

PROJECT MD/16 (MD/15/33 ET MD/03/34)**Legal remedies to foster sustainable mobility in urban areas : the case of Brussels****Partners**

- Centre d'étude du droit de l'environnement (CEDRE), Facultés universitaires Saint-Louis ;
- Centrum interactie recht en technologie (CIRT), Vrij universiteit Brussel.

Aims of the project

Stake : sustainable mobility

Prospective study of legal remedies that might be considered to solve the major problems of sustainable mobility encountered currently by people wishing to move about in and around Brussels.

Aim : tool for the decision makers

The research helps setting up a legal base that can be drawn upon in taking policy decisions to expand sustainable mobility.

Its aim is to translate in practical terms the abstract concept of sustainable development for use by political decision-makers and thereby contribute to the development of the scientific support plan and a sustainable development policy.

Research objectives : Analyse key legal mechanisms

This project is before all a legal study.

Its aim is to develop a panoply of legal mechanisms that, when implemented by the various public authorities, will help institute, even be decisive in instituting, what could be qualified as 'sustainable' mobility in and around Brussels.

The remedies revolve around three main instruments, namely,

- tax policies;
- public transport policies; and
- land planning.

It also includes a special case-study on parking policies in Brussels.

The whole subject is quite complex, given the institutional givens governing the territory covered by this study. Indeed, getting a grip on the possible legal influences of all of the public authorities concerned by Brussels-area mobility means allowing for the powers of the following authorities: the Federal Government, Brussels-Capital Region, Flemish Region, Walloon Region, provinces, and communes.

Methodology

For each of the research fields (tax policies, public transport policies, land planning), the methodology was as follows:

- inventory and study of the relevant regulations in the various research fields;
- study of the competences and fields of action of each relevant authority;
- drafting of proposals about measures that should be adopted by each of the relevant authorities to promote sustainable mobility;
- study of the legal mechanisms available to coordinate the relevant authorities' actions;

Results

Tax policies

Taxes do play a decisive role in people's choices as to how to get about. Since the adoption by the EU of a tax on CO₂ emissions has been suspended, the Member States must find their own ways to reduce the negative impacts of certain means of transport and meet their international obligations.

One of the aims of the study is to check if federal and regional tax policies in Belgium are or are not aimed at promoting sustainable mobility.

Its examines how federal, regional, and local tax policies could be used to reduce the transport problems encountered by people in Brussels and its outlying areas.

Public transport

Public transport policy in Belgium is split up amongst various authorities. The special law of institutional reforms of 8 August 1980 stipulates that urban and by-road public transport come under the Regions' jurisdiction whereas the railway traffic managed by the Belgian National Railways (SNCB) is under federal jurisdiction. Consequently, four authorities are empowered to regulate public transport in and around Brussels.

Of course, the special law of institutional reforms of 8 August 1980 tries to avoid situations in which this separation of powers could lead to contradictory decisions. So, Article 6, §3bis, 3° of the special law provides for organized consultation between the regional and federal governments about cooperation between the railways on the one hand and urban and rural transport companies, on the other hand, in order to coordinate and promote public transport. In line with this provision, the three Regions signed on 18 June 1991 a cooperation agreement concerning regular transport to and from the Brussels-Capital Region.

Nevertheless, Brussels and its environs are not served satisfactorily by federal and regional public transport. Improvements in this service will depend on the cooperation of the various parties concerned and stepping up this cooperation. A more developed institutional framework might help the State and Regions to adopt more sustainable solutions. The analyse of the key elements of that framework was one of the purposes of this project.

Land planning

In the area of land use and planning each Region has adopted its own dynamic development plans (plan régional de développement (PRD) or Regional Development Plan (RDP) and plans communaux de développement (PCD) or Local Development Plans (LDPs) in Brussels-Capital Region; schéma de structure (structural plan) and schéma de développement de l'espace rural (SDER) in the Walloon Region; ruimtelijke structuur plannen (space structure plans) in the Flemish Region) and normative land-use plans (sector plans in the Flemish and Walloon Regions; regional land-use plan in the Brussels-Capital Region).

However, most of these plans are devised locally or regionally without giving enough thought to allowing for the reciprocal influences of the plans adopted by the other localities.

Now, both dynamic and normative planning influence greatly the modes of transport that are preferred in the various land-development sectors.

Thus, with regard to normative land use, the main roads and transport lines must obligatorily be registered in the sector plans of the Regions to be authorised. Consequently, the development of new transport lines between Brussels and its outskirts (for example, the high-speed train line) calls for alteration of the sector plans.

The new development plans have considerable influence over the way people move about. In the Flemish Region, for example, the regional provincial and local structure plans must all include a description of the options in terms of mobility and their environmental impacts (Article 7, §3, 2° of the decree of 24 July 1996 concerning land-use planning). In Brussels-Capital Region both the RDP and LDPs must set 'the development aims and priorities' with regard to movement (Articles 17, 1° and 36, 1° of the ordinance of 29 August 1991). In the Walloon Region the SDER includes 'the options to take, notably with respect to mobility, civil engineering works and infrastructure of supraregional or regional interest'. So, there is an indispensable need to find legal mechanisms that will allow the needs of each Region to be taken into account when drawing up these various plans. The Regions have not yet signed a cooperation agreement in this area.

