

MOLIERE PROJECT

Belgian National Report

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Section 1. Introduction

This document aims at introducing the restructuring phenomena in Belgium. It makes part of a larger project (called the MOLIERE project) undertaken by eleven European countries¹ gathered to analyse restructurings. This national document follows a common reporting format: an introduction of the complex Belgian restructuring frameworks (1), a presentation of the main actors involved in the process (2), a synthesis of the measures created to anticipate change (3) and a synthesis of the measures established to manage change (4).

Section 2. Restructuring frameworks

In the present chapter, we describe the Belgian legislation related to the dynamics of corporate² restructuring. The Belgian legal framework is distinguished by four principal scenarios: (1) collective layoffs, which are subject to a very precise procedure; (2) recognition of a company as being in the process of restructuring, which opens up rights and obligations to the company and its workers; (3) the transfer of the company, the legal details of which guarantee the workers certain rights; and, finally, (4) the closure of the company, which is subject to a particular definition and a particular follow up. The chapter ends with the legislation over the optional social plans and over the selection of workers to be laid off.

1. Collective layoffs

The Directives of the European Communities³ relating to collective layoffs have been translated into Belgian law by three successive legislations⁴.

a. The Collective Bargaining Agreement⁵

This agreement precisely describes the conditions to be fulfilled by a business company⁶ before proceeding to a collective layoff:

1. Having employed on average over 20 workers over the course of the calendar year preceding the collective layoff. In 2013, this threshold

¹ Belgium, France, Deutschland, Nederland, Italy, Spain, Bulgaria, Czech republic, Slovenia, United kingdom and Portugal.

² In Belgium, the legal framework is rather different between private and public sector. All the National Collective Agreements and laws over restructuring concern the corporate sector only.

³ European Directives n° 75/129/EEC of 17th February 1975 and n°98/59/EC of 20th July 1998.

⁴ National Collective Agreement n°24 of 2nd of October 1975 about trade union information and consultation procedure in case of collective layoffs; Royal Decree of 24th May, 1976, on collective layoffs, and finally the decree of the 13th February, 1998, known as the Renault law.

⁵ n°24 of 2nd of October 1975.

⁶ Defined in the broadest sense as any 'technical business unit'.

corresponds to a minority of Belgian businesses (9,57%⁷) but a majority of the country's workers (75,2%⁸).

2. The motive or motives for the layoff must not be related to the individual workers concerned.
3. The layoff must affect a minimum number of workers over a period of sixty days. This number varies according to the size of the technical business unit. For business companies employing over 20 and less than 100 workers, the layoff must involve at least 10 people. For businesses employing between 100 and 299 workers the layoff must involve at least 10% of the workers employed. For companies employing at least 300 workers the layoff must involve at least 30 people. The law imposes this sixty days period in order to limit the "percolated layoffs"; i.e. a rather common tendency of some companies to spread over time the layoffs in order to avoid this mandatory legislation.

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

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

This information 'must enable the workers' representatives to formulate their responses and suggestions so that they can be taken into consideration'. There then a consultation period begins, whose goal is to envisage the possibilities of avoiding or reducing the collective layoff or, at least, to minimizing its

⁷ National Social Security Office, « Travailleurs assujettis à la sécurité sociale répartis par lieu de travail: données au 31 décembre 2012 », p11. See http://www.onss.fgov.be/sites/default/files/binaries/assets/statistics/place/localunit_full_N8_FR_20124.pdf

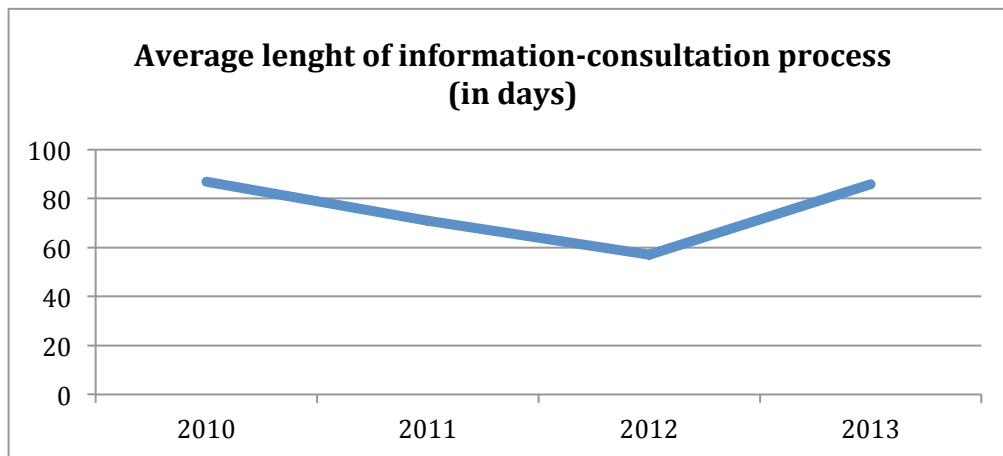
⁸ National Social Security Office, « Estimation rapide de l'emploi salarié (O.N.S.S.) pour le quatrième trimestre 2013 », p.32. See http://www.onss.fgov.be/sites/default/files/binaries/assets/statistics/estimate/estimate_full_FR_20134.

consequences. This lessening of the consequence may be found by the use of social measures aiming notably at helping the transition of laid off workers.

When the information and consultation procedure is completed, the employer gives notice of the intention to implement a collective layoff to the Director of the sub-regional employment department of the region in which the business is situated, in providing proof that the aforementioned procedure has been respected. Since 2009⁹, the employer must also send a copy of this letter to The Federal Public Department for Employment, Labour and Social Consultation. Such a procedure gives to the Federal Public Department a general national overview of the collective layoffs.

This notification triggers a period of 30 days during which the employer cannot sack the workers concerned by the collective layoff. This 30 days period can be reduced or extended (up to 60 days) by the Director of the sub-regional employment department of the region in which the business is situated. This allows regional public employment services and other territorial actors to get time for dealing with the impact of the collective layoff.

