



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper- Belgium

Work-Dismissal-Work: from Theory to Practice?

Peer Review on "Dismissal Law 2.0. How to promote work-to-work transitions and sustainable labour relations?"

The Hague (Netherlands), 22-23 October 2015

Written by prof. dr. Marc De Vos (UGent and Itinera Institute)

October 2015



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Unit C1

Contact: Emilio Castrillejo

E-mail: EMPL-C1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Directorate-General for Employment, Social Affairs and Inclusion

Peer Review on "Dismissal Law 2.0. How to promote work-to-work transitions and sustainable labour relations?"

The Hague (Netherlands), 22-23 October 2015

**Europe Direct is a service to help you find answers
to your questions about the European Union.**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

LEGAL NOTICE

The information contained in this publication does not necessarily reflect the official position of the European Commission

This document has received financial support from the European Union Programme for Employment and Social Innovation "EaSI" (2014-2020). For further information please consult: <http://ec.europa.eu/social/easi>

© European Union, **2015**

Reproduction is authorised provided the source is acknowledged.

Table of Contents

1	Labour market situation in the peer country	1
2	Assessment of the policy measure.....	3
3	Assessment of the success factors and transferability	6
4	Questions	8
5	Annex 1: Summary table	9

1 Labour market situation in the peer country¹

This paper has been prepared for a Peer Review within the framework of the Mutual Learning Programme. It provides information on Belgium's comments on the policy example of the Host Country for the Peer Review. For information on the policy example, please refer to the Host Country Discussion Paper.

Traditionally, the Belgian labour market is characterized by a below E15-average overall activity rate, currently at 73,4% as compared to the EU-15 average of 77,7%. Underneath this national average lie profound and very persistent differences in labour market performance, for regions and provinces within Belgium and for subgroups within the working age population. For instance: the Flemish region typically has a substantially better track record in employment rate and unemployment rate than Wallonia, while non-European immigrants and older workers typically fare substantially worse in labour market prospects than other workers and jobseekers.

In the crisis years after 2007, Belgium's labour market showed some of the tell-tale signs of serious economic stress. Temporary workers bore the brunt of initial job cuts, working time reductions reduced job losses among insiders, job creation fell, and unemployment levels rose. However, a combination of macro-economic luck – particularly the absence of a bursting housing bubble and close economic ties with Germany – and a dose of deft crisis policy – particularly generous temporary unemployment benefits – lowered the immediate labour market costs of the economic crisis in comparison with many other Eurozone countries.

As a result, the overall labour market situation of Belgium has not dramatically shifted through the recent crisis years and is now showing signs of a modest post-crisis recovery in line with pre-crisis structural trends. In terms of job growth, Belgium has added about 20.000 net new jobs per year in the last five years. Reaching its EU2020 overall employment rate target of 73,2% would require more than three times as much net job growth per year. However, since 2014 and in stark contrast with the crisis years, the good news is that job creation has restarted in the private sector, particularly in the services industry, and has particularly benefited jobseekers younger than 25. This is a critical shift since almost all net job creation post-2007 had been government subsidized and since crisis policy was aimed more at keeping workers in their existing jobs than at promoting job opportunities for newcomers.

The post-crisis world thus leaves the Belgian labour market with many of its age-old structural shortcomings. The unemployment rate in Wallonia (around 12%) is more than double than that in Flanders (around 5%). The employment rate of immigrants (and their descendants) from outside the EU is dismal: with the exception of Sweden the difference in overall employment rate for nationals (currently 68,6% in Belgium) and non-EU nationals (currently 40,5%) is nowhere bigger in the EU than in Belgium. On the plus side, the employment rate in the age group older than 50 has increased from 25% in 2000 to over 42% in 2014. This marked improvement is partially a demographic transition as active baby-boomers age, but is also tied to successive measures by successive governments to delay early retirement and to strengthen job search requirements and facilities for the unemployed in that age group.

The reality of job polarisation and insider-outsider segmentation notwithstanding, people in employment in Belgium on average continue to enjoy a relatively high level of stability. At 11,4 years, average seniority is indeed among the very highest in the entire OECD.² Moreover, Belgium's level of employment protection, using the standard OECD indicators, is also among the most stringent, particularly as regards collective dismissal. Overall employment security, as measured by transitions in employment status, has

¹ In what follows I draw mainly from the successive annual reports of Belgium's High Council for Employment, available at www.employment.belgium.be

² OECD.Stat, extracted on September 28th, 2015.

constantly remained over 85% since 2006 and is now almost at pre-crisis level.³ However, while the overall market share of temporary work remains relatively low at below 9%⁴, its share is more than three times that for workers younger than 25, an indication of how temporary work has become a matching and transition station on the road to more stable employment, bypassing dismissal law almost entirely along the way.

