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The new Belgian Senate and the representation of linguistic minorities in Belgium

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After years of political crises and negotiations, the deep-rooted conflict between Dutch- and French-speaking political parties recently led to an agreement in 2011 concerning a further reform of the Belgian state. This reform mainly furthers decentralises the – already federal – state structure, including the devolution of additional competences and fiscal powers to sub-state entities, the Regions and the Communities. But this new state reform also brings about a radical reform of the upper house: the Belgian Senate.

Since 1995, the Senate was composed of three different types of members: Senators directly elected by two linguistically separated electorates (Dutch-speaking and French-speaking electorates), Senators indirectly elected by the Community parliaments, and Senators coopted by the two other types. The French- and German-speaking linguistic minorities had a fixed amount of seats in this assembly.

The reform of the state radically changed the legislative competences of the Senate and its composition as its members are now designated by Regional and Community parliaments (as well as 10 coopted Senators). Broadly speaking, the appointment of the majority of the Senators moved from a system of direct and language-based election to a system of indirect and mixed regional and language-based designation. This change is not without consequence for the representation of linguistic minorities. The organisation of regional, community and federal elections in May 2014 allows testing for the first time this new system of designation of Senators by regional and community parliaments.

This paper intends to present the 2014 reform of the Senate in Belgium and its consequence for the representation of linguistic minorities. The situations before and after the reform of the Senate will be compared, not only in terms of the way Senators are appointed but in terms of its consequence on the linguistic aspects of the regional and community elections campaign and of the profile of the appointed Senators. The first section of this paper presents a short history of the Belgian Senate since the creation of the country. The new Senate and in particular the rules defining its composition are presented in the second section, while the third section discusses the results of the last legislative elections and their consequences on the composition of the Senate and on the representation of linguistic minorities in Belgium.

1. A short history of the Belgian Senate

Belgium's political foundation dates back to the 1830 when the southern provinces of the United Kingdom of the Netherlands broke away after the so-called Belgian revolution. After having been under Spanish, Austrian and French rule, the territory of – the future – Belgium was united, by the Treaty of Vienna of 1815, to the United Kingdom of the Netherlands led at the time by William I of Orange. The religious – pro-Protestantism – and linguistic – pro-Dutch – policies (Witte and Van Velthoven 2000) soon fuelled a movement of contestation among the inhabitants, especially the bourgeoisie, of the southern provinces which led to their secession in 1830 and to the independence of Belgium, quickly acknowledged by the foreign countries (Mabille 2000: 83-97). Belgium was a brand new entity – even though the territories of this new country had been sometimes more or less united under the same ruler (Deschouwer 2012: 16-18). A new state structure – not at all federal at the time – had to be created.

The independence of Belgium from the Kingdom of the Netherlands is declared on 4 October 1830 and a National Congress has to draft the Constitution of the new country. The decree of 10 October 1830 set the system of elections to be by direct suffrage: a plurality vote with a possibility of having two rounds. If a candidate had the absolute majority of votes, he was elected in the first round. There was, however, a second round only if candidates had not reached the necessary quorum to be elected in the first round. The first National Congress made of 200 deputies was chosen by an electorate of 46,099 members. However, the right to vote was not mandatory, therefore out of 46,099 citizens with the right to vote, only 30,000 went to the ballots. The newly elected Congress started functioning on 10 November 1830 but would only lead the country for three months. On 7 February 1831, the Constitution was promulgated and set the stage the new state structure.

One key element of this structure is bicameralism. The Constitution created a House of Representatives and a Senate, placed on equal footing. While their electorate was the same, several features distinguished the two assemblies: the term of office for a Senator was eight years and there were several eligibility criteria in order to be allowed to stand as a candidate for the Senate. For these reasons, the number of Senators was lower than expected and as a consequence some Provinces, notably the Province of Luxemburg, did not have a representative in that assembly until the late eighteen hundreds. To be eligible to the Senate there were two main criteria: age and property. Candidates had to be at least 40 years old and had to pay a large amount of taxes for their properties – 1000 gulden which was a very high amount for the time. In 1848 out of 52 senators 33 were noblemen and in 1892 there were still 39 out of 76; it was thus a rather "aristocratic chamber" – initially it was even thought that the King would nominate the Senators (Dujardin and Singelyn 2012: 67).

