

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT **C**

## CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

Gender Equality

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Petitions

# The impact of the crisis on fundamental rights across Member States of the EU

## Country Report on Belgium

STUDY FOR THE LIBE COMMITTEE







**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

**The impact of the crisis on fundamental  
rights across Member States of the EU**  
**Country Report on Belgium**

**STUDY**

**Abstract**

Upon request by the LIBE Committee, this study looks into the impact of the economic crisis and the austerity measures which were introduced as a response thereto, to the enjoyment of a set of selected fundamental rights by individuals in Belgium. It also contains recommendations on how to make sure that the enjoyment of these rights is ensured in the future.

**DOCUMENT REQUESTED BY THE  
COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

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European Parliament, manuscript completed in February 2015. Given the continuously changing situation in the Member State under examination, the cut-off date for the data collection was set for 30 June 2014.

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## LIST OF ABBREVIATIONS

- BOG** Belgian Official Gazette
- CEDAW** Convention on the Elimination of All Forms of Discrimination against Women
- CRC** Convention on the Rights of the Child
- CRPD** Convention on the Rights of Persons with Disabilities
- CSR** Country Specific Recommendation
- ECHR** European Convention on Human Rights
- ECSR** European Committee of Social Rights
- EMN** European Migration Network
- ESC** European Social Charter
- ESL** Early School Leavers
- FEDASIL** Federal Agency for the Reception of Asylum Seekers (Agence fédérale pour l'accueil des demandeurs d'asile/ Federaal Agentschap voor de opvang van azielzoekers)
- ICCPR** International Covenant for Civil and Political Rights
- ICEO** Interfederal Centre for Equal Opportunities (Centre Interfédéral pour l'Égalité des Chances/ Federaal Migratie Centrum)
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- ISCED** International Standard Classification of Education
- ITUC** International Trade Union Confederation
- NBB** National Bank of Belgium (Banque Nationale de Belgique/ Nationale Bank van België)
- NEO** National Employment Office
- NSSO** National Social security Office



**RESC** Revised European Social Charter

**UDHR** Universal Declaration of Human Rights

**UNCESCR** United Nations Committee on Economic, Social and Cultural Rights

**UNCRC** United Nation Committee on the Rights of Child

**UFAPEC** Francophone Union of parents' associations of catholic education  
(Union francophone des Associations de Parents de l'enseignement  
Catholique)

**WHO** World Health Organisation

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## EXECUTIVE SUMMARY

Up to the spring of 2011, the Belgian economy stood out from the rest of the euro zone – recovering strongly after the global economic and financial crisis of 2008-2009. However, a gradual slowdown in activity began in the second quarter of 2011 and continued in 2012. Economic growth moved into negative territory (NBB, 2012). In 2013, GDP grew only by 0.2% as an annual average. Employment held up relatively well during the first period of the crisis (2008–2009,) but the slight recovery that took hold in the labour market began to weaken in 2011. Though the economic relapse was less severe than in 2008–2009, the net loss of jobs was greater than expected. Young people, women and migrants were severely affected by the consequences of the crisis.

Belgium did not request financial support from the EU, the ECB or the IMF. However, the economic and financial crisis led to stricter monitoring of the Belgian budget by the EU, particularly its State debt which stands at around 100%. The new commitments, arising from the New Economic Governance at EU level, stimulated the debate on total wage costs in Belgium, the reform of preretirement and pension schemes, and the shift of taxes from the labour market to a less growth-distortive tax base.

To deal with the economic crisis, the Federal Government adopted a Recovery Plan in December 2008, and introduced anti-crisis measures to avoid, as much as possible, structural redundancies in the sectors hit by the crisis. In 2012, the Government decided on a recovery strategy containing 40 measures.

### Right to education

According to the OECD (2013), the crisis had no significant impact in this area and public spending on education, as a share of GDP in Belgium, remains one of the highest in the EU – at 0.9 percentage points above the EU average. The 85% proportion of annual education expenditure dedicated to human resource costs, ranks amongst the highest in the EU – far above the 70% EU average. Communities are taking measures of differing scope to increase the efficiency of spending, whilst ensuring quality education for everyone.

The crisis did not have an impact on the number of teachers in Belgium – which nevertheless has a shortage of qualified teachers – and salary cuts were not implemented during the crisis, with the exception of the German-Speaking Community where a 'Crisis decree' included, among other measures in the education sector, a temporary reduction of salaries of up to 2%.

Primary and secondary education is provided free-of-charge but parents are requested to contribute towards the cost of extra-curricular or other activities. It is an issue of concern, especially for vulnerable and low-income families. Besides, the "school allowance" that helps parents to bear the cost of school fees at the beginning of the year has been reduced by 15% in 2014, after a previous reduction of 15% in 2013. This is the consequence of a measure adopted by the federal government in 2012 to save €38 Million.

Despite the unfavourable economic context, the different Communities adopted a range of positive measures in order to improve the access and the quality of education, including measures relating to class sizes in primary and secondary education and measures targeting newly-arrived migrants.

### Right to healthcare

According to the OECD (2013), health spending accounted for 10.9% of GDP in 2012, i.e. higher than the OECD average of 9.3%. 75% of health spending (excluding investments) was funded from public sources in 2012 – slightly more than the OECD average of 72%.

Given the economic situation, there was a debate in Belgium on whether or not to respect the annual growth rate of 4.5% that was established in 2004. In 2012, the government decided to reduce healthcare expenditure for 2013 by limiting the growth rate to 2%. Savings on medical fees in the sectors of clinical biology and medical imaging have been made and structural measures were introduced to reduce the volume of prescriptions in medical imaging, and pharmaceutical coverage. This includes 1.95% price cuts, price cuts for old medicines, and prices for generics at least 31% lower than originals, as well as a temporary freeze on certain items of expenditure, e.g. revalidation, the screening programme for womb cancer, implants.

The question of the impact of the crisis on access to healthcare was not an issue which attracted attention in Belgium. It can be said the economic crisis resulted in no major changes to the scope or the breadth of healthcare coverage. Several measures, aimed at improving this access, have been taken during the period under scrutiny, regarding the group entitled to increased reimbursement of health care expenses, fee-supplement for hospitalised patients in communal or double rooms, specific status for people with a chronic condition, vulnerable patients, and the simplification of the preferential reimbursement system.

If no specific measure related to the crisis or austerity can be reported as having a direct impact on the right to access to healthcare in Belgium, the economic crisis had, however, an impact on people's income, and indirectly on their access to healthcare, raising the issue of financial accessibility to healthcare. A study, carried out by the European Commission as part of the QUALICOPC (Quality and Costs of Primary Care in Europe) project, shows that nearly 900,000 Belgians have had to postpone medical treatment.

### **Right to work**

To avoid massive redundancies, the Government adopted, in 2009, a set of temporary anti-crisis measures aimed at: (i) lowering the cost of labour, (ii) supporting the purchasing power of both active and non-active citizens in order to stimulate demand, (iii) reforming the labour market to avoid dismissals, and (iv) improving the transition from unemployment to work. These measures included: an extension to the scope of the temporary lay-off system for white collar workers; individual temporary reductions in working time; temporary adjustments to working time in a crisis.

During the crisis, Belgian enterprises varied in how they used the different anti-crisis devices. The system of temporary unemployment for economic reasons was most used. This use reached a peak in the first half of 2009, affecting some 200,000 workers at that time, more than twice the number before the crisis. The similar new system applicable to white-collar workers was successful to a smaller extent: involving around 80,000 individuals at its height in the beginning of 2010. Likewise, employers had limited recourse to the crisis time credit and the temporary adjustment to working time, which was applied to only 2,500 and 2,000 persons respectively at the end of 2009. According to the OECD (2013), the use of these devices saved 0.5% of employment in the private sector and 1.25% of permanent employment.

Various labour market reforms were also decided in 2011 "to bring the country out of the crisis, ensuring quality of life for all citizens and protecting the future of young generations": the reform of the career break schemes; reform of the unemployment scheme; and harmonisation of workers' statutes (blue-collar/white collar).

Repeatedly reprimanded by the European Commission due to wages that were too high in relation to competitiveness, Belgium opted for wage moderation. As part of its budget for 2013, designed to spare € 3,700 million, the Belgian government declared that wages in both the public and private sector would be frozen during 2013 and 2014. On 29 March 2013, the Council of Ministers approved the Royal Decree in which the wage norm for 2013-2014 was indeed set at 0%.

The strong degressivity of unemployment benefit as part of the reform of the unemployment regime remains the most criticised measure, with respect to its impact on poverty. A year after its implementation, the National Employment Office assessed the first impact of the degressivity of unemployment benefits and enhanced the follow-up of job seekers. In 2013, a total of 17,140 sanctions had been noticed. The impact is currently limited, but the reform has not yet produced its full effects. The number of people affected is expected to increase and benefits are expected to decrease to a greater extent. According to a recent simulation conducted by the FPS Social Security, while the reform strengthened the financial attractiveness of the jobs available, it further undermined the protection against poverty provided in the form of unemployment benefits, especially for the long-term unemployed. After the reform, the overall risk of poverty in cases of full unemployment rose faster and more strongly with the duration of unemployment: after 61 months, it reached 28% (compared to 21.5% before the reform).

The constitutionality of the Royal Decree implementing it has been questioned before the Council of State (Conseil d'Etat) – unsuccessfully.

### **Right to pension**

A new coalition government was sworn in on 6 December 2011 and quickly embarked on an ambitious reform and austerity programme, bringing the country's public debt in line with European rules and keeping the government out of the Eurozone debt crisis. The first reform introduced was the pension reform. Although the pension age remains at 65, the general goal of the reform was that everybody would work for at least two years longer than before, and that it would be harder to stop working earlier.

Early exits via early statutory retirement were rendered increasingly difficult. In general, the admission age for early retirement schemes in the private and public sector will gradually be raised by 2016 to 62 years after a professional career of 40 years. The preferential career systems for judges, priests and university professors were amended. The age limit for monitoring the actual availability to work<sup>1</sup> of the unemployed was raised in 2013 up to 55 years and in 2016 to at least 58 years.

Regarding the calculation of the pension, pre-pension years prior to the age of 60 are no longer fully taken into account for calculating pensions, except in some special systems, but the career unity principle has been relaxed in order to ensure that all days worked are effectively taken into consideration in calculating the pension. In the public sector, a pension is now calculated on the basis of the average income of the last ten years, instead of five years. The pension bonus encouraging people to work longer has been reformed. It is now provided on a flat-rate basis, and an entitlement to the bonus may be granted no earlier than one year after the early retirement pension qualification requirements have been met.

From 2013, people who are older than 65 and have worked for more than 42 years are allowed to work and earn as much as they want after retirement without losing any state pension rights. For others, the rules have been slightly relaxed and the amount they can earn without being taxed has been raised. However, it is still not possible to acquire extra pension rights by working after retirement age.

The constitutionality of the law of 28 December 2011 increasing the pension age from 60 to 62 years old, in the public sector, was questioned by associations of civil servants –

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<sup>1</sup>Work ability is an important criterion to receive unemployment benefits. Monitoring of work ability is one of the so-called activation strategies Member States take to incite the uptake of employment by unemployed (OECD Employment Outlook 2007, Chapter 5, 'Activating the Unemployed. What Countries do', available at: <http://www.oecd.org/employment/emp/40777063.pdf>).

unsuccessfully. The swift introduction of pension reforms sparked a direct reaction from unions who criticised the lack of social dialogue and negotiation on the issue.

### **Right of access to justice**

Although certain reforms and measures adopted by the government were not expressly formulated in relation with the crisis, they can have a not insignificant impact on the right of access to justice.

In 2013, the government decided to reform legal aid in order to make it more efficient and to reduce costs. Due to budgetary constraints, the budget allocated to legal aid has progressively decreased from €76.7 million in 2013 to €71.1 million in 2014.

The preliminary draft law notably requires trainee lawyers to take on, free of charge, five pro bono cases as part of their training. It also introduces the principle of the user contribution.

A measure that negatively affects the access to justice is the increase of access costs due to the introduction of a 21% VAT on lawyers' fees. Since 1 January 2014, Belgium imposes 21% VAT on the above-mentioned services. As a result, and unless a qualifying relief as statutory director or small VAT entrepreneur applies, all lawyers and lawyers-associates (including trainees who regularly provide legal services on an independent basis) will have to register for VAT purposes, account for VAT and file periodical returns.

### **Right to freedom of expression and assembly**

Austerity raised significant concern among the population, leading to many protests, mainly organised by trade unions and sometimes by civil society. None of the main three Belgian Unions reported any concern regarding the organisation of these events. They were quiet, peaceful and no specific incident or overflow was reported, except in one case reported by ITUC.

### **Right to housing**

A share of the population experiences major difficulty in finding **adequate housing** and in holding on to it. The right to adequate housing enshrined in Article 23 of the Constitution is far from being effective. Access to public housing is becoming more and more difficult as it represents only 9% of the real estate while more than 40,000 households are waiting for public housing in Brussels and more than 30,000 in Wallonia. Waiting times to get public housing vary from seven to eight years for studios and 12 years for three-bedroom apartments.

Further to the financial crisis of 2008, access to mortgages and property was clearly made more difficult, especially for low income households. Understandably, people have to turn increasingly to the private rental market where they encounter many difficulties. The increasing prices of rent on the private market led to a serious increase of judicial evictions.

### **Recommendations**

#### *General recommendations*

NGOs, human rights defenders and social partners play a significant role in monitoring the human rights consequences of austerity. The impact of budget cuts and other measures regarding stability and functioning should be assessed before implementation, to make sure that they would not jeopardise their ability to provide services to the groups affected by the crisis.

Periodic independent monitoring would be a useful tool to identify and assess the present and future impacts of economic policy and ensure that they do not undercut the minimum essential levels of social rights fulfilment.

There is a need to develop a culture of impact assessment of economic and social measures in terms of social and human rights, at all levels of Belgian socio-political organisations (State, Communities and Regions)

### Specific recommendations

#### **Right to education**

The Belgian authorities should further improve equal opportunities in access to education regardless of socio-economic status of children. A special attention should be paid to the abolition of schools' fees, in accordance with the Constitution.

#### **Right to healthcare**

It will be important in the future to make sure that the measures taken to limit the progress of healthcare expenses do not affect the accessibility of these, in particular for the low income households.

#### **Right to work**

Measures taken in the framework of the degressivity of unemployment benefits should be carefully assessed concerning their impact on the more vulnerable groups, and especially women. Although some improvement is observed regarding employment rate of older workers, there is still way to do in Belgium to fill the gap. Measures aimed at helping older workers to stay in activity until the retirement age should be further developed. Again, this is especially true for women.

#### **Right to pension**

It is important to ensure that reforms in the area of pensions, particularly the retirement age and methods of calculation, do not affect the adequacy of these. Again especially for women for which weak labour career may result in inadequate pensions.

#### **Right to housing**

Given the increasing demand for public social housing and the persistence of long-time waiting lists to access such housing, it is necessary to increase public investment for the construction of new public housing.

Initiatives signifying a real improvement in the access to adequate and decent housing should be developed and supported, such as Housing First and social real estate agencies.

Given the increased burden that housing costs are representing for low income households, there is a need to (re)start the debate to introduce a system of housing allowance in the Belgian social protection system.

#### **Right of access to justice**

The access to justice for all, and especially for those who need it most, should be ensured and not compromised during economic downturns. Particular attention should be given to vulnerable groups together with legal aid, to guarantee that they can meaningfully voice their claims against proposed or existing retrogression in the enjoyment of their rights.

# 1. IMPACT OF THE ECONOMIC CRISIS AND OVERVIEW OF THE MAIN MEASURES ADOPTED TO COPE WITH IT

## KEY FINDINGS

- Up to the spring of 2011, the Belgian economy stood out from the rest of the euro zone, recovering strongly after the global economic and financial crisis of 2008-2009. However, a gradual slowdown in activity began in the second quarter of 2011 and continued in 2012. Economic growth moved into negative territory. In 2013, GDP grew by 0.2% as an annual average.
- Employment in Belgium held up relatively well during the first period of the crisis (2008–2009) but the slight recovery that took hold in the labour market began to weaken in 2011. Though the economic relapse was less severe than in 2008–2009, the net loss of jobs was greater than expected.
- The different age groups were affected to various degrees by the crisis. Young people were severely affected by the consequences of the crisis as youth unemployment recorded the strongest rise, from 20.2 % in 2008, to 36.6% in 2013. Women and migrants (non-EU27) were also especially hit by the crisis. Their unemployment rates rose respectively from 10.9% in 2008 to 12.0% in 2013, and from 27.4% to 29.9% in 2013.
- Belgium did not request financial support from the EU and/or the ECB and/or the IMF. However, the economic and financial crisis led to a strengthening, by the EU, of monitoring the Belgian budget, especially its high State debt which stands at around 100%.
- The new commitments arising from the New Economic Governance at EU level stimulated the debate on: total wage costs in Belgium; the reform of preretirement and pension schemes; the shift of taxes from the labour market to a less growth-distortive tax base.
- To deal with the economic crisis, the Federal Government adopted a Recovery Plan in December 2008, with the aim of restoring trust, and introducing anti-crisis measures to avoid, as much as possible, structural redundancies in the sectors hit by the crisis. On 2012, the Government completed its budget review and decided on a recovery strategy containing 40 measures.

### 1.1. The impact of the crisis in Belgium

Up to the spring of 2011, the Belgian economy stood out from the rest of the euro zone, recovering strongly after the global economic and financial crisis of 2008-2009. During that crisis, it had demonstrated greater resilience, since the contraction of GDP had been less marked than in the main neighbouring countries and in the Eurozone as a whole (real GDP growth averaged 2.3% in 2010). Thanks to the strong rebound that followed, at the beginning of 2011, economic activity had already reached a level comparable to that prevailing before the crisis. However, a gradual slowdown in activity began in the second quarter of 2011 and continued in 2012. Economic growth moved into negative territory, although the fall was considerably smaller than at the time of the 2008-2009 global



recession (-2.8% in 2009)<sup>2</sup>. In 2013, GDP grew by 0.2% as an annual average. The recovery was supported by private consumption and exports<sup>3</sup>.

Employment in Belgium held up relatively well during the first period of the crisis (2008–2009). Businesses drew heavily on temporary crisis measures, such as temporary layoffs and temporary working hour reductions for workers (see section 4). But the slight recovery that took hold in the labour market began to wear off in 2011. Though the economic relapse was less severe than it was in 2008–2009, the net loss of jobs was greater than expected. At no time, in the last ten years, have fewer jobs been created in the Belgian labour market than during the most recent crisis period (2011–2013). Also, the labour market crisis is now affecting some of the sectors that had pulled through the first crisis period unscathed. Jobs in the public sector in particular, are disappearing faster than they are being created. These sectors are no longer able to offset the net job losses in industry, construction, trade and catering, and in the financial sector<sup>4</sup>.

**Table 1: Belgium's economy at a glance 2008-2013**

	2008	2009	2010	2011	2012	2013
<b>GDP growth<sup>5</sup></b>	+ 1%	-2.8%	+2.3%	+1.8%	-0.1%	+0.2%
<b>Inflation rate<sup>6</sup></b>	4.5%	0%	2.3%	3.4%	2.6%	1.2%
<b>Unemployment rate<sup>7</sup> (15-64 year-olds)</b>	9.2 %	11.1%	11.0%	10.3%	11.2%	12.5%
<b>Employment rate<sup>8</sup> (15-64 year-olds)</b>	62.4%	61.6%	62.0%	61.9%	61.8%	61.8%

**Sources:** National Employment Office and Eurostat

The different age groups were affected to various degrees by the crisis. The unemployment rate among young people (15-24 year-olds) recorded the strongest rise, from 20.2 % in 2008, to 36.6% in 2013<sup>9</sup>. Women and migrants (non-EU27) were also especially hit by the crisis. Their unemployment rates rose respectively from 10.9% in 2008 to 12.0% in 2013 and from 27.4% to 29.9% in 2013<sup>10</sup>. The group of 55-64 year-olds is the only group whose employment rate increased during the crisis (from 34.5% in 2008 to 37.3% in 2010 and 41.7% in 2013<sup>11</sup>). According to Mulder et al, this was linked to the increase in the legal pension age for women, the measures taken in the context of the Generation Pact and the

<sup>2</sup>National Bank of Belgium, 'Economic and financial developments, Report 2012' (2012).

