The crisis and national labour law reforms: a mapping exercise

Country report: Belgium

1. Introduction

The global economic and financial crisis that was unleashed at the beginning of 2008 was not without consequences for the labour market in Belgium. Indeed, this crisis was the most severe since the Second World War. Whereas the previous three crises, beginning in 1980, 1992 and 2000, were characterised by a maximum decline in volume of GDP of around 2, 3 and 1 per cent, respectively, compared with the previous peak, the activity recorded at the start of 2009 was a little over 4 per cent lower than that in the second quarter of 2008.\(^1\) The unemployment rate rose to 8.3 per cent in 2010 and in the summer of 2011. Then it again peaked in autumn/winter 2015 (8.7 per cent). More recently, in July 2016 unemployment stood at 8.4 per cent.\(^2\)

Within the context of the European Semester the European Commission and the Council of the EU have repeatedly drawn attention to four main points of concern with regard to Belgium’s social policy and legislation. From 2011, their Country-Specific Recommendations (CSRs) to varying degrees addressed the following issues:\(^3\)

- pension reform, with particular attention to reducing early-exit options and linking the pension age to life expectancy;
- reforming the system of wage bargaining, in particular structures of wage-setting and indexation;
- shifting taxes away from labour to less growth-distortive tax bases;
- increasing labour market participation and introducing employment incentives and activation measures, particularly for certain target groups (notably, older and younger people); in fact, Belgium’s ‘chronic underutilisation of labour’ has been a persistent and increasingly urgent concern in the EU’s recommendations.\(^4\)

When it comes to the labour law reforms, the general trend has been similar to other European countries: recourse to more flexible working arrangements and reduction of the cost of labour, especially during the first part of the crisis. At the same time, there have been some improvements for workers, notably the ending of the differentiated treatment between white- and blue-collar workers and some increased protection in specific areas. Another

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\(^1\) De Mulder, M. Druant, The Belgian labour market during and after the crisis, p. 89.
\(^4\) Council Recommendation of 8 July 2014 on the National Reform Programme 2014 of Belgium and delivering a Council opinion on the Stability Programme of Belgium 2014 (2014/C 247/01), Section 14, p. 3.
trend, but perhaps less prominent than in some other (especially, Scandinavian) countries, has been the need to comply with EU legislation.


At the end of 2008, the Belgian federal government, after discussions with the regional governments and the social partners, agreed on a ‘Plan de relance’ containing several anti-crisis recovery measures. The plan was presented on 11 December 2008 and integrated into the loi de relance économique (‘law of economic recovery’) of 27 March 2009. The plan included, among other things, some of the measures agreed upon by the inter-professional social partners in their Accord Interprofessionnel 2009–2010 (‘Interprofessional Agreement’ or IPA) of 22 December 2008.

A second phase of measures, complementing this first part, was adopted in late May 2009 and integrated into the law on 19 June 2009. The measures were grouped around various themes, including lowering the cost of labour, reforming the labour market to avoid dismissals and improving the transition from unemployment to work.

Looking at the reduction of the cost of labour, the measures provided, among other things, for a general reduction of the fiscal burden, a reduction of the social security contributions on night and shift work and a reduction of taxes on the first 65 hours of overtime per year. This ceiling was increased to 100 hours for 2009 and to 130 hours as from 1 January 2010.

As for the measures reforming the labour market, these included a special ‘employment unit’ for assisting dismissed workers in cases of collective dismissal, offering outplacement to all workers dismissed in the context of restructuring. The latter measures were also supposed to apply to fixed-term and agency workers who have been with the company for at least one month. Measures relating to working time arrangements also formed part of the plan. These included possibilities for short-time working and introducing a four-day working week. The law allowed employers faced with a downturn in production a general reduction of working time; that is, to reduce average weekly working hours (counted on an annual basis of full-time workers).

Concerning the reconciliation of work and family life, the legal system entitling employees to take a career break or temporarily switch to part-time work – known as tijdscrediet (‘time credits’) – was changed. New rules were introduced from late November 2011, also including a national collective agreement (CBA No. 103 of 27 June 2012). Accordingly, applications for time credits from then on have to be granted in line with the following criteria:

- The normal time credit or career leave was limited to a maximum of one year for full-time workers, two years for part-timers or five years for those working one-fifth of a usual working week.
- The qualifying criteria were restricted. An applicant must have already worked for more than five years, and at least two years in the company concerned. These restrictions could no longer be overruled or extended by collective agreement.
- The time credit system, if there was a specific reason (for example, caring for a young child or sick family member), could be used for a maximum of 36 months (increased to 48 months from 2015) during a worker’s career, whether they work full- or part-time. Since 2015, time credit has also been possible based on participation in a recognised course, entitling the employee to an interruption allowance of maximum 36 months.

On September 15 2010, the Belgian government decided to extend the anti-crisis measures adopted in June 2009. The law of 1 February 2011 brought a further extension to 31 March...
2011, with the exception of — among other things — the measures on the temporary adjustment of working time, which remained applicable only until 31 January 2011.

