

# THE AUTONOMY OF WALLONIA: THE KEY TO ITS DEVELOPMENT

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The purpose of this presentation isn't to justify an institutional system or place it in its context, but rather to describe it, underscore its most interesting features and some of its weaknesses, so that others can draw inspiration from its positive aspects and avoid falling into pitfalls when developing other systems. This applies for instance to the Moroccan Initiative for the autonomy of the Sahara region, presented to the Secretary General of the United Nations on 11 April 2007. It is well known that this Initiative was put forward by Moroccan authorities not as an end product or a unilateral imposition cast in stone, but rather as a **basis for international negotiations** with the other parties under the aegis of the United Nations. Hence following a presentation of the institutional background to Wallonia's development and its success factors, we shall offer **a few comparisons**. We shall also look into an interesting contribution of the Moroccan civil society contained in a document entitled "New Development Model for the Southern Provinces" drafted in September 2013 by the Economic, Social and Environmental Council (ESEC), knowing of course that it is neither an annex nor an addendum to Morocco's Autonomy Plan. This document refers to the so-called advanced regionalization process initiated by Morocco in the framework of the new Constitution of 2011 and not to the Moroccan Initiative. By way of comparison, it will allow us to identify the elements of the Moroccan Initiative which **go a step further from the point of view of autonomy**.

## **1. Federalism in action**

The Belgian institutional system and, hence, the organization of Wallonia and its experience, are clearly grounded in the basic principles of federalism, i.e.:

- **Autonomy:** each component is granted the exclusive competences and powers needed to achieve its goals;
- **Participation:** federated entities are involved in the establishment and functioning of federal entities, especially one of the chambers of the legislative branch of government. In Belgium this principle applies indirectly in keeping with the constitutional standard imposing language parity in the Federal Council of Ministers (with the possible exception of the Prime Minister and State Secretaries);
- **Subsidiarity:** powers are to be exercised at the level where they can be more effectively exercised, which means conferring competences at the levels where problems occur;
- **Primacy of law:** courts and the Supreme Court guarantee this internal hierarchy. Respect for this hierarchy is facilitated in Belgium by constitutional clauses that provide that any amendment to special laws conferring competences and powers to federated entities (the majority of the members of each language group must be present, adoption must be by an absolute majority vote in each language group and by a two thirds majority vote in the assembly).

## **2. Autonomy and subsidiarity**

In order to ensure the overall coherence of the system, these two principles have been made interdependent in Belgium:

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- Federal entities have **no oversight or controlling power** over federated entities. In other words, there is no relationship of subordination, all entities are equal.
- **Subject matters are clearly distributed** between the federal level and federated entities. The powers vested in the latter are very precisely defined. In other words, if an entity is competent in any subject matter, it enjoys normative (and legislative), executive, budgetary power as well as the power to establish international relations.
- Subject matters that are not specifically attributed to either level of power, i.e. so-called **residual powers**, are exercised by federal authorities. This type of organization is totally different from the Canadian system where "spending power" makes it possible for the federal state to interfere in provincial powers.

By way of simplification, federated powers can be presented as follows. These fields of competences are actually totally interconnected and needed for populations to develop:

#### **a) Living environment**

- Land-use planning (urban planning and land-use planning, communal roadways management plans, acquisitions, layout and equipment of industrial and small business centers, urban renewal, restoration of abandoned economic sites, land policy, monuments and sites);
- Environment and water (air and water protection, noise control, water production, treatment and distribution, waste management policy, external policy for dangerous, substandard and inconvenient establishments), based on four federal exceptions (product standards, protection from ionizing radiations and radioactive waste, transit of waste and labour protection);
- Rural restoration and nature conservation (land consolidation in rural areas and rural restoration, nature conservation and protection, greenfield sites, park zones and green areas, forests, hunting, fishing, agricultural water engineering);
- Housing (housing and policing of substandard housing that constitute a risk for public health, with the exception of rules regulating lease contracts).

