

The Case of BELGIUM^{1 2}

*Yves Lejeune*³

FOREWORD

This study, just as the other national reports, only deals with the administrative procedures for the preparation and implementation of Community decisions. Two brief remarks are required for the delineation of this topic.

The first one concerns the extension of the research field to the administrative effects on the Community decision-making process of the participation of the Belgian State's quasi-federal authorities. Special coordination techniques and structures have been set up in Belgium to ensure that the central authorities take the interests of the Belgian Communities and Regions into account. They are to be given just as much attention as the bodies and processes set up at national level.

The second remark concerns the concept of the Community 'decision'. This has been understood as including every rule of primary or secondary law with a general and abstract scope, with the exception of individual or concrete decisions, such as those relating to aid incompatible with the common market (Art. 93, EEC Treaty).

1 Translated from French by the English Section of the Linguistic Services, EIPA.

2 At the end of this report you will find an appendix with the principal changes that took place following the constitutional review of 5 May 1993.

3 The author expresses his most profound thanks to Mr Didier Nagant de Deuxchaisnes who helped him gather the information required for drafting this report. He also wishes to express his gratitude to all the officials or members of the ministerial cabinets who did not hesitate to grant him and his colleague lengthy and fruitful interviews which served to complement their information. The opinions expressed in this report are entirely those of the author.

I. BELGIAN LEGAL AND ADMINISTRATIVE SYSTEM

Below you will find a brief description of the structure of the Belgian State, the status of its constituent units, the division of powers between the former and the latter, and the resulting administrative organization.⁴

Organization of National Institutions

Due to the effects of successive institutional reforms Belgium is rapidly heading towards a special type of federal structure.⁵ Nevertheless, this reorganization of the State may in no way affect the State's duty to comply fully with its Community obligations and, in particular, to enforce and apply European law correctly. Actually, the Community only recognizes the States which founded it; the role of the central authorities of these States is therefore essential in the European construction, even though the 'regional situation' is gradually gaining a stronger foothold.

In Belgium, national legislative power is exercised collectively by the Chamber of Representatives, the Senate and the King who approves laws by means of ministerial countersignature. The Belgian legislature has 'full power of legislation', which means that it is authorized to take the initiative in regulating all matters which from a constitutional point of view do not fall under the jurisdiction of other public authorities (King, ministers, Community and Regional institutions, Arbitration Court, judicial courts, etc.).

Executive power lies with the King, assisted by the government and the State administration. Since the Sovereign reigns but does not govern, the decisions he endorses are in actual fact taken by the government. The government has an equal number of French-speaking and Dutch-speaking

4 On the relative weakness of the state machinery of Belgium see, for instance, A. François, D. Vandercammen, L. Alvarez, C. de Visscher, 'Belgique', in: H. Siedentopf and J. Ziller, eds., *Making European Policies Work*, Vol. II, (Maastricht, EIPA, 1988) particularly 13-16.

5 The aim of the plans for institutional reforms of the current government is to 'complete the federal structure of the State'. Before long the first article of the Constitution should state that 'Belgium is a federal State composed of Communities and Regions'. Nevertheless, the new composition of the Senate (71 members) would be strictly in proportion to the population and the Communities (not the Regions) would delegate only a small number of senators (10 members of the Council of the French Community, 10 members of the Council of the Flemish Community and 1 member of the Council of the German Community). It is true that by requiring since 1970 that the Belgian government has an equal number of French-speaking and Dutch-speaking ministers, Article 86bis of the Constitution actually gives the representatives of the French-speaking minority of Belgium the same political weight as that of the representatives of the Flemish majority.

ministers, with the possible exception of the Prime Minister (Belgian Constitution, Art. 91*bis*). The government may also comprise state secretaries to whom the rule of linguistic parity does not apply.⁶

In a country where the multiplicity of parties inevitably leads to coalition governments – due to the superimposition of a linguistic division, separating the Flemish parties from the French-speaking parties, and an ideological division – the Council of Ministers can only fulfil its function by observing the rules of collective responsibility and consensus. Collective responsibility implies that all questions of some importance have to be discussed within the Council;⁷ the consensus procedure is that of the ‘negotiated decision’ and it is in principle adopted on the proposal of the Prime Minister. However, support for this proposal does not necessarily have to take the form of a vote. When the decision is taken, the ministers are jointly responsible, even if they were not in favour of it. If they do not accept it, they have to resign or, failing that, they can be removed from office.

There used to be national interministerial committees which were entitled to give an opinion on certain European aspects of government policy. These included a restricted cabinet for general policy, a ministerial committee for external relations, a ministerial committee for scientific policy, a ministerial committee for the environment and a ministerial committee for economic and social coordination.⁸ The current government, which only consists of 16 members, decided to abolish these committees.

Usually a minister is placed at the head of a ministry which does not have a legal personality of its own, even though as a budgetary, functional and organic formation it forms a distinct legal entity. Moreover, the administrations that belong to the central authority can nevertheless be legally detached from it, they can be formed into corporations and be technically, or even organically, independent, through or by virtue of a law. These public services are given specific authority which they exercise in their name under

6 At the moment there is only one state secretary, who is in charge of development cooperation and attached to the Minister for Foreign Affairs.

7 ‘In order to engage the responsibility of the government fully, the Council must be asked to give its opinion on: a) all preliminary drafts of laws; b) all drafts of royal decrees or ministerial orders which, for reason of their subject and implications, may have considerable political or budgetary repercussions; c) all drafts of circulars with budgetary impact as a result of which there is either a considerable increase in state expenditure or a reduction in budgeted savings already decided; d) all questions which may jeopardize governmental solidarity’ (Circular of 28 November 1985 of the services of the Prime Minister, containing practical instructions relating to the Council of Ministers – not published).

8 See the organic Royal Decree of 30 March 1974 on ministerial committees with national jurisdiction, repealed by the Royal Decree of 16 March 1992: *Moniteur belge* (subsequently referred to as *M.b.*) 21 March 1992.

supervision of the State. These include, for instance, the decentralized bodies belonging to the Ministries for Economic Affairs, Agriculture or Public Health, to which the law has conferred a task of control in European affairs.⁹

The Status of the Constituent Units of the State

The Kingdom of Belgium has three Communities: the French Community, consisting of 3.9 million French-speaking Belgians living in Wallonia and Brussels; the Flemish Community comprising 5.9 million Dutch-speaking Belgians living in Flanders and Brussels; and the German Community consisting of 67,000 German-speaking Belgians. Furthermore, since 1980 Belgium has had two main Regions: the Walloon Region whose territory (16,844 km²) includes that of the German Community (854 km²); and the Flemish Region (16,512 km²) whose bodies are the same as those of the Flemish Community. The Brussels Region, which includes the 19 communes of the Brussels conurbation (16 km²), has a special status. The Regions are covered by Articles 107 *quater*, and 108 *ter* of the Constitution; the Communities are covered by Articles 3 *ter*, 59 *bis* and 59 *ter*.

The Communities and Regions are authorities with their own legislative, executive and administrative bodies. They speak through a Council composed of elected representatives¹⁰ and an Executive which the Council chooses from its own ranks. The Councils legislate by means of decrees with the force of law. These decrees are enforced by means of orders adopted by the Regional or Community Executive. Furthermore, each Community or Region has its own administration which is charged with implementing the Executive's policy. Furthermore, these authorities have the right to set up and organize public corporations to which they can entrust part of their work. In the framework of this report we will give some examples: the Office of the Commissioner for International Relations of the French Community of Belgium¹¹ and the Brussels Institute for Environmental Management.¹²

9 ONL, ONDAH, OBEA, Institute for Veterinary Expertise. See in this respect the observations on the control of the application of Community law and the recording of infringements.

10 In fact, the members of the national Parliament who are directly elected by the population are the members of these Councils. Two exceptions should be mentioned: the Council of the Brussels Region and the Council of the German Community are now elected directly. The institutional reform which is currently in progress aims at the direct election of all the Councils, with the exception of the Council of the French Community which will be composed of members of the Walloon Regional Council and a few French-speaking members of the Brussels Regional Council. Some Dutch-speaking members of this Council would also be member of the Flemish Council.

11 Regarding this body, see the observations made below on coordinating bodies within the

Although the establishment of the Communities and Regions is the work of the Belgian Constitution, it is primarily the national legislature acting by special majority which has organized them. In this way the institutional system and the authority of the Communities and Regions are protected against untimely modifications or those carried out against the will of one of the two large Communities. Actually, the procedure for revising the Constitution is very rigid (see Art. 131) and special laws require, besides two thirds of the votes cast, a majority of those present and of the votes of each language group of each national legislative Chamber, combined with the majority of two-thirds of the votes cast in each Chamber.

As a general rule the Communities and Regions have the same legal status. They have the same powers and institutions and their financing procedures are similar. However, there are some exceptions which should be mentioned.

In some respects the Brussels Region differs from the others and this is due to the dualistic structure of the Brussels conurbation where French-speaking and Flemish-speaking people live together, in the proportion of 85%-15% respectively. Brussels has a bilingual status. Furthermore, although the Brussels Region has the same powers as the other two Regions, it is subject to control akin to supervision by national authorities in some areas in order to safeguard its capital status and the conurbation's international role. In addition, the principal rules enacted in the Brussels Region are not decrees but '*ordonnances*' which are slightly lower in rank than laws. Finally, to protect the Flemish minority, the protection methods in force at the national level have been transposed to the Brussels level: both languages are equally represented in the Executive (with the exception of the President) and some rules must be adopted by a double majority of both language groups in the Council of the Brussels Region.

Furthermore, the Flemish and French-speaking institutions are not entirely symmetrical. The powers of the Flemish Region and the Flemish Community are exercised by one single assembly and one single Executive, the Flemish Council and the Flemish Executive, whereas the Walloon Region and the French Community each have their own assembly and their own Executive. As for the German-speaking Community, its status differs very little from that of the other two, save for the fact that it has no linguistic competence and its status is governed by an ordinary national law instead of a special law.

departments.

- 12 Regarding this body, see the observations made below on the administrative control of the observance of the deadline for transposition.

Division of Legislative and Administrative Authority

The Regions are essentially a response to aspirations of socio-economic autonomy. They have major powers in the field of town and country planning, economic policy, public industrial initiative, infrastructure, employment and transport. The Communities are the product of aspirations of cultural autonomy. They have authority in cultural matters, education, use of languages, and in fields with personal impact (personal assistance, health, handicapped policy, protection of young children, etc.).

It should be noted that the proposals for institutional reforms currently being discussed are tending towards giving the Communities and Regions the power to conclude international treaties, and to act on behalf of the Belgian State in international or supranational organizations whose objectives partly or fully cover the fields of Community or Regional authority.¹³

The powers of the Communities and the Regions are in principle exclusive. However, the institutional reforms of 1988-1989 introduced several fields which are the joint responsibility of different power levels. For instance, in the field of foreign trade, Regional authority is exercised without prejudicing national policies of coordination, promotion and cooperation in this matter. Literature generally sees these powers as being 'parallel'. In addition, powers can also be identified which are divided according to the technique of national framework legislation or according to that of division between national normative authority and authority to apply rules enacted in this way. As for fiscal power, this is concurrent authority since the Communities and Regions may only introduce taxes in areas not subject to national taxation.

A basic feature of the Belgian system of the distribution of powers is that, unlike most federal systems, the national power has residual jurisdiction while the Communities and the Regions are vested with delegated jurisdiction, which is limitatively listed in the Constitution and supplementary laws.¹⁴

Although the current distribution of responsibilities is not entirely free of defects, there has been no notable increase in the responsibilities of one power level in proportion to those of another. However, it can be seen that identical Regional positions are being increasingly adopted in the face of identical problems.

To safeguard the division of the respective powers of the State, Communities and Regions, the Belgian Constituent Assembly established a special court: the Arbitration Court (*Cour d'Arbitrage*). In this Court both

¹³ The European Communities for instance.

¹⁴ Currently there is some question of conferring this residual responsibility on the Communities and Regions by means of a constitutional amendment.

languages are equally represented. It declares void laws, decrees or ordinances which encroach upon the legislative jurisdiction of the State or of one of its constituent units. Cases may be brought before this Court by any private individual establishing an interest, by the Belgian Council of Ministers, by the Executives of the Communities and Regions or by the presidents of the legislative assemblies. Besides this control exerted by instituting proceedings, control also takes place following a request for a preliminary ruling made by a court or administrative tribunal.

For administrative acts with similar irregularities, control is exercised by courts and administrative tribunals. The *Conseil d'Etat* may declare administrative acts void which confer too much jurisdiction, and the courts may refuse to apply them.

II. STRUCTURES

To analyze the structures by means of which the Belgian administration contributes to preparing and implementing Community law, an overview should firstly be given from a structural perspective of the locations where the discussions are held to coordinate the positions of the ministerial departments concerned at the time European rules are drawn up, enforced or applied. For the purpose of this presentation a distinction will be made between the interministerial structures, the internal institutions of the ministries and the bodies for external representation.

