**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**
**COMITE EUROPEEN DES DROITS SOCIAUX**

9 February 2024

**Case Document No. 1**

**European Trade Union Confederation (ETUC), *Centrale Générale des Syndicats Libéraux de Belgique* (CGSLB), *Confédération des Syndicats chrétiens de Belgique* (CSC) and *Fédération Générale du Travail de Belgique* (FGTB)**
**v. Belgium**
Complaint No. 237/2024

# COMPLAINT

**Registered at the Secretariat on 6 February 2024**

# Collective Complaint

by the

**European Trade Union Confederation (ETUC)**

**and the**

**Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/**
**Confédération des Syndicats chrétiens de Belgique (CSC)/**
**Fédération Générale du Travail de Belgique (FGTB)**

v.

**the Kingdom of the Belgium**

6 February 2024

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1 This collective complaint concerns the alleged violation of Article 6§2 ESC (in conjunction with Article G) by the Kingdom of Belgium (hereinafter 'Belgium') on the right to collective bargaining. In particular it is alleged that the *"Loi de 26 JUILLET 1996. - Loi relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité"* ('Law of 26 July 1996 on the promotion of employment and the preventive safeguarding of competitiveness' as subsequently amended in particular in 2017; hereafter the "1996 Wage Law", see Annex 6.2 for the relevant parts of the 1996 Wage Law) provides for

- Prior interference in collective bargaining;
- Unilateral setting by the authorities of the parameters for determining the maximum wage increase;
- Impediment to the autonomy of the parties;
- General application and unlimited and recurrent application over time of the restriction on wage increases;

thus severely restricting the possibility/autonomy of social partners to collectively bargain wages increases in Belgium.

2 This complaint is motivated in particular by references to the relevant international legal framework, the developments in the legal framework and practice of the right to collective bargaining on wages in Belgium and the manner in which this development violates the fundamental right to collective bargaining as protected in the ESC in particular.

# 1 Admissibility

## *1.1 Introduction to the complaint*

3 This complaint is submitted by the:

**European Trade Union Confederation (ETUC)**

Represented by **Esther Lynch**, ETUC General Secretary;

Acting Agent: Stefan Clauwaert, ETUC Senior Legal and Human Rights Advisor, ETUC representative in the Council of Europe Steering Committee for Human Rights (CDDH) and Governmental Committee to the European Social Charter/European Code of Social Security, , Boulevard du Jardin Botanique, 20, 1000 Brussels, Belgium, e-mail: sclauwaert@etuc.org.

**Centrale Générale des Syndicats Libéraux de Belgique (CGSLB),**

Represented by: **Mr. Gert Truyens**, President, Koning Albertlaan 95, 9000 Gent, Belgium;

Acting Agent: Mr. Maarten Boghaert, Economic Advisor, Boudewijnlaan, 8, 1000 Brussels, e-mail: maarten.boghaert@aclvb.be.

**Confédération des Syndicats chrétiens de Belgique (CSC)**

Represented by: Mrs. Ann Vermorgen, President, Brouwersstraat 7, 9000 Gent, Belgium ;

Acting Agents: Mr. Piet Van den Bergh, Legal Advisor, and Mr. Alexis Fellahi, Legal Advisor, Chaussée de Haecht, 579, 1030 Schaerbeek, Belgium, e-mail: respectively u99pvg@acv-csc.be and Alexis.Fellahi@acv-csc.be.

**Fédération Générale du Travail de Belgique (FGTB)**

Represented by: Thierry Bodson, President, 42 rue Haute, 1000 Brussels, Belgium;

Acting Agent: Lars Van de Keybus, Economic Advisor, 42 rue Haute, 1000 Brussels, Belgium, e-mail: lars.vandekeybus@abvv.be.

- hereinafter 'the complainants' –

based on the Additional Protocol of 1995 providing for a system of collective complaints (hereinafter: the 1995 Protocol) alleging the violation of Article 6§2 in conjunction with Article G of the Revised European Social Charter (hereinafter: ESC).

## *1.2 The complainant trade union organisations*

4 The ETUC is the international organisation of trade unions provided for in Article 1 lit. a of the 1995 Protocol as well as Article 27§2 of the European Social Charter (ESC). The ETUC is authorised to submit complaints under Article 1 of the 1995 Additional Protocol providing for a system of collective complaints (hereafter the 1995 Protocol) and have done so in the past including with the mentioned Belgian co-complainants.1 The ETUC comprises currently 93 national organisations from 41 countries, including CGSLB, CSC and FGTB in Belgium. The ETUC has also a permanent observer status in the Council of Europe Steering Committee for Human Rights (CDDH) and the Governmental Committee to the European Social Charter and European Code for Social Security. The ETUC is also a recognised European cross-industry social partner under Articles 154-155 Treaty on the Functioning of the European Union (TFEU). For the ETUC Constitution, ad adopted at its 14th Congress in May 2023 in Berling, see Annex 6.1 and 6.1(a)).

5 The three Belgian complainant trade unions are member organisations of the ETUC. With reference, inter alia, to paragraph 22 of the explanatory report to the 1995 Protocol, the ETUC considers that this legal authorisation must also apply to its affiliated members. These three organisations are entitled to submit collective complaints under Article 1c of the 1995 Protocol, which states that "representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint" (as well as the ECSR case law)2 have the right to submit complaints alleging unsatisfactory application of the Charter. To note is that the ETUC, together with the same Belgian affiliates CSC, FGTB and CGSLB, have already in 2009 submitted successfully a collective complaint on

[1] See interalia: the processed Collective Complaint No. 59/2009 European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium and Collective Complaint No. 32/2005 European Trade Union Confederation (ETUC), Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") v. Bulgaria, as well as the pending Collecltive Complaint No. 201/2021 European Trade Union Confederation (ETUC), Netherlands Trade Union Confederation (FNV) and National Federation of Christian Trade Unions (CNV) v. the Netherlands.

[2] Collective Complaint No. 59/2009 European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium.

unacceptable judicial interventions on the right to take collection action and right to strike in particular.3

6 The three trade unions are representative both nationally and in terms of the industries they cover. They are also the representative trade union organisations represented on the National Labour Council ('Nationale Arbeidsraad/ Conseil National du Travail').

7 The Presidents of the three trade unions are authorised to represent their organisations (Annex 6.1 and Annexes 6.1(b), (c) and (d)).

8 Belgium ratified the 1995 Protocol on 23 June 2003 and the revised European Social Charter on 2 March 2004 and, in particular, has accepted Article 6(§2) of the latter.

# 2 The national legal and practice framework

## *2.1 The '1996 Wage Law'*

9 The object of this complaint is the Law of 26 July 1996 on the promotion of employment and the preventive safeguarding of competitiveness, in particular Title II (Articles 2 to 22) in its version applicable since 2017 (see also Annex 6.2) following the legislative amendment made by the Law of 19 March 2017.

10 The 1996 Wage Law introduced a wage moderation mechanism for the entire private sector (as well as for some public economic enterprises) in Belgium. This mechanism results in the definition of a maximum available margin, which can be defined as the maximum percentage allowed for wage increases negotiated at all levels of social consultation (cross-industry, sectoral and company).

11 Wage increases should be understood to include all measures that have a cost for the employer, with a few exceptions listed exhaustively in Article 10 of the 1996 Wage Law. Wage increases include, for example, an increase in the hourly wage as a result of a reduction in working time. The 1996 Wage Law not only envisages wage increases in the strict sense of the term, but also of increases in social security contributions, which are the main source of funding for social security in Belgium. The 1996 Wage Law equally includes, for example, the increase in employers' contributions to a sectoral fund, which has the task of granting supplementary amounts to certain social benefits for workers in the sector concerned.

12 The legal adaptations to the 1996 Wage Law that took place in 2017 have considerably tightened the wage moderation mechanism applicable in Belgium, thus seriously undermining the right to collective bargaining and this without any (economic) justification (See also Annex 6.3).

13 The effect of this 1996 Wage Law is to drastically restrict the margins of negotiation and thus also has a negative impact on the promotion of collective bargaining, at all levels of social consultation, thus undermining the principle of free and voluntary collective bargaining.

14 The 1996 Wage Law as amended in 2017 operates as follows.

### 2.1.1 Report on the evolution of employment and competitivity

15 The 1996 Wage Law does not provide for any institutional role for the social partners in the drafting of the first part of this report.

16 Article 5§1 of the 1996 Wage Law provides that *"every two years, in even-numbered years, the Central Economic Council draws up a report by 15 December*". It should be noted that the

social partners, including the trade unions, are members of the Central Economic Council (CEC).

17 However, Article 5§2 paragraph 1 specifies that the first part of the report referred to in §1 *"is drafted under the responsibility of the secretariat of the Central Economic Council and concerns the maximum margins available for the development of wage costs* [...]" (emphasis added). Although the social partners are members of the CEC, they are in no way part of the secretariat of the CEC, which acts completely independently.

18 The 1996 Wage Law does not define what is meant by *'maximum available margin'*. However, it could be defined as the maximum proportion allowed for salary increases.

19 However, the following paragraphs of Article 5§2 list exhaustively all the parameters that the CEC secretariat must take into account when calculating the maximum margin available. The CEC secretariat thus has no room for manoeuvre in calculating the maximum margin available and is strictly bound by the provisions of the 1996 Wage law.

20 The 1996 Wage Law does not provide for any institutional role for the social partners in the drafting of the first part of this report.

### 2.1.2 Collective bargaining on wages

21 After the publication of the report referred to in part 2.1.1, the 1996 Wage Law provides that the collective bargaining process can begin.

22 Article 6§1 stipulates that "*Every two years, in odd-numbered years, before 15 January, the interprofessional agreement of the social partners shall set out, on the basis of the report referred to in Article 5§1, inter alia, measures for employment and the maximum margin for the evolution of wage costs for the two years of the interprofessional agreement*".

23 Article 6§2 states that "*The maximum margin for wage cost increases referred to in paragraph 1 shall not exceed the maximum margin available, as referred to in Article 5§2*". In other words, the social partners may not agree on a maximum margin for wage increases greater than the maximum available margin defined in advance by the CEC secretariat on the basis of the parameters imposed by the 1996 Wage Law as revised in 2017; the maximum margin for wage increases on which they may agree may therefore only be less than or equal to this maximum available margin.

24 If the social partners reach an agreement, "*the margin [...] is [...] fixed in a collective labour agreement concluded within the National Labour Council* [...]".

25 Article 7§2 of the 1996 Wage Law also specifies that if the social partners decide by mutual agreement to go beyond the maximum available margin defined in the report of the CEC secretariat, the authorities will set the maximum available margin for the evolution of wage costs, in accordance with Article 6§1 and §2 of the 1996 Wage Law, in other words without exceeding the maximum available margin as defined in the report drawn up by the CEC secretariat. This maximum available margin has a general scope in that it applies to all levels of social consultation: cross-industry, sectoral and company level.

### 2.1.3 Conciliation attempt in case of negotiations failure

26 Article 6§3 of the 1996 Wage Law provides that "*in the absence of a consensus between the social partners within two months of the date of the report* [of the CEC]*, the government shall invite the social partners to a consultation and shall formulate a mediation proposal, on the basis of the data contained in the said report*".

27 If an agreement is reached following this conciliation attempt, "*the maximum margin for the evolution of wage costs shall be set in a collective labour agreement concluded within the National Labour Council*".

### 2.1.4 Setting of the maximum wage margin by Royal Decree

28 In the event that this attempt at conciliation fails, Article 7§1,paragraph 1 of the 1996 Wage Law provides that "*in the absence of an agreement between the Government and the social partners, within one month of the social partners being convened for the consultation referred to in Article 6§3, the King shall set, by decree deliberated in the Council of Ministers, the maximum margin for the evolution of wage costs, in accordance with Article 6§1 and §2* [...]".

29 Paragraph 2 of Article 7 of the 1996 Wage Law also specifies that if the social partners decide by mutual agreement to go beyond the maximum available margin defined in the report of the CEC secretariat, the authorities will set the maximum margin for the evolution of wage costs, in accordance with Article 6§1 and §2 of the 1996 Wage Law, in other words without exceeding the maximum available margin as defined in the report drawn up by the CEC secretariat.

### 2.1.5 Administrative sanctions if exceeding the maximum wage margin

30 Social partners who conclude agreements that exceed the maximum wage margin imposed are liable to sanctions under the 1996 Wage Law. Article 9§1, paragraphs 4 to 6 of the 1996 Wage Law provide that "*an administrative fine of 250 to 5,000 euros may be imposed on an employer who does not comply with the obligation [not to exceed the maximum authorised wage margin]. This fine is multiplied by the number of employees concerned, up to a maximum of 100 employees*". In this way, the 1996 Wage Law allows the administration to sanction agreements between social partners that it deems incompatible with the government's economic policy, effectively restricting the autonomy of the parties to collective bargaining.

### 2.1.6 Period of validity of the mechanism

31 Although implemented periodically (every two years), the mechanism introduced by the 1996 Wage Law as revised in 2017 is open-ended and will therefore apply on a recurring basis without any time limit.

## *2.2 Right to bargain collectively: assessment by the Belgian courts*

### 2.2.1 Constitutional Court

32 In its judgment nr. 130/2016 of 13 October 2016 on the “index jump”, the Constitutional Court confirmed that Article 27 of the Belgian Constitution both recognises the right to associate and prohibits it from being subject to preventive measures. It then quotes the conclusion reached in Demir and Baykara, based on the freedom of association from the ECHR: An interference with the exercise of the right to collective bargaining is not excluded, but restrictions on the exercise of that right must be provided for by law, pursue one or more legitimate aims and be necessary in a democratic society (ECtHR, Grand Chamber, 12 November 2008, *Demir and Baykara v. Turkey*, § 159)[4].

33 For the pursuit of legitimate aims, the Constitutional Court refers to the safeguarding of competitiveness and the limitation of public spending. In this judgment of 13 October 2016, the Constitutional Court did not elaborate on the "necessity in a democratic society". It merely stated that it was "not manifestly without reasonable justification." This while the ECtHR requires a "pressing social need" to be justified by "specific circumstances" with reference to the ILO Committee of Experts on Convention 98.

34 In the judgment nr. 152/2016 of 1st December 2016, case introduced by the FGTB against the 2015-2016 wage standard, the Constitutional Court did refer to the ILO:

[4] ECtHR judgement, Case of *DEMİR AND BAYKARA v. TURKEY,* Application no. 34503/97, 12 November 2008.

B.11.1. The restriction on the right to collective bargaining must also be proportionate to the objective pursued. If, as part of its stabilization policy, the government considers that wage cost trends cannot be freely determined by collective bargaining, such a restriction must be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and must be accompanied by adequate safeguards to protect the standard of living of workers (see : " La liberté syndicale. Recueil de décisions et de principes du Comité de la liberté syndicale du Conseil d'administration du BIT ", fifth edition (revised), 2006, § 1024). (...)[5]

35 Nevertheless, the conclusion of the Constitutional Court was lapidary:

B.11.4. By acting after the possibilities for collective bargaining contained in the Act of 26 July 1996 had been exhausted and by adopting the draft agreement of the "Group of Ten", as approved by eight of the ten social dialogue partners, the legislator has allowed collective bargaining to have maximum effect. Thus, the government played a subsidiary role in the agreements on wage development and only intervened when an agreement between all social partners proved impossible.

B.11.5 (...) By limiting the measure to a one-year or two-year period, it can be ensured that it is taken only to the extent necessary. Also, the contested law does not affect the possibility of conducting collective bargaining which does not cover the development of wage costs.

### 2.2.2 Council of State

36 The Council of State also referred to Demir and Baykara in its judgment of 13 February 2015 (no. 230.207)[6] concerning the zero wage norm 2013-2014:

Considérant que la restriction ainsi apportée est prévue par la loi, l'acte attaqué procurant exécution aux dispositions de la loi précitée du 26 juillet 1996;

Considérant qu'elle poursuit un but légitime et a pu être jugée nécessaire dans une société démocratique; que les considérations des requérants en intervention quant à la prise en considération des subventions salariales relèvent de l'opportunité, le calcul des écarts de coût salarial au niveau international pouvant s'opérer de différentes façons; Considérant que cette restriction n'est pas disproportionnée au but légitime poursuivi; qu'en effet, la loi ne prévoit l'intervention du Gouvernement que dans des conditions précises et subsidiairement à la conclusion d'un accord interprofessionnel ou d'un accord après médiation avec les interlocuteurs sociaux; qu'elle vise une durée de deux ans et excepte de l'application de la marge maximale certains éléments, visés aux articles 8, § 3 et 10; que, comme l'indique la partie adverse, des augmentations salariales peuvent encore être négociées même collectivement lorsqu'elles sont possibles sans augmentation du coût salarial moyen dans l'entreprise (…)

37 To note also is that the summary of that judgment on the website of the Council of State states that:

A second point of criticism concerned the fact that the decree encroached on the freedom of collective consultation, a principle upheld in both domestic and international law. The Council of State rejects that plea by stating that the procedures laid down by law, which provide for two phases of collective consultation, namely consultation between the social partners and consultation between those same partners with, in addition, mediation by the Government, were observed and that the contested decision was only taken after both phases of consultation had failed. Moreover, the fixing of the maximum margin for the development of wage costs at 0% is a matter of policy choice that falls outside the competence of the Council of State.

38 Both legally and in practice, the current situation obviously differs from the one in 2013-2014: since the amendments by the 2017 Law, the legislator has imposed a consistent maximum margin for wage cost development, from which the social partners may not deviate. In this context, we can now argue that the failure of the consultation this time is not an "accident de parcours". On the contrary, the failure of the consultation is the result of maximum margin as

[5] Cour Constitutionelle, Arrêt n° 152/2016, 1er décembre 2016.
[6] Conseil d'Etat, Arrêt n° 230.207 du 13 février 2015.

it is now embedded in the wage norm law. The Royal Decree setting the wage standard is the result of that violation of the right to collective bargaining. The legislator has, to paraphrase the Constitutional Court above, clearly not allowed collective bargaining to have maximum effect this time.

39 With the "conditions précises", the Council of State may refer to the "circonstances particulières" / "specific circumstances" on the basis of which the ECtHR allows government interference in the right to collective bargaining in Demir and Baykara. The question rises whether the "conditions précises" could arise every two years, for an indefinite period of time.

40 Despite all references to international sources, the Constitutional Court and the Council of State have so far not seen any obstacles to the imposition of this Decree and in particular they see:

- No problem in the government's imposition of the wage standard over four years. (2013-2014 followed by 2015-2016, each time after the social consultation had been "exhausted")
- No need to critically evaluate the wage cost trend argument against the right to collective bargaining;
- No reason to align the concept of "circonstances particulières" / "specific circumstances" from Demir and Baykara. (considered today with the Covid-19 pandemic and its economic repercussions in mind)

41 It is also useful to note that these judicial bodies intervened before the decision of the ILO Committee on Freedom of Association (CFA, see below para. 83) which gave a negative assessment of the conformity of the 1996 Wage Law with Convention No. 98 of the ILO.

