



## "Belgian federalism and Europeanisation: how does European integration and federalism speak to each other?"

Randour, Francois

### ABSTRACT

This chapter aims at assessing the impact of the European integration on the political institutions of federal Belgium. Over the last 50 years, Belgian federal political institutions witnessed, in parallel, a pooling of their sovereignty to the EU level and a process of decentralization at the domestic level. Indeed, in EU federal Member States like Belgium, while some competences are highly Europeanized - e.g. agriculture, environment - they are, at the same time, regionalized or shared between the regional and national governance levels. This situation raises numerous questions, among which how are regional and national institutions in federal countries shaped by the multi-level setting in which they operate? Against this background, the chapter tackles the following question: how does Europeanization affects Belgian federal political institutions? In particular, the chapter analyses and compares the direct and indirect consequences of the European integration on both executive (i.e. government and their administration) and legislative (i.e. regional and national parliaments) institutions. It discusses whether acting within a multi-level setting triggers, on the one hand, a rise of the degree of centralization and cooperation between political institutions or, on the other hand, whether it stimulates pressure for more decentralization. In fine, the chapter contributes to the literature on the differentiated impact of European integration as well as on federal studies.

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# Belgian Federalism and Europeanization: how does European Integration and federalism speak to each other?

Dr. François Randour (UCLouvain – ISPOLE)

[Franois.randour@uclouvain.be](mailto:Franois.randour@uclouvain.be)

## **Abstract**

This chapter aims at assessing the impact of the European integration on the political institutions of federal Belgium. Over the last 50 years, Belgian federal political institutions witnessed, in parallel, a pooling of their sovereignty to the EU level and a process of decentralization at the domestic level. Indeed, in EU federal Member States like Belgium, while some competences are highly Europeanized - e.g. agriculture, environment - they are, at the same time, regionalized or shared between the regional and national governance levels. This situation raises numerous questions, among which how are regional and national institutions in federal countries shaped by the multi-level setting in which they operate?

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# **Belgian Federalism and Europeanization: how does European Integration and federalism speak to each other?**

## **1. Introduction**

Over the last 50 years and the first state reform, Belgian federal political institutions witnessed a twofold process (Beyers & Bursens, 2006). On the one hand, progressively more and more competences were pooled up to the European level, which now enjoy policy-making competences in many and diverse policy areas (i.e. Agriculture, Environment, External trade, Monetary policies...). On the other hand, and in parallel of this process, Belgium has already known six State reforms in the last 50 years. These reforms incrementally shaped the Belgian State as a federal State. New institutions have been created and strengthened, old institutions had been remodelled and large arrays of competencies were transferred from the national level to the Regions and Communities (see. Chapter 1 of C. Romainville for an overview). Phrased differently, while Belgium was facing a trend towards decentralization and important institutional change within its domestic borders, it also had to adapt to the process of European Integration.

This phenomenon is of particular importance in EU *federal Member States* like Belgium. Indeed, while some competences are highly Europeanized - e.g. agriculture, environment – the same competences are, at the same time, highly decentralized or shared between the regional and national governance levels in Belgium. Notwithstanding a proactive stance on EU affairs (Delreux & Randour, 2015), the process of European integration also came with institutional and behavioral consequences on Belgian political institutions and their political actors. Such a multilevel context indeed requires domestic actors to adapt their organizational format as they need to coordinate national positions, determine representation at the European level and ensure compliance with EU rules. As Auel and Benz explain (2005: 377), '(...) *the relationships between the actors in the parliamentary systems are challenged by linking them to the multi-level politics of the EU*'.

On the one side, for legislative actors, three main challenges are shortly outlined in this paper. First, domestic parliaments are facing increasing difficulties in monitoring and controlling (the EU policy) of their government (Winzen, 2012), notably due to the lack of information on EU negotiations (i.e. difficulties to monitor the executive). Second, domestic parliaments also face difficulties in applying credible ex-post sanctions, as '*EU policies are more difficult to undo than national policies because this requires the consent of other*

*Member States'* (Blom-Hansen and Olsen, 2015: 125) (i.e. difficulties to control the executive). The last reason is more practical: following the gradual increase in their EU prerogatives, domestic parliaments must now also adapt to the important amount of EU documents which they receive each year from EU institutions as well as from their respective government.

