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1. BICAMERALISM IN BELGIUM BETWEEN 1831 AND 1993

Since its inception, in 1830, Belgium has always had a bicameral parliamentary system. Parliament consists of two assemblies, the House of Representatives and the Senate, which are independent one from another and which both represent the Nation.

Originally, the Senate was to be a conservative counterweight against a progressive and liberal House of Representatives. Because of eligibility requirements, only the aristocracy and major landowners could sit in the Upper House. However, over time the Senate became a second Chamber elected by the people similar to the House of Representatives. The Belgian parliamentary system thus evolved, as in other countries, into an undifferentiated and egalitarian bicameral system. The two Chambers had almost an identical profile, both in terms of composition and in terms of responsibilities, each in turn performing exactly the same work.

One cannot deny that the way parliamentary work was organized was the source of slowness and of sterile duplication. The federal Parliament had to be turned into a modern and effective institution. The reform of 5 May 1993 has endeavored to achieve that objective by rationalizing parliamentary work and establishing a degree of specialization between the two assemblies. Political control of the Government and of public finances was consigned solely to the House of Representatives. The Senate became a "Chamber given over to legislative thought and reflection", the guarantor of the quality of legislation. The two Chambers have a joint responsibility for everything relating to the foundations of the Belgian State.

Moreover, the State's federalization process had two effects on the federal Parliament.

On the one hand it was necessary to ensure that the federated entities were represented in the federal Parliament. The Senate therefore became, at least in part, a Chamber that serves as a meeting place for those entities (called 'Communities'). In this respect, it was important for the Communities to be represented as such in the federal Parliament and to participate in the process of making federal legislation.

On the other hand, in 1993, when the Parliaments of the federated entities were to be directly elected, there was a fear that the number of political officeholders would increase considerably. Therefore, the number of federal parliamentarians had to be reduced significantly.

2. FROM A UNITARY TO A FEDERAL STATE

A federal state is always a complicated state. In general, a federal system is characterized by the existence of at least two levels of institutions, the regional level and the federal level.

Article 1 of the Belgian Constitution, which was adopted in 1993, provides : "*Belgium is a federal State which is composed of Communities and Regions*".

However, every federal system is *a sui generis* construction, since it is impossible to dissociate the structures of a state from geographic, economic, cultural, historic and even ideological factors which are reflected in such structures. The Belgian federal system, as it emerges from the constitutional revision of 5 May 1993, has five distinctive features.

2.1. Centrifugality

Firstly, while the majority of federal States are built by association (*e diversitate unitas*), federal Belgium was born of dissociation. Federalism in Belgium is centrifugal. Starting in 1970, the unitary Belgian State has slowly become a federal State. Federated entities (Communities and Regions) were created and gradually acquired ever broader autonomy.

2.2. Bipolarity

Secondly, the origins of Belgium's problems are the coexistence in a single and same country of two major communities - a Dutch-speaking majority and a French-speaking minority. The State's structures have been designed to guarantee equilibrium between the two communities.

There are, for instance, two linguistic groups in the federal Parliament, a French one and a Dutch one. So-called special majority laws, that deal with the state structure, can only be adopted by a majority in each linguistic group. Therefore, these laws can not be adopted without the consent of the French-speaking minority.

The essentially dualist nature of Belgian federalism is also reflected in the Council of Ministers, which consists of the same number of Dutch-speaking as French-speaking members (linguistic parity). The same applies to the highest courts, as well as to the senior members of the civil service.

2.3. Double-Layered federal State

Thirdly, Belgium is considered to be a double-layered federal state. The Belgian federal State consists of two types of federated entities that are superimposed one on another: the Communities and the Regions.

Regions and Communities both have their own elected assemblies and governments. They have been given exclusive competencies.

As Regions and Communities are superimposed one on another, the Communities' Parliaments are derived from the Regions' Parliaments. Only the Parliament of the German-speaking Community is directly elected.

There are three Communities - the Flemish Community, the French Community and the German-speaking Community - which are competent for matters relating to culture, education, audio-visual media, health and welfare. The two main Communities, i.e. the Flemish and the French Community both have jurisdiction over certain institutions in Brussels.

There are three Regions: Flanders, Wallonia and Brussels. In Brussels, special protective measures exist to safeguard the interests of the Flemish minority. The Regions' competencies primarily concern the socio-economic sphere. Examples are inter alia, employment, economy, agriculture, energy, water, environment, town and country planning, housing, foreign trade, transport and public works.

All federated entities have *ius tractatus*: Regions and Communities can conclude international treaties and agreements in those areas in which they have internal jurisdiction. The federal entities thus have powers that go far beyond the traditional federal model.

The federal State is responsible for finance, defense, justice, social security, foreign affairs, a major portion of public health and domestic affairs. It is also competent for all subject matters that have not been explicitly assigned to Regions or Communities (the so-called residual competencies).

However, a special majority law can transfer the so-called residual competencies to Regions and/or Communities.

