

Chapter 3

Belgium: stability on the surface, mounting tensions beneath

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Located on the cultural boundary of Germanic and Latin Europe, the federal state of Belgium is a small, but heterogeneous and densely populated country. Economic vulnerability is a common assumption among the economic and political elites, as Belgium is one of the most open trading economies in Europe (Jones 2008). The state has promoted a consensual approach and social partnership via a corporatist architecture, although trust among the social partners is relative as polarisation can be high, especially at the cross-industry level. Apart from a guaranteed average monthly minimum wage, four other institutional features distinguish today's collective bargaining system in the private sector (Van Gyes *et al.* 2018).¹ First, Belgium is one of the few European countries in which wages are still 'automatically' adjusted to changing prices of goods and services. Second, the Law on the 'promotion of employment and the preventive safeguarding of competitiveness' of 1996 (*Wet tot bevordering van de werkgelegenheid en tot preventieve vrijwaring van het concurrentievermogen*²) (henceforth: the 'competitiveness law') has institutionally modelled collective bargaining on competitive corporatism via a 'wage norm'. This norm has consolidated supply-side wage moderation since the early 1980s and curtails multi-employer bargaining through calibrating wage developments in France, Germany and the Netherlands. Third, bargaining is highly centralised as the wage norm reinforces this characteristic: setting the norm is part of biannual negotiations between the social partners to conclude an interprofessional agreement (*interprofessionele akkoord*, IPA³) at the cross-industry level, which provides a framework for bargaining at the industry and company levels. Fourth, the interlinked hierarchical bargaining levels and corporatist mechanisms, such as the extension of collective agreements, underpin strong bargaining coordination, which is also 'artificially' stimulated by the wage norm.

Belgium's consociational democracy, with its proportional representation and coalition governments, allows only piecemeal policy adjustment; centrifugal federalism, a party system split primarily along linguistic lines and a volatile electorate add to the complication. In this light, one might infer from Table 3.1 that it is the institutional robustness and organisational continuity that need to be explained and the lack of radical change. Several dimensions of collective bargaining, identified by Clegg (1976; see Chapter 1), are almost unaffected, while both sides of industry remain strongly

1. Employment terms and conditions are set by law in the public sector; its bargaining cycle is different from that of the private sector and bargaining can include negotiation or consultation.
2. *Loi relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité.*
3. The French names of institutions, organisations or others that can be abbreviated are not provided in the main text for reasons of space. The French name can be found in the abbreviations list.

Table 3.1 Principal characteristics of collective bargaining in Belgium

Key features	2000	2018
Actors entitled to collective bargaining	Only representative trade unions and employers' associations are entitled to bargain	
Importance of bargaining levels	The industrial level is the main bargaining level but to a diminishing extent	
Favourability principle/derogation possibilities	The favourability principle almost always applies in practice Derogation is legally possible but very limited	
Collective bargaining coverage (%)	96	96
Extension mechanism (or functional equivalent)	Collective agreements are extended more or less 'automatically'	
Trade union density (%)	56.2	54.2*
Employers' association rate (%)	82	82

Note: * 2015.

Source: Appendix A1.

organised. But this snapshot is deceiving: it overlooks 'state intervention' and does not fully grasp tendencies of decentralisation and fragmentation in the bargaining system below the surface of its institutional set-up.

The argument developed here is that a self-perpetuating cycle of heightened tensions is challenging the system's governability and reinforcing its complexity. This has been heightened since the crisis of the finance-led accumulation regime in 2008 (hereafter: 'crisis of 2008') and because the Michel I government of 2014–2018, made up of economic liberals, Flemish nationalists and Flemish Christian Democrats, similar to the Verhofstadt I government (1999–2003, comprising liberals, social democrats and greens), has favoured the 'primacy of politics'. This drift away from Belgium's corporatist tradition by 'state intervention' in the labour market and welfare arrangements, set primarily by the social partners, has strained the relationship with trade unions in particular.

As centralised wage-setting is aligned with domestic inflation and, via the wage norm, to foreign wage developments and is dominated by wage restraint, the social partners' bargaining space has contracted (Dumka 2015; Van Gyes *et al.* 2018; Van Herreweghe *et al.* 2018). This affects bargaining level, scope and depth. The social partners are trying to find negotiation flexibility at a more decentralised level by broadening the scope of bargaining with benefits or less 'tangible' non-wage issues excluded from the calculation of the wage norm. The more technical character of bargaining outcomes may further impede the internal relations between the union confederations and their affiliates, and thus the binding of lower bargaining levels. Failure in the vertical coordination of bargaining opens the door to 'state involvement', which again puts pressure on bargaining space, with rising tensions between the social partners. Bargaining has been further truncated through a tightening of the competitiveness law in 2017. If strictly enforced, real wage increases seem barely achievable by means of collective bargaining, while the law might, indirectly, further encourage individualised remuneration packages at the company level.

Industrial relations context and principal actors

The ‘involvement’ of the Belgian state in shaping the bargaining system is rooted in the period after the First World War and the experiences of the Great Depression and the Second World War. After clandestine negotiations between business and union leaders in 1944, the ‘Social Pact’ facilitated the institutionalisation of corporatist institutions, encouraging social partnership and subordinating strike action to bargaining (Cassiers and Denayer 2010). The Act on collective bargaining agreements and joint committees of 1968 (*Wet betreffende de collectieve arbeidsovereenkomsten en de paritaire comités*⁴) recognises and protects the right to organise and bargain collectively (Van Gyes *et al.* 2018). The Act regulates the establishment, scope and competence of the committees at industry level, which are the key bargaining units, their main competence being to collaborate in drafting collective agreements. Companies assign themselves to a joint committee based on their principal economic activity or activity employing the largest number of workers. If there is doubt or dispute about which is the right joint committee, then the National Office for Social Security (Rijksdienst voor Sociale Zekerheid, RSZ) assigns the company. Thus, the committees’ jurisdiction generally depends on the industry to which the company belongs and not on the individual worker’s occupation; manual and white-collar workers can thus be assigned to the same industry. A Royal Decree sets the number of mandates in each committee. The allocation of union mandates is either determined by the aggregated results of the latest quadrennial social elections of the industry concerned, or in proportion to the union’s strength within the industry, measured by the payment of the ‘union premium’ (see Security of bargaining) or by mutual agreement between the unions. Members of the committees are appointed for four years by Royal Decree.

There were 101 joint committees and 67 joint sub-committees, set up for smaller industrial groupings, in 2017 (FOD WASO 2018). The total number of committees is fairly stable, but the total masks the fading away of defunct committees and the establishment of new ones because of economic and labour market developments.⁵ Several of the committees have not changed their field of competence for a long time, but in 2015 the Michel I government asked the social partners to ‘modernise’ their scope and coverage to better reflect changed business organisation and production processes. This is a slow process as it typically entails intra-organisational shifts within unions or employers’ associations, affecting internal power relations. A quintessential example is the agreement between the social partners in 2013 to gradually end the distinction in the employment regulation between manual and white-collar workers. The new single employment status might result in fewer committees because manual and white-collar committees can now merge.

