and broadest European association of local and regional governments. The Association of Flemish Provinces is a member of CEPLI (European Confederation of Intermediate Local Authorities).

354. In view of the above considerations, the rapporteurs believe that Belgium fully complies with the requirements of Article 10.2 of the Charter.

39. See www.vvsg.be.
40. See https://brulocalis.brussels/.
41. See www.uvcw.be/.
42. See https://cepli.eu/association-of-flemish-provinces-vvp-13464346.

3.9.3. Article 10.3

355. As noted above (see paragraph 5), the Kingdom of Belgium has signed and/or ratified a number of Council of Europe international treaties in the domain of transfrontier co-operation at local level, such as the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106); the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, of 9 November 1995 (ETS No. 159); Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation, of 5 May 1998 (ETS No. 169); Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings, of 16 November 2009 (CETS No. 206). As long as these treaties fall within a subject matter which is within realm of responsibility of the regions, all or most of the above-mentioned treaties have also been ratified by the regions.

356. Consequently, there are extensive legal and institutional foundations for extensive co-operation with municipalities of other neighbouring states (mainly France, Luxembourg, the Netherlands and Germany).

357. For instance, in the case of Flanders, this region has approved the European Framework Convention on Transfrontier Co-operation between Territorial Communities or Authorities, as well as the three additional protocols to this convention. Flanders is also bound by the European Union Regulation of 5 July 2006 on a European Grouping of Territorial Cooperation (EGTC), as amended. Hence, Flanders and/or Flemish local and intermediary authorities currently participate in different EGTCs (for instance, in the Euregio Maas-Rijn).

358. Transborder co-operation is also strong in the context of the Benelux Union, of which Flanders is a partner. This allows for different forms of co-operation, for instance by the creation of a "Benelux Grouping for Territorial co-operation". Flemish municipalities do not need the approval of the Flemish Government, except for the establishment of an EGTC, because the aforementioned Regulation of 5 July 2006, as amended, requires this.

359. In general, the delegation did not hear any complaints about the implementation of this freedom or right enshrined in the Charter, and many Belgian municipalities are involved in schemes for intermunicipal co-operation at the international level, where twin-city partnerships with foreign cities are, of course, a common feature.

360. The delegation did not receive any complaint or negative assessment of this freedom. In light of the above, the rapporteurs believe that Article 10.3 of the Charter is respected in Belgium.

3.10 Article 11 – Legal protection of local self-government

Article 11
Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

361. An analysis of the legal protection of local self-government in the Kingdom of Belgium must consider two different aspects: on the one hand, the regular access of local authorities to ordinary courts, and, on the other hand, the access of such entities to the Constitutional Court to defend the principle of local self-government.

362. As regards the first aspect, Belgian local authorities do enjoy *locus standi* to go to the regular or administrative courts in order to defend their rights, properties and interests, just as other juridical persons do. In the Belgian system, municipalities and provinces are able to go to the courts to secure the free exercise of their powers, interests and properties. They may go to civil courts or to the administrative courts. The delegation did not hear any complaint from local leaders or representatives regarding this.

363. The administrative jurisdiction is of special interest for the purpose of this report. The Council of State is the only general administrative jurisdiction in Belgium, but there are other specialist jurisdictions. For instance, if a municipality claims that a decision concerning it by a regional body is illegal, it may bring a claim to the Council of State.

364. Local authorities have the appropriate legal capacity and regular access to the Council of State (*section du contentieux*), like any other moral person, and this high court examines the "*locus standi*", in the sense

that they must show “an interest to act” (*intérêt à agir*). In general terms, this requirement is implemented to a great extent by the Council of State.

365. Moreover, in some legal proceedings lodged by individuals and companies (for instance in the domain of local planning and urbanism) the Council of State invites the concerned municipality to be a party to or intervener in the proceedings. In practical terms, “*locus standi*” also applies to the local burgomaster and to the board of the mayor and aldermen. The Council of State also implements a broad view of the required “interest to act” when a local resident is the plaintiff, acting for the defence of collective local interests.

366. In a legal proceeding lodged in the Council of State, the concerned local authority may certainly invoke the principles of local government enshrined in the Charter (or in Article 162 of the constitution). A violation of such principles is a frequent claim that is formulated in judicial proceedings where a municipality and a region are opposed within the context of intergovernmental control or administrative supervision (*tutelle*).

367. The Council of State has made several rulings where the notion and principles of local self-government have been interpreted and applied. Consequently, this case law is vital to understanding how the principle of local autonomy is implemented and protected in Belgium. In fact, some of the decisions taken by the Council of State in this domain are cited at different points in this report.

368. The Council of State is very cautious when it comes to recognising the “direct effect” of the Charter, and it does not recognise such a “direct effect” of many provisions of the Charter because of its broad wording.

369. The Council of State is reluctant to recognise such direct effect when a given provision does not entail a clear obligation for the state. Nevertheless, this supreme court has recognised the effect of some articles of the Charter, for instance Article 4.6 (consultation of local authorities). In other cases, the Council of State does not adjudicate on claims on the basis of the Charter only, but also on constitutional or statutory provisions.

370. The case law of the Council of State is of crucial importance when it comes to understanding and implementing the system of interterritorial control in Belgium (*tutelle*), by which regions have the power to control the decisions, plans or measures approved by local authorities. For instance, a local authority may want to implement a decision or plan, but the region may refuse to grant its approval; in other cases, a municipality may envisage introducing a local tax, but the controlling authority refuses to accept the proposal. Then, the municipality can take the region to the Council of State with the said court deciding whether the control exerted by the region is proportional and whether it has respected local autonomy. Consequently, the case law of the Council of State is key to understanding the actual content and limitations of the principles of local self-government.

