The Belgian Electoral System:
Open list system, political parties and individual candidates

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1 – Introduction – Firstly, I would like to thank the people who have organised this seminar for giving me the opportunity to take part. It is a really great honour to have been invited to speak in front of an assembly of eminent members of the legislative power and of the judiciary of the Federative Republic of Brazil.

My intervention will focus, as requested, on the list system that is applied under Belgian electoral law. I will try to explain how it is designed and what its effects are.

My speech will be divided into three main parts. In the first, I will briefly describe the Belgian electoral system, in order to give you some general insights into the political and legal contexts. The second part will concern the core of the topic: I will present the system of open list that is prescribed by Belgian law. Finally, the third part will focus on the concrete political effects of the list system.

Before proceeding with the general description, I would like to inform you that I have a written version of my speech that can be sent to participants of this seminar if there is an interest expressed in this regard. I will keep it at your disposal.

I – General description of the Belgian electoral system

2 – Federal and multi-level political system – Belgium is much smaller than Brazil but has at least one thing in common with it: it is a federal state. Regarding the election system, this means that legislative elections are not only organised at national level, but also at regional ones.

At the federal level, there are two legislative assemblies: the House of Representatives (whose members are directly elected through the people) and the Senate (composed of members designated by the parliaments of the regions and the communities – more on which in a moment –, or co-opted by the Senate itself).

The country is divided into three communities (*Communautés – Gemeenschapen*) that are autonomous in some significant matters and cover together the whole of Belgian territory. It is also divided into three regions (*Régions – Gewest*) that are also components of the federal system and autonomous in some other important ways. The three communities are the French Community, the Flemish Community and the German-speaking Community. The three regions are the Flemish Region, the Walloon Region and the Brussels-Capital Region. Four of these six political entities have their own directly elected parliament.

To complete the overview, let me add that there are ten provinces and 589 municipalities which constitute the local political and administrative bodies. Each of them has its own assembly composed of directly elected members.

My presentation will focus on the federal election system, but it is relevant to know that its main characteristics are shared by the regional and local election systems. This is of course not the right place and moment to discuss their peculiarities.

3 – Proportional system – Proportional representation is one of the most prominent aspects of Belgian electoral law (at every political level). Belgium was the first country worldwide to introduce this electoral system at national level. The legislative power adopted this system in 1899 and it was applied for the first time the year after. The principle has been written into the Constitution since 1920; it would thus be impossible to go back to the majority electoral system without reforming the Constitution itself. The work of the well-known Victor d'Hondt, who taught law at the University of Gent in Belgium, has had a significant influence on this evolution. The model he designed for the attribution of the seats is still the keystone of our system and has been a source of inspiration for many other countries.

It is, however, not the topic of this panel and I will thus not annoy you further with the technical aspects of the d'Hondt system. I nevertheless would like to stress

one element that is, in my opinion, relevant for the general discussion that we hold today: it is important to say that our system does not offer in practice an effective proportionality.

4 – Legal threshold and constituency magnitude – The imperfections in proportionality are not only a consequence of the intrinsic tendency of the d'Hondt system to advantage bigger parties compared to smaller ones, they are also repercussions of two other aspects of Belgian electoral law.

On the one hand, the Election Code foresees that only parties which have obtained at least five percent of the total votes cast in a given constituency can be admitted to the process allocating seats in the said constituency. This is a legal threshold inspired by the one which exists in Germany, but it is applied at the constituency level instead of the federal one.

On the other hand, the highest obstacle for smaller parties comes when standing in some of the smaller constituencies: when there are only a few seats allocated to a constituency, as is the case in some federal and regional constituencies, the need for a greater share of the votes means that another form of threshold is created on the path to parliamentary representation. The level of this kind of threshold reaches up to 20 to 30 % of the vote in some extreme cases.

5 – Open list system – The main features of the proportional representation that I have just presented play a crucial part in the repartition of the seats between political parties. The moment has arrived to talk about another aspect which is more important for the rivalry between the candidates as individuals, i.e., the list system that is implemented in Belgium.

This is a system of open list. It means – as you may know – that electors have the opportunity to vote for the individuals that they prefer and are not bound by the ranking of the list established by the party. However, it would be a mistake to say that this ranking (I mean the ranking of candidates on the list) has no importance at all, for electors have alternatively the option to vote for their favourite list as a whole. And if they choose this latter option, the consequence is that they support in particular the first candidates on the list, at the cost of the ones whose names are written below. Thus, it is not a pure open list system and you could in fact call it "mixed list system" if you think that more appropriate.

I will describe now this system more precisely.

II – Open list system in Belgium

6 – Origin and evolution – Before talking about the technical aspects, let me take one minute to outline some historical elements. The list system that is applied in Belgium is very stable: it has been used at every political level for more than a century without any significant change. The basis of the rules is as old as the proportional system itself.

