

Inter-municipal cooperation in Flanders under reform

An evaluation of the framework decree of July the 6th 2001

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1. Introduction

Inter-municipal cooperation in Flanders is currently regulated by the framework decree of July the 6th 2001. This decree aimed to drastically renew the inter-municipal practice by introducing a whole set of reforms. Each of them sprang from one of three principles that the then Flemish government adhered with regard to inter-municipal cooperation. Legally anchoring a variety of inter-municipal forms was a first one of these guiding principles. After all, municipalities should be able to legally frame their mutual cooperation in different ways. Regardless of this way, the activities that are inter-municipally dealt with should always be sufficiently supervised from the council of the municipalities involved. Hence, a number of reforms out of the 2001 decree are based on the principle of (sufficient) democratic supervision. The third and final principle underlying this decree concerns the purity of inter-municipal cooperation. This type of cooperation should primarily involve municipalities. As a result, the 2001 framework decree excludes an overarching involvement of other actors in each one of its forms of inter-municipal cooperation.

How far has the 2001 framework decree reformed the current practice of inter-municipal cooperation in Flanders? And, more importantly, how much are its reforms appraised on the local level? Up until today, these questions remain unanswered on the level of the Flemish region. Recently, the Flemish Minister for Internal Affairs did announce to answer them in an all-round evaluation of the 2001 decree. Once finalised, this evaluation could then serve to foster adaptations at the decree. After all, the current Flemish government has put itself behind the decree's principles and has – by mouth of its Minister of Internal Affairs – stated to adapt the decree if needed to reinforce their application. (Keulen, 2004: 23)

In this chapter, we seek to kick off this overall evaluation by answering the questions raised above for the so-called Westhoek. This is the label for an area in the west of Flanders that covers the territory of 18 rather small municipalities. As such, focussing upon the Westhoek guarantees a critical case study of the 2001 decree. After all, small municipalities specifically benefit from inter-municipal cooperation as a means of providing their citizens a level of service-delivery that does not distinct them from their larger counterparts. A combination of document analysis and interviews with local representatives has allowed us to trace recent reforms in the inter-municipal cooperation among the Westhoek municipalities as well as to get a grip on their local appraisal. These findings are presented after we clarify the different reforms that were introduced by the 2001 framework decree. But before all this, a few words are on its place on the intergovernmental setting in which this decree has been launched.

2. Intergovernmental setting of the Flemish framework decree of July the 6th 2001

The framework decree on inter-municipal cooperation was approved of in the Flemish Parliament on the 6th of July 2001. As such, this matter was for the first time exclusively regulated in and for Flanders. After all, the Flemish Parliament is the legislative body of the Flemish Government that jointly exercises the competences of the Flemish Region and the Flemish Community. Both of them were founded as a result of Belgian state reform. During the successive rounds of this reform, competences were withdrawn from the central (now federal) government and assigned to regions and communities as the two types of state authorities in Belgium. In total, three regions were founded: the Flemish Region, the Walloon Region and the Brussels Region. They were attributed with territory-oriented competences such as the competency for spatial planning and for mobility. Person-oriented competences such as evolving around welfare and educational issues were directed to the communities. Three communities were set up: the Flemish Community, the French-speaking Community and the German-speaking Community.

As said, the competences of both the Flemish Region and the Flemish Community are jointly exercised by the Flemish Government.¹ So far, this way of working has not been followed anywhere else in the country. As a result, the Flemish Government has a unique strength – particularly also with regard to its local counterparts. In Flanders, there are 5 provinces and 308 municipalities. From their point of view, the Flemish Government is an important central government next to the federal one. After all, the Flemish Government can steer them as far as a number of both territorial and personal matters are concerned. On top of that, the Belgian regions – including the Flemish one – have gained crucial competences with regard to the local governments' structure and functioning throughout the different rounds of state reform. Especially the last round of 2001 is memorable in this regard. It made the Belgian regions competent for the organic legislation on the provinces and municipalities on their territory as from the 1st of January 2002. In Flanders, the Flemish Government took until 2005 before voting the ever first Flemish organic decree on municipalities and one on provinces. Three years thus passed before this government made use of its newly gained competency. However, this time span is rather short in comparison with the one concerning the competency for inter-municipal cooperation. This competency was already fully regionalised in 1993. But only in 2001 – so eight years later – the Flemish Government launched a first framework decree on inter-municipal cooperation.²

In the following, we are first going to clarify the reforms that were introduced by this decree before evaluating their implementation and appraisal in the Westhoek.

3. Reforms and principles of Flemish inter-municipal cooperation

¹ The geographical areas for which the Belgian regions and communities are competent do not coincide. As a result, the Flemish Government exercises regional competences with regard to the territory of the Flemish Region and community competences on behalf of the Flemish-speaking citizens of both the Flemish Region and the Brussels Region.

² Before launching this decree, the Flemish Government did vote one other decree on inter-municipal co-operation in 1987. But this decree only arranged a limited number of aspects concerning Flemish inter-municipal cooperation whilst the rest was grounded in a (federal) law of 1986.

