Belgium

By
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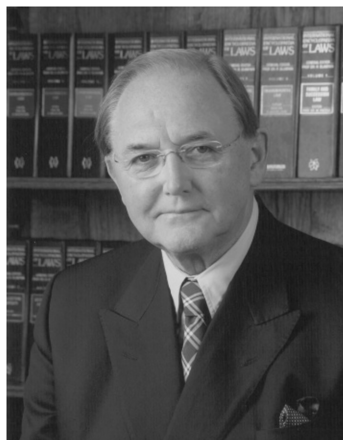
The Author



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List of Abbreviations

ABVV-FGTB	Socialist Unions
ACLVB-CGSLB	Liberal Unions
ACV-CSC	Christian Unions
AH	Labour Court of Appeal
EC	European Community
EU	European Union
ILO	International Labour Organization
ITUC	International Trade Union Confederation
No.	Number
OECD	Organization for Economic Co-operation and Development
RSZ	State Social Security
SME	Small and medium-sized enterprises
VAT	Value Added Tax
VBO-FEB	Federation of Belgian Industries

List of Abbreviations

Introduction

Chapter 1. The General Background

§1. Geography

1. Belgium is a small country lying along the north-western coast of Europe. It covers an area of 11,779 square miles – slightly larger than the state of Maryland in the USA – and has some 40 miles of coastline on the North Sea, and 860 miles of land frontiers (bordering the Netherlands, Germany, Luxembourg and France). The country has a population of about 10,666,866 (2008) and some 905 inhabitants per square mile.

§2. Population

2. Belgium is composed of two main cultural-linguistic communities, speaking Flemish (Dutch) and French, and a small German-speaking community. The Flemish, who outnumber the French-speaking Walloons, live mostly in the north and west, while the Walloons live in the south and east. Both Flemish and French are official languages, and the capital, Brussels, is administratively bilingual. Some 9 per cent are foreigners.

The population of Belgium is as follows.

Table 1
Population of Belgium (1990–2008)

Entiteit	1990	1995	2000	2004	2005	2006	2007	2008
Belgium	9,947,782	10,130,574	10,239,085	10,396,421	10,445,852	10,511,382	10,584,534	10,666,866
Brussels Region	964,385	951,580	959,318	999,899	1,006,749	1,018,804	1,031,215	1,048,491
Flemish Region	5,739,736	5,866,106	5,940,251	6,016,024	6,043,161	6,078,600	6,117,440	6,161,600
Walloon Region	3,243,661	3,312,888	3,339,516	3,380,498	3,395,942	3,413,978	3,435,879	3,456,775

3.

Table 2
Population According to Region and Gender (2000–2008)

		2003	2004	2005	2006	2007	2008
FLEMISH REGION	M	2,956,558	2,966,640	2,979,825	2,997,496	3,017,063	3,039,956
	F	3,038,995	3,049,384	3,063,336	3,081,104	3,100,377	3,121,644
	T	5,995,553	6,016,024	6,043,161	6,078,600	6,117,440	6,161,600
WALLOON REGION	M	1,633,635	1,640,202	1,647,914	1,656,641	1,667,557	1,678,390
	F	1,734,615	1,740,296	1,748,028	1,757,337	1,768,322	1,778,385
	T	3,368,250	3,380,498	3,395,942	3,413,978	3,435,879	3,456,775
OF WHICH GERMAN-SPEAKING COMMUNITY	M	35,543	35,637	36,006	36,330	36,629	36,889
	F	36,028	36,262	36,506	36,789	37,046	37,280
	T	71,571	71,899	72,512	73,119	73,675	74,169
BRUSSELS-CAPITAL REGION	M	476,692	480,334	483,586	489,684	496,788	505,963
	F	515,349	519,565	523,163	529,120	534,427	542,528
	T	992,041	999,899	1,006,749	1,018,804	1,031,215	1,048,491
BELGIUM	M	5,066,885	5,087,176	5,111,325	5,143,821	5,181,408	5,224,309
	F	5,288,959	5,309,245	5,334,527	5,367,561	5,403,126	5,442,557
	T	10,355,844	10,396,421	10,445,852	10,511,382	10,584,534	10,666,866

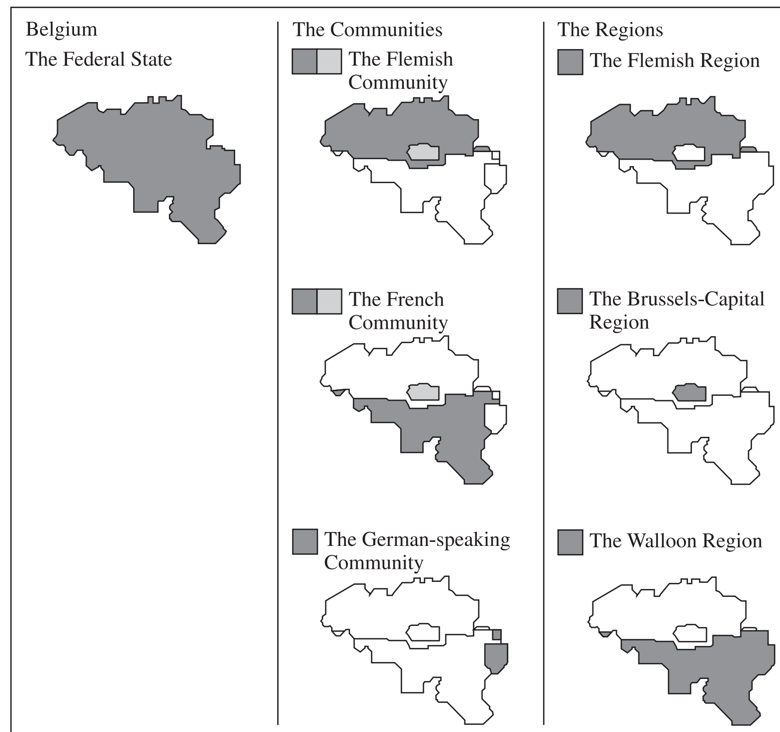
Figure 1
Structure of the population of Belgium 1 January 2008
Per group of age of 5 years and per 1,000 inhabitants

Figure 2
Structure of the population per region 1 January 2005

§3. POLITICAL SYSTEM

4. The Belgian Constitution, promulgated in 1831, set up a centralized state. For many years, however, there has been a growing movement in the two main regions of the country – the Flemish-speaking area in the north, and the French-speaking area in the south – in favour of increased autonomy in the state structures. After much preparation, a general agreement was concluded in 1971, which provided for decentralization to the regional level not only in the cultural field, but also in the social and economic fields, and in the administrative field. This general agreement was separately executed, after difficult and protracted negotiations, by the Acts of 8 and 9 August 1980. A real breakthrough came in the summer of 1988, after prolonged negotiations between three Flemish parties (Christian Democrats, Socialists and the People's Union) and two French parties (Socialist and Christian Democrats), which together constitute a two-thirds majority in Parliament, which is necessary to change the Constitution. The Acts of 1980 were fundamentally amended as Belgium became a federal state, with two states of the Union, a Flemish- and a French-speaking one. It is estimated that some 40 per cent of the budget is decided upon by the Regional Parliaments. Brussels Capital also won special status, with proper powers and organs.

Figure 3
The structure of Belgium



5. The Constitution also sets out the principle of separation between the three powers of the state. The legislative power is wielded collectively by the King and Parliament; the executive power is vested in the King and his Ministers, and the judicial power is in the hands of the Courts and Tribunals. The King reigns, but does not rule. This means that although he appoints and dismisses his Ministers, his person is inviolable and his Ministers are responsible. No Act of the King is effective unless it is countersigned by a Minister. Parliament is composed of two houses: the House of Representatives and the Senate. The members of the House of Representatives number 150 Members. The Senate is composed of 71 members. Both are renewed every four years. Citizens who are fully 18 years old are entitled to vote. The House has full powers and is the main political parliamentary forum. The Senate has specific powers like those relating to the revision of the Constitution and treaties, the relations between the linguistic communities and others. The Senate has also the power of evocation.

6. The two Acts of 1980, as revised in 1988 and in 1993, laid down the organization for Flanders and Wallonia.

A Flemish Council, combining the Flemish Community Council and the Flemish Regional Council (read Parliament) was established, as well as a French Community Council and a Walloon Regional Council. The Councils are directly elected.

Each Council has its own government: the Flemish Executive (maximum eleven members), the French Community Executive (maximum four members) and the Walloon Regional Executive (maximum seven members).

The Regional and Community organs are competent for education (including vocational training), cultural affairs, social welfare, health, economy and energy, employment, roads and transport, environment and housing, ecology, water and land and nature, local and provincial governments, public functions and scientific research.

The Councils can enact decrees, which have the same legal effect as an Act of the national Parliament. Conflicts about competence are settled by a Constitutional Court.

Notwithstanding a large transfer of competence to the respective Communities and Regions, Belgium retains its status as a single economic and monetary union. Thus it is expressly stated that the following remain national competences: monetary and financial policies, price and income policies, competition and commercial practices, commercial law and corporate law, conditions of establishment, industrial and intel-lectual property, metrology and normalization, statistics, the National Investment Board, and labour law and social security legislation.

Needless to say, there are numerous interpretation conflicts between the national and regional institutions about their respective competences, and the Constitutional Court will have a lot on its hands. This is even more so as the Constitutional Court has received extended powers to evaluate the constitutionality of each law and/or decree as far as the principle of equal treatment is concerned, as laid down in Articles 10 and 11 of the Constitution. Laws and/or decrees will also be tested on their constitutionality regarding Article 24 of the Constitution, which guarantees equal treatment as far as the right to education is concerned.

A major constitutional step has been taken, providing the competence of the regional authorities to act as legal parties to international treaties.

Regarding Brussels, the following agreement has been reached. Brussels should be able to play both its roles as European, national and capital of the linguistic Communities. There is an elected Council called the Regional Council of Brussels Capital and a Brussels Government, called the Brussels Executive. Both are competent for the areas for which the other regions are competent: economy and energy, employment policies, environment and housing, water, nature . . . The Council can vote ordinances or regulations, which do not have the same status as the Acts of the Belgian Parliament, or the decrees of the Regional Councils. Culture, education and health fall under the competence of the Flemish, or the French Community Council, which can however delegate authority to the linguistic groups of the Capital and can exercise power by the way of ordinances, which have to respect national laws or regional decrees.

These constitute only the main lines of the political and administrative structure of the Capital Region of Brussels. One of the key characteristics of the arrangement is that Brussels does not constitute a third region on an equal footing with Flanders and Wallonia and cannot consequently act as a third man, swinging the balance of power between the two major linguistic groups.

7. Belgium is composed of 10 provinces: Antwerp, Brabant (2), Hainaut, West and East Flanders, Liège, Limburg, Luxemburg and Namur. Each province is headed by a Provincial Council elected by universal suffrage, and by a Governor who represents the Government and is appointed by the King. From among its members, the Council elects a Permanent Deputation which constitutes the local government. The 589 'communes' or boroughs are administered by a council consisting of the Burgomaster (or Mayor), Aldermen and Councillors. Members of the Council are elected every six years by the voters in their own commune. The Aldermen are elected by the Council and their number is specified by law. The Burgomaster is appointed by the King on the basis of a proposal submitted by the Council.

8. The highest court in Belgium is the *Cour de Cassation*. This Court does not, however, have the power to rule on the constitutionality of Acts passed by the Legislature. There are 5 Courts of Appeal; 26 Tribunals of First Instance (civil – criminal – labour – commercial – youth); and 222 judicial *cantons*, each of which has its own Justice of the peace. The Council of State is the supreme administrative court, competent to rule on the legality of the actions of the government and the administration.

As indicated earlier the Constitutional Court will judge whether the National and Regional Legislators, when enacting laws or decrees, stay within the material and/ or territorial competence which they enjoy under the Constitution. The Court has the power to annul laws of Parliament or Decrees of Regional Councils partly or totally.

9. Until the middle of the 1960s, politics were dominated almost entirely by three 'national' parties which constituted respectively the political expression of the Christian, socialist and liberal ideologies. Since then the position has altered substantially: disagreement between Walloons and Flemings has put an end to the unitary party structure. This has meant the birth of a number of autonomous parties, which although they still largely support the same ideology, adopt a different approach, notably on relations between the Flemish and French-speaking communities:

– the Social Christian Party CDH (*Centre Démocrate Humaniste*) in the French language area, and the CD&V (*Christen-Democratisch en Vlaams*) in the Dutch language area;
– the Socialist Party SPA (*SP Anders – Sociaal Progressief Alternatief*) and the PS (*Parti Socialiste*);
– the Conservative Party: Open VLD (*Vlaamse Liberalen en Democraten – Partij van de burger*) and the MR (*Mouvement Réformateur*).

At the same time, regional parties have emerged, with activities mostly concentrated in a specific region: in Flanders there are the *Nieuwe Vlaamse Alliantie* (NVA) and the *Vlaams Belang* (Flemish right wing); and the *Front Démocratique des Francophones* (FDF), a party which is active in Brussels and in the surrounding area. The Communist Party (PC) is no longer represented in Parliament. More recently other parties have emerged like the Ecologists.

The latest elections of June 2007 and 2009 reshuffled the political cards. Questions arise especially concerning constitutional reform. The Flemish parties want more autonomy for the Commun-ities on issues like employment policy, health, mobility, telecom and scientific policies, as well as more financial responsibility for the communities for the issues for which they are competent. The French-speaking parties reject this, and a stalemate has resulted. At regional level, there is some asymmetry: at Flemish level, the Christian Democrats and NVA are part of the government together with the Socialists.

