



# National Background Paper Belgium



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## 27 National Seminars Anticipating & Managing Restructuring

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## National Seminar – Belgium National Background Paper

### Anticipating and Managing restructuring Belgium

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Over the course of the last decade, the presence in the economic press of ever more numerous cases of restructuring and permanent layoffs has seen us get used to the fact that these phenomena are now part of a business company's normal evolution. More recently, the global crisis has had, and continues to have, an important impact on Belgian businesses, causing a wave of unprecedented restructurings and layoffs.

The present report is divided into five sections: the context, anticipation (the period beforehand), the dynamics of restructuring processes, implementation (the period afterwards) and the actors involved. In the first chapter, we offer an overview of the Belgian economic and social context in order to enable the reader to understand the framework in which restructuring operations take place. The second chapter presents the main measures concerned with the anticipation of restructurings, certain of which have existed for a long time in Belgium whilst others are specific to the measures taken by the public authorities to counter the current crisis. The third chapter concentrates on the different dynamics of business company restructuring and the legal framework which governs them. The fourth chapter deals with the principal measures of implementing restructuring processes, whether they have been, here as well, in place for a long time or are specific to the 'crisis measures.' The quantification and evaluation of the measures presented in this report is the subject of a specific section, as a conclusion to each of these last chapters. Finally, a fifth chapter briefly presents the different actors involved in the restructuring processes.





The first chapter of our report offers an overview of the whole of Belgium's economic and social context. To enable the reader to understand the general framework in which the problematic of restructurings is inscribed in, we will first of all present an overview of Belgian's state structure (a federal state containing three federated regions). We will round it out through different socio-economic indicators and then discuss, with the help also of statistical data, the main challenges the Belgian labour market is faced with. Finally, we will end this chapter by a presentation summarising the system of industrial relations in force in the work arena in Belgium.

## 2.1 Belgium: a federal state, federated entities<sup>1</sup>

Belgium's state structure is difficult to grasp for the uninitiated. The previous unitary state has in fact given place to a more complex system, the outcome of the different reforms which have made Belgium a federal state composed of federated entities: the Communities and the Regions. The three Communities (French, Flemish and German-speaking) correspond to groups within the population, which share the same language and culture, whereas the three Regions (Wallonia, Brussels-Capital and Flanders) are the result of the desire of political leaders and some sections of the population for greater economic independence.<sup>2</sup>

Over the course of five successive institutional reforms (1970, 1980, 1988-89, 1993 and 2001), the Regions and Communities' levels of independence has grown considerably in certain specific areas. That being the case, the power to make decisions and run the country no longer belongs exclusively to the federal Government and the federal Parliament. The administration of the country is now carried out by various authorities who exercise their competences in an autonomous manner in the areas that are their own concern.

Without going into detail, the Regions have competences in areas which concern the occupancy of a 'territory' in the widest sense of the term. Thus, the Flemish Region, the Brussels-Capital Region and the Walloon Region exercise their competences notably in the areas of the economy, employment, agriculture, housing, public works, mobility, the environment, land use development and urban planning, external trade, guardianship of the provinces and communes (local authorities) which make up their territory, etc.<sup>3</sup> For their part, the Communities, founded, as a reminder, on the basis of notions of language and culture, have the benefit of competences concerning, amongst others, education, culture, language use, citizen assistance (protection of

<sup>1</sup> Section written on the basis of the information found on the Belgian federal government portal. For more details, see the website [www.belgium.be](http://www.belgium.be)

<sup>2</sup> The economic situation of the three regions differs sharply (with Flanders performing better than Brussels Capital, and Wallonia), and, consequently, so do their unemployment rates (see below for more information about this situation).

<sup>3</sup> For a more complete picture of the competences of the federated regions, see their respective websites: [www.vlaanderen.be](http://www.vlaanderen.be); [www.bruxelles.irisnet.be](http://www.bruxelles.irisnet.be); [www.wallonie.be](http://www.wallonie.be)

youth, social aid, family assistance, service for immigrants, etc.) etc.<sup>4</sup> The federal State for its part retains powers in numerous domains, such as, amongst others, foreign affairs, national defence, justice, finances, social security, as well as a significant part of public health and internal affairs. The Communities and Regions nevertheless have the authority to establish foreign relations in the framework of the areas their competences have a remit on.

This pyramid system and this logic of a quite complex distribution of competences are not without bringing about tensions between the governments of the different levels of power during certain decision making processes, all the more so when the federal and federated entities are governed by different political majorities (or asymmetrical majorities, to take up the term frequently used in Belgium to describe this situation). The delegation of certain of the federal State's powers to the federated entities, which can be more or less marked, does not always make things any easier, either. Thus, as will be established later in this report, the management of restructuring in Belgium is made more complex because issues relating to employment are dealt with at two levels, the federal and the regional. Moreover, there is often federal involvement in matters which generally fall under regional jurisdiction.<sup>5</sup>

## 2.2 The economic and structural challenges

Having drawn up these observations of the logic of the Belgian state, we will round out our comments by a presentation of the major trends and principal challenges of the Belgian economy. As well as the profound historical transformation of our economy we will highlight the current structuring of the Belgian economy and the profile of the business companies it is composed of.

### 2.2.1 A BELGIAN ECONOMY UNDERGOING RADICAL TRANSFORMATION

As is the case for many European countries, Belgium has seen the structure of its economy be considerably altered over recent decades. The Belgian economy is more and more built on service companies than on the more 'classic' production businesses. Belgian's traditional activities (agriculture, industry, etc.) and the employment linked to them (agricultural businesses, manufacturing plants, workshops, etc.) are in marked decline, their importance in Belgian's GDP becoming concomitantly weaker and weaker. Conversely, the companies in the

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<sup>4</sup> For a thorough view of the Community's competences, see their respective websites: [www.cfwb.be](http://www.cfwb.be); [www.vlaaderen.be](http://www.vlaaderen.be); [www.dglive.be](http://www.dglive.be)

<sup>5</sup> A well-known example of this situation was the management of the collapse of the Belgian airline company Sabena and its consequences in terms of employment. The Belgian federal government acted as a substitute for the failing business in terms of its obligations to compensate its employees, thereby exceeding the role of the federal state as defined in legislation. In this instance, the Belgian Federal government set out a restructuring programme for all of the airline's workers, whereas the Belgian constitution accords this type of jurisdiction to the regions (the three regions in this particular case).

tertiary sector are gaining in importance and are exerting more and more weight over the Belgian economy.

### ***2.2.1.1 Economic disparities between the Regions***

This structural evolution is not without having an impact on the economic activities and the perspectives for growth of the country's different Regions. If the south of the country was, up until the beginning of the 1960s, more economically prosperous than the north of the country, profiting fully from its mining resources and its steel industry to get into such a position, the trend has today been reversed: Flanders' economic situation – and, as a corollary, unemployment levels<sup>6</sup> – differs greatly from that of Wallonia.

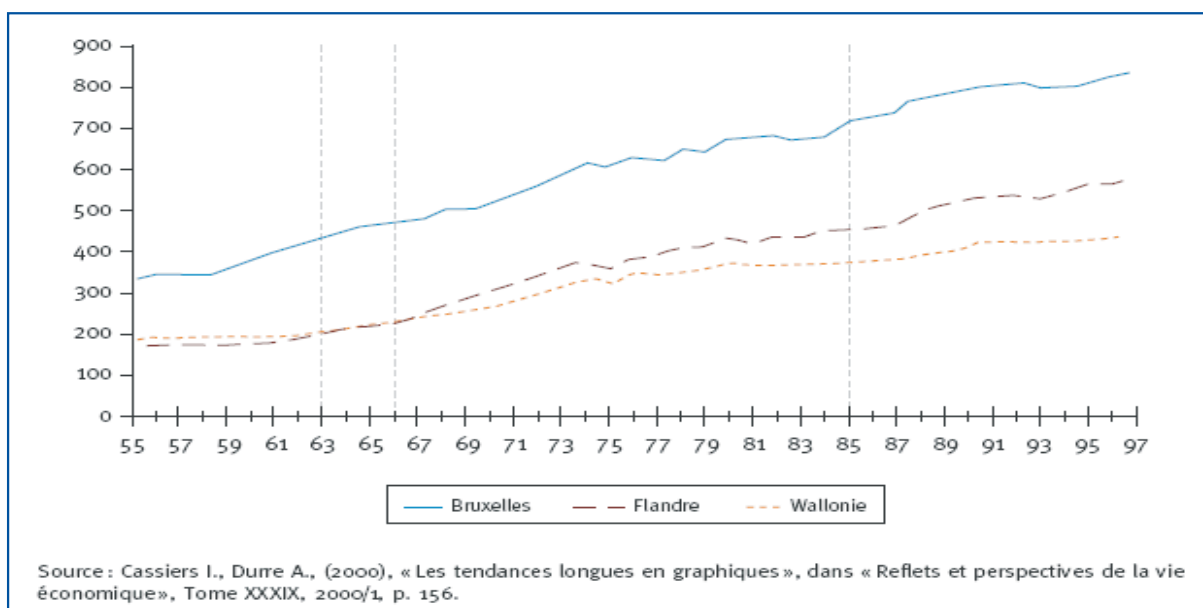
The outcomes of history explain this situation. Without going into historical detail, we would underline that the Walloon economy, very dynamic at the beginning of the twentieth century, was subjected to little industrial damage during the Second World War, which enabled it to maintain high production levels at the end of the war and the beginning of the 1950s. This situation, advantageous in the short term, nevertheless gave rise to negative effects over the longer term: Wallonia's production plants quickly turned out to be obsolete in relation to other European regions, which had been obliged to rebuild their factories; similarly, most of the other economic regions, including Flanders, turned to good account the consequences of the war to develop economically through new areas of activity. This led progressively to a 'falling off' of the Walloon economy. Flanders, on the contrary, was doing better and better thanks to the development of a diversified industrial structure in sectors which proved to be flourishing, such as the chemical industry, the automobile industry, etc. This development was in addition fuelled by foreign capital (American) which benefited from the new law concerning economic expansion (1959). Flanders thus fulfilled its economic potential, at the expense of Wallonia, which in 1963 relinquished its leadership of the Belgian economy (see the graph<sup>7</sup> below, illustrating this trend) and entered a period of industrial reconversion.<sup>8</sup>

<sup>6</sup> See section 2.3 for the details concerning this subject.

<sup>7</sup> Source : Cassiers, I. and Durre, A. (2000), "Les tendances longues en graphiques", cited in Boveroux, P., Gilissen, P. and Thoreau, F.L. (2004), *50 ans d'histoire économique de la Wallonie*, Conseil Economique et Social de la Région wallonne, p.14.

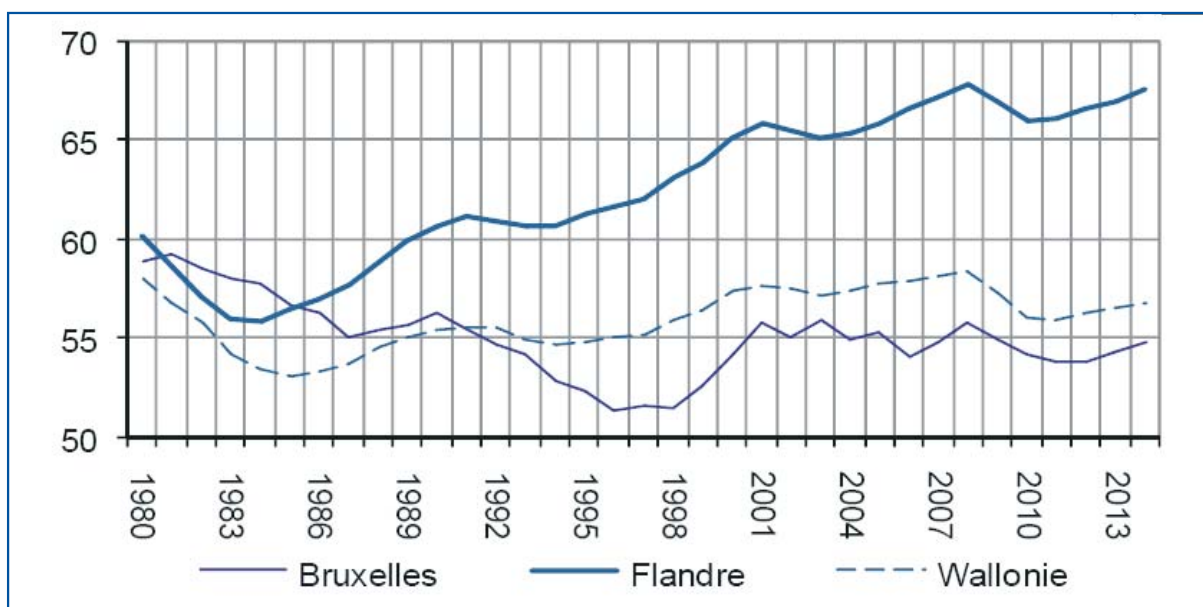
<sup>8</sup> Source : Boveroux, P., Gilissen, P. and Thoreau, F.L. (2004), *50 ans d'histoire économique de la Wallonie*, Conseil Economique et Social de la Région wallonne

## Gross Domestic Product by inhabitant – Historical evolution



Flanders' economic expansion has since then not stopped becoming more marked, in comparison with Brussels and Wallonia, which are experiencing more difficulties facing up to Belgium's sectoral and economic transformations. This trend is in particular illustrated by the following diagram,<sup>9</sup> which presents the evolution of the country's different Regional employment rates since 1980 (with a forecast for the years 2010-2015).

## Evolution of Regional employment rates



<sup>9</sup> Source : Bureau Fédéral du Plan, Institut Bruxellois de Statistique et d'Analyse, Studiedienst van de Vlaamse Regering et Institut Wallon de l'Evaluation, de la Prospective et de la Statistique (2009), *Perspectives économiques et régionales 2008-2014*, p.36.

Let us also note that the economic decline of the Walloon Region appears to have been reinforced in the past few years by the slowdown or even progressive disappearance of the Region's remaining industrial flagships. And this led – in the middle of the years 2000 – the Walloon Regional government to draw up and put into place different initiatives (articulated around an economic recovery plan called the Marshall Plan<sup>10</sup>) aimed at enabling the Walloon Region to economically reconvert through the development of new activities. It should be noted that Flanders has also had to face serious economic problems in recent years following, amongst other things, the closures of the main car production sites the Region had on its territory.

### ***2.2.1.2 Evolution of the profile of business companies***

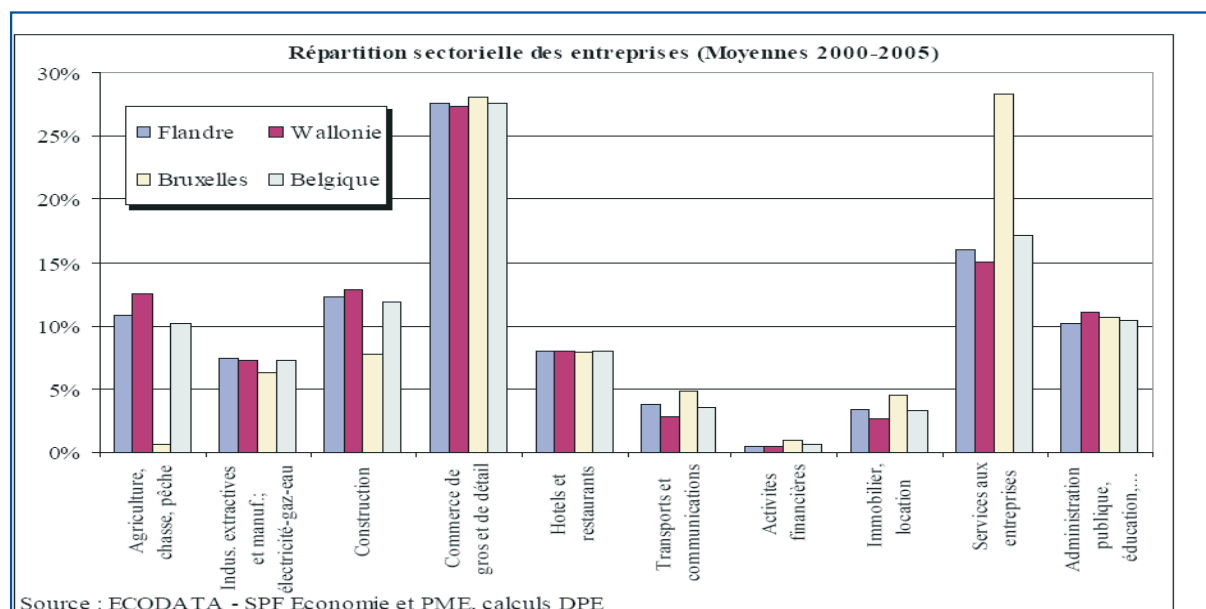
This decline of industrial production activities and this growth in the importance of the tertiary sector in Belgium has gone hand in hand with a recasting of the standard profile of business companies. The Belgian economic fabric is today mainly made up of micro, small and medium sized business companies. Thus, in 2005, 80% of Belgian companies counted less than 10 workers, a percentage which has remained relatively constant since the mid 1990s. Businesses with between 10 and 50 workers make up 16% of Belgium's economic landscape whilst businesses with over 50 workers represent only 4.6% of the whole of Belgian business companies. But they employ in their own right over 61% of the number of workers (business companies with less than 20 workers only employ a little more than 24% of the whole of our country's workers).

The geographical distribution of the number of businesses has evolved little over recent years. Flanders counts by far the greatest number of businesses: over 60% of Belgian companies are found in the Flemish Region, against only 30% in the Walloon Region and 10% in the Brussels-Capital Region. If this segmentation generally corresponds to the distribution of the Belgian population over the three Regions, it will be noted later in this report that problems of unemployment and the shortage of a work force characterise the economic activities of our country's sub-regions, the putting into place of solutions to these problems in addition proving to be more complex due to the Belgian workers' lack of mobility and the poor knowledge the Walloons and the Flemish have of the other national language.

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<sup>10</sup> For more precise details concerning this subject see the Marshall Plan website: [planmarshall.wallonie.be](http://planmarshall.wallonie.be)

Let us finally note that, in line with the aforementioned sectoral evolutions, the core business of Belgian companies is today mainly centred on service activities. The following graph allows for an illustration of the sectoral distribution of businesses active on Belgian soil: the data presented within it are presented for the whole of Belgium as well as broken down for the Walloon, Brussels and Flemish Regions.



## 2.2.2 ECONOMIC PERSPECTIVES MARKED BY THE CRISIS

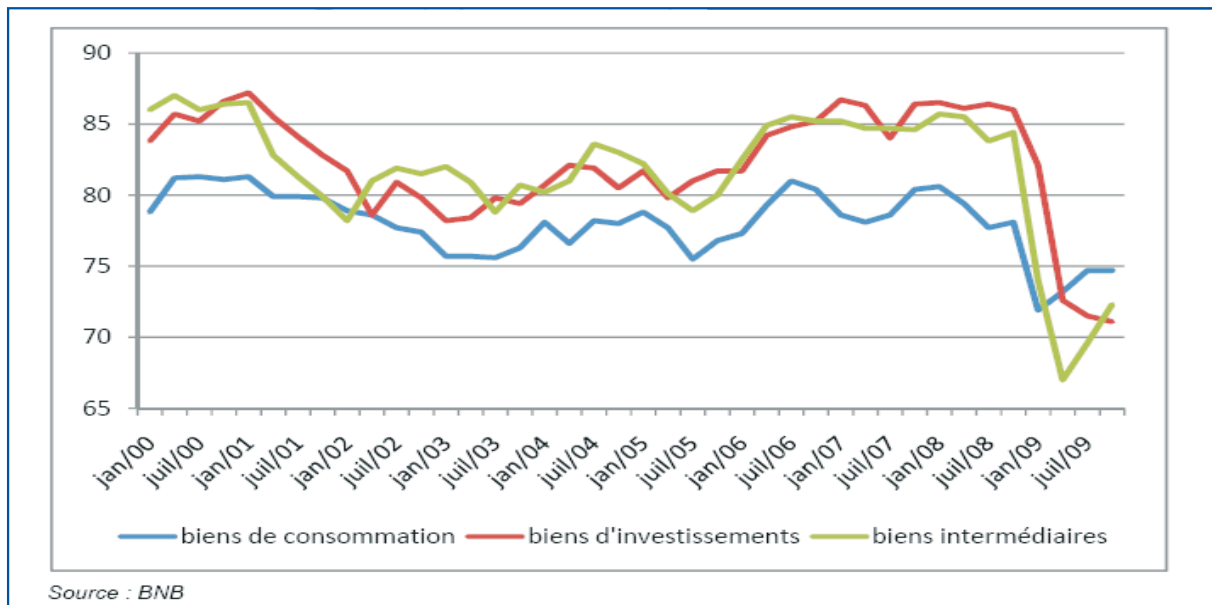
Like other countries, Belgium has borne the brunt of the financial crisis and its socio-economic repercussions. If it is still quite difficult to put exact figures on the consequences of this crisis, the economists of the Federation of Belgian Enterprises point out in their most recent statistical studies that the collapse of international trade has dragged the Belgian economy into its worst recession of the post-war period.

Two graph illustrations in our opinion allow us to bear witness to the importance of this crisis and its economic repercussions, for the workers as much for the business companies: the very strong drop in the production activities of companies situated in Belgium<sup>11</sup> and the concomitant decline in the use made of temporary workers.<sup>12</sup> In a comparable manner, these two diagrams underline the downturn of Belgian economic activity from the Summer of 2008, a decline which continued throughout the whole of the rest 2008 and the first part of 2009, before a slight upward trend was generated from mid-2009 (the most recent statistics do not allow us at the present time to visualise the continuity or otherwise of this rise in the second part and the end of 2009).

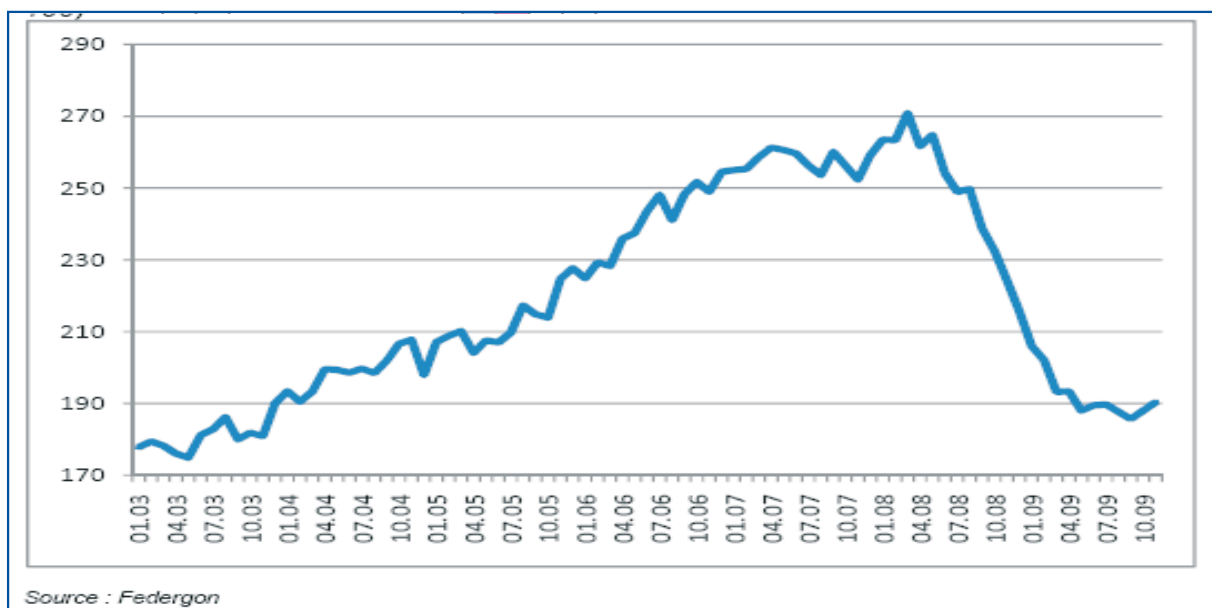
<sup>11</sup> Source : Belgian National Bank statistics, cited in Defourny, A. and Soens, K. (2010), *Monitoring de la crise économique*, Département Economique, Fédération des Entreprises de Belgique, p.3.

<sup>12</sup> Source : Statistics from Federgon, cited in Defourny, A. and Soens, K. (2010), *Monitoring de la crise économique*, Département Economique, Fédération des Entreprises de Belgique, p.9.

### Quarterly evolution of the degree of production capacity use



### Evolution of temporary worker activity



It seems difficult to draw up forecast scenarios in the present circumstances. The specialists at the National Bank, the Federal Planning Bureau, the Federation of Enterprises, Economic Statistics Institutes or trade union centres are all trying to do so, constantly revising their predictions on the basis of every new factor likely to jeopardise their projections. Stressing that their scenarios are linked to particularly high degrees of uncertainty, they invite each and everyone to take the greatest care in interpreting the trends they put forward. In this case, the forecast views of the National Bank, the Federal Planning Bureau and the Federation of Enterprises match up with each other in saying that the progressive coming out of the crisis will end, unless there are new unanticipated turbulences, by zero economic growth in 2010. For



them,<sup>13</sup> economic growth will accelerate from 2011, under the impulse of the international economic climate. GDP will once again take up a progression similar to its average growth over the last twenty years, but higher to that recorded over the past six years.

## 2.3 The challenges of the labour market

Beyond these general considerations of Belgium's structural and economic context, it is here also necessary to highlight several prominent features concerning recent trends and the future challenges of the Belgian labour market. We will present them below, in stressing the principal developments the labour market has experienced in recent years and in identifying the main challenges Belgium will have to face in the coming years at the level of its labour market.

