

Chapter 8

The interface between subnational and national levels of government

Multilevel regulatory governance - that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Belgium is a federal state with a very specific institutional framework, since the federal level and federated entities are on an equal standing. It is thus inappropriate to refer to regions and communities as “subnational levels” of government. “National” levels of government include the federal government, regions and communities. Subnational levels of government include provinces and municipalities (“*communes*”). This chapter will consider the interface between “national” levels of government and local levels of government. Relations between federal authorities, communities and regions are considered in Chapter 2.

Assessment and recommendations

The local government landscape is large and founded on the principle of balanced powers, but significant in terms of direct interaction with business and citizens. There are 589 municipalities, 589 welfare public centres (CPAS), most of them small. Local governments are important actors in the areas of civil and social rights, the environment, mobility, and building regulations as well as permits and planning, and play a major role in the enforcement of higher level regulations. Both federal and regional governments are a key player, with provinces and municipalities under their tutelage. It was suggested that supervision might be simplified, and that account should be taken of difference in size between municipalities.

There is a well established network of consultation between the national and local governments, but some issues need attention. The national governments (federal, regions and communities) consult local governments in the development of regulations through the advisory councils, in which the provinces and municipalities are represented. The regional governments have established specific bodies to interact with local governments. Nevertheless, local authorities have raised concerns about the burdens imposed by higher levels of government. The OECD peer review team heard specific concerns about unfunded mandates and the administrative burdens generated by higher-level regulations. Some initiatives have been taken to address these concerns, for example, an initiative of the Flemish government to reduce administrative burdens on local governments. Another issue raised was the need to put more effort into sharing databases and data re use between levels of government.

Local governments have started to participate in Better Regulation initiatives of higher authorities as well taking some steps of their own. The Flemish government has called on its municipalities to take part in its administrative simplification policy. Various initiatives have recently been developed by municipalities themselves aimed at making municipalities “simple” and to promote a more dynamic environment for entrepreneurs. The EU services directive is proving a useful lever of change as regards one-stop shops.

Background

General context

Structure of local government in Belgium

Local governments include ten provinces (five Flemish provinces and five Walloon provinces), and 589 municipalities (“*communes*”). Most municipalities are small (an average size of 18 000 inhabitants, one third of municipalities with less than 10 000 inhabitants, four with more than 150 000 inhabitants). The territory of Brussels-Capital

Region, which covers 19 municipalities, falls outside the scope of the division of the country into provinces.

Provinces and municipalities are autonomous. Municipalities are led by a *burgmaster* (*bourgmestre*) elected by universal suffrage by the inhabitants of the municipality. The *burgmaster* exercises executive power with a college of *échevins*. The provinces are led by a governor.

The federal and regional levels have a tutelage power as regards their own competences (as specified in the special law of 8 August 1980), with the exception of the 9 German-speaking municipalities for which the German-Speaking Community is the oversight body. Regions have delegated part of their tutelage over municipalities to provinces (this now forms part of the provinces' mandatory missions). There is some direct tutelage by the federal state and the communities, limited to fields for which the communities and the federal authority have competences. For example, a provincial school will be supervised by the relevant community. The regions cannot impede the federal state and communities from delegating missions to local governments within their areas of competences. The federal state retains a number of competences in this respect.¹

There are different types of oversight: (i) *ex ante* oversight (advice, approval, authorisation); (ii) *ex post* cancellation and suspension of a decision; and (iii) coercive oversight (where the province or municipality fails to fulfill its legal obligations, after being formally notified, a special commissioner takes automatic measures). The exercise of supervision has gradually become more flexible and simple. In most cases administrative decisions of provinces and municipalities no longer need to be submitted for approval in advance. They are included on a general list which is sent to the supervisory authority (either provincial governor or the competent minister). This authority can afterwards take action against these decisions through suspension or annulment.

