"Living apart together"

The Belgian intergovernmental co-operation in the domains of environment and economy*

by

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Introduction

Since May 1993, the first article of the Belgian Constitution reads : "Belgium is a federal state, composed by the communities and the regions.". The federal state comprises three *communities*, the Flemish (Dutch speaking), the French (speaking) and the German speaking Community. There are also three *regions*, the Flemish, the Walloon and the Brussels Capital Region, together with the communities they constitute the federated entities or sub-states of the country. The existence of regions and communities causes a number of territorial overlaps. For the competencies concerning education, culture and welfare, the Flemish Community covers the Flemish Region and the Flemish community institutions in the Brussels region. The jurisdiction of the Francophone Community includes the Walloon region and the francophone community institutions of the Brussels region. Brussels, a region in its own right, has a bilingual status.

The Belgian state was not created as an entity out of several autonomous, independently ruled territories, but on the contrary, it was transformed from a centrally ruled state with quite limited autonomy for provinces and towns, into a federal one constituted by the communities and regions. Institutionally, Belgium turned from a decentralised unitary state into a federal state. It experienced a gradual political process of *regionalisation* or *"defederalisation"* (to federate means to agree, to unite) which started in the early 70s.

The constitutional reforms which instaured community and regional institutions stemmed from two separate political movements. From the late 19th century, the Flemish Movement strove after cultural and linguistic emancipation in public life dominated by French language. The establishment of an autonomous Flemish substate within Belgium was felt to be the only way to counter the francophone cultural dominance and to guarantee the cultural and political emancipation of Flanders. In a later stage, during the 1960s, the Flemish strife for autonomy was paralleled by a similar movement in Wallonia. The Walloon Movement sought for an autonomy in economic policy to counter the decline of the coal and steel industries in Wallonia without Flemish interference. The Flemish demand for cultural autonomy and the Walloon strife for economic autonomy resulted in a peculiar federal construction based both on communities (cultural) *and* regions (economic).

The transition from a decentralised unitary state to the present idiosyncratic federal structure proceeded very gradually. The reforms started in 1970 and were brought to a temporary conclusion with the constitutional reform of 1993. During these twenty-three years of institutional reforms substantial exclusive powers were transferred to the three communities and to the three regions. The communities are exclusively competent for cultural policy and education. They have also some power in the field of public health and welfare. The regions have large exclusive powers to pursue policies concerning economic and environmental matters, territorial planning and infrastructure (roads, waterways, harbours). Moreover, they are competent for public transport and employment mediation.

For the time being, the residual powers remain in the hands of the federal authorities - yet, article 35 of the Constitution already stipulates that there will be a reversal in favour of the federated authorities through an amendment to the Constitution and the voting of a special law. The regions and communities also enjoy a constitutive power. They have their own elected parliaments and governments and they can organise these institutions as they see fit without federal intervention.

The dominant feature of the Belgian federal system in Belgium is the pronounced autonomy of the six sub-states. Each unit controls a large package of exclusive powers without federal control or, if any, a very limited one. The centrifugal dynamics of reform process lead to a federation based on quasi-watertight regional and community compartments. The logic of exclusive prerogatives for the federated entities precluded hierarchic relations between the federal and federated governments. Since the federal authorities are not competent to judge neither the expediency nor the legality of the federated decisions and actions, persuasion and voluntary co-operation are the main techniques to establish policy cohesion. The occurrence of continued intergovernmental tensions is kept to a minimum, not because of conscious efforts in intergovernmental conflict regulation, but because the prerogatives are divided in an extremely exclusive way, interlocking as little as possible.

As is the case in most federal states, the federated entities enjoy some kind of representation in the federal second chamber. The Belgian senate provides community representation, but there is no representation of the regions in the senate. The communities *participate in the federal decision making* through debating and voting amendments to the federal Constitution, for which approval requires the majority of the votes of the 21 so called "community senators", appointed by and out of the three community parliaments.

Finally, *co-operation* is organised between the federation and the sub-states and between the sub-states, mostly in matters of media, infrastructure, transport, economy and environment. Due to the dual strife for autonomy (cultural and economic), the legal organisation of co-operation procedures between the authorities on both levels was not a political priority in the reform process. For more than two decades the emphasis was on establishing sub-state autonomy, not on the organisation of future intergovernmental co-operation. From 1988 onwards, the legislator did show a concern with the centrifugal consequences of the "defederalisation" process. Complementary powers were distributed among the federal and the federated units and some *intergovernmental co-operation procedures* were imposed.

This chapter, first presents and evaluates the existing provisions for intergovernmental co-operation in the Belgian federation. Secondly, the institutions in which this co-operation is supposed to take place are described and scrutinised. Thirdly, the actual co-operative practices, which developed in the domains of environment and economy, were analysed on the basis of interviews and official documents. The aim of the analysis is to shed some light on the dynamics and characteristics of the emerging intergovernmental relations in the new Belgian federation.

1. The co-operation procedures

Although the Belgian federation seems to strive towards autonomous and self-sufficient regions and communities, it does provide for a number of co-operation procedures between governments. The co-operation procedures set out some of the interaction patterns between governments. The different co-operation procedures are part of a number of federal laws, which prescribe certain forms of co-operation. Therefore, it is difficult to provide a synthetically overview of the procedures. The existing procedures are dispersed and came about as addenda to laws, which did not essentially deal with intergovernmental co-operation.

The multiple forms of co-operation can be roughly divided into *co-decision* and *participation* procedures. These two categories differ in the number of governments that decide:

- *co-decision* procedures involve at least two governments who each take separate but complementary decisions concerning the same policy issue;
- *participation* procedures imply only one formal governmental decision in which another government participates through a unilateral or a common action.

Both categories entail governmental interdependency: the procedures based on co-decision and participation makes it mandatory that governments co-operate in order to create and implement rules.

1.1. Co-decision procedures

In co-decision procedures, the complementary decisions can only be implemented if all governments involved take the appropriate decisions. Once taken, the decisions are exclusively implemented by one of the governments. Limiting implementation to one single government is another endorsement of the autonomy principle in Belgian federalism even when it concerns co-operation.

These different forms of co-decision procedures, all entailing some degree of *joint decision making*, can be discerned :

1. *decision on agreement* ("akkoord") : a governmental decision which requires the agreement of another government[1];
2. *uniform advice* ("eensluidend advies") : a governmental decision which requires the advice of another government[2];

[1] This procedure applies in some federal fiscal matters, in the field of economic development and for the mutual representation of some joint institutions. Some of these joint institutions are the Belgian Agency for Foreign Trade (BDBH), the federal Fund for Foreign Trade and the national Agency for export assurances (Nationale Delcrederedienst).

[2] The eventual decision needs to be conform with that advice; the uniform advice procedure is mandatory for the fusion of municipalities and the use of regional and community competencies concerning criminal law. Communities and regions can penalise offences of their laws within the limits of some sections of the penal code. The uniform advice of the federal government is required when regions or communities are considering penalities beyond the specified sections in the penal code.

3. *approval* ("goedkeuring") : a government decision requiring the approval of another level of government before the decision can be[3];
4. *decision upon proposition* ("beslissing op voorstel") : a government decision depending on a proposal formulated by another government)[4].

1.2. Participation procedures.

Unlike co-decision formula, participation procedures involve only one single governmental decision. The authority to decide remains undivided in the hands of one single government. The role of other governments in participation procedures is limited to the presentation of information or an opinion. The deciding government remains free to take a final decision or not. Many participation procedures are compulsory, which means that a decision can be annulled if the participation is not adequately respected or non-existent. The participation or "input" procedures aim at the creation of information flows and the policy co-ordination between the different governments.

The following different types of participation procedures can be discerned: (1) *a duty to inform*, (2) *a prior advice* (not binding), (3) *consultation* and (4) *involvement*.

1.3. Practical meaning of the legal procedures

This overview of existing procedures seems to indicate a wide variety of co-operation provisions. However, closer scrutiny of those provisions raises questions about the substantial differences between all those forms of co-operation.

The jurisprudence of both the State Council and the Constitutional Court clarified the scope of the different procedures, by formalising interaction procedures between governments. It also sets out the rules for future intergovernmental behaviour[5].

The State Council expressed that when the federal government uses its own competencies to achieve a goal lying in the regional or community sphere, it should conclude a co-operation agreement with the regions or communities concerned - co-operation agreements being considered as a kind of exception to the principle of exclusive competencies[6]. The Court of Arbitration pronounced a similar point of view on the federal

[3] The approval procedure is often prescribed to maintain the economic and monetary union in Belgium, for instance, when the federal minister of finance has to grant his/her approval to the loans made by the sub-states.

