

OPAL Country Reports

The Belgian Parliament and EU Affairs

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OPAL Country Report on the Belgian Parliament¹

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I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors	
This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.	
1.1	What is the type of government in the political system of your member state? (i.e. parliamentary or semi-presidential)
	Parliamentary system.
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	<p>The parliament is bicameral. It is composed of the House of Representatives and the Senate.</p> <p>The House of Representatives is politically more important. There are policy areas in which the Senate has no legislative powers and in which only the House decides (such as the budget) and other areas in which involvement of the Senate is not mandatory. Another limitation in the power of the Senate is that the government only needs to have a majority in the House, not in the Senate. However, as far European affairs are concerned and following Belgium's Declaration 51 to the Treaty of Lisbon, the House and the Senate (but also the regional assemblies) formally have an equal status as components of the national parliamentary system.</p> <p>As a result of the state reform that was politically agreed upon in 2011², the Senate will from mid-2014 onwards only be competent for a number of constitutional issues. Hence, from that moment on, the powers of the Senate will be considerably decreased as well as its political importance.</p>
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	<p>Belgium is a federal country. It is composed of three Regions (Flemish Region, Brussels-Capital Region, and the Walloon Region) and three Communities (Flemish Community, French Community and German-speaking Community), which are separate entities but partly overlapping in geographical terms. The Communities are responsible for personally-bound competences (such as education, culture or public health), whereas the Regions have territorially-bound competences (such as agriculture, land use planning or environmental policy). All competences are exclusive and there is no hierarchy of norms between the federal and subnational (with the exception of the legislative acts of the Brussels-Capital Region).</p> <p>Belgian federalism is symmetrical in the sense that the three Communities enjoy the same competences, as do the three Regions. However, there is one asymmetrical characteristic as far as the institutional set-up of the subnational entities is concerned: the institutions of the Flemish Community and the Flemish Region are merged (there is only one Flemish government</p>

¹ This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C. Heffler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

² The political agreement on the so-called 'sixth state reform' in the first part of the government agreement of December 2011: http://www.premier.be/files/2011206/Regeerakkoord_1_december_2011.pdf (in Dutch, cf. p. 10-72); http://www.premier.be/files/2011206/Accord_de_Gouvernement_1er_decembre_2011.pdf (in French, cf. p. 10-74).

	and one Flemish parliament), whereas e.g. the French Community and the Walloon Region have separate institutions.
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	<p>The Belgian electoral system is characterized by proportional representation. The repartition of seats is based on the d'Hondt method.</p> <p>The House of Representatives is composed of 150 elected members of parliament. They are elected in 12 electoral districts (6 in the Flemish Region, 1 in Brussels and 5 in the Walloon Region).</p> <p>The Senate is composed of 74 members. More precisely, 40 of them are directly elected (in only 2 electoral districts: a Dutch-speaking and a French-speaking), 21 are elected in their Community parliaments to assure the representation of the Communities in the federal parliament (so-called '<i>Community senators</i>'), 10 are appointed by the political parties to attract experts or give a seat to a valuable member who could not be elected (so-called '<i>co-opted senators</i>') and also the 3 children of the King are formally a member of the Senate, although they <i>de facto</i> never take part in the activities of the Senate.</p> <p>In 2011, aiming to transform the Senate in a meeting place for the Communities, a political agreement was reached to reform the Senate (see 1.2). From mid-2014 onwards, there will be no directly elected senators anymore, but only 50 '<i>Community senators</i>' and 10 '<i>co-opted senators</i>'.</p>
1.5	What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)
	<p>The Constitutional Court has no veto power on Belgian ratification of European treaties or on the (transposition of) European legislation.</p> <p>The Belgian constitution only allows referenda on the local and the provincial level. Hence, at national or subnational level, referenda are not possible.</p>

