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Organisation of powers between Region and municipalities in Brussels: going beyond the antagonism of the “Tina” and “Nimby” approaches

Organisation des compétences entre Région et communes à Bruxelles : dépasser l'antagonisme des approches « Tina » et « Nimby »

Organisatie van de bevoegdheden tussen Gewest en gemeenten in Brussel: de tegenstelling tussen TINA en NIMBY overstijgen

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Organisation of powers between Region and municipalities in Brussels: going beyond the antagonism of the 'Tina' and 'Nimby' approaches

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Does the 'big city' project take place via the suppression of municipalities and the drastic reduction in their powers? There is a heated debate between 'regionalists' and 'municipalists'. A legal analysis provides lines of thought to stop this 'trench war'. The Constitution and the European Charter of Local Self-Government provide a framework for reflection. The law does not impose or exclude any scenario, but forces the legislator to question the possibility of synergetic cooperation between the Region and the municipalities in terms of the principles of subsidiarity and proportionality. Based on this, four questions are asked in the article. Does the Region make full use of its capacity for cohesion and coordination? Is the municipal institution organised in the most efficient way? Have all of the methods for dialogue and synergy been mobilised? Should inter-municipal collaborations not be revised in view of improving the quality of service at a lower cost? This reflection opens the way to rationalising the organisation of institutions and promoting the methods of cooperation.

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Introduction

1. In Brussels, does the 'big city' project take place via the suppression of municipalities and the drastic reduction in their powers? Some people think so, and consider that the characteristics specific to the Brussels Region¹ – including its cramped territory – justify a specific institutional organisation. The specific difficulties which it faces may only be overcome by decompartmentalising the preserve of 'municipalists', confined to a NIMBY-type view ('not in my backyard') and overrepresented in the regional parliament. The 'municipalists' criticise the supporters of 'everything for the Region' for painting a slanted picture of the Region's relationships with the municipalities and for depreciating the institution and municipal action in order to justify, once and for all, the regionalisation of municipal powers and their gradual effacement, in line with the TINA approach ('there is no alternative'). And when the latter feel that there are too many municipalities on the cramped regional territory, the former reply that they are more densely populated than the average Walloon and Flemish municipalities.

2. Neither these controversies nor the difficulties which mark the relationships between the Region and the municipalities must hide the fact that the Belgian Constitution and the Charter of Local Self-Government of the Council of Europe² impose a legal framework for reflection. We shall present the thesis according to which this framework provides an additional means of structuring the debate, allowing this aspect of the rationalisation of Brussels institutions to evolve.

3. The aim is not to propose a turnkey institutional model, particularly since the subject allows endless possibilities in terms of solutions. Instead, the aim is simply to review this framework and to point out its imprecisions – as seen in the differences between the Constitutional Court and the Council of State – in order to propose a framework for

reflection, excluding the community dimension of the issue. This involves (re)considering the organisation of powers in the current institutional framework, without modifying the Constitution or the laws which structure Belgian federalism. Suggestions are made in order to illustrate the viewpoints and to highlight the possibility for in-depth thought between the two poles. The thought is centred on the organisation of powers between the Region and the municipalities. We do not consider the evolution of community (education, etc.) or federal (police, etc.) powers in Brussels.

4. The reflection is structured into three parts.³

1. In the first part, we shall see that in terms of the distribution of power, the law does not favour a particular model and in principle does not exclude any scenario, but determines a procedure. The analysis reveals the special attention to reserve for municipal self-government and, through it, the principles of subsidiarity and proportionality, which require the local level to be considered as the level of principle for the allocation of powers. The higher authority which intends to take them away has to justify the increased efficiency (subsidiarity) and the extent (proportionality) of this restriction. Neither the constitution nor the charter prevent the regionalisation of municipal powers, but they prescribe motivation based on concrete analysis for each transfer considered.

2. This argumentative approach requires an explicitation of the assets and shortcomings of each level of power, which are briefly outlined in the second part.

3. The third part questions the possibility of synergetic cooperation between the Region and the municipalities in terms of the principles of subsidiarity and proportionality, guided by four questions. Does the Region make full use of its capacity for cohesion and

¹ The term 'Region' refers to the regional institution. We use the term 'region' with a lower-case letter in the common sense of the word.