[4] If a government wants to take a decision, it has to be conform to the proposal of the other government, then the deciding government has the right to postpone or cancel the decision process, if the proposal is deemed unsatisfactory - the procedure of decision upon proposition only has to be held in a limited number of cases, i.e. for decision making about state guarantees for loans and investments.

[5] The Belgian State Council has two main tasks: to legally advice the federal and the federated governments concerning draft laws and draft government decrees and to pronounce judgements concerning administrative requests of citizens or authorities to suspend and annulate governmental and ministerial decrees. The Belgian Court of Arbitration, a quasi Constitutional Court, has the power to suspend and to annulate federal and federated laws, voted by parliament, when they violate some constitutional stipulation or any stipulation of an institutional law.

[6] The advisory power of the State Council includes the cooperation agreements submitted to the Council with a draft decree or law, like the international agreements ; the same goes *mutatis mutandis* for the Court of Arbitration, see Moerenhout, Roger, "De samenwerking tussen de federale staat, de gemeenschappen en de gewesten - recente ontwikkelingen" (The Cooperation between the federation,

principles of autonomy and co-operation: "The co-operation agreements are *an addition* to the autonomy principal. (...) Although each co-operation form inevitably implies a limitation of the governmental autonomy, the conclusion of a co-operation agreement should not result into an exchange, a cession or a restitution of competencies. This would be an infringement of the constitutional and legal stipulations concerning the establishment of the distinctive competencies of the state, the communities and the regions."[7] Both the State Council and the Court of Arbitration clearly blocked the view that co-operation procedures could be used to recentralise or recuperate competencies which have been devolved to the regions and communities.

Despite the lack of legislative specification the State Council and the Court of Arbitration argued that the notion of "involvement" goes beyond that of a simple advice. The State Council deemed that "involvement" entailed the reception, the examination and the discussion of all relevant matters "to insure that the views of the involved governments would not be put aside without acceptable reasons."[8] Concerning the notion "consultation", the Court of Arbitration stated that this notion compels the deciding authorities to take the opinion of other authorities into account, without losing their liberty of action ; the consultation only makes sense if it happens before the decision is made[9].

Non-compliance with the co-operation procedures as prescribed by the State Council or the Arbitration Court can lead to the effective annulment of governmental decisions. Up until today no annulment of a law or governmental decree was ever pronounced due to the violation of a co-operation procedure. Moreover, no annulment request in this sense was ever introduced before the courts. The preventive role of the many State Council advises concerning the intergovernmental co-operation procedures seems to be effective : the governments complied.

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the communities and the regions, recent evolutions), in "Tijdschrift voor Bestuurswetenschappen en Publiek Recht" (TBP), 1996, p. 276-277.

[7] The Court stated this in its judgement no. 17/94, March 3, 1994, publ. in het Official Journal, April 13, 1994, concerning prejudicial questions about two substate laws to ratify a cooperation agreement between the Walloon region and the French speaking community, see Moerenhout, R. & Smets, Jan, "De samenwerking tussen de federale staat, de gemeenschappen en de gewesten" (The Cooperation between the federation, the communities and the regions), ed. Kluwer Rechtswetenschappen/E. Story Scientia Service, Antwerp, 1994.

[8] This point of view was recently confirmed in the State Council advice no. L. 27.333/3, March, 17, 1998, concerning the federal draft law on the production rules to promote sustainable production and consumption patterns and to protect the environment and the public health: "The involvement is more than a mere obligation to demand an advice of another government. It means that the government which has the decision power, should take the view of the other government into consideration, without losing its freedom of action."

[9] Court of Arbitration, judgment no. 2/92, January 15, 1992, published in the Official Journal, February 28, 1992.

2. Co-operation agreements between governments

All governments in the federation are allowed to conclude co-operation agreements with each other. Through co-operation agreements governments are allowed to organise common services, to jointly exercise their authority over a given policy domain and to develop common policy initiatives. Although co-operation agreements were conceived to stimulate creative and yet unspecified forms of intergovernmental co-operation, the Court of Arbitration and the Council of State have set a limit to the agreements, i.e. they may never abandon nor entail an exchange or a restitution of governmental prerogatives as set out by the constitution and institutional laws[10]. Co-operation agreements can never be used to alter the constitutional division of powers between governments. This restriction on co-operation agreements again shows the importance attached to sub-state autonomy in the Belgian system.

The co-operation agreements are negotiated and concluded between governments. They should be ratified through a law by the competent parliaments, if they: concern matters settled by federal and/or federated law, burden the governments involved or engage the citizens personally. Parliaments are not systematically informed about the intentions to conclude an agreement, parliaments can not amend an agreement, they merely have the right to refuse or accept it.

The negotiation, formulation and implementation of co-operation agreements are essentially an executive affair. Parliaments are excluded from the process leading to the formulation of a co-operation agreement. A large majority of the co-operation agreements are not submitted to the parliamentary approval, despite the fact that some agreements have budget implications for the agreement parties or that they create rights or obligations for the citizens[11]. Since 1988, only 19 (15 %) of the 126 different co-operation agreements have been approved by the parliaments concerned.

The institutional laws do not merely provide the jurisdictional space for governments to conclude all kinds of agreement within the limitations set out by the courts, but it also *forces* competent governments to conclude agreements in certain matters[12]. The compulsory nature of these co-operation agreements emphasises the legislators' preoc-

[10] However, the "horizontal" fusion of institutions at the federated level is allowed by the Constitution (articles 137, 138 and 139): it is since 1980 fully implemented on the Flemish side (first article of the special Law) and, since 1995, partly on the French speaking side (French Community and Walloon Region).

[11] Moerenhout, Roger, "De Samenwerking tussen de federale staat, de gemeenschappen en de gewesten" (The Cooperation between the federation, the communities and the regions), in TBP, 1996, 281.

[12] The full list of compulsory agreements goes as follows :

a. the *regions* have to conclude agreements concerning :

1. hydrology and water management;
2. transboundary roads, water ways and harbours;
3. public works with potential transboundary damage;
4. services for joint urban and regional transport;
5. transboundary associations of towns and provinces for public interest;

b. the *communities* have to conclude agreements concerning the language use in the nautical colleges in Flanders;

c. *the federation and the regions* have to conclude agreements concerning :

1. the management, exploitation and development of telecommunication and telecontrol networks concerning transboundary traffic and security;
2. the implementation on both levels of European Community rules concerning the calamity risks due to industrial activities;

cupation to solve problems, which result from the indivisible nature of some policy matters. Most policy matters are interconnected, but some are so interconnected to the extent that it becomes counter effective to attribute authority over those issues to different policy levels. In spite of their obvious nation wide importance, policy fields like telecommunications, highways, rivers and canals... resort under the jurisdiction of different government levels. In order to counter the problems that arise out of those pronounced divisions of competencies, co-operation is not merely desirable but it has to be made absolutely imperative. In fact, eight of the eleven cases for which co-operation agreements are mandatory, relate to matters crossing sub-state borders. They concern rivers, roads, harbours, networks, the use of other community languages and the splitting of a province.

The other four policy fields, which require mandatory co-operation agreements, relate to international affairs. Federal and federated governments have to conclude agreements concerning the respect of supranational obligations, the policy co-ordination on immigrating labour forces, the representation of the federation in international organisations and the conclusion of treaties.

The lack of hierarchy and the juxtaposed nature of Belgian intergovernmental relations pose difficulties in the settlement of intergovernmental disputes. In regard to conflicts concerning the interpretation and implementation of co-operation agreements the conflicting governments are referred to the so-called agreement courts. The creation of agreement courts is mandatory for the obligatory co-operation agreements. However, no agreement court has yet been convened because, up until today, the federal law, which is supposed to organise these courts, has never been voted. Despite the legal obligation to embed agreement courts in the text of compulsory co-operation agreements, most co-operation agreements lack any reference to agreement courts. Lacking agreement courts, the disputes are settled today in an informal way through negotiations between the ministerial cabinets or in the Interministerial Conferences.

In practice, all levels of government have concluded co-operation agreements. First, the mandatory agreements were concluded, later a smaller number of optional agreements of varying importance and scope. The number of mandatory agreements equals 78, including the agreements, which deal with the transfer or the management of resources, being an inevitable consequence of the defederalisation. Only 48 co-operation agreements are optional, that is 38 %. Some agreements involve all levels of government. Other are purely bilateral or have a multilateral scope without involving all governments[13].