Interdepartmental Coordination Bodies

General Coordination Bodies

Up till now no ministerial department has been created in Belgium to deal with European issues. The existing bodies have been adapted in order to participate in drawing up and implementing Community decisions. Coordination has been necessary at both political and administrative levels in view of the fact that the responsible authorities and services of several departments and decentralized public bodies are involved.

The Role of the Minister for Foreign Affairs and the Minister for European Affairs

In the current government headed by Mr Jean-Luc Dehaene, the Ministry for Foreign Affairs, Foreign Trade and Development Cooperation is headed by the Minister for Foreign Affairs. The Minister for Foreign Trade is also 'Minister for European Affairs',¹⁵ attached to the Minister for Foreign

Affairs. There is also a State Secretary for Development Cooperation attached to the Minister for Foreign Affairs.

The Minister for Foreign Affairs is responsible for Belgium's foreign policy and general European policy. He participates in the 'General Affairs' Councils and sits together with the Prime Minister on the European Council. The Minister for European Affairs represents the State in the 'Internal Market' Councils and is charged specially with guiding the collective efforts aiming to ensure that Belgium reduces the delay in transposing directives; he is also in charge of the work carried out in the framework of the Schengen Agreements. Finally, he participates in the 'General Affairs' Councils for the items on the agenda which fall within his responsibility as Minister for Foreign Trade.

The Role of the CEI and the P. 11 Service

At administrative level two ministerial departments play a key coordinating role: the Ministry for Foreign Affairs and the Ministry for Economic Affairs. The former has a service which comes under its Directorate-General for Policy: the Directorate for Administration of European Affairs with a 'P. 11 Service' with almost twenty staff members.¹⁶ In the latter ministry consultation takes place in an interdepartmental commission composed of representatives from several ministries: this is the Interministerial Economic Commission (CEI). These administrative bodies are above all national coordination bodies; both the Communities and Regions are also invited to their meetings whenever an issue which concerns them has been put on the agenda.¹⁷

The Interministerial Economic Commission, which coordinates at economic level between the various ministerial departments, is chaired by the Secretary-General of the Ministry for Economic Affairs;¹⁸ it is composed of high-level civil servants from departments with economic responsibility (in the broad sense of the word) and never includes members of the ministerial cabinets; its secretariat is provided by the Directorate-General for General Studies and Documentation. It has set up a sub-commission on 'EEC problems'.¹⁹ As for the P. 11 Service of the Ministry for Foreign Affairs, it

15 Under the previous government, headed by Mr Wilfried Martens, there was a State Secretary for European Affairs and for Agriculture, attached to the Ministry for Foreign Affairs.

16 Concerning the origin of this service, see H. van Hassel and F. Goossens, *European Policy-Formulation within Member Governments. Belgian Decision Networks and European Policy-Making*, Brussels, GEPE, and Maastricht, EIPA, 1986, 13 and 14.

17 The 'European Coordination' has been receiving representatives from the Community or Regional ministries since 1 January 1986 (A. François and others, 'Belgium', *loc. cit.*).

18 See the Regental Order of 14 August 1947 amending the status of the Interministerial Economic Commission set up by Royal Decree of 26 August 1938.

19 Regarding this commission, see C. Chérut, 'Le cas des Communautés européennes,

holds ad hoc meetings, called 'European Coordination' in administrative jargon, to which it invites representatives from the various ministerial cabinets and departments concerned; occasionally a delegation from the services of the Commission of the European Communities attends these meetings. The composition of the group varies according to the subjects studied.

Coordination consists of preparing the Belgian position to be defended in the Community institutions (upstream coordination) and of giving momentum to the transposition of the legal acts of the Communities (downward coordination). It is however difficult to define in this respect the respective roles of the Directorate for European Affairs (P. 11) and the Interministerial Economic Commission (CEI). The 'European Coordination' meetings at the Ministry for Foreign Affairs deal, as a matter of priority, with the political and institutional aspects of the dossiers. They make it possible for Belgium's point of view to be defined during the preparations for the Councils but also on an ad hoc basis, for example, to coordinate the Belgian position at COREPER level. Later, regular meetings are held with the coordinators of the various departments to evaluate the progress of the transposition work.²⁰ The CEI/EEC only meets at the request of either the Belgian Permanent Representation or a ministry; it allows coordination of a more technical nature to be organized.

Sectoral Coordination Bodies

The allocation of duties between the various national ministerial departments is such that frequently several of them have to prepare and implement a rule of European law. In this respect a few examples of 'borderline cases' will be given.

In 1985 the heads of the departments of Economic Affairs and of Agriculture decided to conclude a protocol regulating the distribution of responsibilities between their respective administrations in the field of foodstuffs and, particularly, where EEC agricultural rules were concerned;²¹ pesticides are a matter for both the Ministry for Agriculture and the Ministry for Public Health; dangerous substances are dealt with by the Ministry for Employment and Labour when the protection of workers is concerned and by the Ministry for Public Health when consumers' health is concerned; rules on competition in the transport field can belong to both the Ministry for

aspects pratiques', *La collaboration de l'Etat, des Communautés et des Régions dans le domaine de la politique extérieure*, Louvain-la-Neuve, Brussels, Académia-Bruylant, 1988, 67; A. François and others, 'Belgique', op. cit., 21.

²⁰ Each year a timetable for these meetings is drawn up. Every six months, prior to the meeting of the European Council, a report is made of the situation in Belgium as regards the transposition of the White Paper directives.

²¹ Protocol of 21 November 1984 and 7 October 1985, *M.b.* 18 October 1985.

Economic Affairs and the Ministry for Communications and Infrastructure; company law, intellectual property and the protection of privacy are matters for both the Ministry for Economic Affairs and the Ministry for Justice; possession of fire arms is one of the issues involving the Ministry for Economic Affairs, the Ministry for Justice, the Ministry for Foreign Affairs or the Ministry for Foreign Trade.

Real sectoral coordination bodies, capable of overcoming the practical problems caused by this combination of administrative responsibilities, are not often met. Instead regular ad hoc meetings are held either at the Department of Agriculture or at the Department of Public Health and of the Environment, in which the respective tasks of the services can be defined. As for permanent structures, they are usually created in fields where coordination has to take place not only between the national administrations but also between the national and the Community or Regional administrations.

Structures for Consultation with the Communities and Regions

The ministries of the regions share responsibility for energy with the Department of Economic Affairs and responsibility for environmental protection with the Ministry for Public Health, while the ministries of the Communities manage educational issues together with the services of the Prime Minister (services for scientific policy planning, section national education and culture). Furthermore, the Communities and Regions have sole jurisdiction in the field of culture (including radio and television broadcasting), town and country planning and scientific research on matters within their jurisdiction. The Regions also have some jurisdiction in matters related to agriculture in a broad sense (agricultural water engineering, supplementary or additional aid to agricultural holdings, aid to the agri-foodstuffs sector, rural renewal).

Various institutional reforms have been introduced by the special law of 8 August 1988 and the ordinary law of 16 June 1989 and they have increased the number of places where the central administration, the Communities and the Regions can negotiate with each other in order to try and solve the general coordination problems resulting from the drafting and implementation of Community law on these matters. The Consultation Committee, the Committee for Cooperation between the State and the Brussels Region, and the 'interministerial conferences', composed of members of the national government and the Executives of the Communities and Regions: there are so many possibilities for coordinating the different points of view. In addition, mention should be made of the 'intercabinet' groups and, at the administrative level, of the various bodies falling under the responsibility of a national ministry.

Consultation Committee (*Comité de concertation*)

Established by virtue of Article 31 of the ordinary law on institutional reforms of 9 August 1980 and with due respect for linguistic parity between French-speaking and Flemish, the Consultation Committee comprises six national ministers (including the Prime Minister who chairs the Committee) and six ministers representing the Flemish Executive, the Executive of the French Community, the Regional Walloon Executive and the Executive of the Brussels Region.²² Originally set up to settle 'conflicts of interest', the Committee is now an important meeting place where general coordination problems arising from the drafting and implementation of Belgium's European policy can be raised and maybe solved.²³ Unfortunately, since it is required to deliberate by consensus, which in this case can only mean unanimity, the Committee sometimes gives free reign to a dialogue of the deaf, especially when its members come from different political majorities.

Interministerial Conferences (*conférences interministérielles*)

Pursuant to Article 31 *bis* of the ordinary law on institutional reforms, the Consultation Committee may set up specialized committees, called 'interministerial conferences', to promote consultation and cooperation between the State, Communities and Regions. Consultation takes place between the members involved of the national government and the Community and Regional Executives, not between the members of their staff. The 'conferences' can however set up working groups on a permanent or *ad hoc* basis.

At its meetings of 9 May and 13 June 1989, at the time of the last government of Mr Wilfried Martens, the Committee decided to set up fifteen interministerial conferences.²⁴ Under the current government, led by Mr Jean-Luc Dehaene, a new decision of the Consultation Committee brought the number of conferences to sixteen.²⁵

Several of these specialized 'conferences' have been set up for matters which are governed to a varied extent by Community law: foreign policy; scientific policy; public health; environment; audiovisual aids; and

22 In this Committee the Executive of the German Community has the right to vote each time it is involved in a matter submitted to the Committee (Law of 31 December 1983 on institutional reforms for the German Community, Art. 67, 3).

23 See A. Alen and M. Barbeaux, 'Le Comité de concertation: bilan à la lumière de l'expérience', *Les conflits d'intérêts: quelle solution pour la Belgique de demain?*, (Brussels, La Charte et Faculté de droit de Namur, 1990) 139-173.

24 Ministerial Circular of 3 July 1989 on interministerial conferences (*M.b.* 3 May 1990, 8608).

25 Ministerial Circular of 31 March 1992 on interministerial conferences (*M.b.* 23 June 1992, 14291).

agriculture.

The Interministerial Conference on Agriculture, for instance, convenes representatives of the State, Regions and Communities (which attend for problems related to education). According to its rules of procedure the Conference meets once every three months. It is chaired by the (national) minister or state secretary who has the responsibility for agriculture among his tasks. This is the structure for regular consultation required by law 'to prepare negotiations and decisions and to follow the work of the European institutions in the field of agricultural policy' (special law on institutional reforms of 8 August 1980, Art. 6 §3, 7°).²⁶ To this end it set up a standing working group in the Ministry for Agriculture (rules of procedure of the Interministerial Conference, Art. 11). This State-Regions working group, which meets every Monday, studies the proposals on the agenda of the meeting of the Special Committee on Agriculture or of the Council which takes place the same day.²⁷

The Interministerial Conference on Foreign Policy was established on 6 October 1992. The Ministry for Foreign Affairs assumes the chair and secretariat.²⁸

The Interministerial Conference on Scientific Policy set up an 'international cooperation' commission (CIS) and a 'federal cooperation' commission (CFS), composed of officials representing the various parties.²⁹ Within these commissions the State is represented by the Secretary-General of the Services for the Planning of Scientific Policy (SPPS), but the Minister for Foreign Affairs also appoints a delegate.³⁰

It should be noted that the CIS is responsible for ensuring at administrative level consultation on matters relating to international scientific policy concerning the State, Communities and Regions. In addition, it has to prepare, also at administrative level, the Belgian positions on matters relating to international scientific policy 'when Belgium is necessarily involved and when these matters fully or partly concern subjects which at national level are within the jurisdiction of one or several Regions or Communities'. It gives an institutional framework to the meetings laid down in the Royal Decree of 9 April 1990³¹ 'when the procedure concerns actions with an international

26 See, in the Part III, the observations on the involvement of the Communities and Regions in the preparation and implementation of Community decisions.

27 Information provided by Mr J. Renard, coordinator of the Ministry for Agriculture. Regarding the Special Committee on Agriculture, see the observations on the procedures for preparing Community decisions.

28 See the general policy note of the Ministry for Foreign Affairs for the budgetary year 1993, *documents parlementaires*, Chamber of Representatives, special session 1991-1992, No. 647/1, 6.

29 Cooperation Agreement of 1 February 1991 (*M.b.* 9 February 1991, 2707-2711).

30 Agreement cited, Articles 2, 5 and 10.

31 A royal decree which, in order to enforce Article 6*bis*, 3, para. 2, of the Special Law on

dimension'. In addition, at administrative level, it can ensure consultation on matters relating to international scientific policy 'involving two or more parties to the agreement, at their request and subject to agreement by all parties'.³²

Cooperation Committee State/Brussels Region

The special law of 12 January 1989 on the Brussels institutions, established a Committee for Joint Cooperation between the State and the Brussels Region, comprising an equal number of national ministers and members of the Brussels Executive. Both delegations were composed in accordance with the linguistic parity rule (Art. 44). The Committee gives its opinion, by the consensus rule, on common initiatives which the State and the Region can take 'to favour and promote the international role and capital function of Brussels' (Art. 43).

'Intercabinet' Working Groups

On environmental affairs, the previous government led by Mr Wilfried Martens had given the State Secretary for the Environment a special task of ensuring coordination with the Regions. Currently this task is always performed by the cabinet of the Minister for Social Integration, Public Health and the Environment, Mrs Onckelinx. 'Intercabinet' meetings are held every fortnight. These meetings are attended by representatives from the Regional administrations and from the Ministry for Public Health, but sometimes also by civil servants from the Ministry for Agriculture, the Ministry for Employment and Labour and the Ministry for Economic Affairs.