The three principles underlying the reforms out of the 2001 framework decree are subsequently focussed upon.

a. Varying forms of inter-municipal cooperation

The Flemish Government has clearly based the 2001 framework decree upon the principle of variation as far as the legal form of inter-municipal cooperation is concerned. (Van Walle, 2001: 7-8) Previously, only one form was legally anchored in the (federal) law on inter-municipal cooperation: the so-called 'intercommunale' as a statutory body under public law. In comparison, the 2001 framework decree clearly adheres to variation by providing no less than four different forms. These forms can be divided into two 'light' and two 'heavy' ones as far as their legal status and anchoring is concerned.

The two light variants are the so-called 'interlokale vereniging' and the 'projectvereniging'. The first one is the lightest. It is a form of inter-municipal cooperation that has no 'rechtspersoonlijkheid' and to which no managerial control will be delegated by the municipalities involved.³ At least two municipalities should be involved but other legal bodies under private or public law can participate as well. An 'interlokale vereniging' can be established on the basis of a mutual agreement that is not subject to any specific supervision by the Flemish Government. This form of inter-municipal cooperation is meant for the execution of a joint project that does not require 'rechtspersoonlijkheid'⁴

If this requirement does prevail, then the 'projectvereniging' is the appropriate legal form. After all, this form is meant to let municipalities jointly plan, implement and evaluate a project. Contrary to the 'interlokale vereniging' not all legal bodies under public or private law are entitled to join this form of cooperation. Besides at least two municipalities membership is limited to 'autonome gemeentebedrijven', 'OCMW's' and 'verenigingen van OCMW's zonder private partners', other 'projectverenigingen' and the two heavy forms of inter-municipal cooperation. Together, these parties can establish a 'projectvereniging' by signing a contract among themselves. This contract should be sent to the supervising Flemish Government but for information purposes only.⁵

Both light forms of inter-municipal cooperation are newly introduced by the 2001 decree. Their introduction sprang from the Flemish Government's acknowledgement of a local need for flexible forms of inter-municipal cooperation. Recently, the

³ Delegation of managerial control means that the established form of inter-municipal cooperation is fully entrusted with and thus responsible for the realisation of objectives that are pursued by the founding municipalities. The latter then renounce this realisation themselves. .

⁴ Art. 6 and 7 of the decree of 06-07-2001.

⁵ Art. 10, 12 and 14 of the decree of 06-07-2001.

Flemish Government gathered data concerning their use. These data are presented in table 1. They make clear that the ‘interlokale vereniging’ is currently more in use than the ‘projectvereniging’. Both forms are also popular in different sectors. Whereas the ‘interlokale vereniging’ is predominantly used for projects in the sports sector, the ‘projectvereniging’ is primarily set up for cultural and archaeological projects. The Flemish Government embraced these data. In its opinion, they do not only prove that there was indeed a local need for flexible forms of inter-municipal cooperation. But they are also seen as underlining that this local need was actually met by the two light forms of inter-municipal cooperation anchored in the 2001 decree. (Christiaens, 2005: 11-12).

Table 1: ‘Interlokale’ and ‘projectverenigingen’ according to sector of activity

Sector of activity	‘Interlokale verenigingen’	‘Projectverenigingen’
Sports	19	2
Education	15	0
Culture	2	3
Library	4	0
Finance	4	0
Archaeology	1	3
Youth policy	1	2
Drug prevention	3	0
Soil management	0	2
Tourism	1	1
Other	6	0
Total	56	13

(Source: Administratie Binnenlandse Aangelegenheden, 2005: 11)

Similar figures are currently not available with regard to the ‘dienstverlenende vereniging’ and the ‘opdrachthoudende vereniging’. These are the labels for the two heavy forms of inter-municipal cooperation provided by the 2001 decree. Both are heavy as far as the legal prescriptions surrounding their establishment are concerned. This establishment has to be thoroughly prepared by a body consisting out of representatives of all municipalities involved. This body has to draw up several documents – a management plan, a business plan, a motivational note – and has to draft the form’s legal statutes. All these documents have to be united in a charter and approved of by all municipalities involved. When other parties join, their decision has to be added to the dossier. Possible other partners are the same as those entitled to participate in a ‘projectvereniging’. Last but not least, the establishment also has to be approved of by the Flemish Government.⁶

These heavier prescriptions are in line with the heavier type of inter-municipal cooperation both forms allow. A ‘dienstverlenende vereniging’ is intended to deliver a well delineated service to the parties involved that concerns one or more policy areas. This form has ‘rechtspersoonlijkheid’ but is no managerial control delegated by the municipalities. Delegation of this control only applies in case of a ‘opdrachthoudende vereniging’. The parties involved trust this form with the implementation of one or

⁶ Art. 25, 16, 18, 29 and 30 of the decree of 06-07-2001.

more clearly specified competences in one or more functionally coherent policy fields. By doing this, they renounce their own right to perform either autonomously or with others the task(-s) assigned to the ‘opdrachthoudende vereniging’.⁷

Both heavy forms are the ones to which the existing ‘intercommunales’ had to switch over. For this transition, they had time until November the 10th 2003 i.e. two years after the decree came into force.⁸ But in spite of this, there are no data that split the existing heavy forms of inter-municipal cooperation into the two variants provided by the decree. The only data available just split these forms according to sector of activity. These data are presented in table 2. They make clear that there are currently 90 forms of heavy inter-municipal cooperation active throughout Flanders. This is only five more than two decades ago. (Administratie Binnenlandse Aangelegenheden, 2005, p. 11). As such, the 2001 decree certainly did not increase heavy inter-municipal cooperation. Today, this cooperation primarily prevails in the sector of waste disposal.

