

Local Self-Government in Belgium

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Abstract This chapter discusses local self-government in Belgium. After situating the two tier local government system in the historical development of the state, it subsequently addresses the legal foundation and the scope of local self-government. Then, the protection of local authority boundaries, the administrative structures and resources for their tasks, the conditions under which responsibilities at the local level are exercised and the administrative supervision of their activities enter the fray. The chapter continues with outlining the financial resources and transfer system and the right to associate for local authorities. It concludes by delineating the future challenges for the implementation of the European Charter of Local Self-Government in Belgium.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Belgium

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1 Introduction and history

Belgium is often situated within the Southern, Franco or Napoleonic state tradition of intergovernmental relations. It has a two tier local government system comprised of provinces (N = 10) and municipalities (N = 581). For this chapter we will focus on the municipal tier.

With regard to the status of Belgian local self-government, a distinction should be made between the era before and after 2002. From that year onwards and as a result of the ongoing federalization process of the country, the constitutive framework on local self-government became a competence of the regions. This means that the Flemish Region, the Walloon Region and the Brussels-Capital Region (to a lesser extent given its specific constitutional status) can set and alter the basic laws regulating the political and administrative organization of their municipalities (respectively N = 300, 262 and 19). Since then, the composition, organization, competences and functioning of local entities can differ between regions and subsequent legal frameworks have been established¹. The first two regions have indeed embarked upon (continuing debates on) local government reform of which some translate into differences in terms of local self-government. Brussels has largely kept the former Belgian framework for its local government. Since then, 'central' government means in fact the combination of its regional and federal component.

Three qualifications are needed however. First, the former Belgian Local Government Act (established in 1836, updated and consolidated in 1988) has served as a starting and reversion point for all regions implying that many similarities remain between them. Second, even before the regionalization of the constitutive framework steps had been taken to devolve aspects of local government regulation to Flanders, Wallonia and Brussels such as the functions concerning the supervision of local government (1980), the municipal fund (1988) and intermunicipal cooperation (1993). This implies that even before 2002, the regions had the possibility to reform these aspects. Third, some aspects of local government regulation have remained in the orbit of the federal government (such as the framework on local police, firefighting or the public social welfare center).

Given this (qualified) regionalization and the critical juncture it implies, we will compile this country report by starting from the conjoint Belgian patterns, making relevant differences between regions and/or throughout time explicit in discussing each dimension of the chapter.

The discussion of the different dimensions of the European Charter of Local Self-Government and associated interpretations are mainly based on the legal framework, a

¹ The legal frameworks hence referred to are: Nieuwe Gemeentewet (Belgium, 1988-2002); Gemeentedecreet (Flemish Region, since 2006) and Gemeentekiesdecreet (Flemish Region, since 2006), Code de la Démocratie Locale et de la Décentralisation (Walloon Region, since 2006). In Brussels (since 2003) some ordinances have modified aspects of the pre-2002 framework without replacing it with a consolidated regional counterpart.

secondary analysis of existing data and/or the literature (see references). For the dimension 'financial resources of local authorities and financial transfer system' additional primary data were put at our disposal by Belfius bank².

2 Constitution and legal foundation for local self-government

In Belgium, the right to local self-government is explicitly included in and protected by the constitution (art. 41 and 162). Belgian local government has an open set of tasks (i.e. place-bound residual competencies). Municipal councils have the general competence to autonomously determine issues of local interest. This provision should be read as a negative one however, implying that it upholds as long as no other level of government has assumed legal responsibility for the area under question (mainly through sectorial legislation, regulation or other authoritative policy-instruments). Also, even with regard to local self-government central (i.e. regional or federal) supervision applies. In practice, the scope of local tasks is thus co-determined by central government³.

The regions cannot alter this institutional safeguard (but have indeed impacted upon the actual substance of autonomy) and it has thus remained a constant throughout time (De Rynck & Wayenberg, 2010; De Becker, 2013).

3 Scope of local self-government

Regarding the scope of local self-government in, our evaluation should be seen in view of the previous dimension and against the backdrop of multilevel governance and the subsequent policy entanglement that characterizes Belgium. There is an evident (dynamic) equilibrium at the local level between self-government (full autonomy), co-governance (partial autonomy) and deconcentrated central government (no autonomy in merely executing assigned administrative tasks)⁴.

As a result of their general competence, municipalities have probed into many issues, fields and domains of public policy with a local character and interest. However, central government has equally deployed activities that often have a place-bound component (and where municipalities will subsequently exercise tasks that have been assigned to them by law) or aim to coordinate or standardize formerly local choices. In practice, this means that they co-determine the sphere of local action and municipalities often act as agents of the center with differing degrees of discretion. It also implies that with regard

² We are very grateful to Mrs. Anne-Leen Erauw (Senior Analyst Public Finance Research Belfius) in this respect.

³ Legal debate exists about whether there is a core of local autonomy central government cannot impinge upon. The making of the local budget (including the right for local taxation), the appointment of local officials, the management of local properties and partaking in legal proceedings are often considered as key-elements. However, it is often argued that the precise delineation of local autonomy is '*one of the mysteries of Belgian public law*' and no enumeration of local competencies exists up to today (De Becker, 2013).

⁴ The latter would include e.g. responsibility for public law and order, the management of civil administrative functions and the maintenance of population registers.

to most issues, municipalities usually have some but seldom all of the responsibilities (Plees, 2006; De Ceuninck, Steyvers, Valcke & Van Bever, 2010).

Therefore, our evaluation of the various functions mentioned represents a picture of partial responsibility by default. This overall assessment needs to be qualified according to the different policy domains under consideration (Wayenberg, De Rynck, Steyvers & Pilet, 2011). With regard to (primary) education, for instance, local government is indeed fully responsible for the construction/maintenance of school buildings and the employment/payment of teachers from the municipal sector. In addition, linguistic communities (one of the regional levels in Belgium) and third sector organizations (such as the Catholic Church) are also very active in primary education separate from the municipal sector. Hence, responsibility is shared between the so-called official (established by the public sector) and free (established by the non-profit sector) education⁵.