³ Eurostat, Labour transitions by type of contract - Changes in employment security, Consulted on September 30th, 2015.

⁴ Eurostat, Temporary employees as percentage of the total number of employees, Consulted on September 30th, 2015.

2 Assessment of the policy measure

Contrary to the Netherlands, and irrespective of the burden of long notice periods and the proliferation of specific protections against dismissal for specific groups, the key characteristic of Belgium's dismissal law is one akin to 'employment at will'. As a matter of principle, a Belgian employer who wants to dismiss can dismiss, either through a notice period or by a payment in lieu of notice. Violation of specific dismissal protections translates into yet more redundancy cost but not into forced reinstatement. Important recent dismissal law modernisation in 2013 (hereinafter: the 2013 Act) has not focused on work-to-work transition per se but has primarily sought to harmonize notice periods for blue collar and white collar workers.⁵

However, this does not mean that work-to-work transitions are not on the radar of Belgian dismissal law, quite the contrary. First and foremost, at least from a historical and formal point of view, **notice periods** themselves offer a dismissed employee the time to adjust and explore reemployment opportunities while still remaining in the employment relationship that is in the process of unwinding. While still bound to work during the notice period, employees are entitled to job search leave. This gives the employee the right to be absent from work once or twice per week, provided the total duration of this absence does not exceed one full day of work per week.

Notice periods are prescribed by the 2013 Act and are substantial. During the first 3 months of employment, the notice to be observed is 2 weeks. Thereafter, the notice period increases from 4 weeks for an employee with a seniority of 3 to 6 months and up to 64 weeks for an employee who is in his 23rd year of seniority. After the 23rd year, the employee is entitled to 1 additional week per additional year of seniority. In practice many notice periods are often curtailed and replaced by (partial or full) **payment in lieu**. This leaves the dismissed worker with income and full liberty to explore reemployment opportunities, but is recognized to also present a risk of passivity, increasing the likelihood of long transition periods.

Besides the 'passive' component of notice or payment in lieu of notice, Belgian dismissal law has long contained an 'active' element of work-to-work transition in the shape of **outplacement** services. As a rule, outplacement consists of 60 hours of services, worth 1/12th of the yearly salary of the calendar year that precedes the dismissal with a minimal value of 1,800 € and a maximal value of 5,500 € (in proportion for part-timers). The employer is obliged to make a valid outplacement offer, either within a short period of the termination by in-lieu payment or within 4 weeks after the commencement of the notice period.

The 2013 Act has extended and generalized the outplacement obligation. Prior to 2014, outplacement services were a right only for dismissed workers older than 45. It now covers anyone with a notice period or in-lieu payment of at least 30 weeks, irrespective of age. As of 2016, employees will be obliged to participate in the outplacement, turning a right into a duty.

Outplacement services are also an integral part of Belgian's legal framework of **collective dismissal**. In case of a collective dismissal as defined by law (that is with a sufficient number of dismissals taking into account the number of employees of the company), the employer is obliged to constitute a re-employment cell. The employer must do so at the moment of the announcement of the collective dismissal. The employer, at least one of the trade unions, the regional employment agency and, as the case may be, the training fund of the company's sector of industry are all part of the cell. The regional employment agency has the leading role in offering outplacement to every employee registered in the cell. Employers who recruit a registered employee, temporarily pay less social security contributions on that employee's salary.

⁵ The Act of 26 December 2013, OJ 26 December 2013.

Moreover, both Flanders and Wallonia (but not yet Brussels) complement the institutional fabric of collective dismissal with an independent and complementary framework for **local 'reconversion cells'** that can be established in the wake of a company closure or collective dismissal at the request of unions. The purpose of these publicly funded ad-hoc cells is to offer a local platform for personal support and assistance to the workers who have lost their jobs, with an aim of increasing their mobility and employability.

