

A Year of Mounting Pressure

Belgian State Reform in 2009

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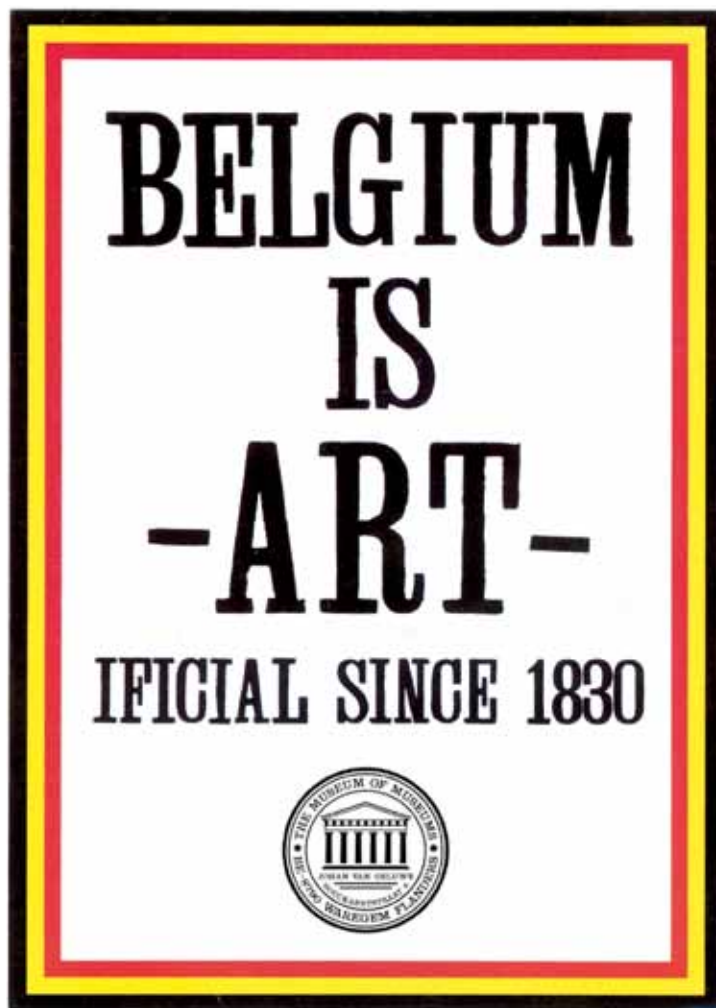
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At last! In 2010 we should finally have a solution for BHV (Brussels-Halle-Vilvoorde) and another round of constitutional reform. Something has got to happen if only because the pressure has been building up for years, including throughout 2009. Of course, such pressure can also make it more difficult to reach agreement. Let us take a look at the 2009 run-up to political D-Day in 2010.

During the federal elections of June 2007 the Flemish Christian-Democratic party (CD&V) promised *'the most definitive constitutional reform ever'*. Since those elections, in which the cartel of Christian Democrats and moderate Flemish Nationalists (N-VA) were very successful, constitutional reform has remained high on the political agenda. But during 2007 and 2008 agreement between the Flemish and French-speaking Communities proved impossible to reach and the constitutional issue continued to hang over the Belgian political world like the sword of Damocles. Failure to reach agreement and lack of mutual trust also added to the difficulties faced by the federal government. So if Belgium is to have a long-term future, some degree of reform seems essential.

Meanwhile, in Flanders pressure for reform is rising and at some point it must find an outlet. However, in the view of Jean-Luc Dehaene, one of the architects of the Belgian federal system, *'definitive constitutional reform is an illusion'*. He was Prime Minister in the 1990s and will be advising the Leterme government in the spring of 2010 on possible solutions to the problems dividing the communities. It is his belief that the institutional architecture of any political system can never be definitive, but must constantly adapt to changes in society. Every constitutional reform in Belgium has carried within it the seeds of future conflict between the linguistic communities. Every reform has been an incomplete, temporary compromise, created by specific temporary coalitions in response to the problems of the day. They have not grown out of any clear vision of an agreed objective. Furthermore, the French and Flemish communities have a different perception of the extent, timing and purpose of constitutional reform. Indeed, there is not even complete agreement within the linguistic communities themselves. So we are still a long way from achieving a conclusive settlement, and the shadow of constitutional reform continues to lurk disturbingly in the background. In a bipolar federation, without national political parties and with-

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out nation-wide media, it is always differences that attract attention. They form an inexhaustible source of disputes about the state's institutions. Constitutional reform is the *perpetuum mobile* of Belgian politics.