² May be consulted on the website of the congress of local and regional authorities: http://www.coe.int/t/congress/Texts/conventions/charte_autonomie_fr.asp

³ These parts are based on the analysis of legal and parliamentary documents, as well as on conversations with various representatives, such as Bernard Clerfayt, mayor of Schaerbeek and federal deputy, and Patrick van Ypersele, current member of the Cellule stratégique du Secrétaire d'Etat aux Réformes institutionnelles Melchior Wathelet. The ideas developed reflect those of the author only.

coordination? Is the municipal institution organised in the most efficient way? Have all of the methods for dialogue and synergy been mobilised? Should inter-municipal collaborations not be revised in view of improving the quality of service at a lower cost? The first two questions concern the organisation and functioning of institutions as well as their potential for evolution, and the last two concern the field of possible synergies. This reflection opens the way to rationalising the organisation of institutions and promoting the methods of cooperation.

1. The legal framework: municipal self-government requires an argumentative approach based on the principles of subsidiarity and proportionality

5. Apart from a few powers which come under the jurisdiction of the federal authority, the Region organises the municipal institutions. It can make changes to their size and their powers. It organises and exercises supervision. However, the Region is not free to do what it wants: it cannot ignore the principle of municipal self-government. We shall review its scope as well as three restrictions.

1.1. Powers in principle and cross-curricular competency

6. Municipal self-government covers three dimensions.

1. The Constitution (art. 41) and the special and ordinary laws define it generally: the power of municipalities covers matters which concern municipal interests. *'The principle of local self-government presupposes that local authorities are able to seize any object which they consider to be in their interest, and to regulate as they feel appropriate.'*⁴ The Charter of Local Self-Government (art. 3) defines it in a similar way as: *'the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members freely elected by*

secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them'. The municipalities may intervene in a 'cross-curricular' manner in powers which come under the higher levels of authority if these policies are in the municipal interest. The higher levels of authority must then allow the municipalities to exercise their powers.

2. The decentralised authorities have primary power of characterisation for matters of local interest, as well as a high level of autonomy in terms of organisation and management (including the right to cooperate and associate, as well as financial capacities and autonomy).

3. Finally, municipal self-government follows a rule regarding the allocation of power. The local level is granted its own powers, and is thus not limited to being a mere agent of the higher authorities. It even acts as the level of allocation of powers in principle, unless a higher level of authority demonstrates a greater capacity to manage these policies: *'3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy. 4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. 5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.'* [...] (art. 4 of the Charter).

7. The Additional Protocol to the Charter on the right to participate in the affairs of the local authorities, signed by the Belgian state, shares the same ambition to favour grassroots democracy.

8. In terms of transfer of powers, the Charter sets no obligations or requirements, apart from an argumentative approach based on a concrete analysis for each power considered and not in a general manner.

⁴ Constitutional Court, judgment n° 89/2010.

For example, in a given matter, can the Region prove more coordination and harmonisation and, if so, is it justified that it invests all of the matter? In other words, any undermining of municipal self-government must be motivated by the enacting authority based on the principle of subsidiarity, in accordance with which it must justify the validity of its intervention ('what is the increase in efficiency?'). If the higher authority meets this requirement, it must comply with the criterion of proportionality by limiting its action to the measure needed to reach the objective ('how and to what extent?').

9. Does the reasoning apply to the merging of the nineteen municipalities into one, in the case of the formation of a city-region? It is true that foreign cities which have been granted regional status, with more than one million inhabitants, sometimes take advantage of the prerogatives of local self-government. The Charter of Local Self-Government does not consider this hypothesis formally, except to specify that '*Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute*' (art. 5). The fact remains that the situation in Brussels is characterised by the existence of nineteen municipalities and that municipal interest is defined based on this. It is therefore in terms of this situation that the effects of any changes are assessed. The models of demerging or merging of municipalities are aimed at the undermining of the municipal institution to the benefit of a more regional management. If the legislator were to take this route, it would not be able to escape the argumentative approach.

10. The European Charter of Local Self-Government does not establish an institutional supervisory body for the principles which it guarantees, after the example of the European Court of Human Rights instituted by the European Convention on Human Rights. The text (art. 11) makes the states responsible for organising an appeal. The national

jurisdictions – in particular the Constitutional Court – verifies the legislator's compliance with regional orders. The Congress of Local and Regional Authorities of Europe (CLRAE), the Council of Europe representative body for local authorities, organises political control and establishes regular reports. Its recommendations, resolutions and interpretations constitute useful reference points in the concrete application of the principle of municipal self-government.