Belgium does not have a hierarchy of norms between acts of Parliament of the Federal State (“laws”) and those of Regions and Communities (“decrees” or “ordinances”). Conflicts of jurisdiction are settled by the Cour d'Arbitrage, the Belgian constitutional court which has the power to review legislation.

2.4. Asymmetric Evolution

Fourthly, although the Constitution seems to suggest that Regions and Communities have identical institutions and operate in the same way, they each have in fact their own legal status, tailor-made to their needs and concerns. The Constitution did not create uniform Community and Regional structures. Only certain basic features are common to all federal entities. Other characteristics are shared by some but not by others.

On the Flemish side, the institutions of the Community exercise both Community and Regional competencies. On the French-speaking side, the opposite happened. Since 1994, the French Community has transferred some of its competencies to the Walloon Region and to the French linguistic group of the Brussels’ Regional Parliament.

Moreover, the most important Regions and Communities have a limited power to organize their own institutions. This so-called “constituting autonomy” contributes to the asymmetric evolution of Belgian federalism.

2.5. Co-operation

Finally, certain mechanisms were created to improve co-operation between all federated entities and with the federal State. The Belgian Constitution explicitly provides that different political entities must be loyal in their relations with one another (the so-called federal loyalty clause). Economic and monetary union is also a significant factor in the unity of the State.

Certain mechanisms ensure a federalism grounded in union. The Communities are represented in the Senate and thus participate in federal decision-making. Co-operation between the different political entities is ensured by intergovernmental conferences, co-operation agreements and consultation procedures. Finally, the system of Regional and Community financing guarantees a certain degree of federal

solidarity.

Over the years, Belgium has developed a system based on consensus. Although many Regional and Community conflicts arose in the past, the above-mentioned conflict prevention mechanisms have ensured the Belgian state's unity.

3. ELECTION, DISSOLUTION AND COMPOSITION OF THE FEDERAL CHAMBERS

Federal Members of Parliament are elected for a four year term using proportional representation (the so-called D'Hondt system).

Every person has the right to vote once they have reached the age of 18. Voting is compulsory. Only Belgians have the right to vote.

3.1. Eligibility

To be a candidate for the federal elections, one must be a Belgian national and enjoy the full set of civil and political rights. Candidates must be 21 years old and must reside in Belgium. These conditions are listed comprehensively in the Constitution: no other condition may be added to that list.

3.2. Ratification of Credentials

After the elections, the Members' credentials are examined. Pursuant to Article 48 of the Constitution " each House examines the credentials of its Members and judges any dispute raised on this matter." Each Chamber has exclusive jurisdiction to examine its Members' credentials (effective Members and successors). The judiciary has no jurisdiction in this matter. The Belgian constitutional court (Cour d'Arbitrage - Arbitragehof), as well as the highest administrative court (Conseil d'État – Raad van State) and the highest civil and criminal court (Cour de Cassation – Hof van Cassatie) have systematically declined to review decisions of either House concerning credentials.

When the House of Representatives and the Senate examine the credentials of each of their Members, they have to verify whether the individual concerned meets all eligibility requirements. They also must determine whether the elections were held in compliance with all existing rules and regulations. Any complaint or objection concerning an election must be submitted prior to the ratification of a Member's credentials.

3.3. Composition of the Chambers

The House of Representatives consists of 150 Members, who are directly elected in

20 constituencies. The number of seats assigned to each constituency is based on its population.

The Senate's composition is more heterogeneous and reflects the objective to ensure, at least in part, a representation of the federated entities. The Senate has 71 Members, divided into three categories.

40 Senators are directly elected in three constituencies, those being the Flanders constituency, the Walloon constituency and the bilingual Brussels-Halle-Vilvoorde constituency.

The French-speaking voters elect 15 Senators. The Dutch-speaking voters elect 25 Senators. The residents of the Brussels-Halle-Vilvoorde constituency can choose whether they want to vote for the election of 15 French-speaking Senators or for the election of 25 Dutch-speaking Senators.

21 Senators are appointed by and from the assemblies of the three Communities: ten by the Parliament of the Flemish Community, 10 by the Parliament of the French-speaking Community and one by the Parliament of the German-speaking Community. Since they remain Members of the Parliament which appoints them, these Senators hold two offices (sometimes even three), sitting both at the federal and at a federated level.

10 Senators are chosen by the two above-mentioned categories of Senators. Six of them are appointed by all of the other Dutch-speaking Senators, and four by the French-speaking Senators.

The Constitution guarantees a minimum representation of Brussels' residents in the Senate.

Finally, the children of the King or, if there are none, the Belgian descendants of the branch of the Royal Family called on to reign, are Senators by right at the age of 18. They can only vote at the age of 21. They are, however, not taken into account for the quorum.

This category of Senators was created to give the heir to the throne the opportunity to acquire political experience and to stay in touch with society. At this moment, all three children of the King, i.e. Crown Prince Philippe, Princess Astrid and Prince Laurent, have taken the oath as Senator and sit in that capacity in the Senate.