The table below gives an overview of the number of new co-operation agreements concluded per year.

3. the coordination of the policies concerning labour & residence permits and the employment rules for foreigners;

d. *the federation, the communities and the regions* have to conclude agreements concerning :

1. the representation of Belgium in international or supranational organisations and the procedures to establish the position and the attitude for lack of consensus;
2. the specific rules to conclude so called “mixted treaties” which involve both the federal and the federated governmental level and to conduct a case before an international or supranational court;
3. the transfer of the personnel and of the property (goods), rights & obligations from the dissolved province of Brabant to the two new provinces (Flemish and Walloon Brabant), the Brussels Capital Region, Community Commissions in Brussels and the federal authorities.

[13] The federal authorities are involved in 94 of the 126 signed agreements, i.e. 75 %.

The number of co-operation agreements signed each year.

Year	Number	Year	Number
1988	**2**	1994	**19**
1989	**14**	1995	**14**
1990	**24**	1996	**8**
1991	**24**	1997	**7**
1992	**6**	1998	**3**
1993	**5**	**Total :**	**126**

The table above shows that the number of co-operation agreements has not risen steadily over the years. There are two important rises immediately after the institutional reforms of 1988 and 1993. The number of co-operation agreements drops considerably two or three years after the reforms. These numbers indicate that the intergovernmental co-operation by way of agreements does not expand over the years, on the contrary, the use of co-operation agreements seems to stagnate on a lower level once the reforms are completely consolidated and implemented. The increases after the institutional reforms are largely due to the conclusion of mandatory and organisational agreements, which were necessary to finalise the transition from a unitary to a federal state. Once these agreements were concluded a new wave of optional agreements deepening the intergovernmental co-operation did not ensue. Most of the optional co-operation agreements that have been concluded over the years were initiated because EU or international policy fora required a co-ordinated action. Only 31 %, at the most, of all co-operation agreements have been concluded for pure domestic policy reasons. Paradoxically, the co-operation, which develops in supranational institutions, seems to be the main reason for the conclusion of co-operation agreements.

3. Institutions dealing with intergovernmental co-operation

3.1. Intergovernmental Concertation Committee (ICC)

The intergovernmental Concertation Committee was created as a top-level forum for intergovernmental decision making. The Concertation Committee can deal with any topic of common interest and is the main institution for the regulation of conflicts of interest[14].

The intergovernmental Concertation Committee (ICC) is composed by the heads of the different governments (the federal premier and the federated minister presidents) and other government members of both levels. The specific composition of the ICC creates a double parity, half of the members belong to the federal level the other half consists of representatives of the federated governments. There is also an equal number of French and Dutch speaking members. The ICC is chaired by the federal prime minister.

The ICC meets nearly once a month, at an average of eight meetings a year, whether on its own initiative, or on the request of its chairman or of a minister president of a federated government. The ICC record 1995-97 shows a far higher contribution to the agenda from the federal government than from the federated governments: 34 topics were submitted by the federal government, only 6 by the Flemish government, 2 by the Brussels Capital region and 1 by the French Community[15]. The ICC agenda indicates that the federal government is the most active and driving force within this top-level forum of intergovernmental co-operation. This does not imply that the federal government actually dominates the ICC meetings. The decisions within the Intergovernmental Concertation Committee are made by consensus which grants each government a de facto veto right. Without unanimity there is no political decision. The decisions of the ICC are not legally binding for the governments. The decisions have a mere political value, governments agree to comply with a decision but cannot actually be sanctioned if they fail to implement or live up to the agreements reached in the ICC.

Currently, the ICC activities mainly focus on (1) the adequate application of the co-operation and participation procedures as set out by the State Council and the Arbitration Court (see above), (2) the regulation of conflicts of interest that arise between governments. Conflicts of interest occur when a government action, carried out within the limits of that government's jurisdiction, seriously harms or interferes with the interests of (an)other government(s). If a government or an assembly feels that its interests are seriously threatened by the actions of another government or assembly, the conflict of interest can be referred to the Intergovernmental Concertation Committee. Except for a consensual decision in the ICC, there is no legal procedure available to regulate conflicts of interest[16]. The lack of hierarchy of norms also prohibits the feder-

[14] The Law of August 9, 1980, does not stipulate the goals of the ICC as such. Instead, its goals are specified in the Internal Reglementation of the Concertation Committee of September 12, 1995. The ICC internal reglementation mentions (1) any subject of common interest (2) conflicts of interest (3) conflicts concerning the respect of coöperation procedures, as domains of ICC activity.

[15] Flemish parliament, question no. 113, March 18, 1998, Bulletin "Vragen & Antwoorden" (Questions & Answers), no. 14, May 28, 1998, p. 1936-1943 (1.A).

[16] Once the decision has been carried out, governments as well as citizens can use certain legal proceedings to fight the decision. The State Council can suspend and discard governmental and ministerial de-

al government to intervene hierarchically in an intergovernmental conflict. Unsettled conflicts of interest are a tangible reality in the Belgian Federation. Seventy per cent of all conflicts interest introduced in the Intergovernmental Concertation Committee were not concluded with a consensus.

3.2. Interministerial Conferences (IMC's).

The Intergovernmental Concertation Committee **(ICC)** joins the premiers of the federal and federated governments in an intergovernmental setting intended to deal with general policy issues. In order to provide room for more specialised discussions concerning specific policy fields, sixteen Interministerial Conferences (IMC's) were created. Fourteen IMC's are competent for a specific policy field[17] and two IMC's deal with recently established high priority issues[18].

The IMC's are composed of the members of the federal government and of the federated governments competent for the policy field or issue involved. Other competent ministers and experts are allowed to assist the Conference members. The sector specific nature of each Interministerial Conference enabled these conferences to become the primary institutions for actual and effective co-operation in the federation. Interministerial Conferences steer the implementation of co-operation agreements and apply the co-operation procedures (see above). IMC's function largely in the same way as the ICC, but their specialised composition creates more possibilities for actual intergovernmental co-operation. Like the intergovernmental Concertation Committee (ICC), the IMC's lack a compulsory decision power, that is, their decisions are not legally binding. Decisions are taken by consensus. If a consensus is reached, the decisions do have an effective political value.

Most IMC's are assisted by working groups on a permanent or occasional basis, composed by personal advisers (cabinet members) and civil servants of each level of government. The working groups prepare the agenda and make draft proposals over which the ministers decide during the official IMC.

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cisions, the Arbitration Court has similar power concerning parliamentary decisions at all levels of government.

[17] These are the Interministerial Conferences for: (1) economy and energy, (2) traffic and infrastructure, (3) scientific policy, (4) foreign policy, (5) budget and finances, (6) home affairs, (7) employment, (8) human resources, (9) agriculture, (10) public health, (11) environment, (12) migrant policy (13) social integration (14) drug policy.

[18] Children's rights and urban innovation were promoted as high priority issues in 1996.

4. Intergovernmental co-operation in the domain of environmental policy.

4.1. The organisation of environmental policy making.

The state reform of 1980 transferred environmental prerogatives to the regions. Important aspects of environmental and waste management came under regional jurisdiction. The state reforms of 1988 and 1993 enlarged the environmental powers substantially. Today, after three constitutional reforms, Belgian environmental policy making is essentially a regional affair. The regions have gradually obtained a large and almost full package of environmental prerogatives. During the last fifteen years the role of the federal government in environmental affairs has decreased significantly. Regional and EU policy making have taken up the policy space vacated by the federal government.

The *Regions* are competent for :

1. *the protection of the environment*, for instance soil and sub-soil protection, water and air protection, struggle against noise nuisance, etc.;
2. *waste management*, both a curative and a preventive role, the import and export of waste materials;
3. *the ("external") control on the dangerous, unhealthy and hampering industries*, except for the regulation of the ("internal") control on the labour protection;
4. *water production and supply*, including the technical rules on the quality of drinking water, *waste water purification and sewerage;*
5. *management of the environment and nature saving*, this includes: land consolidation, nature protection and conservation, the green belts, parks and green spaces, forests, hunting, fowling, fishing, fish farming, agriculture hydraulics, non navigable water ways including their banks, drainage, polders and watercourses.

The state reforms of 1980 and 1988 left the federal government the possibility to set general and sectoral environmental norms where no European norms existed[19]. In other words, the presence or lack of EU regulations determined whether an environmental issue fell under federal or regional jurisdiction. This lack of clarity in the division of federal and regional prerogatives caused confusion and intergovernmental conflict. The state reform of 1993 clarified division of competencies by stating that the regions were entirely in charge of environment policy, except for a limited number of matters explicitly stipulated by law which remained under federal jurisdiction.

