

Federalism and the COVID-19 crisis: Reflections on competences, actors and party politics in Belgium



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Belgian federalism is defined by a unique combination of features. It is characterized by a 'falling apart' evolution without a blueprint for a final equilibrium, a competitive logic putting all government levels on equal footing while granting them full powers in allocated competences, a complex division of competences that cross-cuts policy domains, and separate party systems and electoral constituencies resulting in different government coalitions across the levels of government. The Belgian response to the COVID-19 crisis has been a textbook illustration of how these features (mal) function in practice.

Despite the absence of hierarchy between the federal and the regional levels, a federal executive decision of 2003 nevertheless enables the coordination of crisis management at the federal level. The so-called federal stage of crisis management, which was also used after the terrorist bombings of Brussels in 2016, was announced in response to the COVID-19 outbreak on March 12, 2020. This federal stage implies that all decisions to fight the virus are taken by a crisis management committee composed of the federal Prime Minister, the federal ministers responsible for the relevant policy domains, and the prime ministers of the Regions and Communities. This mixed federal – regional committee seeks advice from several federal risk assessment groups, including the National Security Council, and from a scientific committee composed of medical scientists from universities on both sides of the language border. Because COVID-19

affects competences that are scattered among government levels, the prime ministers of the Regions and Communities were also exceptionally added to the National Security Council, which is normally only composed of members of federal government.

The federal crisis management committee implemented extensive virus control measures on March 12. These included closing down primary and secondary schools, cancelling all recreational activities, ordering the temporary closure of bars and restaurants, partially shutting down shops, and limiting public transport. These measures were extended on March 18 putting the whole Belgian territory in a de facto lockdown. All non-essential movement by all citizens, including travel abroad, was forbidden; companies were ordered to switch to remote working; and all shops were shuttered with the exception of food shops, pharmacies, and those providing other essential services. The decision to implement these





measures was taken only after fierce negotiations, pitting Flemish against French-speaking politicians. The former preferred the (at the time) Dutch approach of remaining relatively open to support economic activities, while the latter leaned towards the French approach of prioritizing public health by installing a far-reaching lock-down. On March 27, the federal crisis management committee decided to prolong the measures (until April 19 and probably May 3 or even longer).

At the time of determining the initial series of COVID-19 control measures, the federal government had been for a significant period performing only the function of administering current affairs, as negotiations to set up a new federal government had been ongoing for almost a year. Ever since the elections of May 2019, Flemish nationalists and French-speaking social-democrats - the largest parties in Flanders and Wallonia respectively - had been unable to find a compromise. As it was becoming clear that the response to COVID-19 would require decisions affecting civil liberties and engendering major budgetary consequences, the crisis proved to be the catalyst for the installation of a federal government with full powers. The solution was found in reinstalling the minority

government of prime-minister Sophie Wilmès, but with wide parliamentary support from opposition parties (only the two Flemish nationalist parties and the radical left party refused to support this course of action). In addition to installing a full blown federal government, the wide parliamentary coalition granted the new government special powers, implying that it is not required to ask for parliamentary approval for six months in taking urgent measures to fight COVID-19.

The control measures taken by the National Security Council had an impact across all levels of government in Belgium, as they affect law and order and social security (federal competences), territory-related domains (Region competences) and person-related domains (Community competences). This explains why the membership of the National Security Council was expanded to include the prime ministers from the Regions and the Communities. The ensuing response highlighted the often-complicated division of competences. While in some domains the necessary actions were very simple (all three Communities closed down primary and secondary schools within their respective jurisdictions, while the federal level closed the borders for to non-essential travel), in other policy areas major

coordination efforts were necessary to align federal and regional competences. A number of examples highlight this complexity. The Regions guaranteed minimal public transport services for buses and trams, while the federal level did the same for trains. The Regions put in place a series of financial compensations for businesses that were closed or limited in operation by the federal government's measures, while the federal government extended its temporary unemployment support scheme for employees of those same businesses. The crucial domain of public health presented a major conundrum of policy competences. The latest state reform transferred substantial additional competences in public health to the Communities, largely inspired by a financing logic (rather than a substantial logic). While the federal level remained responsible for overall crisis management in times of a pandemic, at the operational level the Community has responsibility. The three Communities prohibited visits in retirement homes and activated the emergency plans for hospitals. Policies regarding the regulation of pharmaceuticals and health insurance are federal competences, while all levels of government simultaneously engage in the procurement of medical supplies such as face-masks and protective gowns. Major issues regarding quality requirements for materials and usage of testing kits surfaced in mid-April. If anything, the COVID-19 outbreak has made clear that coordination and cooperation among government levels is a major challenge for the Belgian federal system during public health crises. Representatives of doctors, hospital, and retirement home networks called for a thorough audit of the division of competences in the public health domain.

One final peculiarity of Belgian federalism relates to its European Union membership, which extends the multilevel character of COVID-19 response from two to three levels of government. Some of the EU-level measures must be approved by the Council of Ministers. The Belgian position in the Council has to be adopted through a coordination procedure that involves all levels of government. The aforementioned equality among levels within Belgium necessitates the approval of all governments for all positions and votes taken in the Council. If one or more governments do not agree, the Belgian representative needs to abstain. This has happened at least once during the COVID-19 crisis: Belgium abstained when EU legislation was approved to

immediately release €37 billion of EU cohesion funds to strengthen health care systems and support businesses. The abstention was caused by the position of the – nationalist-dominated – Flemish government, which considered the distribution of the funds unbalanced as Wallonia, being a less wealthy region, would receive more than Flanders. In a similar move, the Flemish government, critical towards ambitious EU climate policies in general, blocked Belgian support for a Danish initiative that called for the application of post-COVID investment in a way that would support the European Green Deal.

In short, the Belgian approach to COVID-19 crisis management seems to be crucially shaped by its federal structure. The split party system, the heterogeneous allocation of competences across levels, and the dual nature of its federalism all pose severe challenges to an effective response to a major public health crisis. Some issues have popped up at the peak of the crisis, for instance those related to the understaffing and undersupply of equipment to retirement homes, and the insufficient quality of face-masks delivered by Chinese providers. Undoubtedly, a thorough evaluation will be made of the functioning of the federal system in responding to COVID-19. Time will tell whether different parties in government in power at different levels will be rewarded or punished by their respective electorates for the ways in which they either administered or criticized the approach to crisis management in the country.