#### **b) Economy and employment**

- Agricultural policy (with the exception of food chain safety regulations);
- Economic policy, in accordance with the principles of free movement of production factors and products, with the single currency and the financial policy, free trade and industry (the federal State is competent for internal and external monetary policy, for financial policy and savings protection, as well as for prices and income policy, competition law, trade practices, trade law, company law, intellectual and industrial property);
- Parallel competences in credit policy and public holdings.
- Protection and promotion of foreign investment and export support, with parallel competences for the issuance of export guarantees;
- Energy (distribution and local power grid, public gas distribution, new energy sources, energy recovery and rational use) with the exception of federal competences with regard to nuclear power, electricity tariffs and national equipment plan (in association with regional governments for the drafting of the latter);
- Employment (vocational training, placement of workers, reemployment of job seekers, activation of unemployment benefit, scrutiny of the availability of the unemployed and sanctions, issuance of work permits to foreigners);
- Applied and fundamental scientific research, with the exception of the space sector and federal scientific establishments.

**c) Local competences**, i.e. at the level of communes, associations of municipalities (associations of local authorities) and provinces (composition, competences, functioning, financing, regulation, voting rules, staff regulations);

**d) Infrastructures**

- Public works (roads, highways, waterways, ports, coastal defense against attacks coming from the sea);
- Transportation, with the exception of national railways (SNCB), (equipment and operation of public airports and aerodromes – with the exception of Brussels' airport – public urban and regional transport, pilotage, marking towards and from ports, maritime rescue and towage). Though rail transport comes under the purview of federal authorities, additional regional financing can be provided for investment purposes.

**e) Education and culture**

- Teaching (regulation and organization, from pre-schools to universities);
- Culture (language protection and promotion, fine-arts, cultural heritage, museums, broadcasting and television libraries, media support, life-long learning and cultural activities, recreation and tourism, sports, social promotion).

**f) Social sphere**

- Assistance to the elderly (nursing homes);
- Assistance to the disabled;
- Preventive health care;
- Hospitals accreditation standards;
- Family allowances, birth benefits, adoption allowances.

**3. International relations**

One of the most original features of the Belgian system is that it gives federated entities the **exclusive right to develop international relations**.

The definition of regions adopted by the Assembly of European Regions – an organization of which Wallonia was one of the most active founding members – places them in second position in the hierarchy of power, i.e. right behind the central State. The second condition that regions have to meet is to have a directly elected assembly.

Obviously, this definition does not fully guarantee autonomy and participation in the central government. Moreover, it does not mention internal expression, which could indicate that regions recognized as such could be denied by central States the opportunity to develop international partnerships.

And yet this international dimension is key to effective regional action when the federalist principle of autonomy is guaranteed. According to this principle, each region or component of a federal State is entrusted with exclusive competences and powers needed to achieve its goals. Therefore, the effectiveness of regional action would be considerably

undermined should central authorities be able to question the objectives of the region by preventing their achievement at the international level.

The latter justified transferring a large proportion of **foreign trade**-related competences to the regions, in the framework of the institutional reforms of 1989, 1993 and 2001. The special law of 16 July 1993, which aimed at completing the federal structure of the State, provides that the regions have competence over trade opportunities and export policy, without prejudice to federal competences:

- to provide guarantees against export risk;
- to pursue a policy of coordination and cooperation;
- to pursue a policy of promotion in collaboration with the regions.

More broadly speaking, **the internal competences of the regions extend to the international arena:**

- they have competence over the treaties that cover matters falling under their purview, while regional governments negotiate them, sign them and submit them to their Parliament for approval;

- what holds true for signature also holds true for ratification, implementation and denunciation. The federal State can oppose a region's draft treaty in four cases (has never been the case so far):

- o when Belgium does not recognize the other contracting party;
- o when Belgium does not maintain diplomatic relations with the other contracting party;
- o when diplomatic relations have been broken, suspended or seriously compromised;
- o ...or when the treaty envisaged stands in the way of Belgium's national or supranational obligations.

The only other case when federal authorities can "interfere" is when a region fails to fulfill an international obligation in an area that falls within its competences.

In this case, provided an international or a supranational court has served a sentence (never has been the case so far), the federal State can replace the failing region, at the region's expenses, and take the required legislative or regulatory measures.

#### **4. Participation and supremacy of the law**

Through the French language group at the Senate, Wallonia can veto draft legal texts on the competences, powers and other features of federated entities, in particular with regards to judicial review.

Moreover, the **federal Senate** is a direct and almost exclusive product of federated entities in that, as from this year, it shall consist of a total of 60 members, among which 24 will directly or indirectly come from French speaking federated assemblies. Any revision of the Constitution or of institutional review laws must be decided by a two-thirds majority, a provision that strengthens the principle of participation.

