

Summary of Dialogue for Advancing Social Europe: Report on Belgium with regard to the impact of EU-regulation on labour relations: report on Belgium

1. Introduction

The major research questions concerned the influence of the EU on the social dialogue in different Member States.

The direct interplay between the EU-level and the Belgian level remains rather limited with regard to the social dialogue. Belgium was mainly occupied with internal issues when it concerned the social dialogue. Our research, however, shows that there exists an (in)direct link between EU labour regulations and the evolution of the social dialogue in Belgium.

The summary shall be divided in four time periods. The impact of EU-regulations on the Belgian social dialogue is the most important in the period between 2008 and 2010. Later on, internal Belgian debates started to become the major topics in the Belgian debate with regard to the social dialogue.

The first part deals with the period 2008-2010, the second part deals with the time period 2010-2011, the third with 2010 till 2014 and the last one with the period 2014-2015. The different periods all deal with distinct periods of government in Belgian recent history. It needs to be underlined that the whole period researched interferes with a period of significant political instability. The period 2010-2011 for example contained the longest governmental formation in world history. It took 541 days before a government was formed. During this 541 days (which corresponds with the second time frame), a caretaker government had to govern pending affairs.

1. Period 2008-2010

1.1. EU-influence on Belgian social dialogue

During this period, the impact of the Lisbon Strategy was the most evident. The Lisbon Strategy promoted in 2005 a different form of employability aiming to reduce the skill gaps between the different member states by investing in jobs and learning opportunities.¹ The Lisbon Strategy concentrated on the important aspect of lifelong learning as a basic element of the European social model. More job rotation and more flexible management to reform the European social model were set as goals.² The European Council desired to improve the employability rate from 61 % to 70% by 2010 and to improve the employment of women from 51 % to 60%.

Belgium developed a recovery plan which intended to improve the rather low employability rate. One of the priorities concerned cutting down the wage costs for companies in order to improve the competitive position of the enterprises in Belgium. The second crucial element concerned the reform of labour market aiming to improve the employability of the older

¹ Lisbon European Council on 23 and 24 March 2000 Presidency Conclusions, to be consulted at http://www.europarl.europa.eu/summits/lis1_en.htm

² Lisbon European Council on 23 and 24 March 2000 Presidency Conclusions, to be consulted at http://www.europarl.europa.eu/summits/lis1_en.htm

employees. The aim was to reach in 2010 an employability rate of 70%.³ In the end, this aim was not reached as the employability rate remained at 67%.

A limited shift towards more flexicurity on the labour market had been made in the Economic Recovery Act. The employers namely received the possibility to become a company in restructuration without the beforehand long-existing duty to apply for a reduction of the age limit with regard to earlier retirement. The bare announcement that the company had been restructurering had become sufficient to be considered as such. The employer, though, also has to fullfil some important duties by the creation of an employability unit and by the payment of reclassification compensations. One could deduce from this agreement that the aim to improve the employability and thus to create a more flexible (and secure) labour market was envisaged in this agreement.⁴

Fleibility was also increased because in case the employer were to licence its employees due to a restructurering, the employer since the enactment of the Economic Recovery Act of 27 March 2009 has the duty to set up a employability unit in its enterprise. Employees received the duty to inscribe themselves in this employability unit. In case they did not do it, they will be excluded from unemployment benefits. Furthermore, the employer needed to pay a (so-called reclassification) compensation for those employees who are employed since at least a year. The aim was to help them to find a new job rapidly.

The role of the social partners in this setting was clear. Their agreements were translated (with some budgettary adjustments) into legislation. It may be important to stress, at this stage of the report, that trade unions indicated that they had the feeling that the specific role of government as facilitator has already shifted to a different approach.

1.2. The Belgian elements

The Interprofessional Agreement set out that the the wage increase for workers had to be limited to 250 euro netto spread over two years. This net-approach was novel in Belgian labour law. It concerned a claim of the employers' organisations to reduce the gross wage costs for the employers and thus to improve the competitive position of employers and enterprises in Belgium.⁵

2. The period 2010-2011

2.1. EU-influence

On 2 December 2009, the European Commission launched a procedure, based upon article 126 of the Treaty on the Functioning of the European Union (TFEU), against an excessive

³ Nationaal Hervormingsplan België 2005-2008, *Meer werk, meer groei*, Brussels, vooruitgangrapport 2006, 2006, 43 to be consulted at <http://ec.europa.eu/social/BlobServlet?docId=6080>.

⁴ M. VAN PUTTEN, "Onderzoek en evaluatie van het effect van het indienen van het concept "flexicurity" zoals bepaald door de Europese Raad in het Belgisch arbeidsrecht", Report FOD Belspo, 2010, 65.