Joint committees are part of a hierarchal bargaining cycle that materialised in the 1960s.⁶ The cycle initially involves talks about a possible new IPA at the multi-industry level, followed by negotiations on collective agreements at the industry or company

4. Loi sur les conventions collectives de travail et les commissions paritaires.

5. There has been a slight increase in the number of joint sub-committees at the expense of joint committees.

6. This cycle mainly concerns wage-setting, but collective agreements can be negotiated at any time.

level. Agreements at the latter level act as a complement to, or substitute for, industry agreements. The practice of bipartite, biannual negotiations at the national level, outside the formal institutions, resulted in seven IPAs between 1960 and 1976.⁷ IPAs are negotiated by an informal group, labelled the ‘Group of Ten’, comprising leaders of the representative union confederations and employers’ associations on a parity basis. Although IPAs are not binding, they are symbolic of social partnership; they coordinate the bargaining system by offering a guiding framework for lower bargaining levels and they are translated into collective agreements at the cross-industry level, which cover the entire economy, laying down minimum standards for all private sector employees. Cross-industry agreements are concluded in the National Labour Council (Nationale Arbeidsraad, NAR) and are almost always extended by Royal Decree. The NAR is an influential social dialogue institution, composed on a parity basis of delegates from the representative union confederations and employers’ associations, which provides advice to the government or parliament on labour and social security law.

When a new IPA could not be agreed in 1976 state ‘intervention’ became increasingly important (Vercauteren 2007). The number of agreements at the industry level decreased due to state-imposed wage restraint. Bargaining revived after the conclusion of a new IPA in 1986 and a more established biannual bargaining cycle set in. State ‘intervention’ in wage setting culminated in the 1989 competitiveness law introducing a ‘wage norm’ (Van den Broeck 2010). The Central Economic Council (Centrale Raad voor het Bedrijfsleven, CRB), reporting on the conjunctural and structural challenges of the Belgian economy, gained in status as it was entrusted with calculating the ‘wage norm’. The law authorised state ‘intervention’ ex-post if wage increases exceed the average of wage developments in seven of Belgium’s main trading partners during the past two years. Wage freezes followed in the mid-1990s in order to ensure entry to the first group of the European monetary union. Belgium entered the euro zone in 1999.

Turning to the main bargaining actors, the union confederations are organised along the traditional ideological pillars in Belgian society, although rivalries have blurred in favour of a more pragmatic stance (Faniel 2010). Union pluralism based on ideological differences is mirrored in the three confederations, each with regional divisions: the socialist General Federation of Belgian Labour (Algemeen Belgisch Vakverbond, ABVV), the Confederation of Christian Trade Unions (Algemeen Christelijk Vakverbond, ACV), the largest confederation since 1959 and especially dominant in Flanders, and the much smaller General Confederation of Liberal Trade Unions of Belgium (Algemene Centrale der Liberale Vakbonden van België, ACLVB). The main employers’ association is the Federation of Enterprises in Belgium (Verbond van Belgische Ondernemingen, VBO), an umbrella organisation of about 50 industrial employers’ associations, representing around 50,000 companies in total, irrespective of size and across the country. This accounts for 75 per cent of employment in the private sector (Arcq 2010). Employers’ associations are also fragmented along regional lines. Small and medium-sized enterprises (SMEs), mainly those with fewer than 50 employees, and the self-employed in Flanders and Wallonia have their own associations. Two have seats in the NAR and CRB; this also applies to the VBO, one organisation representing the agricultural

7. The first agreement of 1960 had a three-year duration.

sector and one organisation representing the not-for-profit sector; the latter has been a full member since 2010. The main regional employers' association in Flanders, the Flanders' Chamber of Commerce and Industry (Vlaams netwerk voor Ondernemingen en Kamers van koophandel in Alle sectoren, VOKA), and parallel employers' associations in Brussels and Wallonia have no seats in the NAR and CRB. Similar social dialogue institutions have been established at regional level since the 1980s, however, with a stronger corporatist underpinning in Flanders than in Brussels or Wallonia (Installé *et al.* 2010). VOKA has increasingly gained influence because labour market and welfare policies came increasingly to the fore in the course of Belgium's devolution (Vandaele and Hooghe 2013). Covenants between the social partners at the industry level, which provide a framework setting targets on, for example, school-to-work transitions, lifelong learning and increasing diversity, and tripartite agreements or pacts add another layer to bargaining (Van Gyes *et al.* 2018). Nevertheless, the federal level is still the *prima facie* level for wage setting and collective agreements cannot legally be concluded at the devolved levels.

Security of bargaining

The Belgian constitution enshrines the right to collective bargaining, while diverse institutional arrangements, provided by the employers or the state, buttress the security of bargaining. This is illustrated by the provision of seats for the social partners on the governing or supervisory boards of various labour market and social security institutions at different policy levels. Bargaining security relates in particular to the regulation on unions and industrial action, incentives for recruiting and retaining union members and wage setting mechanisms. Right-wing political parties have recurrently made legislative proposals to curtail this security, but because federal government coalitions incorporate at least one political party with close links to one of the two main union confederations bargaining security has largely remained intact, although it has become notably weaker over the years. Equally, the right-wing parties in the Michel I government have been bound to the government agreement. The unions' political room to manoeuvre has been reduced, however, and the Flemish nationalist party in the government has followed a media strategy of 'union bashing' to delegitimise them (Zienkowski and De Cleen 2017).

The rights to set up and to join a union are derived from the freedom of association enshrined in the constitution (Humblet and Rigaux 2016). The main union confederations and their affiliates are virtually without competition.⁸ Their quasi-monopoly is guaranteed by the representativeness criteria stipulating that union confederations and interprofessional employers' associations are entitled to bargain if they cover the whole country and have a mandate in the NAR and CRB (Blaise 2010). Non-affiliated employers' associations and other associations representing crafts, small businesses or liberal professions can be declared representative via Royal Decree.

8. Some occupations or professions in the public sector or with strong workplace bargaining power have established their own unions that are not affiliated to the main confederations. Managerial staff can also set up their own organisations and put forward their own candidates on the social election lists.

The right to take industrial action is an individual right. Somewhat undermining bargaining security, and indicating a juridification of industrial action, since the mid-1980s employers have made use of the civil courts to break strikes via the unilateral imposition of substantial fines on picketing workers. The social partners concluded a ‘gentlemen’s agreement’ in 2002 to regulate the ‘modalities’ of industrial action, although the agreement has no binding force. The social partners promised to ‘modernise’ the Agreement in 2016 under pressure from the Michel I government, but negotiations were unsuccessful. A law on a guaranteed minimum service in railways was introduced in 2017, which set a precedent, as case law regulates mainly industrial action.

