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Local and regional democracy in Belgium

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Summary

This is the first monitoring report on the situation of local and regional democracy in Belgium since the country ratified the Charter in 2004. It underlines that the constitutional and legislative foundations of self-government are fully complied with throughout the country and that the scope of local self-government is generally respected, in particular in terms of the protection of boundaries, the conditions for the exercise of responsibilities at local level, local authorities' right to associate and the legal protection of local self-government. In addition, the entry into force of the Sixth State Reform is welcomed, as is the introduction in 2006 of a procedure for the automatic *de jure* appointment of s elected in the Walloon Region. The report does, however, express concern about the overlapping of some responsibilities between municipal and provincial level in the French and Flemish Communities. With regard to financial resources, municipalities' and provinces' resources are inadequate, especially because of the economic crisis and the resulting austerity measures. In particular, local authorities in Belgium encounter financial difficulties relating to staff pension costs. The processes for consulting local authorities should also be improved.

It is recommended that the Belgian authorities continue implementing the Sixth State Reform and clarify the powers of municipalities and provinces throughout the country. They are asked to improve the procedure for consulting the communities and regions, in particular in the case of local authorities in the Walloon Region and the Brussels-Capital Region. The community and regional authorities are also urged to pay particular attention to the financial situation of municipalities and provinces, making sure that they have diversified and adequate resources. In addition, it is recommended that the federal authorities take structural measures to balance staff pension expenditure. Lastly, the Belgian authorities are asked to reconsider ratifying the provisions of the Charter that have not yet been ratified and consider ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

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

Local and regional democracy in Belgium

RECOMMENDATION 366 (2014)²

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

a. Article 2, paragraph 1.b, of Statutory Resolution CM/Res (2011)2 on the Congress, which provides 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 2, paragraph 3, of Statutory Resolution CM/Res (2011) on the Congress, which provides 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, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final] encouraging the governments of member states to take account of the aforementioned Reference Framework in their policies and reforms;

d. the attached explanatory memorandum on local and regional democracy in Belgium.

2. The Congress notes that:

a. Belgium signed the European Charter of Local Self-Government (“the Charter”) on 15 November 1985 and ratified it on 25 August 2004. The Charter entered into force in Belgium on 1 December 2004. The provisions not ratified relate to Articles 3.2, 8.2 and 9.2, 9.6 and 9.7. In accordance with Article 13 of the Charter, the Kingdom of Belgium stated that it intended to confine the scope of the Charter to the provinces and municipalities (*communes*). Pursuant to the same article, the provisions of the Charter do not apply to the social services centres (*Centres publics d’Aide sociale*, CPAS) in the territory of the Brussels-Capital Region;

b. Belgium also signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 but has not yet ratified it. In addition, Belgium has signed the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106). It has not yet ratified the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages;

c. the Congress’s Monitoring Committee appointed Henrik HAMMAR (Sweden, L, EPP/CCE) and Urs WÜTRICH-PELLOLI (Switzerland, R, SOC) as rapporteurs and tasked them with drawing up and submitting to the Congress a report on local and regional democracy in Belgium;

d. the Congress delegation made two visits on 8 and 9 October 2013 (Brussels and Tervueren) and a further visit was made to Brussels from 4 to 6 February 2014.

3. The Congress would like to thank the Permanent Representation of Belgium to the Council of Europe, the Belgian authorities at all territorial levels and everyone to whom they spoke for making themselves available, for their interest in the work of the Congress and for their co-operation throughout the visit.

2. Debated and adopted by the Congress on 15 October 2014, 2nd sitting (see Document [CG\(27\)7FINAL](#) explanatory memorandum) rapporteurs: Henrik HAMMAR, Sweden (L, EPP/CCE) and Urs WÜTRICH-PELLOLI, Switzerland (R, SOC).

4. The Congress notes the following with satisfaction:

a. local and regional democracy in Belgium generally complies with the commitments made under the Charter, the legal foundation of local self-government is fully complied with in all regions of Belgium, in particular Articles 2, 5, 7, 10 and 11 of the Charter;

b. the entry into force of the Sixth State Reform;

c. the introduction in 2006 of a procedure for the automatic *de jure* appointment of burgomasters elected in Wallonia;

d. the passage of a special act in July 2012, endorsed by two judgments of the Constitutional Court on 3 April 2014, under which burgomasters whose appointment is refused may appeal to the Council of State, which can issue a final appointment decision;

e. the appointment in December 2013 by the Flemish Minister of the Interior of a burgomaster for the municipality of Wezembeek-Oppem and the appointment in June 2014 by the general assembly of the Council of State of a burgomaster for the municipality of Kraainem, neither of which had had appointed burgomasters since 2006;

f. the desire expressed by the authorities of the Flemish Region, Walloon Region, the German-speaking Community and the Brussels-Capital Region to reconsider the provisions of the Charter that have not yet been ratified with a view to possible ratification.

5. The Congress nevertheless expresses concern about the following:

a. the overlapping of some responsibilities between municipal and provincial level;

b. the financial difficulties which the local authorities in the three regions encounter, in particular because of the burden of staff pension costs paid by the local authorities;

c. the inadequacy of Belgian municipalities' and provinces' resources in relation to their responsibilities.

6. In the light of the above, the Congress asks the Committee of Ministers to invite the Belgian authorities to:

a. continue the implementation of all aspects of the Sixth State Reform in line with the timetable indicated;

b. clarify Belgian local authorities' powers so as to strengthen their ability to manage their affairs in the light of Article 3.1 of the Charter and strengthen, *de facto and de jure*, local and provincial democracy in Belgium (Article 4.2);

c. envisage the introduction of a system, in Flanders and in the Brussels-Capital Region, for the election of burgomasters by the municipal councils or by the citizens, which implies the automatic nomination of burgomasters;

d. improve and systematise the procedure for consulting local authorities about matters that directly concern them, in particular in the Walloon Region and the Brussels-Capital Region (Article 4.6);

e. review the financial burden of the staff pensions paid by local authorities, which account for a significant proportion of local government expenditure in Belgium (unlike the pensions paid at regional level, which are funded at federal level) and recommend that the federal level take structural measures to balance the relevant expenditure (Articles 6.2 and 9.1);

f. urge the community and regional authorities to pay particular attention to the financial situation of municipalities and provinces, making sure that they have diversified and adequate financial resources deriving from local taxes and charges, of which they have the power to determine the rate within the meaning of Articles 9.3 and 9.4 of the Charter in all the entities in Belgium;

g. reconsider ratifying the provisions of the Charter that have not yet been accepted;

h. consider ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

Local and regional democracy in Belgium

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1. Introduction: aim of the visit, terms of reference, scope

1. According to Article 2.3 of Statutory Resolution CM/Res(2011)2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (“the Congress”) shall prepare regular reports on the situation of local and/or regional democracy in all Council of Europe member states.

2. Belgium signed the European Charter of Local Self-Government (“the Charter”) on 15 November 1985 and ratified it on 25 August 2004. The Charter entered into force in Belgium on 1 December 2004. The provisions not ratified relate to Articles 3.2, 8.2 and 9.2, 9.6 and 9.7. In accordance with Article 13 of the Charter, the Kingdom of Belgium said it intended to confine the scope of the Charter to the provinces and municipalities (*communes*). Pursuant to the same article, the provisions of the Charter do not apply to the social services centres (*Centres publics d'Aide sociale, CPAS*) in the territory of the Brussels-Capital Region.

3. Belgium also signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS no. 207) on 16 November 2009 but has not yet ratified it. In addition, Belgium has signed the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no. 106).. It has not yet ratified the Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages

4. The situation of local and regional democracy in Belgium has already been the subject of a report and of Recommendation 131 adopted by the Congress in 2003.

5. A fact-finding visit to Belgium concerning the Flemish authorities’ refusal to appoint three burgomasters was carried out in 2008 and resulted in Recommendation 258(2008).

6. The Congress’s Monitoring Committee has appointed Henrik HAMMAR (Sweden, L, EPP/CCE) and Urs WÜTRICH-PELLOLI (Switzerland, R, SOC) as rapporteurs and charged them with drawing up and submitting to the Congress a report on local and regional democracy in Belgium.

7. A first on-the-spot visit (to Brussels and Tervueren) took place on 8 and 9 October 2013 and a second was made to Brussels from 4 to 6 February 2014. During these visits, the Congress monitoring delegation met representatives of the institutions with executive legislative and judicial powers both at the federal level and the regional levels (Flanders, Wallonia, Brussels-Capital Region). It also met representatives of the communities (the French Community, the Flemish Community and the German-speaking Community). The detailed programme of these visits can be found in the appendix to this report

8. This report has been drawn up on the basis of information gathered during the two visits to Belgium, extracts of the relevant legislation and other documents and information provided by the representatives of the Belgian authorities as well as by international organisations and experts.

9. The delegation would like to thank the Permanent Representation of Belgium to the Council of Europe, the Belgian authorities at all territorial levels and everyone to whom they spoke for making themselves available, for their interest in the work of the Congress and for their co-operation throughout the visit.

1.1. International situation and relations with neighbouring countries

10. Belgium joined the Council of Europe on 5 May 1949 and is one of the Organisation’s founder members. At the Congress of Local and Regional Authorities, the country is represented by a delegation made up of seven representatives and seven substitutes.

11. Belgium is also a founder member of the European Union and the North Atlantic Treaty Organisation (NATO) and hosts the principal institutions of these two organisations. The country shares its borders with France, Germany, Luxembourg and the Netherlands.

12. Belgium maintains special relations with the Netherlands and Luxembourg, with which it forms Benelux, a co-operation structure that is mainly economic in nature but is also active in the security, transport and spatial planning fields.

13. For historical, geographical and institutional reasons, Belgium's European commitment is the main focus of its foreign policy. Belgium held the presidency of the Council of the European Union in the second half of 2010.

14. Belgium is also a member of the United Nations (UN) and, as such, it is a candidate for a seat on the Human Rights Council for the period 2015-2018. It has also set its sights on one of the ten non-permanent member seats on the UN Security Council for the 2019-2020 biennium.

15. According to the Belgian Constitution, the King has authority to direct international relations. However, the communities and regions have the competence to conduct international relations in matters that fall exclusively within their own remit and also conclude certain treaties.

1.2. Internal political situation and elections (parliamentary, provincial and local)

16. The Kingdom of Belgium became independent in 1830 after the defeat of the Dutch army. Initially, Belgium was constituted as a unitary state. The country, which is characterised by cultural and linguistic diversity, had to take account of the demands of the population, which wanted better representation at the institutional level. Accordingly, language laws were passed from 1873 to 1963 and there has been a succession of state reforms. In 1993, following the Fourth State Reform Belgium became a fully-fledged federal state in which the three communities and the three regions acquired their full range of powers. The Belgian state is a constitutional and parliamentary monarchy, the functioning of which is defined by the Belgian Constitution. The King of the Belgians is the head of state and his status and the hereditary succession are laid down by the Constitution. On 21 July 2013, King Albert II abdicated in favour of his son Prince Philippe after a twenty-year reign.

17. In Belgium, there are five levels of internal government: local, provincial, regional, community and federal and each has its own assembly. A feature of Belgian elections in Belgium is that voting is compulsory.

18. At the federal level, legislative power is exercised by the Federal Parliament, which consists of two chambers, the Chamber of Representatives and the Senate. All the members of the Chamber of Representatives are elected directly in a single ballot by proportional representation for a period of four years. The Dutch-language group had 88 seats in the 2010-2014 legislative period and the French-language group 62 seats. Since the elections of 25 May 2014 and the division of the Brussels-Hal-Vilvorde constituency, the Dutch-language group has had 87 seats and the French-language group 63 seats. As far as the Senate is concerned, its composition and role, as described later in this report, were significantly changed by the Sixth State Reform. Before the latter entered into force, the Senate contained 40 directly elected members (25 senators elected by the Dutch-speaking and 15 senators elected by the French-speaking electoral college). 21 senators were appointed by the parliaments of the communities and ten were co-opted. The elections of the senators were held on the same day as those of the MPs.

19. The 53rd legislative period of the Chamber of Representatives ended on 25 May 2014 and resulted from early parliamentary elections held on 13 June 2010 in a context of institutional and political crisis, which was especially due to the absence of a consensus concerning the bilingual status of the Brussels-Hal-Vilvorde (BHV) constituency. This crisis ended in the resignation of Prime Minister Yves Leterme in April 2010. Following these early parliamentary elections, the Nieuw-Vlaamse Alliantie party headed the Dutch-language group and obtained 27 seats. As far as the French-language group is concerned, the Socialist Party (Parti Socialiste) topped the poll and obtained 26 seats. With regard to the Senate, the New Flemish Alliance came first in the poll and obtained 14 seats, followed by the Socialist Party with 13 seats. These elections did not enable the political crisis to be resolved and it continued until a new government, led by the new Prime Minister Elio Di Rupo (Socialist Party), was formed in December 2011, 541 days after the election. Belgium was without a government for 541 days.

20. The Sixth State Reform agreed between eight political parties in October 2011 provides for the Senate to be composed of 60 senators after Belgium's federal parliamentary elections in 2014, 50 of them from the federated entities. Of these 50 senators, 29 will have to be Dutch-speaking and come

from the Flemish parliament and 20 will have to be French-speaking (10 from the Parliament of the French Community, 8 from the Parliament of the Walloon Region and 2 from the French-language group in the Parliament of the Brussels-Capital Region). One senator will be German-speaking and come from the Parliament of the German-speaking Community. Finally, 10 senators will be co-opted (on the basis of the results of the Chamber of Representatives).

21. Executive power at the federal level is exercised by the Federal Government, which is made up of the Prime Minister, ministers and state secretaries. Constitutionally, the King possesses significant power but this is in reality exercised by the government. According to the Belgian Constitution, “(n)o act of the King can take effect without the countersignature of a minister, who, in doing so, assumes responsibility for it” (Article 106).

22. Each Community has its own parliament, the members of which are elected by direct universal suffrage on the basis of proportional representation. The Flemish parliament has 124 seats (6 of them for the Dutch speakers in Brussels); the Parliament of the German-speaking Community has 25 seats and the Parliament of the French-speaking Community has 94 seats. The latter is made up of MPs from the Walloon region and Brussels. The members of this parliament are not elected in a Community election but come from the regional parliaments.

23. The regional elections, too, are designed to elect members of the four regional and/or Community parliaments. These elections take place every five years, the last being held on 25 May 2014.

24. The provincial council elections by direct universal suffrage are held every six years at the same time as the local elections. The number of provincial councillors to be elected depends on the population of the province on 1 January of the year preceding the election. The Walloon Region and the Flemish Region are each divided into five provinces, whereas the Brussels-Capital Region has none. The electoral constituencies in the provinces are the districts (subdivisions of the administrative entities). The last provincial elections were held on 14 October 2012.

25. Local elections also take place every six years and were last held on 14 October 2012, at the same time as the provincial elections. The members of the local council are elected directly by the citizens. Since 1 January 2002, the regions have been responsible for laying down almost all the rules concerning the organisation of their local institutions, so that the working methods of a local council may vary from one region to another.

1.3. Previous reports and recommendations

26. In 2003, the Congress adopted an information report on local and regional democracy in Belgium, in which it recommended that the Flemish parliament be able to consent to the ratification of the Charter and that Belgium simplify its methods for approving international treaties, especially those concerning the local authorities.

27. In response to this 2003 report, Belgium ratified the European Charter of Local Self-Government on 25 August 2004. The instrument of ratification contains a number of declarations listed above (cf. paragraph 2). It should be noted that Belgium has so far not been the subject of a general monitoring report on local and regional democracy.

28. Six points seemed to be problematic in relation to the Charter: disruption in the management of public affairs; shortcomings with regard to citizens' participation in local affairs; the question of the proportionality of the decision not to appoint the three burgomasters and the absence of any disciplinary procedure against them; the fact that the burgomasters have not appealed against the Flemish Minister of the Interior's refusal to appoint them; the supervision carried out by the Flemish authorities; and the failure to comply with Recommendation 131 (2003).

29. In 2008, a fact-finding visit was also organised in Belgium with the aim of studying the situation of three burgomasters who had been democratically elected in municipalities “with special language arrangements” and whom the Flemish Minister of the Interior had refused to appoint.

30. Recommendation 258 (2008) highlighted five instances of failure to comply with the European Charter of Local Self-Government: disruption in the management of public affairs; an infringement of the preamble of the Charter as it had been made difficult for French-speaking Belgian citizens to take part in local affairs; a violation of Article 8.3 of the Charter owing to the Flemish Minister of the

Interior's refusal to appoint three burgomasters, as a form of punishment; and a breach of the spirit of the Charter, more precisely Articles 4 and 8, with regard to the Flemish authorities' supervision of the local authorities.

31. In particular, the Congress recommended that the Flemish Minister of the Interior appoint the three burgomasters without delay, that the use of the two languages French and Dutch be permitted at sittings of the municipal council and that the system of the election of burgomasters by the municipal council or the citizens be adopted. The Congress also encouraged the authorities to reconsider the non-ratified provisions of the Charter, including Articles 3.2, 8.2, and 9.2, 9.6 and 9.7.

2. Structure of the local and regional authorities

32. Belgium is a federal state comprising three communities and three regions. The provinces and municipalities constitute the infra-regional tiers of government.

The communities

33. The very term Community refers to the language and culture that unite its population. Each Community has an official language: Dutch (Flemish Community), French (French Community) and German (German-speaking Community).



34. The French Community exercises its powers in the Walloon provinces and in Brussels; the Flemish Community exercises its powers in the Flemish provinces and in Brussels; and the German-speaking Community exercises its powers in the municipalities of the German-speaking regions, all of which are situated in the province of Liège.

35. The communities' powers therefore cover cultural issues, education, the use of languages and so-called "person-related" matters, including health policy and welfare.

36. The Flemish parliament is made up all the councillors directly elected at the level of the Flemish Region and of six Dutch-speaking members of the parliament of the Brussels-Capital Region. The Flemish parliament passes decrees, that is to say Flemish community and regional laws. The Government of the Flemish Community exercises executive power. It is made up of a maximum of ten ministers and a Minister-President. By contrast, the French Community and the German-speaking Community have parliaments and governments that are separate from the regions.

The regions

37. Belgium is made up of three regions:

- The Flemish Region, with a population of 6 306 638.³ According to Article 5 of the Belgian Constitution, "(t)he Flemish Region comprises the following provinces: Antwerp, Flemish Brabant, West Flanders, East Flanders and Limburg." The language spoken is Dutch.
- The Walloon Region, with a population of 3 525 540.⁴ According to Article 5 of the Constitution, "(t)he Walloon Region comprises the following provinces: Walloon Brabant, Hainaut, Liege, Luxembourg and Namur." The languages spoken are French and German.
- The Brussels-Capital Region, with a population of 1 119 088.⁵ It comprises 19 municipalities and is a bilingual region (Dutch and French).

3. Chamber of Representatives – Department of Public and International Relations, 1008 Brussels, 2011

4. Ibid.

5. Ibid.



38. In the communities and regions, legislative power is exercised by a parliament and executive power is exercised by a government.

39. The members of the regional parliaments are elected by the population every five years. Accordingly, the regions share a legislative body, the regional parliament, and an executive body, the regional government. In Flanders, the institutions of the regions and communities have merged, so there is just one parliament and one government for the two federated entities.

40. The regions have powers in fields connected with their territory in the broad sense of the term. The three regions accordingly exercise powers relating to the economy, employment, agriculture, water policy, housing, public works, energy, transport, the environment, town and country planning, nature conservation, foreign trade and the supervision of the provinces and municipalities.

The provinces

41. The provinces are the intermediate political tier between the regions and the municipalities. There are ten in all. The following provinces: Hainaut (capital: Mons), Liège (Liège), Luxembourg (Arlon), Namur (Namur) and Walloon Brabant (Wavre) are part of the Walloon Region. The provinces of Antwerp (Antwerp), Limburg (Hasselt), East Flanders (Ghent), West Flanders (Bruges) and Flemish Brabant (Leuven) are part of the Flemish Region. The district of Brussels-Capital is not part of any province. On 1 January 1995, the province of Brabant was abolished and replaced by two new provinces: Flemish Brabant and Walloon Brabant. The part of Brabant situated in the Walloon Region is the province of Walloon Brabant that situated in the Flemish Region the province of Flemish Brabant.

42. The provinces are autonomous institutions but they are subject to the federal state, the communities and, first and foremost, the regions. The provinces have a Provincial Council. Members thereof are directly elected for six years. The Provincial Council takes general decisions, votes provincial regulations and establishes the provincial budget. The Provincial College (Walloon Region) or Deputation (Flemish Region) implements the decisions of the Provincial Council and ensures the daily management. In the Walloon Region, the provincial council elects from among its members a provincial college of 6 members and appoints one of their members as President of the College. In the Flemish Region, the Deputation is a college consisting of six members elected from and by the provincial council. It is chaired by the governor. The governor is not elected but appointed or dismissed by the Flemish or Walloon government, subject to the approval of the (federal) Council of Ministers.

43. The governor is a "Government Commissioner" representing the interests of the federal State as well as those of the region and the community and is appointed by the government of the region among adult Belgian citizens who enjoy civil and political rights. In the administrative district of Brussels-Capital, there is also a Deputy Governor, whose status is similar to that of the Governor. The Deputy, whose ordinary powers include ensuring the implementation of the legislation on the use of languages in the administration, can suspend the decisions of local authorities. In addition, the Deputy replaces the governor' in his or her absence. In the province of Flemish Brabant, a deputy governor, appointed under the same conditions as the Governor, is specifically responsible for ensuring the implementation of the legislation on the use of languages both in the administration and in education; and can, as such, suspend the decisions of local authorities. However, he or she does not replace the governor in case of absence. The Council of Governors brings together the governors of the ten provinces, but not that of Brussels-Capital.

44. The provinces have the power to act in numerous areas and have developed initiatives in the fields of education, social and cultural infrastructure, preventive medicine and social policy. They also

deal with matters relating to the environment, roads and waterways, the economy, transport, public works, housing, the use of languages, etc.

45. They constitute self-governing institutions but are subject to supervision, which means they exercise their powers under the supervision of the higher authorities. For example, a provincial school is run under the supervision of the Community, while an initiative on town and country planning will be supervised by the region. The Permanent Delegation (*Deputatie* in the Flemish provinces and *Collège provincial* in the French provinces) is responsible for the day-to-day running of provincial business. Among other things, it has the power to issue licences for the operation of industrial, craft, commercial and agricultural premises that entail risks or are harmful and therefore need to be regulated. The Governor of a province possesses a range of powers relating to security and the maintenance of public order. He or she is, for example, responsible for the co-ordination of relief campaigns in the event of disasters of a certain magnitude. The province is responsible for managing everything of provincial interest in its territory, in other words anything that needs to be done in the interests of the province and does not fall within the general interest of the federal state, communities, regions or municipalities. These specialised institutions are directly subordinate to the institutions of the higher tier of government, i.e. the regions and the communities.

46. The regions are responsible for the composition, powers and operation of the provincial bodies. All the provinces currently have their own legislative and executive body:

- The provincial council is the legislative body.
- The *collège provincial* (in the Walloon provinces) or the *deputatie* (in the Flemish provinces) is the executive body.

The municipalities

47. The municipalities are the tier of government closest to the citizen. At the birth of the Belgian state, in 1830, there were 2,739. Since the merger of municipalities in 1975, their number has been reduced to 589, with 308 in Flanders, 262 in Wallonia and 19 in the bilingual Brussels-Capital Region. The municipalities existed before the creation of the Belgian state and were recognised by the 1831 Constitution and regulated by the Act of 1836.

48. The powers of the municipalities are very extensive and cover everything that is in the “municipal interest”, in other words the collective needs of the inhabitants. In theory, a municipality can do anything that it is not prohibited from doing, subject to the supervision of the supervisory authorities (the federal state, the communities, the regions and the provinces). In particular, they are responsible for maintaining public order, managing the public records, deaths and marriages and keeping the population registers. The burgomaster is the head of the municipal police in the performance of administrative police functions. The municipality is also responsible with regard to the provision of welfare and in the field of public works.

49. As far as its organisation is concerned, each municipality has a municipal council consisting of between 7 and 55 members, depending on the number of inhabitants. It deals with all matters “of local interest” by passing by-laws. The council elects the *échevins* who, together with the burgomaster, make up the executive (*Collège des Bourgmestre et Échevins/College van burgemeester en schepenen*). The burgomaster is appointed in Flanders and the Brussels-Capital Region from among the elected members of the municipal council, under the supervision of the regional Minister of the Interior. The situation is different in Wallonia, where a system that could be likened to a form of direct election of the burgomaster has been set up.

50. The regions are responsible for the composition, powers and operation of the municipal bodies. All municipalities currently have their own legislative and executive body:

- The municipal council is the legislative body;
- the *Collège des Bourgmestre et Échevins* is the executive.

51. The burgomaster heads the municipality but also has specific powers in his or her capacity as representative of the central/regional administration.

3. The state reforms in Belgium

3.1. Historical background

52. The federalisation process began in 1970 and saw several reforms of the state in 1970, 1980, 1988-1989, 1993 and 2001. The key characteristics of the first five state reforms are as follows:

- In 1970, a **first revision** of the Constitution enshrined the three cultural communities. This was the beginning of the process of reforming the state legal system. The birth of the three cultural communities was, as their name indicates, a sign of a certain degree of autonomy in cultural matters. However, their powers were very limited. This reform was a response to the Flemish population's desire for cultural autonomy. In 1970, provision was also made to set up three regions with their own territory and responsible for taking action in the economic field in particular. They were the response to the desire of the French-speaking population, the Walloons and citizens of Brussels, for economic autonomy.
- 1980: the **Second State Reform** continued the work begun in 1970. For example, the cultural communities became fully-fledged communities because they no longer only managed their cultural affairs but also matters directly affecting the individual, i.e. health and welfare. As a consequence, these three communities have, since 1980, been called the Flemish Community, the French Community and the German-speaking Community. They each have their own council (parliament) and an executive (government). The 1980 reform gave birth to two regions, the Flemish Region and the Walloon Region, each with its own council and government.
- 1988-1989: the **Third State Reform** resulted in particular in the creation of the Brussels-Capital Region. Like the two other regions, it has its own institutions, especially a council (now called the parliament) and a government. The parliament of the Brussels-Capital Region passes ordinances and the government implements them. The third state reform also gave the communities more powers and further strengthened the regions. The communities were given responsibility for education and the regions, among other things, for public works and transport.
- 1993: with the **Fourth State Reform**, 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 first sentence of the former Article 1 of the Belgian Constitution, "Belgium is divided into provinces", was amended to "Belgium is a federal state consisting of communities and regions". From then on, Belgian federalism became a legal reality and was formally recognised as such.
- 2001: the Lambermont Accord and the Lombard Accord ushered in the **Fifth State Reform**. The Lambermont Accord transferred certain powers to the communities and regions. For example, local authority and provincial law a matter for the regions. The accord also provides for a number of measures relating to the financing of the communities, the extension of the fiscal powers of the regions and an extra budget allocation from the Federal Government to the Flemish and French-speaking Community commissions. The Lombard Accord changed the way the Brussels institutions operate. It also changed the distribution of seats between the two language groups in the parliament of the Brussels-Capital Region. The two accords came into force pursuant to two special acts passed on 13 July 2001.