Belgian municipalities assume functions with regard to economic (and other) help to destitute people. This is mainly concerned with the provision of means-tested poverty relief support and associated services where the municipal sector takes the bulk of responsibility. The way in which this is organized represents a specificity for Belgium. For each municipality in the country there namely is a so-called *Public Center for Social Wellbeing (PCSW)*. This is a separately appointed public body with a legal entity responsible for providing constituents in need with assistance in services or support and managing specific caring establishments⁶. The regionalization of local government has affected this organizational form however as Flemish government imposed the integration of the PCSW into the municipality from 2019 onwards. As a result, municipalities became largely responsible for social policy. Municipalities have less responsibility with regard to social security/protection (e.g. none with regard to financial transfers such as pensions or child benefits) which is predominantly organized at the regional and/or the federal level (e.g. deconcentrated through field offices). They are however active in local social policy predominantly rendering them an enabling authority to gather relevant stakeholders and to try to develop shared objectives and frames of reference.

Municipal responsibilities for primary health services follow the sectorial logic of primary education and organizational logic of social assistance. Historically, many municipalities through their PCSWs disposed of their own clinics and/or health center with an associated staff. The municipal health sector was complemented (and often organizationally predominated) by similar initiatives from third sector organization

⁵ In many municipalities both primary education from the official as well as the free net are present. For historical reasons, Belgium highly values parents' free choice of schools in philosophical terms. Evidently, also the free net is highly regulated and subsidized by the state with an eye on education policy standards.

⁶ The PCSW has a council and an executive. It is not directly elected but installed after the first meeting of the municipal council. Its structure and functioning are highly similar to the multipurpose municipal government with a specific-purpose focus on designated aspects of social policy (including poverty relief). In Flanders and since the 2019 reform, the council of the PCSW and that of the municipality coincide.

(especially the Catholic Church) equally establishing facilities and employing doctors⁷. Due to scale-enlargement in the health sector (partly market-driven, partly government-imposed) municipalities lost ground in the health sector. If nowadays they are still running health facilities, these are mainly of the policlinic or day-clinic type whereas more specialized services are rendered in urban localities only (providing for the wider regional area in a more or less hierarchical regulatory arrangement).

For land use municipalities (and particularly the executive branch) are indeed largely responsible for administering building permits and zoning. It should be mentioned however that this domain is heavily regulated and supervised by central (i.e. regional) government⁸. Contrary to land use, municipalities do not take responsibility for the provision of public transport services.

Local government is only partly responsible for housing and town development. Particularly with regard to housing, the municipal sector in the stricter sense only plays a supplementary role next to social housing corporations of which some are inter-municipal however. Overall, the share of public housing is relatively limited in comparison to that held in private hands. Municipalities (particularly the mayor) have a few responsibilities in terms of public order related to housing (assessing livability, taxing vacancy, etc.). With the exception of the larger cities (in which urban development is a more substantial portfolio), municipal activities in terms of development mainly coincide with zoning on the one hand and public infrastructure on the other hand.

Local government is partly responsible for traffic and public order policing. A reform in 1998 integrated the formerly separated municipal police with the local brigades of the national gendarmerie. This so-called unified local police works under a centrally defined uniform framework and is complementary to its federal counterpart. Some argue this is a relative loss of local responsibility and discretion enhanced by the scale-enlargement in police zones (mostly comprised of more than one municipality) that followed suit (De

⁷ Municipalities are neither directly responsible for doctors' payment even if they work in a PCSW-clinic nor for additional medical costs. Doctors are organized in corporate associations agreeing on honorary fees for specific medical actions. Clinics/health centers will also have publicly regulated scales for particular additional medical services/provisions. The total of all medical costs is largely covered by an obliged public insurance against illness. Health insurance funds with a semi-public status administer policy in individual cases (e.g. it is obliged to be a member of one of these and they will pay back most of the remaining medical costs the patient still has to cover after the largest part already being assumed by the social security mechanism).

⁸ For example: municipalities have full responsibility for issuing permits only if they have a so-called emancipated status. This is rendered to them if they meet a number of requirements (such as disposing of an approved municipal spatial structure plan, a municipal functionary in charge of the built environment and acknowledged spatial registries). Nowadays, almost all municipalities do indeed have such a status. For their non-emancipated counterparts, the advice of a regional functionary for the built environment is necessary. In addition: the municipal spatial executive plan (as the binding framework for administering decisions on zoning) always is the specification of the regional spatial (executive) plan.

Rynck & Wayenberg, 2010)⁹. However, local government is still responsible for place-bound security including administrative and judicial policing tasks.

Finally, with regard to caring (kindergartens and services for the elderly or disabled) the logic of primary education and health applies. Within the municipal sector, local government has an extensive responsibility. However, third and sometimes also private sector actors (albeit highly regulated and/or extensively subsidized) offer similar services and provisions and compete with those in the hands of local government.

Overall, there are no important changes in function discernible due to regionalization that significantly affect this picture. Evidently, evolution over time can be determined with regard to specific (packages of) tasks. The most common pattern is one in which local government has gained in terms of the number of tasks in various domains accompanied by framework legislation (and an associated combination of financial incentives and specific supervision) from the federal or the regional level. Especially the latter has taken an activist stance (with more intervention through regulation, finances or objectives) increasing the interwoven character of most policy domains. In addition, regions do differ with regard to the per capita spending in important areas reflecting varying priorities in policy as expressed by expenditure¹⁰ (De Rynck & Wayenberg, 2010).

Given the wide nature of the policy domains discussed above, these tendencies are more a matter of degree¹¹. The standard setting thus remains one in which local government is at least partially involved in and responsible for the tasks mentioned usually in conjunction with its regional and/or federal counterpart.