<sup>3</sup>National Bank of Belgium, 'Economic and financial developments, Report 2013' (2013).

<sup>4</sup>Bulté, S. and Struyven, L., 'The Belgian labour market after 5 years of crisis: never before has the degree of job creation been so low', DynanaM Analysis, December 2013.

<sup>5</sup>National Employment Office, 'National Employment Office in 2013, Volume 2: indicators and evaluation of allocations' (*L'ONEM en 2013, Volume 2 : indicateurs et évolutions des allocations*), 2013, available at [http://www.rva.be/frames/frameset.aspx?Language=FR&Path=D\\_Documentation/&Items=6](http://www.rva.be/frames/frameset.aspx?Language=FR&Path=D_Documentation/&Items=6)

<sup>6</sup>Eurostat, 'HICP-Inflation rate. Annual average rate of change (%)', available at <http://epp.eurostat.ec.europa.eu/tqm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00118>

<sup>7</sup>Eurostat, 'Unemployment rates by sex, age and nationality (%)', available at [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa\\_urgan&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_urgan&lang=en); the unemployment rate represents the number of unemployed persons as a percentage of the same age active (unemployed and employed) population.

<sup>8</sup>Eurostat, 'Employment (main characteristics and rates) - Annual averages', available at [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa\\_emp\\_a&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=lfsa_emp_a&lang=en); the employment rate represents the number of employed persons as a percentage of the same age total population.

<sup>9</sup>Eurostat, 'Unemployment rates by sex, age and nationality (%)', op.cit.

<sup>10</sup>Ibid.

<sup>11</sup>Eurostat, 'Employment (main characteristics and rates) - Annual averages', op.cit.

greater recourse to part-time working (by means of the time credit system, for instance) in order to remain active up to an older age. This upward movement continued in the subsequent period, once the worst of the crisis was over<sup>12</sup>.

Belgium did not request financial support from the EU and/or the ECB and/or the IMF. However, the economic and financial crisis led to a stricter monitoring of the Belgian budget by the EU. In the framework of the Stability and Growth Pact procedure, the Commission prepared a monitoring report on Belgium, on 7 October 2009<sup>13</sup>. Belgium, historically, has high State debt which stands at around 100% (instead of the 60 % allowed at EU level) and it received clear indications as to how this reduction needed to be fulfilled, i.e. mainly through cuts in public spending. Furthermore, the new commitments arising from the New Economic Governance at EU level, and the required National reform programmes, have stimulated the debate on total wage costs in Belgium, the reform of preretirement and pension schemes, and the shift of taxes from the labour market to a less growth-distortive tax base. Other fundamental recommendations are the introduction of a system of decreasing unemployment benefits with the duration of unemployment or improving the effectiveness of active labour market policies (CSRs 2012, 2013, 2014).

Belgium was not only facing the global economic crisis during the period under scrutiny but was also facing a deep institutional crisis, delaying any political decision. New elections were held in June 2010, when the separatist and conservative New Flemish Alliance won a landslide victory in Flanders, while the pro-unity Socialist Party won the elections in French-speaking Belgium. Due to the major differences between the two winning parties, on a community and social-economic level, Government negotiations and formation took a total of 541 days.

## 1.2. Overview of relevant measures

To deal with the economic crisis, the Federal Government adopted a Recovery Plan in December 2008<sup>14</sup>, with the aim to restore trust. The measures focused on four axes: (i) dealing with the financial and banking crisis; (ii) strengthening the sustainable socio-economic levers and investments in the environment; (iii) business competitiveness, employment and a good social climate; (iv) restoring the sustainability of public finances. This plan included measures adopted in the framework of the social partners' interprofessional agreement (2008-2010), aimed at increasing the purchasing power of active and non-active people. The Flemish Government had already implemented a number of measures to counter the crisis with its recovery plan, "Herstel het vertrouwen" (Restore trust) of 14 November 2008<sup>15</sup>. At the end of 2008, the Walloon Government adopted an Anti-crisis Action Plan in reaction to the economic crisis<sup>16</sup>.

During 2009, various measures taken as part of the recovery plan, approved in December 2008, have been implemented. In addition, anti-crisis measures were introduced to avoid, as much as possible, structural redundancies in the sectors hit by the crisis. In December

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<sup>12</sup>De Mulder, J. and Druant, M., 'The Belgian labour market during and after the crisis', Economic Review, 2011.

<sup>13</sup>European Commission, 'Report from the Commission in accordance with article 104(03) of the Treaty on 7 October 2009 on Belgium', 2009.

<sup>14</sup>Federal Government, 'Stimulus: re-establish confidence' (*Plan de relance: rétablissons la confiance*), 11 December 2008, available at [http://www.belgium.be/fr/binaries/planderelance\\_tcm116-29600.pdf](http://www.belgium.be/fr/binaries/planderelance_tcm116-29600.pdf).

<sup>15</sup>The plan included actions based around three priority axes: improving the granting of credit to companies; strengthening the activation of labour market policy and accelerating and strengthening public and private investments: Flemish Government website, available at <http://www.vlaanderen.be/nl/vlaamse-overheid/persberichten/nota-herstel-het-vertrouwen>.

<sup>16</sup>It consisted of five intervention priorities: accelerate investments, access to credit, employment training, alliance environment employment and simplifying and accelerating administrative procedures: Walloon Government, 'Special meeting 05-12-08 Anti-crisis plan' (*Séance spéciale du 05-12-08 Plan d'action anti-crise*), 5 December 2008, available at [http://www.uwe.be/uwe/presse/docs/plan-d-action-anti-crise\\_GW051208.pdf](http://www.uwe.be/uwe/presse/docs/plan-d-action-anti-crise_GW051208.pdf).

2010, the Finance Minister said that Belgium had to take austerity measures in early 2011 to avoid speculative attacks. In January 2011, King Albert II asked the outgoing Prime Minister to prepare the 2011 budget with a better balance than that agreed with the European authorities. The budget, passed in March 2011, largely met European requirements<sup>17</sup>. On July 18 2012, the Di Rupo Government completed its budget review and decided on a recovery strategy containing 40 measures. By safeguarding consumers' purchasing power, enhancing competitiveness and creating jobs, the Government aimed to revive Belgium's economy in a sustainable way. A key priority for the recovery plan was minimal impact on the budget in order to safeguard growth-promoting budget consolidation<sup>18</sup>.

The table below offers an overview of the most notable measures introduced in Belgium – which may have an impact on the fundamental rights covered by this study. References to specific legal measures are made only where they are available in the mentioned source.

**Table 2: Overview of the measures related to fundamental rights under scrutiny, 2008-2014**

Year & Category	Measure
<b>2014<sup>19</sup> (Planned)</b>	
<b>Education</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>School allowance reduced by 15% (See section 2)</li> </ul> <p><b>Flanders</b></p> <ul style="list-style-type: none"> <li>Master Plan for the reform of secondary education</li> <li>New Flemish Parliament Act on the reinforcement of higher vocational education</li> </ul> <p><b>German-speaking Community</b></p> <ul style="list-style-type: none"> <li>Teachers' salaries reduced by 1% (see section 2)</li> </ul>
<b>Health</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>Statutory rate for real growth of healthcare limited to 3%</li> <li>Introduction of BelRAI-instrument improving the efficiency of public expenditure related to long-term care</li> <li>Simplification of the preferential reimbursement system (see section 3)</li> </ul> <p><b>Wallonia</b></p> <ul style="list-style-type: none"> <li>Adoption of a Plan improving the quality of hospital care</li> <li>"Great Dependence Plan" reinforcing services for disabled people</li> <li>New E-health strategic plate-form for the development of ICT solutions</li> </ul>
<b>Employment</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>Wage norm set at 0% real wage growth (Royal Decree 28/04/2013) (see section 4)</li> <li>Various reductions of labour related taxes and contributions (Act of 15/05/2014)</li> <li>Reinforced and quicker active follow-up of jobseekers (enlargement of the target audience, specific path)</li> </ul> <p><b>Flanders</b></p> <ul style="list-style-type: none"> <li>Extension of the Flemish 'systematic approach' towards inflowing jobseekers up to 60 years old and the introduction of a youth guarantee</li> <li>Introduction of the Flemish career vouchers encouraging workers to invest in skills development</li> <li>New integration policy with a focus on the employment rate of people with</li> </ul>

<sup>17</sup>Canazza, C., Vielle, P., Van Gehuchten, P.P. and Dorsemont, F., 'National situation: Belgium' (*Situation nationale: Belgique*) in Escande Varniol, M.C., Laulom, S., Mazuyer, E. and Vielle, P.(eds.) *Quel droit social dans une Europe en crise ?* (Larcier, Bruxelles, 2012).

<sup>18</sup>Trends-Tendances, 'Belgium: Recovery Plan in 40 Points' (*Belgique : Plan de relance en 40 points*) (18 July 2012), Press Release, available at <http://trends.levif.be/economie/politique-economique/belgique-plan-de-relance-en-40-points/articlenormal-208029.html>

<sup>19</sup>Unless otherwise noted, this section is based on the National Reform Programme 2014: European Commission, 'National Reform Programme 2014', 25 April 2014, available at [http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014\\_belgium\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_belgium_en.pdf).

Year & Category	Measure
	a migrant background (Decree of 7/06/2013) <b>Brussels-Capital Region</b> <ul style="list-style-type: none"> <li>Extension of the Brussels systematic, high quality, formalised and customised support to all jobseekers</li> </ul> <b>Wallonia</b> <ul style="list-style-type: none"> <li>Mandatory integration path for migrants (Decree of 27/02/2014).</li> <li>Action Plan related to Youth Guarantee</li> <li>Extension of the AIRBAG plan to sustain self-employment for people aged +50</li> </ul>
<b>Justice</b>	<ul style="list-style-type: none"> <li>VAT on lawyers at 21 % (See section 6)</li> </ul>
<b>Social</b>	<ul style="list-style-type: none"> <li>Reform of pension schemes: minimum age for entering retirement raised to 61 and the minimum length of career increased up to 39 years (Royal decrees 26/4/2012, 20/09/2012)</li> <li>Taking into account the last months of work to calculate pensions (Act of 19/04/2014) (See section 5)</li> </ul>
<b>2013<sup>20</sup></b>	
<b>Education</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>School allowance reduced by 15% (see section 2)</li> </ul> <b>French-speaking Community</b> <ul style="list-style-type: none"> <li>Two decrees aimed at better coordination of education and youth policies (see section 2)</li> </ul> <b>Flanders</b> <ul style="list-style-type: none"> <li>New Flemish Action plan on early school leaving (See section 2)</li> </ul> <b>German-speaking Community</b> <ul style="list-style-type: none"> <li>Teachers' salaries reduced by 1% (see section 2)</li> </ul>
<b>Health</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Statutory rate for real growth of healthcare limited to 2% with an extra 40 million euro for new jobs in the non-profit sector (see section 3)</li> <li>Measures to curb the growth in the level of health expenditure: savings on medical fees and pharmaceutical coverage and a temporary freeze on certain items of expenditure (see section 3)</li> <li>New rules regarding fee-supplements for hospitalised patients (see section 3)</li> </ul>
<b>Employment</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Wage norm set at 0% real wage growth (Royal Decree 28/04/2013) (see section 4)</li> <li>New unified redundancy rules (see section 4)</li> <li>Extension of the activation period and strengthening of the social contribution for poorly educated youths (Royal Decree 29/03/2013)</li> <li>Adaptation and reinforcement of targeted reductions for younger and older workers (Royal Decree 24/01/2013)</li> <li>Specific reductions and more flexible contractual arrangement for the catering sector (Royal Decree 24/01/2013)</li> <li>Reinforcement of the social "work bonus" for the low paid (Royal Decree 24/01/2013)</li> <li>Further structural reduction (Fiscal work bonus) for middle income earners (Royal Decree 11/12/2012)</li> </ul> <b>Flanders</b> <ul style="list-style-type: none"> <li>Introduction of a Flemish Youth guarantee</li> <li>Extension of the Flemish guidance model for the elderly, the so-called systematic approach, towards inflowing jobseekers of 56 and 57 years old.</li> <li>Broadening of the Flemish diversity policy through its integration in a strategic HR and career guidance model.</li> </ul> <b>Wallonia</b> <ul style="list-style-type: none"> <li>Establishment of a single coaching process to accompany all job seekers – modulated on the basis of their individual characteristics (Decree</li> </ul>

<sup>20</sup>Unless otherwise noted, this section is based on the National Reform Programme 2013: European Commission, 'National Reform Programme 2013' (25 April 2013), available at [http://ec.europa.eu/europe2020/pdf/nd/nrp2013\\_belgium\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2013_belgium_en.pdf).

Year & Category	Measure
	26/01/2012) <b>Brussels Wallonia Federation</b> <ul style="list-style-type: none"> <li>Dual education reform</li> </ul>
<b>Justice</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Reform of justice (see section 6)</li> </ul>
<b>Social</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Reform of the pension bonus system by which older workers enjoy an increased state pension (Program law of 28/06/2013) (See section 5)</li> <li>Pension schemes: minimum age for entering raised and minimum length of career increased (Law of 28/12/2011, Royal decrees 26/4/2012, 20/09/2012) (See section 5)</li> <li>Prepension schemes: eligibility conditions for the schemes tightened (more demanding age (60,5) and seniority conditions (38 years)</li> <li>Minimum pension age and career conditions become identical in private and public sector.</li> <li>Launch of the Housing First project</li> </ul> <b>Brussels Capital-Region</b> <ul style="list-style-type: none"> <li>New Housing Code (see section 8)</li> </ul> <b>Flanders</b> <ul style="list-style-type: none"> <li>Decision regarding the social public service obligations and Fund for the prevention of evictions (see section 8)</li> </ul> <b>Wallonia</b> <ul style="list-style-type: none"> <li>Adoption of cadastral mapping (see section 8)</li> <li>Administrative fines imposed on landlords of dwellings declared uninhabitable (see section 8)</li> </ul>
<b>2012<sup>21</sup></b>	
<b>Education</b>	<b>Wallonia</b> <ul style="list-style-type: none"> <li>Mechanism for Welcoming and Schooling New Migrants, DAPSA (Decree 18 /05 2012) (See section 2)</li> </ul> <b>Brussels-Wallonia Federation</b> <ul style="list-style-type: none"> <li>Measures relating to class sizes in primary and secondary education, and an approved reception and education system for newly-arrived students (See section 2)</li> </ul> <b>Flanders</b> <ul style="list-style-type: none"> <li>"Crisis Decree" included a temporary reduction of salaries (16 July 2012)</li> <li>New truancy and other forms of unacceptable behaviour action plan in order to reduce the percentage of early school-leavers</li> <li>Set-up of a distance learning action plan</li> <li>Right to enrolment, to provide access for everyone, to good-quality education (Flemish Parliament Act on the right to enrolment on 25 November 2011)</li> </ul>
<b>Health</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Several measures aimed at improving access to health care (See section 3)</li> <li>Measures taken to accelerate and simplify access to the OMNIO status and extension of the third payer's system for the most vulnerable patient groups (See section 3)</li> </ul> <b>Flanders</b> <ul style="list-style-type: none"> <li>Renewed social policy focus on the affordability and the accessibility of care (basic decree on Flemish Social Protection).</li> </ul>
<b>Employment</b>	<b>Federal (see section 4)</b> <ul style="list-style-type: none"> <li>Real-term cost increases in 2012 only amount to a maximum of 0.3%.</li> <li>Increased degressivity of unemployment of benefits</li> <li>Permanent establishment of a temporary suspension contract scheme for white collar workers (act of 12/04/2011 modifying the law relative to employment contracts)</li> </ul>

<sup>21</sup>Unless otherwise noted, this section is based on the National Reform Programme 2012: European Commission, 'National Reform Programme 2012', April 2012, available at [http://ec.europa.eu/europe2020/pdf/nd/nrp2012\\_belgium\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2012_belgium_en.pdf)

Year & Category	Measure
	<ul style="list-style-type: none"> <li>• Replacement of the temporary crisis premium by a "lay off" allowance (Act of 12/04/2011)</li> <li>• Modification of the definition of a "suitable job"</li> <li>• Tougher restrictions on benefits for school leavers</li> <li>• Enhanced follow-up of job seekers</li> <li>• Implementation of career break reform</li> </ul> <p><b>Wallonia</b></p> <ul style="list-style-type: none"> <li>• Establishment of a single coaching process to accompany all jobseekers (Decree of 26/01/2012)</li> </ul> <p><b>Brussels-capital Region</b></p> <ul style="list-style-type: none"> <li>• Mandatory "Occupational Project Building" on top of the continuing training programme for jobseekers, and a systematic, high-quality, formalised and customised support offered to the under-25s.</li> </ul> <p><b>Flanders</b></p> <ul style="list-style-type: none"> <li>• Extension of the tailored guidance approach to the group of inflowing jobseekers from 55 to 58 years old.</li> <li>• New career agreement targeting young people with insufficient qualifications, and persons over 50</li> </ul>
<b>Social</b>	<p><b>Federal (See section 5)</b></p> <ul style="list-style-type: none"> <li>• Admission age for "ordinary pre-pensions" raised from 58 to 60 years. Required seniority raised to 40 years</li> <li>• For prepensions in loss-making enterprises, the minimum age raised from 50 to 52 years. For pre-pensions in restructuring enterprises, the minimum age raised from 50 to 55 years in 2013.</li> <li>• Pre-pension years, prior to the age of 60, no longer fully taken into account for calculating pensions, except in some deviant systems.</li> <li>• Age of admission for partial early retirement raised from 50 to 55 years, except for some harsh occupations, or for people having worked effectively for 28 years at the age of 50, for whom a 4/5th settlement under certain conditions is maintained.</li> <li>• Introduction of an age proportionality principle, in case of dismissal.</li> </ul>
<b>Asylum &amp; migration</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>• New requirements regarding residence permits for medical reasons (see section 8)</li> </ul>
<b>2011<sup>22</sup></b>	
<b>Education</b>	<p><b>Flanders</b></p> <ul style="list-style-type: none"> <li>• Extra incentives for lifelong learning and compensatory education</li> <li>• Measures aimed at enhancing the quality of the educational system</li> </ul> <p><b>French speaking community and Wallonia</b></p> <ul style="list-style-type: none"> <li>▪ Radical reform of vocational education and closer synergies between education and training providers</li> </ul>
<b>Employment</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>• Wage norm confined to 0.3 %</li> <li>• Reform of the time credit scheme (see section 4)</li> <li>• No personal contribution at minimum wage level and limited tax exemption for remuneration received in the context of redundancy</li> <li>• Reduce wage costs for employers when recruiting certain types of unemployed people from target groups</li> <li>• First stage towards the harmonisation of blue/white collar workers' statuses: extend periods of notice for blue collar workers and shorten them for white collar workers</li> <li>• Plan for economically inactive disabled people to go back to work on a voluntary basis</li> </ul> <p><b>Wallonia</b></p> <ul style="list-style-type: none"> <li>• Individual support for jobseekers and increased efficiency of the public employment and training service</li> </ul> <p><b>Flanders</b></p>

<sup>22</sup>Unless otherwise noted, this section is based on the National Reform Programme 2011: European Commission, 'National Reform Programme Belgium 2011', 15 April 2011, available at [http://ec.europa.eu/europe2020/pdf/nrp/nrp\\_belgium\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nrp/nrp_belgium_en.pdf)