1.2. Two restrictions: Hierarchy of norms and action of the higher authority in the framework of ITS powers

11. The first restriction on municipal self-government is linked to the fact that a power must be exercised in compliance with the hierarchy of norms. If the federal state, a Community or a Region adopts a regulation, the local authorities submit to it. Legislative action limits the self-government of municipalities, which may only address a matter in compliance with and as a supplement to the related legislation.

12. The second restriction results from the action of legislators, which may also deliberately restrict local self-government in the framework of their powers. They have not failed to use this authority, either to have power exercised at a higher level (government, public interest bodies, etc.) and therefore to forbid municipalities from exercising it, or to organise it in a more or less restricting manner and to entrust all or part of its implementation to the municipalities.

13. However, the area of municipal self-government cannot be defined in an exhaustive list. '*The Region would not be able to prevent the provinces [or the municipalities: author's note] – via the adoption of an organic law – from regulating anything of provincial [or municipal: author's note] interest, for example, by establishing a closed list of matters which these institutions would be authorised to regulate, or by providing its own peremptory definition of local interest.*'⁵ The Constitutional Court considers that the undermining of local self-government would

⁵ Announcement of the legislation section of the Council of State of 18 September 2003 on the draft which became a decree establishing the Walloon provinces (*parliamentary document*, Walloon Parliament, n° 613/1-2003/2004, p. 48).

be contrary to municipal interest, *'if it was evidently disproportionate'*.⁶ *'This would be the case, for example, if it ended up depriving the municipalities of all or most of their powers, or if the limitation of power could not be justified by the fact that it would be managed better at another level of authority'*.⁷

14. In practice, these considerations result in diverging assessments, in particular between the Constitutional Court and the legislation section of the Council of State. The criterion of subsidiarity and the parameter of efficiency call on factual elements of assessment, which leave room for subjectivity. But the divergence originates elsewhere. The Constitutional Court confines itself to the minor control of the conditions for restricting municipal self-government. It limits this control to the examination of the 'evidently disproportionate' character of legislative intervention. To do so, it bases its analysis on preliminary works only, i.e. considerations of a political nature put forward by the author of the norm, regardless of their veracity or the true implications of the measure. It does not consider possible measures which are less detrimental to municipal self-government. Furthermore, the Court is exempt from any formal reference to the Charter of Local Self-Government and to the argumentative approaches advocated by the latter. The reasoning of the Council of State, however, is in keeping with this approach. It refers to the Charter and endeavours to assess the concrete effects of the legislative bills on municipal self-government. It points out that the legislator must *'duly justify'* all restrictions and *'demonstrate concretely'* the pertinence of each of them. The approach of the Council of State is anchored in practice and its detailed motivation often appears more critical with respect to the repeated attempts on behalf of the regional legislator to progressively reduce local self-government.

15. In the framework of the appeal against the order of 22 January 2009 regarding the parking policy and the creation of the Parking Agency of the Brussels-Capital Region, the Constitutional Court ruled

that the Region had the power to adopt the disputed order, despite the fact that municipal roads are a matter of municipal interest. With reference to the motives presented, it considered that *'Failing intervention on behalf of the Region, there would still be problems such as the inexplicable differences in regulation between municipalities, the transfer of parking from one municipality to another or the inequitable character of parking cards granted to residents in close proximity to the territorial boundaries between municipalities. Furthermore, it would not be possible to reach the objectives related to reducing traffic and managing it in a better way.'* Basing itself on the Charter, the Council of State deemed that the text undermined municipal self-government in a disproportionate manner as the objective could be reached via other means, in particular by opting for a mechanism of voluntary compliance of municipalities with the proposed system.⁸

16. Following this comparative analysis, the question may be asked as to whether the Court takes away some of the effectiveness of judicial remedy prescribed by the Charter by exercising only marginal control of local self-government.

1.3. Third restriction: levy taxes and impose tariffs

17. Municipalities have the power to levy taxes as well as certain tariffs. The Region may limit this power, according to conditions which vary in relation to the nature of the contribution. Let us therefore make a brief review of its characteristics.