The Senate was therefore quite dissimilar to the House of Representatives although the same electorate chose both. As Stengers notes, having both Assemblies picked by the same voters prevented the Senate from becoming too overwhelming in the political scene (1990: 251). The Belgian Senate was seen as having the role of a moderator because of its conservative tendencies and kept the aristocracy from influencing the House of Representatives. In 1892, noblemen still represented 51% of the Senators,

compared to 29% in 1912. The Constitution allowed the Crown Prince to be a Senator by right as well as the other sons of the King, which he could become by the age of eighteen.

In 1831 there were 51 Senators and their number progressively increased with the demographic rise in the country. The electorate also increased, following the law of 1848 when it doubled to reach the number of 79,076 citizens. Yet, as Stengers observes, the number of citizens who could vote (from 1848 to 1893) represented a mere 2% of the total population (1990: 249). 1893 is a landmark in Belgian electoral history: the 25-year old male citizens were all recognized the right to vote, increasing the electorate from 2% to 21% of the population, but with a plural voting, that is the possibility of receiving one or two extra votes because one has a family, holds a degree, or pays more taxes. In the end of 1918, after the First World War, all male citizens above the age of 21 receive the right to vote – women had to wait until 1948.

While previous electoral reforms did impact the electorate rules but not the eligibility rules, the 1921 reform brought about significant changes for the Senate. The rule of the property tax system that limited the number of candidates was replaced by the rule that the candidates had to belong to one of the socio-professional groups defined by the Constitution. Moreover, the term of office for Senators was set to four years, instead of eight. Finally a new form of member of the Senate was introduced: co-opted senators, which meant that they were elected by their peers and not directly elected.

Between 1921 and 1993, the Belgian Senate remained about the same. While the state was progressively transformed from a unitary into a federal state, the two national assemblies – House of Representatives and Senate – did not experience any major changes until 1993. The fourth state reform completely changed the balance of power between the former and the latter. Before the revision in 1993, both Senate and House of Representatives shared the same powers and both played an equally important role when deciding upon approving a law and controlling the government.

But in 1993, it was decided that the now officially federal state should hitherto rely on unequal bicameralism. In other words, the Senate ceased to share equal power with the House of Representatives. In all but four domains – institutional, international, financial and legal – the House of Representatives was now predominant over the Senate. Meanwhile the number of Senators was brought down to 71 (from 184): 40 directly elected (25 by a Dutch-speaking electoral college and 15 by a French-speaking electoral college), 21 chosen by the Communities (i.e. the so-called 'Community senators': 10 by the Flemish Community Parliament, 10 by the French-speaking Community Parliament and 1 by the German-speaking Community Parliament) and 10 co-opted (6 Dutch-speaking and 4 French-speaking). This new composition came to life after the 1995 elections and last until the last elections of 2014 as the sixth state reform brought about a new reform for the Belgian Senate.

2. The new Senate

Since 2010, the country was in an impasse because of the absence of joint decision-making a new state reform. After several months (more than a year of negotiations), eight political parties reached an agreement about a new reform of the state, on 11 October 2011 (Deschouwer and Reuchamps 2013; Devos and Sinardet 2012). The

negotiations were led by the president of the PS, Elio Di Rupo, and involved the Flemish Christian democrats (CD&V) but without the NV-A that was eventually (after several months of failed attempts of negotiations) perceived as not willing – enough – to come to a compromise, the French-speaking liberal party (MR) but without the FDF which did not accept the agreement because it was not meeting its minimal expectations, the Flemish liberals (Open VLD), the Flemish socialists (sp.a), the French-speaking Christian democrats (cdH) and the green parties of both language groups (Ecolo and Groen). Altogether, the eight parties came to a quite far-reaching package deal that offers - tentative – answers to Belgian federalism's main challenges in four chapters: political renewal, BHV and Brussels, more autonomy and a new financial equalization system (Reuchamps 2013).

