

High-Level Conference

“Structuring Government in the 21st Century:
Managing and Controlling Public Agencies at National and EU level
in Times of Crisis”

Brussels, 27 May 2011

Contribution by Mr Jan Peumans,
Speaker of the Flemish Parliament

Ladies and Gentlemen,

I have been asked, as Speaker of the Flemish Parliament being personally acquainted with the autonomisation of the administrative landscape in Flanders, to make a small contribution to this debate. I am glad to oblige.

First of all, I shall outline the instruments available to the Flemish Parliament in order to bring you some insight into the activities and the results of the autonomous agencies.

Secondly, I shall ask the question how these instruments are currently being employed in the daily practice within the workings of our Flemish Parliament. I shall offer you an example of a “best practice” already realized without, however, minimizing the reality that a lot of hard work and effort still lies ahead of us.

And, finally, I shall conclude with a number of positions that may conceivably offer additional instruments and possibilities to further advance and optimize Parliament’s control over these autonomous agencies.

I shall start with a list of instruments Parliament already has available to scrutinize the autonomous agencies.

And to adequately comment to this, let us first sketch out an overview of the government landscape in Flanders.

The framework Act on Administrative Policy of 18 July 2003 was a milestone and laid down the broad outlines for the operation Better Administrative Policy, or BAP, which completely redesigned the Flemish administrative landscape. In the extension of that framework Act, autonomous agencies were established, all of these with a greater or lesser degree of autonomy. In broad outlines, we talk of internally autonomous agencies and externally autonomous agencies. Both agency forms are directed by the minister via a management agreement: the internal agencies directly, while the external agencies operate under their own Board of Directors and a manager that enjoys fairly broad powers of decision-making. The picture of the government landscape is filled out by the externally autonomous agencies that have a legal form under private law (e.g., Ltd., Cooperative Limited Liability Company, or npo). These agencies have concluded a cooperative agreement, e.g., a contractual commitment between agency and government.

BAP was meant to establish greater order throughout the fragmented Flemish administrative landscape and by means of a far-reaching responsabilisation create a more efficient and effective government service all around. At the same time, the workings of government were to become more transparent, with improved control and steering mechanisms.

This brings us to the question what instruments Parliament has at its disposal to arrive at a better insight into the activities and, especially, gain a better idea of the results of these autonomous agencies. It pertains to a set of instruments. I shall identify six of them.

There are the more conventional ones such as the traditional parliamentary right of control, which implies that the minister in question can at any time be questioned about the agencies that are functioning under his or her political responsibility. There exists the possibility that parliamentary committees can, with approval from the minister in charge, question the agency managers.

In addition, there are a number of rather “new”, recent instruments available.

Parliament is entitled to test the management agreements of the public agencies against the policy memorandum from the minister in charge. Then there is the ever-growing support by the Court of Audit, which facilitates the parliamentary control over the autonomous agencies. Parliament may, if desired, on a structural basis follow up the activities of the agencies by setting up a system of progress reports.

And, finally, aside from the annual budgetary discussions, the possibility will be created to gain even greater insight, via the Audit Act, into the activities and results of the said agencies.

I want to elaborate on this set of new instruments a little more.

The so-called Accounting Act of 7 May 2004, which is a mirror Act to the framework Act on Administrative Policy, was to be *the* instrument *par excellence* to organize the control on the administrative landscape of the Government of Flanders in such a manner that also Parliament be given a serious say into the process. As such, the bar was raised quite significantly. The fact was that now the budgetary cycle would be completely tied to the policy and management cycle, whereby management agreements with the autonomous agencies would constitute an interim link. However, this central provision in the Accounting Act very quickly proved impossible to implement, since this top-down imposition of a completely novel budgetary culture appeared rather a clear instance of overreaching. In the end, this Accounting Act was seen as stillborn and shelved by the Government.

But the bad news didn't stop there. The BAP operation was unable to counter the fact that a significant part of the administrative landscape could still not be harboured under the provisions of the framework Act. Some twenty institutions, amongst which not the least of them, remained outside the framework. In this respect, the public broadcaster VRT was one of the major exceptions. This, however, did not mean that such institutions fell outside of Parliament's control perimeter. But more on this infra, when I touch upon the role of the Court of Audit as Parliament's watchdog.