3.2. The Sixth State Reform

53. The October 2011 institutional agreement on the Sixth State Reform, entitled "A more efficient federal state and more autonomous entities", provided for substantial state reform to take place in several stages. Eighty-two laws and a thousand pages of text were necessary to give legal form to this work. The main elements of this reform are the division of Brussels-Hal-Vilvorde (BHV), the transfer of powers, the reform of the Finance Act, the refinancing and internal reorganisation of the Brussels-Capital Region and the reform of the Senate.

3.2.1. Brussels-Hal-Vilvorde (BHV)

54. The electoral constituency of Brussels-Hal-Vilvorde has existed since the 19th century, well before the process of federalising the country, and can therefore on no way account be considered compensation granted to French speakers after the establishment of the language border in 1963.

55. The establishment of the language border in 1963⁶ does not in any way change the boundaries of the BHV constituency, which still straddles this border. On that occasion, the legislature determined the list of municipalities to be granted the status of “municipalities with special arrangements”, granting rights in some cases to French speakers and in others to Dutch or German speakers. The municipalities of Kraainem, Drogenbos, Linkebeek and Wemmel were confirmed as having that status, while Sint-Genesius-Rode and Wezemebeek-Oppem obtained it.

56. The Use of Languages in Administrative Matters Act of 18 July 1966 created the administrative district of Brussels and the administrative district of Hal-Vilvorde, but the legislature maintained the unity of these two districts at parliamentary elections in order to establish the electoral constituency of Brussels-Hal-Vilvorde.

57. The Saint-Michel reform, negotiated in 1992, led to the division of the province of Brabant by creating the provinces of Walloon Brabant and Flemish Brabant. This division meant no change for the constituency of Brussels-Hal-Vilvorde, which was kept as it was without this being challenged.

58. The fact that the electoral constituency of Brussels-Hal-Vilvorde straddles two language regions presented no constitutional problem at that time. Indeed, the Court of Arbitration (the Constitutional Court) held in a judgment delivered in 1994 that “the retention of the electoral constituency of Brussels-Hal-Vilvorde is based on a choice dictated by an overall concern for compromise, in connection with which an essential balance has been sought between the interests of the different communities and regions within the Belgian state”.

59. It was an electoral reform decided in 2002 that ultimately led to the Court of Arbitration (Constitutional Court) judgment of 2003 that was interpreted as an “obligation” to divide a constituency. The legislature decided on that occasion to amend the Electoral Code in order to replace the previous constituencies by constituencies corresponding to the provinces, with an exception made for Brussels-Hal-Vilvorde, which was retained as it was. In this context, only the administrative district of Leuven (Louvain) makes up the electoral constituency of Flemish Brabant. The aim is to take account of the large French-speaking minority living in the district of Hal-Vilvorde and the large Dutch-speaking minority living in the district of Brussels in order to guarantee the proper representation of each of these minorities and enable everyone to be defended in a court of law in their own language.

60. In a judgment delivered in 2003, the Court of Arbitration held that the situation created by this reform of the Electoral Code led to candidates from Flemish Brabant being treated differently from candidates from the other provinces, but it did not call for a constituency to be split up or establish that there had been discrimination. It even considered that “the measure is based on a concern, already established in a previous judgment (90/94), to seek an essential balance between the interests of the different communities and regions within the Belgian state”. It granted the legislature a tie frame in which to rectify this difference in treatment, but without striking down the electoral reform.

61. Brussels-Hal-Vilvorde (BHV) is a constituency made up of two administrative districts: Brussels and Hal-Vilvorde.

62. Six municipalities on the outskirts of the capital have benefited from a system granting them “special language arrangements” (*facilités/faciliteiten*) owing to the strong presence of French speakers.

63. The BHV problem arose at the time of the subdivision of the province of Brabant: the district of Nivelles became the province of Walloon Brabant in the Walloon Region, the district of Leuven (Louvain) and the Flemish municipalities Hal-Vilvorde in the district of Brussels formed the province of

6. Until 1963, the language border was considered by the legislature as fluid and having to follow the demographic development highlighted by the ten-year language censuses. Such a census was held for the first and last time in 1947 and enabled three municipalities to join Brussels (Berchem-Sainte-Agathe, Evere and Ganshoren) and four to obtain the status of municipalities with special language arrangements (Kraainem, Linkebeek, Drogenbos and Wemmel).

Flemish Brabant in the Flemish Region, whereas the Brussels-Capital Region was not part of any province.

64. The first part of the state reform, which mainly concerned the division of the district of Brussels-Hal-Vilvorde, was passed in July 2012. Apart from the division of the electoral constituency, BHV also underwent judicial reform.

65. The judicial reform of BHV ultimately resulted in a new Dutch-speaking public prosecutor's office for Hal-Vilvorde, with its own Public Prosecutor as well as a number of functionally bilingual magistrates. The Brussels bilingual public prosecutor's office has a French-speaking prosecutor and a Dutch-speaking deputy prosecutor. Certain Brussels courts are divided up into Dutch-speaking and French-speaking courts, each with its own president and judges. Some aspects of language legislation have also been modified, particularly regarding the use of languages in legal matters. The Brussels district will be one of 12 new legal districts created by the justice reform.

66. As far as the reform of the electoral constituency is concerned, it should be noted that BHV has been split into a constituency of Flemish Brabant (administrative districts of Hal-Vilvorde and Louvain) and a constituency of Brussels-Capital (19 communes). People living in Flemish Brabant but not in one of the six municipalities with special language arrangements can only vote for candidates on lists filed in Flemish Brabant. People living in one of the six municipalities with special language arrangements have the option to vote for candidates in Flemish Brabant or for those in Brussels. The inhabitants of the Brussels-Capital constituency can only vote for Brussels candidates.

3.2.2. Transfer of powers and responsibilities

67. The sixth reform of the Belgian state provides for a significant transfer of federal powers to the federated entities and for a revision of the various mechanisms for financing the communities and regions. These powers relate to employment policy (powers transferred to the regions), family benefits (transferred to the communities), healthcare and welfare (transferred to the communities), some tax expenditures and personal income tax (transferred to the regions), and mobility (transferred to the communities). The other powers transferred to the regions relate to the Participation Fund, the Cities Policy, the Belgian Intervention and Refund Office, the Disasters Fund and the Fund for the Reduction of the Overall Cost of Energy. The other powers transferred to the communities are the law centres, the Federal Migration Policy Support Fund, the European Fund for the Integration of Third-Country Nationals, the protection of young people, general projects and career breaks, etc.

68. Pursuant to section 31 of the Special Act of 6 January 2014, from 2015 an "employment" allocation will be granted to the regions. The total amount of this will correspond to 90% of the defederalised expenditure on employment. The "employment" allocation for 2015 will be index-linked in 2016 and adjusted to 75% of real growth and reduced by the regions' contribution. Then, from 2017, in order to have the regions share in the costs of an ageing population the "employment" allocation will be index-linked and adjusted to 55% of real growth. However, in order to enable the regions to benefit more from economic growth when it exceeds 2.25%, the growth adjustment percentage will be 100% for the part of growth exceeding 2.25%. For every year, the "employment" allocation will be shared out according to the regional breakdown of the personal income tax revenue maintained at the federal level.

69. Pursuant to section 32 of the Special Act of 6 January 2014, the regions will benefit from a "tax expenditure" allocation, the total amount of which will correspond to 60% of the amount of region-specific tax expenditure (the remaining 40% of the total tax expenditure will be financed by personal income tax surcharges). As in the case of the "employment" allocation, this allocation will rise with inflation and be adjusted to 75% of economic growth in 2016 and to 55% from 2017 in order to have the regions share in the costs of an ageing population. The allocation will also be shared out according to the regional breakdown of the personal income tax revenue maintained at the federal level.

70. The Special Act of 6 January 2014 provides for the communities to be given responsibility for various healthcare and welfare services, in particular help for people with disabilities, the provision of residences for the elderly and long-term care, mental health care, disease prevention and primary healthcare. It also provides for the communities to be made responsible for financing hospital infrastructure and medical-technical services from 2016 onwards.

71. The responsibilities will be community-based but in Brussels the responsibilities relating to the bi-community institutions and to individuals' rights and duties will be transferred to the Joint Community Commission, (COCOM). Accordingly, in 2015 the "family benefits" allocation will be shared between the Flemish and French communities and COCOM on the basis of the Flemish, Walloon and Brussels regional populations aged between 0 and 18 years. The funds allocated to each of these entities will then rise according to the rate of inflation as well as the growth of their population aged between 0 and 18 years and 25% of the real growth of the gross domestic product (GDP) per inhabitant of the Kingdom. Moreover, it will be possible to allocate part of the welfare budget to increasing the allocations granted to the entities in the event of a significant rise in the higher education attendance rate of young people. For each language region, this increase will depend on its contribution to the total rise in the attendance rate.

72. According to section 50 of the aforementioned Special Act, from 2015 onwards a "healthcare" allocation will also be granted to the communities and to COCOM. From 2016, the amount of these funds will rise according to inflation and to a percentage real GDP growth. For the 2016 fiscal year, this percentage will be 82.5%; from 2017, it is fixed at 65%.

73. The Flemish calls for the defederalisation of certain areas of social security (especially health and family policy) date back to 1999. As a result of the Sixth State Reform, some of these demands have been met for the first time. In all, the transfer of powers in the field of social security represents about 15% of the current social security budget.

74. From the 2015 fiscal year, the Flemish and French communities and COCOM will receive a "care for the elderly" allocation, which will be shared between these entities on the basis of the Flemish, Walloon and Brussels regional populations over 80 years of age. From 2016, the amount of the allocation granted to each of these entities will rise according to inflation and to a percentage of real national per capita GDP growth. For the 2016 fiscal year, this percentage is fixed at 82.5%; from 2017, it will be 65%.

75. The personal income tax (PIT) allocation granted to the communities will henceforth combine the communities' current PIT allocation with the allocation granted under the Lambermont accords described as "VAT refund" less the correction made, since 2010, owing to the effect of the "Turbo-Lambermont"⁷ and the communities' contribution to the consolidation of the public finances. In 2016, the communities' PIT allocation will be index-linked and adjusted to 75% of economic growth. Then, from 2017, the communities' PIT allocation will rise with inflation and, in order to have the communities share in the costs of an ageing population, with 55% of economic growth when this is below 2.25%. The communities' PIT allocation will be shared out on the basis of the breakdown between the communities of the PIT remaining at the federal level.

76. The transfer of responsibilities will take effect after the elections of 25 May, i.e. on 1 July 2014.

3.2.3. *The reform of the Financing Act*

77. The Special Financing Act is the subject of a complex agreement. The Special Act revises the financing mechanisms of the current Special Financing Act (SFL) and regulates the financing of new transferred responsibilities.

78. The reform of the SFL provides for the financing of the communities and regions. The proposed amendment to the law is based on the principle that for the regions the emphasis should be placed on fiscal autonomy and the assumption of responsibility, whereas for the communities the focus should be on the mechanisms concerning the needs of the population. In regard to the regions, the most significant change in the law on funding concerns the extension of their fiscal autonomy. For the communities, the current additional resources will no longer be funded by VAT revenues but will come from personal income tax, while the compensation for the television and radio licence fees will be funded by VAT.

7. The expression "Turbo-Lambermont" refers to the fact that, following the Lambermont accords, the basic amount of the VAT allocation is adjusted to 91% of growth. However, the resulting increase in the allocation is shared out according to the PIT ratio rather than the per-pupil ratio used to distribute the basic amount. As a consequence, the VAT revenues granted to the communities and shared out on the basis of the PIT ratio are rising faster than the VAT revenues distributed according to the per-pupil ratio.

79. The SFL also provides that, “as a transitional measure, during the period from 1 July to 31 December 2014, the federal state shall, against the appropriations approved by the law, act on behalf of the communities, the regions and COCOM and carry out the commitments, disbursements and expenditure liquidations resulting from the application of the laws, regulations or decisions relating to the new responsibilities allocated to the communities, the regions and COCOM”. Then, from 1 January 2015, the financing of the new transferred responsibilities would be organised as defined in the SFL of 6 January 2014.

3.2.4. *The refinancing and constitutive autonomy of the Brussels Region*

80. The refinancing of the Brussels Region consists of two components.

81. In 2012, the first component of the refinancing of the Brussels Region was passed by the federal parliament and incorporated into the financing mechanisms of the current SFL. This component covers the allocations for security and prevention, mobility, the increase in the allocation for the Flemish and French communities, and the rise in the compensation for mortmain and the language bonuses.

82. The second component of the refinancing of the Brussels institutions, introduced in the SFL of 6 January 2014, comprises interregional refinancing for commuters and refinancing paid by the federal state to compensate the Brussels region for the loss of revenues caused by the exemption of the incomes of international officials. The refinancing for commuters and international officials will be gradually increased until 2016 and then reduced, from 2017, and adjusted for inflation from that year onwards.

83. The refinancing of the Brussels Region was organised so that 0.1% of GDP would not be exceeded beyond 2015. For 2015, the combined amount of the two refinancing components is €461m. It should be noted that this refinancing is coupled with the eventual elimination of the National Solidarity Intervention in favour of the Brussels-Capital Region, which amounted in 2014 to €433m. The linear abolition of this intervention at an annual rate of 10% will begin in 2025 and end in 2034.

84. The legislature provides, inter alia, for the creation of the Brussels Metropolitan Community with the aim of co-ordinating the different tiers of government concerned with regard to transregional matters. The new legislation also improves the financing of the Brussels-Capital Region by providing for compensation for some lost revenues and for particularly heavy expenditure incurred for mobility, security and the region’s international role.

85. The Brussels-Capital Region and the German-speaking Community enjoy the same constitutive autonomy as the other federated entities. Their parliaments can deal themselves with a number of matters relating to the government and parliament, such as the election, composition and operation of the parliament and government.

86. The Sixth State Reform grants the parliaments of the Brussels-Capital Region and the German-speaking Community constitutive autonomy. The special legislature – in the case of Brussels – and the ordinary legislature – in the case of the German-speaking Community – specify the matters that the parliaments may deal with themselves as far as the election, composition and operation of the parliament and government are concerned.

87. The exercise of constitutive autonomy requires a special majority. In the two federated entities, a decree or ordinance must be passed by a majority of two-thirds of the votes cast, on condition that a majority of the members of parliament are present.

88. In the Brussels parliament, an absolute majority must also be reached in each language group.

89. The guarantees enjoyed by the French and the Dutch speakers in Brussels with regard to the parliament and government remain the responsibility of the federal special legislature, and the Brussels parliament may not derogate from this. These rules are therefore not affected by its constitutive autonomy. They relate, for example, to the number of parliamentarians, the distribution of seats among the language groups, the equal composition of the government and the distribution by language group of the regional secretaries of state and motions of no-confidence.

3.2.5. *The reform of the Senate*

90. Since its creation in 1830, the Belgian state has always had a bicameral system. The Parliament consists of two legislative assemblies that are independent from one another: the Chamber of Representatives and the Senate, both of which represent the nation.

91. The Senate was significantly changed by the 1993 revision of the Constitution. Apart from the big reduction in the number of senators, from 184 to 71, the upper chamber's legislative powers were curtailed and refocused on the basic federal legislation, namely the Constitution and the right of the federated entities (regions and communities). Whereas all federal laws before that revision were drafted according to the rules of egalitarian bicameralism, the legislative equality of the two chambers henceforth only applied in a specific number of case enumerated in Article 77 of the Constitution.

92. In the context of the Sixth State Reform agreed in October 2011, the Senate will be composed of 60 senators, 50 from the communities (29 Dutch-speaking, 20 French-speaking and 1 German-speaking) and 10 co-opted (on the basis of the breakdown of the Chamber) after Belgium's federal parliamentary elections in 2014. This is why the federal elections and the elections in the communities and regions will be held on the same day. The reform not only affects the Senate but also the entire Belgian bicameral system. In spite of the autonomy it enjoys under the Constitution, the Senate is inseparable from the Chamber of Representatives. The idea on which the Belgian bicameral system is based accordingly remains the complementary specialisation of the two assemblies.

93. The federated entities must participate in the organisation and operation of the federal state and the Senate must become the place where their parliaments meet. This idea is reflected in the composition and powers of the new Senate.

4. **Local government: the European Charter of Local Self-Government**

94. Belgium signed the European Charter of Local Self-Government in 1985 (see paragraph 2 above) and the federal legislature ratified it by passing the Act of 24 June 2000. The draft law was published in the Belgian Gazette (*Moniteur Belge/Belgisch Staatsblad/Belgisches Staatsblatt*) on 25 August 2004 after the ratification of the text by the various competent deliberative bodies in Belgium. The Charter has been ratified by the three regions and entered into force in respect of Belgium on 1 December 2004.

95. Pursuant to Article 13 of the Charter, the Kingdom of Belgium indicated its intention to confine the scope of the Charter to the provinces and municipalities. Pursuant to the same article, none of the Charter's provisions apply to the social services centres (*centres publics d'aide sociale, CPAS*) in the territory of the Brussels-Capital Region.

96. In ratifying the Charter, the Kingdom of Belgium decided it was not bound by Articles 3.2, 8.2 and 9. 2, 9.6 and 9.7. The rapporteurs regret this limitation and urge the Belgian authorities to ratify all the provisions of the Charter that have so far not been ratified.

97. Apart from these provisions that have not been ratified, Belgium accepted, through its ratification, the binding character of the Charter in Belgian law from the moment when it agreed to be bound by this treaty. The very existence of the Act ratifying the Charter (of 24 June 2000) makes no additional legal instrument necessary to incorporate the Charter into domestic law, so the local authorities are entitled to demand compliance with the Charter's provisions.

98. It is important to note that the Walloon, Flemish and Brussels-Capital regional legislatures make clear reference to the Charter when they pass municipal and provincial institutional laws.

99. The importance of the local tier of government is emphasised in several provisions of the Constitution. For example, Title I relates to the territorial components of federal Belgium. Title III deals with the political "powers" and Chapter IV of this title governs "provincial and municipal bodies".

100. However, it should be pointed out that the expression "local self-government" (*autonomie locale/locale autonomie*) is not explicitly mentioned in the Constitution, contrary to municipal and provincial interests.

101. The subsidiarity principle is not expressly mentioned in the Belgian Constitution either, but some evidence of this principle can be found in the constitutional provisions on the institutional organisation of territorial decentralisation. Three aspects may be highlighted in this connection. On the one hand, the Constitution sets up a system of competing powers between the central government and the local authorities, but by providing for a general clause establishing the responsibility of the latter. Secondly, democratic choices are made by the Constitution with regard to the institutional organisation of the decentralised authorities, which have elected deliberative assemblies. Finally, the Constitution grants the local authorities taxation powers.

102. By contrast, the Constitution contains the principle that only the “law” may regulate the provincial and municipal institutions. On the other hand, the law cannot eliminate all the provinces or all the municipalities without a prior amendment to the Constitution, even though it can change the boundaries of the municipal territories (unless these boundary changes involve changes to the language borders).

103. Apart from federal law, the key aspect of the regulation of the organisation and operation of the local administration is accordingly determined by three regional legislative instruments:

- in the Walloon Region, the Code of Democracy and Territorial Decentralisation (*Code de la démocratie et de la décentralisation territoriale*);
- in the Flemish Region, the municipal decree (*Gemeentedecreet*);
- in the Brussels-Capital Region, the traditional title New Municipal Act (*Nouvelle Loi Communale*) has been preserved.

104. In an initial general assessment of the situation of local democracy in Belgium, the rapporteurs stressed the historical entrenchment of local government in the country, the tasks and responsibilities given to the local authorities, often in close co-operation with the higher, regional and federal authorities, and the high degree of protection they enjoy in the national legal system, including by the highest judicial bodies, such as the Council of State and the Constitutional Court.

105. However, it is interesting to note that, after a complex study of the Belgian system, it can be said that the local authorities’ self-governing powers have been weakened. The reasons for this are as follows: on the one hand, it has to be pointed out that when it comes to allocating powers and responsibilities the decision-maker is one of the parties concerned. The distribution of powers and responsibilities is carried out between the local authorities and the central authority, but it is the latter that acts to allocate or limit a particular responsibility, either by legislative means or through supervision of compatibility with the public interest. On the other hand, the federalisation of Belgium has resulted in three different central authorities. Local governments have to engage in a dialogue and co-operation with the Federal Government, the region and the community in order to preserve both the scope for action and their resources. According to several interlocutors, the influence of the local authorities is tending to diminish in this type of dialogue. In addition, the communities and the regions act within the limits of a set of powers and responsibilities that are either exclusive to them or have been allocated, and this is liable to create some frustration when, at the same time, the local authorities are able to take action on any matter they consider to be in their interests.

106. The Sixth State Reform provides support for this entrenchment of self-government. It required long and difficult negotiations and does not resolve all the issues of local democracy but it does respond to some key questions.

107. In conclusion, taking account of the administrative complexity of the Belgian system, this report provides a separate analysis of the application of the Charter for each entity.

4.1. Article-by-article analysis of the situation of local democracy in the Flemish Region (Vlaanderen) in the light of the European Charter of Local Self-Government

108. The Flemish Government Agreement for the period 2009–2014 contains plans for an internal reform of the state that aims to simplify the Flemish administrative landscape. The main thrust is as follows: subsidiarity, emphasis on Flanders and the municipalities, limiting the powers of the provinces, uniform key tasks for each tier of government, simplification of the intermediate structures and bodies.

109. The strengthening of local democracy in Flanders is a key element of the White Paper on the Internal Reform of the State, which executes the part of the Flemish Government Agreement relating to the internal reform of the state, approved by the Flemish government on 8 April 2011.

110. Moreover, the drawing up of the policy and management programme (*Beleids-en beheerscyclus*, BBC) for the local administrations led in turn to an instrument that enables local policy to be planned and monitored. Since the framework incorporates more than the purely financial aspect, the new programme involves the reinterpretation of certain roles within the organisation of an administration. Change management is a key element in the introduction to the BBC.

111. For example, the Flemish authorities have issued a decree creating a framework that will, from 2014, enable the local administrations' planning load to be reduced by incorporating sectoral plans and existing reports into the multi-year local plan and the annual accounts drawn up in the BBC.

112. The financial balance is now assessed according to the elements contained in the BBC. It is essential that the BBC ensure greater planning and monitoring transparency and that the financial impact of each policy decision be measured. The financial balance within the BBC contains both a static and a dynamic aspect. The annual cash-based result enables it to be established whether a balance has been achieved in the course of the fiscal year. The long-term result, or cash-flow margin, verifies whether the administration is achieving a structural balance.

113. From 2014, the following local administrations will apply the rules of the policy and management programme:

- the municipalities and their autonomous municipal enterprises;
- the social services centres and their associations governed by public law;
- the provincial administrations and their autonomous provincial enterprises.

114. For these various administrations, the BBC provides an identical framework that enables them to prepare, budget, implement, monitor and evaluate their policy and to draw up their strategic vision and action plans and identify the financial repercussions in an integrated system. It differs in many respects from the approach prevailing up to now and from the accounting framework. More specifically, the strategic policy vision covering several years will henceforth constitute the main framework for annual budgets. Each of the three policy reports (multi-year plan, budget and accounts) contains a part describing the objectives, a financial part and explanatory notes.

115. The Flemish administrative organisation faces the following challenges:

- diversification at the intermediate level;
- disparity between the social and administrative levels;
- too many details, too much monitoring and supervision imposed by the Flemish authority;
- the compartmentalisation of work on the part of the Flemish authority;
- the imprecise distribution of responsibilities, which overlap;
- the municipalities' limited administrative powers/limited scope.

116. In the context of this internal reform, the Flemish government has accordingly set out to take action to:

- strengthen the municipalities' administrative powers;
- ensure more autonomy and responsibilities for the municipalities;
- ensure efficient processes – fewer intervening levels;
- define the provincial remit;
- simplify the intermediate space.

4.1.1. *Articles 2 and 3: Principle and concept of local self-government*

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

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

117. As pointed out above, the principle of local self-government is recognised in the Belgian Constitution and, in addition to the federal law, by the Flemish regional legislature through Flemish legislation, especially the Flemish parliament's Municipalities Act of 2005 (sections 2 and 3), which establishes the profile of the Flemish municipalities, and the Flemish Government Agreement on the internal state reform, which was approved by the Flemish government on 8 April 2011. Since 2009, several legislative changes have been made by the Flemish legislature, in particular the amendment to the Decree of 6 July 2001 regulating intermunicipal co-operation and the amendments to the Decree of 15 July 2005, the Provincial Decree of 9 December 2005, the Decree on the social services centres of 19 December 2008, etc.

118. The principle of local self-government is accordingly not only recognised in domestic legislation but also in the Constitution. The rapporteurs noted the Flemish legislature's constant concern to take account of the fundamental principles of local government and consider that Article 2 of the Charter is fully complied with in Flanders.

Article 3 - Concept of local self-government

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.

119. The local authorities in Flanders possess powers and responsibilities granted to them in general terms by the Constitution and in specific terms by regional legislation, and they also exercise powers that originate from a variety of instruments, including projects, competitions, receiving deposits of money, and subsidies and functions delegated by the federal and regional governments.

120. As far as the concept of local self-government and its importance for the municipal level is concerned, the question is more complex. In fact, the local authority carries out a dual function. On the one hand, it is a decentralised autonomous political entity with its own decision-making powers and is free to act if the matter is not excluded from its responsibilities by the Constitution, the law, a decree or ordinance. On the other hand, the municipality is a local subordinate body, which means it is tasked with implementing certain decisions taken by other authorities (federal, regional, community). Moreover, for the local authorities regionalisation in Belgium has led to much stronger regional centralism than that existing in the former national state.

121. Belgium has not ratified the provision of Article 3.2, but the rapporteurs would like to mention that the explanatory memorandum to the draft municipal decree, which subsequently became the Municipal Decree of 15 July 2005, provided for the direct election of the burgomaster by the local inhabitants entitled to vote. However, the direct election of the burgomaster is not mentioned in the final text of the municipal decree and the rule on the appointment of the burgomaster by the Flemish government remains in force. The rapporteurs point out that both Recommendation 131 on local democracy in Belgium, adopted by the Congress in 2003, and Recommendation 258, adopted in 2008, urged the adoption of the system of the election of burgomasters by the municipal council or the citizens, which, as indicated in the aforementioned recommendations, would have had the effect of relaxing the conditions of the supervision of the municipalities by the regional authorities.

122. However, the Municipal Decree of 15 July 2005 gave the municipal council an important role in the process of appointing the burgomaster: Article 59.1 states that municipal councillors can propose candidates for the office of burgomaster, and a proposal document duly dated must be submitted to the governor of the province for this purpose. In order to be admissible, the proposal document must be signed by more than half of the elected representatives on the lists of those who stood in the elections and by a majority of the persons elected on the same list as the burgomaster's candidate proposed.

123. In contrast to Wallonia, the German-speaking Community and the Brussels-Capital Region, which are of the opinion that Belgium should ratify this provision, Flanders believes that paragraph 2 of Article 3 should not be the subject of ratification.