## *2.3 The impact in practice of the 1996 Wage Law as revised in 2017*

42 Until 2017, the authorities only intervened in the absence of an agreement between the social partners on wage developments.

43 Since the legal amendment introduced in 2017, the mechanism of the 1996 Wage Law has involved the authorities intervening in advance, systematically and indefinitely in negotiations on wage developments.

44 The Belgian government at the time consulted the social partners on the amendment of the 1996 Wage Law by referring it to the Group of 10, which is an informal social consultation body at cross-industry level bringing together the leaders of trade unions and employers' organisations. This consultation did not therefore formally take place through the National Labour Council, which is legally competent to give opinions to the authorities on social and labour matters.

45 On the one hand, it should be noted that the fact that the social partners were consulted on a law that provides a framework for collective bargaining cannot be invoked to justify the hindrance caused by this law to social consultation.

46 On the other hand, it should be pointed out that this consultation of the social partners took place in November 2016, at the very moment when the social partners were due to negotiate the wage margin for the years 2017-2018 and the interprofessional agreement (AIP) 2017-2018. This consultation greatly deteriorated the spirit of the negotiations.

47 The social partners were naturally unable to reach a consensus on these legislative changes (which were more favourable to the employers) and were therefore unable to formally issue an opinion. However, the trade unions were highly critical of the Belgian government's plans from the outset. This did not prevent the Belgian government from moving forward with its plans to amend the 1996 Wage Law, by adopting an amending law on 19 March 2017.

48 It should be noted that the employers' organizations, obviously satisfied with this governmental project, had made the conclusion of the IPA 2017-2018 (which contained important provisions

in social matters other than wages) conditional on a parliamentary vote on the amending law. This is why the IPA 2017-2018 was concluded on 21 March 2017, two days after the vote in parliament. These events demonstrate the influence of the 1996 Wage Law as amended in 2017 and the imbalance it creates in the collective bargaining process. Moreover, the fact that collective bargaining is possible on other issues cannot justify a drastic limitation of the scope of bargaining on wages.

49 In order to fully understand the harmful effects of the 1996 Wage Law on the promotion of collective bargaining, particularly in its 2017 version, which is still applicable today, one needs to look at the events that have taken place in the context of social negotiations since the entry into force of this new version of the 1996 Wage Law.

50 The first cross-industry negotiations covering the period 2017-2018 were the first to take place under the new version of the 1996 Wage Law. Although a cross-industry agreement - including on wage increases - was reached in 2017-2018, this agreement was reached against a backdrop of great mistrust among the trade union organisations with regard to the new provisions of the 1996 Wage Law as revised in 2017 and materialised in the conclusion of Collective Labour Agreement no. 119 concluded on 21 March 2017 within the National Labour Council.[7]

51 Since then, the trade unions have never ceased to make these virulent criticisms of the 1996 Wage law. So much so that no interprofessional agreement on pay could be reached for the period 2019-2020. The government therefore had to impose the maximum margin for wage increases itself by adopting a Royal Decree8, in accordance with the provisions of the 1996 Wage Law, in the absence of an agreement between the social partners. The maximum wage margin was set at 1.1%.

52 For the period 2021-2022, the trade unions were unable to accept the straitjacket imposed on them by the 1996 Wage Law, as revised in 2017. As a result, no interprofessional agreement on wages could be reached for the period 2021-2022. As a result, the government has once again had to impose the maximum margin for wage increases itself by adopting a new Royal Decree9. The maximum wage margin was set at 0.4%. In the face of strong protests from the unions, the government unilaterally decided to allow the negotiation of a corona bonus, in excess of the maximum margin of 0.4%. This possibility demonstrates the inconsistency of the Belgian government, which is unilaterally imposing a very strict negotiating margin, while at the same time allowing the negotiation of a bonus, the terms of which it itself unilaterally defines.

53 For the period 2023-2024, the same as for the period 2021-2022 happened. No interprofessional agreement on wages could be reached. As a result, the government has once again had to impose the maximum margin for wage increases itself by adopting a new Royal Decree10. The maximum wage margin was set at 0%. And this time again, the government unilaterally decided to allow the negotiation of a purchasing power bonus, in excess of the maximum margin of 0%, again demonstrating the inconsistency of the Belgian government, which is unilaterally imposing a very strict negotiating margin, while at the same time allowing the negotiation of a bonus, the terms of which it itself unilaterally defines. Trade unions have

[7] CONVENTION COLLECTIVE DE TRAVAIL N° 119 DU 21 MARS 2017 FIXANT LA MARGE MAXIMALE POUR L'ÉVOLUTION DU COÛT SALARIAL POUR LA PÉRIODE 2017-2018.
[8] Arrêté royal du 19 avril 2019 portant exécution de l'article 7, § 1er, de la loi du 26 juillet 1996 relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité
[9] Arrêté royal du 30 juillet 2021 portant exécution des articles 7, § 1er de la loi du 26 juillet 1996 relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité
[10] Arrêté royal du 13 mai 2023 portant exécution de l'article 7, § 1er de la loi du 26 juillet 1996 relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité

made their opinion very clear on this in the divided Advice nr. 2349 of the National Labour Council.[11]

54 Two concrete examples illustrate the limitations imposed by this law on sectoral collective bargaining:

> In the **horticulture sector**, the sectoral agreement for 2017-2018 provided as follows: "Programming to be provided to close the gap between the wage applicable to seasonal and casual work, and the minimum wage of the lowest category in the sub-sector concerned by 1/1/2025."
>
> The maximum wage margin prevents this harmonisation of applicable wages from being implemented.
>
> In fact, the implementation of this agreement implies that the employers concerned must grant a wider increase in the wages of seasonal and occasional workers, in order to harmonise these wages with the minimum wage of the lowest category in the sub-sector concerned.
>
> However, these employers have no guarantee that they will be immune from sanctions if this wider increase for seasonal and casual workers results in these employers exceeding the maximum wage margin of 1.1% (years 2017-2018) at company level.
>
> Indeed, the social partners who conclude agreements that exceed the maximum wage margin imposed are liable to sanctions under the 1996 Wage law. Article 9, §1, paragraphs 4 to 6 of the law provide that "*an administrative fine of 250 to 5,000 euros may be imposed on an employer who does not comply with the obligation* [not to exceed the maximum authorised wage margin]. *This fine is multiplied by the number of employees concerned, up to a maximum of 100 employees*". In this way, the 1996 Wage law allows the administration to sanction agreements between social partners that it deems incompatible with the government's economic policy, effectively restricting the autonomy of the parties to collective bargaining.
>
> In the **service voucher sector**, some companies in the sector are refusing to apply a sectoral agreement which provides for the application of hourly wage equalisation in the event of a collective reduction in working time. They refuse to do so on the basis of the 1996 Wage law, on the grounds that such equalisation would lead to the maximum authorised wage margin being exceeded.

55 The description of this context shows just how seriously this legislation has affected collective bargaining in Belgium since 2017, preventing free and voluntary negotiations in all sectors. And rather than encouraging and promoting collective bargaining, this law is seriously undermining collective bargaining in Belgium.

# 3 International and European law and material

56 Below the complainants are referring to pertinent international and European (case) law and other relevant materials[12]. From the outset, it should be noted that Belgium has ratified all instruments mentioned below as far as they are open for ratification and/or unless otherwise mentioned.

## *3.1 United Nations*

57 At a general level, it appears more than relevant to refer at first to the Joint Declaration of the Human Rights Committee (CCPR) and the Committee on Economic, Social and Cultural Rights (CESCR) dealing with the two Covenants ICCPR and ICECSR respectively. Adopted

[11] CNT, Avis N° 2.349, Prime pouvoir d'achat – Projets de loi et d'arrêté royal, Séance du mardi 24 janvier 2023.

[12] As to legal impact of the 'Interpretation in harmony with other rules of international law' see the ETUC Observations in No. 85/2012 *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden* - Case Document no. 4, Observations by the European Trade Union Confederation (ETUC), paras. 32 and 33.

at the occasion of the 100th anniversary of the ILO, in their Joint Statement 'Freedom of association, including the right to form and join trade unions' the following is highlighted:[13]

> (…) The Human Rights Committee and the Committee on Economic, Social and Cultural Rights, welcome the progress made by States to guarantee the freedom of association in labour relations. At the same time, the two committees note the challenges faced in the effective protection of this fundamental freedom, including undue restrictions of the right of individuals to form and join trade unions, the right of unions to function freely, and the right to strike. (…)
>
> 3. Freedom of association includes the right of individuals, without distinction, to form and join trade unions for the protection of their interests. The right to form and join trade unions requires that trade unionists be protected from any discrimination, harassment, intimidation, or reprisals. The right to form and join trade unions also implies that trade unions should be allowed to function freely, without excessive restrictions on their functioning.
>
> (…)

58 Whereas the UDHR (Article 23(4))[14], ICCPR (Article 22(1))[15] and the ICECSR (Article 8, see para. 59) recognise the freedom of association in a more specific way *id est* as a right of everyone to form and join trade unions, none of them contain a provision that explicitly recognises a right to collective bargaining. It is however clear, in particular from the case law of the CECSR and even the CCPR, that the right to collective bargaining is thereby covered (see below, 3.1.2).

### 3.1.1 International Covenant on Economic, Social and Cultural Rights (ICESCR)[16]

#### *a) Right to form and join trade unions (Article 8 ICECSR)*

59 The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides in Article 8 on the right to form and join trade unions the following:

> **Article 8**
>
> 1. The States Parties to the present Covenant undertake to ensure:
> (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
> (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
> (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
> (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
> (…)
>
> 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

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[13] Joint Declaration of the Human Rights Committee (CCPR) and the Committee on Economic, Social and Cultural Rights (CECSR), Statement on freedom of association, including the right to form and join trade unions, 18 October 2019.
[14] Articles 23(4) UDHR states: *Everyone has the right to form and to join trade unions for the protection of his interests.*
[15] See below para. 63 and ff..
[16] Ratified by Belgium in 1968.

### *b) CECSR Concluding observations*

60 Until now, the CECSR has not yet elaborated a specific 'General Comment' in relation to Article 8.

61 However, in its General Comment No. 23 (2016) on the right to just and favourable conditions of work[17], the CECSR reiterated that trade union rights and freedom of association are crucial means of introducing, maintaining and defending the right to just and favourable conditions of work and apply to all workers without distinction. It specified that States Parties have the obligation to adopt the necessary measures to ensure the full realization of the right to just and favourable conditions of work including through collective bargaining and social dialogue.[18]

62 Furthermore, the CESCR expressed in the past serious concern about the protection of trade union rights (right to organise, right to collective bargaining and right to strike), both in law and practice, via its Concluding Observations. See for example the Concluding Observations v. France (2016)[19]:

> **Trade union rights**
>
> 27. The Committee condemns the reprisals taken against trade union representatives and **observes with concern the shrinking of democratic space for collective bargaining** (art. 8).
>
> 28. The Committee urges the State party to adopt effective measures for the protection of persons involved in trade union activities and for the prevention and punishment of all forms of reprisal**. It also urges the State party to ensure that the collective bargaining process is effective** and to uphold the right to union representation in accordance with international standards **as a means of protecting workers' rights in terms of working conditions and social security.**

63 So far, the CESCR did not address Concluding Observations towards Belgium on the particular issue of the right to collective bargaining and the interference by the 1996 Wage Law.

## 3.1.2 ICCPR

### *a) Right to form and join trade unions (Article 22 ICCPR)*

64 Article 22 ICCPR[20] provides:

> 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
>
> 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

[17] CECSR, General Comment No. 23 (2016) on the right to just and favourable conditions of work, 27 April 2016.
[18] CECSR, General comment No. 23 (2016) on the right to just and favourable conditions of work, E/C.12GC/23, 27 April 2016.
[19] CECSR (2016), Concluding observations on the fourth periodic report of France, adopted at its 58th meeting of 6-24 June 2016.
[20] Belgium ratified the ICCPR in 1968.

### *b) CCPR Concluding Observations*

65 Until now, the CCPR has not yet elaborated a specific 'General Comment' in relation to Article 22.

66 However it did express itself already on the right to collective bargaining in general and the procedures of collective bargaining in particular. See for example the CCPR Concluding Observations v. Belarus (2018)[21]:

> Freedom of association
>
> 54. The Committee is concerned about undue restrictions on the freedom of association. (…). The Committee is also concerned at: (…)
>
> d) Obstacles to registering trade unions; the application of the Mass Events Act to trade unions; limitations on the right to strike; anti-union interference, including the discriminatory use of fixed-term contracts in cases involving trade union activists; and specific problems in the application of collective bargaining (arts. 19, 22 and 25).
>
> **55. The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of articles 22 and 25 of the Covenant, including by: (…)**
>
> **(d) Addressing the obstacles to the registration and operation of trade unions, lifting the undue limitations on the right to strike, investigating all reports of interference in the activities of trade unions and of the retaliatory treatment of trade union activists, and revising the procedures governing collective bargaining with a view to ensuring compliance with the Covenant.**

## *3.2 International Labour Organisation (ILO)*

### 3.2.1 Constitution and Declarations

67 One of the ILO's principle missions is to promote collective bargaining. This mission was already set out in Article 1(1) of the ILO Constitution by referring to the ILO Declaration of Philadelphia of 1944 on the aims and purposes of the ILO (annexed to the Constitution) which forms part of the ILO Constitution and which states:

> **III**
> The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:
> (…) (e) the effective recognition of the right of collective bargaining, (…).[22]

68 This was confirmed in the **ILO Declaration on Fundamental Principles and Rights at Work of 1998**, which defines as first among the four main subjects of human rights in the labour field "freedom of association and the effective recognition of the right to collective bargaining' by stating that the International Labour Conference:

> 2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:
>
> 1. Freedom of association and the effective recognition of the right to collective bargaining; (…)[23]

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[21] CCPR (2018), Concluding observations on the fifth periodic report of Belarus, 22 November 2018, para. 54-55.
[22] ILO Declaration of Philadelphia of 1944.
[23] ILO Declaration on Fundamental Principles and Rights at Work of 1998, adopted by the International Labour Conference at its Eighty-sixth session on 18 June 1998.

69 This was reaffirmed by the **ILO Declaration on Social Justice for a Fair Globalization of 2008.**[24]

> **I. Scope and principles**
>
> The Conference recognizes and declares that:
> A. In the context of accelerating change, the commitments and efforts of Members and the Organization to implement the ILO's constitutional mandate, including through international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on the four equally important strategic objectives of the ILO, through which the Decent Work Agenda is expressed and which can be summarized as follows:
> (…)
>
> (iv) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives, noting:
>
> — that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and

70 More recently, in the framework of its 100th anniversary, the ILO International Labour Conference adopted in 2019 the "**ILO Centenary Declaration for the Future of Work**"[25], in which the following is stated in relation to the right of collective bargaining:

> The Conference declares that:
>
> A. In discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centred approach to the future of work, the ILO must direct its efforts to:
>
> (…) (vi) promoting workers' rights as a key element for the attainment of inclusive and sustainable growth, with a focus on freedom of association and the effective recognition of the right to collective bargaining as enabling rights; (..;)
>
> B. Social dialogue, including collective bargaining and tripartite cooperation, provides an essential foundation of all ILO action and contributes to successful policy and decision making in its member States.
>
> C. Effective workplace cooperation is a tool to help ensure safe and productive workplaces, in such a way that it respects collective bargaining and its outcomes, and does not undermine the role of trade unions.

### 3.2.2 Conventions

71 Several ILO (fundamental) Conventions deal with the freedom of association and the right to collective bargaining in general and the public sector in particular. In first instance, there are

[24] ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10 June 2008
[25] ILO Centenary Declaration for the Future of Work, adopted by ILC at its 108th Session, Geneva, 21 June 2019.

the two fundamental 'hard core' Conventions No. 87[26] and 98[27] as well as the ILO Conventions No. 151[28] and 154[29] and some further Conventions at least incidentally.[30]

### *a) Convention No. 87*

72 Convention No. 87 ensures in first instance the protection of freedom of association and whereby the protection afforded to workers and trade union representatives against acts of anti-union discrimination and acts of interferences is an essential aspect as such acts may result in law and practice in a denial of freedom of association and also consequently of collective bargaining.

73 Although the Convention does not address the issue of collective bargaining in an explicit way, in Article 3 it formulates a principle of trade union autonomy in a very broad manner. It indicates that workers' and employers' organisations have the right to organise their activities and to formulate their programmes. Since according to Article 10 of the Convention, these organisations need to 'further and defend the interests of workers or of employers', there is no reason why the right to collective bargaining would not be covered by this principle, as also confirmed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee of Freedom of Association (CFA) case law (see below paras. 79-80).

### *b) Convention No. 98*

74 The Convention No. 98 supplements in certain aspects Convention No. 87 and has three main objectives amongst which the promotion of collective bargaining, via in particular its Article 4 which states:

> **Article 4**
>
> "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

75 Convention No. 98 has since then been supplemented by the Labour Relations (Public Service Convention No. 151 of 1978 but more importantly in the context of this complaint by the Collective Bargaining Convention No. 154 of 1981.

### *c) Convention No. 154*

76 Convention No. 154 of 1981 concerning the Promotion of Collective Bargaining has as main aim to promote free and voluntary collective bargaining and is therefore intended to apply to all branches of economic activity (Article 1§1).

77 The Convention provides in Articles 2 wide definitions of the term collective bargaining by providing that:

---

[26] Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) - Entry into force: 4 July 1950; Belgium ratified this Convention in 1951.
[27] Convention concerning the right to Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (No. 98) – Entry into force: 18 July 1951; Belgium ratified this Convention in 1953.
[28] Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978 (No. 151) - Entry into force: 25 Feb 1981; Belgium ratified in 1991.
[29] Convention concerning the Promotion of Collective Bargaining, 1981, (No. 154) - Entry into force: 11 Aug 1983; France did not ratify this Convention.
[30] E.g. Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

**Article 2**

For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

78 Finally, in Articles 5 to 8 under Part III on 'Promotion of Collective Bargaining', the Convention provides that:

**Article 5**

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;

(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.

**Article 7**

Measures taken by public authorities to encourage and promote the development of collective bargaining shall be the subject of prior consultation and, whenever possible, agreement between public authorities and employers' and workers' organisations.

**Article 8**

The measures taken with a view to promoting collective bargaining shall not be so conceived or applied as to hamper the freedom of collective bargaining.