The Accounting Act, a dead issue, was buried. The Flemish Parliament is at this moment putting the finishing touches to the new so-called Audit Act. That Parliamentary Act replaces the 'aborted' Accounting Act by a more workable instrument that likewise enables a control on institutions and constructions executing public procurements that do not fall directly under the BAP structure. During the discussions on the Audit Act, there was serious debate concerning the manner in which to conduct the control on major infrastructure works. The dossier that we have in mind here is the so-called Master Plan for Antwerp (the major infrastructure works). The Government favours management of these works via complex constructions governed by private law (NV BAM, NV Liefkenshoek tunnel), but does opt for their execution through financing via government resources.

The debate resolved in the choice of a specific regulation to avoid these constructions falling outside of Parliament's remit and control. The choice was to opt for a separate Act. That Act rendered superfluous discussions such as had been conducted during the previous legislature in Flanders on the authority – or the absence of authority - to exercise control over infrastructure projects characterized by the close involvement of companies operating under private law.

We would like to make it clear once and for all that major infrastructure works financed by means of public funds fall within the

control perimeter of the Court of Audit and, hence, also within the remit of Parliament for follow-up and monitoring. It is consequently irrelevant whether or not these works are being organized under the management system of a vehicle in the form of a company operating under private law.

The *Audit Act and that separate Act that will bear my name* hence are new instruments.

We have now come to the most important instrument at the Flemish Parliament's disposal in support of its task as overseer. I am referring here to the *Court of Audit*. The Court of Audit is an important – if not the most important - partner in the control of government policy. The Court of Audit is not only the financial and budgetary advisor of the Government of Flanders, but likewise controls the proper allocation of government funds and ensures that the principles of restraint in spending, effectiveness, and purposefulness be taken into due account. The Court of Audit further played a very important role in the development of yet another control instrument of Parliament. I am referring here to the *progress reports*.

The Court of Audit also conducts audits. These audit reports serve the Flemish Parliament as instruments to maintain a control on the agencies involved and the responsible minister in casu. This is an aspect entirely divorced from the management agreements.

Specifically with reference to the management agreements, the Court of Audit has during the first semester of 2010 submitted six separate reports concerning the implementation of the management agreements to the Flemish Parliament.

Another control instrument is the smart use of the *management agreement*.

The framework Act on Better Administrative Policy stipulates that management agreements concluded with the internally and externally autonomous agencies shall, with respect to their signing, be communicated by the Government of Flanders to the Flemish

Parliament. And, still with respect to the framework Act, the Flemish Parliament is granted a period of 90 days to test out the agreement between the management agreement and the objectives of the approved policy memorandums.

So much for the theory.

From what I have outlined here it may be concluded that, notwithstanding the BAP operation, the Government of Flanders landscape still remains very diversified – not to say ‘diffuse’ – and that with the Audit Act we are only now, eight years following the inception of the operation in question, managing to put the proverbial budgetary-organisational icing on the cake.

And this brings me to the second part of my presentation. The daily practice at the Flemish Parliament.

When we scrutinize a number of our new work instruments: specifically the testing by Parliament of the management agreements, the more intensified activation of the services of the Court of Audit as watchdog, and the introduction of progress reports, and evaluate how Parliament used to deal with these in the past years, I can present you with the following picture.

The Commission for Public Works, Mobility and Energy succeeded during the previous term in organizing periodical reports about the progress achieved in the planned public works projects executed as elements in the broad context of the Master Plan Antwerp.

However, this decision by the Commission was not taken without first running into some headwinds.

In the end, about mid-March 2005, the Commission decided that on a structural basis there was need for reporting at a fixed time by, on the one hand, the ministers in charge of the vehicle coordinating the works (e.g., the Management Company Antwerpen Mobiel – BAM) and, on the other, by the top of the BAM itself. The idea behind this

was that the Commission would organize a progress report about major infrastructure projects based on the Dutch model.

The Act of 2002 on the control of the major infrastructure projects that authorizes Parliament to organize that control in casu figured herein as the guiding principle. It was then also that the Commission decided to activate the Court of Audit for intensive participation.

As of June 2005 until the end of the previous legislature, some dozen reports were organized, each according to a fixed grid suggested by the Court of Audit.

Over the years, the Court of Audit refined the methodology of the reporting and continuously formulated different recommendations for Parliament to consider. As time passed, these recommendations were updated and inventoried.

These structured and follow-up reports ultimately issued in a close involvement of Parliament and the Court of Audit in the (planned) major infrastructure works in Antwerp.

Hence, as far as I am concerned, this represents a foremost example of what I would call 'best practice'.

But there exist other, less successful, examples of control instruments that have not yet been used sufficiently. I am referring here in particular to the testing of the management agreements.