Table 2: Intercommunales according to sector of activity

Sector⁹	Intercommunales
Energy	15
TV-distribution	7
Water distribution	7
Regional development	14
Waste disposal	22
Medical-social sector	4
Sports and recreation	5
Finance	7
Other	9
Total	90

(Source: Administratie Binnenlandse Aangelegenheden, 2005: 11)¹⁰.

b. Democratic supervision over inter-municipal cooperation

⁷ Art. 12 of the decree of 06-07-2001.

⁸ Art. 79 of the decree of 06-07-2001.

⁹ Concerning the grouping of intercommunales according to sector of activity, it has to be taken into account that:

- ‘energy’ is equal to electricity and/or gas and/or TV-distribution
- ‘TV-distribution’ concerns this activity only
- ‘regional development’ sometimes is joined with waste disposal
- ‘waste disposal’ concerns this activity only
- ‘finance’ concerns several activities to increase the capital participation of municipalities which are member of a mixed intercommunale (infra) for the distribution of electricity and gas (Administratie Binnenlandse Aangelegenheden, 2005: 11 and 84).

¹⁰ The figures for 2005 go back to a listing of Flemish intercommunales which dates from January 1, 2003. This list has been updated in June 2005. Therefore it is possible that more heavy forms of inter-municipal cooperation currently exist in Flanders which are not yet listed. In this perspective, the figures for 2005 must be interpreted as minimum figures.

The second principle underlying the 2001 decree is the principle of democratic supervision on inter-municipal cooperation. The decree strengthened this control to meet the frequent criticism on the classic ‘intercommunales’. According to this critique there was insufficient feedback on the decisions of these organizations to the councils of the participating municipalities. As a consequence, ‘intercommunales’ had their own life detached from the political discretionary power of the municipalities (Ory, 2003: 52). In the light of enhancing democratic control on inter-municipal cooperation, eight innovations of the 2001 decree are of importance (Vlaams Parlement, 2001: 107). These innovations concern the ‘dienstverlenende en de opdrachthoudende verenigingen’ as the two forms to which classic ‘intercommunales’ had to convert. When discussing these innovations we will also refer to the provisions of the decree concerning the ‘interlokale en de projectvereniging’. This will also demonstrate how the latter forms of inter-municipal cooperation are lighter compared to the former.

A first reform concerns the *duration* of the inter-municipal cooperation. The decree reduced the maximum duration in case of ‘heavy’ cooperation from 30 to 18 years.¹¹ This reduction implies that municipal councils have to reflect earlier on the continuation of their participation in a heavy form of cooperation and also restrains the life of the cooperation form itself.

The duration is different for the light forms of inter-municipal cooperation: a ‘projectvereniging’ can exist for 6 years at most while no maximum duration is determined for a ‘interlokale vereniging’.¹²

A second reform regards the *objectives* of inter-municipal cooperation. The classic intercommunale could aspire multiple objectives. According to the old legislation, it was an association ‘with certain objectives of municipal importance’ which had to state ‘its objective(s) in its statutes’.¹³ In comparison, the decree of 2001 increased the constraints on the pursuit of multiple objectives in case of both the ‘dienstverlenende en de opdrachthoudende vereniging’. The decree requires clarity in this matter with regard to both types of association. As stated above, the ‘dienstverlenende vereniging’ is intended to deliver a well determined service whilst the ‘opdrachthoudende vereniging’ is intended to perform one or more clearly stated tasks in one or more functionally related policy areas.¹⁴ For both forms, the precise objective has to be stated in the statutes. Indeed, the decree prescribes that the articles have to determine the societal objectives of the association “in a clear and restrictive way”.¹⁵ When the association involved wants to pursue an additional objective, its statutes have to be amended. The decree also prescribes that such modification has to be judged by the respective municipal councils.¹⁶

¹¹ Art. 7 of the act of 22-12-1986. Art. 34 of the decree of 06-07-2001.

¹² Art. 13 of the decree of 06-07-2001.

¹³ Art. 1 and 4 of the act of 22-12-1986.

¹⁴ Art. 11 of the decree of 06-07-2001.

¹⁵ Art. 38 of the decree of 06-07-2001.

¹⁶ Art. 39 of the decree of 06-07-2001.

In comparison, the objectives of a ‘interlokale vereniging’ and a ‘projectvereniging’ are limited. Both forms have been created to manage a project of limited scope.¹⁷

According to the 2001 decree, objectives-related modifications and all other modifications of the statutes of a ‘dienstverlenende’ and a ‘opdrachthoudende vereniging’ have to be approved of by the councils of *the municipalities* involved.¹⁸ This is a third reform by the decree to enhance democratic control on inter-municipal cooperation. Previously, only amendments entailing additional obligations or fewer rights for the municipalities involved had to be approved of by their councils.¹⁹

The decree also prescribes municipal approval of any changes to the statutes of a ‘projectvereniging’ but does not specify anything with regard to modifications of the contract on the basis of which a ‘interlokale vereniging’ is founded.²⁰

At least twice a year, the council of each municipality involved in a ‘dienstverlenende’ and ‘opdrachthoudende vereniging’ receives a *report* on the inter-municipal cooperation.²¹ This report is drawn up by the board responsible for the daily management of the inter-municipal form.²² In particular the board members have to report on the exercise of their mandate and clarify the form’s general policy. This report constitutes the fourth reform introduced by the 2001 decree since the former legislation contained no provisions in this regard.