The *federal competencies* include[20] :

1. *the formulation of product rules*, i. e. the criteria to which products should meet from an environmental perspective (water quality excluded), *the environment com-*

[19] Clement J., D'Hondt H., Van Crombrugge J. & Vanderveeren Ch., "Het Sint-Michielsakkoord en zijn achtergronden" (The Saint Michael's Agreement and its background), Maklu editors, Antwerp & Apeldoorn, 1993, p. 46-47.

[20] These federal competences are mentioned here as exceptions to regional competences stipulated in the special law. Referring to the introduction of this study, the federated power is allocated by the Constitution and the institutional laws. This means that all competences which are not transferred to the regions and communities, are still excercised on the federal level. In other words, the federal government holds the residual power. However, the intention to transfer the residual power to the substates is already stipulated in the Belgian Constitution (article 35) but has not yet been put into practice.

munity inspection under the EC-regulation no. 880/92 and *the necessary environment taxes* which are to preserve the Belgian Luxembourg economic union,

2. *the protection against ion rays*, including nuclear waste;
3. *the transit of waste materials*, to guarantee the efficient implementation of European and international rules.

This federal/regional distribution of environmental powers points at a rigid separation between federal and regional jurisdictions with a minimal role for the federal government. The regional powers are conceived as self-standing, exclusive prerogatives without shared or competing powers.

The remaining federal powers and the transboundary nature of environmental problems still require a minimum of intergovernmental co-operation. The prescribed co-operation takes the form of intergovernmental consultation or involvement. Co-decision procedures are not applied in environmental policy making.

A first set of consultation procedures regards the federal prerogatives. The federal government is required to consult the regional governments when federal draft laws concerning (1) product norms and (2) the transit of waste materials, are being considered. Furthermore, half of the members of the commission on eco-taxes are nominated by the regional governments. A second set of procedures urges the regions to consult each other when specified transboundary issues are at stake. Interregional consultation is required in case of (1) transboundary woods, (2) the opening of hunting, fowling and fishing periods and (3) transboundary waterbeds. The co-ordination of the policy on the import, export and transit of waste materials imposes a consultation requirement at all levels of government.

Two characteristics stand out from the system of co-operative procedures : the co-operation is largely focused on transboundary matters and entails regional participation in the restricted federal prerogatives. The transboundary issues (woods, hunting, waterbeds) are typical policy issues which, by their nature, involve several governments and therefore necessitate co-operation. For instance, the Soignes forest near Brussels covers parts of the three regions and requires a concerted management effort by the three regional governments. Beside the transboundary issues, we find that the remnant of federal environmental authority is actually subject to regional participation. The important federal powers (product norms, eco-taxes and waste transit) are all subject to regional participation. The federal government can not regulate these issues without substantial regional input.

The constitutional division of power and the nature of the co-operative procedures both clearly indicate that environmental policies are to be conducted by the three regional governments separately. Although the prerogatives point at a regional dominance in environmental matters, a continued central role of the federal government should not be ruled out. The federal government holds two essential policy tools with increasing importance in environmental protection strategies, namely, product norms and eco-taxes. The federal government has the power to regulate the composition, measure, weight, etc. of all products and goods introduced to the market. The regional powers start where the federal authority stops, namely the use or consumption, the emissions and eventually the processing of the products as waste. In the framework of

a life cycle approach to environmental problems, product norms are essential since they enable regulators to act in a preventive way, at the source, that is the production process, or at the point where a product enters the consumption cycle. Here the Belgian constitutional framework has created a paradoxical situation. On the one hand, regional governments are deemed to be fully in charge of environmental policy making, but they fail to have an essential instrument at their disposal to tackle environmental problems to their very root. On the other hand, the federal government no longer possesses the constitutional authority to formulate a coherent environmental strategy considering environment as a regional policy domain, although the federal government still holds the power to regulate product norms.

A similar problem exists concerning eco-taxes. In order to obtain the votes of the green parties, necessary to carry out the constitutional reform, the federal government created the ambitious 1993 eco-tax law[21]. The law aimed at changing producer and consumer behaviour by levying taxes on beverage containers, disposable products, packaging of goods, pesticides, pharmaceutical products, paper and batteries. In spite of the expected environmental benefits the law was not carried out in accordance with its initial goals. Intensive lobbying of commercial and industrial sectors pushed the federal government, who no longer needed the green parties' votes, to weaken the scope and effects of the law. The application and evaluation of the law was referred to a federal eco-tax commission with regional participation (see above), which allowed for enlarged tax exemptions, recycling instead of effective re-use, and generally made the law less imposing on the producers of damaging products. In this sense the regional governments, though constitutionally competent, lack the control over key instruments to address environmental problems fundamentally.

4.2. Intergovernmental co-operation in environmental policy making.

Co-operation between federal and federated governments in environmental affairs takes place in the Interministerial Conference for Environment (IMCE) and the Co-ordination Committee for International Environment Policy (CCIEP). The IMCE is the institution in which all ministers of environment participate. The CCIEP assists the IMCE, especially concerning the international dimension of environmental affairs. Both institutions are fairly new and have only recently (after 1993) taken up their full functions as intergovernmental co-ordination bodies.

4.2.1. Interministerial Conference for Environment (IMCE).

The Interministerial Conference for Environment (IMCE) was set up in September 1995[22]. Although the IMCE was initiated as an intergovernmental institution composed of the ministers of environment of all governments, the regional ministers rarely attend the meeting. The federal minister for environment (deputy minister) still presides the meeting and is joined by high level representatives (personal advisers) of the regional ministers. The IMCE started off with four meetings a year, this has dropped to the current average of two a year. Within the IMCE decisions are made by

[21] The regional power to raise taxes is limited. Concerning the environment, the regions only can establish taxes on waste and fertilisers.

[22] The IMCE was preceded by an interministerial committee for coordination which had been created in 1986 by the federal environment minister.

consensus, there is no formal vote but the governments endorse the decisions by adoption of the minutes.

The IMCE has been the forum for several kinds of intergovernmental co-operation. In the period 1995-1998 nine co-operation agreements were concluded within the IMCE. All of these co-operation agreements were either mandatory or instigated by international or EU obligations. The voluntary agreements were concluded in order to comply with EU regulations and requests. During the last three years, only two co-operation agreements were concluded. The decreasing amount of environmental agreements is largely due to the settlement of transboundary issues immediately after the latest state reform of 1993 and because of the presence of the IMCE which reduces the necessity of formalised engagements.

The most frequent items on the IMCE agenda relate to the compliance with participation procedures. As was mentioned above, the federal government is legally forced to ensure regional input concerning product norms and the waste transport and transit. These mandatory intergovernmental consultations take place within the IMCE.

Since the creation of the "Co-ordination Committee for International Environment policy" (CCIEP) (see below), the IMCE has been less involved in international environment matters. The IMCE does however participate in the approval of draft "mixed" treaties (international treaties involving both federal and federated prerogatives) in the environmental domain and also composes the Belgian delegations to international negotiations. Nevertheless, the presence of other institutions specifically designed to deal with the international dimension has curtailed the importance of the IMCE in this respect.

Beside the imposed forms of co-operation (by legal or international obligation), the IMCE has also developed endogenous co-operative initiatives about the use of automobiles through the creation of a number of workings groups dealing with specific environmental problems[23]. Some of these working groups have managed to reach a consensus, which lead to policy changes.

4.2.2. Co-ordination Committee for International Environment Policy (CCIEP).

The Co-ordination Committee for International Environment Policy (CCIEP) was formally established by a mandatory co-operation agreement between the federal government and the regions in April 1995. The CCIEP is a permanent working group that assists the Interministerial Conference for Environment (IMCE) concerning the international dimension of environmental affairs. The CCIEP prepares the Belgian position in international organisations, it composes the Belgian delegation[24], it sees to the coordinated implementation of international decisions and it seeks to reply to international requests for information. The tasks of the CCIEP do not cover the EU activities

[23] Working groups on (1) the reduction of greenhouse gasses (2) the reduction strategy for the use of pesticides (3) automobile taxes (4) the problems caused by the tropospheric ozon, aiming at a draft ozon plan, created together with the IMC for health (5) the reduction of chlorine compound emissions (6) the automobile wrecks.