Once this period has expired a worker can be laid off. It should be noted that this information and consultation process in the case of a collective layoff establishes an obligation concerning procedures and not concerning the result. The consultation thus might not lead to an agreement between the employer and the workers' representatives. In this case, the act has fixed no time period by when this consultation process should be brought to a conclusion. In practice, in 2013, the length of the procedure was to 86 days. The following chart shows a general trend towards a reduction of this length, except in 2013 where



the very large and very long restructurings occurred.

⁹ Royal Decree of 7th of June 2009, which comes into force the 19th of June 2009 and implements the “crisis measures”.

b. The Renault law

In 1997 the non-compliance with the regulations of prior information by the French Renault business company pushed the Belgian legislator to enact a legislation¹⁰ called 'the Renault Law'. This law is often described by the media as the legal framework on collective layoffs. In fact, it only specifies the information and consultation process as it is defined by collective bargaining agreement n°24 and imposes civil sanctions in case of non-respect of the agreement.

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

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

In practice, the arguments from the trade unions may be diverse. They may suggest collective reduction of working time or of salary; they may ask for new business developments; they may envisage the involvement of new public or private partners, etc. Even if these suggestions are most of the time not really taken into consideration, few examples witnesses an incremental or even a radical change of the employer strategy.

These actions are carried out during several extraordinary works councils. This law called "Renault" plans also modalities of an appeal against this decision of dismissal. Thus, each worker concerned by the dismissal arranges a 30 days deadline, starting from the notification done by the employers to the regional public employment service, to contest individually the process. These individual actions are conditioned to the fact that the workers representatives must have, beforehand, themselves contested the process.

¹⁰ The act of 13th February 1998.

Finally, the law imposes civil sanctions if the employer does not respect this information/consultation process¹¹.

2. Company undergoing restructuring

In Belgium, business companies may ask to the Minister of Employment to be recognized as company undergoing restructuring. This recognition is required if the company organizes an early retirement scheme (named “unemployment scheme with company financial contribution”, see below)

Since 2009, as a reaction to the global financial and economic crisis, another law imposes this recognition for business of over 20 workers, which announces its intention to carry out a collective layoff, with or without early retirement scheme. By being considered as “undergoing restructuring”, the company has the obligation to set up a special transition unit (see below).

3. The transfer of a business company

The transfer of a business company is a restructuring process in which a company – or part of it – is transferred (handover, merger, etc.), from a previous owner to a new one and in which workers cope with a change of employer. In certain conditions, the law¹² guarantees the conservation of the workers’ rights and obligations.

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

4. The closure of a business company

The closure of a business company is the worst scenario in terms of restructuring because the consequences are major, as much for the employer as for the workers and the public authorities. The closure of a business company is as a result subject to specific legislations. By the closure of a business company the Belgian legislature understands *‘the definitive work stoppage of the business company’s principal activity (or a division of the company) when the number of*

¹¹ These sanctions target the neutralization of the dismissal effects of the workers concerned by the collective dismissal and this, as long as the process is not totally respected. Thus, if the worker is still in a notice period; the dead line of this notice is suspended until the end of the proceedings, and maintains the wages of the worker. If the contract is already over and indemnified, the worker has the right of being reintegrated in the company.

¹² Collective bargaining agreement n°32bis, the transposition into Belgian law of European Directive 77/187, of the 14th February 1977,

*workers is reduced and below a quarter of the number of workers the company employed on average over the four quarters preceding the definitive cessation of the establishment.'*¹³

The law¹⁴ specifies the two obligations of every closed down business company, as long as it employs on average 20 workers or more:

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

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

5. Social plans and other financial compensation measures

Currently, in Belgium, there is no legal framework placing any obligation on employers to produce a social plan. Nevertheless, The Federal PES (Public Employment Service – named Public Department of Employment, Labour and Social Consultation) between Employers and Trade Unions explains on its web site¹⁵ that social plans are becoming a generalized practice in Belgium and defines them as an extra legal process '*characterized by extra legal measures consented to by the employer to improve the fate of workers hit by anticipated restructuring.*' Moreover, the existence of a social plan policy is implied by collective bargaining agreement n°24, which applies to companies employing 20 or more workers, obliging the employer to inform the workers about the method of calculation envisaged for every possible extra legal indemnity. The experience of The Federal Public Department of Employment, Labour and Social Consultation shows that this information is provided at the end of the consultation period through an agreement between the social partners, during the notice period (30 or 60 days).

Concerning the content of the social plan, it can be made up of a number of measures: whilst they previously contained primarily measures such as early retirement, complementary indemnities for redundancies and the reform of working hours, social plans contain more and more measures for the "activation" of the workers, thanks to outplacement program and/or transition units.

¹³ Art.3 of the Act of 26 June 2002. In addition, it should be noted that a business company undergoing restructuring can be likened to a closing down business in the case where it has been led to carry out at least double the number of collective layoffs required for the application of the regulations related to collective layoffs.

¹⁴ The act of 26th June 2002.

¹⁵ See <http://www.emploi.belgique.be/defaultTab.aspx?id=486>

6. Selecting the workers

A law¹⁶ and a collective bargaining agreement¹⁷ establishes as a mission for Works Council to determine the general criteria “proposed” by the employer to select workers who will be laid off. In practice this legislation is rarely respected in negotiations of the collective bargaining agreement. Most often, general criteria are defined collectively by social partners.

Recently, a law¹⁸ argued that the employer is obliged to select the workers in the same proportion as the population pyramid of the company workforce. If not, the company can be penalised by an increase of the payroll taxes. Nevertheless, this legislation has still not been promulgated.

Section 3. Actors involved in restructuring

1. The public authorities

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

2. The public administrations

The federalization process of the Belgian state has led – and is still leading - to the transfer of certain powers from the central power to federated entities. As a consequence there exists several general governments: one federal and three regionals.

3. Federal level

The Federal PES is the federal public service with responsibility for restructuring. This service has the mission of informing, advising and reconciling the social partners who faced such a situation.