<p>2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors</p>	
<p>This section is about the basic political factors which might influence parliament's strength in relation to the government.</p>	
2.1	<p>What is the type of government after the most recent elections e.g. single party, minority, coalition, oversized coalition government?</p>
	<p>The federal government is always a coalition government, composed of several parties. This is the result of (1) a proportional representation system; (2) a fragmented political party system; and (3) the fact that there are no state-wide political parties in Belgium (only Dutch- and French-speaking political parties).</p> <p>The current government is composed of 6 parties: the French- and Dutch-speaking liberal (MR and Open VLD), socialist (PS and sp.a) and Christian-democratic (CdH and CD&V) parties. It has a majority of 93 from the 150 seats in the House of Representatives, which makes it in theory an oversized coalition government. This can be explained by the political tradition in Belgium to include both parties of the same political family in the federal government (although the period 2008-2011 was an exception, with the French-speaking socialists in government and their Dutch-speaking counterpart in opposition).</p>
2.2	<p>When were the most recent general elections and what were the results? Could you please give a short list of the parliamentary groups, their no. of seats in parliament and ideological</p>

position?			
	Latest election in the LOWER HOUSE:	June 10, 2010	
	Name of the party	No. and percentage of seats in parliament	Ideological position (e.g. Communist, left liberal, socialist, liberal, right liberal, conservative, christian democrat, extreme right, ethnic minority or regionalist party)
	Nieuw-Vlaamse Alliantie (N-VA)	27 seats (17,4%)	Regionalist
	Parti socialiste (PS)	26 seats (13,7%)	Socialist
	Mouvement réformateur (MR)	18 seats (9,3%)	Liberal
	Christen-Democratisch en Vlaams (CD&V)	17 seats (10,8%)	Christian democratic
	Socialistische Partij Anders (sp.a)	13 seats (9,2%)	Socialist
	Open Vlaamse Liberalen en Democraten (Open VLD)	13 seats (8,6%)	Liberal
	Vlaams Belang	12 seats (7,76%)	Extreme right
	Centre démocrate humaniste (cdH)	9 seats (5,5%)	Christian democratic
	Ecolo	8 seats (4,8%)	Green
	Groen!	5 seats (4,4%)	Green
	Libertair, Direct, Democratisch (LDD)	1 seat (2,3%)	Right liberal
	Parti populaire	1 seat (1,3%)	Right liberal
	Latest election in the UPPER HOUSE:	June 10, 2010	
	Name of the party	No. and percentage of seats in parliament (if applicable)	Ideological position (if not mentioned above)
	Nieuwe-Vlaamse Alliantie (N-VA)	14 seats (19,7 %)	/
	Parti socialiste (PS)	13 seats (18,3%)	/
	Mouvement réformateur (MR)	8 seats (11,3%)	/

	Christen-Democratisch en Vlaams (CD&V)	7 seats (9,6%)	/
	Socialistische Partij Anders (sp.a)	7 seats (9,6%)	/
	Open Vlaamse Liberalen en Democraten (Open VLD)	6 seats (8,4%)	/
	Vlaams Belang	5 seats (7,0%)	/
	Ecolo	5 seats (7,0%)	/
	Centre démocrate humaniste (cdH)	4 seats (5,6%)	/
	Groen!	2 seats (2,8%)	/
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	The debate over the ratification of the Lisbon Treaty was not polarized. Belgian MPs have always been favouring European integration. In the House of Representatives, the ratification of the Lisbon treaty in 2008 was supported by 116 MPs (CD&V/N-VA, cdH, Open VLD, MR, sp.a, PS, Groen, and 6 Ecolo MPs), with only the extreme right parties Vlaams Belang and Front National opposing, and LDD and 2 Ecolo MPs abstaining. The parties voted in the same way in the Senate.		

3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 3.3 to 3.5 investigate in how far these procedures have been used.

3.1	<p>Have there been any regulations adopted by your member state to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:</p> <ul style="list-style-type: none"> a. Constitutional provisions b. Legal provisions - Statutory provisions c. Parliamentary Standing Orders d. Other (please specify) <p>Is this process complete or ongoing?</p>
Lower house	<ul style="list-style-type: none"> a. No constitutional provisions have been adopted as a result of the Lisbon Treaty. b. Currently, no legal provisions have been adopted as a result of the Lisbon Treaty. However, interviewees indicate that it is likely that the Special Law on the Reform of the Institutions (dating from 1980) will need to be modified in order to allow Belgian parliaments to conclude inter-parliamentary cooperation agreements (see 3.1.d). c. The House of Representatives has introduced a new article (37bis) in its internal rules in order to deal with the subsidiarity checks. This article describes the procedure regarding the

