Treaty making power in Belgian constitutional law: the case of CETA

Quentin PIRONNET
Brussels, Mission of Switzerland to the EU
June 12th, 2018
The federal system in Belgium

3 Regions

Enact decrees OR ordinances (Brussels)

Sphere of competences:
- Energy
- Roads
- Tourism
- Economy
- ...

Regions

- Energy
- Roads
- Tourism
- Economy
- ...
Enact decrees

Sphere of competences:
- Education
- Culture
- Health
- Youth
- …
The federal system in Belgium

1 federal authority

Enacts laws (+ special laws)
Revises the Constitution

Sphere of competences:
- Defense
- Security
- Justice
- Foreign Affairs
- ...

Equipollence

- Constitution
- Special laws
- Federal Laws | Regional decrees | Community decrees | Brussel’s ordinances
- Executive Regulations
Article 167 of the Constitution

§1. The King shall direct international relations, without prejudice to the competence of the communities and regions to regulate international cooperation, including the conclusion of treaties, in matters within their competence by or under the Constitution.
Distribution of competences

RULE N°1: Exclusivity of the exercise of competences

RULE N°2: In foro interno, in foro externo

Exclusive treaties
- Signature, ratification, assent (no rule)

Mixed treaties
- Signature, assent, ratification (C.Agr. 1994)
First exception to the equipollence: federal suspension (art. 81 special law of 1980)

1. Obligation of information
2. Discussion in Interministerial Conference on Foreign Policy
3. The King can « confirm the suspension » IF
   a. Belgium does not maintain diplomatic relations
   b. The proposed treaty violates the international law

Second exception to the equipollence: federal substitution (art. 169, Const.)

1. Proper warning
2. Only IF Belgium has been held responsible on the international level (ie ECJ)
3. Discussion in the Concertation Committee (environmental field)
Process (Belgian law)

- **MTWG**
  - Assess the type of treaty (exclusive or mixed)
  - Ask the entities to grant full signature power

- **ICFP**
  - Interministerial Conference of Foreign Policy
  - Association to the negotiation

- **Parl.**
  - Assent

- **King**
  - Ratifies alone

CETA
CETA
Process for CETA (EU law)

Negotiations by the EU Commission

Mixed agreement (art. 4 TFEU)

- Signature
  EU - Canada

- Provisional application

Assents (28)

- Application in domestic laws

- Ratification
  EU + 28 member States

- Application in the international sphere
The PS announces it will oppose CETA

Oct. 27, 2016
Internal agreement between the 8 authorities

Oct. 29, 2016
Belgium signs the CETA

Oct. 30, 2016
EU and Canada sign the treaty

Jun. 2017
Preliminary draft law concerning the assent to the CETA
Thank you for your attention