- The law ¹⁹ establishes within this PES an official body of social conciliators. Distributed among industrial (sectoral) joint commissions, they generally enter the stage when all the other procedures within the equal representation commissions have reached an impasse. Their intervention can be requested by one of the party’s concerned or by the

¹⁶ Act of 20 September 1948.

¹⁷ Collective bargaining agreement n°9 of 9th March 1972.

¹⁸ The Act of 29 March 2012.

¹⁹ The Royal Decree of 23rd July 1969 setting up a collective industrial relations department and fixing the personnel status of this department.

Federal Minister for Employment and Labour. They can also choose to intervene on their own initiative. Amongst the missions of the social conciliators, the law²⁰ cites notably that of '*seeing that conflicts are prevented*.' In practice, the President of the joint commission, a civil servant with the function of "social conciliator", meet – separately or not – social partners and try to unblock the process of negotiation by giving a neutral exterior opinion of the issue, by proposing a median solution, etc.

- The consultative commission instituted through The Federal PES has been given the responsibility of appraising early retirement schemes presented by employers undergoing restructuring and of giving advice to the Federal Minister of Employment on the recognition of companies under restructuring. This commission is composed of the social partners, a President and a vice-President, all of them nominated by the Minister of Employment.
- The Internet site of The Federal PES is a powerful information tool aimed at the different stakeholders of the labour market. A section specific to business company restructuring approaches in a very precise way the different scenarios we have moreover represented in this report.

It should be moreover noted that, as we have seen in the previous chapter, the legal framework makes provision for the intervention of the PES in numerous processes. This intervention varies, from receiving information (such as the wish to carry out a collective layoff) to a more active role, such as in giving a company the recognition of undergoing restructuring status, or validating the support follow-up measures for laid off workers in the restructuring plan.

The federal level is also in charge of the unemployment benefits. The law²¹ puts in place the regulation concerning unemployment benefits for salaried employees who have lost their job in circumstances against their own control. The legislation was modified in 2012²² in order to reduce the benefits. The amount of these benefits varies according to the personal situations of the unemployed people (family situation, notably), the length of their professional experience and the level of their final wage. This benefit rises to 65% (60% before 2012) of the worker's last year, with a ceiling of 2.466,59€ (gross), for the duration of the first three months (it was during the first year in the previous legislation) of unemployment. During the following 9 months, the rate lowers to 60%. After that period the amount decreases accordingly to the family situation and the length of the unemployment period. The ceiling amount

²⁰ Article 5 of the Royal Decree of 23rd July 1969.

²¹ Law of 28th December, 1944, concerning the social security of workers, implemented by the Act of 25th November, 1991,

²² Arrêté royal du 23 juillet 2012, *Moniteur belge* du 30 juillet 2012

decreases also in order to reach 2.101,52€ after one year. The lowest amount falls around 500€/month (gross)²³.

The worker who benefits from an unemployment allowance will have the amount due paid by either the trade union s/he is affiliated to (CGSLB, CSC or FGVB) or by the CAPAC (Auxiliary Fund for Unemployment Benefit Payment).

4. Regional Level

In 1980²⁴, a special law²⁵ gave the regions powers as regards the placement of workers. These entities - the regional public employment and vocational training authorities (the Forem in Wallonia, Actiris (ex-Orbem) in the Brussels-Capitale region and the VDAB in Flanders) - use these powers differently in terms of employment management. Their mission is to provide support to any stakeholder in the employment market, i.e. to help individuals to gain access to training, to provide support in finding a job, etc. and to help companies to recruit and to train their workers, etc. These public authorities are also in charge of managing the consequences of the restructuring, mainly through the outplacement activities (see below).

From July 2014, the sixth reform of the federal state holds a new transfer of employment competencies from the federal state to the regional entities. It mainly concerns taxes reductions to promote employment.

5. The political power

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

6. The judicial power

Besides the classical role of the judicial powers, which is sanctioning non-compliance with the legal framework, the Commercial courts play a role in terms of anticipating restructuring. One of the missions of the business tribunals is to monitor the economic situation of the companies established in their judicial administrative region. When a company is showing signs of difficulty (late payments of social security contributions, VAT, etc., liquidity ratios and

²³ see http://www.rva.be/D_Opdracht_W/Werknemers/T67/InfoFR.pdf

²⁴ Recently, in December 2011, a political agreement reaches to the sixth reform of the State, with an important chapter over the transfer of competences from the Federal State to the Regions. We won't go further about it since it has little impact on the restructuring scheme.

²⁵ Law of 8th August 1980.

solvency rates), the Commercial court invites the company's director – or summons him (her) if necessary – in order to warn them of the situation and ask them to undertake corrective measures in order to avoid a judicial reorganization procedure²⁶, or even bankruptcy itself.

In addition, a law²⁷ makes provision, on the principle of business company continuity, for an increased role for Commercial courts. It stipulates the creation of a number of new tools (the Business Chambers of Inquiry, designation of a 'business company mediator', a legal agent or a deputy of the presiding judge,) whose role is to help the business in difficulty to regain good financial and economic health.

7. The workers and their representatives

In Belgium there are 3 main unions, which are, by decreasing size, the Christian union (CSC), the Socialist union (FGTB) and the Liberal union (CGSLB). The very high membership rates (around 60% of the national workforce) can partly be explained by the fact that unions are entitled by the Federal State to manage the payment of the public unemployment benefits to their unemployed adherents.

This membership rate gives them a considerable role and power within the model of Belgian consultation. In case of restructuring, their strategy is firstly to 'save' economic activity by presenting the management of the company with alternative plans with less drastic social consequences. To do this, the unions monitor the economic situation of the company and suggest, for instance, other potential sources of financing, new markets, etc. If the management rejects these proposals, worker representatives start talking about the social dimensions, i.e. mainly severance payments and outplacement programs. The behaviour of the trade unions will firstly depend on the nature of the restructuring, the image of the company and its financial capacity. Their demands will be higher in case of the closure of a subsidiary of a profitable international company than in the case of restructuring in a local SME.

