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Collective bargaining in Belgium, 50 years after the Law of 1968: Never change a bargaining team?

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Executive Summary

In 1968, the Law on collective bargaining agreements and sectoral joint committees in Belgium was approved, consolidating the structure of collective bargaining in Belgium that has taken shape in the years after the second world war. While in many countries, in the second half of the 20th century, collective bargaining underwent systemic changes, generally towards more flexibility and decentralisation, collective bargaining in Belgium proved to be resilient and remains strongly organised. Fifty years after the Law, however, it is time to take a step back and assess the values of the system and their relevance for the future.

Collective bargaining in Belgium comprises two main national bodies, the National Labour Council, which concludes national collective bargaining agreements and advises on labour law, and the Central Economic Bureau, which supports sectoral collective bargaining and prepares national framework agreements (the Wage Norm). Despite a trend towards centralisation of collective bargaining, the legislative weight remains in the joint committees, which consist of representatives of the trade unions and employers at the sectoral level. Collective bargaining agreements have and retain the characteristics of a private contract, but the application and legal sanctioning in case of violation can become equivalent to royal decrees when extended erga omnes (“towards all”). In the interpretation of collective agreements, it is assumed that all wordings are clear, and that no background information (e.g. preparatory documents, comments) are needed or should be allowed in court, unless when higher-order legislation, such as European directives, is implemented.

The free and private character implies that many aspects of collective bargaining are essentially flexible: the competence of the sectoral joint committees, the content of collective agreements, the geographical scope, the expiration, indexation rules for wage agreements, seniority wage formulas, etc. Moreover, because of certain economic trends, such as the blurring of the difference between blue-collar workers and white-collar workers, adjustments are under way. However, even though adaptations are always possible, long-term stability of the collective bargaining structures and agreements can be observed. Is this a sign of rustiness, or should a winning team not be changed?

A well-functioning collective bargaining system manages to foster economic growth while at the same time avoiding increases in inequality. The strong protection of employees, and the high minimum wage floor in many sectors, have guaranteed decent wages, but also implied a historical shift towards capital-intensive growth. This has led to high productivity levels and economic growth, as well as a compressed wage distribution. The ‘automatic stabilisers’ have prevented procyclical reactions to the Great Recession, so that the recovery from the crisis was faster than in many other European countries.

It can be argued that some caution is advised to maintain the voluntarist spirit of collective bargaining. In fact, the strong organisation of the Belgian system of collective bargaining, for which the Law of 1968, perhaps unintentionally, is responsible, is perceived by ‘outsiders’ as rigid. The reality is that many of the regulations are paramount to soft law, and that multiple levels and various bodies are continuously interacting which each other. Yet this misunderstanding, supported by a trend towards judicialisation and increased interventions by the government, may threaten the natural understanding between social partners. As one of the last heirs of collective bargaining in the post-war spirit, the acknowledgement of the principle of subsidiarity, and the independence of social partners, should be warranted.
1 The structures and system of collective bargaining in Belgium

This section presents the structure of the Belgian system of collective bargaining, based on a reading of the Law of 1968, the online knowledge base of the Federal Public Service Employment, Labour and Social Dialogue (FPS ELSD), Dorssement, Cox, & Rombouts, (2004), and comments by Chris Engels (2017).

1.1 Legal-formal aspects of the system

1.1.1 Definition of joint committee, rules of establishment and assignment of workers/company

Joint committees are law-making joint bodies, which means they have an equal representation of employers’ and employees’ organisations. They are linked to sectors of economic activity, but they vary in scope. Some joint committees operate at branch level, others are more general. Because of such ‘open’ joint committees, any employer can be linked to a joint committee. Importantly, the public sector falls beyond the scope of the Law of 1968. There are also joint subcommittees for regions or sub-branches. They can be autonomous or not: the joint committee can decide on whether or not agreements reached within joint subcommittees need to be approved by the joint committee. In any case, those agreements are one step below collective agreements reached in the joint committee and should not be less favourable to workers.

The tasks of a joint committee are to reach collective agreements, prevent or resolve social conflicts, advise the government, the National Labour Council, or the Central Economic Council, and execute any task that is required by a law. There are currently 100 joint committees and 66 joint sub-committees in Belgium, with over 5 000 mandates (positions for negotiators). They differ widely in size: the largest joint committee (the auxiliary joint committee for white-collar workers) covers over 400 000 employees, while some smaller joint committees only cover a few hundred employees and sometimes just a couple of companies.

