

## *Chapter 2*

### **Institutional capacities for Better Regulation**

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

## Assessment and recommendations

### *General context*

*There has been a steady development of Better Regulation institutional structures across Belgium, linked to a growing awareness of the need to address issues such as regulatory inflation.* By EU standards, Belgium has a well-developed set of centrally located structures across the different governments, whose purpose is to drive forward the Better regulation agenda. These structures, which started with the decision in 1998 to establish the federal Administrative Simplification Agency (ASA), reflect a strong awareness that Belgium's rapid federalisation process and the complexity of the Belgian federal model require special efforts to secure effective regulatory management. Today, Belgian governments have almost, without exception established entities for Better Regulation, with some differences in emphasis and scope. There are significant shared institutional features and processes. These include the decisions to put units at the centre of government with a direct reporting line to the head of government, similar administrative cultures which are based on the use of institutionalised bodies to consult and promote consensus, and similar practical processes for the development of regulations which often include the involvement of ministerial cabinets. These shared aspects imply that there is considerable scope for governments to learn from each other.

*In the Belgian context, Better Regulation units play an especially important role in support of Better Regulation and in the search for creative solutions to the issues raised by a complex form of federalism.* Another shared and very positive feature of the Better Regulation structures that are now in place is that they have become a source of expertise, support, ideas and spread of good practice for overcoming the difficulties of regulatory management in Belgium. More broadly, the efforts of civil servants to promote and develop Better Regulation as part of the public management of the Belgian state are of great importance. To carry out their role, the Better Regulation structures use persuasion rather than constraint. Against the background of very autonomous ministries they have no sanctioning powers. This, however leaves them short of sticks to ensure that Better Regulation good practices and processes are respected. They are "helpful" but not "policemen".

*The sustainability of Better Regulation across the political cycles (and sometimes within them) is an issue, which is not unique to Belgium.* There are few easily definable high-level political champions of Better Regulation as a result. A shared issue of concern is that there is often weak political buy-in for Better Regulation. One suggestion made to the OECD peer review team was the establishment of standing groups to address specific issues and with a mandate fixed to extend beyond the political cycle.

*The difficulties of developing Better Regulation are aggravated by the often strong role of cabinets in rule-making processes.* In all governments (federal, regions, communities), ministerial cabinets (referred to as "strategic cells") are large, contain a mix of both civil servants and political nominees, and are often responsible for law drafting (a task usually reserved for civil servants in other countries). There have been attempts to reform and reduce the size of cabinets, without much success so far, from what the OECD peer review team heard. A number of stakeholders voiced their concern to the team that this weakened the application of Better Regulation processes such as effective consultation, because the cabinets did not automatically apply the processes when they drafted laws. One suggestion was to develop partnerships with the cabinets.

*Belgium's tradition of autonomous ministries also generates challenges for co-ordination on Better Regulation within governments. This issue is not unique to Belgium, but it comes on top of other challenges (notably the need to find acceptable and effective ways of working together across different governments).*

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**Recommendation 2.1. (all governments): Ensure the durability of important Better Regulation institutions and projects. Flesh out the Better Regulation strategy through a set of agreed principles to which each government would commit, thus contributing to the durability of key Better Regulation institutions and projects.**

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**Recommendation 2.2. (all governments): Consider how best to secure more effective links between the administration and political units, for shared “buy-in” on Better Regulation processes.**

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**Recommendation 2.3. (all governments): Consider whether any of the structures and processes set up to deal with the management of EU regulations provide any inspiration for the handling of domestic issues.**

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### *Federal government*

*At the federal level, the Administrative Simplification Agency (ASA) has an important dual mission, not only to promote simplification with regard to federal regulations, but also to promote regulatory co-operation across the federal, regional and community governments. The ASA's institutional foundations are strong and a necessary support for its often delicate – but crucial – mission to promote Better Regulation across all the Belgian governments. The order which set it up located it in the Federal Chancellery with a direct line to the Prime Minister,<sup>1</sup> but also as an agency (not a unit) with substantial autonomy, which helps it to ride the vicissitudes of the political cycle, and to work on long-term projects involving different administrations. The ASA also has strong links with stakeholders through its public-private steering committee. The ASA's mission to frame, encourage and promote Better Regulation across governments is an essential support for Belgium's Better Regulation needs, and the ASA itself is a key asset which needs to be preserved and developed.*

*Beyond the ASA, some federal ministries play an important, but currently somewhat separate role in regulatory management and the development of Better Regulation of relevance to the whole of Belgium. Key federal ministries in this regard are the FPS for Economy which has engaged a major initiative to upgrade the quality of the economic regulatory framework; the FPS for Sustainable Development which has developed an *ex ante* impact assessment process for sustainable development; and the FPS Justice which maintains a near complete jurisprudence database used by the Belgian courts in their analyses and recommendations. FPS Finance has recently launched an important initiative to improve the regulatory framework underpinning the modernisation of financial systems. The modernisation of the social security framework is another key work in progress. The significant autonomy of ministries means that relevant initiatives are often not clearly associated with the ASA's work. For example, the project for a sustainable development*

*ex ante* impact assessment is not yet linked up with ASA initiatives to encourage use of the *ex ante* *Kafka* Test for administrative burdens.

A range of other institutions play a Belgium-wide role, which could be further exploited. A number of authorities have Belgium-wide responsibilities and provide centralising “glue” which helps to counter the centrifugal forces of federalisation. These include the Council of State, the *Court of Audit*, the *Inspectorate of Finance*, as well as the Constitutional Court and the judiciary as a whole. The Council of State ensures that competences are allocated appropriately, and follows through to check that the federal structures are functioning effectively. It also provides a country-wide perspective on regulatory management issues. The Council of State carries out an overall control of the legality of all new federal, community and regional regulations. The *Court of Audit’s* mandate extends across all the governments, and its performance audits on the sound use of public funds may lead it to review the implementation of regulations *ex post*. The *Inspectorate of Finance* is a budgetary and financial adviser to all Belgian governments, and its opinion is required on any regulatory project with a budgetary aspect. The Constitutional Court monitors the observance of the constitution by Belgium’s legislative bodies, and may annul primary regulations *ex post*. More generally, the judiciary plays a role in regulatory management through its review of primary regulations for their conformity with the constitution, the fact that it may hear appeals against public bodies, and in particular via the *Court of Cassation* which reports to the parliament on legal and implementation issues. Are these underused assets in Belgium’s regulatory management landscape?

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**Recommendation 2.4. (federal government): Ensure that the ASA keeps its institutional distinctiveness (location in the Federal Chancellery, autonomous agency, strong link with the stakeholders), which has allowed it to promote, often with great success, Better Regulation initiatives of Belgium-wide relevance. Ensure that its Better Regulation advocacy work continues to receive effective support in line with the enlargement of its missions.**

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**Recommendation 2.5. (federal government): Encourage greater co-operation between the ASA and the federal SPFs with regard to those initiatives which appear to be the most promising in support of stronger regulatory quality. For example, consider how *ex ante* impact assessment processes can be more effectively linked up with the *Kafka* test.**

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**Recommendation 2.6. (federal government): Undertake a review, associating the ASA and Better Regulation structures of the other Belgian governments, of whether and how any or all of the Belgium-wide bodies with a role in regulatory management could be associated more closely to the Better Regulation processes.**

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### *Regional and community governments*

Significant Better Regulation structures have also been set up in other Belgian governments. These include the Walloon region’s *EASI-WAL*, the Flemish region’s Regulatory Management Unit, and the French community’s unit for Internet and

Administrative Simplification. *EASI-WAL* sits at the centre of the Walloon government, reports to the Minister President, and is charged with implementing the 2005-09 Action Plan for Administrative Simplification, e-Government and readability. Flanders' Regulatory Management Unit sits at the centre of the Flemish government, covering all aspects of Flemish Better Regulation including simplification and Impact Assessment. It has set up and encourages a network of regulatory quality units and contact points across the Flemish administration. The French community's unit for Internet and Administrative Simplification covers projects for administrative simplification and e-Government. These units, however, to a greater or lesser degree, share issues of long-run sustainability and resourcing. How easily and what kind of shape can they survive a change of government?