Almost continuous upward progress has marked union membership since 1945, with Belgium being considered an exception to the deunionisation trend in Europe. Union-monopolised works councils and union representatives have enabled unions to install and maintain a social norm of membership at the workplace, especially in large companies, in industries dominated by manual workers and among certain medium-skilled occupations and professions. The quasi-Ghent system further explains the stable net union density rate of about 55 per cent (Vandaele 2006). While unemployment insurance is compulsory, unions *de facto* dominate the system through their involvement in benefit administration, via payment bodies paying out unemployment and early retirement benefits. The public non-union payment body, governed by the social partners, plays only an inferior role in benefit administration. The quasi-Ghent system stimulates workers to join a union and to remain a member, especially those with relatively high unemployment risks or with lower educational attainment (Van Rie *et al.* 2011). Austerity measures taken by the Di Rupo government (2011–2014), comprising Social Democrats, Christian Democrats and liberals, and the Michel I government targeting unemployment regulation have indirectly affected the system (Vandaele 2017). Membership growth has halted for the ACV and ABVV since 2011 and 2014, respectively, with aging memberships, accelerated deindustrialisation and declining unemployment as additional factors. Positive or critical union support is still widespread, however, although weaker in Flanders (Swyngedouw *et al.* 2016).

Social security funds at the industry level usually supplement unemployment and early retirement benefits. They also typically organise skill-based education and training for employees and promote health and safety policies. Established by collective agreements, and financed by employers, there are about 180 funds autonomously governed by the employers’ associations and unions. The funds normally also pay out a ‘union premium’: an additional benefit for union members introduced only in certain industries in the 1950s but widespread today. Because collective agreements apply to all employees, irrespective of union membership, the premium aims to avoid free-riding, as it partly or largely compensates for union dues. Settled by a cross-industry collective agreement, the premium is partly exempted from social security contributions and taxes, with a ceiling of 145 euros a year since 2017. The exact amount of the premium is settled by bargaining at the industry level; if no premium is set at this level, then it can be set by a company agreement.⁹

9. A collective agreement at the company level can in principle also increase the premium settled at the industry level.

Bargaining security is also backed by a guaranteed average monthly minimum wage, initiated by means of a cross-industry collective agreement in 1975, and given legal force via a Royal Decree, which was augmented in real terms in 2008. The social partners agreed in 2012 gradually to abolish the specific minimum wages for young employees between 18 and 21 years of age by 2015, but the Michel I government introduced a law, despite union mobilisation, allowing derogation from the industry or cross-industry agreement on minimum wages for young workers aged 18, 19 or 20 years. Actual minimum wages tend to vary considerably between industries and to be considerably higher than the national minimum wage, especially in industries with a strong bargaining tradition. If there is no collective agreement about minimum wages in an industry, then the national minimum wage applies by default; this is so only for a small proportion of employees (CRB 2018). In particular, agreements at the industry level for white-collar workers in the profit sector also include seniority-based wage increases connected to a job classification scheme; similar arrangements exist at the company level. The Michel I government questioned these ‘automatic’ seniority-based wage increases and wanted to replace them with a system based on individual competences and productivity.

Further strengthening bargaining security, minimum wage and pay scales are linked to indexation mechanisms (Van Gyes *et al.* 2018). Those mechanisms are not present in all industries, however, because it belongs to the bargaining autonomy of the social partners. As they are set by collective agreements, the index arrangements differ within industries, but have in common that they ‘automatically’ set a floor for wage increases by linking wages to past inflation based on a so-called ‘health index’. This index, introduced in 1994, is a watered-down version of the consumer price index excluding volatile, heavily tax-influenced commodities such as alcohol, motor fuel and tobacco. A biannual ‘little’ update of the basket of goods and services for tracking consumer prices was introduced in 2006, while the eight-year period for a ‘big’ update was kept. The Di Rupo government again altered the basket’s composition and weighting of goods and services and established a yearly update in 2014, also attempting to moderate energy prices and thus their effect on the basket. The Michel I government imposed a ‘wage-index jump’ of 2 per cent in 2015 to structurally impede ‘automatic’ wage increases based on the ‘health index’. Wage increases based on indexation arrangements thus stopped temporarily, resuming a year later.

Level of bargaining

Joint committees at the industry level are considered to be the cornerstone of Belgium’s multi-level bargaining system as collective agreements at this level are broad in scope and provide legal content for cross-industry agreements (Vandekerckhove and Van Gyes 2012). While the industry is the dominant level, the system is more complex and sophisticated than quantitative indicators capture (CRB 2009; Van Ruysseveldt 2000; Van Gyes *et al.* 2018). Industries can be ordered in terms of their degree of multi-level bargaining. Six types can be distinguished: horizontal coordination between the joint committees via pattern bargaining only in not-for-profit industries; collective agreements at the industry level accompanied by a limited number of company agreements; industrial agreements followed by additional agreements in the largest

companies; industrial agreements providing a framework for company bargaining; industrial agreements acting as a substitute if company agreements are not reached or settled; and solely company agreements.

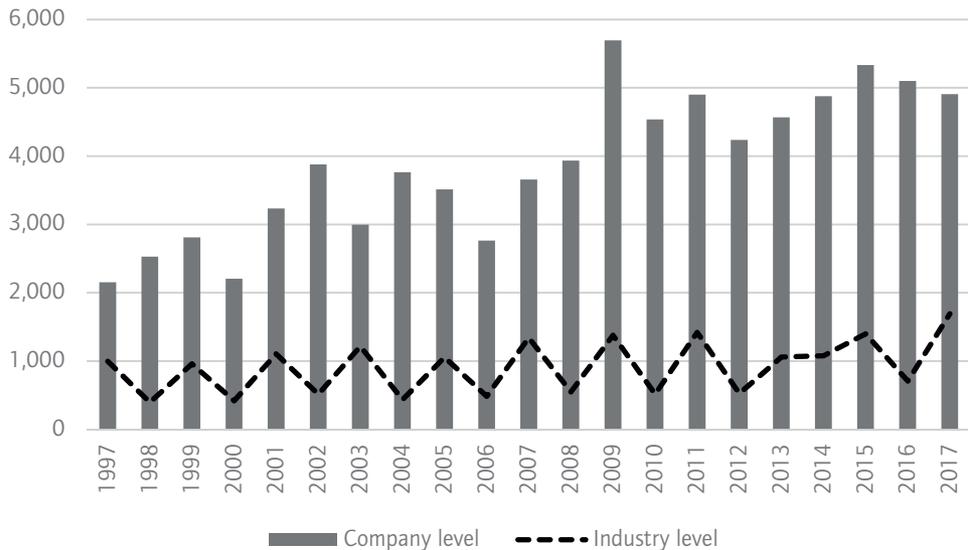
The balance between the company and the industry level is a matter of complementarity, which is largely influenced by companies' capital intensity and employment size. Therefore, some industries are traditionally characterised by organised decentralised bargaining. Current bargaining dynamics do not suggest a decentralisation trend in the strict sense. Some recent decentralising tendencies are noticeable, however, driven by altered employers' preferences (Van Herreweghe *et al.* 2018). A special kind of decentralisation in the Belgian context is regionalisation. Establishing joint (sub-) committees on a territorial basis has always been possible and is relevant for regionally clustered economic activities such as sea ports, or for informal bargaining groups, as in the metal industry. Yet there has also been a more marked regionalisation in certain industries due to Belgium's devolution. This has shifted competences from the federal level to the Regions and Communities: for example, joint committees have been set up in urban and regional public transport, and especially in the not-for-profit sector.