Year & Category	Measure
	<ul style="list-style-type: none"> <li>• Suitable proposal, at an earlier stage, to the medium-term and longer term unemployed</li> <li>• Extension of the systematic approach for the over 50s to the over 55s.</li> <li>• Set-up of workshops targeting young people with a general profile and unable to enter the labour market owing to the crisis ("werkateliers")</li> </ul> <p><b>Brussels Capital Region</b></p> <ul style="list-style-type: none"> <li>• Systematic, high quality, formalised and customised support via Occupational Project Building, offered to the under-25 jobseekers.</li> </ul>
<b>Social</b>	<ul style="list-style-type: none"> <li>• Reform of pensions adopted (Act of 28 December 2011)</li> </ul>
<b>Asylum &amp; migration</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>• Resource requirement for family reunification</li> </ul>
<b>2010<sup>23</sup></b>	
<b>Employment</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>• Reinforcement of incentives for shift and night work</li> <li>• Activation of the unemployment benefit for some categories of unemployed allowing them to keep a part of the benefit after being hired until 31/12/2011.</li> </ul>
<b>2009<sup>24</sup></b>	
<b>Education</b>	<p><b>German-speaking Community</b></p> <ul style="list-style-type: none"> <li>• Individual professional education for employees</li> </ul>
<b>Health</b>	<p><b>Federal (See section 3)</b></p> <ul style="list-style-type: none"> <li>• Statutory rate for real growth of healthcare limited to 4,5%</li> <li>• Allocation of 306,6 million to the Fund to guarantee the future of the Health care system</li> <li>• Measures to curb the growth in the level of health expenditure</li> </ul>
<b>Employment</b>	<p><b>Federal (See section 4)</b></p> <ul style="list-style-type: none"> <li>• Reinforcement of incentives for shift and night work</li> <li>• Increase in the rate of partial exemption from payment of the withholding tax on salaries of researchers from 65% to 75%, in January 2009.</li> <li>• Extension of the scope of the temporary lay-off system to white collar workers (Law of 19<sup>th</sup> June 2009)</li> <li>• Temporary adjustment of collective and individual working time</li> <li>• Set-up of a crisis premium for laid off blue-collar workers (Law on diverse provisions of 30/12/2009)</li> <li>• Restructuring card extended to all workers who are victims of bankruptcy, liquidation or the closing-down of a company (Law 19/06/2009 – various provisions related to work during the crisis)</li> <li>• Special re-employment unit extended to all restructuring enterprises involving more than 20 workers (Law 30/12/2009 on diverse provisions)</li> <li>• Reduction of employers' social security and employees' social security contributions (work bonus) for low wage earners.</li> <li>• Measures reducing wage costs as 'win-win' plan</li> <li>• New system for the follow-up of the unemployed</li> </ul> <p><b>Brussels Capital Region</b></p> <ul style="list-style-type: none"> <li>• Development of a 'crisis guarantee' mechanism</li> </ul>
<b>Social</b>	<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>• Increase in pensions and other social allowances with a focus on the oldest ones and minimum old-age pensions.</li> </ul>
<b>2008<sup>25</sup></b>	

<sup>23</sup>Unless otherwise noted, this section is based on the National Reform Programme 2008-2010: European Commission, 'National Reform Programme 2008-2010 Belgium', 2009, available at [http://socialprotection.eu/files\\_db/213/be\\_nrp\\_en.pdf](http://socialprotection.eu/files_db/213/be_nrp_en.pdf)

<sup>24</sup>Ibid.

<sup>25</sup>Ibid.



Year & Category	Measure
<b>Health</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Allocation of 306,3 million to the Fund to guarantee the future of the Health care system</li> </ul>
<b>Social</b>	<b>Federal</b> <ul style="list-style-type: none"> <li>Tighten access conditions to normal early retirement: from 2008 on, early retirement minimum age is 60 years old with 30 years of seniority (or 58 years old with 35 years of seniority).</li> </ul>
<b>Employment</b>	<b>Brussels Capital Region</b> <ul style="list-style-type: none"> <li>Individual agreement for all young unemployed at the start of their unemployment, with a monthly follow-up.</li> </ul> <b>Flanders</b> <ul style="list-style-type: none"> <li>Agreement "Together for 50+": a systematic guidance approach for jobseekers over 50.</li> <li>"New start for every jobseeker" (mandatory integration of all low-skilled unemployed in a tailored integration course from the first day of unemployment onwards).</li> </ul> <b>Wallonia</b> <ul style="list-style-type: none"> <li>Expansion of the Job Tonic to all young people with at most a certificate of upper secondary education.</li> </ul> <b>German-speaking community</b> <ul style="list-style-type: none"> <li>Systematic integration course for all unemployed</li> <li>New job-creation measure encouraging employers in the private sector to engage older workless people or workless low-skilled persons.</li> </ul>
<b>Education</b>	<b>French speaking Community and Walloon Region</b> <ul style="list-style-type: none"> <li>Reform of work-linked training and creation of a validation of skills system.</li> </ul> <b>Flemish Community</b> <ul style="list-style-type: none"> <li>New decree on part-time educational systems</li> </ul>

**Source:** European Commission

During the period under scrutiny, the ordinary legislative procedure was followed to adopt the various laws related to anti-crisis and austerity measures<sup>26</sup>. However, in some cases, the constitutionality of some acts has been questioned, such as the Royal Decree implementing the reform of pensions and the reinforced degressivity of unemployment allowances. These issues are further developed in the sections related to employment (section 4) and pensions (section 5).

The following sections of the national study will focus on the right to education, to healthcare, to work and to a pension. These rights were selected in light of the research carried out at EU and international level on the impact of the crisis on fundamental rights, which showed that these rights have been most significantly affected by the austerity measures imposed across Europe. However, to make sure the national studies reflect the situation in the country, section 8 will provide a final overview of the national context reporting on other rights that might have been significantly affected in that Member State. Finally, the report provides findings on the right to manifestation and assembly as well as on the right to access to justice, which allow citizens to defend their positions against measures and actions linked to the crisis that negatively affect them.

<sup>26</sup>As confirmed by the National Labour Council's Secretary-General (interviewed on October 14 2014) and a trade union's Legal Adviser (CSC/ACV) (interviewed on October 10 2014). The CNT groups together workers' and employers' organizations that represent business and labour interests in Belgium. CSC/ACV is the Confederation of Christian Trade Unions having a membership of 1.7 million.



## **2. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO EDUCATION (COMPULSORY EDUCATION)**

### **KEY FINDINGS**

- According to the OECD (2013), the crisis had no significant impact in this area and public spending on education, as a share of GDP in Belgium, remains one of the highest in the EU – at 0.9 percentage points above the EU average. The 85% proportion of annual education expenditure dedicated to human resource costs, ranks amongst the highest in the EU – far above the 70% EU average.
- The crisis did not have an impact on the number of teachers in Belgium – which has a shortage of qualified teachers. The situation is more acute in the French community where a shortage is observed at all ISCED levels, whilst the situation in the Flemish community is at about the European average, though with a shortage of teachers in mathematics.
- Salary cuts were not used in Belgium, with the exception of the German-Speaking Community where a 'Crisis decree' included, among other measures in the education sector, a temporary reduction of salaries of up to 2 %.
- The Brussels-Wallonia Federation adopted measures, in 2012, relating to class sizes in primary and secondary education, at the request of teachers.
- Primary and secondary education is provided free-of-charge but parents are requested to contribute towards the cost of extra-curricular or other activities. It is an issue of concern, especially for vulnerable and low-income families.
- In 2012, Belgium still had slightly better figures than the EU average (12.0% vs 12.7% in 2012) on early school-leaving (ESL), despite no significant improvement and increasing gaps between regions.
- Specific attention is paid to newly-arrived migrants, both in the French-speaking and the Flemish Communities.

### **2.1. International and EU legal framework for the protection of the right to education**

The right to education is defined as a universal entitlement to education, and is recognised as a right that includes the right to free, compulsory primary education for all, as well as an obligation to provide for a system of secondary education which is not necessarily free, but is available and accessible to all, while the material conditions of teaching staff shall be continuously improved in accordance with the International Covenant on Economic, Social and Cultural Rights (the 'ICESCR')<sup>27</sup>. In addition, the right to education encompasses the obligation to combat discrimination at all levels of the educational system and to set minimum standards and to improve quality of education. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their

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<sup>27</sup>International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI) of 16 December 1966, 1976, article 13.

communities<sup>28</sup>. Education needs to be provided under the principles of: availability, accessibility, acceptability and adaptability<sup>29</sup>.

The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (the 'CEDAW'), Articles 28 and 29 of the Convention on the Rights of the Child (the 'CRC') and Article 24 of the Convention on the Rights of Persons with Disabilities (the 'CRPD'). Furthermore, it is also guaranteed by Article 2 of Protocol No. 1 to the European Convention on Human Rights (the 'ECHR').

The EU Charter guarantees the right to education and access to vocational and continuing training, with the possibility to receive free compulsory education<sup>30</sup>.

## 2.2. The right to education in Belgium

The right to education in Belgium is recognised under article 24 of the Constitution, which states that:

*"§1. Education is free; any preventive measure is forbidden (...) § 3. Everyone has the right to education, respecting fundamental rights and freedoms. Access to education is free until the end of compulsory education. All pupils of school age have the right to moral or religious education at the community's expense. (...)."*

Education is under Community jurisdiction; federal powers in this area are very limited. Education is mandatory and free. All minors within the compulsory school-age bracket (i.e. 12 years from the age of 6), are obliged to attend school, regardless of their residence status.

## 2.3. Overview of the measures

During the period under scrutiny, it appears that the crisis did not have a significant impact on the Belgian educational system. The Communities carried out some reforms and took measures to ensure better access and to improve the quality of education, i.e. class size, costs, paying specific attention to early school-leavers and newly-arrived migrants.

According to the OECD (2013), there was no significant impact of the crisis, and public spending on education – as a share of GDP in Belgium, remains one of the highest in the EU, at 0.9 percentage points above the EU average (6.2% in 2012 vs. 5.3% in 2011). The share of private expenditure, on all levels of education in Belgium, is one of the lowest among OECD countries (5% vs. 16% on average)<sup>31</sup>.

The 85%, proportion of annual education expenditure dedicated to human resource costs, ranks amongst the highest in the EU, far above the 70% EU average. However, during 2011-2012 a considerable increase in capital expenditure was observed in the German-speaking<sup>32</sup> and the Flemish Communities<sup>33</sup>. In 2013, the French-speaking community

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<sup>28</sup> UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 13 – Right to education', UN Doc. (E/C.12/1999/10 1999), §1.

<sup>29</sup>*Ibid*, §6.

<sup>30</sup> The EU Charter, Article 14.

<sup>31</sup> OECD, 'Education at a Glance, 2013, Country note on Belgium', 2013a, available at [http://www.oecd.org/edu/Belgium\\_EAG2013%20Country%20Note.pdf](http://www.oecd.org/edu/Belgium_EAG2013%20Country%20Note.pdf)

<sup>32</sup>In the German-speaking Community, in December 2010, the Minister for Education signed a number of contracts for public-private partnerships and started the largest investment programme in the Community to run over the period 2011-2014. The total value of this project amounted to more than €145 million: Eurydice, 'Funding of

approved a significant budget to respond to the significant needs in the coming years. Communities are taking measures of differing scope to increase the efficiency of spending, whilst ensuring quality education for everyone<sup>34</sup>.

Regarding specific allowances, the "school allowance" that helps parents to bear the cost of school fees at the beginning of the year has been reduced by 15% in 2014, after a previous reduction of 15% in 2013. This is the consequence of a measure adopted by the federal government in 2012 to save €38 Million<sup>35</sup>.

Regarding the number of teachers, Belgium has a shortage of qualified teachers. The situation is more acute in the French community where a shortage is observed at all ISCED levels, whilst the situation in the Flemish community is around the European average, particularly with a shortage of teachers in mathematics. In the last few years, the Flemish community has taken various measures to modernise the teaching profession. Current discussions aim at improving the working conditions of newly-qualified teachers in order to retain them, and more recently, at revising initial teacher-training. Whilst the French community is badly hit by a shortage of qualified teachers, the number of candidates wishing to join the profession exceeds the available number of places. A recent survey highlights difficulties in retaining them, due to the (too) large difference in chances on the labour market and status between newly qualified teachers and established teachers. The early leaving rate, during the first year of teaching, accounts for more than 50% of the early leaving rate of the first 5 years of teaching<sup>36</sup>. There is no evidence of an aggravation of the phenomenon due to the crisis.

Salary cuts have been used as one of the mechanisms to reduce education expenditure in many Member States, but not in Belgium, which opted for a freeze of salaries, with the exception of the German-Speaking Community. In the French-speaking Community, the teachers' salaries were only increased according to the general salary adjustment to the rise in cost of living for all public and private employees. An index was implemented in January 2013, which increased the basic gross salary by 2 %. The situation is different in the German-speaking Community. In accordance with the Decree of 21 April 2008, to upgrade the teaching profession, the starting salary of newly qualified teachers increased on 1 September 2013, i.e. an increase of 10 % in total: 3 % in September 2009, 6 % in September 2013 and 10 % in September 2014. At the same time, due to the Reform of teachers' salaries, on 16 July 2012, the Parliament of the German-speaking Community of Belgium adopted a 'Crisis decree' which included, among other measures in the education sector, a temporary reduction of salaries. They are reduced by a total of 2 % (1 % in January 2013 and 1 % in January 2014)<sup>37</sup>.

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Education in Europe. The Impact of the Economic Crisis: Report March 2013', 2013, available at [http://eacea.ec.europa.eu/education/eurydice/thematic\\_reports\\_en.php](http://eacea.ec.europa.eu/education/eurydice/thematic_reports_en.php)

<sup>33</sup>Ibid.

<sup>34</sup>European Commission, 'Education and training Monitor 2013 - Belgium', 2013 available at [http://ec.europa.eu/education/tools/docs/2014/monitor2014-be\\_en.pdf](http://ec.europa.eu/education/tools/docs/2014/monitor2014-be_en.pdf)

<sup>35</sup>Law of 30 July 2013 on diverse provisions, BOG 1st August 2013.

<sup>36</sup>OECD (2013) op.cit.

<sup>37</sup>European Commission (2013), op.cit.

## 2.4. Measures aimed at improving the access to and the quality of compulsory education

Regarding the size of classes, the Brussels-Wallonia Federation adopted measures, in 2012, related to class sizes in primary and secondary education<sup>38</sup>. It followed a strong demonstration by 12,000 teachers in March 2011, protesting for better working conditions. The new rules are the following: in primary education, the ratio is set at 20 students (on average) per teacher in 1st and 2nd primary (with a maximum of 24 students), 24 students (on average) from 3rd to 6th primary (with a maximum of 28 and 29 in Brussels). In secondary education: nothing changes at the first level, i.e. no class can have more than 24 students; 29 students for the second level; 26 students rather than the 27 students allowed before the decree; 32 students in the 3<sup>rd</sup> level, i.e. 29 students rather than 30 students allowed before the decree<sup>39</sup>. To implement the decree, a budget of 4.6 Million was allocated<sup>40</sup>.

Regarding costs, primary and secondary education is provided free-of-charge, but parents are requested to contribute towards the cost of extra-curricular or other activities. Indeed, due to budgetary constraints, the French-Speaking Community reintroduced, in 1997, the possibility of charging fees for mandatory and optional activities without specifying the amounts at primary and secondary school levels. Little progress has been made since 2011 and this is still an issue<sup>41</sup>. According to a survey carried out by "La ligue des Familles" in 2013, tuition for a child costs an average of 120 euros per year in school fees<sup>42</sup>. The study shows that many schools continue to ask parents to provide school fees still prohibited by law, including the purchase of the class logbook or textbooks, payment of photocopies or participation in the creation of a "class fund" used to finance various activities. About 44 euros, on average, of these school expenses must be paid in early September, putting low-income families in great difficulties<sup>43</sup>. The Walloon Network against Poverty reports that, given the current economic situation, some parents are forced to partially defer payment of their rent to cope with the fees, while others avoid going to the school to avoid having the teacher remind them of an unpaid bill<sup>44</sup>.

In 2012, Belgium still had figures which were slightly better than the EU average (12.0% vs 12.7% in 2012) on early school-leaving, despite no significant improvement and increasing gaps between regions. The Flemish Government has set an additional ESL target of 5.2% by 2020. In 2012, a declining rate was observed in Flanders while, contrary to EU general trends, ESL rates have been rising again in Wallonia and the Brussels region reaching

<sup>38</sup>Decree of 2 May 2012 on various measures relating to primary education and regular secondary education, especially in terms of class size, BOG 15 June 2012.

<sup>39</sup>Bouillon, P., 'Classes in size XXL are over' (*Les classes à taille XXL, c'est fini*) (30 November 2011), Press Release, available at <http://archives.lesoir.be/les-classes-a-taille-xxl-c-8217-est-fini-t-20111130-01PE1X.html>; Gérard, L., 'Class size: here are the new rules' (*Taille des classes : voici les nouvelles règles*), 30 November 2011, Press Release, available at <http://www.lalibre.be/actu/belgique/taille-des-classes-voici-les-nouvelles-regles-51b8e023e4b0de6db9c460ae>

<sup>40</sup>UFAPEC, 'Small number of pupils, a guarantee to success? Agreement on the size of classes' (*Peu d'élèves, gage de réussite ? Un accord sur la taille des classes*), 2013, available at <http://www.ufapec.be/files/files/analyses/2012/0812-taille-des-classes.pdf>.

<sup>41</sup>Elberhoumi, M., 'Free education: a forgotten promise, a violated egal principle' (*La gratuité de l'enseignement : une promesse oubliée, un principe juridique bafoué*), *Pauvreté*, n°1/2013, (2013) Forum bruxellois de lutte contre la pauvreté.

<sup>42</sup>Ligue des Familles, 'School fees : survey by the Family League' (*Frais scolaires : l'enquête de la Ligue des familles*) 2013, available at <https://www.laligue.be/association/communiqu/2013-08-13-cp-frais-scolaires-l-enquete-de-la-ligue-des-familles>.

<sup>43</sup>RTBF Info, 'School fees: Family League puts pressure to act on Milquet' (*Frais scolaires : la Ligue des familles presse Milquet à agir*), 13 August 2014, available at [http://www.rtbef.be/info/belgique/detail\\_frais-scolaires-la-ligue-des-familles-presse-milquet-a-agir?id=8332798](http://www.rtbef.be/info/belgique/detail_frais-scolaires-la-ligue-des-familles-presse-milquet-a-agir?id=8332798).

<sup>44</sup>Réseau Wallon de Lutte contre la Pauvreté, 'For a reduction in costs associated with the education of children' (*Pour une réduction des coûts liés à la scolarité des enfants*) (17 June 2014), Press Release.

worrisome levels (15.3% and 19.9 % respectively). First steps have been taken towards a comprehensive ESL strategy<sup>45</sup>. The Flemish Government took note on 27 September 2013, of a new Action Plan on early school-leaving. The action plan includes a new all-inclusive strategy to drastically reduce the number of young people that leave school early. One of the objectives of the reform of secondary education, launched in 2012, is the reduction of early school-leaving, the significant impact of social origin on choice and studies, school fatigue, wrong study choices and the alleviation of the transition from primary education to secondary education, which is too abrupt. The French Community Government adopted two decrees in 2013<sup>46</sup>, aimed at better coordination of education and youth policies. The sectoral decree aims at creating, refining or strengthening different educational measures, promoting the welfare of young people in school, school-reintegration, prevention of violence, and support for school counselling approaches. It better distinguishes between, and coordinates, these measures. The cross-cutting decree organises a formal interplay between compulsory education and youth welfare policies.