On the other side, executive actors also face several challenges with EU integration. Indeed, before negotiating at the EU level – and eventually forming a compromise with the other EU member states - executives must first deal with an intensive process of *domestic coordination* to form its national position. In this respect, the European Union is certainly amongst the most demanding sources of coordination to which national government are confronted (Kassim, Peters, Wright 2001). The extended front across which the Union engages the member states, the permanence of their involvement, and the need for action at two levels – the domestic, and the European – impose particularly severe demands. In particular, coordination of EU policy requires a regime that is capable of horizontal (i.e. between different departments of one or several Belgian governments) and vertical coordination (i.e. between the levels of governance) in the domestic executive (Gärtner, Hörner, Obholzer, 2011:80).

Against this background, it is interesting to consider the impact of the European integration on Belgian federal institutions. How did Belgian parliaments and executives face these challenges and with what consequences on Belgian federalism? This questioning is at the center of the chapter. It gives an overview and compares the consequences of the European integration on both the executive (i.e. government) and the legislative (i.e. regional and national parliaments) institutions, hence considering overall the (differentiated) Europeanization of executive-legislative relationship in federal Belgium. In practice, the chapter discusses whether acting within a multi-level setting triggers, on the one hand, a rise of the degree of centralization and cooperation between political institutions or, on the other hand, whether it stimulates pressure for more decentralization. These two dimensions (cooperation and centralization vs. decentralization) are derived from previous studies on the Europeanization of Belgian *executive* institutions (Beyers, Delreux, Serneels, 2004; Beyers & Bursens, 2008; Beyers & Bursens, 2013), but the discussion is extended to include legislative institutions (i.e. Legislative-executive relationship).

The rest of the article unfolds as follows. The next section set the scene and discusses the relation between Belgian federalism and European Integration. Section 3 and 4 provide an overview of the institutional responses to EU integration of Belgian executives

and their legislative counterpart. The chapter ends by a discussion on the relation between federalism and EU integration.

## **2. European integration, Belgian federalism and cooperation mechanisms**

Belgium consists of a federal level and a double federated level of three Communities (Gemeenschappen / Communautés) and three Regions (Gewesten / Régions), with a special status for the Brussels Capital Region (Wayenberg, *et al.* 2011). The underlying logic of the federalization of Belgium has never been to stimulate cooperation among Regions and Communities, or between the constituent units and the federal level, but to pacify conflicting interests (Deschouwer 2012), leading to constituting entities that largely function independently from one another.

For instance, there are no national political parties anymore in Belgium (at the exception of the PTB-go). Accordingly, the Belgian party system is fragmented and characterized by a high level of party discipline (Dandoy, 2011; Depauw, 2003). In addition, government levels have both legislative and executive authority over policy domains for which they are competent (i.e. legislative federalism). In particular, one important feature of the Belgian federal system is the absence of a clear hierarchy of norms, meaning that respective laws adopted by subnational and national governments stand on equal footing. The lack of norm hierarchy has an important impact on how the Belgian federation deals with *internationally and European binding agreements*. In fact, each level has to prepare and implement international and European policies that fall within its powers. This situation is known as the *in foro interno, in foro externo* principle (Bursens *et al.* 2016; Dumont, 2013; Randour and Bursens, 2019).

This situation has important implications for the organization of its parliamentary democracy, the scrutiny of the European policy of their government and the need for coordination between executives' actors. Indeed, each entity (federal, region, community) has its own legislature, resulting in a total of seven legislative chambers (Deschouwer, 2012; Delpérée and Dopagne, 2010) that may decide to scrutinize the EU policy of their respective government. It also implies the development of mechanisms of coordination within and across the federal executives to adopt a national position in EU negotiations. The following two sections give an overview of how Belgian executives and legislative actors answered to European integration.