In some cases the dismissal of union representatives is a real stumbling block. While employers (and collective bargaining agreement²⁸ n°5) consider that in these circumstances union representatives must be treated as normal workers, the trade unions sometimes require a higher compensation/severance payments or more protection, arguing that former trade union representatives have more difficulties in finding a new job.

The unions in Belgium also fight to reduce the legal threshold of union representation in a business company, which at present is fixed at 51 workers, in order to widen consultation, particularly in the case of restructuring.

²⁶ This procedure aims at preserving, under the control of the Judge, the business operations.

²⁷ The act of 31 January 2009.

²⁸ CCT = Convention Collective de Travail – collective bargaining agreement

It should be noted that the support offered by unions is not only addressed to workers on employment. The trade unions have developed a series of services intended to their unemployed adherents:

- they offer legal assistance, for instance in case of trial before a Labour Court
- they monthly pay the unemployment severances on behalf of the Federal State,
- they give support to the workers in public re-employment cells
- etc.

8. The employers and their representatives

Belgian employers are represented by sector federations, which are gathered within the Federation of Belgian Enterprises. This federation is mandated to negotiate collective bargaining agreements and is always called to the negotiating table (as are all the unions) when politicians wish to legislate in the social sphere.

Section 4. Measures for anticipating change

The anticipation measures and tools presented within the framework of this chapter aims at avoiding restructuring. We distinguish two types of anticipation. First, the transfer of economical and social information to the workers, resulting from the legal framework, and, second, other non-binding initiatives taken by the stakeholders in the labour market.

1. The measure of anticipation resulting from the legal framework: the worker information in terms of finding alternative solutions to layoffs

Belgian legislation is in line with European Directives²⁹ related to informing and consulting workers. It seeks to reinforce worker protection in cases of collective layoffs, but also to developing their access to information and consultation before the restructuring process in order to enable a successful conclusion to the process of restructuring and adapting companies.

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

²⁹ Directive 75/129/EEC of the Council of the European Communities, relating to collective layoffs and Directive 2002/14/EC of the European Parliament and Council.

a. Businesses employing 100 workers and more³⁰

The law³¹ sets the threshold for the establishment of Works Councils at 100 workers.³² A Works Council is a consultative body comprising representatives of the employer and the workers which receives information on the economic and financial situation of the company, monitors the implementation of relevant legislation and discusses the regulation of work including working conditions, changes to the production process, working hours, holidays, etc. Companies with Works Council have greater obligations with regard to the provision of information; information on decisions that could potentially have an impact on employment must be provided to the Works Council³³ (Krzeslo, 2003) according to a very strict formula or it may be declared invalid.

The employer must also inform the workers or their representatives of any events that are likely to have an important impact on the company and of any internal decisions that are likely to have significant consequences for the company³⁴. This information must be communicated before any decisions are carried out.

Collective bargaining agreements³⁵ coordinating the national and collective agreements on Works Councils, indicate that in cases of merger, integration, a takeover or closure or other important structural changes negotiated by the company, the Works Council should be informed of it in good time and before any spreading of the information elsewhere. In practice, even if the law required confidentiality in works councils, leaks are frequent.

Finally, the law³⁶ condemns the employers, in some specific cases of company closure, to a heavy fine if they do not respect the obligations of collective bargaining agreement n°9.

b. Businesses consisting of between 50 and 99 workers

As transposition of an European Directive³⁷, the collective bargaining agreement n°9 Ter (February 27th, 2008) imposes several obligations of the employer in terms of information and consultation to the Works Council or,

³⁰ Certain businesses with between 50 and 99 workers are also concerned by virtue of the law of the 8th of November 2007.

³¹ Law of the 8th of November 2007.

³² Currently, European Directive 2002/14/CE determining the threshold for the establishment of a social dialogue at 20 workers has still not been translated into the Belgian legislation.

³³ 'The controlling body, in charge of economic [...] social [...] and employment issues. It is elected by the whole body of workers.'

³⁴ Under Article 25 of the Royal Decree of 27 November 1973 about rules on economic and financial information for the Works Councils.

³⁵ Collective agreement n°9, of 9th March 1973.

³⁶ Decree of 8th April 2003.

³⁷ European Directive 2002/14/EC.

failing that, to the trade union delegation. Moreover, the law³⁸, requires the employer to transmit a series of 'basic' information (status, competitive position, etc.) as well as annual information (statement of financial positions, yearly accounts, etc.) to the Accident Prevention and Safety at Work Committee when the business has a minimum of 50 workers and has not a Business Council. This law obliges also the employer not only to inform but also to consult the workers' representatives concerning factors of a social nature.

Moreover, a collective agreement³⁹, imposes to companies who envisage to invest in new technology to:

- provide information in writing concerning the nature of this technology, the factors justifying its introduction as well as the social consequences it will have,
- embark on a consultation with workers representatives over the social consequences of the introduction of the new technology.'

These obligations only apply if:

- the company employs generally an average of 50 workers at least
- the invest has potentially important collective consequences in terms of employment, work organization or working conditions,
- 50% and at least ten workers of a given professional category are potentially affected by this change of technology.

c. [Businesses consisting of less than 50 workers](#)

For business companies with less than 50 workers, the legislation does not impose the establishment of a formal social dialogue body (Business Council, Accident Prevention and Safety at Work Committee, nor trade union delegation), excepted in specific cases (i.e. in the mine sector, in the building industry, etc.). The obligation to inform workers is consequently more limited and consists mainly of providing information 'in good time' to the representatives of its personnel or, failing that, directly to its personnel in cases of collective layoff⁴⁰, closure⁴¹ or transfer of workers⁴²

³⁸ Law of 23rd April 2008.

³⁹ n°39 of 13th December, 1983.

⁴⁰ Collective bargaining agreement n°24 of 2nd October 1975, for employer occupying on average more than 20 workers.

⁴¹ Decree of 26th June 2002, for the case of a company closing occupying on average 20 workers at least.