The board of a ‘projectvereniging’ also has to report about the form’s activities to the parties involved. In case of an ‘interlokale vereniging’ the decree does not stipulate such reporting.²³

The board of directors is just one of the two management bodies which the decree prescribes for in case of a ‘dienstverlenende’ and an ‘opdrachthoudende vereniging’.²⁴ The other one is the general assembly which is competent – among other things – for the appointment of the members of the board, the approval of the form’s accounts and for decisions with regard to participations in other legal entities.²⁵ The 2001 decree introduced three reforms with regard to the *general assembly* which should increase democratic control on the inter-municipal cooperation. Firstly, the decree contains the

¹⁷ The articles of an inter-local association are stipulated in the agreement between the parties involved on which the association is established. Art. 7 of the decree of 06-07-2001.

¹⁸ Art. 39 of the decree of 06-07-2001.

¹⁹ Art. 9 of the act of 22-12-1986.

²⁰ Art. 15 and 7 of the decree of 06-07-2001.

²¹ Art. 53 of the decree of 06-07-2001.

²² Both in case of a service association and of a commissioned association, this responsibility can be delegated to a managerial committee. Art. 54 of the decree of 06-07-2001.

²³ Art. 16 of the decree of 06-07-2001.

²⁴ Art. 43 of the decree of 06-07-2001. As stated before, also a managerial committee can be established emanating from the board of directors. Besides that, under certain conditions, also advisory committees can be established and support of experts is possible. Art. 54 and 55 of the decree of 06-07-2001. In the case of a service and of a commissioned association, financial control is in the hands of one or more commissioners-revisers which are appointed by the general assembly. Art. 61 of the decree of 06-07-2001.

²⁵ Art. 46-60 of the decree of 06-07-2001.

obligation to organise at least two *meetings* each year in which representatives of all parties involved - the municipalities included - take part.²⁶ The former legislation contained no provisions on the frequency of meetings. A second reform is that the representatives only receive a *mandate for one meeting* of the general assembly.²⁷ Thirdly, the *municipal representatives are delegated by the council* and no longer by the municipality's executive college of the mayor and the aldermen.²⁸

The 'projectvereniging' only operates with a board. Board members are directly appointed by the participating parties. Participating municipalities can delegate councillors, the mayor as well as aldermen. In any case a municipal representative has to take up the chairmanship of the board which is only competent for explicitly delegated decisions.²⁹ The 'interlokale vereniging' has the most simple structure. It only has a managerial committee composed out of delegates of each party involved. Participating municipalities can delegate councillors, the mayor as well as aldermen to this body which – among other things - has to take decisions on the implementation of the inter-local agreement.³⁰

The final reform out of the 2001 decree to strengthen democratic supervision over inter-municipal cooperation concerns the *opposition parties* that are present within the municipal councils. They have to be *represented with advisory vote* in the board of the 'projectvereniging', the 'dienstverlenende vereniging' and the 'opdrachthoudende vereniging'.³¹ Such representation was not legally prescribed in case of the 'intercommunales'.

As pointed out before, the 'intercommunales' got time until the end of November 2003 to switch over to either a 'dienstverlenende' or an 'opdrachthoudende vereniging' and to adapt their statutes accordingly. The state of affairs in this matter is not yet documented. Hence, there is nothing known for the moment about the impact the 2001 decree has had on the democratic supervision over inter-municipal activities throughout Flanders.

c. Pure inter-municipal cooperation

Nor are there data available on the effect of the two reforms out of the 2001 decree that sprang from the principle of 'pure' inter-municipal cooperation. But this is hardly surprising since the time period has not yet passed during which these reforms have to be implemented. The reason behind this is that both reforms will intensely changeover Flanders' longstanding inter-municipal practice.

²⁶ Art. 44 of the decree of 06-07-2001.

²⁷ Art. 44 of the decree of 06-07-2001.

²⁸ Art. 44 of the decree of 06-07-2001. Art. 12 of the act of 22-12-1986.

²⁹ Art. 16 of the decree of 06-07-2001.

³⁰ Art. 9 of the decree of 06-07-2001.

³¹ Art. 16 and 52 of the decree of 06-07-2001.

The first one boils down to the abolition of the so-called ‘mixed’ intercommunales. These are forms of inter-municipal cooperation founded under the former legislation in which private companies participate. Such ‘intercommunales’ are quite prevalent throughout Flanders as table 3 shows. This table divides the total amount of ‘intercommunales’ according to their pure or mixed character for a selected number of policy sectors.