124. The rapporteurs conclude that Article 3.1 is generally respected in Flanders, but in view of the specific nature of the principle of local self-government in Belgium and of the principle of supervision the Flemish authorities should give the municipalities more responsibilities and autonomy and strengthen their administrative powers.

4.1.2. Article 4 - Scope of local self-government

Article 4 - Scope of local self-government

- 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 which 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.

125. As far as Article 4.1 is concerned, local self-government is enshrined in the Constitution and the local authorities' powers and responsibilities are duly enshrined in the law, although a number of responsibilities are assumed in partnership and in co-operation with higher authorities (cf. Article 2 below).

126. With regard to Article 4.2, the Rapporteurs point out that, before 2012, certain principles of local self-government seemed to require a revision of the law, especially with regard to the clarification of powers in the case of the provinces, the strengthening of local democracy and the management of the local and provincial administrations, as well as the modernisation of the administrative system. The Government, through its 29 June 2012 amendment of the Municipal Decree, the Provincial Decree and the Decree on the social services centres, has taken account of all these changes and improvements.

127. The municipalities play a key role in the internal reform of the state in Flanders and are being allocated more powers. The Flemish government believes it is necessary to simplify the levels of administration in order to make the authorities operate more efficiently and more effectively. Moreover, quality agreements concerning the tasks to be performed should be reached with the local and provincial administrations to ensure that the number of levels of administration involved for each policy sector is reduced to a maximum of two.

128. The internal reform of the state in Flanders also comprises a new view of the position of the provinces in the Flemish administrative organisation and places the emphasis both on the municipalities and on the Flemish Authority. As the basic unit of government, the municipalities should be considerably strengthened and benefit from a maximum of room for political manoeuvre. As the intermediate tier of government, the provinces are positioned between the municipalities and the Flemish Authority. In matters relating to land use, provinces retain an open remit; in matters not connected with land use, since 1 January 2014, they may only carry out functions if they have been devolved to them under an explicit statutory provision or decree. In a management agreement concluded between the Flemish government and each of the provinces, agreement was reached on how the provinces can, in the interests of efficient and effective public administration, translate into action the responsibilities allocated to them by means of a decree.

129. Article 4.3 emphasises subsidiarity as the basic principle for the distribution of powers and responsibilities between the different tiers of government that together make up the political community. The consequence of this principle is that functions should normally be assigned to the level of territorial government closest to the citizen, unless the magnitude or nature of the function is

such that it has to be carried out in a larger territorial entity and there are overriding considerations of efficiency and economy. The rapporteurs point out that one of the guiding principles of the Flemish government's 2009-2014 internal reform is that of subsidiarity.

130. With regard to the powers and responsibilities mentioned in Article 4.4, the Flemish government stated in its explanatory memorandum to the draft of the decree on the approval of the European Charter of Local Self-Government, which was signed in Strasbourg on 15 October 1985, that powers and responsibilities are normally granted without any reservation but that additional intervention proves necessary at different levels in certain areas of administration and that it is necessary in these cases for the action of the central or regional authorities to be based on clearly formulated statutory provisions.

131. In the event of the delegation of powers by a central or regional authority, the local authorities should, as far as possible, be allowed discretion in adapting their exercise to local conditions (Article 4.5).

132. Some departments of the federal, community or regional administrations can implement deconcentration mechanisms or, quite the contrary, decentralisation mechanisms through the local authorities. The law has delegated some functions to local authorities with due respect for their autonomy. The municipalities are responsible in the following areas: public records, population, electoral matters and religious facilities, social services centres, education, police services, monitoring unemployment, issuing driving licences, and pension applications, while the provinces can propose candidates for certain judicial offices, validate municipal elections via the Council of Electoral Disputes, and give an opinion on some boundary changes. These delegations of powers and responsibilities to the local authorities entail various forms of oversight exercised by the higher authority.

133. As far as the communities and regions are concerned, no functions have been delegated to them as they are not political authorities subordinated to the federal state. They are federated entities with their own autonomy towards the federal state and have, in this respect, their own organs and functions.

134. With regard to Article 4.6, the local authorities must be consulted, as far as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters that concern them directly.

135. Dialogue, consultation, co-ordination and co-operation, both horizontal (between local authorities) and vertical (between local authorities and higher authorities), is an important reality, even if it sometimes takes place informally.

136. The local and provincial authorities are consulted by the Flemish government through their associations on matters concerning them directly. In Flanders, at management level, the Association of Towns and Municipalities and the Flemish Region's Strategic Advice Council (*Strategisch Adviesraad*) play an important role in the consultation of the local authorities. At the legislative level, dialogue and the consultation of the local authorities take place directly both in the context of the Committee for Internal Affairs of the Flemish Parliament and the Vlabest, the Flemish consultative council, in whose work the towns and municipalities are invited to participate. A significant role in ensuring indirect dialogue, consultation and co-ordination is also played by the large number of MPs who also have a local mandate (currently no less than 75% of MPs).

137. The rapporteurs were informed that the Association of Flemish Towns and Municipalities and the Flemish Association of Provinces are regularly consulted on matters concerning them directly.

138. The rapporteurs were also told during their visit that the Flemish government systematically consulted the respective associations of the local municipal subdivision and of the provincial authorities in the Committee on negotiations and consultations concerning matters relating to work and employment within the local and provincial authorities. The Flemish government also holds talks on matters of governance with the associations present on the Flemish Advisory Council for Administrative Affairs (VLABEST) platform, which gives advice of every strategic case. Representatives of the Association of Flemish Towns and Municipalities and the Flemish Association of Provinces are members of this advisory council.

139. Article 4 is generally complied with in Flanders and the Government is urged to continue the reforms proposed in order to clarify the powers and responsibilities of the provinces and strengthen local and provincial democracy. In the framework of the Sixth State Reform, the rapporteurs stress the importance of continuing to improve dialogue with the communities and regions as subjects which directly concern the communes

4.1.3. Article 5 - Protection of local authority boundaries

Article 5 - Protection of local authority boundaries

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.

140. Article 7 of the Belgian Constitution states: "The boundaries of the state, the provinces and the municipalities can only be changed or corrected by virtue of a law."

141. The regions have the powers⁸ to change or rectify boundaries of provinces and municipalities, with the exception of the boundaries of municipalities mentioned in section 7 of the Use of Languages in Administrative Matters Act, co-ordinated on 18 July 1966, namely Drogenbos, Kraainem, Linkebeek, Sint-Genesius-Rode, Wemmel and Wezembeek-Oppem, and the municipalities of Comines-Warneton and Voeren. The merger of municipalities must be carried out pursuant to a decree.

142. The voluntary merger of municipalities is regulated by Article 297 of the Municipal Decree. Article 297.1 states: "Two or more municipalities may address a merger proposal to the Flemish government, which shall present it to the Flemish parliament in the form of a draft decree".

143. Accordingly, any change to municipal boundaries will only be made with the agreement of all the municipalities concerned. The proposed boundary change will not take place if a municipality objects. Pursuant to Article 260 of the Provincial Decree of 9 December 2005, the provincial council issues an opinion on the proposed changes to the boundaries of the province, districts, electoral constituencies, cantons and municipalities and with regard to the designation of administrative centres.

144. The Flemish government's 2009-2014 policy programme contains the following provisions concerning the voluntary merger of municipalities and the voluntary merger of a municipality and a social services centre:

- Voluntary merger of municipalities: the Flemish Authority will encourage the voluntary mergers of municipalities and gives its support in particular through a one-off subsidy bonus;
- Voluntary merger of a municipality and a social services centre: the voluntary merger of a municipality and a social services centre is made possible by decree. The Flemish Authority gives its support in particular through a one-off subsidy bonus.

145. Furthermore, Article 205 of the Municipal Decree states that the municipal council may, at the request of the municipality's inhabitants, organise a consultative referendum at the municipal level. This initiative must be supported by at least:

- 20% of the citizens in municipalities with less than 15,000 inhabitants;
- 3,000 citizens in municipalities with a minimum of 15,000 inhabitants and less than 30,000 inhabitants;
- 10% of the citizens in municipalities with a minimum of 30,000 inhabitants.

146. The first stage of the procedure is to submit a merger proposal to the Flemish government. This is done via a decision of the municipal councils concerned. The second stage is the possibility available to the Flemish government to submit the merger proposal to the Flemish parliament in the form of a draft decree. However, this is only a possibility (the government "may") and not an obligation. The conclusion of the procedure is the approval of the draft decree by the Flemish parliament.

147. Similarly, a municipality may also submit a proposal to split the municipality.

⁸ On the basis of section 6.1, VIII, first indent, 2, of the Special Institutional Reform Act.

148. Article 5 of the Charter is complied with by Flanders.

4.1.4. Article 6 – Administrative structures

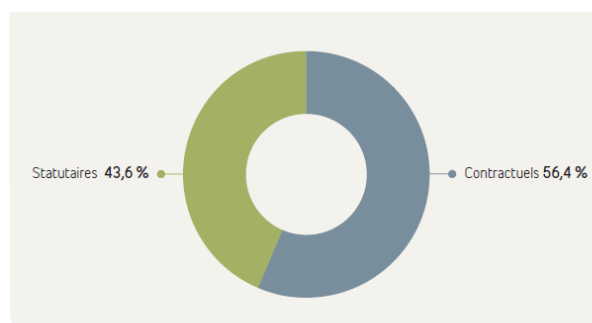
Article 6 - Appropriate administrative structures and resources for the tasks of local authorities

- 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.

149. The Belgian Constitution has enshrined the self-government of the provinces and municipalities. Apart from the disciplinary regulations, the provinces and municipalities are responsible for dealing with the administrative situation of their staff. In the context of the autonomy they enjoy, the Flemish local authorities have their own staff and handle the recruitment and management of their human resources. The local staff comprises personnel from the provinces, the municipalities, intermunicipal partnerships and the social services centres.

150. There are two major categories of local authority staff:

- Regular staff, who work on a permanent basis for a legal person governed by public law. These are staff of the public services, which are governed by administrative law, and are subject to conditions of service that are in many ways similar to those of state employees.
- Employees subject to private law (contract workers), who are bound to the local public employer by a contract of employment. The local authorities make use of them to meet exceptional and temporary staffing requirements or, more frequently, to replace absent regular staff.



Source : ONSSAPL

Fig.: municipal staff in Flanders according to status – June 2012 (in % FTE)

151. As far as contract workers are concerned, the regions, which are responsible for supervising the local authorities, want to put a gradual end to these disparities with regard to conditions of service. The minimum requirements for the status of local staff are listed in the decisions of the Flemish Government, which are, for the most part, issued on the basis of sectoral agreements negotiated with the staff representatives. These decisions must be sent to the relevant authorities who will lay down the principles they intend to see respected. Accordingly, the regions' supervisory authorities have prompted them to recommend and adopt a new classification of grades and of the minimum and maximum points for the determination of the salary scales of the staff concerned.

152. The municipal and regional governments are entirely free to determine the rules relating to the pay and conditions of their staff. As far as the local authorities are concerned, the municipal and provincial councils lay down, within the limits of the law and regulatory provisions, the administrative and financial rules applicable to their staff.

153. According to estimates for 2013,⁹ the municipalities' staff costs in Flanders went up by 3.6%, and many municipalities have decided that they will from now on no longer replace members of staff who

⁹ Belfius report: *Les finances des communes flamandes*, 2013

leave and no longer renew contracts that have expired. There has therefore been a reduction in staff numbers. In spite of the fact that the threshold index was exceeded at the end of 2012 with, at the end of the day, a pay increase of 2% for 2012-2013, the rise in staff costs remained within the limits of the forecasts for 2013. The rapporteurs were informed that the municipalities had had to contend with a higher annual increase during the previous term of office (4.3% on average), including the effect of the annual indexation with a 2% to more than 2% increase in costs for new commitments, salary scale increases, the implementation of the collective bargaining agreement, etc.

154. On 1 January 2012, the “Act ensuring the long-term funding of pensions of permanent members of staff of provincial and local government administrations” came into force. For the local authorities, this reform meant a substantial rise in the basic contribution rates and in the additional rates in respect of so-called “responsibility contributions”, which are significant amounts for the entities and constitute a considerable differential between their actual pension costs and their basic contribution rate. During the first four years of the municipal legislature, the basic contribution rates will not stop rising and in 2016 will reach a single rate of 41.5% of the payroll for regular staff.

155. The crucial problem of municipal staff pensions can only be resolved by a consistent approach between the pensions of regular staff and those of contract staff.

156. Between its entry into force in 2012 and 2016, the reform of the funding of the pensions of regular staff will mean accumulated additional costs of €2.250bn for the country’s municipalities, social services centres, police force areas and intermunicipal partnerships. A reform of the system of financing the pensions of local authority staff was necessary and this law was essential, but it was an inadequate measure in the absence of other structural changes. It seems this situation, especially the aforementioned additional pension refinancing costs of €2.250bn facing the Belgian local authorities, will be a cause for concern up to 2016.

157. The rapporteurs support the demands of the Flemish Association of Towns and Municipalities VVSG (and its two sister associations, UVCW for the French Community and AVCB for the Brussels-Capital Region) and calls on the Federal Government to take measures and offer solutions likely to have a significant impact on the local authorities’ pension costs and to implement the most appropriate of these solutions. It will not be enough to increase receipts, and it will be essential to reduce funding expenditure.

4.1.5. *Article 7: Exercise of responsibilities*

Article 7 - Conditions under which responsibilities at local level are exercised

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| 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. |

158. Any person of Belgian nationality aged 18 and entered on the population register of a municipality, is eligible and can become a local/provincial councillor. More broadly, any EU citizen residing in Belgium, aged 18 and entered on the population register of a municipality, is eligible and can become a local councillor. The conditions for exercising responsibilities at the local level in Flanders are set out in the Municipal Decree of 2005, the CPAS Decree 2008 and the Provincial Decree of 2005.

159. Functions and activities incompatible with the office of a local councillor can only be laid down by law or by fundamental legal principles. The latter are set out in Article 15 of the local and provincial Electoral Decree of 8 July 2011, in the Municipal Decree (Article 11), the CPAS Decree and the Provincial Decree (article 11).

160. According to Article 70 of the communal Decree (2005) burgomasters’ and aldermens’ salaries are determined by the Flemish Government. By a decision of the Flemish Government in 2007, salaries of burgomasters are set according to the number of inhabitants by applying the percentages set for the sessional indemnity of members of parliament. The percentages of the maximum point of the salary scale of the clerk of the relevant municipality to be applied is listed below:

- municipalities with up to 5,000 inhabitants: 75%;
- municipalities with 5,001 to 10,000 inhabitants: 80%;
- municipalities with 10,001 to 20,000 inhabitants: 85%;
- municipalities with 20,001 to 50,000 inhabitants: 95%;
- municipalities with 50,001 to 80,000 inhabitants: 105%;
- municipalities with more than 80,000 inhabitants: 120%.

161. Salaries of deputy burgomasters are fixed at 60% or 75% of that of the burgomaster of the relevant municipality, depending on whether the number on inhabitants is lower than or equal to 50,000 or higher than this figure.

162. The salary of a burgomaster in Flanders mainly depends on the size of his or her municipality. For example a burgomaster of a municipality with a maximum of 300 inhabitants earns less than €22,273 gross a year, while a burgomaster of a municipality with more than 150,000 inhabitants earns about €130,038 gross a year.

163. However, according to Professor Kristof Steyvers of the University of Ghent (Eastern Flanders), burgomasters' satisfaction with their remuneration is mainly due to the changes made by Flemish policy in the last ten years. "Their salaries are now commensurate to those of MPs and depend on the size of the municipality in which they are elected. In a small municipality, the burgomaster earns 25% of the salary of a Flemish MP. In a large municipality, his or her salary may be as much as 151% of that of a Flemish MP. This means that in an average-sized municipality a person can actually make a career of this and live on this salary if they wish", Professor Steyvers concludes.

164. According to several statements received by the rapporteurs during their mission, burgomasters in Flanders are satisfied with their remuneration.

165. All public office-holders (at the municipal level: the burgomaster, *échevin*, the president of the CPAS council) are obliged, on the one hand, to lodge a list of their offices, functions or professions once a year with the Court of Auditors and state whether they are paid or unpaid and, on the other hand, to submit in a sealed envelope a declaration listing their assets (only an investigating magistrate is authorised to consult this list in connection with a criminal investigation conducted against the individual concerned with respect to his/her office or function) .The list of offices, functions or professions of public office-holders is published in the Belgian Gazette (*Moniteur belge*). The list of persons who have failed to submit the required declarations is also published. An omission or false declaration is subject to penalties under the Criminal Code.

166. The following are considered paid executive offices:

- the office of burgomaster, *échevin* and president of a CPAS council;
- any office exercised within a public or private body as a representative of the state, a Community or Region, a province or a municipality provided that it gives the individual more power than the mere status as a member of the annual general meeting or the board of that body and whatever the income concerned;
- any office exercised within a public or private body as a representative of the state, a Community or Region, a province or a municipality provided that the relevant gross taxable monthly income is at least €500. This amount is adjusted annually in line with the consumer prices index.

167. During the visit, the rapporteurs were informed about a reduction in the number of executive office-holders in Flanders. The minimum and maximum number of executive office-holders in Flanders has in fact been reduced by one. To be precise:

- from 1 January 2019, the executive will comprise the burgomaster, the president of the CPAS council (who has been a member of the executive since 1 January 2013) and at least one *échevin*. The maximum number of *échevins*, which depends on the number on inhabitants, will also been reduced by one in each case;

- the maximum number of members of the district college will be reduced from five to four from 1 January 2019;
- from 3 December 2018, the delegation of the provincial council will comprise five members instead of six.

168. Political leaders in Flanders believe that the reduction in the number of executive offices does not adversely affect the quality of the administration. Moreover, it will result in lower administrative costs, which is not insignificant in the period of economic austerity that all European countries are currently experiencing.

169. The general provisions of Flemish legislation concerning Article 7 and its application are in compliance with the Charter.

4.1.6. *Article 8 - Administrative supervision*

Article 8 - Administrative supervision of local authorities' activities

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|---|---|
| 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. |

170. With regard to paragraphs 1 and 3 of Article 8, in Belgium it is not the federal state that is responsible for the local authorities' budget plans and situation. Rather, it is the regions that carry out the ultimate financial supervision, so they have the legal power to supervise the local authorities (supervisory oversight). The communities and regions are not subject to supervision. The supervisory oversight concerns both the legality and the expediency of the local authority's activities.

171. In Belgium, supervision has two aims: to prevent the law from being breached or public interests from being harmed (Constitution, Article 162).

172. The acts of the provinces are subject to supervision by the region. There are two types of supervision:

- special supervision concerning the approval of decisions: this applies to the most important decisions of the local authorities (for example, on levies or staffing levels), which may not be implemented before being approved by the supervisory authority (the Region);
- general supervision concerning the possible annulment of decisions: a number of decisions of average importance are subject to general supervision and must be transmitted for approval. A decision may only be implemented after being forwarded to the supervisory authorities (in most cases, these decisions involve public procurement), whereas a limited list of important decisions (mainly on budgets/accounts, tax regulations, staff complement and regulations) are subjected to specific supervision concerning their approval: the decision may only become effective after being approved or after the supervision deadline had expired. It should be pointed out that the danger that decisions taken, especially in connection with public procurement, will subsequently be set aside will lead to delays in processing documents and, consequently, investment delays since the local authorities prefer to await the end of the supervisory authority's investigation.

173. The Flemish Region has the power to regulate the administrative supervision of all municipalities situated in Flanders but may not, according to the Pacification Act, amend the provisions contained in the new Municipal Act as far as the peripheral Flemish municipalities and Voeren (Fourons) are concerned.

174. As far as local budgets are concerned, it is important to mention that the local authorities have to submit their budget for the approval of the region in which they are located. If the budget does not

enable zero budget balance to be achieved, the region may, as the supervisory authority, reject it and impose management plans to re-establish sound public finances. In Flanders, general supervision of cancellation is applicable to multi-annual plans, budgets and budget changes. Multiannual plans and budgets that do not meet the balance requirements, are suspended by the governor. The approval of the annual accounts is also subject to supervisory approval. The governor of the province can also suspend a municipal budget that shows a deficit.

175. The rapporteurs heard several comments to the effect that the administrative supervision of the municipalities and provinces is very cumbersome. While administrative supervision in general is the responsibility of the regions, the authority competent for a specific matter can organise “specific” supervision. This is reflected in processes for suspending, setting aside or substituting decisions that are in breach of the law or against the public interest. Financial supervision is tending to increase for authorities failing to achieve a balanced budget, with the supervisory authority’s overriding right to take any measure likely to reduce expenditure and increase income if the municipality still fails to present a balanced budget.

176. As far as paragraph 2 of Article 8 is concerned, this has not been ratified by Belgium. The principle of twofold supervision (legality and public interest) is enshrined in the Constitution. This practice enables the supervisory authorities to draw up a framework within which the local and provincial authorities have to work and enables any potential difficulties in the management of these local institutions to be anticipated.

177. The Flemish authorities believe there is no need to ratify Article 8.2 of the Charter for the following reasons: “Administrative supervision in Belgium is regulated by Article 162 of the Constitution, which states that the supervision of the local authorities cannot only be carried out on the legality of decisions but must also be directed at ensuring that decisions comply with the law or are compatible with the public interest.” This provision clashes with Article 8.2 of the Charter and is also the reason why Belgium has not signed this paragraph.

178. Consequently, an interpretation of Article 162.6 of the Belgian Constitution in the light of Article 8.2 of the Charter, could, however, confirm a certain degree of compatibility of the two sets of provisions with one another. It should be stressed that the Charter does not exclude supervision that extends beyond the strictly constitutional and legal sphere. On the contrary, it provides that the aim of the supervision must be to ensure compliance with the principle of legality and with constitutional principles. Furthermore, the Constitution does not provide for an absolute power of supervision of the local authorities. Rather, Article 162.6 clearly limits the supervision of the local authorities to two cases: firstly, breaches of the law and secondly the preservation and safeguarding of public interests.

179. Consequently, the rapporteurs’ interpretation is that the principles adopted by the two sets of provisions could be considered compatible with one another.

180. The provisions of paragraphs 1 and 3 present certain difficulties in Flanders, especially as any action to set aside a decision taken leads to delays in processing documents and, consequently, delays in carrying out investments. Moreover, it appeared to the delegation that the authorities impose an excessive level of supervision.

181. Another concern relating to the application of Article 8.3 was raised during the 2008 visit and led to Recommendation 258 (2008). It concerned the Flemish Minister of the Interior’s refusal to appoint three burgomasters. The Congress held in 2008 that this situation was a breach of Article 8.3 of the Charter and recommended that the Minister appoint the burgomasters without delay. It also recommended the use of the two languages French and Dutch at local council meetings and the adoption of the direct election of burgomasters by the municipal council or the citizens.

182. In December 2013, the rapporteurs learned that the Flemish Minister of the Interior had appointed the burgomaster of Wezembeek-Oppem. For the first time since 2007, this municipality with special language arrangements on the outskirts of Brussels with a French-speaking majority has a burgomaster appointed by the Flemish government. Wezembeek-Oppem is one of the three municipalities with special language arrangements, the other two being Linkebeek and Kraainem, where the Flemish government has also refused to appoint a burgomaster since 2007. Successive ministers refused to carry out the appointments as the duly elected burgomasters had not complied with the circulars from Peeters and company on the language legislation, in particular when voting

papers are sent out. However, since their visit, the Rapporteurs have been informed by the State Council that three judgments have been delivered on this subject.¹⁰

183. In order to find a solution to this situation of the refusal to appoint burgomasters, a special act was passed on 19 July 2012. This maintains the Flemish government's power to appoint burgomasters in the municipalities but enables the burgomaster in the event of a refusal to appoint him/her to lodge an appeal to the general assembly of the administrative disputes section of the Council of State, which can issue a final appointment decision. This law was endorsed by two judgments of the Constitutional Court on 3 April 2014. Moreover, the rapporteurs were also informed of the decision of 20 June 2014 rendered by the General Assembly of the Council of State which annulled the refusal of the Flemish government to appoint the burgomaster of Crainhem. Thus, the elected representative of the Brussels periphery has now been nominated to this post. The high administrative court has, however dismissed the appeal made by another non-appointed burgomaster in the town of Linkebeek upholding the Flemish Minister of the Interior's refusal to nominate in that case.

184. Article 8.2 of the Charter cannot be ratified as long as the provision on supervision of compatibility with the public interest remains in the Belgian Constitution.

4.1.7. Article 9 – Financial resources

Article 9 - Financial resources of local authorities

- 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.

185. As regards compliance with Article 9.1, the Flemish authorities emphasised during their meeting with the rapporteurs that the financial health of local government administrations was a permanent area of attention not only for the latter as such but also the Flemish government. The Flemish local authorities are able to finance their powers and responsibilities, especially by means of their own taxes and general subsidies from the higher authorities (the Federal Authority and the Flemish Region as well as the provinces as far as the municipalities are concerned). The provinces and regions also have their own tax-raising power in matters associated with their own areas of responsibility.

186. According to the Flemish authorities, all the Flemish towns and municipalities managed to present balanced multi-year budgets for the 2013 financial year. It is important to note that the local authorities have had to achieve a balanced budget since 1988. Moreover, since 2003 the Municipalities Fund has grown by 3.5% a year and amounted to over €2.247bn in 2014, which was equivalent to about 8% of the Flemish expenditure budget. The Flemish government has decided to maintain the Fund's annual growth rate at 3.5%.

10. Judgments n° 227.775, 227.776 et 227.777

187. In the new policy and management programme that Flanders has gradually been introducing since 2011 and is being extended to all local and provincial administrations (municipalities, CPAS, provinces, autonomous municipal and provincial companies and CPAS under public law which are not hospitals) from 2014, the requirement to remain in balance is maintained but has been redefined. Administrations will accordingly have to meet two balance criteria: situational cash-based balance and long-term structural balance¹¹. Budgets failing to meet the two balance criteria will be suspended or invalidated. The policy and management programme encompasses both rules for planning with respect to policy substance, execution and evaluation and for the policy's financial aspects and is accordingly indispensable for the way in which the municipalities, social services centres and provinces draw up, cost, execute, monitor and evaluate their policy.

188. Belgium has not ratified Article 9.2 of the Charter. According to the explanation given to the rapporteurs by the Flemish authorities, "(t)he interpretation of this provision remains difficult. The principle that certain expenditure should be covered by certain contributions is contrary to the principle of the universality of contributions, which is why this provision has not been ratified".

189. As regards Article 9.3, Belgium differs from other countries by its open system of local taxes. The collection of taxes by the local authorities is a power enshrined in the Constitution. The local authorities can collect all taxes of local interest, in accordance with the principles laid down in the Constitution (main principles: local self-government and fiscal equality, which means that no privilege may be granted). They can determine the tax rates and the bases of assessment.