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**Recommendation 2.7. (regional and community governments): Ensure that these significant institutional assets are preserved and enhanced. Consider whether resources are adequate to the tasks carried out, and ensure that professional capacities and competences are further enhanced, in order to meet the significant needs of a maturing Better Regulation agenda in support of more effective public administration and economic competitiveness.**

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### *Co-operation on shared policy and regulatory issues*

*In the Belgian context, it is important to find effective ways for governments to work together on shared policy issues where competences (and hence rule-making) are split across the different governments.* The legal and institutional structure supporting Belgian federalism generate major challenges for the effective, efficient, and timely development and implementation of coherent policies and regulations which have a country-wide relevance. In particular, some important policy and regulatory issues engage the competences of the different governments.<sup>2</sup>

*Further co-operation on Better Regulation can help to promote policy coherence, in areas where this is needed.* Federalisation has created overlapping responsibilities in important policy areas such as employment, energy and the environment, and policy fragmentation. The OECD's 2009 Economic Survey of Belgium recommended that policy coherence should be improved, including the harmonisation of regulations in areas where this is critical for a single market, such as electricity. This implies the development of a more targeted and strategic perspective on areas for policy co-operation, to which Better Regulation co-operation initiatives could lend their support. The Chancellery of the Prime Minister would need to play a pivotal role on the policy front, to get this started. The many formal co-operation agreements for Better Regulation could then be usefully activated to support policy coherence, through the development of regulatory coherence to underpin the latter.

*There is already significant co-operation for Better Regulation, using a mix of formal and informal approaches.* Co-operation on Better Regulation is formally anchored in procedures established by law (the Consultation Committee, Inter-ministerial conferences, co-operation agreements). Co-operation agreements have been successfully established for administrative simplification (fleshed out with concrete projects), as well as on e-Government and the development of a shared portal for access to regulations. However, the OECD team heard that formal co-operation mechanisms can be slow and ineffective (partly because of the lack of buy-in from politicians), so informal co-operation and networking (between officials) is used extensively to pave the way for decisions and exchange ideas and practices. Too much reliance on informal networks, however, could be

dangerous in the long-run as it relies on a network of relationships and goodwill between officials.

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**Recommendation 2.8. (federal government – Chancellery of the Prime Minister, and the ASA): Consider the development of a more strategic perspective on policy co-operation, which identifies the issues that may need to be shared (the environment, for example), not least because they involve significant regulation by the different governments. Review and monitor Better Regulation co-operation agreements so that they can play an appropriate supporting role in streamlining the regulatory framework to promote policy coherence across Belgium.**

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### *Role of parliaments*

*The role of the parliaments in the promotion of Better Regulation should not be neglected.* Interviews with the OECD peer review team with Belgian parliaments showed that they are concerned about the need to improve regulatory quality in the rule-making process, and may even be prepared to invest further in the “cleaning” of legislative texts. They are the recipients of important information on Better Regulation in the shape of reports as well as the draft laws which are sent to them by the executives (for example the *Court of Audit* reports to the federal parliament on its performance audits). A starting point for further co-operation is already in place with the 2007 law which sets the legal basis for the evaluation of existing laws. The Flemish government has an inter-institutional agreement about the use of RIA with the Flemish parliament, SERV and strategic advisory bodies.

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**Recommendation 2.9. (all governments): Continue to promote further co-operation and information exchange on Better Regulation with the parliaments, whilst respecting the division of powers and responsibilities between the executive and the legislature.**

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## Background

### *The general public governance context*

The Belgian public governance system is characterised by the following features:

- *Relative complexity of a federal country.* Box 2.1 below gives a perspective on the institutional framework for policy and law making in Belgium. Belgian federalism has an asymmetric division of competences.
- *Autonomous governments.* Belgian governments have complete responsibility and autonomy within their area of competence. There are no shared competences. The strict exclusivity of competences allocated to each authority sets formal and technical constraints on the extent to which the different authorities can share the development of policy and tools for regulatory management, where this is needed. Yet co-operation across governments is important as many policy areas fall within the competences of some or all of the governments. While some key economic policy areas remain at the federal level (including social security and

fiscal policy), other major policy areas are shared (such as energy, transport and the environment).

- *Autonomous ministries within governments.* Ministries within each government are highly autonomous. Administrations are traditionally compartmentalised into strong departments, with strong hierarchical relations and formalism in procedures. This generates challenges for the effective development of shared policy- and rule-making tools and processes within governments. This silo issue is not unique to Belgium, but it is in addition to the silos created by the underlying structure of autonomous governments.
- *Coalition governments and consensus based decision making.* The electoral system leads to coalition government, and as a consequence the political framework for policy-making is characterised by a search for consensus among coalition parties, acceptance of compromise and institutionalised power sharing (Belgian social model of checks and balances). This gives business organisations and trade unions (“social partners”) an important role in the decision-making process. In addition, ministerial cabinets (referred to in Belgium as “strategic cells”) often play a direct role in preparing regulations, compared to other OECD countries.
- *Pragmatism and informality in decision making.* Consensus building within formal and often highly politicised structures, combined with the formal constraints imposed by the strict division of competences, tends to slow and complicate the decision making process. To counter this, a strong tradition of pragmatism and informal dialogue has emerged, aimed at reaching informal and operational agreement on the way forward.
- *A number of centralising elements.* The federal state has retained certain powers, and a number of important institutions have a nationwide reach (including the judiciary, the Constitutional Court, the *Inspectorate of Finance*, the *Court of Audit* and the Council of State). These features play an important role in helping to support coherence in policy and rule-making across the Belgian territory.

### Box 2.1. Institutional framework for policy and law-making in Belgium

Executive and legislative power is divided between the federal state and the federated entities (the three regions and three communities), and is deployed in respect of the competences allocated to each authority. The monarch is the head of state (a largely symbolic role, albeit very important for national unity, and underpinned by some important functions such as the formal designation of the federal Prime Minister). As a consequence bills enacted by each parliament are on an equal footing.

#### The executive

##### *Federal government*

The federal government is headed by the Prime Minister and ministers, nominated by the monarch, and secretaries of state. The number of ministers is limited to 15 and they have no seat in the parliament. Following the election the monarch designates the person to form the government and

negotiate the Federal Coalition Agreement setting out the government's policies, which is approved by all the political parties. The new Prime Minister then presents the Federal Government Policy Statement to the House of Representatives. This is followed by a vote of confidence.

Co-ordination at the political level is done by a Council of Ministers/ Government Council, with the support of (mostly *ad hoc*) inter-cabinet working groups (the Policy-Co-ordination Working Group at the federal level). Some standing bodies are also charged with ensuring co-ordination for some long-term policies. For example, the group on modernisation of social security, which includes representatives of the administration and ministers, has been steering the reform of simplification and modernisation of social security since 1997.

The *Copernicus* Reform of 1999-2003 led to a restructuring of the federal public administration into ten "vertical" Federal Public Services (FPS) dealing with a particular policy area, and four "horizontal" FPS (such as the Chancellery of the Prime Minister). As well, Public Programming Services (PPS) were set up to handle specific issues requiring co-ordination between FPS (such as sustainable development). FPS and PPS have thus replaced the old ministries. FPS and PPS are each supported by a secretariat and a "strategic cell" (a form of enlarged ministerial cabinet or private office). Strategic cells are made up of political appointees (which may include the nomination of civil servants) and play a major role in building consensus on draft regulations, which may include work on drafting.

### ***Regional and community governments***

The governments consist of ministers (as well as secretaries of state in the case of Brussels-Capital Region) elected by the relevant parliament. One of these is designated minister-president. As for the federal state, ministers are supported by an administration and a strategic cell. As for the federal government, following the election, the government agreement is negotiated between the coalition parties and agreed which sets out the government's policies.

- *Flemish public administration.* In 2006 the Flemish government restructured the public administration into 13 policy areas.<sup>3</sup> For each policy area, there are one or more departments and a number of autonomous agencies. Departments support advise the government on policy making. Agencies apply policy through the delivery of services to citizens, businesses and other organisations. They operate with a degree of autonomy defined in their terms of reference.
- *Walloon public administration.* In 2008 the Walloon government re-organised the public administration, which now consists of the Public Service of Wallonia (*Service public de Wallonie*) and a number of public bodies responsible for delivering specific public services or tasks (such as promotion of exports and attraction of foreign investment, support to handicapped people) and public corporations (*e.g.* in the area of public transportation, water management). The Public Service of Wallonia comprises a general secretariat, two cross-cutting directorates (personnel and ICT) and six operational directorates.
- *Brussels-Capital administration.* It consists of a single ministry and 20 regional and para-regional bodies, which are divided into four types. The Ministry of Brussels-Capital comprises a general secretariat and five operational-administrations.
- *French Community administration.* It consists of ministerial services (under a single "Ministry of the French Community) and agencies. The Ministry of the French Community comprises the General Secretariat (with transversal responsibilities) and five general administrations (based on policy areas). Agencies are public interest bodies (*organismes d'intérêt public* or OIP, such as IFC, a training institute), autonomous agencies (*Conseil Supérieur de l'Audiovisuel*, the independent regulator for media) and public corporations (such as RTBF).
- *German-speaking Community administration.* It is structured into four departments, with a total of 200 civil servants.