Finally, the consultation of local authorities in the planning and decision-making processes at central level should explicitly be seen against the corporate conception of this element of local self-government in the Charter, i.e. the extent to which local government as an organized and associated interest has indirect access to and influence over its central counterpart. It should be assessed against a culture of political localism and in particular the common practice of dual mandate-holding as a specific means for particular local interest mediation (De Rynck & Wayenberg, 2010).

⁹ About 75% of all zones are comprised of more than one municipality. These zones have their own police council and executive where delegates from the constituent municipal entities determine policy. In zones comprised of one municipality the council and the mayor are maintaining sole responsibility.

¹⁰ In the Brussels-Capital Region, the regional level has assumed a number of functions related to land-use (e.g. environmental policy or urban planning). However, the municipalities in the region do still have some partial responsibility for this function. For a number of person-related competences, the applicable framework within Brussels differs (since these domains are within the realm of the linguistic-cultural communities). More general, differences between regions are more pronounced if we would consider alternative indicators such as public employment or the per capita spending on various policy domains. In Wallonia and Brussels the local sector is more public than in Flanders.

¹¹ One could argue that the list of tasks for which local government is 'partly responsible' has increased in most policy domains as has the part of the responsibility this refers to.

Traditionally, there were neither legal provisions nor standard procedures for structural negotiations between the local and central levels of government. Central government was not obliged to consult local government in preparing, making or implementing its policy. There was no formal mechanism of representation. Evidently, this did not preclude an extensive degree of actual interaction and the possibility for local government (associations) to influence central policy. This was largely dependent however on the openness of the center (and its willingness to adapt to local demands and interests) and/or the strategic capacity of local government (and its associations).

Particularly with regard to the latter, some changes can be discerned propelled by the process of regionalization and affecting Flanders in particular. The Association of Flemish Cities and Communes (as the regional offspring of a former Belgian counterpart) has become a more important player in intergovernmental relations. The organization has professionalized and its extensive staff now covers almost all policy domains whilst developing policy networks with relevant central actors (such as ministers, cabinets, administrative departments, parliamentary committees or parties). Next to rendering services and giving technical advice to its members, the association engages in proactive policy-making and lobbying towards central government. The association is (informally) acknowledged (particularly by regional government) as the corporate umbrella of local government (although internal differences exist according to municipal size or partisan affiliation) and more routinely involved in issues of central policy or decision-making that may affect the position of local government (a consultation phase with the appropriate corporate interests has become more accustomed). This does not imply any legal obligation for consultation or representation (left alone central government always follows the views of the organization)¹². Therefore, it could reasonably be argued that in Flanders the reach of influence from local government over national policy-making has extended to something more substantial. This holds in particular for the more technical or applied aspects of regulation and policy (to a lesser extent for the main principles where the center is less inclined to give in)¹³. This professionalization is less outspoken in Wallonia and Brussels and the respective associations have a more limited supportive role.

The type of corporate access the above refers to, should be seen against the backdrop of a strong and persistent culture of political localism referring to specific local interests and the political influence of particular local governments playing a substantial role in central government decisions. This is enhanced by the local anchorage of politicians at the central level. Decisions over the distribution of goods and services are often based on territorial

¹² Since 2007 Flanders has established the Flemish Advisory Council for Administrative Affairs. This is an independent advisory board of the regional government and parliament. Its role is to give advice on draft decrees in designated policy areas (where the Region is obliged to ask for this advice) or to do so on its own initiative. The council is dominated by expert members, but the local government association can also send its representatives. This could be considered as a soft version of formal representation and consultation of local government at the regional level. The previous government has abolished the council however.

¹³ It is perhaps a bit too bold to discern such a general increase as the amount of influence will differ according to the issue at stake.

affiliations of central and party political relations of local politicians. The latter have direct access to the center. The most common and sustained mechanism by which this is achieved is the holding of dual mandates. The bulk of all members of parliament (either regional or federal) conjointly occupy a mandate at the local level (either as a councillor, alderman or mayor). Alternatively, local mandate-holders will use their partisan network to connect with Brussels. This direct access is seen (and defended) as a means to influence central decision-making in favor of specific local interests. It gives local politicians leverage to intervene for their local government¹⁴. Regionalization has left the prevalence of this practice largely untouched. In Flanders, its potential effect is said to have diminished however (in conjunction with the relative increase of block grants and more contractual planning relationships and a neutral management style for routine programs) and more focused on regional grants for important local infrastructure and investment or the direct variant of the latter by the center in the local area. With regard to Wallonia and Brussels, political localism is seen as remaining predominant even in daily politics and regarding operational programs¹⁵.

4 Protection of local authority boundaries

Regarding the changes in local authority boundaries, Belgium shows a mixed picture. Back in the 1960s and 1970s forced municipal amalgamations reduced the number of Belgian local authorities drastically (De Ceuninck, 2009). This started in 1964, when the country still counted 2.663 local authorities. By 1972 that number was reduced to 2.359. The most drastic reform would however take place in 1976, when the total number of local authorities was further reduced to 589 by way of large scale compulsory amalgamations. This reform found its legal base in a 1971 parliamentary act that created the possibility to amalgamate all Belgian municipalities by way of a parliamentary vote. It was without doubt the most drastic reform that ever occurred at the local level. This reform was motivated by different elements. One was to make the local authorities financially healthy again. Also, the changing social environment of municipalities (e.g. increased mobility) was a reason for a larger scale on the local level, next to the need to create a better cooperation between central cities and neighboring suburban municipalities (to avoid the disadvantages of spillover effects). A final motive for this enlargement of the local scale was to increase the governing capacity of the local authorities. Also, they were promised extra competences after the reform, a promise that was never granted.

Although there were several good reasons for that reform, it will be remembered primarily by the way it was implemented. The reform was initiated by central government and left little or no room for a local contribution. The government wanted the reform to be

¹⁴ Some argue that this practice also and ultimately enhances loyalty to the center (i.e. parties and executives) to the extent that it will prevail over local interests in general.