⁴² Collective bargaining agreement 32bis, for worker information/consultation measures in case of non-existence of a Work Council nor any workers representation.

Box 1: Case study FAR

This box presents the initiative carried out by a union delegation to put in place a system of continuous monitoring of the financial, economic and industrial health of the businesses in which one or more delegates are represented.

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

The association first of all offers several training modules aimed at FGTB trade union delegates. This training cycle, which lasts for three years and consists of close to 300 hours of training, aims at enabling the delegates to make better use of the information regularly passed on by the employers. Training modules on financial analysis, social law, fiscal law, information technologies, etc. are expected to ensure a better monitoring of the financial, economic and industrial health of the company they are a part of.

Moreover FAR has for several years ensured a monitoring process of the businesses of the Liège region, primarily those from its historical sector, the steel industry and, since the crisis, those from all the important regional sectors. It publishes a 'business barometer', which summarizes and regularly brings up to date relevant information to delegates within the businesses. These files moreover enable FAR to provide 'early warning signals' in cases where the situation is worsened. The business barometer also offers the association the possibility to identify and communicate sectoral trends in the territory and thus create a better understanding of the indirect impact the developments in the large steel groups have on their subcontractors.

2. Long-term initiatives of anticipation

The measures described in this section are not necessarily based on a particular legal framework, but are instead built on the initiatives of different labour market stakeholders. In comparison to the measures described in the previous section, the ambition of these initiatives is to anticipate restructuring in the longer term. These initiatives have two main focus areas: economical redeployment and perspectives of work.

a. The initiative of the economic redeployment: The Marshall Plan 2022

The Marshall Plan 2022 is the third version of a 2005 Walloon Region plan called "Prior Action Plan for the Walloon future", or "The Marshall Plan"⁴³

⁴³ In reference to the economic and financial assistance of the Europe suggested by the American general Georges Marshall the 5th June 1947.

aiming at implementing a new regional development strategy. The main objective of this third version is to prepare the region to face new challenges in 2022, when the results of the sixth reform of the federal state will be concretized by a new transfer of important state responsibilities from the Federal to the regional entities. This transfer represents a financial challenge for the Walloon region since, in 2022, the regional Walloon deficits will not longer be covered by the Flanders surpluses.

This plan is based on 5 axes:

- The creation of poles of competitiveness gathering companies, training organism and research bodies from 6 leading industries:
 - human sciences (“biowin “pole) ,
 - food-processing (Wagralim pole),
 - mechanical engineering (“Mecatech” pole),
 - transport/logistics (“Logistics pole in Wallonia”)
 - aeronautics /spatial (“skywin” pole).
 - environmental technologies (“Greenwin” pole)
- The stimulation of the creation of activities via the rationalisation and a better coordination of the economic stimulation of the help optimization of the economic expansion, the fortification of the exportation support, the increase of the professional availability, the support of the youth employment and the development of the new functions within the SME, the streamlining of the sites of economic activities disaffected and the equipment of grounds for economic activities.
- The reduction, for the companies, of the regional and provincial tax system, the creation of local free trade zones and the suppression of some taxes.
- The fortification of the research and the innovation via different actions of support directed to master projects and research centres.
- the quality improvement of training and qualifying teaching. The development of the competences due to a strategy of response to Jobs in shortage and the launching of a “languages plan”, the quality improvement of the formation and the qualifying teaching.

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

Since the beginning of the plan, results are the following :

- 46.000 new jobs
- 31.000 company subvention
- 417.000 training sessions
- 4.300 EcoPacks (aiming at increasing energetic performance of houses)
- 1.800 researchers funding

b. The labour prospective

The initiatives of the labour prospective target the anticipation of future skills and competence needs within the sector and/or the territory. In Belgium, these approaches are initiated by both the public and private operators. As an example of private actions, we would like to point out the initiative from the technological industry federation that ordered in 2011 a study over the impact of the global crisis on the future of their jobs. Concerning the public sector for instance, the Walloon PES Forem regularly undertakes studies⁴⁴ over the future jobs in the south part of Belgium. These initiatives aim at both guiding the future students and the provision of training. Another example is the Walloon chemical and pharmaceutical industry competence centre about the future jobs in that particular sector. In the north part of Belgium, the Flemish government recently undertook a similar prospective initiative for the airport territory of Zaventem (Brussels National Airport).

Section 5. Measures for managing change

In this section we will present the main measures to manage the implementation of restructuring in Belgium. We will also mention several measures regarding particular collective agreements, whose range is restricted to certain business companies.

1. Temporary layoffs for economic reasons

Temporary layoff has a long history in Belgium. The Act related to employment contracts of 1978⁴⁵, makes provision for an employer to suspend the employment contracts of its blue-collar workers when occur economic difficulties which cannot be attributed to a business decision. It allows the company to adapt the staff costs to the level of activity. The suspension of employment contracts can be total, during a maximum period of four weeks, or partial (working short time) indefinitely if the reduction leads to an

⁴⁴ See <http://www.levif.be/actualite/belgique/audacieux-le-forem/article-normal-104885.html>

⁴⁵ Act of 3rd July 1978.

unemployment of max 2 days a week, and during a maximum length of 3 months (in other cases). After a total suspension of activity, the employer is obliged to put the blue-collar workers back to work for minimum 7 days, unless the company's Joint Committee authorizes the temporary layoff for a longer period because of a difficult economic cycle. In both cases (partial or total suspension), this period of non-activity is financed by the public authorities (National Employment Office) through the granting of unemployment benefit and, since the law of December 26th of 2013, as well as by a supplement paid by the employer.

For the white-collar workers, a similar system was firstly set up for a temporary crisis period (see below). Considering the success of this measure, a new law⁴⁶ made it definite. It consists of a total suspension of the execution of the employment contract (for a maximum of 16 weeks) or the introduction of a reduced working time system (minimum 2 days a week for a maximum of 26 weeks). Contrary to the blue-collar workers regime, where no obligation does exist, the measure for the white-collar workers has to be justified by economic reasons.⁴⁷ During the periods they do not work, workers receive unemployment benefits, from the National Employment Office, as well as a supplement paid by the employer.