## **The legislature**

### ***Federal parliament***

The parliament is bicameral, made up of a lower house (House of Representatives) and an upper house (Senate). The House of Representatives has 150 members (deputies), directly elected by popular vote on the basis of proportional representation to serve four-year terms. The Senate has 71 members serving four-year terms (40 directly elected by popular vote and 31 indirectly elected).<sup>4</sup> Twenty one of the senators are elected indirectly par the community parliaments. This underlines the Senate's mission to represent the federated entities (as well as being a chamber of reflection).

The two houses have different competences. The House of Representatives controls the federal government. Deputies also have the right of interpellation which may be concluded by a vote of confidence. Both deputies and senators have the power to initiate legislation. There are three possible procedures for enactment, unicameral (the House is solely responsible), bicameral (the Senate is equally competent), and optional bicameral (the Senate may ask to examine a bill). The Senate has the possibility a second reading for most bills.

Parliamentary committees are largely responsible for preparatory legislative work and for monitoring the government. The House of Representatives has 11 standing committees, temporary committees (to examine a specific bill) and three advisory committees (European affairs, social emancipation, and science and technology). The Senate has a maximum of six standing committees and may set up special committees. Both the House and Senate may set up enquiry committees.

### ***Regional and community parliaments***

Regional and community parliaments are elected for five years (regional elections). They have similar competences, which include: (i) controlling the government (elect members of government, vote the budget, motion of confidence); (ii) initiating decrees (or ordinances in case of Brussels Parliament); and (iii) voting decrees (or ordinances in case of Brussels Parliament). Whether they are known technically as decrees or ordinances, these instruments are, in effect, laws.

- The Flemish Parliament (which represents both the Flemish Region and the Flemish Community) has 124 members, of which 118 are directly elected in the Flemish Region and 6 are directly elected in the Brussels-Capital Region. For decrees relating to regional competences (as opposed to community competences), only members elected in the Flemish Region take part in the vote.
- The Walloon Parliament has 75 members.
- Brussels Parliament has 89 members. It is structured into two groups made up of members elected on the French-speaking and the Dutch-speaking electoral rolls: the French linguistic group (72 members) and the Dutch linguistic group (17 members). Some decisions require an absolute majority, at least in a first vote, within each linguistic group.
- The French Community Parliament has 94 members, who include the 75 Walloon deputies and 19 members elected by the French linguistic group of Brussels-Capital Parliament within its members.
- The German-Speaking Parliament has 25 members elected by German-speaking voters of the Walloon Region.

### The judiciary

The judicial system is based on civil law and originates from the Napoleonic Code. It has a pyramidal structure, with the *Court of Cassation* at the top. There are also administrative jurisdictions, with the administrative litigation sections of the Council of State and of the Constitutional court at their head. These jurisdictions are not, formally speaking, part of the judicial Order.

### Community commissions

In Brussels, three commissions have been established to manage community competences (mainly culture, education and welfare). Given that Brussels-Capital Region is formally bilingual, decrees of the French Community and the Flemish Community relate only to institutions (either private or public), and not to people (Brussels inhabitants cannot be asked to choose to belong to one community to access services). The French Community Commission (*Commission communautaire française* – COCOF) is competent for institutions attached to the French Community. The Flemish Community Commission (*Vlaamse Gemeenschapscommissie* – VGC) is competent for institutions attached to the Flemish Community. The Common Community Commission (COCOM) is competent for institutions that are not exclusively related to the French Community or the Flemish Community (*i.e.* bilingual institutions). Each commission has an assembly composed of members of Brussels Parliament and a college composed of ministers of Brussels-Capital government. Bicultural competences remain with the federal authorities.

- *The Assembly of the French Community Commission (COCOF)*, also called Brussels French-Speaking Parliament, consists of the 72 members of the French linguistic group of Brussels Parliament. The COCOF has legislative power (*i.e.* enacting decrees) in matters related to institutions which depend exclusively on the French Community and transferred by the French Community to the COCOF as part of the 1993 institutional reform. The COCOF issues decrees (acting under its sovereign legislative capacity) and orders (under tutelage of the French Community of Belgium).
- *The Assembly of the Flemish Community Commission (VGC)* consists of the 17 members of the Dutch linguistic group of Brussels Parliament. The VGC has no legislative power.
- *The Joint Assembly of the Common Community Commission (COCOM)* comprises all members of Brussels Parliament. The COCOM has legislative power (*i.e.* enacting ordinances) in community matters related to bilingual institutions and in the area of direct welfare support to citizens.

### *Developments in the general public governance context*

Belgium has, more than most other OECD countries, been the subject of major changes over the last few decades which have radically altered its public governance and institutional landscape. Until 1970 it was a unitary state. Forty years on, it is a highly decentralised federation. Federalisation has taken place through a negotiated process of transition and five institutional reforms. The process started with the establishment of three cultural communities. Belgium's federal nature was formally recognised in 1993 through the constitution, which now begins with the words "Belgium is a federal state which is composed of communities and regions". In 2001, the *Lambermont* Agreement transferred a large number of further competences from the federal state to communities and regions. New developments are under way as institutional reform is part of the Government Agreement of March 2008.

### Box 2.2. Process of federalisation in Belgium

Federalism has been built step by step in an incremental process through five state reforms starting in 1970. The first major revision of the Belgian Constitution defined the existence of the three regions and of the three communities. This was however still rather declamatory and further state reforms in 1980, 1988, and 1989 put this into full practice. With the major change of the Constitution in 1993, Belgium became formally a federal state with three regions and three communities. The institutional reform is still underway.

#### First reform of the state (1970)

The Constitution was amended to create communities and regions. Article 59 bis created three cultural communities and gave them certain autonomy with regard to culture. Article 107 quarter laid the ground for the territorial division of Belgium into regions active in the economic fields. The creation of communities was a response to pursuit of cultural autonomy by Flemish people, while the creation of regions was a response to the pursuit by French speakers – the Walloons – for economic autonomy.

#### Second reform of the state (1980)

A special law from 1980 created the regional institutions of the Flemish Region and the Walloon Region, and gave them a council (or parliament) and government. The cultural communities became known as “communities”, with extended powers focusing on the needs of individuals (health and social matters). They were also given a council and government. The *Court of Arbitration* (later transformed into the Constitutional Court) was founded to settle conflicts between regions and communities. Immediately following these reforms, the government and council of the Flemish Region merged with the government and the council of the Flemish Community. Another important feature of this second phase in 1980 is that the Brussels Region was put “on hold” with regard to its institutions.

#### Third reform of the state (1988-89)

A special law of 1988 gave more powers to communities and regions. The communities were given responsibilities for education while regions were given responsibilities for transport and public works. In 1989 Brussels-Capital Region received its own institutions (parliament and government). As Brussels-Capital Region was established as a bilingual region, three specific bodies were created to handle community competencies in Brussels (COCOF, the French Community Commission; VGC, the Flemish Community Commission; and COCOM, the Joint Community Commission).

#### Fourth reform of the state (1993)

The Constitution was revised and Belgium became a fully-fledged federal state. The first clause of the first article in the Constitution which used to say: “Belgium is divided into provinces” was amended to: “Belgium is a federal state which consists of communities and regions.” The communities and the regions received their full powers, and their parliaments were to be elected directly. As a solidarity measure among French-speakers, the Saint Quentin decrees transferred some tasks from the French Community to the Walloon Region and the French Community Commission (COCOF) in Brussels.

#### Fifth reform of the state (2001)

Two special laws enacted on 13 July 2001, put into force the *Lambermont* Agreement of January 2001 and the *Lombard* Agreement of April, leading to additional transfers of powers to regions and communities, reform of Brussels-Capital Region’s institutions, and revision of the financing scheme of regions and communities. After the transfer of responsibilities and resources to sub-federal governments in 1989, additional measures were needed to ensure the functioning of sub-federal

institutions and in particular to overcome the structural under - financing of the communities. Financing problems were most pressing for the French-speaking community and various solidarity measures were needed to bail it out.

The *Lambermont* Agreement transferred certain powers to the regions and communities. Powers concerning local authority and provincial law, agriculture, fisheries and foreign trade were regionalised. Development co-operation (with regard to regional and community areas of responsibility), auditing of electoral expenses for elections to the parliament and the supplementary financing of the political parties were transferred to the communities and regions. In addition, the agreement provided 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 Commission.

The *Lombard* Accord amended the way Brussels institutions operate. The six Brussels members of the Flemish Parliament have since become directly elected. The agreement also amended the distribution of seats between the two linguistic groups in Brussels Regional Parliament, and the voting majorities required in each linguistic group of the parliament to adopt main regional ordinances concerning the administrations which they oversee.

