The sixth Belgian state reform of October 2011: analysis & next steps

- The sixth Belgian state reform is an important extension of the regional competences and a big step forward in the process of forming a new government.
- The text on the sixth state reform is very fragmented. A whole range of responsibilities is transferred; some of them completely, others partly.
- The efficacy of the agreement will depend on the new federal government and its implementation of the agreement.
- The socio-economic negotiations and subsequently, the 2012 budget are more likely to have a direct impact on the Belgian economy.

14 October 2011
1 Introduction

The formation of a new federal government is close to hitting its 500th day. A record. Belgium had to wait until day 485 to hear the important words “Nous avons un accord!” (we have an agreement). On 11 October 2011 formateur Elio Di Rupo, president of the French-speaking socialist party PS, accompanied by his eight negotiating partners, presented the so-called Butterfly Agreement on the sixth Belgian state reform. In his presentation, Di Rupo did not eschew big words. This analysis will give a summary of what was called a ‘historical’ agreement.

Hereunder, some background on previous state reforms, the outcome of the latest federal elections and a brief summary of the Butterfly Agreement of 11 October 2011 will be given. The last chapter will put this agreement in perspective and will give an outlook for the following weeks and months.

2 About the sixth Belgian state reform

In October 2011, the sixth state reform is announced. Belgium has a long history of lots of constitutional changes and five other state reforms, a history to take into account when evaluating the importance of the latest state reform.

The Belgian state reform is a process by which, through a series of constitutional amendments, the unitary Belgium of 1830 has evolved into a federal state with three regions and three communities, each of them with their own responsibilities. The division of responsibilities as it was last set out by the latest state reform of 2011, was not eternal. Especially the situation at the electoral district of Brussels-Halle-Vilvoorde, which actually led to the resignation of the previous federal government, was untenable. A new state reform was needed. At stake: splitting the contested electoral district, greater responsibility for the regions, especially in the fields of employment, health, economy and taxation and a review of the financing law, which regulates the flow of money between the federal and the regional level, with fiscal autonomy for the regions.

The sixth state reform is an important prerequisite for the formation of a new federal government. Before being able to reach a coalition agreement, the negotiators should agree on the sixth state reform. Since the elections of 13 June 2010, lots of different key players have tried to take the lead in what was said to be the most difficult negotiations ever. On the Belgian national holiday, 21 July, formateur Elio Di Rupo was happy to announce a two-thirds majority on the continuation of the negotiations on Brussels-Halle-Vilvoorde and the state reform. The Flemish winner of the elections,
Flemish nationalist party N-VA, did no longer take part in the negotiations. From then onwards, the formation talks continued with 8 negotiating parties PS, SP.A, cdH, CD&V, Open VLD, MR, Groen! and Ecolo.

The negotiating parties agreed, under pressure of Flemish Christian-democrats CD&V to set out three important phases; first of all, the split of electoral district Brussels-Halle Vilvoorde, as a prerequisite for the second phase, the sixth state reform and thirdly, the socio-economic negotiations and the 2012 budget. Mid-September, the negotiating parties reached an agreement on part one. Part two, the state reform, was concluded on 11 October. Hereunder, a brief summary will be given of the three phases that precede the formation of a new federal government.

3 Three phases

Phase 1 – BHV one and two, a prerequisite for the sixth state reform

The agreement reached on Wednesday night 14 September 2011 was a first push in the right direction. After more than 450 days, the negotiators reached an agreement on a number of highly sensitive topics, most notably, on the long-lasting problem of the electoral district Brussels-Halle-Vilvoorde (BHV). After years of political disagreement, this electoral district has been split. Next to that, the negotiating parties reached an agreement on the contested appointment of some mayors in the outskirts of Brussels and the reform of the Senate.

Some days later, Elio Di Rupo announced the finalization of ‘BHV two’: the split of judicial district BHV. Next to that, the negotiators took some decisions within the scope of ‘political modernization’: coinciding elections from 2014 onwards, some adoptions of the wage and pension system of politicians and an important cut in the royal endowments.