§4. Employment Statistics

Table 3
Employment rate as percentage of the population aged 15 to 64

		2003	2004	2005	2006	2007
Flemish Region	Male	70.7	71.6	71.8	71.5	72.3
	Female	55.0	56.7	57.8	58.3	59.8
	Total	62.9	64.3	64.9	65.0	66.1
Walloon Region	Male	63.5	63.2	63.7	63.6	64.3
	Female	47.4	46.9	48.4	48.6	49.6
	Total	55.4	55.1	56.1	56.1	57.0
Brussels Capital Region	Male	59.1	60.3	62.0	60.5	61.4
	Female	47.4	47.9	47.9	46.6	48.3
	Total	53.2	54.1	54.8	53.4	54.8
Belgium	Male	67.3	67.9	68.3	67.9	68.7
	Female	51.8	52.6	53.8	54.0	55.3
	Total	59.6	60.3	61.1	61.0	62.0
EU-27 (1)	Male	70.3	70.2	70.8	71.6	72.5
	Female	55.0	55.4	56.3	57.3	58.3
	Total	62.7	62.8	63.5	64.5	65.4
B/EU gap	Male	–3.0	–2.3	–2.5	–3.7	–3.8
	Female	–3.2	–2.8	–2.5	–3.3	–3.0
	Total	–3,1	–2,5	–2,4	–3,5	–3,4

Table 4
Distribution of employers and employees by size of the enterprise on 31 December 2007 Private sector

Size of enterprise	Employers		Blue collar			White collar			xxx			Total	
	Number	%	Male	Female	Total	Male	Female	Total	Male	Female	Total	Number	%
Employers with:													
fewer than 5 employees	163,142	66.06	89,914	47,047	136,961	50,715	104,024	154,739	–	–	–	291,700	10.98
5 to 9 employees	39,893	16.15	87,089	30,290	117,379	52,132	90,498	142,630	–	–	–	260,009	9.79
10 to 19 employees	21,397	8.66	101,534	30,289	131,823	66,402	89,476	155,878	–	–	–	287,701	10.83
20 to 49 employees	14,176	5.74	157,527	49,636	207,163	104,843	121,688	226,531	–	–	–	433,694	16.33
50 to 99 employees	4,618	1.87	100,599	44,855	145,454	77,901	97,569	175,470	–	1	1	320,925	12.08
100 to 199 employees	2,177	0.88	97,343	41,917	139,260	78,883	80,882	159,765	–	–	–	299,025	11.26
200 to 499 employees	1,152	0.47	105,858	48,347	154,205	94,411	100,981	195,392	–	–	–	349,597	13.16
500 to 999 employees	283	0.11	48,470	34,691	83,161	53,023	55,535	108,558	15	4	19	191,738	7.22
1,000 or more employees	123	0.05	77,242	23,952	101,194	62,509	58,146	120,655	61	9	70	221,919	8.35
Total	**246,961**	**100,00**	**865,576**	**351,024**	**1,216,600**	**640,819**	**798,799**	**1,439,618**	**76**	**14**	**90**	**2,656,308**	**100,00**

Table 5

Distribution of employers and employees by size of the enterprise on 31 December 2007 Public sector

Size of enterprise	Employers		Blue collar			White collar			xxx			Total	
	Number	%	Male	Female	Total	Male	Female	Total	Male	Female	Total	Number	%
Employers with:													
Less than 5 employees	4,609	21.83	967	3,203	4,170	967	2,307	3,274	1,208	1,188	2,396	9,840	4.68
5 to 9 employees	2,782	13.17	1,925	4,955	6,880	1,637	4,522	6,159	2,213	3,624	5,837	18,876	8.98
10 to 19 employees	3,587	16.99	2,977	7,413	10,390	4,070	13,069	17,139	8,087	16,083	24,170	51,699	24.60
20 to 49 employees	5,768	27.31	7,215	13,902	21,117	13,920	43,047	56,967	34,771	64,934	99,705	177,789	84.60
50 to 99 employees	2,166	10.26	8,193	11,324	19,517	15,026	32,654	47,680	42,034	44,034	86,068	153,265	72.93
100 to 199 employees	1,380	6.54	11,167	10,311	21,478	19,886	38,344	58,230	54,558	53,535	108,093	187,801	89.37
200 to 499 employees	551	2.61	14,852	11,277	26,129	16,306	29,915	46,221	58,844	31,384	90,228	162,578	77.36
500 to 999 employees	162	0.77	5,294	6,220	11,514	12,674	24,418	37,092	41,366	21,487	62,853	111,459	53.04
1,000 or more employees	112	0.53	10,198	9,201	19,399	27,974	44,584	72,558	73,329	44,859	118,188	210,145	100.00
Total	**21,117**	**100.00**	**62,788**	**77,806**	**140,594**	**112,460**	**232,860**	**345,320**	**316,410**	**281,128**	**597,538**	**1,083,452**	**100.00**

10. In the private sector there are fewer blue-collar workers than white-collar workers. Here a dramatic shift has taken place: in 1947 the ratio was still five blue-collar workers for every white-collar worker. The growth of the white-collar group is continuing and taking into account the fact that the vast majority of public employees are white-collar workers (85 per cent) one can say that the actual ratio is continually changing in favour of white-collar workers. Consequently, the Belgian labour force is better educated and more sophisticated than ever before, with higher expectations of more interesting jobs and humane working conditions.

In December 2007 there were 1,083,452 employees in the public sector and education and 2,656,308 employees in the private sector. There were 1,216,600 blue-collar and 1,439,678 white-collar workers in the private sector.

This has to do with the tertiarization of the economy and not the fact that blue-collar workers received white-collar status. Many white-collar jobs are to be found in the commercial and the non-profit sector. One out of five workers works in the non-profit sector: education, health care, welfare work and the socio-cultural sector.

In 2008, 22.6 per cent of the employees were part time workers: 7.9 per cent men and 40.9 per cent women.

11. Belgium remains a country of 'small businesses'. In 2007 there were in the private sector 246,961 employers as opposed to 220,360 in 1993. The large majority of them are small enterprises with fewer than 50 employees, namely 96.61 per cent or 47.97 per cent of employees. This has important consequences, and in fact introduces a dual *labour system* in Belgium. Taking size into account is a long established practice in labour legislation and industrial relations. A works council only has to be set up in enterprises which employ, on average, at least 100 employees; a committee for prevention and protection at work if there are 50 employees; and a trade union committee, depending on the existing collective agreements, when for example 25 or 50 workers are employed. As a result there are no works councils, committees or trade union committees in the majority of enterprises, and so for an important number of employees there is no workers' representation at this level. Quite evidently the unions have less influence in smaller enterprises, as compared with bigger companies. One has however to bear in mind, as we shall see later, that collective agreements covering wages and working conditions, whether at the inter-industrywide level or at branch level, can be extended and thus made binding on all employers active in the private sector as a whole, or in the given branch of industry, so that all employees will have the benefit of a collective agreement.

§5. Social and Cultural Values

12. The social and cultural values which co-determine the nature of labour law and industrial relations in Belgium largely coincide with the legal foundations of economic power in a free enterprise economy. Economic power in Western society rests mainly on four fundamental options, which will supposedly remain sacrosanct for our generation. The first three of these options enable individuals or groups of individuals to obtain decision-making power over goods; the fourth gives the same individuals or groups of individuals power over people (employees). The first

fundamental option concerns the *right of property*; this right enables the proprietor to dispose of, exploit and benefit from his property, and to make a profit from it. The second fundamental option relates to the *freedom of commerce and industry*, which was introduced in Belgium in 1791 when the medieval guilds and corporations were being abolished during the French Revolution. This freedom means that any person can freely engage in commerce, industry or any other activity of his choosing. Thirdly comes the *freedom of association*, whereby it is possible for individuals to associate with others in order to engage in industry or commerce; and to that end, to bring in their own capital in order to maximize any profit which may ensue for eventual division. Property, freedom of commerce and industry and freedom of association still constitute the legal basis for the free enterprise system in our society and will, unless there is a revolution, undoubtedly continue to do so.

The fourth option involves *the freedom of labour*: thus the employee is free to choose his job and his employer, and has the consequent freedom to conclude an individual labour contract. By means of this contract the employee engages himself to work in a position of *subordination*; that is, under the command, authority and the control of the employer. So the employer gains power over his workers, and they have to carry out – within given limits of course – his orders. It is unneces-sary to illustrate that in the name of individual freedom with the employee at the mercy of the labour market forces and the (often) economically stronger employer, much suffering has been caused: child labour, long hours of work, dangerous and unhealthy work places, and low wages were all characteristic of the 19th and part of the 20th century.

13. Although protective labour laws and trade union action, resulting from collective bargaining as well as from the direct intervention of the state in a mixed economy, have had a dramatic impact upon the Belgian scene, these basic values are still the pillars of the social system, and fundamentally determine the development of the labour relations system. The Belgian economic system can adequately be described as a market economy with active government intervention in its cyclical and structural evolution. The economy is very open to the rest of the world, and two-thirds of all exports are destined for EU Member States. While the 'system', and especially the profit motive, has been challenged less now than in the past, its existence has, at the same time, been repeatedly and explicitly recognized and legitimized. In most of the nation-wide, inter-industry agreements concluded since the Second World War, the trade unions have 'recognized the necessity of the legal authority of the employers' (1944); 'not to change the status of the enterprise or challenge the authority of the managers' (1954); 'respect the managerial responsibilities and the decision-making power of the employer' (1970). In 1971 and again in 1972 the trade unions recognized, as they had in 1947, 'the necessity of the legal authority of the employers, and they consider it to be a point of honour for the workers to execute their work dutifully'. The last agreements are still valid. The societal choice for a free market is exemplified and strengthened by the European Union of which Belgium is a fully fledged member.

14. So, it can be said that Belgium is a pluralist society in which individuals and groups are allowed the freedom to promote their own interests, and in which

social conflict is consequently inevitable, and indeed an essential element in the decision-making process. This is evidently the case in the Belgian industrial relations system, where employers and employees, enjoying a large degree of autonomy, settle their conflicts of interest by means of industrial warfare. Conflict and strife are looked upon as being essential to the autonomous decision-making process which characterizes the Belgian labour relations system: free and effective collective bargaining is in fact impossible when the workers do not, for example, have the freedom to stop work collectively and by so doing try to force the employer to accept their point of view. Or, to put it another way, labour relations are, in Belgium, essentially power relations, whereby the decision-making power of the employer is challenged by the collective power which the workers may display.

Since the growing globalization of the economy, massive introduction of new technologies, human resources management, re-engineering, benchmarking and delayering, the industrial worker, once the traditional base of trade union strength, has been fading away. Shifts in employment have contributed to the weakening of the trade unions, which are, as in other European countries, on the defensive.

§6. Globalization and the Economy: the Impact of the Crisis

I. Unofficial Strikes: 2007–2008

15. As one of the most open economies in the world, Belgium is extremely vulnerable to global developments, such as a rise in the cost of energy, especially oil prices. A first reaction of workers was noticed in 2007–2008; they were demanding higher wages in a series of unofficial strikes[1] to offset rising energy and food prices.

A series of unofficial strikes took place at a subcontractor for the Ford car factory. The main demand of the strikers was for a wage increase of €1 an hour. In some cases, it took only a few hours of strike action before the employer gave in to the demands of the workers. Wage increases of around 4 per cent were awarded, which in some instances were accompanied by bonuses.

These actions were soon followed by a strike held by the Ford workers themselves. The main demand of the strikers was for their temporary contracts to be converted into permanent contracts and for a slowing down of production.

These strikes motivated workers in other companies and economic sectors to take or threaten strike action.

An analysis shows that the strikers were mostly blue-collar workers and that strikes mainly took place in industrial sectors like the metal industry, the food industry and the chemicals sector. The wage demands were often accompanied by complaints about increased work pressure and/or flexibility.

The wave of strikes placed the trade unions in a particularly difficult situation. Sectoral or company collective agreements which deal with wage increases normally also include a so-called ‘social peace clause’. This means that, for the duration of the agreement, trade unions promise not to make additional wage demands or to support these demands through the organization of strikes.

1. Guy Van Gyes, ‘Workers demand higher wages in series of unofficial strikes’, 21 April, 2008, http//:www.Eurofound.ie/.

II. The Crisis (2008–2009)

A. Restructurating

16. The global economic crisis led to negative results for the Belgian economy. The Belgian Central Bank expected for 2008–2009 a slowdown of 1.9 per cent of gross domestic product (GDP) as well as an increase in the unemployment rate from 7.1 per cent to 7.8 per cent. The Central Bank forecast a loss of 58,000 jobs in 2009.

Economic sectors most affected are likely to be those most sensitive to fluctuation. The motor industry and subcontractors to the industry have already suffered from the slowdown in demand. Chemical, metal and glass industries are also concerned by significant restructuring processes and job losses. On the other hand, other sectors seem to be in a stronger position. So far, logistics, transport, hotels and restaurants, health and social work, and food distribution are not facing any slowdown and some sectors are even recruiting additional staff[1].

Also the Belgian banks have suffered from the international financial crisis since mid-2008, resulting in all of the major banks receiving state help. The trade unions fear major job cuts in the sector and are fighting for employment protection. The government also reacted by introducing a law to limit on the wage bonuses of chief executive officers[2].

One of the ways of also tackling the crisis is temporary economic unemployment, which has been extensively applied in the case of blue-collar workers. Temporary economic unemployment means that workers retain their jobs, but are looked upon as unemployed and receive unemployment compensation. This has now, exceptionally, been extended to blue-collar workers.

At company level, alternatives to temporary unemployment are being used, like forms of organized working time reduction in order to save jobs. The system of time credit, diminishing working time combining work and family life, compensated by partial unemployment compensation, is also widely as a way to bridge the crisis[3].

1. Emmanuelle Perin, '50% of companies expect to restructure in 2009', 28 July, 2009, http//:www.Eurofound.ie/.
2. Guy Van Gyes, 'Impact of financial crisis on bank employees', http//:www.Eurofound.ie/.
3. Guy Van Gyes, 'Temporary unemployment is buffer to economic crisis', http//:www.Eurofound.ie/.

B. Action by Government and Social Partners

17. In order to tackle the crisis[1], the Belgian government presented a stimulus plan to revive the national economy. The social partners negotiated their intersectoral agreement for the next two years (2009–2010). That agreement aims to strike a balance between companies' competitiveness, purchasing power and employment. A substantial increase in net salaries and tax reductions for employers are among the proposed measures.

The social partners insisted on the 'exceptional' character of the 2009–2010 intersectoral agreement. The agreement aims to restore the confidence of workers and employers. The first series of measures aim to increase workers' net income

by a maximum of €375 for next two years without increasing costs for employers. This net increase will be realized through:

- an increase in the value of luncheon vouchers;
- an increase in travel compensation (undertaken for work purposes);
- an increase for employers, from 60 per cent to 75 per cent, in the payment of public transport tickets for workers to travel from home to the workplace.

Automatic indexation of wages to the cost of living is maintained. Other measures ensure that social benefits, such as pensions and unemployment benefits, will follow the rise in the cost of living and will also be increased. Workers who are temporarily unemployed because of the economic crisis will receive higher benefits.