1.3.1. The distinction between tax and tariff

18. Tax is defined as *'a levy practised through the authority of the state, [the Regions: author's note], the provinces or the municipalities on the income earned by people – governed by either public or private law – non legal entities and de facto associations or communities, which exist on their territory or have interests there, in order to be allo-*

⁶ Constitutional Court, judgment n° 7/2009

⁷ Constitutional Court, judgment n° 89/2010.

⁸ Council of State, announcement n° 44.315/4, *parliamentary document*, Brussels Regional Parliament, n° A-498/1 – 2007/2008, p. 67.

cated to public utility services'.⁹ In accordance with the principle of consenting to be taxed, it is the responsibility of the municipal council to set down the principle of collection and decide on the calculation method. The rules regarding taxes appear in municipal regulations, but the authorisation to levy taxes is voted each year. Taxes are essentially used as a contribution to collective expenditure, as well as having an incentive or dissuasive function. They never represent a compensation for a specific service provided to a person liable for payment.

19. A payment (tariff) is a contribution of a non fiscal character. It is defined as *'the compensation for a service provided by the authority to the benefit of the person liable for payment considered individually. It is nothing but a compensation, requiring a reasonable relationship between the cost or the value of the service provided and the amount due by the person liable for payment. As the tariff is the compensation for a public service, it is associated with the competence in relation to the subject matter of the authority concerned'*.¹⁰ The tariff cannot consist of a service related to obligations of the authority in terms of public security and peace or access to part of a public road. The authority is required to propose an 'added value'. For example, the installation of ticket machines and parking ticket control in the framework of a general mobility policy are considered to be special services. The legal status of tariffs is more flexible than that of taxes: tariffs cannot be voted each year and the law or regulation must not define the essential elements.

1.3.2. The authority of municipalities to levy taxes

20. Municipalities are free to tax all people who live in the municipality, as well as all the people who have interests there based on all of the situations which exist in the municipality or on all of the events which take place there, even if this levying has consequences on the behav-

iour of citizens with respect to subject-matter competence which is not under the remit of municipalities.

21. Although the Region has been given the power to set rules relating to the establishment and collection of municipal taxes, in principle it does not have the power to adopt a regulation which restricts the power of municipalities to introduce a tax. This power belongs to the federal legislator. Autonomy as regards municipal tax is still an obstacle, in such a way that the administration establishes general tax rates or rates for property tax additions via circular.

22. There is, however, one exception. Based on implicit competence, the Region may restrict the municipal tax capacity if it justifies a connection with one of its powers, if this encroachment upon federal power is necessary in order for it to exercise one of its powers, if the matter is part of a differentiated regime and if the effect of the provisions at issue on this matter remains marginal. This form of occasional 'interference' may only be used sparingly and on a case-by-case basis, as it involves not only encroaching upon a federal reserved power (art. 170 of the Constitution) but also involves limiting municipal self-government. The measure also undermines municipal tax collection and therefore appears to affect its actual capacity to exercise its powers (art. 41 of the Constitution and art. 9 of the Charter).¹¹

23. The Brussels Region called upon implicit competence to adopt the order of 22 January 2009 on the organisation of the abovementioned parking policy. The Constitutional Court ruled that the Region was founded in order to restrict – and even thwart – the power of municipalities to establish a parking tax based on its power to manage public roads, establish their legal status and, if need be, regulate the private use of public roads.¹² Among other motives, the Court considers that

⁹ Court of Cassation, 20 March 2003.

¹⁰ Constitutional Court, judgment n° 89/2010.

¹¹ Council of State, announcement on the draft which became a decree of 21 March 2002 establishing the partnership and the general financing of Walloon provinces, *parliamentary document*, Parliament of the Walloon Region, n° 317/1 – 2001-2002, p. 10.

¹² Constitutional Court, judgment n° 89/2010 (B.9 to B.13.2).

*'parking regulation may therefore constitute a necessary measure for the Brussels regional legislator in order to exercise its power as regards public road management and to reach its objectives, considering the special situation of the Region's nineteen municipalities'.*¹³

1.3.3. The power of municipalities to levy tariffs

24. As long as it proves a connection with its powers, the Region may forbid the municipalities from collecting tariffs. Contrary to the applicable tax regime, there are no clauses which reserve this power to the federal legislator. In the framework of the appeal against the order on the organisation of the parking policy, the constitutional judicial authority considered that the Region had the power to prevent the municipalities from continuing to collect tariffs adopted in the framework of road traffic complementary regulations and to substitute it with a regional tariff. In doing so, the Court based itself on regional power as regards the management and establishment of the legal status of the road system.