A further important set of changes concerns public sector reform. Since the late 1990s, Belgian governments have been carrying out reforms to modernise the public sector as part of an effort to build citizens' trust in government and respond to challenging budgetary constraints. These reforms have shared some objectives: streamlining the organisation of governments, making ministerial departments more accountable, and strengthening the policy making function of the administration (by reducing the size of ministerial cabinets which are traditionally large and strongly involved in the development of policies and drafting of regulations).

- The federal government conducted the *Copernicus* Reform between 1999 and 2003. It re-organised federal ministries into Federal Public Services and Public Programming Services working on cross-cutting social issues). It also reformed human resource and budgetary arrangements (including mandates and audit for top managers), and communication with internal and external stakeholders.
- The Flemish government launched a similar reform, the BBB Reform (*Beter Bestuurlijk Beleid* or Better Governance Policy Reform) in 2000. The government structure was amended to draw a clear distinction between the departments in charge of policy preparation and the agencies in charge of policy implementation, throughout 13 defined policy areas.
- The Walloon government re-organised its administration in August 2008. The Ministry of Equipment and Transport and the Ministry of the Walloon Region were merged into a single body, called the Public Service of Wallonia.
- The French Community government has made significant organisational changes with the introduction of mandates for top officials (Government Order of 1 December 2006) and project-based management (ongoing process).
- The government of Brussels Capital Region has not conducted any general organisational changes, but the developments related to the establishment of its administrative simplification programme allow the sharing of best practices and the development of a global outlook among representatives of all the Brussels public institutions.

From the perspective of Better Regulation, it is not clear that these reforms – which are often ongoing – have yet helped to raise the efficiency and effectiveness of policy and rule-making. The OECD peer review team heard for example that the ministerial cabinets often remain highly involved in the process of rule-making, which may include drafting.

### *Developments in Belgian Better Regulation institutions*

There has been a steady development of Better Regulation institutional infrastructure, starting with the establishment of the Administrative Simplification Agency in 1998, originally focused on administrative simplification for business, but with a mission which now also covers citizens. From the start, the ASA has had a dual purpose, to promote initiatives for simplification at federal level but also to promote cross-government co-operation. Since 2001, Flanders has set up a Regulatory Management Unit to take forward regulatory management as part of its Better Governance Policy, Wallonia has set up the EASI- WAL Commission to implement its Action Plan for administrative simplification and e-Government, and the French Community has also set up a dedicated unit for administrative simplification and e-Government. There has also been a progressive development of networks (and in some cases units) within and across administrations, formal and informal, to liaise with the central units.

**Table 2.1. Milestones in the development of Better Regulation institutions in Belgium**

1998	Programming Law on entrepreneurship establishes the Administrative Simplification Agency (ASA).
2000	The federal government creates a state secretariat for administrative simplification.
2001	<ul style="list-style-type: none"> <li>• The federal government creates <i>FEDICT</i>, a dedicated ministerial department for e-Government.</li> <li>• The Flemish government creates a dedicated unit for Better Regulation: the <i>Dienst Westmatiging</i> (DMW) or Regulatory Management Unit (RMU).</li> <li>• The Walloon government creates the <i>Wall-On-Line</i> unit, in charge of e-Government initiatives.</li> </ul>
2002	The Walloon government sets up the Commissariat à la simplification administrative (Commission for Administrative Simplification).
2005	The Walloon government merges the Wall-On-Line unit and the Commission for Administrative Simplification into the Commissariat E-Administration, Simplification <i>EASI-WAL</i> or Commission for e-Government and Simplification <i>EASI-WAL</i> .
2006	The government of the French Community creates ISA, a dedicated unit for administrative simplification and e-Government within the General Secretariat.
2008	The federal government includes a minister for entrepreneurship and simplification. The Prime Minister remains in overall charge of Better Regulation.

## *Key institutional players for Better Regulation*

### *Key players in governments*

Unlike some other European countries where the centre of gravity for Better Regulation responsibilities cannot easily be identified, Belgium has successfully established a structure of dedicated Better Regulation units. These structures have, in each case, been placed at or close to the centre of government with (in most cases) a reporting line to the head of the government, which is also a distinguishing feature. In the federal government, they are under the Prime Minister, within the Chancellery of the Prime Minister. In regions and communities (except Brussels-Capital Region and the Flemish government), responsibility for Better Regulation lies with the minister-president (or vice minister-president).<sup>5</sup> In Brussels-Capital Region, it is the responsibility of the Secretary of State for Public Affairs. In the Flemish government, it is the responsibility of the minister in charge of administrative affairs. Table 2.2 below sets out the key information.

### Federal government

The Prime Minister is overall responsible for Better Regulation. The Minister for Entrepreneurship and Administrative Simplification is responsible for administrative simplification and e-Government. Located within the Chancellery of the Prime Minister, the Administrative Simplification Agency (ASA) is the key actor for administrative simplification. This includes broader “Better Regulation” issues at the federal level where these issues are associated with simplification activities (*e.g.* impact assessment on the assessment of administrative burdens).

The main task of the ASA is to propose, stimulate and co-ordinate initiatives to simplify the regulatory framework. Its scope of action, originally focused on businesses, has been extended to citizens. The ASA not only promotes and supports simplification initiatives at the federal level. It also promotes co-operation across federal, community and regional governments, which means that in practice it plays a key nationwide role in encouraging Better Regulation. It is institutionally strong as its missions, location (at the centre of government), and substantial autonomy (it is an agency, not a department of the Chancellery) have been defined in a Royal Order, which helps to protect it from the political cycles and allows it to take the “long view” of developments. The ASA’s powers of initiative and networking capacities are strong features of the way it works in practice.

The Chancellery includes other units which are relevant to Better Regulation, linked to its role of helping the Prime Minister lead and co-ordinate government policy. As well as the ASA, the Chancellery has three core units (the Secretariat of the Council of Ministers, the Co-ordination and Legal Unit, and the External Communication Unit), which also play a role in Better Regulation policies. The Secretariat of the Council of Ministers is responsible for the agenda of the Council of Ministers, and acts as a gate keeper on all draft regulations presented to the Council. The Co-ordination and Legal Unit provides legal expertise to the administration and strategic cells (equivalent of ministerial cabinets) in the preparation of regulations and with respect to issues dealt by the *Concertation Committee* (*overlegcomite / comité de concertation*), which consists of ministers of the federal government and of the governments of the communities and regions (see below). The External Communication Unit co-operates with the ASA on all communication campaigns.

### Box 2.3. The Administrative Simplification Agency (ASA)

The federal government created a dedicated unit for administrative simplification in December 1998 (Royal Order of 23 December 1998). The Administrative Simplification Agency (ASA) started operation in June 1999 with the mission to drive the policy for administrative complexity imposed on businesses. The Order setting it up makes it clear that the ASA's role is to encourage and co-ordinate simplification initiatives across administrations. The ASA's missions may be progressively broadened.

#### Institutional framework

The ASA is an agency in the Chancellery of the Prime Minister. The Order setting it up gives it substantial autonomy. The Prime Minister nominates the director and deputy director. The ASA produces an annual report for the Prime Minister who communicates it to members of government, the House of Representatives and the Senate.

The ASA has no powers to direct or constrain other administrations. It essentially relies on consultation and co-operation with administrations.

#### Tasks

The ASA's tasks are formally defined as:

- making proposals for simplification, stimulating and co-ordinating initiatives, carrying out studies;
- elaborating and implementing a methodology for measuring administrative costs imposed by regulations on businesses and SMEs;
- organising co-operation between the different federal administrations;
- elaborating an administrative impact note (the *Kafka* test); and
- organising dialogue on administrative simplification with all levels of authority, representative partners among self-employed and SMEs as well as with European institutions and international organisations.

The ASA has also taken on the following tasks:

- providing legal guidance and co-ordination for several e-Government projects (whose technical aspects are dealt with by *FEDICT*);
- managing the *Kafka* contact point (which collects suggestions for administrative simplification); and
- establishing a dialogue with administrations over simplification projects for citizens.

The ASA produces an annual Action Plan covering its work on simplification, which is approved by its Steering Committee (see below). Once approved by the Steering Committee, the action plan is sent to the Prime Minister. Each action plan is followed by future planning and an annual report on progress, sent to the federal.

### Public-private Steering Committee

A public-private steering committee was created at the same time as the ASA to drive its work. The Steering Committee drives the action of the ASA, advises and issues opinions. In particular it establishes the annual programme of work (action plan) of the ASA and approves its annual report. More broadly it is a platform for discussion between the government and stakeholders (within and outside the administration) on simplification policy.