On the other hand, employers will benefit from tax reductions on labour costs and financial incentives in order to recruit long-term unemployed people.

1. Emmanuelle Perin, 'Social partners and government agree plan to boost economy', 3 February, 2009, http//:www.Eurofound.ie/.

C. Crisis Premium for Blue-collars Workers

Blue collars, who are dismissed by way of notice between 1 January 2010 and 30 June 2010 receive a premium of 1,666 Euro net (no taxes, nor social security contributions). 2/3 of the premium are paid by the National Employment Office; 1/3 or 555 Euro by the employer. The premium is not due when the workers is dismissed during the trial period, when retiring or in case of pre-pension or in the framework of a restructuration when the worker can register himself in an employment cell.[1]

Automatic indexation of wages to the cost of living is maintained. Other measures ensure that social benefits, such as pensions and unemployment benefits, will follow the rise in the cost of living and will also be increased. Workers who are temporarily unemployed because of the economic crisis will receive higher benefits.

On the other hand, employers will benefit from tax reductions on labour costs and financial incentives in order to recruit long-term unemployed people.

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156. The amount of information on the Internet and the relevant websites is of growing importance. Most of the time, however, information is in Flemish and French. A useful website giving summaries and overviews of the situation in Belgium is http://ww.eiro.eurofound.ie set up by the European Foundation for Living and Working Conditions.

Part I. The Individual Employment Relation

Chapter 1. Definitions and Concepts

§1. Different Categories of Employees

157. Belgian labour law distinguishes between different categories of employees, generally according to the nature of their work:

– blue-collar workers;
– white-collar workers;
– commercial travellers;
– domestic servants;
– student workers.

All the above categories are regulated by the Act of 3 July 1978 governing individual labour contracts. Mention must be made of the special Acts for *seamen* (Act of 3 June 2007), *bargemen* (Act of 1 April 1936 and Act of 3 May 2003), *apprentices* (Act of 19 July 1983), and *professional sportsmen* (Act of 24 February 1978). Temporary workers are covered by the Act of 24 July 1987. More detailed description of these categories will, however, be limited to blue-collar and white-collar workers, commercial travellers, temporary workers and sportsmen.

New forms of employment the local employment agency employment contract (Act 7 April 1999 and start-jobs (Act 24 December 1999)) are also emerging as special measures to promote employment.

A new category seems to be in the making: the *teleworker*. The teleworker is someone who works at a non-traditional workplace, from home, a telecottage, whatever. The teleworker is either an employee or self-employed. As an employee he can be a white-collar worker or a homeworker. An Act of 16 December 1996 concerning homework has been adopted, as well as national inter-industry wide collective agreement No. 85 of 9 November 2005 concerning telework, concluded in the National Labour Council, implementing the European Voluntary Agreement of 22 July 2002 on Telework.

I. Blue-collar and White-collar Workers

158. As has already been indicated, the distinction between blue-collar and white-collar workers is the *summa divisio* in Belgian labour law and industrial relations.

This distinction is not only of importance in the implementation of individual labour law, for instance with regard to terms of notice, but also in day-to-day collective labour relations: indeed there are separate unions for blue- and white-collar workers, different joint committees, different election lists for works councils and for the committee for prevention and protection at work, separate chambers in the labour courts and so on. Other main differences, besides the terms of notice, relate to:

– the trial clause;
– the covenant of non-competition;
– the intervals at which the salary is paid.

159. The distinction between blue-collar and white-collar workers can be found in the first protective labour measures taken by the legislature at the end of the 19th and the beginning of the 20th century. When the Act of 10 March 1900, concerning the individual labour contracts of blue-collar workers, was promulgated, it was clear to the members of the Parliament at that time that only production workers needed protection. In all enterprises, which were then generally smaller, the few white-collar workers were looked upon as the confidence men of the employer and as being on the side of the managers. The nature of the distinction between the two categories was also clear: the first category of workers undertook manual labour with little or no intellectual input, while the second did almost exclusively so-called 'intellectual' work (minimum reading and writing). The criterion intellectual/manual is still, after so many years, the only one used to distinguish between blue-collar and white-collar workers. The legislator has never been very explicit about the meaning of the terms 'intellectual' and 'manual', and it has been up to the Labour Courts to apply and qualify the distinction. Analysing the cases, two tendencies can be distinguished: the first, rather formal tendency regards as intellectual every performance which chiefly involves the mind without taking into account the degree of difficulty or the attention which the worker has to pay; the other tendency takes into account the different qualities needed in the performance of the job, such as the responsibility, skill, attention and so on. Needless to say, there are a number of workers, such as so-called technical employees (electricians, TV repairmen etc.), who are extremely difficult to categorize. Notwithstanding, it remains the nature of the performance which is the determining factor. Other elements, such as the timing or means of payment, the denomination given by the parties, and the educational standard of the employee are not, *per se*, relevant for the categorization, although these elements undoubtedly have a part to play if there is doubt.

160. The distinction between white-collar and blue-collar workers, and especially the criterion on which it is based, has been under heavy attack in recent years. Numerous efforts have been made to overcome the unjustified consequences of the distinction, and on some points there has been success (securing a guaranteed salary in the case of incapacity to work because of illness or an accident); but on the important issues such as terms of notice, no real progress has been made. Abolishing the distinction would imply a radical change in too many fundamental societal structures, and especially in the restructuring of collective labour relations, for

which the white-collar workers' unions are certainly not ready. Employers who would like to give blue-collar workers – with their agreement – white-collar status cannot legally do so, as the distinction is one of public order. While it is possible to give a blue-collar worker some of the advantages of white-collar status, such as for example longer terms of notice, it is only possible in so far as the aspects of white-collar status granted are not contrary to the regulations already governing blue-collar workers. For example, the trial period for a blue-collar worker is a minimum of 7 and a maximum of 14 days; for a white-collar worker it is a minimum of a month and a maximum of 6 or 12 months, depending on annual remuneration. The regulation on trial periods for white-collar workers could not be applied to blue-collar workers, even if both parties agreed, given the imperative nature of the law on labour contracts. The fact is, however, that in many cases white-collar status is given to manual workers as a kind of reward after a certain number of years, or in enterprises where there are only a few manual workers. The social inspectors tolerate this, as long as the minimum level of pay obligatory for blue-collar workers, and the rules on working time laid down by the competent joint committee, are respected.

161. As indicated earlier, the Constitutional Court judged on 8 July 1993 that the distinction, although out of date, is not contrary to the principle of equal treatment as embodied in the Constitution and that it is up to the government to introduce the necessary legislative changes in Parliament to remedy the situation.

162. Due, *inter alia*, to criticism emanating from the Committee of Independent Experts of the Council of Europe (Social Charter), the Belgian social partners concluded on 20 December 1999 interindustry-wide collective agreement No. 75 concerning the terms of notice for blue-collar workers to be respected by the employer in case of dismissal. We expand on this later when we discuss the termination of the employment contract. But suffice it to say that the measure leaves blue-collar workers still in the cold, not only because a wide difference remains compared with white-collar workers but also as the agreement does not apply to those sectors where other arrangements apply. These arrangements may be less favourable than the terms contained in Convention No. 75, as we will explain later.[1]

1. *See* Part I, Chapter 6, §3, III, B, 1.

II. Commercial Travellers

163. Commercial travellers, according to the 1978 Act, are white-collar workers engaged in finding and visiting clients with the aim of negotiating and concluding 'business' on behalf of and in the name of one or more employers. This 'business' is to be understood in the widest possible sense: buying and selling, hiring and so on. The commercial traveller acts in the name of and on behalf of his employer: he is essentially an intermediary, and is not a party to the agreement which is eventually concluded between his employer and his client. In order to come within the scope of the 1978 Act, the traveller must exercise his profession permanently; but

this does not necessarily mean exclusively or full-time – only accidental activity is excluded. The *Cour de Cassation* decided, however (in 1999), that commercial travelling should be the main object of the employment contract. The Act explicitly states that authority as an element of subordination is sufficient to establish the existence of an individual labour contract for the commercial traveller. Moreover, the law reserves the duty of proving subordination. Every person engaged in the activity of commercial travelling is regarded as an employee in the sense of the 1978 Act, unless the employer can prove that there is no subordination. Article 4 of the 1978 Act explicitly excludes the insurance sector from its scope. The Constitutional Court (1999) ruled, however, that employees working in the insurance sector needed to be treated as full-fledged commercial travellers, if they performed similar activities. The Court was of the opinion that it was wrong to exclude white-collar insurance workers from the scope of the 1978 Act if they performed similar work.

The Act of 1978 also lays down explicit rules on the following important points: the payment of the commission, the indemnity of eviction and the covenant of non-competition and arbitration. The commercial traveller who is dismissed by his employer will receive an *indemnity of eviction* if he can prove that he has recruited new clients, unless the employee can prove that the termination of the contract causes no detriment to the employee. The traveller is entitled to the indemnity after one year of employment, and it is equal to three months' salary if he has less than five years of employment. If he has greater seniority, his indemnity will be increased by one month's salary for the beginning of each additional five-year period.

III. Temporary Work

A. Temporary Workers

164. Temporary work in Belgium is regulated by the Act of 24 July 1987, which was almost unanimously adopted by Parliament, indicating that a wide consensus has been reached on a topic which was for a long time a subject of heated debate. One can state that temporary work has been consolidated and has acquired a definite place in the Belgian labour law system. The new 1987 Act confirmed options which were already contained in the provisional 1976 Act on temporary work and the consecutive collective agreement No. 36 of 1981 concluded in the National Labour Council. One of the compromises, making a unanimous agreement concerning the role and place temporary work possible, is the fact that temporary work is not only to be undertaken by private enterprises: the State Employment Agency is also involved in temporary work and acts as an employer of temporary workers.

165. Lines of force are:

1. The social protection of the temporary worker

The temporary worker is regarded as a full-fledged employee, enjoying the full protection of labour law and social security. He will be categorized as a white-collar

or blue-collar worker in accordance with the manual or intellectual nature of his work. His employer is the temporary work firm.

2. The safeguarding of the interests of the permanent worker takes place:
   – through the strict limitations imposed on the kind of work temporary workers can perform, so that the jobs of the permanent workers are not threatened;
   – by providing that the wages of the temporary worker cannot be less than the salary he would have earned if he had been engaged by the user as a permanent worker; so that temporary workers cannot be considered as cheap labour, pushing permanent workers out of the market.
3. The protection of the user is achieved:
   – through a system of licences (called 'recognition'), by which the regional government permits only *bona fide* firms to operate. This system also guarantees respect for the social rights of the employees.
4. Finally, the Act gives the *government the necessary powers to eliminate abuses* through surveillance, penal and other sanctions.

166. An employer (that is the user) who needs a temporary worker can have recourse to different measures to meet this need. He can hire temporary workers directly, or he can call upon the employees of another employer within the framework of the lawful putting of employees at the disposal of an employer-user. The Act drastically restricts the possibility of putting workers at the disposal of another employer; however, for practical purposes two channels remain open:

– *sub-contracting*,[1] and the use of
– *temporary work firms*.

The Act of 13 February 1998 concerning the Promotion of Employment (Article 72) allows an employer to place, in addition to his normal activities, his permanent employees for a limited duration at the disposal of a user, provided he has obtained permission beforehand from the public authorities.

1. Sub-contracting may be described as 'a procedure followed by many companies to sub-let certain parts of the operation to sub-contractors, rather than have the company's employees perform the work, frequently on the grounds that the work can be performed more efficiently and with less expense to the main company' (Roberts' *Dictionary of Industrial Relations*, Washington, 1971, BNA, p. 517).

167. Temporary work firms can only operate for the performance of 'temporary work' as defined by the Act. If they operate outside the scope of the Act, they will be punished by penal sanctions and their licence may be suspended or withdrawn. Temporary work is strictly defined in the Act. It is the activity which consists of:

(a) the replacement of a permanent worker (for example in case of sickness, vacation, maternity leave etc.);
(b) help in case of a temporary increase in workload (due, for example, to an increase in orders);

(c) enabling exceptional work to be carried out (caused by an accident, or the creation of a new department for which the employer has not yet been able to engage permanent employees, or similar);
(d) artistic performances or works, which are delivered or made against payment, for the benefit of an occasional employer or user can be temporary work.

This includes creations or interpretations of artistic works in the audiovisual and graphic arts, in music, literature, spectacle, theatre and choreography.

168. On 19 December 2001, two industry-wide collective agreements were concluded in the framework of the National Labour Council, No. 36*quaterdecies* and No. 58*ter*. Both relate to the possibility to use temporary workers in the construction industry, which was until then forbidden. The first agreement allows to make use of blue-collar workers to replace workers, who are incapacitated to perform or in case of temporary increase of the workload. No. 58*ter* provides procedural rules: labour contracts for only one day are forbidden. In case of temporary increase in the work load, the temporary workers can only be employed for a period of 6 months. In enterprises where there is no trade union committee, the duration of the agreement can be from 12 to 18 months provided permission to that end is obtained.

The labour contract for temporary work can be concluded in one of three forms:

(a) a contract for a definite period;
(b) a contract for a precisely indicated job;
(c) a contract for replacement.

169. The quest for more flexibility on the labour markets, enhanced by the information society and the increasing shortage of labour, are in flagrant contradiction with the legal limits on temporary work and on the putting of workers at the disposal of a user or of another employer. It is clear that it should be possible to engage a temporary worker within the framework of an employment contract of an indefinite duration – so that the economic risk lies with the work agency – and that the possibilities of putting workers at the disposal of a user should be enlarged considerably. These points are under discussion now and the trend is one of more flexibility, provided that the workers in question enjoy the same full-fledged protection as other workers, which is perfectly legitimate, possible and not contested.

B. Putting Workers at the Disposal of a User

170. The Act of 12 August 2000 dramatically changed the possibilities of putting workers at the disposal of a user. Previously this was for practical reasons only possible within the framework of temporary work. Now the road lies wide open.

According to the 1987 Act putting workers at the disposal of a user was possible when this was done without delegating any part of the authority that is normally in the hands of the employer. The Act of 2000 has qualified that condition and says that there is no delegation of authority to the user when the user fulfils legal

obligations regarding welfare at work, as well as regarding the guidelines which follow from the agreement he has with the employer, also concerning working time and rest-periods concerning the performance of the agreed upon work.

