THE ISSUE OF RESTRUCTURING IN BELGIUM

Basic Principles

In Belgium the first applicable principle is the freedom of a company to manage its business as it wishes and, consequently, delocalise, reorganise or lay people off in line with its strategy. Since the 1970s, various legal measures resulting from European directives have nevertheless governed its implementation, whether difficulties experienced by a company lead to collective redundancies or restructuring. Two concepts are distinguished under legislation. Belgian law provides for information and consultation of employee representatives in the case of collective lay offs, but not in the case of restructurings without collective lay offs. It also provides for procedures for informing the public employment authorities. These procedures are described below.

The Legal Framework

The procedure for the information and consultation of employee representatives

The freedom to carry out collective lay offs is conditioned, via an increasingly strict procedure, by the obligation to inform employees or their representatives (in companies of more than 50 employees or less if there is a specific agreement) and to consult them to envisage alternative measures in order to avoid job cuts.

The procedure to be followed is defined by CCT n° 24. According to this, employers who are planning to carry out collective lay offs must inform employee representatives (works council, unions, or if these bodies do not exist, the employees) beforehand and in writing.

The "Renault Law" of 13/02/98 states that the various stages of the procedure must be followed. Furthermore, this law lays down explicit penalties should the procedure not be followed. Finally, the "Renault Law" states that employers must provide a copy of the notification of its collective lay offs project to the employees concerned, on the same day as the public authorities are informed, by registered mail.

According to a study carried out recently by the law firm Claeys & Engels, the consultation phase lasts on average 39 days and has at least 5 meetings. It would seem as if the number of meetings has become an unwritten rule, below which a judge could consider, in the case of a dispute between the social partners, that this phase has not been completed.

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Procedure for informing the public authorities

The Royal Decree of 24 May 1976 provides for informing of the public authorities in two phases:

1) the employer who has the intention of carrying out collective lay offs must send the director of the competent sub-regional employment department a copy of the written document sent to the employee representatives;

2) following the consultation phase with the employee representatives, the employer must declare the redundancy project, by registered mail, to the director of the same employment bureau.

Concerning restructurings, the only obligation under the law is the introduction of a request to be recognised as a company undergoing restructuring from the Federal Ministry of Employment and Labour.

After the date of notification of the collective lay offs project to the relevant public authority, the same Royal Decree provides for a period of notice of 30 days before the lay offs can become effective. The regional public authority can reduce or extend the period depending on certain conditions, to ensure that appropriate support structures are in place for the employees (Cf. below).

Selection criteria for employees concerned by the lay offs

CCT (*Convention collective de travail – collective bargaining agreement)* n° 9 gives the works council the responsibility of setting the general criteria in the case of lay offs on the proposal of the company management. In reality, only 7 % of companies which have used collective lay offs have formally established employees' redundancy criteria (Claeys & Engels study), most employers fearing that such criteria would break the anti-discrimination law of 25 February 2003. In practice, the selection criteria are often decided on jointly in the works council and mainly concern age as a criterion, given the widespread use of early retirement mechanisms to avoid straight-forward redundancies.

Conflict solving, remedies and penalties

Querying of a collective lay offs procedure can be done collectively or individually. However, it can only concern the failure of the employer to observe the procedures for informing and consulting the employee representatives. In response, the employer can take the corrective measures necessary, re-start all or part of the procedure, or do nothing if they think that they have fulfilled their obligations. However, the Renault law provides for penalties for employers who have not observed the information and consultation phases. Employees can be re-hired or receive further compensation. Furthermore, should a company be closed in a situation where the Renault law has not been observed, the employer could receive a fine of 1 000 to 5 000 euros per employee in the entity at the time of the closure decision.

As in all social conflicts, conciliators from various joint commissions can intervene when the restructuring process is gridlocked. This intervention can be on their own initiative, on the request of the employee representatives, the employer or the Federal Ministry of Employment and Labour.

Notice

The law of 3 July 1998 concerning working contracts lays out the notice periods for redundancies, be they collective or not. If one of the parties does not observe this period of notice, it has to pay compensation to the other for breach of contract corresponding to the period of notice or the time remaining thereof. For the employees, CCT n° 75 provides, in the case of collective lay offs, longer periods of notice than those provided for under legislation (from 7 to 56 days, depending on length of service). For the employees, sector or company collective bargaining agreements can provide longer periods of notice (at least three months). These are often inspired from the "Claeys Formula" which takes into account the employees' age, length of service and salary.

Redundancy plans and support for employees made redundant

In Belgium, there is no obligation or legal framework for redundancy plans. The law simply states that employees who lose their jobs following circumstances beyond their control can receive unemployment benefit to replace their loss of earnings. However, legal measures and a number of practices are in place to improve the conditions of employees concerned by restructurings, for example:

- reimbursement of part of the outplacement costs for employees made redundant;
- the reduction of the new employers' social payments and a cut in the payments made by the employee taken on;
- reduction in social security payments in the case of a collective reduction in working time designed to avoid lay offs;
- the setting up of re-employment centres (Cf. below);
- payments made by the employer (or by the Company Closure Fund) of a severance payment calculated on the basis of the employee's length of service and age.