2. Respective assets and shortcomings: background information about the principles of subsidiarity and proportionality

25. In the current legal framework, the higher authority must prove that a limitation of local self-government is justified due to the nature and extent of the task, meets the criterion of efficiency and allows an economy of scale to be achieved. This involves giving details of the assets and shortcomings of municipalities and the Region. 'Regionalists' and 'municipalists' assess these differently.¹⁴ Any attempt to make a list of them is therefore subject to criticism on both sides. Nevertheless, let us

attempt an outline in order to demonstrate the relevance of considering them according to the proposed legal and argumentative framework.

2.1. The municipalities

26. Which elements should be considered assets or shortcomings of the municipalities in terms of efficiency and economy of scale?

2.1.1. Proximity and democratic representativeness

27. The European Charter of Local Self-Government underlines the fact that the local authorities *'are closest to the citizen and give him the opportunity of participating effectively in the making of decisions affecting his everyday environment'*.¹⁵ Proximity does not mean that each citizen knows the municipal representatives personally or approaches them at every turn. This concept refers to three realities in the context of Brussels.

1. Firstly, it refers to the democratic legitimacy of local representatives. Because they have been elected, municipal councillors are first-line representatives.¹⁶

2. Secondly, participation organised by the public authorities (neighbourhood and shopkeeper committee meetings, questions of inhabitants during municipal council meetings, etc.) is much easier to implement at municipal level.¹⁷ The experience in Antwerp shows that beyond a certain size there is a clear need for proximity. Although distance does not formally affect the representativeness of elected officials assigned by direct elections, it affects its perception.

3. Finally, proximity has an 'operational' dimension. The chain of operations in municipal administration is shorter. Information moves upwards more quickly. Furthermore, due to their limited territory,

¹³Constitutional Court, judgment n° 89/2010 (B.13.1). *Contra*: voy. C.E., announcement n° 44.315/4, *op. cit.*

¹⁴ The long version of the analysis is made available by the author for [download](#) (in French only). It explores a downstream reflection on the correlative legal obstacles to the reduction of the municipal institution to its simplest form.

¹⁵Explanatory report of the European Charter of Local Self-Government.

¹⁶See the preamble of the Charter of Local Self-Government and Council of State, announcement of 22 October 1980 on various bills aimed at granting foreigners the right to vote at municipal level, annexed to the draft law sanctioning the Treaty on the European Union, *parliamentary document*, House, 482/1-91/92, p. 84.

¹⁷Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of the local authorities.

municipalities enjoy better proximity in terms of locations, users and partners (shopkeepers' and residents' associations, etc.), which allows actions to be carried out with the territory taken well into consideration. Municipalities therefore play a role of two-way intercessor. As they are more approachable, the members of the college are the permanent targets of the expectations and reproaches of citizens, including those relating to regional powers. Furthermore, municipal authorities are more familiar than their citizens to the many regional stakeholders. Their intercession is useful in guiding stakeholders through the mysteries of administration and the complexity of procedures, thus avoiding frustrations and resentment.

28. Seen in this way, the local work of municipalities is valuable to the Region. But practice can prove this vision wrong. Proximity serves as a pretext for certain vague desires to escape the regional project. It also favours the appropriation of the democratic process by a small number of stakeholders, mainly in the presence of structured pressure groups. Finally, in a context of proximity – without it being a specificity of the municipal level – elected representatives and voters may make mutual use of each other in a 'clientelist' relationship.

2.1.2. The municipality: executive body and consolidator of scattered powers

29. The definition of municipal powers according to local interest allows municipalities to manage cross-cutting policies. Their interventions are not confined to the area of regional powers. *'Unlike the regime applicable to the communities and the regions, whose powers are exclusive in principle with respect to the federal authority and to each other,*

*the recognition of the powers of municipalities and provinces based on their self-government relies on a system which does not exclude – and often involves – a sharing of powers between the higher authority and the decentralised authorities or a collaboration between these authorities.'*¹⁸

30. Municipalities are therefore places where scattered powers are consolidated, particularly in Brussels. For example, in terms of security in public spaces, municipalities combine the authority of the police, Beliris, security contracts and urban policy – under federal jurisdiction – with regional neighbourhood contracts and even European grants (ERDF, ESF).