[24] The cooperation agreement on international environment policy stipulates that three composition formulas for Belgian delegations in international organisations are possible: a delegation entirely composed of federal representatives, a mixed delegation of federal and regional representatives or a delegation entirely composed of regional representatives. This allows the Belgian regions to represent the Belgian viewpoint on international organisations.

in environmental matters. The follow up of environmental policy making at the EU level is explicitly attributed to other institutions in the federation, namely the division of European affairs in the federal ministry of Foreign Affairs and the Interministerial Conference for Foreign Policy or IMCFP.

The CCIEP deals primarily with the technical aspects of international environmental issues. The technical nature of the commission is evidenced by its composition. There are thirteen permanent members, seven civil servants and six cabinet advisers attached to a minister. The CCIEP includes representatives from the environmental administrations (federal and federated), foreign affairs, developmental aid and from Belgium's' permanent representation with the EU. Usually, an average of twenty-six persons attends the meetings. The CCIEP is chaired by a civil servant of the federal administration for environment, the secretarial backup is also provided by the federal administration[25]. The CCIEP decides by consensus. The consensus driven interministerial conferences (on environment and foreign policy) which hierarchically supervise the CCIEP have little use for divided CCIEP advises, in practice this urges the commission members to seek unanimous advises. If a consensus fails to materialise it is still up to the interministerial conferences on environment or on foreign policy (in case of foreign policy implications) to settle the matter.

The CCIEP meets every two weeks. Its broad composition, the frequency of the meetings and the growing importance of international environmental activity have uplifted the role of the CCIEP in Belgium's environmental policy making. As an effective, though bureaucratic, decision-making body, the CCIEP has overtaken the Interministerial Conference on Environment in importance. The IMCE only meets twice a year and usually endorses decisions reached at CCIEP level.

A co-operative intergovernmental dynamic quickly developed within the CCIEP. The members of the commission felt the need to deepen the co-operation on a large number of technical and also more political matters. In the framework of the CCIEP no less than 25 expert groups were constituted on a wide variety of topics[26]. The frequency of these expert group meetings is high, most of these working groups meet once a week. The expert groups are lead by federal or regional officials, according to which government is deemed to be the most competent and interested actor in the matter under scrutiny ("the best pilot steers").

This flexible leadership in the expert groups typifies the general co-operative atmosphere, which developed between civil servants, they share a common expertise, language and frame of reference which lead to a common sense of purpose enabling easy and non-conflictual decision making. Cabinet advisors can and do participate in the expert groups but their presence is steadily dropping. In fact, in the overall activities of the CCIEP, the role of civil servants from the different governments has increased

[25] Schoenmaekers, M., "Vlaanderen als actor binnen het Europees Milieubeleid" (Flanders as actor in the European policy field on environment), master thesis in political sciences, Catholic University of Leuven (B), 1995-1996, p. 49 and 51.

[26] The existing expert groups ("steering and working groups") are: (1) nature (2) biological diversity (3) waste materials (4) atmosphere (5) greenhouse gas coordination (6) water (7) oceans and Nord sea (8) products policy (9) "Seveso & Helsinki" (10) noice (11) soils (12) urban environment (13) woods (14) environment and economy (15) labour and environment (16) tourism and environment (17) trade and environment (18) transport and environment (19) agriculture and environment (20) INDSEC/BAT (21) energy and environment (22) government greening (23) environmental performances (24) environment data and (25) health and environment.

at the detriment of the (political) cabinet advisers who have left much of the actual decision making to civil servants mandated to decide on behalf of the responsible ministers.

The increased technocratisation of the CCIEP and its multiple expert groups does not imply that the matters regulated in the commission have become less political. On the contrary, in spite of the explicit mention that CCIEP does not cover EU environmental policy, the CCIEP has been increasingly involved in the implementation and formulation of EU policies. The CCIEP has also tackled environmental issues of a more domestic nature where international ratifications were not of a primary importance[27]. The success of the CCIEP and its expert groups as an intergovernmental co-ordination body, has enabled it to move into areas beyond its immediate prerogatives and even to overshadow the hierarchically superior interministerial conferences.

4. 3. Conflicts in environmental policy making.

The preceding description of the intergovernmental institutions dealing with environmental issues may create the impression that conflicts seldom occur between governments or that they are easily solved. Closer scrutiny of the intergovernmental agendas and interviews with officials indicate that the federation's recent intergovernmental system has not been spared of important conflicts. In the field of environmental policymaking we find the federal and the regional governments at loggerheads on five issues of contention. Ascertaining the presence of intergovernmental conflict probably equals to stating the obvious, more interesting is the analysis of how these conflicts were regulated within the intergovernmental system. Therefore the main environmental issues causing intergovernmental conflict are briefly presented here with the aim to discern possible recurring patterns in intergovernmental conflict management.

The conflict concerning *the control over dangerous industrial facilities* arose when rules for tanker-lorries were discussed at the federal level. The federal government is competent for the internal control of hazardous industries in terms of employee protection and for civil protection against calamities. The regions are in charge of the external effects of dangerous industries as a part of their general environmental prerogatives. The Flemish Region claimed that the regulation of tanker-lorries belonged to the regional authority sphere since the possible external risks and effects of tanker-lorries were by far more important than the internal effects tanker-lorries could have on dangerous industries (limited to the risks for industrial workers during fuelling operations). The federal government discarded the regional reading of its prerogatives and insisted that rules about tanker-lorries remain an exclusive federal domain. The issue was discussed repeatedly within the CCIEP and IMCE without final agreement. Nor did the informal discussions between the cabinets of personal advisors at the federal and regional level lead to a consensus. In spite of the regional objections, the federal government continued its regulatory efforts without regional involvement. In this conflict the federal government chose not to accommodate the Flemish regional government and continued to exercise its prerogatives in a unilateral fashion.

The conflict over *conversion of the European Community directive on the protection against industrial risks*, called the "Seveso" directive (the name of an Italian town

[27] For example, the debate on the internal and external control over hampering industries and their consequences for the federal budget for fire brigades and civilian protection.

where the soil was polluted by industry), into internal law, related to a similar discussion on where the regional external control of dangerous industries ends and the federal prerogatives (internal control) begin. The transposition of the Seveso directive into Belgian law entailed the regulation of high risk industries (e.g. chemical plants) in terms of emergency plans, information mechanisms and campaigns, preventive measures, on the spot inspections, contribution funds, etc. The safety and security rules for the so called Seveso industries were precisely one of the policy domains where the federal and regional governments had the legal obligation to conclude a (mandatory) co-operation agreement. During the intergovernmental discussions the federal government, on the basis of its civil protection powers, advocated a control over issues beyond the confines of industrial facilities. The regional governments stood for a more restrictive interpretation of "internal safety" and perceived their own responsibilities on external safety around high-risk installations in broader terms than the federal government. The stakes in the conflict were raised by the fact that dangerous industries contributed a 'Seveso-tax' to a public fund to finance the safety provisions required under the EU directive. Given the overall risks and burden on public health and the environment in general, the regions felt entitled to a share of those Seveso contributions.

Eventually, the conflict was not regulated within the formal intergovernmental institutions. An ad hoc working group of personal advisers to federal and regional ministers devised a compromise, which resulted in a draft intergovernmental co-operation agreement. Subsequent to the agreement between ministerial cabinets, the draft co-operation agreement was forwarded to the IMCE for ratification. The external pressure to implement an EU directive and the legal obligation to do this through a co-operation agreement excluded unilateral actions and forced the governments to bridge their differences. The eventual management of the conflict shows that the formal intergovernmental institutions have not diminished the central role of personal advisers attached to ministers (the so-called cabinets) and the political links between governments through these cabinets. The ministerial cabinets are an alternative and less formal network of intergovernmental decision making that steps in and short circuits the formal institutions when important (conflictual) issues seem to be at stake.

The conflict on *the product norms* developed when the federal government considered a draft law, which regulated the norms for a number of noxious products[28]. Product norms are a federal prerogative but the federal government is forced to consult and involve the regions in the formulation of these product norms. The draft law was introduced in the IMCE in order to comply with the obligatory consultation provisions. During the IMCE meetings it became clear that the federal and regional governments held different views on the notion of product rules and their environmental implications. The regions feared that the federal product law would undercut and alter the regional policies on waste management. In 1996 two IMCE meetings were dedicated to the issue without reaching a consensus. Informal contacts between ministerial cabinets on both levels of government also ended with a political stalemate. Eventually both the federal and regional governments agreed to refer the conflict to the Council of State for an advice to determine whether the federal government needed to comply with the regional reservations concerning the draft law on product laws. The federal government agreed to suspend its regulatory actions until the State Council issued its

[28] The draft law included norms for batteries, leaded fuel, sulphur levels in diesel fuel, noice levels and environmental inspections.

advice. The Council of State largely followed the regional interpretation by stating that consultation procedures entailed more than a preliminary advice and that federal government needed to take into account the regional preoccupation. The federal government endorsed the State Council advice and amended its draft law in function of the regional demands. The regulation of this conflict shows the weakness of intergovernmental fora in cases of serious conflict. Both the informal and formal networks for co-operation failed to secure an agreement and had to call upon an external referee, the State Council, to settle the matter. The intergovernmental decision making was reduced to the registration of that legal advice.