The *Lambermont* Agreement and the ensuing Special Law of 13 July 2001, devolved the organisation of provinces and municipalities to the regions. These are now defined in regional decrees or ordinances. Regions are competent for defining the composition, competencies, operation and funding of local governments as well as tutelage and statutes of provincial and local employees. Their competences with respect to municipalities include agglomerations and inter-municipal structures. Regions also have the power to create new municipalities or merge municipalities.

The representation of provinces and municipalities is mostly organised at the regional level. Belgium now has two associations of provinces and three associations of municipalities.

Powers and responsibilities of provinces and municipalities

The local authorities are traditionally services “of proximity to the citizen”. Citizens address themselves to their municipality to declare a birth, death or marriage, for identity documents, for pension benefit requests, and certain benefits such as handicap benefits, police records, building permits etc (this list is not exhaustive).

These fall into two categories:

Mandatory missions. Higher authorities (communities, regions and the federal state) delegate a number of strictly defined missions to local governments. Provinces have mandatory missions with respect to security and law order (for example, co-ordination of rescue services case of large-scale catastrophe), and tutelage over municipalities in some areas. The mandatory missions of municipalities include maintaining law and order, birth

and death registries, and municipal roads, organising and co-funding welfare public centres (*Centre public d'action sociale, Centrum voor Maatschappelijk Welsijn*), organisation of primary education: The mayor is responsible for enforcing laws, decrees, royal and government orders, as well as provincial and municipal regulations (see Chapter 6). When the mayor or the alderman (Deputy Mayor) execute the decisions that come from a higher level, they are delegated by the higher authority to do so. For example, the municipality keeps the population register of inhabitants of the town (since 1792). It also issues identification cards under the supervision under the guardianship of the National Register where a central file is kept. All data on citizens is stored in this file which is updated and available to municipalities and to all institutions and to individuals who have authorised access. The issuance of passports is carried out on behalf of the Foreign Affairs office (SPF) and civil status acts are issued on behalf of the Department of Justice.

The mandatory missions of provinces and municipalities include responsibilities for implementing and/or enforcing regulations and policies defined by a higher authority. Higher regional authorities also promote some initiatives at the local level, for example, by co-funding them (such as works in the field of environment, sport infrastructure, after school facilities).

Optional missions. Local governments have regulatory powers in areas that are exclusively of provincial /municipal interest. In some of these areas, general conditions are set by the federal, community or regional legislator. In this case, local governments have room to manoeuvre in adapting the local policy (this is, for example, the case in territorial planning). The College of mayor and aldermen (Deputy Mayors) has regulatory powers over building permits, implantation of corporate sites, the roads, the opening hours of convenience stores (night shops), etc. in compliance with federal and regional standards.

Provinces' optional missions mainly relate to education, and social and cultural infrastructure. Municipalities may develop their own initiatives in any area of general interest to the local population (for example, organisation of pre-primary schools, housing, tourism and culture).

Funding of provinces and municipalities

Municipalities, welfare public centres (CPAS), local policy, and provinces are funded by taxes, transfers and subsidies from higher authorities. Developments over the last 30 years show an increase in resources from their own tax and a stagnation of allocations. In Wallonia, local taxes account for about 40% of the revenues of municipalities. A large part of these taxes (around 80%) are additions to the personal income tax and VAT levied by the federal state (shared taxes). The “municipality fund”, a non-affected transfer from the region, accounts for around 20% of the municipality revenues.

Co-ordination mechanisms

Federal authorities, communities and regions consult local governments in the process of making regulations through the established advisory councils (see Chapter 3 on the role of advisory councils). The provincial and municipal associations are represented in a number of these councils (at federal, community and regional levels). At the federal level, the municipalities are consulted on relevant regulatory developments. They may also be invited to the user committees for public services in charge of the management of data banks. Regions have established specific bodies to interact with local governments. The Walloon Region has established the High Council of Cities, Municipalities and Provinces for conducting formal and informal consultation with local governments. It has also set up a

portal dedicated to local powers² to facilitate interaction with local governments (the site gives access to a large range of information relating to provinces and communities as well as to different tools, such as forms to obtain regional subsidies). In Flanders, the Ministry for Administrative Affairs has set up an administrative unit in charge of relations with local government, the Agency for Domestic Governance. The main objective of this agency is to ensure coherent implementation of policies such as cities policy, diversity policy and integration policy.³