The municipalities themselves have never pleaded for the abolishment of mixed ‘intercommunales’ as the private partners involved usually provided a considerable financial input for their inter-municipal cooperation. Nevertheless, the Flemish Government did decide to abolish these ‘intercommunales’ by arguing that any form of inter-municipal cooperation should be regarded as an extension of the municipalities involved. Hence participation of private companies in forms to which municipalities have delegated managerial control might lead to blurred municipal responsibilities and conflict of interests. And in order to avoid all this, the mixed ‘intercommunales’ should be abolished.³² (Vlaams Parlement, 2001: 107-108). In total, the Flemish municipalities have got 18 years – so until January the 1st 2019 – to purify their inter-municipal cooperation by buying out their private partners.³³ According to the Flemish Association of Cities and Municipalities (VVSG) this is a complete ‘mission impossible’ from a financial point of view. (VVSG, 2004: 1)

Table 3: Intercommunales according to their ‘pure’ or ‘mixed’ character in a number of policy sectors

Sector	Pure intercommunales	Mixed intercommunales
Energy	7	8
TV-distribution	2	5
Water distribution	5	2
Waste disposal	17	5
Total	31	20

(Source: Administratie Binnenlandse Aangelegenheden, 2005: 11)

Apart from abolishing the mixed ‘intercommunales’, the 2001 decree has introduced another reform based on the principle of pure inter-municipal cooperation. This reform concerns the involvement of provinces – as the other type of local government next to municipalities – in forms of inter-municipal cooperation. When preparing the 2001 decree, the then Minister of Internal Affairs intended to completely prohibit any provincial involvement. But his intent was mitigated by the members of the Flemish Parliament voting the 2001 decree. As a result, the decree does allow provincial

³² As said, municipalities only delegate managerial control in case they opt for an ‘opdrachthoudende vereniging’ as one of the two ‘heavy’ forms of inter-municipal cooperation to which ‘intercommunales’ have to switch. The other form is the ‘dienstverlenende vereniging’, be it that the 2001 decree has excluded private actors to participate in this form as well. Consequently, ‘heavy’ inter-municipal cooperation is only possible in a pure form under the 2001 decree. As far as the decree’s two light forms are concerned, participation of private actors is only possible in case of the ‘interlokale vereniging’ as the lightest form out of the decree. For the sake of completeness, it has to be emphasized that the 2001 decree only regulates inter-municipal cooperation. Cooperation between a single municipality and one or more private actors is legally anchored in a Flemish decree of July the 18th on public-private cooperation.

³³ Art. 80 of the decree of 06-07-2001.

involvement in inter-municipal cooperation but only to a limited extent. In particular, provinces may not contribute more than 20 % to the capital of a ‘projectvereniging’, a ‘dienstverlenende vereniging’ and a ‘opdrachthoudende vereniging’ as the three forms of inter-municipal cooperation in which they are allowed to participate.³⁴ This does reduce the provincial involvement in inter-municipal cooperation significantly as the provinces’ contribution could exceed to 50 % of an intercommunale’s capital under the former legislation.³⁵ This reduction has to be realized by the 1st of January 2007. However, if the Flemish Government agrees this deadline can be shifted until January the 1st 2013.³⁶

In sum, the 2001 decree aimed to drastically renew Flemish inter-municipal cooperation by introducing a whole series of reforms.³⁷ So far, its impact has not been systematically evaluated. How far has the decree actually reformed inter-municipal practice? And, more importantly, how much are its reforms appraised on the local level? In the remainder of this chapter, we will answer these questions for the Westhoek. Our findings are based on document analysis and interviews with municipal and provincial representatives involved in inter-municipal cooperation in the area.

4. Inter-municipal cooperation in the Westhoek

The Westhoek encloses 118.000 hectare in the western part of Flanders. 18 municipalities are located in the area. The number of their inhabitants varies from 971 in Mesen to 35.089 in Ieper. These figures – presented in table 4 – make clear that the majority of the Westhoek municipalities belong to Flanders’ smallest municipalities. After all, a Flemish municipality counts on average around 20 000 inhabitants. As expressed by one of our interviewees, the small size of the Westhoek municipalities urges that “something is done in the area in order to guarantee our citizens a sufficient level of service-delivery.” Whether that ‘something’ is inter-municipal cooperation will be addressed in the first paragraph. In particular, we will focus upon the forms of inter-municipal cooperation in use and their appraisal by local policy-makers. Subsequently, we will turn to the issue of democratic supervision over inter-municipal cooperation as the Westhoek respondents have a straightforward opinion on the matter. The last paragraph is devoted to the role that the province of West-Flanders plays in the cooperation among the Westhoek municipalities. After all, this role is threatened by the change proposed by the 2001 decree.

³⁴ Art. 22 and 63 of the decree of 06-07-2001.

³⁵ Art. 19 of the act of 22-12-1986.

³⁶ Art. 80 of the decree of 06-07-2001.

³⁷ In the preceding part, we have limited ourselves to summing up the most important reforms of the 2001 decree based upon its three underlying principles.

Table 4: The 18 Westhoek municipalities ordered by increasing number of inhabitants

Municipality	Number of inhabitants	Municipality	Number of inhabitants
Mesen	971	Nieuwpoort	10.595
Lo-Reninge	3.288	Zonnebeke	11.570
Vleteren	3.588	Veurne	11.859
Alveringem	4.881	Kortemark	12.079
Langemark-Poelkapelle	7.669	Diksmuide	15.494
Koekelare	8.219	Wervik	17.526
Heuvelland	8.322	Poperinge	19.433
Houthulst	8.957	Koksijde	20.498
De Panne	9.852	Ieper	35.089

a. Varying forms of inter-municipal cooperation: a local need finally fulfilled?