Specific attention is paid to newly-arrived migrants - both in the French-speaking and the Flemish Communities. In Flanders, pupils between the ages of 5 and 18, who have just arrived in Belgium, and who are entering the Flemish Dutch-speaking education system, without any knowledge of the Dutch language, can go to reception classes. The objective of these reception classes is that the pupils learn Dutch as quickly as possible, and can then be integrated into Dutch-speaking education. In primary education, the newly-arrived migrant pupils are, together with the other pupils in the same class, and they are taught separately only part of the time. In secondary education, newly-arrived migrant pupils receive, in principle, intensive Dutch language tuition over one year, in order to make the transition to regular education<sup>47</sup>. The Brussels Wallonia Federation approved, in 2012<sup>48</sup>, a mechanism for welcoming and schooling new migrants – the so-called DASPA (Dispositif d'Accueil et de Scolarisation des Primo-Arrivants). This system is designed to guarantee reception, guidance and maximum integration of newly-arrived students, and an intermediate stage of schooling, i.e. 74 subsidised measures<sup>49</sup>.

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<sup>45</sup>OECD, 'Strong Performers and Successful Reformers in Education', 2013b available at <http://www.pearsonfoundation.org/oe.cd/belgium.htm>.

<sup>46</sup>Decree of 21 November 2013 organising various educational measures promoting the welfare of young people in school, school attachment, prevention of violence in schools and support for school guidance and Decree of 21 November 2013 organising joint policies on compulsory education and youth welfare for the well-being of young people in school, school attachment, prevention of violence and support to guidance approaches, BOG 3 April 2014.

<sup>47</sup>Vlaams onderwijs raad, 'Analytical report: Education for pupils with a migrant background in Flanders', 2014, available at [http://www.eunec.eu/sites/www.eunec.eu/files/members/attachments/analytical\\_report.pdf](http://www.eunec.eu/sites/www.eunec.eu/files/members/attachments/analytical_report.pdf).

<sup>48</sup>Decree of 18 May 2012 establishing a host device for the enrollment of new students in education organised or subsidized by the French Community (*Décret du 18 mai 2012 visant à la mise en place d'un dispositif d'accueil et de scolarisation des élèves primo-arrivants dans l'enseignement organisé ou subventionné par la Communauté française*), BOG 22 June 2012.

<sup>49</sup>UFAPEC, 'The reception of newly arrived to school, legislative provisions' (*L'accueil des Primo-arrivants à l'école, dispositifs législatifs*), Analyse UFAPEC, December 2013 N°35.13, available at <http://www.ufapec.be/files/files/analyses/2013/3513-primo-arrivants.pdf>.

### **3. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO HEALTHCARE**

#### **KEY FINDINGS**

- According to the OECD, health spending accounted for 10.9 % of GDP in 2012, higher than the OECD average of 9.3%. 75% of health spending (excluding investments) was funded from public sources in 2012, slightly more than the OECD average of 72%.
- Given the economic situation, there was a debate in Belgium on whether or not to respect the annual growth rate of 4.5% that was established in 2004. At the beginning of the crisis, the final decision was in favour of protecting the health care budget. In 2012, the Government decided to reduce healthcare expenditure for 2013 by limiting the growth rate to 2%.
- Savings on medical fees and pharmaceutical coverage have been made, as well as a temporary freeze on certain items of expenditure.
- The question of the impact of the crisis on access to healthcare was not an issue which attracted attention in Belgium. It can be said the economic crisis resulted in no direct major changes to the scope or the breadth of healthcare coverage.
- Several measures, aimed at improving this access, have been taken during the period under scrutiny, regarding the group entitled to increased reimbursement of health care expenses.
- However, the economic crisis had an impact on people's income, and indirectly on their access to healthcare, raising the issue of financial accessibility to healthcare. The OECD figures show that the private share of funding for health care expenses in Belgium remains higher than that observed in most countries of the EU-15 (average 20.6%). 9.4 billion euros of health spending is financed by households on a private basis.
- The issue of postponement of healthcare is of increasing concern.

#### **3.1. International and EU legal framework for the protection of the right to healthcare**

Article 12 of the ICESCR guarantees the highest attainable standard of health. This right is repeated in the Constitution of the World Health Organisation<sup>50</sup>. Right to health does not mean the right to be healthy, but contains different freedoms and entitlements, where the entitlements represent the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable standard of health. Nonetheless, a line must be drawn between the right to health and the right to healthcare. The right to health is broader and means that 'governments must generate conditions in which everyone can be as healthy as possible<sup>51</sup>'. This entails ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food. The right to healthcare, on the other hand, is limited only to the first component – the right to have access to health services. The right to health, and implicitly the right to healthcare,

<sup>50</sup> Constitution of the World Health Organisation, preamble.

<sup>51</sup> WHO, *Factsheet 323 on the right to health*, available at: <http://www.who.int/mediacentre/factsheets/fs323/en/> (last accessed 23 October 2014).



needs to meet the requirements of: availability, accessibility, acceptability and quality<sup>52</sup>. This entitlement indeed represents the right to healthcare. The right to health (or healthcare) has been re-emphasised in Article 12 the CEDAW, Article 25 of the CRPD, Article 24 of the CRC and Article 11 of both the European Social Charter and the Revised European Social Charter.

Article 35 of the EU Charter guarantees the access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

### **3.2. The right to healthcare in Belgium**

According to Article 23 of the Belgian Constitution, everyone has the right to lead a life in keeping with human dignity, including a right to social security, to healthcare and to social, medical and legal aid.

Belgium considers reliable, accessible and affordable healthcare to be one of its key missions. One of the country's greatest successes is near-universal sickness and disability coverage for its population. The Belgian health system is based on the principle of social insurance – characterised by solidarity between the rich and poor, healthy and sick people. The organisation of health services allows therapeutic freedom for physicians, freedom of choice for patients, and remuneration based on fee-for-service payments. Almost the whole population (> 99%), is covered with a broad benefits package.

### **3.3. Overview of the measures**

According to the OECD, health spending accounted for 10.9 % of GDP in 2012, higher than the OECD average of 9.3%. However, health spending, as a share of GDP, was much lower in Belgium than in other neighbouring European countries such as the Netherlands (11.8%), France (11.6%) and Germany (11.3%). 75% of health spending (excluding investments) was funded by public sources in 2012, slightly more than the OECD average of 72%<sup>53</sup>.

Given the economic situation, there was a debate in Belgium on whether or not to respect the annual growth norm of 4.5% that was established in 2004. At the beginning of the crisis, the final decision was in favour of protecting the health care budget. In the years 2009, 2010 and 2011, this value was maintained, but part of the additional budget – due to the application of the legal percentage, has not been spent but rather held in reserve (put in saving funds), in order to address the future needs of older people<sup>54</sup>.

In 2012, the Government decided to reduce healthcare expenditure by limiting the 2013, growth rate to 2% plus the expected increase of the health price index for 2013<sup>55</sup>. Savings on medical fees in the sectors of clinical biology and medical imaging have been made and structural measures were introduced to reduce the volume of prescriptions in medical imaging, and pharmaceutical coverage. This includes 1.95% price cuts, price cuts for old medicines, and prices for generics at least 31% lower than originals, as well as a temporary

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<sup>52</sup> United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 14 – The right to highest attainable standard of health', UN Doc. (E/C.12/2000/4).

<sup>53</sup> OECD (2014) op.cit.

<sup>54</sup> HOPE, 'The Crisis, Hospitals and Healthcare', April 2011, available at [http://www.hope.be/05eventsandpublications/docpublications/86\\_crisis/86\\_HOPE-The\\_Crisis\\_Hospitals\\_Healthcare\\_April\\_2011.pdf](http://www.hope.be/05eventsandpublications/docpublications/86_crisis/86_HOPE-The_Crisis_Hospitals_Healthcare_April_2011.pdf)

<sup>55</sup> Program Law of 22 June 2012 (article 122), BOG 28 June 2012.

freeze on certain items of expenditure<sup>56</sup>, e.g. revalidation, the screening program for womb cancer, implants<sup>57</sup>.

For 2014, the growth rate has been set at 3%<sup>58</sup>, in the context of the general deficit objective, plus the expected increase of the health prices index for 2014.

The question of the impact of the crisis on access to healthcare was not an issue which attracted attention in Belgium. It can be said that the economic crisis resulted in no direct changes to the scope or the breadth of healthcare coverage<sup>59</sup>. Several measures aiming at improving this access<sup>60</sup> have even been taken during the period under scrutiny regarding the:

- group entitled to increased reimbursement of health care expenses (OMNIO): since 2007, low income families or individuals are eligible. In 2013, the income ceiling was fixed at 16,306.86 € (15,163.96 € in 2011) and increased by 3,018.84€ (2807.26 € in 2011) for each additional family member.
- fee-supplement for hospitalised patients in communal or double rooms: since 1 January 2013, physicians not covered by a convention can no longer claim a fee-supplement for hospitalised patients in communal or double rooms. Fee-supplements in communal and double rooms during standard hospital-stays are now forbidden for all health professionals working in hospitals. This prohibition covers all medical supplements, including supplements in the field of clinical biology and medical imaging.
- specific status for people with a chronic condition, and allowing patients with a chronic condition to have automatic access to certain rights, such as a third-party payment system for all health services, and maximum billing<sup>61</sup> for chronically ill patients.
- vulnerable patients: the third-party payment system became mandatory for two groups of vulnerable patients. Patients with preferential reimbursement status, or with chronically ill status, will only pay the non-reimbursed proportion of the cost of a service, and the third-party payer will cover the remaining proportion<sup>62</sup>.
- simplification of the preferential reimbursement system to improve access to preferential reimbursement for all low-income households from January 2014<sup>63</sup>.

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<sup>56</sup>Decision of Council of Ministers of 30 November 2012 (30 November 2012), available at <http://www.presscenter.org/fr/pressrelease/20121130/objectif-budgetaire-global-2013-de-lassurance-soins-de-sante>.

<sup>57</sup>Mutualités chrétiennes, 'MC-Information. Analysis and opinions' (*MC-Informations. Analyses et points de vue*), number 251, March 2013.

<sup>58</sup>Program Law of 22 June 2012 (article 122), BOG 28 June 2012.

<sup>59</sup>Fact confirmed by an OSE Senior Policy Analyst (interviewed on 19 September 2014) and a trade union's Legal Adviser (CSC/ACV) (interviewed on 10 October 2014).

<sup>60</sup>Avalosse, H., Vancorenland, S., Maron, L., 'Devices, measures and initiatives to promote access to care, to health' (*Dispositifs, mesures et initiatives favorisant l'accès aux soins, à la santé*), in *Livre vert sur l'accès aux soins en Belgique* (INAMI, Kluwer and Médecins du monde, 2014).

<sup>61</sup>The mechanism of maximum billing limits the healthcare cost of each person to an absolute maximum amount per year, that varies according to the income of the family the person belongs to (income-based maximum billing) or according to the social category that the person belongs to (social maximum billing). The maximum billing ensures that, according to the family's net income, each household has an annual out-of-pocket maximum for all "necessary healthcare expenses". As soon as expenses reach the set ceiling, any further healthcare costs are covered in full by the health insurance fund for the remaining part of the year.

<sup>62</sup>Law of 27 December 2012 on various provisions related to the accessibility to health care, BOG 31 December 2012.

<sup>63</sup>Delafortrie, S. and Springael, C., 'Reform of higher reimbursements of insurance' (*Reforme de l'intervention majeure de l'assurance*) (24 octobre 2013), available at <http://www.presscenter.org/fr/pressrelease/20131024/reforme-de-lintervention-majoree-de-lassurance>



### 3.4. Impact of the measures

As highlighted above, no specific measure related to the crisis or austerity can be reported as having a direct impact on the right to access to healthcare in Belgium. However, the economic crisis had an impact on people's income, and indirectly on their access to healthcare, raising the issue of financial accessibility to healthcare<sup>64</sup>.

The OECD figures show that the private share of funding for healthcare expenses in Belgium (20.4% in 2012) remains higher than that observed in most EU countries<sup>65</sup>, i.e. 12.4% in Denmark, 7.5% France, 13.0% Germany, 11.0% Luxembourg. EUR 9.4 billion of health spending is financed by households on a private basis<sup>66</sup>.

According to the most recent health survey carried out by the Scientific Institute for Public Health, questioning 11,250 respondents in 2008, 14% of the population said that they had decided against medical treatment, or to delay or suspend such treatment for financial reasons<sup>67</sup>. According to a 2011 survey, six-out-of-ten patients had to scale down their expenditure in other areas, e.g. housing, food, fuel, education, in order to pay their health care bills. The groups particularly having to postpone healthcare were women, young people below the age of thirty, and single-parent families. The type of care most frequently postponed or suspended was specialised medical care, dental care and the purchase of medicines<sup>68</sup>.

A recent survey carried out by the Solidaris and Socialist Mutuality confirms this trend and reveals that one-in-five persons in Wallonia postponed care which they needed, mainly single parent families<sup>69</sup>. A study, carried out by the European Commission as part of the QUALICOPC (Quality and Costs of Primary Care in Europe) project, the results of which are not yet published, shows that nearly 900,000 Belgians have had to postpone medical treatment<sup>70</sup>.

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<sup>64</sup>The issue of financial accessibility as an indirect impact of the crisis has been raised by an OSE Senior Policy Analyst (interviewed on 19 September 2014), the Combat Poverty, Insecurity and Social Exclusion Service's coordinator (interviewed on 17 September 2014) and a Belgian Anti-Poverty Network's Policy Officer (interviewed on 10 October 2014).

<sup>65</sup>OECD Health Statistics, 'Health expenditure by financing agent/scheme, Out-of-pocket payments (households), % total expenditure on health' (2014), available at <http://stats.oecd.org/Index.aspx?DataSetCode=SHA>

<sup>66</sup>OECD, 'Health Statistics 2014. How does Belgium compare?', 2014, available at <http://www.oecd.org/belgium/Briefing-Note-BELGIUM-2014.pdf>

<sup>67</sup>Demarest S. and Mimildis, H., 'Determinants of the access to healthcare in Belgium – a study on the needs for unmet care due to financial reasons based on a Belgian health survey' (*Les déterminants de l'accès aux soins de santé en Belgique – Une étude des besoins de soins non-satisfaits pour des raisons financières sur base de l'enquête de santé belge*), Bruxelles, Institut de Santé Publique, 2012.

<sup>68</sup>Keckley, P.H. et al, 'Survey of Health Care Consumers in Belgium – Key Findings, Strategic Implications', Brussels, Deloitte, 2011.

<sup>69</sup>Solidaris et Mutualité socialiste, 'Accessibility and affordability of health care: overview and priorities' (*Accessibilité financière aux soins de santé : Bilan et priorités*), 2014.

<sup>70</sup>Deredactie.be, 'Cannot pay the doctor' (*Kunnen dokter niet betalen*), 7 August 2014, available at <http://deredactie.be/cm/vrtnieuws/binnenland/1.2053591>.

## 4. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO WORK

### KEY FINDINGS

- At the end of 2008, the Belgian Federal Government agreed on a Recovery Plan containing several temporary anti-crisis measures. A second round of measures was adopted in late May 2009 and integrated into the Law of 19 June 2009, on various provisions related to work during the crisis.
- These measures were grouped around three themes: lowering the cost of labour, supporting the purchasing power of both active and non-active citizens in order to stimulate demand and reforming the labour market to avoid dismissals, and improving the transition from unemployment to work.
- Various arrangements established temporary measures aimed at: adapting the volume of employment for businesses faced with economic difficulties; extension of the scope of the temporary lay-off system to white collar workers; individual temporary reductions in working time; temporary adjustments to working time in a crisis.
- Various labour market reforms were decided in 2011 "to bring the country out of the crisis, ensuring quality of life for all citizens and protecting the future of young generations": reform of the career break schemes; reform of the unemployment scheme; harmonisation of workers' statutes (blue-collar/white collar).
- During the crisis, Belgian enterprises turned to the above-mentioned anti-crisis arrangements available. According to the OECD, their use saved 0.5% of employment in the private sector and 1.25% of permanent employment.
- The degressivity of unemployment benefit, as part of the reform of the unemployment regime, is the most criticised measure, with respect to its impact on poverty. The constitutionality of the Royal Decree implementing it has been questioned before the Council of State – unsuccessfully.

### 4.1. International and EU legal framework for the protection of the right to work

There is no blanket guarantee in the international law of the right to work, if understood as the right of have and maintain gainful employment. Article 6 of the ICESCR recognises the right to work in the sense of opportunity of everyone to gain their living by freely chosen or accepted work. In that regard, States Parties are expected to take appropriate steps to safeguard this right, including by providing vocational and technical training and economic policies aimed at steady economic development and full employment. This right, according to the ICESCR implies that the Parties must guarantee equal access to employment and protect workers from being unfairly deprived of their employment, including by preventing discrimination. This right depends on a number of interdependent and essential elements, implementation of which will depend on the conditions present in each State Party, which may be identified as: availability, accessibility, acceptability and quality, while the states have the general obligation to respect, protect and fulfil this right<sup>71</sup>. Moreover, the

<sup>71</sup> United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 18 – Right to work', UN Doc. (E/C.12/GC/18) (2006).

International Labour Organization (the 'ILO') has the right to work as the core of its activities, and numerous conventions have been adopted within its framework to protect and improve the enjoyment of the right to work.

Similarly, the EU Charter guarantees to everyone the right to engage in work and to pursue a freely chosen or accepted occupation<sup>72</sup>, which corresponds to the guarantee from the ICESCR. The EU Charter, furthermore, provides for a guarantee for everyone to a free placement service<sup>73</sup>, protection from unjustified dismissal<sup>74</sup> and the right to fair and just working conditions<sup>75</sup>.

## 4.2. The right to work in Belgium

Article 23 of the Constitution recognises the right to work, including the right to: employment; the free choice of an occupation within the context of a general employment policy; fair terms of employment; fair remuneration; information, consultation and collective negotiation.

Since autumn 2008, employment policies have contended with the effects of the global financial crisis. Efforts by the authorities have mainly focused on safeguarding employment and on assistance, support and reorientation for those who had lost their jobs for economic reasons.

## 4.3. Overview of the measures

### 4.3.1. Temporary anti-crisis measures

At the end of 2008, the Federal Government, after discussions with the regional governments and social partners, agreed on a Recovery Plan containing several anti-crisis recovery measures. It was presented on 11 December 2008, and integrated into the "Law on Economic Recovery" of 27 March 2009<sup>76</sup>. The plan included some of the measures agreed upon by the interprofessional social partners in their "Interprofessional Agreement 2009-2010", of 22 December 2008<sup>77</sup>. The social partners were then involved in the implementation of the Recovery Plan<sup>78</sup>. A second phase of measures, complementing this first part, was adopted in late May 2009 and integrated into the Law of 19 June 2009, on various provisions related to work during the crisis<sup>79</sup>. All of these measures were grouped around three themes: (i) lowering the cost of labour, (ii) supporting the purchasing power of both active and non-active citizens in order to stimulate demand, and (iii) reforming the labour market to avoid dismissals, and improving the transition from unemployment to work<sup>80</sup>.

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<sup>72</sup> The EU Charter, Article 15(1).

<sup>73</sup> The EU Charter, Article 29.

<sup>74</sup> The EU Charter, Article 30.

<sup>75</sup> The EU Charter, Article 31.

<sup>76</sup> Law on Economic Recovery of 27 March 2009, BOG 7 April 2009.

<sup>77</sup> National Labour Council, 'Agreement for negotiations in companies during the period 2009-2010' (*Accord exceptionnel en vue des négociations au niveau des secteurs et des entreprises durant la période 2009-2010*) (22 December 2008), available at <http://www.cnt-nar.be/INTERP-AKKOORD/IPA-2009-2010-FR.pdf>.

<sup>78</sup> As reported by the National work Council's Secretary-General (interviewed on 14 October 2014).

<sup>79</sup> Law of 19 June 2009 on various provisions related to work during the crisis, BOG 25 June 2009.