### **3. Belgian executives and EU integration: instances of cooperative federal and a highly Europeanized environment**

**Short transition (focus on 3 policy field) + main argument:** European integration, in some instances, actually induce a slippage towards (1) an increase in coordination across Belgian federated entities (i.e. cooperative federalism) (2) with still a predominant role for the federal level, and in particular the Ministry of Foreign affairs.

#### **3.1 Representation of Belgium at the EU level and the 1994 Cooperation Agreement**

Belgium's representation in the European Council is similar to that of all other EU member states: the European Council is composed of Heads of State or Government of EU member states, in some cases assisted at the meeting by another minister and/or by one official (usually a diplomat from its Permanent Representation). But, as underlined by Vos (2004), 'many legislative measures that are treated in the council are a regional matter in the federal Member States, led to the fact that in the Maastricht Treaty, the possibility was considered that a regional minister could be seated in the Council, if this minister could bind the whole Member States (art. 203 EC). In most federal states a system has been worked out thanks to which regional ministers can effectively participate in sessions of the Council meetings (together with a federal minister or not)' (Vos, 2004: 12).

In Belgium, this system is defined in the *cooperation agreement* of 8th March 1994 between the Federal State, the Communities and Regions regarding the representation of the Belgian Kingdom in the Council of the European Union. In short, the representation in the Council of ministers follows two logics: (a) either it delegates a representative from one specific level of governance (i.e. the federal, regional or community level) or (b) Belgium is represented by a mixed delegation composed of federal and subnational representatives. In particular, the Belgian position that is defended in the Council of the EU is defined during meetings of the 'DGE' (Direction générale Coordination et Affaires européennes), a unit part of the Foreign Affairs Ministry (FMA). The DGE organizes the coordination and chair the DGE meetings where representatives from the ministerial cabinet and of competent departments from the federal and regional level negotiates the Belgian position (Diplomacy Belgium Website, 2015). Before these meetings, each participant also coordinates a position within his own entity. Indeed, Flanders, the Walloon and the Brussels Capital Regions can rely on (1) a representation within the Permanent Representation of Belgium to the European Union as well as (2) specific EU departments at the federated levels composed of EU experts.

Interestingly, when looking at the literature focusing on the Europeanization of EU coordination mechanisms (see. for instance Kassim, 2001; Gärtner et al, 2011; Jensens

2014), the Belgian EU coordination system is categorized as follows: a moderate to high formalized co-ordination mechanism, with a rather important level of coordination ambition (i.e. whether the Member States position itself on most EU dossier), with the Ministry of Foreign affairs identified as the central coordinator in EU affairs, despite a rather high degree of decentralization.

Overall, as rightly outlined by Beyers and Bursens (2006), the 1994 Cooperation Agreement makes the federal Ministry for Foreign Affairs a crucial player, because it is the central arena for coordination meetings and because all meetings are prepared and chaired by federal administrative and political officials. This makes clear that, despite the extensive competences of the Regions and Communities, the role of the central government remains substantial. This has, as a consequence, to mitigate the Belgian characteristics of dual federalism and to favor cooperative federalism on EU dossiers (Beyers & Bursens, 2009, 2013; Beyers & Delreux, 2004; Kerremans, 2003). In addition, the federal level - despite having gradually decentralized policy competences to the federated levels following Belgian state reforms – still possess a major centralization role in EU affairs, as the importance of the Foreign Ministry of EU affairs and the DGE illustrate.

### **3.2 Evidences from the Environment, Agriculture and Trade policies**

\*\* Under Construction\*\*

In practice, what does it mean?