In November 2010, negotiations for Belgium’s next IPA for 2011–2012 began. The agreement would cover all companies and workers in the country’s private sector and set out a two-year framework programme covering issues such as potential wage increases, employees’ contributions and replacement income. The main issues discussed were wage increases, welfare benefits and harmonising conditions for the country’s blue-collar and white-collar workers. On 19 January 2011, the ‘Group of Ten’ reached an agreement. The IPA 2011–2012 set the maximum margin for wage increases at 4.2 per cent. This increase for the most part compensated for inflation (3.9 per cent) in line with estimates from the Central Economic Council (CCE/CRB). The remaining 0.3 per cent reflected the result of the social partners’ bargaining. As for the harmonisation of the employment status of blue-collar and white-collar workers the social partners planned a step-by-step introduction of a ‘single status’ for employees under Belgian labour law.

After 535 days of political crisis and without a federal government, a new government policy was presented to the Parliament by Prime Minister Elio Di Rupo (PS) on 7 December 2011. It included reform of the early retirement scheme and the pension system, but also foresaw a plan to simplify and update the laws on temporary agency work, part-time work and overtime, although without providing further details. The government also sought to encourage and facilitate forms of work that favour a better work–life balance, such as teleworking.

With regard to early retirement, the term ‘bridging pension’ (brugpensioen), which hitherto had referred to a benefit encouraging early retirement, was abolished. It was replaced by another ‘pre-pension’ benefit, now considered to be a category of ‘unemployment with an extra employer benefit’ (stelsel van werkloosheid met bedrijfstoeslag). This change meant that workers – from the age of 60 and after a career of 40 years – who were made redundant could make use of early-exit options. However, they would now receive a permanent unemployment allowance instead of a ‘bridging pension’ and additional compensation payable by the former employer prior to the statutory pension. They still had to be formally available for work. To enforce this rule, the main social partners in the National Labour Council concluded some cross-industry collective labour agreements on the ‘unemployment (benefits) scheme with additional employer payments’ for the entire private sector. For a transitional period, a number of existing or renewed collective agreements could keep the former regime in force until January 2015.

Furthermore, the rules on pre-pensions also changed in the case of collective dismissals, offering workers aged 50 years of age and over the option of an early exit if their company is facing financial difficulties. The minimum age was raised to 52 and has been gradually increased by six months each year to a cap at 55 years from 2015. Since 2013, restructuring companies have to set a minimum retirement age of 55. When a collective dismissal includes 20 per cent of all employees, the restructuring will be subject to the same rules as for a company defined as ‘in difficulties’.

On 27 June 2012, the social partners concluded CBA No. 104 on an employment plan for older workers, applicable to every company with more than 20 employees. These companies must elaborate an employment plan to maintain or increase the number of employees aged 45 years of age or older. The plan must be elaborated annually and include measures that extend over several years. It should provide an overview of all enterprise-specific measures to increase or maintain the number of employees aged 45 years or older. Guidance is provided regarding the sort of measures an employer may opt to apply to

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6 Negotiations were conducted by the so-called ‘Group of Ten’, which comprises two representatives of the Belgian Federation of Employers (FEB/VBO), one representative of the Organisation of the Self-Employed (UNIZO), a member of the Union of Small Firms and Traders (IJCM), a representative of the Federation of Belgian Farmers (BVB) and, on the trade union side, two representatives of the Belgian General Federation of Labour (FTC/ABVV), two from the Confederation of Christian Trade Unions (CSC/ACV) and one representative of the Federation of Liberal Trade Unions of Belgium (CGSLB/ACLVB).

7 Such agreements covered specific risk groups; for example, disabled persons (CBA No. 91 of 20 December 2007, and CBA No. 105 of 28 March 2013), and employees who work night shifts (CBA No. 106 of 28 March 2013), or in specific sectors, for example, the construction sector (CBA No. 106). For those employees, the age limit is 58 years and the seniority condition is 33 years. Such an exception is also available for those performing arduous work.

8 A new CBA No. 107 was concluded on 28 March 2013 regarding the possibility of safeguarding employees’ right to an ‘unemployment (benefits) scheme with additional employer payment’.
encourage the employment of older workers. Finally, this employment plan for older workers is subject to the workers’ information and consultation procedure and the employer’s respective obligations.

During the budget meetings of July 2012, the federal government introduced a series of measures related to the recovery of the economy, the ‘recovery strategy’. One of these measures was aimed at strengthening the existing work bonus, with effect from 1 January 2013. The bonus entails a reduction of personal contributions to social security in favour of low-wage workers. On 24 January 2012, the Belgian government adopted a bill containing a series of measures on the employment of older workers and on training. Measures concerned, among other things: the introduction of seniors’ programmes at company level, an obligation to take account of the age pyramid when there are layoffs and even tougher sanctions against businesses that do not comply with training obligations.

In 2012 various measures intended to activate the labour force and to fight unemployment came into force. Reinforced support for small companies wishing to hire their first employees was introduced. Employers’ social security contributions were reduced for first, second and third hiring. A further transitional internship scheme was introduced allowing unskilled young people to do an internship full-time for a period of 3 to 6 months in a company, a non-profit or public service. In addition to the monthly allowance of 200 euros paid by the employer, the intern receives a stipend paid by the NEO (public social security institution).

In July 2012, tripartite discussions were launched to define measures to support employment within the framework of a larger recovery programme. The thorniest issue was that of wage indexation. Since 2012 the European Commission, using CSRs, has called for the cancellation of systematic wage indexation on inflation as it considered it to be an obstacle to national competitiveness. In November 2012, the government reached an agreement on the draft 2013 budget providing for a pay freeze, which did not affect average and low wages and the minimum wage. In December 2012, the Belgian inter-professional social partners started negotiations on a new Accord Interprofessionnel (IPA) for the period 2013–2014. These negotiations were, however, severely hampered due to the earlier decision of the government to freeze wages for the next two years and thus left hardly any room for the social partners to negotiate.