190. A key issue is arrangements for overseeing and limiting the municipalities' power to levy and collect taxes. They do not have unlimited freedom in this area, and Article 170 of the Constitution allows the federal legislature to limit the municipalities' tax-raising power. It alone can determine the "exceptions proved to be necessary" for the exercise in principle of this power. However, as the supervisory authorities (i.e., the regions) are responsible for the funding and even for the organisation of the municipalities, they only have under the present statutory framework little room for manoeuvre to intervene directly with regard to the municipalities' tax-raising power on the grounds of the public, or indeed regional, interest. Regional intervention in this area accordingly may take place indirectly and on a basis negotiated by means of "fiscal peace" agreements", as it has been the case in 2008 when an agreement was reached on an operation to take over the debts of local governments.

191. In 2008, the Flemish government drew up a proposal for a "local covenant", which was submitted to each of the Flemish municipalities and approved. Its general aim is to contribute to a better balance between social concerns and the funding requirements of the different tiers of government in Flanders and the creation of a business – and household-friendly environment.

192. The Flemish authorities informed the rapporteurs that an average of between 45% and 50% of local revenues was generated by local taxes.

193. In order to ensure the balance of their budget in 2013, the municipalities have opted for a limited increase in the principal taxes. According to the 2013 Belfius Report entitled "The Finances of the Flemish Municipalities", specifically local taxes have increased substantially by an average of 12% but have had a minimal impact. In fact, they only generate 7.3% of municipal revenues, whereas additional taxes make up almost half (45.9%) of all revenues. In total, a municipality had an average of €703 per inhabitant at its disposal in 2013, or an increase of 4.4% over 2012.

194. With regard to the principle laid down by paragraph 4 of Article 9, it is undeniable that local finances are under considerable pressure today. In 2013, the deficit of the municipalities (in the whole of Belgium) was €220m. This situation is due to various factors. On the expenditure side, the Flemish authorities at all levels have to take account of the ageing of the population, the increase in pension costs and essential investments in water treatment, sewerage, waste management, etc. In the next few years, these challenges will be an increasing burden on local authority budgets, so the Flemish government is urging local government to carry out efficiency measures.

11. Situational balance: each year, administrations must show that their total revenues are sufficient to cover all their expenditure (= positive cash-based result). Structural balance: administrations must be able to show that operating revenues will be sufficient at the end of the planning period to finance their operating expenditure as well as interest and depreciation (= positive cash flow margin).

195. The main tax revenues in Flanders come from the personal income tax surcharge and from the property tax surcharge. Since the local authorities' main revenues are from taxes (an average of 48% of total income, with the proportion hovering around 55% of income in the case of small and medium-sized municipalities), the tax variations are crucially important. For example, out of the 308 Flemish municipalities only around twenty have raised their personal income tax surcharge or their property tax, so this increase can be explained more by the indexation of the tax base than by a rise in tax rates. The average per capita taxable income in residential urban areas and on the coast is higher than in rural communities, as well as in the central municipalities, with a level close to €18,000 per inhabitant, compared with less than €16,000 per inhabitant (2011 tax returns¹²). In the last few years, the consequences of the economic and financial crisis for taxable incomes have been to some extent compensated by faster tax assessment, but this effect was only temporary.

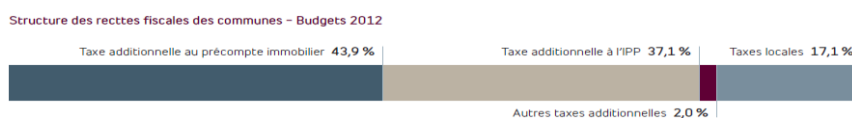
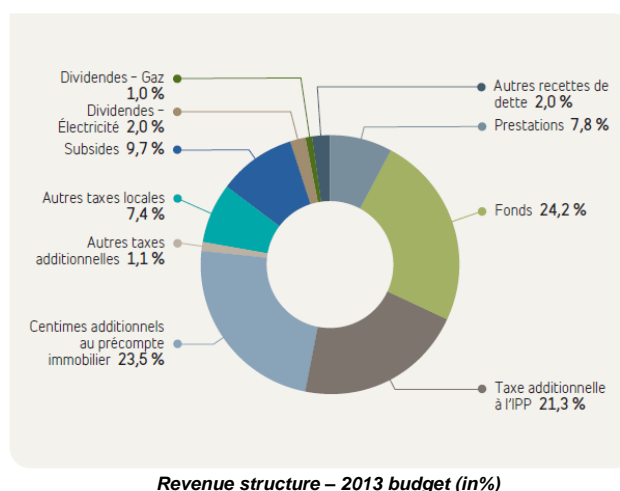


Tableau 1
Les recettes fiscales des communes – Budgets 2012

	Flandre	Wallonie	Bruxelles
Part des impôts dans les recettes ordinaires	54,6 %	48,0 %	53,0 %
Recettes fiscales totales (en EUR millions)	3 650	2 192	1 026
Recettes fiscales totales (en EUR/hab.) dont	664	622	917
Taxe additionnelle au précompte immobilier	290	242	509
Taxe additionnelle à l'IPP	271	238	189
Autres taxes additionnelles	15	12	10
Taxes locales	87	130	209

196. The revenues of the municipalities in Flanders are rising but none of this prevented the average Flemish municipality from closing the 2013 financial year with a deficit of €51 per inhabitant¹³ (3.9% of total revenues). This was €13 better than in 2012. If the reserves and the accumulated balances of previous years are added to this deficit, the financial situation shows a surplus. According to the budget estimates for 2013, a general surplus of €126 per inhabitant was expected for the average Flemish municipality, or 3.9% more than the previous financial year. This bonus is equal to 9.3% of estimated revenues.¹⁴



197. The Flemish municipalities' accounts paint a more realistic picture than the actual budget. The last known budget situation points to a general surplus of €312 per inhabitant in 2011, which is more or less three times as much as the figure estimated for the 2013 budget. In all, 64% of municipalities thought they would not achieve a balance before the 2013 operational year and that they should make use of the surplus of previous years to balance their budget. This can be explained by the fact that the municipal administrations tend to produce a sufficiently broad estimate of their expenditure. The policy and management programme sets out to encourage municipalities to work on the basis of more

12. 2013 Belfius report

13. Ibid.

14. Ibid.

realistic estimates that are more in line with the amounts actually to be included. The budget appropriations will accordingly be determined at a higher level than at the present time.

198. After taxes, the second main source of municipal revenues are funds and specific allocations (an average of 23% of the total), with the Flemish Municipal Fund taking the lion's share (an average of 20% of municipal revenues).

199. Despite the budgetary difficulties, the Flemish Government is in favour of maintaining the flows of subsidies for the general financing of local government administrations. The Flemish authorities informed the rapporteurs that the Flemish municipalities received subsidies without having to initiate any procedure and that they had complete freedom regarding their allocation.

200. Apart from taxes and revenues from funds, the municipalities also generate their own income from activities they organise and from services they provide, such as issuing documents and the provision of swimming pools and libraries. Their properties and shareholdings also generate income (in the form of rentals, dividends, etc). The municipalities are banking on an increase in receipts from services, although the rise in this item can partly be explained by a shift in receipts, especially between taxes and services.

201. Nonetheless, some interlocutors told the delegation that the resources of local government administrations were contingent upon the budget constraints of the regions and communities and on the taxation decisions taken at other levels of government (even though the tax surcharge rates can be adjusted to keep the municipalities' tax burden unchanged).

202. Article.5 of concerns financial equalisation mechanisms. An important issue bound up with municipal taxation results from the significant spatial disparities with regard to potential tax revenues. The income of households and cadastral income can vary from one municipality to another, which naturally has an impact on the ability to finance services to the general public. Various equalisation mechanisms (especially in the context of the Municipal Fund) have been introduced by the regions and enable the impact of these disparities to be reduced to some extent.

203. Mention should also be made of the specific problem of the effects associated with frontier workers. Owing to the exemption in Belgium of the foreign earnings of a large number of Belgian residents, many border municipalities are suffering from a significant shortfall in their income from the personal income tax surcharge.

204. The main sources of financial equalisation are:

- The Municipalities Fund and the Provinces Fund. As this matter is entirely regionalised, the arrangements for sharing out the budget allocations available vary from region to region. According to the Flemish authorities, since 2003 the Municipalities Fund has grown by 3.5% a year and amounted to nearly €2.17bn in 2013, or approximately 8% of the Flemish expenditure budget. The Flemish government has decided to maintain the annual growth rate of the Municipalities Fund at 3.5%. The amount of the Fund increased in nominal terms during the period 2002 to 2013 by no less than 49%, or 18% in real terms (after allowing for cumulative inflation in that period). Virtually all the Flemish Authority's expenditure has gone down, but the government is continuing its efforts to help the municipalities. In all cases, the tax potential as the criterion for distributing the money in the fund among the local authorities comes into play.
- The Special Act of 16 January 1989 on the financing of the communities and regions, section 48 of which provides for a so-called national solidarity mechanism that makes corrective intervention possible in favour of one or more regions whose average personal income tax yield is below the national average.

205. Belgium has not ratified Article 9.6 of the Charter, which constitutes an important element in the relations between the local authorities and the authorities allocating the redistributed resources. According to the Flemish authorities, "(i)n Belgium, this provision is tantamount to saying that the municipalities and provinces must be consulted when the rules for distributing the Municipalities Fund and the Provinces Fund are drawn up. This consultation has never taken place in the past and is not provided for in the regulations, so this provision cannot be ratified".

206. The Flemish authorities emphasise that “from the point of view of the local authorities’ freedom of action, general grants or sector-based grants should be preferred to grants earmarked for specific projects. The excessive use of ring-fenced grants also severely limits the local authorities’ freedom to choose their priority expenditure. However, the proportion of total funding sources made up by grants varies a great deal from one country to another. A larger proportion of ring-fenced grants compared to general grants may be considered acceptable if total grants only constitute a relatively limited proportion of all revenues. The aim of the second and third sentences of Article 9.7 is to guarantee that a grant for a specific purpose does not have any adverse effect on the local authorities’ freedom of choice in their own area of responsibility. Since these general provisions are very extensive, Belgium has made a reservation”.

207. As far as the funds are concerned, with €2.2bn the Municipalities Fund constitutes an extremely important financial transfer from the regional level to local government. Of this amount, 2 billion is allocated to the municipalities and the rest to the social services centres. Each year, the Flemish Authority provides for growth of 3.5% of the sum transferred, so that general funding can more or less keep pace with changes in operational costs at the local level.

208. With regard to access to the national capital market (paragraph 8), the municipalities also receive specific grants for the local implementation of policy areas managed in connection with regional sectoral plans, such as culture, sports, education and environmental policy, among many others. The burden of planning, relative to grant-aided activities, promises to be less onerous with the implementation of the policy and management programme.

209. Apart from the Municipalities Fund, towns and cities receive additional money from the Cities Fund (*Stedenfonds/Fonds des villes*) and quite a number of targeted rural communities will soon be able to receive part of the budget Flemish Rural Fund (*Vlaams Plattelandsfonds/Fonds rural flamande*), the purpose of which is to finance projects that focus on policies specific to their rural or municipal situation. The rapporteurs are therefore of the opinion that the ratification of paragraph 7 of Article 9 should be reconsidered by the authorities.

210. The municipalities mainly finance their investments in fixed assets through loans (53%) and by using their own funds and capital grants. The municipal investment policy is following a cyclical pattern, with a current reduction in investment. On the basis of the budgets for 2013, investment is also significantly down (by around 25%) during the downward phase of the investment cycle. Economic uncertainty and the increase in the bill for the ageing population may also be playing a role here.

211. According to the first summary produced for 2013, it would seem that, during this first year of the term of office, the municipalities have no scope for taking out additional loans. The estimated financial capacity on which the operating budget is based is not enough to cover the present net cost of loans. By 2019, i.e. a year after the end of the term of office, the cash flow should be positive or at least not negative. This second criterion is stricter and only takes account of the cash flow of the operating budget and ignores the generally positive balances of previous years or the funds allocated.

212. In the new situation brought about by the policy and management programme, loans are no longer taken out to support investments but as means of funding aimed at maintaining a balanced cash flow. 61% of municipalities will face a negative cash-flow margin in the next few years, at least on the basis of the 2013 budget. The expenditure figure may have been estimated too high compared with income.

213. Investor confidence in the municipalities can be explained by the fact that their financial situation in general does not raise any serious fears and seems relatively sound. Total municipal debt is only 4.1% of GDP and their debt ratio is 26%.

214. Belgium has not ratified paragraphs 2, 6 and 7 of this article, but these provisions could be ratified. Despite the difficulties inherent in the appropriate interpretation of these Charter obligations, it would seem that Flanders already fully complies with them. By adopting a strict interpretation of the obligations imposed by paragraphs 2, 6 and 7, Flanders, alone, continues to oppose the complete ratification of this article. Articles 9.3 and 9.4 necessitate particular attention by the regional and community authorities.

4.1.8. Article 10 - Right to associate

Article 10 - Local authorities' right to associate

- 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.

215. In Flanders, the Decree of 6 July 2001 provides for the regulation of intermunicipal co-operation. At the federal level, the Law of 22 December 1986 remains in force. At the international level, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities was ratified by Belgium on 6 April 1987 and entered into force on 7 July 1987.

216. Additional Protocol No. 1 to the Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention) was approved by the Flemish Decree of 7 May 2004 and published in the Belgian Gazette on 16 July 2004. Additional Protocol No. 2 to the Madrid Convention was approved by the Flemish Decree of 21 December 2007 and published in the Belgian Gazette on 6 February 2008. Belgium ratified both additional protocols on 12 June 2009 and they entered into force on 13 September 2009.

217. Flanders approved Protocol No. 3 to the Madrid Convention (on Euroregional Co-operation Groupings) on 4 May 2012. Flanders was the first entity in Belgium to approve it.

218. The Benelux Convention on Cross-Border Co-operation between Territorial Partnerships or Authorities, signed on 12 September 1986 (and approved by the Decree of 7 February 1990), also provides concrete legal instruments for decentralised transfrontier co-operation on a basis of public law. For this co-operation, the local authorities can make use of administrative agreements, joint bodies (without legal personality) public transfrontier bodies (with legal personality). There are currently public transfrontier bodies, four joint bodies and eleven administrative agreements, in each case situated on the border between Flanders and the Netherlands.

219. The agreement on transfrontier co-operation between territorial communities and local public bodies signed in Brussels on 16 September 2002 between the Government of the Kingdom of Belgium, the Flemish Government, the Government of the French Community and the Government of the Walloon Region on the one hand and, the Government of the French Republic on the other was approved by the Flemish Decree of 30 April 2004 and published in the Belgian Gazette on 9 June 2004. This agreement is also called the Brussels Accord.

220. The rapporteurs consequently conclude that Article 10 is complied with.

4.1.9. Article 11 - Legal protection of local self-government

Article 11 - Legal protection of local self-government

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.

221. The legal protection of local self-government follows first of all from the fact that Belgium has ratified the Charter. Article 41 of the Constitution states that interests exclusively of a municipal or provincial nature are determined by municipal or provincial councils in accordance with the principles laid down by the Constitution.

222. The Special Act of 9 March 2003, amending that of 6 January 1989, considerably expanded the jurisdiction of the Belgian Constitutional Court, which can now examine the conformity of a given "legislative rule" (a law, administrative regulation, etc) with the principle of municipal tax-setting autonomy contained in the Constitution (Article 170).

223. Apart from this special legal supervision, in Belgium the legal protection of local self-government is guaranteed either by the ordinary courts, subject to the final jurisdiction of the highest court of appeal (the Court of Cassation), or by the administrative courts, in particular the Council of State. The

“ordinary” courts have the power to deny the application of “decisions and regulations” that do not comply with the laws. There is a pure and simple review of legality.

224. Consequently, a local authority affected by a measure, decision or regulation that has been adopted by a higher tier of government (the community, region or federal state) and that it considers illegal can bring an action before the “ordinary” courts seeking the rejection of the requirements of the decision challenged. However, the authority to set aside or have set aside administrative decisions and regulations that do not comply with the law lies exclusively with the administrative courts and the Council of State. For this reason, if a local authority is affected by an administrative decision taken by a higher tier of government and judges it to be illegal it can simply lodge an application to the Council of State to have it set aside. These reviews of legality do not affect the “ordinary” courts’ general power to declare officials and local government bodies accountable.

225. The legal protection of local self-government is respected in Flanders.

4.2. Article-by-article analysis of the situation of local democracy in the Walloon Region and the German-speaking Community in the light of the European Charter of Local Self-Government

226. In the Walloon Regional Policy Declaration of 2009, three key areas are mentioned for the period 2009-2014:

- the priorities of a Marshall Plan 2.Green for Wallonia,
- sectoral policies
- making Wallonia a model of governance

227. With regard to the third area, particular emphasis is placed on the local authorities, for which objectives have been laid down:

- encouraging the municipalities to draw up a strategic municipal plan;
- encouraging citizen participation;
- strengthening good governance at the local level (continuing the evaluation of the Code of Local Democracy, putting an end to conflicts of interest, enhancing the roles of municipal and provincial councillors, strengthening the external and internal supervision of municipalities, simplify and streamlining the paralocal landscape);
- guaranteeing the quality of the services provided to the citizens (using the new technologies to boost relations between the municipalities, the population and companies; human resource management, common synergies– social services centres – paralocal entities);
- providing local government with the appropriate resources;
- reforming the provinces to boost their efficiency and organise supramunicipal bodies.

228. The Walloon Government is accordingly striving to improve local democracy. This Policy Declaration ended with the adoption of the Decree of 26 April 2012 amending certain provisions of the Code of Local Democracy¹⁵. The principal changes concerned the representatives of the municipal bodies (appointments, rules for making replacements, revocation of mandates, etc), majority pacts and no-confidence motions (tabling date, limitation of the number of motions), citizen participation (right of interpellation, public consultation, participatory budgets), provisions relating to paramunicipal bodies, the streamlining of the institutional landscape at the local level (reform of the provinces, the streamlining of paralocal structures) and improving governance and local management (administrative simplification and reform of supervision, reform of the statutory grades and modernisation of the local public service, strategic municipal cross-cutting programme, strengthening the synergies between the municipalities and the social services centres and paralocal bodies, e-governance).

229. During the first half of 2014, the Walloon municipalities made various demands and called on the Walloon Government to guarantee budgetary neutrality regarding the indexation of the Municipalities Fund and to include the Walloon grants in an Interdepartmental Municipal Investment Fund. The municipalities also asked the Federal Government to respect budgetary neutrality with regard to the advances on the personal income tax surcharge and called for a gradual increase of up to 90% of the state’s contribution to the minimum subsistence allowance, an evaluation of the reform of the rescue

15. Belgian Gazette, 14 May 2012.

services and the immediate cessation of the transfers of administrative and budgetary charges to the local police forces. They also denounced the discrimination suffered with regard to pensions and estimate they will have to meet additional costs of €1bn by 2018. They would like to strengthen the consultation and co-decision-making mechanisms in local community politics and want to see the territorial reorganisation of Wallonia. They also called for the ability to control the organisation of their projects at the supramunicipal level.

230. The Union of Walloon Towns and Municipalities (UCVW) published in January 2014 a Regional, Community, Federal and European Memorandum containing twelve proposals for the legislature for 2014-2019:

- put a stop to the financial strangling of local activities;
- focus on efficiently managed, responsible and sound municipalities;
- provide mechanisms for dialogue/consultation between the higher authorities and the municipalities;
- increase the synergies between the municipalities, via supramunicipal bodies, and between the municipalities and the parolocal communities;
- invest massively in the housing policy;
- strengthen the role of the municipalities as guarantors of good spatial planning;
- consolidate local action on the environment;
- rely on local government for an energy policy at the service of the citizen;
- strengthen neutrality at the local level;
- support the local social services centres and ensure social cohesion;
- provide the resources for the local police and local security;
- ensure the financial neutrality of the reform of the rescue services.

231. In the context of the implementation of the Sixth State Reform and with regard to the powers and responsibilities shared between the federal and regional governments, the Union of Towns and Municipalities of Belgium is calling for structured consultation to be established between the federal and regional/municipal levels in order to enable the local authorities to benefit from an integrated approach by being involved in this consultation. In addition, the funding flowing to the local authorities should be allocated in an equitable manner according to objectively assessed needs. When solidarity mechanisms are in place, they must be reasoned and transparent.

4.2.1. Articles 2 and 3 - Principle and concept of local self-government

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

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

232. At the constitutional level, the key questions concerning local self-government are governed in particular by Articles 41 and 162 to 166 of the Constitution. According to the Constitution, the municipalities and provinces are responsible for regulating “everything that is of municipal and/or provincial interest”. This municipal and provincial interest is not explicitly defined, so the municipality or province has fairly broad scope for action and can accordingly deal with anything not expressly prohibited.

233. The Code of Local Democracy and Decentralisation (CLDD) contains all the rules on local government, i.e. on the Walloon provinces and municipalities. It was approved by the Decree of 27 May 2004. The reforms of the CLDD, which were introduced on 8 December 2005, have brought about substantial changes to the constitution and composition of the municipal executive as well as the way in which it operates. This reform was continued with the Decree of 26 April 2012, most of the provisions of which came into force on 24 May 2012. The Walloon provinces are governed by the Decree of 2 February 2004.

234. Since its recognition in 1973, the self-government of the German-speaking Community has made possible the development of special relations with its nine municipalities, based on close co-operation between the Community and the municipalities. This co-operation mainly focuses on dialogue and exchanges of views, thus avoiding the need for binding directives and circulars.

235. Article 2 is complied with in Wallonia and in the German-speaking Community.

Article 3 - Concept of local self-government

- 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.

236. The New Municipal Law and the Code of Local Democracy and Decentralisation regulate the operation of local self-government in the Walloon Region, the provinces and the municipalities.

237. The municipalities in the Walloon Region are considered self-governing political entities with their own decision-making powers and are free to take action if the matter concerned is not excluded from their area of responsibility by the Constitution, the law or regional decree. Each municipality has an elected assembly, the municipal council, and an executive, known as the *Collège des Bourgmestre et Échevins*.

238. Each province has an elected assembly, the provincial council and an executive, the Provincial College (formerly called the Permanent Delegation [*Députation permanente*]). The provincial executive is headed by a Member of the Provincial Parliament - President. The provinces have the power to deal with all matters of provincial interest, that is to say they are free to act if the matter concerned is not excluded from their area of responsibility by the Constitution, the law or regional decree.

239. As far as the German-speaking Community is concerned, the organisation of its nine towns and municipalities situated in the Province of Liège is regulated by decrees adopted by the Community's Parliament. Full exercise thereof will only be effective in 2015.

240. Belgium has not ratified Article 3.2 of the Charter, which enshrines the principle of the free election of members of the local assemblies by secret ballot on the basis of direct, equal and universal suffrage. This paragraph also provides for the existence of an executive accountable to the deliberative assembly.

241. These principles are crucial in the democratic representation of local government political bodies and are also enshrined in Article 162 of the Constitution.

242. The existence of an assembly of directly elected representatives is also a determining factor enabling the local and provincial authorities to have their own financial resources since only institutions possessing the legitimacy of the direct election of their members can decide to levy a tax.

243. The provinces are therefore worried about the provisions in the Walloon Regional Government's agreement envisaging the transformation of the provinces into "territorial communities" run by indirectly elected representatives, which would undeniably be a retrograde step in terms of local self-government and democratic legitimacy.

244. Article 3.1 is complied with both in Wallonia and the German-speaking Community. The principle of the direct election of assemblies is enshrined in the Constitution and the burgomaster can be considered to be directly elected by the citizens. Both the representatives of the provinces and the municipalities in Wallonia would like Belgium to accede to the whole of Article 3 of the Charter.

4.2.2. Article 4 - Scope of local self-government

Article 4 - Scope of local self-government

- 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 which 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.

245. With regard to the first paragraph, the basic powers and responsibilities of local authorities are clearly laid down by the Belgian Constitution and the legislative and regulatory instruments of the Walloon Region and the German-speaking Community, by the Code of Local Democracy and Decentralisation and by the Decree on the exercise of certain functions of the Walloon Region by the subordinate authorities in the German-speaking Community.

246. The provinces of Wallonia have complete discretion within the framework of the law to carry out their initiatives in matters of provincial interest. At the same time, the municipal council deals with all matters of municipal interest. It deliberates on any other issue submitted to it by the higher authority (Article L1122-30 of the Code of Local Democracy and Decentralisation). This right is, however limited by the supervisory authority, as provided for in the legislation.

247. The Walloon Region is therefore responsible for the organisation of the local authorities, including the municipalities, the agglomerations and federations of municipalities, the intermunicipal partnerships and the intramunicipal territorial bodies. At the same time, the regions are responsible for the political organisation of the provinces, especially the composition, powers, operation and funding of the local authorities, as well as for organising supervision, establishing the electoral rules and, finally, determining the conditions of service of local authority staff. The regions can also, in accordance with the law, increase the number of or merge municipalities.

248. The subsidiarity principle is regularly invoked before the Council of State and the Constitutional Court of the Kingdom of Belgium. Nonetheless, it was called into question on 4 July 2013, when the Walloon Government adopted on first reading the preliminary draft decree transferring the provincial responsibilities for housing and energy to the Walloon Region in 2015, which would also involve the transfer of financial and human resources to the region. By invoking the subsidiarity principle, the Association of Walloon Provinces (APW) has come out against this preliminary draft, which according to the APW is an attack on the principle of provincial self-government enshrined in the Charter (Articles 3 and 4) and in the case law of the Constitutional Court, which considers that such a transfer of responsibilities can only have the effect of depriving the provinces of a significant portion of their functions (cf. judgment 95/2005 of 25 May 2005). Moreover, the Memorandum of 25 May 2014 issued by the associations of municipalities of Wallonia, Flanders and the Brussels-Capital Region, points out that governments must take account of the subsidiarity principle in their policies affecting the local level.

249. In the Walloon Region, Article L2212-32 of the Code of Local Democracy and Decentralisation, adopted in application of Article 162 of the Constitution, describes the provincial powers and responsibilities as follows: "The Provincial Council shall, in compliance with the subsidiarity principle, deal with all matters of provincial interest. The Council shall carry out its functions in a manner complementary to, and not competing with, the activities of the regions and municipalities. It shall also deliberate on any other issue submitted to it by the federal, community or regional authorities". The provinces are therefore free to take action on all matters apart from those excluded from their area of responsibility (for example, direct assistance for farmers and horticulturalists, investment aid, etc). These are discretionary responsibilities and differ for each province. As subordinate authorities, the provinces must perform a number of compulsory functions, which are the same for each province, such as compulsory spending on cathedrals, religious facilities, heritage sites, etc.

250. The municipalities' powers and responsibilities are described as follows: "The (municipal) council shall deal with all matters of municipal interest and it shall deliberate on any other issue submitted to it by the higher authority". Accordingly, the municipalities, as self-governing subordinate authorities, deal with any matter they consider it necessary to assign to themselves provided that the function has not been assigned to another authority. As subordinate authorities, they perform compulsory functions, such as local primary education, managing the public records, dealing with the church maintenance deficit and co-funding the social services centre.

251. Apart from their compulsory functions, the provinces and municipalities can take action in the same fields as the sharing of powers and responsibilities between them has not been regulated by the federal or regional legislature.