31. Due to this cross-cutting aspect, the disappearance of the municipal level would force the Region as well as the Communities and the federal authority to reconsider the organisation of some of their powers (police, cultural centres, education, etc.).

2.1.3. Cost

32. Contrary to preconceived notions,¹⁹ a quantitative analysis comparing big cities [Verdonck & al., 2011] shows that the municipalities of Brussels are not more extravagant than the other urban municipalities in Belgium, especially considering the fact that the latter may transfer some of their powers to the provinces or to the increasing number of inter-municipal companies.²⁰ The study also shows that, in Brussels, the regionalisation of certain powers exercised elsewhere at local level, such as rubbish collection, does not necessarily generate an economy of scale. In the same way, when considered globally, the figures²¹ relating to police supervision – whose costs and efficiency are managed by

¹⁸Council of State, announcement of 15 February 2007 on a special bill modifying article 1 of the special law of 6 January 1989 on the Court of Arbitration, in view of empowering the Court to monitor conformance with articles 41 and 162 of the Constitution as regards the municipal and provincial autonomy, *parliamentary document*, Senate, 3-1054/2, 2006-2007, p. 4.

¹⁹J. De Wit, 'Het veiligheidsprobleem in Brussel' in *Gazet van Antwerpen* of 5 February 2010, <http://gva.be/dekrant/experts/johndewit/het-veiligheidsprobleem-in-brussel.aspx>.

²⁰M. Verdonck, N. Van Droogenbroeck, M. Taymans, 'Are the municipalities of Brussels guilty of wasteful spending? A comparative analysis of the budgets of Belgium's main urban municipalities', in *Brussels Studies*, n° 49, 9 May 2011, www.brusselsstudies.be.

²¹We have used figures from the study conducted by Bernard Clerfayt (cfr *Perspectives francophones*, n° 64, 15 February-15 March 2011, pp. 8 and 9).

the six police areas in Brussels²² – are equal to those of the police in Antwerp, Ghent, Liège and Charleroi, which are constituted by a single municipal area.

2.2. The Region

33. The two main assets of the Region are coherence and solidarity.

2.2.1. Coherence

34. The Region gives coherence to largescale policies: the emergence of regional interest is likely to transcend local or individual interests. Thus said, sometimes it does not exercise its powers and its coordination role. Two factors hinder this objective of coherence. Contrary to the municipality, the Region has exclusive competence only and has difficulty playing the role of integrator. Furthermore, the coherence of the Region's policies suffers because of its administrative and sectoral division between cabinets, ministries and para-regional authorities.

2.2.2. Solidarity

35. The policies for solidarity between citizens and municipalities are created more easily at the level of the Region, which allows inequalities to be made up for on a larger scale through the fair distribution of means or through adjustment mechanisms. Better than groupings or municipal reconstitutions, the general grant for municipalities or the regional financing of neighbourhood contracts allow solidarity to be established between citizens and the region's socioeconomic disparities to be taken into account. In the same way, the financing of supra-local public infrastructures (sports centres, swimming pools,²³ etc.) is more equitable than municipal investments, a part of which benefits the citizens of other municipalities.

36. In practice, the effectiveness of this solidarity depends on the chosen intervention or adjustment criteria. The general grant for municipalities fills this function if its allocation criteria are determined objectively.

3. Framework for reflection regarding better use of powers, rationalisation of structures and the development of synergies

37. For each power, the argumentative approach imposed by the principle of local self-government involves abandoning an *a priori* approach and adopting an empirical approach: it involves viewing institutions in terms of their internal organisation and synergies before considering transfers of powers. We shall illustrate this reasoning with a few examples centred on four themes: a better organisation of the Region (3.1); a better organisation of the municipalities (3.2); a better organisation of the relationship between the municipalities and the Region (3.3); a better organisation of the relationship between the municipalities (3.4).