Besides, the **Constitutional Court**, made up of an equal number of members of each language group, has control over regulations with force of law, both federal and federated, in keeping with rules governing the distribution of powers and provisions on fundamental rights and freedoms. A determination is made in case a government, an assembly or an individual

demonstrating legitimate personnel interest lodges an action for annulment. The same applies when a judicial or administrative jurisdiction refers a question to seek a preliminary ruling.

## **5. Conditions for success**

Without trying to impose a regional or federal code of good practice, a few preconditions can foster democracy, ensure that authorities are as close to their citizens as possible and efficient, and ensure more effective clean and global development.

These conditions revolve around seven principles:

### **a) CLARITY**

a.1 **At territorial level:** the various components of the federation have to be clearly separated from a geographical point of view. In other words, one should avoid having two types of federated entities living side by side and each covering the whole of the federal territory but based on different geographical constituencies and different competences.

The dichotomy between the community and the region, which is very specific to Belgium<sup>21</sup>, does not seem to lend itself to transposition, however positive in the case of Belgium.

The risk of lack of clarity indeed becomes an asset in Belgium because the situation is very specific and because institutions are jointly organized, with joint decision-makers: the Community is increasingly becoming a federation of two regions within which clearly determined competences are implemented and collaboration is fostered. Within one region and in order to safeguard minorities, this should however not exclude the granting of specific individual rights to the members of a given culture;

a.2. **From a thematic point of view:** competences must be clearly allocated between the various levels of power and coherent and preferably homogenous blocs should be organized.

### **b) PERSONALITY**

b.1. Existence, at regional level, of an identity and expression of this identity;

b.2. Organization of the institutional architecture of the regions and identification of their competences to **enhance such identity autonomously**.

### **c) CONTENT OF POWER**

c.1 **Exclusive competences** granted to regions and/or federated entities;

c.2 Opportunity for those holding competences to exercise them at the international level;

c.3 Equivalence between federal and regional norms.

### **d) THE MEANS TO AN END**

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<sup>21</sup> The action of Belgium's French speaking community, which is competent over culture, education, social welfare and health, may cover:

- the territory of the Walloon Region, with the exception of German speaking communes;  
- the French speaking population of the Brussels-Capital Region.

d.1 Regional competences should be identified in the areas that are key for development (land-use planning, industrial and agricultural development, research, job placement, employment, culture, education, environment, development of resources, energy, health and social assistance);

d.2 The allocation of the financial resources required to use these competences to the full has to be guaranteed.

#### **e) TRANSPARENCY**

e.1 Regional power has to be organized based on the responsibility of the executive power before the legislative power;

e.2 Power has to be decentralized to truly make the most of proximity to the citizens.

#### **f) RECOGNITION OF INTERDEPENDENCY**

f.1 Coordination mechanisms between the levels of power have to be stabilized, in particular with a view to preventing conflicts of interests;

f.2 A judicial review system has to be established between federal and regional powers to ensure respect for common rules;

f.3 Solidarity has to be established between the various federated entities.

#### **g) INTERNATIONAL ACTION**

g.1 Opportunity should be ensured to exercise exclusive competences internationally, at bilateral as well as multilateral level;

g.2 The same principle shall apply to regional cooperation bodies.

When expressed within States, the positive effect of federalism is that it eliminates the tensions and frustrations that stem from unitary and centralized management, which bears the weight of the majority. In other words, when federalism is well implemented, it spares minority regions from stating they have been aggrieved by the majority and from blaming others for their deficiencies.

### **6. The development of Wallonia**

Before going further into the presentation of Belgium's institutional experience and that of Wallonia as a source of inspiration, it is worth noting that for the French speaking populations of Belgium, the various stages of institutional reform were always meant to provide each region with the capacity, the ingredients and tools to develop and not to ensure formal independence. Their aim was to give them the opportunity to choose their own model of development without having to ask for a change in the autonomy statute.

As stated above, what matters most is to distribute competences well, exclusive powers and effective powers, as well as to ensure they have their own financial resources.

