



the Practitioner's page

Nicolas Lagasse of Belgium: The role of the regions in Belgium's foreign relations

A constitutional lawyer, **Nicolas Lagasse** works with the Belgian Ministry of Foreign Affairs and the Francophone Ministry of Institutional Reform. He was involved in the negotiations and implementation of the last major institutional reform in Belgium, which included granting increased autonomy to its regions and communities. In this comment he discusses the implications, especially for Belgium's foreign relations, of the recent devolution of responsibility for agriculture to the regions.

On January 1, 2002 the Belgian government transferred the jurisdiction of agricultural policies to the regions. This new transfer of power entails the disappearance of the federal Ministry of Agriculture. From now on the regions will be responsible for representing Belgium internationally for all agricultural matters, including the negotiation and signing of treaties, and representing Belgium in supranational and international organizations. This situation is not unusual given the Belgian federal framework where for over ten years constituent units have had power on the international scene.

But agriculture in Europe is a field that involves a great deal of co-ordination internationally, which means the autonomy accorded to the regions in agricultural policy runs the risk of being complex and the source of many organizational difficulties.

The distribution of power in foreign affairs

Belgian federalism is federalism by disaggregation or disassociation. The formerly unitary state *disaggregated* itself into constitutionally sovereign units. In

the field of federalism Belgium is a leading model of delegating responsibility to constituent units, especially on the international scene. This creates an "institutional maze" virtually without equal.

As for foreign affairs, the constituent units' autonomy fits into the principle of "parallel responsibilities", allowing for the authority of the regions and the communities to be applied on the international scene. These constituent units have the same power internationally as they do within the country. The federal authority does not override the constituent units when it comes to negotiating a treaty or taking a position within an international organization.

Consistency within bilateral and multilateral agreements

As clear as the principle appears, delegation based on parallel responsibilities raises certain questions as to consistency. The number of possible delegates on the international scene is particularly high since the country, the three regions and three communities all have authority in international relations. That being the case, it was important to ensure a certain consistency in the practice of foreign affairs as much in treaty-making as within international organizations.

This consistency is based essentially on collaboration and on the *Conférence interministérielle de la politique étrangère* (Inter-ministerial Committee on Foreign Policy), a forum of ministers responsible for foreign affairs at the federal, regional, and community levels. This committee decides on Belgium's

representation and the members confer and consult each other on the consistency of the country's foreign policy. It is only when an agreement cannot be reached or under other similarly exceptional circumstances that the federal authority, solely invested with judicial power in international law, will either take over or restrict the constituent units' authority to conclude treaties.

Only the Belgian federal government has legal status in international law. The Constitution's article 167 gives the constituent regions the right to exercise their authority in international affairs and clearly establishes that, "each regional and community government may conclude treaties which concern them and which fall under the authority of their council. These treaties become effective after their councils' assent". This is a fundamental measure because it supports the constituent units' authority in exercising authority externally. Indeed, the question has arisen as to whether the constituent units could delegate authority in these matters to other organs other than the central government. We now have the answer: internal law takes precedence over international law. The Constitution's article 167 clearly allows for the delegation of authority when it comes to treaty making and representation in international or supranational organizations.

The law allows the federal authority to oppose a treaty project only in these hypothetical situations: when Belgium doesn't recognize one of the contracting parties or does not have diplomatic relations with it, when diplomatic relations have been broken, suspended or seriously compromised, or when the potential treaty conflicts with Belgium's international and supranational obligations.

At the concluding of "mixed level" treaties, such as the founding treaties of the European Union that involve several, if not all levels of authority, negotiations take place to determine the levels of power affected by the text. Each level of power is called upon to take part in the negotiations, to sign and vote its approval of the text. It is therefore necessary to decide which authorities are to be responsible before implementing cooperative mechanisms.

The conditions that apply to the concluding of or adherence to these instruments of the law are regulated by an agreement to cooperate – a "how to" on concluding treaties in Belgium between the central government and its constituent units. This cooperative agreement specifies the different procedural phases: shared information, the signature of each level of authority, and the assignment of a key role to the Inter-ministerial Committee on Foreign Policy.

The federal authority's responsibility in international law when one of the constituent units does not meet its obligations

In international law, only federal governments have judicial power. The responsibility to fulfill their obligations falls on them when one of their constituent units fails to do so. For example, the European Community's Court of Justice sentences the federal government when a constituent unit does not follow a directive. In a federal system, the autonomy that comes with decentralization goes hand in hand with the constituent units being responsible for the financial consequences of failing to meet their obligations. The Constitution offers the federal legislative arm and the federal government the possibility of temporarily replacing each

other in regional and community agencies when either of them defaults on their international obligations.

If negotiations fail, the federal authority can, as a last resort, act in lieu of a defaulting constituent unit by using some of the money it has received from the units.

Representation in international and supranational organizations

In this system of parallel foreign and national responsibilities, representatives of constituent units attend multilateral sessions of organizations such as Benelux, the European Council, UNESCO, the OECD and the UN when their responsibilities are concerned. Nonetheless, the Belgian central government exercises only one voice in international proceedings, not the number of voices it has nationally that is equal to the number of levels of power. One person is mandated to represent Belgium. It remains to be seen which of the regional, community or federal ministers will really occupy the position reserved for the country.

The solution is consistent with the general principle of parallel responsibilities. When a subject falls under the domain of the regions or communities, the federal system concedes Belgium's seat to a regional or community representative.

The issue of representation requires some discussion. It is within the Inter-Ministerial Committee on Foreign Policy that the different levels of power come to a consensus and decide who will speak for and vote on Belgium's behalf. A cooperation agreement lays out the procedures to be followed, sets up a system to exchange information, and establishes a method of ongoing collaboration and rules as to the composition of the delegations.

The Ministry of Foreign Affairs is responsible for ongoing collaboration and consultation and for the positions that the Belgian central government will take. This collaboration is significant because the regional or community minister who is called to a session will only represent the Belgian central government's position. The agreement is that the minister


representing Belgium abstains from voting if negotiations between the parties concerned in the preparatory sessions fail.

The same type of work method and system of delegation applies to European bodies. The regions and communities define Belgium's position in these bodies, including the European Union's Council of Ministers. They send their delegates there. During the Belgian presidencies of the European Union, such as the one from July to December 2001, the ministers of constituent units headed several Councils of Ministers.

A common viewpoint is reached under the stewardship of the central government's Minister of Foreign Affairs. Likewise, when no consensus is reached between the concerned parties in the European Union Council's preparatory sessions, the minister representing the Belgian central government must abstain from voting.

The latest devolution: agriculture

The recent regionalization within Belgium of agricultural policy could be difficult in practice. Its integration at the European level makes it difficult to assign responsibilities. It will not be possible to systematically gather the various representatives concerned to negotiate a common position because of the number and frequency of meetings in European organizations.

The regional agricultural law calls for a member of the central government to represent the regions in order to have a Belgian voice in agriculture and to avoid not reaching a consensus due to a lack of time. This twist in parallel responsibilities at the federal and constituent levels should lead to the creation at the federal government level of a coordinating committee responsible for unifying and harmonizing the regions' opinions in order to present a common position. This future coordinating committee will be viewed as success if it can meet the challenge of European representation without infringing on the substantial responsibilities of the regions. If not, it may disappear in future institutional reforms. 

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