¹⁵ It should be mentioned that the Walloon Parliament has recently formally limited dual mandate-holding. Only the fourth of members of parliament with most preference votes (on the regional candidate list they were elected on) of each party group can continue to conjointly hold an elected mandate at the local level.

implemented very quickly, in the belief that otherwise there would be hardly any mergers. A request to link referendums to those mergers was rejected by the government, who formulated a merger proposal for each municipality. The local authorities could only issue an advice on that proposal. Those advices were particularly contradictory, giving the government free rein to decide who would merge with whom. Only a direct access to the minister could ensure that certain merger plans were subsequently amended. In this way a number of municipalities (N = 92) succeeded in not having to merge at all.

This top-down decision making resulted in a long lasting taboo on scale reforms in Belgium. Many local politicians felt themselves victim of higher party interests. It thus came as a surprise that the Flemish government, that took office in 2009, announced that it would stimulate voluntary mergers. This was part of an 'internal state reform' by which the Flemish government wanted to simplify the administrative landscape (Vlaamse Regering, 2011). The main goals were to empower the local government level and to reduce the provincial level as the current second tier of local government. The Flemish government saw a coordinating and guiding role for themselves as central government. In order to strengthen the local government level, voluntary amalgamations were stimulated by a combination of a financial bonus to the amalgamating municipalities and assured administrative support in the complex process of a merger. Flanders then counts 308 municipalities, of which about 79 do not have 10.000 inhabitants (VVSG, 2016). Encouraging voluntary mergers was seen as a way to strengthen the local level in order to transfer additional powers to it. It would also help the local authorities to better deal with future challenges. Despite the interest of some, not a single municipality took the step towards a voluntary amalgamation. There are several reasons for this. The measures came way too late in the local legislature, which meant that they were close to the local elections in 2012. In addition, many local decision-makers were unaware of the advantages of municipal mergers. That, combined with the limited political support, made the measure unpopular (De Ceuninck, Steyvers & Valcke, 2016).

The Flemish government that took office in 2014 showed continuity in the approach towards the local level compared with the previous legislative term (De Ceuninck, Valcke & Verhelst, 2018). The stimulation of voluntary amalgamations of municipalities was again a policy priority for the Flemish government. The measures developed in the previous legislative term were more elaborated in the form of a Flemish decree on voluntary amalgamations in 2016. The Flemish government created extra financial and political support for voluntary amalgamations, by means of a debt assumption by the Flemish government of EUR 500 per inhabitant and the possibility to appoint more deputy mayors in the two legislative periods after a merger. Finally, 15 Flemish municipalities decided to merge by January 1, 2019 into 7 new municipalities. The 15 municipalities involved invested a great deal in involving the population in these merger plans. In only one municipality a popular consultation was organized, but too few people showed up so that the results were not even counted.

Until now, the scale debate or the demand for municipal mergers, was not so fiercely and concretely on the political agenda in Wallonia or the Brussels region¹⁶.

5 Administrative structures and resources for the tasks of local authorities

The 1990s were a decade of hesitant administrative modernization for local government in Belgium of which some translated into more autonomy in terms of staff (e.g. more timely instruments and processes of human resources) and local structures (e.g. establishment of arms-length agencies, systems of budgeting and accounting). Especially since 1995 (when most of these modernizations were introduced), the autonomy in terms of staff and structure has increased substantially (e.g. in terms of hiring staff, fixing their salary – although this only applies for non-statutory employees, choosing the organizational structure, establishing legal entities and municipal enterprises) (Plees, 2006).

These ideas and tendencies have continued after regionalization (De Rynck & Wayenberg, 2010; Wayenberg, De Rynck, Steyvers & Pilet, 2011). The Flemish region has been most enthusiast about adopting organizational modernization practices diffused under the banner of New Public Management. This has been apparent in a number of measures: introducing strategic planning in municipal policy-making (and integrating it with the functional management domains as to link multiannual goals with financial and personnel commitments in the policy and management cycle), giving leading administrators more managerial leeway and stimulating them to cooperate by establishing a management team, providing different forms of agency to place parts of policy at arms-length of the municipality or more contractual employment (as opposed to statutory personnel with tenure and fixed working conditions). In Wallonia and Brussels change is limited to non-existent as compared to the former (modernized) Belgian framework. The primacy of politics and more hierarchical relations with administrators tend to prevail. Given the possibilities already allowed by the modernized Belgian framework (and at least the continuation thereafter) we designate a score of 2 for autonomy in staff and structure for the period since 2002¹⁷.

¹⁶ From time to time, there is a debate about the political fragmentation of the 19 Brussels municipalities however in relation to city-regional and/or metropolitan challenges allegedly unsufficiently solved at the level of the Brussels Capital Region. This is compounded by the complex decision-making situation in the Brussels policy area where different and sometimes overlapping or intersecting institutions coexist.

¹⁷ As with most aspects of self-government, this should be read as the possibility to make a number of place-bound choices within clear limits of legal and regulatory central frameworks often accompanied by forms of supervision. E.g. in Flanders municipalities can choose to establish agencies but the procedure to do so is outlined in detail in the municipal decree, including an impetus to opt for forms that are close to the municipality first and only later and accompanied by an extensive motivation for more at-length variants.

6 Conditions under which responsibilities at local level are exercised

Belgium traditionally organized its local elections via a (semi-)open list system of proportional representation (Imperiali-method). The same system applied for all localities and was anchored in (municipal) electoral law. Only the members of the local council were directly elected (as enshrined in the constitution). Given its predominantly monist and parliamentary conception of legislative-executive relations a council of mayor and aldermen (CMA) was then subsequently elected among these councillors to act as a collegiate and collective executive of the municipality¹⁸. Formally, the nomination of this CMA had to be supported by a majority in the council (a form of investiture). Informally, this was the result of a process of majority formation often in the form of governing coalitions of political parties. The composition of the CMA (i.e. the number of mandates for or the distribution of specific portfolios to each party and selected individual mandate-holders) was often regarded as the capstone of this process.