Local authorities have raised concerns about the burdens imposed by higher levels of government. The association of Walloon municipalities has, for example, highlighted the need for the federal authorities, communities and regions to assess and evaluate the financial impact on local governments when making new regulations.⁴ In response to similar concerns of Flemish local governments, the Flemish government has started a project to reduce administrative burdens on local governments. The project focuses on information obligations in three areas – cities policy, youth work and mobility. In 2006, the Public Management Institute was requested to develop a test for drawing up profiles of information obligations imposed on local authorities. It conducted a full scan of obligations in the three selected areas, and less detailed quick scan in other areas. The screening was mostly qualitative, with some quantification of a number of obligations. Based on the conclusions of the research, the DWM measured the impact of seven plans of the Flemish government on provinces and municipalities, and identified which of the remaining other 16 plans generated administrative burdens on local governments. It formulated proposals for simplification. This initiative is still work in progress.

Better Regulation policies deployed at local level

Local governments have taken initiatives for Better Regulations policies, either as result of initiatives of higher authorities to involve them in their administrative simplification policies, or as result of their own initiatives.

In 2006, in the aftermath of local elections, the federal Secretary of State for Administrative Simplification called on the new municipal councils, to turn their municipality into a “simple municipality”. The federal government issued ten tips for a user-friendly and simple municipality. One of these tips suggested the appointment of a “Kafka-alderman”. It was implemented by 56 municipal councils. From time to time, the federal authorities and the municipalities take stock of developments in simplification projects and plans.

Since 2005, the Flemish and Walloon governments have called on municipalities to participate in the administrative simplification policy. The Flemish authorities launched a call for simplification projects in 2005, following a conference entitled “Dialogue for simplification” to start the debate on administrative simplification with municipalities. Twenty-one municipalities submitted a total of 33 projects, eight of which the Flemish government selected for the “simplest municipality” award. The Flemish government issued a second “call for project” in 2007. In parallel to the “calls for project”, the government has provided support to municipalities through publication of guidance material and courses. This has included the publication of a guide for local authorities (four examples of simple regulation and 13 tips for simplification by local authorities) and a guide on form elaboration (based on the experience of the Flemish government).

Flemish provinces, which have not been involved in the call for “simplest municipality”, have taken a common initiative for administrative simplification within the framework of a project call for subsidies from the European Regional Development Fund

(ERDF). The project call aims at the creation of more dynamic entrepreneurship environment, including through improvement of the regulations for starting, expanding and taking over a business. Provinces have submitted a project for “administrative simplification and qualitative regulation at the provincial level”.

Notes

1. As the head of the commune, the Mayor presides over meetings of the council and the college. He may also attend meetings of the PCSA (Public Committee for Social Assistance). The mayor is responsible for maintaining order, peace and security in his area. The mayor signs all municipal acts. He also acts as a registrar who issues birth, marriage and death certificates and keeps the records. He also acts as registrar, exercising jurisdiction for the establishment of notarial acts of acquisition for public purposes, and has the right to repossess abandoned buildings. The mayor may delegate some of his/her powers.
2. <http://pouvoirslocaux.wallonie.be>.
3. The specific tasks of the Agency includes preparation of administrative regulations concerning municipal and provincial authorities, distribution and management of funds (Municipal Fund, Provincial Fund, Cities Fund), organisation of elections, support to administrative supervision of municipal and provincial authorities, support in implementation of a range of policies involving provinces and/or municipalities (cities policy, diversity, cemeteries and funerals, integration). The Agency for Local Governance is also charged with developing a centre of expertise on municipalities and provinces.
4. See website of the Association of Walloon Municipalities www.uvcw.be. In 2007, the UVCW published a list of financial and administrative burdens imposed on municipalities including recommendations for remedy and remedy measures already taken.