<sup>80</sup> Clauwaert, S. and Schömann, I., 'The crisis and national labour law reforms: a mapping exercise. Country report: Belgium', 2013, ETUI.

Looking at the reduction of the cost of labour, the measures provided for a general reduction of the fiscal burden, a reduction in social security contributions on night and shift work, and a reduction of taxes on the first 65 hours of overtime per year. The ceiling was increased to 100 hours for 2009 and to 130 hours from 1 January 2010.

Various arrangements relating to terms of employment during the crisis resulted in temporary measures aimed at adapting the volume of employment for businesses faced with economic difficulties resulting from the global crisis:

- *Extension of the scope of the temporary lay-offs system to white collar workers:* the measure concerned the total or partial suspension of the execution of the employment contract for a specifically limited period. It applied, from the end of June 2009, to firms in difficulty (20 % fall in turnover or output over one year, or 20 % temporary lay-offs of blue-collar workers for economic reasons, compared to the total number of days declared to the NSSO). These firms had to be bound by a sectoral collective labour agreement, or failing that, a corporate collective labour agreement or corporate plan. During this period, the employees received, in addition to the NEO benefit, a financial supplement paid by the employer in order to limit their loss of income. Temporary unemployment for white-collar workers became a reality from 2012<sup>81</sup>.
- The *individual temporary reduction in working time also known as the "crisis time credit"* applied in the private sector subject to the same conditions as the preceding measure, i.e. fall in turnover and rate of temporary lay-offs. However, the individual employee had to consent to the use of this instrument. Working time was reduced by one-fifth or by half for a maximum period of six months. This measure applied from 25 June 2009 to 31 March 2011.
- *The temporary adjustment to working time in a crisis* comprised of a collective reduction in working time applicable to all employees of a firm, or to a specific category of workers in the firm. Full-time blue-collar and white-collar workers who saw their working time reduced by one-fifth or a quarter received financial compensation from their employer. The latter was granted a reduction in employer's contributions. The individual worker's consent was not required, but the firm had to have a collective labour agreement in order to qualify for the scheme. This measure applied from 29 June 2009 to 31 January 2011 (NBB, 2009).

The significance of the global crisis necessitated establishing particular measures to address the consequences of restructuring processes:

- The *special re-employment unit* mechanism already existed before the crisis, but had only concerned workers aged over 45 who had been laid off by a company declared to be restructuring. However, since 6 April 2009, any business with 20 or more workers that announces an intention to carry out a collective lay off, must set up a special re-employment unit through which the employer guarantees outplacement for all workers affected by the layoff. The employer is committed to paying a reclassification allowance - three months for workers under the age of 45 or six months over 45 - for all the workers affected that have a minimum seniority of one year. Workers with this minimum seniority of one year in the business, whether they were on temporary contracts (including interim workers) or on permanent employment contracts, are obliged to participate in the special re-employment unit for a minimum of three months (less than 45 years old) or six months (over 45 years old).

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<sup>81</sup>Law of 12 April 2011 amending Law of 1 February 2011 extending crisis measures and implementing the interprofessional agreement, and implementing the Special Government Agreement concerning the draft interprofessional agreement, BOG 28 April 2011.

- *The restructuring card* for workers who lost their jobs was extended to workers who lost their job in the context of a bankruptcy, liquidation or the closing down of a company. The employer who employed someone with such a card received a temporary reduction of employers' contributions. The employee himself received a higher net wage, thanks to a reduction in the employee's contributions to social security. This measure applied from 1 July 2009 to 31 January 2011.

Other relevant measures concerned:

- *The setting up of a crisis premium* due to blue-collar workers who were dismissed between 1 January and 30 June 2010<sup>82</sup>. This premium amounted to 1,666€ and the cost was, in principle, divided between the NEO (1,111€) and the employer (555€). Employers were exempted from paying their part of the premium, if, in 2010, special crisis measures were applied, or temporary unemployment was applied. In both cases the National Employment Service paid the complete crisis premium. Extended, the measure ended on December 31 2011 and was replaced by a "lay off allowance" from January 1 2012<sup>83</sup>.
- *Several measures reduced wage costs* for certain categories of workers. Demand for younger workers was stimulated via the *Win-Win plan* from 1 January 2010 (in place until end-2011) which introduced full or partial exemption from social security contributions for younger workers, where the degree of exemption depended on age, education level, and length of unemployment. The Win-Win plan also targeted older unemployed and long-term unemployed.

#### 4.3.2. Structural reforms of the labour market

Various labour market reforms were decided when the new government was formed in the autumn of 2011. The reforms were presented "as designed to bring the country out of the crisis, ensuring quality of life for all citizens and protecting the future of young generations<sup>84</sup>".

##### **Radical reforms of career breaks**

The right for employees to take a career break with allowance (paid by the NEO), known as time credits, was reformed in 2011. The new rules entered into force on 1 January 2012<sup>85</sup>. The normal time-credit or career leave is now limited to a maximum of one year for full time workers, two years for part-timers, or five years for those working one-fifth of a usual work week. The qualifying criteria have been restricted so that an applicant must have already worked more than five years, of which, two years must be with the company concerned. These restrictions can no longer be overruled or extended by collective agreement.

The time credit system with justification (to care for a young child or sick family member) can be used for a maximum of 36 months during a worker's career, whether they work full

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<sup>82</sup>Act on diverse provisions of 30 December 2009, BOG 31 December 2009.

<sup>83</sup>Act of 12 April 2011 amending the Act of 1 February 2011 extending crisis measures and implementing the interprofessional agreement, and implementing the Special Government Agreement concerning the draft interprofessional agreement, BOG 28 April 2011.

<sup>84</sup>Unisoc, 'Federal government Agreement of 1 December 2011' (*Accord de Gouvernement fédéral du 1 décembre 2011*) (11 July 2011), available at <http://www.codef.be/wp-content/uploads/2012/07/ACCORD-DU-GOUVERNEMENT-MESURES-SOCIO-ECONOMIQUES2.pdf>

<sup>85</sup>Royal Decree of 28 December 2011 amending the Royal Decree of 12 December 2001 implementing Chapter IV of the Act of 10 August 2001 related to the reconciliation of employment and quality of life regarding time credit scheme, decreasing career and reduced working time, BOG 30 December 2011.

or part time. The time credit system for older workers with higher benefits, those over the age of 50, is now restricted to people over 55 who have worked for 25 years.

These time credit periods were previously included as working time for the calculation of pensions. This equalization is now severely limited to a maximum of one year (previously three years in most cases). The career leave system in the public sector will be completely harmonised with the new time credit system by 2020. From 2012 onwards, the career leave system in the public sector is limited to a maximum of 60 months.

### **Harmonisation of workers' statutes: new unified redundancy rules**

Following two rulings by the Constitutional Court<sup>86</sup>, harmonisation of the legal statutes governing blue collar and white collar workers became a key issue in Belgium. The legislator reacted to these rulings by adopting the law of 12 April 2011, amending the law of 1 February 2011 by extending crisis measures and implementing the inter-professional agreement, as well as implementing the Governmental agreement on the draft inter-professional agreement. This law substantially modifies, without unifying, the notice periods applicable to labour contracts entering into force as of 1 January 2012. In a third ruling of 2011, the Constitutional Court qualified the legal differences between blue and white-collar workers maintained in the law of 12 April 2011 as discriminatory and set a binding deadline for the Belgian legislator: the two worker statutes had to be unified by 8 July 2013<sup>87</sup> at the latest.

On 26 December 2013, the Belgian Parliament adopted the Act regarding the introduction of a unified status for blue and white collar workers, with respect to notice periods, the 'carenz day'<sup>88</sup> and related policy measures. The Unified Status Act entered into force on 1 January 2014. It lays down the fixed notice periods to be observed by both employer and employee when terminating an employment agreement of indefinite duration. In addition, outplacement rights and obligations are extended to all dismissed employees with notice entitlements of 30 weeks or more. The obligation to provide a proper reason for dismissals is also extended to all, adding some administrative burdens. Finally, the first day of unpaid sickness leave for blue collar workers is now abolished. The enacted reform constitutes an important step towards a single employment protection system for all workers under Belgian law. As rights acquired before the end of 2013 are, to a large extent guaranteed, the impact of the reform will manifest itself only gradually over time.

### **Reform of the unemployment scheme**

In order to increase incentives to take up work, the Belgian authorities enacted a deep reform of the unemployment benefit system in 2011<sup>89</sup>:

- *increased degressivity of benefits*: the rate at which regular unemployment benefits are reduced over time has been made steeper as of November 2012. The net replacement rate was increased for the first six months (to 65% of gross salary, capped at a reference gross wage of EUR 2,370.8 for the first three months, and 60% of the same reference wage for the following three months) and remained at the same level as before the reform for the remainder of the year (60% of the gross salary). After this first year, unemployment benefits decrease in several steps at a pace which depends on household composition and the length of the previous contribution period. Between 16 and 48 months, job seekers fall back on a lump sum slightly higher than social

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<sup>86</sup>Constitutional Court, 8 July 1993, 56/93; Constitutional Court, 21 June 2001, 84/2001.

<sup>87</sup>Constitutional Court, 7 July 2011, 125/2011.

<sup>88</sup>The carenz day or waiting day was the first non-refunded day of sick leave for blue collar workers (not for white collar workers).

<sup>89</sup>Ministerial Decree of 28 December 2011 amending articles 1er, 38bis, 62 and 87 of Ministerial Decree of 26 November 1991 implementing the unemployment regulation regarding the job introduction benefit, BOG 30 December 2011.



assistance benefits (1090.70€ for a cohabitant with dependents, 916.24€ for single persons and 483.86€ for a cohabitant without dependents). Exceptions apply to the temporarily unemployed, certain categories of elderly unemployed or those with long tenures, and unemployed persons with disabilities. At the same time, eligibility conditions have been relaxed by lengthening the reference periods used for the calculation of previous work experience (from 18, 27 and 36 to 21, 33 and 42 months, respectively) and by assimilating to salaried work periods of activity carried out in the framework of labour market reintegration programmes<sup>90</sup>.

- *Modification of the definition of a suitable job*<sup>91</sup>: the minimum distance rule for accepting a job offer from the state employment agency has been increased from 25 to 60 kilometers since 1 January 2012. If unemployed workers choose not to accept a job offer, they can lose their unemployment benefit.
- *Tougher restrictions on benefits for school leavers*<sup>92</sup>: the unpaid transition period between leaving school and receiving benefits has been extended from nine months to one year. The name of the benefit they then receive changed from 'waiting benefit' to 'job introduction benefit'. This benefit is payable for a maximum of three years and recipients will be monitored to check they are making an effort to find work. This maximum term can be extended if the claimant has worked for more than 156 days in the two years before unemployment. Those over the age of 33 can no longer receive this 'job introduction benefit'.
- *Enhanced follow-up of job seekers*<sup>93</sup>: guidance by regional employment services is backed up by assessment interviews with the federal institution, which decides if the person is entitled to receive unemployment benefits. For young school leavers, the interviews take place during the seventh and the eleventh months of unemployment. To be entitled to unemployment benefits specifically provided for young school leavers, both assessments must be positive. For young people under the age of 25 years receiving ordinary unemployment benefits (after a year of work at least), the first assessment interview takes place after 9 months instead of the previous 15 months. For job seekers aged 26 to 55, the first assessment interview takes place after 12 months (instead of 21 months). Furthermore, the age limit will be raised from 55 to 58 years by 2016. From now on, young people working part-time and receiving supplementary unemployment benefits, and people with a limited occupational disability are also monitored through interviews.

## **Pay Freeze 2013-2014**

The wage norm is a percentage that expresses the maximum wage cost change over a period of two years, based on the wage cost change in Germany, France and the Netherlands. Limiting an increase in wage cost protects Belgium's competitive position

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<sup>90</sup>Royal decree of 23 July 2012 amending the royal decree of 25 November 1991 concerning rules governing unemployment and the increased degressivity of unemployment benefits, BOG 30 July 2012.

<sup>91</sup>Ministerial Decree of 28 December 2011 amending articles 1er, 38bis, 62 and 87 of Ministerial Decree of 26 November 1991 implementing the unemployment regulation regarding the job introduction benefit, BOG 30 December 2011.

<sup>92</sup>Royal Decree of 28 December 2011 modifying articles 27, 36, 36ter, 36quater, 36sexies, 40, 59quinquies, 59sexies, 63, 79, 92, 93, 94, 97, 124 et 131septies of the Royal Decree of 25 November 1991 concerning rules governing unemployment, BOG 30 December 2011; Ministerial decree of 28 December 2011 amending articles 1er, 38bis, 62 and 87 of Ministerial Decree of 26 November 1991 implementing the unemployment regulation regarding the job introduction benefit, BOG 30 December 2011.

<sup>93</sup>Royal Decree 28 December 2011 amending articles 27, 36, 36ter, 36quater, 36sexies, 40, 59quinquies, 59sexies, 63, 79, 92, 93, 94, 97, 124 et 131septies of the Royal Decree of 25 November 1991 concerning rules governing unemployment, BOG 30 December 2011.

compared to neighbouring countries. This wage norm is generally set by the social partners every two years. However, following the repeated failure of the negotiations with the social partners, and after a mediation proposal by the government did not result in an agreement, the initiative passed once again to the government.

Repeatedly reprimanded by the European Commission due to wages that were too high in relation to competitiveness, Belgium opted for wage moderation. As part of its budget for 2013, designed to spare 3.700 million €, the Belgian government declared that wages in both the public and private sector would be frozen during 2013 and 2014. On 29 March 2013, the Council of Ministers approved the Royal Decree in which the wage norm for 2013-2014 was indeed set at 0%<sup>94</sup>. The freeze was however not total and involved only a prohibition of any new increases negotiated between companies and the trade unions via the collective bargaining system. Individually negotiated salary increases remain possible, as is the case for pre-existing scale increases based on age and seniority. There are also exceptions for low income earners who do not earn more than the minimum wage, for whom a 0.9% increase during 2013-2014 is possible. These low income earners also benefit from tax reductions which will have the effect of increasing their net income <sup>95</sup>.

#### **4.4. Impact of the measures**

During the crisis, Belgian enterprises varied in how they used the different anti-crisis devices. The system of temporary unemployment for economic reasons was most used. This use reached a peak in the first half of 2009, affecting some 200,000 workers at that time, more than twice the number before the crisis. The similar new system applicable to white-collar workers was successful to a smaller extent: involving around 80,000 individuals at its height in the beginning of 2010. Likewise, employers had limited recourse to the crisis time credit and the temporary adjustment to working time, which was applied to only some 2,500 and 2,000 persons respectively at the end of 2009 (De Mulder et al, 2011). According to the OECD, the use of these devices saved 0.5% of employment in the private sector and 1.25% of permanent employment<sup>96</sup>.

According to workers' representatives, these results indicated that the measures were inappropriate and their low level of use was explained by the need for the company to prove a reduction in turnover. This condition was imposed by trade unions and discouraged a good number of businesses from making use of this option which showed, in the eyes of the trade unions, that the measures envisaged in fact responded to a pure need for flexibility on the part of the employers<sup>97</sup>.

The number of new employment contracts supported by activation of the temporary Win - Win plan greatly increased. At the end of 2010, around 30,000 contracts had been concluded under the Win-Win scheme. By December 2011, that number had risen to 54,000 (NBB, 2011).

A year after its implementation, the NEO assessed the first impact of the degressivity of unemployment benefits and enhanced the follow-up of job seekers. In 2013, a total of 17,140 sanctions (temporary suspensions, reduced allowances, exclusions) had been noticed. According to the report, some unemployed persons received more, as the reform provided increased allocations for the first three months of benefits<sup>98</sup>. This represented about 7% of all beneficiaries of unemployment benefits. This decrease varied between 1

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<sup>94</sup>Royal Decree of 29 March 2013 implementing article 7 § 1 of the Law of 26 July 1996 on the promotion of employment and the safeguarding of competitiveness, BOG 2 May 2013.

<sup>95</sup>Clauwaert et al. (2013), op.cit.

<sup>96</sup>OECD, 'OECD Economic Surveys Belgium 2011', 2011.

<sup>97</sup>Nadenoen, F., Lisein, O., Pichaucht, F, 'Anticipating and managing restructuring- Belgium', 2010, European Commission, Employment, Social Affairs and Equal Opportunities.

<sup>98</sup>National Employment Office, 'L'ONEM en 2013, Volume 2 : indicateurs et évolutions des allocations' (2013).



and 4% but reached up to 10% for some cohabitants. The impact is currently limited, but the reform has not yet produced its full effects. The number of people affected is expected to increase and benefits are expected to decrease to a greater extent<sup>99</sup>. A recent simulation - conducted by the FPS Social Security, at the request of the Central Economic Council and the Department for the fight against poverty, precariousness and social exclusion - quantifies the impact of this increased degressivity of jobseekers' income<sup>100</sup>. While the reform strengthened the financial attractiveness of the jobs available, it further undermined the protection against poverty provided in the form of unemployment benefits, especially for the long-term unemployed. After the reform, the overall risk of poverty in cases of full unemployment rose faster and more strongly with the duration of unemployment: after 61 months, it reached 28% (compared to 21.5% before the reform). This increased risk of poverty is observed for all categories of households, but particularly for single people- after 61 months, it reached 71.9% (as against 11.7%), an increase of 60.2%. For heads of household, the increase was "only" 5% (to 66.1%), but they were already at a high risk of poverty before the reform (61%). The risk of poverty increased by 2% for cohabiting persons (15.6% to 17.1%) and was much lower compared to other households<sup>101</sup>.

Several NGOs active in the defence of women's rights (Vie Féminine, Plate-forme féministe socioéconomique, etc.) also pointed out that the reform of the unemployment scheme hit women harder, taking them further into poverty<sup>102</sup>.

The constitutionality of the Royal Decree of 23 July 2012 implementing the degressivity of unemployment benefits has been questioned by trade unions<sup>103</sup> and several NGOs<sup>104</sup>. The right to social security is guaranteed by various legal provisions, notably Article 23 of the Constitution, which includes at least one 'standstill' effect. This principle, developed by doctrine and jurisprudence, precludes the legislator from reducing the highest level of protection conferred by law, without compelling reasons. Such a reduction is possible, but only if it is in the public interest and if the consequences are not disproportionate to the aim pursued. However, neither the royal decree nor the government agreement justifies the measures taken. The decree constitutes a significant decline, both in terms of access to unemployment benefits and their retention and removal. The Flemish Network for the Fight against Poverty has appealed to the Council of State to set aside the royal decree in question. The latter was dismissed in a judgment delivered in December 2012 on the grounds that the applicant did not have an interest to act<sup>105 106</sup>.

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<sup>99</sup>Service de lutte contre la pauvreté, la précarité et l'exclusion sociale, 'Enhanced degression of unemployment benefits: impact on poverty' (*La dégressivité renforcée des allocations de chômage : impact sur la pauvreté*), August 2014, available at <http://www.luttepauvrete.be/publications/degrossivite.pdf>

<sup>100</sup>Nevejan, Hendrik and Van Camp, Guy, 'The strengthened degression of Belgian unemployment benefits: effects on the income of the unemployed and financial employment traps' (*La dégressivité renforcée des allocations de chômage belges: effets sur le revenu des chômeurs et sur les pièges financiers à l'emploi*) in Maystadt, Philippe et al (éds.), *Le modèle social belge: quel avenir?* [2013] Presses interuniversitaires de Charleroi), p.471-507.

<sup>101</sup>A concern especially raised by the Combat Poverty, Insecurity and Social Exclusion Service's Coordinator (interviewed on 17 September 2014) and a Belgian Anti-Poverty Network's Policy Officer (interviewed on 10 October 2014).

<sup>102</sup>Vie féminine, 'Degression of unemployment: a disgrace for women' (*La dégressivité du chômage : une honte pour les femmes*), Press release, 11 May 2012, available at <http://www.viefeminine.be/spip.php?article2335>.