371. Another field where the judicial activity of the Council of State is very relevant is the implementation of legislation on the municipalities with linguistic “facilities” (especially in the six municipalities located in Flanders, in the periphery of the Brussels-Capital Region), which has proved to be very controversial (see below, section 4.3). There is a specific chamber in the Council of State that deals with these issues (the General Chamber).

372. Regarding the access of local authorities to the Constitutional Court, there is no major problem concerning their *locus standi,* as they have the legal capacity to go to that court. Moreover, individual citizens can also act on behalf of a municipality, acting as a “substitute”, and associations of local authorities may also bring challenges to the court, as they are recognised as having the legal capacity as well.

373. Therefore, the case law of the Constitutional Court is the second pillar that needs to be considered when one wants to understand in detail the interpretation, implementation and protection of the principle of local self-government in Belgium, and, by implication, that of the Charter. Indeed, the Constitutional Court does not need to use the concept of “direct effect” to check for the actual application of an international treaty, as the court may apply an “indirect review” of the conformity of legislation with such treaties, including the Charter. The Constitutional Court has also recognised the existence of the principle of subsidiarity, although this principle is not explicitly enshrined in the constitution.

374. So far, local authorities have introduced roughly 80 complaints to the Constitutional Court (this figure includes single municipalities or provinces, or an association thereof). Usually, they ask for the annulment of a legal rule or decision that they consider to be unconstitutional. If an action for annulment is successful, the act is annulled by the Constitutional Court and the respective body or parliament must make a new law.

Moreover, during the course of the proceedings, the court can suspend the challenged statute as an interim measure.

375. Another indirect way by which municipalities may have an "access" to the Constitutional Court is by way of a "preliminary ruling", by which a lower court, which is competent to adjudicate on a complaint triggered by a local authority (or any that involve such an authority), formulates to the Court a question that is relevant for the solution of the case pending in that court (for instance, a question about the constitutionality of a statute that is decisive in adjudicating on the legal proceedings). According to the services of the Constitutional Court, until now there have been some 153 cases of preliminary rulings where a local authority was involved in one way or another.

376. In any of the proceedings outlined above, the principles of local self-government may be invoked, as they are in practice (especially in the domain of local finances, such as those concerning fire brigades, the police, local pensions, etc.). This is facilitated by the position of the court vis-à-vis the direct or indirect application of treaties, including the Charter, in the Belgian legal system.

377. Consequently, the Constitutional Court has made several relevant rulings where the principle of local self-government has been identified and applied in a precise forensic context. Among that case law, it is worth mentioning the following.

- Ruling No. 173/2004 of 2 November 2004 resolved an annulment action filed by the province of Namur. Articles 41 and 160 of the constitution were interpreted "in the light of" the Charter.

- Ruling No. 89/2010 of 29 July 2010 adjudicated on an annulment action filed by several municipalities from the Brussels-Capital Region against a law (*ordonnance*) passed by the regional parliament regulating the parking operations and police in the region. However, the court did not find a violation of the principle of local self-government.

- Ruling No. 109/2011 of 16 June 2011 solved a preliminary ruling filed by the Council of State, concerning a statutory provision in the Flemish Region that set up a body whose activities could encroach upon the autonomy of the municipalities.

- Ruling No. 28/2019 of 14 February 2019. This decision is particularly relevant to this part of the report. This decision concerned a provision of the Flemish regional legislation of local authorities, namely Article 194 of the regional law of 15 July 2005, which, in exceptional circumstances, allows a single local resident to act in court on behalf of the local authority for the protection of its rights and interests, provided that the local council had refused to initiate legal action. The court analysed the constitutionality of that provision (at the request of a lower court) and did so in the light of Article 11 of the Charter. The court found that the provision was constitutional and that it respected the said provision of the Charter.

378. Other relevant rulings are those of 8 May 2014 (Ruling No. 73/2014) and 21 December 2017 (Ruling No. 145/2017)

379. Another domain where the Constitutional Court case law has had a very relevant impact is the legal scheme governing the municipalities endowed with "linguistic facilities". In this field, Rulings No. 57 and No. 58/2014, both of 3 April 2014, should be highlighted (see section 4.3, below).

380. In light of the foregoing considerations, the delegation believes that the Belgian system of local government fully complies with the requirements laid down in Article 11 of the Charter.

4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

381. In the analysis of local and regional democracy in Belgium, there are other matters that are not directly raised in the text of the Charter but have an important dimension in terms of local self-government. Here, we will refer to two important issues: first, the impact of the Covid-19 pandemic on the local and regional authorities, and the lessons learned from the health crisis; second, the vitality of local democracy in a context of linguistic diversity.

4.1. The ombudsman and human rights at local level

382. In Belgium, there is a national ombudsman, but they do not (cannot) receive complaints from the local authorities or on matters connected to the work of the local authorities, since the ombudsman focuses on the federal administration only. Consequently, the matter of the situation of human rights at local level is an issue that is regulated or handled exclusively at local and/or regional level. This feature reinforces the idea that, at least as concerns local government, Belgium enshrines at least three different situations or scenarios.

383. There is an ombudsman in each region, and in the German-speaking Community. Each regional ombudsman is competent to receive complaints concerning the respect of human rights by local authorities, or to initiate investigations related to human rights at local level. In the Flemish Region, the regional ombudsman has already been in place for the last 23 years, and it has the ability to receive and to investigate complaints connected with both the regional and local authorities.