### 3.2.3 Other relevant ILO instruments

79 Furthermore, the ILO adopted unanimously in 2009 the Resolution "**Recovering from the crisis: A Global Jobs Pact"**.[31] This global policy instrument addresses the social and employment impact of the international financial and economic crisis and "its fundamental objective is to provide an internationally agreed basis for policy-making designed to reduce the time lag between economic recovery and a recovery with decent work opportunities". This Pact makes the following references to collective bargaining:

**I. Principles for promoting recovery and development**

9. Action must be guided by the Decent Work Agenda and commitments made by the ILO and its constituents in the 2008 Declaration on Social Justice for a Fair Globalization. We set out here a framework for the period ahead and a resource of practical policies for the multilateral system,

[31] ILO (2009) "Recovering from the crisis: A Global Jobs Pact", adopted by the International Labour Conference at its Ninety-eighth Session, Geneva, 19 June 2009.

governments, workers and employers. It ensures linkages between social progress and economic development and involves the following principles:

(…)

(8) engaging in social dialogue, such as tripartism and collective bargaining between employers and workers as constructive processes to maximize the impact of crisis responses to the needs of the real economy; (…).

**III. Decent work responses**

***Building social protection systems and protecting people***

12. (…) (3) In order to avoid deflationary wage spirals, the following options should be a guide:

– social dialogue;

– collective bargaining;

– statutory or negotiated minimum wages.

Minimum wages should be regularly reviewed and adapted.

Governments as employers and procurers should respect and promote negotiated wage rates. (…)

***Strengthening respect for international labour standards***

14. International labour standards create a basis for and support rights at work and contribute to building a culture of social dialogue particularly useful in times of crisis. In order to prevent a downward spiral in labour conditions and build the recovery, it is especially important to recognize that:

(1) Respect for fundamental principles and rights at work is critical for human dignity. It is also critical for recovery and development. Consequently, increase:

(…)

(ii) respect for freedom of association, the right to organize and the effective recognition of the right to collective bargaining as enabling mechanisms to productive social dialogue in times of increased social tension, in both the formal and informal economies.

***Social dialogue: Bargaining collectively, identifying priorities, stimulating action***

15. Especially in times of heightened social tension, strengthened respect for, and use of, mechanisms of social dialogue, including collective bargaining, where appropriate at all levels, is vital.

16. Social dialogue is an invaluable mechanism for the design of policies to fit national priorities. Furthermore, it is a strong basis for building the commitment of employers and workers to the joint action with governments needed to overcome the crisis and for a sustainable recovery. Successfully concluded, it inspires confidence in the results achieved.

### 3.2.4 ILO Supervisory bodies case law

80 There exists a longstanding case law by both the CFA and the CEACR in particular on the issue of the right to collective bargaining. Below, an overview of the most relevant case law parts is provided both in general as well as in specific decisions in relation to Belgium.

#### *a) General case law*

##### (1) Committee of Experts on Application of Conventions and Recommendations

81 In its most recent General Survey on fundamental rights Conventions, in particular on Conventions No. 87 and 98 (2012), the CEACR states the following:[32]

[32] ILO, International Labour Conference, 101st Session, 2012, Report of the Committee of Experts on the Application of Conventions and Recommendations – Report III (Part 1 B), General Survey – Giving globalisation a human face, Geneva 2012, § 168.

**Chapter 2 Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**

**Introduction**

167. (…) Collective bargaining is one of the principal and most useful institutions developed since the end of the nineteenth century. As a powerful instrument of dialogue between workers" and employers" organizations, collective bargaining contributes to the establishment of just and equitable working conditions and other benefits, thereby contributing to social peace. (…) Collective bargaining is therefore an effective instrument which facilitates adaptation to economic, socio-political and technological change. The principal elements of Convention No. 98, with which most national law and practice is now aligned, are the following: (i) the principle of the independence and autonomy of the parties and of free and voluntary bargaining; (ii) the effort made, in the context of the various bargaining systems, to reduce to a minimum any possible interference by the public authorities in bipartite negotiations; and (iii) the primacy accorded to employers and their organizations and to trade unions as the parties to negotiations.

**Part II. Freedom of association and collective bargaining**

***Promotion of collective bargaining***

**National legislation**

198. Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, collective bargaining is a fundamental right accepted by member States from the very fact of their membership in the ILO, and which they have an obligation to respect, to promote and to realize in good faith. 475 In this respect, Article 4 of Convention No. 98 sets out two essential elements: action by the public authorities to promote collective bargaining; and the voluntary nature of negotiation, which implies the autonomy of the parties. Although this provision does not imply a formal obligation to negotiate and to reach agreement, the supervisory bodies consider that the parties must respect the principle in good faith and not resort to unfair or abusive practices in this context (such as, for example, the non-recognition of representative organizations, obstruction of the bargaining process, etc.). The Committee emphasizes that the overall aim of this Article is, however, the promotion of good-faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The agreements so concluded must be respected and must be able to establish conditions of work more favourable than those envisaged in law: indeed, if this were not so, there would be no reason for engaging in collective bargaining.

**Scope of collective bargaining**

*Free and voluntary negotiation and autonomy of the parties*

200. Under the terms of Article 4 of the Convention, collective bargaining must be free and voluntary and respect the principle of the autonomy of the parties. However, the public authorities are under the obligation to ensure its promotion. Interventions by the authorities which have the effect of cancelling or modifying the content of collective agreements freely concluded by the social partners would therefore be contrary to the principle of free and voluntary negotiation.

*Content of collective bargaining*

215. Conventions Nos 98, 151 and 154 and Recommendation No. 91 focus the content of collective bargaining on terms and conditions of work and employment, and on the regulation of relations between employers and workers and their respective organizations. The concept of "conditions of work" covers not only traditional working conditions (the working day, additional hours, rest periods, wages, etc.), but also subjects that the parties decide freely to address, including those that are normally included in the field of terms and conditions of employment in the strict sense (promotion, transfer, dismissal without notice, etc.) (…) Whatever the content, the Committee considers that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are generally incompatible with the Convention;529[33] (…).

[33] To note is that Footnote 529 refers to the CEACR Observations (2010) on Croatia which state " Furthermore, the Committee had noted the allegations that the Act on the realization of the

### (2) Committee on Freedom of Association

82 From the most recent CFA Compilation, the following becomes amongst others apparent[34]:

**The right to bargain collectively**

**General principles**

> 1231. Measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements
>
> 1232. The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programmes.
>
> 1233. The preliminary work for the adoption of Convention No. 87 clearly indicates that "one of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form organizations independent of the public authorities and capable of determining wages and other conditions of employment by means of freely concluded collective agreements".

**The principle of free and voluntary negotiation**

> 1313. The voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association.
>
> 1314. The Committee emphasizes the importance of respecting the autonomy of the parties in the collective bargaining process so that the free and voluntary character thereof, established in Article 4 of Convention No. 98, is ensured.

**Restrictions on the principle of free and voluntary bargaining**

> **B. Intervention by the authorities in collective bargaining**
>
> ***(a) General principles***
>
> 1420. In cases of government intervention to restrict collective bargaining, the Committee has considered that it is not its role to express a view on the soundness of the economic arguments used by the Government to justify its position or on the measures it has adopted. However, it is for the Committee to express its views on whether, in taking such action, the Government has gone beyond what the Committee has considered to be acceptable restrictions that might be placed temporarily on free collective bargaining
>
> 1421. In any case, any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers' and employers' organizations in an effort to obtain their agreement.

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Government's budget of 1993 allows the Government to modify the substance of a collective agreement in the public sector for financial reasons. It had requested the Government to provide a copy of the legislative provisions allowing the Government to modify the substance of collective agreements in the public service and information on their application in practice. **Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee once again requests the Government to provide, with its next report, a copy of the said legislative provisions, as well as information on their application in practice."**

[34] ILO, Compilation of decisions of the Committee on Freedom of Association. Sixth edition, 2018.

1422. In cases in which governments had, on many occasions over the past decade, resorted to statutory limitations on collective bargaining, the Committee pointed out that repeated recourse to statutory restrictions on collective bargaining could, in the long term, only prove harmful and destabilize labour relations, as it deprived workers of a fundamental right and means of furthering and defending their economic and social interests.

1423. Repeated and extensive intervention in collective bargaining can destabilize the overall framework for labour relations in the country if the measures are not consistent with the principles of freedom of association and collective bargaining.

***(b) The drafting of collective agreements***

1431. Where intervention by the public authorities is essentially for the purpose of ensuring that the negotiating parties subordinate their interests to the national economic policy pursued by the government, irrespective of whether they agree with that policy or not, this is not compatible with the generally accepted principles that workers' and employers' organizations should enjoy the right freely to organize their activities and to formulate their programmes, that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and that the law of the land should not be such as to impair or be so applied as to impair the enjoyment of such right.

1434. While it is not its role to express a view on the soundness of the economic arguments invoked to justify government intervention to restrict collective bargaining, the Committee must recall that measures that might be taken to confront exceptional circumstances ought to be temporary in nature having regard to the severe negative consequences on workers' terms and conditions of employment and their particular impact on vulnerable workers.

***(c) Administrative approval of freely concluded collective agreements and the national economic policy***

1437. The Committee has highlighted the importance, in the context of an economic crisis, of maintaining permanent and intensive dialogue with the most representative workers' and employers' organizations. (See 368th Report, Case No. 2918, para. 362.)

***(d) Administrative interventions which suspend or require the renegotiation of existing collective agreements***

1450. Repeated recourse to legislative restrictions on collective bargaining can only, in the long term, prejudice and destabilize the labour relations climate, if the legislator frequently intervenes to suspend or terminate the exercise of rights recognized for unions and their members. Moreover, this may have a detrimental effect on workers' interests in unionization, since members and potential members could consider it useless to join an organization the main objective of which is to represent its members in collective bargaining, if the results of such bargaining are constantly cancelled by law.

***(f) Restrictions imposed by the authorities on future collective bargaining***

1456. If, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards.

1457. A three-year period of limited collective bargaining on remuneration within the context of a policy of economic stabilization constitutes a substantial restriction, and the legislation in question should cease producing effects at the latest at the dates mentioned in the Act, or indeed earlier if the fiscal and economic situation improves.

1458. Restraints on collective bargaining for three years are too long.

1461. As regards the obligation for future collective agreements to respect productivity criteria, the Committee recalled that if, within the context of a stabilization policy, a government may consider for compelling reasons that wage rates cannot be fixed freely by collective bargaining (in the present case the fixing of wage scales excludes index-linking mechanisms and must be adjusted to increases in

productivity), such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period and it should be accompanied by adequate safeguards to protect workers' living standards. This principle is all the more important because successive restrictions may lead to a prolonged suspension of wage negotiations, which goes against the principle of encouraging voluntary collective negotiation.

***(g) Restrictions on clauses to index wages to the cost of living***

1462. The impossibility of negotiating wage increases on an ongoing basis is contrary to the principle of free and voluntary collective bargaining enshrined in Convention No. 98.

1463. Legislative provisions prohibiting the negotiation of wage increases beyond the level of the increase in the cost of living are contrary to the principle of voluntary collective bargaining embodied in Convention No. 98; such a limitation would be admissible only if it remained within the context of an economic stabilization policy, and even then only as an exceptional measure and only to the extent necessary, without exceeding a reasonable period of time.

1464. In a case where government measures had fixed the base reference for the indexation of wages, whereas the parties had fixed another indexation system, the Committee recalled that the intervention of a government in areas which traditionally have always been negotiated freely by the parties could call into question the principle of free collective bargaining recognized by Article 4 of Convention No. 98, if it is not accompanied by certain guarantees and in particular if its period of application is not limited in time.

1465. The determination of criteria to be applied by the parties in fixing wages (cost-of-living increases, productivity, etc.) is a matter for negotiation between the parties and it is not for the Committee to express an opinion on the criteria that should be applied in fixing pay adjustments.

### *b) Specific case law in relation to Belgium*

#### (1) Committee of Experts on Application of Conventions and Recommendations

83 The interference of the 1996 Wage Law in the collective bargaining rights/process in Belgium has been raised by the CEACR as follows:

***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)***

**Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021)**

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government and the social partners this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Organisation of Employers (IOE) and of the Federation of Enterprises in Belgium (FEB), dated 28 September and 1 October 2020, concerning issues raised in the present comment. It also notes the observations of the General Labour Federation of Belgium (FGTB), the Confederation of Christian Trade Unions (CSC) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB), dated 1 October and 9 November 2020, which, apart from referring to the issues examined in the present comment, denounce the lack of negotiation with trade unions regarding the adoption of measures to tackle the health crisis. ***The Committee requests the Government to send its comments on this point.***

Article 4. Right to collective bargaining. Wage fixing. The Committee notes the observations of the trade union organizations on the Act of 26 July 1996 on employment promotion and the preventive maintenance of competitiveness, as amended by the Act of 19 March 2017. The trade union organizations indicate that the provisions of the Act result in the fixing of a maximum wage band that severely limits the possibilities for collective bargaining and does not really allow wage increases, not only on the national level, but also at the sectoral and enterprise level. The Committee notes that, according to the Government: (i) the goal of the legislation in question is to reduce the gap in wage costs

with neighbouring countries in order to encourage the competitiveness of the country's enterprises and the development of employment; and (ii) the mechanism for negotiating the wage band and wages has not been amended, and the role of the social partners remains critical in wage fixing. The Government explains that wage standards are determined by the Group of Ten comprising the executive bodies of the trade union and employers' organizations, in the framework of the Interoccupational Agreement (AIP), based on the technical report of the Secretariat of the Central Economic Council (CCE). The Government indicates that: (i) the AIP has to be concluded before 15 January in odd-numbered years; (ii) the wage standard is then established through a collective labour agreement concluded by the National Labour Council (CNT), which is made obligatory by the King; (iii) if the social partners do not reach an agreement, the Government must summon them to a dialogue and formulate a mediation proposal; (iv) if no agreement is reached in the month following the dialogue, the King, by degree discussed by the Council of Ministers, shall fix the maximum band of wage cost increases for the two years that should have been covered by the AIP ; and (v) negotiations at the sectoral and enterprise level are then held, respecting the wage band determined at the interoccupational level. Therefore, in the Government's view, the social partners play an important decision-making role in the wage fixing process, and the public authorities intervene only if they do not reach agreement. The Committee notes that an AIP was concluded for 2017–18, but that no agreement was reached for 2019–20 owing to an absence of unanimity in the Group of Ten, as had already been the case in 2013–14 and 2015–16. In this regard, the Committee recalls that the system had already been criticized by the FGTB, CSC and CGSLB in 2013. At that time, the Government explained that the system placed emphasis on the participation of the social partners and that, in the cases where the public authority had to fix the wage band due to a lack of agreement, it had followed the draft agreement concluded by the majority of the social partners. The Committee noted those replies. The Committee also notes that the IOE and the FEB emphasize that: (i) the social partners remain fully competent for negotiating wage adjustments and that the Government only intervenes on a subsidiary basis; and (ii) any such political decision is only valid for a limited duration. It applies for a maximum period of two years, after which the social partners regain their freedom of collective bargaining in each case. ***Noting the divergence in approach between the trade unions, on the one hand, and the Government and employers' organizations, on the other, the Committee requests the Government to provide detailed information on the effect given to the provisions of the Act of 26 July 1996, as amended by the Act of 19 March 2017, so that it can assess their effects on the possibility of negotiating wages at any level.***

**Direct Request (CEACR) - adopted 2019, published 109th ILC session (2021)**

The Committee notes the observations of the General Labour Federation of Belgium (FGTB), the Confederation of Christian Trade Unions (CSC) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB) of 30 August 2019 relating to issues examined in this comment, and the Government's reply in this regard, received on 29 October 2019.

Article 4. Right to collective bargaining. Wage fixing. The Committee notes the observations of the trade union organizations on the Act of 26 July 1996 on employment promotion and the preventive maintenance of competitiveness, as amended by the Act of 19 March 2017. The trade union organizations indicate that the provisions of the Act result in the fixing of a maximum wage band that severely limits the possibilities for collective bargaining and does not really allow wage increases, not only on the national level, but also at the sectoral and enterprise level. The Committee notes that, according to the Government: (i) the goal of the legislation in question is to reduce the gap in wage costs with neighbouring countries in order to encourage the competitiveness of the country's enterprises and the development of employment; and (ii) the mechanism for negotiating the wage band and wages has not been amended, and the role of the social partners remains critical in wage fixing. The Government explains that wage standards are determined by the Group of Ten comprising the executive bodies of the trade union and employers' organizations, in the framework of the Interoccupational Agreement (AIP), based on the technical report of the Secretariat of the Central Economic Council (CCE). The Government indicates that: (i) the Interoccupational Agreement has to be concluded before 15 January in odd-numbered years; (ii) the wage standard is then established through a collective labour agreement concluded by the National Labour Council (CNT), which is made obligatory by the King; (iii) if the social partners do not reach an agreement, the Government must summon them to a dialogue and formulate a mediation proposal; (iv) if no agreement is reached in the month following the dialogue, the King, by degree discussed by the Council of Ministers, shall fix the maximum band of wage cost increases for the

two years that should have been covered by the Interoccupational Agreement; and (v) negotiations at the sectoral and enterprise level are then held, respecting the wage band determined at the interoccupational level. Therefore, in the Government's view, the social partners play an important decision-making role in the wage fixing process, and the public authorities intervene only if they do not reach agreement. The Committee notes that an Interoccupational Agreement was concluded for 2017–18, but that no agreement was reached for 2019–20 owing to an absence of unanimity in the Group of Ten, as had already been the case in 2013–14 and 2015–16. In this regard, the Committee recalls that the system had already been criticized by the FGTB, CSC and CGSLB in 2013. At that time, the Government explained that the system placed emphasis on the participation of the social partners and that, in the cases where the public authority had to fix the wage band due to a lack of agreement, it had followed the draft agreement concluded by the majority of the social partners. The Committee noted those replies. ***Noting the divergence in approach between the trade unions and the Government, the Committee requests the Government to provide detailed information on the effect given to the provisions of the Act of 26 July 1996, as amended by the Act of 19 March 2017, so that it can assess their effects on the possibility of negotiating wages at any level.***

**Direct Request (CEACR) - adopted 2013, published 103rd ILC session (2014)**

The Committee notes the comments of the International Trade Union Confederation of 30 August 2013, as well as those of the Confederation of Christian Trade Unions, the General Confederation of Liberal Trade Unions of Belgium and the General Labour Federation of Belgium, dated 10 September 2013, concerning legislation restricting collective wage bargaining in the private sector, which is submitted to criteria of competitiveness. ***The Committee requests the Government to reply to these comments.***

**Direct Request (CEACR) - adopted 2011, published 101st ILC session (2012)**

Observations received from trade union organizations. (…) The Committee notes the communication dated 31 August 2011 from the General Confederation of Liberal Trade Unions of Belgium (CGSLB–Syndicat libéral) concerning the mechanism of establishing the maximum margin of growth in labour costs established by the Act of 26 July 1996, implemented by the Royal Decree of 28 March 2001. The Committee notes the Government's reply thereon.