The 2013 Act also attempts to **modernize the law of individual dismissal by fully integrating an active component**. Sectoral collective bargaining agreements are expected, by 2019, to provide that dismissed workers who are entitled to a notice period or in-lieu payment of at least 30 weeks, will receive a third of their dismissal package through measures that increase the employability of the dismissed worker. It remains to be seen whether the bargaining will follow if workers favour hard cash over services: failure will only result in the employer having to top up notice pay with a contribution of 4%.⁶

Like the Netherlands, Belgium has tinkered with its **unemployment insurance** with an aim of increasing labour supply, stimulating the willingness to work, and improving unemployment-to-work transitions. Belgium famously provides unemployment benefits of unlimited duration, making the activation of the unemployed a pressing need from a perspective of labour market participation. For a number of years, Belgium's official employment agencies – first in Flanders, then also in Wallonia and Brussels – have increasingly embraced follow-up policies towards the unemployed, complemented with a more systematic supervision and sanctioning at the (federal) level of benefit payment.⁷

On the one hand, personal follow-up has been extended to cover the unemployed until age 58, to be gradually further extended beyond that age in the future. On the other hand, the employment agencies in charge of verifying benefit eligibility have gradually extended their process of screening labour market availability to include the unemployed up to age 54. This screening process is based on initial interviews, followed by personal agreements with the unemployed who show insufficient job-finding efforts.

Two target groups of unemployed have moreover seen a recent change in their benefit system, again with an activation purpose. Firstly, for the long-term unemployed, a new system of accelerated **gradual benefit reduction** has been designed. After one year of continuous unemployment, unemployment benefits are gradually reduced, the tempo depending on the years of previous employment. After a period of no more than four years, all the unemployed fall back on a fixed-sum benefit, although several categories remain exempted from this measure. Secondly, for **first entrants on the labour market** the unemployment insurance has been adjusted to avoid immediate entitlement to benefits. They now need to wait an entrance period of 310 days, after which time they are entitled to insertion benefits for no longer than 36 months. While these restrictions have had an immediate statistical effect in the unemployment insurance, their positive impact on the employability of the persons concerned has remained murky and contested, fuelling contentious political debate.

Both the previous and the current federal Belgian government has also gone further than mere 'activation'. As in the Netherlands, the **concept of 'suitable work'** which unemployed job seekers are required to accept has been broadened. Even more contentious is the ambition, of both the current federal and Flemish governments, to impose compulsory **'societal service' for categories of long-term unemployed**, in the shape of two half-days of unpaid work, as a condition for continued unemployment benefit eligibility. This political ambition has not yet come to fruition but is already the

⁶ Articles 92 and 93 of the Act of 26 December 2013, OJ 26 December 2013.

⁷ See also OECD, *Enhancing the inclusiveness of the labor market in Belgium*, 2013.

subject of intense opposition, raising questions whether the ambition will actually become reality.⁸

⁸ See, e.g., W. Schepers and I. Nicaise, *Chinese vrijwilligers: nu ook in België? Naar een verplichte gemeenschapsdienst voor langdurig werklozen?*, HIVA, 2015.

3 Assessment of the success factors and transferability

The Netherlands and Belgium have traditionally had substantially different conceptual approaches to dismissal law, with Belgium having a much more open and flexible, albeit substantially costly, approach that acknowledges the employer's termination power and the necessity of termination when one of the parties of an employment contract no longer wants to continue it. After the recent Dutch overhaul, the two systems of dismissal law seem to have substantially converged.

Indeed, the new Dutch 'transition allowance' – both in its concept and in its function – looks remarkably similar to Belgium's age-old notice period in its active purpose of facilitating work-to-work transitions. From the perspective of Belgium's long experience the key success factor will now be more cultural than institutional: how to ensure that payment at termination is not seen as just another financial cushion against dismissal, but rather as an actual allowance to enable work-to-work transition?

It is a question with which Belgium has long struggled and which it has essentially failed to answer convincingly. Instead, Belgium has added layers of new and 'activation'-oriented obligations around the core of 'passive' financial compensation for dismissal, with a particular focus on outplacement. More than modernizing dismissal law itself, old dismissal law and old dismissal culture have thus become surrounded by and embedded in additional procedures and entitlements tilted towards work-to-work transitions.

This is nowhere more evident than in the case of collective dismissal, where the activation record of the aforementioned re-employment cells is disappointingly poor. Belgium's procedure for collective dismissal is very slow and involves a long and drawn-out negotiation process over additional dismissal fees, between the employer and the company unions. Workers often prefer to wait and cash in on these generous dismissal bonuses, rather than fully commit to outplacement and move on prior to being able to receive the payment from the deal.⁹

This touches upon a raw nerve of work-to-work transitions subsequent to dismissal, which is also evident from the description of the Netherlands: the role of unions or social partners. There can be no 'active' dismissal culture if unions do not advocate or support it. More generally: who are the stakeholders of modern dismissal law, and how to get them all aboard are key success questions for anyone seeking to promote a work-to-work philosophy.