3.4. Dissolution of the Chambers

The federal Chambers are elected for four years. However, they can be dissolved before the end of this period. This happens in most cases. Elections have to take place within 40 days of dissolution with the two newly elected Chambers reconvening within two months after the dissolution.

When the legislator adopts a declaration to revise the Constitution, both Chambers are automatically dissolved. This is nowadays one of the most important reasons for the dissolution of the Chambers, since Belgium has engaged itself in a constant process of institutional reform.

The King has the right to dissolve the Chambers only when:

- 1/ the federal Government resigns, provided an absolute majority of the Members of the House of Representatives consents to the dissolution, or when,
- 2/ the House of Representatives rejects a vote of confidence or passes a vote of no-confidence, without proposing to the King a successor for the Prime Minister.

A dissolution at the initiative of the King (the Government), is usually the outcome of a political crisis. These crises are often the result of a coalition breakdown. As a result, a majority in Parliament is no longer willing to support any government action. In such situations, the Government generally resigns rather than leaving the initiative to the House of Representatives.

Prior to the revision of the Constitution of 1993, the King could dissolve the federal Parliament at will. There were no prerequisites for such a dissolution: the King could take this initiative for practical reasons (calendar, etc.).

4. LEGAL STATUS OF MEMBERS OF PARLIAMENT

4.1. Incompatibilities and disqualifications

Parliament does not systematically control possible incompatibilities which could apply to its Members. However, at the start of their mandate, newly-elected Members are made aware of the most important incompatibilities. It is, up to the Members themselves to verify whether they comply with these rules and if not, to determine which office they will abandon.

Certain offices are ended automatically when taking the oath as Member of Parliament. Article 233 of the Electoral Code provides for instance that Members of a Regional Parliament who become Senator or Representative automatically lose their office in the Regional Parliament (with the exception of Community Senators). The same applies the other way around.

One of the most important incompatibilities is based on the separation of powers. Article 50 of the Constitution provides that a Member of Parliament who becomes a federal Minister ceases to sit in Parliament. If that individual resigns as Minister, however, he or she will get his or her parliamentary seat back.

A Member of the federal Parliament cannot be a civil servant and cannot hold judicial office.

A civil servant elected to the federal Parliament is, however, entitled to political leave and is not obliged to resign as a civil servant.

Federal parliamentarians may not sit in Regional or Community assemblies, except for the 21 Community Senators, who are appointed by and from the Community Parliaments. They may also not be member of a Regional or Community Government.

There is also an incompatibility between the office of Member of the federal Parliament and of Member of the European Parliament.

As far as local elective offices are concerned, there is no incompatibility between membership of Parliament and a local mandate, except for Community Senators who may not become mayor, alderman or president of a social welfare center.

An act of Parliament recently restricted the accumulation of elective offices by Representatives and Senators. The Act prohibits Members of Parliament from holding more than one additional paid executive office. The following are considered paid executive offices: local elective offices such as mayor, alderman, president of a social welfare center and certain mandates as representative of a political entity in public or private organizations.

There is no general limitation on combining membership of Parliament and functions in private companies and bodies.

4.2. Parliamentary Privilege

Members of Parliament enjoy special rights and immunities to enable them to discharge their functions freely. One generally distinguishes between freedom of speech in debate and parliamentary immunity.

Freedom of speech in debate is provided for by article 58 of the Constitution. No Member of either of the two Houses can be prosecuted for opinions expressed and votes taken in the exercise of his or her duties. This privilege also applies after a session has ended, or when the person concerned ceases to be a Member of Parliament.

Article 59 of the Constitution defines and describes in detail the principle of parliamentary immunity. It protects Members of Parliament when they are prosecuted for criminal acts, other than votes taken and opinions expressed in the exercise of their parliamentary duties. Immunity only applies during the session. Once the session is closed and until the opening of the next session, the protection regime does not apply.

In practice, however, the session is closed by the King only one or two days before the opening of the following session, on the second Tuesday of October. As a result, immunity applies continuously for the entire legislative term, except for a few days between sessions and when Parliament is dissolved.

Parliamentary immunity consists of the following principles:

- 1) Only officials of the Public Prosecutor's Office may initiate criminal proceedings against a Member of either House. Private persons may not do so.
- 2) During the enquiry, certain acts can only be taken provided procedural guarantees are complied with. Coercive criminal measures which normally require a decision of a judge (*juge d'instruction*) may only be taken by the President of the Court of Appeal. The Speaker of the House concerned is to be informed of the decision. The Speaker – or his representative – has to be present when a search or writ of execution is carried out. Moreover, the Member concerned may, at any stage during the proceedings, petition the Chamber of which he or she is a Member to suspend the prosecution. This appeal constitutes a safeguard against prosecution for political motives.