The Steering Committee of the ASA, chaired by the Prime Minister (in practice, by a representative of the minister for Entrepreneurship and Administrative simplification, includes 16 members with voting rights (six stand for the political power, two for the administration, six for business organisations, and two for trade unions). The ASA's director and deputy director participate in meetings and have a consultative vote. Members are nominated for five years by each of the stakeholders (who are defined by the royal order which set up the ASA). Their mandate can be extended. In case of a change in government, the governmental-representatives step down and new ministers design their own representatives.

Additional monitoring committees have been established for complex projects (such as the Crossroads Bank for Enterprises BCE and the transparency committee for the public service information directive).

Some other federal ministries (now called Federal Public Services – FPS – or Public Programming Services – PPS – since the *Copernicus* Reform) play a role in Better Regulation policies, partly through specific initiatives.

- The FPS for Economy, SMEs, Self-Employed and Energy is a major actor for simplification policy in Belgium. As part of its mission to create the conditions for a competitive, sustainable and balanced operation of the Belgian market, it works closely with the ASA to improve the regulatory framework for businesses. It has launched a major initiative for upgrading the quality of the economic regulatory framework (see Chapter 5).
- The PPS for Sustainable Development, which assists other ministerial departments in preparing and implementing policy on sustainable development, has developed an impact assessment test with respect to sustainable development. This test is now part of the formal process for preparing draft regulations (see Chapter 4).
- The FPS for Information and Communication Technologies (*FEDICT*) was established in 2001 to develop and oversee the federal government's initiatives for e-Government. *FEDICT* has a fair degree of autonomy, including for recruitment (staff are outside the standard framework for human resources for civil servants).
- The FPS for Personnel and Organisation (P&O) is in charge of co-ordinating “back office modernisation projects” across the whole administration. P&O works on Business Process Re-engineering project, most of them proposed by the services, and focuses on the efficiency of the processes in administration.
- The FPS Justice currently has a relatively limited role in Better Regulation (mostly relating to the publication of the official journal (*Belgisch Staatsblad / Moniteur belge*), and the maintenance of a near complete jurisprudence database which is used by the courts in their analyses and recommendations on legislation).



- The FPS Finances has recently launched a vast regulatory reform of financial systems. A new service (*Expertise et Support Stratégique*) reports to the president of FPS Finances. This service is responsible for developing a quality regulatory framework based on criteria of legibility, coherence and concision.

### Flemish government

Since the June 2009 elections Better Regulation is under the responsibility of the minister in charge of administrative affairs (responsibility held by the Minister-President of the Flemish Region before the June 2009 regional elections,). As well as the Regulatory Management Unit of the Administrative Affairs policy area the Flemish Chancellery (Services for the General Government Policy area) also plays an important role in Better Regulation through two of its units. The Legal Services Unit provides legal expertise to civil servants and ministerial cabinet members drafting regulations, checks the legal quality of draft regulations, and manages the Flemish regulatory database. The Linguistic Unit promotes plain language by giving opinions on draft regulations and providing guidance (Chapter 3).

As part of its Better Governance Policy (BBB) policy (see Chapter 1), the Flemish government created a permanent and independent unit charged with developing and implementing regulatory management. The *Dienst Wetsmatiging* (DWM) or Regulatory Management Unit (RMU) started up in 2002. The government has set up a separate unit, CORVE, for the implementation of e-Government policies. Like the DMW, it is in the portfolio of the minister in charge of administrative affairs.

The DWM's mission is to support, guide and assess the Flemish better governance policy. This formally includes:

- Supporting the government's policy on regulatory management (in particular preparing the government's decisions relating to regulatory management).
- Co-ordinating regulatory management across the government (between the minister of regulatory management and the government, and between the departments). The DMW manages, advises and reports to the Flemish government and minister on regulatory management initiatives of all departments. To this end it has developed a network of "Units for Regulatory Quality" (see below).
- Building up expertise and providing advice, including through preparation of guidelines, tools and training, participation in simplification and regulatory management projects of departments.
- Ensuring quality control. The DMW is charged with checking that draft regulations comply with the standards of good regulation and evaluating simplification projects. It reports to the minister and formulate its opinion.
- Advocating for Better Regulation. The DMW promotes regulatory quality and administrative simplification within and outside the administration through internal and external communication campaigns.
- Signalling any issues on regulatory management to the government and ministries.

The government has set up units for regulatory quality (*cellen wetskwaliteit*) within each policy area to centralise regulatory capacity and avoid fragmentation in the development of regulations. The Flemish government agreement of 16 May 2007, established two key principles for the creation of these units: they had to be funded without extra budget, and they would be evaluated by 2009. The units have been set up under flexible arrangements (*i.e.* it is possible to set up one or more units per policy area). Within their area of work (department /agency /policy area), units for regulatory quality have to: (i) centralise and build in expertise in regulatory drafting; (ii) develop regulatory management; and (iii) act as contact point for the DMW (thereby replacing the existing network of contact points that had been established).

An evaluation conducted in mid-2008 showed that the creation of these units has promoted co-operation within each policy area for the preparation, implementation and enforcement of regulations, although this is not yet systematic. Co-operation across policy areas is much more difficult, and co-operation between units needs to be developed. The evaluation exercise itself has proved useful in enhancing contacts between the units and the DMW, clarifying the tasks of the units, highlighting good practices and building political support for further development of these units. The OECD peer review team was also told that these units are developing their own agenda for Better Regulation, thereby embedding the development of regulatory management tools (such as impact assessment and administrative simplification) within departments. The capacity of regulatory units strongly depends on the level of support from the minister and senior officials, especially since these units have been created without additional resources. For more on this see Chapter 4.

### Walloon government

Better Regulation is under the responsibility of the Minister-President. The Walloon government set up the *EASI-WAL Commission* in 2005 to implement the 2005-09 Action Plan for Administrative Simplification, e-Government and Readability. The Commission comprises two project-oriented units (administrative simplification, e-Government) and two supporting units (transversal unit, administrative unit).

The government set up a legal expert working group, the Legislative Committee, presided by the *EASI-WAL Commission*, and charged with advising the government on simplification of the regulatory framework such as codification and removal of obsolete regulations (see Chapter 5). The Legislative Committee comprises lawyers from the legal directorate of the Walloon government and other departments as well as experts working outside the administration. It also includes representatives from the Ombudsman Office of administrative services of the Walloon parliament as well as of the French Community.

### Brussels-Capital government

The Secretary of State for Public Affairs and the Port of Brussels has overall responsibility for administrative simplification policies. The government agreement of 2004 provided for the establishment of an administrative simplification unit, but this has not been implemented. Brussels Regional Informatics Centre (*Centre d'informatique pour la région bruxelloise*) plays an indirect role by promoting re-engineering of administrative processes as part of e-Government initiatives.

### French Community government

Better Regulation policies are under the remit of several units of the General Secretariat of the Ministry of the French Community. These are the Legal Unit, the Internet and Administrative Simplification Unit (ISA) and the General Unit for Budgetary and Financial Audit. They are brought together in the administrative simplification task force, which is under direct authority of the General Director for General Affairs and Budgetary and Financial Audit. These units have the support of the ETNIC (*Entreprise des technologies nouvelles de l'information et de la communication*).

ISA, a dedicated unit for administrative simplification and e-Government, works with a network of contact points across the administration. Its work is steered and supervised by the Strategic Committee and the Steering Committee. The Strategic Committee is in charge of defining the government strategy for administrative simplification and e-Government. It comprises representatives from the Ministry of Public Affairs, the General Secretary, other officials from the Ministry of the French Community, public-interest bodies and the *Conseil supérieur de l'audiovisuel* (CSA), the independent media regulator. The Steering Committee is in charge of implementing and monitoring the decisions of the Strategic Committee. It is chaired by the General-Secretary and includes representatives from each minister, the administration, public-interest bodies, CSA, the general directorate in charge of administrative simplification and e-Government, the general directorate in charge of personnel and, as observers, representatives from the *Inspectorate of Finance* and the Audit.

### German-Speaking Community government

The Ministry of the German-Speaking Community has set up the inter-departmental group of lawyers, a working group of eight lawyers, to work on regulatory management.