Mayors have always occupied a specific position in this cycle. Historically, the mandate included a strong supra-local component and part of the associated task was to act as a representative of the center at the local level. As a consequence, and despite of the requirement to be elected as a councillor, the mayor was appointed by central government after nomination by the council (as part of that of the CMA). Gradually, the mandate of mayor has become more localized both in terms of selection as well as of functioning. With regard to the first, the attribution of the mayoral position is part of the governing formation process and an informal practice has emerged to nominate as mayor the candidate with most preference votes of the largest party in the coalition. The formal appointment survived however, in the bulk of all cases as the central rubber-stamp of a local choice. With regard to the latter, local tasks have become priority over central counterparts and mayors could definitely be seen as the first citizens of their municipality (assuming many local leadership roles). Given that the scores refer to the whole of the executive and the factual indirect election of the mayor it is felt safe to assess that the executive is elected by the municipal council.

Overall, the Belgian system described above has remained largely intact in the regionalized context after 2002 when in principle variegated organizational systems could be created (De Rynck & Wayenberg, 2010). Both the electoral system as well as the way in which the executive attains office remained constant and uniform for all municipalities, despite fierce debates on reform. In the Flemish Region, e.g. the latter concentrated on the direct election of the mayor or making the electoral system more proportional without effective consequences. In Flanders, preference votes have received relative more weight in determining who gets elected. And the council can elect its own president (instead of the default option of the mayor). Furthermore, the number of aldermen will be reduced with 1 in the next legislature. In the Walloon region, the existing informal mode of

¹⁸ The municipal council has the residual fullness of competence with the exception of a limited number of explicitly enumerated counterparts for the CMA. In the Flemish Region, the latter can be supplemented by powers delegated from the council to the executive (allowing for a more tailor-made municipal organization).

mayoral designation was formalized whilst at the same time adopting the possibility of a motion of censure against the executive (i.e. individually or collectively) in an attempt to strengthen the parliamentary nature of the system. Also, the Flemish region adopted a (limited and collective) constructive vote of no confidence as a means to empower the council vis-à-vis the executive board. A few minor modifications have thus occurred in some regions but not to subvert the path dependencies of the previous Belgian era.

In terms of the politicians' statute, the Belgian system is characterized by a sharp divide between local politicians holding an executive office (i.e. a position in the CMA) and non-executive councillors (Wayenberg et al., 2011). The social statute and reward of the mayors and aldermen was improved by Belgian government in 1999 and reconfirmed by the regions afterwards. This system includes, amongst others, earnings, holiday pay, expenses and a retirement fee. Non-executive councillors on the other hand still predominantly act as layman politicians who receive an attendance fee for council or committee meetings (and, potentially, some political leave, temporary replacement or – minimal – expenses, e.g. for training seminars, literature, transport)¹⁹.

The legal statute furthermore guarantees assistance for disabled councillors, municipal responsibility and assurance to cover civil liability of local politicians in office and defines the incompatibilities with local elective office in Belgium (e.g. magistrates, provincial governors, second-degree relatives, administrative personnel of the municipality). It also lists the instruments councillors dispose of to fulfil their mandate (e.g. interpellations, field visits to municipal institutions, copy right, consultation of policy documents, agenda-setting in and convening of the council, information from the municipal administration, etc.). No sharp regional divides are to be found in this respect²⁰.

7 Administrative supervision of local authorities' activities

The interpretation of the administrative supervision of local authorities' activities follows from the continuation of one typical feature of the Franco-model, i.e. the existence of extensive administrative supervision. Even when the extreme versions of the latter have been modified the tenet of central oversight and control over the local level has persisted over time and in the various regions (De Ceuninck, Steyvers, Valcke & Van Bever, 2010; De Becker, 2013).

Before the 1980s supervision was the exclusive privilege of national government. As a result of the state reform the regions gradually assumed that competence (even before a full federal system was in place). Throughout that period and until today, the provincial governor played a crucial role in supervision, acting as the place-bound representative of

¹⁹ These fees are defined by the municipal council within limits set by central government.

²⁰ The Flemish local government act however includes the possibility to financially support the political groups in the council.

the center²¹. The accustomed conception of supervision was twofold. Decisions of local government either needed preliminary approval by central government before they could be enacted (principle of visa) or these could be suspended and ultimately nullified should the center find them in contradiction with the law (principle of legality) or the general interest (principle of expedience). Supervision of legality and expedience have been enshrined in the country's constitution (art. 162). Expedience (the general interest) has long been interpreted in practice as giving the center the possibility to act both when local decisions ran counter central objectives as well as when they were perceived to fail the interests of the local community.

The constitutional foundation for supervision has remained unchanged, also after the regionalization of 2002. In the Walloon and Brussels-Capital regions, the traditional principles of supervision and their subsequent interpretation have largely sustained. Little structural change has occurred in this regard or is likely to emerge in the near future. Both preliminary approval as well as the possibility of suspension or nullification continue to be accepted routines in central-local relations and are often interpreted in a maximalist way. In Flanders, whilst upholding the (constitutional) principles, the interpretation has become less strict leading to an actual deregulation of supervision²². For one thing, the range of local decisions encompassed by preliminary approval has been greatly reduced. For another, in contemporary Flemish practice suspension and nullification will only be deployed after a formal complaint of an actor who sees his interests harmed by a particular local decision. In addition, the general interest is now interpreted as one that should transcend local government implying the principle of expedience can only apply when larger interests are potentially threatened (and not just that of the local community)²³.