The transformation of the Senate will thoroughly remould the political landscape of Belgium. The reform of bicameralism impinges all elected assemblies – at the federal level as well as at the level of the federated entities. On the one hand, the House of Representatives is affected through the new distribution of competencies between both chambers. On the other hand, the federated entities' assemblies will almost all have to send a –larger than before – part of their members to the Senate.

First, the sixth state reform intends to redistribute the federal competencies and the Senate will lose its permanent character. There will no longer permanently be plenary sessions of the Senate. Rules of the Senate have to determine the number and the hypotheses when the Senate will have to gather. Accordingly, the Chamber will gain competencies since the normative role of the Senate will be restrained – i.e. some competencies will become unicameral while the Senate will only hold an evocation right for some competencies in place of being equal to the Chamber.

Second, the sixth State reform intends to reinforce the federalisation by modifying the Senate's composition. Hence, the Senate has to evolve in order to cope with the traditional function of an Upper House, namely being a meeting place for the federated entities. Regions and Communities will get a reinforced access to participate in the political life at the federal level. Concretely, the composition of the Senate is modified, decreasing its size from 71 to 60 senators while removing the 40 directly elected senators. From the 2014 elections onwards, only two types of senators will be distinguished: senators of federated entities (new terminology for the previous 'Community senators') and co-opted senators.[1] Besides the formal membership of *ex officio* senators (namely the King's children) is removed.

As a result, 50 senators are designated by the sub-state entities and 10 will be co-opted. Out of the 50 senators: 29 are designated by the Flemish Parliament[2] (one of who must be from Brussels), 10 by the Parliament of the French-speaking Community, 8 by the Walloon Parliament, 2 by the French linguistic group of the Brussels-Capital Region Parliament, and finally 1 by the Parliament of the German-speaking Community. Out of

[1] As a consequence, senators will differ financially speaking. Senators from the federated entities will financially depend on the federated entity level that also holds the power to determine the amount of the income. Co-opted senators will remain paid by the Senate's allowance. This could lead to differentiated incomes depending on the type of senator.

[2] The Flemish parliament gathers both the competences of the Flemish regional parliament and the Flemish community parliament.

the 10 co-opted senators, 6 will be Dutch-speaking and will be chosen by the 29 Dutch-speaking senators; 4 will be French-speaking and designated by the French-speaking senators. These co-opted senators are chosen based on the election results in the House. Furthermore, there cannot be more than two-thirds of the same gender, meaning that there cannot be less than 20 men or women in the Senate.

A large part of the Senate (five out of six, i.e. 83.3%) will be made of senators holding de facto concurrently a seat in their federated entity parliament. Before the reform, only a small third (29.6%) was in this situation. Regarding the co-opted senators, the situation remains the same as before the reform. If we take the perspective of the parliaments of the federated entities, almost all will see a large difference in terms of the share of deputies sent to the Senate. About one fourth (23%) of the members of the Flemish parliament will be designated to seat in the Senate (against 8% before the reform). The Parliaments of the Walloon region as well as of the Brussels region did previously not send deputies to the Senate. After the reform, 10% of the Walloon regional MPs and 4%of the Brussels regional MPs will seat in the Senate. However, the Parliaments of the French-speaking Community and of the German-speaking Community will send the same proportion of deputies than before the reform (respectively about 10% and 4%).

Table 1. Composition of the Senate (summary)

	1993-2010	2014 onwards
Directly elected	40	0
Designated by community parliaments	21	40
Designated by regional parliaments	0	10
Co-opted	10	10
Total	71*	60

Note: * it does not include the King's children.

Because of this in-depth reform of the composition of the Senate, other rules had to be adapted. We explain first how this has changed for the senators from the federated entities and next for the co-opted senators. We then detail how rules regarding gender have also to be adapted to the new situation.

First, some changes have been made to rules concerning the incompatibilities between different mandates and concerning the allocation of seats. From 2014 elections onwards, the mandate of member of a community or regional parliament is no longer compatible with a seat in the federal House. Moreover these federal MPs cannot be co-opted by the senators.