Another urgent concern of the Belgian legislator in the employment field has been the issue of undeclared work and problems of fraud in the national social security system. Problems concerned the international deployment or ‘posting’ of workers in the context of the EU freedom of movement of service providers, as well as the internal situation of the delimitation between subordinate employment and self-employment.

The situation of posted workers reveals a multilateral relationship of employment, of which temporary agency work is one possible example. The Belgian legislator generally considers such working arrangements susceptible to abuse, and therefore has long sought to curb such practices through stringent rules, notably based on the Act of 24 July 1987, including a ban on the posting of workers (with three limited exceptions). A legislative amendment in 2000 (Act of 12 August) substantially broadened the possibility to post workers. While the 1987 Law also contains a number of provisions intended to protect posted workers, so as to avoid their being exploited as cheap labour (for example, through an extensive system of public licenses), the

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9 They may choose from one or more of the following areas: development of the competences and qualifications of workers; career development and career guidance within the undertaking; providing opportunities and positions that correspond to the development of the employee’s capabilities and competences. The above list is non-exhaustive and can be supplemented by the different sectors and/or individual companies.

10 By a Decree of 14 December 2012 the Flemish government expanded the measure of employment premiums to hire older employees, amending the Decree of 28 April 2006.

11 Reinforced support for small companies wishing to hire their first employees: (i) first hiring: the employer’s social security contribution is now diminished to 1,500 euros/quarter during the first quarter (against 1,000 euros previously), 1,000 euros/quarter for four quarters and 400 euros/quarter during the following quarters (previously 400 euros during the eight quarters); (ii) second hiring: the employer’s social security contribution is now diminished to 1,000 euros/quarter during the first five quarters and to 400 euros during eight quarters (previously 400 euros over 13 quarters); (iii) third hiring: the employer’s social security contribution is now diminished to 1,000 euros/quarter during the first five quarters and 400 euros for four quarters (previously 400 euros for nine quarters).

12 The Commission has also emphasised the need to ensure that wages evolve in line with the country’s productivity both in 2015 and in 2016.
so-called Programme Act of 27 December 2012 also sought to eliminate abuses by further restricting possibilities of posting by procedural and formal requirements and through the application of both civil and criminal sanctions (although what constitutes an ‘abuse’ is not specified). The user and employer that post workers in breach of this Act are jointly and severally liable for the payment of social security contributions, wages, allowances and benefits.

Three new obligations for employers were introduced concerning temporary agency workers, in order to implement Directive 2008/14 on temporary agency work:

- the interim workers will have to be informed about internal vacancies;
- they must have equal access to infrastructure and services available to permanent employees;
- they have to be subject to the internal rules concerning the protection of pregnant women and periods of breastfeeding, equal treatment between men and women and measures against discrimination.

In recent years, the federal government has also adopted further measures to counteract fraud and legal insecurity in the employment field. The Act of 25 August 2012 amended, among other things, the 2006 Labour Relations Act, which is aimed at fighting bogus self-employment. The legislator introduced three additional criteria (including, for the first time, a rebuttable presumption for four sectors) next to the previous six ones to determine the existence of an employment contract in situations in which fraudulent self-employment is suspected.

Furthermore, concerning parental leave, the legislator – in order to comply with Directive 2010/18/EU – extended to four months (previously three) the maximum duration of parental leave for parents of children aged under 12 years of age.

Finally, measures to monitor and address the gender pay gap at both company and sectoral level were introduced. Employers with more than 50 employees have to report the wages of male and female employees in the ‘social balance sheet’ that all Belgian companies are required to include in their annual accounts and will have to carry out regular analysis of their pay structure. The conclusions of this analysis have to be submitted to the works council and it has to include wages, social benefits, supplementary insurances and other fringe benefits, measured as full-time equivalents, and broken down by gender, blue-/white-collar status, job level, seniority and level of qualification. Furthermore, such companies were also given an obligation to appoint a mediator within the company, who can independently search for a solution if any employee thinks they are a victim of wage discrimination. To protect employees in smaller companies (fewer than 50 employees), sectoral Joint Committees have to develop specific measures, such as gender-neutral job function classifications. These must be submitted to the Federal Public Service for Employment, Labour and Social Dialogue, which assesses them against the already existing checklist for gender neutrality in job evaluation and classification, developed by the Institute for the Equality of Women and Men (a Federal Public Institute, created to guarantee and promote the equality of women and men).


In this period, there were two notable general developments, and the rest of the reforms could be divided into the groups they affect: the distinction between blue- and white-collar workers, working time, collective redundancies, atypical work and rules for older workers.

First, on 14 January 2013 the trade unions announced that, in their opinion, it would not be possible to come to a cross-industry agreement for 2013–2014 because there was not enough room for manoeuvre after the government imposed wage moderation. However, they were willing to keep bargaining for a series of partial agreements. They signed an opinion drafted by their experts on three issues, at the government’s request. The first was on the link between benefits and well-being, in respect of which the government is planning to increase minimum

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13 The application of criminal sanctions to labour legislation is a peculiar feature of the Belgian labour law system. In fact, the Belgian Act of 5 March 2002 implementing the EU Posting of Workers Directive 96/71 may be considered an infringement in light of the European Court's case law, in violation of the narrow construction of the legislation's public policy exception.
benefits. Secondly, they agreed on a series of measures reducing employer social security contributions in order to boost employment. And a third agreement concerned an increase of the guaranteed minimum wage. Discussions restarted in February 2013 on how to improve flexibility, net minimum wages, retirement benefits, social contributions from employers and upgrading labour law; however, the social partners remained divided over the issue of the pay freeze and wage indexation, with employers opting for more flexibility and unions denouncing such reform.