Joint committees are recognized by a Royal Decree, which defines the name, the job categories for which it is applicable, the sector of activity and the region to which it applies. The Minister of Labour can take the initiative or the representative organisation can request the formation of a new joint committee. This is then announced in the Official Gazette so that representative organisations can apply for membership of the joint committee. A Royal Decree will fix the number of mandates for each representative organisation, for which they need to propose two candidates within one month. After this, mandates have a duration of four years, after which there is a vacancy. The joint committee further consist of a president and a vice-president, who are generally social conciliators, and one or more secretaries, who are civil servants of the Ministry of Labour.

By article 3 of the law of 1968, representative organisations are national inter-sectoral employers’ or employees’ organisations that are represented in the Central Economic Council and the National Labour Council, and the professional organisations that are affiliated to these organisations, as well as professional employers’ organisations that are recognised by Royal Decree for a specific sector of economic activity or branch. Representative organisations of small and medium sized enterprises are defined by the law of 22 April 2014. Once recognized, the ability to reach agreements only depends on representativeness in any part of the total economy, not within sectors or firms. Other groups are free to reach private agreements, but these are not covered by the law of 1968 and hence do not take the form of collective agreements with a public character.

1.1.2 Forms and types of collective agreements

Collective bargaining agreements are reached between one or more employers’ organisations and one or more employees’ organisations, and settle the individual and
collective rights and duties of the signing parties (obligatory rules) and the affiliated members or targeted population (normative rules). Collective bargaining agreements are essentially private contracts, meaning that the government is not intervening in nor imposing the agreement, but with a special statute that gives them, by virtue of the law of 1968, a public character.

Collective bargaining agreements exist on three levels: intersectoral agreements in the National Labour Council, sectoral agreements in joint committees and joint subcommittees, and company agreements between at least one representative trade union and one representative employer’s organisation. Note that representativeness at the company level itself is not required. A special case are transnational collective bargaining agreements within European Works Councils, which is not foreseen in the law of 1968. However, the law stipulates that collective bargaining agreements should comply with higher order and international legislation.

The most important settlements (on wages and labour conditions) are automatically applicable to the targeted population of all employers and all employees within the sector or branch for which the joint committee is assigned. On the request of the National Labour Council or the joint (sub)committee, a full extension is possible, binding the targeted population and giving a higher legal order to the collective agreement and allowing for criminal persecution in case of violation. After verification by the Ministry of Labour of a range of formal requirements (including language rules, signatures), this extension is nearly automatically applied through the procedure of the law of 1968.

The duration of the agreement always needs to be mentioned. Three possibilities exist: permanent agreements for which exit rules need to be defined, agreements with a fixed duration and agreements with a fixed duration which is automatically renewed. Importantly, agreements can be changed over time. Although the Belgium Federal Public Service for Employment, Labour and Social Dialogue (FPS ELSD) requires the signing parties in that case to be the same as for the original agreement, the law does not stipulate this, and any representative organisation could possibly conclude a change in the agreement.

1.2 The relevance of the different levels of collective bargaining for employment and working conditions

Wage bargaining in Belgium is structured in terms of three interlinked levels: the highest, national level, with centralised cross-sectoral agreements covering the entire economy; an important intermediate level covering specific sectors; and company-level negotiations as a complement or substitute for the sector-level bargaining. In principle, lower-level agreements can only improve (from the employees’ perspective) what has been negotiated at a higher level; in other words, there is no derogation possible except when it is explicitly stated in the higher-order agreement.