There is also an 'intercabinet' working group for public contracts, chaired by a representative of the Prime Minister. This working group consists of six representatives from national departments and six from the Communities and Regions. It settles political issues which have emerged in the technical discussions on the preparation or transposition of directives.

Administrative Consultation Bodies

Several national ministries have bodies in which high-level civil servants or cabinet members meet to compare and, if possible, coordinate their points of view on matters regarding which their ministries have certain jurisdiction. Representatives from the Regions and Communities have a seat in these bodies. The same applies, for instance, to the Public Contracts Commission

Institutional Reforms of 8 August 1980, lays down the procedure according to which the national authority must submit a proposal for cooperation to the Communities and Regions when it wishes to take initiatives in the field of scientific research which are the province of the Communities and Regions (see Articles 4.3 and 5.4).

³² Agreement cited, Art. 3.

which operates in the Prime Minister's Services and has general consultative power with respect to legal provisions or regulations governing public works, supply and service contracts in Belgium,³³ or even to the 'unit for consultation with the Regions on the matter of energy' (CONCERE), set up in the Ministry for Economic Affairs to cover the regionalized aspects of this matter in view of, in particular, Belgium's participation in the activities of international organizations.

Since 1988 it has been laid down by law that the Regions will be involved in the management of the Agricultural Fund, a budgetary fund which ensures the financing of expenditure 'eligible' for the EAGGF-Guidance Section and actions complementing the agricultural policy of the markets, and of the agricultural investment fund whose official mission is to grant investment aid to farmers and horticulturists and their associations and cooperatives.³⁴ Another plan is to arrange the representation of the Regions in the management bodies of certain decentralized public organizations under the responsibility of the Ministry for Agriculture: the National Office for Milk and Derived Products (ONL) and the National Office for Agricultural and Horticultural Outlets (ONDAH).³⁵ Major developments are expected in this field in the (likely) event that new institutional reforms will be introduced in the near future.³⁶

Coordination Bodies within the Departments

Some ministerial departments which are particularly involved in European integration have their own European coordination structures. All, however, have assigned one of their staff to be a 'European coordinator'. Only the Community or Regional administrations seem to be an exception to this rule.

33 See the Royal Decree of 14 December 1960 establishing the Public Contracts Commission, amended notably by the Royal Decree of 14 August 1972.

34 The Agricultural Fund was created by the Law of 29 July 1955; the Agricultural Investment Fund was established by the Law of 15 February 1961. Article 6, 1, VI, 4°, of the Special Law on Institutional Reforms of 8 August 1980, which lays down the involvement of the Regions in the management of both funds has not yet been given definite shape by any regulatory implementing measure.

35 Article 92^{ter} of the Special Law on Institutional Reforms does in fact make it possible to regulate, by a royal decree discussed in the Council of Ministers, with the agreement of the Executives concerned, 'the representation of the Communities and Regions, depending on the case, in the management or decision-making bodies' which the King (read: the Belgian government) will designate. Concerning the bodies cited in the text, see *infra*, the observations made on the control of the application of Community law by the services that fall under the Ministry for Agriculture.

36 See in this respect the final remarks of this study.

European Coordinators

In October 1989 the then Prime Minister Mr Wilfried Martens took part in a day's study organized by his State Secretary 'for Europe 1992', Mrs Anne-Marie Lizin. He expressed the wish to appoint a European coordinator in each national, Regional and Community department who would be responsible for seeing that EC directives are transposed into national law. The following month the Minister for Foreign Affairs, Mr Mark Eyskens, wrote to each national minister or state secretary and to the presidents of the Community or Regional Executives, with the request to appoint these coordinators as rapidly as possible.

By January 1990 the heads of department to whom the letter was addressed had communicated the names of the respective coordinators to the Minister for Foreign Affairs. The Ministry for Finance appointed two coordinators, one for tax matters, the other for the Treasury. In addition it should be noted that the Chancellery of the Prime Minister has a public contracts section which has exclusive responsibility in the matter; it therefore has a coordinator, just as the so-called 'technical' departments.

Each coordinator has the following tasks:

- to be notified of all new directives adopted by the EEC Council and Commission, and to see that all appropriate measures are taken for rapid transposition into Belgian law within the stipulated period of time;
- to follow the transposition of directives;
- to look for solutions should there be problems;
- to report on the progress of the dossiers in the coordination meetings of the Ministry for Foreign Affairs;
- to provide the Commission, through the Permanent Representation, with complete information on the transposition of directives, with a copy for the Ministry for Foreign Affairs; and
- to follow all infringement procedures and propose appropriate measures to bring them to an end.

The Community or Regional ministries do not have coordinators. However, these administrations have 'units' (*cellules*) which instead receive information from the Permanent Representation or the Ministry for Foreign Affairs, centralize it and pass it on to the services concerned.

The Ministry for the Flemish Community has six 'departments', including the coordination department which has an administration for external relations containing an EEC unit (two staff members). The Directorate-General for External Relations (DARE) of the Ministry for the Walloon Region plays the same role on behalf of the Walloon ministries. The Office of the General Commissioner for International Relations of the French Community, a public corporate body led by the Executive of this Community

has a European multilateral service (four people) which deals especially with dossiers relating to the European Community. The Ministry for the Brussels Region has an external relations service in which two officials have the same duties. Finally, the small German-speaking Community is currently reorganizing its Secretariat-General in such a way that one person will be centralizing European information.

Structures Belonging to Certain Departments

Some ministerial departments have set up more complex coordination structures, often because of the considerable task they have in the preparation and implementation of Community law. Therefore the Ministry for Economic Affairs has a 'European correspondent' in the secretariat-general and in each directorate-general who is in charge of rapidly furnishing the department's coordinator with information, particularly on the transposition or infringement of Community law. Under the supervision of the coordinator, these correspondents form a 'Europe working group' (or 'Task Force Europe'), which can meet at any moment to deal with specific problems. There is also coordination unit in the Ministry for Agriculture, chaired by the secretary-general, to which each service regularly reports on the progress in the transposition of directives within its jurisdiction.

Representation Bodies

The ministerial departments concerned can bring their point view right to the heart of the Community decision-making process by way of two bodies: the Permanent Representation of Belgium to the European Communities, and the Council, the central institution of the European Communities.

Permanent Representation of Belgium

Just as the other Member States, Belgium has a Representation to the Communities in Brussels. The Treaty of 8 April 1965, by mentioning the existence of COREPER, consequently implied the realization of such a permanent mission whose importance need no longer be emphasized. This Representation is the normal channel for all communications between the European institutions and the Belgian administrations. It participates in the coordination of work pertaining to Community law from the point of view of preparing national positions. It is present in the management committees and working parties which prepare Council decisions, possibly even in expert groups convened by the Commission. It takes part in negotiations in which it expresses Belgium's standpoint.

The – basic – role of the Permanent Representative and of the Deputy

Permanent Representative within COREPER and the Council relates just as much to Community institutional law as to the Belgian administrative organization. For this reason, it lies outside the field of this study.

Besides career diplomats, the Belgian Permanent Representation comprises officials seconded from the Ministries for Economic Affairs; Communications and Infrastructure; Finance; Agriculture; Employment and Labour; but also from the National Bank.

The French Community also has two representatives in the Permanent Representation, called '*attachés*'. The Walloon Region can make use of the services of one of them, but the Brussels Region decided to recruit an '*attaché pour la Communauté européenne*'. The Flemish Community which has made use of the services of a '*lobbyiste*', plans to appoint an *attaché* in 1993. The status of these persons, quite often engaged on a contractual basis, is regulated by political arrangements worked out between the Belgian Ministry for Foreign Affairs and the ministers in charge of external relations within the various Community or Regional Executives.³⁷ Their instructions only come from the ministers to whom they are answerable, but they are placed under the diplomatic authority of the '*chef de poste*' and put on the list of representatives of Belgium to the European Communities.

Belgian Representation within the Council

The matter of the Belgian representation within the Council of the Communities is obviously political and should therefore remain outside the scope of this analysis. Nonetheless, the national observers have been asked to extend their study to forms of participation by Regional or federal political authorities in the Community legislative process. In Belgium this participation goes as far as allowing the ministers of the three Communities to sit at the Council table.

In fact, for several years now a member of each Community Executive has been participating in the informal meetings of the Ministers for Culture or the Ministers for Education of the Member States of the European Community;³⁸ at each of these meetings one or more of the officials representing the national government also form part of the Belgian delegation. On the other hand, at the official meetings, Belgium is represented by a member of the Belgian government and also by the ministers for culture or for education of the Community Executives. The latter are finalizing a proposal to alternate participation in the Council in order to avoid all of them having to

³⁷ The texts of these protocols can be found in F. Standaert, *Les relations extérieures dans la Belgique fédérale*, Groupe Coudenberg, 1990, 222-223, 224-225 and 226-227, and in the *Stukken* (documents) of the Flemish Council, session 1989-1990, n° 258/2, 6 and 7 (annex).

³⁸ Since 1982. See in this respect Y. Lejeune, *Les relations extérieures des Communautés et des Régions* (II), Cahiers constitutionnels, 1986/3-4, 162 and 163.

attend together and to ensure unity in the views expressed by Belgium. Therefore, in the future there may be only one spokesperson for the Belgian Communities.³⁹ However, the right to vote within the Council can currently only be exercised by a representative of the national government, since Article 146 of the Rome Treaty stipulates that 'the Council shall consist of representatives of the Member States. Each Government shall delegate to it one of its members.'⁴⁰

The three Communities would like the member of the Belgian government to abstain from voting if their representatives do not all share the same view. This demand has been rejected by the Minister for Foreign Affairs because of the implications of abstention in European law.⁴¹

The same issue would arise if Regional Executives were represented in a Council of Ministers for Town and Country Planning or in a Council of Ministers for the Environment.

Two new rules provide a preliminary response to this matter, even though they are not yet in force: they are Article 146 of the Rome Treaty, as reformulated by Article G (43) of the Maastricht Treaty, and Article 81(6), of the special law on institutional reforms of 8 August 1980, with the content to be provided by Article 2 of the proposal for a special law on international relations of the Communities and Regions,⁴² which is currently being debated in the Senate. By virtue of the new Article 146, representation of Belgium within the Council will be possible through 'a representative...at ministerial level' from all the competent Communities and Regions, 'authorized to commit the government' of Belgium. As for paragraph 6 of the new Article 81 of the special law, it will authorize 'the Executives to commit the State within the Council in which one of their members (will) represent(s) Belgium', in

39 In time, it should be possible to apply the rule of alternating participation to the Regional executives, particularly where town and country planning and the environment are concerned.

40 See in this context the note of the General Secretariat of the Council of the European Communities, annexed to the report of the Joint Parliamentary Committee concerning international relations (*documents parlementaires*, session 1989-1990, Chamber of Representatives, No. 1167/3 and Senate, No. 935/3, 54). It can also be found in F. Standaert, *op. cit.*, 237.

41 Abstention does not have the same meaning in European law as in national law. At European level abstention really stands for a positive vote in cases requiring unanimity; in fact, there have been many 'unanimous' decisions taken with, for instance, 8 votes in favour and 4 abstentions. On the other hand, when a qualified majority is required, within the meaning of Article 148 of the EEC Treaty (54 votes out of 76), abstention is in fact a negative vote as it prevents the required majority from being obtained. The main drawback of this abstention system is that within the Council of Ministers the representative of a country loses all negotiating power (including at financial level) as soon as the other ministers know in which way the votes will go.

42 *Documents parlementaires*, Senate, special session 1991-1992, No. 457/1 of 16 July 1992.

accordance with a cooperation agreement to be concluded between the State, the Communities and the Regions 'on the procedure for taking positions and for the standpoint to be adopted if no consensus is reached' (Art. 92 *bis*, new para. 4 *bis* of the special law, inserted by the private members bill on international relations).

III. METHODS AND PROCEDURES

After having presented the locations where the Belgian administration's participation in the Community decision-making process takes shape, we will now study the principal phases of this participation by distinguishing the preparation, implementation and place given to the Communities and Regions in each of the phases.

Preparation

We know that each legislative act goes through a lengthy preparation process which as a general rule starts with a Commission proposal. This proposal is actually the outcome of work during which the Commission calls upon, in particular, consultants or experts from the national administrations. At this stage Belgian experts are selected without officially going through the Permanent Representation, the Ministry for Foreign Affairs or the European coordinators. At the end of these consultations the Commission adopts a proposal and forwards it to the Council. The Permanent Representation then passes this proposal on to the ministry concerned, without informing the coordinator of that ministry.

When the proposal has been submitted to the Council, the latter sends it to COREPER, a pivotal body for Community legislative action; the latter is assisted by the many working parties it has set up. The working party to which the Commission document is submitted analyzes it technically taking into account, where necessary, a preliminary exchange of views that may have taken place within COREPER or even within the Council. Furthermore, to prepare certain decisions, the Council has special committees, established by the Treaty or by the Council and these report back directly to the latter, without going through COREPER: an example is the Special Committee on Agriculture.