	<p>EWS (see 3.2.ii). The House also introduced the function of ‘europromotor’ as defined in art. 37 (see 3.7).</p> <p>d. In order to operationalize Protocols 1 and 2 of the Treaty of Lisbon, as well as Belgium’s Declaration 51 to that same Treaty (stipulating that all parliamentary assemblies in Belgium need to be considered as fully fledged assemblies of the Belgian parliamentary system; see 1.3), a cooperation agreement between the parliaments of the national level, the Regions and the Communities has been agreed by the chairmen of these 7 parliaments. This already occurred in December 2005, in the run-up of the Belgian ratification of the Constitutional Treaty. Basically, this inter-parliamentary cooperation agreement determines how Belgium will use its two votes in the Early Warning System (see 3.2.ii). The inter-parliamentary cooperation agreement has been initialled by the chairmen of the parliaments concerned, but it has not yet entered into force, since Belgium’s Council of State has argued that the possibility to conclude cooperation agreements between federal and subnational parliaments in Belgium needs to be provided by a Special Law (see 3.1.b). Until now, the Special Law only foresees that the governments of the federal and the subnational entities can conclude cooperation agreements, not the parliaments. Although the inter-parliamentary cooperation agreement has not yet entered into force, its provisions are currently <i>de facto</i> applied.</p>
Upper house	See above.
3.2	What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament’s involvement, cooperation in bicameral systems) for...
3.2 i	The “Political Dialogue“ with the Commission
Lower house	The procedure regarding the ‘political dialogue’ is the same as the one regarding the Early Warning Mechanism (see 3.2.ii).
Upper house	The procedure regarding the ‘political dialogue’ is the same as the one regarding the Early Warning Mechanism (see 3.2.ii).
3.2 ii	The Early Warning Mechanism (EWM)
Lower house	<p>The procedure is described in article 37bis of the internal rules of the House of Representatives. The secretariat of the FACEA of the House screens the legislative proposals from the Commission (and even other non-legislative documents from the European institutions). Either following a request from the chairman of the House or from one third of the members of a sectorial committee, or on its own initiative, the secretariat prepares a report regarding subsidiarity and proportionality of the Commission’s proposal. This report is sent to the members of the competent sectorial committee and to the members of the FACEA. Here, the procedure is slightly different from the one used in the Senate, where just a list of European documents, but no specific reports on subsidiarity and proportionality is sent to the members of the Senate. The larger administrative capacity of the House may explain this different with the Senate (see 3.15).</p> <p>When a sectorial committee adopts a draft resolution (subsidiarity opinion) regarding the EWS, two scenarios are possible. Either it is considered as the resolution of the House of Representatives; or, if one third of the members of the sectorial committee find it necessary, the draft resolution is submitted to the plenary. After adoption, the subsidiary opinion is sent to the European Commission and the Belgian government.</p> <p>In case of legislative proposals that touch upon the competences of the federal and the subnational parliaments, the Secretariat of the ‘Conference of the 7 assemblies’, which is <i>de facto</i> the FACEA secretariat, plays a role. The role of this Secretariat of the ‘Conference of the 7 assemblies’ is to collect all the possible opinions from the assemblies of the federal and the subnational level (see 1.3) and to make sure that the opinions of the different parliaments are aggregated into the two Belgian votes in the EWS. In the inter-parliamentary cooperation agreement (see 3.1.d), four scenarios are foreseen: (a) when dealing with an exclusive federal</p>