252. The aim of the Sixth State Reform now underway is to transfer to the federated entities, regions and communities some functions currently exercised by the federal state. With regard to the impact of this reform at the provincial level, there should be no direct effect (the only provision governing the province as an institution is the amendment to the Constitution which transfers the competence of organising the provinces to the Regions as a whole). The provinces have therefore taken action in connection with some transferred functions, especially in the healthcare and welfare sectors, but also housing, farming and the economy.

253. As far as responsibilities still shared between the federal and regional levels are concerned, the Union of Walloon Towns and Municipalities also stated in the Memorandum of 24 May 2014 that it is absolutely essential for structured consultation to be established between the federal and the regional/community levels so that the local authorities can benefit from an integrated approach.

254. With regard to Article 4.5 and the delegation of powers, the rapporteurs note that the local authorities can have allocated functions, either because the delegating authority considers they concern matters of municipal or local interest or because the delegating authority believes these functions will be better performed at the local level. According to the functions assigned and the legal instrument employed, the local authority will therefore be considered a devolved or decentralised authority.

255. As far as the German-speaking Community is concerned, the decree of 1 June 2004 entitled "Decree on the exercise of certain functions of the Walloon Region by the subordinate authorities in the German-speaking Community" (*Dekret über die Ausübung gewisser Zuständigkeiten der Wallonischen Region im Bereich der untergeordneten Behörden durch die Deutschsprachige Gemeinschaft*) enabled the supervision and funding of these municipalities to be carried out by the German-speaking Community. This transfer comprises:

- the general funding of the municipalities (municipal funds),
- the funding of road infrastructure and other grant-aided works,
- the supervision of municipalities' administrative acts,
- the organisation of the bodies responsible for managing places of worship,
- regulations on funerals and graves.

256. The exercise of these new responsibilities first of all led to significant administrative simplification and to a reduction in the time taken to approve decisions for all the local authorities concerned as it rendered superfluous the systematic translation of administrative decisions and reduced the number of cases of special supervision. All the new provisions in the decree were taken after considering the specific local conditions and after consulting the local authorities.

257. With regard to the local authorities' right to be consulted, the UVCW has a key role in the dialogue between the Walloon Region and the municipalities. It is recognised as the representative federation of the towns, municipalities, social services centres and police areas in Wallonia. At the Walloon level, it plays an important upstream role via structured contacts with administrations and cabinets when governmental measures are being prepared and a downstream role via structured contacts with the Walloon parliament. The UVCW is often consulted when parliamentary committees examine draft decrees concerning the local authorities. Alternatively, municipal parliamentarians draw for their contributions to debates on analytical notes provided to them by the UVCW. The UVCW also sits on many regional, community and federal consultative committees.

258. At the federal level, the consultation process takes place through the Union of Towns and Municipalities of Belgium, of which the UVCW is a member, like its sister associations the Union of Flemish Towns and Municipalities and the Association of the City and Municipalities of the Brussels-Capital Region.

259. The UVCW has reiterated the importance of the Federal Government undertaking to carry out a consultation with representatives of the local authorities (municipalities, social services centres, police areas, future emergency rescue zones) each time it plans measures concerning them, especially

when these measures have financial implications for them. At the same time, the unions of towns and municipalities must participate in intergovernmental consultations between the Federal Government and the regions when the Consultation Committees deal with issues concerning the local authorities. Similarly, when issues concern the local authorities, experts from the unions of towns and municipalities must be involved in the work of the Higher Finance Council.

260. The German-speaking Community maintains a close relationship of partnership and complementarity both with the Walloon Region, which has transferred responsibilities to it, and with its local authorities, the nine municipalities, which can be explained by the relatively small size of the territory and by their linguistic identity. Various meetings take place several times a year between the Community's authorities and the local authorities.

261. The delegation is of the opinion that, generally speaking, Article 4 is complied with and applied in respect of the local authorities of the Walloon Region and the German-speaking Community. However, the sharing of responsibilities between municipal and provincial authorities has not been regulated by the federal legislature or the Walloon regional legislature. At the same time, the federal and the regional must comply with the principle of subsidiarity and improve consultation with the local authorities and their respective representatives.

4.2.3. Article 5 - Protection of local authority boundaries

Article 5 - Protection of local authority boundaries

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.

262. In Belgium, Article 7 of the Constitution states that the boundaries of the state provinces and municipalities can only be changed or corrected pursuant to a law (exception: changes to the language boundaries). Similarly, the boundaries of agglomerations and federations of municipalities can only be changed or corrected pursuant to a law. However, the Constitution also states that the law cannot eliminate the provinces or municipalities without a prior amendment to the Constitution. The protection of the provinces is guaranteed all the more as their legal names are mentioned in the Constitution. However, section 4 of the Special Act of 13 July 2001 on the transfer of various powers and responsibilities to the regions and communities¹⁶ amended section 6, VIII, of the Special Institutional Reform Act of 8 August 1980, making the regions responsible for "in respect of the subordinate authorities: [...], changes or corrections of the boundaries of provinces and municipalities". Local authority boundaries can therefore be changed by decree.

263. The local authorities can organise consultative referendums (*consultations populaires*) on matters of local interest. The Sixth State Reform provides for the possibility to organise regional popular consultation processes based on regional decrees.

264. In the Walloon Region and the German-speaking Community, an initiative to change boundaries between two municipalities will come from the municipalities concerned, which will send their requests to the government. It is therefore the government that submits to the parliament a draft decree on boundary change. Each municipality then carries out a public inquiry, after the completion of which the municipal council of each municipality concerned meets again to issue an opinion on the changes planned, taking account of the outcome of the inquiry. According to Articles L1112-1 and L1112-2 of the CDLD, if the territorial changes involve population changes that mean the composition of the municipal bodies also has to be changed, then a Government order gives instructions for the election writ to be issued and will deal with all matters relating to the first election.

265. Article 5 is complied with in Wallonia and the German-speaking Community.

4.2.4. Article 6 - Administrative structures

Article 6 - Appropriate administrative structures and resources for the tasks of local authorities

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.

16. Belgian Gazette, 3 August 2001

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.

266. In the Walloon Region and the German-speaking Community, the municipal council has regulatory power both with regard to the internal organisation of municipal services and the pecuniary interests of the municipality. These regulations and ordinances must not be in breach of the law or of general or provincial administrative regulations.

267. With regard to paragraph 2, the local authorities in the Walloon Region and the German-speaking Community have different types of staff: regular staff (civil servants) or contract workers, who can only occupy posts not governed by any staff regulations. Staff are recruited according to the administrative regulations, and the law states that individuals recruited by the public authorities are in principle civil servants. This rule applies to all levels of government and constitutes a general principle. Accordingly, in the case of the local authorities it is the responsibility of the municipal or provincial council to recruit staff (in principle by means of a competitive examination) and to determine their conditions of service.

268. In the Walloon Region, according to the Civil Service recruitment takes place through competitive examinations, and staff are given grade promotions, promotions to managerial posts or promotions by accession to a higher rank. Staff are also given an assessment every two year. Within the local authorities, the current trend is for an increase in the recruitment of contract staff, which may to some extent contribute to the relative insecurity of public service employment.

269. On 1 January 2012, the “Act ensuring the long-term funding of pensions of permanent members of staff of provincial and local government administrations” came into force. For the local authorities, this reform means a substantial rise in the basic contribution rates and in the additional rates in respect of so-called “responsibility contributions”, which are significant amounts for the entities and constitute a considerable differential between their actual pension costs and their basic contribution rate. During the first four years of the municipal legislature, the basic contribution rates will not stop rising and will reach a single rate of 41.5% of the payroll for regular staff in 2016.

270. The crucial problem of municipal staff pensions can only be resolved by a consistent approach to the pensions of regular staff and those of contract staff.

271. Between its entry into force in 2012 and 2016, the reform of the funding of the pensions of regular staff will mean accumulated additional costs of €2.250bn for the country’s municipalities, social services centres, police force areas and intermunicipal partnerships. The UVCW has never denied the need for a reform of the system for funding the pensions of local authority staff aimed at ensuring its sustainability. As the UVCW is of the opinion that this law has been constructed around a balance between the mutual solidarity of all the local authorities and their responsibility for their own pension costs, this law was essential, but it was an inadequate measure in the absence of other structural changes.

272. On the basis of data for 2012, the UVCW has made a number of estimates that seem to give cause for concern up to 2016, especially the fact that the accumulated extra costs of refinancing pensions will reach €2.250bn for the Belgian local authorities, with €582m for the Walloon local authorities alone, then €238m for the municipalities, nearly €150m for their police areas, more than 105 million for their social services centres and more than €87m for the intermunicipal partnerships and other local bodies.

273. Measures concerning the volume of jobs, such as a zero recruitment policy or lay-offs, proved in 2013 that the municipalities have borne the full brunt of the impact of the financial difficulties. As laying off staff to be able to pay pensions was not an acceptable option, and aware that a considerable number of local government staff will reach retirement age in the next fifteen years, the UVCW has issued an urgent appeal to the federal level to take measures.

274. In short, the UVCW has called for measures that will enable staff to receive a reasonable pension but remain financially sustainable for the employer.

275. In the same context, the local authorities have called for the use of the Old-Age Fund (*Fonds de vieillissement*), the reserves of which exceeded €19bn in 2013. The federal state is financially involved in the payment of pensions of everyone – civil servants, salaried staff and even self-employed people

– apart from local authority pensions. In this connection, the towns and municipalities alone bear the costs associated with the pensions of their regular staff, which is an enormous burden for the local entities.

276. The rapporteurs support the demands of the UVCW and its two sister associations, the VVSG for the Flemish Community and the AVCB for the Brussels-Capital Region), which is calling on the Federal Government to study possible solutions likely to have a significant impact on the local authorities' pension costs and to implement the most appropriate of these solutions. It will not be enough to increase receipts, and it will be essential to reduce the funding expenditure.

4.2.5. Article 7 - Exercise of responsibilities

Article 7 - Conditions under which responsibilities at local level are exercised

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|---|---|
| 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. |

277. A municipality in Wallonia and the German-speaking Community comprises several political "bodies": the burgomaster, the municipal council and the municipal college. The work of these three bodies is supported by a director general, a financial director and an administrative apparatus.

278. The burgomaster is the first law officer of the municipality and its central figure and has significant administrative powers (for example, he/she issues administrative orders when an urgent situation requires the prompt restoration of public order). The municipal council, which is the local parliament, passes regulations, issues administrative ordinances and adopts the budget and accounts. The municipal college is the municipal executive and consists of the burgomaster and *échevins*. Since the recent reform of the Code of Local Democracy, the president of the CPAS council has also been a member of the college, which facilitates the relations and synergies between the municipality and its social arm, the social services centre.

279. The rapporteurs have listened to the concerns of local elected representatives regarding criminal liability. These concerns are common to many European countries, and the rapporteurs are therefore of the opinion that, strictly speaking, Article 7.1 should not understand criminal liability as a limitation in the free exercise of the elected representative's functions. They believe the situation in Wallonia and the German-speaking Community is in compliance with Article 7.1.

280. Elected representatives in the Walloon Region and the German-speaking Community must satisfy conditions of eligibility (age, civil and political rights, nationality, residence, etc) and enjoy a special status in connection with the exercise of their functions. This specific legal framework concerns both rules on financial status and social insurance cover and provisions on professional ethics and limits to their liability.

281. Local office-holders, whether in the municipalities or the provinces, are subject to the provisions of the Code of Local Democracy, which specifies the amount of remuneration (unchanged under the decree of 2009), leaving the provinces and municipalities little room for manoeuvre. For example, a burgomaster receives a salary according to the number of inhabitants in the municipality, and this can vary from €13,785.16 a year gross for municipalities with 300 inhabitants and less to €80,492.09 a year gross for municipalities with 150,000 inhabitants and more. Municipal councillors do not receive a salary but attendance tokens according to their attendances at meetings of the council, committees and subdivisions of the municipality. The amount of the token is determined by the municipal council.

282. With regard to provincial office-holders, the Code of Local Democracy has established a similar system of tokens for provincial councillors. The offices of chair, vice-chair, clerk and committee chair are considered special offices that may be subject to remuneration, the maximum amount of which is laid down (chair: €1,585 a month gross; vice-chair: €160 a month gross).

283. The Code of Local Democracy also specifies the functions and activities that are incompatible with the office of a local elected representative and, in particular, prohibits dual mandates (CLD, Article L1125-1, New Municipal Act, section 71, 7).

284. Article 7 does not raise any problems in Wallonia and the German-speaking Community.

4.2.6. Article 8 - Administrative supervision

Article 8 - Administrative supervision of local authorities' activities

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.

285. As mentioned above, the oversight of the local authorities' activities takes the form of ordinary or specific supervision, the exercise of which with respect to the local authorities is laid down in section 7 of the Special Act on institutional reforms of 8 August 1980. For the local authorities in the Walloon Region, ordinary supervision is carried out by the Region¹⁷, while for the local authorities in the German-speaking Community it is carried out by the Community. Specific supervision is carried out by the federal state, the Community or the Region in the context of delegated functions. At the local level, the municipalities exercise the same type of supervision over their public facilities, in particular their social services centres.

286. In the Walloon Region, ordinary supervision is organised by the Law on Local Democracy and Decentralisation, which provides for two types of supervision:

- special supervision concerning the approval of decisions: this applies to the most important decisions of the local authorities (for example, on levies, staffing levels, the budget, the accounts, the property tax surcharge, etc). These decisions may not be implemented before being approved by the Region.
- general supervision concerning the possible annulment of decisions: this applies to the other local authority decisions (for example, award of a contract, punishment of a provincial staff member, loan guarantees, etc). Decisions subjected to general supervision can be carried out immediately but the supervisory authority can set them aside within a period of thirty days. The authority responsible for general supervision is the Minister for Local Authorities.

287. The purpose of ordinary supervision is both to carry out a review of legality, which involves ensuring that no local authority decision is contrary to a legislative standard. Furthermore, a check of compliance with public interest is also carried out.. This principle of twofold supervision is enshrined in the Constitution. Belgium has not ratified paragraph 2 of Article 8 owing to its desire to ensure that a check for compliance with public interest is carried out. The Walloon Region and the German-speaking Community therefore retain a key role with regard to administrative supervision, but when they exercise their supervisory powers they have to give reasons for their intervention based on the public-interest criterion. This system seems well-established and is now part and parcel of the institutional practices in Belgium. In the event of disagreement between the local authority and the supervisory authority, the Council of State or the Constitutional Court will adjudicate on the matter.

288. However, although limiting the supervisory power to compliance with the law is to be recommended in the context of local self-government it appears difficult to envisage this in the short term because the principle of twofold supervision is enshrined in the Constitution and is routine practice in the organisation by the Region of the administrative supervision of the activities of the local and provincial authorities.

289. Nonetheless, the UVCW believes that supervision concerning the approval of decisions based on their legality and expediency is fairly cumbersome not only in terms of time but also in terms of

17. Part III of the Code of Local Democracy and Decentralisation.

choices made, since the supervisory authority can impose penalties for budgets that it believes are against the public interest. Moreover, with regard to general supervision concerning the possible annulment of decisions that must be transmitted for approval, it needs to be pointed out that the danger that decisions taken, especially in connection with public procurement, will subsequently be set aside will lead to delays in processing documents and, consequently, investment delays since the local authorities prefer to await the end of the supervisory authority's investigation.

290. The supervision of provincial budgets and accounts by the Walloon Region is carried out as follows:

- the budgets and accounts are subjected to special supervision concerning their approval (they cannot take effect until the Walloon Region has approved them);
- the other decisions of a budgetary nature (loan guarantees) are subject to general supervision concerning their possible annulment (their effect is immediate but may be set aside by the supervisory authority).
- When it was drawing up its budget for 2014, the Walloon Region introduced a new procedure, the main aim of which is to provide the European authorities with better information on the financial situation of the federated entities. The objective therefore is not, strictly speaking, to establish a new form of supervision of budgets and accounts.

291. It is also necessary to point out that the provincial accounts are subjected to the scrutiny of the (federal) Court of Auditors, a rule that does not apply to the municipalities.

292. It would appear that the administrative supervision of the activities of local authorities in the Walloon Region and the German-speaking Community is carried out in a proportionate manner. Each decision of the supervisory authority must be fully reasoned, and the autonomy and effectiveness of the local authorities are guaranteed by the legal instruments and by the relevant judicial institutions. The local authorities are entitled to appeal.

293. Article 8 of the Charter taken as a whole is complied with. With regard to paragraph 2 of this provision, it should be noted that, since the principle of twofold supervision (legality and the public interest) is enshrined in the Constitution, Article 8 para. 2 cannot be ratified as long as it is provided for in the Constitution. However, the authorities in Wallonia (including the German-speaking Community) are of the opinion that only supervision with regard to legality is justified in the light of the principles of local self-government. The Walloon provinces and municipalities accordingly endorse the recommendations issued in 2003 by the Council of Europe Congress of Local and Regional Authorities that Belgium adopt the narrow interpretation of supervision contained in the Charter, subject to the reservations already mentioned with regard to the difficulty in reforming the principle of twofold supervision in the near future.

4.2.7. Article 9 - Financial resources

Article 9 - Financial resources of local authorities

- 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.

294. Belgium has not ratified paragraphs 2, 6 and 7 of this article, so the application of these provisions will not be the subject of a recommendation.

295. With regard to paragraphs 1 and 3 of this article, Wallonia and the German-speaking Community and their local authorities have their own resources but these are not always sufficient in Wallonia, as the local authorities complain. On the one hand, there is the problem of financial resources, especially the transfer of functions from the other tiers of government to the municipalities without the commensurate funds.

296. A policy commitment to ensure the budgetary neutrality of decisions of the other tiers of government has only been made by the Walloon Region. This principle is not guaranteed either legally or constitutionally and, according to the Walloon authorities, is not respected by the Federal Government, which imposes reforms without allocating the necessary funds. The funding of the local police, the problem of the funding of rescue services (firefighters) and restrictions with respect to unemployment that affect the social services centres are three glaring examples of policies falling within the responsibility of the Federal Government with serious repercussions for local finances.

297. The local authorities in Wallonia informed the rapporteurs that in connection with transfers of responsibilities two important sources of funding for the municipalities and the social services centres have been regionalised: the employment promotion policy (20,000 staff in the Walloon municipalities are exempt from 25% of social security contributions) and the financing of rest homes/care homes. These policies, like all regionalised policies (there is also the Large Cities Policy, etc) are transferred with 90% of their budgets, and the municipalities fear that their funds for these policies will be reduced by 10%.

298. Like the municipalities, the Walloon provinces can levy taxes (Article 170. 3 of the Constitution), which constitute one of their main sources of funding. Each province can impose various taxes and levies: taxes on banking institutions, hunting licence fees, taxes on scrap-yards, provincial action on the environment and on healthcare, property tax surcharge, etc. The additional property tax represents more than 97% of provincial tax revenues and contrary to the communes, the provinces do not have additional personal income taxes.

299. On 1 January 2014, the Walloon Government introduced a regional tax on telecommunication towers (of €8,000 per site). Walloon towns and municipalities are now prohibited from doing likewise but are authorised to levy a surcharge on the regional tax on GSM towers erected in their territory.

300. According to information provided by the UVCW, 50% of municipal revenues in Wallonia comes from tax receipts. 80% of municipalities' tax receipts derives from the personal income tax surcharge and property tax and 20% from local taxation. It is the Federal Government administration that collects these taxes and calculates the tax bases.

301. The Walloon municipalities' tax revenues amounted to €2.269bn in 2013 and represented 49.6% of their ordinary receipts in that tax year, or €640 per inhabitant. Municipal taxation takes various forms. It includes, on the one hand, additional taxes, such as the property tax surcharge and personal income tax surcharge, and, on the other hand, specifically municipal taxation. While additional taxes represented the bulk of tax-based resources (79%), or €505.50 per inhabitant, the proportion of local taxes, up sharply in 2013, was more one-fifth of total tax revenues. Moreover, the Walloon municipalities have their own income, which is made up of receipts from the provision of services (receipts generated by municipal properties and fees due for the use of land occupied by roads by the operators of gas and electricity networks) and financial receipts. All these revenues amounted to €478m in the 2013 budget and represented 9.9% of ordinary income. Receipts from the provision of services and debt-based revenue (investment income) have been moving in the opposite direction for several years.

302. Apart from taxation, 40.1% of receipts from transfers derives from other levels of government in the form of grants and subsidies, for which the municipalities have no room for manoeuvre. Finally, the

municipalities' own revenues represent 10.4% of total income. They are generated by billing public services provided by the municipality or in the form of receipts from local properties or financial assets.

303. The UVCW complains, among other things, that the state fails to ensure that the local authorities receive the revenues belonging to them. In particular it complains about the failure to update the cadastres, the negotiation of significant tax relief following tax engineering tricks, insufficient increases in tax compensation for frontier workers in Luxembourg, France Germany, etc.

304. The general funding of municipalities for the German-speaking Community amounts to €19,163,538 (2013). After a transitional period and following consultations with municipal leaders accompanied by outside experts, the Parliament of the German-speaking Community approved on 15 December 2008 a decree setting out the new rules and criteria for calculating the annual allocation to which each municipality is entitled. These new provisions came into force on 1 January 2009 and enabled the funds available to be redistributed and better adapted to the circumstances of the nine German-speaking municipalities, while at the same time taking into consideration the more rural or more urban character of a municipality. At the same time, the financial autonomy of the social services centres was strengthened by granting them 10% of the overall amount, which was double the previous contribution of €1,965,568 (in 2013).

305. In Wallonia, the financial equalisation between municipalities is mainly provided by the Municipalities Fund¹⁸ (regional allocation). The specific aim of the criteria for distributing this fund is to rebalance the differences between the municipalities with weak and those with strong tax bases. Other distribution criteria seek to bring about the better distribution of social housing throughout Wallonia.

306. The funding of the municipalities of the German-speaking Community is a matter for the Community, which has its own Municipality Fund. The overall amount of the municipal allocation is distributed as follows: an allocation with a variable amount is designed to bring all the municipalities with a lower tax yield into line with the Community average at the level of this average. The calculation is based on the average yield and the average rate applied in the nine German-speaking municipalities. The remainder is distributed in accordance with five 5 criteria (5% in equal parts, 45% according to the number of inhabitants, 20% according to the number of workers in the municipality, 15% according to the number of unemployed, 15% according to the municipal surface area). In order to avoid too sudden jumps, the amounts according to the criteria are evened out over a period of six years.

307. There is also a Provinces Fund for the provinces in the Walloon Region. The disbursement of the Fund is as follows: for general funding, representing 80% of the provincial share, disbursed in three advances (February 30%, May 30%, August 20%) and for a partnership, representing 20% of the share, disbursed on 31 December at the latest subject to the conclusion of a partnership agreement and a positive assessment of its execution. The distribution of the Funds between the five provinces is laid down by decree.

308. With regard to the subsidies granted to the local authorities, to the investment mechanisms and to the national capital market, the UVCW struggled for years to bring about a drawing right for the benefit of the Walloon municipalities. By means of the new drawing right mechanism, the regional authority grants each of the municipalities concerned for a fixed period an "allocation" from which it can draw to carry out certain types of investment. The amount of the allocation available is calculated on the basis of preset criteria (number of kilometres of municipal roads resurfaced, number of inhabitants, average per capital income and other criteria associated with the Municipalities Fund). The legislation also specifies the type of investment covered and permissible.

309. In terms of the law, this fund was established by the Decree of 6 February 2014 amending the part of the Code of Local Democracy and Decentralisation relating to subsidies for certain investments in the public interest. Specific subsidies have always constituted a key source of income for towns and municipalities. The aim of the Walloon legislature has been to draw in public investment by helping municipalities to finance contracts for public works and services entered into with companies, so this classical arrangement has undergone a genuine revolution because on 1 January 2013 the three-year programme of grant-aided work gave way to a Municipalities' Investment Fund.

18. Book III, Title III, Chapter II of the Code of Local Democracy and Decentralisation.

310. This drawing right is based on multi-year planning extending over a municipal term of office (six years). An annual amount of €45m is planned over the first period of the programme (2013-2016) and will be linked to the consumer price index from 2017. As a result of the Fund, each municipality receives an annual amount known in advance that enables it to carry out investments in a specific field with more freedom to judge the most appropriate projects according to its own strategy.

311. Following a pilot experiment conducted in 2012, the Investment Fund applies to 253 French-speaking municipalities in Wallonia (the nine German-speaking municipalities already have their own mechanism).

312. The drawing right mechanism had been called for by the UVCW for a long time and until now only met with a response in a very limited form as part of a pilot project. The creation of the Municipalities' Investment Fund therefore constitutes a historic victory in terms of strategic planning, which is vital for the local authorities.

313. However, the mechanism still has room for improvement, and the UVCW intends to continue to work on it. The UVCW is still appealing for less stringent supervision, for an extension of the scope of the Fund and for an increase in its endowment.

314. In the German-speaking Community, subsidising the road infrastructure has undergone one of the most far-reaching simplification processes to date in Belgium (Decree of 15 December 2008). This has involved the transformation of the administratively cumbersome, complicated and time-consuming grants system into an annual allocation for the municipalities. Here, too, the consultation with municipal stakeholders has made it possible to determine the most appropriate criteria that serve as a basis for calculating the amount due to each municipality. Moreover, planning up to 2023 provides for a regular increase in the amount allocated by the Community for this annual grant from €850,000 in 2009 to €3m in 2023 (€1.2m in 2013).

315. The Decree of 15 December 2008 also fundamentally changed the procedure by which the German-speaking Community subsidises local (cultural and sports) associations and libraries, while at the same time maintaining the payment of the subsidy to the associations concerned. In the past, both the municipalities and the Community made operating grants to the local associations, which therefore had to lodge their application with the two institutions. Since 2009, after each municipality had drawn up municipal regulations on subsidising the associations situated in its territory, the associations have received a single grant by lodging an application to the municipal authority alone. The Community remits to the respective municipalities an annual grant corresponding to the amount it would have paid to the associations.

316. One significant problem at present for all Communities and regions is that the ESA 95 accounting standards used to test compliance with the stability and growth pact are really not suitable for recording municipal deficits since, under ESA 95, capital spending is considered to be current expenditure. The application of this accounting rule to municipalities, which provide 50% of Belgian public investment, has meant that local authorities have been required to make substantial investment cuts, constituting a disaster not only for quality of local public services but also for the local economy.

317. As far as the unratified paragraphs of Article 9 are concerned, questions of proportionality in terms of responsibilities exercised are fundamental to the discussions under way in the Walloon Region regarding reorganisation of provincial responsibilities. This raises the issue of the provinces' fiscal autonomy and their secured ability to raise their own financial resources for which they themselves determine the rate of taxation; the temptation for the Walloon Region to cut the Provinces Fund when transferring responsibilities is a concern, since it undermines provincial self-government. Local authorities believe that it is essential for paragraph 2 to be ratified by Belgium.

318. As regards consultation of local authorities, the local authorities in Wallonia believe that paragraph 6 could be ratified for Wallonia: municipalities are consulted through the High Council of Cities, Municipalities and Provinces. The German-speaking Community is of the same opinion.