<sup>103</sup>Palsterman, P., 'Elements for the critique of constitutionality of certain parts of the unemployment benefits regulation' (*Eléments en vue d'une critique de la constitutionnalité de certains éléments de la réglementation du chômage*), internal note, 2012.

<sup>104</sup>Forget, C., 'Can we still talk of the right to unemployment?' (*Peut-on encore parler de droit au chômage?*), in *Etat des droits de l'homme en Belgique*. Rapport LDH 2013-2014, La Revue Nouvelle, February 2014.

<sup>105</sup>Council of State, 20 December 2012, *Vlaams netwerk van verenigingen waar armen het woord nemen t/ Belgische Staat*, no 221.853.

<sup>106</sup>Dumont, D., 'Increased degression of unemployment benefits versus principle of standstill' (*Dégressivité accrue des allocations de chômage versus principe de standstill*), *Journal des Tribunaux*, November 2013, p. 769-776.

## 5. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO PENSION

### KEY FINDINGS

- Since mid-2000, there has been a minor increase in the effective retirement age for males and a two year increase for females which reflects the gradual increase, completed in 2009, of the legal retirement age for women to 65, aligning it with that of men. Despite these developments, the age for both males and females remains among the lowest in the OECD.
- After December 2011, the new coalition government quickly embarked on an ambitious reform and austerity programme, bringing the country's budget deficit in line with the European rules and keeping the government out of the Eurozone debt crisis. The first reform introduced was the pension reform.
- Although the pension age remains at 65, the general goal of the reform was that everybody would work for at least two years longer than before, and that it would be harder to stop working earlier.
- Pre-pension years prior to the age of 60 are no longer fully taken into account when calculating pensions, except in some special systems. In the public sector, the pension is now calculated based on the average income of the last ten years instead of five years.
- The constitutionality of the law of 28 December 2011 increasing the pension age from 60 to 62 in the public sector was unsuccessfully questioned by associations of civil servants.
- The swift introduction of pension reforms sparked a direct reaction from unions, who criticised the lack of social dialogue and negotiation on the issue.

### 5.1. International and EU legal framework for the protection of the right to pension

There is no internationally guaranteed right to pension. However, pensions, including the contributory pensions, as well as the so-called social pensions (in so far as provided by applicable legislation), have been observed through the lenses of the right to property. Namely, having developed the doctrine of pensions as acquired rights, the European Court of Human Rights has observed pensions through the lenses of the right to property as guaranteed by Article 1 of Protocol No. 1 to the ECHR<sup>107</sup>.

With this understanding, Article 17 of the EU Charter guarantees the right for everyone 'to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.'

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<sup>107</sup> See e.g. *Gaygusuz v. Austria*, case no. 17371/90, judgment of 16 September 1996, §41. For a full list of references to the regime of 'acquired rights' see *Grudić v. Serbia*, case no. 31925/08, judgment of 17 April 2012, §72.

## 5.2. Entitlement to a pension in Belgium

The right to social security (including pension) is guaranteed under article 23 of the Belgian Constitution. The entitlement to a pension or other welfare benefits also falls under the protection of Article 1 of Protocol No. 1 to the European Convention on Human Rights, guaranteeing the right to property. The Court has stressed in the *Stec and others v. the United Kingdom*<sup>108</sup> case that in the democratic State, many individuals were, for all, or part of their lives, completely dependent for survival on social security and welfare benefits. Many domestic legal systems recognised that such individuals required a degree of certainty and security, and provided for benefits to be paid – subject to the fulfilment of the conditions of eligibility – as a right. Therefore, where an individual had a right under domestic law to a welfare benefit, the importance of that right should also be reflected by holding Article 1 of Protocol No. 1 to be applicable<sup>109 110</sup>(Zvonimir et al, 2007).

Since mid-2000, there has been a minor increase in the effective retirement age for males and a two years increase for females, which reflects the gradual increase, completed in 2009, of the legal retirement age for women to 65, aligning it with that of men. Despite these developments, the age for both males and females remains among the lowest in the OECD<sup>111</sup>.

## 5.3. Overview of the relevant measures

After a record breaking 541 days of political negotiations, a new coalition government was sworn in on 6 December 2011 in Belgium. It quickly embarked on an ambitious reform and austerity programme, bringing the country's public debt in line with European rules (see section 1.1) and keeping the government out of the Eurozone debt crisis. The first reform introduced was the pension reform<sup>112</sup>. Although the pension age remains at 65, the general goal of the reform was that everybody would work for at least two years longer than before, and that it would be harder to stop working earlier. The reform was implemented in 2012.

### 5.3.1. Age, seniority and availability requirements introduced by the reform

The admission age for early retirement (unemployment allowances with company allowance) has been raised from 58 to 60 years. The required seniority was raised to 40 years<sup>113</sup>. This will be implemented in several steps and will be fully operational by 2015.

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<sup>108</sup>European Court of human rights, 12 April 2006, *Stec and others v. the United Kingdom*, ECHR 2006-VI.

<sup>109</sup>However, this provision cannot be interpreted as giving an individual a right to a pension of a particular amount, although a substantial reduction could be regarded as affecting the very substance of the right. It does not mean either that Article 1 of Protocol No. 1 guarantees entitlement to pension or other social security benefits where there is no basis for such benefits under the domestic law. This is so because the right to a pension or other social security benefits is not as such guaranteed under the Convention and because, as already noted above, Article 1 of Protocol No. 1 does not create a right to acquire property (Zvonimir Matage, A., Longar, M. and Vilfan, A., 'The right to property under the European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights and its protocols' (2007), available at [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-10\(2007\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-10(2007).pdf)

<sup>110</sup>Zvonimir Matage, A., Longar, M. and Vilfan, A., 'The right to property under the European Convention on Human Rights. A guide to the implementation of the European Convention on Human Rights and its protocols', human rights handbooks, No. 10, 2007, available at [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-10\(2007\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-10(2007).pdf).

<sup>111</sup>Hoj, J., 'Enhancing the inclusiveness of the labour market in Belgium', 2013, Economics Department, Working Paper no.1009, OECD.

<sup>112</sup>Act of 28 December 2011 on various provisions, BOG 14 August 2012.

<sup>113</sup>Royal Decree of 28 December 2011 amending the Royal Decree of 3 May 2007 establishing the standard early retirement as part of the Solidarity Pact between generations, to increase the employment rate of older workers, BOG 30 December 2011.

Additionally, employers' social security contributions for the employers' bonus will increase for lower exit ages.

For pre-pensions in loss-making enterprises, the minimum age was raised from 50 to 52 years in 2012 and plans to move to 55 years in 2018. For pre-pensions in restructuring enterprises, the minimum age was raised from 50 to 55 years in 2013<sup>114</sup>.

The age of eligibility for partial early retirement (the right to work halftime or 4/5-time) was raised from 50 to 55 years, except for some harsh occupations or for people having worked effectively 28 years at the age of 50, for whom a 4/5th settlement under certain conditions is maintained<sup>115</sup>. In addition to that, a proportionality principle was introduced in cases of dismissal, aiming at a proportional spread of the collective dismissals over all age groups. Moreover, enterprises will have to present annually to the Works Council an "employment for elderly workers" plan (for maintaining or increasing the number of elderly workers aged 50 and above)<sup>116</sup>.

Early exits via early statutory retirement were rendered increasingly difficult. In general, the admission age for early retirement schemes in the private and public sector will gradually be raised by 2016 to 62 years after a professional career of 40 years (or to 60 years after a professional career of 42 years and to 61 years after a professional career of 41 years)<sup>117</sup>. The preferential career systems for judges, priests and university professors were amended.

The age limit for monitoring the actual availability of all the unemployed (including those in the pre-pension scheme) was raised in 2013 up to 55 years and in 2016 to at least 58 years<sup>118</sup>.

### 5.3.2. Calculation of pensions after the reform

Pre-pension years prior to the age of 60 are no longer fully taken into account for calculating pensions, except in some special systems<sup>119</sup>.

The unity of career principle<sup>120</sup> has been relaxed in order to ensure that all days worked are effectively taken into consideration in calculating the pension<sup>121</sup>. From 1<sup>st</sup> January 2015, this calculation will be based on the number of full-time equivalent days instead of the number of calendar years.

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<sup>114</sup>Ibid.

<sup>115</sup>Royal Decree of 28 December 2011 amending articles 27, 36, 36ter, 36quater, 36sexies, 40, 59quinquies, 59sexies, 63, 79, 92, 93, 94, 97, 124 and 131septies of the Royal Decree of 25 November 1991 concerning rules governing unemployment, BOG 30 December 2011.

<sup>116</sup>Act of 29 March 2012 on various provisions, BOG 30 March 2012.

<sup>117</sup>Act of 28 December 2011 on various provisions, BOG 14 August 2012.

<sup>118</sup>Royal Decree of 28 December 2011 amending articles 27, 36, 36ter, 36quater, 36sexies, 40, 59quinquies, 59sexies, 63, 79, 92, 93, 94, 97, 124 and 131septies of the Royal Decree of 25 November 1991 concerning rules governing unemployment, BOG 30 December 2011.

<sup>119</sup>Royal Decree of 28 December 2011 amending Royal Decree of 3 May 2007 establishing the standard early retirement as part of the Solidarity Pact between generations, to increase the employment rate of older workers, BOG 30 December 2011; Royal Decree of 20 September 2012 amending the Royal Decree of 3 May 2007 fixing the unemployment scheme with company allowance, BOG 4 October 2012.

<sup>120</sup>The unity of career principle implies that for the calculation of the pension, the career may not be longer than 45 years. In case of a longer career, the least advantageous years are not taken into account. As from 1<sup>st</sup> January 2015, the unity of career will no longer be 45 years then, but 14,040 full-time equivalent days (45x 312 days).

<sup>121</sup>Act of 19 April 2014 amending various provisions of the pension scheme for employees given the principle of the career unit and Act of 19 April 2014 amending the Royal Decree No. 50 of 24 October 1967 on the retirement and survival pension and survival for employees, BOG 6 June 2014.

The last months of the professional career in the year during which a worker retires will be taken into consideration in the pension calculation<sup>122</sup>. Up to now, the months of the year in which a worker retires do not provide entitlement to a pension. The objective is to encourage the elderly to continue to work beyond the 1 January of the retirement year.

In the public sector, a pension is now calculated on the basis of the average income of the last ten years instead of five years<sup>123</sup> (since 1 January 2012).

The reform of the pension bonus for private sector workers (attributed to those who keep on working after the age of 62) and the age top-up scheme for civil servants were applied starting in 1 January 2014, to encourage people to stay at work longer while harmonising the arrangements for all the schemes. The pension bonus, taking the form of a pension top-up, is increased the longer the retirement date is deferred. It is now provided on a flat-rate basis, and an entitlement to the bonus may be granted no earlier than one year after the early retirement pension qualification requirements have been met<sup>124</sup>.

From 2013, people who are older than 65 and have worked for more than 42 years are allowed to work and earn as much as they want after retirement without losing any state pension rights. For others, the rules have been slightly relaxed and the amount they can earn without being taxed has been raised. However, it is still not possible to acquire extra pension rights by working after retirement age<sup>125</sup>.

#### **5.4. Impact of the measures**

In 2013, Belgium had more than 1,900,000 pensioners on average, taking all systems together. This rise of almost 2% compared to 2012 is a tangible sign of population ageing in Belgium<sup>126</sup>.

The reform of the rules governing the early retirement scheme had a deep impact on the number of people entitled to the different schemes. With respect to "unemployment with a company allowance" (former early retirement), the number of new entrants decreased by 3.3% between 2011 and 2013, all schemes considered. The general scheme for workers aged 58 and over with a career of 38 years (men) or 35 years (women), for which the seniority requirement for men was increased up to 40 years has been especially hard-hit by this decrease- the number of entrants decreased from 5,305 persons in 2011 to 4,862 in 2013 (- 8.4%)<sup>127</sup>.

Implemented in 2013, it is difficult to assess the impact of the reform of the pension bonus on ageing costs. However, in its July 2013 report, the Study Committee on Ageing predicted a decrease of the cost of pension expenditure of 0.6% and 2% respectively by 2020 and 2060<sup>128</sup>.

The constitutionality of the Act of 28 December 2011, which raised the minimum pension age from 60 to 62 years in the public sector, was questioned by several associations representing civil servants arguing that the law was not negotiated properly with the representative trade unions, although the Act of 19 December 1974 obliged the Belgian

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<sup>122</sup>Ibid.

<sup>123</sup>Law of 28 December 2011 on diverse provisions, BOG 14 August 2012.

<sup>124</sup>Program Law of 28 June 2013, BOG 1 July 2013.

<sup>125</sup>Royal Decree of 28 May 2013 amending various regulatory provisions related to the accumulation of an employees' pension with income or benefits, BOG 20 June 2013.

<sup>126</sup>National Bank of Belgium (2013), op.cit.

<sup>127</sup>National Employment Office (2013), op.cit.

<sup>128</sup>Study Committee on Ageing, 2013 Annual Report.

State to negotiate the essential elements of the administrative and pecuniary status of officials. This issue is further developed in section 9.

The swift introduction of pension reforms sparked a direct reaction from unions, who criticised the lack of social dialogue and negotiation on the issue. The public sector led the protest by organising a strike on 22 December, followed by a general strike on January 30 2012. This point is further developed in section 7.

## 6. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT OF ACCESS TO JUSTICE

### KEY FINDINGS

- The main mechanism available to natural and legal persons to enforce the rights under review is to instigate court proceedings.
- The Belgian Equality Body, the Centre Interfédéral pour l'Égalité des Chances, may assist victims of discrimination through advice, legal support, mediation or legal action. It is an independent body which can act as a mediator or as a party before the courts. It has competence in matters of both racial and non-racial discrimination in areas such as employment, education, and housing.
- In order to allow an effective access to justice, vulnerable and precarious groups may claim legal aid, according to article 508/1 of the judiciary code.
- Although certain reforms and measures adopted by the government were not expressly formulated in relation with the crisis, they can have a not insignificant impact on the right of access to justice. In 2013, the government decided to reform legal aid in order to make it more efficient and to reduce costs . According to the Minister of Justice, legal aid cost the state more than €78 Million in 2012. Due to budgetary constraints, the budget allocated to legal aid has progressively decreased from €76.7 Million in 2013 to €71,1 Million in 2014 . The preliminary draft law notably requires trainee lawyers to take on, free of charge, five pro bono cases as part of their training. It also introduces the principle of the user contribution.
- A measure negatively affecting the access to justice is the increase of access costs due to the introduction of a 21 % VAT on lawyers' fees from 1 January 2014.

### 6.1. International and EU legal framework for the protection of the right of access to justice

While access to justice has not been explicitly guaranteed by international human rights law as such, it has however figured highly in the general requirements of the respect of rights of individuals. Hence, the UDHR, ICCPR, or ECHR, while guaranteeing procedural rights by means of the right to a fair hearing (or trial), do not make a reference to access to justice. The absence of a guarantee of the right of access to justice has not prevented the ECtHR to effectively provide protection of this right by expanding the guarantee from Article 6 of the right to a fair trial to also mean the guarantee of the right to access to a court. Furthermore, Article 13 of the ECHR guarantees the right to legal remedy, which is also an important element of access to justice.

More recently, however, the Convention on the Rights of Persons with Disabilities<sup>129</sup> guarantees the right of people with disabilities on access to justice on an equal basis with others.

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<sup>129</sup> CRPD, Article 13.



Access to justice is guaranteed by Article 47 of the EU Charter, which guarantees the right of everyone to an effective remedy before a tribunal established by the law, by means of a fair and public hearing within a reasonable time, with access to legal aid, if necessary. However, even though it is seen to typically mean 'having a case heard in a court, it can more broadly be achieved or supported through mechanisms such as national human rights institutions, equality bodies and ombudsman institutions, as well as European Ombudsman at the EU level<sup>130</sup>.'

## 6.2. Access to justice in Belgium

The main mechanism available to natural and legal persons to enforce the rights under review is to instigate court proceedings. There is no recognition in a written text of a general right to access to a judicial body. However, its existence as a general principle of law has been confirmed in Belgian case law as part of the right to a fair trial. The right of access to a judicial body to claim one's rights can be based on article 13 of the Belgium Constitution, which holds that nobody can be held from the judge attributed to him by law.

Mediation services exist in Belgium, often intended to mediate between private persons and government agencies. In this respect the Belgian Equality Body, the *Centre Interfédéral pour l'Égalité des Chances*, which assists victims of discrimination through advice, legal support, mediation or legal action, should be mentioned. It is an independent body which can act as a mediator or as a party before the courts. It has competence in matters of both racial and non-racial discrimination in areas such as employment, education, and housing<sup>131</sup>.

In order to allow an effective access to justice, vulnerable and low-income groups may claim legal aid according to article 508/1 of the judiciary code. The costs of the procedure, the fees of the public and ministerial officers and the experts appointed by the court can then be partially waived (income between €944 and €1,213 for someone living alone or between €1,213 and €1,480 for a household) or fully waived (income up to €944 for a single person and up to €1,213 for a household). The main criterion is the insufficiency of means to conduct the proceedings. Various forms of legal aid are provided. First-line legal aid is provided by specialised organisations or by legal counsels on certain days, either freely or at a fixed cost. The aid includes practical information, judicial information or preliminary legal advice. Persons applying for this aid can be directed either to an organisation for legal aid or to second-line legal aid. This aid includes elaborate legal advice and assistance, either in proceedings or in a contentious procedure. The second-line aid is partially or fully free of charge for anyone below specified levels of income<sup>132</sup>.

## 6.3. Impact of reforms and measures on access to justice

Although certain reforms and measures adopted by the government were not expressly formulated in relation with the crisis, they can have a not insignificant impact on the right to access to justice. This is why we briefly describe them below.

In 2013, the government decided to reform legal aid in order to make it more efficient and to reduce costs. According to the Minister of Justice, legal aid cost the state more than €78

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<sup>130</sup> FRA, *Themes: Access to justice*.

<sup>131</sup> Interfederal Centre for Equal Opportunities website, available at <http://www.diversite.be/mission-statement>.

<sup>132</sup> FRA, 'Access to justice in Europe: an overview of challenges and opportunities- Country report Belgium', 2011.

Million in 2012<sup>133</sup>. Due to budgetary constraints, the budget allocated to legal aid has progressively decreased from €76.7 Million in 2013 to €71.1 Million in 2014<sup>134</sup>.

The preliminary draft law notably requires trainee lawyers to take on, free of charge, five pro bono cases as part of their training. It also introduces the principle of the user contribution. All persons will have to pay a fee: 10 euros for the appointment of counsel and an amount between 20 and 30 euros per procedure. If an individual wishes to appeal, he/she will have to pay another fee for this appeal process.

People who try to find a solution to their disputes through the mechanism of conciliation or mediation will not be charged an additional contribution in addition to the contribution they pay for the appointment of counsel.

The right to free legal aid cannot be granted to persons if evidence exists that they have sufficient resources, or to beneficiaries who are clearly not cooperating in the defence of their own interests. The preliminary draft law does not explain in detail what is meant by this second condition, thus leaving the door open to relatively arbitrary decisions.

There is another change directly concerning the recipient of legal aid: the amount of time he/she is given, if a lawyer is allocated to him as a matter of urgency, to provide proof of insufficient resources and to pay the contribution due. This time period is set at five days, which is less than the month currently granted to the applicant to provide proof of income in urgent cases. There is a risk that this reform will deprive vulnerable groups of access to justice<sup>135</sup>.

Some amendments were made to the draft reform by the Council of State. Without rejecting the reform out of hand, the Council felt that it should not prevent access to justice for the most deprived groups when these were involved in a criminal case. The Minister of Justice nevertheless announced that the principle of user contributions would be maintained<sup>136</sup>.

