

Cooperation and Settlement of Conflicts within the Federal State of Belgium

Cooperation and conflicts: the two sides of the federal coin

The competences of the Belgian State have been divided up among the federal authorities, the communities and the regions. These three levels of power are on an equal footing and may, within the limits of their competences, develop their own policies. The policies of the respective authorities must nevertheless be in accordance. A certain number of problems are also connected to each other or are of a cross-border nature (water, transport, pollution for example). The federal model is thus only viable if autonomy is matched by the will to cooperate. This will is realised in practice through the application of cooperation procedures.

Despite good intentions the administration does not always proceed harmoniously in a federal State. Tensions may arise between the different levels of power because of disputes regarding competences or because of conflicting interests. The good working of the federal model requires the adoption of procedures to enable solutions to be provided or to bring an end to these conflicts.

Basic principle of cooperation: federal loyalty

The constitutioner defined this principle (art. 143 of the Constitution) as being a means of avoiding conflicts of interest. It follows that both the federal authorities, the communities and regions must be mindful of their mutual interests when exercising their competences.

How does this cooperation proceed in practice?

» Bodies for cooperation

The Concertation committee

The Concertation committee consists of the Prime Minister and five members of the federal government, the Minister-President and a member of the Flemish government, the respective Minister-Presidents of the government of the French Community

and the Walloon Region, the Minister-President of the government of the Brussels-Capital Region and a member of this government belonging to the other language group. The Concertation committee deals with problems submitted to it, deliberates and decides by a consensus.

The interministerial conferences

The interministerial conferences are the places where informal agreements are made on the policies to be followed in certain areas. These conferences do not have decision making power but are used for preparing the decisions of the respective authorities. Example: the interministerial conference on foreign policy, where the federal power informs the community and regional governments of its foreign policy.

The metropolitan Community of Brussels

With a view to consultation on certain matters of importance to more than one region, in particular mobility, road safety and road works in, towards and around Brussels, a metropolitan Community of Brussels was set up. In particular, the junctions and exits of the Brussels Ring motorway (R0) can only be closed or made unusable after consultation between the regions within the metropolitan Community.

The regions are members of this Community, as are the local authorities of the Brussels-Capital Region and the federal authority. The provinces of Flemish Brabant and Walloon Brabant are free to join it. A cooperation agreement will establish the arrangements and the purpose of this consultation.

» Forms of cooperation

The laws reforming the institutions list various forms of cooperation. The non-observance of the compulsory cooperation procedures forms grounds for cancelling as well the legislative standards as the decrees and ordinances.

Cooperation agreements

The federal, community and regional authorities may conclude agreements concerning the joint exercise of competences, and the creation and management of common services. In certain cases such agreements have been made compulsory by law (for cross-border transport, roads and watercourses).

The obligation to inform

In certain cases, the respective authorities are required to inform each other. This procedure allows it to be examined whether there is a risk of a conflict of interest or a conflict of competence and thus allows an appropriate response.

The obligation to take advice

Before taking certain decisions, the authority with decision-making power is required to seek the advice of the other authority. It can be ordinary advice, but in certain cases the advice has to be unanimous.

The obligation to consult

The authority that has decision-making power is required to take the point of view of the other authorities into account, without losing its freedom of action. Concertation takes place prior to the decision.

How are conflicts resolved?

Two types of conflict may arise between the different levels of power of a federal State: conflicts of competence and conflicts of interest.

» Conflicts of competence

These are disputes that arise when, in the implementation of policy, the federal authority, a community or a region violates the existing rules regarding the dividing up of competences. These disputes are of a legal nature and are settled by judicial means.

Preventing conflicts of competence

The legislation section of the Council of State gives advice on:

- all the draft laws, decrees or ordinances
- certain private member's bills, decrees or ordinances after being tabled at the House of Representatives and/or the Senate or at the community or regional parliaments.

When making such advice the Council of State may find that there has been a breach of the dividing up of competences.

Settling conflicts of competence

If after developing a law, decree or ordinance it is found that competences have been exceeded, individual persons (if they can demonstrate an interest) or authorities may contest this standard before the Constitutional Court (art. 142 of the Constitution). If the Constitutional Court accedes to the request, the standard concerned is cancelled.

» Conflicts of interest

Even if, in the implementation of its policy, an authority strictly observes the bounds of its competences, it is still possible that the interests of other authorities are harmed. Conflicts of interest are of a political nature and are settled by political dialogue. The procedure for resolving conflicts of interest cannot relate to laws, decrees, regulations, acts and decisions by the Federal State relating to taxable basis, tax rates, exemptions or any other factor affecting the calculation of income tax.

These conflicts of interest may arise on the parliamentary or government level.

Settling conflicts of interest between parliaments

In a motion adopted by 3/4 of the votes a parliamentary assembly may judge that a legislative initiative (law, decree, ordinance) of another parliamentary assembly seriously harms its interests. This motion suspends the contested bill or private member's bill for a period of 60 days. If no solution has been found during this period the Senate must give its reasoned advice within 30 days to the Concertation committee, which must adopt a position within 30 days.

If the motion comes from a federal legislative assembly the intervention of the Senate is not needed and the Concertation committee decides within 60 days.

Settling conflicts of interest between governments

A draft decision, a decision or the absence of a decision from the government level may be submitted to the Concertation committee on the request of the Prime Minister or the respective presidents of the community or regional governments. The Concertation committee then endeavours to find a solution within 60 days. In the meantime the decision or draft decision are suspended.