3) The House to which the Member concerned belongs must authorize certain procedural acts. A Member of Parliament may not be committed for trial or summoned directly (without preliminary investigation) before a court or tribunal, or arrested without such prior authorization. Other investigative acts do not require prior authorization. A Member may for instance be questioned and confronted with witnesses, his or her telephone may be tapped, he or she may be the object of searches and seizures or body searches without having to lift his or her parliamentary immunity.

The parliamentary immunity can be lifted upon a request of the Public Prosecutor of the competent Court of Appeal. The Justice Committee in the Senate or a Special Committee for Prosecutions in the House of Representatives examines whether there are reasons to deny the request, e.g. because the facts are insubstantial or the prosecution is purely political. The Committee submits a report to the assembly which takes the final decision.

If a Member of Parliament is caught while committing an offence parliamentary immunity does not apply.

The detention or prosecution of a Member of Parliament must be suspended during the session if the House of which he or she is a Member so requests.

4.3. Parliamentary Allowances

The amount of the parliamentary allowance corresponds to the salary of a member of the Conseil d'État (Raad van State), the highest administrative court in Belgium, at the beginning of his career. This allowance is index-linked and subject to taxation. Members of parliament are, in addition, entitled to a grant for expenses which amounts to 28% of the parliamentary allowance.

The parliamentary allowance can be combined with other earnings. However, the income a Member of parliament receives for other political activities may not exceed half of his or her parliamentary allowance.

Members of the Parliament's Bureau receive an extra allowance for expenses.

Representatives and Senators have free access to all public transport operated by the State or the Regions. They receive in addition a "kilometer allowance".

Senators and Representatives have offices in Parliament's office building. They can hire an assistant who is paid for by the House.

All periods of parliamentary service, whatever the legislative assembly in which a term has been served, are taken into consideration to determine parliamentary pension rights.

5. THE FEDERAL PARLIAMENT'S ORGANISATION

5.1. The Principle of Procedural Autonomy

Article 60 of the Constitution provides: "*each Chamber determines, by its own Standing Orders, the way in which it exercises its responsibilities.*"

This provision is essential because it guarantees the autonomy of each of the two Chambers. It thus constitutes the very foundation of parliamentary law. Both Houses may draw up or modify, within the limits set by the Constitution, their rules of procedure.

Both Chambers in addition enjoy financial autonomy. Each adopts its own budget. This power is essential to ensure the Chambers' autonomy. The amount of the budget is determined annually by each Chamber and cannot be modified afterwards, either by the federal Government or by the other Chamber.

5.2. Managing Bodies

In the Senate, the Bureau is the sole managing body. It consists of the Speaker, three Vice-Presidents, three Quaestors and the Presidents of political groups that are represented in the standing committees. Currently, the Bureau has 16 members. A federal Minister attends its meetings.

The Senate's Standing Orders provide for a system of weighed votes within the Bureau: the number of votes of each political group depends on its size.

The Bureau examines proposals to amend the Standing Orders and determines the Senate's budget. Most importantly, the Bureau sets the Order of Business, even if, formally speaking, its proposals must be ratified by the assembly. The Bureau also supervises the administrative services. It takes all the important individual or collective decisions and determines the principles for the organization of the Senate.

The Bureau plays a crucial role as it exercises great influence over Parliament's activities. Within the limits set by the Constitution, by legislation and by the Standing Orders, it shapes the assembly's missions. The Bureau can play a dynamic role, taking new initiatives: every important initiative - such as the establishment of special committees, committees of inquiry or advisory panels; the organization of a debate, a colloquium or a press conference - is discussed in the Bureau. It also plays an

important role in resolving impasses in parliamentary proceedings.

In the House of Representatives, these responsibilities are divided between the Bureau, the Conference of Presidents, the Rules Committee and the Budget Committee.

The Speaker of each Chamber guides debates and discussions in the assembly. To this effect, they are given comprehensive powers. Each Speaker represents his or her House in external relations. He or she speaks on behalf of the general assembly and in accordance with its instructions. Each Speaker also represents his or her House in court and before all other institutions in general. Finally, the Speakers are responsible for security in Parliament.

An Act of 2 March 1954 prohibits all demonstrations in and around Parliament. It thus establishes a neutral zone around Parliament.

The Quaestors are in charge of parliamentary housekeeping. In both Houses, the Quaestors are responsible for the smooth proceeding of parliamentary activities. To that effect, they have to make sure that the necessary equipment and facilities are available. The College of Quaestors in the House of Representatives consists of six Representatives appointed for two years by the assembly. In the Senate the College of Quaestors consists of three Senators.

The Colleges of the Quaestors of the two Chambers meet regularly to settle common problems concerning the library, buildings, security, catering, etc.

5. 3. Committees and the Plenary

Standing committees examine legislative bills and proposals. They are at the core of the legislator's work. For this purpose, committees may organize hearings with representatives of civil society, experts, etc. In the House of Representatives, committees also hold the Government to account, by putting questions to Ministers and Secretaries of State.