2. Collective reduction of working hours

In 2003 a law⁴⁸ makes provision for reductions of the social security contributions for companies which decide, to implement, in order to avoid layoffs, either a collective reduction of working hours (at least one hour a week for an indefinite period) or to implement a four day week.⁴⁹ This measure cannot be undertaken without the agreement of the company workers representatives. This agreement must specify the terms of the reductions and the optional compensation systems. In order to benefit from reductions in social security contributions, the reduction of working hours has to be determined for an unspecified period. The duration of the reduction is proportional to the reduction⁵⁰ of working hours.

⁴⁶ The law of December 26th of 2013.

⁴⁷ It is only available to businesses who are faced with either a reduction of 20% of turnover, of production or of their orders,⁴⁷ or are making significant use (20%) of a temporary layoff for their blue collar workers and who have concluded a collective bargaining agreement or who have established a business plan on the subject.

⁴⁸ The Royal Decree of 16th May, 2003.

⁴⁹ At present the reduction is 400€ per quarter per worker concerned.

⁵⁰ It is 8 quarters for a collective reduction to 37h per week, 12 quarters for a reduction to 36h per week and 16 quarters for a reduction to 35h per week. And finally it is 4 quarters when a four-day week is implemented.

3. Temporary crisis measures

In 2009, a law⁵¹ containing various arrangements in terms of employment during the crisis established temporary measures (until the end of 2010), which aimed at adapting the volume of employment for businesses that are faced with economic difficulties resulting from the contemporary global crisis.

- *The temporary adaptation of working time for crisis reasons* which consisted of a collective reduction of working hours for a section or the whole of a company's workforce. The measure can be decided at the sole discretion of the employer but must include a compulsory compensation system for the workers.
- *The individual and temporary reduction of working time to face the crisis*, also called "temporary working time reductions" which was a measure the employer could offer its personnel.
- *White collar worker unemployment for economic reasons*, made permanent by the law of December 26th of 2013 (see above).

4. Exemptions to the general early retirement scheme

The general early retirement scheme is a system combining unemployment benefits with an extra amount monthly paid by the employer. It is accessible to elderly workers (60 y.o. or 58 y.o. in case of specific sectoral collective agreement) with a certain length of work (25 years) if and only if they have been laid off. The employer has the obligation to replace this worker by an unemployed worker.

Companies in difficulty⁵² or undergoing restructuring can receive exemptions from the Minister of Employment to the legislation concerning the early retirement aiming at not having to replace a worker gone on early retirement, reducing the notice period, and/or lowering the early retirement age to 55 (for a collective layoff of 10% or temporary unemployment during 20% of the normal time), or even to 50 if the collective layoff concerns at least 30% of the personnel. According to the law, the prerequisites are:

⁵¹ The decree of 19th June 2009.

⁵² 'By a business in difficulty is understood a company which records, in the two fiscal year annual accounts records which precede the period for which recognition is requested, an operating loss, before taxes, when for the most recent fiscal period this loss exceeds the sum of financial provision for depreciation and a reduction in value on preliminary expenses, and on intangible and fixed assets. The company must present its annual accounts for the five fiscal periods prior to the period for which recognition is sought. If the company has existed for less than five years, only the fiscal year accounts related to the years it has existed are demanded.' See www.restructurations.be

- to proceed to a collective dismissal⁵³

OR

- to be in a particular economical situation: to have known during the previous year a certain number of unemployed days (temporary layoff) at least up to 20% of the total amount of days declared for the workers to the National Security Social Office.

These companies have to submit to the federal public employment service a collective agreement relative to the early retirement, and including a “restructuring plan”. This plan must contain:

- a set of positive actions for women,
- financial guarantees concerning the share of the unemployment benefits paid by the companies, in case of bankruptcy.

In addition, the collective agreement must include the following elements:

- a description of the measures related to the redistribution of work within the company.
- The rules concerning the severance pay for voluntary leaves.
- The follow-up support measures planned with a view to getting people back to work including the creation – or the participation - of a special re-employment unit and the outplacement provisions funded by the company. (see later section)
- The list of candidates for early retirement
- The attestation of the Regional Ministry of Employment, through which it approves the follow-up support measures for getting back to work.⁵⁴

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

⁵³ It should be noted that for this recognition, the law stipulates a particular definition of collective layoff, as its size in terms of its workforce must reach the following threshold:

- Less than 12 workers = layoffs of 50% of the workforce
- Between 12 and 20 = At least 6 layoffs
- Between 21 and 99 = At least 10 layoffs
- 100 and over = At least 10%

Consequently, the definition of a business undergoing restructuring does not exactly overlap the definition of collective layoffs. A business can plan to carry out a collective layoff without benefiting from the status of a business undergoing restructuring, and vice-versa.

⁵⁴ Source: Comments on the draft national background paper, from the Federal Public Department on Work, Labour and social dialogue, 28th June, 2010.

It should be noted that this legislation has regularly been modified through successive recent laws aiming at discouraging the use of early retirement scheme:

- In 2010 the costs for the employer has been deeply increased. Until that date, the cost for the employer was 50% of the difference between the last salary and the unemployment benefit. Since the unemployment benefit is regularly growing from year to year, this extra amount was decreasing. By this new law, the total amount of the employers' indemnity is the same over time.
- In 2011 a new law was enforced, stipulating that the threshold limits will be progressively increased for the companies in difficulty from 50 to 52 in 2012; to 52,5 in 2013; to 53 in 2014 until 55 in 2018. The same evolution is expected for the companies under restructuring but the law must still be promulgated.
- In 2012 a law⁵⁵ renamed the device as "Unemployment with company complement" and imposed to the workers concerned by the device to stay on the job market and to keep looking for a job.

5. Dismissal and transition to new jobs

a. Employers' pool.