***Collective Bargaining Convention, 1981 (No. 154)*** [35]

**Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015)**

The Committee notes the observations made by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2014. It also notes the observations made jointly by the General Labour Federation of Belgium (FGTB), the Confederation of Christian Trade Unions (CSC) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB) in a communication received on 29 September 2014, relating to the Government's report on the application of the Convention. The trade union organizations consider that the measures taken by the Government in the framework of the "wage moderation" policy which has been imposed since 2011, and is due to last until 2018, cover a period that exceeds the reasonable timeframe stipulated by the ILO supervisory bodies for restrictions imposed by the authorities on wage negotiations. ***The Committee requests the Government to provide its comments in this respect.***

***The Government is asked to to reply in detail to the present comments in 2015.***

### (2) Committee on Freedom of Association

84 In 2021, the Belgian complainant trade unions filed a complaint to the Committtee on Freedom of Association:

Case No 3415 (Belgium) - Complaint date: 06-DEC-21 (pages 37 to 48)

Confederation of Christian Trade Unions (CSC), General Labour Federation of Belgium (FGTB) and General Confederation of Liberal Trade Unions of Belgium (CGSLB)

[35] Ratified by Belgium in 1988.

In §146 of the CFA report, the following is stated: “Concerning the first point, the Committee notes that, as indicated by the parties, in accordance with the legislation in force, the social partners cannot agree on a wage standard providing for an increase higher than the maximum margin for wage cost increases established in advance by the CCE technical secretariat, which is calculated on the basis of criteria listed exhaustively by the Act. In this regard, the Committee notes that section 2 of the Act defines the wage cost increase as “the increase in nominal terms of the average wage cost per worker in the private sector” and that, in this context, the wage cost is defined by the same provision as “all remuneration in cash or in kind paid by employers to their employees for work completed by the employees during the period of reference ...”. While noting that section 10 of the Act establishes that certain payroll increases listed exhaustively are not included in the calculation of the maximum margin, **the Committee observes that the elements described indicate the existence of a significative restriction of the ability of the social partners to autonomously negotiate wage levels in the private sector**. In this regard, the Committee recalls that it is for the parties concerned to decide on the subjects for negotiation, and that determination of criteria to be applied by the parties in fixing wages (cost-of-living increases, productivity, etc.) is a matter for negotiation between the parties and it is not for the Committee to express an opinion on the criteria that should be applied in fixing pay adjustments [see Compilation of decisions of the Committee on Freedom of Association, sixth edition, 2018, paras 1289 and 1465.] Recalling that Belgium has ratified Conventions Nos 98 and 154, the Committee also underscores that it has considered that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with Convention No. 98; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties [see Compilation, para. 1290].” (emphasis added).

In §147 of the same report, the following can be found: “Concerning the temporary nature or otherwise of the restrictions on free negotiation of the maximum margin for wage cost increases described above, the Committee observes that, while the wage standard adopted every two years is not, by definition, permanent, the mechanism which allows for the setting of the standard, and which is the subject of the present complaint, is, however, continuous in time insofar as, in accordance with the legislation in force, it governs for an indefinite period of time the successive exercises for setting the maximum margin of wage cost increases. In this regard, and while duly taking into account the characteristics of the present case (participation of the social partners in the setting of the maximum margin, possibility of negotiating certain defined aspects of remuneration in addition to this margin, wage indexation mechanism), the Committee recalls that it has considered that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers’ living standards”.

In §148, the Committee concludes : “In the light of the foregoing, and taking duly into account the tradition of dialogue that characterizes collective labour relations in Belgium, the Committee requests the Government to take, in full consultation with the social partners, the necessary steps to ensure that the social partners are able to freely determine the criteria on which to base their negotiations on wage increases at the intersectoral level, and the results of those negotiations. The Committee requests the Government to keep it informed of any developments”.

## *3.3 Council of Europe*

85 The Council of Europe (CoE) is characterised by two main human rights instruments, the European Convention on Human Rights (ECHR, see Section 3.3.1) and the European Social Charter (ESC, see Section 3.3.2) with the latter being at the very core of this complaint. However, there are also other relevant documents (see Section 3.3.3).

### 3.3.1 European Convention of Human Rights (ECHR)

86 The right to collective bargaining is, unlike in other international and European human rights texts (see above and below), not explicitly referred to in the ECHR. However, it is clear from the case law of the European Court of Human Rights (ECtHR) the right to collective bargaining

is covered by Article 11 ECHR on 'Freedom of assembly and association' which states the following:

> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. (…)

87 Whereas already in the cases *Gustafsson*, *Wilson and National Union of Journalist and others*,[36] the ECtHR already included elements which were rather positive to the trade union involvement in the process of collective bargaining, the actual breakthrough in confirming that Article 11 ECHR covers the right to collective bargaining came with the ECtHR Grand Chamber decision in Demir and Baykara.[37]

88 In this case, the ECtHR Grand Chamber reconsidered and reversed its earlier jurisprudence, ruling that:

> "154. Consequently, the Court considers that, having regard to the developments in labour law, both international and national, and to the practice of Contracting States [of the Council of Europe] in such matters, the right to bargain collectively with the employer has, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention,(…)."

89 In its argumentation in relation to the particular right of collective bargaining, the ECtHR also noted the existence of other international and European instruments (i.a. ILO Convention No. 98 (see para. 73-74 above), the European Social Charter (Article 6§2) (see 3.3.2 below) and the Charter of Fundamental Rights of the European Union (CFREU, in particular Article 28 thereof) (see para. 110-111 below).

90 This judgment is thus also the fruit of that kind of dynamic interpretation often embraced by constitutional courts in Europe enabling them to continually modernise their case law; even the ECtHR refers in this judgment to the 'living nature of the Convention'.[38]

> The Court, in defining the meaning of terms and notions in the text of the Convention, can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. The consensus emerging from specialised international instruments and from the practice of

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[36] ECtHR, *Gustafsson v. Sweden*, App. No. 15573/89, Judgment of 25 April 1996; ECtHR, *Wilson, National Union of Journalists and others v. UK*, App. Nos. 30668/96, 30671/96 and 30678/96, Judgment of 2 July 2002.

[37] ECtHR, 12 November 2008, *Demir and Baykara v. Turkey*, App. No. 34503/97, Judgment of 12 November 2008. In this case a Turkish trade union, active in the civil/public service, was given access to the bargaining table and had concluded a collective agreement with the municipality. As at the at time (mid-1990s) there was no explicit recognition of the freedom of association in/for the Turkish public service and no legal framework for it, the Turkish courts considered the agreement to be null and void. As a consequence, public servants had to repay a wage increase granted under the collective agreement. This was declared to be in violation of Article 11 ECHR by the ECtHR.

[38] Jacobs, A. (2014), Article 11 ECHR : The Right to Bargain Collectively under Article 11 ECHR, in Dorssemont, F., Lörcher, K. and Schömann, I. (eds.) (2014) The European Convention of Human Rights and the Employment Relation, London: Hart Publishing, Chapter 12, p. 309-316. The ECtHR had in relation to Article 11 ECHR already pointed out before that the ECHR is a 'living instrument' by stating that '(…) it should be recalled that the Convention is a living instrument which must be interpreted in the light of present-day conditions'. (ECtHR, *Sigurdur A. Sigurjonsson v. Iceland* (24/1992.369/443), Judgment 30 June 1993, para. 35.

Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases.

In this context, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies (see, mutatis mutandis, Marckx, cited above, § 41).

### 3.3.2 European Social Charter (ESC)

91 Trade union rights and in particular the right to collective bargaining are embedded in Articles 5 and in particular 6§2 of the ESC, both articles belonging to the so-called "hard core provisions of the Charter" and their fundamental character remained thus unchanged in the Revised European Social Charter.

#### *a) Right to Collective bargaining (Article 6)*

92 The European Social Charter provides in Article 6§2 the following:

**Article 6 – The right to bargain collectively**

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

(…)

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements; (…).

93 As for the eventual restrictions allowed to be put on the rights established in Article 6, Article G provides the following:

**Article G – Restrictions**

1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

#### *b) Compilation of case law*

94 The 'Digest of the Case Law of the European Committee of Social Rights' (Digest 2022) compiles the main principles deriving from the ECSR's case law based on Statements of Interpretation, Conclusions or Decisions further in the following terms.[39] [40]

95 Concerning the protection offered by Article 6§2 ESC, the Digest 2022 states the following:

The exercise of the right to bargain collectively and the right to collective action represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to:

[39] Digest of the Case Law of the European Committee of Social Rights, June 2022.

[40] For a detailed analysis of Article 6§2, see also Dorssemont, F., Article 6: The Right to Bargain Collectively: A Matrix for Industrial Relations; in Bruun, N.; Lörcher, K.; Schömann, I. and Clauwaert, S. (2017), The European Social Charter and Employment Relation, London: Hart Publishing, (in particular) p. 257 -261.

(…)

- fair remuneration (Article 4), (…)

Nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police or armed forces in particular. Therefore, any restrictions must comply with the requirements set out in Article G of the Charter. (…)

According to Article 6§2, domestic law must recognise that employers' and workers' organisations may regulate their relations by collective agreement. (…) Whatever the procedures put in place are, collective bargaining should remain free and voluntary. (…) .

States Parties should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned, including the use of collective action. Trade unions must be allowed to strive for the improvement of existing living and working conditions of workers and in this area the rights of trade unions should not be limited by legislation to the attainment of minimum conditions.

96 The ECSR has emphasised this importance of the right to collective bargaining i.a. also in some Decisions on the merits in other collective complaints in the following terms:

109. From a general point of view, the Committee considers that the exercise of the right to bargain collectively and the right to collective action, guaranteed by Article 6§§2 and 4 of the Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to just conditions of work (Article 2), (…), fair remuneration (Article 4), (…).

110. In addition, the Committee notes that the right to collective bargaining and action receives constitutional recognition at national level in the vast majority of the Council of Europe's member States, as well as in a significant number of binding legal instruments at the United Nations and EU level. In this respect, reference is made inter alia to Article 8 of the International Covenant on Economic, Social and Cultural Rights (see paragraph 37 above), the relevant provisions of the ILO conventions Nos. 87, 98 and 154 (see paragraph 38 above) as well as the EU Charter of Fundamental Rights,(…).

111. The Committee recalls that on the basis of Article 6§2 of the Charter "Contracting Parties undertake not only to recognise, in their legislation, that employers and workers may settle their mutual relations by means of collective agreements, but also actively to promote the conclusion of such agreement if their spontaneous development is not satisfactory and, in particular, to ensure that each side is prepared to bargain collectively with the other (…)" (Conclusions I - 1969, Statement of Interpretation on Article 6§2). The Committee also considers that the States should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned.[41]

97 As or the restrictions allowed by Article G ESC, the Digest provides the following:

Article G provides for the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted. This provision corresponds to the second paragraph of Articles 8 to 11 of the European Convention on Human Rights. It cannot lead to a violation as such, but this provision can nevertheless be taken into account when assessing the merits of the complaint with regard to a substantive article of the Charter.

Article G is applicable to all provisions of Articles 1 to 31 of the Charter.

[41] Decision on admissibility and the merits, 3 July 2013, Complaint No. 85/2012, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, paras. 109 – 111.

Any restriction to a right is only in conformity with the Charter if it satisfies the conditions laid down in Article G. Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article G lays down specific preconditions for applying such restrictions.

Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article 31 must be interpreted narrowly. Thus, any restriction has to be:

(i) prescribed by law, Prescribed by law means by statutory law or any other text or case-law provided that the text is sufficiently clear i. e. that satisfy the requirements of precision and foreseeability implied by the concept of "prescribed by law"

(ii) pursue a legitimate purpose, i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals. In a democratic society, it is in principle for the legislature to legitimise and define the public interest by striking a fair balance between the needs of all members of society. From the point of view of the Charter, the legislature has a margin of appreciation in doing so. However, the legislature is not totally free of any constraints in its decision-making : obligations undertaken under the Charter cannot be abandoned without appropriate guarantees of a level of protection which is still adequate to meeting basic social needs. It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions.

(iii) necessary in a democratic society for the pursuance of these purposes, i.e. the restriction has to be proportionate to the legitimate aim pursued : There must be a reasonable relationship of proportionality between the restriction on the right and the legitimate aim(s) pursued.

In transposing restrictive measures into national law, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights. Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate.

Moreover, a thorough balancing analysis of the effects of the legislative measures should be conducted by the authorities, notably of their possible impact on the most vulnerable groups in the labour market as well as a genuine consultation with those most affected by the measures.

### *c) Compilation of ECSR case law on protection of social rights in times of (economic) crisis*

98 Recalling that the 1996 Wage Law was adopted in a (economic) crisis situation, it seems appropriate to refer to the ECSR case law on the protection of social rights in times of (economic) crisis.

99 As for the ECSR case law Digest 2022, this provides the following:

**ix Implementation of the Charter in time of economic crisis**

In conclusions 2009 [General introduction], the Committee made a Comment on the application of the Charter in the context of the global economic crisis. Under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

In its decision on the merits of 23 May 2012, in respect of General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions

(ADEDY) v. Greece, complaint No. 65/2011, the Committee indicated that this principle also applies to labour rights under the Charter.

100 The ECSR largely repeated and confirmed this approach also in its Decision on the Merits in the Collective Complaint 111/2014 GSEE v. Greece where it states:

> Having regard to the context of economic crisis, the Committee recalls that ensuring the effective enjoyment of equal, inalienable and universal human rights cannot be subordinated to changes in the political, economic or fiscal environment. The Committee has previously stated that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most." (General introduction to Conclusions XIX-2, (2009)). The Committee subsequently reiterated this analysis and stated that "doing away with such guarantees would not only force employees to shoulder an excessively large share of the consequences of the crisis but also accept pro-cyclical effects liable to make the crisis worse and to increase the burden on welfare systems […].” (GENOP-DEI and ADEDY v. Greece, Complaint No. 65/2011, op.cit., §18).
>
> The Committee considers that, in the light of the objectives of the Charter, the protection of public interest as envisaged by Article 31 could justify the taking of measures relating to labour law which restrict rights protected by the Charter to the extent that, in a context of crisis endangering the exercise of these rights, these measures would make it possible to adequately protect all beneficiaries, in particular employees and the most socially vulnerable. (…) [42]

101 In this context, reference could also be made to the CDDH Report on “Improving the protection of social rights in Europe, Volume 1”, where, next to the ECSR case law on the impact of the economic crisis on social rights, multiple references can be found on how other Council of Europe instances, including for example (the then President of) the European Court of Human Rights, the Secretary General and the Commissioner for Human Rights” have expressed themselves on this matter.[43]

### *d) Compilation of case law in relation to Belgium*

102 The ECSR has expressed itself under the reporting procedure in the following way on the 1996 Wage Law and the right to collective bargaining as established in Article 6§2:

> **Conclusions Belgium – 2022**
>
> The Committee takes note of the information contained in the report submitted by Belgium, as well as the comments submitted jointly by the trade union organisations Confederation of Christian Trade Unions (CSC); General Confederation of Liberal Trade Unions of Belgium (CGSLB); General Labour Federation of Belgium (FGTB), and by the Federal Institute for the Protection and Promotion of Human Rights, the Service to Combat Poverty Insecurity and Social Exclusion, the Institute for the Equality of Women and Men, Myria, and the Central Monitoring Council for Prisons, respectively. (…)
>
> The above-mentioned comments indicate that the Act of 26 July 1996 on the promotion of employment and protection of competitiveness was amended in 2017 by introducing a maximum wage band that severely limits the possibilities for collective bargaining and does not really allow wage increases, not only on the national level, but also at the sectoral and enterprise level. The comments note that, as a result of these restrictive amendments, the social partners were unable to reach an agreement in collective negotiations that took place at the national level in 2019 and 2021.
>
> The Committee further refers to the recently adopted conclusions of the Committee on Freedom of Association (CFA), which found that the amendments in question entailed a significant restriction of the ability of the social partners to autonomously negotiate wage levels in the private sector, in a manner

[42] Decision on the Merits, 23 March 2017, Complaint No. 111/2014, GSEE v. Greece, para. 88-89.
[43] CDDH (2018), “Improving the protection of social rights in Europe, Volume 1, Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe”, adopted by the CDDH at its 89th meeting (19–22 June 2018), paras. 34-43.

that was potentially incompatible with the International Labour Organization Conventions no. 98 and 154 (400th Report of the Committee on Freedom of Association, GB.346/INS/15, 9 November 2022, §§ 110-149).

The Committee asks for the Government's comments on the provisions of the Act of 26 July 1996, as amended by the Act of 19 March 2017, in light of the objections included in the above-mentioned third-party observations and the conclusions of the CFA.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

The comments of the trade union organisations Confederation of Christian Trade Unions (CSC); General Confederation of Liberal Trade Unions of Belgium (CGSLB), referred to in the Conclusions 2022, can be found here[44]

**Conclusions Belgium - 2014**

The Committee takes note of the information contained in the report submitted by Belgium.

In the private sector, interprofessional dialogue is governed by the Act of 26 July 1996 on employment promotion and preventive safeguarding of competitiveness. It is organised in a co-ordinated manner, in 2-year cycles. To this end, a procedure has been devised in which the social partners play the primary role and the public authorities may become involved at a later stage.

Initially, the National Labour Council and the Central Economic Council play a role in determining the actual state of the Belgian economy and in paving the way for social dialogue. Every two years, the National Labour Council and the Central Economic Council publish a joint report on employment and wage cost trends in Belgium and the reference member states. In addition, by 30 September every year, the Central Economic Council produces a technical report on the maximum permitted margins for growth in wage costs, based on the trends over the previous two years and on anticipated movements in wage costs in the reference member states. This report is sent to the Government, the Parliament and the social partners.

Next, the intersectoral social partners enter into negotiations. This bargaining process can result in an intersectoral agreement, essentially a policy agreement which must then be implemented at the various levels (intersectoral, sectoral, company).

The Committee notes that over the period 2009-2012, Belgium saw two rounds of social dialogue:

- for the period 2009-2010, the social partners concluded an interprofessional agreement dated 22 December 2008, whose main features included a package amounting to €250 per worker, an increase in the employer's contribution to the cost of season tickets for travel between home and the workplace to 75%, and changes to various welfare benefits relating to pensions, sickness and invalidity, unemployment, occupational diseases and accidents;

- for the period 2011-2012, a draft interprofessional agreement was concluded on 18 January 2011, but since it was not approved by two representative workers' organisations, the final agreement could not be signed. By Royal Decree of 28 March 2011, therefore, the Government capped increases in wage costs at 0.3% for 2011 and 2012.