Since the late 1980s there has been a strong but uneven increase in collective agreements at the company level, which tend to cover single issues. This largely underscores 'delegation', in the sense of the implementation of what has been decided at higher levels, whereby unions at the company level are explicitly granted bargaining power (Van Gyes *et al.* 2018). Moreover, while agreements at the company level have traditionally acted as a complement to or substitute for industrial agreements, they have gained more substance as today's industrial agreements are often framework agreements. One typical example of delegation is the 'non-recurrent performance-related collective bonus', which has existed since 2008. This wage bonus has to be introduced through a collective agreement if union representation is present in the company. If it is not, then the employer can opt for either an accession act, to be approved by the joint committee concerned, or a collective agreement that must be signed by a union officer of a representative union. While 'bonus plans' can be initiated at the industry level, its predominant level is that of the company: the number of agreements implementing a bonus plan more than doubled in the period 2008–2017 (FOD WASO 2018).

The increase in bonus plans should be understood in relation to the 1996 competitiveness law. This law reduced the benchmark from seven to three reference countries for calculating the wage norm and has replaced the ex-post assessment of hourly labour costs in those countries with ex-ante assessment. The CRB is responsible for calculating predicted inflation in Belgium and the wage norm for the two-year period the IPA is intended to cover; they provide the floor and ceiling of wage setting at lower bargaining levels (Dumka 2015). The norm is a percentage expressing the maximum margin for wage increases in the private sector based on the weighted average of anticipated hourly labour cost developments in France, Germany and the Netherlands.¹⁰ Company-level bonus plans are not explicitly excluded from the wage norm calculation, but they allow

10. The union confederations initially set up the 'Doorn process' to coordinate wage demands with the unions from the reference countries, but this has faded away over time.

Figure 3.1 Collective agreements at the company and industry levels in Belgium, 1997–2017



Source: FOD WASO/SPF ETCS.

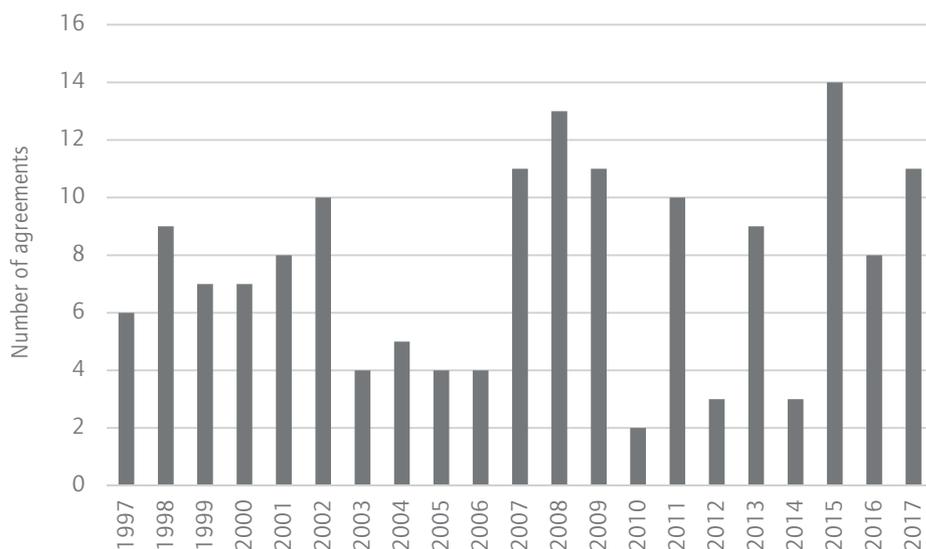
for remuneration gains above the norm, so that they can be considered a response to the limited space for wage increases.

The growth of company agreements has not been at the expense of agreements at the industry level. The slight increase in the number of joint committees and social funds, and a broadening of the scope of bargaining that calls for industrial agreements explains their slight upward trend (Bocksteins 2006). All industries are covered by a joint committee today. The industry-level bargaining cycle also shows the interaction with the biannual setting of the wage norm: except for 2014 there is a clear two-year pattern (Figure 3.1). Guided by the CRB-report, negotiating the wage norm is part of the IPA negotiations among the ‘Group of Ten’; if they reach no agreement on the precise norm, the federal government is authorised to suspend negotiations and to propose a compromise or, ultimately, to set an imperative wage norm, mainly following the draft IPA, especially if it is supported by most social partners.

Centralised wage setting has oscillated between state-sponsored and state-imposed coordination since 1996. Before the crisis of 2008 state sponsored coordination mainly took the form of cutting employers’ social security contributions. Companies have been exempted from withholding tax since the IPA of 2008.¹¹ The Michel I government replaced the existing cuts and exemptions with a tax shift of 7.2 billion euros in 2016, aimed at gradually shifting taxes from labour to other sources, especially consumption, and at reinforcing job creation and boosting consumer purchasing power, although the budget effects and the achievement of those aims have been seriously debated. In

11. Those exemptions have been first introduced in companies using shift, night and non-stop work in 2004.

Figure 3.2 Cross-industry agreements in Belgium, 1997–2017



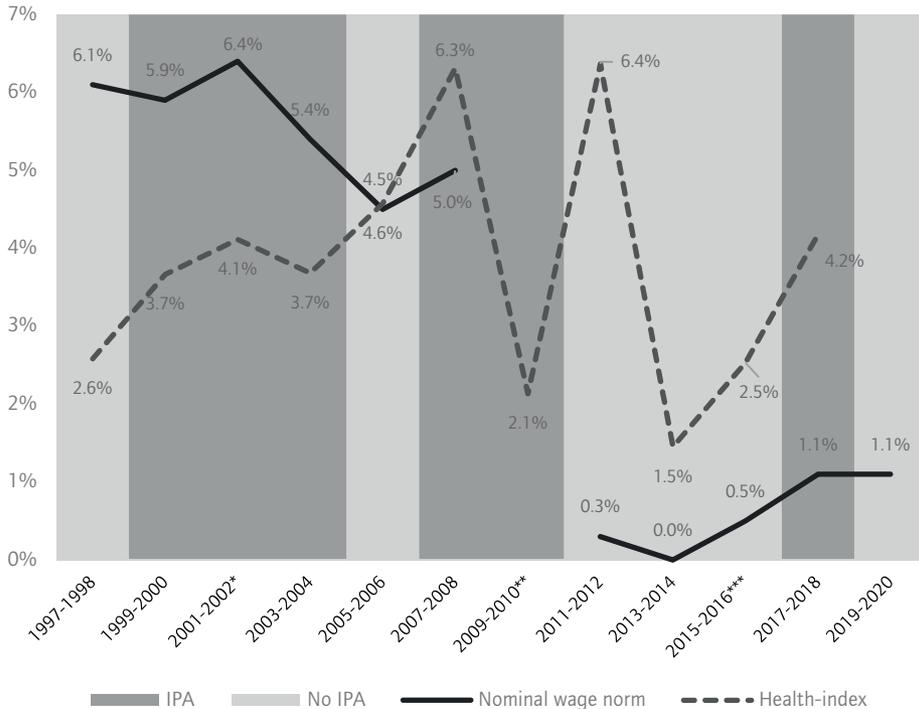
Source: NAR.

any case, employers' social security contributions have been structurally reduced since then, which calls into question the prospects of future state-sponsored coordination, at least in this form. Six IPAs have been concluded successfully since 1996, but this has to be set against six (partial) failures.