The 2000 Act responds in this way to the growing need for flexibility on the labour market. The Act renders the prohibition of putting workers at the disposal of a user void of almost any content. Disposal is possible also when the user determines the welfare on the job, working time and rest periods and the performance of the work to be done, as agreed upon between the employer and the user. One wonders what authority is left to the employer? The indication of the user where the employee will work, the evaluation of the job performance, wage rises and promotion, eventual disciplinary sanctions and, of course, the right to dismiss the employees are still within the authority of the employer.

The 2000 Act opens the door to putting workers at the disposal of a user widely. The disposal is not limited either in time, or as regards the nature of the work to be performed, or concerning the kind of employment contract (for a definite or for an indefinite period).

IV. Apprentices

171. The apprenticeship contract is, according to the Act of 19 July 1983, concerning apprenticeship for jobs, performed by employees, with the exception of domestic workers; it is a contract for a definite period under which a master engages himself to provide, or have someone provide, an apprentice with a training aimed at performing certain work; the apprentice engages himself in learning the practice of the work under the authority of the master and follows under his control the necessary courses.

Such an agreement can be concluded when the apprentice has reached the age of 16 and before he has reached the age of 18 years. Each apprenticeship contract has to be put in writing for each individual apprentice at the latest when the apprentice enters into service. The contract has an obligatory content, as well as a trial period, with a minimum period of one month and a maximum period of three months.

The apprentice will receive compensation, equal to a percentage of the minimum wage for the job the apprentice wishes to learn. This compensation is to be looked upon as a wage in the sense of the Wage Protection Act of 12 April 1965.

The joint committees and the National Labour Council will create specialized apprenticeship committees. These committees have the task of establishing a model training programme for each job. The Act of 19 July 1983 comprises a rather elaborate regulation of the obligation of both parties, the suspension of the execution of the apprenticeship contract, the termination of the contract, the organization of the learning time, the control bodies . . . Notwithstanding, labour law in general is applicable to apprentices as the Act considers apprentices to be ‘employees’ according to the labour law.

V. Start-jobs

172. In response to the European employment guidelines, which stipulate *inter alia* that youngsters out of a job should either enjoy employment or training, start-jobs were introduced by the Act of 24 December 1999. The start-job scheme aims at giving youngsters the possibility of entering the labour market. Start-jobs provide them with a job and/or additional vocational training.

In order to realize that goal, employers who employ at least 50 employees are obliged to hire new workers (youngsters engaged within the framework of a start-job-agreement) at a rate of 3 per cent of their workforce.

173. All youngsters, whether they have a diploma or not, qualify for a start-job if they are registered as looking for a job and less than 26 years old.

Start-jobs can last until the last trimester of the year in which the worker becomes 26 years of age.

An employer who engages youngsters who are unskilled or lowly skilled gets a reduction of social security contributions. Since January 2006 he can qualify for an unemployment indemnity which he can deduct from the net wage.

174. A start-job contract can be a labour contract, cover an alternative training programme or be an apprenticeship contract, as follows:

– a labour contract (minimum half-time);
– an alternative training programme, being a part-time employment contract – at least half time;
– an apprenticeship contract, either as an apprentice employee or a self-employed apprentice or an agreement for reintegration in the labour process;
– any other form of training contract, as determined by Royal Decree.

The start-job contract has to follow a model contract laid down in a Royal Decree.

175. Private employers who are in economic difficulties or have already created additional jobs, and non-profit and public employers who have financial difficulties, can obtain an exemption from the Minister of Employment and Labour. Employers who engage youngsters within the framework of a labour contract of an indefinite duration can also obtain relief for a – renewable – period of two years. Employers in the private sector can also be exempted if a collective agreement prevailing in the sector provides for alternative formulas leading to additional employment.

The start-jobber is entitled to the same remuneration as that of a worker who is doing the same job within the enterprise. In case of training, which goes specifically with the job, the employer can spend 10 per cent of the salary for training purposes. The works council, the union committee or if both of them are lacking, the sub-regional employment committee, has to be informed about the 10 per cent of salary retained for training purposes.

176. The employer is subsidized by the government.

Employers are obliged to send a copy of the start-job contracts to the Ministry of Employment; the Social Inspectorate is competent to organize the necessary controls to see that the legal obligations are properly fulfilled.

VI. Professional Sportsmen

177. After more than 10 years of legislative debate legal provisions protecting professional sportsmen have been introduced (1978). Until then many professional sportsmen – especially soccer players – were practically bound for life to their employer, who virtually owned them and sold them like cattle, or else refused to allow their possible transfer, as he desired. The Act of 24 February 1978 tried to give sportsmen more freedom of labour by imposing a maximum term for contracts for a definite period and by allowing for the termination of a contract concluded for an indefinite period by simply giving notice. It also gave sportsmen the protection of labour law and social security which every other employee enjoys.

The Act of 24 February 1978 applies to (paid) professional sportsmen who accept an obligation to prepare themselves for, or to participate in, a sporting competition or exhibition under the authority of another person. These sportsmen are, *jure et de jure*, looked upon as white-collar workers engaged with individual labour contracts.

In order to qualify as a ‘professional’, the sports player must earn a yearly salary exceeding a certain amount. Football trainers who earn an equal amount are also covered by the Act of 24 February 1978 (Royal Decree of 15 December 2006).

178. For 1 July 2009 to 1 July 2010 this amounts to €8,675. According to a Royal Decree of 2 July 2003, the 1978 Act also covers part-time professional soccer players,[1] who work less than 30 hours a week and earn at least €8,675 a year. Until then, in Flanders at least, according to a 1996 Decree, players earning less than the national minimum wage could change clubs every year without transfer fee. By lowering the ceiling to €8,675 for part-time players, the federal government allows that also for those players contracts are concluded for duration of a maximum of five years. So those players can also be sold within that period. Commerce in humans goes on. This amount is determined annually by Royal Decree upon the advice of the National Joint Committee for Sport.

The contract of the professional sportsman can be for a definite period or an indefinite period. If it is concluded for a definite period it must be in writing and may not exceed five years. It is, however, renewable. If the contract is terminated by either party without a serious cause, the compensation used to be equal to six months’ salary. By another Royal Decree of 13 July 2004, this compensation has been increased up to, depending on the salary of the player (€98,526 a year) linked to the cost of living, 36 months of salary. If the contract is concluded for an indefinite period then each party can end the contract by means of a registered letter, which takes effect on the third working day after the day on which it is served. This letter must be notified during a period indicated by Royal Decree upon the advice of the above-mentioned joint committee.

Covenants of non-competition between employer and player are treated as being non-existent, as is the provision requiring individual grievances relating to the application of the Act to be submitted to arbitration beforehand. In accordance with the Royal Decree of 23 December 1983 the law became operative, from 1 January 1984 onwards for cyclists and motorcyclists, and 1 June 1984 for other professional sportsmen. The law applies to those sportsmen who earn an average minimum wage (€8,675) or more per year.

1. According to a collective agreement of 7 June 2000.

179. In practice, however, the 1978 Act on Professional Sportsmen was not followed by a number of sport organizations, especially in soccer, where clubs continue to ask transfer fees from the new employer-to-be, even when the employment contract between the player and the club had come to an end. The system applied went to such extremes as blocking a player worldwide if the original owner-club did not get the transfer fee it wanted. Players were treated as property.

The Belgian, as well as the European and even the worldwide system of selling and buying players, was challenged in the Belgian courts and before the Court of Justice of the European Community in Luxembourg by J.M. Bosman, a Belgian player who got caught between a Belgian and French club. The question before the European court was, among others, whether the transfer system, which meant that a player could be blocked, was contrary to Article 39 of the EC Treaty concerning the free movement of labour. The Court of Justice condemned the system in the landmark judgment of 15 December 1995.[1]

Not many professional players dare to go to court in Belgium, not only because they fear the possible (worldwide) boycott from the clubs, but also because many of them receive unofficial wages. It is hoped that the outcome of the *Bosman* case will change this. At present, the commerce in players is continued within the framework of the contracts for a definite period. When players transfer in the course of their contract, selling fees are charged. Business as usual.

On 12 June 1998 a collective agreement was concluded between the soccer league and the trade unions concerning essential points like:

– remuneration;
– fundamental rights like the freedom of expression, the free choice of medical doctor; the right to image and name; respect of the privacy of the players;
– fines and sanctions;
– the end of the individual employment contract;
– and a conciliation procedure.

1. *See* Blanpain, Roger and Inston, Rita, *The Bosman Case: End of the Transfer System?* London, Sweet & Maxwell, 1996.

180. On 5 March 2001 an agreement was concluded between the FIFA, UEFA and the European Commission whereby the practice of selling and buying soccer players who are under contract with a club-employer was confirmed. In consequence, clubs now force players to prolong their contract, so that few players see their contract come to an end.

The Commission also accepted that players cannot terminate their contracts during a given period (from three to two years, depending on their age (less than 28 years of age or more) as well as the payment of a training premium to club, which has trained younger players). The Commission yielded to the pressure of European political leaders like Tony Blair and Gerhard Schröder, who have been successfully lobbied by the FIFA and UEFA. Out goes freedom of labour, in comes greed and trade in humans.[1] Nothing new under the sun.

1. *See* R. Blanpain, *The Legal Status of Sportsmen and Sportswomen under International 'European and Belgian National and Regional Law*, KLI, 2003; R. Blanpain, *Specificity of Sports: The Lisbon Treaty*', *Liker Amicoram Ronnie Eklond*, Opsala, 2009, pp. 17–21.

VII. Homeworkers – Teleworkers

A. Generalities

1. Telework on the Move

181. Telework in Belgium is on the move. More than 54 per cent of Belgian employees consider telework at home as a possibility; moreover they believe that work at home would more productive than work at the standard workplace. In doing so, Belgium scores the highest in an inquiry, organized in 15 EU Countries,[1] and well before Italy, Spain, the UK with 48 per cent, Finland with 43 per cent and Germany with only 28 per cent. One out of five Belgians is against the increase of telework.

So, telework seems to be 'in'. Nevertheless only 1 out of 10 employees in Belgium actually engage in one or another form of telework. So, there is room for more.

Not that official support is lacking. The Belgian government wants to encourage telework, amongst others for civil servants via organizational and regulatory changes. Social partners concluded the inter-industry wide collective agreement No. 95 of 9 November 2005 concerning telework, implementing the European Voluntary Framework of 2002. That agreement is agreed upon in the National Labour Council and will, once extended by Royal Decree, be binding for the whole private sector. In the Flemish Government a directive on telework was adopted.

1. A study by Manpower, involving 12,000 respondents 18–65 years of age. In Belgium 992 respondents, especially white collar workers and supervisory personnel (cadres) were involved.

182. So, there is a lot of push. But what about reality?

The fact is that we are not at all sure about the numbers: 10 per cent of employees, who engage in telework or more?

This uncertainty is also due to the lack of a uniform notion of 'telework'. Various notions are used. Is one only referring to 'structural' teleworkers, who perform at regular times in another place than the standard workplace? Or does one also include occasional, informal teleworkers, who perform from time to time, also during the weekend, without formal, explicit agreements between employer and employee on the matter.

Does one include only those who perform at home and/or at another place of their choice, or does one also consider those teleworkers who work from a distance in satellite offices or in a telecentre, linked to the head office.

Are so-called mobile workers who perform with their own laptop as consultants in the workplace of the clients or, e.g. commercial travellers, also to be considered as teleworkers?

2. A Diversified Picture

183. A study of four cases[1] tells us that home telework is mostly occasional, *ad hoc* and non-structural. Informal arrangements prevail: 'tomorrow, I will work at home, as I want to concentrate, the weather will bad, kids are ill, there is a transport strike, to avoid a traffic jam…'.

Structural telework at home seems rather exceptional. On the other hand, structural telework with clients and in satellite offices are more frequent.

The reasons for this situation are self-evident. Telework at home is expensive, especially regarding infrastructure and communication. Moreover, there is a danger of the social isolation of the teleworker and a decrease of his involvement in the work organization and with the team to which he belongs.

Telework at home is thus limited. Full-time telework is rather exceptional. Structural telework, if it occurs, is mostly limited to maximum two to three days a week.

Telework at the premises of the clients (consultancy) and for those, who want to work closer to home, structural then, in satellite-offices or telecentres is, as indicated, more frequent than structural homework.

The question, however, remains: what is the difference between structural and occasional telework? Is evening or week-end telework at home *ad hoc* or structural? The last is not excluded when it would occur regularly.

1. IBM, General Motors, VRT (Flemish TV) and a Flemish Governmental Service – thus all situated in Belgium. *See* Blanpain Roger, *Telewerk. Arbeidsrecht en praktijk. Internationaal, Europees en Belgisch*, Die Keure, Brugge, 2006, 222 p.

3. Telework and HRM

184. Telework is not an isolated phenomenom. The fact is that telework in all its forms is part and parcel of a global human resources strategy which aims:

- to give employees more responsibility in the fostering of their own careers, regarding the place and the time of work;
- to evaluate the contribution of the employee on the basis of the results obtained;
- to increase work satisfaction;
- to provide for a better balance between private life and work;
- to provide a better service for the clients;
- to increase the image of the company;
- to increase productivity;
- to save on office space and infrastructure in the standard workplace.

4. Free and Transparent

185. It is remarkable that telework does not constitute a right for the employee and can also not be unilaterally imposed by the employer. Telework requires the agreement of both parties. In principle, the teleworker is allowed, on short notice, to return to the standard work place.

Self-evidently, someone can be engaged expressedly for telework e.g. to work as a consultant at the premises of the clients or as a commercial traveller. . . .

5. Not for All Jobs

186. Telework fits only certain jobs. As well the function as the used infrastructure and communication equipment come into play.

Typical activities are:

– collection, inserting and manipulation of information;
– conceptual work;
– knowledge intensive activities;
– planning and organization of projects;
– policy supportive tasks;
– consultancy;
– commercial travelling.

6. Not for Every Employee

187. Indeed, not all employees qualify. One thinks especially about competences such as:

– working independently;
– result oriented work;
– initiative;
– efficiency; working according to plan;
– discipline;
– skills and competence.

Candidates for telework need to reason and indicate why they qualify for telework.

7. Integration

188. It is indicated for teleworkers to stay in close contact with their team and the superiors through sufficient communication, meetings, happy hours, etc.