From the statistics provided by the European Industrial Relations Observatory (EIRO) website, the Committee notes that in 2009 some 96% of the workforce were covered by collective agreements.

In the public sector, the Committee notes that, for most staff members in Belgian's public services, social dialogue continues to be governed by the Act of 19 December 1974 and that this model has not changed.

[44] Commentaires des organisations syndicales belges (CSC, CGSLB et FGTB) sur le 16e rapport national sur la mise en œuvre de la Charte sociale européenne - Articles 2, 4, 5, 6, 21, 22, 26, 28 et 29 pour la période 01/01/2017- 31/12/2020 – Cycle 2022, soumis par LE GOUVERNEMENT DE Belgique, Rapport enregistré par le Secrétariat le 15/07/2022.

**Conclusion**

The Committee concludes that the situation in Belgium is in conformity with Article 6§2 of the Charter.

103 In all other Conclusions since the come about of the 1996 Law (i.e. Conclusoins XVIII-1 (2006), XVII-1(2005), XVI-1 (2003), XV-1 (2000), XIV-1(1998) and XIII-4(1996), the ECSR did not express itself/refer to the particular issues at stake.

### 3.3.3 Other relevant Council of Europe documents

104 In its Resolution 2033 (2015) of 28 January 2015 on the "Protection of the right to bargain collectively, including the right to strike"[45], the Parliamentary Assembly (PACE) highlights the following:

> 1. Social dialogue, the regular and institutionalised dialogue between employers' and workers' representatives, has been an inherent part of European socio-economic processes for decades. The rights to organise, to bargain collectively and to strike – all essential components of this dialogue – are not only democratic principles underlying modern economic processes, but fundamental rights enshrined in the European Convention on Human Rights (ETS No. 5) and the European Social Charter (revised) (ETS No. 163).
>
> 2. However, these fundamental rights have come under threat in many Council of Europe member States in recent years, in the context of the economic crisis and austerity measures. In some countries, the right to organise has been restricted, collective agreements have been revoked, collective bargaining undermined and the right to strike limited. As a consequence, in the affected countries, inequalities have grown, there has been a persistent trend towards lower wages, and negative effects on working and employment conditions have been observed.
>
> 3. The Parliamentary Assembly is most concerned by these trends and their consequences for the values, institutions and outcomes of economic governance. Without equal opportunities for all in accessing decent employment and without appropriate means of defending social rights in a globalised economic context, the inclusion, development and life chances of whole generations will be put into question. In the medium term, the exclusion of certain groups from economic development, the distribution of wealth and decision making could seriously damage European economies and democracy itself.
>
> 4. Investing in social rights is an investment in the future. In order to build and maintain strong and sustainable socio-economic systems in Europe, social rights need to be protected and promoted.
>
> 5. In particular, the rights to bargain collectively and to strike are crucial to ensure that workers and their organisations can effectively take part in the socio-economic process to promote their interests when it comes to wages, working conditions and social rights. "Social partners" should be taken to mean just that: "partners" in achieving economic performance, but sometimes opponents striving to find a settlement concerning the distribution of power and scarce resources.

105 Therefore, the PACE calls in this Resolution amongst others on the member states to take measures to uphold the highest standard of democracy and good governance in the socio-economic sphere including:

> 7.1. protect and strengthen the rights to organise, to bargain collectively and to strike by:
>
> (…) 7.1.2. developing or revising their labour legislation to make it comprehensive and solid with regard to these specific rights; (…)
>
> 7.1.3. restoring these rights wherever institutions and processes have already been undermined by recent legislative or regulatory changes;

[45] PACE Resolution 2033 (2015), Protection of the right to bargain collectively, including the right to strike', Rapporteur Mr. Andrej Hunko; text adopted by the Assembly on 28 January 2015 (6th Sitting).

## *3.4 European Union*

### 3.4.1 Treaty

106 Based on the Treaty of the Functioning of the European Union (TFEU), the EU has the competence to regulate on the issues of social dialogue in general and collective bargaining in particular.

107 The promotion of dialogue between social partners is enshrined as a common objective of the Union and the Member States in Article 151 of the Treaty on the Functioning of the European Union (TFEU).

> **Article 151**
>
> The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.
>
> To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy. (…)

108 Next to the reference to the European Social Charter in Article 151 TFEU is should also recalled that in the Recital 5 to the Treaty of the European Union (TEU) that all EU member states are

> CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

109 Recognising the vital role of social dialogue (in particular collective bargaining) and social partners, the EU even provides for a specific social dialogue at 'its level', i.e. the European one and this for both the cross-sectoral as sectoral dimension. This is elaborated in Articles 152 and 154-155 TFEU.

> **Article 152**
>
> The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy. (…)
>
> **Article 154**
>
> 1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.
>
> 2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.
>
> 3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.
>
> 4. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

**Article 155**

1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.

The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2).

110 Secondly, there is of course also the **Charter of Fundamental Rights of the European Union** (CFREU) which provides under 'Chapter IV Solidarity' in its Article 28 on 'Right to collective bargaining and action' that:[46]

> Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

111 The 'Explanations' on Article 28 CFREU show that this article is clearly based on and inspired by Article 6 ESC (and its case law) and should thus be interpreted in light of the ESC provisions and ECSR case law:[47]

> This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). (…) As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. (…)[48]

### 3.4.2 Fundamental rights texts

112 Over the course of time, the European Community/European Union has developed several mainly politically binding catalogues of fundamental social rights.

113 Firstly, there is the **Community Charter of Fundamental Social Rights of Workers** (CCFSRW, 1989) which explicitly includes the right to collective bargaining:

> 12. Employers or employers' organizations, on the one hand, and workers' organizations, on the other, shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.

114 Furthermore, the 10th paragraph of the Preamble of the CCFSRW mentions that in the implementation of this Charter:

> (…) inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe; (10th paragraph of Preamble)

115 Secondly, there is the solemnly proclaimed **European Pillar of Social Rights** (EPSR) (November 2017).

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[46] For a recent extensive academic analysis, see Dorssemont, F. and Rocca, M. (2019) Chapter 22. Article 28 – Right of Collective Bargaining and Action, Filip Dorssemont, Klaus Lörcher, Stefan Clauwaert and Mélanie Schmitt (eds.) (2019), The Charter of Fundamental Rights of the European Union and the Employment Relation, London: Hart Publishing, pp. 465-504.

[47] Explanations relating to the Charter of Fundamental Rights, O.J. C303, 14 December 2007, p. 17-35.

[48] In the explanations to Article 27 on 'Workers' right to information and consultation within the undertaking' it is mentioned that "(…) The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. (…).

116 Under “Chapter II – Fair working conditions”, the right to social dialogue and collective bargaining is particularly referred to in Principle 8 of the Pillar as follows:

> **Social dialogue and involvement of workers**
>
> a. The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States.
>
> c. Support for increased capacity of social partners to promote social dialogue shall be encouraged.

117 It is thereby also to be noted that the accompanying Staff Working Document[49] highlights the following in relation to capacity building:

> While capacity-building is first and foremost a bottom-up process depending on the will and efforts of the social partners themselves, the provisions of the Pillar highlight that the efforts by the social partners can be complemented by public authorities **while respecting the social partners' autonomy**. Capacity-building refers to increasing the representativeness of social partners and to strengthening their operational, analytical and legal capabilities to engage in collective bargaining and to contribute to policy-making. This support can take the form of setting the appropriate institutional/legal framework, by giving a clear role to social partners in policymaking and also by providing financial support**.**

118 Furthermore, the abovementioned explanatory notes state in particular in the listing of the applicable “Union acquis”:

> **1. The Union acquis**
>
> ***a) The Charter of Fundamental Rights of the European Union***
>
> Article 28 of the Charter provides that workers and employers, or their respective organisations have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. Article 27 of the Charter gives every worker the right at the appropriate levels to be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

119 It has also to be recalled that the Preamble to the EPSR refers at several occasions to the European Social Charter and ILO Conventions in particular in relation to the interpretation and implementation of the EPSR:

> The European Pillar of Social Rights shall not prevent Member States or their social partners from establishing more ambitious social standards. In particular, nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed at Turin on 18 October 1961 and the relevant Conventions and Recommendations of the International Labour Organisation.

120 From the above it is clear that as Principle 8 thus builds on Articles 27 and 28 CFREU (and its interpretation), which on their turn draw amongst others on Article 6 ESC (and which in its turn draws on relevant ILO Conventions (see sections a) and b)), that both in the interpretation and implementation of Principle 8 due regard needs to be taken to the interpretation given to the latter mentioned ESC and ILO norms.

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[49] Commission Staff Working Document - Accompanying the document Communication from the Commission to the European Parliament, the Council, the European And Social Committee and the Committee of the Regions Establishing a European Pillar of Social Rights, Brussels, 26.4.2017, SWD(2017) 201 final.

### 3.4.3 Secondary law

121 In several EU secondary legislative acts (Directives, Regulations), a particular role is given to social partners, collective bargaining and collective agreements to regulate the concrete working conditions at stake in these acts.

122 Both in preamble and/or hard core provisions of these EU secondary legislative acts text is embedded to:

- Oblige member states to take, in accordance with national traditions and practice, adequate measures to promote social dialogue between social partners and encourage them (see amongst others **Directive 2006/54/EC** of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Article 21 on "Social dialogue"; Council **Directive 2000/78/EC** of 27 November 2000 establishing a general framework for equal treatment in employment and occupation[50] (Recital (33) and Article 13 on 'Social dialogue') or

- encourage member states to allow social partners to maintain, negotiate, conclude and enforce collective agreements (see amongst others **Directive (EU) 2019/1152** of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (Recital (38) and Article 14 on "collective agreements")

123 When it comes to the most relevant piece of secondary EU legislation in relation to (minimum) wages, reference should of course be made to the Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.[51] In its Article 4 it states:

> **Promotion of collective bargaining on wage-setting**
>
> 1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:
>
> (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;
> (b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;
> (c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;
>
> (d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective

[50] To note is that this Directive refers in its Recital 4 to the following International and European human rights instruments: the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.
[51] OJ L 275, 25.10.2022, p. 33–47.

bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80 % shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners. The Member State shall review its action plan regularly, and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.

124 From the Recitals, it is also clear that the main objective of the Directive, i.e. the promotion and even protection of collective bargaining has to be seen in the context of (recent) financial and economic crisises and to be construed in line international and European human rights instruments from the ILO, Council of Europe and EU (as they are elaborated above in the Sections 3.2, 3.3 and 3.4.1):

(16) While strong collective bargaining, in particular at sector or cross-industry level, contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during recent decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work. In addition, sectoral and cross-industry level collective bargaining came under pressure in some Member States in the aftermath of the 2008 financial crisis. However, sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened.

(24) In a context of declining collective bargaining coverage, it is essential that the Member States promote collective bargaining, facilitate the exercise of the right of collective bargaining on wage-setting and thereby enhance the wage-setting provided for in collective agreements to improve workers' minimum wage protection. Member States have ratified ILO Freedom of Association and Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949). The right to bargain collectively is recognised under those ILO conventions, under ILO Labour Relations (Public Services) Convention No 151 (1978) and ILO Collective Bargaining Convention No 154 (1981), as well as under the Convention for the Protection of Human Rights and Fundamental Freedoms and the ESC. Articles 12 and 28 of the Charter guarantee, respectively, the freedom of assembly and association and the right of collective bargaining and action. According to its preamble, the Charter reaffirms those rights as they result, in particular, from the Convention on the Protection of Human Rights and Fundamental Freedoms and the Social Charters adopted by the Union and by the Council of Europe. Member States should take, as appropriate and in accordance with national law and practice, measures promoting collective bargaining on wage-setting. Such measures might include, among others, measures easing the access of trade union representatives to workers.

125 For a further guidance on the content and objectives of the Directive, in particular in view of the transposition by Member States, reference could be made to the European Commission Expert Group Report on the "Transposition of Directive (EU) 2022/2041 on adequate minimum wages in the European Union".[52]

# 4 The Law

## *4.1 General principles*

126 For assessing the situation in Belgium in relation to Article 6§2 ESC the following elements will have to be taken into account as starting points:

127 The right to collective bargaining is a fundamental right of specific importance. This is shown by the importance that is attached to it in particular by the ILO (fundamental) Conventions and Declarations and the Council of Europe European Social Charter and the case law of their respective supervisory bodies, in particular the CEACR, CFA and ECSR. To note is that the importance is not attached only to ensure the right to collective bargaining as such but also because of the consequences the insufficient or non-respect for the right to collective bargaining could have on the larger socio-political context or the fullfilment of other fundamental workers' rights. See in that sense amongst others:

- ILO CEACR defining collective bargaining as "one of the principle and most useful institutions developed since the end of the nineteenth century", "contributing to social peace", "an effective instrument which facilitates adaptation to economic, socio-political and technological change" (see para. 81 above)";
- ILO Centenary Declaration for the Future of Work defining collective bargaining "an essential foundation of all ILO action and contributing to successful policy and decision making in its Member States" (see para.70 above);
- the ESCR itself considering that the right to collective bargaining represents "an essential basis for the fulfilment of other fundamental rights including fair remuneration" (see para. 95 above);

128 From all the cited international and European human rights instruments and case law cited above in Section 3, it is also crystal clear that the right to collective bargaining has not only a 'static' dimension but in particular also a dynamic character, which requires specific encouragement and promotion by Member States, thereby also respecting the autonomy of the trade unions and employers' organisations. See in that sense amongst others: ILO Convention n° 98 Article 4 and related CEACR and CFA case law (see paras. 74 and 80-81 above), European Social Charter Article 6§2 and related ECSR case law (see paras. 92 and 95-96 above), Principle 8 of the EPSR or Article 4 of Directive 2022/2014 on adequate minimum wages (see paras. 115-120 and 123-124 above).

129 Hence why under all the above cited international and European human rights instruments, the right to collective bargaining can thus in principle not be restricted or limited unless under specific and exhaustively described circumstances/conditions. For Article G§1 ESC, which is invoked in this complaint, this particularly implies:

> The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts,

[52] European Commission (2023), Report Expert Group Transposition of Directive (EU) 2022/2041 on adequate minimum wages in the European Union, November 2023, p. 75; for Article 4, see in particular pp. 21-27.

except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

130 And even if under Article G§1 (or other international and European human rights instruments) these exhaustively described restrictions and/or limitations would be allowed, they have to respect at least the level of protection provided by international standards and case law. Furthermore, in none of them, "economic (crisis) reasons", as the one at stake in this complaint, are explicitly mentioned.

131 On the contrary, such "economic (crisis) reasons" can not have as a consequence a regression on or reduction of fundamental rights such as right to collective bargaining or fair remuneration, and are thus on themselves further bound by very strict conditions: they should be exceptional measures, limited in time and accompanied by adequate additional safeguards to protect workers' living standards, see in particular above para. 82 on ILO CFA case law n° 1456-1458 and 1461 and para. 98-100 on the ECSR case law.

132 These principles will form the background for assessing whether the situation in Belgium is in line with Article 6§2 ESC in combination with Article G§1 ESC.

## *4.2 Requirements for justification according to Article G (1) ESC*

133 In order to comply with Article 6§2 ESC the Government must show that the restrictions imposed on the right to collective bargaining are in line with Article G§1 ESC. The following elements have to be fulfilled jointly.

### 4.2.1 Restrictions

134 The following elements of the 1996 Wage Law and its 2017 amendments are to be considered as restrictions to the right to bargain collectively (Article 6§2 ESC).

#### *a) Prior interference in collective bargaining*

135 In the present case, by fixing in advance a maximum margin available for wage increases, the authorities are interfering in the collective bargaining process even before collective bargaining has begun and are considerably restricting the framework for negotiations even before they start, to the detriment of the interests defended by the trade unions.

#### *b) Unilateral setting by the authorities of the parameters for determining the maximum wage increase*

136 Without dwelling on the numerous criticisms that may be levelled at the parameters introduced in the 1996 Wage Law with a view to calculating the maximum margin available, it is essential to stress that these parameters were imposed unilaterally by the authorities.

137 These parameters mean that the maximum margin available is so limited that the organisations representing employers have little interest in negotiating.

#### *c) Impediment to the autonomy of the parties*

138 The autonomy of the social partners in collective bargaining is a fundamental aspect of the principles of trade union freedom.

139 However, by unilaterally imposing the parameters for calculating the maximum wage increase, without any possibility of derogation, and by imposing in advance a mandatory maximum available margin, the authorities are seriously and permanently undermining the autonomy of the parties to collective bargaining.

140 Furthermore, as soon as wage increases are limited by law, one of the negotiating parties (the organisations representing the employers) has little interest in making use of them, and this

prevents the formation of balanced agreements that are satisfactory to all the parties involved. This creates an imbalance between the parties to collective bargaining.

*d) General application and unlimited and recurrent application over time of the restriction on wage increases*

141 The restrictions imposed by the 1996 Wage Law are of general application to the whole of the private sector and the mechanism at issue in the 1996 Wage Law is applicable for an indefinite period.

142 It is applied each time for successive periods of two years. However, this periodicity in no way detracts from the permanent nature of the scheme.

*e) Interim conclusions*

143 It has been shown that the situation in law contains important restrictions to the right to bargain collectively as guaranteed in Article 6§2 ESC. Accordingly, they have to be justified against the following requirements imposed by Article G§1 ESC.

### 4.2.2 'prescribed by law'

144 As to this requirement to be “prescribed by law” both the original 1996 Wage Law and the 2017 revision seem to fulfil this requirement, although it should thereby be noted that both have been unilaterally imposed by the Belgian government.

145 However, it is to be recalled that the ILO CFA has in this sense clearly stated that “legislative provisions prohibiting the negotiation of wage increases beyond the level of the increase in the cost of living are contrary to the principle of voluntary collective bargaining embodied in Convention No. 98; such a limitation would be admissible only if it remained within the context of an economic stabilization policy, and even then only as an exceptional measure and only to the extent necessary, without exceeding a reasonable period of time” and that such measures should be “accompanied by guarantees and the period of application should be limited in time”. (para. 81 ILO CFA case law n° 1456-1458 and 1461 and para. 98-99 on the ECSR case law). In the complaint at stake, the social partners are not only “prohibited” to negotiate wages increases, but in case they would nevertheless do so they risk even (financial) sanctions.