In the case of state-enforced wage-setting, time and again, concerns have arisen about whether this implies the end of social partnership. Cross-industry agreements are still concluded in the NAR (Figure 3.2), however, although their scope has 'become more technical than before (...) and [some] can be defined more as "implementation agreements" of government decisions' (Van Gyes *et al.* 2018: 85) because of either discord between the social partners or the Michel I government's 'primacy of politics' stance, overruling the advice of the partners concluded in the NAR. Regarding the European social dialogue agenda, the involvement of the social partners via information and consultation at the federal level has become notably weaker. While the NAR and the CRB still organise information exchange based on the European Union's Semester approach, it has a far less formal, explicit and extensive character than social dialogue as regards implementing the Lisbon Agenda. A 'Belgian desk' has been established, however, to ensure regular social dialogue between the social partners and the European Commission (EC).

Before the 2008 crisis, the leeway for IPA negotiations was reduced either by inflationary wage developments exceeding the wage norm, or by wage moderation in the Netherlands and, especially, Germany. Additionally, if economic prospects look bleak, as in the crisis period 2008–2016, agreeing an IPA is touch-and-go because the odds on state-sponsored coordination are slim, given its strong dependence on budgetary and

Figure 3.3 The floor and ceiling for wage development in Belgium, 1997–2020



Note: After 2008 the wage-norm excludes wage-indexation. * The wage norm was set at 7 per cent in some industries. ** No percentage increase was set for 2009–2010; instead, a maximum increase of 250 euros was permitted, 125 euros of which could be granted in 2009. *** There was a jump in the wage index from April 2015 to April 2016; the 0.5 per cent wage increase might be raised by 0.3 per cent in some cases.
Source: Dumka (2015: 144), and author's updates from 2013 onwards.

fiscal policies (Figure 3.3). The social partners concluded a new IPA after government mediation in 2008. The agreement no longer contained a non-binding interpretation of the wage norm, enabling employers to grant increases above the wage norm in some well performing companies or industries; it allowed only for binding or imperative wage increases. Two years later the IPA negotiations failed (see Depth of bargaining), and the government imposed the draft-IPA with a Royal Decree, excluding wage indexation from the wage norm, although indexation was still guaranteed, and making the norm imperative again (Ajzen and Vermandere 2013).

State 'intervention' in wage setting before the IPA negotiations, focusing on its floor or ceiling, or both, cast talks about a new IPA into disarray from the start. This occurred in 2012 and 2014. A wage freeze was imposed for 2012–2013 before the IPA talks, while retaining the index mechanism, as part of the state budget consolidation effort. At most only partial agreements have been reached on specific topics. Whereas there was no state intervention before the IPA negotiations regarding the ceiling, the Michel I government imposed a 'wage-index jump' affecting the floor for wage-setting (see Security of

bargaining). The negotiations failed again, and the wage norm was set by the government at 0.8 per cent in 2015–2016. The government also expanded application of the wage norm by including certain state-owned enterprises in 2015. After three consecutive failures, the social partners concluded a new IPA in 2016 (Faniel 2018).

Encouraged by the EC, within the framework of its Semester recommendations since 2012, the Michel I government substantially strengthened the competitiveness law in 2017 by building into the wage norm's calculation an ex-ante safety margin and ex-post correction mechanisms (for details, see Van Gyes *et al.* 2018: 81). While 'automatic' wage increases based on seniority or indexation arrangements remain outside the scope of the calculation, real wage increases are considerably limited by the new calculation methods. There is legally no room for an indicative interpretation of the wage norm. Additionally, the negotiation flexibility for the social partners to agree on the ceiling has been further reduced: the wage norm is an entirely technocratic exercise today because only the secretariat of the CRB is responsible for setting the maximum norm and no longer the CRB as a whole. The partners can only discuss how and to what extent the wage norm will be used, which means that the maximum norm set by the CRB is imperative. Either the wage norm is set autonomously by the social partners by a legally binding collective agreement at the cross-industry level or imposed by the state with a Royal Decree. The IPA negotiations failed in 2018. The union confederations held a national strike in early 2019 to obtain a higher wage increase than the wage norm of 0.8 per cent calculated by the CRB. Although an updated CRB calculation set a slightly higher wage norm of 1.1 per cent, a new IPA could not be concluded. Consequently, the minority government 'Michel II', that is, without the Flemish nationalists, set the new wage norm, as newly calculated, while agreements on several labour market and welfare issues of the draft IPA agreement will be implemented via the NAR.

Scope of agreements

There are no comprehensive studies analysing long-term changes and trends in the scope of bargaining. A dynamic picture can be partly sketched out, however, by means of representative snapshots of selected industries in certain periods. The bargaining scope at the lower levels depends on the dominant level of bargaining, but generally covers a wide range of issues, such as pay levels, job classification schemes, luncheon and other vouchers and bonuses; working time arrangements; occupational welfare benefits via the social security funds; employment and careers; training; and social dialogue and union matters (Verly and Martinez 2010). Responding to the changing demographic and economic environment, collective agreements in particular industries sometimes play a pioneering role: agreements introducing occupational pension schemes, for example, have substantially influenced the bargaining scope by setting best practices for other industries.

For a long time, occupational pension schemes have either been set aside for staff members only or have been part of agreements in certain companies or industries. To compensate for the comparatively low pension benefits available through the state-managed pay-as-you-go system, a legal regulation adopted in 2003 aimed to consolidate occupational

pension schemes to all employees, encouraging this through fiscal incentives for employers (FOD WASO 2016). Collective agreements on innovation have also been encouraged by the Di Rupo government since 2014 (Van Gyes et. al 2018: 84–85). Such agreements set up a scoreboard for tracking commitment to improve innovation and performance in terms of product and process innovations and innovations in work organisation. A recent example is the 2015–2016 collective agreement in the chemical industry that established a ‘demographic fund’ for stimulating longer labour market participation in a motivational and practicable way.

Bargaining scope is increasingly marked by a tension between the social partners, trying to retain bargaining autonomy, and the state, which sometimes overrules them. The competitiveness law leaves little room for additional wage increases, especially since its ‘imperative turn’ after the 2008 crisis and its strengthening in 2017. Recurrent state ‘intervention’ in wage setting has made wage increases even more difficult, whereas litigation by the union confederations against state-imposed wage freezes has not been successful (Kéfer 2017). The social partners are therefore trying to find negotiating flexibility on other issues than wages, resulting in a broadening of bargaining scope (Dumka 2015). This again implies a more prominent state role in the negotiation process as these new bargaining issues often demand legal revision or new regulation.