A measure negatively affecting the access to justice is the increase of access costs due to the introduction of a 21 % VAT on lawyers' activities<sup>137</sup>. Until 31 December 2013 Belgium was the only EU country applying VAT exemption under art.44 §1 (1) of the VAT Act to lawyer services provided by Belgian, EU-listed lawyers or firms located in Belgium with the majority of Belgian or EU-listed partners. This allowed for not charging clients VAT, however, the firms had to absorb any VAT costs on overheads. Since 1 January 2014 Belgium imposes 21% VAT on the above-mentioned services. As a result, and unless a qualifying relief as statutory director or small VAT entrepreneur applies, all lawyers and lawyers-associates (including trainees who regularly provide legal services on an independent basis) will have to register for VAT purposes, account for VAT and file periodical returns.

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<sup>133</sup>Minister for Justice Website: [http://justice.belgium.be/fr/nouvelles/communiqués\\_de\\_presse/news\\_pers\\_2013-05-03.jsp](http://justice.belgium.be/fr/nouvelles/communiqués_de_presse/news_pers_2013-05-03.jsp).

<sup>134</sup>Cour des comptes (2013), Commentaire et observations sur les projets du budget de l'Etat pour l'année budgétaire 2014, Rapport adopté en assemblée générale de la Cour des Comptes du 18 novembre 2013.

<sup>135</sup>Macy, C., 'Aide juridique : une réforme injuste', La Revue nouvelle, February 2014.

<sup>136</sup>RTBF Info, 'The Turtelboom reform on legal aid tarnished by the State Council' (*La réforme Turtelboom sur l'aide juridique écornée par le Conseil d'Etat*), 26 June 2013, available at [http://www.rtbf.be/info/belgique/detail\\_la-reforme-turtelboom-sur-l-aide-juridique-ecornee-par-le-conseil-d-etat?id=8026712](http://www.rtbf.be/info/belgique/detail_la-reforme-turtelboom-sur-l-aide-juridique-ecornee-par-le-conseil-d-etat?id=8026712).

<sup>137</sup>Law of 30 July 2013 on various provisions (article 60), BOG 1st August 2013.

## 7. RIGHT TO FREEDOM OF EXPRESSION AND ASSEMBLY: PROTESTS AGAINST AUSTERITY MEASURES

### KEY FINDINGS

- Austerity raised great concern among the population, leading to many protests mainly organised by trade unions and sometimes by civil society.
- None of the main three Belgian Unions reported any concern regarding the organisation of these events. They were quiet, peaceful and no specific incident or overflow was reported, except in one case reported by ITUC.

### 7.1. International and EU legal framework for the protection of the freedom of expression and assembly

Freedoms of expression and assembly are guaranteed by Articles 20 and 23 of the UDHR, Articles 21 and 22 of the ICCPR, Article 8 of the IESCR, Articles 10 and 11 of the ECHR and Articles 5 of both ESC and RESC. Article 11 of the EU Charter guarantees the right of freedom of expression and information, while Article 12 provides for the protection of freedom of assembly and association.

Indeed, freedom of expression and freedom of assembly are two separate rights. The former guarantees the 'right to hold opinions and to receive and impart information and ideas without interference by public authority<sup>138</sup>', whereas the latter provides for the protection of the 'right to freedom of peaceful assembly<sup>139</sup>'. However, in the context of this particular study, they are being observed at the same time, and in relation with the same events – the protests in the Member States which were provoked by the austerity measures, and which at the same time served to express their opinions, however quite often by means of collective public assembly, through protests and other forms of manifestations, hence calling for the protection from either or both of these guarantees.

Like all other rights dealt with in the present study, these two rights are not absolute. In other words, they are guaranteed, but only under certain conditions. In that regard, one important element has to be present – the assembly needs to be peaceful. As soon as the assembly loses this attribute, the State has not only the right, but also the duty to intervene, in order to protect the rights and freedoms of others. At the same time, the opinion needs to be expressed without interference by a public authority, unless such an interference is 'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'<sup>140</sup>.

<sup>138</sup> ECHR, Article 10 and EU Charter, Article 11.

<sup>139</sup> ECHR, Article 11 and EU Charter, Article 12.

<sup>140</sup> ECHR, Article 10.

## 7.2. Right to freedom of expression and assembly in Belgium

Article 26 of the Constitution states that Belgians have the right to gather peaceably and without arms, without prior authorisation being required. This provision does not apply to open air meetings, which are entirely subject to police regulations.

## 7.3. Protests against austerity

Austerity raised much concern among the population, leading to many protests, mainly organised by trade unions and sometimes by civil society. None of the main three Belgian Unions reported any concern regarding the organisation of these events<sup>141</sup>. They were quiet, peaceful and no specific incident or overflow was reported, except in one case reported by ITUC, mentioned below<sup>142</sup>.

On 29 January 2010, the trade unions established a united front, organising a mass demonstration in Brussels led by the three Belgian unions (ACV/CSC, FGVB/ABVV and GCLSB/ACLVB). Between 25,000 and 35,000 demonstrators sent an urgent signal concerning their demand for more jobs and greater respect for workers. Directly after this open conflict, the government decided to intervene by holding a meeting with the social partners<sup>143</sup>.

On 2 December 2011, 80,000 Belgian citizens (50,000 according to the police) took to the streets in the capital, to protest against the austerity measures taken by the then-incoming government<sup>144</sup>.

The swift introduction of pension reforms sparked a direct reaction from unions, who criticised the lack of social dialogue and negotiation on the issue. The public sector led the protest by organising a strike on 22 December, followed by a general strike on January 30 2012. A joint statement by Union leaders said the strike's aim was to convince the government and employers to fully take into account the social situation of workers and those on benefits. Defending the strike, unions said they feared that the Di Rupo government's rationalisation plans would hit hardest Belgium's most vulnerable people, the young, the old and the poor<sup>145</sup>. The government did not listen to this message and kept seeking to extend austerity measures.

On 19 June 2012, 600 people took part in a demonstration in front of the headquarters of Belgium's National Employment Office (ONEM) over reforms to the benefits system. The aim was to denounce Government measures affecting young people and the labour market<sup>146</sup>.

Workers in Belgium took part in major protests in February 2013, including a march by civil servants against public sector reforms. On 7 February 2013, thousands of civil servants demonstrated in Brussels to express their dissatisfaction with the proposed public sector reform. Trade union estimates put the number of protesters at 10,000, though police said

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<sup>141</sup>As reported by a trade union's Legal Adviser and the National work Council's Secretary-General.

<sup>142</sup>Note that the "EURO manifestations", bringing together trade unions across Europe and organised in Brussels, are not covered here.

<sup>143</sup>Eironline, 'Crisis in social dialogue due to anti-crisis measures', 9 April 2010, available at <http://www.eurofound.europa.eu/eiro/2010/02/articles/be1002019i.htm>.

<sup>144</sup>Le Monde, 'Ten thousands of Belgian citizens on the streets against austerity' (*Des dizaines de milliers de belges dans la rue contre l'austérité*), 2 December 2011, available at [http://www.lemonde.fr/europe/article/2011/12/02/des-dizaines-de-milliers-de-belges-dans-la-rue-contre-l-austerite\\_1612710\\_3214.html](http://www.lemonde.fr/europe/article/2011/12/02/des-dizaines-de-milliers-de-belges-dans-la-rue-contre-l-austerite_1612710_3214.html).

<sup>145</sup>Eironline, 'Union protest against government's austerity package', 5 April 2012, available at <http://www.eurofound.europa.eu/eiro/2012/02/articles/be1202011i.htm>.

<sup>146</sup>Eironline, 'Protests over reforms to benefits system', 8 January 2013, available at <http://www.eurofound.europa.eu/eiro/2012/06/articles/be1206011i.htm>.

there were 7,000 marchers<sup>147</sup>. On 21 February 2013 between 30,000 (according to the police) and 40,000 union militants demonstrated in Brussels. They wanted to express their concerns about the Belgian government's recent policy decisions changing the automatic wage index in December 2012, which limited its margin of increase. Members of the government said they understood the concerns of the unions, but stood by their policies. ITUC reported that Workers at the Rossel Printing Company were reprimanded for participating in this nation-wide trade union protest<sup>148</sup>.

On 6 June 2013 between 25,000 and 30,000 protesters staged a march, according to police estimates. Trade Union organizers said as many as 35,000 showed up. They were protesting against austerity and wage freezes<sup>149</sup>.

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<sup>147</sup>Eironline, 'Government policy brings social unrest', 24 May 2013, available at <http://www.eurofound.europa.eu/eiro/2013/02/articles/be1302031i.htm>.

<sup>148</sup>ITUC, 'Survey of violation of Trade Unions Rights. Belgium', 20 March 2013, available at <http://survey.ituc-csi.org/Belgium.html?lang=en#tabs-3>.

<sup>149</sup>Dhnet, 'Demonstration of the trade unions: between 25,000 and 35,000 participants' (*Manifestation des syndicats : entre 25.000 et 35.000 participants*), 6 June 2013, available at <http://www.dhnet.be/actu/belgique/manifestation-des-syndicats-entre-25-000-et-35-000-participants-51b7374ee4b0de6db975db1d>.

## 8. OVERVIEW OF THE IMPACT OF THE AUSTERITY MEASURES ON OTHER FUNDAMENTAL RIGHTS IN BELGIUM

### KEY FINDINGS

- A share of the population experiences major difficulty in finding adequate housing and in holding on to it. The right to adequate housing enshrined in the Article 23 of the Constitution is far from being effective. Access to public housing is more and more difficult as it represents only 9% of the real estate while more than 40,000 households are waiting for public housing in Brussels and more than 30,000 in Wallonia. Further to the financial crisis of 2008, access to mortgages and property was clearly made more difficult, especially for low income households. Understandably, people have to turn increasingly to the private rental market where they encounter a whole host of difficulties. The increasing prices of rent on the private market led to a serious increase of judicial evictions.
- In order to improve access to adequate housing, the federal and regional governments took a series of measures. Such measures include the pilot project "Housing First" which was launched in five major Belgian cities on September 2013.

The purpose of this section is to analyse the impact of austerity measures on other fundamental rights reflecting the specific situation of Belgium. Due to the extent of the problem, this chapter presents the impact of austerity measures on the right to housing.

### 8.1. International and EU legal framework for the protection of the right to housing

The right to housing is recognised by Article 25 of the UDHR and by Article 11(1) of the ICESCR. Furthermore, Article 34(3) of the EU Charter guarantees the 'right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources'.

The UNCESCR has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it should be seen as the right to live somewhere in security, peace and dignity. The characteristics of the right to adequate housing are clarified mainly in the general comments on the right to adequate housing<sup>150</sup> and on forced evictions<sup>151</sup>. While it does not guarantee the right to own property, the right to housing contains a number of elements, including protection against forced evictions, security of tenure and requirement for non-discriminatory access. As a minimum, it must 'provide more than four walls and a roof<sup>152</sup>'.

<sup>150</sup> UNCESCR, General comment no. 4 on the right to housing, [UN Doc. E/1992/23](#), 1991.

<sup>151</sup> UNCESCR, General comment no. 7 on forced evictions, [UN Doc. E/1998/22](#), 1997.

<sup>152</sup> OHCHR, '[The Right to Adequate Housing](#)', undated, p. 3. See the same document for a detailed overview of UN standards applicable to the notion of adequate housing.

## 8.2. Austerity measures and their impact on the right to housing

A share of the population experiences major difficulty in finding adequate housing and in holding on to it. The right to adequate housing enshrined in Article 23 of the Constitution is far from being effective. For many years, housing policies and the resources allocated to them have been largely devoted to encouraging access to property and it is predominantly those in the higher categories of income who are able to become property owners. In 2011, the lower-income category scarcely used up 3% of the budget allocated to tax deductions for a primary residence<sup>153</sup>. The access to public housing is becoming more and more difficult as it represents only 9% of real estate while more than 40,000 households are waiting for public housing in Brussels and more than 30,000 in Wallonia. Waiting times to get public housing vary- from seven to eight years for studios to 12 years for three-bedroom apartments<sup>154</sup>.

Further to the financial crisis of 2008, access to mortgages and property was clearly made more difficult, especially for low income households. Understandably, people had to turn increasingly to the private rental market where they encounter a whole host of difficulties. The price of rent and its impact on a person's budget are near the top of the list, especially in time of crisis. In 2013, the average price of rent for an apartment in Belgium was 740 euros, an increase of 14.8% compared to 2012. In Flanders, rent has increased by 20% in 5 years and a third of tenants can no longer afford to live above the poverty line once they have paid their rent. In Brussels, the situation is identical. 50% of tenants have incomes between 1000 and 2000 € and they have to spend between 36% and 45% of the household budget on rent, according to the *Observatoire des loyers*<sup>155</sup>. The increasing price of rent has led to a serious increase of judicial evictions. As reported by the Board of Housing, judicial evictions have almost tripled in Wallonia since 2005, from 5,529 to 14,234<sup>156</sup>.

In order to improve access to adequate housing, the federal and regional governments took a series of measures. Such measures include the pilot project "Housing First" which was launched in five major Belgian cities on September 2013. The basic principle was the unconditional right to have a roof over one's head. With that certitude, people can evolve towards living a regular life<sup>157</sup>. On 1 April 2014, the VAT on electricity for private persons was reduced from 21% to 6%<sup>158</sup>.

On 11 July 2013, the Brussels Capital Region also adopted a new Housing Code. The reform included a series of changes aimed at reinforcing the fight against unhealthy housing and unoccupied dwellings<sup>159</sup>. In Flanders, it was decided that people who are on a waiting list for social housing will be entitled to rental assistance after four years (instead of five). Henceforth, a rental guarantee fund will insure the affiliated landlords against nonpayment. By the end of 2013, the Flemish Government also voted on a decision regarding the social public service obligations of the Flemish water companies, which lays down the procedures for cutting water supply and which protects vulnerable groups. A fund for the prevention of

<sup>153</sup>De Mol, M., 'Moving forward on the right to housing in Belgium', Housing Rights Watch Newsletter, Issue 4, October 2012.

<sup>154</sup>Géraldine Vessière, 'Housing crisis: the reign of imagination' (*Crise du logement : le règne de l'imagination*) in Le Soir 23 January 2014, available at <http://www.lesoir.be/409935/article/economie/immo/2014-01-23/crise-du-logement-regne-l-imagination>.

<sup>155</sup>Muriel Lefèvre, 'Rent prices increased by 20% in 5 years' (*Le prix des loyers a augmenté de 20% en 5 ans*) in Le Vif 12 June 2014, available at <http://www.levif.be/actualite/belgique/le-prix-des-loyers-a-augmente-de-20-en-5-ans/article-normal-34401.html>.

<sup>156</sup>The number of criminal deportations is increasing' (*Le nombre d'expulsions judiciaires ne cesse d'augmenter*), Press Release, available at <http://info.catho.be/2014/04/03/le-nombre-dexpulsions-judiciaires-ne-cesse-daugmenter/#.VFJuy1LjiUk>.

<sup>157</sup>Housing First Belgium website, available at <http://www.housingfirstbelgium.be/>.

<sup>158</sup>Federal Government, 'Recovery Strategy: Supporting the purchasing power of citizens, strengthen the competitiveness of our economy, create more quality jobs' (*Stratégie de Relance : Soutenir le pouvoir d'achat des citoyens, Renforcer la compétitivité de notre économie, Créer plus d'emplois de qualité*) (18 July 2012), available at <http://www.groups.be/doc/notecadre.pdf>.

<sup>159</sup>Ordinance of 11 July 2013 amending the Brussels-Capital Housing Code, BOG 18 July 2013.



evictions has also been created<sup>160</sup>. In May 2013, the Walloon Government adopted the cadastral mapping of the sites to which the Plan for permanent housing applies. A new bonus for the improvement of caravans for long-term housing in these areas was introduced. The installation premium granted to persons moving into a decent dwelling increased in a number of situations<sup>161</sup>. Since 2013, administrative fines may be imposed on landlords of dwellings that have been declared uninhabitable or dwellings for which no renting permit has been issued<sup>162</sup>. A decree on the granting of moving, rental and installation premiums has been adopted<sup>163</sup>. It introduces three new aids for tenants: (i) assistance to tenants leaving a dwelling early to move into social housing, (ii) assistance to households that leave an under-occupied social dwelling to move into a dwelling that they rent on the private market and, (iii) a higher installation premium for persons who leave a dwelling they own and situated in phase 1 of the Plan for permanent housing (flood risk areas).

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<sup>160</sup> *Belgian National Reform Programme 2014*: European Commission, 'National Reform Programme 2014' (25 April 2014), available at [http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014\\_belgium\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2014/nrp2014_belgium_en.pdf).

<sup>161</sup> 'Permanent habitat map: adoption of mapping the sites concerned' (*Plan habitat permanent : adoption de la cartographie des sites concernés*), Walloon Government website, available at <http://henry.wallonie.be/plan-habitat-permanent-adoption-de-la-cartographie-des-sites-concern-s-0>.

<sup>162</sup> Walloon Government Decree of 12 July 2012 on the collection and recovery of administrative fines applicable under Articles 13b, 200 bis and 200 ter, MB July 30, 2012. (*Arrêté du Gouvernement wallon du 12 juillet 2012 relatif à la perception et au recouvrement des amendes administratives applicables en vertu des articles 13 ter, 200 bis et 200 ter, MB 30 juillet 2012*).

<sup>163</sup> Walloon Government Decree of 6 February 2014 amending Walloon Government Decree of 21 January 1999 on the granting of moving and rental premiums, BOG 20 February 2014.

## **9. MONITORING COMPLIANCE OF NATIONAL MEASURES WITH FUNDAMENTAL RIGHTS**

### **KEY FINDINGS**

- The Constitutional Court reviews legislative acts, including both substantive and formal rules adopted by the federal parliament (statutes) and by the parliaments of the communities and regions (decrees and ordinances). All other regulations, such as Royal Decrees, decrees of governments, of communities and regions, ministerial decrees, regulations and decrees of provinces and municipalities, and court decisions, fall outside the jurisdiction of the Court and fall under the jurisdiction of the Council of the State.
- The constitutionality of the Act of 28 December 2011, which raised the minimum pension age from 60 to 62 years in the public sector, was questioned by several associations representing civil servants. Regarding unemployment benefits, the constitutionality of the Royal Decree of 23 July 2012 implementing the degressivity of unemployment benefits has been questioned by trade unions and several NGOs. During the period under scrutiny, other cases related to housing were also brought to the Constitutional Court.
- The Inter-federal Center for Equal Opportunities is the main human rights body in Belgium and has a mandate to address issues in the area of equal opportunities and non-discrimination at federal, regional and community levels. There are also a number of other independent public human rights bodies with competence limited to a specific human right or a specific area: the Institute for the Equality of Women and Men (IEWM), Combat Poverty, Insecurity and Social Exclusion Service, Migration center, the Federal Ombudsman
- There is evidence that the economic crisis has had an impact on the financing of some of these human right statutory bodies.

### **9.1. Monitoring compliance at national level**

The Constitutional Court reviews legislative acts, including both substantive and formal rules adopted by the federal parliament (statutes) and by the parliaments of the communities and regions (decrees and ordinances). All other regulations, such as Royal Decrees, decrees of governments, of communities and regions, ministerial decrees, regulations and decrees of provinces and municipalities, and court decisions, fall outside the jurisdiction of the Court and fall under the jurisdiction of the Council of the State. The Constitutional Court has the authority to pass judgment on any violation, by legislative acts, of the fundamental rights and liberties guaranteed in Section II of the Constitution (Articles 8 to 32) and article 191 (foreigners' protection). A case may be brought before the Court in the form of an action for annulment that may be instituted by any authority designated by statute or by any person who has a justifiable interest. Secondly, any tribunal may refer preliminary questions to the Constitutional Court.