384. In the specific and sensitive area of the use of languages, the regional or local ombudsmen do not receive too many complaints; there are two reasons for this. On the one hand, the use of languages is strictly regulated in law (there are two major monolingual regions, one small region which is bilingual and a small community where German is spoken) and the ombudsman can do little on this subject, according to our interlocutors. Moreover, there is a specific commission that handles those issues, the Linguistic Policy Committee. This body may receive complaints about the use of languages and the existing arrangements. Moreover, this commission issues reports and advice, which are not binding but which are usually followed by the Council of State.

385. Individual cities may, on their own initiative, also set up a specific local ombudsman, but this is not an obligation. Only the German-speaking Community and the Brussels-Capital Region have introduced an ombudsman function at the local level, making the regional ombudsman automatically competent for municipalities that have not set up their own local ombudsman.

386. In the case of the Brussels-Capital Region, only two cities have established such an office, and the same situation may be found in the Walloon Region. In Flanders and Wallonia, there is no obligation to set up a local ombudsman. In those regions, only about 50 municipalities have voluntarily called upon the regional ombudsman to mediate at the local level, especially in the large cities of Flanders (Antwerp, Ghent, Bruges) and in some Walloon and Brussels municipalities. These local ombudsmen have specific responsibility for handling complaints at local level.

387. Out of the 581 Belgian municipalities, more than 500 still do not offer any ombudsman function.

388. In practical terms, the complaints about the work and activities of municipalities that the ombudsmen receive typically deal with topics such as taxes, school allocations, management of teachers and staff, environmental protection, urban planning, access to social housing or (in Flanders) subsidies for green energy. An important issue also arose during the Covid pandemic, when the harshest restrictions led to the isolation of the elderly in nursing homes and the inability of relatives to visit them. There were also complaints about the measures adopted at local (and regional) level, which involved restrictions on personal freedom.

4.2. The impact of the Covid-19 pandemic on local authorities

389. As in other European countries, the Covid-19 pandemic has had an important impact on Belgian local authorities. The two parts of the visit, respectively in March and in May 2022, allowed the Congress delegation to obtain first-hand and up-to-date information on the impact that the Covid-19 crisis has had so far on the regional and local authorities in Belgium. Apart from this information, which is presented below, it is important to note some other relevant aspects.

390. In Belgium, the protection of health is a matter of a complex allocation of responsibilities between the federal state and the federated entities, something that became a public issue at the beginning of the pandemic. According to some media, this complex arrangement and the high number of organs and authorities that are, in principle, responsible for health and connected matters could have complicated the response of the country to the pandemic (in fact, Belgium suffered a high mortality rate from Covid-19 during the first wave in spring 2020).

391. In principle, the protection of health (public hospitals and medical services) is a matter that belongs to the communities. However, the fight against the pandemic involves a number of different aspects across different domains (those concerning medical insurance, university hospitals, screening and testing, nursing

homes, etc.). This significantly increases the number of authorities and ministries that are actually responsible, in one way or another, for the fight against the pandemic. The number of authorities that may be competent in one way or another to take Covid-related decisions could be up to 12 “ministries” or authorities, according to the perspective used, including the federal minister of health and the regional/community ministers, all further complicated by the specific situation in the Brussels-Capital Region.[43]

392. The high number of authorities, departments and ministries that, in one way or another, have responsibility for fighting the pandemic has exacerbated the critical opinion held among parts of the population about the current complex distribution of powers between the federal state, the regions, the communities and the local authorities. At the same time, it somehow diluted responsibility for the management of the pandemic. For some aspects of the pandemic (the use of face masks and obligatory confinement, for instance) one could find different rules in each region, something that, according to some, was not reasonable in view of the size of the country.

393. This complex situation has required the setting up or the use of already existing intergovernmental structures for dialogue and decision. But here again the number of intergovernmental bodies is high: the Governmental Centre for Crisis Co-ordination (CGCCR), the National Security Council (CNS), the Regional Coordination and Crisis Centre of the Flemish Authority (CCVO, in the Flemish Region), the Regional Council for Security (in the Brussels-Capital Region), the Evaluation Cell (Celeval), the Concertation Committee (Comité de Concertation, usually referred to as CODECO), etc. The situation was so complex that some section of the media instructed their readers on “who does what” in the struggle against the pandemic.[44]

394. In this area, though, the most important organ has been the Concertation Committee (CODECO). This body was created during the 1980 state reform in order to settle possible conflicts between the federal government and one or more federated entities, or between several federated entities. It is chaired by the prime minister and is made up of representatives of the various executives. In the case of the pandemic, this multimember organ is constituted by the ministers who, at each level of government, are competent for health and related matters. It met several times since the coronavirus crisis in order to decide on certain measures between meetings of the National Security Council or to prepare for these meetings.

395. However, the decision-making process within CODECO has sometimes been far from smooth, characterised by sharply opposing views among the different competent ministers. Moreover, the decisions of CODECO do not set homogeneous rules across the country, since the federated entities have retained some leeway to adopt their own rules.[45]

396. As in other countries, the pandemic has had a very negative economic impact on local finances. The first and most noticeable impact on local authorities was that the pandemic caused a clear drop in local revenue as a result of the economically induced effects of the lockdown and the subsequent economic slowdown. This reduction in revenue was largely a result of the shrinking of revenue (taxes and fees) usually derived from multiple economic activities.