The national level of collective bargaining in Belgium encompasses two institutions: the National Labour Council and the Central Economic Council. Both predate the law of 1968. The National Labour Council was established in 1952 and advises on labour legislation and is also a decision-making body that discusses national collective bargaining agreements. The main topics are working hours, contracts, payment forms and the minimum wage for the private sector. The Central Economic Council, established in 1948, supports sectoral collective bargaining, providing research and a platform for intersectoral discussions. It is also responsible for the bi-annual advisory report on the maximum margins for collectively agreed pay increases. This advice leads to the important Wage Norm that pegs wage development in Belgium to expected productivity increases in the economies of the main trading partners. The practice has existed since October, 2018
1989, but the Law of 1996 ‘on the promotion of employment and the preventive protection of competitiveness’ marks the beginning of an evolution towards centralisation of collective bargaining in Belgium. While at first the Wage Norm was in principle a non-binding agreement by the social partners in the informal ‘Group of Ten’ committee to guide sectoral negotiations, it has become stricter. The revision of the law in March 2017 finalised this process. Now the Wage Norm is, in theory, enforceable at the company level, meaning that the total wage bill cannot increase by more than the Wage Norm. Furthermore, the Wage Norm is set below the target in order to include a ‘safety margin’. Finally, any additional productivity growth above the predicted values will be cut in half, with one-part compensation for the underestimation, and the other paying back the ‘historical backlog’ dating back to 1996. As a result, the margins for wage negotiations have become extremely tight. In Figure 1, we see that the real Wage Norm has shrunk over time and sectoral negotiated pay increases are closer to the norm set. The ‘health index’ is a measure of inflation to which wages are indexed, which excludes alcohol, tobacco products, and motor fuel. Until 2007-2008, the Wage Norm was defined in nominal terms, including wage indexation, which changed into a real Wage Norm from 2009-2010 onwards, on top of wage indexation.

**Figure 1. Collectively agreed pay increases in Belgium (1997-2015)**

![Collectively agreed pay increases in Belgium (1997-2015)](image)

**Source:** Federal Public Service Employment, Labour and Social Dialogue (FPS ELSD), Statbel. Own calculations.

In order to prevent conflicts between collective agreements concluded at different levels, but covering the same industry, the legislator has established a hierarchy of collective agreements. Article 51 of the law of 1968 establishes a hierarchy between collective agreements concluded within the National Labour Council, a joint committee, a joint subcommittee and outside a joint body. According to this hierarchy, collective agreements concluded in a joint body, but not extended or declared generally binding by Royal Decree, rank below the individual agreement in writing. Article 26 of the 1968 Act stipulates, however, that normative issues related to the individual employment relationship (e.g. wages and working time) in a non-extended sectoral or national agreement are binding, if not stated otherwise in the individual employment contract. As a consequence, it is common practice in the Belgian system to ask for the collective agreement to be declared generally legally binding by Royal Decree, to avoid this kind
of derogation. The agreement may also include procedures for opting out, for instance when a company is in economic hardship. This is a rather exceptional practice.

The social peace obligation requires parties to refrain from formulating any additional claims concerning matters regulated by the collective agreement during its period of validity. This obligation may be expressed tacitly or explicitly. The social peace obligation is the transposition into labour law of the principles of civil law related to the execution of contracts, namely autonomy of will, the obligatory (binding) force of contracts and their execution in good faith. Social peace clauses can be considered to form part of the normative provisions when their wording is such that their scope of application is broader than that of the signatory parties. Signatory parties are, however, not ultimately responsible for their members’ conduct. Furthermore, when one signatory party violates the social peace obligation, the right of the other party to be indemnified is limited. Article 4 of the 1968 Act provides specifically that in the case of non-performance of contractual obligations, damages can be recovered from an organisation only when the collective agreement specifically provides for such a possibility.

1.3 Key industrial relations indicators

It should be clear from the discussion above that the Belgian system of collective bargaining is strongly organised and institutionalised. The last data from the Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS), shown in Figure 2, confirm that in 2014 Belgium had both the highest degree of centralisation and coordination, as Finland had already started the movement towards decentralisation. The centralisation is linked to the favourability principle that builds on the national minimum wage (which is determined in the National Labour Council) and the generalised practice of wage indexation on the one hand (although this is a sectoral matter, and hence rather steered by coordination), and the bi-annual Wage Norm on the other hand. Nevertheless, the main legislative level remains the sector level. As a result of this structure, collective bargaining coverage is nearly 100%. The strong institutions are further supported by high levels of unionisation, despite a trend of declining unionisation in most western economies. The reasons for this are flexibilisation of work organisation, leading to a decrease in the mobilisation capacity of trade unions, and structural shifts in the economy due to deindustrialisation, affecting large sectors with traditionally high levels of unionisation.