146 In addition, as to the particular point of setting the parameters/criteria for eventual wage increases, the ILO CFA stressed that “the determination of criteria to be applied by the parties in fixing wages is a matter for negotiation between the parties” and thus not for the government to be determined unilaterally (see para. 82 above, CFA case law reference n° 1465). and

147 And also the ILO CEACR stressed that “collective agreements must be able to establish conditions of work more favourable than those envisaged in law, and if this were not so, there would be no reason for engaging in collective bargaining” (see para. 81 above).

### 4.2.3 'legitimate aims'

148 Article G§1 ESC states several aims which are considered as legitimate for justifying restrictions. Among the list contained therein probably only the 'protection of public interest' could be eventually referred to by the Government.

149 However, for the 'protection of public interest' it does not suffice to put forward economic considerations. This interpretation is confirmed by the following international and European case law stating that “economic (crisis) reasons” can not have as a consequence a regression on or reduction of fundamental rights such as right to collective bargaining or fair remuneration, and are thus on themselves further bound by very strict conditions: they should be exceptional measures, limited in time and accompanied by adequate additional safeguards to protect workers’ living standards, see in particular para. 82 on ILO CFA case law n° 1456-1458 and 1461 and para. 98-100 on the ECSR case law.

150 Furthermore, the complainants consider that the Government can not invoke the aim “for the protection of rights and freedom of others” as firstly neither “financial adjustments” or “preventive safeguarding of competitiveness (as referred to in the title of the 1996 Wage Law) can amount to fulfilling this condition because they are not rights or freedoms in the sense of the Charter (nor the ECHR). On the contrary, for the complaints the 1996 Wage Law is clearly restricting/impeding on the right to collective bargaining as well as the right to a fair remuneration for workers, both rights which are rights in the sense of the Charter (respectively Article 6§2 and Article 4 ESC).

151 In legal terms, this means that the restrictions are not based on ‘legitimate aims’. Accordingly, Article G§1 ESC is not fulfilled and Article 6§2 ESC is violated.

### 4.2.4 'necessary in a democratic society'

152 But even if the Committee would not follow this line of reasoning it would still have to assess whether the restrictions were 'necessary in a democratic society'. This (final) element of Article G§1 ESC requires a specifically detailed analysis taking into account at least the following elements.

#### *a) General principles*

153 First of all, it will be important to define more precisely the general principles according to which the assessment will have to take place.

154 Generally, the ‘General principles’ for the legal framework of Article 6§2 ESC as described above will have to be the starting point.

155 The degree for justifying the restriction must be high because at least the 2017 amendment is a regression in relation to the previous 1996 Law. Even supposing that the previous legislation 'effectively realised' (Article G§1 ESC) the requirements of Article 6§2 ESC this regression needs specific justification.

156 Moreover, it will be important to take substantially account of all the international material which will be referred to in the following analysis.

157 Furthermore, the proportionality test requires to examine different elements, for example whether there are less intrusive measures possible.

158 Finally, the reasons put forward for justification will have to analysed. In this respect particular attention should be paid to the ‘economic analysis’ developed in the Annex 6.3 which indicate that there was no or not sufficient (economic) justification for in particular the 2017 revision.

159 Against this background, the complainants would like, for the Committee’s attention, to highlight/reiterate the following considerations:

#### *b) Prior interference in collective bargaining*

160 Even if the Committee on Freedom of Association (CFA) has already accepted that the authorities may intervene after an agreement has not been reached between the social partners it clearly states that this only applies to cases where the authorities intervene after the event. (see para. 82)

#### *c) Unilateral setting by the authorities of the parameters for determining the maximum wage increase*

161 In application of Convention No. 98 it has long been established that, "*the determination of the criteria to be taken into account by the parties in fixing wages is a matter for negotiation between them*". (see para. 82 above, CFA case law reference n° 1465); If the social partners were to wish to define these criteria, they would have to be in a position to determine for

themselves the parameters to be taken into account in determining the maximum wage increase.

*d) Impediment to the autonomy of the parties*

162 The autonomy of the social partners in collective bargaining is a fundamental aspect of the principles of trade union freedom.

163 While the current version of the 1996 Wage Law is already problematic with regard to Convention No. 98, as it considerably restricts the autonomy of one of the parties to collective bargaining (the organisations representing the workers) to the advantage of another party (the organisations representing the employers), Article 7, paragraph 2 of the 1996 Wage Law is a perfect illustration of the restrictions imposed by this legislation on the autonomy of the negotiating parties, since this article goes so far as to allow the authorities to annihilate any agreement reached between the social partners which would enshrine a maximum wage increase in excess of the maximum available wage margin calculated in accordance with Article 5§2 by the CCE secretariat.

164 In that sense it should be recalled that the ILO CEACR has stated that “public authorities should reduce to a minimum any possible interference in bipartite negotiations” (see para. 81 above). Idem the CFA stressed that “public authorities should refrain from any interference which would restrict the right to collective bargaining or impede the lawfull exercise thereof” and that any limitation on collective bargaining on the part of the authorities should be preceded by consultations with the workers’ and employers’ organisations in an effort to obtain their agreement”. (see para. 82).

*e) General application and unlimited and recurrent application over time of the restriction on wage increases*

165 As the CFA has already pointed out, "*if, in the name of a stabilisation policy, a government considers that the rate of wages cannot be set freely through collective bargaining, such a restriction should be applied as an exceptional measure, limited to what is essential, it should not exceed a reasonable period and it should be accompanied by appropriate guarantees to protect workers' living standards*". While the CFA has already recognised the need for a policy of wage moderation in the event of a crisis, it has made it clear that such limitations must be limited to sectors facing such a crisis. (See para. 82 above)

166 The restrictions imposed by the authorities must therefore be exceptional, necessary and limited in time. The 1996 Wage Law does not satisfy any of these conditions.

167 Moreover, the CFA has already taken the view that "*repeated recourse to legislative restrictions on collective bargaining can, in the long term, only have a harmful and destabilising effect on the climate of industrial relations, given that such measures deprive workers of a fundamental right and a means of promoting their economic and social interests*" and that "*restrictions on collective bargaining for three years are excessively long*". (See para. 82 above)

*f) Interim conclusions*

168 None of the previously examined elements of possible justifications for restricting the right to bargain collectively having been 'necessary in a democratic society' it shows that Article 6§2ESC has been violated (even if the Committee would not follow the reasoning under ‘legitimate aims’ (see above)).

# 5 Conclusions

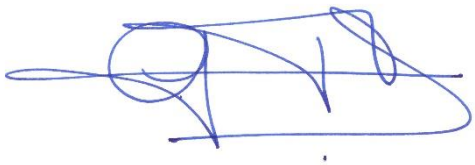
169 The complainants therefore are of the opinion that the ECSR should conclude that neither the 1996 Wage Law nor the 2017 amendments were in conformity with Articles 6§2 and G§1 ESC.

Brussels, 6 February 2024

On behalf of the ETUC,

Esther Lynch, ETUC General Secretary

On behalf of the CGSLB/ACLVB,



Gert Truyens, President CGSLB

On behalf of the CSC/ACV,

Ann Vermorgen, President CSC

On behalf of FGTB/ABVV,

Thierry Bodson, President FGTB

# 6 ANNEXES

## *Annex 6.1: Constitutions of the complainant organisations*

**ETUC (Annex 1(a)), CGSLB (Annex 1(b)), CSC (Annex 1(c)) and FGTB (Annex 1(d))**

All four Constitutions/Statutes will be provided as separate documents.

As for the mandate of the signatory Presidents/General Secretary, this stems from:

- **For ETUC:**

  **Article 22§3 ETUC Constitution 2023-2027** which states:

  *The General Secretary shall be the spokesperson of the Confederation and the coordinator of all activities, and shall have overall responsibility for the internal organisation of the Secretariat*

- **For CGSLB:**

  **Article 48 Statuts CGSLB** which states:

  *Le Président National coordonne la gestion de l'organisation, la représente à l'extérieur, y compris dans des procédures judiciaires, et préside les réunions des organes nationaux de gestion.*

- **For CSC:**

  **Article 35 Statuts de la CSC** which states :

  *Le Président*

  *Le Président de la C.S.C, est élu par ie Conseil Général pour une durée illimitée. Il est complètement au service de la C.S.C. Il a la Direction de la C.S.C, et de ses services. Il en est responsable devant le Bureau National, le Comité National et le Conseil Général.*

- **For FGTB :**

  ***2. LE SECRETARIAT FEDERAL***
  *Le secrétariat fédéral reste un Collège fédéral qui assume l'administration de la FGTB.*
  *Il s'exprime en tant que tel vis-à-vis du Bureau, du Comité fédéral et du Congrès.*
  *Par conséquent, le Secrétariat fédéral ne pourra être scindé en Collèges de Secrétaires appartenant aux communautés respectives.*
  *Le Secrétariat fédéral présentera au Bureau une répartition des tâches qui assure la coordination et la cohésion nécessaires à son bon fonctionnement.*

  ***Le Président***
  *Le mandat de Président reste un mandat fédéral et interprofessionnel.*
  *L'incompatibilité entre le mandat de Président de la FGTB et celui de Secrétaire d'une Interrégionale de la FGTB est maintenue.*
  *Le Président est d'office membre de son Interrégionale.*

*Le Président, en collaboration avec le Secrétaire général, dirige le Secrétariat fédéral, représente la FGTB vis-à-vis de l'extérieur, tant au plan fédéral qu'international et assume la gestion interne de la FGTB.*
*Le Secrétaire général remplace le Président lorsque ce dernier est absent.*

## *Annex 6.2: Consolidated text of the '1996 Wage Law'*

The full consolidated version of the 1996 Law (as subsequently amended including in 2017) can be consulted in French at: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1996072632&table_name=loi

For this complaint the relevant parts concern in particular Titles I and II, Articles 1-22; see below:

**JUSTEL - Législation consolidée**
http://www.ejustice.just.fgov.be/eli/loi/1996/07/26/1996021236/justel
Dossier numéro : 1996-07-26/32
**Titre**
26 JUILLET 1996. - Loi relative à la promotion de l'emploi et à la sauvegarde préventive de la compétitivité.
Situation : Intégration des modifications en vigueur publiées jusqu'au 30-06-2020 inclus.
Source : PREMIER MINISTRE
Publication : Moniteur belge du 01-08-1996 page : 20575
Entrée en vigueur : 11-08-1996
**Table des matières**

(...)
**Texte**
TITRE I. - Disposition générale.
Article 1. La présente loi règle une matière visée à l'article 78 de la Constitution.
TITRE II. - Sauvegarde préventive de la compétitivité.
CHAPITRE I. - [1 Définitions et champ d'application.]1
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(1)<L 2015-04-23/01, art. 5, 017; En vigueur : 27-04-2015>
Art. 2.Pour l'application du présent titre, on entend par :
- "Etats membres de référence" : les Etats membres de l'Union européenne suivants : l'Allemagne, la France et les Pays-Bas;

- "évolution du coût salarial" : l'augmentation en termes nominaux du coût salarial moyen par travailleur dans lesecteur privé, exprimé en équivalents temps plein et, le cas échéant, corrigé en fonction de modifications dans ladurée annuelle moyenne [1 effective]1 de travail, [1 exprimée en euro]1, en Belgique et dans les Etats membresde référence. L'augmentation salariale en Belgique et dans les Etats membres de référence est basée sur les données et les prévisions de [1 l'Institut des Comptes nationaux et des sources officielles nationales etinternationales disponibles]1;
[1 - le "coût salarial": le traitement des travailleurs (D.1), représente l'ensemble des rémunérations en espèces ou en nature que versent les employeurs à leurs salariés en paiement du travail accompli par ces derniers au cours de la période de référence des comptes, comme mentionnée dans l'annexe A, chapitre 4, point 4.02 du Règlement 549/2013 du 21 mai 2013 du Parlement européen et du Conseil relatif au système européen des comptes nationaux et régionaux dans l'Union européenne;

- le "handicap des coûts salariaux": l'écart entre l'évolution des coûts salariaux en Belgique et celle dans les Etats membres de référence depuis 1996, exprimé comme un pourcentage par rapport à 1996; - le "handicap absolu des coûts salariaux": le rapport entre, d'une part, la division des coûts salariaux des travailleurs diminuée des subsides salariaux par le nombre d'heures prestées en Belgique et, d'autre part, la division des coûts salariaux des travailleurs diminuée des subsides salariaux par le nombre d'heures prestées dans les trois Etats membres de référence;

- le "handicap historique des coûts salariaux": le handicap restant après l'élimination du handicap des coûts salariaux encouru depuis 1996. L'ampleur de ce handicap est fixée le Conseil Central de l'Economie;]1

- "inflation" : l'augmentation, exprimée en pourcentage, de l'indice-santé des prix à la consommation. L'inflation attendue est basée sur les données de l'Institut des comptes nationaux et [1 des sources officielles nationales et internationales disponibles]1;

- "indexation" : l'augmentation des salaires résultant de l'application des mécanismes d'indexation tels que décrits dans les conventions collectives de travail existantes relatives à la liaison des salaires à [1 l'indice-santé lissé]1;

- "augmentation barémique" : l'augmentation salariale existante en fonction de l'ancienneté, de l'âge, des promotions normales ou changements de catégorie individuels, prévue par des conventions collectives de travail;

- "emploi" : le nombre de personnes occupées dans le secteur privé, globalement et par secteur, en Belgique et dans les Etats membres de référence, ainsi que le nombre en équivalents temps plein ;

- "interlocuteurs sociaux" : les organisations représentatives des travailleurs et des employeurs au sein du Conseil national du travail.
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(1)<L 2017-03-19/04, art. 2, 020; En vigueur : 01-01-2017>

Art. 2bis. [1 La présente loi est d'application:
a) aux employeurs et aux travailleurs qui sont soumis à la loi du 5 décembre 1968 relative aux conventions collectives de travail et aux commissions paritaires;
b) aux organismes classés parmi les entreprises publiques économiques, telles que visées à l'article 1er, § 4, de la loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques.]1
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(1)<Inséré par L 2015-04-23/01, art. 5, 017; En vigueur : 27-04-2015>

Art. 3.§ 1. L'évolution de l'emploi et l'évolution du coût salarial sont exprimées en taux de croissance en pourcentages par comparaison avec les deux années antérieures et les prévisions pour les deux années suivantes, ainsi qu'avec la situation dans les Etats membres de référence.
§ 2. L'importance relative de chacun des Etats membres de référence est fixée pour chaque année par le poids que représente le Produit intérieur brut en valeur de ce pays dans le Produit intérieur brut global de l'ensemble des Etats membres de référence, [1 exprimé en euro]1.
§ 3. Le Roi peut, après avis du Conseil central de l'économie, fixer, par arrêté délibéré en Conseil des Ministres, les modalités techniques du calcul des facteurs visés au § 1er.
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(1)<L 2017-03-19/04, art. 3, 020; En vigueur : 01-01-2017>

CHAPITRE II. - Rapports sur l'évolution de l'emploi et de la compétitivité.
Art. 4.
<Abrogé par L 2017-03-19/04, art. 4, 020; En vigueur : 01-01-2017>

Art. 5.[1
§ 1er. Tous les deux ans, dans les années paires, le Conseil Central de l'Economie rédige un rapport avant le 15 décembre.

§ 2. La première partie du rapport est rédigée sous la responsabilité du secrétariat du Conseil Central de l'Economie et concerne les marges maximales disponibles pour l'évolution du coût salarial et le handicap des coûts salariaux.
Pour le calcul du handicap des coûts salariaux le secrétariat ne tient pas compte au moment du calcul de ce handicap des diminutions de cotisations de sécurité sociale du tax shift 2016-2020, en ce compris l'intégration du 1 % de non-versement du précompte professionnel dans les diminutions des cotisations sociales patronales, mais bien avec l'effet des diminutions des cotisations patronales suite au pacte de compétitivité de 2016, à l'exception des subsides salariaux pour le travail en équipe et le travail de nuit issus du pacte de compétitivité.
Les diminutions de cotisations patronales du tax shift 2016-2020, en ce compris l'intégration du 1 % de non versement du précompte professionnel dans les diminutions des cotisations sociales patronales, à l'exception des diminutions des cotisations dans le cadre du pacte de

compétitivité de 2016, seront utilisées pour contribuer à éliminer le handicap historique des coûts salariaux.
A chaque nouvelle décision de réduire les cotisations patronales après ou en sus du tax shift 2016-2020, au moins la moitié n'est pas prise en compte pour et au moment du calcul du handicap des coûts salariaux. Cette partie des diminutions est, par contre, utilisée pour contribuer à éliminer le handicap historique des coûts salariaux.
Pour le calcul de la marge maximale disponible visée à l'alinéa 1er, le secrétariat tient compte des prévisions pour l'évolution du coût salarial dans les Etats membres de référence au cours des deux années à venir. A la lumière des prévisions pour le développement du coût salarial dans les Etats membres de référence, les éléments suivants sont déduits par le secrétariat du Conseil Central de l'Economie du calcul de la marge maximale disponible :

- les indexations prévues;
- un terme de correction;
- une marge de sécurité de 25 % de la marge restante après application des diminutions suite aux indexations et au terme de correction, avec un minimum de 0,5 % .

Le terme de correction visé à l'alinéa 4 est déterminé de la façon suivante :

- si l'erreur de prévision est plus grande que la marge de sécurité précédente et que le handicap des coûts salariaux est positif ou égal à zéro, le terme de correction est égal au handicap des coûts salariaux. Si l'erreur de prévision est plus grande que la marge de sécurité précédente et que le handicap des coûts salariaux est négatif, le terme de correction est égal à la moitié du handicap des coûts salariaux. L'autre moitié, en valeur absolue, contribue à éliminer le handicap historique des coûts salariaux. Cette dernière partie n'est donc plus prise en compte pour et au moment du calcul du handicap des coûts salariaux;

- si l'erreur de prévision est négative et que le handicap des coûts salariaux est positif ou égal à zéro, le terme de correction est égal au handicap des coûts salariaux diminué de la marge de sécurité précédente. Si l'erreur de prévision est négative et que le handicap des coûts salariaux est également négatif, le terme de correction est égal à la moitié du handicap des coûts salariaux qui n'est pas dû à la marge de sécurité précédente, diminué de la marge de sécurité précédente. L'autre moitié, en valeur absolue, du handicap des coûts salariaux qui n'est pas dû à la marge de sécurité précédente, contribue à éliminer le handicap historique des coûts salariaux. Cette dernière partie n'est donc plus prise en compte pour et au moment du calcul du handicap des coûts salariaux;

- si l'erreur de prévision est positive ou égale à zéro, mais inférieure ou égale à la marge de sécurité précédente et que le handicap des coûts salariaux est positif ou égal à zéro, le terme de correction est égal au handicap des coûts salariaux, diminué de la différence entre la marge de sécurité précédente et l'erreur de prévision. Si l'erreur de prévision est positive ou égale à zéro, mais inférieure ou égale à la marge de sécurité précédente et que le handicap des coûts salariaux est négatif, le terme de correction est égal à la moitié du handicap des coûts salariaux qui n'est pas dû à la marge de sécurité précédente, diminué de la différence entre la marge de sécurité précédente et l'erreur de prévision. L'autre moitié, en valeur absolue, du handicap des coûts salariaux qui n'est pas dû à la marge de sécurité précédente, contribue à éliminer le

handicap historique des coûts salariaux. Cette dernière partie n'est donc plus prise en compte pour et au moment du calcul du handicap des coûts salariaux.