The allocation of seats across political parties is calculated on the basis of the results of the federated entities' elections.[3] For the Dutch-speaking group, seats are allocated according to the Flemish parliament elections. An electoral threshold of one seat minimum in the Flemish parliament is established to enter the Senate. The calculation is more sophisticated for the French-speaking group given the several parliaments involved. The lists' electoral results for the elections for the Walloon parliament and for the parliament of the Brussels-Capital Region are aggregated. A party can enter the Senate if he obtains at least one seat in the Walloon Parliament, in the French-

[3] Apart from the German-speaking senator, who elected by his Parliament at the absolute majority of expressed votes

Community Parliament and in the French-speaking group of the Parliament of the Brussels Capital Region.

The legislation regarding co-opted senators is also modified. The 50 senators from the federated entities, within each linguistic group, designate 10 co-opted senators. Seats are allocated according to the federal elections results (i.e. for the House). The 6 Dutch-speaking senators are allocated among political parties on the basis of these election results in Flanders and in Brussels. The 4 French-speaking senators are designated according to election results in Wallonia, in Brussels as well as in the administrative arrondissement of Hal-Vilvorde (in order to take into account the French-speaking citizens living in this area). Political parties' electoral results are calculated based on the so-called correspondence statements – according to which parties have to declare that the different electoral lists in the electoral constituencies are attached to them.

The law has also been adapted regarding the representation of women and men in the Parliament. As the senators are no longer elected, it is not possible to introduce a gender quota, as it is the case for the other parliaments (where half of the candidates on a list has to be from each sex and where the first two positions must be allocated to persons from different sexes). Accordingly, the reform introduces reserved seats instead of legislative quotas (see Krook, 2009). The law stipulates that the Senate cannot count more than two thirds of senators from the same gender. However the implementation of this article seems to be complicated without further specification of the working plan. The legislative section of the State Council (i.e. the body consulted in the law-making process that provide legal advices to the parliament) emphasized this issue in its advice. The State Council argues that the law proposal does not contain measures aiming at guaranteeing or at favouring the proper execution of the rule. They suggest setting up a consultation mechanism between the assemblies and linguistic groups so as to respect the gender equilibrium.

3. The new senate and the representation of linguistic minorities

Even if this reform can be considered as a very important change in both Belgian bicameralism and federalism, it does not affect to a large extent the representation of the linguistic groups. The Dutch-speaking senators are still the largest group in the Senate and increase their representation (+0.59%) as well as the German-speaking group (+0.26%). On the other side, the French-speaking group loses a small share of the Senate's seats (-0.85%). However, an interesting change resulting from the reform is that the German-speaking senator will not anymore be taken into account when calculating the quorum in each linguistic group. This senator will not belong to any linguistic group whereas before the reform he was sometimes taken into account, and sometimes not.

Table 2. Composition of the Senate (summary)

	1993-2010	2014 onwards
Dutch-speaking senators	41 (57,75%)	35 (58,33%)
French-speaking senators	29 (40,85%)	24 (40,00%)
German-speaking senators	1	1

(1,41%) (1,67%)

On the 24 May 2014, Belgian voters elected their representatives for the European, federal and regional elections. In this section, we will analyse these results and see in how far some parties benefit more than others from the new Senate, as well as some language group. The first group of senators – the 50 senators of the federated entities – are distributed based on regional elections results. In Table 3, we observe the difference in the seat distributions for the Flemish parliament (124 seats) and the 29 senators designated by the Flemish parliament. The parties that benefit from this seat distribution in the Senate (compared to their success in terms of seats in the Flemish parliament) are the CD&V and the Vlaams Belang. The Open VLD and Groen can be considered as the losers of this method of distributing seats in the Senate.