The Belgian experts included in a COREPER working party are specialized officials appointed by the department that contacts the Permanent Representation. In most cases it is easy to find the competent service. The coordinator will only intervene when the decision proposal does not clearly fit

into a section of existing Belgian law: he has then to designate an official to participate in the work or, if several ministries can claim jurisdiction in the matter, he will attend a European coordination meeting in the P. 11 Service which will determine the department to be the so-called '*pilot department*'.⁴³

In actual fact, the importance of the preparatory work on regulations or directives and on their consequences for the future had apparently not always been fully appreciated (particularly in the framework of the preparation for the Internal Market). Therefore, on 8 March 1991 the Ministerial Committee for European Affairs⁴⁴ decided to follow the recommendation made by the European coordinators at a meeting organized by the Ministry for Foreign Affairs. This was that a 'pilot department' be entrusted with preparing the transposition from the time the Commission forwards a new draft directive to the Council, i.e. prior to the Community act being adopted. As soon as the pilot department is designated, it has to examine which legal instruments have to be modified if the Community decision is adopted, and take all the initiatives likely to advance the subsequent transposition. Unfortunately, the designation of this department, which is sometimes confirmed in writing, often takes place only at a late stage because the P. 11 Service is not systematically informed of the work going on.

It is possible for the Belgian officials in the working party to have neither a mandate for negotiation nor precise ministerial instructions. Such instructions are issued each time a coordination meeting is required or a political problem arises. In such cases the Belgian positions are determined within the CEI (Interministerial Economic Commission), in which the expert discusses with his colleagues from other departments questions of a technical nature which may arise during the negotiations, and within the P. 11 Service which is responsible more specifically for setting up European coordination meetings to deal with issues of a political nature.⁴⁵ At this point the information has to circulate and the stumbling blocks have to be clearly defined so that in the framework of subsequent Community negotiations the Belgian officials in charge, now aware of probable difficulties, can defend Belgium's point of view with full knowledge of the situation.

A form of *a posteriori* control of the position adopted by the expert is the regular report he has to submit to the minister to whom he is answerable. In

43 Concerning the pilot departments, see the observations made below on the implementation of Community law.

44 The Ministerial Committee for European Affairs, composed of certain members of the Belgian government, was a spin-off from the Ministerial Committee for External Relations. It met frequently in 1990 and 1991.

45 The P. 11 Service sometimes organizes more technical coordination. In such cases, the meetings are held in the offices and with the help of the Belgian Permanent Representation to the European Communities.

addition, coherence of the Belgian position is guaranteed by the presence within the working party of officials from the Permanent Representation who act there as spokespersons for Belgium. At this stage, the Representation is actually responsible for the coordination; if necessary, it is assisted by the pilot department. Only when a highly technical dossier is involved, does the expert himself act as Belgian spokesperson.

After the proposal has been studied by the working party, it is again submitted to COREPER. Very often agreement is reached in the working party. However, if a political problem has arisen during the discussions, this is reported to COREPER. At this stage new coordination meetings are sometimes held, at the request of the Permanent Representation, in the Ministry for Foreign Affairs in order to determine the position of Belgium in detail.

When the dossier goes back to the Council, the basis of the decision is still the Commission proposal. The experts gathered in 'European coordination' then prepare the Council meeting by charting the main lines of the position to be defended by the minister, accompanied by a member of his cabinet, the Permanent Representative and the Deputy Permanent Representative.

A similar procedure is followed each time the Commission has to re-examine, in the light of amendments proposed by the European Parliament, the initial proposal on the basis of which the Council determined its common position; as a result the Council has to decide again after a second reading.

The Belgian Ministry for Foreign Affairs is then notified of the directive or regulation via the Permanent Representation which sends a copy to the ministerial departments concerned. The Ministry for Foreign Affairs transmits it to them officially.

At the Ministry for Foreign Affairs, the 'Europe Task Force' has to provide guidance and information throughout the process of negotiations on the Community legal act until it is adopted by the Council of the European Communities.

Implementation

A large number of Community acts are regulations which in general do not require implementing measures: the administrations are solely required to supervise their application.⁴⁶ On the other hand, the transposition of directives in Belgian law does not take place without some difficulties of a practical nature arising. Therefore, at a meeting of the Ministerial Committee for External Relations⁴⁷ held on 23 December 1988 it was decided to entrust the

46 See the observations made on this subject in Part IV.

Ministry for Foreign Affairs with coordinating this transposition.

The department or departments concerned make plans which are communicated to the European coordinator or coordinators. The P. 11 Service mainly sees to it that the deadlines for the transposition of directives are observed.⁴⁸ The choice of legal instruments is solely that of the departments responsible for the matter regulated by the directive, regulation or decision. If necessary, the coordinator can continue to follow up the implementation of the directive.

Phases

As Community rules generally encompass the responsibilities of several ministerial departments of the State, the Communities and the Regions, coordination at this level is required.

- a) An initiating role is entrusted to the 'pilot departments' who are charged with contacting the other ministerial departments concerned and following the action through. These departments are chosen because of their responsibility and those most often charged with implementing directives are Economic Affairs, Agriculture, Employment and Labour, Public Health, Finance and Environment. If there is some doubt regarding the designation of the department which is mainly responsible, the matter is settled at a European coordination meeting organized by the Ministry for Foreign Affairs. One month after the official notification of the directive has been sent to its coordinator,⁴⁹ the pilot department has to send an indicative timetable of the transposition to the Ministry for Foreign Affairs.
- b) Within the pilot department, the coordinator ensures that the technically competent officials are dealing with the transposition and that they have the information required for this purpose. Rarely does he have to determine the services which will be entrusted with working out the implementing measures; his mission is to see that the transposition takes place within the stipulated period of time.

⁴⁷ At the time the Ministerial Committee for External Affairs, composed of certain members of the Belgian government appointed by the Prime Minister, was in charge of determining the economic, financial and social aspects of the government's policy for all matters in which the external policy aspect was predominant. It also had to coordinate the activities of the various ministerial departments whose sphere of action extended to other countries.

⁴⁸ See the observations relating to this matter in the part on political and administrative control below.

⁴⁹ The secretary-general of the ministry and the Permanent Representative in the CEI (Interministerial Economic Commission) receive a copy of this notification.

Unfortunately, the official who due to his specialization is the logical choice for preparing the transposition has not necessarily participated in preparing the Community rule. However, in the Ministry for Public Health, the Ministry for Agriculture or in the services of the Prime Minister (public contracts section), the official does indeed participate, which means he has in-depth knowledge of the dossier.

- c) In theory, during the work of transposition, the CEI should be the appropriate body for bringing together the experts who had already been charged with preparing the directives. In fact, they usually attend the *ad hoc* meetings held at the Ministry for Public Health and the Environment, the Ministry for Agriculture, etc. The effectiveness of these meetings has been amply proven.

In parallel, regular meetings are held at the Ministry for Foreign Affairs to ensure that the follow-up is supervised. At these meetings the coordinators of the departments concerned evaluate the progress of the transposition or implementation procedure.

- d) The period of time laid down for transposition is put to good use by starting the required consultations. Actually, in many fields basic legislation makes all later rules subject to consultation by some specialized council.⁵⁰ In practice, such consultation also takes place on preliminary drafts of laws (or decrees or ordinances) of transposition.

These councils are either bodies composed of scientific specialists (High Council for Hygiene in Mines), consumers and social partners (Public Contracts Commission), even only of social partners (National Labour Council, High Council for Security, Hygiene and Improvement of Work Places), or bodies with a socio-economic composition (Consumption Council, Central Council for the Economy). They are not bound by any deadlines within which they have to give their opinion. As is customarily the case in Belgium, they also enjoy a considerable amount of autonomy in organizing their work.

The order or preliminary draft of the law (decree, ordinance) of transposition can only be discussed in the Council of Ministers (or in the meeting of the Executive) after these administrative bodies have given their opinion.

- e) The opinion of the legislation section of the Conseil d'Etat is sought when the signing of the introductory order requires no further formality or

⁵⁰ Omission of this important formality could lead to the transposition being annulled by the *Conseil d'Etat*.

consultation.⁵¹ The coordinated laws on the Conseil d'Etat do not provide for any special system for consulting the Conseil d'Etat on the draft laws for the transposition of directives; either the request for an opinion has no deadline, or the minister asks for an opinion on very short notice, while specially motivating his request. This has been legally fixed at a maximum of 3 days;⁵² however, this has been extended to a maximum of 8 days 'when the request for an opinion raises a question concerning the respective competences of the State, the Communities and the Regions.'⁵³ The claim of urgency, duly and explicitly motivated, can exclude a draft order from the obligatory consultation of the *Conseil d'Etat*,⁵⁴ which speeds up the transposition but deprives the government (or the competent Executive) of some particularly apposite legal advice. On the other hand, urgency does not allow this consultation to be evaded when a preliminary draft of a law (or decree or ordinance) is concerned: in such cases the opinion is still required and concerns the question of whether the subject of the text concerns matters that fall, depending on the case, under the jurisdiction of the State, a Community, a Region or the Brussels body in charge of managing bi-Community matters with personal impact.⁵⁵ Various suggestions to reform the procedure for consulting the *Conseil d'Etat* on the implementation of European law have never been followed by political circles. These suggestions provided for the fixing of deadlines, ranging from three to six months, in which time the requested opinion should be given.

- f) The government or the Executive may change its (first) draft according to the suggestions contained in the opinion of the *Conseil d'Etat*; however, it is not bound by this opinion. The draft order is then submitted to the King to be signed (or to the competent ministers of the Executive); as for the draft law (or decree or ordinance), this is presented to the competent legislative assemblies. When the national Parliament is involved, the legislative procedure requires a shuttling backwards and forwards between the two Chambers if they do not adopt the draft text in the same terms. Ratification, promulgation and publication are still required for the law, the decree or the ordinance to be applicable in Belgian law.

51 J. Masquelin and C. Lambotte, 'De la section de législation', *Nouvelles: droit administratif*, t. VI: Le Conseil d'Etat (Brussels, Larcier, 1975) 128, No. 502.

52 See Article 84 of the laws on the *Conseil d'Etat*, coordinated on 12 January 1973.

53 See Article 85bis of the cited coordinated laws.

54 See Article 3 of the cited coordinated laws.

55 Same reference.

- g) Once the transposition has been completed, the Permanent Representation of Belgium is informed so that it can notify the Commission.

In view of Belgium's backlog in transposing the European directives contained in the White Paper, the Council of Ministers adopted an emergency programme on 27 March 1992 which contained the following major points:

- the drafting by the departments concerned of bimonthly reports summing up the situation with respect to transpositions and indicating the problems encountered and solutions proposed for each White Paper directive to be transposed. The Minister for European Affairs, in his capacity as national coordinator, gathers the information and reports on it to the Belgian government;
- the organization of a series of bilateral meetings between, on the one hand, the cabinet for European affairs, the P. 11 Service and the Permanent Representation and, on the other hand, and the coordinators of the various departments and their officials who are technically responsible for the transposition. The aim is to clarify the problems and arrive at appropriate solutions within a relatively short period of time;
- the setting, by each department concerned, of priorities so that the organizational measures needed to observe the deadline of 31 December 1992 can be taken;
- an overall evaluation towards mid-June, then one at the beginning of December, after a report by the Minister for Foreign Affairs.

In June 1992 the Belgian government took a number of decisions to catch up more quickly with the delay; these were translated into the following initiatives:

- in conjunction with the Minister for European Affairs, the Minister for the Interior and the Minister for Scientific Policy, who are responsible for relations with the Parliament, proposed to the Presidents of the two Chambers that bills transposing European directives be given priority treatment;
- the Minister for European Affairs asked the Conseil d'Etat to press on with the examination of draft laws or draft royal decrees for the implementation of European directives contained in the White Paper;
- as regards draft legislation for transposition that has become blocked in consultative bodies or councils, each functionally responsible minister would try to speed up these dossiers by contacting these bodies or

- councils;
- the Minister for the Budget has instructed the tax inspectorate to give some impetus to the White Paper dossiers.

- h) As we have seen, after a given directive has been transposed, the pilot department and its coordinator sometimes have to ensure some 'follow-up'. The application of the directive may require, for instance, the organization and financing of a staff training programme.⁵⁶

At this stage new problems may appear which can sometimes be overcome in a smaller territorial framework through consultations between the Benelux States. In this way former Directive No. 79/112 on the labelling of foodstuffs had led to differences in application which could be neutralized within the Benelux thanks to extensive consultation.⁵⁷

As for the 'public contracts' section of the chancellery of the Prime Minister, it plays a double role in the application of directives adopted in this field. First, by drafting and sending circulars which attracts the attention of the authorities concerned, it provides information on the rules applicable to contracts which attain a certain threshold, or in specific cases it sends the authorities concerned observations on the obligations they have under Community law. Secondly, it assists the authorities concerned, either before the procedure for awarding the public contract starts, or in answering a request for an explanation from the Commission.