### 2.3.1 A LABOUR MARKET UNDERGOING TRANSFORMATION, MARKED BY STRONG INCREASE IN UNEMPLOYMENT

The main development which characterizes the labour market in Belgium is the strong rise in unemployment it has experienced in a quite short time scale, as well as a profound transformation in the nature of this unemployment, as much in terms of the average duration of periods of inactivity for the unemployed as in terms of the standard profiles of people who are experiencing difficulties in entering and/or remaining on the labour market.

In effect, over the past 30 years the number of unemployed people has increased more than fivefold: in 1975, Belgium counted around 100,000 people in unemployment, essentially of a short duration; this number has incessantly climbed rapidly since then, to reach the number of 500,000 people in 1985, the majority of whom were young people, first and foremost poorly qualified, and the long term unemployed. In less than ten years the labour market has thus radically changed its appearance. This transformation has been continually more marked ever since. The latest official statistics published by 'FPS Economy, SMEs and the self employed' and by the Belgian National Bank cites the figure of 596,000 unemployed job seekers in Belgium, an average figure around which the number of people of working age who are without a job has stabilized over the past few years (the latest Belgian unemployment barometers give a figure of 575,000 people in unemployment in December 2009, on the basis of data published in the press in January 2010).

These different data have only partially integrated the consequences of the present economic crisis. As the Federal Planning Bureau emphasises,<sup>14</sup> the effects on employment of the brutal fall in activity is being shown progressively: estimates, which still have to be refined, show that

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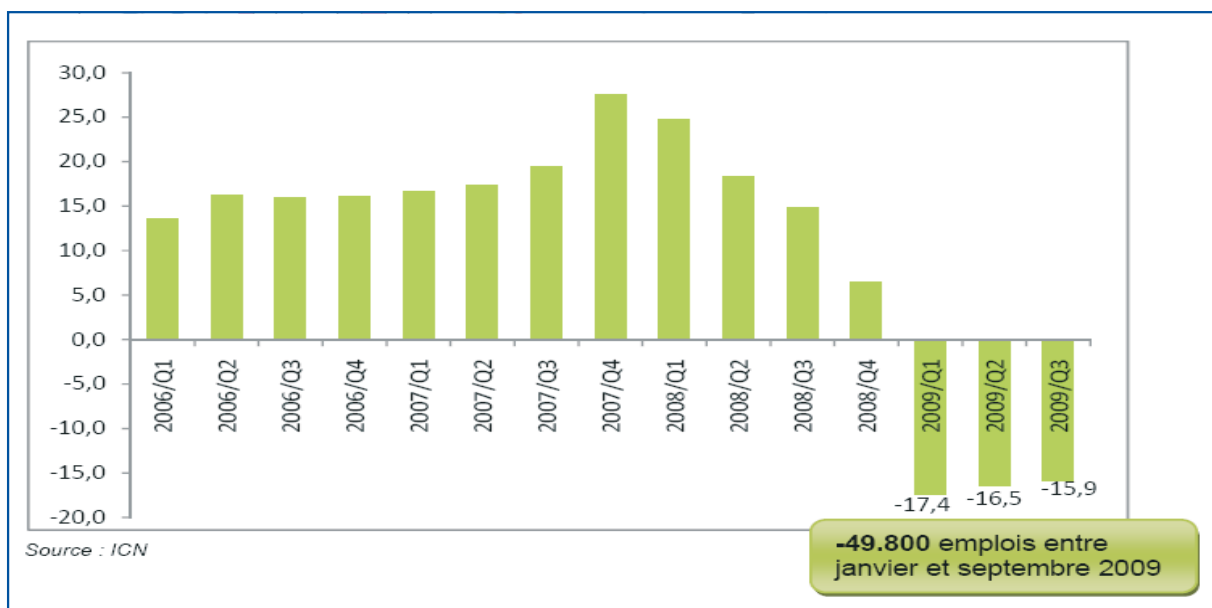
<sup>13</sup> See the respective websites of the Belgian National Bank ([www.bnb.be](http://www.bnb.be)), The Federal Planning Bureau ([www.plan.be](http://www.plan.be)) and the Federation of Belgian Enterprises ([www.feb.be](http://www.feb.be)).

<sup>14</sup> Source : Federal Planning Bureau: [www.plan.be](http://www.plan.be)



Belgium's internal employment declined by over 50,000 units in 2009 (see the graph below<sup>15</sup>), whilst predictions for 2010 anticipate an identical loss. The 5 yearly economic predictions made by the Federal Planning Bureau predict a slight recovery in activity in 2011, which will be felt in a minimal way by the rates of employment; it will be only from 2012 that job creation might once again be consequential in terms of numerical data (estimate of 40 to 45,000 units per year). Still according to the barometer of the Federal Planning Bureau, unemployment rates will thus in 2011 reach an estimated level of 15.2%<sup>16</sup>, a percentage which would constitute an historic record for post-war Belgium. A slow drop in the level is expected from 2012 onwards, leading the unemployment rate to drop to 14.5%, according to the most recent predictions.

### Quarterly variations of Belgium's internal employment



Nevertheless, the first European job market analysis on the impact of the crisis show a relative resistance of the Belgian job market in comparison with the other European countries. Indeed, after Germany, Belgium is the country where the job market has the best overcome the crisis between the beginning (September 2008) and december 2009 : the rate has grown by 11% (from 7,3% to 8,1%<sup>17</sup>), whereas the european average was by 29% (from 7,7% to 9,9%). This situation seems to be due to two main factors : the importance of public employment and the crisis measures (temporary unemployment).<sup>18</sup>

Besides these general figures on the employment and unemployment levels, statistics which are judged as worrying by political, economic and trade union actors, it is also necessary to underline the transformation in the very nature of unemployment itself – short term at the beginning, long

<sup>15</sup> Source : ICN data (National Accounting Institute), cited in Defourny, A. and Soens, K. (2010), *Monitoring de la crise économique*, Département Economique, Fédération des Entreprises de Belgique, p.6.

<sup>16</sup> We should notice that the way of calculating the unemployment rate differs between the "Bureau Fédéral du Plan" and Eurostat which foresee for 2011 a unemployment rate of 9%.

<sup>17</sup> Data from Eurostat

<sup>18</sup> Source : Document from the Onem of the 18th of March 2010 "Communiqué de presse : le rapport annuel de l'Onem 2009".

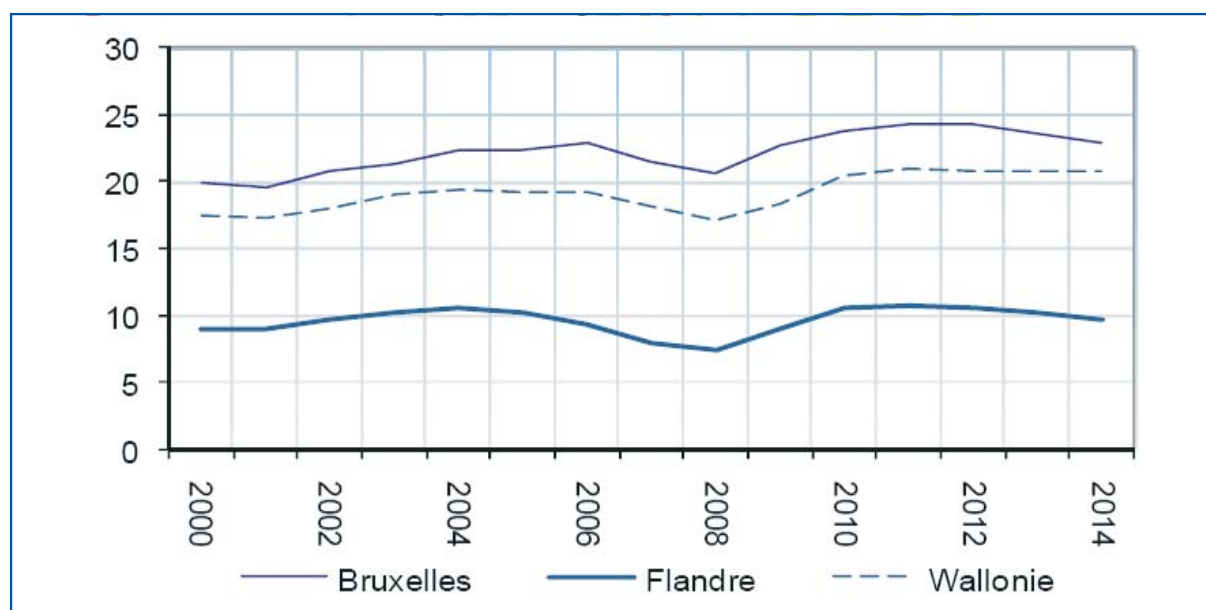
term today – as well as the disparities which can exist depending on Belgium's Regions and the profiles of the people affected.

### 2.3.1.1 Disparities between Regions

Statistical data in our possession illustrate the very contrasted situations of our regional markets. The employment rates, expressed as a percentage of the total population aged between 15 and 64, have been assessed as the following: 65% in Flanders, 55% in Brussels and 56% in Wallonia (which gives rise to a Belgian average of 61%); as for unemployment levels, they are respectively 5.5% in Flanders, 16.5% in Brussels and 12% in Wallonia (Belgian average: 8.5%).

As is in addition detailed in the statistical table found in the annex (see the table 'Harmonised indicators of the labour market for the 15 to 64'<sup>19</sup>), and is illustrated very well in the diagram below,<sup>20</sup> these differences between employment levels and unemployment rates remained relatively stable for the 2002-2006 period, a trend which reflects the absence of a movement of convergence between Belgium's three federated Regions and which in particular underlines the lack of inter-regional mobility on the part of Belgium's population (see below).

#### Evolution of regional unemployment levels



<sup>19</sup> Source: statistical table adapted from the Belgian National Bank's study 'The labour market and salary costs,' carried out on the basis of data at the FPS Economy, SMEs and the self employed, at the Belgian National Bank and the European Commission.

<sup>20</sup> Source: Federal Planning Bureau, Institut Bruxellois de Statistique et d'Analyse, Studiedienst van de Vlaamse Regering and Institut Wallon de l'Evaluation, de la Prospective et de la Statistique (2009), *Perspectives économiques et régionales 2008-2014*, p.36.

**Disparities between people profiles**

In terms of the 'standard profiles' of people who are unemployed, it will be noted that Belgium is characterized by a quite dualistic labour market, in comparison with other European countries; very good levels of employment for qualified and experienced people on the one hand; mass unemployment for the young, older people, non-native people and poorly qualified people on the other (let us note in addition that for the last two categories, employment rates for women are considerably lower than for men). If these points present general trends for the whole of Belgium, we would stress that, continuing on from the aforementioned disparities between the three Regions – Wallonia, Flanders and Brussels – the proportion of the so called 'at risk' people who are without jobs is still higher in Brussels and Wallonia than in Flanders. The table which follows<sup>21</sup> illustrates these trends (on the basis of statistical data from 2006): it breaks down the profile of job seekers through different criteria (gender, age, level of education and the duration of time on unemployment) and splits up the data over Belgium's three Regions (Brussels, Flanders, Wallonia).

| Profile of unemployed job seekers<br>(yearly averages, percentages of the total by geographical area) |                |               |                |                |
|---|----------------|---------------|----------------|----------------|
|   | Belgium        | Brussels      | Flanders       | Wallonia       |
| Broken down by gender   |                |               |                |                |
| Men   | 47,4           | 50,8          | 46,5           | 46,9           |
| Women   | 52,6           | 49,2          | 53,5           | 53,1           |
| Broken down by age  |                |               |                |                |
| Less than 25 years old  | 21,5           | 16,7          | 21 ,8          | 22,9           |
| 25 to 54 years old  | 73,2           | 79,1          | 71,2           | 72,8           |
| 55 years and older  | 5,3            | 4,2           | 7,0            | 4,4            |
| Broken down by educational level  |                |               |                |                |
| Primary education and the first level of secondary education  | 26,5           | 23,8          | 28,6           | 25,9           |
| Higher levels of secondary education  | 58,5           | 51,2          | 56,5           | 62,6           |
| Higher education  | 13,4           | 16,0          | 14,9           | 11,3           |
| Others  | 1,6            | 9,0           | 0,0            | 0,2            |
| Broken down by length of unemployment   |                |               |                |                |
| Less than 6 months  | 28,5           | 23,5          | 35,8           | 24,6           |
| Six months to two years   | 33,1           | 33,0          | 35,5           | 31,2           |
| More than 2 years   | 38,4           | 43,6          | 28,7           | 44,2           |
| <i>Total number of unemployed</i>   | <i>588.000</i> | <i>97.000</i> | <i>217.000</i> | <i>274.000</i> |
| <i>Percentage of the total number of unemployed</i>   | <i>100,0</i>   | <i>16,5</i>   | <i>36,8</i>    | <i>46,8</i>    |

On this subject, two recent developments within the Belgian labour market must be mentioned, in relation to initiatives put in place by the public authorities to curb the unemployment of people 'at risk' and to encourage the employment of young people, seniors, non natives and less

<sup>21</sup> Source: statistical table adapted from the Belgian National Bank's study 'The labour market and salary costs,' carried out on the basis of data from the FOREM, the ORBEM, the ONEM and the VDAB.

qualified people (see below): employment rates have gone down for the young and the poorly qualified since the beginning of the year 2000, this despite the measures taken by the public authorities in favour of these two target groups; the situation for seniors has improved, even if we are far from the objectives fixed at this level (in Belgium, less than a third of the people aged 54 to 64 years are working at the present moment in time, whilst a European objective has fixed the percentage to be reached in terms of employment rates for seniors at 50% for 2010). We will also underline, on the basis of the statistical table above, the fact that the periods of inactivity for job seekers is becoming longer and longer; whilst this data has not yet integrated the effects of the current crisis, around 40% of Belgium's unemployed people have been looking for work for over two years.

### ***2.3.1.3 A worrying unemployment rate***

Overall, and without specifically taking into account the effects brought about by the present crisis, the employment rates for the whole of Belgium remain worrying and problematic. Experts furthermore stress in this respect the risks of social marginalisation and exclusion which are bred by the fact of remaining without work for a long period. According to them it is necessary to eradicate these risks by putting into place adapted solutions. Amongst them (where some have already been implemented, others are still at the planning stage), the experts highlight the necessity for the public authorities to pay greater attention to the quality of employment, to the definition of statuses which offer future perspectives to wage earners and the granting of reasonable salaries, to the development of training policies enabling the long term unemployed to seize job opportunities and permitting in this way a better adaptation between supply and demand, developing the fight against discrimination at work, which certain people seem to be the victim of, etc. The experts also highlight the necessity, in certain situations, of offering individualized and adapted back up support for unemployed people, through ad hoc structures, and encouraging the gaining of skills which meet the needs of the labour market.

## **2.3.2 A LABOUR MARKET FACED WITH MULTIPLE ISSUES**

These points introduce in an underlying fashion several of the issues and challenges Belgium is faced with at the level of managing its employment and labour market. We will flesh these out with more detail below, and round them out by looking at the different aspects frequently identified in studies which forecast Belgium's labour market.

### ***2.3.2.1 The ageing of the population***

Belgium, like most other European countries, is confronted with a significant modification of the age pyramid of its population, a transformation which should become still more pronounced over the next years and decades. In parallel with an increase in life expectancy and a rise in the average age of death, we are witnessing a reduction of the birth rates amongst the generations born after the Second World War: these two factors will lead to a reduction of the numbers of people of working age (the people considered between 15 and 64 in the majority of statistics on questions of work and employment) as well as an increase in the 'inactive population/active population' ratio.

This ageing of the population has a cost for the State finances, which is getting heavier with the constant increase of the number of retired people. But the funds available for this ageing are insufficient, as states the Minister for Pensions 'Green Book', published in January 2010, to absorb as a constant policy this rise in the number of retired people (estimates predict that soon two active people will have to pay for more than one person aged over 65 years<sup>22</sup>). For the minister, the only imaginable path is to increase the employment levels for the elderly, which are particularly low in Belgium (see below): for him it will be necessary to defer the effective retirement age by three years from now and the year 2030.<sup>23</sup> Let us note that it is not a question here of revising the age of retirement, and of transforming it from 65 to 68, but indeed to encourage – notably in making the systems of prepension and early retirement from the labour market less attractive – workers who are tempted by a departure in advance to instead prolong their professional career by three additional years.

Various initiatives have already been introduced in this respect by the public authorities. Amongst them we will here note the progressive rise of the legal retirement age for women, which is today at the age of 65, the same as it is for men. But the initiative launched in Belgium to prepare the country for the 'bombshell of demographic ageing' which has gained the most media attention is unquestionably the adoption of a 'solidarity pact between the generations', widely disseminated in national and international studies. In this pact are found different decisions which should help Belgium to financially manage the ageing of its population. Access to the pre-pension system<sup>24</sup> has thus been restricted: the age at which this becomes available has thus moved from 58 years, on condition of having 25 years of service, to 60 years, on condition of having completed 30 years of service for men; this seniority, required in order to obtain an early departure from the labour market will in addition be gradually increased, to be fixed in 2012 – subject to new changes proposed by the Council of Ministers (see above) – to 35 years, for women as well as for men, apart from some dispensations for certain so called 'hard' professions. The 'solidarity pact between the generations' also makes provision for different financial incentives to encourage people at the end of their careers to stay in or return to employment: a reduction of social security contributions when seniors are hired, the possibility of combining a pension with a job income, etc.

<sup>22</sup> Source: newspaper article "Priorité à l'emploi des plus de 50 ans, gare aux prépensions", Le Soir, 11 février 2010, p.4.

<sup>23</sup> Source: newspaper article "Priorité à l'emploi des plus de 50 ans, gare aux prépensions", Le Soir, 11 février 2010, p.4.

<sup>24</sup> Created in 1974, the "pre-pension" system is an early retirement measure allowing a sacked worker to draw at the same time unemployment benefit (60% of the last gross salary, with a ceiling of 1153,1€ net) financed by the public authorities and an additional allowance (in principle 50% of the difference between the last wage and the unemployment benefit), financed by the business company or a Fund up until retirement age, fixed at 65 years. The measure has undergone various legislative developments, the most recent being linked to the solidarity pact between the generations. If the general system provides for access to the pre-pension at the age of 60 for workers who can be paid unemployment benefit thanks to an inter-professional, sectoriel or business company collective agreement, a special dispensation system allows the pre-pension age to be lowered

- To 56 for workers whose professions are considered 'heavy', who have a minimum of 33 years of professional career, of which a minimum of twenty years in a night work system or in the construction sector;
- From the age of 55 for workers who have had long careers, (in 2010: 37 years for men and 35 years for women);
- To 58 for workers who are less able-bodied or have serious physical problems and who can give proof of 35 years of professional experience.

This dispensation system is however called into question through the solidarity pact between the generations which, as is explained elsewhere, aims at extending the professional careers of seniors.

### ***2.3.2.2 The inactivity of seniors and juniors***

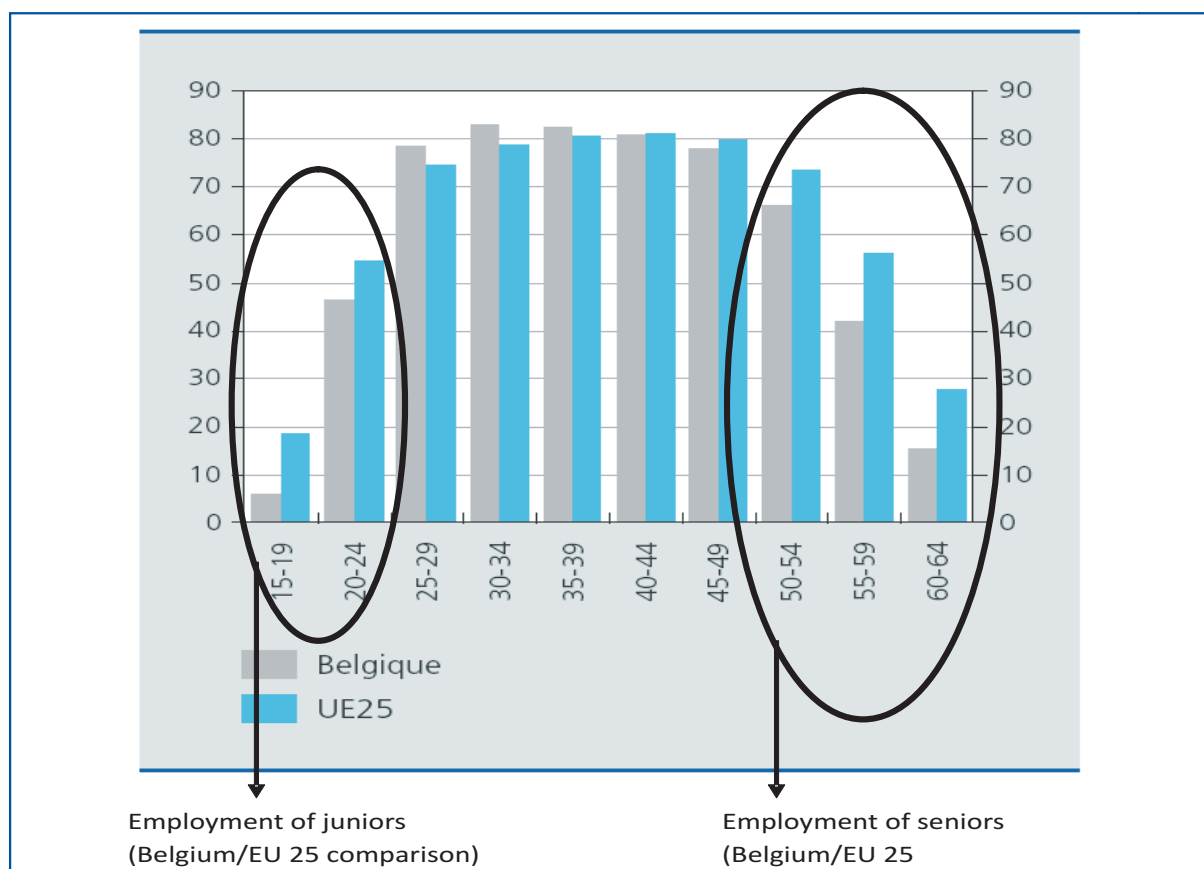
The consequences of the ageing of the population and the expected 'demographic bombshell' are all the more significant for Belgium in that, in comparison with other European countries, employment rates from the age of 50 onwards are quite low there, due in particular to the financial attractiveness which are today offered by the systems of early departure from the labour market (see the graph below illustrating the lowest proportion of people aged over 50 who have a job in Belgium, compared to the European average). The statistical table we have placed in the annex (see the table 'The over 50s on the labour market'<sup>25</sup>) illustrates this trend and highlights the particularly high levels of inactivity for those aged over 55 (47.4% are inactive), and which are even higher for the over 60s for whom the employment rate is only 17% (42% of the people aged 60-64 benefit from a pension or early retirement, a percentage to which it is necessary to add the 13% of seniors aged 60-64 who have availability status prior to retirement or in early retirement).

The relative rise of the number of seniors in the total population of people of working age is not without having consequences for the potential of the Belgian economy's future growth: maintaining or even increasing the growth of economic activity in the next years in effect assumes a rise in the participation of everyone on the labour market, and in particular the seniors, whose employment rate is statistically the lowest. The public authorities have understood this very well, and are already taking initiatives to (attempt to) achieve this goal (see the explanations given above concerning the generations' pact), even if the results which flow from them remain mixed at the present time and require further initiatives (see above).

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<sup>25</sup> Source: statistics presented in a newspaper article "Priorité à l'emploi des plus de 50 ans, gare aux prépensions", Le Soir, 11 February 2010, p.4, based on data from enquiries into the Belgian workforce.

### Employment rates by age group, in Belgium and EU of 25<sup>26</sup>



At the other end of the age pyramid, young people also constitute a group which is particularly hit by unemployment in Belgium, and this is even more the case where young poorly qualified people are concerned, in comparison with other European countries (see the graph above, illustrating the lowest proportion of the under 25s who have a job in Belgium, compared to the European average). The youth unemployment rate has even tended to rise since the beginning of the millennium: it was 15% in 2000 and is now in the neighbourhood of 20%, a trend which in part reflects the fact that the labour market is more and more selective and demands more thorough and tailored skills.

It should be noted that behind these general points are once again found large disparities between the Regions: the unemployment rate for young people is less in Flanders than in Brussels and Wallonia, where 33% of young people are without a job, sometimes for over a year. A study carried out by FOREM thus shows that, in the Walloon Region, young job seekers aged less than 25 without employment (a number which thus does not include young people who are still in education) represent 22% of the total number of job seekers; 37% of these unemployed young people have furthermore been jobless for at least two years. The reasons? Beyond a declining labour market, the main explanation for the low employment rate for the under 25s is to be found in the lack of skills amongst the young people concerned (45% of young job seekers have not received advanced secondary education qualifications), in terms of knowledge of the

<sup>26</sup> Source: The Belgian National Bank's study "Marché du travail et coûts salariaux"; graph based on the European Commission's statistical data.



business world as much as in terms of qualifications, not to mention the little motivation to work certain amongst them exhibit.

The federal and regional governments are aware of this situation. As has been done for the seniors, they have implemented different initiatives aiming to encourage youth employment: a reinforcement of the structured support, following up and monitoring of job seekers, the setting up of a ‘first job’ convention system, the obligation for businesses to create ‘youth’ jobs, awarding financial subsidies to businesses which employ young people, all the more so if poorly qualified, etc. If these measures have given rise to certain positive effects, a better understanding of the barriers to youth employment and the development of more earlier actions prior to the labour market (training at school, the development of qualifications, etc.) appear necessary in the eyes of many specialists of the labour market to curb in a more marked manner the problematic of the low employment rate amongst young generations. They are required for the participation of young people in the labour market and, as a corollary, the effective contribution of the latter to the economic and social issues Belgium is faced with.