Here - Empirical illustrations (based on a literature review and 2-3 semi-structured interviews) of the 'cooperative federalism' and (re)centralization of EU affairs in Environment, Agriculture and Trade policies

## **4. The Belgian parliamentary system and EU integration: the persistence of dual-federalism and a weak EU politicization**

**Short transition + outline main argument of the section:** EU integration did not provided a similar stimulus for the development of cooperative federalism across parliamentary institutions, which lead to a decentralization and little inter-parliamentary cooperation and a weak role for the Belgian senate

### **4.1 The Belgian parliamentary system and EU affairs**

On EU affairs, there are no specific legal rights for Belgian parliaments. Neither the Belgian Constitution nor the special laws on the country's state structure include specific rights to

Belgian parliaments in EU affairs (Delreux and Randour, 2015). The only exception is an article in the Special Law on the Reform of the institutions and that concerns the transmission of European Legislative proposals to the Belgian Parliament (Dumont, 2013). For the rest, one has to look in the Rules of Procedure for each of the Belgian parliaments to find specific articles dealing with EU affairs<sup>1</sup>.

Overall, the organization of the scrutiny of EU affairs in Belgian regional and national parliaments tends to follow the same pattern. While all Belgian parliaments have access to legislative proposals of the EU, comparative studies show that they have hardly made use of the ex-ante subsidiarity control (Vara Arribas 2015, Fromage 2016), and to the extent that they did, they engaged within their own parliament without interparliamentary consultations (Bursens et al. 2015; Randour and Wolfs, 2017). Parliamentary scrutiny of EU policies takes place in standing committees and EU Affairs Committees (EACs). The Federal Parliament hosts the Advisory Committee on European Affairs which has a unique composition with members from the House, the Senate and even MEPs. The Walloon (and Brussels) parliaments have a committee exclusively dealing with EU affairs, while Flemish parliament merged EU and international affairs in one single committee. These committees mainly deal with broad and transversal issues, such as trade and migration, the transposition deficit or the (ongoing) revision of the executive Cooperation Agreement regulating EU affairs in Belgium. The functioning of the Walloon EAC resembles closely to a 'working group' focusing on only a few EU issues, rather than a traditional broadly oriented committee. The practice shows that the committee mainly organizes hearings with regional, national and EU actors (officials, interest groups, experts etc.) and produces reports and (non-binding) resolutions, and that no time is devoted to core parliamentary tools (e.g. parliamentary questions), as it is the case in the Flemish and Brussels parliaments. Furthermore, EU issues are also discussed in the standing committees that have the most Europeanized competences. This can take the form of joint committees of the EAC and a standing committee or by direct involvement of standing committees (Randour and Wolfs 2017).

Indeed, sectorial committees are responsible for the scrutiny on day-to-day EU decision-making, both at the regional and federal levels. However, the extent to which these

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<sup>1</sup> Art. 36, 37, 37 bis and 68 of the Rules of Procedure in the House of Representatives, Art. 78 in the Belgian Senate, Art. 115 and 116 in the Walloon parliament, Art. 48, 121, 122 for the Brussels's region parliament, and Art. 111 and 112 for the Flemish parliament.



committees scrutinize EU affairs varies greatly between committees and between parliaments (Delreux and Randour, 2015). Briefing and debriefing of the Council of the EU rarely take place. The deployment of 'traditional' tools of parliamentary scrutiny, such as questions and interpellations to the government, can be considered very weak (Van Hecke et al. 2012). The same is true for sectorial committees at the subnational level, where (de)briefings of the Council of the EU meetings happen on a rarely basis. On this matter, Bursens et al. (2016) observe that the scrutiny of Council meetings happens more often in the Flemish parliament than in its Walloon and Brussels counterparts. The analysis of Randour and Wolfs (2017) on the scrutiny in agricultural and environmental EU policies shows that Belgian regional parliaments rely mostly on classical parliamentary tools. These tools aimed at gathering information rather than constraining instruments which attempt to influence their government.

