# Some Thoughts on Financial Worries in the Exercise of Municipal Tasks: the Brussels Inter-Municipal Water Company

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## 1. Introduction

The director general of an inter-municipal company, Vivaqua, which supplies Belgium's capital, Brussels, with water and manages its sewers, sounded the alarm earlier this year. The dept pit is astronomical, and due to the lack of budget, broken sewers, collapsed roads, and IT problems are daily occurrences in the Brussels Capital Region. In 2022, Vivaqua took out a number of loans with high interest rates, so the annual figures show that debts have since risen to 1.17 billion euros, which is an increase of nearly 20% on a 5-year term. The debt pit of more than 1 billion euros at Vivaqua proves that there seems to be something profoundly wrong with (at least some of) Belgian inter-municipal companies. It was only a matter of time before yet another Belgian inter-local company was compromised. They are in need of a fundamental reform.

## 2. Inter-municipal corporations to perform municipal tasks

With water supply, a crucial task lies on the inter-municipal corporation's plate. Since the early 2000s, Vivaqua has also been responsible for rehabilitating sewers, but it inherited outdated infrastructure. Due to high inflation, repair costs are rising. Due to the fight against floods, among other things, the range of tasks is expanding. Established by the European Union, the Blue Deal adds even more stringent requirements for water purity. This is a big responsibility for an inter-municipal corporation, because that's what Vivaqua is. As an inter-municipal corporation which was created by and for municipalities.

The governance technique of 'inter-municipal' or 'inter-local' cooperation, as an alternative service delivery method on the local government level, goes back a long time. Already in the Middle Ages, cities collaborated to obtain better market conditions and to protect their merchants from the dangers that trade routes could entail. The first legislation in Belgium allowing inter-municipal companies in the hospital, local railway, and water sectors dates back to the end of the 19$^{th}$ and the beginning of the 20$^{th}$ century. Nowadays, it is a global trend that local governments, e.g., cities and municipalities,

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strongly rely on mutual cooperation to perform public tasks such as waste collection, energy distribution, water purification – or even mosquito control.

Collaborating in this way can have may advantages, for example, making the local service delivery more efficient and creating economies of scale. Under ideal circumstances, cities and towns can collaborate and use inter-municipal entities to provide a quality service to citizens while breaking even or even adding a dividend to their municipal treasuries. The downside, next to the risk of a democratic deficit and a lack of accountability, is that such collaborative structures can also sometimes find themselves in difficult waters financially. Local governments have to tap their own (e.g., municipal) finances if their inter-municipal companies are in bad shape. In the Vivaqua story, the Brussels municipalities that created Vivaqua seem to bear the ultimate responsibility as shareholders.

### 3. 'Public entities' are excluded from bankruptcy

But what if the municipal treasury no longer allows them to step in, as is the case with Vivaqua? In Belgium, bankruptcy is not an option for legal persons governed by public law, and this is exactly how inter-municipal companies qualify. The Decree on Local Government (for the Flemish Region), the Democracy and Decentralization Code (for the Walloon Region) and the Ordinance of 5 July 2018 (for the Brussels Capital Region) explicitly qualify the inter-municipal corporation as a "*legal person governed by public law*". Furthermore, Article I.22, 8° of the Economic Law Code of 28 February 2013 defines a "debtor" eligible for bankruptcy as a corporation "*excluding any legal entity governed by public law*". This means that legal persons governed by public law, and thus inter-municipal corporations, cannot be declared bankrupt.

Consequently, the inter-municipal company will have to find other solutions. It can try to restructure its finances, make savings, ask for new cash injections from the participating municipalities, or seek external financing. That the municipalities would step in is not so obvious. After all, local authorities themselves are nowadays often looking for additional resources to meet their growing range of tasks. The subsidiarity principle (see, e.g., Art. 5 and 10(3) of the Treaty on the European Union) causes the local level to be given more and more responsibilities, but their limited administrative power and fiscal stress require that they (must) look for alternative ways to provide services – ironically also call for inter-municipal cooperation. We are spinning in circles.