**Table 2.2. Overview of Better Regulation units and related structures in Belgium**

	Federal state	Flemish Region	Walloon Region	French Community	Brussels Capital Region
<b>Name</b>	ASA	DWM	<i>EASI-WAL</i>	ISA	<i>AVEG</i>
<b>Start of operation</b>	1999	2002	2005 <sup>a</sup>	2005	2005
<b>Statute</b>	Agency	Agency	Agency (“commissariat”)	Administrative unit	Administrative unit
<b>Reporting to</b>	Prime Minister	Minister in charge of Administrative Affairs	Minister-President of WR	General Secretary of the Ministry of the FC	General Secretary of the MRBC
<b>Staff</b>	16 persons	9 persons	22 persons (of which 6 on administrative simplification)	8 persons	4 persons
<b>Scope</b>	Administrative simplification	Administrative simplification and regulatory quality	Administrative simplification and e-Government (includes aspects of regulatory quality through legal simplification)	Administrative simplification and e-Government	Administrative simplification and e-Government

<b>Unit's role in rule-making process<sup>b</sup></b>	<i>Ex post</i> review of <i>Kafka</i> tests	<i>Ex post</i> review of impact assessments	Issues opinion on all draft decrees and orders regarding administrative simplification and readability		Create <i>Kafka</i> test
<b>Programme work defined by</b>	Annual programme of work (approved by Steering Committee and PM)	Based on: Government agreement and policy statement administrative affairs (BR chapter)	Based on: Action Plan for Administrative Simplification and e-Government	Based on: 2005-10 Strategy for Administrative Simplification and e-Government,	Brussels plan to reduce administrative burdens by 25%
<b>Steering / support committee</b>	Steering Committee composed of public officials and external stakeholders (businesses and trade unions)	No steering committee	Legislative Committee composed of lawyers from Walloon administrations and public bodies. Scientific Committee (experts from administration, university, businesses, etc.)	Strategic Committee and Steering Committee composed of representatives from administration and public bodies	Support Committee of representatives of all administrations and public bodies
<b>Role of committee</b>	Establishing annual programme of work of the ASA and approving its annual report; general platform for discussion		Legislative Committee: identifying obsolete regulations, potential codification and developing semantic glossary. Extended to all Better Regulation activities in June 2008. Scientific Committee: providing expertise support	Defining strategic orientations relating to administrative simplification and e-Government; and monitoring implementation	Search for common solutions
<b>Networks across administration</b>	Network of simplification agents	Units for regulatory quality	Members of Legislative Committee and Network of study groups	Network of contacts (one per administration and public body)	one per administration and public body + contacts with federal and regional

Notes a. *EASI-WAL* was established from the merger of the *Commissariat à la simplification administrative* (Administrative Simplification Agency) and *Wall-on-Line*, in charge of e-Government, both of which were set up in 2002. b. This does not integrate guidance and support material on regulatory drafting.

## *Policy and regulatory co-ordination between Belgian governments*

### Mechanisms for co-ordination

Co-operation and co-ordination in areas of shared interest must take account of the fact that Belgian federalism severely limits the scope for governments to interfere in each others' areas of competence. It is therefore anchored in procedures established by law, but there is also a tradition of informal networking to supplement the formal channels. There are also specific mechanisms for preventing and managing conflict of competences arising between different authorities (Box 2.5). Informal co-operation is used extensively to pave the way for decisions and exchange ideas and practices. Formal co-operation and co-ordination may take place through one or more of the following procedures:

- *The Concertation Committee* (Dutch: *overlegcomite*; French: *Comité de concertation*). This is the key body. It is responsible for preventing conflicts of interest between the federal state, the communities and the regions. It consists of the head of each government (Prime Minister and minister-presidents of each region and community), and is based on the linguistic parity rule. The Consultation Committee examines all issues requiring co-operation between governments and issues relating to competence sharing. The Committee meets once a month and its agenda systematically includes: (i) transposition of EU directives, (ii) work of inter-ministerial conferences (see below), and (iii) co-operation agreements. The Committee also issues opinions on issues relating to division of competences tabled by the Council of State. When the legislative section of the Council of State identifies that competence has been exceeded as part of its scrutiny of draft regulations (see Chapter 4), it calls on the Consultation Committee, which issues an opinion within a 40-day deadline. The Committee then “invites” the relevant government to take action to eliminate it.
- *Inter-ministerial conferences*. These are established by the Consultation Committee to provide a forum for co-operation between federal, community and regional ministers in specific policy areas. They have no binding decision power. There are 16 inter-ministerial conferences covering the different policy areas,<sup>6</sup> including the Inter-ministerial Conference of Foreign Policy (CIPE) for EU co-ordination.
- *Co-operation agreements*. The federal state, communities and regions may conclude “co-operation agreements” for the development of common initiatives, joint exercise of competences and establishment or management of joint institutions. In the field of Better Regulation, the federal government, communities and regions signed a co-operation agreement on administrative simplification in 2003. There are two categories of co-operation agreement, depending on whether the agreement needs to be approved by law, decree and/or ordinance. Co-operation agreements tend to focus on specific projects, with more limited impact in terms of co-operation in the development of policy and strategy. It was pointed out to the OECD peer review team that co-operation agreements are often difficult to implement in practice, and may be in effect ignored at the political level. Taking the co-operation forward then relies on the goodwill and commitment of officials.

### Box 2.4. Managing conflicts of competence

The constitution provides for a specific procedure to suspend the adoption of a legislation which prejudices the interests of a linguistic minority, referred to as “alarm bell” procedure. A motivated motion can be adopted to declare that a draft law (federal level) seriously endangers the relations between communities. It has to be signed by at least three-quarters of the members of a linguistic group of the House of Representatives or of the Senate. In this case, the parliamentary process is stopped, and the motion is sent to the Council of Ministers which has 30 days to give its opinion and reach consensus. The relevant house is then invited to make a decision on the opinion of the Council of Ministers or on the draft regulation. The procedure has been used mostly regarding linguistic issues, more or less frequently over time.

Each executive or legislative power may ask for the organisation of a consultation across entities about a decision taken by a federal, community or regional government or parliament if it considers that this decision, although in conformity with rules regarding distribution of competences, challenges its interests.

In its *ex ante* consultative role, the Council of State identifies any issue of competences between jurisdictions, before adoption of the regulation.

Cases relating to a conflict of competence can be brought for annulment to the Constitutional Court. (which was initially created in 1989 as the Arbitrage Court for solving disputes relating to competences). Over the past years cases relating to competence sharing have accounted for less than 10% of the rulings of the Court. For example, in 2007, the Constitutional Court issued 11 rulings related to sharing of competences between the federal state, communities and regions, out of a total of 163 (*Cour constitutionnelle*, 2007). The following authorities and persons may bring an action for annulment before the Constitutional Court: (i) the Council of Ministers and the governments of the communities and regions; (ii) the presidents of all legislative assemblies, at the request of two-thirds of their members; and (iii) natural or legal persons, both in private law and public law, Belgian as well as foreign nationals. The latter category of persons must declare a justifiable interest.

If a question comes up before a particular tribunal about the correspondence of laws, decrees and ordinances with the rules laying down the division of powers between the federal state, the communities and the regions, the tribunal must address a preliminary question to the Constitutional Court, and the proceedings are suspended pending the answer of the Court.

### Co-ordination on Better Regulation

The transposition of EU directives and simplification have so far been the main areas for co-ordination and co-operation as regards Better Regulation. The Consultation Committee plays a particularly important role in the transposition of EU directives, which in some cases require a co-operation agreement (see Chapter 7). Belgian governments formalised their intention to co-operate on administrative simplification in an agreement of December 2003. This agreement provides for exchange of information and practices, collaboration within international bodies such as the EU and the OECD, co-ordination of simplification projects, co-operation on specific simplification projects (such as the *Kafka* contact point, Crossroads Bank for Enterprises), and the establishment of a consultation committee on administrative simplification. Other co-operation agreements were signed in the field of e-Government in 2001 and 2005 (OECD, 2007).

Beyond these formal processes, governments and officials have co-operated informally to take forward Better Regulation in a number of areas:

- *Access to information.* Governments have co-operated to put in place a number of tools to facilitate access of citizens, business and administration throughout the

institutional structure. Examples include the creation of common portal on legislation, the Crossroads Bank for Enterprises, the publication by the FPS for Economy of the “*Vademecum of companies*” guidance for business on regulatory requirements (see Chapter 3), and the *aandeslag.be / autravail.be* website, which gives employers and employees information on measures relating to the promotion of employment (including a tool for calculating employment-related benefits).

- *Consultation.* A number of advisory boards include representatives of the different governments. There are also specific advisory bodies to co-ordinate policies across governments. Examples include: *ENOVER / CONCERE (Energieoverleg / Concertation État-régions pour l'énergie)*; a unit for discussions between federal government and regional governments over energy-related matters that have been devolved to regions; and the federal inter-departmental commission for sustainable development.
- *Impact assessment.* The newly established sustainability test for federal regulations includes a spatial dimension (see Chapter 4). This means that the evaluation of economic, social and environmental consequences has to be done – at least theoretically – for the whole of Belgium but also from the perspective of the different levels within Belgium (as well as outside Belgium).
- *Exchange of information* (for example, on implementing EU directives, on measurement of administrative simplification) and common initiatives such as the *Kafka* contact point (see Chapter 5).

