

INTRODUCTION

Thanks to its dense roads, waterways and railways network, its extensive public transport network and its harbours and airports, Belgium is at a crossroads of Europe. This is particularly the case for road traffic, that is deemed to be the most damaging environmental means of transportation.

As a matter of fact, traffic increase goes hand in hand with economic growth.

As far as cars are concerned, in 1990, 60 billion km. were driven, whereas in 2030 experts are expecting that cars will cover 100 billion km. Moreover, the percentage of diesel vehicles is still increasing. So far, few electric and hybrid cars are placed on the market.

As far as trucks are concerned, one is facing an even sharper increase. Traffic of goods was reaching 5,6 billion km. in 1990. Experts are expecting that the distance covered by trucks will reach 11,5 billion km. in 2030.

It comes as no surprise that the road traffic in **Belgium** has significant environmental impacts. That being said, in spite of continuous traffic increase, pollutants emissions from road vehicles are diminishing thanks to new technologies. Between 1990 and 2030, PM10 emissions are likely to decrease by 90%, NOx emissions by 70% , CO by 80% and VOC by 86 %.¹

Describe the key national legislation to promote a sustainable transport policy.

ALLOCATION OF POWERS IN BELGIUM

Belgium is a federal state composed of Communities and Regions. The allocation of competences is established in the country's special institutional reform act of 8 August 1980 and subsequent amendments, in particular its Article 6. It is the aim of this introduction to describe briefly how a number of competences regarding transport and environmental matters have been allocated to the three Regions and how several competences are still retained by the Federal State.

REGIONS

There are three Regions that are endowed with legislative (Regional Parliaments) and executive organs (Regional Governments). The regional authorities are endowed with broad competences regarding land planning, environmental protection and the management of roads.

Regarding **land planning**, their competences encompass among others (Art. 6, §1^{er}, I, Special Law on Institutional Reforms of 8 August 1980):

¹ Transport and Mobility, *Emissions of Road Traffic in Belgium* (Leuven, 2006).

- 1° Urbanism and land planning;
- 2° Plans delineating local roads;

...

Regarding **environmental protection**, regional competences encompass all environmental issues among which air pollution (Art. 6, §1^{er}, II, Special Law on Institutional Reforms of 8 August 1980). However, the Federal authorities are competent to lay down product standards. As a result, the directives on fuels, cars, boats trucks, etc. have to be implemented by the Federal authorities whereas the directives on air quality or emissions of pollutants into the atmosphere are implemented by the Regional authorities.

Regarding **transport and public works** (Art. 6, §1^{er}, X, Special Law on Institutional Reforms of 8 August 1980), the Regions are competent for the following policies :

- 1° roads;
- 2° waterways including canals;
- 2°bis the legal regime applying to roads and waterways, irrespective of the nature of the manager, but for the railway managed by the National Railway Company of Belgium (Special law of 16th of July 1993)
- 3° harbours;
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- 7° the equipment and the operation of airports, but Brussels-National Airport;
- 8° the public transportation system;

.....

The Constitutional Court stressed that in accordance with Article 6, § 1er, X, 1er, 2bis, the Regions are competent to manage the road network, and in particular, to lay down the legal regime of roads. In particular, this competence encompasses the regulation of the private use of the road networks.²

Accordingly, the road network in Belgium which is made of highways, national (or regional) roads is managed by regional authorities. It follows that a road section in Flanders is managed by the Flemish regional authorities, a road section in Brussels by the Brussels regional authorities and a road section in Wallonia by the Walloon regional authorities.

Belgium is undergoing a new institutional reform. Against this background, regions will be endowed with a swathe of new competences ranging from speed limits (except highways), the regulation of hazardous goods, the implementation of road safety rules (code de la route), to the enactment of standards regarding road infrastructure and the control of motor vehicles. What is more, the competences of the National Institute for Road Safety, the National Fund of Road Safety will be transferred to the regions.

As a result, Regions are endowed with broad powers regarding transport policies.

² Belgian Constitutional Court, 89/2010, B.10.2.

In spite of these broad competences, only the Flemish Region has been making headways in setting up a genuine mobility policy.

FEDERAL STATE

In spite of the broad regional competences, the Federal State retains extensive powers, for example in the area of foreign affairs (conclusion of international agreements on transport), justice (attorney generals' policy regarding traffic misdemeanours), finance (tax exemptions on the purchase of cleaner cars), as well as important segments of the health policy (impact of pollutants).

In virtue of Article 6, § 1er, VIII, 1er, 1^o, the Federal State is competent regarding « the organisation of and [...] the policy regarding police ». Accordingly, the Federal State is competent to allocate the powers of the police at both the national and the local level. Nonetheless, Regional Governments are associated to the establishment of the general police rules and the regulation of communications and transport (*“l'élaboration des règles de police générale et de la réglementation relatives aux communications et aux transports”*), among which the road transport. It follows that the adoption of general policy rules regarding transport fall within the scope of ambit of the Federal authorities.³

What is more, in virtue of the Special Law on Institutional Reforms of 8 August 1980, the Federal State is competent to manage:

- the railway network (Art. 6, §1^{er}, X, 2bis),
- Brussels-National airport (Art. 6, §1^{er}, X, 7).