All four forms of inter-municipal cooperation out of the 2001 decree are currently in use in the Westhoek. As far as the two light forms are concerned, the ‘interlokale vereniging’ prevails the most. Seven of these ‘verenigingen’ currently exist whilst there is just one ‘projectvereniging’ in use. Table 5 lists these forms of cooperation according to their sector of activity. The Westhoek area is in this regard representative for the rest of Flanders. After all, the sports and cultural sector are also the ones in which respectively the ‘interlokale vereniging’ and the ‘projectvereniging’ prevail the most throughout Flanders. (see table 1)

Table 6: ‘Interlokale’ and ‘projectverenigingen’ in the Westhoek according to sector of activity

Sector	‘Interlokale verenigingen’	‘Projectverenigingen’
Sports	3	0
Education	1	0
Culture	0	1
Library	0	0
Finance	1	0
Archaeology	0	0
Youth policy	1	0
Drug prevention	0	0
Soil management	0	0
Tourism	0	0
Other	1	0
Total	7	1

(Source: Administratie Binnenlandse Aangelegenheden, 2005).

Next to these 8 light forms of inter-municipal cooperation, the Westhoek also counts 11 heavy forms. Table 6 lists these forms according to their sector of activity. Again, the Westhoek does not deviate from the overall picture that was drawn for Flanders (see table 2). In both areas, waste disposal is the activity around which the highest number of ‘intercommunales’ operate.

Table 7: Intercommunales in the Westhoek according to sector of activity

Sector of activity ³⁸	'Intercommunales'
Energy	2
TV-distribution	0
Water distribution	1
Regional development	1
Waste disposal	3
Medical-social sector	0
Sports and recreation	0
Finance	1
Other	3
Total	11

(Source: Administratie Binnenlandse Aangelegenheden, 2005)

In sum, the Westhoek municipalities make use of all four forms out of the 2001 decree to give shape to their mutual cooperation. The question is, however, whether the decree thus fulfils the municipalities' need for a variety of inter-municipal forms. This question has been answered both negatively and positively by our local respondents.

Their negative response is based on the fact that the Westhoek municipalities have not waited until the 2001 decree to cooperate among themselves. As explained before, the decree is primarily renewing in this regard by introducing two light forms of inter-municipal cooperation. Such forms were not foreseen in the previous (primarily federal) legislation on this matter. However, this did not stop the Westhoek municipalities from cooperating and using provisions in other legislation to legally shape their cooperation. As one of the respondents observed: "Sports is for example an activity around which we cooperate among each other in the Westhoek for more than 20 years now. And in order to do so, we used the formula of a non-profit-organisation or we enclosed agreements with each other." Once the 2001 decree was in force, the municipalities opted for either an 'interlokale vereniging' or a 'projectvereniging' to legally shape their cooperation. But in some cases, this turned out to be impossible. The most frequently cited and striking example in this regard evolves around Westhoekoverleg. This is the label for an actual cooperation among the 18 Westhoek municipalities that exists since 1994 and has organically grown out of the contacts among their mayors. In fact, this cooperation could be framed in a 'projectvereniging' but in the words of another respondent: "Such a 'vereniging' is ideal when municipalities cooperate around a specific project. But in case of Westhoekoverleg, the inter-municipal cooperation evolves all kinds of matters and projects. And this sort of cooperation can not take place in a 'projectvereniging' according to the [2001] decree." As a result, Westhoekoverleg currently "does not exist from a Flemish point of view whilst it signifies so much for us here in the Westhoek." Another respondent clarified this signification by referring to the

³⁸ Concerning the typology of intercommunales according to sector of activity, it must be taken into account that:

- 'energy' is equal to electricity and/or gas and/or TV-distribution
- 'TV-distribution' concerns this activity only

‘interlokale vereniging’ of Westhoekpersoneel. This is a cooperation of the Westhoek municipalities that jointly employ personnel such as around cultural, spatial planning and environmental issues. According to this respondent, its managerial committee is “a paper construction in the sense that all decisions are actually taken within the Westhoekoverleg.” In other words, the Westhoekoverleg that actually signifies so much for the Westhoek municipalities can not be put into one of the forms out of the 2001 decree without drastically altering its way of working. And this example illustrates why the decree with its variety of inter-municipal forms does not fulfil the Westhoek municipalities’ need for such forms. As expressed by one local respondent: “the decree actually forces us from the start of any cooperation to pin ourselves down to one specific form with all its rules and regulations whereas we should be given the space to grow in our mutual cooperation – such as in the case of Westhoekoverleg – without having to follow all kinds of rules and regulations. After all, what finally matters? The fact that something is inter-municipally taken care of. And the legal form for this cooperation? Well, this form should then just be tailored to the actual cooperation.”