It remains to be seen whether the long-awaited inter-community agreement on reform will be achieved in 2010. In any case, during 2009 the pressure for constitutional change intensified considerably in Flanders. The BHV issue presents an obvious external justification for state reform, comparable to the way in which earlier constitutional reform resulted from, amongst other things, pressure caused by the financial problems in Francophone education.

In 2009, the results of the regional elections in Flanders, Wallonia and Brussels, the subsequent government formations and the ups and downs of the Belgian budget show that the issue of constitutional reform is very much alive. The question whether the electoral constituency of Brussels-Halle-Vilvoorde (BHV) will be split up lies below the surface of Belgian politics like a ticking time bomb and has made further negotiations about inter-community relations inevitable¹. They will take place in 2010. In this article we shall consider what happened in 2009 in the run-up to those negotiations.

The 2009 Flemish elections

On 7 June 2009 the former partners in the now defunct 'Flemish cartel', the Flemish Christian Democrats (CD&V) and the New Flemish Alliance (N-VA), won the Flemish elections. Together they received 36% of the votes, an increase of 9.9 percentage points on their score in 2004 and 6.4 percentage points more than in the federal elections of 2007. Particularly striking was the high level of support for the moderate nationalists, the N-VA. As an offshoot of the disbanded regionalist party Volksunie (in 2003) this was its first campaign as an independent party since the federal elections of 2003 – the cartel with CD&V was formed in 2004 – and it attracted 13.1% of the votes and gained 16 seats in the Flemish parliament. In contrast, the liberal Open VLD, the social democratic SP.a and the far right-wing, separatist Vlaams Belang all suffered losses, ending up with about 15% of the vote. The right-wing liberal LDD got only 7.6%, well below what was expected, and with 6.8% the ecological party Groen! did not manage to gain any advantage from the hype surrounding Jean-Michel Javaux, the President of the Francophone Ecolo, who generated a green tsunami in French-speaking Belgium. The degree of support for the Christian Democrats, nationalists (from N-VA and Vlaams Belang) and LDD, all of whom explicitly campaigned for far-reaching constitutional reforms, was interpreted by some commentators as a powerful signal from the Flemish electorate that radical constitutional change was needed. The same conclusion was drawn after the federal elections of 2007.

According to the N-VA's leading light, Flemish Minister Geert Bourgeois, their electoral success revived 'humanitarian' Flemish nationalism. No longer would Flemish nationalism automatically be identified with the extreme right. Although inter-community issues seemed to vanish during the regional campaign, they resurfaced prominently on the evening of election day during a final televised debate between the party leaders. It was then that the electoral result was interpreted as a 'signal' from the voters that the CD&V and N-VA now had a popular mandate to push for constitutional reform.

The community debate dominated the day following the elections. This was somewhat unexpected because during the campaign the economic crisis had attracted most attention and hardly anything was said about constitutional reform. Apart from some spluttering from the N-VA about regional, linguistic issues, it was the silence that was most striking. Even in Christian-Democratic circles, where the failure of inter-community negotiations after the 2007 federal elections had caused great dissatisfaction, it was scarcely mentioned. Presumably so as not to remind voters that the grand promises of 2007 had all come to nothing. Furthermore, at the end of 2008, the Christian Democrats' front-runner, the then outgoing and now current Minister-President of Flanders, Kris Peeters, had claimed credit for having inspired the dialogue between the Flemish and French-speaking Communities. But in the end that too failed. During the previous election campaign of 2007 there had also been very little debate on constitutional reform, but it was obvious that the CD-V / N-VA cartel had already agreed their agenda on the communities. However, this was much less apparent during the regional elections of 2009. Nevertheless, since 2007 the question of constitutional reform has never disappeared and in 2009 it was once again deliberately pushed to centre stage – but only after the regional elections.



Herman Van Rompuy leaves his post as Prime Minister in November 2009 to become the First President of the European Union.

Forming the Flemish government

The formation of the Flemish government in mid-2009 was a further contributory factor in the drive for constitutional reform. Simply by virtue of its make-up, the Peeters cabinet provided extra momentum because of the pressure generated by the different composition of the Flemish and federal governments. Both are coalitions headed by the Christian Democrats. However, the liberals are their partners at the Federal level, but are in opposition in Flanders. Conversely the nationalist N-VA and the socialist SP.a are coalition partners of the Christian Democrats in Flanders, but are in opposition to the federal government led by the Christian-Democratic Prime Minister Leterme.