Choice of Legal Instruments

No Belgian legislative or rule-making procedure has the implementation of Community law as its general objective. It is in principle up to the national legislator to see that this implementation takes place, as the Constitution has not vested such power in the King.⁵⁸ Customarily, provisions ensuring transposition are incorporated in bills with a very broad scope by means of which the government intends to carry out an often fundamental revision of the legislation in force. In this way the 'public contracts' directives will be transposed to a large extent by the adoption of a bill currently being drafted

56 For instance, because of the radiation to which persons undergoing medical examinations or treatments could be exposed (see Directive No. 84/466 of 3 September 1984).

57 Information provided by Mr M. De Win, coordinator of the Ministry for Public Health and the Environment.

58 Application of the constitutional principle known as 'full power of legislation' (see above in Part I presenting the national institutions).

whose aim is to coordinate the entire Belgian legislation with the rules for transposing the new directives. This procedure will allow the parliamentary work to be concentrated in one debate only, but its drawback is that it slows down the implementation of European law.

Deputy Van der Maelen proposed an amendment to the code of regulations of the Chamber of Representatives which involved setting up a priority procedure for examining bills transposing legislative acts of the European Communities.⁵⁹ Put to one side following the dissolution of the Parliament in October 1991, it was tabled again unchanged at the beginning of the current legislature.⁶⁰ Its examination is however not on the agenda. As for the Senate, it has not received any such proposal.

A private members bill originating from the Parliament could also start a legislative transposition process. However, up till now this has never happened, even though it would be legally correct.

If a directive deals with a subject that falls within the jurisdiction of the national Executive, the latter may take the necessary implementing measures. On the other hand, certain special laws give the King the power to take, through orders discussed in the Council of Ministers, all the measures needed to ensure the implementation of international commitments, particularly obligations under Community law.⁶¹ These measures may include the modification or abrogation of legal provisions. There are even enabling acts

59 Parliamentary documents, Chamber of Representatives, session 1989-1990, No. 1249/1; see the favourable opinion of the Advisory Committee for European Questions, No. 1249/3.

60 Special session 1991-1992, No. 273/1.

61 See for instance the Law of 11 September 1962 on the import, export and transit of goods, *M.b.* 27 October 1962; the Law of 18 February 1969 on measures for implementing international treaties and acts on transport by road, rail and inland waterways, *M.b.* 4 April 1969; the Law of 3 May 1971 furthering the improvement of agriculture and horticulture, *M.b.* 10 June 1971; the Law of 20 July 1973 on measures for implementing international treaties and acts on public works, supply and service contracts awarded by the public services, *M.b.* 20 July 1973; the Law of 28 March 1975 on trade in agricultural, horticultural and sea fishery products, *M.b.* 25 April 1975; the Law of 24 January 1977 on the protection of consumer health with respect to foodstuffs and other products, *M.b.* 8 April 1977; the Law of 15 December 1980 on territorial access, stay, establishment and expulsion of foreigners, *M.b.* 31 December 1980; the Law of 24 May 1983 on the general rules laying down the quality objectives for surface waters intended for specific use, *M.b.* 15 June 1983; the Law of 21 June 1983 amending the Law on Medicines, *M.b.* 15 July 1983; the Law of 21 June 1983 on medicated feedingstuffs for animals, *M.b.* 28 October 1983; the Law of 9 July 1984 concerning the import, export and transit of waste, *M.b.* 4 October 1984; the Law of 21 June 1985 on the technical requirements which must be met by every vehicle for transport over land, its components and safety devices, *M.b.* 13 August 1985; the Law of 15 July 1985 on the use of substances with hormonal or antihormonal effects on animals, *M.b.* 4 September 1985; the Law of 21 February 1986 punishing infringements of EEC regulations concerning the wine market, *M.b.* 19 March 1986.

whose only aim is to authorize the King to ensure the implementation of certain regulations or directives by amending, complementing or abrogating certain laws.⁶² For several years the legislation section of the *Conseil d'Etat* has made its reluctance obvious with respect to this procedure which it considers as 'exceptional in our constitutional system',⁶³ so the legislature only follows it when it is absolutely necessary. One may well wonder whether the *Conseil d'Etat* is not demonstrating too much strictness in this matter which underestimates the requirements of transposing European laws.

Sometimes the King issues transposition orders solely based on the directive to be implemented.⁶⁴ This procedure is unconstitutional because the Belgian constitution limits the King's executive power to the implementation of laws (the relevant provision (Art. 67) has not changed since the origin of the State.

Under certain circumstances transposition may result from an agreement being concluded between the Belgian State and a semi-state-controlled company, such as S.A. Distrigaz.⁶⁵

The consequence of Belgium's quasi-federal structure is that Community law has to be implemented in the legal systems of the three Belgian Communities and the three Belgian Regions. Unlike the American

62 The Law of 4 April 1980 containing the delegation of powers to ensure the implementation of the directives of the Council of the European Communities relating to the medical profession, the nursing profession, the paramedical professions and the veterinary profession, *M.b.* 21 May 1980; the Law of 28 July 1987 implementing regulations and directives adopted in compliance with Article 87 of the EEC Treaty, *M.b.* 24 September 1987; the Law of 4 July 1989 concerning the delegation of powers to ensure the implementation of the Directive of the Council of the European Communities of 10 June 1985, *M.b.* 13 September 1989. Concerning the implementation of this last authorization by the King, see Judgment No. 2/91 delivered on 7 February 1991 by the Arbitration Court (*Journal des tribunaux*, 1991, 310).

63 See for instance the opinion given on 18 April 1990 on the bill tabled by Deputy Van der Maelen concerning the implementation of normative acts of the European Communities in the national legal system, *documents parlementaires*, Chamber of Representatives, session 1989-1990, No. 1149/2, 4.

64 An typical example of this course of action is the Royal Decree of 26 February 1981 (*M.b.* 1 May 1981) implementing the judgment of 6 March 1980 by which the Court of Justice had found that the Belgian authorities had failed to fulfil their obligations by failing to take within the prescribed period the measures necessary for applying the directives on the approximation of the laws of the Member States relating to motor vehicles and wheeled agricultural or forestry tractors (*ECR* [1980] 1483). Article 1 of the abovementioned Royal Decree stipulates that the EEC type-approval of the vehicles and tractors in question must be carried out in accordance with the provisions of the *ad hoc* directives. The latter are annexed to the Royal Decree.

65 See the Convention of 19 October 1992 between the Belgian State, represented by the Minister for Economic Affairs, and S.A. Distrigaz, implementing Directive 91/296 of 31 May 1991 on the transit of natural gas through grids (*M.b.* 19 October 1992).

constitutional system, the Belgian system does not have federal power to implement international law in fields that fall under the constituent units of the State at internal level. The same applies to Community law: despite some isolated opinions,⁶⁶ it is generally admitted that in the eyes of constitutional law the Belgian Communities and Regions are the only ones which have the power to implement European law in their internal sphere of competence.⁶⁷

The question of choosing the legal instruments for implementing European law also arises at this level and is of the same order as that at national level. An Executive cannot take legislative measures to implement a legislative act of the European Communities if the Community or Regional legislature has not explicitly given it the power to do so. This is stipulated in the Special Law of 8 August 1980 which gives the Executive the power to implement decrees and ordinances only (Art. 20 of the Community-Regional equivalent of Article 67 of the Constitution).

Involvement of Communities and Regions

In the field of European policy the only coordination procedures which have been formalized by legal rules concern cooperation between the State, the Communities and the Regions. These relate to the involvement of the Community or Regional Executives in international negotiations and the mutual consultation of these Executives in the preparation of decisions and follow-up of the work of the European institutions in the fields falling under Regional jurisdiction.

The drafting and application of environment directives are a good illustration of this problem. They were the subject of a colloquium whose proceedings were published with the same title in 1990 by H. Bocken and D. Ryckbost.⁶⁸ Two papers⁶⁹ touch upon the problems created in this field by the devolution of legislative and administrative competences to the three Regions.

66 See in particular K. Lenaerts, 'The Application of Community Law in Belgium' *Common Market Law Review*, 1986, 253-286; by the same author, 'La Belgique régionalisée et communautarisée face à la Communauté européenne', in: *La collaboration de l'Etat, des Communautés et des Régions dans le domaine de la politique extérieure* op. cit., 119-126.

67 Y. Lejeune, 'Les grands thèmes', in: *La collaboration de l'Etat, des Communautés et des Régions dans le domaine de la politique extérieure*, 11-31, here 26; B. Jadot, 'L'Exécution du droit européen par les Régions', op. cit., 127-131.

68 *L'élaboration et l'application des directives européennes en matière d'environnement*, Brussels, Story-Scientia, 1990.

69 R. Leysen, 'Samenwerking tussen nationale en regionale overheden bij de voorbereiding van Europese richtlijnen. Mogelijke oplossingen voor België', op. cit., 103-121; M.A. Lejeune, 'L'application des directives européen en matière d'environnement. Solutions possible pour la Belgique', op. cit., 189-223.

A review of the debates⁷⁰ shows that for several years the Regions' involvement has been meeting various obstacles which administrative practice is trying to overcome.

Involvement in the Preparation of EC Decisions

Article 81 of the Law on Institutional Reforms of 8 August 1980 stipulates: 'in matters which are within the competence of the Council (of the Community or the Region), its Executive shall be involved in negotiations on international agreements, while the King remains the only interlocutor at international level with due regard for...the Constitution.'

Although literally this provision only applies to international agreements, it is nowadays considered as being generally applicable. In particular, it applies to the preparation of the position which Belgium will defend within the European Community. According to the indications in the preliminary documents, the Executives are only involved in preparing the dossiers; they are consulted before the Belgian government decides which position it will take when the European Community is working out a rule on matters which are within the exclusive jurisdiction of the Belgian Regions (or Communities).

The Special Law on Institutional Reforms, as amended on 8 August 1988, refers to another form of involvement of the Regions in the relations which the State maintains with the European Community: the new Article 6, §3, 7° now obliges the national authority to organize structured mutual consultations with the Executives concerned 'to prepare negotiations and decisions as well as the follow-up of the work of the European institutions relating to matters falling under Regional jurisdiction and to agricultural policy'.

It should be emphasized that this obligation of 'mutual consultation' only applies to the Regions (not to the Communities) but requires the State to involve them in the elaboration of European law not only on matters considered to be Regional in Belgium but also on issues relating to agricultural policy, even though the latter is essentially, at the time of writing, a matter falling under 'national' jurisdiction.

Forms of Involvement

According to the provisional documents 'this structured and permanent involvement will take place, for instance, by the creation of a select working group of the Consultation Committee composed of the ministers responsible for agriculture in each authority concerned'.⁷¹ 'Specialized working groups,

⁷⁰ M. Paques, 'Essai de synthèse: l'élaboration et l'application des directives européennes en matière d'environnement', op. cit., 251-271.

composed of the specialized ministers of the Executives and the central government, can operate (*sic*) within the Consultation Committee'.⁷² These intentions have taken concrete shape through the creation of the interministerial conferences mentioned earlier.⁷³

The concepts 'mutual consultation (*concertation*)' and 'involvement (*association*)' have not been specified. In a similar area, i.e. the involvement of the Regional Executives in the elaboration of preliminary drafts of laws and national regulations on a variety of matters, the case law of the *Conseil d'Etat* requires 'more extensive cooperation' than that resulting from a mere request for advice: 'involving a body in the elaboration (of a rule) implies not only receiving and examining such a suggestion, but also discussing it with that body'. The national authority might however adopt the draft rule if it has made enough offers as regards the special law and if the persistent silence on the part of the Regional Executive is holding up the decision longer than is reasonably required by the involvement requirement.⁷⁴ According to the Arbitration Court, the aim of the mutual consultation is to oblige the authority invested with decision-making power to take the opinion of another authority into consideration, without however the authority empowered to decide losing its freedom to act; so it only makes sense if it takes place before the decision.⁷⁵

However, the involvement laid down in Article 81 of the Special Law in European matters also takes on other forms gradually being determined by politico-administrative practice. One of the most effective forms allows the Executives, or their representatives, to participate in the deliberations of the Council of the European Communities or in intergovernmental negotiations.

The first formula has already been mentioned earlier.⁷⁶ The second one was applied during the intergovernmental conferences on Political Union and Economic and Monetary Union. It was agreed in the Consultation Committee⁷⁷ that the Belgian delegation would be composed as follows, taking into account the subject dealt with:

71 Explanatory memorandum, *Documents parlementaires*, Chamber of Representatives, special session 1988, No. 516/1, 9.

72 Report of Antoine-Uyttendaele, *Documents parlementaires*, Chamber of Representatives, special session 1988, No. 516/6, 117.

73 See the observations made above on the structures for consultation with the Communities and Regions.

74 C.E., 14 December 1988, Walloon Region v. Belgian State, No. 31587, *Jurisprudence de Liège, Mons et Bruxelles*, 1989, 547, note B. Haubert; 16 June 1989, Walloon Region v. Belgian State, No. 32760, *Aménagement*, 1989, 141, note B. Jadot.

75 Judgment No. 2/92 of 15 January 1992, 2.B.3 (*M.b.* 28 February 1992).

76 See, in the part describing the structures, the observations made above about the representation bodies of Belgium.

77 Concerning this body, see the observations made on the structures for consultation between the State, the Communities and the Regions.