Phase 2 – The state reform or the Butterfly Agreement

The Butterfly Agreement will change Belgium, or as Elio Di Rupo stated “the heart of decision making should lie in the regions. The federal level should become more compact and more efficient. Flanders, the Brussels Capital Region and Wallonia more autonomous and more responsible.” Nevertheless, despite

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2 A list of highlights of the Butterfly Agreement can be found in appendix.
the frequent use of the word ‘historical’ these last days, this agreement should be seen as a starting point for a long process of ‘responsabilization’ of the regions.

This agreement has in fact an important duality. On the one hand, it strengthens the regions, but on the other hand the federal state should stay strong enough to pay its debts and finance social security. Some responsibilities were entirely transferred to the regions, while others are more fragmented. The transfer of family allowances, elderly care and work are most remarkable.

The refusal of the French-speaking negotiators to split social security is still an important breaking point. Consequently, the federal government is still responsible for welfare payments (pensions, unemployment benefits and social security) and health insurance, leading to a very fragmented transfer of healthcare matters. The outcome of this agreement clearly shows that the regions live in different economic realities, leading to rather artificial compromises. The Flemish negotiators were for example in favor of the transfer of personal and corporate tax. The result: tax law is still a federal matter. For personal taxes, the regions will be able to charge extra taxes or grant reductions. The socio-economic negotiations that are the next phase on the agenda, should clear out the corporate taxation system. Employment is transferred to the regions, but elementary legislation on employment will remain a federal matter. The regions will for example not be able to reduce the time of unemployment benefits and pay negotiations will still be held on federal level. On the other hand, the regions will now have fiscal autonomy.

Phase 3 – The socio-economic negotiations

Starting from 14 October, the negotiating parties, led by formateur Elio Di Rupo will negotiate on the socio-economic plan and subsequently, the 2012 budget. An economy of at least ten billion is needed. By 2015, Belgium should submit a balanced budget. If not, penalties of the European Union will follow. Never before in history, a new government had to work on economy measures of this size. But after the previous results – in phase one and two – the negotiators are committed to work on a positive outcome.

This third phase is more likely to have a direct impact on the Belgian economy and Belgium-based companies. Economies will be realized on many different levels. The liberal parties recognize the search for new incomes. The socialists realize that savings in social security will be unavoidable. One plan is for example the reorganization of taxation. Reducing early retirement and other end-of-career options are most definitely on the table.
4 Conclusions

This state reform should be put in the right perspective. On the one hand, this state reform could be called ‘historical’. It is an important extension of the regional competences and a big step in the process of forming a new federal government, a process which has been going on since the federal elections of 13 June 2010. On the other hand, the state reform is only one part of the full agreement that needs to be reached to come to a real ‘coalition agreement’ and new government. One has to keep in mind the political wisdom which states that ‘there is no agreement until there is an agreement on everything’.

A whole range of responsibilities is transferred by the Butterfly Agreement. However, the planned split of justice is not treated and the transfer of healthcare remains very poor. A split of social security was even absolutely left out of the negotiations. Additionally, taking into account the Flemish Octopus note, a part of the 2008 Flemish government policy statement which regulates the responsibilities of the Flemish region, the Butterfly Agreement can still be the target of criticism for the Flemish coalition.

Right after presenting the Butterfly Agreement, all concerned political parties announced a period of ‘peace and quiet’, in favor of the continuation of the government formation. When on 13 October the green parties Ecolo and Groen! were officially left out of the socio-economic negotiations, it was immediately clear that every party will continue playing its role. At this point, the struggle for the most interesting ministerial posts has begun.

By discarding the green parties, Elio Di Rupo explicitly followed the demands of Open VLD and CD&V. The Flemish liberals had announced already long before the presentation of the Butterfly Agreement that they would not participate in a government with Groen! and Ecolo. Officially, because an eight-party government is too much, but it is clear that Open VLD is mostly influenced by the major ideological differences with the green parties. CD&V supported Open VLD and on the French-speaking side, there was no outspoken veto against the green parties. What is most remarkable is that both N-VA (28% in Flanders) and Groen! (7% in Flanders) will no longer participate in the coalition, while N-VA was the winner of the June 2010 elections and Groen! was – after N-VA – the only Flemish party not to lose, but to win votes.