Second, in summer 2014, Belgium undertook its Sixth State Reform, which implied a transfer of powers from the Federal Government to the Communities and Regions. Policies related to employees’ social security contributions were regionalised. Policies on unemployment benefits (or social welfare assistance) were transferred. The system of service vouchers (service checks) is now determined by the regions. The latter are also now responsible for the local employment agencies (‘plaatselijke werkgelegenheidsagentschappen’). Systems for training and learning were also transferred to the communities and regions. The system of paid educational leave (types of training, number of hours per programme, amount of compensation and so on) was regionalised. Labour law remained a federal competence, including the rules relating to individual labour law (the right to take time off work, protection against dismissal and so on). The transfer took effect on 1 July 2014, including certain transitional arrangements, under the so-called Special Act of 6 January 2014 on the Sixth State Reform and the Special Finance Act of 6 January.

3.1 Distinction between blue- and white-collar workers

In a preliminary ruling No. 125/2011 (Moniteur belge, 18 October 2011), the Belgian Constitutional Court had given the Belgian Parliament a deadline by which to abolish the difference in treatment between white-collar and blue-collar employees (8 July 2013). On 5 July 2013, then-federal Minister of Labour De Coninck forged a political agreement among the political parties belonging to the majority in the federal government, and supported by the social partners. It sought to bring an end to discrimination between blue-collar workers and white-collar workers by early 2014. To implement the agreement, the Council of Ministers of the Federal Government approved the Bill on the unique legal status (joint statutes blue-collar worker/white-collar employee) on 27 September 2013, entering into force on 1 January 2014.14 The following were among the biggest differences between blue-collar and white-collar workers:

- The conditions of dismissal, including the length of notice periods: the IPA suggested harmonising them by increasing the length of notice given to blue-collar workers and decreasing it for white-collar workers; On 1 January 2014 the waiting day for blue-collar workers was cancelled and the calculation of notice periods was harmonised between workers. In 2014, legislation also harmonised labour practices between blue- and white-collar workers regarding the justification of layoffs. Previously, white-collar workers were not required to be informed about the concrete reasons for their dismissal, but blue-collar workers were entitled to this information. On 1 April 2014 the social partners’ Collective Bargaining Agreement (CBA) No. 109 entered into force, making the provision of a justification for dismissals obligatory. It also amended the notion of unfair dismissal, modifying it to ‘flagrantly unfair dismissal’ in the event an employment termination cannot be considered to have occurred on reasonable grounds.
- Provisions on guaranteed incomes: for blue-collar workers, the first day of illness was not paid at all, whereas it was paid in full for white-collar workers. Royal Decree of 7 June 2015 implementing the Act of 23 April 2015 to improve employment provided for the necessary compensation of the additional costs for the legal elimination of so-called ‘carenz days’ or waiting days.
- Provisions on holiday benefits: in order to end discrimination between manual workers and employees in this respect, union and employer representatives aimed at developing

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14 The entry into force of the new legislation is planned for 1 January 2014. The new scheme is applicable, in principle, to workers dismissed after 1 January 2014. Any dismissals prior to the entry into force of the new legislation retain all their legal consequences. The period of notice for employees whose employment commenced before 1 January 2014 is calculated based on the total of two factors. The first factor is the level of seniority acquired by 31 December 2013. The second factor is the level of seniority acquired as of 1 January 2014.
a single calculation method for all workers. The latest amendment gradually decreased employers' contributions for annual leave of manual workers in the period from the second quarter of 2015 to the first quarter of 2018.

- Provisions on temporary employment measures: lastly, the applicability of certain measures put in place during the crisis to deal with the impact on employment was extended. The possibility for white-collar workers to opt for temporary employment was extended permanently. As for blue-collar workers, this option was extended to them as part of the anti-crisis measures. From 2016, there is one single measure for all workers. Until then, temporary employment crisis measures were upheld for white-collar workers. Other anti-crisis measures were also extended.

3.2 Working time

With regard to working time arrangements, the government regarded the 38-hour working week as too inflexible and considered ways in which it could be flexibilised, including annualisation. On 17 July 2013 new legislation was adopted by the Chamber of Representatives in a bid to increase the flexibility of the overtime system. The previous quarterly limit of 65 hours was increased to 78 or 91 if an annual account was the period of reference. Annualisation would be possible only if determined in either sectoral or company collective agreements. Depending on negotiations with the social partners, the bar could be set even higher, up to 120, or 143 in a sectoral agreement. Besides, on 17 August 2013, the Law on the modernisation of labour law was adopted which partly dealt with working time limits. It slightly increased the limit of working time within the reference period of, for example, one year in which the legal limits of working time must be observed. A second measure concerned the increase in overtime for which the employee may waive compensatory rest. It also addressed the employment policy for young workers.