When proportional representation was being introduced (in 1899), Belgian MPs deliberated between two different models. On the one hand, some of them suggested the "closed list system" that would not have allowed electors to cast votes for individual candidates but only for whole lists, giving a major part of the power to the selection process operated, and ranking established by, political parties. On the other hand, the idea of the "pure open list system" had also some success; it was the preference of MPs who wanted to limit the influence of political parties, to increase the competition between individual candidates and to give the final word to the electorate.

Belgium is known as a country of political compromises. The choice of the list system in 1899 tends to confirm this reputation. As I explained a minute ago, the principle of the open list was adopted, so the electors have the freedom of supporting their favourite candidate even if he or she is not one of the top candidates of a party, but the law also gives them the option of voting globally for a list and, by doing so, validate the pre-established ranking.

Regarding the evolution of this system, there is in my opinion only one relevant element to mention here. It concerns the electors who choose not to validate the ranking of the list as it is suggested by the party. While these electors could originally vote for one and only one candidate, they have, since 1995, been allowed to support as many candidates as they want, so long as these candidates are presented on the same list. Voting for candidates of different parties is thus not allowed in Belgium: when an elector breaks this rule, the ballot is considered as void.

7 – Constitution of the lists – In the system that I am describing, the question of the constitution of the lists is of course very important. I would like to present you the main features of Belgian law regarding this topic.

Before the election, parties which want to take part in the election process have to establish a list of candidates. Political parties enjoy a large freedom; they do not have to respect democratic principles when they select their candidates and set their ranking on the list. This is a significant difference with, for example, Germany where the Basic Law foresees that "internal organisation [of the parties] must conform to democratic principles". There are, however, two sets of rules that parties do have to respect.

Firstly, they have to nominative at least one full candidate and several substitute candidates whose exact number depends on the number of seats available in the constituency. Substitutes candidates would only ever serve if an elected full candidate later died or resigned. The nomination of substitute candidates is compulsory in order to minimise the need for future by-elections. To be accurate on this point, substitute candidates are nominated on a separate list, and that follows the main one on the ballot. Since the last election, it has been forbidden to compete as a full candidate and as a substitute candidate at the same election. This means that a full candidate who is not elected has no opportunity to later obtain a seat at the same parliament when an MP of his party dies or resigns.

Secondly, parties have to comply with a gender quota. On every list there must be as many women as men. A difference of only one unit is admitted when the number of candidates on the list is uneven. Moreover, there is a stricter rule that concerns specifically the top of the list: the first and the second candidates must be of a different gender. These principles are applicable to the lists both of full and substitute candidates of each party.

8 – Official registration of the lists – Parties which comply with the rules I have just set out can officially register their list and start their election campaign.

On the contrary to what exists in some countries, such as the United Kingdom, there is no obligation to put down a deposit to validate the list. However, a list cannot be registered if it is not sponsored by a number of outgoing MPs or a (larger) number of electors who have agreed to sign it. This sometimes builds an obstacle for small or new parties in that do not have the support of outgoing MPs, especially in case of early elections, organised after a dissolution of the parliament, when there is less time to collect the required public signatures.

9 – Options open to electors on election day – On election day, each elector who arrives at the poll station receives a ballot (which could be a paper ballot or an electronic one). All the registered lists appear on the ballot; each in a separate column. The names of all individual candidates are also mentioned on the ballot; they are ranked under the name of their party in the order established by it.

The law offers several possibilities to the electors.

Firstly, it is quite important to say that they can avoid choosing between the registered parties and candidates. Even if the Belgian Constitution decrees that voting is compulsory, it is actually the attending that is compulsory: nothing forbids an elector from deciding not to vote for any of the lists or the candidates and to cast a blank or a spoiled ballot. At the last federal election, in 2014, 10.32 % of the electors did not go at

all to a polling station despite the legal duty and 5.77 % cast a blank or a spoiled ballot.

The other electors – so around 84 % of the electorate – chose between one of two options: voting for one (and only one) list as a whole or voting for one or several candidates on the same list. In the first case, they simply approve the ranking established by the party and accept that priority will be given to the candidates on the top of the list. In the second case, they give "preference votes" and support their favourite candidates with the intention of advantaging them in the competition with the other candidates on their own list.

Both options are available for the lists of full candidates and the lists of substitute candidates. It is thus possible to vote for three individual full candidates on the list of one party and to approve as a whole the list of substitute candidates for the same party. (However, the elector who votes either for the list of full candidates of a party or for individual candidates on this list cannot then choose a list of substitute candidates of another party).