Finally, Belgian parliaments also improved their administrative capabilities to cope with information from the EU level. Following the Lisbon Treaty and the newly revised protocol 2 on subsidiarity and proportionality, all Belgian parliament has strengthened the administrative unit dealing with EU issues. As for the federal level, but to a lesser extent, Belgian regional parliaments have administrators filtering documents coming from the EU (Schmitt, Ruys and Marx, 2013). The Flemish parliament hosts more administrative support than its Brussels and Walloon counterparts, but overall the number of administrators working on EU affairs is small, compared to other EU parliaments. Still, in practice, Belgian federal parliaments and subnational parliaments rarely made use of the ex-ante subsidiarity control (Delreux and Randour, 2015; Fromage, 2016). When they did, there were no interparliamentary consultations between Belgian parliaments (Bursens *et al.* 2016). In practice, exchange of information or formal coordination between Belgian parliaments rarely takes place at the political level - at the notable exception of occasional meetings of the seven presidents of parliaments – and is rarely taking place informally at the administrative level. The strength of Belgian (sub)national parliaments is thus quite limited when dealing with EU affairs, with little importance for cooperation mechanisms between parliaments. (+ limited role of Belgian Senate).

## **4.2 Consequences of EU integration on the Belgian parliamentary system**

As explained by Delreux and Randour (2015: 166), '*Although the parliament has undergone an institutional and administrative adaptation, the actual political scrutiny of European affairs in Belgium remains limited*'. Since each parliament has full powers over its constitutionally

assigned competencies and since a parliamentary act from one level cannot overrule an act of another level, Belgian parliaments are not formally stimulated to cooperate. In addition, the Constitution nor the Special Laws on State Reform mention parliamentary scrutiny of EU policies, and neither does the Cooperation Agreement which implements the drafting and representation of Belgian EU positions. These (quasi-) constitutional provisions have substantial consequences for the way parliamentary assemblies deal with the scrutiny of their executives' EU policies. On an aggregate level the Belgian parliaments act in EU affairs according to what they are used to in general: bilateral scrutiny of their own executive, very little engagement in intra-Belgian cooperation and even less nor with the EP or parliaments of other Member States (Bursens et al. 2015; Delreux and Randour, 2015; Randour & Bursens, 2016). Overall, Belgian parliaments are considered quite weak, juxtaposed to strong executives and dominant political parties in coalition governments (Deschouwer 2009; Delreux and Randour 2015).

## **5. Discussion**

EU integration has had a differentiated impact on executive and legislative institutions, with varying consequences on federal Belgium. On the one hand, the process of EU integration triggered Belgian executives to develop an elaborated system of ex-ante coordination mechanism. Indeed, when the Belgian Regions or Communities want to be effective European (and international) players, they need to forge a compromise position with other Belgian Regions and Communities and often also with the federal government. These European institutional pressures result in a domestic coordination system in which a) cooperative practices, and not separating strategies, prevail and b) the federal level still plays a central but increasingly also coordinating role (Beyers and Bursens 2006 and 2006a; Beyers and Bursens, 2013; Beyers, Delreux, Seneseels, 2004).

On the other hand, the domestic parliamentary system only Europeanized to a limited extent, despite the fact that they have acquired additional scrutiny mechanisms. Despite the fact that they all adapted their institutions to cope with the challenges of EU integration (i.e. they all have a European Affairs committee), even in the presence of the interparliamentary cooperation agreement signed between all Belgian parliaments following the Lisbon Treaty, Belgian parliaments have very little incentives to coordinate or cooperate across them. They do business as usual: each parliament scrutinize their respective government. In addition, contrary to cases such as the German and Austria Bundesrat – where upper houses play a central role in the scrutiny of EU affairs for their regions - the conditions where not met for the Belgium Senate to position itself as an 'EU chamber'

(despite the idea being defended by some civil servants). Rather, over the last 50, the Belgium Senate has progressively lost important prerogatives and is clearly not a major actors in Belgian politics.

→ These differentiated Europeanisation of Belgian political institutions raise questions in terms of legitimacy and accountability. EU integration has indeed **(1)** re-enforce executive actors over legislative actors

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