In July 2009, the new Government of Flanders took office. The coalition agreement was translated into policy memorandums of the ministers, opening up the opportunity to start an extensive exercise in drawing up management agreements with the agencies for this legislative term up to 2014. In their turn, the management agreements are translating the political policy lines in concrete actions within the various Flemish competence areas.

Up to the present day, 33 draft proposals of management agreements have been discussed in the various Parliamentary policy committees. In some cases, this led to the submission of resolutive proposals, with suggestions to the Government of Flanders to update the draft agreements.

During the discussions about the framework Act in June 2003, it was already held that those management agreements are of great significance for Parliamentary control. It is up to Parliament to test whether the objectives imposed on the agencies in the policy are, indeed, a translation of the general policy conducted by the Government of Flanders, as it has been established in the coalition agreement and in the policy memorandums.

Once concluded, it becomes a question of following up the implementation of the management agreements. Are the objectives being realized? Is there need for their eventual upgrading in the course of the management term? Obviously, it is in the first place incumbent on the Government of Flanders to follow this up. But Parliamentary control is likewise needed and advisable indirectly. Here too the Court of Audit is helpful, having recently started a novel experiment. By way of a sample test, the Court of Audit has for some six agencies drafted an evaluation report about the completed management agreement. This proffered some very interesting subject material for a discussion in the Parliamentary Committees. But, to be honest, we have to confess that Parliament has hardly reacted to this.

In summary, I may state that the Flemish Parliament is now in a position via the Audit Act and the support by the Court of Audit to follow up the budgetary cycle of the public agencies. In addition, the management agreements proffer the possibility to exercise ex ante and ex post control on the workings of the agencies. Without the BAP reforms, Parliament would not have had those instruments at its

disposal. We are thus very justified to talk about a reinforcement of Parliamentary control on the administrative landscape and policy implementation.

I could conclude my small contribution on this positive note, but those who know me better also know that I remain extremely critical and alert when it concerns the workings of institutions, both for what concerns institutions of the executive power and the legislative authority. It is not because we satisfy a number of formal regulations, such as the annual adoption of the budget or discussions on a number of management agreements, that we are actually performing great parliamentary work.

In the course of the coming years, we shall have to work hard at a number of issues. Let me clarify them here.

1. The Flemish Parliament needs to look for an effective form of control on the workings of agencies

The parliamentary control instrument *par excellence* to exercise control on the executive power is the opportunity offered to all of the members of Parliament to direct their queries to the Government. The Flemish parliamentarians take full advantage of this privilege. In the course of this working year alone, the Committees have had to deal with more than 2,200 requests for an explanation. These are questions dealing largely with very concrete and, often, also very fragmentary parts of government policy. Questioning the government is an important instrument as the practice often leads to revealing the essence of issues that are symptomatic of a policy that is not very successful and hence in need of upgrading.

Yet, this fragmentary manner of proceeding also has a very clear disadvantage: by focussing on only a part, or certain aspects, of the problems, the danger is always present that the entire issue will

become compromised in the process. This, as an example, may very well mean that the debates focus overly on concrete policy implementation to the detriment of the general discussion that needs to be conducted about the policy in casu.

The manner in which the drafts of management agreements have over the past few months been discussed in Parliament is, in any case, quite illustrative. While these management agreements offered an ideal opportunity to critically assess, and deal in depth with, both the workings of the agencies and the policy behind the agreements, the tendency has been to kind of shove them aside as not all that important. In fact, some of the discussions were conducted in a rather superficial and summary manner. Mostly, there was no debate about the actual main points.

Too bad, since it could have made for a very interesting exercise. To give just one telling example: in what way are the various agencies applying the imposed linear savings provisions in the actual practice? This is the implementation of a general political policy line by the Government of Flanders. It is therefore of some interest to try to determine what that actually means in the field, meaning amongst the agencies that have to work with fewer resources.

It is obvious then that effective control on the workings of agencies cannot be restricted to asking questions about part aspects only but needs to include especially an approach that embraces the entire picture. Following up the implementation of the management agreements is essential to that end.

It is not merely a matter of sorrow and misery, so to speak. I cite as an example the new management agreement with the transport company De Lijn (the public transport company of Flanders). This new management agreement was seriously debated in the Committee of Mobility. More than that: the parliamentary committee has – for instance, on the basis of an analysis of the

previous management agreement - itself performed preliminary work. The outlines of the newly to be established management agreement were fixed via a resolution by Parliament. This led to concrete recommendations for the government. Afterwards, the completed management agreement (negotiated between the minister and the agency) was tested against the recommendations formulated by the parliamentary committee. This way you can, as Parliament, contribute weight to the balance.