8. Clear Arrangements

189. Indeed, clear arrangements, as well collective as individual are a must. Telework needs to be a subject of involvement with the representatives of the employees and thoroughly explained to all employees, also to those who do not participate in telework, like assembly line workers, so that all understand what is going on and can have empathy with teleworkers.

Clear arrangements regarding infrastructure, its use, costs, health and safety, possible visits of the workplace at home by the employer . . . are, self-evidently, also more than indicated.

Individual telework agreements will lead to a change of the individual employment contract, by way of an addendum or of a specific telework labour contract. For satellite work or work at the premises of the client an additional contract is not strictly necessary if the description of the place of work in the basic employment contract is sufficiently flexible.

An adaptation of the work rules – indicating the possibility of telework and specific conditions – in the company is also necessary.

9. Pay

190. No additional pay is provided for telework.

10. Insurance: Structural and *Ad Hoc*

191. Here one has to be extremely careful. What about work accidents, which take place at home? Does the insurance cover fire or other damage e.g. to the laptop of the enterprise in case of ad hoc telework at home? Also here, whether structural or occasional, the necessary proctection – read insurances – has to be provided.

B. The Act of 6 December 1996

192. Traditionally homeworkers are manual workers, which as a category has disappeared almost altogether. There are no reliable figures. For 1990, a few hundred were reported in the clothing industry, the leather and textile industry. Those workers are traditionally defined as employees working for remuneration under the authority of an employer, in a place which is not imposed by the employer, but usually in the vicinity of or in the home of the worker. The basic criterion distinguishing the homeworker from the other employees is the fact that he more or less chooses for himself the place of work.

The Belgian *Cour de Cassation* decided in a landmark case (30 November 1992) that the Act of 1978 concerning individual employment contracts did not apply to homeworkers. So, homeworkers were workers, but their status was not specifically regulated. One had to check each labour law Act in order to find out whether it applied to homeworkers.

193. The Act contains legal definition either of ‘teleworker’, or ‘telework’. One could define telework as work involving the use of telecommunications in a way which is independent from a fixed-traditional location. This may be the home of the worker, a ‘telecottage’ and any other place. The teleworker may do this in a capacity of an employee, including as a homeworker or as self-employed.

There are no overall statistical data available in Belgium on the number of teleworkers. The numbers of teleworkers, however, seems to be still relatively small. It is also unknown how many people operate as freelance teleworkers like journalists, consultants etc.

Teleworkers can be fully fledged employees, homeworkers or self-employed, depending on whether work is done in subordination. This is under the command and control, thus the authority, of the employer. As employee the teleworker will be either a white-collar worker, eventually a commercial representative or a temporary worker. The teleworker employee can also be a homeworker, but, as said, traditionally homeworkers have been mainly manual labourers.

Teleworkers can be part-time or full-time, engaged with a contract for a fixed period or for an indefinite duration or even with a contract for replacement. Teleworkers can have one or more employers. If the teleworker is an employee, the labour law applies. In case of homeworkers, they are accounted for in a number of thresholds, including social elections for works councils or for closing of enterprises.

Teleworkers can also be self-employed. In that case general rules relating to contracts prevail. Labour law is not applicable.

Teleworkers can be employees in relation to an employer and self-employed at the same time depending on the nature of the relationship with his/her contractors.

194. According to Article 15 of the Belgian Constitution ‘a person’s home (is) inviolable; no search can be made other than in the cases laid down by statute and in the manner prescribed’. This applies to the teleworker’s home. It should be noted that the violation is criminally sanctioned. In case of telework outside of the employee’s home, e.g. in telecottages or telecentres or in decentralized units, normal rules regarding inspection apply. The labour inspector is entitled to visit them day and night. The labour inspector can visit homes only when the judicial authority grants permission beforehand. Legally there is a possibility to inspect teleworkers at home. However, in practice, the Belgian Labour Inspectorate suffers from a shortage of manpower.

195. A special Act of 6 December 1996 deals with the employment of homeworkers, covering as well traditional homework, as newer forms like telework. The Act can be summarized as follows.

The government starts from the fact that telework, which it expects to grow considerably in the near future, is a form of work at a distance in which use is made of telematics, which can constitute a new variant of homework. This form of work allows for certain tasks of an intellectual nature to be performed by homeworkers, who use a computer, which is or is not linked to the central computer of an enterprise. Acknowledging the fact that some pilot projects have already been introduced

in Belgium, the government is of the opinion that it is necessary to ascertain the legal certainty regarding homework in order to be prepared for the day when it will expand. The Act only deals with homeworkers who work under the authority of the employer, thus as employees and not self-employed.

To that end the Act introduces a separate Title VI (Article 119.1–12) dealing with homework in the 1978 Act concerning individual employment contracts. Self-employed teleworkers would continue to be covered by general principles of contract law.

1. Definition

196. The employment contract for homework is a contract by which an employee, the home-worker, undertakes in return for remuneration, to perform work under an employer's authority, in his home or another place chosen by him, without being under the supervision or the direct control of the employer. According to the case, the homeworker will be either a manual or an intellectual worker (Article 119.1).

In case of a mixed situation, where a regular employee is also working at home, he will have two legal statuses; his normal status and he will also be covered by the Act of 6 December 1996.

2. Form

197. The employment contract has to be in writing no later than when the homeworker takes up his employment (Article 119.4). In absence of a written contract, the homeworker is able to terminate his employment at any moment without notice or compensation (Article 119.5).

3. Content of the Agreement

198. The written agreement should mention:

1. the identity of the parties;
2. the remuneration or the way and criteria for its calculation;
3. the payment of expenses related to homework; in absence of such a regulation, expenses will be calculated at a rate of 10 per cent of the remuneration;
4. the place(s) chosen by the homeworker to work;
5. the job description;
6. the working time; the work roster or the minimum number of duties (Article 119.4).

4. Conditions

a. Incapacity to Work: Guaranteed Salary

199. The Act guarantees the homeworker:

1. if he is receiving a regular wage, a guaranteed salary for the day he is incapable to work, for reasons beyond his control (Article 119.5);
2. in cases of incapacity to work for reasons of illness or accident, with the exception of an act of God, the homeworker must
   (a) inform his employer immediately;
   (b) send a medical certificate within a period of two days.

Other articles of the Act concern the right to a guaranteed salary if the homeworker is not paid on the basis of a regular wage; in that case the salary is in principle equal to that of blue- or white-collars workers: the compensation per day will equal 1/7 of the average weekly income.

b. Working Time

200. The Act confirms that regulations concerning working time and Sunday rest are not applicable to homeworkers but the Government can extend those regulations totally or partially to homeworkers, taking the opinion of social partners into account.

C. Collective Agreement No. 85 of 9 November 2005

1. Purpose

201. The Collective Agreement,[1] No. 85, concluded in the National Labour Council and extended by Royal Decree, implemented the European Framework Agreement of 16 July 2002. That agreement aimed at:

– modernizing the organization of work;
– providing more autonomy of the workers performing their jobs;
– providing a better relation between private and working life;
– promotion of flexibility and security;
– enhancing the quality of job;
– improvement of the chances for the handicapped to become employed.

1. Amended by Agreement No. 85*bis* of 27 February 2008, extended by Royal Decree.

2. Definitions and Scope

a. Teleworker

202. Telework is, according to Article 2 of the Agreement No. 85:

- work;
- performed in the framework of a labour contract;
- using information technology;
- on a regular basis;
- carried out at another place than the employer's premises.

b. Place

203.

- Home and any other chosen place;
- A satellite-office provided for by the employer; this is a decentralized location which the employer puts at the disposal of the employee. It falls outside the scope of the collective agreement.
- Mobile work: teleworkers for whom mobile work is part and parcel of the performance of their jobs. Mobile workers are e.g. commercial travellers, medical representatives, technical workers, providing services on the premises of the client, home-nurses . . . Mobile work also falls outside the scope of the collective agreement No. 85.

c. Voluntary Character

204. Telework is performed on a voluntary basis: both employer and employee have to agree.

Telework can be part of the original job description or can be agreed upon in the course of the employment contract between employer and employee.

In other words, if telework is not a part of the original employment contract and the employer offers the possibility of telework, the employee can either accept or refuse the offer.

If an employee indicates his desire to engage in telework, the employer can either agree or refuse.

3. Nature of the Telework Contract

a. No Homework

205. Telework cannot be classified as homework, according to the 1996 Act, that we described above which falls under the scope of Collective Agreement No. 85.[1]

1. Act of 20 July 2006.

b. An Employment Contract for White-collar Workers

206. The National Labour Council consequently asked the Belgian legislator to amend the 1978 Act on employment contracts, in order to provide for a specific telework employment contract.

c. White Collar

207. A white-collar worker performs 'intellectual work'. So, teleworkers should be white-collar workers. Blue-collar workers, performing mainly manual work, would not qualify.

4. Form: a Written Agreement

a. Timing

(1) When Hiring

208. The written agreement has to be concluded prior to the moment the employee starts performing the job.

(2) In the Course of the Employment Contract

209. A written addendum has to be made.

b. Content

210. The written agreement should contain at least the following:

– the frequency of the telework, eventually the days on which telework will be performed and eventually the days and/of hours of presence in the enterprise;
– the times or the periods during which the teleworkers must be reachable and via which means;
– the times at which the teleworker can make an appeal for technical support;
– the rules according to which the employer will compensate costs or will pay for them;
– the conditions and rules regarding a returning of the teleworker to the normal workplace and, in case of such a return, the term of notice and/of the duration of working time and its prologation;
– the places where the teleworker has chosen to work.

c. Sanction

211. In case of lack of a written agreement the teleworker has the right, at any time, to terminate his activities at the standard workplace or return to that normal workplace.

5. Working Conditions

a. Equal Treatment

212. Regarding working conditions, teleworkers enjoy the same conditions as comparable workers who work in the standard workplace.

b. Specific Conditions

213. Specific conditions can be laid down in collective or individual labour agreements in order to take account of the specificities of telework.

Thus it is possible to provide in the telework contract, in case of defect of the infrastructure or in case of an Act of God, due to which the teleworker cannot perform his task, specific rules, like the performance of other activities or partial return to the standard workplace.

c. Information

214. The teleworker is entitled to information about the working conditions and especially regarding complementary conditions, namely:

– the description of the task to be performed in the framework of telework;
– the division of the enterprise to which he is attached;
– the identification of his immediate superior and of other persons whom he may address for raising question relating to his job or questions of a personal nature;
– arrangements for reporting.

The written agreement or addendum does not necessarily contain all working conditions but can refer to a collective agreements on telework, which are concluded at sectoral, either at enterprise level or to the enterprise work rules.

6. Organization of Telework

a. Working Time

215. The teleworker organizes the work himself within the framework of the prevailing working time schedule in the enterprise.

b. Work Load and Norms of Efficiency

216. The teleworker has the same work load and efficiency norms as comparable employees in the standard workplace.

c. Prevention of Isolation

217. The employer must take all measures in order to prevent the teleworker becoming isolated from the rest of the labour community in the enterprise, namely by offering opportunities for the teleworker to meet colleagues and by organizing access to information regarding the enterprise. The employer is entitled, to that end, to recall the teleworker at regular intervals.

d. Equipment

(1) Installation by the Employer: Technical Support

218. The employer is responsible for making available to the teleworker the necessary equipment, installing and maintaining it.

The employer provides appropriate technical support facilities to the teleworker.

(2) Costs

219. The employer, and he alone, compensates or pays for the costs related to the communications which go along with telework.

If the teleworker uses his own equipment, the costs related to telework, namely installation of information programmes, working and maintenance, as well as costs relating to the writing of the costs of the equipment, are entirely to be paid by the employer.

The costs to be paid by the employer will before the commencement of the telework be established, pro rata of the work performed as telework or according to a key agreed upon by the parties.

The costs which arise from the loss or the damage to the equipment or to the data used in the framework of the telework are to be paid by the employer.

(3) Diligence and Determined Use

220. The teleworker should use the equipment put at his disposal by the employer with care. The teleworker will not collect or communicate, via the internet, materials which fall outside the performance of his job.

(4) Breakdown

221. In case of breakdown of the equipment or in case of an Act of God, as a consequence of which the teleworker cannot perform his job, he should immediately

inform the employer. The employer remains, however, obliged to pay the agreed upon remuneration.

7. Protection of Data

a. Measures for Protection

222. The employer should take the necessary measures to protect data which are used by the teleworker.

He has to inform the employee about the applicable legal and company rules concerning the protection of the data. The teleworker has to abide by these rules.

b. Limitations on the Use of IT Equipment

223. The employer informs the teleworker about the limitations of the use of IT equipment or facilities and of the possible sanctions if the teleworker does not live up to these limitations. Here, the National Collective Agreement No. 81 of 26 April 2002 on the protection of employees' personal data with the respect of monitoring on-line communications data[1] applies *mutatis mutandis*.

The objective of National Collective Agreement No. 81 is to safeguard the fundamental rights of employees to have their personal privacy respected in the employment context by specifying, while at the same time taking account of what is required for the company's efficient operation, the purposes for which a system for monitoring electronic on-line communications data may be installed, the conditions of proportionality and transparency with which it must comply and the rules governing the permissibility of individualizing such data.

1. *See* Roger Blanpain and Marc Van Gestel, *Use and Monitoring of E-Mail, Intranet and Internet Facilities at Work*, Studies in Employment and Social Policy, The Hague, Kluwer Law International, 2004, pp. 160–191.

8. Health and Safety

a. Policy, Information and Execution

224. The employers should inform the teleworker of the company policy relating to safety and health on the work floor, especially regarding the requirements relating to display screen equipment.

b. Inspection of the Work Place of the Teleworker, his Home Included

225. The competent internal prevention services of the enterprise employer have access to the work place of the teleworkers in order to control whether

the prevailing rules regarding safety and health are applied in a correct manner. If telework takes place in a living room, the visit will have to be announced previously and the consent of the teleworker to be obtained.

The teleworker can request the visit of these health and safety services himself.

9. Vocational Training and Career Development

a. Equal Treatment

226. Teleworkers have the same rights as comparable employees in the enterprise regarding vocational training and career development. The enjoy the same evaluation procedures.

b. Vocational Training

227. Teleworkers receive an adequate vocational training regarding the use of the technical equipment which is put at their disposal and of the working of the internet.

The hierarchical superiors and the direct colleagues of the teleworkers can also be trained for this form of work and for the management thereof.