8 Financial resources of local authorities and financial transfer system

The outlook of the financial structure of Belgian local self-government reflects the contingent nature of local fiscal autonomy. Local government can indeed independently tax its population. This is a constitutional prerogative of the municipal council (art. 170) in line with the idea of general competence (see 'constitution and legal foundation for

²¹ The regions first gained the responsibility for the actual daily supervision of their localities (1980) before acquiring the ability to effectively change its constitutive framework (1988). The governor now acts as a representative of the regional or the federal government (depending on which central level is constitutive for a particular decision).

²² This has been anchored in the municipal decree (i.e. the regional local government act) in use since 2006 (art. 249).

²³ It should be noted that this modernization largely concerns the so-called general supervision (with the regional agency competent for internal affairs in a coordinating role). Supervision over specific policy domains (resulting from the increasing entanglement between regional and local domains) follows more traditional principles and interpretations (often including detailed preliminary regulations and intermediate reporting obligations for local government). Moreover, it has long been uncoordinated. Flanders has recently adopted a decree aimed at reducing the planning burden for local government partly trying to impinge upon and reduce this specific supervision.

local self-government')²⁴. Depending on the type of tax local government can determine the base and the rate (for minor taxes) or only the latter (for major taxes). Often, central government imposes restrictions on local taxation. Nowadays taxes make up about half of all municipal income (Bafoil & Lefèvre, 2008; Dessoy, Erauw & Lafontaine, 2014)²⁵. From a comparative perspective, this level of fiscal discretion is relatively extensive. However, a closer and more specific look nuances.

The bulk of the local tax income (80% of all taxes or 40% of the total local income) namely comes from two major taxes that are in fact supplemental, i.e. grafted on a base and standardized rate set by another governmental level. Here, local government only has leeway to set the rates of the supplements²⁶.

The first is a form of income tax. More in particular it is a percentage local government can add to the general ex-ante taxation (corrected ex-post) of personal income gained from labor with standardized rates and bases set by the federal government (that is also responsible for its collection) for citizens who have their main abode on the territory of the municipality. Whilst municipalities are free to set their own supplemental value and sometimes use central bases and alleged associated pressures to shed unpopular elements of local choice, it also makes them dependent on the tax policy of their federal counterpart. If the latter decides e.g. to lower the standardized rates or alter the base, municipalities are obliged to increase their percentage supplemental income tax (SINT) if they are willing to derive the same level of income. In addition, this income tax is progressive as its standardized rates (disproportionately but within a fork) increase with the level of taxable income declared. This implies that the supplemented income derived from this tax is sensitive to the decisions in terms of demographic mobility of (a small group of well-waged) people.

The second is a form of property tax. In particular, it is a part (called *opcentiemen*) local government can add to the ex-ante taxation of immovable goods (i.e. houses and apartments) owned by citizens who have their main abode on the territory of the municipality. This is a mixed competence involving three levels of government. Whereas the standardized rate for this tax is set by the regional government (hence also collected by it) its base is categorized (so not progressive) upon a standardized measure of property value (*kadastraal inkomen*) determined by the federal government. Similar problems of local dependency thus occur with regards to this supplemental immovable tax (SIMT).

²⁴ The federal government can determine the range of local fiscal autonomy however, by prohibiting certain taxes to be levied.

²⁵ Between 2000 and 2012 local government taxes conjointly represented a bit more than 4 to a bit more than 5% of all government taxation income. With the latter representing about 45% of GDP, this implies that local government taxation consumed around 2,3% of GDP.

²⁶ These resources are considered as own-source tax revenue since they are surtaxes and not a fraction of tax receipts of supra-local levels (which would designate them as shared tax revenues).

The remainder of non-supplemental minor local taxes (20% of all taxes or 10% of the total local income) are more genuinely place-bound. Recent accounts for the Flemish region show that no less than 90 different varieties of such taxes could be discerned with a ditto divergence in terms of bases and rates (e.g. on public sanity, economic activity, equity or occupying the public domain). Recently, the three regions have embarked on an attempt to reduce the multiplication of local taxes as a means to induce place-bound economic growth. Although the particularities differ according to the regional arrangement, the main mechanism is similar: the financial losses invoked by the centrally stimulated abundance of certain local taxes and/or limiting and structuring other ones are compensated by regional government. It is clear that the price of this fiscal peace is a relative reduction of municipal autonomy.

With regard to the overall extent of independent local taxation power however, the traditional Belgian fiscal regime described above has clearly sustained after regionalization (De Rynck & Wayenberg, 2010).

Next to their own sources, transfers from central government are an important part of the revenue of local government. These transfers are either conditional or unconditional reflecting varying degrees of financial autonomy.

The way in which these transfers have been organized varies over time and/or between regions in Belgium, ranging from the dominance of conditional transfers to the dominance of unconditional grants. This variation is more due to incremental changes over time and/or gradual differences between areas than the result of a deliberative shift or substantial territorially variegated choice in central policy on financial transfers although some trends can be discerned. In the era where Belgium as a national (unitary and later on federal) state was responsible for local government, the financial transfer system comprised both conditional and unconditional transfers to an equal degree, although the share of unconditional financial grants was to be situated at the upper limit of the fork determined in the index (approximating 60% or surmounting it, as was the case in two years of the pre-2002 era). Since the regionalization in 2002, either a balance between both types of grants (Flanders) or a dominance of unconditional grants (Wallonia) can be discerned. However, again the variation between both regions is more a matter of degree (just below and above 60%) corresponding with (qualitatively) different categories in the index. Only in Brussels, conditional grants are clearly dominant (consistently above 60%).

Unconditional local (or block) granting by central government has been a feature of intergovernmental relations since the 19th century under the form of a so-called communal or municipal fund. This fund has come under the guidance of respective regional governments since 1988. Since then, each region had its own fund. All have kept the combination of two main goals: guaranteeing a stable growth path (according to the number and importance of the tasks required by central government) as well as providing financial equity (by redistributing resources to ensure solidarity). The sum received by

each municipality is not earmarked (i.e. reserving it for specific functions and/or requiring a particular approach, method or instrumentation) to maximize expenditure discretion.