The Flemish nationalist party N-VA, winner of the federal elections, but no longer taking part in the negotiations, already announced to be very skeptical about the continuation of the negotiations and the state reform. However, despite this critical stance, the N-VA will continue being part of the Flemish government. Despite the great criticism of N-VA and distrust of the other Flemish parties, a real crisis in the Flemish government should not be expected.

On the French-speaking side, Olivier Maingain, president of the French nationalist party FDF, announced that the current agreement is again a victory of the Flemish negotiators. At the end of September, FDF,
cartel partner of the French-speaking liberals MR, have voted in favor of breaking away and continuing on its own. FDF is not happy with the position the MR is taking in the government formation talks. The split up is bound to affect the ongoing political talks, as MR president Charles Michel is expected to take a tougher stand against the Flemish parties after paying a high price for the BHV issue.

It is relatively likely that a new Federal Government will be formed in the next few weeks, improving the political stability of Belgium. Besides the current breakthrough and the state reform, some other elements play as well. One of those is the ongoing pressure from the international financial markets. Given the recent events at Dexia and the growing stress for a negative rating, Belgium is urgently in need for a stable government. Next to that, demissionary Prime Minister Yves Leterme is expected to quit the scene by the end of this year, to become Deputy Secretary General at the OECD.

To conclude, we could state that there is lots of fragmentation in the Butterfly Agreement. If the socio-economic negotiations will bring a comparable outcome, the efficacy of the agreements will mostly depend on the new coalition and the implementation of the agreements by the new government. Therefore, a period of essential decisions is still ahead of us.

The analysis and conclusions that are mentioned above have a general character. Whyte Corporate Affairs elaborates tailor-made analyses, strategies and action plans for its clients.
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Appendix – Highlights of the sixth Belgian state reform

Matters that will be transferred from the federal to the regional level:

Economic and industrial policies:
- The technological attraction poles
- The socio-economic permit which is needed for the implantation of commercial projects
- Price control. The federal entities have the authority to control price for waste and water policies, for the public distribution of gas, for the public distribution and transmission of electricity (for grid infrastructures with a tension inferior to 70 kV), taxi services, car with driver rent services, commercial lease, etc.
Energy and Environment:

- **Distribution tariffs (gas and electricity).** For electricity, this does not concern the tariffs of the transmission system operators even if the grid tension is equal or inferior to 70 kV. All the other matters, such as energy prospective studies; nuclear fuel cycle; on and off-shore energy production; big energy providers and energy storage infrastructures; energy transmission; final energy price policy for consumers as well as social price policy; energy efficiency of federal buildings.

Urban Planning, Housing and Environmental Planning:

- **Expropriations.** The regions will be in charge of the expropriation procedure (except for the expropriations done by the federal authority - or any corporate body which depends on the federal authority).

The fiscal independence and responsibility of the regions:

- **Fiscal distribution.** The funding system will rely on fiscal autonomy of the regions or endowments distributed according to a key tax. This option means that the regions will have to respect the fiscal responsibility principle which will be completed with a climate responsibility system (e.g. lower CO₂ emissions will be rewarded).
- **Corporate taxation.** This point is on the agenda of the socio-economic negotiations.

Healthcare and personal assistance

- **Healthcare issues.** An institute will be created in order to bring answers on healthcare issues (the budget policy for instance) but also on key challenges for the future of the sector (aging population; lack of highly qualified people; technological breakthroughs; social changes; environmental disasters, etc.). This institute will be an inter-federal structure gathering Ministers of Healthcare. Its mission will be to set a common global vision and a sustainable policy for the sector. The current mission and actors of the INAMI general council as well as the Interministerial health conference remain unchanged.

Employment

- **Budget.** The Regions will be able to allocate the budget to any kind of labor market policies (wage costs, professional insertion program, training and support for job seekers, etc.)
- **Reclassification costs:** the Regions will be in charge of the refund of company reclassification costs and of the sanctions for employers if there is no redeployment.