Although juridification, with a strict mandate for legal advisors representing the employers, limits negotiating flexibility, it is often sought in types of remuneration that are omitted from the calculation of the wage norm and are commonly partly exempted from social security contributions and taxes. Moreover, while bonus plans (see Level of bargaining) are in addition to wage increases, so-called ‘cafeteria plans’ are increasingly being used in an attempt to replace current benefits and wage increases via a set of individualised alternative benefits. Furthermore, the Michel I government overruled the social partners by introducing a new variable pay scheme, the tax-favourable ‘profit premium’, in 2018, whose introduction and application can unilaterally be decided by management. It remains to be seen to what extent this will supplement or replace the current scheme based on bonus plans, especially in SMEs. Another example of overruling is the 2017 law regarding manageable and feasible work (Wet betreffende werkbaar en wendbaar Werk¹²). This concerns the flexibilisation of working time and deregulates night and overtime work. While details about working time are normally set by the unions and employers’ associations at the industry level, the law allows companies to make it more flexible in a more unilateral way.

Depth of bargaining

Bargaining depth is generally strong in countries such as Belgium with its high union density and multi-level bargaining system. Influencing the duration of the bargaining process, depth is ideally the result of a bi-directional process. It refers to the degree of articulation between the lower organisational levels vis-à-vis the umbrella organisations in terms of interest aggregation and agenda-setting, as well as internal agreement

12. Loi concernant le travail faisable et maniable.

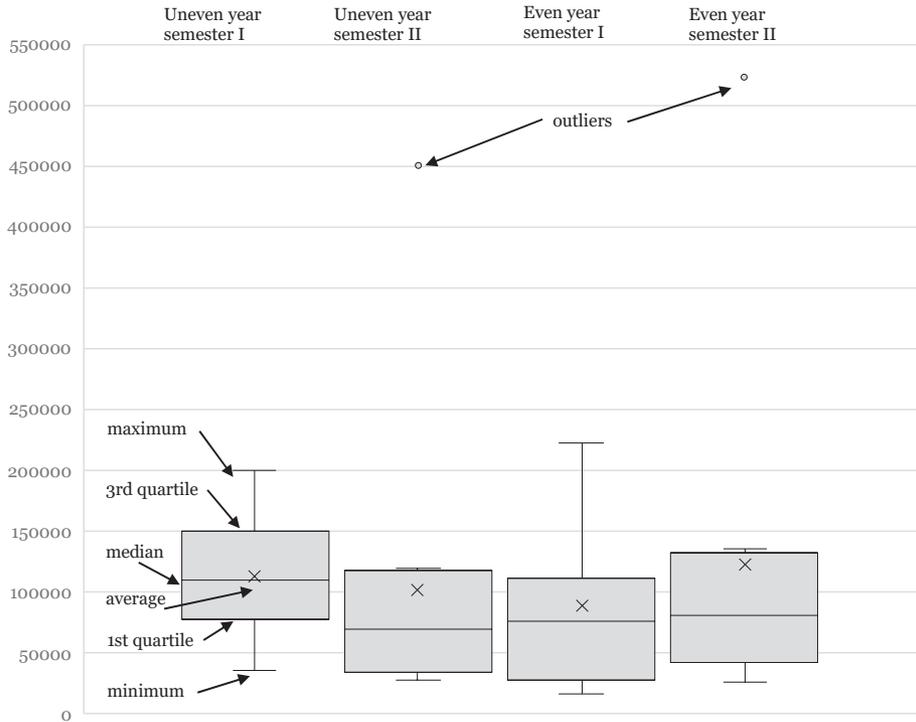
ratification procedures once a draft collective agreement has been achieved. From a historical-comparative perspective, the capacity of the Belgian social partners to bind lower organisational levels to higher-level agreements is considered fairly ineffective (Crouch 1993). Their rather weak vertical coordination can be explained by the union affiliates' or employers' associations' dominance over their respective umbrella organisations at the industry level. Thus, on the employer's side, when it comes to setting its demands and negotiation strategies, the VBO is dominated by its most prominent associations, whereas coordination between them is weaker compared with unions at the industry level (Van Ruysseveldt 2000: 239). While the VBO aims to reach an internal consensus on ratifying a draft IPA, on several occasions not all employers' associations have whole-heartedly supported it. Indicating interest heterogeneity, particularly employers' associations that represent export-oriented industries have repeatedly considered wage moderation insufficient. Moreover, VOKA, the employers' organisation representing Flemish business, has also been critical of centralised wage setting and IPAs, while associations representing the not-for-profit sector have considered the wage norm too rigid.

Turning to the unions, bottom-up decision-making provides room for union activists and representatives to articulate their demands (Van Ruysseveldt 2000: 216–217). Some unions may also conduct surveys to reach their members, especially in industries dominated by SMEs, in which union representation is weaker. Regional and national full-time officials aggregate the demands and inform union activists and representatives. While in the past demands were based on experience, they have recently become more sophisticated, juxtaposed with socio-economic data. ABVV affiliates use the socio-economic data only for tactical reasons; this is to try to reach a common understanding with the employers' associations. The ABVV affiliates reject this approach for ideological reasons, however, because they do not want socio-economic data to constrain bargaining outcomes (Vanherreweghe *et al.* 2018). Full-time officials in particular are consulted on key shifts in demands during the negotiations. A draft agreement is approved by an assembly consisting of union representatives and full-time officials. Research is lacking on the extent to which this process is prevalent in all union sections, but the responsiveness of full-time officials and the leadership will certainly be influential.

Intra-union coordination is enhanced either by negotiators at the industry level who can have an advisory role in bargaining at company level, or by union officers negotiating several agreements at the company level in the same region (CRB 2009). There is normally also a 'common union front' for setting joint bargaining demands. Such inter-union coordination is particularly relevant at the industry level as collective agreements should be signed by all unions on the joint committee. If there is more than one union at the negotiation table from the same confederation, then the ratification of only one is required. While the local union organisation(s), together with the union representative(s), negotiate(s) the agreement at the company level, it is normally signed by the full-time official responsible for the industry in which the company is active, unless the union mandates otherwise.

Negotiations on collective agreements at lower bargaining levels are generally collaborative (Van Ruysseveldt 2000: 204; Van Herreweghe *et al.* 2018: 10), with few

Figure 3.4 Days not worked due to industrial action per semester in Belgium (private sector only), 1997–2018*



Note: * 2018: only first semester.

Source: RSZ/ONSS.

industrial actions at the industry level, although the biannual bargaining cycle seems to influence strike behaviour. Following the IPA talks, negotiations start at the lower bargaining levels in the first semester of odd years. The strike level is markedly higher in those years than in any other semester (Figure 3.4). It appears, however, that IPAs have a dampening effect on the level: whereas the median is 69,726 days not worked due to industrial action in the case of an IPA, it stands at 105,256 days when there is no IPA.¹³ Union demonstrations and mass strikes against labour market and welfare regime reforms, which have increased in particular since 2011, explain outliers in the strike level.

To some extent, the competitiveness law has put the union confederations and their affiliates at odds with one another. It is especially delicate for unions organising in the domestic sector, such as white-collar unions, to comply with draft IPAs promoting wage moderation because they feel less pressure for restraint and emphasise the importance of purchasing power in stimulating domestic demand. A considerable proportion of today's wage increases are also not directly credited to actual union efforts. They are

13. The median is chosen over the mean as mass strikes tend to dominate strike data, resulting in extreme values that skew the average.

rather the result of ‘automatic’ arrangements such as the indexation arrangements and seniority-based schemes at the industry level and, recently, of government policies, such as the tax shift attempted by the Michel I government, aimed at increasing nominal wages, especially for lower wage categories. Finally, the broadening of bargaining scope has made bargaining outcomes more opaque and technical ‘where their ability to connect with affiliates and members is increasingly being challenged’ (Dumka 2015: 145).