⁵ Uitzonderlijk Akkoord voor de onderhandelingen op sector- en ondernemingsvlak in de periode 2009-2010, *Bijdrage tot het herstel van het vertrouwen*, 22 December 2008, Brussels, 2008, 4 to be consulted at <http://www.cnt-nar.be/INTERP-AKKOORD/IPA-2009-2010-NL.pdf>

deficit in Belgium.⁶ The Commission clearly indicated that the pensions systems were considered to be inappropriate and it considered that a reform of the pension system was imminent. The caretaker government did not come with specific measures with regard to this topic. It was only the new government Di Rupo I which set up modifications in the pension system.

2.2. Belgian elements

For the first time, social partners could not agree on an Interprofessional Agreement and in order to avoid budgetary issues, federal government took the initiative to underpin the original draft of the Interprofessional Agreement with regulation. Federal caretaker government decided to initiate itself the procedure for a reform and to put the social dialogue aside. A legislative basis for governmental intervention was provided by article 7 paragraph 1 of the Act of 26 July 1996 to improve the employability and the preventive safeguarding of the competitiveness (hereafter also the Act of 26 July 1996). This article provides that the Crown (read the government) can provide by Royal Decree the minimal margins for the development of the wage costs. A Royal Decree of 28 March 2011 executed this competence and provided the possibility for a wage increase in the period 2011 and 2012. The Royal Decree stipulated a wage increase of 0% for the year 2011 and an increase of 0,3% for the year 2012.

Furthermore, the Constitutional Court declared on 7 July 2011 the existing distinctions between labourers and employees unconstitutional with regard to the notice periods and the first sick leave day.⁷ The Constitutional Court decided that there existed no objective ground to install a distinction between blue and white collar workers with regard to the notice period. However, the Constitutional Court furthermore decided that the Belgian legislator should be granted some time to diminish the statutory distinction between blue and white collar workers. The consequences of the distinction therefore could be kept until the 8 July 2013.⁸

3. The period 2011-2014

3.1. EU-elements

During this period, Belgium dealt with the consequences of the budget deficit procedure. It took for the first time measures to reduce the pensions in the public sector. The reform of the pension system in the public sector was done by the Act of 28 December 2011. This Act was not negotiated with the trade unions since it was initiated by a parliamentary proposal instead of a governmental initiative.

⁶ Council Recommendation of 2 December 2009 to end the situation of an excessive budget deficit to be consulted at http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/30_edps/104-07_council/2009-12-02_be_126-7_council_en.pdf

⁷ Constitutional Court, 125/2011, 7 July 2011, note M. Mahieu en G. Pijcke, «Aménagement dans le temps des effets des arrêts rendus sur question préjudicielle: la Cour constitutionnelle a franchi le cap », *JT* 2011, 717.

⁸ Constitutional Court, 125/2011, 7 July 2011, , note M. Mahieu en G. Pijcke, «Aménagement dans le temps des effets des arrêts rendus sur question préjudicielle: la Cour constitutionnelle a franchi le cap », *JT* 2011, 717.

This example shows that an indirect (negative) impact of EU measures on the Belgian social dialogue existed.

A second EU-element concerned the transposition of the Directive 2008/104/EC. This directive obliged Member States to improve the social protection of atypical workers. They had to be treated equally as typical workers (with a permanent contract). Social partners reached an agreement on the transposition of this Directive by providing that the aim to enlarge the better social protection linked to a contract of employment with indefinite duration to the temporary agency worker. This reasoning constitutes the basic legal underpinning of article 24 of the collective bargaining agreement number 108 in the National Labour Council.⁹ The social partners thus allowed the use of temporary agency work as a way for enterprises to 'test' a worker before enlisting the worker with a fixed contract of employment. The goal is to limit the use of temporary agency work to a maximum of 6 months per 'tested' worker. Consequently, the worker could be transferred to a fixed contract of indefinite duration.