Since 2014 the law expressly provides that an employee, derogating from the general rule that she can enjoy health insurance benefits for pregnancy only if she suspends all occupational activity, can also take advantage of maternity benefits during the renewal period of post-natal maternity leave by the period during which she had to interrupt one job, but continued working in another part-time job for six weeks until two weeks prior to giving birth. Employees with two or more part-time jobs, who are prohibited from continuing to work, can now choose to continue working in the other part-time job(s) (which do not pose a risk to the pregnancy). Henceforth, the working days worked in the other part-time job(s) can be transferred to extend the period of post-natal maternity leave. The new legislation is aimed at bringing the previous legislation in line with the Constitutional Court’s ruling of 10 November 2011.

3.3 Atypical work

Given the particular exposure to economic difficulties, the Belgian government adopted specific economic recovery measures for the catering branch (hotels, restaurants and cafes) in December 2013. These were complemented by another law on 26 November 2015 that introduced a new form of contract in this sector, the so-called flexi-jobs in the catering business, linked to specific treatment in terms of social security and taxation. In the private sector generally, social security reductions for employers were expanded by the Royal Decree of 14 March 2014.

\[15\] Meanwhile, Belgian working time legislation was also brought in line with EU law regarding workers’ entitlement to a minimum of four weeks’ paid annual holiday. Article 17bis of the Act of 28 June 1971 on annual leave of employees (in force since 1 April 2012) contains the right to additional leave for workers to whom the normal legislation does not apply (entitlement to four weeks of annual leave with pay). This is the case for employees who ‘start’ working for the first time, given that the Belgian holiday scheme is based on a system in which leave entitlement is built on the basis of days worked in the previous calendar year, establishing leave rights for the following year. The new additional leave in derogation of the normal system is often referred to as ‘European vacation’, as the scheme was created to comply with Directive 2003/88/EC.

\[16\] The law thus increased working time flexibility to some extent, but it is regarded as highly technical legislation, in line with the EU Working Time Directive 2003/88.

\[17\] The new regulation applies only to employees and employers covered by the joint committee No. 302 for the hotel, restaurants and cafés sector (‘Horeca’) or catering. Even when operating in these branches with temporary agency workers, the new rules can be applied.
Regarding domestic situations of **temporary agency employment**, doubts were raised about the compatibility of the Belgian ban with Article 4 of the EU Agency Work Directive 2008/104/EC, which provides that prohibitions or restrictions on the use of agency work shall be justified only on grounds of general interest related, among other things, to the protection of temporary agency workers. Regarding the cross-border posting of workers, Belgian law may be at odds with the principle of free movement of services. At the end of 2012, Belgium had already been reprimanded by the Court of Justice for acting in violation of the EU rules on cross-border service provision. In a judgment of 19 December 2012, the Court of Justice ruled that the requirement for independent service providers who are not established in Belgium to submit a prior notification before carrying out their activities in Belgium is contrary to the free movement of services (Article 56 TFEU). While the Court recognised that Belgium could invoke overriding requirements in the country’s general interest and thus justify a restriction on the freedom to provide services, the legislation went too far for self-employed workers.

The relevant Belgian ministers did not delay their response following the judgment of the Court of Justice of 19 December 2012 and adjusted the Limosa legislation, taking into account the scope of the CJEU’s ruling. A first amendment was introduced with a Royal Decree of 19 March 2013, amending the Limosa Decree of 20 March 2007. This adjustment included both foreign and self-employed workers, as well as trainees, and a shortened list of mandatory information that had to be provided. Second, the Act of 11 November 2013 has removed the Limosa declaration for all waged and self-employed trainees. The reporting requirement for self-employed persons was retained in the Belgian Limosa legislation also after the Court’s 2012 ruling, although in a more restricted version.

Temporary agency work used to be prohibited in Belgium principally in the applicable legislation of 24 July 1987. The Belgian Law of 12 August 2000 introduced some exceptions, allowing employers to join together to engage employees in service and to set out and publish the provisions related to temporary work. On 17 February 2012, the Council of Ministers adopted the draft bill transposing Community Directive 2008/104 on temporary agency work. The Federal House of Representatives adopted the law on 24 May 2012. Belgian legislation on agency work was further thoroughly modified with effect from 1 September 2013 (by a law published on 16 July 2013). The topics of this adjustment were:

- **Establishing and governing the object of ‘inflow’**: The notion of ‘inflow’ was added to the list of reasons for which agency workers could be hired. The Law of 26 June 2013 defined the pattern of inflows. A cross-industry CBA No. 108, dated 18 July 2013, adds the following principles:
  - each vacancy may not be filled more than three times;
  - the duration of each post is limited to a maximum of six months per temporary agency worker;
  - per work station, the duration of employment under the object of ‘inflow’ is limited to a period which may not exceed nine months in total;
  - the employment of temporary agency workers under the object of inflow must continue for at least one week and for six months maximum;
  - to ensure that any temporary worker hired under the object of inflow is given a reasonable opportunity to prove their abilities, the temporary agency must provide an employment guarantee during a specified period. This specified period is principally one month.

- **Consecutive day contracts**: The law of 26 June 2013 established the principle that consecutive day contracts for temporary employment with the same user are permitted only if the user can demonstrate the need for flexibility of the use of such consecutive day contracts. If that need is not demonstrated, the temporary agency must pay an

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18 LIMOSA stands for Landoverschrijdende Informatiesysteem ten behoeve van MigratieOnderzoek bij de Sociale Administratie ('Cross-Country Information on behalf of Migration Research in the Social Administration'). In the context of the further gradual introduction of the so-called Limosa project Belgium had introduced a mandatory prior notification system, which entered into force on 1 April 2007 for employees, trainees and self-employed persons posted to Belgium from any country in the world.