- in the case of exclusive jurisdiction of the State:
 - * government: 5
 - * Executives: 1
- in the case of exclusive jurisdiction of the Communities and Regions:
 - * government: 3
 - * Executives: 3 (1 per Executive of the Communities or Regions, depending on the case)
- in the other cases:
 - * government: 3
 - * for the Conference on Political Union:
 - government: 4
 - Executives: 2
 - * for the Conference on Economic and Monetary Union:
 - government: 5
 - Executives: 1
 - * for the official opening of the conferences:
 - government: 5
 - Executives: 1

The Executives agreed between themselves on the turns they would take. They were also represented when the Treaty of Maastricht was signed on 7 February 1992.

In the field of scientific policy an agreement concluded on 1 February 1991 with the three Communities, the three Regions and the Brussels body in charge of managing bi-Community affairs with personal impact organizes the involvement of the State's constituent units in the activities of the European Communities (framework programme and programmes to implement it, COST, etc.).⁷⁸ According to Article 5 of the agreement, the participation of the Communities and the Regions 'concerns the preparation, implementation and follow-up of these activities as well as the relevant decision-making'; it takes shape particularly by participation in determining the Belgian positions to be adopted in the bodies of the European Communities in which representatives of the Member States have a seat and which mainly deal with matters in the field of scientific policy, as well as by the presence of representatives from the

⁷⁸ *M.b.* 9 February 1977, 2712.

Communities and Regions in the Belgian delegations to these bodies.

The 'International Cooperation' Commission (CIS) of the Inter-ministerial Conference on Scientific Policy⁷⁹ and the specialized bodies it could set up for this purpose are responsible for taking the measures required to see that participation takes place. However, the Belgian positions to be adopted in the Council of Ministers of the European Communities are determined by the Interministerial Conference which is assisted by its 'intercabinet' working group in which the Minister for Foreign Affairs or the Permanent Representation take part (Art. 6).

The agreement also includes provisions on decision-making procedures within the CIS; the setting-up of specialized consultation groups; representation of the Communities and the Regions in the European bodies that operate in the field of scientific policy; the distribution of information; and participation in COST actions

The Consequences of Involvement

The Communities and Regions must be involved, through their Executives, in the elaboration of European law from the stage of drafting instructions until possible participation in the Council meetings, in such a way that conformity is ensured between those instructions and the decisions reached in the negotiations. In our view, both Article 6, § 3, 7° ('concertation') and Article 81 ('association') of the Special Law seem to imply that the member of the Belgian government who participates in the Council of the European Communities may, in principle, not deviate from the 'negotiation mandate' which the Executives tacitly give him each time that these Executives may be considered as the only ones with jurisdiction in the field of activities under consideration.⁸⁰ However, the same line of reasoning cannot be applied to the fields which at national level are divided between the State, the Communities and the Regions.

Just as the involvement laid down in Article 81 of the Special Law, the consultation stipulated in Article 6, §3, 7° is not only laid down by law but also has the character of a substantial formality. The legislation currently in force in Belgium allows punishment in case of infringement of either provision. At

⁷⁹ See the observations made above on the Interministerial Conference on Scientific Policy.

⁸⁰ How can it be allowed for a member of the national government to approve, against the will of one or more executives, a European rule with financial consequences for them? Article 146 of the Treaty establishing the European Economic Community, as reworded by G(43) of the Maastricht Treaty on European Union, will, when the Treaty enters into force, allow Belgium to be represented by 'a representative...at ministerial level' from all the competent Communities and Regions, 'authorized to commit the government' of Belgium. See in this respect, in the part describing the structures, the observations made about the bodies representing Belgium.

the political level, the Executive which has not been involved in such consultation can prevent any decision or implementation of a decision until the Consultation Committee⁸¹ finds, by consensus, that the prescribed rule of procedure has been observed. However, postponement may not last longer than 120 days. As far as disputes are concerned, the *Conseil d'Etat* is now entitled to declare any administrative act void on the grounds that the prescribed involvement or consultation procedure has not been followed, which is considered as a major breach of procedure. As for the Arbitration Court, this court may declare the law ratifying a treaty void if it infringes the procedure laid down in Article 81 because such provisions are considered as terms of reference which can justify the annulment of the law affected by this irregularity. Still, it should be possible to attribute to the legislature the irregularities affecting the treaty which it ratifies.⁸²

Involvement in Implementing Community Decisions

Since they are not introduced into national law, the rules of European secondary legislation are not subject in Belgium to parliamentary assent affecting their applicability. On the other hand, the transposition of directives in Regional and Community fields (within the meaning of the Belgian law) solely depends on the Communities or Regions, without the national authority being able to force the latter to fulfil the European obligations which are incumbent on them. The Belgian State could be held liable at international level.

This is what happened with environmental protection, a field in which Regions often fail to act, are late or negligent. This can be explained both by the lack of clarity in the distribution of competences resulting from the state reform and by a certain indifference on the part of the Regions. On 2 February 1982 Belgium was sentenced by the Court of Justice of the European Communities for letting the deadline expire for the implementation of six directives on waste management and the protection of surface waters.⁸³ On 14 January 1988 it was sentenced again for not having enforced four of the six 1982 judgments.⁸⁴ On 5 July 1990, in the Brussels and the Walloon Regions, another judgment recorded inadequate measures to transpose Directive

81 Regarding the Consultation Committee, see the observations about the structures for consultation between the State, the Communities and the Regions.

82 See on this matter Y. Lejeune and Ph. Brouwers, 'La Cour d'arbitrage face au contrôle de la constitutionnalité des traités', note under C. Arb., 16 October 1991, No. 26/91, *Journal des tribunaux*, 1992, 670-676.

83 Cases 68 to 73/81, *Commission v. Belgium*, judgment of 2 February 1982, [1982] *ECR* 153, opinion F. Capotorti.

84 Cases 227 to 230/85, *Commission v. Belgium*, judgments of 14 February 1988, [1988] *ECR* 7.

80/778 concerning the protection of water intended for human consumption.⁸⁵ And on 11 June 1991 the Court of Justice found that Belgium had failed to fulfil its obligations by not taking the required measures for implementing, in the Walloon and Flemish Regions, Directives 75/440 and 79/869 on the quality of surface water intended for the abstraction of drinking water and the methods of analyzing surface water.⁸⁶

The Communities and Regions are certainly under the obligation to implement in time the directives that fall within their jurisdiction. However, the separation between the power to take the required implementing measures and the international responsibility for failure to apply or for incorrect or incomplete transposition allows the Communities and Regions to escape any direct involvement in their responsibility.

Under the Belgian law as it is now, the State has no power to impose injunctions or constraints on its constituent units; nor can it substitute for the Community or Region which has failed to implement directives, except where it has parallel normative jurisdiction or the power to draw up framework legislation in an area with shared jurisdiction. Relatively speaking, this is exceptional.

This problem should soon be solved, as it has been suggested that the State should be able to have power of temporary substitution.⁸⁷ If the plans of the current government majority materialize at the legal level, the central authority will be able to substitute for the Community or Region which has not fulfilled, or not correctly fulfilled, an 'international or supranational' obligation, provided that beforehand the State has been 'sentenced by an international or supranational court for not fulfilling' this obligation. The State would then have the power to implement the 'enacting terms of the decision' of the court, but these measures would stop 'producing its effects as soon as the Community or Region concerned has complied with the enacting terms of the decision'.⁸⁸

Consultation and cooperation between the State and its constituent units therefore seem to be the only adequate methods of ensuring rapid implementation of European law. The way for this has been paved by Article 6, § 3, 7° of the Special Law of 8 August 1980, mentioned earlier ('follow-up' of the work of the European institutions). Each time the transposition of a directive requires intervention by two 'levels' of powers, *ad hoc* consultation formulas are sought, on the initiative of the cabinet of a national minister

85 Case C-42/89.

86 Case C-290/89.

87 See the proposal to amend Article 68 §7 of the Constitution and Article 1 of the special law on international relations of the Communities and Regions (*documents parlementaires*, Senate, session 1991-1992, No. 100-61/1° and No. 457/1).

88 See the cited special law, Article 1.

(Economic Affairs, Public Health and the Environment, Agriculture, etc.) or the technical administration mainly concerned.

IV. POLITICAL AND ADMINISTRATIVE CONTROL

An examination still has to be made of the way in which the work of the administrative bodies participating in the elaboration and implementation of Community decisions is monitored. The various parliamentary assemblies concern themselves to a varied extent with the preparation and implementation of European law. Administrative bodies control the promptness of the services in charge of transposing directives into Belgian law. Finally, many officials in the administration check whether the normative acts of the European Communities are being implemented correctly; if not, they are authorized to record infringements that are being committed.

Political Control

The parliamentary assemblies, mainly those that make up the national Parliament, have strived to strengthen their control of European integration and, in particular, of the transposition of Community law in Belgium.

Since April 1985, within the Chamber of Representatives, there has been an Advisory Committee on European Questions, composed of ten deputies and ten Belgian members of the European Parliament.⁸⁹ The main task of this Committee is to inform the Chamber on Community institutional issues; it reports on some other matters as well.⁹⁰ Special mention should be made of the report of Mr De Gucht on 'The Implementation of Community Law by Belgium'.⁹¹

It was only in March 1990 that the Senate in its turn set up an Advisory Committee on European Questions, composed exclusively of 25 senators.⁹²

89 This committee was modeled after the joint commission established within the German *Bundestag*. See Y. Devuyt, 'De Adviescomités voor Europese aangelegenheden van het Belgisch Parlement', *Tijdschrift voor Bestuurswetenschappen en Publiekrecht*, 1992, 468-475, here 469 and 407; and Article 100 of the Regulations of the Chamber of Representatives of Belgium.

90 See the report of the President of the Chamber of Representative of Belgium presented at the Conference of Presidents of the Parliaments of the EC Member States and the European Parliament (Luxembourg, 12-13 June 1987), *documents parlementaires*, Chamber of Representatives, session 1986-1987, No. 100/1, 28.

91 *Documents parlementaires*, Chamber of Representatives, session 1986-1987, No. 20-739/1.

92 See Y. Devuyt, abovementioned article, 470 and 471; and Article 62 *bis* of the Regulations

The two Committees hold many joint meetings, in particular to listen to ministers or members of the European Parliament. Thanks to the presence of the latter they have been able to exert closer control over the government's European policy.

These initiatives accurately reflect the reactions of most national parliaments in the face of what is called the 'European Democratic Deficit'; they have had however only little influence on the Belgian administration.

On the recommendation of its Advisory Committee, the Chamber of Representatives asked the government, through a resolution adopted on 12 July 1990, to submit each year the report laid down in Article 2 of the Law of 2 December 1957 ratifying the Rome Treaties, on the implementation and application of the Treaties establishing the European Communities, and to organize a general debate in the form of either a plenary session or a commission meeting prior to each European Council of Heads of State and Government.⁹³ It is up to the Minister for Foreign Affairs to report to the Parliament once a year.

It is not sufficient to organize general debates to exert influence on Community decision-making. The separate examination of each new proposal for a normative act may prove to be advisable. No doubt this will soon be made possible by Article 4 of the draft special law on the international relations of the Communities and Regions which will add a new title to the Special Law on Institutional Reforms. This title will contain one single article stipulating that 'as soon as they are sent to the Council of the European Communities, the proposals for regulations and directives of the Commission of the European Communities are sent to the (national legislative) Chambers and to the (Community or Regional) Councils, depending on the subject matter'.⁹⁴ The various assemblies may then adopt resolutions on the draft texts, according to the rules laid down by their standing orders. Such a procedure would give appropriate shape to the commitments entered into by the governments of the Twelve in the declaration (No. 13) on the role of the national parliaments in the European Union, annexed to the Final Act of the Intergovernmental Conferences on Political Union and Economic and Monetary Union.

At the Regional and Community level one cannot but notice that the political control of the elaboration and implementation of Community decisions has developed unevenly.

The Brussels Ordinance of 5 September 1991 'on the transposition and

of the Senate of Belgium.

⁹³ See the content of the recommendation in the *documents parlementaires* of the Chamber of Representatives, session 1989-1990, No. 20-1251/1, 9.

⁹⁴ Art. 92 *quater* (*documents parlementaires*, Senate, special session 1991-1992, No. 457/1, 9.

implementation of the law of the European Communities in the Brussels Region,⁹⁵ set up a relatively comprehensive system for informing the Regional council about proposals for normative acts that have been forwarded by the Commission and presented to the Council, and about the implementation and application of Community law in the Brussels Region.

At the beginning of May and November the Executive has to inform the Regional council of the progress of the proposals for normative acts (Art. 4 of the Ordinance). Furthermore, every year on 1 November at the latest, the Executive has to present reports on the following matters:

- the implementation and application of the Treaties of the European Communities in the Brussels Region (Art. 3);
- the rules that have been enacted to transpose the normative acts whose deadline for implementation has expired at the time the report is presented (Art. 6);
- the normative acts that have not been completely transposed and whose deadline for implementation has expired at the time the report is presented (Art. 6);
- the normative acts that have not been completely transposed and whose deadline for implementation will expire in the twelve months following the month in which the report is presented (Art. 5).