In this kind of asymmetric political configuration potential conflicts between the linguistic communities are more difficult to smooth out or calm down because the two levels of government are only connected through a single party, the Christian Democrats. This is not enough to prevent the interests of the two governments from diverging since their interests are ultimately dictated by party politics. In the past, too, this had led to serious tensions between the federal and community levels. When the Christian Democrats included the immediate breakup of BHV in their regional coalition agreement in 2004, they indirectly placed a bomb under the federal coalition of socialists and liberals. For splitting up BHV involves electoral law and is therefore a federal responsibility. At that time, CD&V was not part of the federal government. In 2004, the Flemish Christian Democrats no longer felt any great sense of loyalty towards the French-speaking community after breaking the links with their Francophone sister party. Furthermore, placing the issue on the political agenda was an ideal way of tripping up the 'purple' federal government. At the time, the Flemish liberal democrats (Open VLD) and socialists (SP.a) were partners in Verhofstadt's second federal government, but wanted to avoid being seen as hostile to Flemish interests. So they too promised that BHV would be split up and in 2005 the Verhofstadt government attempted to push it through. It was unsuccessful. Then, in 2007, the Christian Democrats promised their electors that it could succeed where others had failed by using the Flemish majority to push through the legislation against the wishes of the French-speaking minority. However, the Francophones were able to exploit all kinds of institutional veto mechanisms to obstruct the proposed legislation and the affair dragged on into 2009. After the regional elections of 2009, though, the issue of BHV once again took centre stage.



Yves Leterme is Prime Minister for the second time from November 2009 on.

In particular, it hit the headlines in the summer of 2009 when the leader of the moderate Flemish nationalists (N-VA) De Wever declared that the so-called Maddens doctrine was the preferred way to resolve the community question. According to this 'doctrine', named after a Flemish political scientist, Flanders should withhold its contributions to the Federal government until the relatively poorer southern provinces which depend on federal subsidies are forced to demand constitutional reform. De Wever's remarkable suggestion, a few days after the Flemish elections, that the federal state should be put into receivership aroused a great deal of criticism, even among Christian Democrats who head the federal government against which the N-VA is in opposition.

Furthermore, the agreement between the Flemish coalition parties states that the Flemish government will pursue strong and assertive Flemish policies. It insists on wide-ranging constitutional reform and the dismantling of BHV, on which there can be no compromise. The Christian Democrats who head both the Federal and Flemish governments have signed up to this agreement. It is also agreed that the Flemish government will interpret its powers as widely as possible – for instance by creating a supplementary social security system for Flanders – and will no longer set funds aside to help with the Federal budget.

In addition, the Flemish government will implement a policy to strengthen the Flemish character of the so-called 'Vlaamse Rand', the environs of Brussels which lie in Flanders, and insist on the language laws in the city and its suburbs being respected. The European agreement on minorities will not be ratified and will therefore not be included in any general agreement on constitutional reform. Meanwhile, the Flemish Parliament passed a regional decree to bring the inspection of French-speaking schools (which are paid for by Flanders) in Flemish municipalities within the competence of the Flemish authorities. French speakers have reacted strongly to this. The decree will compromise negotiations on BHV, they say.

Francophone reactions to the Flemish coalition agreement in general have been extremely critical. In particular, the sections proposing supplementary child benefit and hospital insurance in Flanders have met with considerable opposition in the south of the country because it is feared that it could undermine federal social security provision. For the Francophone parties this is as much of a no-go area as moving the language boundary is for Flemish politicians. To Francophones, tinkering with the social security system is to interfere with the very foundations of the federal state and to propose any change is regarded as provocation. Community relations have been further soured by the continued refusal of the Flemish government to ratify the appointment of three Francophone mayors who were elected in 2006 by the Flemish municipalities with 'linguistic facilities'². It has created much bad blood within the French-speaking community and their official appointment by the Flemish government has been made one of the preconditions for any breaking up of BHV in 2010. That too contributed to the build-up of conflict during 2009.