### ***2.3.2.3 A work force shortage in certain professions***

There is another threat linked to the labour market which weighs on the growth of the Belgian economy: the shortage of a work force in certain professions, which appears very worrying in the eyes of the experts at the Federation of Belgium Enterprises (FEB) and the economists at the Belgian National Bank (BNB). In effect, whilst the unemployment rate and the number of job seekers are particularly high, certain businesses are confronted with real recruitment problems for certain professions. On the basis of the latest numerical data in our possession, in Belgium we count over 300,000 vacant posts, of which 120,000 concern so called ‘in need’ professions for which businesses are encountering real difficulties finding job candidates.<sup>27</sup>

Without presenting an exhaustive list in this report of the ‘critical’ professions, we will note that the regional vocational training centres and employment services offer on their respective websites a regularly updated statement of the professions in which a shortage, or the risk of a shortage, of a work force has proved to be the case. Certain of the positions found amongst these lists of professions with a labour shortage moreover tend to stay on them for a long period of time, despite the measures implemented by the vocational training centres to direct and train job seekers towards positions for which employers are experiencing recruitment difficulties. This tends to confirm the structural nature of these recruitment problems and this problem of a lack of certain standard profiles.

This situation, and the statistics concerning the shortage of an available work force for certain professions which is connected to it, has drawn the attention of the FEB’s directors, who stress two potential explanations for this problematic, which for them does not originate from solely quantitative factors (the lack of interested candidates for these professions): on the one hand the lack of mobility for certain workers (see below) and, on the other, the absence of sustained training for the long term unemployed, whose profiles do not correspond to business companies’ contemporary needs. To these potential explanations Walloon and Brussels vocational training centres add two other possible explanatory factors: the lack of a match up between the demands of the employers and the profiles of the candidates (are certain business companies not too demanding?) as well as the not very attractive working conditions characteristic of practicing

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<sup>27</sup> Source: based on statistical data presented on the FOREM, VDAB, Actiris and ONEM websites.



certain professions experiencing a shortage (the attractiveness of professions in terms of salary, working hours, the precariousness of contracts, etc.) or the not always necessarily positive image of these professions in the eyes of the population.

Let us note that, in order to make up for the shortage of a work force in certain professions, different provisions and arrangements have been decided by the public authorities. Without detailing all of them (they are presented exhaustively on the websites of the vocational training centres– FOREM, Actiris et VDDAB – as well as the ONEM), we will cite the granting of financial incentives to students who begin and successfully complete studies which prepare them to exercise a so called ‘critical’ profession and who obtain a job contract for such a position, the possibility for the unemployed to have certain dispensations from certain of the obligations linked to their job seeker status whilst continuing to receive unemployment benefit if they take up studies which lead to practicing a profession for which there is a labour shortage, etc. If these mechanisms are providing their first tangible results, they nevertheless call for a wider consideration of solutions to this shortage problem, notably by the effective involvement of every category of actor concerned (employers, public authorities, vocational training centres and training organisations, etc.)

#### ***2.3.2.4 Inter-regional professional mobility***

The Belgian paradox which has been underlined in the previous sections – the unemployment level is particularly high whilst positions remain vacant for certain professions – seems even more telling if we refine this observation by an examination of regional statistics: certain geographical regions have particularly significant levels of unemployment, all the more so for certain categories of people, whilst others point to job opportunities which remain vacant because of an insufficient number of candidates.

Statistically, it appears that the people who are proportionally the most to be found in unemployment statistics (the young, the over 55 and, more generally, the poorly qualified) are also the least mobile. This situation is partly due to the costs (public transport costs, or even the cost of buying a car and daily petrol expenses) linked to mobility. Let us note that for the less qualified, whose income levels are not very high, it is likely that the hope of extra revenue is not sufficient to compensate for these costs and thus discourages these categories of people from the possibilities of employment in other regions.<sup>28</sup> To this cost factor are also added other potential explanations for workers and job seekers refusing mobility: the public transport timetables not being adapted to each other, certain sites being difficult to access via public transport, the difficulties of mobility linked to road congestion, an insufficient knowledge of the second national language after the mother tongue, etc.

As, if the problematic of the lack of mobility exists within a single federated region (intra-regional mobility), it is all the more telling between the country’s different Regions – Wallonia, Flanders,

<sup>28</sup> Source: Federal Planning Bureau, Institut Bruxellois de Statistique et d’Analyse, Studiedienst van de Vlaamse Regering et Institut Wallon de l’Evaluation, de la Prospective et de la Statistique (2009), *Perspectives économiques et régionales 2008-2014*, pp.28-35.

Brussels (inter-regional mobility). On this point, the relatively low numbers of commuters<sup>29</sup> between the Walloon and Flanders Regions indicates that the language barrier constitutes a real brake to professional mobility in our country<sup>30</sup>: sufficient knowledge of the other national language thus appears to constitute an important factor for increased worker mobility and, as a consequence, for a more effectively functioning labour market in which solutions to the current imbalances would be found, at least in part.

Let us note on this subject that the lack of a match up between supply and demand is particularly marked in the Walloon and Brussels Regions. Thus, for example, if Brussels has the country's highest unemployment rate, it is not for the want of creating jobs but indeed for not being able to fill them with ad hoc skills. The Region is moreover developing joint projects with the other regions and the different regional vocational training centres in order to alleviate this problem.<sup>31</sup> In a general ways, the different Flemish, Brussels and Walloon employment services have decided to reinforce their joint projects to respond better to the regional disparities of the Belgian labour market. The agreements sealed in 2005 between their respective regulatory authorities make provision for an improvement of the flow of information between the parties, the systematic transmission of information concerning vacant posts and job offers which the different vocational training centres receive, all the more so if they concern critical professions (see above), a more marked synergy in professional training initiatives, etc.

### **2.3.2.5 Harmonization of white collar worker – blue collar worker status**

Belgium distinguishes itself from a good number of other European countries by its principle of 'double status' for workers, blue collar workers and white collar workers being subject to different statutory logics. It is nevertheless today a question of envisaging a harmonization of white collar worker and blue collar worker status: this constitutes a particularly telling topical subject in Belgium at the present time.

The drawing up of blue collar worker and white collar worker statuses (which have their origins in the first laws concerning job contracts, dating from 1900 and 1922) is based on a historical distinction between work situations where the tasks carried out are essentially manual and situations where the work effected is essentially intellectual in nature. The underlying idea of this distinction was, at the time, to distinguish the group of workers from occupied in industrial production from the people carrying out administrative and service tasks. This latter group, that of the white collar workers, in addition received a status which offered it a better income and employment guarantee. The law concerning job contracts of 3<sup>rd</sup> July, 1978, still in force today, maintains this distinction between

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<sup>29</sup> Statistically, the largest mobility flows, in terms of the data, are carried out from Flanders and Wallonia in the direction of Brussels. The number of Flanders based commuters going to work in Wallonia, and conversely, remains for its part relatively low. It should be noted that the number of commuters from Flanders to Wallonia are less numerous than those from Wallonia to Flanders: 36,000 Walloon workers travel to the Flemish Region, against 21,500 Flemish who do the opposite commute. (Source: Federal Planning Bureau, Institut Bruxellois de Statistique et d'Analyse, Studiedienst van de Vlaamse Regering and Institut Wallon de l'Evaluation, de la Prospective et de la Statistique (2009), *Perspectives économiques et régionales 2008-2014*).

<sup>30</sup> Source: Federal Planning Bureau, Institut Bruxellois de Statistique et d'Analyse, Studiedienst van de Vlaamse Regering and Institut Wallon de l'Evaluation, de la Prospective et de la Statistique (2009), *Perspectives économiques et régionales 2008-2014* pp.28-35.

<sup>31</sup> This perspective of increased collaboration between the actors of the labour market is without doubt not the only solution to be envisaged. Brussels suffers from problems such as access, mobility, infrastructure and quality of life which, for certain experts, are so many points which divert the population of Wallonia and Flanders from Brussels job opportunities.

blue collar workers and white collar workers,<sup>32</sup> and the differences associated with these statuses, despite various attempts to remove this statutory distinction.

This statutory distinction, which is not without its ambiguities and which is regularly subject to various interpretations, is nonetheless being more and more contested, the nuance between manual and intellectual work no longer being necessarily adapted to the current developments in work practices (automatisation of production tasks, leading to less tasks requiring physical effort but more supervision tasks; a diminishing of the differentiation between design tasks and those of production/execution; an increase in the responsibilities of every category of actor within a business company; etc.). This wish to harmonise blue collar worker and white collar worker statuses moreover features in the governmental agreements of the recent legislatures, without them having for all that been made concrete since then. The social partners furthermore do not seem to be in a hurry to tackle this situation, which does not necessarily figure in their present priorities, which have been somewhat revised following the financial crisis and the economic and social difficulties which are currently being encountered.

The debate nevertheless raises different practical questions, which come back to the table at more or less regular intervals. There are in effect a number of components in this problematic. If the employers' organizations have already clearly expressed the fact that, for them, the introduction of a single status for workers must be inscribed in a neutral approach in terms of cost and that the new status must not cost the employers more than the blue collar worker and white collar worker statuses combined, the concrete questions, flowing from characteristics specific to the current blue collar worker and white collar worker statuses, have to be decided. What of the case, for example, of the trial period clause, the financial intervention of the employer in the case of a worker being absent through illness, the possibility of temporary unemployment (granted to business companies for blue collar workers but not for white collar workers), the organisational factors and the payment of annual holidays, or the right to fire and the modalities of the notice period, all of which are points which are presently managed differently depending on whether the worker is a blue collar worker or white collar worker?<sup>33</sup> This harmonization of statuses around a single status in addition requires, according to certain specialists of the labour market and of social dialogue, additional reforms at the different levels of social consultation, notably in terms of collective bargaining agreements as well as the differentiation and functioning of equal representation commissions.

### 2.3.3 THE BELGIAN SYSTEM OF INDUSTRIAL RELATIONS

The highlighting of these different challenges and the presentation of the partial solutions already put in place to resolve certain issues which will arise concerning the Belgian labour market, imply on several occasions the intervention of multiple actors in this management of employment and labour market policies. If we have already mentioned in the first part of this chapter that the questions of employment are managed in part by the federal government and in part by the federated entities, it also seems important to us to specify, in the perspective of the following chapters on the modes of managing restructurings, the way industrial relations are managed in Belgium.

<sup>32</sup> The social partners have available practical experience and a series of practices which enable them to confer blue collar worker or white collar worker status on the basis of descriptions of job functions and positions.

<sup>33</sup> For more precise details on this subject see the summarizing table found in the annex, a table which results from one of our earlier studies, carried out at LENTIC, and which allows for an illustration of the main points of differentiation between blue collar worker and employee status.

On this point, let us note that the Belgian system of industrial relations might be described as neo-corporatist, insofar as the involvement of social partners in the public decision-making process is highly institutionalised. The system is characterised by sustained pressure and intervention by the state, mainly over pay bargaining, and high levels of union membership. Employment issues are mainly managed on the basis of formal consultation and bipartite (or even tripartite) co-decisions. This participatory multi-level model is presented in a summarising way in the following table, drawn up by our research centre in the framework of developing a teaching tool addressed to trade union organisations for the presentation of the structures of social negotiation.<sup>34</sup> In it are presented the different bodies (beyond the government and the political authorities) which play an active role in terms of social dialogue. We'll notice through the reading of this board that these different organs are equal. They're composed by both an organisation of employers' representatives and an organisation of workers representatives.

The drawing up of collective bargaining agreements are the result of these different bodies and the negotiations carried out within them, agreements which are supplementary to the Belgian legal framework. These collective bargaining agreements can take several forms; their reach is in addition variable depending on the level at which they have been negotiated. There are thus inter-professional collective bargaining agreements,<sup>35</sup> concluded between the social partners sitting on the National Work Council, which apply for all the businesses in the private sector. Other collective bargaining agreements are for their part concluded within sector based equal representative commissions: they thus have a binding power limited to just the sector of activity for which they have been concluded. Finally, other collective agreements spring from negotiations between the workers representatives and the management of a given business company: these agreements thus have a binding power only within the business company in question.

In a general way, business company restructurings are often wrongly reduced to the sole phenomenon of collective layoffs. The academic literature on the subject on the contrary offers a wider vision and distinguishes three large stages of every restructuring process: the period before the restructuring, during the decision making process and, finally, the period after the decisions have been taken. The process can be summarised in the following manner:



The report follows this logic, and that is why the next three chapters respectively deal with the three main stages of the restructuring process.

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<sup>34</sup> The “ODISSER – Outils du Dialogue Social au sein de l’Entreprise-Réseau” (*Social Dialogue Tools within the Business-Network*) project carried out at LENTIC in 2006 and 2007, which consisted of developing teaching tools for raising awareness and training for social dialogue in the new forms of organisation (more information: [www.odisser.org](http://www.odisser.org)).

<sup>35</sup> Unless otherwise stated, all the collective agreements cited in this document are inter-professional agreements concluded at the National Work Council.

The anticipation measures and tools presented within the framework of this chapter are aimed at avoiding a restructuring or at reducing its social impact in advance. We distinguish two types of anticipation, those resulting from the legal framework, considered as being mainly measures of short-term anticipation (except, obviously, the information from the workers), those ones measured as long-term which, though they do back on the legal framework, constitute more initiatives from the stakeholders of the labour market.

## 3.1 The measure of anticipation resulting from the legal framework

Most of the measures concern the business companies and their workers situated on the whole of Belgian territory. Just a single anticipatory measure is specific to one of the country's Regions. In every case the measures presented concern only business companies within the private sector.

We will present first of all the legal framework linked to the continuous information given to the (representatives of the) workers. We will then look at the measures for adapting the workforce according to the business company's workload: temporary layoffs for blue collar workers for economic reasons and the collective reduction of working hours. Finally, we will close this chapter in presenting the temporary crisis measures which are, at the federal level, the 'temporary working time reductions for crisis reasons,' the individual and temporary reduction of working hours to face the crisis and temporary layoffs for white collar workers for economic reasons, and, uniquely within the Flanders Region, 'the transition allowance.'

### 3.1.1 WORKER INFORMATION IN TERMS OF FINDING ALTERNATIVE SOLUTIONS TO LAYOFFS

Belgian legislation is inscribed in line with Directive 75/129/EEC of the Council of the European Communities, established on 17th February 1975, relating to collective layoffs and the 11th March, 2002, Directive 2002/14/EC of the European Parliament and Council related to informing and consulting workers. It seeks to reinforce worker protection in cases of collective layoffs, but also to developing their access to information and consultation before the restructuring process in order to enable a successful conclusion to the process of restructuring and adapting business companies.

Beyond the employers' obligation to inform in the case of collective layoffs (see below), the degree of information the workers representatives have depends on the size of the business concerned, depending on if it employs 100 workers and more, between 50 and 99 workers or less than 50 workers.

### ***Businesses consisting of 100 workers and more<sup>36</sup>***

The law of the 8<sup>th</sup> of November 2007 sets the threshold for the establishment of a Works Council at 100 workers.<sup>37</sup> The Works Council is a consultative body comprising representatives of the employer and the white collar workers which receives information on the economic and financial situation of the company, monitors the implementation of relevant legislation and discusses the regulation of work including working conditions, changes to the production process, working hours, holidays, etc. Companies with a Works Council have greater obligations with regard to the provision of information; information on decisions that could potentially have an impact on employment must be provided to the Works Council<sup>38</sup> (Krzeslo, 2003) according to a very strict formula or it may be declared invalid.

Under Article 25 of the Royal Decree of 27 November 1973 about rules on economic and financial information for the Works Councils, the employer must also inform the workers or their representatives of any events that are likely to have an important impact on the company and of any internal decisions that are likely to have significant consequences for the company. This information must be communicated before any decisions are carried out.

Collective bargaining agreement n°9, of 9<sup>th</sup> March, 1973, coordinating the national and collective agreements on Works Councils, indicates that in cases of merger, integration, a takeover or closure or other important structural changes negotiated by the company, the Works Council will be informed of it in good time and before any spreading of the information elsewhere.

Finally, as already mentioned, the decree of 8<sup>th</sup> April, 2003, condemns the employers, in some specific cases of company closure, to a heavy fine if they not respect the obligations of collective bargaining agreement n°9.

### ***Businesses consisting of between 50 and 99 workers***

Up until recently, businesses consisting of between 50 and 99 workers were not affected by the legal framework mentioned above. Nonetheless, the integration into Belgian law of European Directive 2002/14/EC obliges such companies to inform and consult with the workers' representatives more than was previously the case.

- The decree of 23<sup>rd</sup> April, 2008, requires the employer to transmit a series of 'basic' information (status, competitive position, etc.) as well as annual information (statement of financial positions, yearly accounts, etc.) to the Accident Prevention and Safety at Work Committee when the business has a minimum of 50 workers and has neither a Business Council nor a trade union delegation. Moreover this law obliges the employer not only to inform but also to consult the workers' representatives concerning factors of a social nature.

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<sup>36</sup> Certain businesses with between 50 and 99 workers are also concerned by virtue of the law of the 8<sup>th</sup> of November 2007.

<sup>37</sup> Currently, European Directive 2002/14/CE determining the threshold for the establishment of a social dialogue at 20 workers has still not been translated into the Belgian legislation.

<sup>38</sup> 'The controlling body, in charge of economic [...] social [...] and employment issues. It is elected by the whole body of workers.'



- A modification by the social partners of collective bargaining agreement n°9 (March 9<sup>th</sup>, 1972) now makes for provision for the fact that, in the absence of a Works Council, the obligations of the employer in terms of information and consultation remain and apply to the trade union delegation or, failing that, to the Accident Prevention and Safety at Work Committee.
- In addition it should be noted that collective bargaining agreement n°39 of 13<sup>th</sup> December, 1983, specifies for the companies “occupying generally an average of 50 workers at least ” that ‘when the employer has decided to invest in new technology and when this has important collective consequences in terms of employment, work organization or working conditions, it is obliged, at the latest three months before the beginning of the installation of this new technology, on the one hand to provide information in writing concerning the nature of this technology, the factors justifying its introduction as well as the social consequences it will have, and on the other to embark on a consultation with workers representatives over the social consequences of the introduction of the new technology.’ This measure is applied when 50% and at least ten workers of a given professional category are affected by this change of technology.

### ***Businesses consisting of less than 50 workers***

For business companies with less than 50 workers, the legislation does not impose generally the establishment of either a Business Council or an Accident Prevention and Safety at Work Committee, excepted in specific cases (i.e. in the mine sector). In the majority of sectors neither does there exist a trade union delegation excepted in specific sectors (i.e. in the building industry). The obligation to inform workers is consequently more limited:

- Collective bargaining agreement n°24 of 2<sup>nd</sup> October, 1975, specifies the obligations of the employer, occupying on average more than 20 workers, concerning providing information ‘in good time’ to the representatives of its personnel or, failing that, directly to its personnel in cases of collective layoff (see above).
- The decree of 26<sup>th</sup> June, 2002, specifies the obligations concerning information in the case of a company closing occupying on average 20 workers at least (see above).
- The modification of collective bargaining agreement n°9 following the decree of 23<sup>rd</sup> April, 2008, makes provision for the obligation to inform and consult union delegations, when their existence is permitted on the basis of a sectoral agreement. These obligations are nevertheless lower than those in case of Work Committee.

## Box 1:



### Case study FAR

This box contains the first of four case studies presented in this report. This one presents the initiative carried out by a union delegation to put in place a system of continuous monitoring of the financial, economic and industrial health of the businesses in which it is represented by one or more delegates.

The nonprofit association, "Form'Action André Renard" (FAR) is the study centre of the socialist trade union FGTB for the Liège region. Several of its missions concern the management of business restructuring processes, as much in terms of anticipating them as in providing follow-up support.

As far as anticipation goes, the association first of all develops several training modules aimed at FGTB trade union delegates. This training cycle, which lasts for three years and consists of close to 300 hours of training, aims at enabling around a hundred delegates to make better use of the information regularly passed on by the business company, thanks to training modules on financial analysis, social law, fiscal law, information technologies, etc. and to thus ensure a better monitoring of the financial, economic and industrial health of the company they are a part of.

Moreover FAR has for several years ensured a surveillance process of the businesses of the Liège region, principally those springing from its historical sector, the steel industry. It thus publishes 'business barometer' files which summarise and regularly bring up to date the relevant information aimed at delegates within the businesses. These files moreover enable FAR to 'sound the alarm signal' in cases where the data worsen. They also offer the association the possibility of developing sectoral trends over the territory and to thus understand the indirect impacts the large steel groups have on their subcontractors.

In terms of providing follow-up support during restructuring, FAR publishes dossiers for its delegates so that they have better tools to participate actively to the information and consultation processes of businesses 'envisaging a collective layoff.' These dossiers also contain a series of questions put forward by FAR's experts in order to collect relevant information. In the case of a request by delegates (and the approval of the company), these experts can take part in information meetings where they assume a technical, strategic and/or particularly complex character.

This approach of the FAR, according to us, displays many forces : It's first an innovating tool based on an unique approach within the French-speaking Belgian union world. By the way, it allows to work more precisely, more effectively too, the economical and financial information due to be public by virtue of legislation are actually seen by the union delegates as out reach, or unintelligible. Another advantage are the processes of formation and accompagnement which are realized by the same persons within the FAR, this permits creating a relation of trust, always useful when it deals with such difficult topics. Concerning the borders of the approach, we've pointed out four elements. First, the member who's interviewed in the prospective of this project shows that it may be difficult to make the delegates aware of the necessity to put forward this anticipatory approach of redevelopment, above all when they come from companies where the trade union culture is nonexistent. Another limit identified by one of our indicator is the difficulty to give a sense of responsibility to the beneficiary of the anticipatory actions realized by the FAR. On the other hand, it appears to us that the continuous refresh of the companies references might be quite tedious and time consumating. Finally, we've noticed that this approach is restricted to a very particular area, the one of metallurgy and that of steel industry, and in conclusion it cannot back the global vigil of the economical sector of a given area.

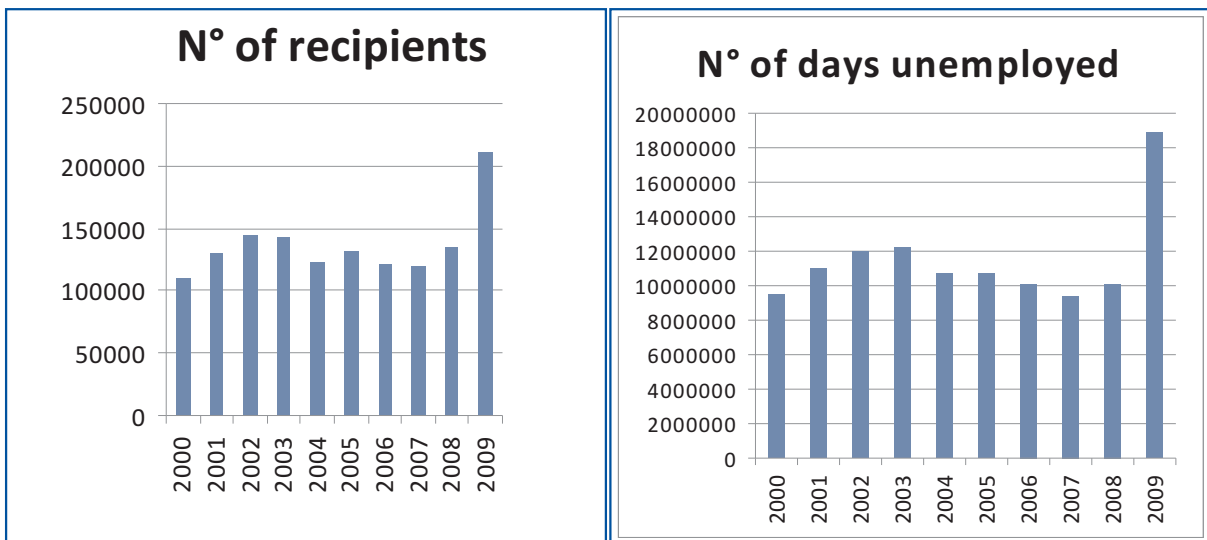


### 3.1.2 TEMPORARY LAYOFFS OF BLUE COLLAR WORKERS FOR ECONOMIC REASONS

The unemployment of the temporary workers for economic reasons is a tool of "anticipation" in the sense it is often used by the companies in order to avoid the collective dismissals which would be a result from a lack of temporary activity.

The Act related to employment contracts of 3<sup>rd</sup> July, 1978, makes provision for an employer to suspend the employment contracts of its blue collar workers when economic difficulties which cannot be attributed to it prevent the maintenance of the work rhythm within the company. The suspension of employment contracts can be total or partial (working short time) during a maximum duration of four weeks. After a suspension of activity for such duration, the employer is obliged to put the blue collar workers back to work for 7 days, unless the company's Equal Representation Committee authorizes the temporary layoff for a longer period because of a difficult economic cycle. This period of non-activity is financed by the public authorities (National Employment Office) through the granting of unemployment benefit, the amount depending on the personal situations of the workers concerned.

This temporary unemployment of blue collar workers for economic reasons is a measure which is frequently used by Belgian business companies. Thus the figures given by ONEM (responsible for paying part of the unemployment allowances) show a relatively consistent and continuous use of the measure, with a peak during the year 2009, when the measure was used almost twice as much. This rise is probably due to the conjunction of two phenomena: a harsh winter and the global economic crisis.



### 3.1.3 COLLECTIVE REDUCTION OF WORKING HOURS

The collective reduction of working hours is a tool of "anticipation" in the sense it is often used by the companies in order to avoid the collective dismissals which would be a result from a lack of temporary activity.