At the national level, a similar proposal, submitted by Deputy Van der Maelen, was adopted by the Commission for the Revision of the Constitution of the Chamber of Representatives on 23 April 1991⁹⁶ and then by the Chamber itself in plenary session on 8 May 1991.⁹⁷ According to this text, at the beginning of May and November, the Belgian government will report to the Chambers on the progress of the proposals for normative acts which are pending before the Council of Ministers and which fall under the jurisdiction of the national authority (Art. 2(2) and (3)). It will immediately inform the Chambers of any proposals whose transposition into Belgian law, in its opinion, requires the intervention of the legislature (Art. 2(1)). Furthermore, every year on 1 November at the latest, it has to present reports on the following matters:

- the implementation and application of the Treaties of the European Communities in accordance with Article 2 of the Law of 2 December 1957 ratifying, among other things, the Treaties of Rome (Art. 1);⁹⁸

95 *M.b.* 20 February 1992. The title of this act is surely not very fortunate since it does not reflect its content.

96 *Documents parlementaires*, Chamber of Representatives, session 1989-1990, No. 1230/8 and 9.

97 *Annales parlementaires*, Chamber of Representatives, plenary session of 8 May 1991, 2829-2834.

- the normative acts whose deadline has expired, or that the transposition rules have been enacted, or that Belgium has failed to transpose these acts within the stipulated period of time (Art. 4).

It is to be believed that by strengthening their control of the implementation of the Treaties establishing the European Communities and of the correct implementation of Community law in general, the parliamentary assemblies have rendered the administrations in charge of monitoring the implementation of European rules an excellent service. The annual reports on the implementation of Community law presented to the legislative Chambers by the Minister for Foreign Affairs and the increasingly systematic explanations given by the Minister for European Affairs to the Advisory Committees of the Chamber or the Senate in charge of European Affairs demand careful summary analysis by the ministerial cabinet or the administration that draw them up. These documents can then serve as an 'overview' for the administrations in charge of monitoring the application of Community decisions. They can also give the administrations dealing with the transposition an overall insight into the work that remains to be done, the time they still have left and the interdepartmental coordination measures that they still have to take.

Administrative Control with Respect to Transposition

Transposition Deadline

We have seen that in practice administrative control of the observance of the deadline for transposing directives is ensured by the Directorate for European Affairs (P. 11 Service) of the Ministry for Foreign Affairs in cooperation with the coordinators from the departments.

Although the Communities and Regions have access to the coordination meetings held by the P. 11 Service and each of them has set up an administration in charge of European coordination, this is certainly one of the levels where the greatest problems arise where control of the implementation of European law is concerned. The Community or Regional ministries were only recently set up and are, moreover, attached to the service of political bodies which are themselves very attentive regarding respect for their

98 The Chamber of Representatives adopted a resolution to this end on 12 July 1990 (see above).

newly acquired autonomy.

Therefore, the control system set up by the Brussels Region in the framework of the Ordinance of 5 September 1991, mentioned earlier, can be seen as a brilliant exception.⁹⁹ In March 1991¹⁰⁰ a public body with legal status was established for this Region and called the 'Brussels Institute for Environmental Management'. It has been charged, among other things, with studying the application and transposition in Brussels law of the rules of the European Communities related to the environment. It has already reported twice to the Regional council submitting tables which provide details on the following:

- directives that have been transposed completely (Art. 6 of the Ordinance);
- directives that are being transposed and whose deadline for implementation has not yet expired (Art. 5);
- directives whose deadline for transposition into Brussels law has expired without all implementing measures being able to be taken (Art. 6).

The result of this is that within three years the Brussels Region has been able to reduce its backlog in this field, so that only six directives could not be transposed within the deadline stipulated for these acts; it should be noted however that four of them require implementation jointly with the central authority, which slows down their transposition even more.

Adequacy of the Transposition

According to the prevailing opinion in administrative circles it is not up to the European coordinators to check whether the measures for implementing regulations or the measures for transposing directives are complete or correct as regards the requirements of Community law. It is up to the Commission to control compliance and, in order to be able to do this, when the internal transposition rules are notified the Commission may require a table comparing these rules and the transposed normative act.

In practice, the coordinator usually sends the Commission, through the Permanent Representation, a copy of the text which is presumed to bring about the required transposition. The coordinator of the Ministry for Agriculture, for instance, notifies the transposition to the agricultural attaché of the Representation.

⁹⁹ See the observations about political control.

¹⁰⁰ See the Royal Decree of 8 March 1989 (*M.b.* 24 March 1989), confirmed by Article 41 of the Law of 16 June 1989 concerning various institutional reforms (*M.b.* 17 June 1989).

The Procedure Prior to the Application to the Court or Article 169 of the EEC Treaty

If the Commission of the European Communities finds that Belgium has not taken all the legal steps required by the Community normative act or has not communicated the content before the set deadline, it will successively send Belgium a request for information, and then a notice with the request to reply to its observations within a new deadline of some weeks. It is then up to the P. 11 Service to organize a meeting of representatives of the departments concerned where an explanation can be given of the problems which have temporarily hindered the implementation of the directive or regulation, and then to inform the Commission of this. The transposition efforts continue; they mean new consultations and the drafting of the necessary texts.

In the field of public procurement, a network of contacts between the State, the Communities and the Regions has been established on the initiative of the Consultation Committee.¹⁰¹ The driving force behind this network is the coordinator attached to the chancellery of the Prime Minister. Composed of public servants and members of ministerial cabinets, the network makes it possible to react quickly to any notice from the Commission or any request for an explanation regarding the awarding of a specific public works contract. It also allows the forwarding of information to Community or Regional ministries.

On the basis of the observations it has received, the Commission may find that the State has failed to fulfil its obligations: it then delivers a reasoned opinion which is actually a decision demanding that the State settles the matter within the deadline fixed by the Commission. We have already seen that some departments succeed in complying with the Community instructions between the time at which the opinion is delivered and the expiry of this deadline. If this time is not put to good use by completing the transposition, the Commission brings the matter before the Court of Justice of the European Communities when the deadline expires.

The centralizing role of the Ministry for Foreign Affairs can be explained, *inter alia*, by the fact that only this department has extensive knowledge of the transposition dossiers. Lists are drawn up regularly by the Directorate for European affairs recording information received from other departments on '169 proceedings'. They form what is in administrative practice customarily referred to as 'groups', i.e. 'group' I (failure to fulfil an obligation on the part of the Ministries for Economic Affairs, for Agriculture, and for Public Health); 'group' II (environmental issues); and 'group' III (others). The transposed European rule is assigned to 'group' V.¹⁰²

¹⁰¹ Regarding the Consultation Committee, see *supra* the observations made about the structures for consultation between the State, the Communities and the Regions.

Application Control and the Recording of Infringements

Numerous administrations are responsible for controlling the effective application of Community law in Belgium. Depending on the case, this control may be by way of formalities which have to be completed, or may be carried out in the field. Often it is the administrations responsible for the transposition that are entrusted with this control and the recording of infringements. It is impossible to present an exhaustive overview of all the services entrusted with these tasks and for this reason in the following only a few have been singled out as examples.

Services of the Ministry for Economic Affairs

Within the Ministry for Economic Affairs, the Economic Inspectorate-General (*Inspection générale économique*), comprising some 275 officials, is in charge of controlling the observance of EEC rules with respect to common market organizations or Community operations.¹⁰³ It has also to control imports, exports and the transit of goods;¹⁰⁴ it carries out inspections and provides assistance in the framework of certain EEC regulations, particularly those issued pursuant to Article 87 of the Rome Treaty.¹⁰⁵

The Economic Inspectorate-General comprises central services and also external services which are responsible in particular for investigations in the field. It is in regular contact with the EAGGF and the Court of Auditors of the European Communities.

102 'Group' IV, on its part, contains new directives whose deadline for transposition has not expired.

103 See particularly Article 5 of the Law of 28 March 1975 on trade in agricultural, horticultural and sea fishery products (*M.b.* 25 April 1975), which empowers the Economic Inspectorate-General to investigate and record infringements of the provisions of the said law.

104 The Law of 11 September 1962 on the import, export and transit of goods (*M.b.* 27 October 1962) gives the Economic Inspectorate-General overall competence to investigate and record infringements in this field. Other legal provisions, such as Article 6 of the Law of 3 August 1992, extend its competence to the investigation of infringements of the general law on customs and excises.

105 See the Royal Decree of 19 August 1991 (*M.b.* 17 October 1991) which, by virtue of the Law of 28 July 1987, appoints the Service for 'Competition Policy and Rules' of the Trade Administration of the Ministry for Economic Affairs to be heard by the Commission before the latter takes the decision to proceed with an inspection at an enterprise or association of enterprises; and which entrusts officials of the Economic Inspectorate-General, assisted if necessary by officials of the Ministry for Communications and Infrastructure, with tasks of inspection and providing assistance requested by the Commission and authorized by the Law of 28 July 1987 (*M.b.* 24 September 1987).

Services of the Ministry for Agriculture

Some administrations or public bodies that fall under the responsibility of the Ministry for Agriculture have been given the power to investigate and record infringements of Community law.

The Raw Materials Inspectorate (*Inspection des matières premières*) is part of the Directorate for Agricultural Policy within the economic services administration. Its task is to control observance of Community rules. Its inspection services observe, sample and examine products and, when doing this, may draw up reports recording infringements and seize products which do not comply.¹⁰⁶

Of the decentralized public bodies responsible to the Ministry, three are in charge of exerting control in European matters: the *Office national du lait et de ses dérivés* (National Office for Milk and Related Products – ONL), the *Office national des débouchés agricoles et horticoles* (National Office for Agricultural and Horticultural Outlets – ONDAH) and the *Office belge de l'économie et de l'agriculture* (Belgian Office for the Economy and Agriculture – OBEA) which is supervised by both the Minister for Economic Affairs and the Minister for Agriculture. The ONL supervises the rules and the management of the milk quota system; the ONDAH collaborates in the implementation of rules concerning agricultural and horticultural products and in the control of seeds and seedlings; as for the OBEA, this office is responsible for seeing that all regulations, directives and recommendations of the European Community are applied in the agricultural products sector. The staff of these three bodies have been given the power to investigate and record infringements of the rules relating to the granting of Community subsidies.¹⁰⁷

Services of the Ministry for Public Health

Within this Ministry, the Public Hygiene Administration has some services whose main task is to protect the health of the population. One of these services is the *Inspection des denrées alimentaires* (Foodstuffs Inspectorate) which controls the preparation of foodstuffs, the trade in cosmetics, tobacco, detergents and other household products, and the hygiene of persons and places in this sector; the *Inspection générale de la pharmacie* (Inspectorate-General of Pharmaceuticals) controls the manufacture, import, export, distribution of and wholesale trade in medicines and medicated feedingstuffs,

¹⁰⁶ The Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and stock-farming empowers the Inspectorate to supervise the trade in such products and, consequently, the application of Community rules in this field; the abovementioned law of 28 March 1975 on the trade in agricultural, horticultural and sea fishery products empowers the Inspectorate to investigate any irregularities in the rules on granting of EEC aid.

¹⁰⁷ By virtue of Article 5 of the abovementioned Law of 28 March 1975.

the import, export, possession and sale of narcotic drugs and psychotropics, the import and export of hormones, anti-hormones and antibiotics, and the placing on the market of pesticides, plant-protection products and other dangerous substances; the *Service de protection contre les radiations ionisantes* (Service for Protection against Ionizing Radiation) is responsible, in particular, for the supervision of nuclear installations where public health protection is concerned; the *cellule Environnement* (Environment Unit) controls the application of rules relating to PCB (polychlorinated biphenyl) and PCT (polychlorinated terphenyl) and the transborder transport of waste. Another task of this Unit is the prevention of major accidents in certain industries. Usually the officials who supervise the observance of the rules applying to the above matters can draw up an infringement report and take samples or seize substances which do not comply with the legal requirements or rules in force.¹⁰⁸

Within the Medical Institutions Administration, the *Service de l'art de guérir* (Service for the Healing Arts) supervises the application of European directives on the freedom of establishment and the mutual recognition of diplomas of doctors, nurses, dentists and midwives.

There is also an *Institut d'expertise vétérinaire* (Institute for Veterinary Expertise), a decentralized public body responsible to the Ministry, which is in charge of carrying out expert appraisals and health controls intended to protect the health of consumers of foodstuffs of animal origin. The Institute has a central administration and inspection services divided into 20 sections. The Institute's veterinary officials and controllers are empowered to investigate and record infringements of the laws and orders in force in this field.¹⁰⁹

¹⁰⁸ The following articles confer these powers on officials or staff appointed by the King: Article 11 of the Law of 24 January 1977 on the protection of consumer health in the field of foodstuffs and other products (*M.b.* 8 April 1977), Article 113, §5, of the Law of 14 July 1991 on trade practices and on the provision of information to and protection of consumers (*M.b.* 29 August 1991), Articles 14 and 15 of the Law of 25 March 1964 on medicines (*M.b.* 17 April 1964), Article 10 of the Law of 10 June 1983 on medicated feedingstuffs for animals (*M.b.* 28 October 1983), Article 7 of the law of 24 February 1921 on poisonous, soporific, narcotic, disinfectant or antiseptic substances (amended on 9 July 1975), Article 6 of the Law of 15 July 1985 on the use of substances with hormonal or antihormonal effects on animals (*M.b.* 4 September 1985), Article 6 of the Law of 11 July 1969 on pesticides and raw materials for agriculture, horticulture, forestry and stock-farming (*M.b.* 17 July 1969), the new Article 5 of the law of 29 March 1958 on the protection of the population against ionizing radiation (*M.b.* 30 April 1958) and Article 17 of the Law of 21 January 1987 on the risks of major accidents in certain industries (amended on 22 December 1989).