The intergovernmental disagreement concerning *the international contributions* involved the financial obligations resulting from international treaties and organisations to which the Belgian State had agreed to in the past. Some of these treaties and international organisations now involved issues entirely or partly in the regional authority sphere. Given the extended regional prerogatives, the federal government could no longer be expected to carry the full financial burden of international obligations, which it no longer controlled.

The conflict consisted of two issues (1) the identification of the adequate ratio for federal and regional contributions and (2) the visibility and international recognition of the regional contributions.

The issue was introduced in the CCIEP meeting without conclusive results. The issue was then forwarded to the IMCE where a similar lack of agreement was noted. After observing a deadlock, the IMCE asked the Interministerial Conference on Foreign Policy (IMCFP) to consider the issue. The IMCFP also failed to reach a consensus and charged the CCIEP to reconsider the topic.

During the numerous discussions in different committees, governments swiftly agreed that the percentage of the expenses carried by each government should be proportional to their functional and territorial involvement. The level of contributions to be paid by each government proved not to be the largest stumbling block in the talks. The continued disagreement during the talks centred on the visibility and recognisability of the regional contributions to international organisations. The regions wanted to appear as fully competent actors on the international scene and sought to use the contributions as a means to promote and affirm the regional involvement in international affairs. The regions desired to interact directly, and not through a federal intermediary, with the international organisations.

Eventually, the four governments agreed within the CCIEP to set a fixed contribution ratio for only four treaties or international organisations[29]. For those four treaties the federal ministries of agriculture and foreign affairs would no longer be the sole contributors but the regions would also contribute directly to the international organisations. The solution was explicitly limited to four treaties and did not constitute a gen-

[29] The CCIEP (September 2, 1997) agreed upon a financial participation, ratified by the IMCE (November 25, 1997), for the following treaties or organisations : (1) the Agreement on the water areas of international value, in particular as the biotope for water birds (Ramsar, 1971), financed to 45 % by the Flemish and the Walloon Region, 2 % by the Brussels Region and 8 % by the federation, (2) the Treaty on the protection of migrating wild animal species (Bonn, 1979), financed at 47,5 % by the Flemish and the Walloon Region, 5 % by the Brussels Region, (3) and (4) the Fund for the international Waterfowl and Wetlands Research, called "Wetlands international", and the international Hunting Council financed only by the Flemish and Walloon Region, 50 % each.

eral solution for other treaty obligations. The lack of a general solution for a contribution ratio and its procedure caused a backlog in Belgium's international contribution payments and sanctions followed. For instance, in United Nations Economic Commission for Europe, the Belgian delegation was not allowed to apply for chairmanship of the committee on sustainable development. In other international organisations the Belgian delegation found itself excluded from debates and voting procedures for defaulting on its contribution payments. Despite the increasing number of sanctions, intergovernmental actors have not yet agreed to any solution for the conflict.

The dispute over *the processing and transfer to the ESO* (Eurostat) *of environment data* concerned the question whether regional or federal agencies were to provide the Eurostat environmental data. The National Institute for Statistics (NIS) is officially designated with the task to provide official and validated data, but did not posses the operational means to collect data relating to policy domains under regional control. The regions did posses the means and organisational capacity to provide the requested environmental data, but were not in a position to validate or officialise the data. In this framework of mutual dependence, both the federal (NIS) and regional levels claimed the control over the data to be forwarded to the Eurostat organisation (ESO). The matter was discussed in the CCIEP without ensuing agreement. Again, informal concertation outside the intergovernmental institutions between ministerial cabinets of both levels of government lead to an agreement, which was eventually ratified in the IMCE. The compromise entails that the regions collect and process the data, the NIS validates the data and a member of the interregional cell for information exchange (IRCEL) is appointed as Belgian representative in the ESO. The NIS informs the ESO about the appointment and participates to the CCIEP meetings on environment data as an observer. The outcome of the dispute was influenced by the announcement of an ESO program to finance the development of regional environment statistics in the near future. The regulation of this conflict again indicates that the role of the formal intergovernmental institutions consists of the acknowledgement of disagreement and the subsequent endorsement of an agreement conceived outside the intergovernmental institution. Concertation between ministerial cabinets (federal and regional) continues to be the essential instrument to forge agreements between governments.

5. Intergovernmental co-operation in the field of economic policy.

5. 1. The organisation of economic policy making.

The Belgian federalisation process addressed the Flemish demand for cultural autonomy (communities) and the Walloon strive for economic autonomy. The formation of regions competent for economic policy satisfied one of the traditional demands of the Walloon movement. Although the achievement of economic autonomy had not been Flanders' primary concern, the attribution of economic powers to the regions was also welcomed in Flanders as an important element in the development of the Flemish autonomy. Given the parallelism of interests, the state reform of 1980 already envisaged a transfer of economic prerogatives to the regions.

According to the institutional law, the regions are generally in charge of economic policymaking[30], including the regional aspects of energy policy. The explicit mention of the regions as the primary level of economic policy making implies that the remaining powers of the federal government should be interpreted in a restrictive sense. Hence, economic policy issues which are not explicitly attributed to the federal level, belong implicitly to the regional authorities.

The list of federal economic powers includes monetary, financial, competition, price and income policies[31]. The federal prerogatives appear to be quite extensive. However, most of the federal powers are subject to EU regulations leaving the federal government very little room for autonomous policy making. The federal government only retained those policy matters necessary to maintain the economic and (until 1998) monetary union. Economic matters which could not be directly expected to jeopardise the union, were transferred to the regions. Although the federal competencies are limited, they are very important to the economic policy domain - a similar situation to the environment domain can be noticed (the product norms are established by the federal authorities).

The division of powers with its clear regional predominance in economic matters, left little institutional grey zones and is generally deemed to be clear. The governments operate independently with little interference from other governments. The legislator did impose a limited number of co-decision procedures on the federal and regional governments. Regions and federal governments co-decide on a number of issues in the domain of economic expansion[32]. Again, the necessity to uphold economic and monetary union required a minimum of joint decision making.

5.2. Intergovernmental co-operation concerning economic and energy issues.

The primary institution for intergovernmental co-operation in the field of economy is the Interministerial Conference for Economy and Energy (IMCEE) established in 1989. This intergovernmental forum is composed of the ministers of economy and energy of all governments. Given its composition, the IMCEE should be the source and the driving force of intergovernmental policy making. In practice, we find a different picture. Since its creation in 1989, the IMCEE has only convened three times

[30] The regional prerogatives consist of (1) *the economic policy*, globally granted to the regions, including the economic expansion, the renovation, the restructuring policies as well as the public industrial policy, (2) *the regional aspects of the credit policy*, the creation and the management of public credit agencies included, (3) aspects of *the market and export policy*, (4) *the natural resources*.

[31] The federal prerogatives are: (1) public tenders, (2) consumer protection, (3) organisation of enterprises, (4) the maximum aid levels for businesses in the framework of economic expansion programs, (5) monetary policy (since January 1999 transferred to the European institutions - the Belgian currency has been replaced by the new European currency, common to eleven EU-states), (6) financial policy and protection of the deposits, (7) price and income policy, (8) competition law and law on trade methods, (9) trade and company law, (10) business establishment rules, (11) industrial and intellectual property, (12) quota restrictions and permits, (13) the metric system and the standardisation, (14) the statistical secret, (15) the federal investment company, (16) labour law and social security.

[32] The following cases require codecisions (1) regional regulations are subject to federal approval, when the implementation of economic expansion regulations involves *fiscal benefits (tax cuts or exemptions)* within federal taxe sytems, (2) upon the proposal of a regional government, the federal council of ministers decides whether to grant *the state guarantee* in the framework of the economic expansion rules (3) the federal authorities need the approval of the regions to amend *the maximum amounts to support enterprises* in the domain of the economic expansion.