As Figure 3 shows, Belgium is the exception to this trend. According to the ICTWSS dataset, between 1975 and 2013, there has even been an increase in union density of up to around 55%. Employers’ density, expressed as the share of employees working at employers that are member of an employers’ federation (not shown in Figure 3), is estimated at around 80% and has been stable over the last twenty years. However, today unions also report decreasing membership figures. As the Dutch case has learnt, collective bargaining institutions can be resilient for a long time despite low unionisation, but eventually this leads to a shift in bargaining power (Boumans & Keune, 2018).

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1 Particularly when excluding the free student membership.
Figure 2. Coordination and centralisation of collective bargaining in Europe (2014)

Source: ICTWSS 5.1

Figure 3. Union density rate in Belgium, France, Germany and the Netherlands

Source: ICTWSS 5.1, own calculations
Outside of the institutional sphere, we may want to look at the mobilization power or activity of the trade unions. Figure 4 shows the quarterly number of strike days since 2007. There is no discernible long-term trend towards more or less strikes, although it should be noted that there could be a larger number of separate strikes at the company level in one year that are overshadowed by national actions in another year, such as the protests against the pension reforms of the Michel government in the last quarter of 2014 that do create a spike in the data.

**Figure 4. Strike days in Belgium 2007q1-2016q3 (log10 scale)**

![Graph showing strike days in Belgium 2007q1-2016q3](image)

*Source: National Office for Social Security, own calculations*

### 1.4 Performance of the system

To assess the performance of a collective bargaining system, two dimensions are essential: i) the ability to create growth; and ii) the degree to which inequality can be contained. It is now known that centralised and coordinated systems can potentially internalise negative economic consequences caused by market imperfections (Chagny, 2018; Driffill, 2006), but it is of course not guaranteed. Let us therefore first look at the recent economic performance in Figure 5. We see that the evolution of GDP in Belgium since 2008 slightly lags behind the growth in Germany (which has come at the expense of extreme flexibility and precariousness, see for instance Marx & Starke, 2017) and Austria, but was above the trend in France and the Netherlands. Importantly, the trough during the sovereign debt crisis in Europe was not as deep as in other countries and the recovery was faster. This shows that the institutional arrangements, which besides wage protection also included a form of temporary unemployment for job protection, manage to smoothen trends. As a result, the catch up also usually has some delay.

The evolution of employment levels in Figure 6 show even stronger differences in the reaction to the crisis: in Belgium, the recovery from the first dip in the recession was almost immediate, after which wage growth stagnated for a number of years. In a note in the New York Times in 2013, Paul Krugman suggested that the lack of political action in Belgium prevented the procyclical movements seen in other countries. However, while Germany and the United Kingdom witnessed further employment growth, Belgium was hit by a second dip and returned to the 2008 employment level in 2016 at the same time with France.
Figure 5. Real GDP growth in selected countries, 1995-2015 (2008 = 100)

Source: national accounts, own calculations

Figure 6. Employment evolution in selected countries, 2008-2017 (2008 = 100)

Source: Eurostat Labour Force Survey, own calculations
Figure 7 shows the job flows behind the net evolution in Figure 6: the two dips are the result of a simultaneous decrease in job inflows, and an increase in outflows. Although there are very little internationally comparative data on job dynamics, the flows between the employment and unemployment are weaker than in most other countries (Cassado et al. 2015), and the level of dynamism within the labour market are average, similar to the German rates and below the levels of some peripheral countries or the Nordic flexicurity labour markets (OECD, 2009).

**Figure 7. Employment flows in Belgium (rates, 2005-2016)**

![Graph showing employment flows in Belgium](image)

*Source: Dynam, National Office for Social Security*

The same apparent stability and resilience is also found in the evolution of real wages (Figure 8). Because wage indexation was guaranteed until 2015, wages have not directly been impacted by the crisis. Nevertheless, wage costs were effectively moderated compared to the other countries, including the main trading partners of Belgium (the Netherlands, France and Germany). It should also be noted that in this period, productivity growth was stagnant, so that the labour share was unaffected. Figure 9 shows that the ‘old continental’ country group experienced a fall in the labour share shortly before the crisis, and - due to the loss of profits - a rise afterwards, but is now at a long-term stable point. In contrast, in the peripheral country groups, Greece and Ireland continue to exhibit a historically low labour share. The figures are uncorrected shares, meaning that the difference in the self-employment rate leads to higher labour shares where less self-employed are active. In the countries similar to Belgium, this labour share is higher than in other parts of Europe.
**Figure 8. Evolution of real wage cost in selected countries (1995-2015)**