10 – Consequences on the attribution of seats – The choices made by electors have of course considerable effects on the distribution of seats. I will not talk about the repartition of seats between the different lists, which is the result of the implementation of the d'Hondt system, but will focus on the attribution of seats to the individual candidates.

There are in this respect two theoretical hypotheses. If the number of full candidates on a list equals the number of seats allocated to that list, all these candidates are elected. This is however not the usual situation. Most of the time, the number of full candidates on a list is larger than the number of seats allocated to that list. In that case, the votes cast in favour of the list as a whole are distributed to the full candidates according to their ranking on the list. The first candidate on the list benefits from these votes in priority. They are added to his or her own "preference votes" up to the number of votes required to obtain a seat. If the list as a whole obtains enough votes, then the remainder benefits the second candidate, then possibly the third, fourth, and so on. When this operation ends, the seats allocated to the list are awarded to the full candidates who have obtained the highest number of votes, with or without the addition of a part of the votes cast for the list as a whole.

The effects of these rules depend largely on the behaviour of the electors (do the majority vote for lists as a whole or do they opt for choosing individual candidates?). As many electors choose the first option, this system clearly advantages the top candidates. They are often elected even if they received less preference votes than candidates whose names are below them on the list. After some debates on this topic, legislators finally admitted that this advantage was excessive. As a result, since 2000, the number of votes cast for a list as a whole has been divided into two before being

distributed between the top candidates. This means that the supply of votes is twice smaller and that fewer candidates benefit from it. For this reason, it is nowadays a bit less difficult for candidates who are not on the top of the list to be elected thanks to their preference votes. In other words, preference votes have now a relatively bigger influence than formerly on the final results of the election.

III – Political effects of the electoral law

11 – General tendencies – Theoretically, the system that I have just described is fundamentally an open list system, for electors always have the opportunity to choose their favourite individuals candidates and are not bound by the ranking established by the party. Practically, however, this system has effects that are quite close to those of a closed list system, even if slightly less so since the 2000 reform. In the third and last part of my presentation, I would like to highlight some of the concrete political effects of the election law as applied in Belgium.

Before 2000, it was practically impossible to obtain a seat at the House of Representatives without being one of the top candidates of a party. One author has observed that, between 1919 and 1985 — a period of almost 70 years — only 26 MPs that were not well ranked on their list were elected thanks to their preference votes. At the last election before the reform – the one of 1999 – only one MP was elected this way among the 150 members of the House. Things have significantly changed since 2000. Following the 2003 election, no less than 18 MPs from the 150 acceded to the House of Representatives on their own, without the help of the votes cast for the list as a whole.

12 – Concrete example – Before ending, I think that it could be useful to illustrate the effects of the system by means of a real-world example.

Names of the candidates	Prefe-rence votes	System in force before the 2000 reform			System in force today			Pure open list system		
		Added votes	Total	Elec-ted	Added votes	Total	Elec-ted	Added votes	Total	Elec-ted
1. Jambon	61.100	0	61.100	**1**	0	61.100	**1**	0	61.100	**1**
2. De Wit	29.918	10.486	37.404	**2**	10.486	37.404	**2**	0	29.918	**2**
3. Van Noppen	21.635	15.769	37.404	**3**	15.769	37.404	**3**	0	21.635	**3**
4. Demir	10.248	27.156	37.404	**4**	27.156	37.404	**4**	0	10.248	**5**
5. Van Moer	8.956	28.448	37.404	**5**	28.448	37.404	**5**	0	8.956	**7**
6. V. Esbroeck	6.527	30.877	37.404	**6**	23.247	29.774	**6**	0	6.527	
7. Bellens	8.648	28.756	37.404	**7**	0	8.648		0	8.648	
8. De Ridder	9.404	28.000	37.404	**8**	0	9.404	**8**	0	9.404	**6**
9. V. D. Voorde	5.447	31.957	37.404		0	5.447		0	5.447	
10. Broecks	5.310	8.763	14.073		0	5.310		0	5.310	
11. V. D. Vloet	7.741	0	7.741		0	7.741		0	7.741	
12. Frederickx	6.497	0	6.497		0	6.497		0	6.497	
13. Peeters	6.890	0	6.890		0	6.890		0	6.890	**8**
14. Antonio	4.677	0	4.677		0	4.677		0	4.677	
15. Geets	3.794	0	3.794		0	3.794		0	3.794	

16. Choukri	5.631	0	5.631	0	5.631		0	5.631	
17. Guldentops	6.837	0	6.837	0	6.837		0	6.837	
18. Van Laer	4.166	0	4.166	0	4.166		0	4.166	
19. Anthonis	4.025	0	4.025	0	4.025		0	4.025	
20. Weets	5.032	0	5.032	0	5.032		0	5.032	
21. Vangheel	3.908	0	3.908	0	3.908		0	3.908	
22. Cottenie	5.120	0	5.120	0	5.120		0	5.120	
23. Celis	6.542	0	6.542	0	6.542		0	6.542	
24. Van Dijck	15.607	0	15.607	0	15.607	7	0	15.607	4