French-speaking Belgium was dismayed by the plans of Kris Peeters and his ministers. A specifically Flemish supplementary child allowance or hospital insurance was seen as an attack on 'interpersonal solidarity'. *'A child is a child. It is unacceptable that a distinction should be made between a child from the north and a child from the south'*, said Cathérine Fonck the Christian Democratic minister responsible for children's welfare in the Francophone community. In Flanders, on the other hand, there seems, strangely enough, to be some degree

of consensus on the coalition's proposals. The socialist SP.a, a party which in 1999 voted against one of the Flemish parliament's famous five resolutions because it involved regionalising family allowances and health insurance, is now fully behind the proposals. Even Jan Renders, leader of the Flemish Christian trade union and therefore a descendent of the founding fathers of the Belgian social model, has not rejected a Flemish system of hospital insurance out of hand. This could portend an important development in the debate on regionalising social security.

Nevertheless, there is still internal disagreement on the precise range and concrete implications of the Maddens doctrine, despite a degree of consensus on the development of a separate Flemish care system and the assertive stance of the Flemish government. The Christian Democrats, for instance, do not want to go down the 'conflict of interest' route too often to obstruct federal measures such as the budget. Their party is, after all, the leading member of the federal government and they are clearly uncomfortable about allowing the federal budget to erode merely to force French-speaking Belgium to demand reforms.

The Budget

In 2009, it was not only the Flemish elections and subsequent cabinet formation, but also, in particular, the argument over the budgetary contributions of the different governments that showed that constitutional reform was inevitable. Agreement was reached on the distribution of the budgetary burden up to 2012, whereby Flanders would pay more than its fair share so that by 2015 the various governments could together achieve a balanced budget at the Belgian level. The Flemish government said on several occasions that any surpluses it might collect after 2012 will not be set aside to support the federal budget, but will be used to fund Flemish policies. That seems to be a certain recipe for inter-community conflict.

There is another issue that makes linking the budget and constitutional reform inevitable. The financial position of the federal government is simply untenable. The federal government is unable to hold on to enough of its income to function properly because it faces the rising cost of past debts, pays ever-larger sums of money to the regions, and supports the increasingly expensive social security system from general funds. The federal government has to bear 90% of the spiralling costs of an aging population and is already structurally under-financed. A possible solution would be for the regions to take on a greater share of the cost of aging by paying the pensions of their own civil servants. It should also be possible to reduce the regional subsidies from the federal treasury or even to transfer competences to the regions without funding them. In this way the poverty-stricken federal government might be able to create some financial breathing space for itself.

BHV

Finally, back to where we started: BHV. Nobody expects an institutional big bang before the federal elections of 2011. The lengthy procedures for resolving conflicts of interest over BHV run out in March 2010 and then it could come

down to a straight vote between Flanders and French-speaking Belgium in the Federal parliament. This could presumably result in the fall of the government. After Prime Minister Van Rompuy became President of the EU, in November 2009, the new Leterme government agreed on the negotiating procedures for BHV. Ex-Prime Minister Jean-Luc Dehaene, who is very experienced in resolving complex inter-community problems, has been asked to come up with some solutions for BHV by Easter 2010. After that a committee consisting of the party leaders and Prime Minister Leterme will conclude the negotiations.

The BHV issue might very well lead to a 'mini' constitutional reform. Bearing in mind the Belgian consensus model, one might speculate that it could be settled within some kind of package deal, as is the tradition in Belgian state reform. After the usual game of give and take, a deal on BHV could be buried inside a wider agreement whereby in exchange for dismantling it, concessions are made to the French-speaking community, allowing all parties to leave the table as 'winners'.

These might include finding some extra money for the Brussels region, whose finances are currently on the rocks, and finally confirming the appointment of the three Francophone mayors in the Flemish suburbs. They might also include extending the French community's powers in the Flemish municipalities with facilities for French speakers, relaxing the language laws in Brussels or being more flexible about the right of French speakers in the Flemish environs of Brussels to register for elections in the city and cast their votes there. Probably a few minor agreements (the famous 'cocktail snacks') which were agreed in 2008 will be included in any BHV deal. These involved among other things the regionalisation of a number of insignificant powers, measures to strengthen the federation and extra funding for Brussels. So some minor constitutional changes can be expected. Meanwhile, during the transition to the Leterme government in November 2009, an agreement was reached on what negotiation method should be used.