### *The legislature and Better Regulation*

Belgian parliaments' association with the development of Better Regulation policies takes place through their involvement in the development of governments' Better Regulation policies, regular reporting of governments on their Better Regulation activities, and their own initiatives. Interviews of the OECD team showed that Belgian parliaments are concerned at the need to improve regulatory quality throughout the rule-making process.

- *Federal parliament.* The House of Representatives has taken different initiatives to improve the quality of laws, such as a requirement to prepare a summary description of the file accompanying the draft regulation and an unofficial consolidation of texts where a bill modifies existing legislation, and the introduction of a legal quality scrutiny on all amendments adopted by parliamentary committees. In 2007 a law provided for the establishment of a parliamentary committee on law monitoring,<sup>7</sup> which will give the parliament a significant role in *ex post* evaluation of laws (Chapter 4).
- *Flemish parliament.* The Flemish Parliament has a parliamentary committee with responsibility for following up of the Flemish government's Better Regulation policy. As part of its supervising task, the committee played a role in the development of the impact assessment and regulatory agenda of the government. In 2007, it sent a reasoned motion to the government on adaptation of the impact assessment system, for example asking for regular reporting on the quality of impact assessments. It is part of the initiative for a Flemish Inter-institutional

Agreement (IIA) on the joint-approach and application of regulatory impact analysis adopted in July 2008 (Chapter 3). In 2008, the Flemish parliament changed its rules of procedure, as a result of which the government has to attach a regulatory agenda to the submitted annual policy papers (Chapter 3). The Flemish parliament has also started to consider Better Regulation policies for its own activities (benchmark with other parliaments, including quality of legislation, current discussion on a memorandum on the role of the parliament in evaluating acts).

- *Walloon parliament.* In 2005, the Walloon Parliament formally approved the government's regional policy statement, thereby subscribing to the commitment to Better Regulation. Better Regulation comes within the competence of the parliamentary Committee for General Affairs, Administrative Simplification, European Funds, Regulation and Accounting. There are regular exchanges between the government and the parliament, in particular through the annual presentation by *EASI-WAL* on Better Regulation policies to members of the parliament and parliamentary staff.

### *The judiciary and Better Regulation*

The judiciary does not have a direct role in the development of Better Regulation policies but plays an important role in regulatory management through three main channels. First, courts and tribunals control the conformity of general, provincial and local orders and rulings with the law and with the constitution (the Constitutional Court controls conformity with the constitution for primary regulations, but has no competence regarding secondary regulations – see below). Second, while administrative courts and the Council of State hear cases against administrative decisions, the judiciary is competent for recourse against a public body as soon as it relates to subjective rights (Chapter 6). Third, the *Court of Cassation* reports to the parliament on legal issues and implementation issues which would require the legislative power to intervene (Chapter 4).

### *Regulatory agencies and Better Regulation*

Mapping the quality of regulatory management of agencies is beyond the scope of this review, but two points can be highlighted. First, as in some other countries, regulatory agencies, which are often newly established bodies with some autonomous management, have often been quicker to adopt good regulatory management principles (for example, use of public consultation and risk management). Second, the establishment of autonomous agencies has sometimes proved to be a useful means of taking issues forward which have a national dimension, and hence overcoming co-ordination problems. For example, the Federal Agency for the Safety of the Food Chain was established in 2000 as a response to a series of food crises in Europe and Belgium, in particular after the dioxin crisis, which revealed co-ordination problems between the different control services of the federal administration.



### Box 2.5. Regulatory agencies

The major federal regulatory agencies are the Competition Authority, the Belgian Institute for Posts and Telecommunications, the Electricity and Gas Regulatory Commission, the Banking, Finance and Insurance Commission, and the Federal Agency for the Safety of the Food Chain. These are autonomous public bodies, except the Competition Authority, which is a directorate inside the FPS Economy with a separate line in the government's budget. They vary in their legal status, powers, lines of accountability and means of redress (administrative courts and judiciary).

There are also regional and community sectoral regulatory agencies. While competition policy is an exclusive competence of the federal state, sectoral regulations can fall under the competence of different entities. For example, the energy sectors (electricity and gas) are regulated by a federal authority and three regional authorities.<sup>8</sup> In the communication sector, the federal state is competent for telecommunications, and communities are competent for content. There is a federal regulator for telecommunications and postal services (IBPT) and two regional regulators for broadcasting activities (*Conseil supérieur de l'audiovisuel* or CSA).

#### *Other important players*

These include four authorities with Belgium-wide responsibilities – the Constitutional Court, the Council of State, the *Court of Audit*, and the *Inspectorate of Finance* – which may be viewed as a form of centralising “glue” to counter the centrifugal forces of federalisation, as well as providing a country-wide perspective on regulatory management issues.

#### Constitutional Court

The Constitutional Court (*Grondwettelijk Hof – Cour constitutionnelle*) is composed of 12 judges, who monitor the observance of the constitution by the legislative authorities of Belgium.<sup>9</sup> It has the power (*ex post*) to annul and suspend laws, decrees and ordinances (but not orders and other secondary regulations issued by governments). There is no appeal. Judges are appointed for life by the King from a list of two candidates proposed alternately by the House of Representatives and the Senate by a majority of at least two-thirds of the members present. Judges are appointed for life by the monarch.

#### Council of State

The constitution (Article 160) establishes one Council of State embracing the whole range of regulations across Belgium. The Council of State (*Raad van State – Conseil d'État*)<sup>10</sup> is at the crossroads of the legislative, executive and judiciary powers, and plays a key role in improving regulatory quality through *ex ante* and *ex post* formal procedures. The Council of State does not officially belong to the judiciary system but falls under the competence of the minister of the Interior. Its 46 judges are magistrates who are appointed for life by the King out of a list of three names nominated by the Council of State itself, according to a number of conditions set by law. The Council members then nominate elect their presidents and presidents of chambers. It also comprises an auditors' office (also consisting of magistrates), a co-ordination office (keeping track of legislation) and a registry office.

The Council of State has a dual function: it is the supreme administrative court and it is the legal adviser of Belgian governments. It is structured into two sections, which correspond to these two competences:

- *Administrative litigation.* The administrative litigation section hears cases against decisions of Belgian governments (federal, regional, communities) as well as decisions of provincial and municipal executives. It examines the conformity of administrative decisions with the rule of law, and is the supreme administrative court, ruling on appeals against decisions of the lower administrative courts. The Council of State can annul subordinate regulations, but not primary regulations (laws, decrees and ordinances) (Chapter 6). It has the power to suspend and annul administrative acts (individual and statutory) that are contrary to the rules in force.
- *Legal advice on draft regulations.* The legislative section formulates opinions on the overall legality of draft regulations. Governments are required to send it all draft regulations before they are approved by the government or sent to the parliament. The opinions of the Council of State are not binding. Acts of a legislative nature are included in the folder accompanying the draft and published on parliamentary websites (Chapter 4).

### *Court of Audit*

The Belgian *Court of Audit* (*Rekenhof, Cour des Comptes*) is institutionally linked to the federal Belgian parliament. Its members are elected by the federal House of Representatives for a six-year renewable term. The *Court of Audit* is independent and carries out most of its activities on its own initiative (and occasionally upon request of parliament). It appoints and dismisses its staff (600 people, two-thirds of whom are auditors or controllers).

The *Court of Audit* is competent in matters related to the federal state, the communities, the regions, the public bodies depending upon them, and the provinces. It is not competent in matters related to municipalities. The Court has several functions:

- It audits government expenditure and revenue of the federal state, the communities, the regions, the public bodies depending upon them, and the provinces. It does not audit municipalities.
- It monitors the sound use of public funds and informs the parliament about the way public services are managed. It carries out audits on the operation of specific units or administrations, processes and public policies. It selects subjects to be audited on three criteria: balanced coverage of its whole scope of competence, risk analysis, and areas of interest of members of parliament.
- It gives an opinion on the budgetary and financial impact of proposals of law submitted by parliament members (as opposed to projects of law initiated by the government), upon request of the parliament. This is often done in the field of taxation and social security.
- The audit process includes a formal contradictory (adversarial) debate with the government and the administration. Audit reports are sent to the relevant

parliament. Upon initiative of the parliament it can be discussed in parliamentary committee with the presence of the minister.