The locus of power is the affiliated unions and not the confederal level, although arguably less so within the ACV, which operates a centralised strike fund.¹⁴ Not only has the ABVV relatively weaker authority over its affiliates, with each union maintaining a strike fund, but also membership concentration and leadership’s instability at the confederal level have been relatively stronger in the period considered here. White-collar workers in both confederations are organised across industrial boundaries, thus in separate unions, because of the legal distinction that previously existed between manual and white-collar workers in employment statutes. Negotiations between the social partners about harmonisation impeded the bargaining round in 2012: one of the main unions in the ABVV, organising manual workers, and the white-collar unions in both confederations voted against the draft IPA. The social partners reached an agreement on unified status and the partial harmonisation of existing statutes in 2013. Unions organising manual and white-collar workers anticipated the labour law change by exchanging members in certain industries, a process that continues today. Finally, the ethno-linguistic dimension might be another source of union division (Vandaele and Hooghe 2013). Some unions, such as the Christian white-collar unions, have been split along this dimension from the outset. Christian education unions, for example, have been divided on whether this would make lobbying the political authorities at the Community level more effective. Internal discord led to a formal split of the socialist metal union in 2006. In each confederation, affiliated unions account for two-thirds of the votes for (dis)approving the draft IPA, while one-third are assigned to regional sub-structures.

Degree of control of collective agreements

The Federal Public Service Employment, Labour and Social Dialogue (Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, FOD WASO), together with the joint committees, plays a key role in the bargaining process by facilitating the conclusion of collective agreements, monitoring their implementation and preventing or settling labour disputes. The chair of the joint (sub-)committees is usually a civil servant from the FOD WASO. In practice, while legally agreements must be signed within the committee, negotiating flexibility is often achieved through informal groups based on more homogenous industries (Van Ruysseveldt 2000: 190–191). Negotiations also often take place informally in small groups outside the committee. One or more labour conciliators can be appointed by the FOD WASO or by one of the conflicting parties in case of a stalled labour dispute or company restructuring that has a regional

14. ACV affiliates have the authority to recognise strike actions.

or national impact. Labour tribunals are responsible for settling disputes between workers and employers, including the interpretation of collective agreements.

Joint committees generally establish a conciliation body for preventing or settling labour disputes in the companies in the industry concerned or at the industry level. This conciliation body, or the chair, tries to reach a recommendation in case of an impending conflict. Although recommendations are non-binding, in practice they are followed mainly by the conflicting parties. Apart from conciliation bodies, ‘social peace’ clauses in collective agreements are also available as a means to avoid labour disputes (Cox 2007). This obligation is tacitly assumed in every collective agreement. The obligation can either be ‘absolute’ or ‘relative’. If the obligation is made explicit, then it usually implies that the ‘social peace’ clause is ‘absolute’: the contracting parties cannot resort to industrial action to formulate additional demands during the duration of the agreement. It is considered ‘relative’ if industrial action is still possible except regarding issues settled by the agreement. Absolute or relative obligations can also bind lower bargaining levels. The most restrictive clauses are associated with industries in which the industry level is predominant (CRB 2009). Employers’ contributions to the social security funds or union premium payments are generally, but not always, dependent on the compliance by the rank-and-file with this ‘social peace’ clause. But even if there is no compliance, sanctions are often not carried out as part of the settlement agreement. Overall, in many cases, industrial action is still possible. If a collective agreement has ended and a new one cannot be concluded, then the terms and conditions remain unchanged to guarantee ‘social peace’, except if otherwise stated in the terminated agreement.

The labour inspectorate monitors labour law compliance and the implementation of collective agreements; the inspectorate may act pro-actively or after receiving a complaint. The degree of control of agreements is further safeguarded by union-only representation structures at the company level. Union representatives are active in companies with at least 50 employees, but this threshold is lowered in various industries depending on provisions laid down in collective agreements. Health and safety bodies are legally required in companies with 50 employees and works councils in those with 100 employees or more. Works councils have the right to information and advice and a limited right of consultation. Union agency also matters for strengthening the degree of control: unions have targeted specific groups of workers through public or comprehensive campaigns highlighting issues that should be addressed by better regulation. Prominent examples are campaigns on employment agencies and the cleaning industry or union actions against social dumping in construction and transport or against internal social dumping by labour ‘platforms’ such as Deliveroo. The introduction of so-called ‘flexi-jobs’ by the Michel I government in 2015 has made the unions’ controlling agenda heavier: they consider it a Trojan horse for further deregulation and flexibilisation of employment relations.

As for bargaining outcomes, wage drift is generally modest at the aggregate level, although there is cross-industry variation, with higher wage drift during periods of economic expansion, especially among higher earners due to individualised bonuses (Vandekerckhove and Van Gyes 2012). Since the 2011–2012 bargaining round, the FOD

WASO has stepped up its efforts to scrutinise agreements to ensure compliance with the wage norm. Non-compliance can result in administrative fines, which have been increased since the 2017 law revision, but this has rarely been applied in practice. Wage setting also seems to allow inter-regional wage differentials reflecting regional diversity in productivity (Plasman *et al.* 2010). Belgium's relatively modest and stable income inequality is often attributed to resilience in its bargaining system compressing the wage distribution in addition to its welfare state regime (Marx and Van Cant 2018; Valenduc 2017). Inter-industry differences in wage developments even seem to fall because of its highly centralised and coordinated character (Vandekerckhove *et al.* 2018). Equally, together with gender-neutral job classifications systems since 2012, this explains why Belgium has one of the smallest gender pay gaps (IGVM and FOD WASO 2017).

Extent of bargaining

Bargaining coverage, including cross-industry agreements, is estimated at 96 per cent, which has remained unchanged since the 1980s. The remaining 4 per cent comprises high-level jobs such as management. Their employment terms and conditions are usually set individually. Coverage is high even before legal extension, as employment is strongly concentrated in a few bargaining units (RSZ 2018). Above all, the strong and stable employers' association rate of 82 per cent, which is nearly 30 percentage points higher than net union density, is responsible for the high coverage. Incentives for companies to join employers' associations are either instrumental for SMEs, in the form of services, or political for larger companies, which in particular seek influence over the association's bargaining position as collective agreements at the cross- and industry level are nearly always extended. Extension is especially requested in industries with a fairly low organisational rate among employers' associations (Van Ruysseveldt 2000: 199–200). Non-members of employers' associations often anticipate extension, as they apply the agreements straightaway after bargaining negotiations (Vandekerckhove and Van Gyes 2012: 4). Collective agreements at the company level are *erga omnes*.

Stimulating organisational coordination, collective agreements concluded in joint committees and in the NAR require the signature of all the parties involved. If one or more of the parties do not agree with the agreement, then it can be concluded outside the committee. But such agreements cannot legally derogate from agreements concluded in joint committees or the NAR as it is legally lower in the hierarchy. Only agreements concluded within those joint bodies can be declared generally binding. The signatory parties must be considered representative, but no additional criteria are needed for extension. Although only one party is required, usually all parties involved ask for an extension in practice. Agreements must be officially registered with the FOD WASO, which controls for normative and obligatory requirements, and must be confirmed by Royal Decree.

