Belgium: New developments in Belgian employment law

The new initiatives i.a. include a new collective bargaining agreement regarding 'time-credit', implementation of index jump, a law extending the restraint on wages and an increase of the maximum face value of luncheon vouchers. The news also give a status on the Belgian Work-Place Pensions Act.

NEW COLLECTIVE BARGAINING AGREEMENT REGARDING ‘TIME-CREDIT’

In December 2014, the Government Michel I decided to increase the age of access to the so-called ‘end of career time-credit’ regime, allowing older employees to reduce their working hours while benefitting from a State allowance compensating this reduction.

Specific categories of employees
For specific categories of employees (such as employees in enterprise undergoing restructuring, performing heavy work or with a career of at least 35 years), the required age has been progressively increased from 55 years to 60 years (56 in 2016, 57 in 2017, 58 in 2018 and 60 in 2019). The social partners, nevertheless, may themselves conclude a collective bargaining agreement to maintain the required age at 55 years for a limited period of two years.

This new collective bargaining agreement (CBA no. 118 of 27 April 2015) has been concluded only for the period 2015-2016, with a (retroactive) period of effect of two years (1 January 2015 - 31 December 2016). According to this CBA, the age of access to ‘end of career time-credit’ for employees in the case of restructuring, performing heavy work or having a career of at least 35 years will be maintained at 55 years for 2015-2016.

It nevertheless remains necessary for the sectoral Joint Committees (or enterprises under restructuring) to conclude their own CBA in order to ‘activate’ CBA no. 118.

***

IMPLEMENTATION OF INDEX JUMP

On 27 April 2015, the law regulating the wage index jump was published in the Belgian State Gazette. Along with the wage norm for 2015 and 2016, this measure has polarised a number of the points of contention between the government and the unions these last few months.

About the 'index jump'
In Belgium, the method of automatic indexation of wages varies from sector to sector. In the public sector and for around half of the private sector, indexation occurs automatically as and when the (predetermined) 2% index jump-point is
exceeded. The last time this jump point was exceeded was in November 2012.

Despite union threats, parliament voted through the application of an ‘index jump’. The effect of this measure is that when the next index jump-point is exceeded, wages (and social benefits) will not be indexed. For those sectors where the indexation method is different, (for example, fixed date indexation), the measure will be applied gradually (thus curbing the index) such that, ultimately, all wages will equally be subject to a 2% index jump.

Indexation, therefore, is largely dictated by inflation. Whereas inflation has been virtually zero for almost a year, according to the latest estimates of the Federal Bureau for Planning, the index jump-point will not be reached in 2015, but rather in 2016. This, therefore, has the effect of holding back indexations and, consequently, the real effect of the index jump.

Of course, it is much more than simply an issue of calendar dates. It is the real financial impact on workers in the medium and long term which is the major bone of contention between the social partners.

The impact of the index jump (and the wage norm) on the wage costs and on the employees’ net revenues is highly complex, and difficult to calculate with any precision, which has already made it the subject the object of many calculations and disputed projections.

***

NO WAGE RENEGOTIATIONS BEFORE 2016

By means of the ‘wage norm’, the law pre-emptively determines the maximum margin by which wage costs can increase in any company. Politically, this limitation is based on the desire to support the competitive edge of the Belgian corporate sector by restricting the increase of wage costs for companies.

On 30 April 2015, the law regulating the ‘wage norm’ for 2015 and 2016 was published in the Belgian State Gazette. This is the result of long discussions between social partners.

In practice, the average annual wage cost of a worker for a company may not increase from one year to the next, by more than the limit set by the wage norm (with some exceptions referred to below).

The law of 28 April has again prolonged the restraint on wages (already applied in 2013 and 2014) at 0% for 2015. However, an increase of the wage norm by 0.5% for 2016 is planned. This means that new collective or individual negotiations can be entered into as from 2016, but only within the limit of 0.5% of the total wage costs. Prior to that, workers and employers cannot contractually agree to wage increases. The application of the wage norm does not, however, restrict a wage increase where a worker’s job duties have evolved, if his or her position has changed or if he or she takes on increased responsibilities. An increase related to a promotion, therefore, remains possible. There are also other ‘exceptions’ such as so-called ‘baremic’ wage increases (legal wage scale), the ‘solidarity’ part of workplace pension schemes or collective result based advantages (‘CBA 90’ collective bonuses). In principle, wage indexation also applies, in spite of the wage norm. Given the fact that an index jump has been decided, however, indexation should not, in the short term, affect this calculation. Furthermore, for 2016, the (same) law provides that a net maximum budget of 0.3% of the total wage costs can be used for net increases, without additional costs for employers (as, for example, by means of raising the value of lunch vouchers or bonus caps CCT90).
The practical question for you, as an employer, is how to monitor and enforce compliance with the wage norm.

It had been announced that the law is to be reformulated in order to reinforce the monitoring of this norm, but there has been no evidence of this so far. The issue, therefore, is fraught with uncertainty and the coming months will tell whether the government or the administration will take any specific measures in this regard.

The order of the day, therefore, is to remain on the alert to development.

***

**INCREASE OF THE MAXIMUM FACE VALUE OF LUNCHEON VOUCHERS**

*Providing luncheon vouchers enables an employer, subject to certain conditions, to increase employees’ net salary packages without incurring social security contributions and withholding tax on their face value. The maximum face value of luncheon vouchers has increased from EUR 7 to EUR 8.*

The previous cap of EUR 7, applicable to this exemption, consisted of two parts: maximum EUR 5.91, borne by the employer and minimum EUR 1.09 borne by the employee.

In January 2015, the agreement with the social partners increased the maximum amount borne by employers, from EUR 5.91 to EUR 6.91, bringing the total face value of the luncheon vouchers up to EUR 8. The employee’s part remains EUR 1.09 minimum. The aim of this measure is to enable employers to increase their part of the luncheon voucher and thereby raise the net purchasing power of employees while limiting the increase of the gross salaries costs for the employer.

A collective bargaining agreement or an addendum to the employment contract remains necessary to implement the increase in the face value of the luncheon voucher.

That measure is implemented in a Royal Decree of 26 May 2015 (concerning the social security contributions exemption) and in a bill pending before the Parliament (concerning the tax exemption).

The Government has also decided to raise the amount, which may be deducted by employers, from EUR 1 to EUR 2 on each luncheon voucher.

The Royal Decree of 26 May 2015 entered into force with immediate effect. The tax measures, contained in the bill pending before Parliament, will enter into force on 1 January 2016.

***

**NO SOLUTION YET FOR GUARANTEED RETURN**

The Belgian Work-Place Pensions Act (WAP/LPC) imposes a guaranteed return of 3.25% per annum on employer contributions (less expenses subject to a maximum of 5% and risk benefit costs) and of 3.75% on employee contributions, applicable to both defined contribution and cash balance plans.
The guaranteed return should be fully funded by the time employees retire or transfer their vested reserves to another pension vehicle, or the pension plan is discontinued. If at such time there is underfunding, the delta is to be financed by the employer.

Following significantly lower contractual returns offered by insurance companies, the guaranteed return has come under revision. As part of a general revision of the Work-Place Pensions Act, the Minister of Pensions had invited the social partners in the National Labour Counsel (NAR/CNT) to advise on the matter before 30 June. The unions have now announced that the advice of the social partners is not yet ready, and that they will resume the work in September. Discussions are said to have been constructive, but have not yet led to clear proposals.