Despite of this critique, the 2001 decree is in the Westhoek also positively regarded as far as the fulfilment of the local need for a variety of inter-municipal forms is concerned. Two different arguments underpin this positive response. Firstly, several of our respondents pointed to the fact that the decree has finally provided a legal anchoring for light forms of inter-municipal cooperation. The provision of the ‘projectvereniging’ has in particular been welcomed in this regard. In the words of one of these respondents: “this form really meets a need among municipalities to be able to set up a partnership among themselves for the realisation of a specific project that does not exceed the local term.” At first sight, this seems rather surprising as we have observed that there is currently one ‘projectvereniging’ active in the Westhoek whilst there are 7 ‘interlokale verenigingen’. However, the latter all tend to concern longstanding inter-municipal cooperation contrary to Overleg Cultuur Zuid-West-Vlaanderen as the label of the sole ‘projectvereniging’ in use. This ‘vereniging’ has only recently been founded under impulse of the Flemish Government’s decree on local culture policy that – as expressed by another respondent – “prescribes the use of one of the forms out of the 2001 decree in case of inter-municipal cooperation. And the ‘projectvereniging’ turned out to be ideal for the cooperation we wanted to set up in the field of culture policy.”³⁹ This immediately brings us to the second argument underpinning the positive response on the 2001 decree in the Westhoek. After all, this decree on local culture policy is illustrative for what several respondents described as “another positive development on the part of the Flemish Government” apart from voting the 2001 decree with its variety of inter-municipal forms. This development implies that the Flemish Government “does not come up anymore with strongly regulated variants on the forms that are anchored in the legislation on inter-municipal cooperation in every domain-specific decree it votes.” Put differently, the Flemish Government has started to treat the 2001 decree as a genuine framework decree that applies whenever inter-municipal cooperation is at stake. Up until today however, there are still domains in which the Flemish Government was said to “refuse to live

³⁹ The decree referred to is the decree of July the 13th 2001 on the promotion of an integrated and high-quality culture policy on the local level.

according to its own rules and this complicates our life on the municipal level.” Not surprisingly then that this development was repeatedly applauded by Westhoek respondents.

b. Democratic control over inter-municipal cooperation: a longstanding deficit finally tackled?

As pointed out, the 2001 decree contains a number of reforms with the view on safeguarding sufficient democratic control over activities that are inter-municipally taken care of. The Westhoek respondents recognized the problem that the decree thus seeks to tackle. In the words of one of them: “one often encounters the situation in which some sort of inter-municipal cooperation is set up and after a while nobody bothers to ask: must this cooperation continue? Is it working properly? Should it not be aligned with another form of cooperation? And so, the cooperation starts leading a life of its own. Now, with the [2001] decree, the council [of the municipalities involved] has the task to periodically reflect on these questions. That is a good thing. Of course, there is a difference in this regard between, on the one hand, the ‘interlokale vereniging’ and the ‘projectvereniging’ and, on the other hand, the ‘dienstverlenende vereniging’ and ‘the opdrachthoudende vereniging’.” The interviewee thus pointed to a distinction between the two forms for ‘light’ and those for ‘heavy’ inter-municipal cooperation. In his view, they do not only differ as far as their legal anchoring is concerned but also with regard to the treatment they get whenever they pop up on the agenda of a municipality’s council. After all, “issues concerning the ‘interlokale vereniging’ and the ‘projectvereniging’ are usually well-debated and questioned. But the same can not be said in case of the two other forms [of heavy inter-municipal cooperation]. The councillors who represent municipalities in these forms’ organs usually provide short but well-grounded information whenever an issue about the cooperation is at stake in the council of their municipality. But more often than not, the other councillors then present just take notes. And then there is a vote and they all move to another agenda point. So, in general, there is little debate in municipalities about the activities of the ‘dienstverlenende’ and ‘opdrachthoudende verenigingen’ in which they are involved.” The other respondents confirmed this practice which thus points to a larger democratic deficit in case of these two forms in comparison with both the ‘interlokale’ and the ‘projectvereniging’.

Apart from all recognizing this difference, the Westhoek respondents were also unanimous in their explanation for it. This explanation evolves around the issue of the municipal ‘core tasks’. According to our interviewees, the tasks that are inter-municipally handled in the Westhoek via a light form are seen as municipal core tasks by the councillors of the municipalities involved. As indicated, these tasks primarily concern sports and cultural activities. And in the words of one respondent “such tasks are typically municipal. After all, every municipality – even the smallest one – needs to organise sports activities for its inhabitants such as a good cycling or hiking tour. And it needs to have a culture policy involving the local brass band or the theatre. And even when such activities are inter-municipally organised, the councillors keep their eyes on them. Because these sorts of activities are specifically made for and/or with the citizens of their municipality.” The same was not said on behalf of the tasks

of the ‘dienstverlenende’ and the ‘opdrachthoudende verenigingen’ in which Westhoek municipalities currently participate. As observed by another respondent with regard to the distribution of electricity, a task that is handled by several intercommunales in the area: “this task is not our core business as municipalities. It has nothing to do with municipal democracy and autonomy. The only thing citizens want is that their electricity is distributed as cheaply as possible. Electricity distribution is not a task that needs to be implemented via measures that are made to the size of the citizens of a specific area. The same goes for other tasks such as water supply and waste disposal. They are not our core business.” And this was put forward as explaining why municipal councillors do not tend to ‘keep their eyes’ so much on these tasks whenever they are at stake in a council meeting.