In the Senate, a standing committee comprises 15 members, while in the House of Representatives, it has 17 members. Members are appointed using proportional representation. Committee presidencies are allocated to different parties following the same principle of proportional representation. As a result, some standing committees are chaired by Members of the opposition.

Each assembly can set up temporary committees or special committees to examine a particular bill or a specific problem.

The Parliamentary Consultation Committee is a joint committee common to the two Chambers in which an equal number of Representatives and Senators have a seat. Its main task is to resolve certain problems relating to the legislative procedure. One of the main problems in this respect concerns the determination of the legislative procedure to be followed. Other issues concern the time limits to call up and review certain legislative bills.

There are others joint committees, such as the Committee Monitoring the Electoral Expenditure and Accounts of Political Parties and the Federal Advisory Committee on European Matters. In the latter committee, apart from Members of the Senate and of the House of Representatives, Belgian Members of the European Parliament also have a seat.

In the House of Representatives and in the Senate, committee meetings are in general open to the public. There are, however, a limited number of exceptions to this principle.

The activities of the plenary are diverse and vary depending on the political agenda. Once draft bills have been examined in committee, they are debated in the plenary. Voting usually takes place on Thursday afternoon. Both Chambers vote on bills by roll-call (using an electronic voting system). At the beginning of the Thursday sessions, Members can put questions to Ministers during “question time”.

5.4. Linguistic Groups

Each assembly is divided into two linguistic groups. This division into linguistic groups is important, since certain so-called special majority laws require, besides a two-third majority overall, a majority within each linguistic group.

In the Senate, the 25 Senators elected by the Dutch-speaking electoral college, the 10 Senators designated by the Flemish Parliament and 6 Dutch-speaking co-opted Senators make up the Dutch linguistic group, in total 41 Senators. 15 Senators elected by the French-speaking electoral college, 10 Senators designated by the Parliament of the French Community and 4 French-speaking co-opted Senators make up the French linguistic group, in total 29 Senators. The Senator designated by the Parliament of the German-speaking Community, as well as the ex-officio Senators (3 in 2000) are not part of any linguistic group.

In the House of Representatives, a Member automatically belongs to the French-speaking linguistic group or to the Dutch-speaking linguistic group when the constituency wherein he or she was elected is an integral part of the French language region or of the Dutch language region. The Representatives elected in the German language region belong to the French linguistic group. As far as Representatives elected in the Brussels-Halle-Vilvoorde constituency are concerned, the language which they first use when they take the oath of

office determines the linguistic group to which they belong. Currently, the Dutch linguistic group comprises 91 Members and the French linguistic group has 59 Members.

5.5. The Political Groups

The political groups play a key role in parliamentary proceedings. Their Members meet regularly to establish a common line of conduct. They choose a president who is their spokesperson in the assembly and in the Bureau.

Seats within standing committees are attributed to political groups using proportional representation. A political group must have a minimum number of Members to have a seat within standing committees. However, even if a group is not represented as such in committee, its Members are not completely excluded from committee proceedings. Every Senator has in fact the right to attend committee meetings, even those committees of which he or she is not a member. Small political groups thus can participate in discussions at committee level and table amendments. However, Senators who attend a meeting of a committee of which they are not a member, do not have voting rights.

Proportional representation is, in general, also applied for the constitution of other parliamentary bodies and delegations.

Neither in the Senate nor in the House of Representatives can one create so-called “technical groups” which consist of Members belonging to different political parties. In the Senate, the constitution of political groups flows from the very process of the formation of the assembly, as organized under the Electoral Code, leaving individual Senators only a limited choice.

The Senate Standing Orders stipulate that: "The Senators elected directly by the electoral corps can constitute political groups according to the lists on which they have been elected". This means that they may not choose which group to join. The same principle applies to Senators designated by Community Councils and to the co-opted Senators: they may only join the group which – indirectly – has appointed them. However, the sole Senator designated by the Parliament of the German-speaking Community is free to join the political group of his or her choice, since he or she is designated by and from said Parliament, not by a particular group.

A Senator who leaves his or her political group in the course of a session, is not allowed to join another group. He or she must therefore sit as an independent Member. In the House of Representatives on the other hand, a Representative may change political group.

In the Senate, proportional representation among political groups is not modified when a Member leaves his or her group. Proportional representation is established following the

elections and remains the same for the entire session. If, however, a large number of Members would abandon their group, or if a group implodes, proportional representation may be modified.

Political groups receive from the budget of the House of Representatives and of the Senate financial resources to ensure the operation of their secretariat and to hire university graduates and administrative assistants. The amount each group receives is proportional to its size.

5.6. *The Assemblies' Services*

The services of the House of Representatives and of the Senate are divided into a legislative department (Grefte) and an administrative department (Quaestor). They operate under the authority of the Clerk of the House (Secretary General), who is appointed by the assembly. Both Chambers together have approximately 850 civil servants in total, 25% of whom are university graduates.

Each Chamber recruits its own staff. They have their own status which is similar to that of federal civil servants.