If not stated otherwise in the employment contract, normative issues related to the individual employment relationship in non-extended collective agreements at the industry or cross-industry level are binding. Derogation, however, is theoretically possible as non-extended agreements concluded in a joint body are legally ranked below an individual

employment contract in writing. Extending a collective agreement by Royal Decree concluded in a joint body is therefore common practice to avoid this type of derogation by non-signatory employers. Only the collective normative provisions, including social peace clauses, can be extended, not the obligatory provisions of the agreement. Once declared generally binding by Royal Decree, all employers and their unionised and non-unionised employees within the jurisdiction of the joint body are bound by the professional or territorial scope stipulated by the agreement. If a company is allocated to another joint committee, due to a change in its activities, then the company still needs to apply the terms and conditions of the former joint committee to the existing employees. Ways in which companies seek to avoid 'expensive' employment terms and conditions include bogus self-employment or 'regime shopping' in an effort to be allocated to a 'cheaper' joint committee by outsourcing, subcontracting or franchising.

The favourability principle has no legal standing. The hierarchy of legal sources implies, however, that a norm set at a lower level cannot contradict norms set at a higher one. Thus, in practice, collective agreements at the company level cannot negatively derogate from higher-level agreements. Derogation can occur if the higher-level agreement explicitly allows for it and if the agreement has not been declared generally binding (Van Gyes *et al.* 2018). But the guaranteed average monthly minimum wage, set at the cross-industry level, must always be applied. Formal derogation occurs very exceptionally, for instance via hardship clauses that are possible for companies in financial trouble: they must defend their case before an arbitration board composed of members of the joint committee. Hardship clauses are very limited, and not on the increase. Finally, a kind of derogation has been established by the Michel I government. While night-work is in principle not allowed, there exist several exceptions in certain industries regulated by collective agreements. The government has made night-work possible in several joint committees that are active in e-commerce, thereby overruling existing agreements as union approval is no longer needed.

Conclusions

Joint committees at industry level are the main bargaining units in the Belgian collective bargaining system. This system offers more flexibility than one might think as bargaining traditions reveal an interplay and complementarity between bargaining levels. The bargaining system has largely been unaffected on the institutional surface because it is underpinned by relatively strong security of bargaining. Apart from the unions' institutional embeddedness in the labour market and welfare regime, this security is also related to the floor of wage-setting through 'automatic' nominal wage increases via seniority-based pay scales, particularly for white-collar workers, and index mechanisms at the industry level, in particular pertaining to unions. Aspects of this bargaining security are contested by right-wing political parties, although security is still fairly solid: federal governments so far have been composed of political parties that have historical links with at least one of the two main union confederations. Nevertheless, these political allies have lost significant electoral influence over time, while especially the Flemish nationalist party is attempting to delegitimise the corporatist tradition, and some unions have recently lost members. A more outspoken prioritisation of

union innovative strategies, beyond advocating and mobilising, is required to regain organisational power and reignite membership growth, especially as today's political opportunity structure is less open.

Adjustment in the bargaining system has taken place incrementally, with path-dependent change particularly influenced by Belgium's export-oriented position in global capitalism. As a result of this intersection between domestic and European and international developments, especially German wage restraint, the competitiveness law of 1996 put a ceiling on wage-setting by means of a central wage norm in anticipation of indexation and real wage increases. Instead of reregulating wage setting through market forces, via decentralisation, the law institutionalises the triggering of state intervention in wage setting when the social partners cannot agree upon the wage norm. Disorganised decentralisation was not a policy option in 1996 and this is still the case today, due to the unions' institutional embeddedness in the workplace, especially in large companies. Simultaneously, employers' incentives to openly resist unions at the workplace are low due to the strongly centralised bargaining system. Usually in the disguise of regionalisation of employment relations, right-wing political parties still foster the idea of decentralisation, however. The aftermath of the crisis of 2008 has been a political opportunity for those parties to strengthen the law and in 2017 a stringent permanent regime of wage moderation was established, making the wage norm imperative and no longer indicative. Above all, to the frustration of the union rank-and-file and affecting bargaining depth, the current competitiveness law has implanted collective bargaining socio-economically instead of being based on a purely social logic.

If autonomous bargaining is considered a balloon, then the state's pressure exerted at one point, through squeezing via the competitiveness law, explains why the air within the balloon creates a bulge with benefits that are exempted from the wage-norm's calculation. It partly explains the creative broadening of bargaining scope over time via, for instance, occupational pension schemes, company bonus plans and other *à-la-carte* benefits. The social partners consider that this enables them to preserve a certain autonomy in response to the state-led institutionalised centralisation and coordination of bargaining via the wage norm. Both sides of industry have their own incentives to do this. It is a way in which the unions can increase workers' incomes, as the norm has considerably restricted the bargaining scope for wage negotiations at the industry level. Simultaneously, several benefits have a more individual productivity-based orientation and are habitually exempted from the normal taxes and employers' social security contributions in contrast to wage increases set collectively, which explains why employers and their associations favour them. These gains, however, are likely to feed back adversely in the immediate and medium term. This approach encourages a type of organised decentralisation of collective bargaining that, especially via company bonus plans, induces income inequality, as variable pay schemes tend to be paid out in well performing companies and less so in weaker ones. Exemptions from taxes and employers' social security contributions, together with the tax shift by the Michel I government, also entail structural underfinancing of the social security system and of public services. At the same time, autonomous collective bargaining is increasingly being overruled by the state. None of this, however, means that collective bargaining is likely to fail in the short or medium term.

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All links were checked on 18 July 2018.

Abbreviations

ABVV/FGTB	Algemeen Belgisch Vakverbond/Fédération générale du travail de Belgique (General Federation of Belgian Labour)
ACLVB/CGSLB	Algemene Centrale der Liberale Vakbonden van België/Centrale Générale des Syndicats Libéraux de Belgique
ACV/CSC	Algemeen Christelijk Vakverbond/Confédération des syndicats chrétiens (Confederation of Christian Trade Unions)
CRB/CEC	Centrale Raad voor het Bedrijfsleven/Conseil central de l'économie (Central Economic Council)
IPA/AIP	Interprofessioneel akkoord/accord interprofessionnel (inter-professional agreement)
FOD WASO/SPF ETCS	Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg/Service public fédéral Emploi, Travail et Concertation sociale (Federal Public Service Employment, Labour and Social Dialogue)
NAR/CNT	Nationale Arbeidsraad/Conseil national du travail (National Labour Council)
RSZ/ONSS	Rijksdienst voor Sociale Zekerheid/Office national de sécurité sociale (National Office for Social Security)
VBO/FEB	Verbond van Belgische Ondernemingen/Fédération des Entreprises de Belgique (Federation of Enterprises in Belgium)
VOKA	Vlaams netwerk voor Ondernemingen en Kamers van koophandel in Alle sectoren (Flanders' Chamber of Commerce and Industry)