From a Belgian perspective, the overall post-dismissal picture is also coloured by our increasingly complex state structure. After several cycles of devolution, all 'active' components surrounding dismissal – outplacement, cells, employment agencies, activation under unemployment insurance – have become regional competencies, while the law of dismissal itself has remained federal. We are still in a transition phase after the most recent state reform, as the Netherlands is now entering into with a new dismissal law. Transitions generate transition issues. A key success factor is thus to manage the transition correctly, in a way that sets the stage for a forward-looking and active dismissal reality.

Both the Netherlands and Belgium are moving in a very similar direction as regards unemployment insurance too. Achieving societal acceptance, avoiding a 'witch-hunt' perception or culture, making increased activation a success in terms of employability, will all be keys to sustain and find support for a more work-oriented unemployment insurance. Whether the changes currently adopted or considered in both countries will suffice, or whether dismissal law and unemployment insurance must join forces to forge an even stronger tool for work-to-work transitions constitutes one of the deciding success factors.

⁹ See, e.g., the 2011 annual report of Belgium's High Council for Employment, available at www.employment.belgium.be

Finally, as with ALMP and indeed as with all new policy orientation, there remains the issue of data and transparency. Work-to-work is no miracle. We will need to develop its best practices. We will need to understand the limits of what it can achieve. We will need to show the reality of what it does achieve, both for the short-term employment status of the persons involved and for their long-term careers.

4 Questions

Drawing from Belgium's recent travails on the modernisation of employment law and the activation of dismissal law and unemployment insurance, a number of questions arise that may shed a useful light on endeavours common to the Netherlands, Belgium, and other EU member states in the wake of the crisis years.

An initial question is one of **cost**: how does the modernisation and the shift towards active work-to-work transition affect the costs of dismissal for all involved? How do we succeed in developing **incentives** that stimulate dismissal practices that support employability for the long-run and avoid the easy route of paying off dismissed workers with a lump-sum fee?

A second question is one of **roles, partnerships and culture**: how do we succeed in mobilizing all the relevant actors around a shared goal of employability and work-to-work transition? What role has to be given to which actor? Where do unions fit in? What is the proper role of governments, of the public sector and of the private sector, particularly the HR service providers and temporary work agencies? How do you succeed in incorporating a work-to-work transition into HR-policies well before any immediate risk of dismissal presents itself? Will we not have to nurture and develop a life-cycle approach to employment and complement dismissal rules with such instruments as career accounts or time saving accounts for the new dismissal rules to really become effective when the critical time of a dismissal is upon us?

A third question is one of **effectiveness**: how do we define 'success' in work-to-work transition? What perspectives do we integrate? What measurements and data collection do we have to develop in order to gauge the impact of new dismissal rules on a career and labour market level correctly? How do we compare outcomes in the search for good and bad practices?

Indeed, as is evident from both this country report and from the Dutch host country report, both Belgium and the Netherlands have in place a quite comprehensive set of rules and institutions aimed at work-to-work transition in and after dismissal. How do we get from that theory to a reality that will win over the opponents who claim the hand of austerity and social decline?

5 Annex 1: Summary table

Labour market situation in the Peer Country

- Belgium's labour market trends have not shifted through the crisis.
- Net job creation remains relatively low but has now rekindled in the private sector.
- People in employment in Belgium have high employment security.
- Temporary work is an important transition station for young workers, bypassing dismissal law.

Assessment of the policy measure

- Generous notice periods in theory allow for work-to-work transition but in practice can also delay it by nurturing a passive attitude.
- Outplacement is a part of both the law of individual and collective dismissal.
- Unemployment insurance is increasingly tilted towards activation, and restrictive for long-term unemployed.

Assessment of success factors and transferability

- A key factor of success is dismissal culture.
- The role of, and the incentives for, the unions and other stakeholders are critical.
- A key factor is to manage the transition from 'passive' to 'active'.
- The interplay between dismissal and unemployment insurance is important.
- Monitoring and data on career affects are important tools.

Questions

- How to develop the right incentives for the stakeholders of modern dismissal law?
- How to embed an 'active' dismissal law in the broader HR context?
- How to define and measure success and failure in work-to-work transitions?
- How to get from theory to practice?



Publications Office