I chose the case of one particular party (the NV-A, i.e., the National Flemish Alliance) in one particular constituency (the one of Antwerp) at a particular federal election (the one of 2010). The National Flemish Alliance – which has been for a few years the strongest party in my country – obtained 8 seats out of the 24 which are available in the Antwerp constituency. Once you know that, the next question is how you distribute the 8 seats won by the party between the 24 full candidates whose names are on the list. To answer this question, you need to take into consideration the votes cast for the list as a whole and the preference votes awarded to individual candidates. I will now try to show how they are combined to distribute the available seats.

Firstly, you have to find the number of votes that is required to obtain a seat on this particular list. This number is the result of the following calculation: you divide the total number of votes obtained by the party by the number of seats won plus one unit. In the present case, it means that you divide 336,631 votes into 9 (8 seats + 1) and you obtain 37,404. This is the eligibility number of the list.

The second step of the process consists of allocating the supply of votes awarded to the list as a whole to the top candidates who do not have reached alone – with their sole preference votes – the required number of votes to be elected. As I mentioned earlier, this supply of votes must be, since 2000, divided into two before being shared between the candidates. In our example, when we exclude the preference votes, we have 210,212 votes for the list of full candidates as a whole. It means a supply of 105,106 votes after the division into two.

Now you look at the numbers of preference votes won by the first candidates of the list and you simply add to these numbers the quantity of votes that is necessary to reach the eligibility number of the list, i.e., 37,404 in this example. You repeat this operation until the supply of votes runs out.

Starting with the first candidate, Jambon, you can observe that he has won a number of preference votes that is larger than the eligibility number. So we do not add any votes from the supply. Regarding the second candidate, De Wit, you see that he has 29.918 preference votes and that he needs a further 10.486 votes to reach the eligibility number of the list. You take these 10.486 votes from the supply and go to the third

candidates. This one, Van Noppen, needs 15,769 supplementary votes to get the eligibility number of 37,404. You then do the same operation with the fourth and the fifth candidates. When you arrive at the sixth candidate, you will notice that you are at the end of the supply of votes. The candidate Van Esbroek has only 6,527 preference votes and you only have 23,247 votes left in the supply. If you add up both numbers, you see that Van Esbroek obtains 29,774 votes, which is under the eligibility number. The supply is now empty and you cannot help the candidates who are below on the list by adding any more votes to the preference votes that they have individually won.

The last step is easy to understand. You now have to compare the total number of votes obtained by the candidates after the addition, or not, of votes from the supply. The best candidate is Jambon with 61,100 votes; he is therefore the first elected candidate from this list in this constituency. Then you have four candidates with the same result (37,404 votes – which corresponds to the eligibility number). These candidates are respectively the second, third, fourth and fifth elected candidates of the party, in the order they appear ranked on the list. As mentioned, the party actually won eight seats in the constituency, so we still need to identify three other MPs among the candidates from the list. None of them have reached the eligibility number. We however select the three best results among the remaining candidates: candidate number 6 (Van Esbroeck has 29,774 votes), then you have candidate number 24 (Van Dijck, the last one on the list, with 15,607 votes) and finally candidate number 8 (De Ridder, who has won 9,404 votes). The 16 other candidates have lower results and are not elected.

We can now reflect on the eventual outcome for this entire list. You see that most of the elected candidates are from the top of the list. Only one candidate (Van Dijck) has won one of the eight available seats after not being ranked in one of the first eight positions on the list. Conversely, candidate number 7 (Bellens) is the only one from the top eight of the list who is not elected.

(It is significant to notice that if we had applied to this example the system that was in force before 2000, Bellens would have been elected instead of Van Dijck. So only the top eight candidates, without exception, would have seated at the House of Representatives.)

On the contrary, if we had applied a pure open list system, and thus not used the system of distributing the supply of 'whole list' votes amongst the top candidates, the results would also have been different. In that case, six of the top eight candidates would have nevertheless been elected. This happens both because political parties often put the most popular candidates on the top of the list and also because electors have a tendency to give more preference votes to the first candidates. However, we would have observed the election of two candidates from outside of the top eight, i.e., Van Dijck – like under the present law – and Peeters – who is candidate number 13

and had a relatively good personal result.

<p style="text-align:center">*</p>

13 – Final words – I now reach the end of my presentation. I hope you have now, with this overview, a better understanding of the Belgian list system and its effects in the context of proportional representation.

I thank you very much for your attention and remain of course at your disposal for any further information or clarification. I would be glad to answer any questions you may have.