This is problematic. In the case of Vivaqua, the Brussels-Capital Region will probably pay off (part of) its debts. Calling on regional resources, however, cannot be described as a sustainable long-term solution. For what if after the water sector, the energy sector, or waste sector, etc. also fall into a dept situation?

## 4. Just a Brussels disease?

In the other Belgian regions, including Flanders, sewerage is also in the hands of inter-municipal corporations. Their governance is supplemented by the Flemish regional company Aquafin, which manages the supra-municipal sewerage. In Flanders, the financial deficits do not yet seem as large as in Brussels. The Vlaamse Milieumaatschappij (Flemish Environmental Society) keeps a sharp eye on it from its monitoring role. Nevertheless, since 2005, debts have also been increasing among Flemish inter-municipal sewerage companies. Considering all Flemish inter-municipal corporations in all sectors combined, their debt grew to over 10 billion euros in 2018, an increase of more than 50% compared to ten years earlier. Their debts are higher than those of all Flemish cities and municipalities combined.

In theory, legal mechanisms exist to maintain financial control over inter-communal corporations. An auditor audits the annual accounts and the bank assesses financial health when granting loans. City council members must consider the financial statements of these inter-municipal companies in which they have a share, the board of directors' report, and the auditor's report. In practice, this is an arduous task. Because of the financial complexity and technicality of the subject matter, it is to be determined whether asking city council members to exercise that oversight is appropriate, which is an exercise that was initiated in the previous legislature. Indeed, the question arises as to what role inter-municipal corporations should (continue to) play in the performance of governance tasks.

## 5. What Next?

What can be done about (financial) problems like the one at Vivaqua? One option is to strengthen financial supervision on these inter-municipal corporations. Recently, the Flemish advisory board (Socioeconomic Council of Flanders) has proposed the creation of a Flemish regulator for all utility sectors together. By doing this, expertise could be grouped and comparisons could be made between sectors. However, the fact that the Brussels energy regulator (BRUGEL) has also been responsible for the water market since 2017 has, unfortunately, not prevented the problems with Vivaqua.

In addition, with the necessary support, city council members – who are local politicians – could better assume their responsibilities and powers of control. This can only succeed if accompanied by a strengthening of their status. This ‘strengthening exercise’ is already being made. The Flemish regulator is considering strengthening the position of local politicians, who often combine their mandate (and, in principle, their supervisory role in these corporations) with a full-time job. However, this is not an obvious exercise, and solutions are not easy to come by.

The malaise at Vivaqua is also prompting calls to transfer the sewerage task to the region. At some point, that seems insurmountable. Should such heavy service delivery tasks still be in the hands of local governments today? For more than a hundred years, cities and municipalities have worked together in inter-municipal companies. The first law allowing

inter-municipal cooperation in Belgium dates from 1897. Since their creation, the economic interventionism by the state has increased. Belgium has evolved from a unitary to a federal state, and we have experienced a process of Europeanization and the accompanying creation of a European free market, including liberalizations. Regulators and politicians urgently need to become aware of the changed context in which inter-municipal corporations operate. What used to seem desirable to do at the municipal level may be obsolete today, Vivaqua wryly illustrates. The delivery of some public services, such as water distribution, was unprofitable at the beginning of the 20th century as well and was then done primarily from a social point of view, but the debt pit that exists today exceeds all imagination.

To avoid headlong damage control, it is necessary to take structural and proactive action. It is not only their objectives, activities, and the sectors in which inter-municipal corporations operate that need to be overhauled. There is also legislative work that needs to be done. The legal form of inter-municipal companies is currently hybrid and leaves doubt about their nature and legal position. The legal framework for branching and subsidiarizing has little to no elaboration. The effect of European regulations, autonomous notions, and case law on these inter-municipal corporations needs to be clarified.

The message of this article is: it is about time to fundamentally rethink inter-municipal corporations and make their modernization a top priority.