The Royal Decree of 16<sup>th</sup> May, 2003, makes provision for reductions of the social security contributions for companies which decide to implement, in order to avoid layoffs, either a collective reduction of working hours (at least one hour a week for an indefinite period) or to implement a four day week.<sup>39</sup>

In order to benefit from reductions in social security contributions, the reduction of working hours has to be determined for an unspecified period. The duration of the reduction is proportional to the reduction of working hours. It is 8 quarters for a collective reduction to 37h per week, 12 quarters for a reduction to 36h per week and 16 quarters for a reduction to 35h per week. And finally it is 4 quarters when a four day week is implemented.

### 3.1.4 TEMPORARY CRISIS MEASURES

The decree of 19<sup>th</sup> June, 2009, containing various arrangements in terms of employment during the crisis establishes temporary measures which aim at adapting the volume of employment for businesses that are faced with economic difficulties resulting from the contemporary global crisis. These measures had initially to be end by the end of June 2010, but they have been extended until the 30<sup>th</sup> of September, after advice from the National Work Council, and could be extended again until the end of December. More specifically, the act makes provision for the following measures:

- *The temporary adaptation of working time for crisis reasons* which consists of a collective reduction of working hours for a section or the whole of a company's personnel. This reduction must bear on ¼ or 1/5 of the weekly full time working time and must be subject to a company collective bargaining agreement. The aid consists of a reduction in social security contributions.<sup>40</sup> As this reduction in working hours involves a proportional reduction of income (before reductions), the collective bargaining agreement must make provision for financial compensation for the workers.<sup>41</sup>
- *The individual and temporary reduction of working time to face the crisis*, also called "temporary working time reductions" which is a measure the employer can offer its personnel. The reduction must bear on a fifth or a half of the working time for a period from one to six months. A worker who accepts such an agreement receives an allowance from the National Employment Office in order to compensate for a reduction in his/her salary.<sup>42</sup>
- *White collar worker unemployment for economic reasons*, which consists of a total suspension of the execution of the employment contract (for a maximum of 16 weeks) or the introduction of a reduced time working system (minimum 2 days a week for a maximum of 26 weeks). The measure has to be justified by economic causes linked to the crisis. It is thus only available to businesses who are faced with either a reduction of 20% of turnover, of production or of their orders,<sup>43</sup> or are making significant use (20%) of a temporary layoff for their blue collar workers and who have concluded a collective

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<sup>39</sup> At present the reduction is 400€ per quarter per worker concerned.

<sup>40</sup> The reduction is respectively €750 (reduction by ¼) and €600 (1/5) per worker and per quarter. If the reduction of working hours goes hand in hand with the introduction of a four day week, the aid is increased by €400 per worker and per quarter.

<sup>41</sup> This compensation must be at least ¾ of the amount of the fixed reduction of social security contributions.

<sup>42</sup> The amount of the allowance is proportional to the reduction aimed at by the agreement. The allowance is €188 (-50 years) or €248 in case of a 1/5 time reduction and €442 in case of a 50% reduction of working hours..

<sup>43</sup> Royal Decree, 31<sup>st</sup> July, 2009

bargaining agreement or who have established a business plan on the subject. During the periods they do not work, workers receive unemployment benefit from the National Employment Office as well as supplement paid by the employer.

- *The restructuring card* for the workers of businesses which have gone bankrupt (see the chapter on the implementation of restructurings).<sup>44</sup>

The ONEM<sup>45</sup> recently distributed its first analyses as to the use made of the two principal crisis measures which are the temporary unemployment of white collar workers and temporary adaptation of working hours. According to the report it seems that the use of the temporary unemployment of white collar workers has not been as large as was predicted. In fact, the ONEM states that after six months of existence, between July and December, 2009, only 1,380 businesses had made use of the measure and placed 28,965 white collar workers on unemployment for economic reasons. This measure cost the ONEM 9,390 million Euros whilst the body had budgeted 75.5 million for this purpose. The temporary adaptation of working hours was also used less than had been expected. Only 633 companies took advantage of this measure, in reducing the working time of 11.345 people for a cost of 2.2 million Euros, whilst 18.25 million had been allocated to this end.

However the participants of the national seminar of the report presentation don't share these observations given that they all highlighted the huge efficiency of these measures and judged them fully adequate to face the crisis.

### 3.1.5 THE TRANSITION ALLOWANCE IN THE FLEMISH REGION

The transition allowance is a Flemish Regional measure supplementary to the federal temporary crisis measures. Flemish workers whose working time has had to be reduced because of the current crisis can benefit from an allowance.<sup>46</sup> This allowance is not granted if the employer is already providing compensation for the loss of income resulting from this reduction of working time, if the workers have several jobs or if they benefit from official business creation assistance. If the worker whose reduction of working time is a minimum of 20% decides to follow a training programme recognized by the Flemish public authorities s/he receives an additional allowance.<sup>47</sup> The allowance is limited to the duration of the reduction of working time and cannot exceed 6 months (this period can be extended by a maximum of 6 months).

We've noticed during the national seminar, that most of the participants both French speakers and Dutch speakers possessed little knowledge of this device which could be due to a very confidential use of the companies. By the way, all focuses the interest of such a measure while this crisis time and more precisely, the link suggested between the temporary unemployment and the formation.

<sup>44</sup> 'To obtain the target group reduction, the worker's standard quarterly salary must not exceed €5870,71 if, when s/he is hired, the worker is aged less than 30 years old. For workers who are aged at least thirty, this limit is €12.000' See <http://www.emploi.belgique.be/defaultTab.aspx?id=24016>

<sup>45</sup> ROCOUR Vincent, "les mesures anti-crise, les entreprises ne se ruent pas", article in the newspaper, La Libre Belgique, 12/02/2010.

<sup>46</sup> This allowance rises to 345€ (+43,35€ if the person is living alone) net per month in the case of a 50% reduction of working time, to 145€ (+43,35€ if the person is living alone) net per month in the case of a 20% reduction of working time and to 95€ net for a reduction of between 10% to 20%

<sup>47</sup> A sum of 58,59€.

## 3.2 Long-term initiatives of anticipation

The measures described in this chapter are not necessarily based on a particular legal framework but are instead all built on the initiatives set by the stakeholders of the labour market in the perspective of anticipating on a larger temporality than the legal measures displayed in the previous chapter, the phenomena of restructuration. We successively show the initiatives of the economical redeployment, the initiatives of the flexibility of the labour market and the initiatives of the perspectives of work.

### 3.2.1 THE INITIATIVE OF THE ECONOMIC REDEPLOYMENT

Avoiding the exhaustive list of the initiatives of the economic redeployment, we display a “micro” initiative resulting from the territory of Seraing, “The Master Plan” and another one more “macro”, “the Marshall Plan”, initiated by the Walloon Region.

#### 3.2.1.1 *An original initiative in anticipating employment needs*

#### Box 2:



#### The Master Plan of the city of Seraing

*This case study summarises the initiative carried out by a Wallonia town to anticipate its future needs in terms of economic activity and jobs...*

Situated on the banks of the Meuse, on the very outskirts of Liège, the town of Seraing has experienced a history and economic boom strongly marked by industrial evolution. Up until around 10 years ago, Seraing – also known as the City of Iron due to its numerous coalmining resources and its significant steel production – is an economically prosperous industrial town, on whose territory numerous renowned businesses have set up, with a continuous flow of production and employing numerous blue collar workers, the majority of whom spring directly from the town and the nearby region.

The progressive slowdown of steel production and the successive phases of amalgamation/buy-outs experienced by the Cockerill-Sambre business company, a local economic flagship, which has in a few years become simply Usinor, then Arcelor and today Arcelor-Mittal, has led local and regional elected representatives to ask questions about the future and to fear economic dependency on some beacon factories now managed in a logic of globalisation and worldwide competition. The Town thus set up a not for profit organisation – Arebs, for ‘Agence pour le Redéploiement Economique du Bassin Sérésin’ – whose primary goal is to draw up, on a recurring basis over the course of time, diagnoses concerning, amongst others, the economic activities and the life of the local population. These data have given rise to the creation of different themed working groups, whose aim is to initiate reconversion steps, notably by providing a support structure for the development of new activities and promoting research and training activities, and in this way to anticipate any important economic difficulty.

A difficulty which materialized in 2003 when the Arcelor Group announced its new strategic directions: the Group's investments would henceforth be concentrated on its most high performance factories and the Group's most accessible ones (on the edges of the sea). This decision could not be appealed and meant the closure of so called 'hot phase' factories, situated in Seraing and other industrial sites in the Liège region. The Group's message to the hot phase factories in the Liège basin was clear: in six years steel production in the sites of the Liège regions would cease. Six years, such was the time limit the local elected representatives, the directors and the socio-economic structures had available to anticipate the restructuring of the Arcelor factories and to initiate the process of economic redeployment.

The Master Plan drawn up by the working groups set up by Arebs, which traces out the main lines of regional planning and economic promotion which are to be privileged, has become a genuine tool for negotiating with the industrialists on the site – in particular to manage the projected restructuring of steel production activities – as well as a guiding plan for the promotion activities the Town is developing in order to attract new investors and new companies to Seraing and the region. This Plan has also become a tool of managing the forward planning of the economic reconversion and professional reinsertion of local wage earners threatened by the restructuring of the Arcelor Group.

Reflections were thus initiated as to the skills of the – in part future – job seekers, on the needs of employers as well as on the method of encouraging the matching up of these two components, notably by making use of the region's training institutions, in order to avoid a too dramatic social crisis and certain levels of the local population being placed in precarity. In the course of 2005, the City of Seraing created an Autonomous Communal Board called 'Erigès' (<http://www.eriges.be/en/pages/homepage.aspx>, given the responsibility of implementing the Master Plan.

### 3.2.1.2 The Marshall Plan

The 30th of August 2005, The Walloon government adopted a plan to relaunch the Walloon Region called "Prior Action Plan for the Walloon future", or "Marshall Plan" in reference to the economic and financial assistance of the Europe suggested by the American general Georges Marshall the 5<sup>th</sup> June 1947. This plan concerning the years 2006-2009 is based on 5 axes:

- The creation of poles of competitiveness piecing together, the organisms of formation and research from 5 domains "bearer" which are the human sciences ("biowin" pole), food-processing (Wagralim pole), the mechanical engineering ("Mecatech" Pole), the transport/logistics ("Logistics pole in Wallonia") and the aeronautics /spatial ("skywin").
- The stimulation of the creation of activities via the rationalisation and a better coordination of the economic stimulation of the help optimization of the economic expansion, the fortification of the exportation support, the increase of the professional availability, the support of the youth employment and the development of the new functions within the TPE and PME, the streamlining of the sites of economic activities disaffected and the equipment of home zones of economic activities.
- The reduction, for the companies, of the regional and provincial tax system, the creation of local frank zones and the suppression of some taxes.

- The fortification of the research and the innovation via different actions of support directed to projects bearers and research centres.
- The development of the competences due to a strategy of response to Jobs in shortage and the launching of a “languages plan”, the quality improvement of the formation and the qualifying teaching.

In addition, this plan of relaunching projects a work methodology based on principles of “new governance” in a matter of coordination between actors, budgetary management, calendars of implement and evaluation.

In September 2009, The Walloon Government dedicated its time to carry on this initiative bringing to it a list of modifications in order to improve its efficiency. Thus, the initiative called “Marshall Plan 2 Green ” points the strengthening of the proper framework to the creation of activity and employment, to promote the competences and the knowledge , to initiate the alliances “ employment-environment” to strengthen the increase of the professional availability and create a 6<sup>th</sup> pole of competitiveness dedicated to environmental technologies. Also the government promises to accentuate the aspect of “long-term development” for each of these measures of the plan.

### 3.2.2 THE INITIATIVES OF FLEXIBILITY OF THE LABOUR WORK

In order to illustrate the initiatives of flexibility of the labour market, we display here the measures “Plus minus conto” and also the device of the employers association.

#### 3.2.2.1 *An initiative to anticipate the negative effects of a cyclic production*

##### Box 3:



#### **The Plus Minus Conto**

*This case study summarises the initiative carried out by the Flemish and the Brussels Regions to anticipate the decreasing of employment in the production cycle in the automotive industry.*

In Belgium, the automotive industry is confronted to an enormous challenge in order to save and strengthen its competitive position, essentially compared to the neighboring countries.

For that reason, following the announcement of the closure of Audi VW in Brussels, the Region of Brussels Capital and the Flanders have both agreed to sign an agreement at sectorial level which is called the “Plus Minus Conto” as they were put at risk to see this car manufacturers getting off Belgium. *“The working collective agreement of March 2007 has launched a “plus minus conto” which is applied to employers and workers of automotive vehicles assembly plants and to firms involved in the manufacturing of pieces and accessories for the automotive industry, both located in the Flemish region as well as in Brussels”* (Joint Commission 111).

This agreement forecasts to face the fluctuations of the market demands over the cycle of the car (6 years). In other words, workers should work longer days (10 hours a day and 48h a week maximum) once a new car model is launched as there is much more sales than at the time car manufacturers design a new model and shorter days later in the cycle. The goal of this system is a “capitalization of time” which gives the opportunity to collectively agree that the workers would work longer for some periods and less in others, under the condition of being conformed to the legal working time average at the end of a 6 years cycle. This agreement can also be perceived as an alternative of technical unemployment. We must underline the fact that this agreement does not only apply to car manufacturers but also to their subcontractors (joint commissions of metallic, mechanical and electric buildings). We must point out that this anticipative measure of restructurings is not approved unanimously between social partners since many Belgian union representatives denounce this measure that they consider as responsible for a deterioration of working conditions and which would lead to the disappearing of many temporary and fixed term contracts. During the national seminar, many participants have already underlined the limited interest of such a tool responding to a very particular cycle of activities (pluriannual). To them, the other long-time existing tools such as the annualization of the working time, remained the most adequate to answer to some more classical situations.

### **3.2.2.2 The employers pool**

The association of employers is an innovating tool which permits to the companies to get connected and hire together a staff and sharing its labour time as its cost. This sharing responds to two types of situation: The cyclic variations of the activity (ex. Seasonalisations)

Or regular needs but restricted to particular abilities (ex: accountants assistant). This device is considered as “winner –winner” while it allows to join the needs in flexibility of the companies with a security of the jobs, thanks to the open-ended contract, imposed by the legal framework (Program law of August 2000)

- In anticipation, it allows a member of the employers association, in difficulty, to avoid the dismissal by temporarily or definitely unload from the cost of the worker via a reallocation of the time dedicated to him towards other companies of the association.
- Curatively, allowing a company under restructuration to create or join an association of employers in order to transfer a staff likely to be dismissed to such a structure<sup>48</sup>.

### **3.2.2.3 Initiatives regarding employment trends**

Initiatives on employment trends focus on anticipating future skills needs within a sector or territory. In Belgium these approaches are initiated mainly by the public authorities at regional or sectoral level.

In Wallonia the main initiatives are led by the 25 Competence Centers. Created in 1998, these centers have within their remit training, teaching, monitoring, knowledge management and

<sup>48</sup> Thus we observe that this initiative would suit the legal framework of the device seen it wouldn't respect the target public imposed by the program law of 2000 which restricts it to long-term job seeker. It would be suitable to get a special exemption from the authorities.



raising of public awareness on employment trends, and are constituted of company leaders, workers, unemployed people, students, and teachers. Each centre offers high-level technical training, using state-of-the-art technological tools, in a specific area of activity (logistics, chemistry, water industry, tourism, etc.). They are non-profit making organisations, registered in the Walloon Region and coordinated by the Forem (Walloon public employment service), the Board of Directors of which is composed of all stakeholders (company representatives, trade unions, universities, research centers and Forem) with an interest in the relevant area of activity. These bodies are spread across the Walloon territory and are situated close to the respective industries. As regards employment prospects, the competence centers are responsible for monitoring the availability of jobs and skills with a view to a better match between supply and demand. Each centre is expected to submit a biannual synthesis report along with recommendations<sup>49</sup>.

Other Walloon initiatives on labour trends are carried out by the 11 sub-regional Employment and Training Committees (CSEF), which are consultative bodies integrated into the Forem since 2003. These bodies, which are also of a multi-stakeholder nature (comprising representatives of companies, trade unions and public authorities) have within their remit identification of the socio-economic trends in their area based on an analysis of local employment and training needs.

In Flanders, according to the Belgian national report produced as part of the European ECORYS project<sup>50</sup>, there are separate Commissions for the following sectors : goods transport, metal-working and technology, textiles and clothing, welfare and health care, timber and construction, and tourism. One of their objectives is to gain insight into likely trends in employment and skills needs. This work consists mainly of a quantitative analysis of the job market; a qualitative analysis of the results for specific sectors is carried out every two years by the Social and Economic Councils. The results of these analyses, carried out in partnership with Sectoral Training Funds, are the basis for corresponding policy formation.

Another initiative in Flanders should be noted: the 2008 study on "creation of sustainable employment at and around the Brussels airport"<sup>51</sup> financed by the Flemish Government<sup>52</sup> and coordinated by the Flemish Airport Commission. One of the objectives of this study was to identify current and future key issues (with a 2025 horizon) in the job market in the airport area.

At sectoral level there are several bipartite Sectoral Training Funds financed by all companies participating in a joint commission, operating on a local (province, region) or national basis; some of them have labour trends within their remit. Without claiming to be exhaustive, two of the initiatives are:

- the 2010 study from the Training Fund of the Liege-Luxembourg AGORIA Federation for Industrial Technology, the objectives of which were to specify the changes needed in sectoral training programmes and to identify the areas in which innovations are needed at company or sectoral levels;
- The CEFORA Research Service which carries out national surveys on job trends and related critical areas<sup>53</sup>.

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<sup>49</sup> See <http://www.leforem.be/centres-de-competence/les-centres/missions/veille/rapports-de-veille.html>

<sup>50</sup> PETERS and al (2010), "Sector Councils on Employment and Skills at EU level", Country reports, Belgium, Rotterdam, Ecorys Nederland BV in cooperation with KBA, March.

<sup>51</sup> "Creatie van duurzamerwerkgelegenheid op en rond Brussels Airport"; [www.serv.be/uitgaven/1312.pdf](http://www.serv.be/uitgaven/1312.pdf)

<sup>52</sup> The national airport is located in the Flemish territory.

<sup>53</sup> <http://www.cefora.be/cefora/fr/entreprises/mieux-nous-connaître/qui-sommes-nous/>



Finally one should note the existence of trans-regional initiatives such as the Abilitic Project. This research was co-financed by the European Regional Development Fund, the Government of the Grand Duchy of Luxembourg, the Walloon Region and the European Interreg3 Programme during the period July 2005 to December 2007, and was aimed at anticipating future skills needs in the broad Lorraine, Luxembourg and Wallonia area. A website still exists<sup>54</sup> and offers both a methodology for skills needs forecasting and the results of such a study on eight trades within the following sectors : TIC, Logistics, and Building.

### 3.3 Evaluation of anticipation mechanisms

The anticipation mechanisms from the legal framework stand apart because of their age, their implementation dynamics and by the manner in which the different restructuring stakeholders consider them.

The continuous informing of workers is by far the oldest measure. Given impetus on the basis of European Directives, it is not very specific to Belgium. In terms of information on business restructuring, the principle of information in advance is compromised by the frequent desire of business companies to keep their intentions secret as long as possible in order to maintain control of the process of restructuring and/or to not broadcast an image of failure which could damage them. Another limitation is tied to the international character of numerous businesses established in Belgium: it is thus very often the case that the initiative for restructuring comes from foreign decision makers who do not take part in the information process. As far as the workers are concerned, the initiatives taken by certain organizations, such as FAR, the subject of our first case study, bears witness to the necessity to train business company union delegates, often poorly equipped to manage and analyse the flow of information which is passed on by their company.

The temporary unemployment of blue collar workers is also an old measure. Arising from a debate between the social partners as to the necessity of offering business companies more flexibility to confront various contextual influences (weather, business conditions, etc.), this measure has proved and continues to prove its relevance today, in the eyes of the different social partners. Several criticism can sometimes be made of it. . On the one hand, it involves a transfer of the responsibility of paying for the cost of flexibility from the business company to the collective body, as the public authorities pay a part of the unemployment benefit. Next, the system can be often hijacked by the employers, and often with the workers' approval, into an illicit search to avoid paying taxes: the businesses place their workers on temporary unemployment whilst keeping the work going whilst paying their workers on the black.

We do not have quantitative data available related to the collective reduction of working time with a reduction in salary. It nevertheless seems that this recent measure (2003) is hardly meeting with success in Belgian business companies. Within the trade unions, the legal measure is presented as a solution which is often reluctantly accepted by workers to avoid layoffs in businesses in difficulty. This measure also provides the occasion for workers' representatives to

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<sup>54</sup> <http://www.abilitic.eu/>

relaunch the wider debate about the reduction of working time, but on an equal salary and with compensatory staffing. For employers organizations, the employers seem rather favourable to increasing working time through the payment of overtime. Compensating for a reduction in working time by the hiring of new workers also raises in their eyes the question of recruiting and the training of the latter and the indirect costs linked to the reorganization of the company.

The temporary crisis measures are the first examples of anticipatory legislation rapidly put into place, following the serious deterioration of the overall business conditions. Very recent measures, they do not permit a sufficiently detached view in order to correctly evaluate how they function. The first ONEM report on the subject has already provoked reactions from the social partners. According to the workers' representatives, these results indicate that the measures are inappropriate and their low level of use is explained by the need for the company to prove a reduction in turnover. This condition, imposed by the workers' representatives, has been able to discourage a good number of businesses to make use of it, which shows that, in the eyes of the trade unions, the envisaged measures in fact respond to a need for 'pure flexibility' on the part of the employers. The trade union organizations in addition estimate that the temporary unemployment does not enable jobs to be saved: whilst unemployment for economic reasons for blue collar workers has been used overwhelmingly since the beginning of the crisis, 80% of sackings concern blue collar workers. To conclude, the workers' representatives stress that what has protected the white collar workers from collective layoffs is the duration of their notice period, much greater than for blue collar workers, which has ended by relaunching the debate over the harmonisation of white and blue collar worker status. For the Federation of Belgian Enterprises, there is quite another explanation and it is to be found in an overestimation of the financial needs necessary to use these measures. The ONEM counted on a maximum use of temporary unemployment, lasting 5 days a week, whilst the business companies only use it during 1 or 2 days a week. The employers' organizations thus maintain that the measure is effective and point out that the temporary unemployment mechanism incontestably explains the low growth of unemployment in Belgium, in comparison with neighbouring countries.

Finally the transition allowance in the Flanders Region is a recent measure, initiated a little before the implementation of the Federal crisis measures. At the present time no evaluation of this mechanism exists. This allowance bears witness to the specific competences the Regions have in terms of managing employment and the differences in treatment they can bring about between Belgian workers. It also bears witness to a difference in financial means that the Regional authorities have available to face up to the present crisis and, more generally, the management of employment.

Concerning the long-term initiatives of anticipation, the evaluation skills are less common. The evaluation of the Marshall Plan was twice realized by the Walloon Evaluation Prospective and Statistics Institute (IWEPS) in august 2007 and March 2009. Its last report focused on a list of positive elements (particularly "the new governance " and the research aid) and others needing some improvements (especially the lack of the strategic of new coordination structures, administrative issues in the financing projects, strategies of formation and the perfectible modalities of access to this one. Also, the study points out the lack of retrospect to judge the results of some measures (economic impact of different measures, infrastructure plans,). The device of the employers group, in regard of it, is not yet the subject of formal evaluation, well-knowing, that its development in Belgium remains very confidential (it concerns twenty companies sharing twenty of workers through three groups of employers). Yet, the qualitative analysis of these three groups witness situations in which such a device prevent many companies in restructuration from many numerous dismissals.

In the present chapter, we propose to go over the Belgian legislation related to the dynamics of business company restructuring. The Belgian legal framework is distinguished by four principal scenarios: collective layoffs, which are subject to a very precise procedure; recognizing a business company as being in the process of restructuring, which opens up certain particular rights to the company and its workers; the transfer of the company, the legal details of which guarantee the workers certain rights; and, finally, the closure of the company, which is subject to a particular definition and a particular follow up.

### 4.1 Collective layoffs

The Directives of the European Communities<sup>55</sup> relating to collective layoffs have been transposed into Belgian law by the Collective Bargaining Agreement n°24 of 2<sup>nd</sup> of October 1975 about trade union information and consultation procedure in case of collective layoffs and by Royal Decree of 24<sup>th</sup> May, 1976, on collective layoffs, then by the decree of the 13<sup>th</sup> February, 1998, (known as the Renault law).

#### 4.1.1 THE COLLECTIVE BARGAINING AGREEMENT N°24 OF 2<sup>nd</sup> OF OCTOBER 1975

This agreement precisely describes the conditions to be fulfilled by a business company<sup>56</sup> before proceeding to a collective layoff<sup>57</sup>:

1. Having employed on average over 20 workers over the course of the calendar year preceding the collective layoff. On the 20<sup>th</sup> June, 2009, this threshold corresponds to a minority of Belgian businesses (8,81%<sup>58</sup>) but a majority of the country's workers (78,41%<sup>59</sup>).
2. The motive or motives for the layoff must not be related to the individual workers concerned.
3. The layoff must affect a minimum number of workers over a period of sixty days. This number varies according to the size of the technical business unit. For business companies employing over 20 and less than 100 workers, the layoff must involve at least

<sup>55</sup> European Directives n° 75/129/EEC of 17<sup>th</sup> February 1975 and n°98/59/EC of 20<sup>th</sup> July, 1998.

<sup>56</sup> Defined in the broadest sense as any 'technical business unit'.

<sup>57</sup> The attentive reader will have observed that the definition of a business undergoing restructuring does not exactly overly the definition of collective layoffs. A business can plan to carry out a collective layoff without benefiting from the status of a business undergoing restructuring, and vice-versa.