Within the Federal administration, the Mobility and Transport FPS prepares and implements federal policy on mobility. As part of its tasks, this FPS focuses on safety, the environment, social issues and optimum integration of all modes of transport. The FPS Mobility and Transport is currently organised into four Directorates-General:

- The Directorate-General for Mobility and Traffic Safety
- The Directorate-General for Transport by Road
- The Directorate-General for Maritime Transport
- The Directorate-General for Aviation

It is also responsible for several government agencies, such as the Belgian Institute for Traffic Safety, as well as autonomous public companies (the National Railway Company of Belgium, the Brussels Airport Company and Belgocontrol).

COMMUNAL AUTHORITIES

In addition to three regions and three cultural communities, Belgium also is divided into 10 provinces and 589 municipalities. Municipal governments are vigorous political entities with significant powers regarding local transport.

In virtue of Article 135, § 2, de the New Communal Law:

³ Belgian Constitutional Court, 89/2010, B.5.4.

« In as much as these competences have not been removed from the communal competences, communes are competent :

1° everything related to the street commodity and safety, etc., which includes the regulation of road traffic (« *police de la circulation routière* »).

The secondary network encompassing communal roads (or streets) is thus managed at the municipal level.

Against this background, the Constitutional Court ruled that the fact that a Brussels legislative act aiming at centralizing the fees at a regional level, and thus depriving the communes of some of their powers, was not abridging the principle of local autonomy. In effect, in spite of this principle the communes are called on to abide by the principle of the hierarchy of rules (« *principe de la hiérarchie des normes* »).⁴ Whenever the Brussels Region regulates a subject matter falling within the ambit of this competences, the regional intervention has the effect of abridging the principle of local autonomy. In an obiter dictum, the Constitutional Court stressed that the Region was better suited to harmonize the parking fees than the commune.⁵

REGIONAL AND COMMUNAL AUTHORITIES

The management of roads are the responsibility of the Regions or the commune in which they are located. These bodies are thus responsible for work on infrastructure, asphaltting, repairs, marking, traffic signal management and gritting in freezing weather. They also manage parking, safety, specific facilities for pedestrians, persons with reduced mobility and bikes, street lighting, flower beds and street furniture among other things.

- a. To what extent, environmental issues are taken into account in national transport policy? Does national transport policy set specific goals in order to reduce especially negative impacts from road traffic, e.g. emission goals, road traffic relocation on rail etc.?**

There is no national transport policy document as such. Transport issues are dealt with the 2009-2012 Federal Sustainable Plan as well as the Federal Plan on the air quality 2009-2012. However, these plans do not set out specific goals in order to reduce negative impacts from road traffic.

- b. What are important constitutional law provisions?**

Article 7bis on Sustainable Development – which is a rather programmatic provision – and Article 21 on the right to a healthy environment.

- c. What are the most important legislative acts in the field of road and rail transportation?**

⁴ Belgian Constitutional Court, 89/2010, B.18.2.

⁵ Belgian Constitutional Court, 89/2010, B.19.

There is indeed a patchwork approach in this field. As explained above, the allocation of powers between the Federal State and the Regions are making the decision-making process somewhat complex. One can fear that the forthcoming institutional reform will not simplify the coordination of federal and local policies. But Flanders, neither the Federal level nor Wallonia and Brussels have been codifying their traffic and transport regulations.

Flanders has adopted a legislative act that endorses a genuine mobility perspective. On 20th March 2010, the Flemish Parliament has adopted a specific legislation on mobility (*Decreet betreffende het mobiliteitsbeleid*). This calls for a few words of explanation.

Account must be taken of the principles underpinning the Flemish mobility policy. Firstly, in virtue of the regional law, the mobility policy must be based on sustainable development (Article 3). In the implementation of the policy, authorities are called on to apply a STOP-Principle. Accordingly, they must give priority to a) pedestrians, b) cyclists, c) public transport, d) individual motor transportation. What is more, the authorities are subject to the principle of participation (Article 4).

In virtue of the Mobility Regional Law, the Flemish government adopted a Mobility Plan Flanders - Sustainable Mobility (*Mobiliteitsplan Vlaanderen - Duurzame Mobiliteit in Vlaanderen*)., which aims to:

- Guarantee the accessibility of cities, towns and villages.
- Ensure that everyone has equal access to mobility.
- Increase road and traffic safety.
- Create a mobility policy that has a positive impact on quality of life.
- Decrease pollution levels.

These five main objectives of the Mobility Plan are to facilitate the creation of a sustainable mobility policy in Flanders by the year 2010, through an integrated process of different aspects related to improved mobility (society, accessibility, environment, pollution, quality of life) The Mobility Plan assigns each of the five objectives with policy guidelines to be implemented in the medium term (by 2005) and the long term (by 2010). In total around 225 new policies should be put in place by 2010 replying needs.