The aim of this part of the study was to identify the mechanisms that might be included in each of the three Regions to get them to compare and contrast each other's policy options with regard to physical mobility in their development and land-use plans.

For more details, please see the final report of the project, as sent to the SSTC on 29th February 2000, pp. 145-153 (conclusions)

Teams

Researchers

The study involved two part-time researchers, for 18 months only (from mid 1998 till end of 1999) :

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The Teams :

- The CEDRE

The Centre for the Study of Environmental Law (CEDRE) was created at *Facultés universitaires Saint-Louis* in 1989 for the critical and constructive study of environmental law with a commitment to promote sustainable development. It is run by François Ost (Director) and Nicolas de Sadeleer (Deputy Director).

Since its creation CEDRE has conducted a large amount of fundamental research into the substance and implementation of environmental law, especially its interactions with such areas as transport policy, tax policy, and land use and town planning. The overwhelming majority of these studies have culminated in publications.

Since 1992 CEDRE offers a special degree in environmental law at FUSL.

It also organizes colloquia, conferences and seminars dealing with environmental law, land use and sustainable development. It provides legal counseling and has a documentation centre open to all interested persons.

Besides its expertise in sustainable development issues, CEDRE has built up solid experience in multidisciplinary research.

CEDRE has ties with numerous specialists in environmental law at universities in London, Amsterdam, Limoges and Lyons. It has close relationships with other research centres, such as the Darmstadt-based Öko-Institut.

-The CIRT

The *Centrum Interactie Recht en Technologie* or Law and Technology Interactions Centre (formerly the *Centrum voor Internationaal Strafrecht* or Centre for International Criminal Law) is devoted to the multidisciplinary study of the legal problems caused by technological and scientific progress. It is run by Professors Bart De Schutter (Director) and Serge Gutwirth (Deputy Director) and is based at the Vrije Universiteit Brussel (V.U.B.).

Since the early '80s CIRT has conducted and carried through a number of research projects concerning data processing or computer law, often commissioned by government authorities (for example, the FAST-supported 'Computer and telematics fraud' project, SPPS, 1984-88, in which Gutwirth was engaged). All of these projects led to publications.

Since the early '90s, under the impetus of its deputy director, Serge Gutwirth, CIRT has turned to the fields of environmental law (see Gutwirth's publications below) and, more recently, land use and town planning.

- Connections

CEDRE and CIRT have been working for more than three years on various joint projects dealing with the legal aspects of sustainable development. For example, they organized an international colloquium on the future of environmental law ('*Quel avenir pour le droit de l'environnement?*') that was held on VUB and FUSL's premises in December 1995. This colloquium was followed by a publication put out jointly by VUBPress and Les Publications des Facultés Universitaires Saint-Louis. The two centres have also been working together on two important research projects, one on the roles of the 'polluter pays', prevention, and precautionary principles, the other on the orientations of land use planning in Brussels.

Evaluation

Although the study had to be completed on a very short (not to say too short...) span of time, it leads to interesting results and opens the way for the acquisition of a deeper knowledge in the legal science of sustainable mobility.

Interesting inputs to the research were given to the researchers at the occasion of the three meetings of the “ accompanying committee ” they organized in 1999.

Final results were distributed to various decision-makers (administrations, cabinets, etc...) and a colloquium was organized in Brussels by both CEDRE and CIRT in December 1999 in order to present, among other topics, the provisory results of the study.

The research paves the way for more intensive investigations in the field of sustainable mobility, for the two research centers, with a more acute focus on the legal remedies to atmospheric pollution for the CEDRE and a part-time job with the cabinet of the federal Minister of Mobility for the researcher of the CIRT, Mr Martens.

The results are of particular interest in a period where most decision-makers are confronted to the necessity to take steps forwards in favour of more sustainable mobility paths.

Published papers

Misonne, D., “ Le remboursement des frais de déplacement à Bruxelles : le point sur la situation juridique ”, Nomologue 63, été 2000, p.10 et sv. ;

Misonne, D., “ Remèdes juridiques pour une mobilité durable à Bruxelles : un état des lieux de la fiscalité des particuliers ”, Coll. Ecole Urbaine de l’ARAU, septembre 2000 ;

Misonne, D., “ La nouvelle ordonnance bruxelloise relative à la qualité de l’air : présentation et perspectives ”, Aménagement/ Environnement, 1999/4, p.266 et sv.

Misonne D. & de Sadeleer, N., “ Choisissons l’air pur et les transports plus propres ”, carte blanche, Le Soir du 8 septembre 2000.

Conferences

- 3 December 1999 : Colloquium on sustainable mobility policies, organized by the Belgian Association for Environmental Law, in Brussels (Royal Institute for Natural Sciences) :

Papers presented by the two researchers on :

- fiscal instruments (D. Misonne)
- land planning (M.Martens)
- parking policies (D.Misonne & M.Martens)

- 22 March 1999 : Conference made by D. Misonne & M. Martens on the conclusions of the project, Ecole urbaine de l’ARAU, Maison de la Francité, Brussels.

Appendices

- **See the final report of the project, sent on 25 th February 2000 to the SSTC (Administrator: Mme A. Grandjean) – 153 pages + annexes.**