Until 2002, the various regional regulations remained quite similar. They were predominantly based on categories of local government according to the number of inhabitants. For larger cities, a specific proportion of the fund was guaranteed while the distribution to their smaller municipal counterparts was mainly based on the principle of equity. In Flanders, a 2002 decree established a fixed growth path and integrated some earmarked funds into the general fund. Also, the criteria of fiscal equity and compensation for the alleged costs of functional spillover (mainly from central cities to their suburban environment) gained prominence. Lastly, a new fund for larger cities was created with open-ended goals to meet local priorities in contractual agreements with central government²⁷. It is felt that in Flanders, these changes have increased local discretion. At the same time and as mentioned, Flanders is the region that has displayed most regulatory activism often implying an executive role for local government in fulfilling centrally defined tasks in exchange for earmarked granting (De Rynck & Wayenberg, 2010). In Wallonia, a reform was adopted in 2008 including the determination of new criteria for the overall growth of the municipal fund and for its distribution. The implementation of the latter was spread in time with a transition period of more than 20 years (Dessoay, Erauw & Lafontaine, 2014).

Local sources have traditionally been an important part of municipal income. Around 80% of such sources are taxes (the bulk of which are two surtaxes on a regional and federal base complemented by strictly local counterparts) and retributions. The remainder is divided between fee revenues generated by user contributions to the costs of specific local services and provisions of the local authority and debt revenues as the recurrent financial receipts collected by municipalities. The latter is a mix of dividend payouts from energy inter-municipal companies (which was traditionally the most important but has lost prominence under the European liberalization of the market), municipal holding companies, interest or revenue generated by monetary investments and reimbursements from their parties of the borrowing costs linked to loans initially contracted by the municipalities (Bafail & Lefèvre, 2008).

Whereas own sources yielded over 50% of the municipal income for the pre-2002 era, in the Walloon Region these have been a bit below 50% throughout. Particularly during the last decade, the proportional share of own sources in local revenues has increased everywhere however (up to a bit more than 50% in Brussels and 60% in Flanders and Wallonia). This is largely due to the growing share of income derived from local taxes and retributions.

²⁷ The current Flemish government wishes to integrate this into the municipal fund however. In addition, there is an ongoing discussion on the criteria used for the distribution of this fund and the consequences for specific categories of municipalities (and those bordering between categories).

Borrowing is regarded a legitimate source of local income that does not need specific prior authorization by central government. However, it is subject to a number of restrictions.

This has been a long-standing tradition in Belgium. As a result of regionalization, some of the restrictions have been altered and the way in which this was the case differed between Flanders and Wallonia (Brussels has largely kept the existing framework). Ultimately, these alternations are not substantial enough to affect the score on the index. We start with the elements that have pertained over time and areas after which some more specific regional changes are discussed (Bafail & Lefèvre, 2008; Dessoy, Erauw & Lafontaine, 2014).

Municipalities are free to borrow without needing higher levels of government giving them permission in advance: they thus have the *a priori* autonomy to attract loans for financing their activities²⁸.

Confining the scope to which the latter applies is a first restriction. Recourse to borrowing should be used to cover extraordinary expenditure such as investment or becoming a stakeholder in certain public companies or associations. This could be considered as a form of golden rule: ordinary expenditure should be financed by recurrent income. Municipalities should not borrow to cover prospective budget or current account deficits for ordinary services or provisions.

In the past, municipal financial assets had to be invested with national public credit institutions (there even was a special semi-public bank predominantly concerned with providing credit for local government). Nowadays, municipalities are free to choose their financial partner. However, they are accustomed to turn to one of the major banks active on the Belgian market. Given that municipalities are responsible for more than half of all investment expenditures in the public sector, there is extensive competition between these banks to attract them as clients (leading to low interests, although the financial crisis and the subsequent increase in banking regulation has made cheap borrowing less evident).

Since the late 1980s Belgian municipalities are obliged to submit a balanced budget. This has implied an implicit cap on individual borrowing (particularly given the investment-related nature of loans and the practice of a golden rule)²⁹.

In the Flemish region, recently a number of financial rules have changed impinging (indirectly) upon borrowing. Budgeting has become part of strategic multi-annual planning. Municipalities have to make up such a plan at the beginning of the legislature. The plan explicitly has to integrate policy goals with financial and personnel

²⁸ The deterioration of finances in some municipalities has made it necessary in the past to set up emergence loans. Here, supervisory authorities can take over financial charges or at least provide a guarantee. Local authorities are then obliged to respect a strict financial management plan.

²⁹ This financial balance is subject to the regime of general supervision (see administrative supervision).

commitments. This is part of a policy and management cycle (PMC) used as a comprehensive instrument for planning (preparing and budgeting), execution and control (oversight and evaluation). This has some specific (mainly indirect) consequences for the practice of borrowing. First, a new definition is used for balanced finances. On the one hand, there has to be an annual balance in the budget (reconfirming previous regulation). On the other hand, an additional structural balance is needed in the long term. Therefore, municipalities have to demonstrate their financial base expressed in a positive auto-finance margin at the end of their planning period. The calculation of this margin takes existing loans into account³⁰. The margin indicates that municipalities are capable to carry their present burden and have (at least partial) room for new (investment) expenditure without needing additional financing through borrowing. Second, in the PMC borrowing is no longer explicitly restricted to investment projects. A wider approach is possible in which loans can be used to cover broader treasury needs. The idea of specific purpose borrowing has thus been left but is compensated by the double balance municipalities have achieved.

Also in the Walloon region, regional regulation concerned with municipal budgets stress the importance of stabilizing the debt burden to avoid sudden financial deterioration. A specific regional agency is designated to help municipalities in financial trouble (and ultimately take over financial responsibility).