2. INSTRUMENTS TO MANAGE AND REDUCE ROAD TRAFFIC

Is there a national debate on the sense and nonsense of traffic tolls and other instruments to manage and reduce road traffic, and if so, has this led to changes or corrections of the regulatory framework?

a. Tolls and user charges

- aa) To what extent is the Directive 1999/62 being implemented in the national legal systems?**

The Agreement of 9 February 1994 between the Governments of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands concerning the levying of charges for the use of certain roads by heavy goods vehicles implements Directive 1999/62.

User charges are being levied for the use of infrastructure. So far, there is no integration of environmental externalities.

bb) Do you have a road toll system “other” than the one foreseen by Directive 1999/62, e.g. on other roads, transport of persons etc.?

Discussions are taking place both at Federal and Regional level, albeit without any concrete results.

cc) To what extent external costs are being charged in the rail-sector?

This is not the case.

b. Emission Trading

aa) Does there exist an emission trading system on vehicles and how does it function?

Nothing

c. Transit Exchange System

Nothing

3. INSTRUMENTS TO PROMOTE RAIL TRAFFIC AND COMBINED TRAFFIC?

- a. Is there any specific legislation promoting rail traffic and combined traffic, such as regulation, price control, subsidies etc.?

4. CASE LAW

- a. **To what extent have the following rulings of the Court of Justice also been of relevance in your countries?**

The ECJ case law referred to in the questionnaire did not had any impact whatsoever.

Regarding the scope of the Eurovignette Directive 93/89/EEC, the question arose as to whether regional trucks transporting household waste were deemed to be considered as carriage of goods by road and as consequently subject to charges for the use of certain roads. The Cour de Cassation followed the reasoning endorsed by the ECJ in its Case C-193/98 *Pfennigmann* that was handed down on 28 October 1999. In its judgment, the ECJ ruled that « in order to determine whether a motor vehicle or an articulated vehicle combination is intended exclusively for the carriage of goods by road, ..., reference must be made to the general purpose for which the vehicle is intended, irrespective of the use to which it may be put in a particular instance ». The Cour de cassation endorsed the same reasoning. It reached

the conclusion that the « general purpose » of trucks carrying household waste was not « intended exclusively for the carriage of goods by road ».⁶

Case 68/2012 of 31 May 2012 handed down by the Belgian Constitutional Court is a good case in point regarding the scope of directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Directive 2004/18/EC does not apply to « service concessions ». These services are defined as « a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment. » The Brussels Region adopted a law providing for a « service concession » granted to a private undertaking managing a bicycle park within the region. A private company which has been previously tendering that market argued before the constitutional court that the legal regime provided for by the Act at issue could not be qualified as a « service concession » on the grounds that the lawmaker did not regulate the payment of the service. As a result, the legal regime at issue had to be qualified as a « public supply contract » falling within the scope of the Directive. The action was dismissed on the grounds that the Regional lawmaker required that all the conditions related to a « service concession » had to be implemented by the Regional government.⁷

Last, it is worth to mention Case C-120/10 regarding the interpretation of Directive 2002/30/EC, in particular with respect to the noise level limits that must be observed when overflying built-up areas near an airport.

A. LAND-USE PLANNING AND ENVIRONMENTAL IMPACT ASSESSMENT

1. Are there different levels of the planning of transportation infrastructure? If so, which ones and how do they differ from each other?

But for railway network, the Regions are competent to regulate the planning of transportation infrastructure. So far, this planning has been integrated into the regional plans (plans de secteur, gewestelijke plans, PRAS).

By the same token, local plans include the local road network.

2. If there is road construction planning on a higher level, are the different transportation modes (roads, railways, air transportation, waterways etc) weighed against each other with a view to select the least environmentally burdensome?

Given that the regional and national programmes and plans are subject to an SEA in accordance with Directive 2010/42/EC, this issue has to be dealt at the screening stage. However, it appears that there is no real weighing of interest at that stage.

⁶ Cass, *Flemish Region v. City of Antwerp*, F.10.0049.N.

⁷ Belgian Constitutional Court, 68/2012, B.5.1.

3. Concerning the approval of individual road construction projects: Is there a test of need for more roads? If so, is it taken into consideration that new roads may trigger further individual transportation?

There is no such test.

4. To what extent have alternatives to be taken into account?

a. What is the legal basis of alternatives testing: SEA and EIA? Natura 2000?

Given that environmental competence is regionalised, each region has adopted a specific legislation implementing the SEA, EIA, and Habitats Directives.

b. Do these alternatives include “other” projects (e.g. rail construction, instead of road construction)?

Usually it is not the case. The experts working on an EIA on a motorway are going to compare the different options regarding the courses of the road infrastructure. Admittedly, they are not likely to compare the road project at issue with other means of transportation.