Given this diagnosis to the problem of the democratic deficit in case of inter-municipal cooperation, the remedy was quite straightforward in the respondents’ view. It does not lie in launching a decree that prescribes all kinds of measures to safeguard a municipal council’s control over tasks that are inter-municipally handled such as the 2001 decree. They agreed that the remedy lies elsewhere i.e. in reopening the so-called core task debate among Flanders’ governmental layers. Such a debate has already been held in the period 2001-2003. It was closed off with a political agreement between the (then) Flemish Government and the representative association of both the provinces and the municipalities. But none of our local interviewees were impressed by it because as one of them observed: “if this debate had been properly held and implemented, the problem of the democratic deficit in case of inter-municipal cooperation would already have been solved a long time ago because the tasks that are suffering from the largest deficit would already have been taken away from the municipalities.”

c. Pure inter-municipal cooperation: and what about longstanding intergovernmental cooperation?

The two reforms out of the 2001 decree that aim to purify the inter-municipal cooperation were granted a longer time span to be implemented than all the other ones mentioned. Hence, the difficulty to evaluate their impact. As far as the Westhoek is concerned, one thing is beyond questioning: the respondents did not applaud the decree’s intent to completely abolish private involvement and to drastically downsize provincial involvement in case of ‘heavy’ inter-municipal cooperation. A clear indication lies in the progress that the Westhoek municipalities have already made with preparing themselves for these reforms. Or better in the lack of this progress as few preparatory measures have been taken to buy out private companies as well as the Province of West-Flanders as far as its involvement is concerned in WVI. This is the abbreviation of ‘West-Vlaamse Intercommunale’, the only ‘dienstverlenende vereniging’ in which all 18 Westhoek municipalities are involved. This seems particularly striking because the provinces were legally prescribed to be bought out by the 1st of January 2007 whereas the time span regarding private companies only ends 11 years later. However, the Westhoek municipalities do not risk to be sanctioned in 2007 as they have managed to make use of the decree’s provision to extend their deadline of buying out the Province of West-Flanders with 6 years.

In order to do so, the Province had to agree but in the words of one provincial respondent “this was no problem at all because WVI is ‘a provincial child’. We have founded this ‘vereniging’ together with the municipalities and we want to continue our involvement in it.’ More so, if ever the Province would be bought out, it was believed to still devote “all available money on cooperation with municipalities because here in the Westhoek, we have a very strong tradition of working together, be it that we are threatened by the Flemish Government in this regard.” Other provincial and municipal respondents recognised this threat, be it not only as a result of the 2001 decree on inter-municipal cooperation. Other decrees of a more domain-specific nature were pointed out as well such as the decree of October the 21st 1997 on nature conservation and the one of May the 7th 2004 on socio-economic policy. These kinds of decrees make provisions for cooperation between one or more provinces and one or more municipalities. But they all tend to do this in not only a domain-specific but also in a very detailed way so that one respondent observed on behalf of both the Province of West-Flanders and the Westhoek municipalities that “we all have to spend a lot of time and energy to figure out and apply the specific rules that count in each domain. And this is extremely pernicious for the debate that we are eventually supposed to have among each other about the objectives of our cooperation.”

In our respondents’ view, a possible way out of today’s threatening situation for the future cooperation between the Province of West-Flanders and the Westhoek municipalities lies in the voting of a Flemish framework decree on intergovernmental cooperation. Such a decree currently does not exist nor any other document with even mere advisory or guiding character on the matter. But if the Flemish Government would follow this suggestion, it should also take the respondents’ request into account not to repeat the mistakes made in case of the 2001 decree on inter-municipal cooperation. As expressed by one of them “it then should not be another decree made with little cooperation with the local level but resulting in too much regulation of that level.”

5. Conclusion

In this chapter, we focussed upon the Flemish framework decree of July the 6th 2001 on inter-municipal cooperation. Our aim was to evaluate the decree’s impact in the Westhoek area as it has introduced numerous reforms. A first reform was based upon the principle of varying the legal forms for inter-municipal cooperation. Therefore, the decree provides four of these forms whilst there used to be only one. But as far as the Westhoek municipalities are concerned, their need to shape their cooperation in varying ways is thus not yet fulfilled. After all, Westhoekoverleg – which embodies the currently most important cooperation among the municipalities – could not be framed in any form out of the 2001 decree. Furthermore, this decree introduced a whole series of reforms on the basis of the principle of democratic control over inter-municipal cooperation. In other words, whenever tasks are inter-municipally handled, they should be sufficiently supervised from the council of the municipalities involved. In the Westhoek, however, there still is a democratic deficit particularly with regard to tasks that are subject to ‘heavy’ inter-municipal cooperation. Finally, the 2001 decree

also aimed to reform inter-municipal practice from the principle of pure cooperation. After all, the decree seeks to abolish the involvement of private companies and to downsize the involvement of provinces in case of ‘heavy’ cooperation. The time span to implement both reforms has not yet passed. But even so, little preparation has been undertaken in the Westhoek as the municipalities are not very keen on both reforms. Especially the last one – downsizing the provincial involvement – is currently fired at because it threatens the longstanding and mutually appreciated working relationship between the Province of West-Flanders and the Westhoek municipalities.

This covers the most important findings of our evaluation of the 2001 decree in the Westhoek. As said, 18 municipalities are located in this area. They are all rather small municipalities for whom cooperation is not always the only but often at least one of the most important ways towards delivering services of a high quality to their citizens. Next to these 18, there are still another 290 municipalities in Flanders. Some of them larger than those out of the Westhoek, others not. But all them deserve to be heard by the Flemish Government before she proceeds in drastically altering its framework decree on inter-municipal cooperation.

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