10. Collective Rights

a. Rights of Teleworkers

228. Teleworkers enjoy the same collective rights as other workers. They have the right to communicate with the representatives of employees and *vice versa*.

b. Rights of Employees' Representatives: Information and Consultation

229. Employee representatives are informed and consulted concerning the introduction of telework in the enterprise in the same way as regarding the social consequences of the introduction of new technologies.

11. Conclusion

230. The national collective agreement No. 85 translates the European Voluntary Agreement in an appropriate way.

Two remarks however. As we have seen in the introduction, structural home telework is, *de facto* rather exceptional. Now, the collective agreement No. 85 excludes from its scope of application occasional home telework, as well telework in satellites and telecentres.

It seems to me that the scope of application of the collective agreement becomes very narrow, excluding the most important forms of telework, while all teleworkers need the same or similar protection.

So, the question arises whether the agreement has any impact in practice?

Secondly, in Belgium national collective agreements, which are extended by Royal decree, are hard law and penally sanctioned.

This is not the case in other EU Member States, such as e.g. in the UK or the Scandinavian countries where such extending mechanisms do not exist.

Are we in this way not heading towards a dual social Europe? And what about a European level social playing field?

Perhaps voluntary agreements are after all not such a good idea.

D. The Act of 20 July 2006 on Telework

231. According to that Act, the 1996 Act on Homework is not applicable to employees who fall within the scope of application of Collective Agreement No. 85 concerning telework.

When, in the framework of one and the same individual employment contract, only a part of the work of the employee is devoted to telework, then the Collective Agreement and the 2006 Act apply to that part of the employment contract. The other part of the job, done by the employee, falls under the normal application of the employment contract rules for blue- or white-collar workers.

The work rules of the enterprise can mention the periods during which the employee, whether or not at the request of the employer, performs telework as it is meant in the Collective Agreement No. 85.

VIII. The Local Employment Agency Contract

232. Local employment agencies are set up in every local community in order to give the unemployed the possibility to earn some additional income by allowing them to do certain services for the benefit of individual persons or a household (gardening, painting and others) in a tax friendly way. The user of those services pays the unemployed by way of a voucher, which is tax deductible.

The scheme was successful but was criticized by the trade unions as not providing real jobs. In answer to that criticism the Act of 7 April 1999 was passed in order to give those workers a full-fledged employment contract.

The local employment agency employment contract is an agreement by which an employee engages himself to work under the authority of the agency in order to perform certain kinds of activities, which are determined by the Minister of Labour and Employment. Such an agreement is concluded for an indefinite period. It has to be established for each worker individually and at the latest before employment takes place.

The individual agreement needs to identify the parties, the services to be rendered, working time and the remuneration. The Act further defines the rights and obligations of the employee and the employer, the suspension of the execution of the contract and how it can be terminated.

Part II. Collective Labour Relations

551. Conflict and strife, in the form of strikes and lock-outs, between employers and employees are essential features of societies which recognize the freedom of industry and labour as fundamental values. Employers and employees, although their roles are complementary, often have opposing interests. It is, however, in the interests of society as a whole, as well as in the interests of the employers and employees in particular, to limit possible conflicts and the ensuing strife to a minimum, and to have as much 'industrial peace' as possible. The best and most obvious way of achieving this goal consists in the creation of possibilities for contact between employers and employees so that they are able to discuss and solve their mutual problems. The result which is reached by these means will undoubtedly be that which will best satisfy the needs of both parties. Thus the first condition necessary to foster 'industrial peace' is the setting up of a whole complex of 'relations' between employer and employee to facilitate direct and flexible contacts between management and labour. This presupposes that employees, and employers as well for that matter, are sufficiently organized in order to be able to take collective action to defend their interests successfully. A prior condition then, if employees are to successfully influence the decisions which affect their livelihood, is that they have the right to organize and the freedom to set up trade unions. The evolution and the significance of trade union freedom in Belgium will be discussed in Chapter 1.

552. Since the achievement of trade union freedom, both the trade unions and the employers' associations in Belgium have developed into powerful organizations. We study their structure, organization and their (legal) integration into Belgian society in Chapter 2.

The major representative trade unions have also, as a result of their links with the major political parties, succeeded in improving their standing at different levels of the Belgian economy. Meeting places where the trade unions or the representatives of the workers can exert influence on managerial decision-making exist at many different levels: at the plant and enterprise level through the works councils, trade union committees and committees for prevention and protection at work, at industry level through the joint committees, at national interindustry-wide level through the National Labour Council. In Chapter 3 we will pay attention to the institutionalized relations between employers and employees.

553. These and other contacts result, for example, in advice being given by the works council, grievances being handled by the trade union committee members and joint committees, in joint declarations and also in formal collective bargaining

agreements. Collective bargaining plays a very important part in Belgian labour relations. The collective bargaining relationship between Belgian employers and employees was earlier characterized both by the great degree of autonomy enjoyed by the parties and by the lack of government intervention, especially with regard to wage agreements. For some 20 years, however, the government has been obliged to intervene in this autonomous relationship in an attempt to keep inflation under control and the Belgian economy and enterprises competitive in our globalized world. The level, content, and binding effect of collective bargaining agreements and the effect of recent government intervention on the autonomy of the social partners will be examined in Chapter 4.

554. It is an accepted fact in most industrialized countries with free market economies that free and effective collective bargaining is impossible when workers do not, for example, have the freedom to collectively stop work, and by so doing force the employer to accept their point of view. Without corresponding power on the side of labour there would be no collective bargaining, but only collective begging. Although the freedom to strike, as well as that to lock out, is essential, it goes without saying that such freedom cannot for obvious reasons be unlimited. The question then is where to draw the line. Here we touch on a dilemma: it is the very strikes which most harm the employer and the public, those which are most disruptive, that breed success. If the Belgian museum attendants strike who will care, except a lonely tourist? But if the refuse collectors strike, the railway workers, the doctors, the petroleum workers and so on, the well-being of society as a whole may be at stake. In this world of power relations between employer and employees there may be any of three situations: a situation in which the employees have no or insufficient power; one in which the employees wield too much power and finally a situation in which a certain power equilibrium exists between the parties. These situations are not, of course, static but are constantly evolving: the strong of today may be extremely vulnerable tomorrow. The law, which is itself an element of power, cannot abstain and must intervene to restore the balance of power between the parties, both in order to protect outside parties and to protect essential services; it must also intervene to prevent the harm and loss inflicted being out of proportion with the aims pursued by the conflicting parties, or being intolerable. Strikes (including sit-ins and occupations of plants) and lock-outs, as well as the settlement of industrial disputes and the protection of vital needs, will be covered in Chapters 5 and 6.

Chapter 1. Trade Union Freedom

§1. The Achievement of Trade Union Freedom

555. It took almost a century and a half (from 1789 until 1921) for trade union freedom to be firmly established in Belgium. The French Revolution, which overthrew the *ancien régime*, proclaimed the freedom of labour and the freedom of industry in the Decree of 2–17 March 1791 and in the famous Act *Le Chapelier* of 14–17 June 1791, named after its author. This freedom excluded the exertion of any form of pressure of coercion, certainly any collective pressure, whether upon employers to raise wages or upon fellow workers not to work unless certain conditions were met. Coalitions[1] formed with the aim of improving wages and working conditions were regarded as criminal offences and severely punished by the (French) Penal Code of 1810. It is typical that when Belgium gained its independence in 1830 those prohibitions remained in force, notwithstanding the then Article 20 of the Belgian Constitution which proclaimed the freedom of association for all.

1. Coalitions were unlawful agreements among several persons not to do something except under agreed conditions, particularly strikes.

556. In 1866 the coalition delict was abolished: the mere fact of employees meeting, organizing and taking collective decisions about the wages and working conditions they would demand, or deciding to strike, was no longer a punishable offence. But the actual implementation of these decisions by means of industrial action in the form of strikes remained prohibited. Article 310 of the 1867 Penal Code reads as follows:

> 'The penalties of imprisonment for one month to two years and a fine of 50 to 100 francs, or one of these penalties, shall be imposed on any person who, with the object of exacting an increase or decrease of wages or interfering with the free exercise of industry or labour, commits violence, makes use of insults or threats, the imposition of fines, prohibitions, interdicts or proscriptions of any kind whatever, against those who work themselves or cause work to be done.
>
> The same provision shall apply to all who interfere with the freedom of masters or workers, whether by assembling near the establishments in which work is being carried on or near the dwellings of the persons directing the work, or by acts of intimidation directed against workers on their way to or from work, or by causing explosions near the establishments in which work is being carried on or in districts inhabited by workers, or by breaking down the fences of the establishments in which work is being carried on or of the dwellings or land occupied by the workers, or by destroying or rendering unfit for their proper use the tools, instruments, appliances, and apparatus of work or industry.'

557. After the riots and violent strikes of 1886, and repeated violations of Article 310, the penal sanctions were increased to two years of imprisonment and a fine. A new punishable offence was introduced: every act tending to intimidate workers who were going to or coming from their place of work.

558. In the period after the First World War the conservative Belgian bourgeoisie was in a considerably weaker position. The introduction (in 1919) of the political principle of one man-one vote, the continued growth of the trade unions and the fear inspired by workers' revolts in Germany and Russia combined to make it necessary that the pre-war regulations regarding trade union freedom were adapted. On 24 May 1921, Article 310 of the Penal Code was abolished and the Act giving freedom of association promulgated.

§2. The Protection of Trade Union Freedom

I. National Legislation

559. Freedom to join or not to join a union is still guaranteed by the Act of May 1921. According to Article 1 of this Act: 'Universal freedom of association if hereby guaranteed. No person shall be compelled to join or refrain from joining any association.' Articles 3 and 4 of the Act lay down terms of imprisonment of one week to one month and fines of €50 to €500, or one of these penalties, for:

– any person who, with the purpose of compelling a particular individual to join or refrain from joining an association, resorts to violence, molestation or threats, or who causes him to fear the loss of his employment or injury to his person, family or property (Article 3);
– any person who, with intent to attack freedom of association, makes the conclusion, the execution or (even with due regard to customary notice) the continuance of a contract of work or service conditional upon the affiliation or non-affiliation of one or more persons to an association (Article 4).

Thus Articles 3 and 4 protect employees against anti-union discrimination in the form of dismissal, refusal of promotion, abusive transfer and so on.

560. However, in order to evaluate the real importance of this Act we must take into account the fact that a punishable infraction of the Act depends upon proof of 'intent to attack freedom of association' as required by Article 4, and which applies implicitly in the case of Article 3. This criminal intent to infringe upon the freedom of association – namely a *dolus specialis* (specific intent) – is extremely difficult, if not impossible, to prove. Therefore no one will be amazed to learn that since 1921 there have only been about 10 prosecutions. In fact trade union freedom is best protected by a strong trade union presence within an enterprise. This is certainly the case for the larger Belgian enterprises, but is not necessarily so for the smaller ones.

II. International Legislation

A. Conventions 87 (1948) and 98 (1949) of the ILO

561. Belgium has ratified both of these Conventions:

- No. 87 concerning freedom of association and protection of the right to organize in 1951;
- No. 98 concerning the application of the principles of the right to organize and to bargain collectively in 1953.

562. According to Article 1 of Convention No. 87 'workers and employers, without any distinction whatsoever, (shall) have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization'.

Workers' organizations are also entitled:

- to draw up their own constitutions and rules, to freely elect their representatives, to organize their administration and activities and to formulate programmes (Articles 3, 1);
- that the organizations cannot be suspended or dissolved by the administrative authorities (Article 4);
- to the right to establish and join federations and confederations, and any such organization, federation or confederation shall have the right to affiliate with international workers' organizations (Article 5);
- that the acquisition of legal authority cannot be made subject to such conditions or requirements which would impede the exercise of the freedom of association (Article 7).

563. According to Article 1 of Convention No. 98, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to:

- make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- cause the dismissal of or otherwise prejudice a worker by reason of his union membership or because of his participation in union activities outside working hours or, with the consent of the employer, within working hours.

Workers' and employers' organizations are also entitled to protection against any act of interference by each other or each other's agents or members in their establishment, functioning or administration (Articles 2, 1).

B. The European Convention on Human Rights and Fundamental Freedoms of 1950 and the European Social Charter of 1961

564. The European Convention, concluded within the framework of the Council of Europe, was signed in Rome on 4 November 1950, and came into force on 3 September 1953. It was ratified by Belgium in 1955. Article 11 of the Convention relates to the right to form trade unions. It reads:

> '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights of freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.'

565. Mention should also be made of the European Social Charter of 1961, ratified by Belgium in 1991. While the Charter also guarantees the right to organize (Article 5), it is not directly enforceable; but an independent committee of experts regularly examines and reviews reports submitted by Member States.

According to Article 12.1 of the Charter of the Fundamental Rights of the European Union (2007):

> 'Everyone has the right to freedom of peaceful assembly and to the freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.'

C. Trade Union Freedom and the Free Movement of Labour within the EEC

566. The EC Regulation of 15 October 1968, enacted in accordance with Article 45 of the Consolidated Treaty on the Functioning of the European Union (Treaty of Lisbon 2009), deals in Article 8 of Title 2 (relating to Employment and Equality of Treatment) with the equality of rights as regards trade union membership and activities:

> 'A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote; but he may be excluded from taking part in the management of bodies governed by public law from holding an office governed by public law.[1] Furthermore, he shall be eligible for workers' representative bodies in the undertaking....'

1. E.g. having a seat in the Labour Court.

§3. Trade Union Freedom and the State

567. The Belgian trade unions are completely independent of the government in as far as their establishment and functioning is concerned. Trade unions can be established without having to complete any formalities or obtain any permission; they are free in the drawing up of their programmes, in the daily execution of their affairs and in the handling of their finances. Unions can affiliate freely with other

unions at the national or international level, as can employers' associations. One has to take into account, however, what has already been said about the relationship between the trade union movement and the major political parties. One consequence of these links is that not all unions have the status of 'most representative trade unions'. This is in fact a drastic intervention by the government, which determines the role the unions can play in actually defending the interests of their members.

568. An important change, however, was introduced by the 1985 Social Recovery Act. As well as the traditional representative trade unions, room has been made for another representative union, namely for 'cadres' (*see above*: Introduction, II). By this is meant interindustry-wide unions, which are established for the whole country and organize at least 10,000 'cadres'. These organizations are to be recognized by the executive.