(once in 1991, 1995 and 1998). At the first two occasions, a co-operation_agreement was concluded. These two co-operation agreements organised institutions for permanent co-operation regarding foreign investments (Liaison Cell for Foreign Investment) and energy (Energy Concertation Group). Three other existing economic co-operation agreements were concluded outside the IMCEE. The co-decision and consultation procedures imposed by law are also conducted outside the IMCEE. Economic co-decisions are referred to the Interministerial Conference on Finances and Budget.

The low frequency of interministerial meetings (three over a period of ten years) and the overall poor co-operation record in the IMCEE requires some explanation. Concerning economic issues the governments scarcely feel the need to co-operate. The division of powers leaves little open to interpretation and clearly attributes the policy tools outside of EU control to the regions and not to the federal government. The remaining federal powers with a potential effect on regional economic policies are limited to tax exemptions of businesses, state guarantees and the maximum amounts for expansion aid. Given the increasing importance of EU regulations the regions are more eager to co-operate in and with EU institutions concerning economic policies, than with the federal government or with each other.

The Walloon and Flemish region have adopted different orientations in economic development strategies. Generally, at the risk of oversimplifying, Flemish economic policies can be deemed more voluntaristic and liberal, whereas the Walloon regional government insists on a more interventionist stance. Flemish economic policy seeks to reduce the company taxes and the social security costs imposed on employers, policy options which are not contemplated by the Walloon government[33]. Flanders and Wallonia follow a different policy on small and medium sized enterprises[34]. In terms of economic expansion programmes, the Flemish government has abandoned a sectoral or geographic approach to economic development while the Walloon region continues sectoral support for (steel) industries and for specific geographic areas. The different economic policies adopted in both sides of the country have discouraged the regions to invest in common economic policies and in-depth co-operation. The federal government, built on a linguistic parity, adopts the position of a neutral observer without taking initiatives unless the regions appear to be in agreement and a consensus seems feasible.

For economic matters intergovernmental co-operation take place in a working group of cabinet advisors and in the Interministerial Economy Commission (IEC). The working group consists of personal advisers to the federal and regional ministers for economy. This working group is not permanent and meets when political circumstances require so. The activities can be interpreted as a kind of crisis management called upon when decisions can no longer be delayed and when concertation is necessary. The working group was involved in the conflicts concerning the creation of a

[33] For example, the Flemish region voted regional tax cuts for companies and their owners regarding inheritance and real estate taxation ("Vlaminov" project). In the framework of another Flemish economic initiative ("Marivlam" project) the Flemish government proposed a reduction of company taxes to the other governments. This proposal was rejected by the Walloon government. The federal government, which holds the fiscal powers, remained passive and proposed no alternative nor a compromise. The "Marivlam" initiative was eventually deadlocked.

[34] Organisation for economic co-operation and development (OECD), Economic survey, 1996-1997, Belgium/Luxembourg, p. 84-85.

federal Agency for Foreign Investors (FAFI) and the capital increase for the interregional glass packing company Verlipack. The creation of a co-ordination and information agency for foreign investors was interpreted by the Flemish region as a federal encroachment in regional prerogatives and was therefore rejected. In the case of Verlipack the Flemish region refused to participate in a capital increase of the company to which the Walloon region agreed. In both cases the working group of cabinet advisers intervened and tried to establish a compromise.

More permanent forms of economic co-operation occur in the Interministerial Economy Commission (IEC). The IEC, created in 1938, was not specifically designed to prepare intergovernmental decisions but served as co-ordination office for the national ministers involved in economic affairs. From 1993 onwards the regional officials became permanent members of the IEC. Most of the IEC activities concern the international aspects of Belgium's economic policy. The composition and position of Belgian delegations (in EU, OECD, WTO), the conversion of economic EU directives and the international demands for economic information and data are prepared by the IEC. All IEC members are civil servants of the federal and regional administrations. Decisions are made by consensus and endorsed by the federal and regional ministers. The IEC has created seven sub-commissions to deal with specific issues[35], but not all of these commissions deal with intergovernmental issues. Especially the sub-commission 'various problems' has an intergovernmental agenda and deals with international economic issues, which affect federal and regional powers alike. Lack of consensus in the IEC meeting over international issues results in an abstention of the Belgian delegation[36] or in case of EU directives a delay in the conversion[37]. In cases of continued disagreement between the governments, the IEC discussions are broken off and the working group of cabinet advisers or the Interministerial Conference for Foreign Policy intervenes. Despite the occasional conflicts, the intergovernmental policy making in IEC and its sub-commissions is intense[38] and generally non-conflictual and co-operative. The fact that most of the agenda items are technical and instigated by international demands and obligations stimulates a problem-solving attitude amongst the commission members.

6. Conclusions.

[35] The seven IEC subcommissions are: (1) agriculture, (2) efficient supply of oil products, (3) priority rights for the distribution of stocks when shortage occurs, (4) struggle against fraude through the abuse of the European regulation, (5) advice on the prohibition of products, (6) federal coordination to promote foreign investments and (7) 'various problems'.

[36] For example, the Belgian delegation abstained due to internal disagreement in the debate over the EC policy proposal on ecological support for economic expansion investments.

[37] The conversion of both the EU directives on biotechnological inventions and on product origin certificats was delayed due to intergovernmental disagreement in the IEC.

[38] The number of IEC meetings is high: 59 meetings in 1993, 38 in 1994, 51 in 1995, 50 in 1996 and 71 in 1997. The IEC subcommission "various problems" had 41 meetings in 1993, 26 in 1994, 36 in 1995, 39 in 1996 and 53 in 1997.

The preceding analysis of environmental and economic policy making served as a case study of policy making in the new Belgian Federation. The new federal dispensation which took its full effect after 1993 involves intergovernmental policy making. The transition from a unitary to a federal state brought regional and community governments to the centre of policy making which had previously been reserved to political parties and their representatives. This new intergovernmental dimension to Belgian politics is likely to affect the functioning of the political system both in institutional and behavioural terms. The goal of this contribution was to shed some light on possible new patterns of intergovernmental policy making emerging from the new (federal) institutional conditions by focusing on a limited number of policy domains (environment and economy). Consequences of the federal reform in these domains can be determined by analysing the policy outputs, for example, in Wallonia as opposed to the policies created in Brussels or Flanders. The approach chosen for this contribution did not focus on differential policy outputs, but investigated the instances and institutions of intergovernmental co-operation to determine some of the effects of the federal condition. Given the recent nature of the federal reform, there is only a relatively short track record of intergovernmental co-operation to base conclusions upon. In spite of the novelty and the limited intergovernmental experiences some characteristics and dynamics do surface and allow us to qualify the new Belgian intergovernmentalism.

The intergovernmental relations are ***formalised***. Intergovernmental co-operation is not an ad hoc exercise, the wide variety of existing co-operation techniques indicates that there are numerous institutional possibilities for governments to co-operate if they desire to do so. Governments are involved in co-decision and participation procedures, they can and should conclude co-operation agreements. The Intergovernmental Concertation Committee and the sixteen different Interministerial Conferences allow for deepened and specialised intergovernmental co-operation. Moreover, one finds that the Interministerial Conferences are assisted by a myriad of specialised commissions of experts. The Senate and the regional and community parliaments have specific commissions to organise the intergovernmental co-operation at parliamentary level. If anything there is no lack of fora for intergovernmental policy making.

In spite of the numerous institutional possibilities we find that the intergovernmental co-operation is ***minimal***. This co-operative minimum can be defined as the conclusion of mandatory co-operation agreements, obligatory compliance with co-operation procedures (co-decision and participation) and fulfilment of international obligations. Co-operation beyond this minimum is scarce and atypical. This minimum concerns issues on which federal and federated governments have to co-operate or face legal and/or international sanctions. Beside the imposed forms of co-operation there is little endogenous and genuine co-operation. The analysis of the environmental and economic co-operation indicates that the intergovernmental arena is hardly the place where important joint policy initiatives are initiated or implemented. Most of the items on the intergovernmental agenda concern technical and specific issues void of broad and penetrating policy consequences. Policy choices are conceived and put to practice by each separate government separately. The role of intergovernmental fora seems to be limited to the registration and accommodation of the implications of policies conceived outside the intergovernmental forum. The intergovernmental bodies have not developed into central policy makers. The meagre political importance attributed to intergovernmental co-operation is evidenced by the decreasing number of

co-operation agreements, by the low frequency of Interministerial Conferences and by the poor attendance of regional ministers to those top level meetings.