Table 3. Flemish parties (co-opted senators not included)

Party	**Flemish Parliament**		**Senate**	**Difference**
	% votes	**% seats**	**% seats**	**(in %)**
N-VA	31,88	34,68	34,48	-0,19
CD&V	20,48	21,77	24,14	+2,36
Open VLD	14,15	15,32	13,79	-1,53
sp.a	13,99	14,52	13,79	-0,72
Groen	8,70	8,06	6,90	-1,17
VB	5,92	4,84	6,90	+2,06
UF	0,83	0,81	0	-0,81
Others	4,95	0	0	0
Total	100,00	100,00	100,00	

On the French-speaking side, it is not possible to compare seat distribution in the French-speaking Community and in the Senate as they both are a consequence of the election results in the Walloon region. Nonetheless, we observe here the difference in the seat distributions for the Walloon parliament (75 seats) and the 10 senators designated by the Walloon parliament. Ecolo and the MR benefit from this new seat distribution in the Senate, while the cdH, PTB-go! and PS lose some political influence. Obviously, as the number of seats to be allocated in this regional parliament (10) is smaller, the observed differences between the tow parliaments are larger than in the case of the Flemish parliament.

Table 4. French-speaking parties (co-opted senators not included)

Party	**Walloon Parliament**		**Senate**	**Difference**
	% votes	**% seats**	**% seats**	**(in %)**
PS	30,90	40,00	37,50	-2,50
MR	26,69	33,33	37,50	4,17
cdH	15,17	17,33	12,50	-4,83
Ecolo	8,62	5,33	12,50	7,17
PTB-go!	5,76	2,67	0	-2,67
PP	4,86	1,33	0	-1,33
Others	8,00	0	0	0
Total	100,00	100,00	100,00	

The second group of senators concerns the co-opted ones (see Table 5). As mentioned above, co-opted seats are allocated according to the federal elections results, i.e. for the House. We therefore observe the difference in the seat distributions for the House (150 seats) and the 10 co-opted senators. Obviously, differences are important but do not go over 6%. The four largest parties (N-VA, PS, CD&V and MR) do not benefit from the way the co-opted are attributed while the beneficiaries are the green parties Groen and Ecolo (+6%) and the cdH (+4%). There is no clear linguistic pattern on those groups of the winners and the losers from the attribution of co-opted senators.

Table 5. Co-opted senators

Party	**House**		**Senate**	**Difference**
	% votes	**% seats**	**% seats**	
N-VA	20,26	22,00	20	-2,00
CD&V	11,61	12,00	10	-2,00
Open VLD	9,78	9,33	10	+0,67
sp.a	8,83	8,67	10	+1,33
Groen	5,32	4,00	10	+6,00
VB	3,67	2,00	0	-2,00
PS	11,67	15,33	10	-5,33
MR	9,64	13,33	10	-3,33
cdH	4,98	6,00	10	+4,00
Ecolo	3,3	4,00	10	+6,00
PTB-go!	1,97	1,33	0	-1,33
PP	1,52	0,67	0	-0,67
FDF	1,8	1,33	0	-1,33
Others	5,65	0	0	0
Total	100,00	100,00	100,00	

Finally, we also observe the overall differences between the two federal assemblies, i.e. between the seat distributions for the House (150 seats) and for the Senate (60 seats). The parties that benefit from the new system of seat allocation in the Senate (compared to the election results for the federal elections that took place on the same day) are the CD&V and the VB (+1,33%) and the green parties Groen and Ecolo (+1%). The parties that – comparatively – lost the most from the new seat distribution are the N-VA (-2%), followed by the Open VLD (-1%) and the three small French-speaking parties (that managed to win one of two seats in the House but were excluded from the seat distribution in the Senate). Remarkably, the MR has exactly the same share of seats in both federal assemblies.