That recognition, however, has, strictly speaking, only consequences for the administration of the 1948 Act relating to the works councils.

569. Although the unions and employers' associations are independent of the Government, the reverse cannot be said. This political influence is exercised through different channels and at many different levels. In an almost never-ending list of consultative bodies, employers and unions have the right to give *advice* (on prices, the cost of living index, energy, economic development, cultural organization, . . .), to *administrate* (the National Employment Agency, Unemployment Insurance, the National Service for Sickness and Invalidity Insurance . . .) and to participate in the *administration of justice* (for example, by sitting on the benches of the Labour Courts . . .).

§4. Trade Union Freedom and the Relations between Trade Unions

570. The principle of freedom of association contains the possibility of creating different unions or associations to represent the same group of workers or employers. This is, as indicated earlier, not only a legal possibility but also a reality of Belgian labour relations. Needless to say, workers and employers belong to different organizations, with the result that there are no mixed organizations of which both employers and employees can be members. The principle of non-interference by employers in trade union activities, and vice versa, does not exclude certain forms of co-operation, such as the payment by employers of benefits which are solely reserved for trade union members, the financial contribution by employers to funds for trade union education or the payment of wages if trade union committee members are carrying out union activities during working time and so on.

571. The principle of equality which in theory governs the relations between the different trade unions has evidently been dramatically affected by the notion of the representative union. Undoubtedly those trade unions which are more representative than others must be treated as such, and consequently they are entitled to certain privileges; but this should not lead to situation where the so-called 'non'-representative unions have no real chance of defending the interests of their members

effectively, even if, for example, they organize the majority of workers in a given enterprise or industry. In Belgium the 'non'-representative unions cannot in fact defend the interests of their members in an appropriate way.

§5. Individual Trade Union Freedom

572. The freedom of an individual to join (positive freedom) or not to join (negative freedom) a trade union is laid down in the Act of 24 May 1921. According to Article 1 of the Act, no person shall be compelled to join or to refrain from joining any association. Article 2 explicitly adds that a member 'may withdraw from the association, in conformity with the rules, at any time; any provision in the rules which denies his liberty to do so shall be void'.

573. The ILO Conventions 87 and 98 deal only with the *positive trade union freedom*: the freedom to join a union. Convention 87 recognizes the right of employees (and employers) to establish and to join such organizations (Article 2), while Convention 98 provides for the protection of this right. This protection applies more particularly in respect of acts calculated to:

'(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
(b) cause the dismissal of or otherwise prejudice a worker by reason of his union membership or because of his participation in union activities outside working hours or, with the consent of the employer, within working hours' (Articles 1, 2).

Positive individual trade union freedom implies the right of the individual to become a member of a trade union. Convention 87 restricts the grounds on which a union may refuse membership. The wording of Convention 87 restricts: 'without any distinction whatsoever prohibits the denial of membership on religious, political, racial or national grounds'.

574. As has already been indicated, Articles 3 and 4 of the 1921 Act provide penal sanctions for not respecting the freedom of association; however, the requirement of a *dolus specialis* (specific intent) has as a consequence that these provisions are in practice almost never invoked. The positive freedom to join a union is in fact protected by the actual strength of the union, although this is undoubtedly not always so in smaller firms or for white-collar workers and leading personnel. However, the employers' associations have repeatedly reaffirmed their commitment to respect the freedom of association and not to hamper, either directly or indirectly, the development of trade unions. This was re-affirmed at the conclusion of interindustry-wide collective agreement No. 5 (which dealt with the status of the trade union committee) in the National Labour Council on 24 May 1971. The leaders of the employers engaged themselves to recommend their members not to exert any pressure with the end of inducing their employees not to join a union, and not to extend any special advantages to non-members (Article 3). Trade union committee members,

members of work councils and members of committees for prevention and protection at work all enjoy special protection with regard to promotion and dismissal. They may only be dismissed for economic or technical reasons, except if there is just cause, as will be explained later.

575. Belgian trade unions, although ideologically split, do not in general refuse membership on grounds of religion, political belief, race or language. The fact that there are three unions competing for members guarantees a certain freedom for workers who want to become members. In general it may be said that Belgian employees do not always choose a particular union on ideological grounds, but also take considerations of tradition and efficiency into account. The same is not true for trade union leaders; here ideology is the determining factor, as it is for the employees of the union who must all really belong to the same spiritual community. If an employee is refused membership by a union he has in fact no legal redress. As we will discuss later, a trade union cannot be sued before a court because it lacks corporate capacity. According to Article 2 of the 1921 Act it is accepted that 'any person who applies for membership of an association must, by the very fact of becoming a member, submit to the rules of the association in question and to decisions and penalties adopted under the said rules'. For the same reason a union which neglects its duty of fair representation cannot be sued by its members. Again the only possible sanction which the worker can inflict upon the union is to leave that union and join another one.

Recently, the Christian and Socialist trade unions have expressedly refused employees who are political candidates for the extreme right-wing and xenophobic party, the Vlaams Belang.

576. Of course the right not to join a trade union is equally protected by the 1921 Act.

In practice, both yellow-dog contracts and union-security clauses – such as the closed shop, the union shop, the agency shop and the maintenance of membership – are almost unknown in Belgian labour relations. With a few exceptions, check-off is not practised because the unions do not want the employers to know how many members they have.

Nevertheless, devices do exist which are designed to persuade employees to join representative unions. One device in common use during the past 40 years has been the stipulation in collective agreements of special benefits or bonuses for union members only. These take varied forms, including supplemental retirement and unemployment compensation benefits. The *quid pro quo* to the employer is usually a no-strike (peace obligation) clause.[1] Unions have also successfully argued that a situation under which non-dues-paying, non-union members also benefit, pursuant to the normative effect of general provisions of collective agreements, from trade union accomplishments financed by dues and contributions of members, is no longer acceptable. Thus, they argue, it is just and equitable that a special benefit in the form of a dues reimbursement bonus, paid by the employer, should be reserved solely for the unions or for the union members. Although this demand for union solidarity has been vigorously resisted by many employers almost one million workers are covered by such clauses.

The building trade unions reject the idea of reserved benefits for union members. However, the administrative formalities and the red tape in the Belgian construction industry are so complicated that unionization is virtually a necessity for workers, as is the formation of associations for employers. The availability of special financial allowances paid through a social fund by collective agreement in case of lay-offs for bad weather is alone sufficient to convince building workers of the merits of unionization.

1. The reservation of benefits is not inconsistent with the principle by which collective agreements result in the extension of the general benefits of such agreements to non-union members. This results from the 'normative' concept applied to collective bargaining; but the contracting parties are free to limit the scope of the agreement and often do this, in the case of reserved benefits, in favour of union members.

577. The legality of benefits being reserved for trade union members is no longer an issue.[1] In some sectors special devices exist which approach a closed shop situation. In Antwerp Harbour a dock-worker can only obtain employment if he is the holder of a workcard. These are distributed by the National Joint Committee of the Harbour of Antwerp and the unions control 90 per cent of them.

1. *See* No. 35.

Chapter 2. The Trade Unions and the Employers' Associations

§1. Organization and Structure of the Trade Unions and the Employers' Associations

I. The Trade Unions

578. Trade union density in Belgium is estimated at about 50–60 per cent. In 2000 trade union density stood at 49.3 per cent, while in 2005 it increased to 51.5 per cent,[1] thus giving Belgium one of the highest degrees of unionization in the European Community. The most important trade unions are, the Confederation of Christian Trade Unions (ACV-CSC)[2] and the Socialist Trade Union Movement (ABVV-FGTB).[3] Less important is the Liberal Trade Union Movement (ACLV-CGSLB).[4] In the major sectors of industry – such as building, metals, chemicals, cement, petroleum and the mines – up to 80 per cent of the blue-collar workers are organized. White-collar workers tend to organize less (approximately 23 per cent); while staff or supervisory personnel are rarely organized, although under the 1921 Act they have a legal right to do so and under the 1968 Act they are entitled to bargain collectively.

1. Belgium: industrial relations profile, http://www.eurofound.europa.eu/eiro/country/belgium (26 October 2009).
2. Algemeen Christelijk Vakverbond–Confederation des Syndicats Chrétiens.
3. Algemeen Belgisch Vakverbond–Federation Générale du Travail de Belgique.
4. Algemeen Centrale der Liberale Vakbonden–Centrale Générale des Syndicats Liberaux de Belgique.

579. Trade union membership did not evolve much in recent years. CSC/ACV is the most important trade union with 1.7 million members, followed by FGTB/ABVV with 1.4 million members; CGSLB/ACLVB is the least important trade union with 265,000 members.[1]

The respective strengths of the three union federations are also reflected by the results which the unions obtain in the elections for works councils and for committees for prevention and protection at work of the workplace which take place every four years. All workers are entitled to vote in these, whether or not they are members of a union.

1. See note 1.

580. The social elections in 2008 did not result in any fundamental changes in the balance of power between Belgium's three main trade union confederations. At national level, the Christian ACV/CSC retained its dominant position, securing almost 57 per cent of the seats on works councils and just over 59 per cent of the seats on the CPPT/CPBW. The socialist ABVV/FGTB is equally represented in both representative bodies, with just over one third of the seats. Meanwhile, the liberal ACLVB/CGSLB increased its number of seats on both the works councils (6.6 per cent) and CPPT/CPBWs (6.2 per cent).[1]

1. Guy Van Gyes, 'Results of 2008 social elections in private sector', www.euro.found (2009).

Table 7 compares the results of both the 2008 and 2004 elections for the main trade union confederations in terms .of votes and seats for the works council and CPPT/CPBW elections.

Table 7
Trade union votes and seats in social elections, 2004 and 2008 (%)

Votes				
	CPPT/CPBWs		Works councils	
	2004	2008	2004	2008
ABVV/FGTB	36.3	36.7	35.8	36.2
ACV/CSC	53.8	53.4	52.3	52.4
ACLVB/CGSLB	9.9	9.8	9.5	9.7
Alternative managerial staff lists*	–	–	2.5	1.6
Seats				
	CPPT/CPBWs		Works councils	
	2004	2008	2004	2008
ABVV/FGTB	34.2	34.5	34.1	34.8
ACV/CSC	60.0	59.3	57.3	56.8
ACLVB/CGSLB	5.8	6.2	6.1	6.6
Alternative managerial staff lists*	–	–	2.5	1.8

* Alternative managerial staff lists (National Confederation of Managerial Staff (Confédération Nationale des Cadres/Nationale Confederatie voor Kaderleden, CNC/NCK) or autonomous company groups) are only allowed in works council elections.
Source: Federal Ministry of Employment, Labour and Social Dialogue (Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg/Service public fédéral Emploi, Travail et Concertation sociale, FOD/WASO).

581. Comparing the 2008 results with those for 2004, a slight loss can be detected for the largest trade union confederation, ACV/CSC. The negative trend in election results for the alternative lists for managerial staff has also been prolonged.

Social elections are organized in the private sector. This sector includes the so-called 'not-for-profit sector', which encompasses organizations and institutions involved in healthcare, social work and cultural activities. This sector is dominated by Christian-based organizations, with ACV-CSC therefore having a significant advantage.

Table 8 shows the results for the sector's private industries and services, excluding the not-for-profit private sector.

Results of social elections in private industry and services sector, 2004 and 2008 (%)

Votes				
	CPPT/CPBWs		Works councils	
	2004	2008	2004	2008
ABVV/FGTB	39.4	40.1	38.7	39.8
ACV/CSC	49.7	49.1	48.0	47.6
ACLVB/CGSLB	10.9	10.8	10.3	10.5
Alternative managerial staff lists*	–	–	3.0	2.1
Seats				
	CPPT/CPBWs		Works councils	
	2004	2008	2004	2008
ABVV/FGTB	39.4	39.6	37.9	38.6
ACV/CSC	53.7	53.1	52.1	51.6
ACLVB/CGSLB	6.9	7.3	6.9	7.5
Alternative managerial staff lists*	–	–	3.1	2.3

* Alternative managerial staff lists (CNC/NCK or autonomous company groups) are only allowed in works council elections.
Source: FOD/WASO

582. The majority position of ACV/CSC is still evident, albeit less prominent and with slight losses.

It is worthwhile comparing the results according to region. Traditionally, ABVV/FGTB has maintained a much stronger presence in the Walloon and Brussels regions, while ACV/CSC has dominated the Flanders region – as is confirmed by these latest results. The following table presents the results in relation to works council seats by region.

Seats in private sector works council elections, by region, 2004 and 2008 (%)

Total seats						
	Flanders		Wallonia		Brussels	
	2004	2008	2004	2008	2004	2008
ABVV/FGTB	29.3	30.8	42.0	42.0	38.6	38.0
ACV/CSC	63.2	61.4	51.9	51.9	46.8	49.1
ACLVB/CGSLB	5.9	6.6	3.8	4.4	9.4	9.4
Alternative managerial staff lists*	1.6	1.2	2.3	5.2	5.2	3.4

Seats in private for-profit sector						
	Flanders		Wallonia		Brussels	
	2004	2008	2004	2008	2004	2008
ABVV/FGTB	33.2	34.5	50.6	50.4	39.1	39.4
ACV/CSC	58.3	56.5	41.9	42.5	44.4	45.7
ACLVB/CGSLB	6.7	7.5	4.1	4.6	10.3	10.4
Alternative managerial staff lists*	1.9	1.5	3.5	2.6	6.3	4.5

* Alternative managerial staff lists (CNC/NCK or autonomous company groups) are only allowed in works council elections. Source: FOD/WASO.

583. Belgian trade unions are not organized on a craft or occupational basis, and industrial unions prevail. Both the Socialist and Christian unions have separate divisions for white-collar workers, regardless of the sector of industry to which they may belong.

The ABVV is based on principles of democratic socialism corresponding with those of the Belgian Socialist Party. Its declared goal is a system of social and economic democracy under which the means the production will be at the service of the whole community. Different national unions are affiliated to the ABVV. Each union is an independent organization with its own structure, governing body, and statutory rules. To become affiliated, the union must give an assurance that it will accept the basic principles of the Socialist ABVV, and that it will carry out all the decisions made by the governing body of the ABVV. The Socialist trade union movement is completely free in its organizational activities, and cannot be forced to account for conduct that accords with the basic ABVV principles and governing rules. On the other hand, the ABVV is the only Socialist body authorized to take decisions at a general or national level in defence of the general interests of the workers as the Socialist trade union movement is decentralized at the regional and local levels.