Even the mandatory co-operation has also met with a reduced activity over the last five years. Once the mandatory and transitional co-operation agreements were concluded immediately after the state reforms, the number of co-operation agreements has dropped significantly. The conclusion of mandatory agreements has not been followed by a similar wave of voluntary agreements. The co-operation procedures (co-decision and participation) which by their nature entail a more continuous interaction underwent a different development. After some disputes and court advises and decisions concerning the extent to which governments were forced to take each others opinions into account under the co-operation procedures, the federal and federated governments conscientiously respected the procedural requirements. Although the governments respect and apply the co-operation procedure, they often do so merely to comply with the formal requirements without genuine commitment to joint policy initiatives. Federal and federated governments perceive the co-operation procedures as an unavoidable administrative constraint to which they comply in order to avoid legal annulment of their initiatives by the courts. Today, the compliance with co-operation procedures is the main activity of the interministerial conferences.

Though minimal, the intergovernmental co-operation that does occur is ***largely instigated by the international and/or European Union institutions***. Indeed, the main political force that pushes the Belgian and federated governments to co-operate is exogenous. Both in the fields of environment and economy we find that those institutions dealing with the international dimensions of the policies are the most active, elaborate and goal-effective ones. Both in the cases of environment and economy, the number and frequency of commissions and sub-commissions on international issues is striking certainly in the face of the decreasing number, or even, the virtual absence of Interministerial Conferences (cf. economy). The central intergovernmental institutions in the analysed policy domains are the Co-ordination Committee for International Environment Policy (CCIEP) and the Interministerial Economy Commission (IEC). Precisely those institutions are in charge of the international aspects of a specific policy domain. The actual intergovernmental co-operation which occurs in the fields of environment and economy takes place in these institutions and is predominantly related to relevant international obligations and EU regulations. Generally, the interaction between governments in these institutions is smooth and endowed with a problem-solving spirit. Both, federal and federated governments are eager to play an international role and prefer to co-operate instead of being blamed for the non-conversion of EU directives or the failing on their international obligations. With regard to co-operation agreements, we find a similar picture whereby 70 % of all co-operation agreements were concluded because international institutions required a concerted intergovernmental action. Paradoxically, the Belgian federal and federated governments show a remarkable co-operative capacity when it comes to the transboundary and international aspects of environment and economy; they seem less committed to co-operation when purely domestic aspects of these issues are at stake.

During the short history of Belgian federation, intergovernmental affairs have rapidly become a ***highly technocratic activity***. Political representatives (ministers) have gradually left the intergovernmental floor to their personal advisers (cabinet members) and eventually to civil servants. Most of the numerous meetings of the many

(sub-)commissions within the CCIEP and IEC, where most of the policy work is done, are largely, and even exclusively composed by specialised civil servants. The role of parliaments in intergovernmental affairs is limited to the approval or disapproval of co-operation agreements. Within the federated parliaments commissions were assigned to promote and monitor the co-operation with other authorities. So far little has emanated from those parliamentary commissions. The in 1993 reformed Senate, with community representation, is since 1995 assigned to formulate advises concerning conflicts of interest between the federated entities. Up until today the Senate has dealt with only three conflicts of interest ; in two cases the Senate deemed itself incompetent and in the third case the formulation of the advice was postponed. Generally, the parliamentary assemblies feel ill at ease with settling conflicts of interests or with the scrutiny of intergovernmental affairs. Political parties do control their parliamentary groups which allows the governments (coalitions of parties) to dominate the parliamentary work.

The analysis of the decision rules in intergovernmental bodies shows that the entire intergovernmental system is ***based upon consensus***. All decisions at every echelon of the intergovernmental structure are taken by consensus. The consensus rule is formalised for some institutions (for example ICC), but adapted in all intergovernmental bodies. The de facto consensus rule entails that intergovernmental policy making can easily be stalled when governmental policy preferences diverge. This seems to be the case for the lack of interministerial conferences on economy. Since the Walloon and Flemish regional governments sensed their differences over fundamental economic policy options, they preferred not to invest in consensus based intergovernmentalism and to go their own way. The consensus rule and the lack of intergovernmental hierarchy create a setting where there are no institutional responses to severe intergovernemental conflict. The federal government can not overrule (there is no hierarchy rule), nor can a coalition of governments impose its views on another government (no majority rule). Continued disagreement results in the cessation of formal intergovernmental co-operation over the issue at stake. The abstentions of the Belgian delegations at EU and international meetings evidence the limitations of the consensus rule.

Although conflicts occurred in the fields of environment and economy, governments have ***managed to avoid paralysing conflicts*** in the intergovernmental sphere. Generally, governments have preferred to fully exploit their recently achieved autonomy instead of developing co-operation with other governments. Moreover, the constitutional power distribution included few strong co-operative incentives and reinforced the governments' perceptions of perfect isolation. The net result of the regional autonomy drive is that governments interact relatively little and therefore there are few instances where intergovernmental conflicts can actually occur. In the domains where the intra-federal (institutional) or external (international) context imposed joint decision-making, a number of important conflicts emerged. Some of these conflicts were discussed above. A first striking feature of these disagreements is that most conflicts opposed regional governments to the federal level. Very few conflicts concerned inter-regional disagreements. In view of the long-standing rivalry between the two linguistic communities the lack of inter-regional confrontation is quite surprising. The federal reform apparently pacified some of the interregional tensions and introduced a new (federal) conflict line, which opposes the federated entities to the federal level.

Closer scrutiny of the conflicts in environmental and economic matters does not show a clear and recurring pattern of conflict regulation. Some conflicts were left without conclusion (cf. tanker lorries, international environment contributions, federal taxes on industries), others resulted in compromises (cf. FAFI, ESO environment data), or were referred to external arbiters (the state council in the case of product norms), or resulted in Belgian abstentions in international organisations (cfr. ecological investments and biological mutations).

The conclusions that can be drawn are that governments generally avoid intergovernmental discussions about matters on which they sense a preliminary disagreement. Nevertheless, if conflicts erupt in the course of routine intergovernmental affairs, they are usually not settled within the formal intergovernmental institutions. Most of the described disagreements were settled by formal but usually informal consultations between cabinet advisors attached to federal and regional ministers. These informal networks between ministerial cabinets proved to be crucial in the construction of compromises which were subsequently endorsed by the intergovernmental bodies. These close networks of advisors work quite effectively since regional and federal governments (except for the Brussels Capital Region) are composed of similar coalitions of regional parties only (all federal parties have split before the first large constitutional reform in 1980). The fact that politicians operating at the federal and regional levels belong to the same parties forges strong co-operative ties, which are called upon in cases of important intergovernmental conflict. It can be expected that the pacifying effect of these informal mechanisms will decrease when asymmetric coalitions are created at the regional and federal levels, especially when there are no federal parties.

The analysed intergovernmental relations reflect the ***centrifugal nature*** of the Belgian federation. The centre of political decision making has shifted to the community and regional governments. We find very elaborate regional powers excluded from federal interventions. Regional governments cover entire policy domains. There are no extensive shared or concurrent powers, which force regional governments to envisage substantial joint or intergovernmental policymaking. Many of the remaining federal prerogatives regarding environment and economy are subject to regional participation. Regional involvement in federal powers entails the de facto use of the consensus rule, which grants the regions a decisive weight in federal decisions. The regional governments are clearly the dominant political forces in the environmental and economic policy domains. These centrifugal tendencies have strengthened the regional self-perceptions of self-contained, independent governments hardly in need of domestic intergovernmental co-operation. The long and cumbersome strife for regional autonomy on both sides of the linguistic border has made the regional governments hesitant towards intergovernmental efforts which could curtail their recently achieved autonomy and might be interpreted as a new type of intergovernmental unitarism.

In spite of the watertight distribution of powers between federal and regional governments we do find several cases of governmental interdependence. The federal control over eco-taxes and product norms deprives the regions of essential environmental policy tools. The federal prerogatives over fiscal matters also indicate a regional dependence on federal prerogatives to initiate fundamental policy changes. However, this institutional interdependence is not used as a starting point for intergovernmental co-operation.

Instead of seeking to create institutionally integrated environmental (product norms) or economic (reduction of labour costs) policies to tackle important policy problems, the regional governments advocate enlarged and more homogenous policy packages which would allow them to conduct these policies independently without external interference. Especially the Flemish government and Parliament have advocated a new constitutional negotiation of the regional powers after the parliamentary elections of 1999. If such goals would be realised, the Belgian federal state may very well have been regionalised to the point where little is left for the federal government to regulate on.

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