The Court intervenes in the area of Better Regulation, but only indirectly. Its performance audits on the sound use of public funds lead it to review *ex post* the implementation of regulations and policies. Its reports often include assessments relating to the quality of laws and their implementation (such as coherence with objectives, adequate tools for implementation). It can also – but on rare occasions – contribute to regulatory quality in the development of regulations as the parliament may request its opinion on proposals of law initiated by members of parliament.

### *Inspectorate of Finance*

The *Inspectorate of Finance* is a budgetary and financial adviser to all Belgian governments. It plays an important role in the development of regulations as its opinion is required for any project with a budgetary aspect. Inspectors of finance are assigned to work on the issues related to a specific jurisdiction (federal state, communities and regions). The Inspectorate is an inter-federal body and staff are allocated to the different governments under a rotating system.

### Consultative bodies

Belgium has a number of institutionalised consultative bodies which take part in the rule-making process (Chapter 3). A number are “social partnership” forums, including business and employee representatives (referred to as “social partners”, where government proposals are discussed. These bodies also act as a think tank through publication of reports. At the federal level, this takes place mainly through two long-standing advisory boards (National Council of Labour established in 1952, often referred to as “Belgium’s social parliament”, and the Economy Central Council established in 1948). Each federated entity has established its own social and economic council, bringing together social partners.<sup>11</sup> These councils provide advice and recommendations to their regional government on all matters of regional competence and those having an impact on the region’s economic and social life. They include several thematic permanent committees and *ad hoc* committees created for large and specific issues.<sup>12</sup>

### Ombudsmen

The establishment of ombudsmen in Belgium dates back to the 1990s. Each (federal, community and regional) entity (except Brussels-Capital Region) has established its own ombudsman-type institutions. Besides their main mission (*i.e.* helping to solve disputes with administrative authorities), the ombudsmen play a role in identifying regulatory problems and raising awareness of government and parliament of the need to improve regulations through the publication of its annual report. It was pointed out to the OECD team that the recommendations of ombudsmen have been a source of information in the development of programmes for administrative simplification.

## ***Resources and training***

### *Federal government*

The ASA has a 12-person staff, including a director, a deputy-director, seven officials and six assistants. Officials are civil servants in secondment from ministerial departments, and work independently from these departments. It has access to funds for consultancy purposes in support of its missions.

The Federal Administration Training Institute, which is part of the FPS for Personnel and Organisation, provides a large number of training programmes, some of which are grouped into the “regulation and dispute” category. The ASA organises training sessions on the *Kafka* Test and the standard cost methodology (see Chapters 4 and 5), as well as workshop and information sessions (for example, on the use of e-Government, European Better Regulation initiatives).

### *Flemish government*

The Regulatory Management Unit – Flemish government (DMW) has a staff of nine persons (one co-ordinator, six policy advisors and two support staff). It also has access to fund for consultancy work. The DMW organises a wide range of training sessions (for example on legal techniques, form design, impact assessment, administrative burdens) and events and workshops in the field of Better Regulation. Following evaluation of training, it launched a tender at the end of 2008. The new orientations is to give increased attention to governance, economics and sociology (besides legal aspects), determine specific needs on the basis of evaluation of the units for regulatory quality and of impact assessments, and target not only government officials but also staff of the parliament and of advisory council. Target groups have been defined based on their involvement in regulatory drafting and policy making.

### *Walloon government*

The Commissioner for e-Government and Simplification – Walloon government (*EASI-WAL*) has a team of 22 persons working on simplification and e-Government. The simplification unit has six officials (one head of unit – “deputy commissioner” – and five experts). The Department of Legal Affairs of the Walloon government has about 20 lawyers who provide assistance to civil servants and members of ministerial cabinets in drafting regulations. Each administration has its own legal department.

The Human Resources Management Department provides various training courses relating to administrative law, preparation of administrative documents, new legislation, legislative technique and administrative simplification procedures. Some of these training are compulsory as part of appointment process as a statutory official. Documents in support of training programmes are available on line.<sup>13</sup> In addition *EASI-WAL* has organised specific training courses on impact assessment (*Kafka* Test) and burden reduction (SCM methodology).<sup>14</sup> It has produced a collection of practical guides on regulation (summarising best practices for Better Regulation), process methodologies, forms (creating and assessing administrative forms), Standard Cost Model, and readability of regulations. It has created a number of handout tools for simplification (such as process for preparing a regulation). Other tools include ATLAS, an online glossary of legal terminology (see Chapter 5).

### *Brussels-Capital Region*

The Brussels Capital Region has a specific team, *AVEG*, for Better Regulations issues, which was combined with the *Kafka* Platform to bring together the units involved in these issues. Altogether there are around 25 persons involved in Better Regulation.

### *French Community of Belgium*

The Internet and Administrative Simplification Unit – Ministry of the French Community (ISA) has a team of ten people, several of which are involved in Better Regulation issues. The legal unit has a staff of four lawyers. The Public School of Administration of the Ministry of the French Community is in charge of the training policy and provides a number of training programmes. Entry in the administration includes training session in the area of regulatory drafting.

### *German-Speaking Community*

The Ministry of the German-speaking Community has set up a working group of eight lawyers (out of a total staff of 240) to work on regulatory quality issues.

## Notes

1. The ASA also currently reports to the minister in charge of administrative simplification.
2. See OECD 2009 ; also IEA 2005 (“the structure may cause problems of regulatory powers -overlap of powers, lack of regulatory coverage of certain segments, lack of the economies of scale - and co-ordination - both the objectives and of enforcement decisions. This structure may lead to lengthy communication procedures and increase bureaucracy”).
3. These 13 policy areas are: Services for the General Government Policy; Public Governance; Foreign Affairs; Finance and Budget; Education and Training; Economy, Science and Innovation; Culture, Youth, Sport and Media; Welfare, Public Health and Family; Agriculture and Fisheries; Work and Social Economy; Mobility and Public Works; Environment, Nature and Energy; Town and Country Planning, Housing Policy and Immovable Heritage.
4. Forty senators are directly elected by popular vote (15 by the French-speaking electoral college and 25 by the Flemish electoral college. Thirty-one are indirectly elected (10 appointed by the Parliament of the French Community, 10 by the Flemish Parliament, one by the German-speaking Parliament, and 10 co-opted by senators).
5. In Flanders Better Regulation has been under the responsibility of the minister in charge of Administrative Affairs. In October 2008, the responsibility was put under the remit Minister-President. In the new government set up after the regional elections of June 2009, this responsibility is under the remit of a Vice Minister-President and minister in charge of Administrative Affairs.
6. The 16 inter-ministerial conferences are the following: institutional reforms; economy and energy; mobility, infrastructure and telecommunications; scientific policy and culture; foreign policy; foreign trade; home affairs; employment, training and social economy; civil service and modernisation of public services; agriculture; health; environment; social integration; urban policy and housing; well-being, sports and families.
7. Law of 25 April 2007 on the establishment of a parliamentary committee in charge of legislative monitoring.
8. The federal regulator for gas and electricity is the Electricity and Gas Regulatory Commission (*Commissie voor de Regulering van de Elektriciteit en het Gas* - *Commission de Régulation de l'Électricité et du Gaz* or CREG). The regional regulators are: *Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt* (VREG) in Flanders; *Commission wallonne pour l'énergie* (CWAPE) in Wallonia, and *Institut bruxellois pour la gestion de l'environnement* (IBGE) in Brussels-Capital Region.

9. The precursor of the Constitutional Court was the Court of Arbitration, established in 1980, at a time when Belgium was gradually being transformed into a federal state. The Court of Arbitration owed its name to its original mission, which was to act as arbitrator between the different legislatures of the federal state, the communities and the regions by monitoring the conformity of laws, decrees and ordinances with the power-assigning rules in the constitution and the laws on institutional reform. The jurisdiction of the Constitutional Court has been gradually extended to include the review of laws, decrees and ordinances with Title II of the constitution (Articles 8 to 32 on the rights and freedoms of Belgians) and with Articles 170 and 172 (legality and equality of taxes) and 191 (protection of foreign nationals).
10. Established by the law of 23 December 1946.
11. Brussels Social and Economic Council, established in 1988; Flanders Social and Economic Council (SERV), established in 1988 ; Wallon Region Economic and Social Council (CESRW), established in 1985; Economic and Social Council of the French Community, established in 2008 and composed of members of the social and economic councils of the Walloon Region and the Brussels-capital region.
12. The regional economic and social councils also act as a strategic advisory board for several policy areas (Flemish Region) or as secretariat for advisory boards (Walloon Region). See Chapter 3.
13. *<http://formation.mrw.wallonie.be>*.
14. Resources are available at *<http://easi.wallonie.be>*.