319. With regard to grants, we note that the Region has introduced a new procedure to make provision of grants more objective: a drawing right for capital spending on subsidised public works such as roads, drainage, street lighting and public buildings. Municipalities will now receive an individual grant from the Region, calculated on the basis of pre-established criteria, on which they can

draw for this type of investment. It should however be noted that this option is currently limited to municipalities and excludes the provinces. Paragraph 7 could also be ratified by Belgium.

320. At present, municipalities in the Walloon Region and the German-speaking Community are facing the consequences of the financial and economic crisis, which necessitates fiscal consolidation to balance the accounts. The Walloon Region is distinguished by disparities attributable to the socioeconomic situations of the various municipalities. In addition, the socioeconomic indicators for most of these municipalities are lower than the national average. In the rapporteurs' opinion, paragraphs 1, 3 and 4 of Article 9 are still a concern for Wallonia. The representatives of Wallonia and the German-speaking Community believe that the unratified paragraphs of Article 9 should be ratified.

4.2.8. Article 10 - Right to associate

Article 10 – Local authorities' right to associate

- | | |
|---|---|
| 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. |

321. In the Walloon Region and the German-speaking Community, local authorities are able to co-operate with each other. Article 162 of the Belgian Constitution acknowledges this right: '[S]everal provinces or municipalities can co-operate or form associations. However, provincial councils or municipal councils cannot be permitted to deliberate jointly.' In the Walloon Region co-operation between municipalities takes place in the shape of agreements between municipalities,¹⁹ project partnerships²⁰ and intermunicipal partnerships.²¹ The latter may take the form of a limited liability co-operative (SCRL, the most frequent form) or that of a public limited company (SA). There are currently a hundred or so intermunicipal partnerships operating in the Walloon Region. They are supervised by the Region, which ensures that municipal politicians have control over co-operation within these organisations. Intermunicipal partnerships are also common among municipalities in the German-speaking Community, where they are supervised by the Community. In addition, intermunicipal co-operation of this kind can take place between local authorities in different regions of Belgium, since on 26 March 2014 the Walloon Parliament passed a decree approving the co-operation agreement signed between the Flemish Region, the Walloon Region and the Brussels-Capital Region on cross-regional intermunicipal partnerships.

322. Local authorities in the Walloon Region and the German-speaking Community also have the right to belong to an association for the protection and promotion of their common interests. The most significant associations are the Union of Towns and Municipalities of Wallonia, which defends the interests of local government at all levels whilst also acting as its mouthpiece, and the Association of Walloon Provinces, which aims to provide its members with all the services they need to carry out their missions, as well as to promote the institution of the province and uphold its independence. Local authorities also belong to international associations; for example, some Walloon municipalities are members of the International Association of French-speaking Burgomasters.

323. Lastly, as regards co-operation of local authorities with their counterparts in other states, it should be pointed out that Belgium ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities in 1987 and subsequently signed and ratified the first two additional protocols and signed the third. Consequently, in 1996 the Walloon Region and the German-speaking Community signed the Karlsruhe Agreement on transfrontier co-operation between local authorities and local public bodies. In addition, in 2002 the Walloon Region signed the Brussels Agreement on local-government co-operation between France and Belgium. Both the Walloon Region and the German-speaking Community are also helping to implement the Benelux Convention on transfrontier and interterritorial co-operation.

324. Article 10 is observed in Wallonia and the German-speaking Community.

19. Code of Local Democracy and Decentralisation: Articles L1521-1 to L1521-3.

20. Code of Local Democracy and Decentralisation: Articles L1522-1 to L1522-8.

21. Code of Local Democracy and Decentralisation: Articles L1523-9 to L1523-25.

4.2.9. *Article 11 - Legal protection of local self-government*

Article 11 - Legal protection of local self-government

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.

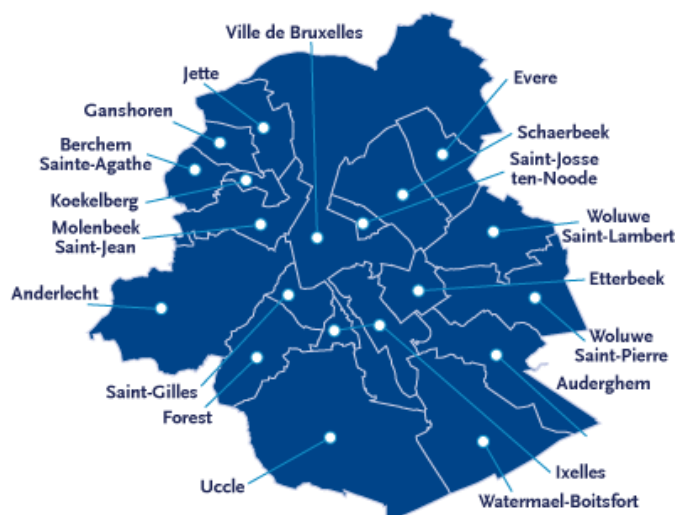
325. Local authorities in the Walloon Region and the German-speaking Community are entitled to legal protection of local self-government inasmuch as they are able to enter an appeal if they consider their self-government to have been restricted. Since 2003 and the special law of 9 March, the Constitutional Court has had jurisdiction regarding compliance of legal provisions with the principle of fiscal autonomy enshrined in Article 170 of the Belgian Constitution. As far as the other elements of local self-government are concerned, the Court of Cassation and the Council of State review the legality of all decisions and are therefore able to rescind any unlawful decision taken by a higher authority (federal state, Community or region).

326. Legal protection of local self-government is guaranteed in Wallonia and the German-speaking Community.

4.3. *Article-by-article analysis of the situation of local democracy in the Brussels-Capital Region in the light of the European Charter for Local Self-Government*

327. The Belgian Constitution makes reference to the Brussels Region in its Article 3. In 1989, under the special law of 12 January, the Brussels-Capital Region was permanently established on the territory of 19 municipalities, covering a total area of 161.4 km². This status was the outcome of a lengthy process and the vagaries of Belgian political life, including:

- 1970: Revision of the Constitution creating three regions in law: the Walloon Region, the Flemish Region and the Brussels Region.
- 1971: Establishment of the Brussels Conurbation, the single body overseeing the 19 Brussels municipalities. The Conurbation had responsibilities in the fields of urban development, transport, security, health, street cleaning and refuse collection, economic expansion, etc.
- 1977 and 1978: The Egmont Pact and Stuyvenberg Agreements respectively, political agreements on institutional reform providing for the creation of three similar regions, with the same rights being granted to Flemish citizens in Brussels and to French speakers on the outskirts. But this plan was frozen owing to the fall of the then government.
- 1980: The special law of 8 August establishing regional institutions but not including any provisions concerning the Brussels Region because of the obvious impossibility of political agreement.
- 1989: The special law of 12 January permanently establishing the Brussels-Capital Region on the territory of 19 municipalities and setting up its legislative and executive bodies. This law also transferred the Conurbation's responsibilities to the new region.



Ville de Bruxelles = City of Brussels

328. The Association of the City and Municipalities of the Brussels-Capital Region (AVCB) is an association serving the Region's local authorities. It works to bolster the role of the 19 municipalities in the general decision-making process and improve their synergy at local level. The Brussels Region is the only region to have a bilingual structure.

329. The powers of the Brussels-Capital Region are exercised by the Brussels Parliament, the composition of which ensures Flemish representation, and by the Brussels Government.

The Brussels Parliament

330. The Brussels Parliament consists of 89 members elected by universal suffrage every five years by adult Belgians resident in the Brussels-Capital Region. The members of this parliament are divided into two groups: 72 are elected from lists of French speakers and 17 from lists of Dutch speakers. The parliament chooses the members of the Region's government and the regional secretaries of state. If the latter are drawn from elected members of parliament, they are replaced in parliament by their substitutes on the electoral list. Elections are held every five years at the same time as those for the parliaments of the Flemish and German-speaking Communities and the Walloon Region as well as the European Parliament. The status of members of the Brussels Parliament is the same as that of parliamentarians in the other regions.

331. The parliament is organised according to the principle of two linguistic groups, and the law requires candidates to stand on single-language lists. The 5% electoral threshold applies to each linguistic group.

332. To allow each of the Communities to pursue Community-related policies focused on Brussels within the area covered by the 19 municipalities, three specific institutions were set up: the French Community Commission (COCOF), the Flemish Community Commission (VGC) and the Joint Community Commission (COCOM).

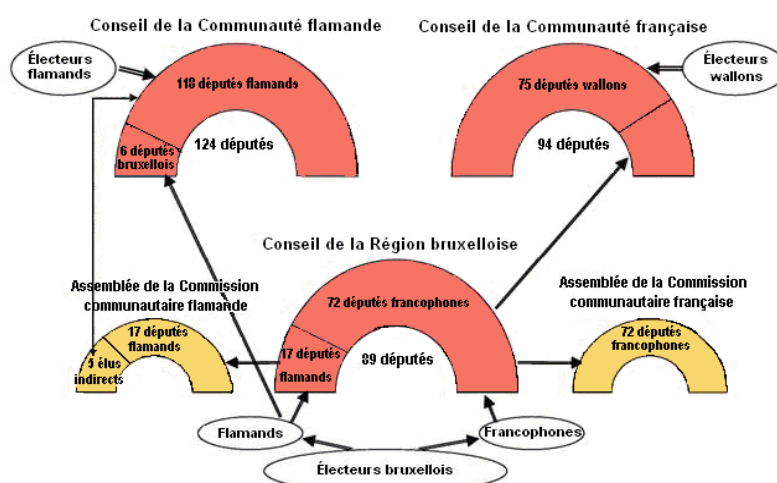
333. The Assembly of the French Community Commission consists of members of French-speaking group in the Brussels Parliament, while its executive consists of the two French-speaking ministers from the regional government, the two French-speaking secretaries of state and the non-voting Brussels member of the government from the French Community. Originally this commission was responsible for culture, social matters and education. It has become a much broader institution since the French Community transferred some of its powers to it in 1993 (health policy, assistance to individuals, tourism, school transport, and vocational training), thus enabling it to pass decrees having force of law.

334. The Assembly of the Flemish Community Commission consists of members of the Dutch-speaking group in the Brussels Parliament, while its executive consists of the two Flemish ministers from the regional government, the Flemish secretary of state and the non-voting Brussels member of the government from the Flemish Community. This commission is responsible for culture, social matters and education. The Flemish Community has not delegated any authority to it, preferring to act

in its own right in order to highlight the link between Brussels and Flanders. The Flemish Community Commission is therefore a less powerful institution than its French counterpart.

335. The Joint Community Commission is made up of both linguistic groups in the Brussels-Capital Region Parliament. Its legislative body is called the joint assembly and has jurisdiction over institutions not belonging exclusively to either Community (so-called 'bicomunity institutions', such as the 19 social services centres in Brussels (*Centres publics d'aide sociale*, CPAS) and their hospitals. It is also responsible for services to individuals in the fields of health policy, social policy, disability, old age, etc. The assembly of the Joint Community Commission does not deliberate in the same way as the regional parliament: its ordinances must be passed by a majority from each linguistic group.

336. The following diagram shows the composition of the Brussels institutions and the Community Councils.



Assemblée de la Commission communautaire flamande = Assembly of the Flemish Community Commission

Assemblée de la Commission communautaire française = Assembly of the French Community Commission

Conseil de la Communauté flamande = Council of the Flemish Community

Conseil de la Communauté française = Council of the French Community

Conseil de la Région bruxelloise = Council of the Brussels Region

Électeurs bruxellois = Brussels voters

Électeurs flamands = Flemish voters

Électeurs wallons = Walloon voters

Flamands = Flemish speakers

Francophones = French speakers

5 élus indirects = 5 indirectly elected members

6 députés bruxellois = 6 Brussels members

17 députés flamands = 17 Flemish members

72 députés francophones = 72 French-speaking members

75 députés wallons = 75 Walloon members

89 députés = 89 members

94 députés = 94 members

118 députés flamands = 118 Flemish members

124 députés = 124 members

337. The regional parliament exercises its authority by adopting ordinances that have the force of law at regional and subregional level.

338. The Region also has a special link with the federal authority because of its international role and its position as capital. This connection has led, amongst other things, to introduction of the Beliris co-operation scheme. Beliris is a joint effort by the federal state and the Brussels-Capital Region to promote the standing of Brussels as capital of Belgium and of Europe. Beliris undertakes construction, renewal and rehabilitation projects in a variety of fields: mobility, social housing, parks, neighbourhood regeneration, culture, heritage and sport.

Government of the Brussels-Capital Region

339. The Brussels-Capital Region Government consists of a prime minister, 4 ministers (2 French-speaking and 2 Dutch-speaking) and 3 secretaries of state (2 French-speaking and 1 Dutch-

speaking). The government is elected every 5 years by the Brussels Parliament (or Council of the Brussels-Capital Region).

340. The members of the Brussels-Capital Region Government deal with matters coming under regional jurisdiction: urban development, planning, urban renewal, housing, public works, transport, economic policy, external trade, employment, environmental protection, energy, local authorities, scientific research and international relations.

341. The government shares in legislative authority (it can prepare draft ordinances and table amendments) and exercises executive authority by adopting regulations and the implementing orders for ordinances. The government is accountable to parliament.

342. As regards Community matters, members of government also meet separately, according to their linguistic group. The Dutch-speaking members of the Brussels government constitute the executive of the Flemish Community Commission, while the French-speaking members of the Brussels Government constitute the executive of the French Community Commission. The Community Commissions exercise Community-related powers (in the fields of culture, education, etc.) for French- or Dutch-speaking residents of Brussels. They do this through ordinances from their assemblies and orders from their executives. The French Community has also delegated certain powers concerning French-speaking inhabitants of Brussels (in the fields of tourism, health policy, etc.) to the French Community Commission. These powers are exercised by decree.

343. Like the other governments, the Brussels-Capital Region Government can be voted out only by a constructive motion of no confidence. As in the case of the government's election, the procedure must allow for specific rules stemming from the representation of both Communities in the parliament.

344. On 13 March 2014, in connection with state reform and inauguration of a new government, the three Unions of Towns and Municipalities, for Flanders, Wallonia and Brussels, representing all the country's municipalities, CPASs and police zones, presented a joint memorandum stating that the federal government must pledge to consult representatives of local authorities (from municipalities, CPASs, police zones and the future fire and rescue zones) whenever it was planning measures affecting these authorities and particularly when these measures had financial implications for them.

345. Furthermore, the Unions of Towns and Municipalities should be part of intergovernmental consultations between the federal government and the regions when the Consultation Committees were addressing subjects of concern to local authorities (budgetary strategy, etc.). In the same spirit, in matters affecting the latter, experts from the Unions of Towns and Municipalities should take part in the work of the High Council of Finance.

346. The city of Brussels is a triple capital: it is at one and same time capital of Belgium, Flanders and the French Community. This report will consider the question of Brussels' status as a capital city in Section 7 below.

4.3.1. Articles 2 and 3 - Principle and concept of local self-government

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

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

347. The European Charter of Local Self-Government has been ratified by the Brussels-Capital Region. The Brussels-Capital Region Parliament regularly makes reference to the Charter in its ordinances, which in the legislative hierarchy are equivalent to decrees.

348. According to the principle of local self-government: 'Interests which are exclusively of a municipal nature are dealt with by municipal cial councils, according to the principles laid down by the Constitution' (Belgian Constitution, Article 41). This means that to implement municipal interests a municipality must be able to initiate measures and decide on the resources to be allocated to them without its decision-making authority being subject to even tacit authorisation.

349. On 5 March 2009 the government of the Brussels-Capital Region adopted an ordinance fundamentally amending the new Municipalities Act and designed to modernise the way the municipal system operated and improve the efficiency of services delivered. The Sixth State Reform has given

the parliaments of the Brussels-Capital Region the freedom to determine certain aspects of their own organisation.

350. Article 2 is observed in the Brussels-Capital Region.

Article 3 - Concept of local self-government

- | | |
|---|--|
| 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. |

351. The special law of 12 January 1989 on Brussels institutions governs the statutory framework for the Brussels-Capital Region. Local self-government has its legal basis in Articles 41 and 162 of the Belgian Constitution and in regional legislation.

352. Regarding the concept of local self-government at municipal level, the matter is more complex. As indicated above, the local authority has a dual function. On the one hand, it is an independent decentralised political authority with its own decision-making power, free to take initiatives in so far as the field has not been placed outside its jurisdiction by the Constitution, a statute, a decree or an ordinance; on the other, a municipality is a subordinate local authority, that is, responsible for implementing certain decisions taken by other authorities (federal, regional, Community).

353. A municipality thus has a number of mandatory missions, which are the same for each municipality in Brussels (although the way in which they are implemented may differ), together with discretionary missions specific to each municipality.

354. The rapporteurs consider that, in principle, the authorities of both the Brussels Capital Region and the 19 municipalities have the right and ability, 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, whereas, regarding the functions specific to each municipality, the municipalities do not always have full freedom, since they are subject to administrative supervision by the Region.

355. On 23 October 2013 the Association of the City and Municipalities of the Brussels-Capital Region (AVCB) adopted a regional memorandum containing its demands for the regional tier of government looking ahead to the elections for the Brussels Parliament on 25 May 2014. This memorandum called for 'strong municipalities to partner a strong Region' and for systematic consultation between local authorities and their association on the one hand and the regional authorities on the other – consultation that, according to the AVCB, had sometimes been lacking in the recent past.

356. Belgium has not ratified paragraph 2 of Article 3. Nevertheless, at the regional level the Brussels Parliament consists of 89 members elected by universal suffrage every five years by adult Belgians resident in the Brussels-Capital Region. As for the municipal level, the organisation and management of a municipality are based mainly on three bodies:

- A municipal council consisting of representatives elected every six years in municipal elections;
- A municipal executive comprising the burgomaster and *échevins*, which looks after the municipality's day-to-day administration; it exercises its responsibilities collectively;
- A burgomaster appointed by the government of the Brussels-Capital Region from among the municipal councillors.

357. During the rapporteurs' visit, the representatives they met from the Brussels-Capital Region expressed the view that paragraph 2 of Article 3 could be ratified by Belgium.

358. The principle of local self-government set out in Article 3, paragraph 1, of the Charter calls for closer consideration by the regional authorities of the Brussels-Capital Region in order to ensure a greater degree of self-government for the Brussels municipalities.

4.3.2. Article 4 - Scope of local self-government

Article 4 - Scope of local self-government

- 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 which 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.

359. Section 4.1 of the special law of 12 January 1989 on Brussels institutions provides as follows: 'The Brussels-Capital Region shall have the same powers and responsibilities as the Walloon Region and the Flemish Region. The powers assigned to regional councils shall, in the case of the Brussels-Capital Region, be exercised through ordinances.' The ordinance of 5 March 2009 amending the new Municipalities Act introduced a local governance plan designed to modernise government and improve the quality of public services delivered.

360. As part of the Sixth State Reform, the Brussels-Capital Region has undergone large-scale reorganisation which has strengthened it through refinancing and the fact that it has received the same powers and responsibilities as the other two regions.

361. The regional bodies in Brussels simultaneously hold:

- the same regional powers as in Flanders and Wallonia;
- Community powers for 'bicomunity' matters relating to individuals.

362. In 2012 the Brussels-Capital Region was given the freedom to determine certain aspects of its own organisation,²² which it does by a two-thirds composite vote (as in the other regions) but also by a majority in each linguistic group. It can now organise its own institutions and divide and streamline exercise of powers between the Region and the 19 municipalities (for planning, social housing, mobility, street cleaning and refuse collection, security and tourism). One principal facet covers security in the region while another relates to a redistribution of powers between the Region and the municipalities.

363. With respect to paragraph 2 of Article 4, taken in conjunction with paragraph 6, the AVCB indicated its concern regarding the government's proposed new housing code, brought before parliament without any prior consultation with local authorities, which constitutes a further blow to local self-government. This code provides, amongst other things, that public housing managed by Social Services Centres (*Centres publics d'action sociale*, CPASs) or by municipalities can be allocated by CPAS councils or municipal executives only with the consent of an independent commission. A draft regional government order provides that no politicians can sit on this commission. In other words, it is civil servants who will make up such bodies. It is a worrying trend in terms of democracy that decisions are now being taken not by elected political authorities but by unelected individuals.

22. For the Brussels Parliament this freedom relates to the following matters in particular: disqualifications applying to members of the parliament joining the government of a federated entity; replacement of members of parliament joining the federal government (a member who ceases to attend is replaced, and his or her replacement is given the status of member of parliament); additional disqualifications for members of parliament; fixing of additional rules on the composition of parliament; capitals of electoral districts; rules on substitutes; effect on seat distribution of votes for unchanged lists (not covering rules on seat distribution according to linguistic group); opening session of parliament; speaker of opening session; public sessions; attendance by the government; petitions; executive officers and assembly staff; clerk; signing of orders; operation of government.

364. The rapporteurs believe that some aspects arising out of Article 4, paragraph 3, of the Charter (read in the light of other Charter provisions) deserve closer consideration by regional government authorities. It should here be mentioned that, looking ahead to the regional elections of 25 May 2014, the Board of the Association of the City and Municipalities of the Brussels-Capital Region adopted a memorandum containing Brussels municipalities' demands of the political parties and future regional government. This memorandum states the concerns of local authorities in the region and lists the main improvements that the association would like to see in running of municipalities through application of the principles of subsidiarity, decentralisation, balance and consultation, which are fundamental to local democracy and good governance.

365. The special law of 8 August 1980 established the powers and responsibilities of the three regions in Belgium, pursuant to Article 107 *quater*, which was added to the Constitution in 1970. With due regard for the specific features of the Brussels-Capital Region, various powers and responsibilities can be distinguished: at regional level, for Brussels as capital city, and for the 19 municipalities.

366. For regional matters the Brussels Region (like the Walloon and Flemish Regions) exercises specific powers in the following fields: urban development, housing, environment, water policy and nature conservation, the economy and employment policy, transport, public works, energy policy, local authorities and subordinate authorities (municipalities, intermunicipal partnerships, faiths), external relations, scientific research, etc.

367. As for its powers as a capital city, given that Brussels is both the capital of Belgium and the seat of European institutions, the Region co-operates with the federal state on initiatives in the fields of urban development, planning, public works and transport.

368. The municipalities' mandatory missions include the following: managing and co-funding the CPASs, managing municipal primary education, keeping registers of births, deaths and marriages, maintaining law and order, maintaining municipal roads, etc. Other municipal missions are discretionary, such as education beyond primary level, housing, and promotion of cultural activities.

369. The Region also exercises powers formerly granted to the Brussels Conurbation, namely firefighting and urgent medical assistance, refuse collection and disposal, and taxis. The Region has also inherited provincial powers from the former province of Brabant.

370. According to some sources it is necessary to clarify the division of responsibilities and missions between the Region and the 19 municipalities, since in some fields their powers overlap. The many regeneration programmes for public areas offer multiple examples. The policy of subsidised works is another example of lengthy administrative procedures of this kind. Street cleaning and refuse collection is a further instance of failure due to a labyrinth of powers when it should be based on the subsidiarity principle whilst ensuring that only one public authority is responsible for managing a particular public area.

371. These overlaps lead to reduced resources and ability for the municipalities in Brussels to pursue their own policies for social and cultural matters and development of public areas, having been reduced so to speak to a purely administrative role. This situation is detrimental to the public perception of how democratic institutions are run, since municipal policymakers should still have the ability to determine priorities in line with the specific features of their municipality and the needs of their community. Furthermore, a multi-level management is necessary, namely through cooperation between different levels of government with the aim of guiding the management of certain matters that should be kept separate.

372. It is vital to end these parallel powers and as well as sometimes to increase the Region's independence from the municipalities for exercise of certain powers but in other cases to strengthen municipal independence, since the municipalities must be able to meet their communities' expectations more effectively.

373. The legal basis for delegation of powers is enshrined in sections 108 to 111 and section 133 of the new Municipalities Act. Burgomasters may delegate all their statutory powers if they are absent or unable to discharge their duties. Regarding the police, a burgomaster may delegate part of his or her powers to an *échevin*. He or she may also delegate his or her power of signature.

374. The delegation was informed that the latest draft ordinance (adopted on 27/2/2014) amending the new Municipalities Act was brought before the Brussels Parliament without any prior consultation with the Conference of Burgomasters or the Association of the City and Municipalities. The Association would have liked to have been consulted, to have read the draft ordinance and to have given its opinion. Another example of failure to consult the Brussels municipalities, in which the latter were not even informed of its publication in the Belgian Gazette, was the ordinance of 26 July 2013 establishing a framework for transport planning (published in the Belgian Gazette on 3 September 2013) and amending the Brussels Urban Development Code.

375. In the rapporteurs' opinion, clarification is required regarding the division of powers and missions between the Region and the 19 municipalities. Furthermore, it is important that the municipalities should remain solely responsible for all matters concerning them and that the federal state should take financial responsibility for a number of missions within its remit, the cost of which is borne mainly by the Brussels municipalities. Consultation of local authorities in all matters of direct concern to them must be improved, and the Association of the City and Municipalities of the Brussels-Capital Region (AVCB) must here be one of the main partners in the dialogue that is essential between the Region and its local authorities.

4.3.3. *Article 5 - Protection of local authority boundaries*

Article 5 – Protection of local authority boundaries

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.

376. In Belgium, Article 7 of the Constitution provides that the boundaries of the state, provinces and municipalities can be changed or corrected only by virtue of a law (except for changes to language boundaries). The regions are responsible²³ for changing or correcting the boundaries of provinces and municipalities, apart from the boundaries of those municipalities cited in section 7 of the Use of Languages in Administration Act, consolidated on 18 July 1966, namely Drogenbos, Kraainem, Linkebeek, Sint-Genesius-Rode, Wemmel and Wezembeek-Oppem, and the municipalities of Comines-Warneton and Voeren. Municipalities are merged by decree. It should be noted that a number of political parties have criticised the multiple layers of Brussels institutions and suggested that some municipalities might be merged. Those who support this political view believe that it is hard to govern Brussels properly because of its overcomplicated institutional framework: federal government, French Community, Flemish Community, VGC, COCOF, COCOM, regional government, Parliament, 19 municipalities, 19 CPASs, 130 *échevins* and 650 municipal councillors. In practice, reducing the number of Brussels municipalities from 19 to 11, for example, was an idea put forward by a regional candidate in a campaign called 'A Simpler Brussels'. He based his argument on the differences in area and population between the capital's municipalities. Nevertheless, such electioneering ideas have usually remained at the discussion stage, since in actual fact the existing burgomasters mostly prefer to remain the head of a small municipality rather than becoming *échevins* in a larger area.

377. Local authority boundaries are protected in the Brussels-Capital Region.

4.3.4. *Article 6 - Administrative structures*

Article 6 - Appropriate administrative structures and resources for the tasks of local authorities

- 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.

378. Determination of personnel policy, and implementation of its various aspects, must be a matter for the appropriate bodies at local level, whether the municipalities or the CPASs.

379. Like the two other regions, the Brussels-Capital Region has its own administration, institutions and staff. It has the same powers as the other regions in this respect.

23. Under the Special Institutional Reform Act (LSRI), section 6, §1, VIII, first paragraph (2).

380. The latest amendment to the Municipalities Act is seen as positive by the rapporteurs with regard to the option of sacking a regular employee if the latter has received two successive negative appraisals. All the efforts being made to improve training for local-government officers were also considered positive. The requirement for municipal representatives in the intermunicipal partnerships to report annually to the municipal council was also thought necessary. Extending the range of documents that had to be available to the public on the Internet further helped to improve transparency.