The Christian workers in Belgium are grouped together in a national organization called the Christian Labour Movement. The aim of this organization is to defend the interests of the workers in accordance with Christian social doctrine and the principles of democracy. It is composed of specialized national organizations for economic, cultural and educational action such as the Confederation of Christian Trade Unions (ACV-CSC), mutual insurance companies, co-operative societies, Workers' Youth Movements, Women's Guilds, and the Workers' Associations. The ACV is the nationwide organization entrusted with the direction of the activities of all the Christian trade unions in Belgium. The ACV basically has the same structure as the ABVV: it is composed of national unions based on industry which are decentralized at the regional and local level.

The ACV and the ABVV have essentially the same structure; both are federations of national trade unions organized – as a general rule – per sector(s) of the industry. Important exceptions are the white-collar and the public sector unions. The ACLVB has a unified structure.

The ABVV is an association of:

– seven branch federations (the *branch trade unions*), which group the members according to work sector;
– three *inter-regional organizations*, which follow the federal structure of the Belgian State;
– 17 *regional organizations*, which bring the members together according to geographical zone.

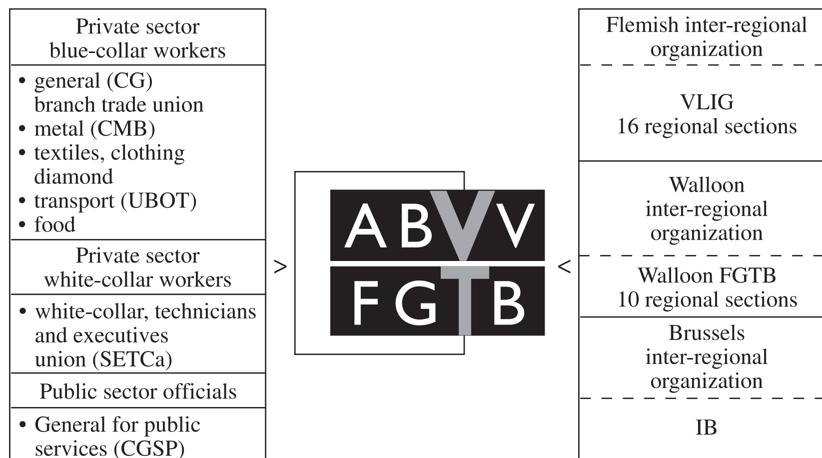

Table 15
Number of members per branch union

	1994	1995	1996	1997	1998	1999	2001	2002	2003	2004	2005	2006	2007	2008
General	287,702	300,003	294,058	299,232	306,823	307,507	316,797	333,065	339,294	343,534	350,764	364,246	370,304	376,768
SETCa	233,311	249,567	255,367	261,511	259,552	268,649	300,529	311,251	324,979	343,420	356,912	365,371	373,867	382,291
Book			13,358	12,232	12,692	12,365	5,085							
Textiles Clothing Diamonds	57,015	56,131	53,212	52,267	51,509	50,339	47,596	46,544	45,426	44,012	42,163	40,562	38,719	36,905
Metal	183,212	188,683	184,080	180,232	179,923	175,895	175,144	179,796	177,884	178,482	179,155	180,459	180,914	178,943
Public Services	249,014	271,964	272,382	279,759	269,986	267,860	280,354	285,234	286,232	289,679	284,576	299,258	297,379	302,084
Transport (UBOT)	25,827	26,677	26,961	26,796	28,096	28,310	30,981	33,012	34,697	36,645	38,091	39,476	40,144	42,312
Food	72,281	74,879	74,391	78,745	78,110	79,594	83,910	89,325	92,505	97,605	100,510	105,353	108,211	109,391
Cadets	9,026	8,797	9,215	7,496	9,956	8,194	6,671	8,741	10,429	10,433	15,452	20,678	24,989	26,760
Total	1,117,388	1,176,701	1,183,024	1,198,270	1,196,647	1,198,713	1,201,952	1,286,968	1,311,446	1,343,810	1,367,623	1,415,403	1,434,527	1,455,454

584. The ABVV-FGTB is present in all industrial, economic, government and social sectors. At the heart of both public services and private enterprise, within the trading and non-trading sectors, amongst economic-oriented or non-trading undertakings, in major companies and small and medium-sized undertakings, in the service of every worker and every job-seeker, within every region and province in Belgium.

The FGTB also represents those who are excluded, the most deprived, migrant workers, women, the retired and the early retired, those seeking work.

The TGTB represents workers in a large number of economic and social institutions. These include:

National Labour Council Consultative council on all employment questions. It enters into collective bargaining agreements.

Central Economic Council Consultative council on all economic and organizational questions on the national and international economy.

Higher Council on Preventive Measures and Protection at Work Consultative council on all questions relating to preventive measures and protection at work.

Joint Committees Co-determination bodies involved in negotiation and the conclusion of sectoral accords on salaries and working conditions (CBA – collective bargaining agreements). The joint committees are also conciliation bodies in cases of disputes.

Consumer organizations' research and information centres (CRIOC) The FGTB plays a role as a consumer defence organization.

Supervisory Committee for Gas and Electricity A committee ensuring compliance with the general interest in matters regarding gas and electricity.

Index Committee Committee that calculates the monthly consumer prices index. This index has an effect on pay and social security benefits.

Federal Council on Scientific Policy Consultative council on all questions of scientific policy.

Federal Council for Sustainable Development Consultative council on the entire Belgian State's policy on sustainable development.

Equal Opportunities Council Consultative council on equal opportunities between men and women.

Industrial Accidents Fund Semi-governmental social security institution in charge of supervising industrial accident insurers.

Occupational disease Semi-governmental social security institution in charge of insurance against occupational disease and which compensates victims.

National Institute of Invalidity and Sickness Insurance (INAMI) Social security institution in charge of paying benefits for sickness and health care.

National Social Security Office (ONSS) Body that collects social security contributions.

National Employment Office (ONEm) Department that awards unemployment benefit.

National Office for Annual Holidays (ONVA) Social security office that administrates annual holidays for manual workers.

585. Union dues differ according to the union district, and take into account the personal situation of the employee (sickness, unemployment, retirement, military

service and so on). In the Christian trade unions union dues amount to €14.52 per month. There are special dues for sick, unemployed and young people.

586. Each national trade union is autonomous in defending the interests of its members and in discharging essential trade union functions. The national trade unions have provincial, regional and local sections. The ABVV and the ACV have regional federations. These regional federations are subordinate bodies of the national federation, and they co-ordinate the activities of the different trade unions operating within the region. For the most part, they are charged with administrative and financial duties such as the recruiting of new members, the collection of dues, and the provision of legal assistance to members and propaganda. Jurisdictional or demarcation disputes between national trade unions belonging to the same national federation are resolved by means of a binding decision taken in the central committee of the federation. There are no jurisdictional disputes between parallel organizations of ACV and ABVV; rather they present a common front to the employers or employers' associations. This means that the unions will bargain with the employer on the basis of a 'common' programme. Firstly the different unions will draft their separate programmes, then they will meet together and formulate a 'common' programme to be presented jointly to the employer(s). Both organizations are equally recognized by the employer side of the bargaining table, although of course each movement will be seeking to attract as many members as possible.

587. Recently, both major trade unions have started to adapt their unitary structures to the new political and economic realities involved in the federalization in Belgium, and regional organizations have been set up. In the Christian trade unions, white-collar workers have separate organizations along linguistic lines. The white-collar organizations do, however, bargain independently. This tendency is bound to accelerate in the near future. The metal workers, although still national, have two separate (linguistic) wings, which are competent to deal with the regional political authorities and can take autonomous points of view; collective agreements are, however, still concluded by the national union.

588. The Belgian metalworkers' union affiliated to the Belgian General Federation of Labour (ABVV-FGTB) has been split into three regional organizations or federations: one for Brussels, one for Flanders and one for the Walloon region. However, trade union leaders have declared that the organization and coordination of collective bargaining in the metal sectors will remain at a national level.[1]

As a result, the Brussels, Flemish and Walloon branches of CMB will now function almost autonomously. Each branch will decide independently on the union strategies and practices they want to deploy to reach their objectives, based on the statutory rules of the Belgian General Federation of Labour and on the social and economic situation in their region.

From an organizational perspective, both the union's budget for the strike fund and its real estate will be divided between the Flemish and Walloon sections according to a distribution code. To a large extent, the available resources will be divided equally, which is surprising considering that the Flemish section counts in absolute numbers many more members than the Walloon division.

A federal consultative structure will be maintained in the union to coordinate decision making in the important, but still federal and unitary policy fields of labour law, social security and national sector bargaining. However, the function of national secretary-general will cease to exist.

1. Guy Van Gyes, 'Metalworkers' union to split into regional divisions', Higher Institute for Labour Studies (HIVA), Catholic University of Leuven.

589. There is no legislation in Belgium regulating the *administration* or *functioning* of the trade unions.

Belgian unions are consequently completely free and sovereign in all matters. Trade union leaders are not directly elected but are appointed by co-option; that is, by their predecessors in office, by those already in power when vacancies occur.

590. The ACV describes the existing system as follows:

> 'In the heroic times of the trade union movement trade union leaders were nominated directly by the members, who selected for positions of leadership the most eloquent among their comrades and those who displayed the greatest dynamism and the liveliest zeal for trade union interests. These were the times of direct democracy in the management of trade union affairs. But with the further development of membership, the growing complexity of trade unions and the centralization of trade union action caused by changes in industrial life, it proved no longer possible for the leaders to be elected directly by the members. First of all, not all the members attend meetings; furthermore, ordinary members are not always capable of forming a sound judgment of the aptitudes required of possible leaders. Direct election therefore, was replaced by appointment, by delegation and by co-optation.'

Full-time officers are nominated by the Committee of the organization in whose service they are employed, and their appointment has to be confirmed either by the Central Committee (Trades Centres and Regional Federations) of the Council (ACV). They are paid by their organizations and relieved of all other professional activities.

At the top of the trade union hierarchy are full-time officers who are entrusted with the direction of the Trades Centres, the Regional Federations and the ACV. They are recruited from among full-time officers of the second echelon and their nomination must also meet with the approval either of the central committee, or the Council of the organization concerned.

591. For the most part, the rank-and-file members are not involved in the elaboration of union programmes or in the establishment of the dues schedules. They have no right to examine financial documents and reports, which are kept secret. However, the trade unions claim that, notwithstanding the aforementioned procedures, there is a high degree of informal democracy: that trade union leaders come to the forefront through their zeal for the trade union cause and are readily accepted by the members; that union funds and especially the strike fund must be

kept secret; and that above all employers should not know the financial strength and possibilities of the unions in the event of an economic showdown.

592. As well as defending the interests of employees *vis-à-vis* the employers and the government, and in front of the labour courts, the unions also extended various benefits to their members:

1. strike benefits;
2. marriage benefit.

The different national industrial unions can augment these benefits, and of course the benefit for union members only must also be added.

593. The Christian tade unions pay strike allowances per week as follows:

1st week	2nd week	5th week	9th week
€150.00	€175.00	€207.50	€227.50

Trade unions act also as paymaster for the unemployed, who are their members. A large majority of the unemployed remain members of the trade unions, mainly for that reason. They get their money much more easily than non-members, who have to address a National Fund.

594. At an *international level* the Socialist unions are the Christian unions affiliated to the International Confederation of Trade Unions (IFTU). The individual national unions are members of the *Industrial Internationals*, which are linked to the Global Internationals.

At a *European* level, however, the three unions belong to the European Confederation of Trade Unions (ETUC) and their individual unions belong to the European Industrial Unions (e.g. the European Metal Workers' Federation). The unity which exists between the the three unions at a European level is certainly not to be expected on the national level in the near future. Although both unions collaborate in the development of their strategies, their ideological differences are sometimes such that a unified trade union movement is not for tomorrow.

595. Solidarity was one of the main themes of the thirty-third statutory congress, held on 19–21 October 2006 of Belgium's Confederation of Christian Trade Unions (CSC/ACV).[1]

1. Cécile A., 'Trade union congress call for greater solidarity', 12 December 2006, Eurofoundation.

A. Themes of Congress

596. Following more than six months of internal preparation, the congress defined the broad issues for debate and action by the trade union confederation. The congress was also used as the occasion to draw comparisons with the previous CSC/ACV congress, held four years ago, which dealt with the issue of fair pay.

A central theme of this year's congress was the important issue of solidarity, which was discussed by delegates of the confederation. It is around this major axis that CSC/ACV defined its principal actions and future positions, which will define the forthcoming inter-professional negotiations for 2007–2008.

B. Four Main Pillars

597. At the end of the congress meeting, a total of 77 guiding principles were released. These proposals will define the actions of CSC/ACV for the next four years. The proposals mainly revolve around four pillars:

– The first pillar relates to an attempt to 'reinforce solidarity', in particular by insisting on the importance of a strong inter-professional agreement, which is autonomously negotiated by the two sides of industry; it also underlines the importance of fair taxation for all.
– Secondly, CSC/ACV wants to increase 'solidarity in work' by fighting against discrimination. Moreover, the trade union confederation wants to continue its work in the area of guaranteeing the rights of workers and of increasing the protection of trade unions. Within this framework, CSC/ACV reaffirmed the essential role of trade unionism at European level.
– In addition, the confederation aims to reinforce 'solidarity for employment'. In this context, proposals were discussed in relation to the following issues: increasing employment; reorganising the distribution of work; providing a supplement for young unemployed people, redundant workers and immigrants; and improving the European legal framework with regard to measures being taken to restructure companies.
– Lastly, CSC/ACV underlined the importance of 'working for solidarity'. This axis of actions considers not only the trade union claims about the representation of workers in small and medium-sized enterprises (SMEs) but also the implications for CSC/ACV in relation to the new International Trade Union Confederation (Confédération syndicale internationale, ITUC), founded in November 2006.

598. Finally, the congress was used as the occasion for CSC/ACV to outline its position with regard to three particularly current and much discussed issues in the Belgian social context. CSC/ACV clearly expressed its views against any regionalization measures in relation to social security, labour law and collective agreements.

> '…we do not want a state where solidarity is exhausted. We do not accept a reform of the state which calls into question solidarity between workers, independently of their work or place of residence.…The fundamental mechanisms of solidarity between workers must remain federal: social security, labour law and inter-professional collective agreements.'

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