The legislative department assists legislative work in all its aspects, both at committee level and at assembly level. Each committee is assisted by one or more university graduate staff members who take care of the committee's secretariat, advises its chairperson and assist rapporteurs in drafting reports. Since all documents have to be translated into Dutch or French, both Chambers have extensive translation services.

Some part of the civil servants only work on days when the assembly meets in plenary session, e.g. the service that drafts the parliamentary reports.

The logistics of the assemblies are handled by the administrative (Quaestor) department, which is responsible for human resources, the buildings and accounting. The service for external relations organizes visits for visitors in general (some 50.000 persons each year) and for official foreign delegations in particular. In addition, it acts as secretariat for the Federal Advisory Committee on European Matters and it handles questions concerning protocol and arrangements with the press. Finally, officials of the service accompany Belgian parliamentary delegations during their visits and missions abroad.

Every Member of Parliament can hire a full-time assistant. These assistants are paid for by Parliament which is also in charge of human resources' issues. The chairpersons of political groups have an additional budget to hire university

graduates and administrative staff.

6. PARLIAMENT'S ACTIVITIES

Traditionally, Parliament performs three main functions: law-making, budget and political control. For each of these functions, the Belgian Constitution has established a degree of specialization between the two federal assemblies.

In addition, Parliament takes part in other functions, which are often related to one of the above-mentioned three traditional parliamentary functions: a constitutional function, which is a federal competence, and an international function, which falls primarily within Government's responsibility.

In a federal State, the federative function must be added to the three traditional parliamentary functions: Parliament offers a forum where federated entities meet one another.

6.1. The Constitutional Function

The Constitution is the highest (internal) legal norm in a civil law system such as Belgium's. It guarantees fundamental freedoms, organizes relations amongst different State powers and lays the foundations for the State's federal structure.

The federal Parliament is the only assembly in Belgium which has the power to revise the Constitution. Regional authorities live by rules and principles drawn up in the Constitution and in several federal laws. Thus, the organization of the different Regional entities is a federal competence.

The procedure for amending the Constitution is intentionally cumbersome. It tries to avoid the Constitution being amended at the drop of a hat. Article 195 of the Constitution lays down a three-step procedure. First of all, the federal legislator adopts a declaration to revise the Constitution in which it lists the provisions that need revision. The Chambers are then automatically dissolved. Following elections, the new Chambers have jurisdiction to amend the Constitution. They can only adopt a revision with a two-thirds majority, provided that at least two-thirds of the Members are present.

6.2. Lawmaking

In Belgium, the federal legislator consists of three branches: the House of Representatives, the Senate and the King. For issues concerning the State's structure and its institutions, the House of Representatives and the Senate have identical competences. For all other matters, the Senate's intervention is optional, while the House of Representatives prevails if the two Chambers disagree.

However, many areas today are part of the jurisdiction of the Communities and of the Regions. In those areas, the Parliaments of the federated entities have legislative power.

1° Integral Bicameralism:

For basic federal acts, the House of Representatives and the Senate are on an equal footing. This means that draft bills and proposals can be passed only if the two Chambers agree on an identical text.

In short, integral bicameralism applies to the following areas:

1/ Fundamental institutional rules: the Constitution and special majority laws; laws concerning the federal State's structures and concerning Parliament's proceedings; acts concerning the monarchy.

2/ Laws consenting to international treaties; laws transferring powers to international institutions; laws whereby the federal legislator temporarily substitutes Community and Regional institutions that did not comply with Belgium's international obligations

3/ Laws approving co-operation agreements between the federal State, the Communities and the Regions.

4/ Laws concerning the Conseil d'État and the Cour d'Arbitrage, as well as those organizing the judiciary.

A special majority law can extend the list of integral bicameral matters.

2° Restricted Bicameralism

In most cases, the Senate has limited jurisdiction. Government bills are tabled in the House of Representatives. After the House of Representatives passes a bill, it is sent to the Senate. If 15 Senators so request within 15 days, the Senate reviews the bill. If not, the bill is published and becomes law. The Senate can amend the bill within 60 days and return it to the House of Representatives which considers it again. The number of "shuttles" between the two Chambers is limited. If both Chambers fail to agree on the same text, the opinion of the House of Representatives prevails.

Senators can also table private bills in those areas wherein the Senate has limited jurisdiction.

3° Monocameralism

In one area, legislative power is held by the House of Representatives and the King, with the exclusion of the Senate : the House of Representatives has sole jurisdiction to determine rules concerning civil and criminal liability of federal Ministers. This is the consequence of the fact that the House authorizes criminal prosecutions against federal Ministers.

The Constitution lists other so-called monocameral acts of Parliament. They are primarily acts of the House which take the form of a law but which are bereft of any normative content, such as laws granting naturalization, approving State budgets and establishing conscription quotas for the army.

4° Special Powers (Delegated legislation)

Parliament may grant special powers to the Government. When Parliament adopts an act granting the Government special powers, it delegates to the Government, for a given time and in specific areas, the power to adopt acts which, if necessary, can repeal, complement or amend existing acts of Parliament. Government decrees implementing such special powers have to be confirmed afterwards by Parliament.