397. A number of different associations have produced comprehensive documents putting figures and percentages to the situation.[46]

398. Conversely, the pandemic also produced an increase in local expenses. For instance, local authorities were supposed to carry out different activities, such as the disinfection of public premises and facilities, and to intensify their efforts to take care of the jobless and those needing humanitarian aid.

399. Yet another area of concern, linked to another situation of crisis, has been the military invasion of Ukraine by the Russian Federation. This war has produced an enormous number of displaced people and refugees around Europe. In the case of Belgium, this has produced – as in other parts of Europe – the consequent problems of lack of resources or financial means, which the municipalities have been trying to solve in a supportive manner. As in other areas of public action, this matter is also devolved to the regions and to the communities, depending on the task to be performed.

43. See Jean Faniel, “Une répartition complexe des compétences”, *Santé conjuguée*, December 2020, No. 93.
44. See www.rtbf.be/article/coronavirus-en-belgique-cns-comite-de-concertation-celeval-qui-fait-quoi-qui-decide-quoi-10554937.
45. For instance, in December 2021 the Brussels-Capital Region was the only federated entity that required an obligatory seven-day confinement of any foreign visitor who was not vaccinated and holding a negative PCR test certificate.
46. See Brulocalis: “Les budgets Communaux sous haute tension. Inventaire des pertes de recettes et d’augmentation des charges pour les communes”, May 2022.

400. Here again, the regional and community governments are helping the municipalities to face up to this challenge. For instance, on 9 May 2022 the Government of the Brussels-Capital Region agreed to the granting of a subsidy of €10 million to the 19 Brussels municipalities to support them in the creation of accommodation places for the benefit of Ukrainian refugees. In Belgium, the number of registrations of Ukrainian refugees could reach 200 000 people, according to different estimates, and the Brussels area is supposed to welcome at least 10% of that figure, at least in theory.

4.3. Local democracy in a context of linguistic diversity

4.3.1. Previous activities of the Congress

401. The fact that several languages are spoken in the Kingdom of Belgium (see above) triggers a unique and rich landscape of linguistic diversity, which has an important and very sensitive impact on the operation of the several levels and units of government, and in the relations between the citizens and the public authorities, especially the local authorities, those closest to the population.

402. Different arrangements have been enacted or set up in Belgium to organise this linguistic diversity since 1966. However, these arrangements have not been free of conflict, especially in the municipalities endowed with special linguistic arrangements or "facilities" (*faciliteitengemeenten* in Dutch).[47] The use of languages for administrative purposes in the municipalities with special linguistic "facilities" constitutes a derogation or exception from the general scheme and has been regulated by a complex set of national and regional laws and regulations (ministerial "circulars").

403. At federal level, the main piece of legislation is the "Co-ordinated laws on the use of languages in administrative matters (or for governmental purposes)" enacted on 18 July 1966 and subsequently amended (hereinafter, "the 1966 Laws"). In reality, these laws apply to all governmental institutions in Belgium and lay down specific provisions for local authorities (Articles 9-31). Common provisions apply also to municipalities (Articles 57 and following). Even more specific provisions address the peculiarities of "rim" municipalities around Brussels (Articles 23-31). In some of the communities endowed with linguistic "facilities", the majority of residents are French speaking. Therefore, special linguistic arrangements have been implemented in order to ensure that French-speaking residents have easier access to the local public administration by being able to use their mother tongue.[48]

404. The application of the legal framework by the Flemish Government in those local authorities has been the source of several complaints, made by local authorities and local elected representatives, which have been addressed to the Congress.[49] In reply to those complaints, the Congress has carried out different fact-finding missions to Belgium, which have eventually led to recommendations.

405. Thus, as noted above (section 2.4) a fact-finding mission to Belgium on the refusal of the Flemish regional authorities to appoint three burgomasters in some "communes with facilities" (on language-related issues) was carried out in 2008 and resulted in Recommendation 258 (2008) of 2 December 2008. The fact-finding mission was conducted after the Bureau of the Chamber of Local Authorities was informed of the refusal by the Flemish Interior Minister to appoint three mayors, despite being democratically elected within their municipalities. Under the legal scheme in force at that time, the regional Flemish Government could refuse the appointment of the proposed burgomaster on the general ground that the candidate did not meet the necessary moral requirements to become burgomaster.

406. A second fact-finding mission, dealing with a similar issue, was conducted in 2017. In this case, the complaint was filed by local government representatives from the six Flemish *faciliteitengemeenten* located in the periphery of Brussels. In those local authorities (all of them municipalities with linguistic "facilities") the local representatives alleged that they were not allowed to speak French during the regular sessions of the municipal council. During these meetings, French-speaking residents were also not able to speak in their

47. These six municipalities are located in the territory of the Flemish Region, around the Brussels-Capital Region. They are: Drogenbos, Kraainem, Linkebeek, Sint-Genesius-Rode, Wemmel and Wezembeek-Oppem. Following the 1970 constitutional revision, these municipalities (with a majority of French-speaking residents) were added to the territory of the Flemish Region, and the 1988 state reform enacted the legal scheme governing these local authorities.

48. For a full analysis of the legal and political situation surrounding these municipalities, we refer to the explanatory memorandum or Congress Recommendation 409 (2017) of 19 October 2017 and that of the corresponding fact-finding mission.