19 The main changes included: the guarantee that the rules on non-discrimination, equal treatment of men and women, the protection of maternity and women who are breastfeeding must apply to the temporary workers posted to the user company; the obligation to inform temporary workers about vacant positions at the user company; and the guarantee that temporary workers get equal access to existing infrastructure and services within the user company, to anything offered to the company’s permanent workers, unless the difference in treatment is justified by objective reasons.
additional salary that is equivalent to the wages that would have been paid if a contract for temporary employment of two weeks had been concluded.

- **Adaptation of the system of information** to unions on the use of temporary agency work:

  The CBA No. 108, concluded in the National Labour Council, provided an extension of the information obligations of the employer to trade unions with respect to temporary agency work. This should improve the knowledge of the unions on the use of temporary agency work in enterprises, so they can tackle the problems in this field.

- **Phasing out of the 48-hour rule** for establishing contracts for temporary workers: The law allows the conclusion of temporary agency work contracts within two working days after the temporary worker has started working in the user’s business. To clarify the terms of employment of the temporary agency worker, the social partners agreed to abolish the 48-hour rule.

However, considering that the abovementioned exceptions were underused, the legislator modified the respective provisions in Articles 64–72 of the new Law of 25 April 2014. The latter also contains contain several provisions on social security. The purpose of the modification was to enable the joined employers to mutually benefit from the employees hired in accordance with their specific and multiple needs. The Act contained several regulations specifying the circumstances under which employers can join together and use temporary employees.

In addition, in 2013 special rules concerning **foreign workers** were adopted. Employers must now ask all foreign workers they wish to employ to present their residence permit and must keep a copy of it for the use of the registration authorities. Employers who use workers without a valid residence permit have to bear the costs of the unpaid wages, social security contributions and tax owed in respect of these workers. Where fraud has been committed, companies face a level-four penalty (the most severe). If any subcontractor makes use of third-country nationals without the requisite residence permit, the companies are jointly liable for unpaid wages and penalties.

Furthermore, in early 2013 a special Administrative Committee within the Belgian Federal Ministry of Social Security – as already envisaged by the 2006 Act – was finally established to facilitate determination of who is an employee and who is self-employed. Further measures to combat fraud with a view to the payment of social security contributions included: the extension of joint and several liability in the construction sector and also to other sensitive economic branches; extension of social security contributions to all forms of dismissal compensation; sectoral registration requirements (for example, the meat sector) and the increase of applicable administrative fines.

Finally, the Royal Decree published on 10 March authorised **night work** in the e-commerce sector. Under the condition that recourse to night work must be justified by the nature of the work or activity, and employers must show this to be the case, night work is now authorised for companies belonging to the sectors of independent retailers, employees in retail food distribution, large wholesalers companies and large shops.20

### 3.4 Collective redundancies

More recently, in December 2014, the Belgian Government determined that older workers must now register with a so-called **employment unit**, which is a partnership between the labour market authority, employers and unions, and an outplacement office with the view to increasing re-employment following collective redundancies. If an employer establishes an employment body as part of the restructuring of the enterprise, the employees are required to register with that body. Until recently, both employees older than 58 years and those who could show a professional record of at least 38 years were exempt from this requirement. In light of the government’s policy to increase the availability of older workers in the labour market, those exemptions were abolished from 1 January 2015. This measure also affected the calculation of severance compensation in case of dismissal.

It was also planned to ‘re-evaluate the Renault law’ which deals with **information and consultation obligations in cases of collective redundancies**. In the summer of 2013, Belgian MPs debated the merits of the Renault Act and potential amendments. Potential

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20 Planet Labor, 21 March 2016, No. 9564– www.planetlabor.com
reforms debated included better enforcement of employer violations of the procedure and creating a better framework for the prevention of mass dismissals.

On 22 July 2013, the Act of 27 May 2013, amending various laws governing the continuity of enterprises was published. These complement the 2009 Law on the continuity of business. The legislator introduced a new set of instruments to support firms that are facing difficulties, including the procedure of transfer of the whole or part of a company under judicial authority.

In the case of collective redundancies, businesses will have to take account of the age of the employees concerned to maintain a balanced age pyramid in the company. The employer has a duty to respect an age pyramid with regard to the workers who will be laid off. The aim was to avoid mainly older workers losing their jobs in the context of collective redundancies. However, for companies whose collective redundancies take place within the scope of bankruptcy procedures, a judicial dissolution pursuant to the Act of 31 January 2009 concerning the continuity of enterprises and a closure of the company within the meaning of the Act of 26 June 2002 concerning the closure of companies remain excluded from the application of this new age-pyramid legislation, provided that such a closure is complete and covers all the employees of the company. The number of redundancies in the context of collective dismissal must be proportionally spread across different ages. If, however, the dismissals take place in only one or more departments or in one or more business segments, only those workers who are employed in the respective departments or business segments have to be considered. With regard to age group, a deviation of only 10 per cent is, in principle, accepted. Certain exclusions are also possible. Respecting the age pyramid in a collective redundancy is a prerequisite for a company wishing to exercise its entitlement to a reduction in social security contributions.