There are also other measures. CCT n° 10, for instance, states that the employer must pay "compensation in the case of collective lay offs". Furthermore, employees who cannot take early retirement can benefit, under certain conditions, from similar severance compensation ("Canada Dry"[1] compensation). Other measures can be negotiated jointly, particularly the maintaining of hospitalisation insurance, compensation for moral prejudice, etc.

This presentation of the legal framework shows that in Belgium the law has a certain weight in the regulating of redundancy and restructuring procedures, but not on the content of the measures to be taken.

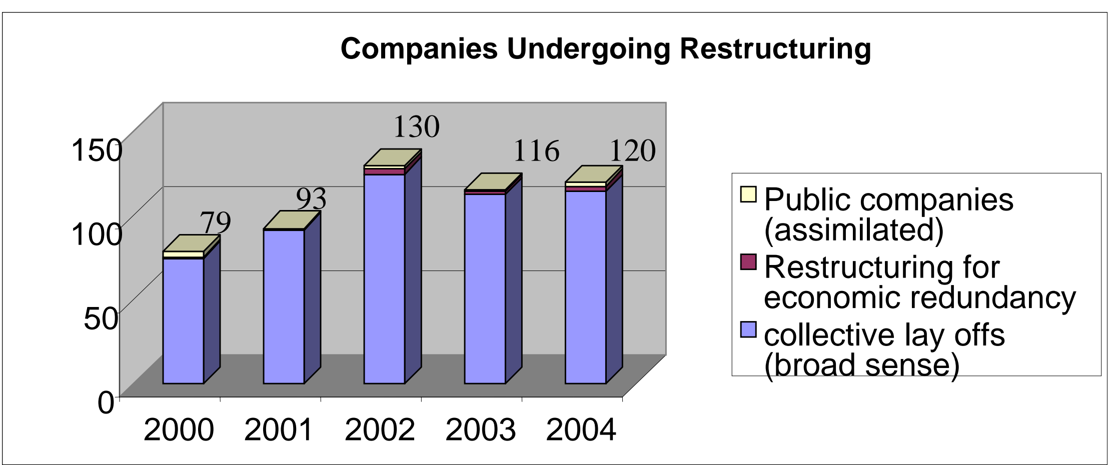
[1] This Canada Dry compensation will disappear to fall in line with demands from Europe concerning employment levels of older employees.

Legislation, specified by jurisprudence and recently strengthened by the closure of the Renault plant in Vilvoorde, therefore provides for an obligation of means, but not of results.

The size of the phenomenon

There is no official data quantifying the phenomenon of restructurings in Belgium. A study carried out by the law firm Claeys & Engels attempted to grasp the size of the phenomenon on the basis of an automatic survey of collective bargaining agreements concerning restructurings between 2000 and 2004. The results suggest that over a period of 2 years, 178 company restructurings took place, 87 of them leading to companies being closed and 91 collective lay offs. The data gathering method did not make it possible to look at the phenomenon exhaustively and since the study only covered 2 years the Lentic team decided to carry out its own study starting from data gathered at their source and concerning the whole of Belgium. This original work was carried out within the Federal Public Department for Employment, Labour and Social Consultation.

The first results are as follows:



This graph shows the constant growth of the phenomenon (with a peak in 2002, probably due to the stock market crisis at the time) and the large predominance of restructurings by collective lay offs. It should be noted, however, that this data only concerns companies which have declared themselves to be undergoing restructuring to the Belgian authorities.

The data gathered also makes it possible to see the importance of the phenomenon in terms of jobs.

Year	Number of workers belonging to a company undergoing restructuring	Number of people made redundant	% of employees made redundant	Number of early retirements	% of early retirements
2000	10 561	3 873	36.67%	1 481	38.24%
2001	36 611	8 759	23.92%	4 510	51.49%
2002	66 215	14 277	21.56%	6 452	45.19%
2003	23 893	7 118	29.79%	3 256	45.74%
2004	29 631	9 301	31.39%	3 200	34.40%
TOTAL	**166 913**	**43 328**	**25.96%**	**18 899**	**43.62%**

Regulation of employment and the stakeholders

A neo-corporatist system: the Belgian system of industrial relations might be described as neo-corporatist, insofar as the involvement of social partners in the public decision-making process is highly institutionalised. The system is characterised by sustained pressure and intervention from the state, mainly in pay bargaining, and the high levels of union membership, which stands at around 80% of the workforce. Employment is managed on the basis of formal consultation and bipartite (or even tripartite) co-decision.

The restructuring processes involves the following stakeholders:

- ***The public authorities***

In Belgium, the restructuring phenomenon is far from recent. In Wallonia, in particular, the economic fabric has continued to deteriorate since the end of the Second World War. In response to this situation, the public authorities have gradually developed a legal framework making it possible to position these restructurings, mainly by ensuring the social protection of employees during the transition phase between two jobs. However, this legal framework was not able to adapt to the changes in this phenomenon, which used to be characterised as being an exceptional phenomenon whereas nowadays it is frequent, if not constant.