<sup>58</sup> National Social Security Office, "Emploi salarié (O.N.S.S.) du deuxième trimestre 2009", page 19. See [http://www.onss.fgov.be/binaries/assets/statistics/employment/employment\\_full\\_fr\\_20092.pdf](http://www.onss.fgov.be/binaries/assets/statistics/employment/employment_full_fr_20092.pdf)

<sup>59</sup> National Social Security Office, "Emploi salarié (O.N.S.S.) du deuxième trimestre 2009", page 81. See [http://www.onss.fgov.be/binaries/assets/statistics/employment/employment\\_full\\_fr\\_20092.pdf](http://www.onss.fgov.be/binaries/assets/statistics/employment/employment_full_fr_20092.pdf)

10 people. For businesses employing between 100 and 299 workers the layoff must involve at least 10% of the workers employed. For companies employing at least 300 workers the layoff must involve at least 30 people.

Concerning the notification of collective layoffs to workers' representatives, the agreement specifies that an employer planning to instigate a collective layoff must inform 'beforehand' the workers' representatives (Works Council, or in its absence the union delegation, or, in the absence of that, the workers themselves). The employer must communicate in writing 'all relevant information and in every case the following elements':

- The motives for the planned layoff
- The criteria envisaged to choose the workers to be laid off
- The number and category of workers to be laid off
- The number and categories of workers usually employed
- The envisaged method for calculating possible severance pay which does not result from law or from a collective bargaining agreement
- The period during which the layoffs will be carried out

This information 'must enable the workers' representatives to formulate their responses and suggestions so that they can be taken into consideration'. There then begins a consultation period, whose goal is to envisage the possibilities of avoiding or reducing the collective layoff or, at least, to lessening its consequences through making use of social measures of back up support aiming notably at aiding the reclassification or the reconversion of laid off workers.

After the end of the information and consultation procedure, the employer gives notice of the intention to implement a collective layoff to the Director of the sub-regional employment department of the region in which the business is situated, in providing proof that the aforementioned procedure has been respected. Since the Royal Decree of 7<sup>th</sup> of June 2009, come into force the 19<sup>th</sup> of June 2009 and implementing the crisis measures the employer must also send a copy of this letter to The Federal Public Department for Employment, Labour and Social Consultation.

This notification triggers a period of 30 days during which the employer cannot sack the workers concerned by the collective layoff. This 30 day period can be reduced or extended (up to 60 days) by the Director of the sub-regional employment department of the region in which the business is situated.

Once this period has expired a worker can be laid off. It should be noted that this information and consultation process in the case of a collective layoff establishes an obligation concerning procedures and not concerning the result. The consultation thus might not lead to an agreement between the employer and the workers' representatives. In this case, the act has fixed no time period by when this consultation process should be brought to a conclusion.

### 4.1.2. THE RENAULT LAW

In 1997 the non-compliance with the regulations of prior information by the French Renault business company pushed the Belgian legislator to enact the act of 13<sup>th</sup> February, 1998, called 'the Renault Law,'. This law is often described by the media as the legal framework on collective layoffs. In fact, it only specifies the information and consultation process as it is defined by collective bargaining agreement n°24 and imposes civil sanctions in case of non respect of the agreement.

The law specifies the four stage procedure the employer must compulsorily follow:

1. Present to workers' representatives a written report in which it announces its intention to carry out a collective layoff. A copy of this report must be sent to the Director of the relevant sub-regional employment department (FOREM in Wallonia, VDAB in Flanders or Adinis in the Brussels Region) of the region in which the business is situated, as well as The Federal Public Department for Employment, Labour and Social Consultation
2. Provide proof that they have met them to discuss orally their intention to carry out a collective layoff
3. That they have consulted the workers in order to allow them to ask questions, formulate arguments and/or make counter-proposals.
4. That they have examined these questions, arguments and counter-proposals and have responded to them.

This law called "Renault" plans also modalities of an appeal against this decision of dismissal. Thus, the representative of workers arrange a 30 days deadline, starting from the notification done by the employers in the employer of the subregional employ department, to contest individually the process, under the condition, though, that the workers representatives have themselves contested the process.

We observe that the workers who are authorized to benefit from this are those who were dismissed during a 120 days period, which takes place from the start of the 60 days used to establish the collective character of the dismissal and ends after a 60 days period.

The law named "Renault" imposes civil sanctions in case of non respect of the information/consultation process of the CTT n°24. These sanctions target the neutralization of the dismissal effects of the workers concerned by the collective dismissal and this, as long as the process is not totally respected. Thus, if the worker is still in an advance note, the dead line of this advance note is suspended until the end of the proceedings, and maintains the wages of the worker. If the contract is already over and indemnified, the worker has the right of being reintegrated in the company.

In addition to this legislation on collective layoffs, 'the solidarity pact between the generations' and the 'anti-crisis' measures have led to the developing of several new obligations for the employer in order to help the laid off worker to rapidly find a job. These measures are presented in chapter 5 of the present report.

## 4.2 Recognizing a business company as undergoing restructuring

Belgian legislation defines very precisely the criteria which must be met for a business company to obtain recognition from the Federal Ministry of Employment, Labour and Consultation as being a business company undergoing restructuring. The legislation on this point has been profoundly changed following the Solidarity Pact between the generations.

- The Royal Decree of 7th December, 1992, stipulates the necessity for a business company to introduce a recognition as a company undergoing restructuring file

The Royal Decree of 9<sup>th</sup> March, 2006, related to the active management of restructurings modifies the previously cited Decree and makes provision for new conditions for recognition as a company undergoing restructuring. The business occupying more than 20 workers and which has announced a collective layoff is recognized as undergoing restructuring<sup>60</sup>. The company has to set a special reemployment unit or to participate to an existing a special reemployment unit which will offer outplacement program to the laid off workers (see the chapter 5.1.1.)

- The royal decree of the 3<sup>rd</sup> May 2007 fixing the conventional pre-retirement in the context of the solidarity pact between the generations, plans, predicts rules in matter of pre-retirement (reduction of the age access to the pre-retirement, reduction of the advance-note) enforceable to the workers of the companies under restructuration as long as these companies introduce a file in order to be known by the Federal Minister of the Employment as a company under restructuration. These companies have to proceed to a collective dismissal or have known during the previous year a certain number on unemployed days at least up to 20% of the total amount of days declared for the workers to the National Security Social Office. These companies have to submit a collective convention of work relative to the pre-retirement as a plan of restructuration which contains a plan of positive actions for the women, the guarantees concerning the complementary damages of pre-retirement in case of bankruptcy of the company. The companies which proceeded to a collective dismissal have to set up or participate to a special reemployment unit. In addition the plan must include the following elements:
  - An assessment of the measures concerning the possible redistribution of work within the business company.
  - The rules agreed to within the above mentioned collective bargaining agreement concerning the severance pay.
  - The follow-up support measures planned with a view to getting people back to work including the creation of a special re-employment unit and an outplacement provision funded by the company. (see later section)
  - The list of candidates for prepension

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<sup>60</sup> When this royal decree was released, an extra obligation planned that only the company wished to reduce the age of the access to the pre-retirement could be recognized as being under restructuration. This obligation was repealed by the AR of the 22<sup>nd</sup> April 2009.

- The attestation of the Regional Ministry of Employment, through which it approves the follow-up support measures for getting back to work.<sup>61</sup>

It should be noted that these two Royal Decrees make provision for a particular definition of a collective layoff, as its size in terms of its workforce must reach the following threshold:

**Table1 - Restructuring: minimum workforce according to the size of the business company**

| Business company workforce | Number of layoffs |
|----------------------------|-------------------|
| Less than 12               | 50 %              |
| Between 12 and 20          | At least 6        |
| Between 21 and 99          | At least 10       |
| 100 et plus                | At least 10%      |

This recognition as being a company undergoing restructuring status is valid for a period fixed by the Ministry of Employment, starting when the collective layoffs are announced and finishing after two years at the latest.

### 4.3 The transfer of a business company

The transfer of a business company is a restructuring process in which a company – or part of it – is transferred, from a previous owner to a new one and in which the workers are faced with a change of employer. Collective bargaining agreement 32bis, the transposition into Belgian law of European Directive 77/187, of the 14<sup>th</sup> February 1977, aims to guarantee workers' rights and obligations in every case where there is a change of employer, as much in the case of a company transfer (handover, merger, etc.)

This guarantee is not required from the European Directive in the case of re-hiring of workers following a takeover of assets following a bankruptcy. In this case, the legal framework imposes lower obligations for the new company in order to avoid compromising the success of the takeover the choice of which workers to transfer and a partial modification of working conditions. Workers for their part are then free to refuse the transfer to a new employer.

The Collective bargaining agreement 32bis also makes provision for worker information/consultation measures in case of non-existence of a Work Council nor any workers representation.

<sup>61</sup> Source: Comments on the draft national background paper, from the Federal Public Department on Work, Labour and social dialogue, 28<sup>th</sup> June, 2010.



**Box 4:**



### **The MBO Case study**

*This fourth case study focuses on the transfer of a Belgian business company recorded in 2006 within the framework of the European MIRE<sup>62</sup> project and so judged socially responsible by the social partners brought together for the project. An updating of this project in February 2010 has confirmed the viability of such a practice and its value in terms of maintaining and creating jobs.*

In 1932, Nestlé built a factory in Hamoir. The site's activity grew rapidly, shaping the development of the entire region. From 2005, the worldwide reorganisation of the Nestlé group led to a fall in production at Hamoir. The management informed the trade union of its intention to lay off 60 of the 120 staff and to find a solution for those staff that would have to leave the company. The Renault Law process thus started on February 2005, with the first phase of information and consultation taking place over three months. Before the company's annual holiday in July, the social partners arrived at a preliminary agreement envisaging the retention of 72 of the 120 staff. On September 2005, the day on which the preliminary agreement was due to have been signed by the social partners, Nestlé Belgium announced the loss of a major export contract and, consequently, the closure of the plant. Nonetheless, the site director announced that he had been working for a few months on the development of a solution to respond to the "disaster" scenario: the takeover of the site by members of its management. The project aimed to create a new legal entity outside Nestlé. Closing its ranks, the trade union delegation indicated its wish to separate the discussions about this solution from those relating to the plant closure decision and therefore from the need to resume the process of the Renault Law. As the information and consultation period did not result in the avoidance of the factory's closure, the social partners moved on to commence negotiations on the social plan. The social partners thus restarted from the point of the preliminary agreement, increasing the compensation packages. The collective agreements, signed on October 2005, envisaged a specific solution for three different groups of white collar workers: continuity of Nestlé working conditions for those white collar workers that remained, a reduction in the age at which white collar workers could take early retirement to 50 and the setting-up of an internal retraining unit within the company for those white collar workers to be laid off. Given the financial resources placed on the table, the trade union delegates accepted the proposal for a private retraining unit, which was considered as more favourable than the one funded by the public sector which would have had a lower financing and would have been set up later, after the effective closure of the plant.

The new company, Belourthe Natural Food Ingredients, was launched on January 2006. Unstable at the start, Belourthe managed to develop client loyalty and to increase this latter thanks to a strategy of international expansion. In March 2010, the company had 58 workers under contract and between 10 and 30 persons on temporary contracts.

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<sup>62</sup> [www.mire-restructuring.eu](http://www.mire-restructuring.eu)



## 4.4 The closure of a business company

The closure of a business company is the worst scenario in terms of restructuring because the consequences are major, as much for the employer as for the workers and the public authorities. The closure of a business company is as a result subject to specific legislations. By the closure of a business company the Belgian legislature understands 'the definitive work stoppage of the business company's principal activity (nb: or a division of the company) when the number of workers is reduced and below a quarter of the number of workers the company employed on average over the four quarters preceding the definitive cessation of the establishment.'<sup>63</sup> It should be noted in addition that a business company undergoing restructuring can be likened to a closing down business in the case where it has been led to carry out at least double the number of collective layoffs required for the application of the regulations related to collective layoffs.<sup>64</sup>

The act of 26<sup>th</sup> June, 2002, specifies the two obligations of every closed down business company, as long as it employs on average 20 workers or more:

- Inform the different stakeholders in advance
- Pay a special severance pay allowance

Where an employer becomes insolvent, the worker can resort to the business closure fund to receive this allowance (See below)

## 4.5 Quantification

Here we present the available data on business undergoing restructuring and those in bankruptcy. The data on businesses undergoing restructuring originate partly from statistical work carried out specially for this study on the basis of new published data, and partly from two studies carried out by private companies. The data on businesses in bankruptcy for their part originate directly from the Federal Ministry for Employment.

### 4.5.1 DATA ON BUSINESS UNDERGOING RESTRUCTURING

Up until recently, it was very difficult to obtain a statistical view of the restructuring of businesses in Belgium because the announcement of a business' wish to carry out a collective layoff has to be transmitted to the sub-regional offices of the public employment services (FOREM in the Walloon Region, ACTIRIS in the Brussels Region and VDAB in the Flanders

<sup>63</sup> Art.3 of the Act of 26 June 2002

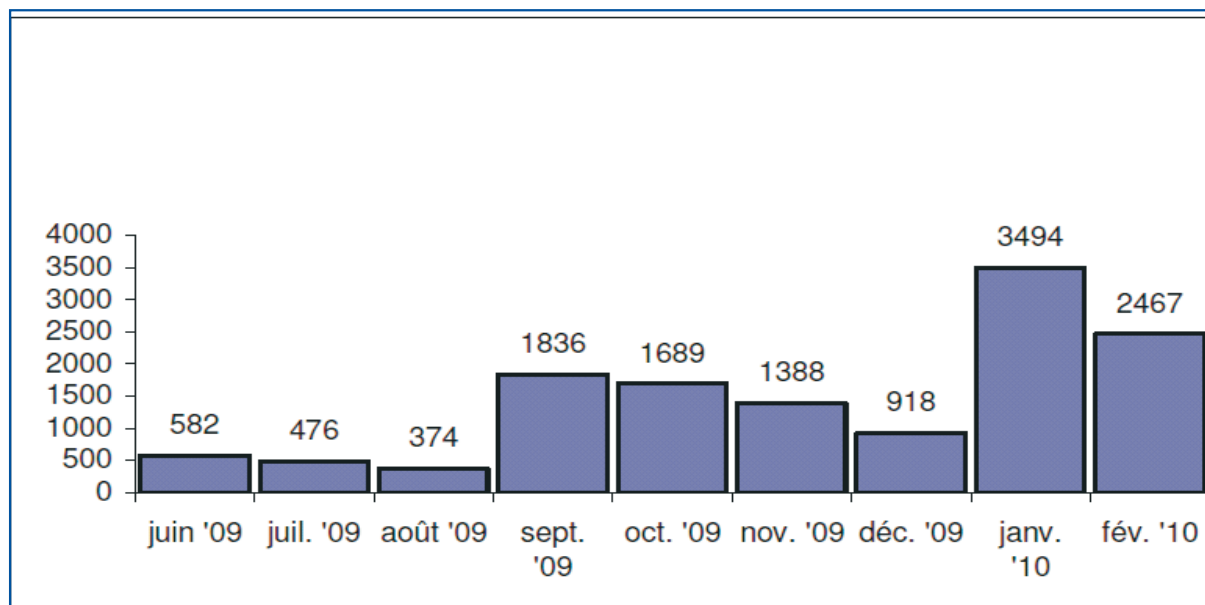
<sup>64</sup> Art. 5 of the Act of 26 June 2002

Region) and the data have not been subjected to a systematic consolidation at national level. Since the Act of 7<sup>th</sup> June, 2009, implementing the crisis measures, the businesses who first envisage and then decide to carry out a collective layoff must now also inform the Federal Public Department for Employment and Labour, and on two occasions (1<sup>st</sup> notification: the wish; 2<sup>nd</sup> notification: the decision).

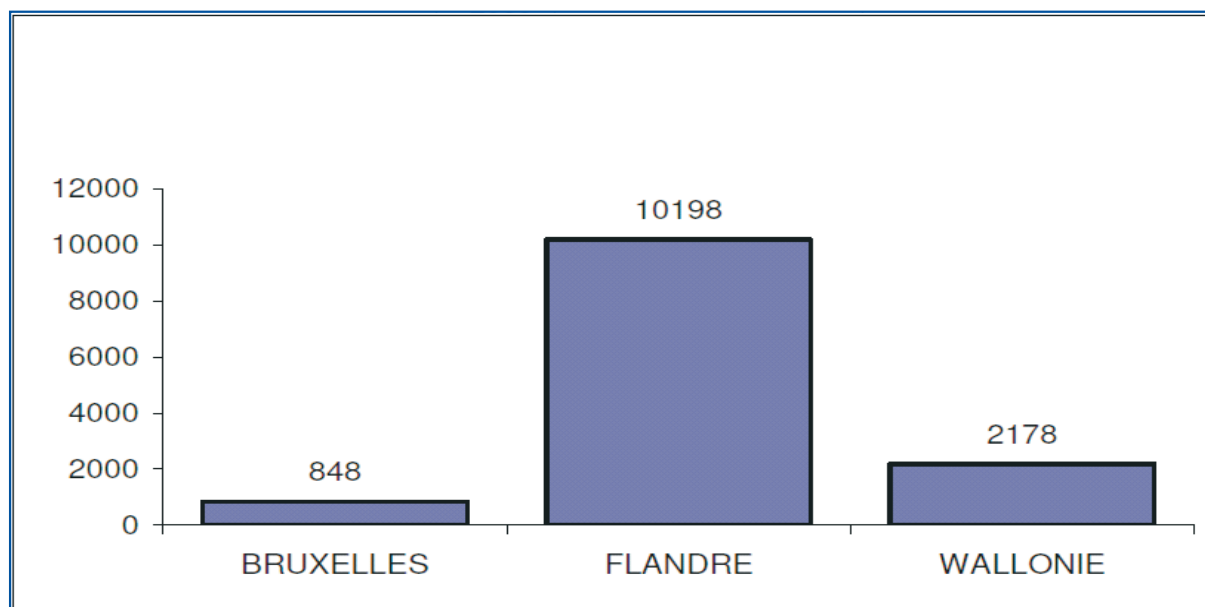
This centralization of business company declarations at the level of the Federal Public Department for Employment and Labour now allows for a quantification of this phenomenon and a statistical processing of it, a task carried out in the context of this report. Thus, between 19<sup>th</sup> June, 2009, and 10<sup>th</sup> February, 2010, 130 businesses have sent a notification to the Federal Public Department for Employment and Labour, amongst which:

- 54 companies have begun their collective layoff processes but have not yet completed it. By the 10<sup>th</sup> of February, 2010, they had only sent the 1<sup>st</sup> notification. These businesses together employ 17,609 workers and envisage laying off 5,550. On average these businesses are envisaging laying off 30.24% of their personnel. Amongst these 54 companies, 9 find themselves in a closing down situation and thus envisage a 100% laying off of their personnel.
- 14 companies had already undertaken the process before the 19<sup>th</sup> of June and had thus only sent the 2<sup>nd</sup> notification. They represent 3,419 jobs and have decided to lay off 1,044 workers. On average these businesses (besides the closing down businesses) have decided to lay off 23.54% of their personnel. Amongst these 14 companies, 4 are closing down.
- 62 companies started and completed the process during the period covered by the database. This complete process allows more conclusions to be drawn:
  - At the time of the 1<sup>st</sup> notification the businesses employed 22,026 workers and envisaged laying off 4719. On average each business, apart from closing down businesses, envisaged laying off 36.86% of its personnel.
  - At the time of the 2<sup>nd</sup> notification they employed 20,405 workers and had decided to lay off 4,286. On average they had decided to sack 35.13% of their personnel (besides closing down businesses).
- The information/consultation process enabled a reduction of the number of collective layoff victims by 433 units, in other words a little over 9%.
- 19 businesses saw their overall workforce vary between the 2 notifications:
  - For 8 amongst them their overall workforce increased.
  - For 11 amongst them their overall workforce diminished
  - In total, 1,621 jobs disappeared between the two phases.
- The average length of time between the two notifications is 50 days, with very large variations, ranging from 0 to 205 days.
- Amongst the 62 businesses 8 find themselves in a closing down situation.
- One company which, on its first notification, envisaged sacking 36 of its 110 workers, in the end carried out no layoffs.

In its monthly information letter of April 2009 “Employment SPF, Work and Social consultation” have displayed a similar work, larger in matter of exploitation of these statistics data. In this file, the SPF spread many graphs particularly interesting as the following ones.

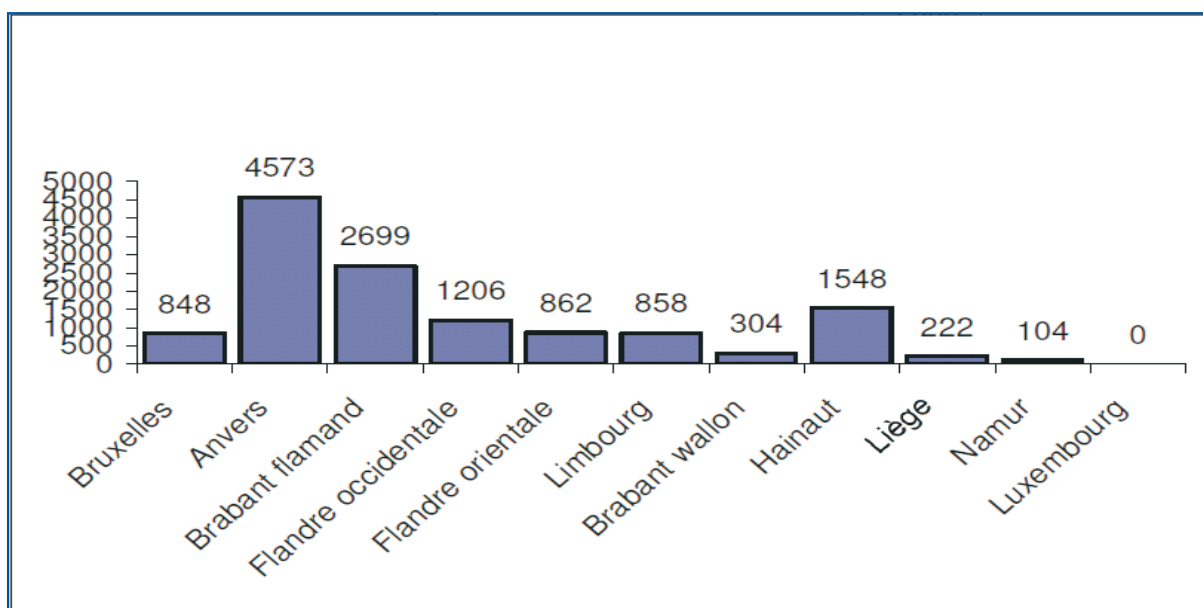
**Number of layoffs announced in the frame of the collective layoffs legislation.**

Source : Federal Public Department for Employment, Labour and social consultation, April 2010.

**Number of layoffs announced by regions.**

Source: Federal Public Department for Employment, Labour and social consultation, April 2010.

### Number of layoffs announced by Province.



Source: Federal Public Department for Employment, Labour and social consultation, April 2010.

In addition, several private advisory bodies regularly carry out studies on businesses undergoing restructuring on the basis of other types of data. Thus the legal firm SD Works has observed, in a quantitative study it carried out on the subject via a survey of human resources departments that, over the last three years, in other words the 2006-2008 period, 41% of businesses were confronted with one or another type of restructuring. This data can be broken down into various sub-categories, as the following table illustrates.<sup>65</sup> There it will be noted that, amongst the main trends, for 12% of these businesses the restructuring involves an internal reorganization which has had an impact on over a tenth of the total workforce; for 13% of the cases, the restructuring takes the form of taking over another company whilst 11% have been taken over by another organization.

| Restructuring undergone by Belgian businesses                                    | 2006 - 2008 |
|--|-------------|
| Merger with another organization   | 6%          |
| Taking over another organization   | 13%         |
| Being taken over by another organization   | 11%         |
| Internal reorganization which has had an impact on over 10% of its personnel     | 12%         |
| Closing down of part of the organization   | 4%          |
| A reduction in capacity of over 10% of the organization/installation's personnel | 3%          |
| A splitting of the organization into several new legal entities                  | 3%          |
| Relocation which has had an impact on over 10% of its personnel                  | 5%          |
| None of these forms  | 58,5%       |

<sup>65</sup> Source: statistical study provided by SD Works

These findings show that the types of ongoing restructuring can be very different. They can be a relocation, a merger, a takeover, a reduction of the workforce, an internal reorganization or a closure. It should also be noted that in Belgium, where the economic fabric is composed of many SMEs,<sup>66</sup> it turns out that the restructurings are more frequent amongst the large organizations than amongst the SMEs. Thus, between 2006 and 2008, 71% of the organizations numbering over 500 workers underwent a restructuring. This percentage only reached 21% amongst the SMEs.<sup>67</sup>

For another source of information, the Claeys&Engels legal firm regularly analyses this phenomenon, this time on the basis of the collective bargaining agreements related to business restructuring processes. Their most recent study, at the end of 2008, focuses on 100 business restructurings announced between 1<sup>st</sup> January, 2006, and 31<sup>st</sup> March, 2008, through 216 collective bargaining agreements. The results show that of the 100 restructurings, 52 are linked to a collective layoff and 48 to business closures. The study also notes an overall lengthening of the restructuring process to 88 days, whilst it was 80 days in their previous study (2004): the information/consultation phase has in effect an average duration of 52 days, whilst it was limited to 39 days in the previous study, and the social plan negotiation phase for its part now has an average duration of 36 days, where it had been 41 previously. According to the study's authors, this situation can be mainly explained by the social plan negotiation phase breaking out during the information/consultation phase, which is harmful to the smooth running of the process as a whole.