381. Points still of concern are associated with the fact that the municipal council has been given too many powers in personnel matters, a field that should come under the municipal executive.

382. All positions will in future be available for recruitment and promotion unless the council expressly provides otherwise. This is an entirely new provision.

383. The expediency of this measure is open to question. It is unlikely to encourage members of staff to remain in their own departments. The AVCB is concerned about an adverse impact on good governance of administrative staff, leading to a substantial loss of experience among local-government officers and competition between municipalities to attract the most highly regarded.

384. The fact that the Council of Europe's revised European Social Charter²⁴ has been incorporated into the new Municipalities Act is to be welcomed. From the very start of the parliamentary term it was the government's intention to recast this text and incorporate into an ordinance the agreements signed between the unions and the government. These agreements cover the following: staff framework, organisation chart, job descriptions, terms of recruitment and promotion, staff training and appraisal, the role of the municipal clerk and internal mobility.

385. As regards language matters, it is important for the Region to provide financial incentives for the municipalities to develop language-learning programmes enabling their staff to have a good command of both national languages.

386. Another aspect that deserves mention is the fact that municipalities are the only authorities to have to fund the entirety of their staff pensions. Pensions are a federal matter, and the Region and federal government must take the structural measures required for long-term rescue of the pension scheme for regular staff in order to ensure that the latter have a reasonable pension that is still financially viable for the employer. In this respect, cities and municipalities are alone in bearing the cost of pensions for their regular staff, and this represents a huge expense for local government.

387. The rapporteurs consider that, despite the fact that municipal decisions on staff matters are subject to approval by the Region, the legislative arrangements nevertheless guarantee municipalities a measure of self-government. However, the rapporteurs reiterate their support to the demands of the AVCB (and its two sister associations, the Flemish VVSG and the Walloon UVCW), addressed to the federal authority to study a number of options likely to have a significant impact on the local-governments' pension burden and to act on the most relevant.

4.3.5. *Article 7 - Exercise of responsibilities*

Article 7 - Conditions under which responsibilities at local level are exercised

- 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.

388. The legal basis for the conditions under which responsibilities at local level are exercised in the Brussels-Capital Region (as in the two other regions) is to be found in the new Municipalities Act

24. ETS No. 163.

(section 19) and the law of 4 May 1999 improving the pay and conditions of local representatives. Thus holders of public office are entitled to pay and social insurance cover.

389. Since 1 January 2001 executive officers with no other occupation are required by the municipality to pay insurance covering health care, unemployment benefits and family allowances.

390. The total number of municipal councillors in the Region is six hundred and twenty-six, distributed according to size of municipality. Executive power in the municipalities is exercised by an executive consisting of the burgomaster and *échevin* and led by the burgomaster. Traditionally, burgomasters and *échevins* are also municipal councillors, although this is not actually mandatory.

391. The burgomaster's salary is a percentage of the municipal clerk's, and an *échevin*'s salary is a percentage of the burgomaster's. Burgomasters and *échevins* have not just a salary but also an end-of-year bonus and holiday pay.

Burgomaster	
Number of residents in municipality	Percentage of municipal clerk's salary
10,001 - 20,000	85
20,001 - 50,000	95
50,001 - 80,000	105
> 80,000	120

Échevin	
Number of residents in municipality	Percentage of burgomaster's salary
≤ 50,000	60
> 50,000	75

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392. Paragraphs 2 to 4 of section 12 of the special law of 12 January 1989 on Brussels institutions provides that a member of the Brussels-Capital Region Parliament cannot hold various other posts. Article 12 *bis* specifies that a member of this parliament elected as a current member of certain other parliamentary assemblies will be disqualified from this parliament.

393. The new Municipalities Act specifies the functions that may entail the disqualification referred to in Article 7, paragraph 3, of the Charter. Under paragraphs 1 to 3 of section 71 of the new Municipalities Act, provincial governors, the governor and vice-governor of the Brussels-Capital administrative district, the deputy governor of the Flemish Brabant province and members of the executive set up by section 83 *quinquies*, paragraph 2, of the special law of 12 January 1989 on Brussels institutions cannot be members of a municipal council. Similarly, nobody who is a member of staff or receives an allowance or salary from a municipality, apart from volunteer firefighters, can be a municipal councillor (new Municipalities Act, section 71.6). There are disqualifications under other legislation, such as the Judicial Code, the consolidated laws on the Council of State, the Integrated Policing Act and the CPAS Act. Judges cannot be municipal councillors, whether they sit in the ordinary courts or tribunals, the Council of State or the Court of Arbitration.

394. The amendment of the new Municipalities Act also covered disqualifications for office. It thus introduced incompatibility between the holding of local executive office and:

- holding of office in a regional, Community or bi-Community authority in Brussels,
- holding of office or an executive function in a public-interest body,
- a post as a permanent member of the management committee of a public-interest body.

395. The draft special ordinance of 10 February 2014 limiting plurality of office for members of the Brussels-Capital Region Parliament aimed, in line with Chapter 7 of the 2009-2014 regional government agreement ('Effective public services for residents of Brussels'), to limit the number of members of the Brussels-Capital Region Parliament simultaneously holding the posts of burgomaster, *échevin* or CPAS president. There was no vote on this draft ordinance because of the imminence of

the 25 May 2014 elections. It will rest with the new members of the Brussels Parliament to vote on this.

396. As regards actual management of municipalities, the AVCB has drawn the Region's attention to the fact that more and more representatives, especially burgomasters, have to face criminal proceedings for a variety of offences in their municipalities. The primary and secondary sentences may be particularly severe, even including actual prison and loss of civil and political rights. Such penalties are very serious for individuals holding public office and generally incommensurate with the offences with which they are charged. There is a genuine danger that over time it will become harder and harder to find people willing to occupy public office. Limitation of representatives' criminal liability is therefore imperative, without necessarily introducing full immunity. Representatives' liability should be limited to gross misconduct, recurrence of slight negligence, and deliberate offences.

397. The rapporteurs here refer to their conclusion in paragraph 278 and find that paragraph 1 of Article 7 is observed, as are paragraphs 2 and 3, which call for no specific comment.

4.3.6. Article 8 - Administrative supervision

Article 8 - Administrative supervision of local authorities' activities

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| 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. |

398. The legal basis for administrative supervision in the Brussels-Capital Region is to be found in the Belgian Constitution (Article 162.2), the new Municipalities Act (sections 117, 264 *et seq.*) and the ordinance of 14 May 1998 on organisation of administrative supervision in the municipalities of the Brussels-Capital Region.

399. Administrative supervision encompasses both the lawfulness of subordinate administrative bodies' legal transactions and contracts and their expediency and compliance with the public interest. Consequently, administrative supervision extends further than the power of the courts – and therefore of the Council of State – as they can only rule on a legal transaction's compliance with the law.

400. There is normal supervision and special supervision.

401. Normal supervision concerns local-government decisions relating to local matters and is supervision of local management in general. It may be:

- *General supervision (discretionary)*: In the Brussels-Capital Region the government may suspend or reverse a municipality's decision by decree. This is general, discretionary, supervision, since municipal decisions are open to supervisory action, but the government is not obliged to take it. In determining whether or not a decision is contrary to the public interest, the supervisory authority can intervene only if the decision by the local authority is prejudicial to a higher public interest, that is, if the authority takes a decision harmful to a sphere of interests broader than the municipal sphere (to regional interests, for example). If a decision is suspended, the municipality may either withdraw it or uphold it by proving it to be warranted. Reversal remains possible after a municipality has upheld a decision.
- *Specific supervision concerning approval of decisions (mandatory)*: A number of decisions listed in Articles 13 and 14 of the ordinance of 14 May 1998 on organisation of administrative supervision in the municipalities of the Brussels-Capital Region have to be approved by the Region before being able to take effect. This is specific supervision concerning approval of decisions. Such supervision is more extensive and allows a supervisory authority to reject a decision by the subordinate authority on the grounds not only that it is contrary to the public interest in the shape of higher public interests but also that it adversely affects the municipality's interests. Decisions are subject to approval in the following fields: staff

framework, budgets, accounts, creation of municipally-owned enterprises, public procurement, staff pay and staff dismissal.

- *Relief supervision*: Lastly, in the rare cases of failure on the part of a municipality, the Region can replace the latter. This type of supervision is used when the subordinate authority fails to meet its statutory obligations. It is imposed only for failure to comply with the law and never for breach of public interest. This relief supervision may be exercised through ex officio measures or by sending a special commissioner to the municipality concerned. To facilitate the authority's work and avoid overburdening its departments with too much paperwork, the ordinance of 14 May 1998 and its implementing decree of 16 July 1998 list the decisions that municipalities have to send the Region in full (that is, with all the records relating to the decision), including those subject to specific supervision concerning approval of decisions, and many other decisions. The legislation also provides that the government must respect time-limits when examining municipal decisions and exercising administrative supervision. Once the examination time-limit is past, a decision is no longer open to supervisory measures.

402. Special supervision is supervision that departs from the rules of normal supervision. It is instituted by the authority responsible for the federal, Community or regional interests that are to be protected by the special supervisory measures taken. This supervision thus enables the authority responsible for these interests to protect them by supervisory measures for which it sets its own rules. In other words, when the state, a Community or a region assigns tasks to local authorities and decides how they should be carried out, it may establish special supervision in this field. It will then specify in the relevant legislation which decisions are subject to supervision, together with time-limits and the supervisory body as well as basic elements of the procedure.

403. These two types of supervisory procedure can coexist. The following are some examples of special supervision in the Brussels-Capital Region:

- Police-zone supervision by the Governor;
- Supervision by the Vice-Governor regarding use of languages in administration;
- Planning supervision by the Brussels-Capital Region Government: burgomaster's decrees for demolition of protected or listed buildings are subject to approval by the Brussels Government;
- Supervision by the Region's mobility minister of additional road-traffic regulations.

404. Administrative supervision in the Brussels-Capital Region is the statutory responsibility of:

- The Brussels-Capital Region Government for municipalities, municipally-owned enterprises, intermunicipal partnerships, some institutions managing secular matters for faiths, and the Mont-de-Piété (state-owned pawnshop). In actual fact it is the Brussels Local Authorities organisation that exercises this power on behalf of the government.
- The Joint Board of COCOM for the CPASSs, CPAS joint associations and the IRIS hospital network. In a memorandum of understanding between COCOM and the Brussels Government it was agreed to set up, within Brussels local government, a unit responsible for processing paperwork with a view to exercising administrative supervision over the CPASSs.
- The Governor of the Brussels-Capital administrative district, who exercises special supervision over decisions taken by the police board and council with regard to the organisation and management of the local police. However, the Brussels Local Authorities organisation exercises general administrative supervision over decisions outside the Governor's supervision.

405. The Brussels Local Authorities (BLA) organisation organises, advises, supervises and funds local authorities in a relationship of mutual trust. In doing so, the BLA ensures that important values, such as equal treatment, transparency and compliance with regulations, are observed. Brussels Local Authorities works in the following fields:

- Control and supervision of local-authority finances, staff, public procurement, etc.;

- Assistance and funding for local authorities, public investments and special initiatives;
- Preparation of regulations governing local-authority organisation, organisation of municipal elections, and advice to local government.

406. As far as staff supervision is concerned, the BLA's Municipal Staff Directorate and Special Initiatives Directorate supervise staff decisions taken by the municipal council or municipal executive. The CPAS Supervision Directorate supervises decisions taken by the Social Services Centres (CPASs). These decisions must respect the provisions of the Social Charter and their own staff regulations (ordinance of 14 May 1998).

407. As for financial supervision, certain local-authority decisions with financial repercussions must be submitted to the BLA Finance Directorate for approval. This is the case for the municipalities' budgets and accounts, their multi-year management plans, off-budget expenditure and creation of municipally-owned enterprises. CPAS budgets and accounts must be submitted to the municipal council for approval, while the COCOM Joint Board (through the CPAS Supervision Directorate) rules on decisions taken by the CPASs.

408. As already mentioned, paragraph 2 of Article 8 has not been ratified by Belgium. The provisions of paragraphs 1 and 3 of Article 8 of the Charter seem to be observed in the Brussels-Capital Region.

4.3.7. Article - Financial resources

Article 9 - Financial resources of local authorities

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| 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. |

409. As mentioned above, Belgium has not ratified paragraphs 2, 6 and 7 of Article 9. At the time the non-ratification was a decision of the federal government. The rapporteurs note that today the institutional situation has changed in Belgium in favour of the jurisdiction granted to the regions as regards the organisation of municipalities. Therefore, these provisions not ratified by Belgium should be looked at in the light of this new situation.

410. The Brussels-Capital Region receives funding from the federal authority and has tax-raising and subsidiary powers providing it with the means to pursue its policies.

411. The Brussels Local Authorities (BLA) organisation funds local authorities and subsidises public investments. The BLA also supports special initiatives such as the prevention plans for Brussels and training for local-government officers. In addition, it is investing in the Brussels-Capital Region's equal opportunities policy and provides funding for faiths. There are also many partnership contracts between local and regional authorities.

412. The municipalities are funded largely by grants from the Brussels-Capital Region. Each year the regional budget provides a general grant for every municipality and CPAS. This sum depends on criteria such as the number of residents, school-age children, jobless and social-security claimants in the municipality as well as population density, area and revenue from personal income tax and the withholding tax on investment income. The general grant is made by the BLA Finance Directorate with no specific conditions as to use.

413. Mention should also be made of federal government support for fairer financing of the Brussels institutions: €461m a year from 2015. However, this support is only partial compensation for the extra costs incurred by the Brussels-Capital Region in its triple role as regional capital, national capital and international capital and for the economic loss hitherto covered by the taxpayers of Brussels, where the average per capita income is now the lowest in the country. In this respect, the so-called 'commuter grant' of €44m from 2015 will do very little to offset the fact that income is taxed according to place of residence rather than workplace. A fair division of personal income tax between place of work and place of residence should therefore be a major concern for Brussels-Capital Region policymakers in their contacts and negotiations with the federal state and the federated entities.

414. However, the rapporteurs found during their visit that the Brussels municipalities had suffered a substantial loss of financial resources when the Municipalities Fund was regionalised after the 1976 reform. According to the Association of the City and Municipalities of the Brussels-Capital Region (AVCB): 'Over the years the general grant has admittedly seen regular increases, but these have not been enough to offset the original substantial loss. In this respect, the Brussels municipalities come off badly in comparisons with the country's other major cities. More than ever, funding of municipalities must in future be based on a larger general grant.'

415. Another point of concern is the relation between municipalities' responsibilities and the resources allocated. Here one of the demands of the Brussels municipalities at the time of the May 2014 elections was for a balance between the tasks and resources allocated to each tier of authority. This implies the principle of budget neutrality for measures taken at the regional level, and at any other level, if these measures affect local authorities. It is thus necessary to assess the financial and administrative repercussions on local authorities of any proposed decisions. If there is a negative impact on local-government management and finances, the authority concerned must take the countervailing measures required. Compensation must also be provided for responsibilities transferred to the regions under the Sixth State Reform when, as an indirect result, some of these responsibilities have been added to the mass of municipal tasks. This principle of balance also entails considerations of fairness. Money flows to local authorities must be allocated fairly according to objectively assessed requirements. If solidarity mechanisms have been established, they must be transparent and justifiable.

416. In the financial field, the AVCB is arguing for introduction of a permanent system of advances for payment to the municipalities of the personal income tax surcharge in the first half of the year, namely 90% of anticipated revenue over the first six months, a period corresponding to the normal assessment period. In view of the fact that property tax is paid to the municipalities in the second half of the year, granting advances on personal income tax in the first half would make it possible to balance revenue over the year as a whole. Provision of advances would not be an additional burden on the federal budget but would, however, afford the municipalities an appreciable degree of financial security in the unsettled financial climate that has prevailed over the past few months and will probably continue for quite a few more. This system would offset the advantage to the Treasury from collecting the share of the municipal property-tax surcharge.

417. Generally speaking, the federal refinancing of the Brussels-Capital Region arising out of the sixth institutional reform should see part of the support grant return to the municipalities, since they carry out some of the missions to be funded by it.

418. In its dealings with the regional authority, the AVCB has stressed that, in order to maintain vital mechanisms for municipal self-government with reference to the European Charter of Local Self-Government, the general grant must retain its multi-purpose, unconditional nature and, in particular, not be cut in favour of grants for specific purposes. The AVCB is also asking for maintenance of regional aid to stabilise municipal accounts, namely €30m a year. While the Region should increase its aid to the municipalities on top of the general grant, the AVCB believes that stabilisation of municipal accounts must remain a key objective. In this respect, the AVCB further emphasises that prompt

payment of grants would help to ease municipal finances, especially for those municipalities in a particularly critical financial situation.

419. A number of recent studies and analyses show that the financial situation of Brussels municipalities remains worrying, despite the efforts of the Brussels-Capital Region to refinance the latter. Thus half the municipalities are following stabilisation plans. This means that no expenditure (even if planned and covered by allocations in the municipal budget approved by the Region) can be incurred without prior approval from a regional inspector. As a result, self-government in these municipalities has become extremely restricted.

420. The Brussels municipalities are suffering financial difficulties despite heavier local taxation than in Wallonia or Flanders and municipal spending that is in general proportionally lower than in the four major Belgian conurbations of Ghent, Antwerp, Liège and Charleroi. The residents of Brussels are on average the poorest citizens in the country, and they pay the highest local taxes. The steady impoverishment of the Brussels population over a number of years is weighing on the financial resources of the region and its municipalities. Brussels is becoming an increasingly wealthy Region with poor inhabitants. The 350,000 commuters who come to work every day in Brussels do not even pay part of their taxes there, since taxes in Belgium are collected solely on the basis of place of residence.

421. Moreover, the funding of pensions for regular staff of the Brussels municipalities (and their Flemish and Walloon counterparts) could create a problem in the long run. There is the only pensions scheme not to have state involvement in its funding, which depends entirely on local authorities. By 2016, for Belgium as a whole and on the basis of the current contributions scheme, local authorities in general will have to find an estimated €2.25bn extra to fund pensions if the situation does not change. For this reason, the AVCB and its two sister organisations are calling for introduction of a mixed pension (years worked as a contract employee would count towards a private pension and only the years worked as a regular employee would count towards a public pension) and incentives for staff to continue working until the age of 65.

422. At present, municipalities are prefinancing the federal state for quite a few months; the state collects their share of personal income tax (the surcharge) on their behalf, but they may receive it anything up to a year later. This is why the AVCB and its sister organisations, in keeping with a proposal from the High Council of Finance, have been calling for the federal state to establish a system for advancing payment to the municipalities of the surcharge that it collects for them. This would guarantee the municipalities genuine predictability and stability regarding their revenue from the personal income tax surcharge.

423. Paragraphs 1, 3 and 4 of Article 9 remain of concern for the Brussels-Capital Region. Representatives at both the regional and municipal levels believe that Belgium should ratify these paragraphs.

4.3.8. *Article 10 - Right to associate*

Article 10 - Local authorities' right to associate

- 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.

424. Approximately one Belgian municipality in ten is participating in a high-quality international programme for municipal co-operation. These municipalities have committed themselves to the campaign against poverty over a number of years, specifically through building the capacity of municipalities in the global South, since one element of the complex phenomenon that is poverty is inadequate access to public goods and services, particularly local services. Practical co-operation between municipalities in Belgium and in Africa and Latin America covers registries of births, deaths and marriages, water purification, waste management, locally generated economic development,

improved financial resources and financial resource management. This programme (which has had excellent results) and the resources allocated to it must be kept up and consolidated.

425. Article 10 of the Charter is observed.

4.3.9. *Article 1 - Legal protection of local self-government*

Article 11 - Legal protection of local self-government

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.

426. Legal protection of self-government in the Brussels-Capital Region is the same as for other entities arising out of the legal standards of the Belgian state and its institutions, including the Constitutional Court, the Council of State, the Court of Cassation and administrative courts.

427. Legal protection of self-government in the Brussels-Capital Region poses no problem in terms of Article 11.

5. Capital city status

428. Brussels has a special status in Belgium inasmuch as it is deemed to be a capital several times over; not only is it the capital city of the Belgian state, but it is also home to the Parliaments of the French Community, now renamed the Brussels-Wallonia Federation (with powers covering the French-speaking region and French-language matters in the Brussels region), and the Flemish Community (with powers covering the Dutch-speaking region and Dutch-language matters in the Brussels region). In addition, it is the capital of the Flemish Region, even though Brussels is not part of the Flemish Region and Flemish regional laws are not applicable on the territory of the Brussels-Capital Region.

429. The Region's legal status is clearly marked by its function as a capital city and its international role. Thus the Brussels-Capital Region is the only bilingual region in the country. Moreover, the standards adopted by the region's legislature are called ordinances (whereas the country's other regions pass decrees). This difference in name is meant to highlight the fact that the constitutionality of Brussels legislation can be reviewed in the ordinary courts. Lastly, because of the region's multiple national and international roles, the federal authority can suspend or rescind ordinances or decrees in the fields of planning, urban development, public works and transport if it considers that the Brussels Parliament or Government is harming the city's international role or its function as capital.

430. In the Belgian Constitution the city of Brussels is designated the capital of Belgium and the seat of the federal government (Article 194). It derives its organisational powers and financial standing from the Constitution and the Municipalities Act in the same way as all the other municipalities in the country, with no particular distinction.

431. Under the Special Financing Act establishing the financing system for federated entities, the City of Brussels receives an annual special grant (section 64). This grant is adjusted annually in line with the consumer price index.

432. With the current fiscal and economic crisis, especially given specific aspects of today's societies, the City of Brussels is having to face a number of challenges. The first is bound up with a population boom that has, amongst other things, seen the population become younger. Consequently, the City of Brussels must meet the challenge of extending and improving its infrastructure and service delivery, such as providing new care arrangements for young children, increasing school capacity and gearing policy to housing.

433. Concurrently with this population boom, the City of Brussels has to face the problem of an ageing population, resulting in the need to pursue specific social policy through the Brussels Social Services Centre (CPAS) in order to expand facilities and services for this population. This includes making more accommodation available in nursing homes and rest homes and increasing home-support services to ensure that elderly people can stay longer in their own homes.

434. In addition, the City of Brussels is affected by the increasing impoverishment of its population and a relatively high unemployment rate in the Brussels-Capital Region, particularly for the younger generation. This comes on top of federal measures to reduce the length of time during which the unemployed can claim benefits, with the result that part of this vulnerable population requires assistance from the Social Services Centre. This situation is already affecting municipal finances.

435. Taken together, these factors lead us to conclude that funding from outside public bodies is no longer adequate at a time when social and logistical pressures on local authorities are constantly growing.

436. As regards the extent of self-government enjoyed by the City of Brussels, especially where finances are concerned, it should be noted that the City of Brussels receives specific resources for particular projects or distinctive aspects of the city (urban policy, prevention and safety projects, holding of European summits, etc.). Nevertheless, it seems that the resources for financing these various projects are insufficient, entailing the need to look for other sources of funding.

437. Local taxation in Brussels, in terms of what is taxed, is comparable to that in the country's other cities. There are no taxes specific to Brussels.

438. Thanks to its status as 'European' capital, Brussels has a level of economic activity that is in aggregate higher than in other cities and, with the same level of local taxation, receives more financial resources from the latter.

439. Representatives of the City of Brussels told the rapporteurs that the City's population boom (over the past few years) had clearly helped to stimulate building and renew the housing stock, yielding an increase in revenue from the property tax surcharge and indirectly from local taxation.

440. However, the heavy concentration of regional, federal, European and international institutions on the territory of the City of Brussels has also had a somewhat negative effect on property tax, in the shape of 'mortmain', since the buildings occupied by these various institutions are not subject to this tax.

441. In addition to his statutory powers, the burgomaster of a city such as Brussels:

- heads a public body with a sizeable budget,
- has vital responsibilities in the fields of policing, security and maintenance of law and order for events such as demonstrations,
- heads an entity which is the capital of Belgium and Europe and which is home to most national institutions (federal, regional and Community parliaments and ministries) and to European and international institutions.

442. A burgomaster's salary is determined according to the salary scale for the municipal clerk. This scale depends on the number of residents in the municipality. In the past few years, the scale has been revised, leading to higher salaries in small municipalities and smaller increases in large cities.

Number of residents in municipality	Percentage of municipal clerk's salary
10,001 - 20,000	85
20,001 - 50,000	95
50,001 - 80,000	120

443. As for the members of the executive (new Municipalities Act, section 19), they receive salaries according to their office, and these salaries are also supposed to cover their attendance at meetings. Consequently, they do not receive an attendance allowance.

444. Under section 28.1 of the new Municipalities Act, the salary scale of the municipal clerk is set within the following limits:

- Municipalities with under 25,001 residents: €34,144.50 - €50,266.62,
- Municipalities with between 25,001 and 35,000 residents: €36,273.24 - €53,567.34,

- Municipalities with between 35,001 and 50,000 residents: €38,484.60 - €56,701.80,
- Municipalities with between 50,001 and 80,000 residents: €41,141.70 - €60,167.76,
- Municipalities with between 80,001 and 150,000 residents: €43,567.26 - €63,468.48,
- Municipalities with over 150,000 residents: €47,246.40 - €68,418.54.

445. The minimum and maximum amounts of the salary scale for municipal clerks are linked to a threshold index of 138.01.

446. An *échevin*'s salary is set as a percentage of the burgomaster's salary.

Number of residents in municipality	Percentage of burgomaster's salary
≤ 50,000	60
> 50,000	75

447. The precise amount of the holiday allowance and end-of-year bonus is based on that of federal officials.

448. As far as municipal councillors are concerned (new Municipalities Act, section 12), they do not receive a salary. They are paid an attendance allowance for meetings of the municipal council, committees and municipal subdivisions. A double attendance allowance is given to the leader of the municipal council or the leader's substitute, other than the burgomaster or the burgomaster's substitute, for every council meeting chaired. The amount of the attendance allowance is determined by the municipal council (municipal council decree of 17 June 2002 setting the amount of the attendance allowance paid to municipal councillors at €47.93). This amount ranges between a minimum of €37.18 and a maximum equivalent to the attendance allowance received by provincial councillors attending provincial council meetings, being raised or reduced according to the rules linking it to the price index. It must be paid to municipal councillors both for municipal council meetings and for meetings of the committees and subdivisions of which they are members. A municipal councillor receives this allowance for each individual meeting attended, even if they take place on the same day.

449. A municipal council cannot decide to abolish the attendance allowance for one or more of its meetings or for committee or subdivision meetings. However, a municipal councillor attending a municipal committee meeting without being a member does not receive an attendance allowance. Similarly, for extra-municipal advisory committees required by other statutory obligations, attendance allowances, if given, will depend solely on the body responsible for such a committee.

450. In Belgium an elected representative can, subject to certain limitations and conditions, hold multiple offices in different assemblies. However, the overall compensation of such representatives cannot exceed a certain ceiling.