![Graph showing the evolution of real wage cost in selected countries from 1995 to 2015.](image)

*Source: national accounts, own calculations*

**Figure 9. Labour share in the EU (1995-2017)**

![Graph showing the labour share in the EU from 1995 to 2017.](image)

*Source: Eurostat national accounts, own calculations*
Finally, wage inequality is also remarkably stable. Figure 10 illustrates that the 10th percentile of the wage distribution for full time equivalents holds over 40% of the basic wage of the 90th percentile, while the 20th percentile holds slightly under 60% of the basic wage of the 80th percentile. The same stability is found when expressed as volumes (wage mass). This can be explained by the compression of the wage distribution on both sides of the distribution: as wage floors in sectors, which are always above the national minimum wages, are increased, higher wages increase less than lower wages and therefore both move closer to the median. The positive effect of minimum wages (‘beta’ in Figure 11) below the median and the negative effect above the median reflect this compression effect that compensates for time trends that increase inequality.

**Figure 10. Wage inequality in Belgium (1996-2015)**

![Graph showing wage inequality in Belgium from 1996 to 2015](image)

*Source: National Office for Social Security, own calculations*
Figure 11. The effect of minimum wages on the distance to the median per vigintile (1996-2015)

Source: National Office for Social Security, own calculations
2 Trends in collective bargaining in Belgium

This section provides a description and analysis of key trends in the socio-economic life of Belgium based on recent qualitative research and interviews (Van Gyes, Van Herreweghe, Smits, & Vandekerckhove, 2018; Van Herreweghe, Vandekerckhove, & Van Gyes, 2018; Vandekerckhove, 2018). It discusses their impact on the structure, processes and results of the Belgian system of collective bargaining set-up by the law of 1968, which testifies of a ‘dynamic balance’, where few things move at the surface, but certain trends roll out under the hood and permanent stress is applied to the system (Serroyen, 2011).

2.1 Role of the government

As indicated in the first section, collective bargaining is in theory independent from the state and collective bargaining agreements are a free, private contract form. However, in practice there is certainly interaction between the state and the social partners and its influence is “neither too much nor too little”. We can therefore say that bargaining is bipartite, but dialogue is tripartite.

In 2015, the government intervened by obliging the sectors to skip the next wage indexation of 2 per cent, by increasing the pension age, by further constraining the wage norm and by reducing social security contributions for young workers. This may create the perception among social partners that the new centralisation is in fact a take-over by the state. Indeed, it has been signalled that in the recent period, most initiatives in the sphere of collective bargaining have come from the government (FOD WASO, 2018), although at the same time a record number of collective bargaining agreements was registered. As the core employment conditions are temporarily frozen, many new topics, such as work-life balance, training, diversity and aging plans, come to the foreground (Van Gyes et al., 2018).

2.2 Impact of internationalisation

The European integration has strongly affected collective bargaining in Belgium. In the past, wage evolutions and wage indexation could be absorbed by periodical devaluations of the currency. When Belgium entered the ECU exchange rate mechanism in the 1990s and adopted the euro in 1999, this possibility disappeared. For this reason, in 1996 the Wage Norm was introduced, which imposes an upper margin on wage growth, based on projections of the wage evolutions in the neighbouring countries, and main trading partners, Germany, France, and the Netherlands. The moderation of wages was a means to prevent the need to resort to internal devaluation through real wage cuts, while at the same time allowing the cost of living adjustment of wages. However, in 2015 the government forbid the next wage indexation of 2 per cent as well as a compensation for this by a new wage agreement. It had two effects: on the one hand real wages dropped, on the other hand the conventional wage level was suppressed more than effective wages, reducing the importance of the collectively agreed part of wages and thereby permitting growing inequality.