#### 4.5.2 DATA ON BUSINESSES IN BANKRUPTCY

In a manner comparable to the question of business restructuring, the number of bankruptcies has been subject to a rise over the last two years, the effects of the economic and financial crisis being considerably felt here as well. Thus, as the following table illustrates,<sup>68</sup> after having remained relatively stable from 2004 to 2008 (around 7500 to 8000 bankruptcies depending on the year), the number of bankruptcies noted in one year has undergone a clear evolution in 2008 (a little less than 8500 officially recorded bankruptcies) and in 2009 (9420 bankruptcies over the year, in other words close to 2000 more than 2 years previously and 1000 more than in 2008 (or an increase of 10% between 2008 and 2009)).

| Number of bankruptcies  | 2004  | 2005  | 2006  | 2007  | 2008  | 2009  |
|-------------------------|-------|-------|-------|-------|-------|-------|
| BELGIUM                 | 7.935 | 7.878 | 7.617 | 7.678 | 8.476 | 9.420 |
| Walloon Region          | 2.315 | 2.336 | 2.222 | 2.201 | 2.390 | 2.649 |
| Flemish Region          | 4.329 | 4.154 | 3.894 | 3.992 | 4.273 | 4.983 |
| Brussels-Capital Region | 1.291 | 1.388 | 1.501 | 1.485 | 1.813 | 1.788 |

And this trend does not seem to be softening at the beginning of this year, 2010. Thus, on the basis of the latest available data,<sup>69</sup> 813 companies were declared bankrupt in Belgium in

<sup>66</sup> See chapter 1 for a reminder.

<sup>67</sup> Source: statistical study provided by SD Works.

<sup>68</sup> Source : SPF Emploi

<sup>69</sup> Source : INS – National Statistics Institute

January 2010, in other words an increase of 4.9% in relation to 2009. The number of bankruptcies recorded during the last three months rises to 2,467, which represents an increase of 6.2% in comparison with the same period of the previous year. These figures can be broken down by activity sector, illustrated by the graph below,<sup>70</sup> to provide a more precise view of the sectors most affected by bankruptcies over the past few years, and even more in recent months. Thus, over the last three months, in comparison with the same period of the previous year, the industrial, trade and service sectors have been particularly affected: the number of businesses in bankruptcy has increased by 20,1% in industry, 11.6% in trade, and has increased by 13.9% in transport and other services.

#### Box n°5 :



#### The VW Forest restructuring

*This case study on the restructuring of VW Forest, in the Brussels Region, has been written on the basis of a literary review.*

The automotive production site VW in Forest, in the Brussels Region, has been existing since the creation of the company "Anciens Etablissements D'Ieteren Frères", in 1949. During half a century, the unit has grown and produced many VW models, until 1997, when the ending of the Passat model production led to the restructuring of the site. The social tensions ended with the conclusion of a collective agreement including a deep restructuring in exchange with the preservation of the site activity. In 2004, social partners concluded a "Plan for the future II" consisting in the increase of the site productivity and the building of a logistical and subcontractor park named "Automotive park".

In April 2006, the German parent company Volkswagen AG decided to achieve its "biggest social plan ever"<sup>71</sup>, by increasing the working time of its workers without any financial compensation. This decision led to the increase of the global productivity and, therefore, threatened 20.000 workers' jobs worldwide. In order to maintain the employment in Germany, the parent company decided to concentrate the production of the Golf model in two West European units instead of three and chose the Mosel and Wolfsburg sites to the detriment of the Belgian one which closure was, consequently, announced by several media. This strategic decision meant the leaving of 4.000 workers and threatened, eventually, the survival of the site and its 5.200 direct workers (from the three Belgian regions) and 13.000 indirect workers, hired by subcontractor. At the end of November, the VW group indicated the possibility to build on the Forest site the future Audi A1, but only if the fabric was able to reduce its production cost to 20%...

The 26<sup>th</sup> of January 2007, after two months of social tensions and strikes, trade unions and VW signed a draft agreement including the extension of the working time from 35 to 38 hours without salary compensation, and a reduction of 20% of the site global salary costs in exchange for the guarantee to hold 2.200 jobs in order to produce the new Audi model. The social agreement negotiated for the leaving workers is one of the most favorable ever granted in Belgium.

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<sup>70</sup> Source : SPF Economie, PME, Classes moyennes et Energie

<sup>71</sup> See the press article from "La Libre Belgique", the 14th of April 2006 "L'usine VW-Forest fermée mercredi ?" in the address <http://www.lalibre.be/economie/actualite/article/280491/l-usine-vw-forest-fermee-mercredi.html>

All in all, 2.311 blue collar workers decided to leave the company in exchange for an allowance of one month gross pay for each year of seniority (meaning from 25.000€ to 144.000€), about 180 temporary workers were dismissed (they received an allowance of 25.000€) and 37 white collar workers were laid off. 2.200 workers remain in the company. The Belgian Government granted the early retirement for the age of 50 (with an allowance representing from 1 to 12 months of net salary). Moreover, the VW Group partly intervened in the allowance of the subcontractor workers.

May 2010, following two years of site renovation, the production of the new Audi A1 is launched in the presence of many well-known politicians and business leaders. The Group foresees a progression of the production, from 58.000 unities in 2010 to 100.000 in 2012 and plans to hire 450 temporary workers to support the 2.200 workers in place.

### Box n° 6 :



#### Ford Genk restructuring

*This case study is a part of an article about the Ford Genk restructuring published by the European Industrial Relation Observatory (EIRO) on-line<sup>72</sup>.*

At the beginning of October 2003, management at Ford Genk convened an extraordinary works council meeting to provide new information about Ford Europe's future intentions for the plant. Jan Gijsen, the site's operations manager, explained the unpromising business situation, with the Ford group badly hit by the deteriorating economic climate, resulting in considerable financial losses. According to Mr Gijsen, these losses were the immediate reason for starting a review of all investment plans, aimed at improving the group's business structure.

The consequences of this group-wide review for Ford Genk arise above all from a decision not to make planned investments to enable production of a new Focus model at the site. Ford now wants to concentrate the production of the Focus at two, rather than three plants. Genk would, however, remain the production site for assembly of all versions of the current Mondeo. However, given the production prospects of this model, which has not proved very successful, a two-shift system would suffice instead of the current three shifts.

As a result of these plans, Ford Genk will have to deal with a surplus of about 3,000 employees - 2,900 blue-collar workers and 100 white-collar workers. Genk management therefore announced the collective redundancy of 3,000 employees, to start between the end of December 2003 and the first quarter of 2004.

#### *Trade union reactions*

The trade unions acknowledged that Ford has to intervene in view of its major losses in Europe, but reacted with great disappointment at what they claimed was the 'deceitful attitude of the European Ford management, which breaks its promises'. The unions organized a 24-hour strike at Genk, a few 'lightning strikes' and a brief occupation of the factory gates, but these were seen as a very 'moderate' reaction, with the unions giving priority to keeping the remaining 6,000 jobs.

<sup>72</sup> OSTEE, M.; VILROKX, J., "Herstructurering bij Ford kost 3000 banen", EIRO, December 2003. See <http://www.eurofound.europa.eu/eiro/2003/11/feature/be0311305f.htm>



Gerard Ignoul, the provincial secretary of the metalworkers' trade union affiliated to the Confederation of Christian Trade Unions (Confédération des Syndicats Chrétiens/Algemeen Christelijk Vakverbond, CSC/ACV), was critical of the management's position. Above all, he criticised the fact that there is no certainty that production of the Mondeo, to which the continued existence of the remaining 6,000 jobs is directly linked, will remain at Genk. Both the CSC/ACV union and the metalworkers' organisation of the Belgian General Federation of Labour (Fédération Générale du Travail de Belgique/Algemeen Belgisch Vakverbond, FGVB/ABVV) expressed fears that the Ford site at Genk will be closed in future.

Commentators claimed that management's communication with the employees over the situation at Genk was inadequate, fanning feelings of unrest and feeding rumours.

In the meantime, under pressure from the unions for written guarantees, the management of Ford Europe announced in mid-December 2003 that the Genk site will in future assemble two more models in addition to the Mondeo. It was stated at a works council meeting that production of both the successor of the Galaxy and of the Crossover (a cross between a passenger and all-terrain vehicle) will be brought to Genk. This will be accompanied by an investment of about EUR 500 million. This decision by European management should guarantee the existence of the plant in the medium term.

With regard to the 3,000 redundancies, in negotiations with management over an accompanying 'social plan', trade unions have sought preservation of the maximum number of jobs at Genk, maximum attention to re-employment, early retirement at the age of 50 and highly developed social support measures for the workers concerned. Preliminary agreement has been reached on early retirement at the age of 50, while the parties have also agreed on the establishment of a 're-employment unit' to speed up the process of finding new jobs for the redundant workers.

#### *High wage costs*

According to the Agoria metalworking and technological industries employers' federation, the Belgian car assembly sectors has a number of key advantages, notably:

- the closeness of the sales markets - as the transport of finished cars occurs within a maximum radius of 500 kilometres, Belgium's central location is a definite advantage;
- the training level and commitment of employees, which are well thought of; and
- the fact that labour is characterised by a great willingness to be flexible.

However, according to the employers' organization, this is countered by the high cost of wages. The cost of wages for workers in Belgium is amongst the highest in Europe. However, according to Pieter Donck, the automotive sector director at Agoria, the cost of wages is not the only problem - 'high energy costs, the cost of employee travel and the complex environmental legislation also play a role.'

The Federation of Belgian Enterprises (Fédération des Entreprises de Belgique/Verbond van Belgische Ondernemingen, FEB/VBO) feels that the Ford restructuring is proof that the economic situation is still vulnerable in Belgium. The FEB/VBO director-general, Pieter Timmermans, stated in the *De Standaard* newspaper that structural intervention is an absolute necessity. 'Policy must remove the obstacles that stand in the way of job creation and preserving jobs', said Mr. Timmermans.



## 4.6 Evaluation of the dynamics of restructuring

*The legal framework presented in this chapter is principally the fruit of the negotiations between the social partners within the context of the Belgian ‘corporatist’ system. This system is certainly one of the strengths of the Belgian restructuring framework, since the views of the social partners are taken into account in the decision making process. The legal framework specified by jurisprudence and strengthened by the closure of the Renault plant in Vilvoorde, has a certain weight in the regulation of redundancy and restructuring procedures. Nevertheless, legislation provides a context for strong sectoral and corporate collective bargaining. This system allows the legal framework to operate a minima while facilitating ad hoc solutions. Lastly, the recent evolution of the legal framework (through the solidarity pact between the generations), tends to reduce the weight of this corporatist decision-making process. However, the role of the law must be put into perspective: the desire of the legislator to use early retirement as a last resort, for instance, is still not respected by the social partners, as is illustrated by an increase of the use of the prepension system.*

Furthermore, the system was devised in the context of full employment, dominated by large companies and a workforce hired on permanent contracts. However, a growing number of employees (temporary workers, those who have been out-sourced, fixed-term contract workers, employees in SMEs, etc.) are not totally or partially covered by the safety net provided by the legal protection system, and this tendency is likely to increase, even if recent developments in terms of information for workers allows a larger number of workers to be involved on this specific point.

The very recent existence of public databases enabling the evaluation, quantification and monitoring of business undergoing restructuring responds – finally – to criticisms by the social partners, who deplored the non-existence of public data on restructuring and stressed the risks linked to the management of restructuring policies by Federal and Regional governments on the sole statistical basis of studies carried out by private legal firms.<sup>73</sup> Up until now, however, this data, received from the businesses, seems to be not made use of by the Federal Public Department for Employment, Labour and Social Consultation, which is content to merely compile the information without carrying out a statistical processing. The statistical work carried out in the context of this report nevertheless enables interesting conclusions to be drawn. In effect the results show that since 2009 the companies undergoing restructuring first envisage and then decide to lay off a significant part of their personnel (between 23.54% and 36.88%). In addition, the information/consultation process has a very variable duration (between 0 and 205 days), which confirms the findings of the employers representatives, who have been asking for a limitation on this duration since the Solidarity Pact. Another interesting fact is that the information/consultation process has allowed for a 10% reduction in the number of workers laid off<sup>74</sup>. Finally, the variations in the companies’ workforce between the two notifications bears witness to the strategy of certain businesses to hire personnel whilst all the while envisaging laying them off. In the future, the statistical monitoring of these restructuring phenomena will help not only in leading to (more) appropriate public and legal measures, but also in estimating the real impact of the current crisis on Belgian businesses.

<sup>73</sup> See also the opinion of CESRW

<sup>74</sup> We observe that some participants doubt the positive impact of the process of information /consultation. According to them, the reduction of the amount of dismissals would be due to the natural departure (pre-retirement, resignation) of some threatened workers. Consequently, it seems that it would be useful to hold a deeper subsequent study in order to deepen this issue.



In this chapter we will present in detail the main general measures in existence to manage the implementation of restructuring procedures. We will also mention several measures regarding particular equal representation agreements, whose range is restricted to certain business companies.

## 5.1 Notice period

For any layoff, be it collective or otherwise, the Belgian legal and contractual framework makes provision for a notice period which is specific to the status of the worker (see above)



### The case of blue collar workers:

The act of 3<sup>rd</sup> July, 1978, related to work contracts fixes the notice period for blue collar workers to twenty-eight days when the dismissal is given by the employer. This notice period is doubled in the case of blue collar workers who have remained in uninterrupted service at the same business company for at least twenty years (art. 59). In the case of blue collar workers who have worked for less than six months uninterrupted in the same business company, this notice period can be reduced to a minimum notice period of seven days (art.60). This notice period must be calculated on the basis of the seniority accumulated at the moment the notice period is given.

Collective bargaining agreement n°75 of 20<sup>th</sup> December, 1999, related to notice periods for blue collar workers departs from Article 59 of the Act of 3<sup>rd</sup> July, 1978, in proposing longer notice periods.

**Table 2 – Notice period for laying off workers**

| Seniority                 | Notice period |
|---------------------------|---------------|
| From 6 months to 5 years  | 35 days       |
| From 5 years to 10 years  | 42 days       |
| From 10 years to 15 years | 56 days       |
| From 15 years to 20 years | 84 days       |
| Over 20 years             | 112 days      |

Finally, we should notice that several Royal Acts specify exceptional notice period for specific sectors.



### **The case of white collar workers:**

When the annual salary does not exceed 30.327<sup>75</sup>, the notice period the employer must observe is at least three months for each five year period of employment which has begun. When the annual salary is over 28.093, the notice period the employer must observe is fixed by mutual agreement with the employer or a judge in the case of disagreement (Art. 82). In practice, the notice period is often greater than this legal minimum, and is fixed on the basis of the extra-legal 'Claeys analysis grid' which takes into account the worker's salary, and his or her seniority and age.

According to the 2008 study by the Claeys&Engels legal firm mentioned earlier, the notice period is actually worked (at least partially) in only 12.5% of businesses, a percentage which has been going down in comparison with 2004 when it was put into practice in 14% of cases. Moreover, the duration of the notice period for blue collar workers is increasing as in 19% of cases it goes beyond the legal notice period (against 6% in 2004). For white collar workers the study shows a more increasing use of the Claeys analysis grid: the duration of the notice period for white collar workers makes reference to it in 87% of cases, whilst this percentage figure was only 67% in 2004.

## **5.2 Selecting the workers**

Whilst respecting the employers' freedom to manage as they wish, the definition of the selection criteria of workers affected by a collective layoff aims at drawing up objective criteria within the business company, in a consulted and negotiated way between the employer and personnel representatives.

The Act of 20 September, 1948, dealing with the organization of the economy fixes, amongst other things, as a mission for Works Council to examine the general criteria to follow in the case of workers being laid off, on the basis of a proposition made by the employer. Collective bargaining agreement n°9 of 9<sup>th</sup> March, 1972, attributes to the Works Council the determining of the general criteria to follow in the case of workers being laid off on the basis of a proposition by the company director. The social partners present during the national seminar of the project precise the aspect of the collective bargaining agreement n°9 is rarely practised in the negotiations of the collective bargaining agreement about collective layoffs.

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<sup>75</sup> Amount in effect from 1<sup>st</sup> January, 2010.

### 5.3 Social plans and other financial compensation measures

Currently, in Belgium, there is no legal framework placing any obligation on employers to produce a social plan. Nevertheless, The Federal Public Department of Employment, Labour and Social Consultation between Employers and Trade Unions explains on its web site that social plans are becoming a generalized practice in Belgium and defines them as an extra legal process 'characterized by extra legal measures consented to by the employer to improve the fate of workers hit by anticipated restructuring.' Moreover, the existence of a social plan policy is implied by collective bargaining agreement n°24, which applies to companies employing 20 or more workers, obliging the employer to inform the workers about the method of calculation envisaged for every possible extra legal indemnity. The experience of The Federal Public Department of Employment, Labour and Social Consultation shows that this information is provided at the end of the consultation period through an agreement between the social partners, during the notice period (30 or 60 days).

Concerning the content of the social plan, it can be made up of a number of measures: whilst they previously contained primarily measures such as early retirement, complementary indemnities for redundancies and the reform of working hours, social plans contain more and more measures of a different kind, such as the outplacement programme and reconversion cells.

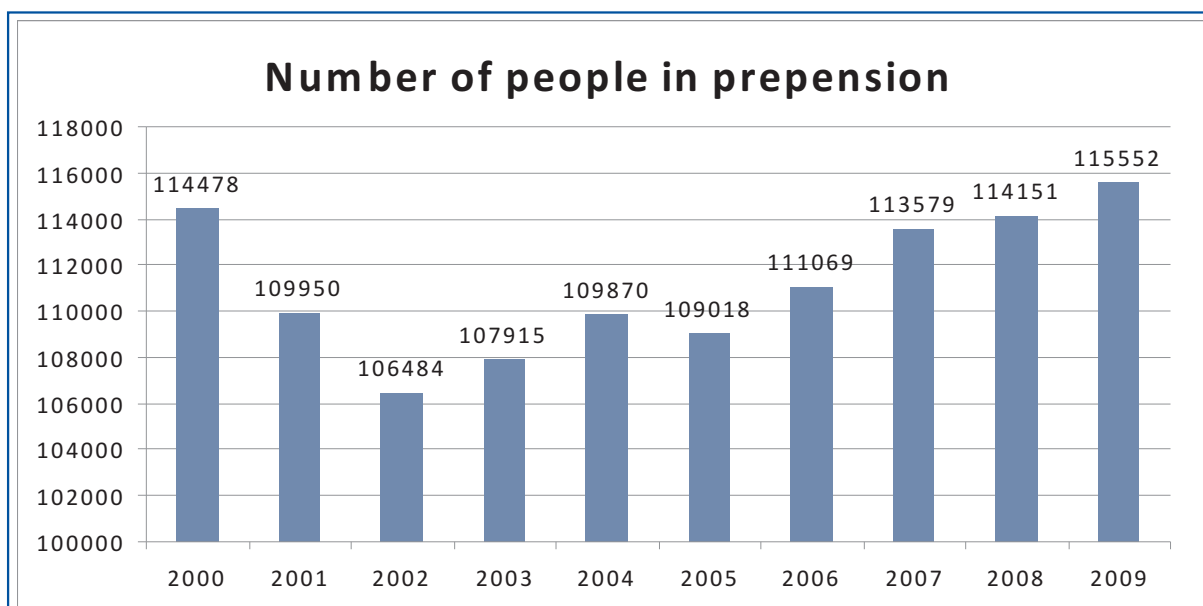
#### 5.3.1 EXEMPTIONS TO THE GENERAL PREPENSION SYSTEM

Business company's in difficulty<sup>76</sup> or undergoing restructuring can receive from the Minister of Employment exemptions to the legislation concerning the prepension (see above) aiming at not having to replace a worker on a prepension, reducing the notice period, and/or lowering the prepension age to 55 (for a collective layoff of 10% or temporary unemployment during 20% of the normal time), or even to 50 if the collective layoff concerns at least 30% of the personnel.

In a document<sup>77</sup> dated the 10<sup>th</sup> September, 2009, the Federal Public Department for Employment points out a series of indicators bearing witness to the lack of effectiveness of the Solidarity Pact between the generations, mainly as regards the use made of the prepension system, which it was nonetheless supposed to limit. The document in fact reveals that even if the employment rates of older people have risen, passing from over 35% in 2000 to over 40% in 2008 for men, and for women from over 15% in 2000 to close to 25% in 2008, they are nevertheless lagging behind in comparison with other European countries. More worryingly, even though the prepension age has passed from an average of 56.3 years in 2004 to 57.5 years in 2008, the use of an early departure from the labour market has risen, despite the Pact. The following diagram illustrates this situation:

<sup>76</sup> 'By a business in difficulty is understood a company which records, in the two fiscal year annual accounts records which precede the period for which recognition is requested, an operating loss, before taxes, when for the most recent fiscal period this loss exceeds the sum of financial provision for depreciation and a reduction in value on preliminary expenses, and on intangible and fixed assets. The company must present its annual accounts for the five fiscal periods prior to the period for which recognition is sought. If the company has existed for less than five years, only the fiscal year accounts related to the years it has existed are demanded.' See [www.restructurations.be](http://www.restructurations.be)

<sup>77</sup> "Le pour et le contre du pacte de solidarité entre les générations", powerpoint document. September 10th, 2009



According to the Federal Public Department for Employment document, the attempt to restrict the use of the prepension is a failure, and for three reasons. First of all, because of an inappropriate method of calculating access to the prepension. Then, because the Pact has not put an end to the maintenance of formula specific to workers aged less than 58 years. And finally, because of the absence of fiscal discouragement such as the rise in social security contributions or the supplementary allowance to be paid by the employer according to age.

It should nonetheless be noted that this situation has greatly evolve since new legal measures has come into force on 1st April, 2010: they make provision for a heavy increase in the costs for the employer of making use of the prepension in fixing over time the total amount of the employers' indemnity, whilst it was based on a sliding scale until now.

### 5.3.2 "CANADA DRY" COMPENSATION ALLOWANCE

'Canada Dry' arrangements are meant for workers who do not meet the statutory conditions for early retirement. They enable them to enjoy similar financial conditions on departure thanks to the payment, by the employer, of a supplement to the unemployment benefit received by the laid off worker. This system provides a joint way of alleviating the conditions of the Belgian bridging pension system.

In terms of an allowance for the worker, the Canada dry measure is only distinguished from the prepension in the case of the monthly amount paid by the business company is invariable as, contrary to the prepension system, the workers' unemployment benefit goes down over time. In this case, the sum obtained by the worker is also reduced over time, contrary to the worker on the prepension system.

The solidarity pact between the generations has strongly discouraged this type of practice in imposing significant deductions on the employers and a deep increasing complexity of its legal framework. Moreover, the pact enshrines the idea that the collective bargaining agreement which

makes provision for this type of measure now stipulates that the allowance will continue to be paid if the worker finds another job, in order to not discourage the worker from getting back to work.

### 5.3.3 OUTPLACEMENT

In Belgium, outplacement<sup>78</sup> is a measure framed by a legislation which distinguishes between an outplacement established on a voluntary basis by the business (Collective bargaining agreement n° 51 of the 10<sup>th</sup> February, 1992) and that imposed by law.

Collective bargaining agreement n°82 of 10<sup>th</sup> July 2002 aims to execute the Act of 5<sup>th</sup> September aiming to improve the workers' employment levels. This agreement makes provision for a right to outplacement, for a maximum duration of one year, for workers aged over 45 years and who have worked for a minimum of one month, as long as s/he has not been sacked for a serious reason. The collective bargaining agreement makes provision for a series of qualitative criteria which have to be fulfilled by the outplacement agency and specifies that the costs of outplacing are to be met by the employer.

Concerning the particular situation of workers laid off in the context of a business company restructuring, their outplacement rights are governed by the legislation concerning special re-employment unit (see further below).

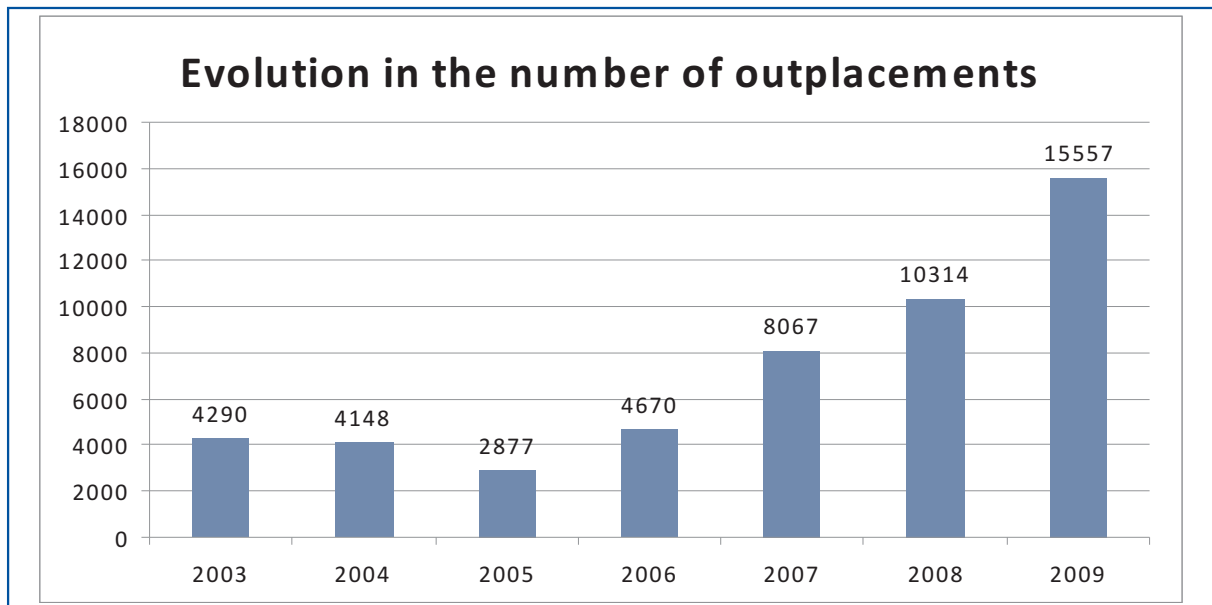
The evolution of the legislative framework for providing laid off workers with follow-up support has led, quite logically, to a strong rise in the use of private outplacement services. The following graph bears witness to this evolution.<sup>79</sup>

According to the Federation of Temporary Work and Outplacement Agencies (Federgon), the evolution in the number of outplacements is also due, in addition to modifications in the legal framework, to an evolution in the employers' way of thinking, as they are now more aware of the importance of such a measure.