The employers' pool is a tool, which allows companies to gather in order to share workers. This sharing responds to two types of situations: The cyclic variations of the activity or the existence of regular but temporary needs for example a few days every week. This device is considered as a "win-win-solution" because it allows flexibility to employers and security to the workers, thanks to the stability of the relationship.

The device is used as a management tool when a member of the employers association, in difficulty, avoid dismissals by temporarily or definitely unload the cost of the worker via a reallocation of the time dedicated to him towards other companies of the pool.

Recently, the federal legislation has been adapted to allow the employers pool to hire non-only unemployed people. After a period of reluctance from the politics, this legal change has been accepted⁵⁶ in June 2014 in order to allow ArcelorMittal to create the UDILE employers pool with the participation of the Walloon Region and several local companies from the steel industry. The goal of the partners is to transfer 200 ArcelorMittal workers into UDILE and by this way, keep the skills in the region by sharing these workers with smaller steel companies.

⁵⁵ Law of 29th of March 2012.

⁵⁶ It seems that the success of this lobbying is also due to the fact that the Ford Company envisages to use the same device when it will close its fabrics in the Flanders, in December 2014.

b. Outplacement

In Belgium, outplacement⁵⁷ is a measure framed by several laws which distinguishes between:

- possibility for a company to setup an outplacement program for (part of) their redundant workers
- obligation (imposed by law) for a company to setup an outplacement program for all their laid-off workers if the company is recognized as “undergoing restructuring”.

In the second case, this obligation is governed by the legislation concerning a special transition unit named the federal “Employment Unit”. Initially, in 2006, a law⁵⁸ imposed the creation of a transition unit only for workers aged over 45, dismissed by a company declared to be “under restructuring”. However, its application has been widely extended by a law⁵⁹ in 2009, as a reaction to the global financial and economic crisis. From that date, a business of over 20 workers which announces its intention to carry out a collective layoff is recognized as a company under restructuring and has the obligation to set up a special transition unit (or to contribute to, under certain conditions, multi-company transition unit) through which the employer guarantees outplacement services for all its workers affected by the layoff, and not only those aged over 45. The employer is obliged to pay for a reclassification allowance during 3 months (for workers aged under 45) or during 6 months (over 45) (which replaces the advance notice indemnity and which is the equivalent of the current salary including the extra-legal advantages, such as lunch tickets, night premium, etc.) for all the open ended contract workers effected and who have a minimum seniority of one year.⁶⁰ These latter receive a “restructuring card”⁶¹.

If the company has 20 workers at the most, the employer is obliged to create a special transition unit only if it wants to lower the early retirement age for the

⁵⁷ Outplacement is ‘an ensemble of services and guidance provided individually or to groups by a third party, hereafter called an outplacement office, requested for and paid by an employer in order to enable a worker to find a job with a new employer as quickly as possible or to develop a professional activity as a self-employed person.’ Extract from Collective Bargaining Agreement n°51 of 10th February 1992.

⁵⁸ The Royal Decree of 9th March 2006.

⁵⁹ The Act of 22nd April 2009.

⁶⁰ The costs linked to these measures can be partially reimbursed by the public authorities.

⁶¹ *The restructuring card* for the workers of businesses under bankruptcy is temporary crisis measures made permanent by a law⁶¹ in 2009 and extended to the workers laid off because of a closure or liquidation⁶¹. The restructuring card is a document, which gives the right to reduced social security contribution⁶¹, both for the new employer and for the laid-off worker (victim of a collective redundancy)⁶¹. The validity period of this card starts when the collective redundancies are announced and ends 12 months later.⁶¹ The restructuring card also enables an employer undergoing restructuring to benefit from a repayment of part of the outplacement costs for a worker it has had to lay off. In the case of companies in bankruptcy, in closing or in compulsory liquidation, the period of the validity of the card is reduced to 6 months.

workers it is planning to dismiss. In the opposite scenario, the employer is not obliged to set up such a transition unit, but it must⁶² then offer outplacement measures to all the workers over 45 who have a minimum seniority of one year.

Workers on permanent employment contracts are obliged to participate in the special federal transition unit until they find a job or for a minimum period of 3 months (less than 45) or 6 months (over 45). After that period, the workers who have not found a job join the classical system of unemployment benefits. Workers who refuse to join the unit are exposed to sanctions (exclusion of allocations)⁶³.

Temporary workers are not obliged to subscribe to the special transition unit but, if they have a minimum seniority of one year in the business, they can join the unit on a voluntary basis.

The federal transition unit is steered, at the minimum, by the employer, a representative trade union organization, the sectorial training Fund (if existing) and the regional PES (FOREM, Actiris, VDAB). In case of successive restructuring processes, large companies must officially create each time a specific unit, even if, in practice, the workers are often gathered in the same room and followed by the same counsellors.

Until now, the results of this device are unknown.

Regional specificities

In practice, the Federal transition units are managed differently in the three regions :

- In the Flanders the cells are managed by private outplacement providers, paid by companies.
- In the Brussels Capital Region, the cells are also managed by private outplacement providers, paid by companies. Furthermore, the current Minister of the Employment in the Brussels Region increases the minimum duration (90h or 60h, rather 60h or 30h) of the individual support offered to the workers.
- In Wallonia, the cells may be managed by
 - o private outplacement providers, paid by companies
 - o public regional transition unit (see below). In that case, the unit is financed mainly by the PES and, optionally, by the company if the social plan stipulates it
 - o mix partners which means by both private and public providers.

⁶² Collective bargaining agreement n°82 of 10th July 2002.

⁶³ Source: Comments on the draft national background paper, from the Federal Public Department on Work, Labour and social dialogue, 28th June, 2010.