3.1. A better organisation of the Region

38. Rationalisations may be considered at regional level, in order to ensure better coordination of stakeholders by limiting redundant administrative structures. This redundancy is explained by the concern for political and/or linguistic balance, through the distribution of influence among bodies dependent on different ministers. Let us look at a few examples in the areas of public or subsidised housing, economic policies and mobility.

39. The Société du Logement de la Région de Bruxelles-Capitale (SLRB, Brussels-Capital Region Housing Society), the Société de Développement pour la Région de Bruxelles-Capitale (SDRB, Brussels-Capital Region Development Society) and the Société Régionale d'Investissement de Bruxelles (SRIB, Brussels Regional Investment Society) all work towards the production of medium-sized dwellings. The structure could be simplified and the missions could be clarified by replacing these three organisms with a 'Brussels Economy' agency, which would provide support for economic activity and integrate the information functions of the Entreprise Agency, as well as with a 'Brussels Housing' agency, which would ensure the supervision and financing of social

²²The police come under the jurisdiction of the federal authority. The comparison is pertinent nonetheless, to the extent that the management of the local police is handled by the municipalities.

²³These are concrete examples, but a legal expert would question the orthodoxy of regional financing of sports infrastructures.

housing companies, as well as the construction of medium-sized dwellings for sale and/or for rent.

40. The mobility and parking policies come mostly under the Region, which has powers of supervision and harmonisation, but which is perhaps slow to exercise them. For example, the municipalities devised municipal mobility plans before the adoption of the regional plan at the initiative of the Region, which subsidised them. Furthermore, three years after the adoption of the order of 22 January 2009 regarding the parking policy, one may question the effectiveness of the Parking Agency. In addition, the STIB research division, the Bruxelles Mobilité strategy directorate and the Regional Parking Agency have very complementary powers but do not work together. A single body for programming and for the study of regional mobility, bringing together all pertinent information and regional motivations regardless of the operator, would allow a more integrated approach.

3.2. *Better intra-municipal collaborations*

41. Municipal organisation could also be reconsidered in the perspective of more efficient management and better synergy with regional institutions and operators. Let us look at two examples related to management and housing.

42. Municipal and CPAS services function in a very watertight manner. Do decision-making independence and the smooth functioning of the CPAS prevent it from sharing the same purchasing service, building management, computer system and management of the public housing stock with the municipality, or from having the same allocation rules and waiting lists, etc.?

43. The 33 SISF social housing companies, municipal administrations, CPAS administrations, municipal property management agencies, private companies with municipal funding and AISs all manage supervised rental housing stock: applicants must put their names down on different waiting lists, which all have different allocation criteria. The reduction in the number of SISFs appears in the institutional agreement of September 2011. It is intended to simplify the task of citizens in search of

housing, simplify management and reduce costs, strive towards more coherent management of the housing policy and allow a link between social housing policy and social policy, which are coordinated at local level by CPASs. No matter how ideal, this merging project would probably encounter legal and financial difficulties.

3.3. *A better synergy between Region and municipalities*

44. The harmonious implementation of a power may require the intervention of the Region (principle of subsidiarity), without justifying its appropriation in the light of the principle of proportionality. We therefore question the potential or underused synergies, in particular in terms of structures and procedures for dialogue or information exchange. The metropolis of Lille is often cited as an example, based on a structured partnership between 'Lille metropolis' and the municipalities. It presents its own institutional characteristics, but could inspire the Brussels project.²⁴ The local specificities do not thwart the project on a larger scale when used as inspiration and when the municipalities situate their action in the framework of common objectives. In Lille, this synergy of functions between the local authorities and the metropolis takes place through the development of places for coordination, impetus and information exchange. In Brussels, this complementarity could involve other levels of authority. Let us examine a few concrete examples in order to understand the importance of developing these synergies, which already exist in certain domains.

3.3.1. The Region as coordinator and representative

45. The Local Authorities Administration could become a true stakeholder in the coordination between regional administrative structures, between the Region and the municipalities and, finally, between municipalities. The same coordination could be considered in terms of mobility, urbanism, harmonisation and management of municipal technical tools, and the harmonisation of municipal regulations. The municipalities could adopt tax regulations or a harmonised collection and claims system if the regional administration proposed a model.

²⁴ And, not to mention, it could possibly inspire the management of relations between the Brussels Region and its hinterland.