49. The Regional Government of Flanders has approved different administrative regulations called "circulars", which are known by the surname of the politician who approved them (the Peeters, Martens and Keulen "circulars"). These regulations define in detail the linguistic duties and rights of local residents and of local officials in those municipalities, and the procedures and ways to implement those linguistic "facilities". A long-standing contention made by local French-speaking residents has been that the Flemish Government, by approving those "circulars" has tried to interpret in a narrow and restrictive way the linguistic facilities or liberties inherent to those municipalities.

native language. According to them, this prohibition was hampering their ability to discharge their political and representative duties and would also amount to a non-application of the Congress Recommendation of 2 December 2008. Furthermore, the complaint addressed the issue of the non-appointment of the democratically elected mayor of the municipality of Linkebeek because of the refusal of the Flemish Minister for Local and Provincial Government.[50]

407. That fact-finding visit resulted in Recommendation 409 (2017), of 19 October 2017.[51] In that recommendation, the Congress asked the Belgian authorities to do away with the system requiring the Flemish Interior Minister to make the appointment of the burgomasters. It also asked the national authorities to review the way in which language laws were applied in "communes with facilities", in order to allow the use of both French and Dutch by municipal councillors in the exercise of their local mandates.

408. On the occasion of this latest monitoring visit, the delegation was able to note that the legal framework is still the one determined in 2012, at least as concerns the appointment of the burgomasters in those municipalities. That year, the Special Act of 19 July 2012 introduced a new procedure for the appointment of mayors (burgomasters) of the peripheral municipalities.[52]

409. From the perspective of the Charter, this legal amendment deserved a very positive appraisal. This act introduced a new Article13bis into the new Municipalities Act and makes it possible for a local councillor whose appointment as burgomaster has been refused by the Flemish Government to introduce an appeal specifically targeted at obtaining the annulment of the said refusal. The Council of State (its General Assembly, a bilingual chamber) may overrule the refusal of the regional executive. If the Council of State quashes the decision of the regional executive, this implies automatically that the proposed person will be proclaimed as burgomaster, by the very virtue of the ruling (Article 13bis, § 7).

410. The Belgian Constitutional Court, on 3 April 2014, issued two different rulings confirming that this piece of legislation was in conformity with the Belgian Constitution (Rulings No. 56/2014 and No. 57/2014).

411. This law was inspired by two principles. First, in order to avoid the occurrence of past problems, a compromise was made which led to the creation of a specific legal process. The overarching goal in reaching that compromise was to ensure peace among the communities (*paix communautaire*), something that is very peculiar and unique to Belgium. Second, since the sixth reform of the state, the administrative litigation concerning the six municipalities with facilities and of the natural and legal residents therein has been entrusted to the General Assembly of the Council of State. This bilingual assembly is therefore the only body with jurisdiction in this specific matter.

4.3.2. New developments

412. On this latest monitoring visit, the delegation was able to verify the existence of some new developments in this area of linguistic diversity, which are summarised below.

413. As concerns the **appointment of mayors**, the delegation was informed that the legal arrangements approved in 2012 (presented above) were implemented on the occasion of the local elections of October 2018. After those elections, the candidates proposed by their local councils to become the burgomasters of Linkebeek, Wezembee-Oppem, Drogenbos and Sint-Genesius-Rode were all refused their appointments by the Flemish Interior Ministry, because of alleged violations of the linguistic legislation. However, the individuals concerned appealed to the Council of State and in July 2019 the High Court upheld their appeals. Consequently, they eventually became the burgomasters of those municipalities by virtue of a Council of State ruling.[53]

414. Precisely as a consequence of one of those rulings, the delegation learned about an interesting legal affair. Namely, on 1 April 2022, the French-speaking court of first instance in Brussels ordered the Flemish Region to compensate an alderman of Sint-Genesius-Rode (Mr Kuczynski), for the collateral damage (seven months' salary) caused by the non-appointment of a burgomaster in this municipality. As a reminder, when

50. The non-appointment of this and other candidates following the local elections of 2012 were appealed against in the Council of State, but the appeals were rejected: Cases *Damien Thiery* (Case No. 5 640), *François van Hoobrouck d'Aspr*e (Case No. 5 641) and *Véronique Caprasse* (Case No 5 642).
51. Congress of Local and Regional authorities: *The functioning of local democracy bodies in a context of linguistic diversity in the municipalities with linguistic "facilities" around Brussels in the Flemish region.* 33 Session, report CPL33(2017)02final, of 19 October 2017.
52. Special Act of 19 July 2012, pertaining to the modification of several laws.
53. See, among others, the Ruling of the Council of State No. 245.055 of 2 July 2019 A. 227.628/Abis-25 (General Assembly), *Yves Ghequière v. Flemish Region.*

a burgomaster is not appointed by the Flemish Government, he remains as first alderman, which prevents, *de facto*, the promotion of another alderman (precisely the case of the plaintiff). Since the proposed burgomaster could only become the actual mayor of Sint-Genesius-Rode as a consequence of a Council of State ruling, the person who expected to become alderman could only start his functions after that ruling. Indeed, Mr Kuczynski sued the Flemish Region for liability and the court agreed with him, pointing to "a fault" on the part of the Flemish administration. The region agreed with the decision and did not appeal.

415. Other recent developments relate to the possibility of French-speaking residents living in the municipalities with "facilities" to have official **documents delivered in French** by the municipal administration, which is one of the core elements of those "facilities".

416. Some residents (and their political representatives) have repeatedly complained that, under the interpretation of the Flemish Government, they were required to ask explicitly each time that the official documents be delivered in French by the local government services. In contrast, the French-speaking residents and their local elected representatives maintained that the request should only be made once and that this expression of will, once formulated, should be valid forever.