3.5 Rules for older workers

The employer contribution to a pre-pension was adapted according to the age of the retiring person. The system of part-time bridging of pensions was abolished, and no new entrants to this scheme have been accepted since 2012. The government also envisaged the gradual increase of the age requirement for the pre-pension to 62 years by 2020. In January 2013, it began a series of successive increases of six months every year. By Royal Decree of 30 December 2014, under the general system, the age requirement for retirement was increased from 60 to 62 years. Sectors may, however, keep the age limit of 60 years until the end of 2017 on condition of a collective agreement. The duration of seniority required remains 40 years. The changes became effective from 1 January 2015.

The time credit system (previously amended in November 2011) was further restricted, this time for older workers with higher benefits. Previously, workers could apply from the age of 50. Eligibility was then raised to the age of 55 and workers who have worked for 25 years.

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21 On 22 July 2013, the Act of 27 May 2013, amending various laws governing the continuity of enterprises was published. The National Labour Council announced that, as this legislation enters into force on 1 August 2013, CBA No. 102 of 5 October 2011, relating to the safeguarding of employee rights in case of change of employer as a result of a judicial reorganisation transfer under judicial supervision (declared generally binding by the Royal Decree of 14 April 2013), also enters into force on that date (Moniteur belge 25 April 2013). These complement the 2009 Law on the continuity of business entered into force. With this law, the legislator introduced a new set of instruments to support firms that are facing difficulties, including the procedure of transfer of the whole or part of a company under judicial authority. The National Labour Council deems that Collective Labour Agreement No. 102 protects the rights of employees involved in a transfer under judicial supervision in a balanced way and with greater legal certainty, and that the need to guarantee business activity is balanced with the fees imposed on the public insolvency fund for workers.

22 The age categories are: employees younger than 30, employees between 30 and 50 years, and employees older than 50, taking into account the age at the time of the notification of the intention to initiate collective redundancies.

23 Employees with an employment contract for a fixed period or for a specific project may be excluded from this scheme, unless the termination of employment due to the collective redundancies is made before the end of the fixed term of the contract or before the completion of the work. Employees who have a key role in the company may also be excluded from the scheme. These workers are not taken into account when determining the proportional allocation.

24 According to the explanatory memorandum of the Act, this is the only consequence if the age pyramid is not observed. The obligation to respect the age pyramid does not create special protection or rights for an individual employee, nor is the validity of the negotiated social plan compromised in case of non-observation. When they fail to comply with the law, businesses may lose, for two years, some of their rights to reduced contributions.
From 2015, the minimum age for entitlement to interruption allowance in case of end-of-career time credit was increased to 60 years. These amendments were introduced by the Royal Decree of 30 December 2014. Importantly, from 2015 the amending Royal Decree entirely abolished the right to those benefits in the event of time credit without motive. The new rules entered into force on 1 January 2015, but the Royal Decree provided for transitional measures. These time credit periods were previously included as working time for the calculation of pensions. This ‘equalisation’ would now be severely limited to a maximum of one year (previously three years in most cases). The career leave system in the public sector had to be gradually harmonised with the new time credit system, to be completed by 2020. Since 2012, the career leave for public sector employees has been limited to a maximum of 60 months.

3.6 Other measures

Since 1 April 2013 all temporary unemployed persons receive 70 per cent of their wages and their family situation no longer affects this amount.

In 2013 the Belgian social partners agreed to gradually upgrade the lower minimum wages for workers younger than 20 years old (whose minimum wage is now determined following a degressive scale, depending on age), in order to eliminate the age-based difference in 2015.

In spring 2014 the Belgian legislator adopted measures to improve the prevention of psychosocial risks in the workplace. The key novelties concerned the definition of these risks and the internal appeal procedures that employers have to set up in order to manage situations. The law refers to psychosocial risks at work instead of the psychosocial burden caused by work, which was deemed unclear and incomprehensible. Thus, psychosocial risks at work were defined as follows:

the possibility that one or several worker(s) is(are) subject to mental damage that can also come with physical damage following exposure to components of the organization of labour, the content of work, working conditions, living conditions and work and interpersonal relations at work, on which the employer has an impact and which objectively represent danger.

The goal was to make employers aware of their responsibilities only in situations for which they can do something and that represent an objective risk. Besides, the definition of the notion of ‘harassment at work’ was extended to clarify the fact that several forms of behaviour can be considered harassment, even though, taken alone, they are not excessive, but are when taken together. Workers who feel that they are subject to harm because of psychosocial risks will have access to two types of procedures that employers have to implement: informal psychosocial intervention and formal psychosocial intervention.

4. Labour law reforms: 2015 onwards

The Belgian system of parental leave was recently amended by CBA No. 64bis of 24 February 2015 concluded in the National Labour Council. The system contains two pillars implementing the prevalent European rules in this field – namely, cross-industry CBA No. 64 of 29 April 1997 and Royal Decree of 29 October 1997. The two instruments, one adopted by the inter-sectoral social partners and the other by the federal government, are not cumulative and have been criticised for providing a rather uncoordinated structure. The Royal Decree introduced the right to parental leave which is embedded in the system of career

25 Exceptions would be developed for so-called ‘arduous’ occupations. The social partners concluded an intersectoral CBA for the private industry on 27 April 2015 regarding part-time career breaks for older employees as a form of part-time reduction of their weekly working hours (CBA No. 103bis of 27 April 2015) and CBA No. 118 of 27 April 2015. It is aimed at establishing an interprofessional framework for the reduction of the age limit to 55 years for the period 2015–2016 as regards access to the entitlement to benefits for older employees, ending their career in a so-called ‘soft landing’ job when they enjoyed a long career, worked in arduous jobs or if the employer is facing economic difficulties or is in a process of restructuring. In most cases, older employees who use their time credit properly by reducing their weekly working hours, receive additional unemployment benefits paid by the Federal Unemployment Office, called ‘interruption benefits’, to partially compensate their reduced salary on account of working time reduction.