Competitive pressures are a constant concern and this is not unique in the Eurozone (Vandekerckhove, 2018). The cumulated wage drift relative to the Wage Norm, generating an export disadvantage relative to the main trading partners since 1996, has been compensated through wage moderation. However, the 2017 revision of the law presumes that a ‘historical’ wage gap still exists, and a further compensation is needed in the form of half of the gains from stronger productivity growth compared to the main trading partners. In other words: the compulsory pegging of wage evolutions by the Wage Norm can at most keep the labour share stable. Moreover, as in practice the Wage Norm implies that Belgian wages “are set in Germany” (because of the large weight of Germany in the calculation of the Wage Norm), wage rates are decoupled from economic
logic. Indeed, at the sector level there is very little margin for negotiating. At the same time, this has also prevented the growth of inter-industry wage differentials unlike in other countries.

Despite the economic pressures and the national mechanism to deal with it, there is no firm belief in supranational wage bargaining (e.g. European Works Councils) and international wage coordination, even if the Belgian unions are among the most voluntaristic in Europe: in the service sector, the Christian trade union for the service sector pleads for reforms to link collective bargaining agreements within value chains, while in the metal sector, there is a demand to make the wage coordination rule of Industry. All Europe more binding. On the other hand, the employers argue that share growth and the social market economy are core principles of their organisation but that it is international competition that puts pressure on the labour share, as capital flows towards the highest return on investment (ROI), and they are hesitant to export the Belgian welfare state and collective bargaining institutions, which are said to only fit the structure of the Belgian economy (Van Herreweghe et al., 2018).

2.3 Impact of changing economic structure and new groups of workers

The overall picture of the Belgium economy reflects stability, but under the hood some changes are occurring. One trend is the feminisation of the labour force. As Figure 12 shows, there is an ongoing catch-up process of increasing feminisation and mainly impacted male full-time employment, which decreased by 50 000 workers, while male (as well as female) part-time employment increased. The Europe 2020 goal of an employment rate of 73.2% of active-age workers is not reached on average: the male employment rate was 73.4% in 2017 and the female employment rate was 63.6%. Moreover, the employment rate of migrant workers is stagnant at around 40%, while the number of foreigners at birth has doubled in 25 years to 2 200 000 people (Myria, 2016).

Figure 12. Job growth by gender and working time regime, moving average of the last four quarters (2008-2017)

Source: EU-Labour force survey
What is remarkable, and this is due to collective bargaining, is that strict wage discrimination, defined as different pay levels for similar productivity levels, is almost non-existing once workers are on the labour market (Kampelmann & Rycx, 2016). Beside the nature of collective bargaining, which is based on functions and job classifications rather than on individual bargaining power, there is also a host of diversity plans, ageing plans, and the gender pay gap law which continually expose the issue of potential discrimination (Pollet & Lamberts, 2015; Vandekerckhove & Knipprath, 2016).

In the same way, the structural change of the economy due to the growth of the service industry and deindustrialisation (Vandekerckhove, Struyven, & Heylen, 2013), coupled with job polarisation and the growth of low-paid service work, has not (yet) led to a sharply dualised economy. The interpretation of the Wage Norm as a maximum for employers, but also as a minimum for trade unions, has prevented the diverging of sectors with increasing productivity levels (e.g. aided by technological advances) from low-skilled service jobs with unchanging productivity.

Since 2014, there is an operation to harmonise the statutes of white- and blue-collar workers. The historical difference was based on the distinction between manual and non-manual work, which has become irrelevant as in highly efficient industries, all workers to some degree perform non-manual work. Sickness benefits and the dismissal legislation have already been adjusted, and pensions are under review at the moment. However, a new type of workers is arising: the gig/freelance workers, freelancers, and the bogus self-employed. While a case can be made to use existing legislation to cover such new forms of work, as in other countries there is some difficulty with the legal enforcement.

2.4 Innovation versus interference

As has been said, there is a centralising tendency on the one hand, and on the other hand there are decentralised innovations in a broad range of topics. However, neither the innovation nor the discretion granted to sectoral social partners should be overestimated. In fact, the social partners are constantly under pressure to implement what other bodies have pre-designed: training investments, life-long learning, longer careers, diversity plans, decent and sustainable work, etc. The flexibility of the multi-level structure of social dialogue also has the disadvantage of creating an exponential number of possible interferences: e.g. from regional economic councils, covenants, social security administration, the government, the group of ten, etc. The danger is that the motivation for social partnership might get lost.