46. At a time when much is said about the regionalisation of municipal powers, many of the administrative responsibilities of the Region and the federal authority are being transferred to the municipalities and the CPAS, without financial compensation. The Region could appeal to the federal authorities for the responsibilities imposed on the municipalities to comply with budget neutrality.

3.3.2. The Region as an incentive and technical support

47. The Region and municipalities may be part of coherent policies, defined in cooperation or proposed by the Region. In this case, the order sets objectives and offers a financial advantage to the municipalities which participate in their realisation. The initiative regarding tax matters (order of 19 July 2007) could inspire others. There are many applications, from the coordination of trans-municipal cycle paths to the development of public spaces. The method consists in combining municipal self-government and a concern for coherence between municipal and regional policies. Structural dialogue allows municipal action to 'serve' more global regional objectives. This is particularly true in tax matters.²⁵ Furthermore, this cooperation often proves to be more efficient than unilateral action. Coercive intervention in terms of the harmonisation of taxation and municipal charges would be subject to legal controversy and dispute. The concerted or incentive approach removes these difficulties as the municipalities carry out modifications to appropriate regulations themselves.

48. The municipalities sometimes have services at their disposal which are unjustified at this level of power, in particular considering the costs related to control, maintenance and use, as well as their lack of usefulness in the daily management of the local authorities. Certain cases also require municipal services with respect to powers which are often beyond their expertise (debt management, elaboration of specifications, specialised translations, obtaining grants, etc.), for lack of regular use. The Region could centralise this expertise at a service point providing technical and logistical support to municipalities. This form of subsidiarity would combine rationalisation and economy of scale.

3.4. Better inter-municipal collaborations

49. Inter-municipal collaboration raises questions when it leads to a lack of democratic control or a variable level of power of administrators. Furthermore, reflection should be centred on the rationalisation of structures and the reduction in their operating costs. Are the inter-municipal water and energy distribution companies still justified nowadays in terms of municipal interest, considering the developments in this sector? Thus said, there are several beneficial forms of collaboration, some of which do not involve inter-municipal structures, such as the management of the commercial area on Chaussée de Ninove (Atrium) by Molenbeek and Anderlecht, or the association of several municipalities to manage a supra-municipal infrastructure such as a swimming pool.

Conclusion

50. How can Brussels 'act like a big city' - which involves more coherence between the actions of the different stakeholders and more economy of scale - and go beyond the antagonism of municipalist or regionalist visions? In terms of legal and institutional reflection, the principles of subsidiarity and proportionality could steer this evolution. In doing so, it appears to us that although the principle of subsidiarity can justify regional intervention for many powers, the principle of proportionality questions the option of their regionalisation pure and simple.

51. The examples presented are all possible areas of work, and show that if we examine the possible options on a case-by-case basis, the effective implementation of regional powers and the improvement of dialogue procedures between levels of authority, each stakeholder is mobilised by enhancing the value of their assets in a cooperative approach. In particular, the Region could rely more on its current powers to give coherence to municipal policies. The more frequent recourse to contractualisation favours this coherence, as well as a dynamic of positive dialogue between levels of authority.

²⁵On this point in particular, the long version of the analysis is made available by the author for [download](#) (in French only).

52. This, however, involves the implementation of a true culture of evaluation, individual justification and negotiation of transfers or restrictions of power between municipalities and the Region, in terms of the process proposed by the Charter of Local Self-Government. Following this exercise and the fundamental revision of the organisation and methods of collaboration of the municipalities and the Region, an evaluation should be carried out with respect to a possible relationship of complementarity. The restricted length of this article does not allow a discussion of the evolution of their respective roles in the framework of all powers. Is this exercise bound to fail due to the 'municipalist' bias of regional councillors or the excessive influence of mayors, who undermine any vague desire for harmonisation? This remains to be seen.

53. The institutional agreement of September 2011 is far from ending all reflection on the subject. Thankfully, because the residents of Brussels themselves ought to be giving the issue some thought. The theme is part of a wider debate and often serves as a bargaining chip: other dimensions therefore interfere and are sometimes a long way from good governance. This shows the responsibility of authorised representatives of Brussels who hold all the cards to carry the debate on the organisation of powers between the Region and the municipalities through to a successful conclusion. It is up to them to jump into the debate with realism and imagination, before others attempt to take over. Is this not a very concrete way to defend the self-government and regional status of Brussels?

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