	<p>competence, the House of Representatives and the Senate each have one vote; (b) when dealing with a mixed competence (federal/subnational), two votes are used when at least one federal and one regional assembly sends its opinion; (c), when dealing with an exclusive subnational competence, in order for the two votes to be used, opinions must come from different linguistic regimes (e.g one opinion from the Walloon Parliament and one opinion from the Flemish Parliament); and (d) when the competence of only one parliament is concerned (apparently this refers to exclusive competences of the House of Representatives, see 1.2), the latter can cast the two votes.</p>
Upper house	<p>The Senate receives the documents on behalf of all Belgian parliaments concerned and it is in charge to transmit them to the House of Representatives and to the subnational assemblies.</p> <p>The FACEA secretariat of the Senate selects the documents that will be forwarded to the competent sectorial committees according to two criteria: legal competence and political relevance. The chairman/chairmen of the FACEA approve that selection, but they can also propose to insert additional documents. The selection is then sent to the selected sectorial committees. A request from coming from one member of the sectorial committee is sufficient to put it on the agenda. When the sectorial committee produces a motivated opinion, it is sent to the plenary for discussion. If approved, the opinion is sent to the secretariat of the FACEA, which then forwards it to the European Commission.</p>
3.2 iii	The "Passarelle clause"
Lower house	<p>The cooperation between the parliamentary assemblies of the federal level, the Regions and the Communities on the passerelle clause is not formally regulated since they do not seem to agree whether each parliament should enjoy veto power on this issue. However, interviewees suggest that it would be likely that the same system of distribution of votes that is used for the Early Warning System (see 3.1 and 3.2.ii) would pragmatically be used.</p>
Upper house	See above.
3.2 iv	<p>The action of annulment before ECJ on breach with the subsidiarity principle (What quota of MPs is needed to enforce the action of annulment?)</p>
Lower house	<p>The procedure of annulment before ECJ is (vaguely) described in the inter-parliamentary cooperation agreement (see 3.1). Briefly, it stipulates that any assembly wishing to start a procedure of annulment before ECJ must first alert the other Belgian assemblies. If no other assembly contest the competence of the parliament wishing to start an action of annulment within a one-week period, the procedure is launched. If, on the contrary, it is contested, the Council of State is consulted. However, practical details still need to be developed since the inter-parliamentary cooperation agreement does not cover all possible scenarios.</p>
Upper house	See above.
3.2 v	Accession of new member states to the EU
Lower house	<p>In the Belgian constitutional order, accession treaties between the EU and its member states, on the one hand, and an applicant country, on the other hand, are mixed agreements, which need to be ratified by the federal government, the Regions and the Communities (see 1.3). At every level, ratification goes by parliamentary approval. Consequently, the parliaments of the Regions, these of the Communities, and the federal House of Representatives and the Senate need to approve the accession treaty before Belgium can deposit its ratification instrument. Although the multiple veto points may suggest that ratification of accession treaties is difficult in Belgium, practice shows that this is not at all the case because of the general pro-European attitude of Belgian political elites.</p>
Upper house	See above.

3-3	How actively does the parliament engage in the political dialogue and “early warning mechanism” with the Commission?
Lower house	<p>Since 2010, the House yearly receives more than 750 documents from the EU institutions, of which an average of 150 documents were annually selected. In the House of representatives, the sectorial committees have issued three negative opinions regarding subsidiarity between January and December 2012 (all in 2012), as well as twelve opinions with regard to the political dialogue (three in 2010, four in 2011 and five in 2012).</p> <p>Generally speaking, the parliamentary activity and output regarding subsidiarity scrutiny can be considered as low. Interviews revealed that the difference between the EWS and the political dialogue is not always clear for MPs, and that the opinions which are not negative are considered as falling under the ‘political dialogue’.</p>
Upper house	<p>For the 2010-2011 session, the Senate received 753 documents from the European institutions, of which 191 (including 74 legislative proposals) were selected by the secretariat, For the 2011-2012 session, the Senate received 1025 EU documents, of which 228 (including 117 legislative proposals) were selected and forwarded to the sectorial Committees. 1 opinion regarding subsidiarity and 1 opinion regarding the political dialogue have been adopted by the Senate in the 2011-2012 sessions.</p>
3-4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?
Lower house	No.
Upper house	No.
3-5	<p>If applicable to your member state, how does parliament proceed on the ratification of:</p> <p>a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012</p> <p>b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012</p>
Lower house	<p>a. Treaty Establishing the European Stability Mechanism (ESM Treaty) has been approved by the House of Representatives at 14 June 2012 (90 votes in favour, 14 against and 24 abstentions). In Belgium, the ESM Treaty has not been considered as a mixed treaty, as a result of which the Regions and/or the Communities have not been involved in its ratification process.</p> <p>b. Contrary to the ESM Treaty, the Fiscal Compact is a mixed treaty, which also requires the ratification by the Regions and the Communities. None of the parliaments, neither at federal nor at subnational level, have already approved the Treaty. Belgium’s Prime Minister has committed himself to strive for a Belgian ratification before the end of 2012.</p>
Upper house	<p>a. The ESM Treaty has been approved by the Senate at 7 June 2012 (46 votes in favour, 4 against and 14 abstentions).</p> <p>b. See above.</p>