Table. Seat distribution in the federal parliament

Party	**House**		**Senate**	**Difference**
	% votes	**% seats**	**% seats**	
N-VA	20,26	22	20,00	-2,00
CD&V	11,61	12	13,33	+1,33
Open VLD	9,78	9,33	8,33	-1,00
sp.a	8,83	8,67	8,33	-0,34
Groen	5,32	4	5	+1,00
VB	3,67	2	3,33	+1,33
Flemish parties	59,47	58	58,33	+0,33

PS	11,67	15,33	15	-0,33
MR	9,64	13,33	13,33	0,00
cdH	4,98	6,00	6,67	+0,67
Ecolo	3,3	4,00	5,00	+1,00
PTB-go!	1,97	1,33	0	-1,33
PP	1,52	0,67	0	-0,67
FDF	1,8	1,33	0	-1,33
French-speaking parties	34,88	41,99	41,67	-0,32
German-speaking parties		0,00	1,67	-1,67
Total	100,00	100,00	100,00	

But these new rules establishing seat allocation between parties created several problems. We will expose two examples of these issues in this final section of the paper: one concerning the parties that benefit – or not – from a seat in the Senate and one concerning the individuals that can – or not – be selected in order to occupy those seats.

The French-speaking radical-left party PTB-go! issued an official complaint to the Senate concerning the parties that benefited from a seat in this assembly. According to the article 210 decies § 2 of the Electoral Code, only the lists that obtain 5% of the votes in the Walloon regional Parliament and in the French-speaking group of the Brussels regional parliament can enter into consideration for the seat allocation in the Senate.[4] The Clerk of the Senate interpreted this rule as the party needs to obtain 5% of the votes in each of the two regional assemblies. According to this interpretation, the PTB-go! – that obtained 5% of the votes in the Walloon regional Parliament and 3,86% of the votes in the French-speaking group of the Brussels regional parliament – cannot obtain a seat in the Senate. The PTB-go! interpreted the article 210 decies § 2 in another way: the party needs to obtain 5% of the votes in the regional assemblies taken together. Following this interpretation, the PTB-go! went over the 5% threshold and should have had access to the seat distribution. Ultimately, the Senate decided to follow its Clerk's interpretation and not to grant the PTB-go! with a Senate seat.

There are some specific rules concerning two types of senators. As we have seen above, there are specific rules that concern gender as there cannot be more than two-thirds of the same gender, meaning that there cannot be less than 20 men or women in the Senate. Another set of rules concerns the representation of senators living in Brussels. First, there are two senators designated by the French linguistic group of the Brussels-Capital Region parliament. Second, among the 29 senators designated by the Flemish parliament, one must be from Brussels, and among the 10 designated by the parliament of the French-speaking Community, three must be from Brussels. When parties select their senators, they have to keep these rules in mind.

Based on its electoral results, the French-speaking green party Ecolo can claim three senatorial seats: two senators from the federated entities and one co-opted senator. The

[4] « Sont seules admises à la répartition des sièges les formations politiques dont les listes ont obtenu au moins 5 % du total général des votes valablement exprimés lors de l'élection tant du Parlement wallon que du groupe linguistique français du Parlement de la Région de Bruxelles-Capitale».

party proposed to designate the Brussels regional MP Arnaud Pinxteren as one of the 10 senators designated by the parliament of the French-speaking Community and the Walloon regional MP Philippe Henry, as one of the 8 senators designated by the Walloon Parliament well as Cécile Thibaut as one of the 4 French-speaking co-opted senators. As the party received 8 seats in the Brussels regional parliament, and 4 seats in the Walloon regional parliament, the idea was to have a representative in the senate coming from each of these regional assemblies. Yet, as a small party, Ecolo can choose its representatives after the larger parties. In this case, the bureau of the French-speaking Community parliament refused the nomination of Arnaud Pinxteren, as the largest parties already designated three senators from Brussels among the 10 designated by the parliament of the French-speaking Community. Ecolo legally opposed this decision but had ultimately to accept it. The party decided to appoint the Walloon regional MP Hélène Ryckmans in replacement of Arnaud Pinxteren.

The same conclusions could have applied in case of the gender rules would not have been respected: the smaller parties would have been the ones designating the male or female senator(s) that would have contributed to reach the minimum of 20 men or women in the Senate. This rule had no impact on the designation for senators in 2014, but one cannot evacuate its potential consequence for further elections or in the case of a resignation within the parliamentary term. When one knows that at least 20% of senators resign during their five years term, these rules can bring some instability in the composition of the Senate.

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