In 1980, a special law (Law of 8 August 1980) gave the regions powers as regards the placement of workers and re-employment programmes for unemployed job seekers. The regions use the powers given to them by the Federal authorities differently in terms of employment management.

With its 2004 decree instituting the Re-employment Support Programme, Wallonia is focussing on collective re-employment incentives and the maintaining of a social group through cells managed by employee representatives, whereas Flanders and Bruxelles-Capitale focus more on individualised support systems such as outplacement.

- ***Trades unions***

In Belgium there are 3 main employee unions, which are, in order of size, the liberal union (CGSLB), the socialist union (FGTB) and the Christian union (CSC). Membership rates are very high at almost 80 %[2], which gives them a considerable role and power within the neo-corporatist system presented above. In the case of restructurings, their strategy is designed firstly to "save" the economic activity by presenting the management of the company in difficulty with alternative plans with less drastic social consequences than those put forward in the restructuring plan. To do this, the unions monitor the economic situation of the company. The unions also push companies to redeploy indicating, for instance, other potential sources of financing. It is only when the proposals have been eliminated by the management that the employee representatives start the social dimension of the negotiation.

- ***Employers' organisations***

Belgian employers are represented by the sector federations, which are grouped together within the Fédération des Entreprises de Belgique. This federation is authorised to negotiate interprofessional collective bargaining agreements and is always called to the negotiating table (like all the unions) when politicians wish to legislate in the social field. In the case of conflicts relating to restructuring, the employers' organisations can mediate to try and find conciliation[3].

- ***The public authorities***

The regional public employment and vocational training authorities (the Forem in Wallonia, the Orbem in the Bruxelles-Capitale region and the VDAB in Flanders) are there to provide support to any stakeholder in the employment market, i.e. help individuals in their professional training through training, support in finding a job, etc. and helping companies recruit and train their employees, etc. These public authorities are in charge of managing the consequences of restructurings in Wallonia (re-employment units) and in the Bruxelles-Capitale region (outplacement).

In Flanders, the outplacement programmes for workers who have been victims of restructuring are ensured by private companies.

[2] This high level can be explained by the almost exclusive role of the Belgian unions in granting certain public aids (such as unemployment benefit).

[3] The law states that this role is also mainly played by the chairs of the various joint committees.

➢ ***Local authorities***

In Belgium, the local authorities are not major players in the neo-corporatist system. However, their role, which has been fairly hidden up until now, is emerging given large restructurings which have a considerable and direct impact in the territories such as the one announced by Arcelor in the Liège region. Furthermore, recent regional environmental standards[4] also give them a role in sanitation in industrial sites. For instance, a commune (or group of communes) can propose to the Wallon Government to decree that a site should be abandoned and undergo sanitation works, paid for, if possible, by the site owner[5], the commune concerned also gives its opinion concerning the sanitation project, etc. Other public local organisations (such as Sorasi[6], the Foncière Liégeoise[7], etc.) also participate in the sanitation of industrial wastelands.

The main problems raised by the current system

One of the main weaknesses of the system comes from the fact that compensation payments take up the main part of the amounts the company has to carry out its restructuring. There are therefore very few resources remaining for individual and/or industrial re-employment. Furthermore, the system was devised for a period of full employment, characterised by the presence of major integrated companies and the mobilisation of a workforce on full-term contracts. Given this, a large number of employees fall through the net of legal protection systems either totally or partially (temporary workers, out-sourcing, fixed-term contract workers, employees of SMEs, etc.), and the tendency is likely to increase. Furthermore, problems can be seen on the employers' side. Some claim to be in restructuring to be able to give early retirement to employees who do not fulfil the legal requirements. Others put all the people to be laid of into their operational site so as to reach the minimum number of lay offs necessary to benefit from the facilities provided. This phenomenon is all the more worrying as, according to a recent study carried out by PriceWaterhouseCoopers[8], employers are deciding to restructure in order to maintain the value of the company (through shares) rather than because of general economic reasons.

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[4] Cf. the "Ground Decree" of April 2004, on the site www.decretsols.be. It should be noted that the Application of this decree was still awaited at 12/10/2005.
[5] Should the owner refuse to pay for the sanitation costs, the region can make an offer to buy the land, and in the case of refusal, carry out an expropriation.
[6] SORASI is a subsidiary of SPI+, the development agency for the Province of Liège, who main aim is to sanitise and renovate abandoned industrial sites in the Province of Liège.
[7] Belonging jointly to Arcelor and the Region of Wallonia, the Foncière Liégeoise works to use sites belonging to – and sanitised by – Arcelor, in consultation with the communes.
[8] Study quoted in the EIRO report: *Les systèmes de gouvernement d'entreprise et la nature de la restructuration industrielle*, EIRO, electronic document available on page: http://www.eiro.eurofound.eu.int/2002/09/study/tn0209102s.html

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