3.2. Belgian elements

Belgian labour law was dominated by the question on the ban of discrimination between blue and white collar workers with regard to their redundancy payments and notice periods. Social partners had to negotiate on this topic but no solution was found for internal Belgian reasons. Government took the initiative over and this finally led to the Act of 26 December 2013. This was the most significant reform of dismissal law in Belgium. Notice periods for blue and white collar workers were equalized. Long notice periods (for white collar workers) were linked to the non-existence of a duty to motivate a dismissal. This equilibrium (the "power" to dismiss but with high costs) was modified. Therefore, social partners reached a collective bargaining agreement which provided that dismissed workers can ask the reasons why they are dismissed. The collective bargaining agreement number 109 (signed in the National Labour Council) also provides sanctions in case the motives are not granted or are not sufficient for a dismissal. It needs to be underlined that the collective bargaining agreement number 109 is only applicable in the private sector. In the public sector, a large debate on the duty to motivate (or the possibility to motivate) a dismissal of contractual employee is still pending. There thus exists no possibility in the public sector to demand the motives for a dismissal in order to use these motives during a procedure and there exists no other legislation demanding a motivation of a dismissal of a contractual employee in the public sector.¹⁰

Finally, once again no Intersectoral Agreement was reached. Therefore, federal government used the legal procedure provided by the Act of 26 July 1996 on the promotion and the preventive safeguard of the competitiveness. Articles 6 and 7 of this Act provide that in case

⁹ Commentary of the social partners to article 24 of the collective bargaining agreement number 108 of 16 July 2013 in the National Labour Council, 22 to be consulted at [http://www.cnt-nar.be/CAO-ORIG/cao-108-\(16-07-2013\).pdf](http://www.cnt-nar.be/CAO-ORIG/cao-108-(16-07-2013).pdf)

¹⁰ During a certain period some authors defended the thesis that a special Act (the Act on the Formal Motivation of Administrative Acts) obliged employers in the public sector to motivate their dismissals. However, the Court of Cassation has decided that this Act may not be considered to be a Special Act obliging the employers in the public sector to motivate their dismissal decisions. Cass., 12 October 2015, nr. S. 13.0026.N to be consulted at <http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=nl>

the social partners do not reach an Interprofessional agreement on the development of the wages with regard to the wage development, government does a proposal to the social partners. In case this proposal does not lead to a consensus on the wage development for the period of the collective bargaining agreement, government has the power to enact itself regulation by issuing a Royal Decree. Article 1 of the Royal Decree of 28 April 2013 provided that the increase for wages was limited to 0%. Although, the index mechanism was kept which meant that a certain wage increase was ensured. It indicated that wage negotiations were one of the main barriers of the social dialogue in Belgium. Social partners still decide over the wages but the financial crisis provoked that social partners had major difficulties to agree on this topic.

4. Period 2014-2015

4.1. EU-elements

The improvement of employability in Belgium played a role behind the scenes of pending debates. However, no real direct influence of EU-measures could be identified.

4.2. Belgian elements

The draft of an interprofessional Agreement 2015-2016 proposed a so-called index jump (of 2%) and an index block. The index block ensures that the index jump remains because otherwise an increase of the index would wipe out the index jump. Therefore, the index mechanism needed to be blocked and could only restart on the moment that the 2% limit is exceeded. The index jump and the index block signified that during a period of a year the wages shall not be submitted to an indexation.¹¹ Social partners disagreed on the opportunity and the usefulness of such an index jump. Employers' organisations defended the view that an index jump was absolutely necessary to improve the competitiveness of the Belgian companies. They based their opinion on a report of the Central Council of Company life.¹² Trade unions strongly opposed the idea of an index jump. Their criticism based itself on the conviction that the index jump would lead to an impoverishment of the poorer classes. This measure, according to the trade unions, mainly affects the wages and the social benefits of these groups.

Eventually, Parliament adopted an Act to introduce a so-called index jump. Article 2 of the Act of 23 April 2015 installed a jump and a block of 2% with regard to indexation. The index jump means that the automatic indexation of the wages is frozen for a certain period. When the indexation of wages restarts, it is impossible to compensate with the new indexation the "old" index jump. To that extent, it should be understood as an index jump and a temporary index block. All trade unions set up a procedure before the Constitutional Court with regard to the index jump and the index block.¹³ The socialist trade union is the only one which has set up a procedure against the wage stop. With regard to the first procedure the Constitutional Court

¹¹ *Parl. Doc.*, Chamber of Representatives, session 2014-2015, nr. 960/1, 6.

¹² Central Council of Company Life, *Technisch Verslag*, 22 December 2014, 3 to be consulted at

http://www.ccecrb.fgov.be/txt/nl/report_nl.pdf

¹³ Belgian Official Gazette, 23 December 2015.

rendered a decision that the Act of 28 April did not violate the Constitution on 13 October 2016.¹⁴ The invoked legal means did thus not alter the situation for the trade unions.

However, this procedure indicates that the relationship at national level are very tensed. Social dialogue though does take place but mainly at sectoral and company level. At national level, social dialogue suffers from a lack of mutual confidence.

¹⁴ Constitutional Court, nr. 130/2016, 13 October 2016.