5° Information

As a corollary to its legislative work, both Chambers play an important role in gathering and distributing information. To do this, they set up special committees, hold hearings and organize seminars and conferences.

6° Assessment of Legislation

The Senate recently created a department to review the quality of legislation. It also set up a committee of civil servants to examine bills that fall under the restricted bicameral regime and that are sent or are to be sent to the Senate by the House of Representatives.

The House of Representatives supervises if acts of Parliament are duly executed. Each year, it publishes a report indicating for each bill if it has been adopted by the Senate and if and when it was signed by the King and published in the Official Journal.

6.3. The Budget

The second traditional function of Parliament is the adoption of the budget. This function is held solely by the House of Representatives. The Senate only adopts its own operating budget.

Historically speaking, Parliament was granted the power to adopt the budget to enable it to control Government. If, for any reason, Parliament would not agree with the proposed budget, Government would be paralyzed.

In the House of Representatives the Government tables three documents: the general expenditures budget, the ways and means budget and an introductory statement.

The introductory statement consists of a synthesis of all expenditures and revenues relating to the budget of the year in question. The ways and means budget authorizes the Government to collect taxes for one year, according to existing laws, decrees and regulations. It contains an appraisal of the State's income and authorizes the procurement of loans. The general expenditures budget provides for and authorizes expenditures by the general administration of the State.

In the course of the budgetary year, the House of Representatives holds a budget verification debate. The budget is then compared with the actual evolution of the socio-economic situation, as well as with actual State expenditures and revenues. An adjustment to the budget is made, if necessary.

When it verifies State expenditures and revenues, the House of Representatives is assisted by the Court of Auditors, the members of which the House of Representatives appoints.

6.4. Political Control

Contrary to what many think, the main task of Parliament is not to legislate, but rather to control the Government.

The King cannot act alone in the political domain. All his acts must be countersigned by a Minister who thereby becomes sole responsible for such act. Political control therefore only applies to the Government.

Since the revision of the Constitution in 1993, it is mainly the House of Representatives which monitors the Government's actions. Only the House can question the Government's political responsibility and vote on a motion of confidence or of no-confidence.

The Senate, however, has retained certain instruments to monitor the Government, as accessories of its legislative function: Senators can, for instance, put forward oral and written questions and the Senate can adopt resolutions. However, the Senate cannot sanction the Government politically.

Apart from general principles concerning inter alia motions of confidence and the right of inquiry, the Constitution does not contain detailed rules regulating specific control mechanisms. Every Chamber has the right to define such mechanisms in its Standing Orders.

1° The Governmental Declaration

When a new Government is established, the Prime Minister presents a governmental declaration to the House of Representatives outlining the main themes of the coalition agreement. This declaration is followed by a debate and a vote of confidence. In the past, the Prime Minister has also presented this declaration to the Senate, although he is not required to do so by law.

At the beginning of each parliamentary year (October) the Prime Minister also makes the so-called State of the Union address. In this declaration, the Prime Minister lists the Government's priorities for the coming year.

It may happen that the Prime Minister reads a governmental declaration, independently of the formation of a new Government. In such a case, the Prime Minister comes before the House of Representatives in order to galvanize support for his team or to report on new policies envisaged by his cabinet.

2° Parliamentary Questions and Interpellations (questions followed by motions)

Every Member of Parliament has the right to put oral or written questions to a particular member of the Government. Written questions and the Ministers' replies, are published in the weekly Bulletin of Questions and Answers. Oral questions are asked in plenary assembly (or in committee in the House of Representatives) and must concern issues of general interest. In principle, the start of each Thursday

afternoon session is devoted to question time.

Parliamentary *interpellations* are more extensive than questions. They give rise to a thorough debate in which all representatives are free to intervene. Motions can be tabled at the end of an *interpellation*. One distinguishes the following categories of motions : reasoned motions which contain a recommendation to the Government, without taking a position on whether the Government or a Minister still enjoys the confidence of the House; motions to go to the next item of the agenda (without taking a position on an issue in debate); motions of confidence or of no-confidence. When a majority of the Members of the House adopts a so-called constructive motion of no-confidence, the Government must resign. Since Ministers are not answerable to the Senate, the third category only exists in the House of Representatives.

Finally, the House of Representatives and the Senate can address resolutions to the Government.

3° Right of Inquiry

Parliamentary committees of inquiry, which were rarely set up until 20 years ago, have been used increasingly in the recent past.

Article 56 of the Constitution provides that "*each Chamber has the right of inquiry*".

In practice, the Assemblies use the right of inquiry by creating amongst their Members a special inquiry committee. This committee can summon and hear witnesses. Witnesses, as well as interpreters and experts, take an oath and are subject to the same obligations as when questioned by a so-called *investigation judge* (*juge d'instruction - onderzoeksrechter*). A parliamentary committee of inquiry can also conduct searches and seize documents. Committee meetings at which witnesses or experts are heard are public, unless the committee decides otherwise. Normally, the committee is obliged to report in a given time to the assembly. It can for instance suggest amending existing legislation. The plenary assembly votes on motions submitted in the committee's report.