417. In 2014, the Council of State did not agree with either side, opting for a middle way, declaring that the formal declaration by the local residents should be valid for four years.[54] After this important decision, the rule seemed to be that a local French-speaking resident must only make one formal declaration every four years, that this declaration is valid for four years and that within that period of time all the documents will be delivered in French, without the need to make an explicit request each time. This case law, however, did not seem to be final or consolidated.

418. However, in two publicised decisions made on 22 September 2021, the Council of State overturned a decision of the Flemish Interior Minister and reiterated its case law: one single declaration, valid for four years, is enough.[55] The case law seems now sufficiently clear and consolidated. Moreover, the Council of State refused to submit a preliminary ruling to the Constitutional Court in light of the clarity of the legal questions involved.

419. In addition, the local representatives of some of the *faciliteitengemeenten* complained that in the **day-to-day application of this special regime**, local residents and the municipal bureaucracy are confronted with specific unsatisfactory situations, derived from the harsh application of the unilingual nature of the Flemish Region and the differences in interpretation between the municipality and the region regarding the application of language facilities.

420. For instance, they reported that when a French-speaking resident calls an emergency number for supra-municipal services (the fire brigade, for example), he or she is often confronted with the inability of the Dutch-speaking caller to understand him or her and to discuss the matter in French. This difficulty is an obstacle that can have serious consequences for the health and safety of inhabitants, just as the lack of Dutch-speaking doctors and hospital staff in the region of Brussels-Capital can have serious consequences for the health and safety of Dutch-speaking residents in that region. Second, under the "Omgevingsloket", a (compulsory) digital tool developed by Flanders for applying for an urban development permit, this software is only translated to a limited extent and the French-speaking inhabitants face difficulties using this tool.

421. They also underlined that in the field of communication between the municipality and local residents, it is forbidden for Flemish municipalities to use English in written or oral communications, something that, according to those interlocutors, was most regrettable since many foreigners live in those municipalities.

422. Finally, the situation described in the previous Congress recommendations (local councillors and local residents being prevented from making oral interventions in French during the meetings of the local council or of its committees) is still the same; nothing has changed in law or in practice.

54. Ruling of the Council of State in the Caprasse case of 20 June 2014.
55. Ruling of the Council of State No. 251.571 of 22 September 2021, A. 222.937/Abis-16, (General Assembly), Municipality *of Drogenbos v. Flemish Region.*

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusions

423. After six successive state reforms, Belgium has become a fully federal country, one of the most decentralised in Europe. While the complexity of the territorial and institutional arrangements constitute a well-known feature of Belgian constitutional law, they are the result of a comprehensive political compromise to establish a delicate balance, aimed at ensuring the overarching goal of social peace in the cohabitation of the cultural and linguistic groups existing in the country. A subtle and complex system of checks and balances aims to avoid the preponderance of one group over the other.

424. In general, local and regional politicians and all the representatives met by the delegation declared that they were happy about the current situation of "intercommunity peace".

425. The situation of local self-government in Belgium is assessed in very good terms by the local elected representatives and by the associations of local authorities. In general, they are satisfied (or very satisfied) with the depth of local autonomy, with the social and political relevance of municipalities and with the level of responsibilities they have.

426. All the stakeholders met by the delegation, whether at local, community or regional level, agreed on the fact that the autonomy enjoyed by local authorities (especially by municipalities) is very high.

427. This assessment differs in the case of the provinces: the level of their responsibility has been reduced (especially in Flanders), their social and institutional relevance is decreasing and their existence is openly questioned by many. The constitution even foresees the possibility of replacing the existing provinces with other types of representative bodies.

428. The future of the provinces is uncertain. Some political parties would like to abolish the provinces. However, there are still many political discussions about this matter and few political stakeholders have, at present, a final and formal statement on that. For instance, the government agreement for Flanders for the legislature for the period 2019-2024 does not take a position on the future of the provinces. There is no extension of the powers of the provinces, but also no reduction (the policy choice is to keep the status quo).

429. Following successive constitutional reforms during the last few decades, and especially since 2001, local authorities currently constitute an exclusive responsibility for the three regions (and of the German-speaking Community in the case of the nine municipalities present there). Consequently, Belgium is one of the few European countries where there is no longer a national policy on local government.

430. The regions and not the state are responsible for almost all the relevant features of local authorities: legislation, financing, human resources, etc. It is a common opinion that the regions have reinforced the local authorities and local autonomy.

431. Regions are also responsible for expressing their assent for the ratification of international treaties pertaining to local authorities, such as the Charter and its additional protocol.

432. In general, all the stakeholders agreed that the devolution of the matter of local authorities to the regions has not produced negative results for the local authorities and that the regions have enhanced local autonomy.

433. The basic complaints of the local leaders pertain to the local finances and to the lack of preliminary consultation, not only in general but specifically in financial matters. Namely, they complain that the federal level usually takes different political and economic decisions which have a clear negative impact on the local budget, without even considering their opinion.

434. In this vein, they pointed out that the decision of the federal government to transfer to the local authorities the payment of the retirement pensions of their civil servants is having a devastating effect on the finances of local authorities. The rapporteurs however regret that the non-ratification of Article 9.2 of the Charter by Belgium results in the situation of non-compliance remaining unresolved on this very important matter for local self-government. Therefore, they have formulated a number of proposals (in paragraphs 444-446 below), which are not part of the Recommendation addressed to the government given the non-binding effect of Article 9.2 on Belgium, but which the rapporteurs encourage the country to follow to improve the financial situation of local authorities.

435. This report has produced an extensive analysis of the compliance of the Charter in Belgium. In general, the review is very positive and the vast majority of its provisions are respected. However, the report has identified only a partial compliance of the following articles: 3.2, 4.6 (violation in Brussels-Capital Region) and 8.3 (violation in Flanders).