Le résultat du calcul visé à l'alinéa 4 est arrondi à la deuxième décimale. Si la troisième décimale est 5, l'arrondissement se fait vers le haut.

L'erreur de prévision est positive lorsque les indexations prévues et/ou de l'évolution des coûts salariaux dans les Etats membres de référence ne sont pas égales à la réalisation et que cela contribue à augmenter le handicap des coûts salariaux. L'erreur de prévision est négative lorsque les indexations prévues et/ou de l'évolution des coûts salariaux dans les Etats membres de référence ne sont pas égales à la réalisation et que cela diminue le handicap des coûts salariaux.

Le mécanisme visé à l'alinéa 3 et les mécanismes qui attribuent la moitié du handicap négatif des coûts salariaux qui n'est pas dû à la marge de sécurité à l'élimination du handicap historique des coûts salariaux, visés à l'alinéa 5, s'appliquent jusqu'à ce que le total des contributions à l'élimination du handicap historique des coûts salariaux visé aux alinéas 2, 3 et 5 et à l'article 6, § 2, est égal au handicap historique des coûts salariaux, de façon à éliminer ce dernier. Quand l'élimination est complète, le handicap négatif qui n'est pas dû à la marge de sécurité est attribué à la marge maximale disponible.

Les indexations et les augmentations barémiques sont toujours garanties, et ce, quelle que soit la marge maximale disponible.

Si l'application des alinéas précédents a pour conséquence que la marge maximale disponible ne permet pas d'éliminer le handicap des coûts salariaux au cours d'une période de deux ans, étant donné les prévisions disponibles à ce moment, le gouvernement prend des mesures après que les partenaires sociaux ont rendu un avis au sein du Conseil Central de l'Economie, avis qui est rendu dans un délai de deux mois.

La marge maximale disponible est scindée par le secrétariat du Conseil Central de l'Economie, dans son rapport, en une partie disponible dans tous les cas et une partie qui correspond à la moitié du handicap négatif des coûts salariaux qui n'est pas dû à la marge de sécurité et qui n'est pas attribuée automatiquement à la contribution à l'élimination du handicap historique des coûts salariaux, telle que visée à l'alinéa 5 et dont les partenaires sociaux décident s'ils l'utilisent éventuellement entièrement ou en partie pour contribuer à l'élimination du handicap historique des coûts salariaux. La partie que les partenaires sociaux considèrent comme contribuant à l'élimination du handicap salarial historique n'est plus prise en compte pour et au moment du calcul du handicap des coûts salariaux.

Le rapport visé à l'alinéa 1er comporte également une analyse de l'évolution de l'écart salarial entre hommes et femmes.

Le Conseil Central de l'Economie fait également un rapport, dans la partie du rapport visée à l'alinéa 1er, sur:

- le handicap absolu des coûts salariaux;

- le handicap absolu des coûts salariaux, corrigé pour le niveau de productivité;
- le handicap des coûts salariaux, corrigé pour les diminutions de cotisations patronales et les subsides salariaux en Belgique et dans les Etats membres de référence depuis 1996.

§ 3. La deuxième partie du rapport visé au paragraphe 1er comporte une analyse de la politique en matière de salaires et d'emploi des Etats membres de référence, ainsi que des facteurs de nature à expliquer une évolution divergente par rapport à la Belgique.

Un rapport est également rendu sur les aspects structurels de la compétitivité et de l'emploi, en particulier quant à la structure sectorielle des investissements nationaux et étrangers, aux dépenses en matière de recherche et développement, aux parts de marché, à l'orientation géographique des exportations, à la structure de l'économie, aux processus d'innovation, aux structures de financement de l'économie, aux facteurs de la productivité, aux structures de formation et d'éducation, aux modifications dans l'organisation et au développement des entreprises. Le cas échéant, des suggestions sont formulées en vue d'apporter des améliorations.

Le rapport comprend également une analyse du respect de la paix sociale et de l'influence de l'ancienneté sur les salaires, ainsi qu'une analyse de l'impact des niveaux de salaires sur le fonctionnement du marché du travail en général et, en particulier sur l'intégration des groupes à risques sur le marché du travail.

§ 4. Dans l'année durant laquelle le Conseil Central de l'Economie n'émet pas de rapport visé au paragraphe 1er, celui-ci publie, avant le 15 décembre, un rapport intermédiaire comprenant une actualisation de la première partie, à l'exception de la marge maximale disponible, et de la deuxième partie du rapport visé à l'article 5.

§ 5. Les rapports visés aux paragraphes 1er et 4 sont transmis sans délai à la Chambre des représentants et au gouvernement, ainsi qu'aux interlocuteurs sociaux.]1
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(1)<L 2017-03-19/04, art. 5, 020; En vigueur : 01-01-2017>

CHAPITRE III. - Les négociations salariales collectives.

Art. 6.[1
§ 1er. Tous les deux ans, dans les années impaires, avant le 15 janvier, l'accord interprofessionnel des interlocuteurs sociaux fixe, sur la base du rapport visé à l'article 5, § 1er, entre autres, des mesures pour l'emploi ainsi que la marge maximale pour l'évolution du coût salarial des deux années de l'accord interprofessionnel. Cet accord fixe également des mesures dans le cadre de la lutte contre l'écart salarial entre hommes et femmes, en particulier en rendant les systèmes de classification de fonctions neutres sur le plan du genre. Une attention particulière est également consacrée au respect des objectifs liés à la formation et à la mesure dans laquelle les secteurs ont effectivement augmenté leurs efforts.

La marge visée à l'alinéa 1er est ensuite fixée dans une convention collective du travail conclue au sein du Conseil National du Travail, rendue obligatoire par le Roi, conformément à la loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires.

§ 2. La marge maximale pour l'évolution du coût salarial, visée au paragraphe premier, est au maximum la marge maximale disponible, telle que visée à l'article 5, § 2. Les partenaires sociaux peuvent intégralement ou partiellement destiner la moitié du handicap des coûts salariaux négatif qui n'est pas dû à la marge de sécurité et qui n'est pas automatiquement attribué à contribuer à l'élimination du handicap historique des coûts salariaux, visé à l'article 5, § 2, alinéa 5, à contribuer à l'élimination du handicap historique des coûts salariaux. Cette marge peut être exprimée soit par deux pourcentages annuels, soit par un pourcentage bisannuel.

§ 3. A défaut de consensus entre les interlocuteurs sociaux dans un délai de deux mois à compter de la date du rapport visé à l'article 5, § 1er, le gouvernement invite les interlocuteurs sociaux à une concertation et formule une proposition de médiation, sur la base des données contenues dans ledit rapport.

En cas d'accord entre le gouvernement et les partenaires sociaux, la marge maximale pour l'évolution des coûts salariaux est fixée dans une convention collective de travail conclue au sein du Conseil National du Travail, rendue obligatoire par le Roi, conformément à la loi du 5 décembre 1968 sur les conventions collectives de travail et les commissions paritaires.

§ 4. La marge maximale pour l'évolution des coûts salariaux s'élève au minimum à zéro pour permettre les indexations prévues. Les indexations et les augmentations barémiques sont toujours garanties.

Si l'application de l'alinéa 1er a pour conséquence que la marge maximale ne permet pas d'éliminer le handicap des coûts salariaux au cours d'une période de deux ans, étant donné les prévisions disponibles à ce moment, le gouvernement prend des mesures, tel que visé à l'article 5, § 2, alinéa 10, après que les partenaires sociaux ont rendu dans un délai de deux mois un avis au sein du Conseil Central de l'Economie.]1

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(1)<L 2017-03-19/04, art. 6, 020; En vigueur : 01-01-2017>

Art. 7.

§ 1. [1 A défaut d'accord entre le gouvernement et les interlocuteurs sociaux, dans le mois suivant la convocation des interlocuteurs sociaux à une concertation visée à l'article 6, § 3, le Roi fixe, par arrêté délibéré en Conseil des ministres, la marge maximale pour l'évolution des coûts salariaux, conformément à l'article 6, § 1er et § 2, soit par deux pourcentages annuels, soit par un pourcentage bisannuel.

L'alinéa 1er est aussi d'application si la marge maximale pour l'évolution des coûts salariaux, telle que convenue dans l'accord interprofessionnel ou après la proposition de médiation du gouvernement, ne respecte pas les dispositions de l'article 5, § 2, et 6, § § 1er et 2.
L'article 6, § 4, est d'application à l'arrêté visé aux alinéas 1er et 2.]1.

§ 2. A défaut d'un accord interprofessionnel sur l'emploi, le Roi peut, par arrêté délibéré en Conseil des Ministres, pour la durée prévue de l'accord interprofessionnel, prendre des mesures supplémentaires en faveur de l'emploi, entre autres en ce qui concerne :

1° la redistribution du travail, en ce compris des possibilités de réduction du temps de travail, le travail à temps partiel, l'augmentation des chances d'emploi pour les jeunes et l'interruption de carrière;
2° une plus grande souplesse dans l'organisation du marché de travail.
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(1)<L 2017-03-19/04, art. 7, 020; En vigueur : 01-01-2017>

Art. 7_REGION_WALLONNE.
§ 1. [1 A défaut d'accord entre le gouvernement et les interlocuteurs sociaux, dans le mois suivant la convocation des interlocuteurs sociaux à une concertation visée à l'article 6, § 3, le Roi fixe, par arrêté délibéré en Conseil des ministres, la marge maximale pour l'évolution des coûts salariaux, conformément à l'article 6, §1er et § 2, soit par deux pourcentages annuels, soit par un pourcentage bisannuel.

L'alinéa 1er est aussi d'application si la marge maximale pour l'évolution des coûts salariaux, telle que convenue dans l'accord interprofessionnel ou après la proposition de médiation du gouvernement, ne respecte pas les dispositions de l'article 5, § 2, et 6, § § 1er et 2.
L'article 6, § 4, est d'application à l'arrêté visé aux alinéas 1er et 2.]1.

§ 2. A défaut d'un accord interprofessionnel sur l'emploi, le Roi peut, par arrêté délibéré en Conseil des Ministres, pour la durée prévue de l'accord interprofessionnel, prendre des mesures supplémentaires en faveur de l'emploi, entre autres en ce qui concerne :

1° la redistribution du travail, en ce compris des possibilités de réduction du temps de travail, le travail à temps partiel, l'augmentation des chances d'emploi pour les jeunes et l'interruption de carrière;
2° une plus grande souplesse dans l'organisation du marché de travail.
[2 L'habilitation visée à l'alinéa premier ne permet pas la prise de mesures visant à réduire les cotisations de sécurité sociale pour les employeurs du secteur du dragage, du remorquage et de la marine marchande.]2
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(1)<L 2017-03-19/04, art. 7, 020; En vigueur : 01-01-2017>
(2)<DRW 2017-02-02/24, art. 19, 021; En vigueur : 01-07-2017>

Art. 7_COMMUNAUTE_GERMANOPHONE.
§ 1. A défaut d'un accord entre le Gouvernement et les interlocuteurs sociaux, dans le mois suivant la convocation des interlocuteurs sociaux à une concertation telle que prévue à l'article 6, § 3, le Roi peut, par arrêté délibéré en Conseil des Ministres, déterminer la marge maximale pour l'évolution du coût salarial, conformément aux conditions prévues à l'article 6, §§ 1er et 2, avec comme minimum l'indexation et les augmentations barémiques.

§ 2. A défaut d'un accord interprofessionnel sur l'emploi, le Roi peut, par arrêté délibéré en Conseil des Ministres, pour la durée prévue de l'accord interprofessionnel, prendre des mesures supplémentaires en faveur de l'emploi, entre autres en ce qui concerne :

1° la redistribution du travail, en ce compris des possibilités de réduction du temps de travail, le travail à temps partiel, l'augmentation des chances d'emploi pour les jeunes et l'interruption de carrière;
2° une plus grande souplesse dans l'organisation du marché de travail.
[1 L'habilitation visée à l'alinéa 1er ne permet pas de prendre des mesures visant à diminuer les cotisations de sécurité sociale pour les employeurs des secteurs du dragage, du remorquage et de la marine marchande.]1
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(1)<DCG 2016-04-25/10, art. 37, 019; En vigueur : 01-10-2016>

Art. 7_REGION_DE_BRUXELLES-CAPITALE.
§ 1. A défaut d'un accord entre le Gouvernement et les interlocuteurs sociaux, dans le mois suivant la convocation des interlocuteurs sociaux à une concertation telle que prévue à l'article 6, § 3, le Roi peut, par arrêté délibéré en Conseil des Ministres, déterminer la marge maximale pour l'évolution du coût salarial, conformément aux conditions prévues à l'article 6, §§ 1er et 2, avec comme minimum l'indexation et les augmentations barémiques.

§ 2. A défaut d'un accord interprofessionnel sur l'emploi, le Roi peut, par arrêté délibéré en Conseil des Ministres, pour la durée prévue de l'accord interprofessionnel, prendre des mesures supplémentaires en faveur de l'emploi, entre autres en ce qui concerne :

1° la redistribution du travail, en ce compris des possibilités de réduction du temps de travail, le travail à temps
partiel, l'augmentation des chances d'emploi pour les jeunes et l'interruption de carrière;
2° une plus grande souplesse dans l'organisation du marché de travail.
[1 L'habilitation visée à l'alinéa premier ne permet pas la prise de mesures visant à réduire les cotisations de sécurité sociale pour les employeurs du secteur du dragage, du remorquage et de la marine marchande.]1
(1)<ORD 2015-07-02/08, art. 4, 018; En vigueur : 20-07-2015>

Art. 7bis. [1 Sans porter préjudice aux dispositions de la loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques et de ses arrêtés d'exécution, la marge maximale pour l'évolution du coût salarial telle que déterminée en application des articles 6, § 1er, et 7, § 1er, est d'application aux entreprises publiques économiques, visées à l'article 1er, § 4, de la loi précitée durant la période de deux années qui coïncide avec la période couverte par la convention collective de travail, visée à l'article 6, § 4, ou avec l'arrêté royal, visé à l'article 7, § 1er.]1
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(1)<Inséré par L 2015-04-23/01, art. 5, 017; En vigueur : 27-04-2015>

Art. 8.
§ 1. Des conventions collectives de travail relatives à l'évolution de l'emploi et à l'évolution du coût salarial sont conclues au niveau sectoriel (avant le 15 mai) ou au niveau des entreprises (avant le 30 juin) de la première année de la durée de l'accord interprofessionnel. L'évolution du coût salarial doit se situer dans la marge maximale visée aux articles 6 et 7, avec comme minimum l'indexation et les augmentations barémiques. Ce faisant, il est tenu compte du

mécanisme d'indexation des salaires en vigueur dans le secteur et des possibilités économiques du secteur. <L 1997-06-26/31, art. 4, 003; En vigueur : 28-06-1997>

§ 2. Les conventions collectives de travail visées au § 1er peuvent porter tant sur les conditions de rémunération et de travail que sur l'évolution de l'emploi, pour autant que l'évolution du coût salarial qui en découle respecte la marge visée aux articles 6 et 7.

§ 3. [1 Des conventions collectives sont également conclues dans le cadre de la lutte contre l'écart salarial entre hommes et femmes, en particulier en rendant les systèmes de classification de fonctions, existants ou élaborés après l'entrée en vigueur de cet article, neutres sur le plan du genre.]1

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(1)<L 2013-07-12/05, art. 6, 016; En vigueur : 01-07-2013>

Art. 9.

§ 1. Les conventions de travail au niveau intersectoriel, sectoriel, d'entreprise ou individuel ne peuvent prévoir de dépassement de la marge d'évolution du coût salarial visée aux articles 6 et 7.

(Les fonctionnaires désignés par le Roi exercent la surveillance du respect de l'obligation visée à l'alinéa premier).

[1 Si des partenaires sociaux sectoriels veulent s'assurer de la conformité d'un projet de convention collective avec la marge maximale pour l'évolution des coûts salariaux, ils peuvent demander l'avis de la direction générale des Relations Collectives de Travail du Service Public Fédéral Emploi, Travail et Concertation Sociale.

Une amende administrative de 250 à 5.000 euros peut être infligée à l'employeur qui ne respecte pas l'obligation visée à l'alinéa 1er.

L'amende administrative visée à l'alinéa 3 est infligée par l'administration compétente visée aux articles 16, 13°, et 70 du Code pénal social. Les articles 74 à 91 et 111 à 116 du Code pénal social sont d'application.

L'amende est multipliée par le nombre de travailleurs concernés, avec un maximum de 100 travailleurs.

La décision infligeant l'amende administrative visée à l'alinéa 4 est susceptible d'un recours, sur la base de l'article 3 de la loi du 2 juin 2010 comportant des dispositions de droit pénal social et dans les formes, délai et champ d'application visés à cet article.]1

§ 2. [1 Une amende égale à celle prévue par le paragraphe 1er, alinéa 3, peut être infligée, dans les mêmes conditions et selon les mêmes modalités, à l'employeur qui ne respecte pas les arrêtés pris en exécution de l'article 7, § 2.]1

§ 3. Avant le 30 novembre de chaque année, le Conseil supérieur pour l'emploi formulera des recommandations sur les conventions collectives de travail au niveau intersectoriel ou sectoriel, qui ne comportent pas de mesures suffisantes en faveur de l'emploi. Sur la base de ces recommandations, le Roi peut, par arrêté délibéré en Conseil des Ministres prendre les mesures appropriées qui s'imposent.

Ces recommandations ont comme objectif d'assurer une évolution de l'emploi parallèle à celle des trois Etats membres de référence avec l'ambition de maintenir au moins l'emploi intersectoriel global.