4° Control over Police and Intelligence Services

A parliamentary committee has been set up in each Chamber to monitor the proceedings of two so-called standing committees on the police and on the intelligence services. The Senate monitors the Standing Committee on the

Intelligence Services, while the House of Representatives monitors the Standing Committee on Police Services.

5° Federal Mediators (Ombudsmen)

The House of Representatives appoints a Dutch-speaking and a French-speaking federal mediator or ombudsman for a renewable six year term. The mediator examines citizens' complaints concerning the operation of the federal administration.

They can also investigate the way a particular administration operates at the request of the House of Representatives. The mediators issue recommendations and report to the House of Representatives.

6° Permission to prosecute Federal Ministers

As far as offences that a Minister is alleged to have committed while performing his ministerial duties are concerned, he or she can only be tried by the Court of Appeal. This is also the case for offences committed by Ministers which are not related to their ministerial duties but for which they are brought to trial while they are in office.

The Court of Appeal's decision is amenable to review by the *Cour de Cassation (Hof van Cassatie)* sitting *en banc*, which only reviews legal issues but does judge the merits of the case.

Any committal or any direct summons to appear before the Court of Appeal and any arrest (except when caught red-handed), requires the authorization of the House of Representatives. The House of Representatives does not decide upon the merits of the case: it only verifies whether the request is well-founded. It can refuse authorization when it deems that the prosecution is clearly based on political grounds or that the elements provided are arbitrary or trivial.

6.5. The International Function

The Government is responsible for international relations. Members of Parliament can try to influence the Government's foreign policy or can try to set off an initiative using ordinary means of political control, such as parliamentary questions and interpellations, motions or resolutions.

Members of Parliament also have many bilateral and multilateral contacts, resulting in a form of parallel diplomacy.

Bills whereby the legislator consents to a treaty must first be tabled in the Senate and must be adopted following the full bicameral procedure. A Member of Parliament cannot table a consent bill: this belongs to the Government's prerogative. Parliament cannot amend these bills. It can only reject or adopt them *ne varietur*.

The Government has to keep Parliament informed during negotiations to revise European Union treaties. The text of amending treaties must be given to the assemblies before they are signed. This obligation to inform Parliament does not infringe on the executive power's authority to conduct negotiations. Nevertheless, it enables the assemblies to hold a prior debate and to influence the Belgian delegation's points of view.

Democratic control does not only concern international treaties: draft proposals of EU secondary legislation, such as regulations and directives, must also be conveyed to the Member States' Parliaments when sent to the Council of Ministers of the European Union. These proposals are examined in the Joint Federal Advisory Committee on European Matters, which consists of Representatives, Senators and Belgian members of the European Parliament.

6.6. The Federative Function

The Constitution wants the Senate to be a Chamber where the Communities meet. The Communities' Parliaments are represented in the Senate as they appoint 21 so-called Community Senators. Indirectly, they thus participate in the process of adopting federal legislation. In addition, the Senate plays an important role in the settlement of conflicts of interests between different federal and federated assemblies. When a legislative assembly considers that its interests could be seriously damaged by a bill tabled in another assembly and the conflict cannot be settled by mutual agreement, the conflict is referred to the Senate, which advises on possible solutions. The final decision is taken by the so-called Consultation Committee, in which representatives of the different federal and federated Governments sit and which decides by consensus.

6.7. Miscellaneous_

Three responsibilities of Parliament do not fall within any of the classic functions. They have been entrusted to Parliament because it personifies democratic legitimacy.

1° Control of the Political Parties' Accounts and of Electoral Expenses

Since 1989, Parliament has adopted several acts limiting and controlling electoral expenses and providing public funding for political parties. An act also created a committee which has to verify whether political parties and individual candidates abide by those rules. The committee consists of an equal number of Members of the House of Representatives and of the Senate and is chaired by the Speakers of both assemblies.

2° Naturalization

Naturalization gives a foreigner Belgian nationality and confers to him or her all political rights that the Constitution bestows on Belgian citizens. The Constitution therefore provides that Belgian nationality is granted by the House of Representatives. As naturalization is deemed to be a favour, the House of Representatives has absolute discretion whether or not to grant naturalization. The courts have no jurisdiction whatsoever over its decisions.

3° Succession to the Throne

In three cases, Parliament deals with issues concerning the Monarchy:

- 1/ The King can only ascend to the throne after having taken the oath before the joint Chambers;
- 2/ A law must be adopted approving the civil list (the budget the King receives to enable him to perform his constitutional duties);
- 3/ In exceptional cases, when there is no heir or when the throne is vacant, the joint Chambers intervene in the appointment of a new King. They also install a regent in the cases foreseen by the Constitution.