<sup>78</sup> Outplacement is 'an ensemble of services and guidance provided individually or to groups by a third party, hereafter called an outplacement office, requested for and paid by an employer in order to enable a worker to find a job with a new employer as quickly as possible or to develop a professional activity as a self-employed person.' Extract from Collective Bargaining Agreement n°51 of 10<sup>th</sup> February, 1992.

<sup>79</sup> Sources : Federgon





It should be noted that the figures include the whole of the outplacement measures and are thus not specific to outplacements following a business restructuring. For the years 2003-2008, the follow-up support for permanent layoffs represented 63.3% of cases. In 36.7% of cases, outplacement results from a layoff for reasons connected to the person involved. Furthermore, in a report dating from March, 2010, and relating to the 2009 results, Federgon specifies that 'only' 40% of the 15,557 follow-up support practices concern the workers who are the victims of company restructuring. The report also indicates a lowering of placement rates, due to the crisis: it was 63% in 2009, whilst it had reached 76.8% in 2007.

### 5.3.4 AN ORIGINAL SUPPORT FOLLOW-UP INITIATIVE FOR WORKERS WHO ARE VICTIMS OF COMPANY RESTRUCTURING PROCESSES

#### Box 6:

#### The “Reverse Company”

*This case study deals with the initiative set up by a large steel business company to find an alternative to laying off many of its older workers.*

Due to changes in its business and in the international situation, the Arcelor Group, becoming Arcelor-Mittal, was forced to restructure a part of its activity. It decided upon the gradual closure of the hot phase at its Liege site, due to poor profitability. As this site included other entities active in the cold phase of the steelmaking process, the social plan envisaged the transfer of as many retrainable workers as possible to the cold phase, and the use of early retirement for those workers of an appropriate age. This strategy enabled compulsory redundancies to be avoided, the implementation to be staggered over several years, governed by the closure program for the different blast furnaces, and the gradual accession of older workers to the early retirement system. However, this restructuring strategy was costly for the company, since a good section of the workers awaiting early retirement were unoccupied or overmanned on non-renewable positions, whereas the company was committed to maintaining their salary and all associated rights and benefits.

The management of the Arcelor Liege site decided then to replicate the “Homme & Emploi” “Reverse Company” system, successfully implemented in Lorraine (France) from 1999, consecutively to the buying up of Unimetal by the ISPAT Group and the 200 workers lay-off.

Nevertheless, the device implemented in Liège is partly different from the Lorraine experiment, notably because the closure of the hot phase in Liège has been planned over several years, and is constrained by a mobility plan between the cold and hot phases and is linked to a pre-retirement plan. Moreover, the various entities of the Belgian site of Arcelor are legally and financially autonomous, which makes the setting up and the running of a multi-activity company much more complex.

This company, named “Homme & Emploi”, remains the property of the steelmaking group within which it is integrated. It offers services internally to the group’s different entities in Liège, in three fields of activity:

- Construction finishing
- Maintenance of green spaces
- Document archiving

Its workforce is made up of about 70 workers who are awaiting early retirement, regarded as “non-retrainable”, overmanned on non-renewable posts or in a fragile situation due to health problems that make them unsuitable for the steelmaking industry. These workers are “seconded” to “Homme & Emploi” by the group’s different local entities, on the basis of a “double voluntary participation”. These entities however remain the legal employer of the workers they second, and these workers retain their full salaries and benefits connected with the position they previously occupied. Incomes generated by the services supplied by Homme & Emploi enable the group to reduce the cost of these workers around 50%.

### 5.3.5 OTHER EXTRA-LEGAL FINANCIAL MEASURES

Beyond this optional social plan, several legal and conventional measures and a number of practices are in place to improve the conditions of workers affected by restructuring.

#### ***5.3.5.1 Other extra-legal financial measures***

In order to soften the consequences of collective layoffs, collective bargaining agreement n°10 of 8th May, 1973, topped up this measure by establishing 'the redundancy pay due in the case of a collective layoff,' to the benefit of each sacked worker and paid by the company. It should be noted that this collective bargaining agreement cites a particular definition of 'collective layoff' as it mentions the following thresholds: 6 collective layoffs for businesses employing from 20 to 50 workers or 10% of the average workforce for companies employing more than 60 workers.

Its amount rises to half of the difference between the standard monthly net pay<sup>80</sup> and the unemployment benefit these workers can claim (Art.8).

In the case of a collective layoff which occurs within the context of a business company closing, the worker concerned by the collective layoff only benefits from the redundancy allowance for a closed business and not collective layoff redundancy pay. This redundancy pay for a closed down business are aimed at workers who have at least a year's seniority at the company and are tied to it through an open ended employment contract. Several categories of worker are excluded from this convention's field of application.

#### ***5.3.5.2 Redundancy allowance for a closed down business***

The Act of 26th June, 2002, concerning company closure establishes a 'redundancy allowance for business closure' calculated on the basis of seniority (basic compensation) and the age of the worker (supplementary compensation). This compensation is paid to the worker by his/her employer as long as the business affected by the closure has employed on average 20 workers during the calendar year which precedes the closure. To benefit from this compensation payment the worker must also have been sacked during the 12 months (for blue collar workers) or the 18 months (for white collar workers) which precede the closure, at the moment of the closure, or in the 12 months consecutive to this closure. This last period can be extended to three years for white collar workers who take part in the business company's liquidation activities<sup>81</sup>. In order to respond to specific situations for example those for older workers, in reason of their age, often meet huge difficulties is to find again a job, an extra of 142,09€ per year of age over 45 years was also planned in addition to this amount, the worker is likely to benefit only from this extra for the years spent in the company.

In the case where the employer defaults, this compensation is paid by the Company Closure Funds.<sup>82</sup> This public body is also charged with the mission of ensuring 33% of the cost of blue

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<sup>80</sup> With a ceiling of 2962,54€ established on 1<sup>st</sup> September, 2008.

<sup>81</sup> On 1<sup>st</sup> September, 2008, the basic company closure compensation rose to 142,09€ per year of seniority in the company, with a maximum of 2841,09 .

<sup>82</sup> For more information see the site: <http://www.onem.fgov.be/FondsFR.htm>

collar worker temporary layoffs (or 'cost of blue collar worker temporary layoffs'. Under the responsibility of the National Employment Office, it is financed by contributions from every employer and by funds raised by its trustees. Its intervention concerns primarily businesses with over 20 workers but it can, in certain cases, apply itself to smaller structures.

#### **5.3.5.3 Transition allowance**

The transition allowance concerns workers sacked in the month preceding the bankruptcy of their company and rehired following the buying up of the company's assets by a new company within the following 6 months after the takeover. This allowance, paid by the Business Closure Funds, is the equivalent to the worker's gross salary before the bankruptcy (with a ceiling fixed by law).

#### **5.3.5.4 Other forms of financial compensation**

According to negotiations carried out by employers and personnel representatives, other forms of compensation can be paid to workers who are victims of a collective layoff. These measures do not have the same reach as those mentioned earlier in the sense that the latter are specific to certain sectors or result from the negotiations between the social partners of particular business companies. Furthermore they do not all have the same objectives. Certain, for example, favour the departure of the workers, whilst others are aimed at retaining them. Here is a list of the most implemented forms of financial compensation, according to the report carried out by the Lawfort legal firm:

- Compensation for moral damages
- Compensation in case of a new salary lower than the previous one
- Compensation in case of voluntary departure
- Loyalty Compensation (being retained)
- Compensation for returning to work
- Supplementary Company Closure Compensation
- Retention of hospitalisation insurance

According to the 2008 study by the Claeys&Engels legal firm, the principal financial compensation measures are, beyond the notice indemnity, the extra-legal indemnities and the supplements to unemployment benefit. The study notes that the extra- legal indemnities are mainly a modification of the regulations for calculating the standard earnings in relation to which the indemnity is fixed (77.5% of the restructuring cases studies), the granting of severance pay (or others) (42.5%), the payment of a supplementary closure allowance (32%), the retaining of extra legal advantages (30%), the paying of a reclassification bonus (6.5%) and moral damages (3%). The study moreover points out a net reduction in supplements to unemployment benefits, which are now only offered in 37% of cases, whilst such supplements were anticipated in 64% of cases in 2004. Moreover, an 'old worker' distinction (of a 'Canada Dry' type) is now only made in 21% of cases. On the other hand, the search for and the payment of supplements in the case of getting back to work is a feature in 73.91% of cases, with even a bonus in 4% of collective bargaining agreements.

## 5.4 The Regional professional reconversion measures

As was already mentioned in chapter one of this report, the implementation, from the 1980s onwards, of institutional reforms led to the transfer of powers in terms of employment and professional training from the National Employment Office towards the Regions. The latter consequently have drawn up measures responding to the needs and specifics of their respective territories.

### 5.4.1. THE RECONVERSION CELLS IN THE WALLOON REGION

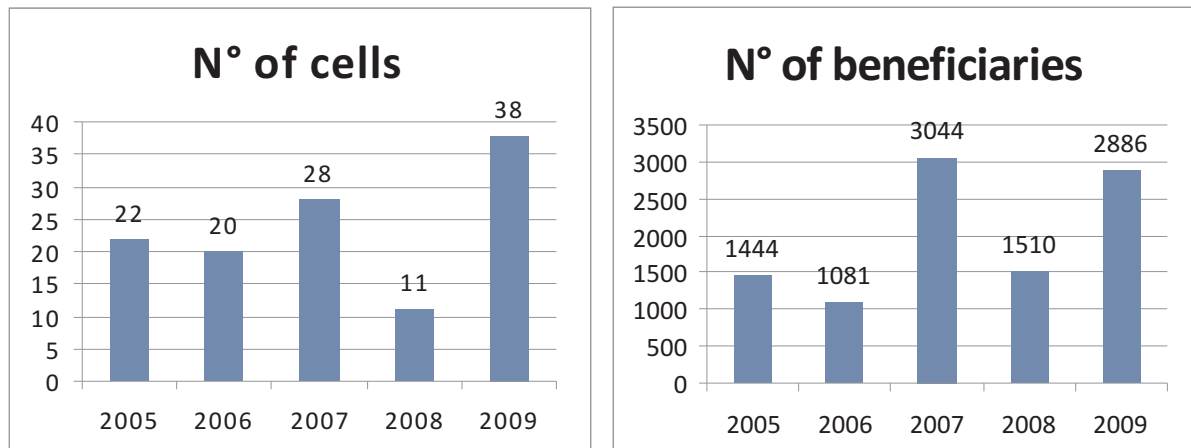
In Wallonia a decree introduced in 2004 instituted the Reconversion Support Programme. The region is focusing on public collective reconversion incentives and the maintenance of social support networks through cells managed by both trade union representatives from the company and by the Forem, and financed by this latter. These reconversion cells are open to all the workers who have been employed by companies undergoing restructuring, including those on fixed term contracts, temporary workers and those taking early retirement. The cell can be specific to a (large) company or can bring together the victims of separate restructurings from the same area. The beneficiaries receive assistance to deal with redundancy, to develop their Curriculum Vitae and secure professional references, to find a new job, to obtain information on the job market and to get access to vocational or reconversion training. Before this assistance, the beneficiaries sign a socio-professional contract by which they mark their commitment to be active in the programme and receive in return an allowance. The establishment of the cell is carried out at the request of the workers' representatives and can last one or two years. The first reconversion cell in Belgium was created in 1979 following the restructuring of the Klaverbel business company. Today, reconversion cells are constituted in partnership with the FOREM and the business company's workers' representatives and are managed on a daily basis by these representatives, then named 'social support workers.' These cells are open to laid off workers as well as workers who possibly want to leave the company. Depending on the case, the FOREM team redirects the workers either to another company in the same sector, to a new profession in the same sector, or finally towards another profession in another sector requiring similar skills.

The reconversion cells differ from outplacement practices through the provision of personalised psychological follow-up support for people who are the victims of a restructuring, as well as retaining a sense of collective spirit, which encourages emulation, avoids isolation and the erosion of social ties.

Reconversion cells exist only in Wallonia, outplacement being preferred by the Flanders and Brussels-Capital Regions.

### 5.4.2 DATA ON RECONVERSION CELLS

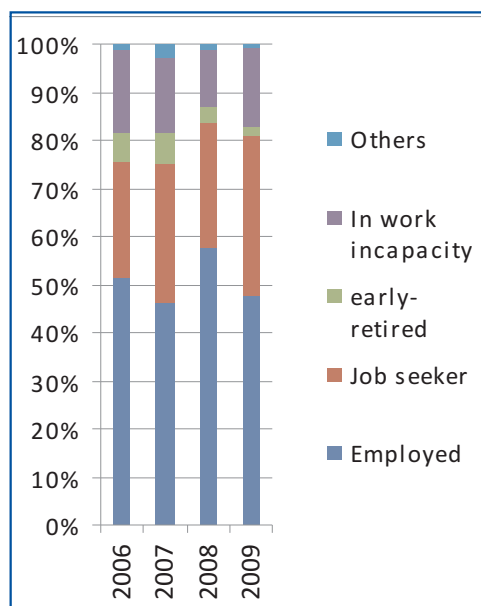
An analysis of the statistical reports drawn up annually by this public body allows us to highlight the principal characteristics of this mechanism and to illustrate how it has evolved over time.



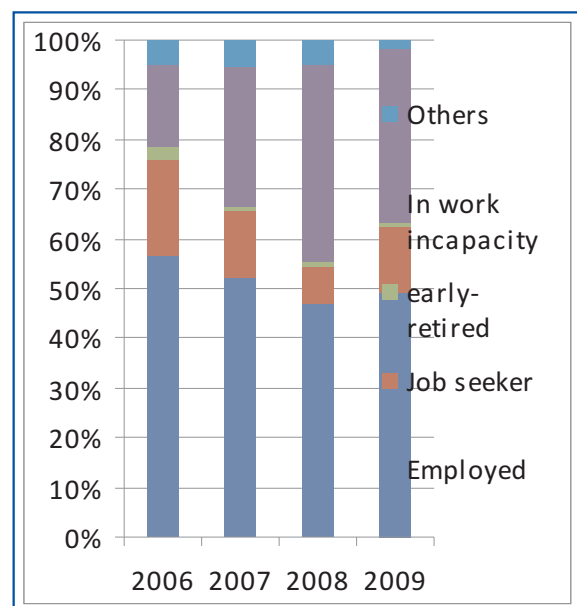
As these two graphs demonstrate, the number of cells set up between 2005 and 2009 has varied between 9 and 38 and the number of beneficiaries varies from 1081 and 3044. On analyzing this, we note that the two peaks of 2007 and 2009 can be explained in different ways. In 2007, even if there was an increase in the number of cells in comparison with the previous year, the impact on the number of beneficiaries is mainly explained by the restructuring of six large businesses which embarked on mass layoffs (between 150 and 751 workers), whilst the other restructurings concerned a lower number of workers (80 on average). In 2009 the rise in the number of beneficiaries is for its part explained by the size of the number of 'small restructurings' (43 people laid off on average), in addition to the 7 large restructurings whose impact on the number of workers is however less than in 2007 (between 150 and 336 workers).

As far as the results of terminated reconversion cells is concerned, we will note two major elements: the particular situation of the people concerned at the completion of the cell, and the distribution of the type of job obtained.

**Fig 1 : Situation of blue collar beneficiaries**



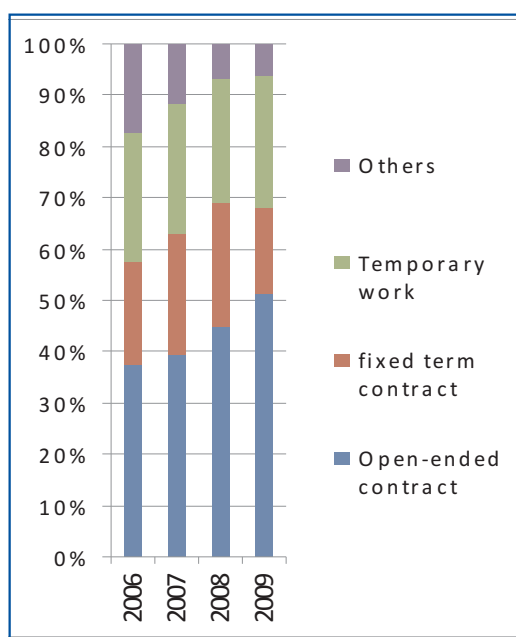
**2 : Situation of white collar beneficiaries**



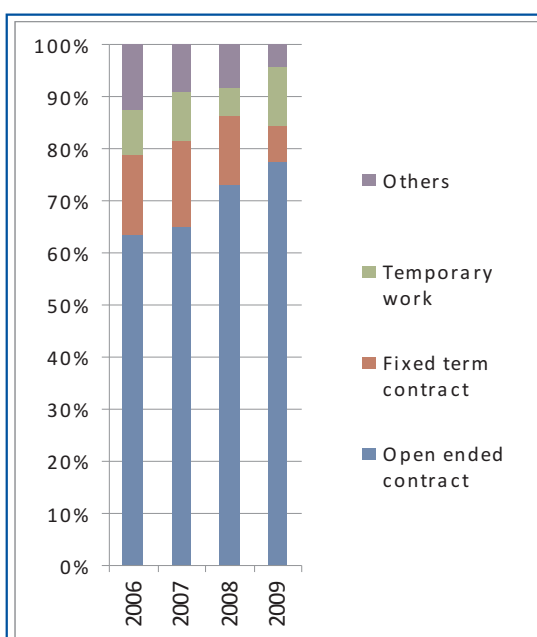
The two graphs bear witness to a return to work raw<sup>83</sup> rate of around 50% for the beneficiaries of reconversion cells, without a large distinction between blue collar workers and white collar workers. On the other hand two major differences between the two statuses are to be noted: for workers who are not in employment, a large majority of blue collar workers find themselves in a jobseeker situation, whilst for white collar workers the large majority find themselves in a work incapacity situation.

Blue colour (getting back to work)

**Figure 2 : blue collar workers**



**Figure 4 : white collar workers**



Concerning the division of the type of employment found, the two preceding graphs illustrate the more and more frequent obtaining of permanent employment contracts whilst the turning towards other types of employment (job alteration training programme, self employed work, trustee work) is constantly diminishing. Here once again, the graphs illustrate an important distinction between the two statuses: white collar workers more often receive permanent employment contracts, whilst blue collar workers obtain more often less stable jobs, with fixed term contracts or temporary work.

<sup>83</sup> The return to work "net" rate, i.e. the active beneficiaries, without the early retired, those in work incapacity and the "others" reaches, on average, 64% for the years from 2006 to 2009.



### 5.4.3 THE SITUATION IN THE BRUSSELS REGION

In the Brussels Capital Region, there is no similar tool to help the redeployment of redundant workers. The regional budget does not provide any grants for public outplacement despite a political awareness campaign initiated by the unions. Beyond restrictions in terms of budgets, this situation is also explained by the co-existence of two public bodies offering follow-up support for people who are the victims of a restructuring - Bruxelles Formation and Actiris – making the putting into place of such structures complicated and politically sensitive.

As a consequence, the follow-up support for workers who are the victims of a restructuring is limited to prescriptions of Federal legislation and thus to the services of the 17 private providers accredited to deliver outplacement activities. Let us note that a former department of the regional administration, Brussels Outplacement, is independent since 2003 and operates on the market as one of the 17 service providers.

We notice that the current Minister of the Employment in the Brussels Region imposes to the special reemployment units set up in his region an outplacement offer of minimum 90h, instead of 30 or 60h imposed by the federal level.

### 5.4.4 THE FLEMISH SOCIAL INTERVENTION FUND

In Flanders, the purpose of the **social intervention fund**,<sup>84</sup> set up by the decree of the 18<sup>th</sup> of May 1999 and, from March 1, 2009, managed by the VDAB, is to finance the outplacement of business directors (and/or their providers) who are bankrupt and want to become employees, as well as redundant workers who worked for the company up until a year before the bankruptcy. The Fund, financed by the VDAB, also intervenes when their former employer is incapable of doing so (in case of bankruptcy, of judicial agreement or if the company is in difficulty). Applications can be made by the bankruptcy trustee the commissioner named by the judicial agreement or the employer in difficulty himself. The latter are obliged to make an application if approached by a worker representative. The outplacement programme is managed by a private provider accredited by the regional government. The decree provides a quick administrative procedure through which to authorise outplacement.<sup>85</sup>

Moreover, this fund has, as a second mission, to coordinate the special reemployment units (set up by the companies under restructuring) or the 12 permanent special reemployment units responsible for the accompaniment of the small companies under restructuring. To this, it hires 30 social guides<sup>86</sup>.

<sup>84</sup> This Fund previously went under the name of 'Herplaatsingsfonds'

<sup>85</sup> The provider receives a maximum of 2865€ (indexed) for each beneficiary.

<sup>86</sup> Source : File « Activerend herstructureren », magazine Vakbeweging n°713, 25<sup>th</sup> January 2010.

## 5.5 Crisis measures in terms of managing restructurings

The significance of the current global crisis has necessitated the putting into place of particular measures to manage the consequences of restructuring processes. Thus the Act of 27<sup>th</sup> March, 2009, has changed the range within which a special re-employment unit can intervene. In addition, the Act of 19<sup>th</sup> June, 2009, already mentioned in the chapter dealing with the anticipation of restructuring processes, makes provision for the temporary establishment<sup>87</sup> of a restructuring card for workers who are victims of their company going bankrupt.

### 5.5.1 SPECIAL RE-EMPLOYMENT UNITS

The special re-employment unit mechanism already existed before the current crisis, as it was set up on the execution of the Solidarity Pact between the generations by the Royal Decree of 9<sup>th</sup> March, 2006. The re-employment units then only concerned workers aged over 45 sacked by a company declared to be restructuring. However, its application has been widely extended by the Act of 22<sup>nd</sup> April, 2009, as a reaction to the global financial and economic crisis. Thus, from 7<sup>th</sup> April, 2009, a business of over 20 workers which announces its intention to carry out a collective layoff is recognised as a company under restructuring and has the obligation of setting up a special re-employment unit (or to contribute to, under certain conditions, a common special re-employment unit or a regional special re-employment unit, of a reconversion cell type) through which the employer guarantees outplacement for all its workers affected by the layoff, and not only those aged over 45. The employer is committed to paying for 3 months (for workers aged under 45) or 6 months (over 45) a reclassification allowance (which replaces the advance notice indemnity and which is the equivalent of the current salary plus the extra-legal advantages) for all the open ended contract' workers effected and who have a minimum seniority of one year.<sup>88</sup> These latter receive a "restructuring card" (see below).

If the business company has 20 workers at the most, the employer is only obliged to create a special re-employment unit if it wants to lower the pre-pension age of the personnel it is planning on laying off. In the opposite scenario, the employer is not obliged to set up such a re-employment unit, but it must then offer outplacement measures to all the workers over 45 who have a minimum seniority of one year, as is enshrined in collective bargaining agreement n°82 of 10<sup>th</sup> July, 2002.

Workers who have a minimum seniority of one year in the business, whether they are on temporary contracts (including interim workers) or on permanent employment contracts are obliged to participate in the special re-employment unit for a minimum period of 3 months (less than 45) or 6 months (over 45). The workers under temporary contract are not obliged to subscribe the special reemployment unit in case of refusal of submission, these one are not sanctioned in opposition to those under opened- term contract who are obliged to subscribe the

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<sup>87</sup> Up until 30<sup>th</sup> June, 2010.

<sup>88</sup> The costs linked to these measures can be partially reimbursed by the public authorities.

special reemployment unit, without which, they are exposed to sanctions (exclusion of allocations)<sup>89</sup>.

The re-employment is made up, at the minimum, of the employer, a representative trade union organization, a sectoral training Fund (if need be) and the regional employment department (FOREM, Actiris, VDAB).

### 5.5.2 THE RESTRUCTURING CARD

The restructuring card, for the workers registered in a special reemployment unit, is a temporary crisis measure, effective up to the 30<sup>th</sup> of September 2010 (except if extension) which consists of a document which gives the right to social security reductions, for the laidoff worker as much as for the his/her new employer. The validity period of this card starts at the announce of the collective layoff and ends 12 months after the registration to a special reemployment unit. These reductions of personal social security contributions are 133,33 for a white collar worker and 140 for a blue collar worker.<sup>90</sup> For the new employer the reduction in employer's social security contributions rises to 1000 per quarter per worker, for four quarters. If the worker is aged under 45, this period is followed by a reduction of 400 per quarter for 16 quarters.<sup>91</sup> The restructuring card also enables an employer undergoing restructuring to benefit from a repayment of part of the outplacement costs for a worker it has had to sack.

In the case of companies in bankruptcy, in closing or in compulsory liquidation, the period of the validity of the card is reduced to 6 months. This one permits the reduction of the ONSS contributions for the worker who finds again a new job as for the employer. In opposition, the repayment of the outplacement cost and don't take part of the advantages<sup>92</sup>.