9 Local authorities' right to associate

As we have stated in the discussion of the scope of local self-government, the Belgian rationale of political localism is underpinned by a strong degree of access of the local level to central government. Next to the extensive personnel links between both government levels through party-political contacts and dual-office holding, the associations of local government play an important role in this regard. The three regional associations of local government were formally established in 1977 and originate from the federal umbrella (the Association of Belgian Cities and Communes) dating back to 1913. They represent the municipalities, PCSWs, police zones and some intermunicipal companies on their territory. The national umbrella still exists as a platform for information exchange and deliberation between the three regional entities, as well as a representative of Belgian cities and communes in international and European fora. In fact, the different Belgian local government associations are also member of the international and European umbrella of local government (i.e. UCLG – United Cities and Local Governments; and CEMR – Council of European Municipalities and Regions). As noted above, it is above all in Flanders that the association plays a systematic and proactive role in policy-making at the central level.

³⁰ It is calculated as the difference between the ordinary (exploitation) income and expenditure (without interests). From that amount, existing loan burdens (both capital as well as interest amortization) are subtracted. The result has to be 0 or more at the end of the planning period.

Furthermore, Belgian local government is characterized by a strong degree of inter-municipal cooperation in different forms across policy domains (e.g. land use, planning, utilities such as water, gas and electricity, finance, medical services, etc.). Much in line with the New Public Management discourse, this system is set to provide local services more efficiently on a larger scale and to engender public investments in key areas of public life. The legal basis of this system of inter-municipal cooperation was a Belgian act issued in 1986. This act regulated the legal statute and organisational set-up of the institutionalized cooperation between local authorities, as well as (non-institutionalized) contracts between local authorities. After the regionalization of local government, the three Belgian regions continued to provide a legal framework for the cooperation between local governments³¹.

10 Legal protection of local self-government

Our assessment of the legal protection of local self-government in Belgium is motivated by the existence of both constitutional as well as other legal means to assert local autonomy (De Becker, 2013). As explained above (see 'constitution and legal foundation for local self-government') the constitution provides and protects local self-government. In addition and given their legal personality, municipalities can make an appeal to the various components of the judicial system which could include matters of central-local relations. The most obvious would be the Council of State where recourse can be sought against allegedly irregular administrative acts (the Council can suspend or annul the latter when assessed as contradicting the legal rules in force). In theory, municipalities can also turn to the Constitutional Court (suspending or annulling federal or regional laws found contradicting the constitution) or other civic courts (but this is less common and will only seldom relate to issues of autonomy). The College of Mayor and Aldermen (the collegiate executive) legally represents the municipality in the different courts.

Just like the principle of local self-government should be seen against its negative definition and the practice of decentralization and deconcentration, the potential reach of judicial appeal should be weighed against the principles and the practices of administrative supervision (see 'administrative supervision of local authorities' activities') which give central government extensive leeway to limit local autonomy (especially since it also includes the expediency of local decisions).

11 Future challenges of the implementation of the European Charter of Local Self-Government in Belgian legislation

There are several challenges that the local authorities will have to deal with in the coming years. We do not intend to be exhaustive, but we list the most important challenges

³¹ The Brussels region retained the federal act and complemented this with ordinances regulating the administrative supervision and the acknowledgement of the cooperation agreement between the three regions regulating cross-regional inter-municipal cooperation. In the Walloon and Flanders region the inter-municipal cooperation is regulated in the general local government act.

pertinent to local self-government here below (see De Ceuninck, Steyvers & Valcke, 2016; De Ceuninck, Valcke & Verhelst, 2018).

Firstly, we assume that the scale debate, especially in Flanders, will also determine the local political agenda in the coming years. In Flanders, the encouragement of voluntary mergers has created a dynamic that is unlikely to stop after 2019, at the start of the next local administrative period. In any case, the current regional government further stimulates the voluntary merger of municipalities. At the federal level, there is also the scale debate concerning the police zones. The federal government is aiming for an enlargement of the current ones in the medium term.

A second challenge, specifically for Flanders, will be to streamline the social policy in the Flemish municipalities after the PCSW and the municipality are united. The municipal councils are responsible for the social policy within their municipality from 2019, where this was formerly assigned to a separate board. This will require a different reflex from those municipal councils, and by extension everyone who takes responsibility within a local authority.

A third point of attention remains the functioning of the municipal councils, which occasionally raises questions. Especially the council's scrutiny role is questioned more and more. This has several causes. For example, the number of municipal tasks has only increased over the years together with the complexity of these tasks. This ensures that council members have to invest more and more time in their mandate if they want to maintain the overview. This is in sharp contrast with the status of council members. The vast majority of municipal councillors in Flanders exercise their mandate part-time. Because of the limited remuneration council members receive for their work, it is impossible for them to carry out their work as a full-time job. This has also to be seen in the light of the evolution that the local executive has gone through in recent years. The colleges of mayor and aldermen have only become stronger (and often impinge upon the traditional policy determination role of the council often reducing the latter to mere policy affirmation or rejection). That makes it in no way easier to fill in the controlling role councillors have in a serious way. In Flanders, there were some instruments created in order to remedy that situation (own president for the council, a commission to overlook the inter-municipal partnerships and a 'structural non-management' procedure), but the question remains whether that is enough. In any case, a strong tendency of party governance is also likely to sustain. With partisan affiliations and interests as a first point of reference, the decisional fault lines in the municipalities continue to run along the majority versus opposition divide, rather than opposing the executive to the legislative. Notwithstanding the potential of preceding discussion behind the closed doors of the party group, the functioning of the council in public is often driven by the logic of party discipline.

A fourth and final challenge that we put forward here is the debate on how to deal with inter-municipal cooperation in the future. In all three the Belgian regions, there have

been scandals in recent years about the internal working of inter-municipal structures. These have made it particularly clear that they must be more transparent and that the exchange of information between the local and the supra-local government level has to be improved in the near future.

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