2. The products produced by the Court of Audit need to be used more frequently, and with better results, by Parliament (better harmonisation)

In this area, we've come a long way during the past few years. The gamut of products of the Court of Audit (we are talking here about the thematic audits, the traditional reports, the Accounting Book, and the evaluation reports by the Court of Audit) represents, as already stated, an indispensable resource and can provide Parliament with topics of discussion to flesh out the debates. But Parliament can do more, e.g., charge the Court of Audit with specific assignments.

Since recently, a structural consultation between the Court of Audit and the Speaker of Parliament has been started. During these consultations, agreements are made about, amongst others, the audits to be performed and the manner in which the Court of Audit can still better lend assistance to Parliament. In addition, there is also ex officio consultation between committee secretaries and the parties responsible for content within the Court of Audit. The idea is to streamline the workings of the Committees and of the Court of Audit.

It is furthermore important that also members of Parliament make optimum use of the various instruments and products offered by the Court of Audit. Some members have already found the way to the

Court of Audit, yet this remains one of those areas where a lot of work still needs to be done.

3. Parliamentary expertise is important and needs to be further developed through a planned approach to the dossiers

BAP has streamlined the government landscape and, at least in principle, made it more transparent. But, at the same time, the Flemish Parliament has with the further development of the control on the government organisation been burdened with a lot more work. It is essential that the workings of government be well monitored and controlled in all aspects and in the totality of its agencies and other public institutions, and this presupposes parliamentary expertise. The Court of Audit is, as already stated *supra*, the instrument *par excellence* to provide that kind of needed expertise. But this needs to become embedded into a parliamentary research culture imbued in all of the representatives. To that end, they need to be fully supported by a well-functioning parliamentary organisation.

The building components to achieve this have been laid by my predecessors during the past legislative sessions. In my policy Plan "Plenum" I am trying to turn these building stones into a solid parliamentary structure. For example, we are guiding the parliamentary policy committees into the direction of the planned process. Out of the multitude of dossiers generated by the thousands of questions, they need to develop systems leading to the planned follow-up of policy issues. This can best be achieved within the context of a clearly defined framework. The management agreements with the agencies are just such a framework.

I am giving you here once again a paradigm of a best practice. In the Committee for Economy and Employment, it has been customary during the previous legislature to discuss an interim evaluation of the management agreement with an important and, in addition, an

effective agency: I refer to the Flemish Service for Employment and Vocational Training (VDAB). That is the correct approach. That the VDAB is very effective is due to the expertise of the agency itself, yet also to the manner in which it reports to the government and to Parliament. Their example ought, at the least, to become for all important agencies a customary way of operating.

4. Recognition of the specificity of the various agencies – tailor-made control

Notwithstanding the fact that BAP was a streamlining operation, it ought to be evident that each agency possesses its individual character, its own specificity, in terms of its internal workings and business culture. This is certainly the case for the major external public agencies. And, amongst other reasons, this is in consequence of the autonomy and the responsabilisation of those agencies, but also because of the administrative tradition on which they often continue to build. It is only just and proper for Parliament to recognize that individual specificity and diversity.

As a consequence, for instance, parliamentary control on each of the agencies will result in its becoming imbued with a number of specificities. A concrete example of this is the public broadcaster VRT. Although the VRT is not an agency in the “traditional” sense and remains outside of the BAP structure, it is nonetheless an institution with which a management agreement has been concluded. In preparation of the new management agreement, the competent policy committee has already organized a dozen or so sessions with the involved parties and the stakeholders. This is a very good way to proceed. Once the management agreement has been concluded, an enterprise such as the VRT needs to retain a very large measure of autonomy in order to carry out its assignments. It is especially during the phase of preparation of that management agreement that

Parliament can assume its part in ensuring that the guidelines of the agreement be clearly drawn up.

Once that has been accomplished, it is incumbent on Parliament to respect the agency's autonomy without any interference in its daily operations.

I hope that the above passages have brought you a few valuable insights into some practical aspects of the workings of the Flemish Parliament and the Government.

Contemporary government needs to collaborate with mature and responsible organisations. During the past decade, Flanders has come a long way along that road. In the process, the Flemish Parliament prides itself on having played a prime role. It is up now to the current generation of member representatives to work profitably with, and within, this modern official administrative landscape. It will take a lot of work still to have it functioning at its best, the way we visualize and want it. But we are making an effort, as we ought to, and it is my sincere hope that at the conclusion of my term as Speaker I will be in a position to present a very favourable final report on our progress.