## 5.6 Job seeker activation measures

Following on from the whole restructuring process, it seems pertinent to mention a series of measures enabling the follow-up support of laid off workers in the case where they have not

<sup>89</sup> Source: Comments on the draft national background paper, from the Federal Public Department on Work, Labour and social dialogue, 28<sup>th</sup> June, 2010.

<sup>90</sup> 'To obtain a reduction in personal contributions, the worker's standard average monthly wage must not exceed 1956,90, if the worker is aged at least 30 when s/he started in the post. For workers who are under 30, this limit is 4000. The standard average monthly wage is a conversion of the gross wages, based on work carried out, into a wage that the worker could hypothetically receive if s/he had been hired full time for the whole month.' See <http://www.emploi.belgique.be/defaultTab.aspx?id=24016>

<sup>91</sup> 'To obtain the target group reduction, the worker's quarterly standard wage must not exceed 6030 if, at the moment s/he was hired the worker was aged under 30. For workers aged at least 30, this limit is 12,000.' See <http://www.emploi.belgique.be/defaultTab.aspx?id=24016>

<sup>92</sup> Source: Comments on the draft national background paper, from the Federal Public Department on Work, Labour and social dialogue, 28<sup>th</sup> June, 2010.

found new employment. We are not looking to be exhaustive in this section but are instead aiming at highlighting the main job seeker activation measures and policies.

### 5.6.1 UNEMPLOYMENT BENEFIT

The law of 28<sup>th</sup> December, 1944,, concerning the social security of workers, implemented by the Act of 25<sup>th</sup> November, 1991, puts in place the regulation concerning unemployment benefit for salaried employees who have lost their job in circumstances against their own control. The amount of these benefits varies according to the personal situations of the unemployed people (family situation, notably), the length of their professional experience and the level of their final wage. The worker who benefits from an unemployment allowance will have the amount due paid by either the trade union s/he is affiliated to (CGSLB, CSC or FGTB) or by the CAPAC (Auxiliary Fund for Unemployment Benefit Payment). This benefit rises to 60% of the worker's last year for the duration of the first year of unemployment (Worked out on a wages price ceiling higher than, 2206, 46€ per month and valid during the 6 first months of the 1<sup>st</sup> period of indemnity. Then, there is an intermediate wages price ceiling which is of 2.056,46 euros per month and is valid for the 6 next months of this first period of indemnity.)<sup>93</sup>

). After this period of 12 months, the basis ceiling is lowered to 1.921,71€ per month and depending on the personal situation, this benefit could be reduced to 40% for a period of 3 months, extended by 3 months per year of paid work. For people who cannot give proof of either having dependents, nor loss of the only income they have, or having living alone person status, this benefit allowance is further restricted to a forfeit of 17,20€<sup>94</sup>, without time restrictions, unless in case of exclusions or sanctions).

### 5.6.2 THE UNEMPLOYED PERSONS FOLLOW-UP SUPPORT PLAN

The Solidarity Pact between the generations has provided for the setting up of an unemployed persons follow-up support plan. This plan consists of a series of measures aiming to encourage getting back to work. It is managed on the one hand by the ONEM, which checks through different measures (including being summoned for an evaluation meeting) that the efforts made by the unemployed to find work are sufficient and which hands out sanctions in the case of regulations being breached, and on the other by the Regional public employment services which put into place a particular follow-up support programme for the job seeker.

### 5.6.3 ASSISTANCE MEASURES FOR GETTING BACK TO WORK

There exist in Belgium measures to help people get back to work. None of them are specific to workers who are the victims of restructuring processes, which is why we will settle for mentioning the main measures below:

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<sup>93</sup> Amounts from 1<sup>st</sup> January, 2009.

<sup>94</sup> Amount from 1<sup>st</sup> October, 2008.

- The ACTIVA plan aims at getting people back to work through granting a reduction of social security contributions, the amount of which depends, amongst other things, on the age of the worker concerned (over 45 or otherwise).
- The professional transition programme aims to offer the long term unemployed the possibility of carrying out a training programme in the public sector, in not for profit organizations or in non-market sector associations.
- Reductions in employers' social security contributions are granted to companies which hire workers aged over 50 years. The reduction is progressive, depending on the age of the worker.
- Individual training within a business company in the Flanders Region allows employers to hire a job seeker and to train them according to their specific needs. Through this training programme (which lasts 1 to 6 months), the employer only pays the difference between the post's normal wage and the unemployment benefit received by the worker. The employer commits to keeping the worker in employment for a period which is at least equal to the training period.
- Insertion temporary work is a measure which enables the promotion of job seeker insertion through temporary work agencies. In certain cases, the Flanders Region offers a special bonus to encourage this type of insertion.
- Paying part of the travelling and child minding costs for job seekers in a training programme
- Etc.

## 5.7 Evaluation

The importance of measures linked to the implementation of restructurings bears witness to the historical conduct of Belgian policy, which for a long time was focused on compensation measures such as financial indemnities for workers who were victims of restructurings and the widespread use of an early departure from the labour market. Given the rise in frequency and the number of restructurings and with a view to European pressure to confront the low employment level amongst seniors, this policy was deeply modified by the 'Solidarity Pact amongst the generations' of October 2005, and by the 'crisis measures' of April 2009. The solidarity pact has nonetheless not succeeded in limiting the use made of the prepension, even if it has delayed access to it for older workers. On the other hand, the setting up of special re-employment units aimed at 'old' workers, and their extension to all of the victims of the present crisis seems – even if statistics on the subject do not unfortunately exist – to be a success. In the same way, the growth in the use made of outplacement measures bears witness to the development of the management of the consequences of workers being sacked to more follow-up support measures. This development fully satisfies workers' representatives because, in the majority of restructurings, they take the form of a supplement to financial compensations. The reaction of employers' representatives on this subject is quite different, as they denounce an increase in the financial package necessary to company restructuring, and demand that a larger part of this cost

is met by the public authorities. The Federal Public Department for Employment, Labour and Social Consultation for its part, on the contrary considers that the legal framework does not make the employers responsible enough in terms of the reclassification of workers as the public authorities pay a part of these costs.

Concerning the measures of follow-up support for workers who have been collectively laid off, the reconversion cells system in Wallonia are perceived by the social partners to be a very effective tool, even if they could be adapted to better anticipate restructuring (e.g. to initiate the cell when restructuring is announced and not when people are actually laid off). Moreover, the deep involvement of unions in the cells appears to be an important explanatory factor of their success (Bingen, A., 2006), this particularity moreover stirring up interest in numerous European countries. The statistical analyses carried out in the context of our study however bear witness to mixed results as the reinsertion rates are limited to around 50% of the total of the beneficiaries, whilst it would be more than 65% via outplacement measures. It should nonetheless be noted that the calculation method used by us differs to that of FOREM, which does not integrate certain categories of worker into the reinsertion rates (people in prepension, people available for the prepension, people in work incapacity, etc.) in order to calculate an active people reinsertion rate (64% for the years between 2006 and 2009). In addition it has not been possible to verify the calculation method for the reclassification rates presented by Federgon, which means that the comparison cannot be validated. These results also highlight important differences between the white collar and blue collar worker statuses as the latter, when they find a job, often find themselves in more precarious situations (fixed term contracts, temporary work) than the white collar workers (the majority of whom get permanent employment contracts).

During the national seminar of the project, most of the participants have particularly regretted the lack of quantitative and qualitative data on the results of the private practices of outplacement. Yet, they would judge the efficiency of these approaches and set up criteria of quality and make them to be respected by the private operators.

## 6.1. The employers and their representatives

Belgian employers are represented by sector federations, which are grouped together within the Federation of Belgian Enterprises. This federation is authorised to negotiate collective bargaining agreements and is always called to the negotiating table (as are all the unions) when politicians wish to legislate in the social sphere. In the case of conflict arising from restructuring, the employers' organisations can promote conciliation or mediation.<sup>95</sup> The employers' organisations very positively welcomed the recent governmental decisions (the solidarity contract and the anti-crisis measures), considering that these devices protect economic activities, which must be, in their view, a prerequisite for wider measures, such as social protection, etc.

## 6.2. The workers and their representatives

In Belgium there are 3 main unions, which are, by increasing size, the liberal union (CGSLB), the Socialist union (FGTB) and the Christian union (CSC). The very high membership rates, partly explained by the fact that unions manage unemployment benefits, gives them a considerable role and power within the model of Belgian consultation. In case of restructuring, their strategy is designed firstly to 'save' economic activity by presenting the management of the company with alternative plans with less drastic social consequences. To do this, the unions monitor the economic situation of the company and push it to redeploy itself by proposing, for instance, other potential sources of financing, of new incomes, etc. It is only when these proposals have been eliminated by the management that the worker representatives engage in negotiation over the social dimensions. The behaviour of the trade unions will firstly depend on the nature of the restructuring, the image of the company and its financial capacity. Their demands will be greater in the case of the closure of a subsidiary of a rich international company than in the case of the restructuring of a local SME.

In some cases of restructuring, the redundancy of the union representatives is a real stumbling block. Whilst employers (and collective bargaining agreement<sup>96</sup> n°5) consider that in these circumstances union representatives must be treated as normal workers, the trade unions require sometime a higher indemnity, arguing that former representatives will have more difficulties in finding a new job.

The unions in Belgium also fight to lower the legal threshold of union representation in a business company, which at present is fixed at 51 workers, in order to widen consultation, particularly in the case of restructuring. They in addition fight for a harmonisation of the white collar and blue collar worker statues, enabling the latter to gain longer notice periods and to thus discourage the laying off of such workers.

<sup>95</sup> The act states that this role is also mainly played by the chairs of the various joint committees.

<sup>96</sup> CCT = Convention Collective de Travail – collective bargaining agreement



It should be noted that worker follow-up support offered by the unions is not restricted to the period during which the worker is present within the business company but also when s/he is sacked, and it offers assistance through possible special re-employment units and/or through the period of unemployment (see above).

## 6.3. The public authorities

The term ‘public authorities’ covers different actors involved in the business company restructuring process: the public administrations, the political powers and the judicial powers. Below is a brief presentation, including their role in terms of restructuring.

### 6.3.1 THE PUBLIC ADMINISTRATIONS

As we have already mentioned, the process of the federalisation of the Belgian state has led to the transfer of certain powers from the central power to federated entities. As a consequence there exist several general governments: one federal and the others regional.

#### *Federal level*

The Federal Public Department for Employment, Labour and Social Consultation is the federal public service with responsibility for business company restructuring. This service has the mission of informing, advising and reconciling the social partners who are faced with such a situation.

- The internet site of The Federal Public Department for Employment, Labour and Social Consultation is a powerful information tool aimed at the different stakeholders of the labour market. A section specific to business company restructuring approaches in a very precise way the different scenarios we have moreover represented in this report.
- The Royal Decree of 23<sup>rd</sup> July, 1969, setting up a collective industrial relations department and fixing the personnel status of this department, established an official body of social conciliators. They generally enter the stage when all the other procedures within the equal representation commissions have reached an impasse. Their intervention can be requested by one of the party's concerned or by the Federal Minister for Employment and Labour. They can also choose to intervene on their own initiative. Amongst the missions of the social conciliators, Article 5 of the Royal Decree of 23<sup>rd</sup> July, 1969, cites notably that of ‘seeing that conflicts are prevented.’
- The consultative commission instituted through The Federal Public Department for Employment has been given the responsibility of appraising pre-pension dossiers presented by employers undergoing restructuring and of giving advice to the Federal Minister of Employment on the recognition of companies under restructuring. This

commission is composed of the social partners, a President and a vice-President, all of them nominated by the Minister of Employment.

It should be moreover noted that, as we have seen in the previous chapters, the legal framework makes provision for the intervention of The Federal Public Department for Employment in numerous processes. This intervention varies, because in some cases it is restricted to receiving information (such as the wish to carry out a collective layoff) whilst in other situations its role is more active, such as in giving a company the recognition of undergoing restructuring status, where The Federal Public Department for Employment is asked to validate the support follow-up measures for laid off workers in the restructuring plan.

### ***Regional Level***

In 1980, a special law (Law of 8 August 1980) gave the regions powers as regards the placement of workers. These entities - the regional public employment and vocational training authorities (the Forem in Wallonia, Actiris (ex-Orbem) in the Bruxelles-Capitale region and the VDAB in Flanders) - use these powers differently in terms of employment management. Their mission is to provide support to any stakeholder in the employment market, i.e. to help individuals to gain access to training, to provide support in finding a job, etc. and to help companies recruit and train their white collar workers, etc. These public authorities are also in charge of managing the consequences of the restructuring.

### **6.3.2. THE POLITICAL POWER**

Politicians have little real systematic involvement in restructuring processes. In fact Federal Minister for Employment and Labour as well as other local politicians are mobilized mainly in the case of mass restructuring and/or when a restructuring process has a significant media impact. Their role then often consists of conciliation missions, looking on the one hand to facilitate compromises between the different parties, and on the other to limit the impact of the restructuring on the territory they have responsibility for.

### **6.3.3. THE JUDICIAL POWER**

Besides the classical role of the judicial powers, which is sanctioning non-compliance with the legal framework, the business tribunals play a role in terms of anticipating restructurings. Thus, one of the missions of the business tribunals aims to monitor the economic situation of the business companies established on their judicial administrative region. When a business company is showing signs of difficulty (late payments of ONSS, VAT, etc., liquidity ratios and solvency rates), the Business Tribunal invites the company's director – or summons him or her if necessary – in order to warn them of the situation and their interest in taking corrective measures in order to avoid a winding up order, or even bankruptcy itself.

In addition, the act of 31 January, 2009, on the principle of business company continuity makes provision for an increased role for the business tribunals. It stipulates the creation of a number of new tools (the Business Chambers of Inquiry, designation of a 'business company mediator', a

legal agent or a deputy of the presiding judge,) whose role is to help the business in difficulty to regain good financial and economic health.

#### **6.3.4. SECTORIEL EQUAL REPRESENTATION COMMISSIONS**

The equal commissions have important missions and essential in the frameworks of restructuration of the companies like those of concluding collective conventions of work. In response to the social partners , the minister of the employment or initiative, the social conciliator who is in practice the president of the equal commission , are competent to intent to unblock the process of negotiation.<sup>97</sup>

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<sup>97</sup> Source: Comments on the draft national background paper, from the Federal Public Department on Work, Labour and social dialogue, 28<sup>th</sup> June, 2010.

This national report suggests a synthetically vision of the issue of restructuration in Belgium. The originally of this work constitute , according to their authors, to piece together , inside an unique file, the different steps of all the process of restructuration: The upload or the anticipation , the dynamic of restructuration such as it or the downstream , the measures of accompaniment of the victims of this restructuration. The report also suggests in the introduction a list of contextual information on the situation in Belgium as at the end of the report, a presentation of the main actors implicated in these processes of restructuration.

Thus, the first chapter suggests a list of data on the Belgian economic and social context, allowing the reader to apprehend the main specificities which run in Belgium, as the Belgian federal structure, the economic and structural contests of the labour market. These data are essentials to all the work of the efficient transnational comparison of work , such as it should be realized by the coordinator of this project ARENAS and how it could be lead , then, by any other actor from one of the 27 European countries and interested by the restructuration issue.

The second chapter, concerning the measures of anticipation , distinguishes measures resulting from the legal framework, often set up on a logic that can be qualified of short-term ( except the point , very general, relative to the information of the workers), whose temporary measures to face the crisis , and some initiative of economical redeployment , flexibility of the labour work and /or jobs prospective , set by different stakeholders of the labour market in order to anticipate , on a longer term, restructuration of companies or territories.

The third chapter deals with other four main dynamics of restructuration of company, such as the Belgian legal framework. These dynamics are the collective dismissal, the recognition as company under restructuration, the transfer of companies and the enclosure of companies. The 4<sup>th</sup> chapter concerns the setting up of restructuration and is interested an advance-notes, selection of workers, social plans ( such as the outplacement measures) and other economical extra-legal measures, regional measures of professional reclassification and measures for the crisis in matter of management of restructuration . This chapter shows also briefly the downstream of these measures of accompaniment of the dismissed workers, which are the measures of activation of the job seeker.

For each of these three steps ( chapter 2 to 4) the authors focused on showing a quantification as an evaluation of the different devices displayed , when such information was available in two cases the quantification of the collective dismissals and the results of the cells of Walloon reconversion, a work of statistics analysis has been especially realized for this report . In addition, a particular attention was drawn around 7 case studies in order to illustrate original initiatives linked to some of the devices displayed.

Finally, the last chapter displays, briefly, the main actors implicated in the process of restructuration, which are the employers and their representatives, the public authorities and the sector-based equal commission.

A first version of this report was displayed to these different stakeholders during a seminar which took place in Brussels the 8<sup>th</sup> and 9<sup>th</sup> June 2010 and which connected 60 participants. The numerous rich exchanges of these two days meeting allowed to enrich and valid the contents of this report. Widely, this meeting is considered by the authors of this report, as the first step of transregional partnership of the follow-up and of reflexion on the thematic of the restructuration in Belgium.



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## ANNEXES

Harmonised indicators of the labour market for the 15 to 64<sup>98</sup>  
(yearly averages, in percentages)

|  | 2002 | 2003 | 2004 | 2005 | 2006 |
|--|------|------|------|------|------|
| Harmonised employment rates <sup>99</sup>    | 59,9 | 59,6 | 60,4 | 61,1 | 60,9 |
| <i>Brussels</i>                              | 54,5 | 53,2 | 54,1 | 54,8 | 53,4 |
| <i>Flanders</i>                              | 63,5 | 62,9 | 64,3 | 64,9 | 64,4 |
| <i>Wallonia</i>                              | 54,9 | 55,4 | 55,1 | 56,1 | 55,9 |
| Harmonised unemployment rates <sup>100</sup> | 7,6  | 8,2  | 8,4  | 8,5  | 8,3  |
| <i>Brussels</i>                              | 14,7 | 15,8 | 15,9 | 16,5 | 17,7 |
| <i>Flanders</i>                              | 4,9  | 5,7  | 5,4  | 5,5  | 5,2  |
| <i>Wallonia</i>                              | 10,6 | 10,9 | 12,1 | 11,9 | 11,8 |

The over 50s on the labour market<sup>101</sup>

|  | 50-54 years | 55-59 years | 60-64 years |
|--|-------------|-------------|-------------|
| In employment  | 71,2%       | 50,1%       | 17,0%       |
| Unemployed   | 3,6%        | 2,5%        | 0,5%        |
| Inactive   | 25,2%       | 47,4%       | 82,5%       |
| • <i>In pre-pension or in early retirement</i>                       | 2,3%        | 7,4%        | 41,9%       |
| • <i>Male/female homemaker (looks after the household)</i>           | 9,9%        | 13,1%       | 14,8%       |
| • <i>Available status prior to retirement or to early retirement</i> | 0,8%        | 9,6%        | 13,0%       |
| • <i>Work incapacity</i>   | 6,5%        | 7,8%        | 5,7%        |
| • <i>Unemployment</i>  | 4,0%        | 7,4%        | 5,7%        |
| • <i>Other</i>   | 1,7%        | 2,2%        | 1,5%        |

<sup>98</sup> Source: statistical table adapted from the Belgian National Bank's study 'The labour market and salary costs,' carried out on the basis of data from the FPS Economy, SMEs and the self employed, the Belgian National Bank and the European Commission.

<sup>99</sup> Harmonised employment rates, defined by the authors of the consulted study as 'the people employed as a percentage of the total population of working age.'

<sup>100</sup> Harmonised unemployment rates, presented by the authors of the study as being 'job seekers as a percentage of the active population of working age.'

<sup>101</sup> Source: statistics presented in a newspaper article "Priorité à l'emploi des plus de 50 ans, gare aux prépensions", Le Soir, 11 February 2010, p.4, based on data from enquiries into the Belgian workforce.

## Differentiation of blue collar worker or white collar worker status in Belgium

|  | Blue collar worker   | White collar worker<br>(annual salary _ 25.277 )                                     | White collar worker<br>(annual salary 25.277 ) |
|--|--|--|--|
| <b>1 Individual work rights</b>                                |  |  |  |
| <b>1.1 Trial period</b>  |  |  |  |
| Minimum duration   | 7 days   | 1 month  |  |
| Maximum duration   | 14 days  | 6 months   | 12 months                                      |
| Notice period (on top of the minimum period)                   | None   | 7 days   |  |
| <b>1.2 Illness</b>   |  |  |  |
| In case of work incapacity of less than 14 days                | One day unpaid, then very day is paid  | Every day is paid  |  |
| <b>1.3 Notice period</b>                                       |  |  |  |
| Beginning (after notification)                                 | The first Monday   | The first day of the following month   |  |
| Period in the case where notification is given by the employer | 28 days (56 days when the worker has 20 years of uninterrupted employment), adjusted by the sectoriel collective bargaining agreements (CCT) or collective bargaining agreement n° 75 (CCT 75) | Three months for each 5 year period of employment which has begun                    | idem, or greater by agreement                  |
| Period in the case where notification is given by the worker   | 14 days (it can be reduced if the worker has been employed for less than 6 months)   | 1.5 months for each 5 year period of employment which has begun (4.5 months maximum) | idem, or greater by agreement                  |
| Reason   | The employer has to demonstrate that it is not an arbitrary sacking, if not payment of six months salary   | The worker has to show that it is an arbitrary sacking.                              |  |
| <b>1.4 Annual holidays</b>                                     |  |  |  |
| Duration   | Fixed by Royal Decree  | Two days holiday per month   |  |
| Holiday pay  | Paid by the holiday fund   | Paid by the employer   |  |
| <b>1.5 Suspending of the execution of employment contract</b>  |  |  |  |
|  | Conditionally possible   | Possible in manufacturing (conditionally)  |  |
| <b>2 Collective work rights</b>                                |  |  |  |
| At business company level                                      | Separate elections for the Works Council and the Accident Prevention and Safety at Work Committee  |  |  |
| At sector level  | Equal Representation Commissions which apply only to white collar workers or blue collar workers   |  |  |

## Description of social dialogue bodies in Belgium<sup>102</sup>

| Level     | Body  | Description   | Main roles   | Contents   |
|-----------|---|---|--|--|
| National  | <b>'Groupe des Dix'</b><br>(Belgian management and union representatives) | Regular contacts and formal agreements between leaders of Business Federations and Trade Union Organizations at national level (with government support or pressure)  | Make recommendations to the legislator or government. Make declarations of intent with a view to concluding a collective bargaining agreement and signing general biannual inter-professional agreements (A.I.P. – inter-professional agreement)   | Agreements making provision for guaranteed social inter-professional planning, working and salary conditions, attempts to train workers in the various sectors               |
|           | <b>C.N.T.</b><br>(National Works Council)                                 | Equal representation body at the Federal level, composed of 24 actual/substitute members presented by the representative organizations of employers and workers       | Give advice and formulate proposals concerning subjects in the social field, addressed to the Government and/or the Parliament. Conclude collective bargaining agreements at the inter-professional level (quasi legislative powers). Putting into practice the Union's social directives. | Collective bargaining agreements and advice on<br><br>Individual and collective bargaining law<br><br>Social security law<br><br>Etc.  |
|           | <b>C.C.E.</b><br>(Central Economic Council)                               | Equal representation body at the Federal level, composed of a maximum of 50 peoples presented by the representative organizations of employers and workers            | Give advice or formulate proposals concerning problems related to the national economy, addressed to the Government and/or the Parliament. Purely consultative powers.   | Advice on:<br><br>Economic and Monetary Union, participation of workers, purchasing power...<br><br>Wage margins, competition...   |
| Sectoriel | <b>Equal Representation Commissions</b><br>(By sector of activity)        | Equal representation bodies within professional sectors and presided over by an official from the Federal public department of employment and work (social mediation) | Draw up collective bargaining agreements for the sector (source of specific social rights). Anticipate and mediate all litigation between workers and employers (through a conciliation agency). Manage the social security welfare funds and the industrial training funds                | Agreements on:<br><br>Professional and salary categories, bonus and social advantages, working hours, status of union delegations, untypical working conditions, flexibility |

<sup>102</sup> On the basis of work carried out for the "Odisser – Outils du Dialogue Social au sein de l'Entreprise-Réseau" (*Social Dialogue Tools within the Business-Network*) project carried out at LENTIC in 2006 and 2007, which consisted of developing teaching tools for raising awareness and training for social dialogue in the new forms of organisation (more information: [www.odisser.org](http://www.odisser.org)).

| Level            | Body  | Description   | Main roles  | Contents   |
|------------------|---|---|---|--|
| Business Company | <b>C.E.</b><br>(Business Company Council)               | Election of worker representatives in companies of 100 people and more (or falling to less than 100). Equal representation body presided over by the company director.  | Mainly, to inform and consult workers. To supervise and sometimes decide (work regulations, planning holidays, social and charitable works...)  | Basic economic, financial and social information; periodicals (annual and quarterly) data; exchanges on decisions with collective impacts (restructuring, mass layoffs, close downs...)  |
|                  | <b>Accident Prevention and Safety at Work Committee</b> | Established within business companies with 50 or more workers, through elections. Equal representation body presided over by an employer's representative, plus the safety advisor (secretariat)                                    | To look for and suggest any means of encouraging well being at work, taking decisions in terms of safety  | Safety, health protection, stress, psychological burden, hygiene, environment  |
|                  | <b>Union delegation</b><br>(representative unions)      | Personnel representatives, mandated by their trade union organization. Their status (CCT n°5 – collective bargaining agreement) is implemented by the Equal Representation Commissions or by the C.N.T. (Central Economic Council). | To propose, demand and negotiate with the employer. Sign the business company's collective bargaining agreements. Inform the workers. Deal with all of the affiliated members collective disputes and individual litigation. Oversee the application of the various social regulations. | Every question related to work relationships (contract, working conditions, salaries, regulations, extension of sectoriel business company collective bargaining agreements. Legal information if no Business Company Council has been set up. |