26 Planet Labor, 14 May 2014, No. 8384 – www.planetlabor.com

27 Parental Leave Directive 2010/18/EU of 8 March 2010, implementing the revised Framework Agreement on parental leave, replaced the earlier Directive 96/34/EC.
breaks (see above) linking the employee’s entitlement also to an interruption allowance, which is not the case under the CBA.\(^\text{28}\) With the latest amendment of CBA No. 64bis, the right to parental leave has been extended from three to four months (referring to a respective full suspension of employment or reducing working hours based on the parties’ agreement). Secondly, the maximum age of the child for which parental leave under the CBA No. 64 can be taken has been increased from four to eight years (under the Royal Decree the child’s age limit is 12 years). Finally, the CBA No. 64 introduced the right for the employee to apply for a suitable work schedule or a modified work schedule during the period following the end of the parental leave.

By Royal Decree of 26 May 2015 the federal government introduced wage rises by slightly extending two measures, meal vouchers and non-recurring results-related benefits. In order to accelerate improvements in employment and competitiveness – although admittedly the effectiveness of such measures is far from proven – the federal government proposed more drastic measures in April 2015. It presented a legislative proposal for parliamentary discussion addressing two major issues: (i) an index increase to 2 per cent, temporarily neutralising the existing sectoral systems in collective bargaining agreements linking wages to the index of consumer prices. This index jump is also applicable to the salaries of civil servants and to social security benefits. Secondly, (ii) the Law of 26 July 1996 on the promotion of employment and the protection of competitiveness is also applicable to public enterprises. The Law on the improvement of employment, further amending the system of wage indexation, was adopted on 23 April 2015.

The Royal Decree of 10 August 2015 furthermore introduced special arrangements for the application of annual leave for temporary agency workers. It stipulated that when the same agency concluded two employment contracts with an agency worker for consecutive assignments with the same user which are only interrupted by one or more annual leave or replacement days, then these leave or replacement days must be considered days during which the temporary agency worker was employed by the temporary agency. This applies irrespective of whether those annual leave or replacement days were combined with days when the employee did not work in the user enterprise, for instance, including weekends. In other words, it is now no longer possible to evade employer obligations to pay for annual leave by concluding temporary contracts at intervals so that they fall before or after the temporary worker’s annual leave days.

A Royal Decree of 30 November 2015 determined that gender-neutral actuarial factors must now be used for calculating the lump sum due as compensation for an accident at work. This amendment applies both to the private sector and public sector schemes. This development results from the judgment of the CJEU in Case C-318/13 X., and the subsequent letter addressed by the Commission to Member States. As a reminder, the CJEU found in Case X. that while Article 7(1) of Directive 79/7/EEC concerning the equal treatment of men and women in statutory social security offered Member States an exhaustive list of grounds for ‘derogations’ that they could opt to permit, the use of gender based actuarial factors (GBAF) in the calculation of a statutory social security benefit did not appear on that list. Thus, when in Finland the male victim of an accident at work applied for the conversion of the annual compensation into a lump sum, the CJEU ruled that the application of GBAF constituted gender discrimination.

In March 2016 a Royal Decree amended the Royal Decree of 20 July 1971 concerning the Sickness and Maternity Insurance Scheme for Self-employed Workers. The amendment concerns all self-employed workers and their assistants, as well as assisting spouses and registered partners. The present duration of maternity leave is eight weeks, of which three are obligatory (that is, using those weeks is a condition of entitlement to social security benefits) and the remainder is optional and may be used over a period of 21 weeks following the obligatory leave. After the amendment the maximum duration of the leave will be 12 weeks, including the obligatory three weeks, the optional part of the leave will be usable over a period of 36 weeks, and during the optional part of the leave, a worker will be allowed to resume her activities half-time. The amendment brings the Belgian scheme closer to the minimum requirements set out in Article 8 (1) of Directive 2010/41/EU; however, it should be noted that the statutory maternity scheme for paid workers does not provide any possibility of

\(^{28}\) Furthermore, the Decree applies only to full-time employees, while part-time employees must invoke their parental leave right based on the CBA.
resuming work half-time during the optional part of the leave (that is, five weeks out of a total of 15).\(^{29}\)

Previously, employers needed only to provide **outplacement services** to employees if they were dismissed after the age of 45. As of 1 January 2016 dismissed employees must have access to outplacement services as soon as they become entitled to 30 weeks' notice, regardless of their age. There are exceptions for gross misconduct and restructuring situations. When the employee is dismissed and paid in lieu of notice, the outplacement benefit must be valued at one-twelfth of the employee’s annual salary. The value cannot be lower than 1,800 euros or higher than 5,500 euros. Whether or not the employee accepts outplacement, four weeks' pay can be deducted from the payment in lieu.\(^{30}\)

Finally, in September 2016 it was announced that the European Commission had given Belgium one month to adapt its law relating to **employment in ports**. The alleged breach concerns the ‘pool system’, which means that only recognised dock workers may take up employment in the port areas in Zeebrugge, Ostend, Ghent and Antwerp.\(^{31}\)

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