In Wallonia these conditions were met to allow the region to adopt a global development policy based on the end of segregation, in particular sectoral, cultural and disciplinary. The milestones in the process have been the launch in 2006 of the priority action plan for Wallonian steel, commonly referred to as Wallonia's 'Marshall Plan' (additional resources of €2 millions over a 4 year period), followed by Green Marshall Plan 2, an extension of the first one over 2009-2014 (€2.75 million budget) focused on six priority areas:

- **Human capital development** (development of life-long training, enhanced linkages between economic, teaching, training and employment policies);

- **Further redeployment of the industrial policy**, based on networking between stakeholders through competitiveness poles (businesses, training units and research centers) in six Wallonian sectors recognized by international experts for their world-class excellence: life sciences, aeronautics and space, mechanical engineering, logistics, agri-food industries, green technologies, and through clusters;

- **Scientific research** (upscaling of investments in R&D, support to excellence in scientific research, enhanced development of research and innovation within the economic fabric);

- **Providing an environment to foster business and quality employment creation** (support for entrepreneurship, for the setting-up and development of businesses, for businesses internationalization and strengthening the territory's attractiveness in the eyes of investors);

- **Combining employment and environment** (development of new opportunities in 'green' sectors: innovation, training, employment, etc.);

- **Employment support** in community services to meet societal needs.

Green Marshall Plan 2 was strengthened in two respects:

- through the 'Creative Wallonia' Plan focused on creativity and innovation via decompartmentalization and transdisciplinarity;

- through Marshall Plan 2022, a ten year strategy aimed at ensuring continuity based on the most important elements of the previous plans.

The success of this policy was due to this holistic approach aimed at developing all competences, infrastructures (logistical) and teaching. Among other success factors, it is worth mentioning complementarity with federal authorities (in terms of fiscal incentives for instance) and European bodies (cohesion policy) as well as the absence of territorial silos that makes it possible to take into account the whole Region. On this last item, territorial unity means that no one part of the territory is excluded and that its identity is to be respected.

This policy was drafted and implemented through a process of consultations with social partners (Economic and Social Council, Social Partners Group-GPS) as well as with partners-operators from various sectors (Counsel of Wallonian foreign trade operators, Research and Innovation Platform). A system of external assessment was also established by international experts, public procurement was opened to large audit bureaus or the European Commission and OECD, the latter having carried out an in-depth study of Wallonia's innovation policy.

Belgium's institutional system undoubtedly allowed Wallonia to autonomously implement a proactive and efficient development policy for its citizens and to ensure their **ownership** of the institution and its actions. This is one the lessons that can be learned from it at this stage: autonomy should be established on a sufficiently broad basis in terms of competences and the widest possible powers should be allocated to ensure **adoption of adequate policies and citizens ownership**.

Its effects are even greater when regional authorities can express their own identity, which justifies participation in governance at the central level in order to guarantee support for their development policy and that no measures are adopted that may undermine it. Identity is also the positive element that highlights, through diversity, the region's added value for the rest of the country.

When a community with its own identity and territories joins an existing State, the above-mentioned ideas better guarantee such added value as well as the prevention of possible disputes. The same goes for the recognition of the unity of the region's territory and avoiding diluting it through territorial division. In other words, the more autonomy is genuine and respected, the more those who enjoy it will feel they master their own future.

The approach mentioned above can on several counts be implicitly compared with the Moroccan Initiative for negotiating an autonomy statute for the Sahara Region. The latter bears some similarities with Wallonia's autonomy.

The two are similar in areas such as competences in employment, culture, education, the social and environmental spheres, as well as fiscal autonomy. The same applies to so-called exclusive powers. One may still question their effectiveness and their equivalence. The opinion formulated by the Economic, Social and Environmental Council in the so-called 'New development model' may however raise some doubts as we shall see below, since that document is dated October 2013.

It also differs from it in many aspects. The list of powers envisaged does not seem to cover land-use planning, which is considered a basic competence in Belgium and a key feature of development or infrastructures. Conversely, competences over local police and regional jurisdictions (higher regional court) are mentioned in the Moroccan Initiative. This Initiative however seems to be going further than Belgium in terms of autonomy through **residual competences**, granted in Belgium to federal authorities while they are jointly exercised in the Moroccan Initiative, based on the principle of subsidiarity. With regards to **international powers**, the situation is reversed. The 'window of opportunity' given to the Sahara is limited to connections with 'foreign regions' (and does not apply to States while it does in the case of Wallonia), in consultation with the central government. In this project, the relationship with the Moroccan Government takes on a different dimension, i.e. the latter holds consultations with regional authorities on issues related to the powers of the region (unlike the Belgian system that ensures equivalence and treats standards on an equal footing at the international level too).