436. Furthermore, a case of violation has been detected concerning the following articles: 8.2, 9.2 and 9.6. However, these provisions are not binding on Belgium.

437. Notably, the rapporteurs have noted that little progress has been achieved in the matter of the appointment of the burgomaster by the regional government in Flanders.

438. Besides, there is the question of the number of "reservations" made by Belgium at the time of ratifying the Charter, which may be considered as too high. Some of them could be lifted, like the one concerning Article 9.7, since this provision seems to be respected at present.

439. Finally, the rapporteurs believe that little progress has been achieved in the implementation of Congress Recommendation 258 (2008) and Congress Recommendation 409 (2017).

5.2. Recommendations

440. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Belgium (at the corresponding territorial level) to do the following.

441. Take advantage of the incoming Seventh Reform of the State in order to introduce into the Belgian Constitution the principle of local self-government in a more explicit and clear manner.

442. Alternatively, amend the existing regional legislation on local government (general statutes on local authorities) in order to explicitly introduce the principle of local self-government.

443. Build up more dialogue and consultation between the federal and the local levels, especially when the former decides to transfer to the local authorities those tasks and responsibilities that might have a significant financial burden on those entities. The best option would be to set up at the federal level a bilateral body composed of representatives of the state and representatives of local authorities, or at least a structural concertation, for an institutional dialogue and consultation on matters that concern the Belgian municipalities, especially in the domain of employment law negotiations for local police officers, firefighters and other local government employees that are paid by municipalities.

444. Establish at all the appropriate levels and in an explicit manner the principle of budgetary neutrality, by which the decisions and rules of the federal or regional levels that have an impact on the duties and activities of the municipalities should be accompanied by adequate funding.

445. Avoid decentralising to the local authorities duties or responsibilities without first establishing the necessary financial resources. Transfers of responsibilities must be accompanied by corresponding funding.

446. Encourage the federal level and/or the regions to assume a significant share of the financial burden represented by the payment of the pensions of the local government employees who have "civil servant" status.

447. Set up (in the Brussels-Capital Region) a permanent bilateral body composed of representatives of the regions and representatives of local authorities, for a permanent and stable institutional dialogue and consultation.

448. Amend (in Flanders) the current legal process for the appointment of burgomasters, with the aim of abolishing the appointment of the said burgomasters by the regional executive, so as to establish an automatic appointment by the local council. At least, the law should regulate in a clearer and restrictive manner the grounds on which a refusal decision may be adopted by the said government.

449. Alternatively, amend (in Flanders) the future legal process for the appointment of burgomasters that will be applicable for the next local elections in 2024, with the specific aim of abolishing the appointment of the said burgomasters by the regional executive, so as to establish an automatic appointment by the local council. At least, the law should regulate in a clearer and restrictive manner the grounds on which a refusal decision may be adopted by the said government.

450. Encourage Flanders to fully implement Congress Recommendation 258 (2008) and Recommendation 409 (2017).

451. In the Flemish Region, encourage the regional government to translate into a circular the case law of the Council of State in the matter of the right of the French-speaking residents to have access to local official documents in the language they wish for a period of four years after submitting a formal declaration, in the *faciliteitengemeenten.* This circular could be updated as necessary.

452. During the consultation procedure, the Government of Flanders pointed out that there is no established case law on the use of the language registers yet. The Flemish Government is still developing new legal arguments in the relevant lawsuits (currently in the pending case between the Flemish Government and the municipality of Kraainem – case G/A 234.099). The opinion of the Council of State on these new legal arguments must be awaited.

453. Enlarge the freedom and room of manoeuvre of local authorities in the domain of human resources, so that they can establish a system of incentives and rewards to acknowledge the high performance of their employees.

454. Complete the ongoing procedures concerning the ratification of the Additional Protocol to the Charter, so that the federal level can ratify the said protocol as soon as possible.

455. Lift some of reservations to the Charter made by Belgium when ratifying the Charter, especially in the case of the provisions of the Charter that are already complied with in practice, for instance Article 9.7. To this end, the federal level should initiate the appropriate procedures for regional consultation on this matter.

456. Encourage the holding of local referendums in the municipalities concerned whenever the regional government wants to merge these authorities. Amend the legislation to make local referendums compulsory or adopt the corresponding policy statement.

457. Clarify the allocation of the respective responsibilities of the Walloon Region and those of the German-speaking Community, as regards the municipalities in the territory of the said community.

APPENDIX 1 – Programme of the first part of the Congress monitoring visit to Belgium

CONGRESS MONITORING VISIT TO BELGIUM

Brussels, Sint-Genesius-Rode

(8-10 March 2022)

Congress delegation

Rapporteurs

Mr Matthias GYSIN	Rapporteur on Local Democracy Chamber of Local Authorities, ILDG[56] Member of the Monitoring Committee of the Congress, Municipal Councillor (Duggingen) Switzerland
Mr Magnus BERNTSSON	Rapporteur on Regional Democracy Chamber of Regions, EPP/CCE Member of the Monitoring Committee of the Congress, Member of the Regional Council (Västra Götaland) Sweden

Expert

Prof. Angel M. MORENO	Chair of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress (Spain)

Congress Secretariat

Ms Stéphanie POIREL	Head of the Statutory Committees Division Secretary to the Monitoring Committee

Interpreters

Ms Catherine DE WILDE
Mr Peter GROENINCK

The working languages, for which interpretation is provided during the visit, will be English, Dutch and French.

56. EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

Tuesday, 8 March 2022
Brussels

- **MEETING WITH THE MEMBERS OF THE NATIONAL DELEGATION OF BELGIUM TO THE CONGRESS**

Mr Jean-Paul BASTIN, Head of Delegation, Mayor of Malmedy
Mr Marc COOLS, Communal Councillor of Uccle
Mr Karl-Heinz LAMBERTZ, President of the German-speaking Community Parliament
Mr Joris NACHTERGAELE, Member of the Flemish Regional Parliament

- **CITY OF BRUSSELS**

Mr Philippe CLOSE, Mayor

- **OMBUDSMEN**

Ms Marlene HARDT, Ombudswoman of the German-speaking Community
Mr Marc BERTRAND, Ombudsman of Wallonia and the Wallonia-Brussels Federation
Mr Bart WEEKERS, Ombudsman of Flanders
Ms Catherine DE BRUECKER, Ombudswoman of Brussels-Capital Region

- **CONSTITUTIONAL COURT**

Mr Luc LAVRYSEN, President (NL)
Mr Pierre NIHOUL, President
Ms Bernadette RENAULD, Law Clerk
Mr Jan THEUNIS, Law Clerk

Wednesday, 9 March 2022
Brussels

- **PARLIAMENT OF FLANDERS**

Ms Liesbeth HOMANS, Speaker
Mr Kris VAN DIJCK, Chairman of the Committee on Home Affairs
Ms Ellen VAN ORSHAEGEN, Head of Cabinet
Mr Gerit VERMEYLEN, Director
Mr Willy DIRKX, Committee Secretary
Mr Dries BERGEN, Responsible for Europe and International Relations
Ms Anja HOMMERS, Protocol

- **COUNCIL OF STATE**

Mr Roger STEVENS, First Chair
Mr Johan LUST, President of the Chamber
Mme Pascale VANDERNACHT, President of the Chamber
Mme Elisabeth WILLEMART, State councillor
Mr Eric THIBAUT, Deputy auditor-general
Mr Jùrgen NEUTS, First auditor

- **WALLOON-BRUSSELS FEDERATION/FRENCH COMMUNITY PARLIAMENT**

Mr Rudy DEMOTTE, President

Thursday, 10 March 2022
Sint-Genesius-Rode

- **SINT-GENESIUS-RODE**

Mr Pierre ROLIN, Mayor

APPENDIX 2 – Programme of the second part of the Congress monitoring visit to Belgium

CONGRESS MONITORING VISIT TO BELGIUM
Brussels, Eupen, Genk
(10-12 May 2022)

Congress delegation

Rapporteurs

Mr Matthias GYSIN	Rapporteur on Local Democracy Chamber of Local Authorities, ILDG[57] Member of the Monitoring Committee of the Congress, Municipal Councillor (Duggingen) Switzerland
Mr Magnus BERNTSSON	Rapporteur on Regional Democracy Chamber of Regions, EPP/CCE Member of the Monitoring Committee of the Congress, Member of the Regional Council (Västra Götaland) Sweden

Expert

Prof. Angel M. MORENO	Chair of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress (Spain)

Congress Secretariat

Ms Stéphanie POIREL	Head of the Statutory Committees Division Secretary to the Monitoring Committee

Interpreters

Ms Catherine DE WILDE
Ms Silke ENDRES
Mr Peter GROENINCK

The working languages, for which interpretation is provided during the visit, will be English, Dutch, French and German.

57. EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

Tuesday, 10 May 2022
Brussels

- **PARLIAMENT OF THE BRUSSELS-CAPITAL REGION**

Mr Rachid MADRANE, President
Ms Carla DEJONGHE, Member of the Parliament
Mr Hugues TIMMERMANS, Secretary general
Mr Michel BEERLANDT, Director general
Mr Jean-Luc ROBERT, Director of the legal department
Mr Ludwik KURZEJA, Responsible for Europe & International Relations
Mr Stéphane DURVIAUX, Head of Cabinet

- **GOVERNMENT OF FLANDERS**

Mr Jan JAMBON, Minister-President of the Government of Flanders, Flemish Minister for Foreign Policy, Culture, Digitisation and Facilities
Mr Bart SOMERS, Vice-Minister-President of the Government of Flanders, Interior Minister, Administrative Affairs, Civic Integration and Equal Opportunities
Mr Matthias DIEPENDAELE, Flemish Minister for Finance and Budget, Housing and Immovable Heritage

- **GOVERNMENT OF THE BRUSSELS-CAPITAL REGION**

Mr Bernard CLERFAYT, Minister of the Government of the Brussels-Capital Region, responsible for employment and vocational training, digital transition, local authorities and animal welfare

Wednesday, 11 May 2022
Namur, Eupen

- **JOINT MEETING WITH THE GOVERNMENT AND THE PARLIAMENT OF WALLONIA**

Mr Christophe COLLIGNON, Minister for Housing, Local Authorities and the City
Mr Jean-Claude MARCOURT, President of the Parliament

- **EUPEN CITY HALL**

Ms Claudia NIESSEN, Mayor
Mr Bernd LENTZ, Director of the city administration

- **JOINT MEETING WITH THE GOVERNMENT AND THE PARLIAMENT OF THE GERMAN-SPEAKING COMMUNITY**

Mr Oliver PAASCH, Minister-President of the German-speaking Community, Minister for Local Authorities and Finance
Mr Karl-Heinz LAMBERTZ, President of the Parliament

- **GENK CITY HALL**

Mr Wim DRIES, Mayor