Judgments of the Constitutional Court are enforceable by law and not open to appeal. If the action for annulment is well-founded, the challenged legislative act will be entirely or partially annulled. Annulment judgments have absolute binding force from the moment they are published in the Official Journal. Such annulment has retroactive effect, which means that the annulled act must be deemed never to have existed. The effects of rulings given on preliminary questions are somewhat different. The court of law that referred the preliminary question, and any other court passing judgment in the same case (for instance

on appeal) must, in settling the dispute that gave rise to the preliminary question, comply with the ruling given by the Constitutional Court on the preliminary point of law in question. Where the Court finds a violation, the legislative act will remain part of the legal system but a new six-month term begins in which an action for annulment of the relevant legislative act concerned can be brought forward<sup>164</sup>.

During the period under scrutiny, several cases were brought to the Constitutional Court and the Council of State regarding the rights covered by the study:

- The constitutionality of the Royal Decree of 23 July 2012 implementing the degressivity of unemployment benefits has been questioned by trade unions<sup>165</sup> and several NGOs<sup>166</sup>. The right to social security is guaranteed by various legal provisions, notably Article 23 of the Constitution, which includes at least one 'standstill' effect. This principle, developed by doctrine and jurisprudence, precludes the legislator from reducing the highest level of protection conferred by law, without compelling reasons. Such a reduction is possible, but only if it is in the public interest and if the consequences are not disproportionate to the aim pursued. However, neither the royal decree nor the government agreement justifies the measures taken. The decree constitutes a significant decline, both in terms of access to unemployment benefits and their retention and removal. The Flemish Network for the Fight against Poverty has appealed to the Council of State to set aside the royal decree in question. The latter was dismissed in a judgment delivered in December 2012 on the grounds that the applicant did not have an interest to act<sup>167 168</sup>.
- The constitutionality of the Act of 28 December 2011, which raised the minimum pension age from 60 to 62 years in the public sector, was questioned by several associations representing civil servants. The law was not negotiated properly with the representative trade unions, although the Act of 19 December 1974 obliged the Belgian State to negotiate the essential elements of the administrative and pecuniary status of officials. De Becker (2013) explained how the Government used a trick to overcome this obstacle, by modifying the original proposal with a parliamentary amendment (such amendments are not subject to this legislation), avoiding the legal obligation to negotiate with representative trade unions concerning this issue<sup>169</sup>. The Constitutional Court dismissed the applications in two separate decisions, in which it did not deal with the content of the reform. As highlighted by De Becker (2013), it remains strange that the action taken by the government to avoid applying the 1974 Act properly was not foreseen. Attempts could have been made to check whether this action was in line with Article 27 of the Constitution, which provides a legal guarantee of freedom of association, and which could have been linked with the principle of legitimate expectations. The government had to indicate specifically why the obligations to enter into formal collective negotiations were not respected. Parliamentary documents indicate that the Minister had contacted the trade unions once the texts were ready and organised negotiations, indicating that the texts could no longer be modified. However, this had to be done before the initiative was initiated in Parliament in order to organise a substantive collective bargaining procedure (De Becker, 2013). The Minister stressed the sense of urgency and defended his choice to avoid preliminary negotiations and indicated that the specific economic circumstances justified his behaviour<sup>170</sup>.
- Private complaints and French-speaking authorities questioned the legality of the willingness to learn Dutch, required by the Flemish housing code from people renting

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<sup>164</sup> Constitutional Court website, available at <http://www.const-court.be/en/common/home.html>.

<sup>165</sup> Palsterman (2012) op.cit.

<sup>166</sup> Forget (2014), op.cit.

<sup>167</sup> Council of State, 20 December 2012, *Vlaams netwerk van verenigingen waar armen het woord nemen t. Belgische Staat*, no 221.853.

<sup>168</sup> Dumont (2013), op.cit.

<sup>169</sup> Parliamentary Document, Senate, nr 5-1408/3, session, 2011-2012.

<sup>170</sup> Ibid.

social house, arguing that this amounted to a violation of article 23 of the Constitution, on socio-economic rights, read in conjunction with international human rights standards. The Constitutional Court decided that the measure pursued a legitimate aim, i.e. improving social cohesion amongst the tenants of a social housing complex<sup>171</sup>. This is in contrast with the views held by international human rights bodies in relation to the same legislation in their review of Belgian reports. The Committee on the Elimination of Racial Discrimination recommended that Belgium "ensure that linguistic requirements do not lead to indirect discrimination affecting both citizens and non-citizens who do not speak Dutch, on grounds of their cultural rights, in particular their housing rights"<sup>172</sup>. Similar concerns were expressed in other reports by the Human Rights Committee, the European Committee against Racism and Intolerance and the Commissioner of Human Rights of the Council of Europe<sup>173</sup>.

Regarding non-judicial bodies, the federal government, regions and communities agreed, in 2013 to convert the current equality body into an Inter-federal Centre for Equal Opportunities<sup>174</sup> (ICEO) (interfederaal Centrum voor gelijke kansen /Centre interfédéral pour l'égalité des chances) with a mandate to address issues in the area of equal opportunities and non-discrimination at those three levels. There are also a number of other independent public human rights bodies with competence limited to a specific human right or a specific area: the Institute for the Equality of Women and Men (IEWM), Combat Poverty, Insecurity and Social Exclusion Service, Migration Centre (fundamental rights of foreigners), the Federal Ombudsman, etc. These bodies undertake, develop, support and co-ordinate studies and research in their field as well as assess the impact of policies, programmes and measures. They address recommendations to the public authorities and take legal action.

There is evidence that the economic crisis has had an impact on the financing of some of these human right statutory bodies. The Director of the ICEO confirmed that from 2008, its institution had to face several budget reductions (up to €173,000 in 2011) very late in the year. Its situation will be different from now on, as the cooperation agreement approved by the Parliament fixed the functioning budget of the Centre from 2015 to up to €7.85 million a year. This amount will be maintained for three years and subject to an annual index. The agreement, however, provides a possibility to re-discuss the amount if all the parties agree<sup>175</sup>.

Other bodies were not spared. The website of IEWM showed a staff reduction from 39 people in 2010 to 35 people in 2014<sup>176</sup>. The Federal Ombudsman also reported in its annual report 2013<sup>177</sup>, a reduction of its budget by up to €159,200 and a staff reduction (by 1.5 full-time posts).

Concerning the Combat Poverty, Insecurity and Social Exclusion Service, as explained by its coordinator, its functioning budget was determined by the cooperation agreement created

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<sup>171</sup>Constitutional Court, 10 July 2008, 101/2008.

<sup>172</sup>CERD/C/BEL/CO/15 §16, 11 April 2008.

<sup>173</sup>Wouters, J. and Vidal, M., 'International (human rights) law as applied between the entities and the Belgian federation', KU Leuven Working Paper, n° 106, June 2013.

<sup>174</sup>Cooperation Agreement between the Federal Government, the Regions and Communities to create a Interfederal Centre for Equal Opportunities and the Fight against racism and discrimination in the form of a common institution within the meaning of Article 92bis of the Special Institutional Reform Act of 8 August 1980 (*Accord de coopération entre l'Autorité fédérale, les Régions et les Communautés visant à créer un Centre interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations sous la forme d'une institution commune, au sens de l'article 92bis de la loi spéciale de réformes institutionnelles du 8 août 1980*), available at [http://www.diversite.be/sites/default/files/documents/law/accord\\_de\\_cooperation\\_centre\\_interfederal.pdf](http://www.diversite.be/sites/default/files/documents/law/accord_de_cooperation_centre_interfederal.pdf).

<sup>175</sup>According to the Director of the Inter-federal Centre for Equal Opportunities interviewed on 14 October 2014)

<sup>176</sup>IEWM website, available at <http://iqvm-iefh.belgium.be/fr/>.

<sup>177</sup>Federal Ombudsman, 'Annual Report' (*le Médiateur fédéral Rapport annuel*) (2013), available at [http://www.mEDIATEURFEDERAL.be/sites/1070.b.fedimbo.belgium.be/files/rapport\\_annuel\\_-\\_jaarverslag\\_-\\_2013\\_0.pdf](http://www.mEDIATEURFEDERAL.be/sites/1070.b.fedimbo.belgium.be/files/rapport_annuel_-_jaarverslag_-_2013_0.pdf).

in 1998. The amount of €500,000 allocated to the Service has been subject to an annual index and never has been reduced or increased. However, costs have continually increased over the years, rendering the missions of the Service more difficult to achieve<sup>178</sup>.

## 9.2. Monitoring compliance at international level

The European Committee of Social Rights (ECSR) has adopted several conclusions concerning Belgium's compliance with the European Social Charter in the fields covered by this study. The table below provides an overview of instances in which the ECSR found that Belgium was not in compliance with the relevant Charter provisions. It covers conclusions issued since the year 2008.

**Table 3: Non conformity of national law with European Social Charter provisions**

Year	Description	Field
2012 <sup>179</sup>	<p><b>Prohibition of discrimination in employment</b></p> <ul style="list-style-type: none"> <li>not in conformity with Article 1§2 of the Charter on the ground that the restrictions on foreigners non-nationals of EEA member states or Swiss nationals occupying posts in the federal civil service go beyond those permitted by the Charter.</li> </ul> <p><b>Vocational guidance, training and rehabilitation</b></p> <ul style="list-style-type: none"> <li>not in conformity with Article 1§4 of the Charter on the ground that it has not been established that people with disabilities are guaranteed an effective right to mainstream training.</li> </ul> <p><b>Vocational training</b></p> <ul style="list-style-type: none"> <li>Belgium is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training in the German-speaking community</li> <li>not in conformity with Article 10§4 of the Charter on the ground that it has not been established that the equality of treatment as regards access to training for long -term unemployed persons is guaranteed to nationals of other States Parties in the German -speaking community</li> </ul>	Employment
2010 <sup>180</sup>	<p><b>Reasonable notice of termination of employment</b></p> <ul style="list-style-type: none"> <li>not in conformity with Article 4§4 of the Revised Charter on the grounds that 28 days' notice is insufficient for workers with three or more years' service; 56 days' notice is insufficient for workers with ten or more years' service.</li> </ul>	Employment
2008 <sup>181</sup>	<p><b>Free placement service</b></p> <ul style="list-style-type: none"> <li>not in conformity with Article 1§3 of the Revised Charter on the ground that it has not been established that the right to free employment services is guaranteed.</li> </ul> <p><b>Vocational guidance, training and rehabilitation</b></p> <ul style="list-style-type: none"> <li>not in conformity with Article 1§4 of the Revised Charter.</li> </ul> <p><b>Vocational training</b></p> <ul style="list-style-type: none"> <li>is not in conformity with Article 9 of the Revised Charter on the ground that it has not been established that the right to vocational guidance in the education system and in the labour market is guaranteed.</li> </ul>	Employment

**Source:** European Committee of Social Rights

<sup>178</sup>As reported by The Combat Poverty, Insecurity and Social Exclusion Service's Coordinator (interviewed on 17 September 2014).

<sup>179</sup>European Committee of Social Rights, 'Conclusions 2012 (BELGIUM), Articles 1,9,10, 15, 18, 20 and 25 of the Revised Charter', 2012, available at [http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2012\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2012_en.pdf).

<sup>180</sup>European Committee of Social Rights, 'Conclusions 2010 (BELGIUM), Articles 2, 4, 5, 6, 21, 22, 26 and 29 of the Revised Charter', 2010, available at [http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2010\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2010_en.pdf).

<sup>181</sup>European Committee of Social Rights, 'Conclusions 2008 (BELGIUM), Articles 1, 9, 10, 15, 18, 20, and 25 of the Revised Charter', 2008, available at [http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/conclusions/State/Belgium2008_en.pdf).

At the UN, the Committee on Economic, Social and Cultural Rights delivered its concluding observations concerning the fourth periodic report of Belgium in 2013<sup>182</sup>, raising some issues related to the fields covered by the study. The Committee recommended among other things, to:

- ensure that persons with disabilities and persons of foreign origin are able to fully enjoy their economic, social and cultural rights
- (a) strengthen and continue its action to combat youth unemployment effectively, including for the least qualified, and particularly in the Walloon and Brussels-Capital Regions, as well as unemployment among persons aged 55–64, women and persons with disabilities; (b) reinforce the impact of its specific plans and policies to reduce joblessness among non-European Union migrants.
- guarantee the exercise of the right to strike in law and in practice, in full compliance with the Covenant.
- put in place stronger measures to promote access, without discrimination, to adequate housing for low-income persons, marginalized and underprivileged population sectors, and persons of foreign origin.
- pursue the policy of construction of social housing launched in the various regions and promote access to such housing for these population groups. The State party is encouraged to consider adopting a national strategy on access to housing.
- enact legislation to protect individuals from forced evictions, in line with international standards, including the obligation to ensure that no person is rendered homeless or vulnerable to the violation of other human rights as a result of eviction.

Besides, the Committee requested Belgium to provide, in its next report, comprehensive information on the impact of the new system established in 2012, namely: the effect of the scale of reductions in unemployment benefits, and the enjoyment of the economic, social and cultural rights of unemployed persons (art. 9).

In 2010, the UN Committee on the Rights of the Child expressed concern about the significant inequality in the enjoyment of the right to education among children in Belgium, and particularly at the impact of socio-economic status on the education opportunities accessible to children and their school performance. The Committee noted with particular concern that schools' fees imposed in spite of the constitutional guarantee of free education greatly contributed to discrimination in the access to education, and urged Belgium to take the necessary measures to abolish school fees in accordance with its Constitution<sup>183</sup>.

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<sup>182</sup>United Nations, Committee on Economic, Social and Cultural Rights, 'Concluding observations concerning the fourth periodic report of Belgium', December 2013, E/C.12/BEL/CO/4.

<sup>183</sup>United Nations Committee of the Rights of Child, 'Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Belgium', 2010, CRC/C/BEL/CO/3-42010.



## 10. CONCRETE PROPOSALS FOR IMPROVING THE RESPECT OF FUNDAMENTAL RIGHTS IN TIMES OF ECONOMIC CRISIS

### KEY FINDINGS

General recommendations to improve the respect of fundamental rights in times of crisis include the following:

- attention should be paid that budget cuts and other measures do not impede the service provisions of bodies that support the groups affected by the crisis (such as NGOs, human rights' defenders and social partners);
- periodical independent monitoring as well as a culture of impact assessment of measures in terms of social and human rights would be useful to ensure that measures do not undercut the minimum essential levels of social rights' fulfilment.

Due to the impact of the crisis and related measures in these fields, the specific recommendations in the following areas are of particular importance:

- right to work: measures taken in the framework of the degressivity of unemployment benefits should be carefully assessed concerning their impact on the more vulnerable groups; measures supporting older workers to stay in the labour market until retirement age should be further developed;
- right to housing: Public investment for the construction of new public housing needs to be increased; initiatives that improve decent housing should be supported; the debate to introduce a system of housing allowance should be resumed;
- right of access to justice: Particular for vulnerable groups, access to justice and legal aid should not be compromised during economic downturns.

Women should be given particular attention, as they are likely to be especially vulnerable concerning their labour market access and (as a result) their right to pension.

Recommendations have also been made concerning the other rights, which may be seen more as preventive.

In order to improve the respect of fundamental rights in times of crisis, a number of recommendations have been listed with regard to each right mentioned in this study.

#### General recommendations

- NGOs, human rights' defenders and social partners play a significant role in monitoring the human rights' consequences of austerity. The impact of budget cuts and other measures regarding stability and functioning should be assessed before implementation, to make sure that they would not jeopardise their ability to provide services to the groups affected by the crisis.
- Periodic independent monitoring would be a useful tool to identify and assess the present and future impacts of economic policy and ensure that they do not undercut the minimum essential levels of social rights' fulfilment.



- There is a need to develop a culture of impact assessment of economic and social measures in terms of social and human rights, at all levels of Belgian socio-political organisations (State, Communities and Regions)

### Specific recommendations

#### **Right to education**

- The Belgian authorities should further improve equal opportunities in access to education regardless of socio-economic status of children. Special attention should be paid to the abolition of schools' fees, in accordance with the Constitution.

#### **Right to healthcare**

- It will be important in the future to make sure that the measures taken to limit the progress of healthcare expenses do not affect the accessibility of these, in particular for low income households.

#### **Right to work**

- Measures taken in the framework of the degressivity of unemployment benefits should be carefully assessed concerning their impact on the more vulnerable groups, and especially women. Although some improvement is observed regarding the employment rate of older workers, there is still a way to go in Belgium to fill the gap. Measures aimed at helping older workers to stay in activity until the retirement age should be further developed. Again, this is especially true for women.

#### **Right to pension**

- It is important to ensure that reforms in the area of pensions, particularly the retirement age and methods of calculation, do not affect the adequacy of these. Again, especially for women for whom a weak labour career may result in inadequate pensions.

#### **Right to housing**

- Given the increasing demand for public social housing and the persistence of long-time waiting lists to access such housing it is necessary to increase public investment for the construction of new public housing.
- Initiatives signifying a real improvement in the access to adequate and decent housing should be developed and supported, such as Housing First and social real estate agencies.
- Given the increased burden that housing costs are representing for low income households, there is a need to (re)start the debate to introduce a system of housing allowance in the Belgian social protection system.

### **Right of access to justice**

- The access to justice for all, and especially for those who need it most, should be ensured and not compromised during economic downturns. Particular attention should be given to vulnerable groups together with legal aid, to guarantee that they can meaningfully voice their claims against proposed or existing retrogression in the enjoyment of their rights.

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- Coordinator and Officer, Combat Poverty, Insecurity and Social Exclusion Service (17 September 2014); the Combat Poverty, Insecurity and Social Exclusion Service aims to keep the eradication of poverty as a priority on the political agenda. In consultation with associations, Public Centres for Social Welfare, trade unions, professionals from different sectors, administrations, etc., the Service produces analyses and recommendations for policy makers.
- Senior Policy Analyst, European Social Observatory (19 September 2014)
- Policy Officer, Belgian Anti-Poverty Network (10 October 2014); BAPN is an independent national non-profit organisation and has, amongst others, the following objectives: advocacy towards political decision-makers at federal and European level with regard to social, economic and financial policies in order to eradicate poverty.
- Legal Adviser, Research department, Confederation of Christian Trade Unions (CSC) (10 October 2014)
- Secretary-General of the National Labour Council (14 October 2014)
- Director, Interfederal Center for Equal Opportunities (14 October 2014)

## ANNEX - OVERVIEW OF RELATED STUDIES

<b>Name of the Study</b>	<b>PE number</b>	<b>ISBN number</b>
The impact of the crisis on fundamental rights across Member States of the EU - Comparative analysis	<b>PE 510.021</b>	<b>978-92-823-6598-4 print edition</b> <b>978-92-823-6599-1 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Belgium	<b>PE 510.015</b>	<b>978-92-823-6553-3 print edition</b> <b>978-92-823-6552-6 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Ireland	<b>PE 510.016</b>	<b>978-92-823-6547-2 print edition</b> <b>978-92-823-6546-5 online edition</b>
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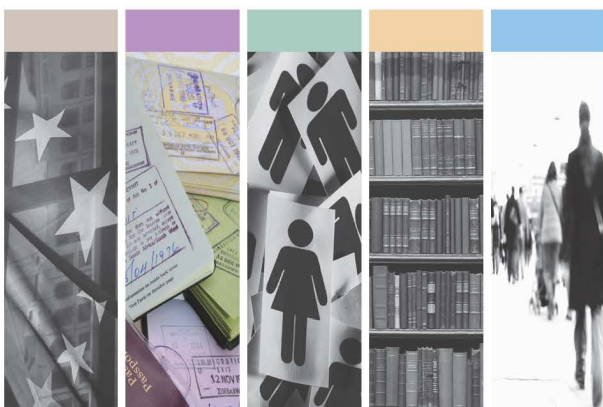
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