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(1)<L 2017-03-19/04, art. 8, 020; En vigueur : 01-01-2017>

Art. 10.Ne sont pas prises en compte pour le calcul de l'évolution du coût salarial :

1° les participations bénéficiaires, telles que définies par la loi;
2° les augmentations de la masse salariale résultant de l'accroissement du nombre de personnes occupées en équivalents temps plein.
(3° les paiements en espèces ou en actions ou parts aux travailleurs, en application de la loi du 22 mai 2001 [1 relative à la participation des travailleurs au capital des sociétés et à l'établissement d'une prime bénéficiaire pour les travailleurs]1.) <L 2001-05-22/33, art. 35, 009; En vigueur : 29-12-2001, étant entendu que le premier bénéfice distribuable est celui de l'exercice comptable qui se clôture au plus tôt le 31 décembre 2001>
(3° les cotisations versées dans le cadre des régimes de pension qui remplissent les conditions visées au Titre II, chapitre II, section II, de (la loi du 28 avril 2003 relative aux pensions complémentaires) et au régime fiscal de celles-ci et de certains avantages complémentaires en matière de sécurité sociale. <Erratum, voir M.B. 26.05.2003, p. 28892>) <L 2003-04-28/36, art. 71, 012; En vigueur : indéterminée>
(4° les primes uniques d'innovation visées à l'article 28 de la loi du 3 juillet 2005 portant des dispositions diverses relatives à la concertation sociale;) <L 2005-07-03/46, art. 30, 013; En vigueur : 01-01-2006>
[2 5° la prime corona visée à l'article 19quinquies de l'arrêté royal du 28 novembre 1969 pris en exécution de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs et émis au plus tard le 31 décembre 2021;]2
[2 6° le droit à l'absence rémunérée au travail visé à l'article 3 de la loi du 28 mars 2021 accordant un droit au petit chômage aux travailleurs afin de recevoir un vaccin contre le coronavirus COVID-19;
7° toutes les autres mesures exceptionnelles et temporaires contenant un élément d'augmentation du coût salarial, prises lors de la crise de la COVID-19 et ce avant le 12 avril 2021.]2
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(1)<L 2018-12-14/02, art. 12, 022; En vigueur : 01-01-2018>
(2)<AR 45 2020-06-26/07, art. 9, 023; En vigueur : 01-07-2021>

CHAPITRE IV. - Mécanismes de correction.
Art. 11.
§ 1. Les conventions collectives de travail intersectorielles biennales visées à l'article 6 prévoient un mécanisme de correction qui s'applique lorsqu'il s'avère, à la fin de la première année, que l'évolution du coût salarial en Belgique est supérieure à l'évolution du coût salarial dans les Etats membres de référence.

§ 2. Les conventions collectives de travail sectorielles prévoient un mécanisme de correction qui s'inscrit dans le cadre du mécanisme de correction intersectoriel visé au § 1er et qui tient compte des caractéristiques propres au secteur concerné.

§ 3. A défaut d'un mécanisme de correction ou lorsque le mécanisme de correction au niveau sectoriel, visé au § 2, s'avère inefficace, le mécanisme de correction intersectoriel visé au § 1er, est d'application.

Art. 12.
§ 1. Le dépassement de l'évolution du coût salarial visé à l'article 11, § 1er, est constaté par les interlocuteurs sociaux sur la base du rapport [1 ...]1 visé à l'article 5.

§ 2. Les interlocuteurs sociaux constatent le dépassement éventuel au plus tard le [1 15 décembre]1 de la première année et appliquent le mécanisme de correction prévu à l'article 11, § 2, ou, le cas échéant, § 1er.
A défaut de consensus entre les interlocuteurs sociaux, le Gouvernement convoque ceux-ci à une concertation avant le 31 décembre de la première année et formule une proposition de médiation.
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(1)<L 2017-03-19/04, art. 9, 020; En vigueur : 01-01-2017>

Art. 13.
§ 1. A défaut d'un accord entre le Gouvernement et les interlocuteurs sociaux dans le mois de la convocation des interlocuteurs, visée à l'article 12, § 2, alinéa 2, le Roi peut, par arrêté délibéré en Conseil des Ministres, imposer l'application du mécanisme de correction visé à l'article 11, § 2, ou, le cas échéant, § 1er, avec comme évolution minimale du coût salarial l'indexation et les augmentations barémiques.

§ 2. Si le mécanisme de correction visé à l'article 11, § 1er ou § 2, n'est pas fixé ou s'avère inefficace, le Roi peut, par arrêté délibéré en Conseil des Ministres, imposer une correction de l'évolution du coût salarial, sur la base du rapport [1 ...]1 visé à l'article 5, s'il s'avère à la fin de la première année que l'évolution du coût salarial en Belgique est supérieure à l'évolution du coût salarial dans les Etats membres de référence.
Nonobstant la correction visée à l'alinéa précédent, la marge comporte toujours au minimum l'indexation et les augmentations barémiques.

§ 3. Lorsque l'évolution de l'emploi constatée est inférieure à celle des Etats membres de référence, le Gouvernement et les interlocuteurs sociaux en concertation :
1° examineront les causes de cette évolution et
2° le cas échéant, prendront, chacun en ce qui le concerne, des mesures supplémentaires.
Cette concertation a comme objectif d'assurer une évolution de l'emploi parallèle à celle des trois Etats membres de référence, avec l'ambition de maintenir au moins l'emploi intersectoriel global.
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(1)<L 2017-03-19/04, art. 10, 020; En vigueur : 01-01-2017>

CHAPITRE V. - Dispositions complémentaires.

Art. 14.
§ 1. Tenant compte du rapport visé à l'article 4, le Roi peut, après avis du Conseil supérieur de l'emploi, prendre, par arrêté délibéré en Conseil des Ministres, des mesures de modération

équivalente des revenus des indépendants en faveur des investissements dans leur entreprise et de l'emploi, ainsi que des mesures de modération équivalente des revenus des professions libérales, des dividendes, des tantièmes, des allocations sociales, des loyers, et des autres revenus.

§ 2. [1 Les infractions aux dispositions arrêtées par le présent article sont punies d'une amende administrative qui n'excède pas les montants prévus à l'article 9, § 1er, alinéa 3.
Le Roi fixe, par arrêté délibéré en Conseil des ministres, les modalités de constat et de perception de cette amende]1.
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(1)<L 2017-03-19/04, art. 11, 020; En vigueur : 01-01-2017>

CHAPITRE V/1. [1 - Dispositions relatives à la surveillance.]1
(1)<Inséré par L 2017-03-19/04, art. 12, 020; En vigueur : 01-01-2017>

Art. 14/1. [1 Les infractions aux dispositions de l'article 9, § 1er, alinéa 1er et aux dispositions des arrêtés royaux visées à l'article 7, § 2, et 14, § 1er, sont recherchées et constatées conformément au Code pénal social.
Les inspecteurs sociaux disposent des pouvoirs visés aux articles 23 à 39 du Code pénal social lorsqu'ils agissent d'initiative ou sur demande dans le cadre de leur mission d'information, de conseil et de surveillance relative au respect des dispositions de la présente loi et de leurs arrêtés d'exécution.]1
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(1)<Inséré par L 2017-03-19/04, art. 13, 020; En vigueur : 01-01-2017>

CHAPITRE VI. - Dispositions transitoires et finales.

Art. 15. Le présent titre ne s'applique pas aux dispositions de l'accord interprofessionnel 1995-1996.

Art. 16.
§ 1. Pour le premier accord interprofessionnel conclu en application de la présente loi, on doit entendre par "augmentations barémiques", celles qui sont prévues dans les conventions collectives de travail, conclues avant le 1er mai 1996, déposées au greffe du Service des conventions collectives de travail du Ministère de l'Emploi et du Travail.

§ 2. L'exécution de l'article 48 de la présente loi ne peut donner lieu au paiement de l'amende administrative visée à l'article 9, § 1er.

Art. 17.
§ 1. Les arrêtés pris en application des articles 7, § 2, 9, § 3, et 14, § 1er, peuvent abroger, compléter, modifier ou remplacer les dispositions légales en vigueur.

§ 2. Les arrêtés visés au § 1er cessent de produire leurs effets à la fin du septième mois qui suit leur entrée en vigueur s'ils n'ont pas été confirmés par la loi avant cette date.

§ 3. Les arrêtés confirmés par la loi au sens du § 2 ne peuvent être modifiés, complétés, remplacés ou abrogés que par une loi.

Art. 18. Dans l'article 9, § 1er, de la loi du 6 janvier 1989 de sauvegarde de la compétitivité du pays, il est inséré un alinéa 2, rédigé comme suit :
"Le Conseil supérieur de l'emploi peut formuler des recommandations sur les mesures utiles sur le plan de l'évolution du coût salarial ou de l'emploi s'il est d'avis que les circonstances exceptionnelles se produisent.".

Art. 19. A l'article 10, § 1er, 4°, de la même loi, les mots "dans les secteurs exposés à la concurrence internationale" sont supprimés.

Art. 20. Aux articles 10 et 11 de la même loi, les mots "des articles 8, § 5, et 9, § 5", et "aux articles 8, § 6, et 9, § 6" sont remplacés respectivement par les mots "de l'article 9, § 5," et "à l'article 9, § 5".

Art. 21. Les Chapitres Ier et II de la loi du 6 janvier 1989 de sauvegarde de la compétitivité du pays sont abrogés.

Art. 22. Le Roi fixe, par arrêté délibéré en Conseil des Ministres, la date d'entrée en vigueur du présent titre.

(Note : Entrée en vigueur fixée le 15-11-1996, à l'exception de l'art. 21 qui entre en vigueur le 01-01-1997, par AR 1996-11-12/30, art. 1).

## *Annex 6.3: The Wage Law of 26 July 1996, reformed in 2017: an economic analysis*

### 1. Introduction

This complaint concerns the law of 26 July 1996, renewed by the law of 17 March 2017, also known as “the wage norm law”. The law was introduced in 1996 to keep the evolution of Belgian wages in the private sector (as well as a few public enterprises) in line with the wage evolution in the three neighbouring countries. In practise the law was a way to introduce active wage moderation and limit real wage growth. Although from 1996, the law already limited the right to negotiate real wage growth, it was mainly since the reform in 2017 that the right to collectively bargaining wages was actively violated.

Wages in Belgium are determined by multiple factors: wage indexation, sectoral pay scales, sectoral and interprofessional minimum wages and the biannual interprofessional wage agreement. The wage indexation depends on the sector (timing and frequency of indexation) and is not uniform for the entire economy. Wage indexation is the result of a sectoral negotiation between employers and trade unions and is enshrined in collective agreements for each specific sector. Indexation is a conventional feature of Belgian wage formation. Indexations are adjustments to price increases. It does not take into account an increase in productivity or business profits. In order to integrate this last element, an interprofessional negotiation between employers and unions takes place every two years, during which a wage margin is established. This margin determines wage increases in addition to wage indexation in all sectors. The process of how the wage margin is determined, is enshrined in the law of 26 July 1996.

### 2. The Law of 96 – original form

The main component of the law is a biannual determination of a so called “wage margin”, the margin available for conventional wage growth on top of indexation. The law allocated the task to the Central Council of Economy to calculate the maximal available wage margin. In the original law this margin was based on the expected wage growth in Germany, France and the Netherlands during the two coming years, and the indexation forecast in Belgium for the same period. The difference between these two figures was the maximal available margin. This figure was considered as a starting point from which interprofessional negotiations started in the so called “Group of 10”. This group gathers the leaders of trade unions and employers organisations. The Group of 10 had the freedom to interpret – according to their assessment of the economic and social situation – this figure and decide on a final figure. In the agreement made by the Group of 10, the so called “interprofessional agreement” the wage margin was always mentioned as being “an indication”, meaning that sectors could interpret the norm according to their own economic reality (productivity and profits) and negotiate sectoral agreements according to that reality.

### 3. The Law of 96 – 2017 reform

The reform of 2017 altered the wage formation process in various ways. On the one hand the freedom to negotiate was drastically reduced by introducing a “imperative” wage margin and on the other hand the calculation of the wage margin itself was fundamentally changed.

#### *An imperative wage margin*

The wage margin used to be determined by an interprofessional agreement until 2017. As mentioned before this agreement set a wage margin merely as an indication for sectoral negotiations. In the reformed law, the wage margin is unilaterally defined by the government

as an absolute maximum. It commits social partners to conclude an interprofessional collective agreement that is binding for all sectors. This means that no sectoral or company agreement can give higher pay rises than the interprofessional agreement, even when they would be willing to do that. This limits any freedom for sectors and companies to negotiate agreements in line with their productivity or profitability.

In the past, the government only intervened if no agreement was found between the social partners. This was an exceptional rule. This is no longer the case. The government intervenes structurally by imposing an absolute maximum wage margin. And, as explained in the following paragraphs, through a complex calculation method of the wage margin, it no longer gives the social partners any freedom to negotiate. This measure is no longer exceptional, nor temporary.

### *New parameters to calculate the wage margin*

The reformed law introduced multiple technical mechanisms with the only purpose to limit the wage margin for real wage growth, without any economic or legal basis. In this way government intervention already takes place even before the start of negotiations. This intervention is unilateral as the government determines the criteria and method of calculating the wage margin without the participation of the social partners. A brief overview of the main new mechanisms:

- **Introduction of a correction term**:
  Every year the Central Council of the Economy (CCE) calculates the “wage gap” between Belgium and the neighbouring countries. The wage gap compares the evolution (not the absolute difference) of wages in Belgium and its neighbours since 1996. This is an important reference, because the original aim of the law is to keep wage evolution in Belgium in line with its neighbours. In the original law this figure gave guidance during the negotiations of the wage margin. Since the reform of 2017, the law states that any wage gap since 1996 has to be completely deducted from the available wage margin, regardless of the economic, social and political situation. This mechanism is called the “correction term” and limits the freedom for social partners to determine the correct margin for wage growth.
- **Calculation basis of the wage margin**:
  Due to the introduction of the correction term the social partners are obliged to deduct a the wage gap from the available wage margin. But also, the basis to calculate the wage gap was artificially altered in 2017. More specifically, in 2015 it was decided that employer’s social security contributions were to be lowered from 33% to 25%. This measure was called ‘the tax shift’. This meant a serious reduction of labour costs for employers because they have to pay less social security contributions. Therefore the tax shift has led to a fall in labour costs (1.6% according to the CCE). But with the reform of the law of 96 it was decided that this reduction in labor costs will no longer be taken into account in the calculation of the wage gap with neighbouring countries. As a result, the wage gap since 2017 is artificially high. Moreover, nor the wage subsidies can be taken into account. Given the fact that the level of wage subsidies in Belgium is much higher than in the neighbouring countries, the calculated wage gap is 3 pp higher than it actually is. If both wage reductions would be taken into account, the wage gap would be 4,6 pp lower and no wage gap would have to be deducted.
- **Safety margin**:
  Even though the Central Council of Economy uses four different sources to calculate the wage gap and the available wage margin (central banks, OECD, European Commission and one national source for each country), from which the “outliers” are not taken into account, the new law states that there has to be used a safety margin of

at least 0,5 % in the calculation of the maximal available wage margin, in case the previsions were wrong. Although this safety margin is given back to social partners the next two years if it wasn't necessary, the introduction of this safety margin costed all Belgian workers structurally 0,5 % wage increase when it was introduced.

## 4. The lack of a justification of the reform

The altered calculation of the wage margin limits real wage growth severely. This is not only problematic from a legal and social point of view, there is also no economic justification for these reforms.

In an just and equitable economy, wages rise at the same rate as prices and productivity. In this way, workers are compensated for increased prices and share in rising corporate profits. Since the introduction of the wage law in 1996 there is an important disconnection between wage growth and productivity growth. Productivity has grown 15 % faster since 1996 than hourly wages. In the meanwhile, profit margins of Belgian companies are at a historical high level, also in comparison to our neighbouring countries. The macro-economic gross profit margin in Belgium topped at 45 % in 2022, compared to less than 40 % before the reform of 2017. Profit margin remain high ever since. The reform of the law means more space for higher profits and dividend payments and less space for wage growth. Consequently, the wage share in the economy dropped to less than 60 %, compared to almost 65 % in 2013. Even in these times of high inflation and high nominal wage growth, the Belgian National Bank clearly showed in winter 2023 economic projections that Belgian companies have sufficient high profit margins to incorporate the higher wage costs.

Also, since the financial crisis of 2008, the purchasing power of Belgian workers has stagnated. Real wages (gross wages net of inflation) have not increased. This is remarkable for two reasons. On the one hand, the productivity of Belgian workers has increased since 2008. That rising productivity is not reflected in their wages. Second, in the euro zone, real wages increased by 7% on average. Thus, purchasing power went up solidly in other countries, while Belgian workers have haven't made any progress for more than a decade.

The economic reasoning behind the reform of 2017, was the existence of a "historical wage gap". This is the difference in wage level between Belgium and its neighbours before 1996. This concept is used several times in the law. This goes against the original intent of the law, namely to monitor the evolution of wages, and not the level. For that purpose 1996 was taken as the point of reference. Social partners in the Central Council of Economy were given the task to determine the "historical wage gap", but no agreement was found. Economists have confirmed that comparing the wage level of countries without taking productivity level in account is the wrong approach. When taking into account productivity there is no "historical wage gap". On the contrary, in 2021 the hourly wage gap corrected for productivity was 3,1% % in the advantage of Belgium.

A possible justification for the reform could have been the fact that final sectoral agreements exceed the interprofessional wage norm. But the opposite is true: the wage norm has never been exceeded by the conventional wage growth above indexation, as visible in this table:

| Years | Maximal wage margin (above indexation) | Conventional gross hourly wage growth private sector (on top of indexation) |
|---|---|---|
| **1997-1998** | 1,9 % | 0,8 % |
| **1999-2000** | 2,8 % | 1,7 % |
| **2001-2002** | 3,3 %-3,9 % | 2,1 % |
| **2003-2004** | 2,4 % | 1,2 % |
| **2005-2006** | 1,2 % | 0,8 % |
| **2007-2008** | 1,1 % | 0,7 % |
| **2009-2010** | € 250 | 0,2 % |
| **2011-2012** | 0,3 % | 0,2 % |
| **2013-2014** | 0 % | 0,1 % |
| **2015-2016** | 0,5 % + 0,3 % | 0 % |
| **2017-2018** | 1,1 % | 0,7 % |

Another problematic element in the law is the fact that other goals and purposes of the law are not being respected. The law is named “the law to promote employment and preventive safeguarding of competitiveness”. But in practice, no measures are taken to serve these goals. Whereas factors such as innovation, investment and training are probably even more important on the longer term for employment growth and reinforcing the competitiveness of the Belgian economy. Belgium is performing rather weak in several of these areas, but no action is taken under the scope of this law. This proves the only purpose of the wage law is limiting decent real wage growth and the right to collective bargaining.

## 5. Conclusion

There is no economic justification for imposing a strict, imperative wage norm in Belgium. In a structural way, Belgian wages lag behind productivity increases. The Belgian social partners have always respected their indicative agreements. The current wage-setting framework does not allow for sectoral diversification in terms of productivity or profitability. The way the wage norm is calculated today is the result of a wrong comparison of wage costs between Belgium and neighbouring countries. In this way, the autonomy for collective wage bargaining is severely violated by unilateral government intervention.