451. As regards co-operation between the City of Brussels and the Brussels-Capital Region, the City's legal department is not aware of any statutory basis for general co-operation between City authorities and Region authorities. Such co-operation may nevertheless be formalised in co-operation agreements on specific projects (in the field of urban development, for example).

452. It should be mentioned that a major project for the Pentagon district covering the 2012-2018 period is currently in progress. Its main development aims for the capital are as follows:

- Improving quality of life;
- Encouraging residents and various other users to reclaim public space;
- Increasing the cultural, commercial, economic and tourist appeal of the city centre;
- Improving city-centre accessibility and mobility.

6. Specific situation of municipalities with special language arrangements

453. Apart from the 19 municipalities of the bilingual Brussels-Capital region, all municipalities must use the official language of the linguistic region in which the municipality is situated (French-, Dutch- or German-speaking) for their decisions and relations with the public. The introduction of 'administrative arrangements' is a consequence of the language laws governing use of languages in Belgium. Belgian

municipalities with special language arrangements are distinguished by the fact that their internal departments are monolingual, meaning that the authority works in only one language in-house, but they are bilingual for all external matters, meaning that the authority uses two languages in its relations with the public. Special language arrangements are therefore an exception to the recognised principle that relations between a region's inhabitants and its authority must be conducted in the language of that region. The specific scope of and approaches to these special language arrangements are not the same for all municipalities. There are thus six different sets of rules relating to the obligation to issue documents directly in the citizen's language or provide a copy, bilingual requirements for municipal staff, etc.

454. In municipalities with special arrangements for protection of their minorities, Use of Languages in Administration Act (18 July 1966) provides that 'each local authority [...] shall use only the language of its region in-house, in relations with authorities to which it reports', etc. However, it must employ the second language with those individuals who use it. Furthermore, public notices and statements must be issued in both languages. The language used for a series of documents, such as civil-status certificates, is subject to rules that can vary between municipalities. It may be the language of the region or the individual concerned may be allowed to choose. The law of 30 July 1963 on language arrangements in education further provides that nursery and primary schools in the minority language must be recognised. Funding of French-speaking schools in the Dutch-speaking region was transferred from the federal state to the Flemish Community when education became the responsibility of the Communities in 1988. Flanders receives a federal grant to fund French-speaking education.

455. Municipalities with special language arrangements can be grouped into four categories:

- 12 Dutch-speaking municipalities with special arrangements for French speakers, in the Brussels suburbs (Drogenbos, Kraainem, Linkebeek, Sint-Genesius-Rode, Wemmel and Wezembeek-Oppeem) and on the language boundary (Bever, Spiere-Helkijn, Voeren, Herstappe, Mesen and Ronse),
- 4 French-speaking municipalities with special arrangements for Dutch speakers, on the language boundary (Comines-Warneton, Enghien, Flobecq and Mouscron),
- 2 French-speaking municipalities with special arrangements for German speakers (Malmedy and Waimes),
- 9 German-speaking municipalities with special arrangements for French speakers (Amel, Büllingen, Burg-Reuland, Butgenbach, Eupen, Kelmis, Lontzen, Raeren and Sankt Vith).

456. It should be noted that there are no municipalities with trilingual arrangements, in which three languages of administration are used.

457. Six municipalities with special arrangements in the Brussels suburbs in the province of Flemish Brabant have between 50% and 80% of French speakers and, like other Dutch-speaking municipalities with special arrangements, are governed by the Peeters circular of 16 December 1997. This circular orders local authorities to ensure that:

- all official documents are sent in Dutch to all members of the public, including French speakers, living in municipalities with special arrangements. If a resident in one of these municipalities (but not in any others) wishes to receive these documents in French, he or she must make a request in each case. On the basis of this circular, Flemish regional authorities sending documents in French directly to French speakers and in Dutch to Dutch speakers are considered to be at fault, even if these local authorities believe that they are endeavouring to enforce the law laying down the principle that 'in their relations with an individual they shall employ the language used by that individual if it is Dutch or French';
- municipal departments use only Dutch in-house;
- the language used in the municipal council is Dutch. The burgomaster and all other members of an executive in a municipality in the Flemish Region are therefore prohibited from introducing or commenting on an item on a municipal council meeting agenda in any language

other than Dutch and from replying in such a language to questions or contributions from municipal councillors.

458. Numerous applications have been made by French speakers to have this circular set aside, but their appeals have failed to result in its being rescinded, either by the Court of Arbitration or by the Flemish Chamber of the Council of State. The circular also constituted a primary legal basis for the Flemish authorities' case for not appointing three burgomasters in the municipalities of Linkebeek, Kraainem and Wezembeek-Oppem. The situation was explained to members of a Congress delegation on a visit in 2008.

459. In 2008 the Congress ruled that this situation was incompatible with Article 8, paragraph 3, of the Charter and recommended that the Flemish Minister of the Interior appoint the burgomasters without further delay. The Congress further recommended use of both French and Dutch at municipal council meetings and adoption of the system of election of burgomasters by the municipal council or by the citizens. In December 2013 the rapporteurs learnt that the Flemish Minister of the Interior had appointed Frédéric Petit (MR) as burgomaster of Wezembeek-Oppem. This municipality with special language arrangements in the Brussels suburbs, with a majority of French speakers, now has a burgomaster appointed by the Flemish Government for the first time since 2007.

460. The rapporteurs refer (see above para. 181) to the Council of State decision of 20 June 2014 revoking the refusal of the Flemish government to nominate a burgomaster in Crainhem. Thus, the elected representative from the Brussels periphery concerned is now appointed to this post. The high administrative court has, however, dismissed the appeal filed by another (unnamed) burgomaster in the municipality of Linkebeek. As a result, the municipal council has one *échevin* less, compromising (in the rapporteurs' opinion) the effective management of the municipality.

461. The rapporteurs refer to paragraph 181 which details new developments that could lead to a situation with regard to this issue.

462. It is important here to stress the specific nature and dual role of burgomasters in the political structure of the Belgian system as both burgomasters of the relevant municipality and representative of the relevant region and the state as a whole.

463. In this respect, Wallonia and Flanders have chosen different options. Wallonia has chosen to endorse election results automatically and appoint the burgomasters elected. Conversely, Flanders has opted to remain loyal to the former royal principle of appointment, making appointment of burgomasters conditional on an admissibility assessment and scrutiny of the proposed candidates regarding their capacity to perform properly the range of tasks associated with the post of burgomaster.

464. While, from a Flemish point of view, the election of burgomasters is indicative of their democratic connection with the citizens who elect them and to whom they are accountable, their appointment by the region reflects their ties to the higher tiers of the political structure and the political trust required by all stakeholders having to work together. This explains the views expressed by a variety of burgomasters and other authorities met during monitoring visits, who found that rather than diminishing their democratic legitimacy, this regional involvement was a positive factor establishing burgomasters as partners of the relevant higher-level authorities.

7. Conclusions

465. As regards its domestic political situation, Belgium is currently undergoing numerous changes arising mainly from the Sixth State Reform agreed in October 2011. This reform is principally the result of the political and institutional crisis that afflicted the country in 2010 and left it without a government for 541 days.

466. The rapporteurs' conclusions follow the same pattern as the rest of the report and deal with each region in turn.

467. The rapporteurs refer to the relevant parts of their report for more detailed arguments supporting their conclusions.

Conclusions of the article-by-article analysis of the situation of local democracy in Flanders

468. In the light of the European Charter of Local Self-Government, the constitutional and legal foundation of local self-government (Article 2) is fully complied with in Flanders. The rapporteurs established in this connection that the Flemish legislature was constantly concerned to take account of the fundamental principles of local self-government.

469. With regard to Article 3.1, the rapporteurs conclude that this provision is generally complied with in Flanders and accordingly believe that, given the specific nature of the principle of local self-government in Belgium and the principle of supervision, the Flemish authorities should grant the municipalities more autonomy and more powers and responsibilities and strengthen their ability to manage their affairs.

470. The Belgian authorities have not ratified Article 3.2. Unlike Wallonia, the German-speaking Community and the Brussels-Capital Region, which are of the opinion that Belgium should ratify this provision, Flanders considers that paragraph 2 of Article 3 should not be the subject of ratification. As it has not yet been ratified, this provision will not be the subject of a recommendation regarding its substance.

471. Article 4 is complied with in Flanders and the government is urged to continue the proposed reforms in order to clarify the provinces' powers and responsibilities and strengthen local and provincial democracy. In the context of the Sixth State Reform, the rapporteurs believe there is also a need to continue to improve the dialogue with the Communities and Regions on matters that directly concern the municipalities.

472. The protection of local authority boundaries in Flanders is assured (Article 5).

473. As far as administrative structures are concerned (Article 6.2), the application of this provision seems to present a problem. The Flemish municipalities have regulatory powers for the internal organisation of services, but the local authorities are encountering serious financial difficulties and calling for measures to deal with them, especially as far as the costs of their staff pensions are concerned. The Federal Government is therefore urged to take measures and provide solutions likely to have a significant impact on the local authorities' pension costs and to implement the most appropriate of these solutions. The rapporteurs believe it will not be enough to increase receipts and that it will also be necessary to reduce funding expenditure.

474. Conditions under which responsibilities at the local level are exercised (Article 7) are implemented and guaranteed in Flanders.

475. The administrative supervision of local authorities' activities (Article 8) gives some cause for concern. Difficulties arise in the case of paragraphs 1 and 3 in particular with respect to actions to set aside decisions taken, which lead to delays in processing documents and, consequently, delays in carrying out investments. During the consultation with the authorities, the rapporteurs were informed of the Flemish Government's intention to accelerate and simplify the procedure for supervision.

476. The non-ratification of paragraph 8.2, which concerns supervision with regard to legality and expediency, can be explained by the principle of twofold supervision, which involves both types of supervision. It is not easy to reform this principle in Belgium. In practice, this provision cannot be ratified as long as supervision with regard to expediency continues to be enshrined in the Belgian Constitution.

477. Another difficulty relating to the application of Article 8.3 of the Charter was mentioned during the 2008 visit and led to Recommendation 258 (2008). It concerned the Flemish Minister of the Interior's refusal to appoint three burgomasters. The Congress held in 2008 that this situation constituted a breach of Article 8.3 and recommended that the Minister appoint the burgomasters without delay. It also recommended the use of the two languages, French and Dutch, at local council meetings and the adoption of the direct election of burgomasters by the municipal council or the citizens. In December 2013, the rapporteurs learned that the Flemish Minister of the Interior had appointed the burgomaster of Wezembeek-Oppeem. However, they wish to emphasise the importance of developments which could eventually lead to the settlement of the issue of non-appointment of burgomasters. Indeed, a special law was adopted on 19 July 2012, which allows the Council of State to decide on the non-appointment in reply to a direct appeal by the non-appointed burgomaster. This law has been

validated by two judgments of the Constitutional Court on 3 April 2014. According to this new procedure, the General Assembly of the Council of State ruled on 20 June 2014 on the Flemish Minister of interior's refusal to appoint the burgomaster by canceling this decision to refuse the appointment of the burgomaster of Crainhem. The elected representative from the Brussels periphery is thereby definitely appointed to this post. The high administrative court has, however, dismissed the appeal filed by another burgomaster, non-appointed in the town of Linkebeek.

478. With regard to financial resources (Article 9), the local authorities have to contend with the consequences of the crisis and are encountering difficulties common to local elected representatives in Europe at this time. Articles 9.3 and 9.4 require particular attention on the part of the regional and community authorities. By adopting a strict interpretation of the obligations imposed by paragraphs 2, 6 and 7, Flanders, alone, continues to pose obstacles to the complete ratification of this article. During the consultation process the Flemish Government informed the rapporteurs that some initial steps have been taken to examine the non-ratified Charter provisions with a view to their ratification in due course.

479. The right to associate (Article 10) is guaranteed both in law and in practice for the Flemish local authorities, which can co-operate with one another, join associations for the protection and promotion of their interests and participate in transfrontier co-operation.

480. Finally, with regard to the legal protection of local self-government (Article 11), the Flemish local authorities can lodge an appeal if they consider themselves victims of an illegal decision or believe their interests have been harmed by a decision. This ensures compliance with the provision.

Conclusion of the article-by-article analysis of the situation of local democracy in the Walloon Region and the German-speaking Community

481. In the light of the Charter of Local Self-Government, the constitutional and legal foundation for local self-government (Article 2) is fully respected in the Walloon Region and the German-speaking Community.

482. The Belgian authorities have not ratified Article 3.2. In this connection, the Walloon provinces have expressed their concern regarding the plan to transform the provinces into "territorial communities" run by indirectly elected representatives. In their opinion, the implementation of such a plan questions the concepts of local self-government (Article 3) and democratic legitimacy in Belgium.

483. The scope of local self-government (Article 4) is generally respected, even though the distribution of powers and responsibilities between municipalities and provinces is not clearly spelled out in the legal instruments and the subsidiarity principle and the requirement to consult the local authorities are not always adhered to.

484. The protection of local authority boundaries in Wallonia and the German-speaking Community (Article 5) is assured and the local authorities can organise consultative referendums concerning possible boundary changes.

485. As far as the administrative structures (Article 6) are concerned, municipalities in Wallonia and the German-speaking Community have regulatory powers for the internal organisation of services, but the local authorities are encountering serious financial difficulties and calling for measures to alleviate them, especially with regard to the costs of their staff pensions. The application of Article 6.2 thus seems to present a problem.

486. The conditions under which responsibilities at the local level are exercised (Article 7) are guaranteed in the Walloon Region and the German-speaking Community and do not call for any specific remarks in this connection.

487. The administrative supervision of local authorities' activities (Article 8) generally complies with the provisions of Article 8. The non-ratification of Article 8.2 on the supervision of legality is based on the principle of twofold supervision, which encompasses both supervision of legality and supervision of expediency, which is difficult (but not impossible) to reform in Belgium, even though the local authorities in Wallonia and the German-speaking Community consider that only supervision of legality is justified.

488. As regards financial resources (Article 9), it is obvious that, like everywhere in Europe, local authorities are having to face the consequences of the crisis and are encountering problems. Thus there are concerns regarding compliance with paragraphs 1, 3 and 4 of Article 9 owing to consolidation measures. Moreover, local authorities in the Walloon Region and the German-speaking Community expressed the desire to see paragraphs 2, 6 and 7 of Article 9 ratified by the federal state.

489. The right to associate (Article 10) is secured both de jure and de facto for local authorities in Wallonia and the German-speaking Community, which are able to co-operate with each other, belong to associations for the protection and promotion of their interests and take part in transfrontier co-operation.

490. Lastly, with regard to legal protection of self-government (Article 11), local authorities in Wallonia and the German-speaking Community are able to enter an appeal if they believe themselves to be the victim of an unlawful decision or one which affects their interests, and this ensures compliance with Article 11.

Conclusion of the article-by-article analysis of the situation of local democracy in the Brussels-Capital Region in the light of the European Charter of Local Self-Government

491. As regards the legal and constitutional foundation for local self-government (Article 2), the Brussels-Capital Region complies with the relevant provisions and regularly makes reference to the Charter in its ordinances.

492. Article 3 and the concept of local self-government merit closer consideration inasmuch as the Brussels municipalities have a number of mandatory missions, as subordinate local authorities, that may affect compliance with this article. Furthermore, Belgium has not ratified paragraph 2 of Article 3, although the Brussels local authorities have come out in favour of such ratification.

493. The rapporteurs' assessment of the scope of local self-government (Article 4) is less straightforward, especially regarding division of responsibilities, which the rapporteurs believe should be clarified. It would see advisable to strengthen the cooperation between different levels of authority through multi-level management. In addition, it seems that the Brussels municipalities are having to bear substantial financial costs that ought to be borne by the federal state and they do not always have resources concomitant with their competences.

494. Consultation of local authorities is also an important aspect that must be improved in practice according to the requirements laid down in paragraph 6 of Article 4.

495. As for protection of territorial boundaries (Article 5), Brussels local authorities are ruled by the Belgian Constitution, which specifies that boundaries can be changed only by virtue of a law, apart from the changes to municipal boundaries cited in section 7 of the Use of Languages in Administration Act, for which a decree is necessary if municipalities merge. While the multiple layers of Brussels institutions are sometimes criticised in terms of theory, the content of Article 5 is respected in terms of procedure.

496. Administrative structures (Article 6) are generally appropriate to local-government missions, and legislative arrangements guarantee municipalities a measure of self-government. However, the AVCB is asking the federal authority to review the burden of staff pensions, which has a significant impact on local-government finances.

497. The conditions under which responsibilities at local level are exercised (Article 7) are respected, including appropriate financial compensation for expenses incurred in the exercise of office (paragraph 2) and incompatibility of functions and activities with the holding of local elective office (paragraph 3).

498. As regards administrative supervision of local authorities' activities (Article 8), this seems to be exercised with due regard for the principle of proportionality (paragraph 3). Belgium has not ratified the second paragraph of Article 8 because of the principle of twofold supervision, which includes a review of expediency rooted in Belgian tradition.

499. The financial resources of Brussels municipalities (Article 9) are of some concern, and local authorities expressed fears to the rapporteurs because half the municipalities were following

stabilisation plans while their populations were growing poorer. The Brussels municipalities have, moreover, asked the federal state to establish a system for advancing payment of surcharges. Thus application of paragraphs 1, 3 and 4 of Article 9 remain of concern, and local-government representatives believe that Belgium should ratify paragraphs 2, 6 and 7 of Article 9 of the Charter.

500. On the other hand, Article 10 and local authorities' right to associate is fully respected, with an edifying figure as evidence: one Belgian municipality in ten is participating in an international programme for municipal co-operation.

501. Lastly, legal protection of local self-government (Article 11) is safeguarded by the Constitutional Court²⁵ and the Council of State as well as by the Court of Cassation and Belgium's administrative courts.

25. See in this context decisions No.173/2004, 95/2005, 7/2009, 89/2010, 109/2011, 47/2012.

Appendix - Programme of the Congress visits in Belgium (from 8 to 9 October 2013 and from 4 to 6 February 2014)

**CONGRESS MONITORING VISIT TO BELGIUM
Brussels and Tervuren (8-9 October 2013)**

Programme

Congress delegation:

Rapporteurs:

Mr Henrik HAMMAR	Rapporteur on local democracy Chamber of Local Authorities, EPP/CCE ²⁶ Member of the Monitoring Committee of the Congress (Sweden)
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Mr Urs WÜTHRICH-PELLOLI	Rapporteur on regional democracy Chamber of Regions, SOC ¹ Member of the Monitoring Committee of the Congress (Switzerland)
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Congress Secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee of the Congress
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Ms Olesea SAVCA	Co-secretary to the Monitoring Committee of the Congress
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Expert:

Mr Carlos Eduardo PACHECO AMARAL	Consultant, Member of the Group of Independent Experts on the European Charter of Local Self- Government of the Congress
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²⁶. EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group of the Congress

**Tuesday, 8 October 2013
Brussels and Tervuren**

Experts:

- Prof. Dr. Frank DELMARTINO, Professor of European Institutions and Policies at K.U.Leuven
- Prof. Dr. Christian BEHRENDT, Professor at the Faculty of Law and Political Sciences at Liege University

Belgian Delegation to the Congress and Local and Provincial Associations:Belgian Delegation to the Congress:

- Mr Johan SAUWENS, Head of the delegation to the Congress, Member of the Flemish Parliament, Communal Counselor of Bilzen
- Mr Marc COOLS, President of the Association of the City and the Municipalities of the Brussels-Capital Region (AVCB), *Échevin* of Uccle
- Mr Karl-Heinz LAMBERTZ, Minister-President of the Government of the German-speaking Community of Belgium
represented by Mr Robert HAGEN
- Mr Luc MARTENS, President of the Union of Belgian Cities and Municipalities (UVCB) and President of the Association of Flemish Cities and Municipalities (VVSG), Burgomaster of Roeselaere
- Ms Sabine VAN DOOREN, *Échevin* of Kapellen
- Mr Jean-Paul BASTIN, Burgomaster of Malmédy

Association of the City and the Municipalities of the Brussels-Capital Region (AVCB) and members of the association:

- Mr Marc COOLS, President of the Association of the City and the Municipalities of the Brussels-Capital Region (AVCB), *Échevin* of Uccle

Union of Belgian Cities and Municipalities (UVCB) and Association of Flemish Cities and Municipalities (VVSG) and members of the association:

- Mr Luc MARTENS, President of the Union of Belgian Cities and Municipalities (UVCB), President of the Association of Flemish Cities and Municipalities (VVSG) and Burgomaster of Roeselare

Association of Flemish Provinces (VVP) and members of the association:

- Mr Raymond VAN LOOCK, Director of the Association of Flemish Provinces (VVP)
- Mr Hans BONNARENS, Advisor on European Affairs

Union of Cities and Municipalities of Wallonia (UVCW) and members of the association:

- Mr Jacques GOBERT, President of the Union of Cities and Municipalities of Wallonia and of Louvière
- Ms Louise-Marie BATAILLE, Secretary-General of the Union of Cities and Municipalities of Wallonia

Association of Walloon Provinces (APW) and members of the association:

- Mr Paul-Emile MOTTARD, President of the Association of Walloon Provinces
represented by Mr Bruno DE VIRON
- Mr Roger JEUNEHOMME, Expert of the Association of Walloon Provinces

Municipality of Tervuren:

- Mr Jan SPOOREN, Burgomaster

Wednesday, 9 October 2013
Brussels

Municipality of Brussels:

- Mr Freddy THIELEMANS, Burgomaster
- Ms Nel VANDEVANNET, Director of the Cabinet of
- Mr Luc SYMOENS, Communal Secretary
- Ms Mia VERMEIR, Town Receiver

Brussels Metropolitan:

- Mr Emmanuel VAN INNIS, President Brussels Metropolitan
- Mr Alain DENEFF, Intendant Brussels Metropolitan

Municipalities of Linkebeek, Kraainem and Wezembeek-Oppem:

- Mr Damien THIERY, acting Burgomaster of Linkebeek
- Ms Veronique CAPRASSE, acting Burgomaster of Kraainem
- Mr Francois VAN HOUBROUCK, acting Burgomaster of Wezembeek-Oppem

Municipality of Flobecq:

- Mr Philippe METTENS, Burgomaster

**CONGRESS MONITORING VISIT TO BELGIUM
Brussels (4-6 February 2014)**

Programme

Congress delegation:

Rapporteurs:

Mr Henrik HAMMAR

Rapporteur on local democracy
Chamber of Local Authorities, EPP/CCE²⁷
Member of the Monitoring Committee of the
Congress (Sweden)

Mr Urs WÜTHRICH-PELLOLI

Rapporteur on regional democracy
Chamber of Regions, SOC¹
Member of the Monitoring Committee of the
Congress (Switzerland)

Congress Secretariat:

Ms Stéphanie POIREL

Secretary to the Monitoring Committee of the
Congress

Ms Olesea SAVCA

Co-secretary to the Monitoring Committee of the
Congress

Expert:

Mr Carlos Eduardo PACHECO AMARAL

Consultant, Member of the Group of Independent
Experts on the European Charter of Local
Self-Government of the Congress

²⁷. EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group of the Congress

Tuesday, 4 February 2014
Brussels

Government of Flanders:

- Mr Kris PEETERS, Minister-President, Minister for Economy, Foreign Policy, Agriculture and Rural Policy
- Mr Geert BOURGEOIS, Vice-Minister-President, Minister for Public Governance, Local and Provincial Government, Civic Integration, Tourism and the Vlaamse Rand

Parliament of Flanders:

- Mr Jan PEUMANS, Speaker
- Mr Marnic DE MEULEMEESTER, Chairman of the Committee for Public Governance, Local and Provincial Government, Law Evaluation, Civic Integration and Tourism
- Mr Piet DE BRUYN, Chairman of the Committee for Brussels and Periphery
- Mr Gerit VERMEYLEN, Director, Directorate Legislation of the Flemish Parliament
- Mr Willy DIRCKX, Clerk of the Committee for Public Governance, Local and Provincial Government, Law Evaluation, Civic Integration and Tourism
- Mr Henk CUYPERS, Director of the cabinet of the speaker of the Flemish Parliament
- Mr Dries BERGEN, Protocol

Parliament of Brussels-Capital Region:

- Ms Françoise DUPUIS, Speaker

Parliament of the French Community / Walloon - Brussels Federation / Walloon Parliament:

- Mr Jean-Charles LUPERTO, President of the Parliament of the French Community, President of the Parliament of Walloon-Brussels Federation
Represented by Mr Michel LEBRUN, member of the bureau of the Parliament
- Mr Patrick DUPRIEZ, President of the Walloon Parliament
Represented by Ms PARY-MILLE, Vice-President of the Commission on Internal affairs and Tourism of the Walloon Parliament

Wednesday, 5 February 2014
Brussels

Ministry of Finance:

- Mr Koen GEENS, Minister of Finance and Chairman of the High Council of Finance
- Mr Chris DELAERE, Advisor at the private office of the Minister of Finance
- Mr Stefan VAN PARYS, Advisor at the private office of the Minister of Finance
- Ms Florence SMETS, Advisor at the private office of the Minister of Finance
- Mr Bernard DU FOUR, Advisor at the private office of the Minister of Finance
- Ms Carine SPINNOY, Advisor-general of the Staff of Policy Expertise and Support service and specialist in the financial regulations concerning the Regions and communities

Government of the French Community / Wallonia:

- Mr Rudy DEMOTTE, Minister-President of the French Community, Minister-President of Wallonia and the Walloon-Brussels Federation
- Mr Paul FURLAN, Minister for local government, city policy and tourism

Ombudsmen:

- Mr Philippe NICODEM, Director of the Federal Ombudsman office
- Mr Donald CARDON, Auditor-coordinator for the Federal Ombudsman
- Mr Bart WEEKERS, Dutch Ombudsman
- Mr Marc BERTRAND, Ombudsman of Wallonia and of the Walloon-Brussels Federation
- Ms Karla BLOMME, Ombudswoman of Antwerpen
- Ms Rita PASSEMIERS, Ombudswoman of Gent
- Ms Aurore PONCIN, Ombudswoman of Ixelles - Elsene

Thursday, 6 February 2014
Brussels

Liaison Office of the Council of Europe with the European Union:

- Mr Torbjorn FROYSNES, Ambassador and Head of the liaison Office

Council of State:

- Mr Roger STEVENS, President
- Mr Michel LEROY, President of a Chamber
- Mr Geert DEBERSAQUES, Councillor of State
- Mr Marc LEFEVER, Deputy Auditor General
- Ms Iris VERHEVEN, Auditor
- Mr Marc JOASSART, Auditor

German-speaking Community:

- Mr Karl-Heinz LAMBERTZ, Minister-President, Minister for local authorities
- Mr Alexander MIESEN, Speaker of the Parliament

Brussels-Capital Region:

- Mr Rudi VERVOORT, Minister-President and President of the United College of the Common Community Commission of Brussels-Capital
Represented by Mr Baptiste DELHAUTEUR, Deputy Head of the Private Office
- Mr Xavier SIMON, Advisor

Constitutional Court of Belgium:

- Mr André ALEN, President for the Dutch Language Group
- Mr Jean SPREUTELS, President for the French Language Group
- Mr Koen MUYLLE, Legal Secretary
- Mr Etienne PEREMANS, Legal Secretary