In contrast to the declarations after the Flemish elections in June 2009, Prime Minister Leterme's policy statement in November 2009 was unambiguously in favour of finding a fair solution. He also distanced himself from the tough statements he had made in 2007 when he demanded that BHV be "split up without concessions". Nevertheless, even if the Communities reach agreement on BHV in 2010, it will still not resolve the untenable financial position of the federal government. Those negotiations will have to wait until after the federal elections of 2011, assuming that the Leterme II cabinet survives that long.

A striking feature of the present debate about constitutional reform is the reversal in the motives underpinning federalism. In the past, Flanders fought for greater autonomy in the pursuit of cultural emancipation for Belgium's Dutch speakers. The Walloons for their part hoped that self-government would revive their faltering economy. Constitutional reforms in the past were pushed through solely with the idea of helping the regions and making them more self-sufficient. But in 2009 it became clear, partly because of the global economic crisis, that the structure of the state itself would have to be modified if the federal government is to keep its head above water.

There are already many who assume that Belgium will evolve into a confederation. Whereas in the past, one tried to justify the existence of the regions, nowadays one wonders what purpose the federal government serves. By law, every government in Belgium is supposed to be equal, but in the current debate



Ex-Prime Minister Jean-Luc Dehaene: master of compromise?

on constitutional reform it appears that the federal government can now only survive by the grace of the regions. Constitutional reform has turned Belgium from a unitary state into a federal state. The question now is whether the never-ending story of constitutional change will lead on to confederalism. In 2009, the pressure to find a deal on BHV in 2010 and an agreement on the reform of the state in 2011 increased considerably.

At the start of 2010, the President of the Flemish liberal party, which is part of the federal government coalition, repeated that he would not accept anything other than a genuine solution for BHV, which would remove it from the political agenda once and for all. According to this newly elected president, who has made credibility his trademark, his party would not accept any kind of emergency law that would not solve the BHV question but would sail around the legal obstacles against federal elections as formulated by the Constitutional Court.

It is not only the credibility of one party that is at stake here, but the credibility and stability of the whole of the Belgian system – and not least its renowned skill in consensus building and conflict resolution. ■

NOTES

1 The debate surrounding BHV has its roots in the 1960s but until 2003 it was a purely political problem that only interested a few Flemish politicians. BHV is an electoral constituency for federal and European elections which is unique in that it extends across two linguistic areas: the 19 bilingual municipalities of Brussels and the 35 Flemish municipalities of Halle-Vilvoorde, a part of the Province of Flemish Brabant. The numerous French speakers in the Flemish suburbs are thereby able to vote for the same Francophone parties as Francophones in Brussels. They are the only voters in Belgium that can vote across the language border that divides unilingual Flanders from bilingual Brussels and unilingual Wallonia. This has given rise to much ill-feeling. In the first place, the Flemish parties consider BHV to be a hindrance to the integration of French speakers in Flanders. Secondly, they regard its very existence as evidence of Francophone imperialism. For whenever there are federal or European elections, Belgium's bilingual district bursts its banks and the linguistic frontier shifts dozens of kilometres into the Flemish hinterland. In 2003 BHV also became a legal problem when the Constitutional Court decided that the new electoral law of 2002 was unconstitutional because provincial constituencies had been created to replace the former district constituencies everywhere except in Flemish Brabant (which completely surrounds Brussels). Candidates from Flemish Brabant were therefore treated differently from candidates in other provinces in violation of the constitutional principle of equal treatment. They, unlike all other candidates in all other provincial constituencies, had to compete with voters outside their own province (namely in Brussels). The Constitutional Court ruled that the combination of BHV with provincial constituencies elsewhere had to go, otherwise the Federal elections would no longer be legal. The judgment was circumvented in 2007 by bringing forward the elections, but any federal elections after 2007 will be illegal unless the BHV issue is resolved. The Flemish parties regard the judgement as vindicating their demand that the existing constituency be broken up. The Francophone parties stress that the Court has not ordered the break-up of the constituency and consider that a return to the old district electoral system is the best solution. They will only agree to the break-up of BHV in exchange for large concessions by the Flemish. It is the terms of that exchange, the break-up of BHV for concessions to the Francophone community, which must be agreed in 2010.

2 Because in 2006 they failed to accept the Flemish interpretation of the language legislation and refused to post the polling cards first in Dutch, the Flemish government will not officially appoint them as mayor. Today they remain, as it were, temporarily in office, a situation that could drag on for a long time.