Box 2 : The Walloon Transition Unit

In Wallonia a decree enforced in 2004 initiated the Transition Support Program. The region was the first to create transition unit (named “Cellule de Reconversion”) focused on collective accompaniment and the maintenance of social support networks. These units are managed by both trade union representatives from the company and by the Forem, and financed by this latter. These regional transition units are open to all workers who are employed by companies undergoing restructuring, including those on fixed term contracts, temporary agency workers and those taking early retirement. The cell can be specific to a (large) company or can bring together redundant workers from other companies in the same area. The beneficiaries receive assistance to deal with redundancy, to develop their Curriculum Vitae and secure professional references, to find a new job, to obtain information on the job market and to get access to vocational training (for an updating or for new skills). Before this assistance, the beneficiaries sign a socio-professional contract by which they mark their commitment to be active in the program and receive in return an allowance. The establishment of the unit is carried out at the request of the workers’ representatives and can last one or two years. The first transition unit in Belgium was created in 1979 following the restructuring of the Mining and Metal Company of Rodange, condemning the job of 1.500 workers from that major company. Today, reconversion cells are constituted in partnership with the FOREM and the workers’ representatives of the company and are managed on a daily basis by these representatives, then named ‘social support workers.’ These cells are open to laid off workers as well as workers who possibly want to leave the company. Depending on the case, the FOREM team redirects the workers either to another company in the same sector, to a new profession in the same sector, or finally towards another profession in another sector requiring similar skills.

6. Other extra-legal financial measures

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

a. Other extra-legal financial measures

In order to soften the consequences of collective layoffs, a law⁶⁴ established ‘the redundancy pay due in the case of a collective layoff,’ to the benefit of each dismissed worker and paid by the company.

⁶⁴ Collective bargaining agreement n°10 of 8th May 1973. It should be noted that this law cites a particular definition of collective redundancies as it mentions the following thresholds: 6 collective layoffs for businesses employing from 20 to 50 workers or 10% of the average workforce for companies employing more than 60 workers.

The amount increases to 50% of the difference between one standard monthly net pay⁶⁵ and the unemployment benefit that these workers can claim (Art.8).

In the case of collective redundancies, which occur within the context of a company closing, the worker concerned only benefits from the redundancy allowance for a closed business and not the collective redundancy severance payment. This severance payment for a closed down business is targeting workers who have at least a year's seniority at the company and are tied to it through an open-ended employment contract. Several categories of worker are excluded from this measure.

b. Redundancy allowance for a closed business

A law⁶⁶ concerning company closure establishes a 'redundancy allowance for business closure' calculated on the basis of seniority (basic compensation) and the age of the worker (supplementary compensation). This compensation is paid to the worker by his/her employer if the business affected by the closure has employed on average 20 workers during the calendar year, which precedes the closure. To benefit from this compensation (severance) payment, the worker must also have been dismissed during the 12 months (for blue collar workers) or the 18 months (for white collar workers) preceding the closure, at the moment of the closure, or in the 12 months consecutive to this closure. This last period can be extended to three years for white-collar workers who take part in the company's liquidation activities⁶⁷.

In the case where the company has not the capacity to pay these amounts, this compensation is paid by the Company Closure Funds.⁶⁸ Under the responsibility of the National Employment Office, the Funds is financed by contributions from every employer and by funds raised by its trustees. Its intervention concerns primarily businesses with over 20 workers but it can, in certain cases, apply itself to smaller structures.

⁶⁵With a ceiling of 2962,54€ established on 1st September 2008.

⁶⁶ The Act of 26th June 2002.

⁶⁷ On 1st September 2012, the basic company closure compensation rose to 153,8€ per year of seniority in the company, with a maximum of 3.076€. In order to respond to specific situations for example those for older workers, in reason of their age, often meet huger difficulties is to find again a job, an extra of 153,8€ per year of age over 45 years, **ith** a maximum of 2.922,2€ was also planned in addition to this amount, the worker is likely to benefit only from this extra for the years spent in the company.

⁶⁸ For more information see the site: <http://www.onem.fgov.be/FondsFR.htm>.

c. Transition allowance

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

d. Other forms of financial compensation

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

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

Section 6: Concluding remarks

In Belgium, restructuring has been a subject of debate for the 40 last years. Reading this document allows to draw some conclusions.

First, successive massive restructurings that occurred in the seventies brought about an important legal framework, based on both laws and national collective agreements. According to the Belgian social model, the employment regulation is mainly characterized by a juxtaposition of general laws, regional decrees, and an important involvement of the social partners that negotiate national, sectoral and local agreements. This stratification makes the Belgian legislation hard to apprehend, even for the Belgian stakeholders.

Second, this legal framework is mainly focused on the process of restructuring. The legislation imposes the companies to follow very precise procedures in case of restructuring and/or collective layoffs. The main goal of this is to ensure the involvement of the trade unions representatives in the process, and by this way, to oblige employers to respect the complex and important system of workers compensations.

Third, the interest of the legislator lastly moved to the fate of these workers. While the Walloon region was the sole to manage a transition unit system since the seventies, the federal legislator lastly introduces a similar system for the whole country, but by making it compulsory both for companies and for workers. This federal initiative is the consequence of the imposition by the European Commission for Belgium to increase the low level of its active people. By imposing them an outplacement program, all the redundant workers are now “activated” to get a new job, to restart vocational training, or to become self-employed. These changes illustrate a switch of the legal system from “only compensation” to both “compensation and activation”.

Fourth, anticipation is definitely not the object of a strategy in Belgium. If we except the very well developed transfer of economical and social information to the workers, where Belgium was an European pioneer since the seventies, few initiatives have since been undertaken to avoid restructuring or to anticipate and minimize the effect of these changes on job and/or territory.

Finally, we may see that the 2008 global crisis has had very few impacts of the Belgian restructuring system. Even if, as other countries, Belgium implemented several temporary measures to face the situation, the system globally remains in the same state than before the crisis. The explanation is double: Firstly, Belgium has better resisted than other countries to the crisis thanks to its competitiveness. Secondly, thanks to the high proportion of (para-) public jobs, the effects of the crisis were mainly delayed to 2010. At that date, Belgium was in an institutional crisis, unable to designate a new government during more

than 500 days... Consequently, the government was only dealing with current affairs and was not entitled to adopt major legal measures to cope with the crisis.

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