The Moroccan Initiative mentions the free consultation of the populations concerned through a referendum, i.e. their right to self-determination. Against a different backdrop, the political debate remains animated in Belgium over the usefulness of a referendum, sometimes opposed to popular consultation, which results are not binding.

Finally, without going into a comparison of each King's respective powers, the Initiative provides that the head of the regional government is appointed by His Majesty the King, whereas in Belgium it only takes the oath before the King, a purely symbolic character in practice.

Beyond this simple comparison, it seems useful to wonder about the content of these provisions and their possible contradiction with other practical considerations. Hence, the **territorial division**, confirmed (?) by the name 'Southern Provinces' may well considerably water down regional autonomy.



Besides, based on the limited decentralization it provides for and the way it is drafted, the opinion expressed by Morocco's Economic, Social and Environmental Council, dated October 2013, may be interpreted as revealing a centralized system and a will to place into trusteeship, which would not be in keeping with the Moroccan autonomy initiative aimed at finding a final, political, internationally negotiated and consensual solution to the dispute over the Sahara and at ensuring growth and human development in the region.

In fact, the new development model of the CESE refers to the respect for the rule of law, which is the backbone of authority and delegation of mandates. The notion of '**delegation**' may indeed imply that the entity that delegates may take over full responsibility through a simple unilateral decision. This reading of the text seems to be confirmed by other provisions of the said document, such as:

- the fact that the new model is based on the 'strengthening of the place of the State as a regulator and as entity guaranteeing implementation of the law';
- the clearly stated goal of 'turning our Southern Provinces into a geostrategic space of reference';
- the fact or the desire for 'the credibility of the State and its action in the southern provinces [to depend] on the sound management of public affairs in a transparent, clear manner, making sure citizens have access to information';
- the stated desire that 'the State must ensure transition to a predictable framework that provides incentives for investment and market activities';
- the foreseen conclusion of regional program contracts with each of the three regions envisaged, which confirms a breach in the regional unity of the Sahara and dependency vis-à-vis the State;
- the role envisaged for the region's *Walīs*, i.e. 'making sure laws and regulations are complied with, assisting the presidents of regional councils in the implementation of their development plans and programs, and coordinating the action of the central government's devolved services, making sure they function properly'. This is more like a 'French-style type of decentralization' than a 'Belgian-style regionalization' considering the similarity with the role of French prefects. Besides, the text mentions the creation of a High Authority to assess and give impetus to programs as well as to set development goals in the contracts between the State and elected representatives of the Southern regions.

With regards to the content of regional competences, while the Moroccan Initiative mentions 'social security and protection' among the competences entrusted to the autonomous region of the Sahara, the CESE recommends, before any competences are transferred, establishing a new conditional social security system organized around social safety nets, replacing food aid by financial aid. In our opinion, an institutional system of exclusive competences should leave it to the so-called autonomous region to **adopt its own policy**, choose the way it is going to implement these competences and organize its own consultative processes, in particular with regional social partners.

Moreover, the text of the Initiative includes 'the proceeds from the exploitation of **natural resources** allocated to the Region and collected by the State' among the financial resources of the autonomous Region. Here again, the opinion of the CESE seems to limit autonomy by advocating a medium and long term strategy based on renewed practices aimed at ensuring that the populations 'and their representatives' (?) are consulted and involved in the process and that such populations effectively and equitably benefit from these natural resources.

By way of conclusion, when compared with the legal context and development autonomy of Wallonia the Moroccan Initiative:

- though advanced and informed, offers **lower regional autonomy** with lesser development **leverage**, both internally and internationally;
- in the light of the current situation and the proposal of the CESE, the Initiative may perpetuate considerable **dependency** vis-à-vis the central State, in terms of financing, powers and competences;
- there is a risk of **territorial dilution and fragmentation** which does not tally with the recognition of identity.

In view of the circumstances, **identity** remains essential: in order to make peace, its recognition involves negotiating a status of association that implies strong and advanced autonomy, together with corresponding competences and powers.