On the other hand, questioning some of the structural elements of collective bargaining, including the rules of the Law of 1968 (e.g. automatic extension, no derogation) or indexation rules would perhaps revive the bargaining practice, but it would probably not improve the system much. This is the catch 22 for collective bargaining: it cannot be taken for granted without incentivising free-rides, but it can also not be disentangled without distorting the balance and mutual gains.

2.5 Judicialisation

A major trend is the judicialisation of society. This means that codified rules are more strictly interpreted and legal courts are used as the place to settle conflicts. It also means that there is only hard law. In contrast, the Belgium system of collective bargain was actually for a long time very flexible and interpretative, for instance involving a large role for the social conciliators. This reflects the principles of subsidiarity and the autonomy of the social partners (Dorssment, Cox, & Rombouts, 2004). Collective bargaining agreements, and also the Law of 1968, lack the more extensive detailing that other legal fields may have. Outsiders, however, have pointed at the rigidities of the system, in part because of a misunderstanding about the permanent bargaining
mode which is compromise-seeking and conflict-solving, rather than drawing a clear line between winners and losers of any law or agreement. This view is now increasingly taken over in public discourse and in social conflicts, for instance by filing court cases against strikes and the inviolability of unions as they lack legal personality. Also, originally the inter-sectoral agreement which was arguably the most important agreement in terms of its scope, was decided by the informal Group of Ten. While this is still the case, the norm now is almost imposed by the Central Economic Council, and the legal binding is ensured. However, the circle is closed as in practice, the stricter norm is not enforced and there are no cases of employers that have received a penalty for giving too high wage increases. The main effect today seems to be that sectoral collective bargaining has less room to manoeuvre.
3 Key findings and conclusions

Collective bargaining in Belgium is perhaps cherished because of an apparent anachronism. No other country has the same degree of organisation. The Law of 1968 is the cornerstone in the institutional system, defining collective bargaining agreements, joint committees, the levels of bargaining and the hierarchy of legal forms. Is this system, at 50 years of age, in its second youth, or is it lacking the agility for the modern day?

To the outside world, the institutional structure indeed looks highly inflexible: the multi-level setup combined with competitive pressures implies that in the field of core employment conditions (working time and wages), there is very little room for manoeuvre. The ‘acquis’ of collective bargaining have cumulated over time, and changing one element would necessarily make another element fall. Moreover, this body of legal agreements has become interpreted much stricter than before.

We argue that this is not the real nature of Belgian collective bargaining, but it does pose a threat. The institutional structure has always allowed adaptations, and is essentially based on free, private agreements. The Law of 1968 primarily strengthens this freedom, for instance by legal extension and stronger means of enforcement. It is neutral to the context, save that the favourability principle holds and that derogation is in principle not possible. However, any arrangement for opting out of and limiting the duration of agreements can be part of the agreements, as well as regionalisation, changes in the cost of living adjustment, seniority, and so on. In practice, most of this is not happening or even disappearing, if it has ever existed. It seems that the bargaining team has some accomplishments that are to be upkept.

When we look at the main performance indicators, economic growth and inequality, we see that this is the case. While in terms of economic growth, Belgium is not forging ahead, it is also not lagging behind. What is sure is that in the past, few social sacrifices have been made to spur growth above the steady path. This choice for stability is also expressed in the evolution of the labour share and wage inequality: in the long run, things remain the same.

Yet never changing the bargaining team could, after 50 years, make the system difficult to sell. Many of the outcomes, such as the preservation of purchasing power and the universality of agreements, are too easily taken for granted. They should be seen in light of the dynamic balance with other aspects: social peace, wage moderation, shared growth, creative destruction, etc. Moreover, within the multilevel system, and also through interventions from outside institutions and the government, the agenda of the social partners may be imposed by other parties and the principle of subsidiarity is not always followed. As the speed of those external claims seems to be increasing, it is perhaps time, after 50 years, to look back at the core structures (e.g. the circumscription of joint committees, the legislative chain of agreements) and whether those are still fit for the job and allow the social partners to take up the social responsibilities their members desire. The harmonisation of the job categories is already one step on the way.
4 List of references


- (FOD WASO, 2018)