¹⁰⁹ See Article 11 of the Law of 24 January 1977 mentioned earlier, Article 16 of the Law of 5 September 1952 on the expertise and trade in meat (amended on 13 July 1981), Article 7 of the Law of 15 April 1965 on the expertise and trade in fish, poultry, rabbits and game (amended on 13 July 1981), and the Royal Decree of 1 December 1977 on the appointing

Services of the Ministry for Finance

The *Administration des douanes et accises* (Customs and Excise Administration), which participates in the preparation and implementation of EEC regulations relating to customs,¹¹⁰ plays an important role in the investigation, recording, compromise arrangements and even in the proceedings for the infringements of these rules. There are various legal provisions which confer these competences on customs officials.¹¹¹

The *Administration de la T.V.A., de l'enregistrement et des domaines* (Administration of VAT, Registration and Landed Property) is responsible for the application of Community law, primarily in the field of the import, export and transit of goods. Officials in charge of collecting this tax are authorized to investigate and record infringements in this field by virtue of Article 85 of the VAT Code.

The *Inspection spéciale des impôts* (Special Tax Inspectorate, established by the Royal Decree of 14 October 1978, has investigating powers in the entire fiscal sector (direct or indirect taxes, customs duties). Its officials have notably been authorized to investigate and record infringements of the provisions of the general law on customs and excise duties.¹¹²

The review of the public services which has just been completed under the aegis of the current Minister for the Interior contain many proposals for reform including the suggestion to restructure the control and inspection services falling under the Ministries for Economic Affairs, for Agriculture and for Public Health. However, some ministries have declared themselves strongly opposed to any regrouping of these administrations.¹¹³

of officials and staff in charge of the inspection of foodstuffs and other products, referred to in the Law of 24 January 1977 (amended, notably, on 28 October 1987).

110 It imposes and collects entry taxes which help finance the budget of the Communities.

111 Article 5 of the abovementioned Law of 28 March 1975 entitles these officials to deal with fraud in the field of EAGGF guarantees; Articles 267 and 281 of the General Law on customs and excise duties (*M.b.* 27 October 1977) entitling them to deal with infringements in the field of imports and exports.

112 See Article 187 of the Law of 8 August 1980 (*M.b.* 15 August 1980).

113 See, for instance, *La Libre Belgique* of 23 and 24 January 1993, 4.

CONCLUSION

Being a small country, Belgium rarely takes the initiative for new Community rules. It may however put forward some aspect of its national law as a source of inspiration for a future directive. Generally speaking, it likes to play a conciliatory role between the divergent, even antagonistic, positions of some other Member States.

The reasons for this relative discretion could be a very 'integrated' view on Community policy and the frequent lack of real 'essential national interests' to be defended on the European scene.

Be that as it may, the administrative procedures for the preparation and implementation of Community decisions seem to be badly coordinated and badly structured. They are often informal. The plans for institutional reforms which are now under way, particularly those relating to international competences and partial regionalization of agriculture, will certainly encourage the reorganization of these procedures.

Often Informal and Badly Coordinated Procedures

Belgium has unfortunately earned itself the reputation of being tardy where the implementation of Community law is concerned which has led to a loss in credibility of the policy it intended to conduct in the field of European integration.¹¹⁴ This slow or incomplete transposition of a considerable number of directives may be due to a long-lasting government crisis, such as the one in 1991-1992, but it is also the result of the ineffective functioning of some public administrations, due to their obvious shortage of staff. In addition, the coordination required of the many dossiers between the pilot department and the other ministries involved does not always function as satisfactorily as could be hoped.

We have also seen that the procedures are very informal, except when coordination of action of the State and its Communities and Regions is concerned. The political power, which has restricted the administration to what is seen as an inferior role, hardly concerns itself with organizing structures and regulating administrative procedures for the preparation and implementation of decisions taken by the Community institutions.

¹¹⁴ Since the establishment of the ECSC, European integration has been recognized as being one of the main objectives of Belgian policy. The greater part of the political world shares this point of view.

Badly Structured Procedures

In general, the officials in charge of preparing a directive and those responsible for its implementation are not the same.¹¹⁵ Because of this strict separation between upstream preparation and downward implementation, some practical problems, specific to Belgium, only arise during the implementation phase. In countries where this strict separation does not exist (United Kingdom, Denmark) the transposition statistics are much more favourable.

Therefore, as early as the negotiating phase of the directive, it is essential for the pilot department to be designated and for the coordinator of this department to be involved in the preparation, in close collaboration with the officials who are technically responsible. Currently the cabinet for European affairs is attempting, in cooperation with the service for European affairs of the Ministry for Foreign Affairs and with the Belgian Permanent Representation to the European Communities, to improve the role of the coordinators in this context.

Furthermore, the specialization principle applied in the administration often leads to the transposition being entrusted to officials who only have a limited knowledge of law and, due to the staff shortages, cannot ask for assistance from the legal service of the department where they work.

Another structural fault is probably due to the lack of involvement of parliamentarians in the preparatory phase of Community decisions. It is certainly true that the greater number of assemblies in the Belgian constitutional system makes such involvement more difficult than in a unitary state.

Procedures to be Reorganized

A thorough administrative reform carried just for the sake of it is not conceivable in Belgium in the near future. On the other hand, government reform projects that are now being discussed will, if adopted, lead to a thorough reorganization of the administrative procedures analyzed above. The plan is to regionalize a considerable part of the agricultural responsibility and to restructure the Belgian representation to and within the international or supranational organizations.

The parliamentary majority now intends to 'regionalize the application of European measures in the framework of the common structure policy', and is

¹¹⁵ There are exceptions to this 'rule', notably in the field of agriculture, health and public contracts.

planning 'promotion missions', but will leave to the national level 'the market and price policy, the product policy and the health policy...in view of Economic and Monetary Union'. From a similar perspective, it seems inevitable that there will be a restructuring of the Ministry for Agriculture and the public bodies responsible to it.

Political compromises also aim to compel the national authority to conclude agreements with the Regions and the Communities regulating the Belgian representation to the Communities and the procedure for taking decisions in this framework if there is no consensus; until such agreements are concluded, consultation on all matters of mixed responsibility will be obligatory. Moreover, the Regional Executives would participate directly in the work of the Community institutions, as far as their area of responsibility is concerned, just as Community Executives are already doing. Here too, it seems inevitable that there will be a reorganization of the structures and the administrative procedures examined. Nevertheless, it is essential that the general coordinating role of the Directorate for European Affairs of the Ministry for Foreign Affairs be maintained as well as the functions of 'liaison' and 'surveillance' devolved upon the Permanent Representation in its relations with both the national and Community or Regional Belgian administrations.

As to the problem arising from the implementation of European law in the areas of responsibility of the Communities or Regions, a partial solution at least should be found in the power of temporary substitution that will be conferred on the national authority.¹¹⁶ Basically that is a way of reconciling the requirements of European integration with those of the thorough reorganization of a state which is prey to '*mal d'être*'.

¹¹⁶ See the observations made on this matter in the part dealing with the involvement of the Communities and Regions in the implementation of Community law.

ADDENDUM (JUNE 1993)

The first edition of the *Moniteur belge* of 8 May 1993 published the texts arising from the constitutional revision of 5 May and the special law and ordinary law on 'international relations of the Communities and Regions'. At the time this was written other proposals for special and ordinary law 'to complete the federal structure of the state' were still being debated in the Parliament. However, it is now possible to start pointing out the main repercussions of the reform of the State on the problems of the administrative procedures for the preparation and implementation of Community decisions. For the sake of this article a distinction will be made between institutional, material and procedural aspects.

INSTITUTIONAL ASPECTS

- (1) The new Article 1 of the Constitution states that 'Belgium is a federal [S]tate composed of [C]ommunities and [R]egions' (see footnote 5).
- (2) After the next general elections the federal authorities will practise a reduced and specialized bicameral system. It will be reduced in the sense that the Senate will no longer be obliged to study a bill adopted by the Chamber of Representatives, except if this is requested by fifteen senators; the Chamber and the Senate will however remain equally empowered for ten matters listed in the new Article 41 of the Constitution. This bicameral system will moreover be specialized in the sense that the matter of ministerial responsibility will fall within the exclusive jurisdiction of the Chamber of Representatives and that the Senate will no longer intervene in the procedure for drawing up laws on naturalization, civil and criminal liability of federal ministers, budgets and accounts of the state and the army contingent (new Art. 26, para. 2, and new Art. 88).
- (3) Starting with the coming general elections, the members of all the Community or Regional councils will be elected directly for periods of five years (Constitution, new Art. 59^{quater}). However, the Council of the French Community will consist of the elected members of the Walloon Regional Council, plus 19 French-speaking members of the Brussels Regional Council, elected by their peers; the Flemish Council will consist of the elected members of the Flemish Region and 6 Dutch-speaking members of the Brussels Regional Council (see footnote 10).

- (4) The members of the Community or Regional executives, now called 'governments', will no longer necessarily have to be member of their respective councils.
- (5) The existence of an Interministerial Conference on Foreign Policy (see the text to which footnote 28 refers) is now laid down by a legal provision. At this Conference, the federal government is obliged to inform the Community and Regional governments regularly on foreign policy.
- (6) As a result of a recent ministerial reshuffle, Mrs de Galan replaced Mrs L. Onckelinx at the head of the Ministry for Social Integration, Public Health and the Environment.
- (7) The ordinary law which aims at completing the federal structure of the state will transfer the tasks, staff and goods and assets of the ONDAH connected with agricultural promotion and will integrate the part that is not transferred to the Regions into the federal Ministry for Agriculture.

MATERIAL ASPECTS

- (8) The new Article 68 of the Constitution gives the Communities and Regions the right to conclude treaties on matters that fall within their jurisdiction.
- (9) From now on the agricultural investment fund is a matter of Regional responsibility. In particular, this will also cover the policy of promoting agricultural and horticultural products and the application of European agricultural structure measures, when these involve aid to agriculture in less-favoured Regions and rural development, in the framework of the Agricultural Fund. The Regions will also be responsible as regards the application, in the framework of CAP, of European measures relating to the environment, rural rehabilitation, forests and nature conservation.
- (10) By virtue of the new Article 25^{ter} of the Constitution residual jurisdiction remains with the federal authority as long as there are no new constitutional and legal provisions laying down the conditions and procedures for transferring this jurisdiction to the Communities and Regions, and the exclusive powers which the national authorities will keep are not specified.

PROCEDURAL ASPECTS

- (11) The laws on international relations of the Communities and Regions require that 'the proposals for regulations or directives and, if necessary, other acts with a normative character of the Commission of the European Communities' are communicated to the federal legislative Chambers and to the Community or Regional councils, depending on the subject matter, 'as soon as they are sent to the Council of the European Communities.'
- (12) From now on the procedures for involving the Communities and Regions in the preparation and implementation of Community law will be governed by legal provisions whose scope will not be fundamentally different from the rules that were in force previously: in anticipation of the conclusion of a cooperation agreement, 'consultation involving the national authority and the [Community and Regional] executives will be held to prepare negotiations and decisions and to follow up the work of international and supranational organizations in the field of matters that fall within Community or Regional authority' (Article 92*bis*, § 4*bis*, new subparagraph 2, of the Special Law on Institutional Reforms).

As regards agricultural policy in particular, the special law which is now under discussion will stipulate that 'the federal authority consults with the Regional governments concerned to prepare negotiations and decisions and to follow up the activities of the European institutions in the field of agricultural policy'. It will also state that 'at European level, besides the federal representatives, the representatives of the Regions sit in the technical committees.'

- (13) Paragraph 6 of the new Article 81 of the Special Law on Institutional Reforms authorizes the Community and Regional governments to commit Belgium within the Council of the European Communities in accordance with a cooperation agreement to be concluded between the federal authority, the Communities and the Regions.
- (14) 'To guarantee that international and supranational obligations are observed', the new Article 68 of the Constitution gives the federal authorities the power to temporarily substitute for the Communities or Regions, on the conditions laid down in paragraph 3 of the new Article 16 of the Special Law on Institutional Reforms:
- 1° the Community or Region concerned must have been given notice three months before;

- 2° it must have been involved in the entire procedure for settling the dispute, including the proceedings before the 'international or supranational court' which sentenced Belgium for not fulfilling the said international obligations;
- 3° if necessary, the federal state must have complied with the cooperation agreement on the procedures for concluding treaties which do not solely concern Community or Regional matters.